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# **Evaluation of the Background Check Pilot Program**

## **Final Report**

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## List of Acronyms

CBRF	Community-based rehabilitation facility
CE	Continuing education
CMS	Centers for Medicare & Medicaid Services
CNA	Certified Nursing Assistant
CNAC	CNA Corporation
FDD	Facilities for people with developmental disabilities
HHS	Department of Health and Human Services
HR	Human Resources
FBI	Federal Bureau of Investigation
HCBS	Home and community based service
IAFIS	Integrated Automated Fingerprint Identification System
ICF/MR	Intermediate care facilities for the mentally retarded
LEIE	List of excluded individuals/entities (OIG exclusion list)
LPN	Licensed Practical Nurse
LTC	Long-term care
MMA	Medicare Prescription Drug, Improvement, and Modernization Act
MSU	Michigan State University
OIG	Office of Inspector General
PCW	Personal care workers
RN	Registered Nurse
SNF	Skilled nursing facility
UCDHSC	University of Colorado at Denver and Health Sciences Center
WIN	Western Information Network

### Alaska

AK-DHHS	Alaska Department of Health & Social Services
AK-DPH	Alaska Department of Public Health
AK-DPS	Alaska Department of Public Safety

### Idaho

CHU	Criminal History Unit
IDHW	Idaho Department of Health and Welfare
ISP	Idaho State Police

### Illinois

IDPH	Illinois Department of Public Health
ISP	Illinois State Police
UCIA	Uniform Conviction Information Act

### Michigan

AANP	Adult Abuse and Neglect Prevention
BEAM	Bringing the Eden Alternative to the Midwest
LEIN	Michigan Law Enforcement Information Network
MSP	Michigan State Police

OTIS Michigan Offender Tracking Information System

Nevada

NV-BLC Nevada Bureau of Licensure and Certification  
NV-DHS Nevada Department of Health and Human Services  
NV-DPS Nevada Department of Public Safety

New Mexico

CCHSP Caregiver Criminal History Screening Program  
COR Consolidated Online Registry  
NM-DOH New Mexico Department of Health  
NM-DPS New Mexico Department of Public Safety  
ORR Online Registry Reference tool  
PACT Providing Assistance, Communication and Training Program

Wisconsin

IBIS Integrated Background Information System  
WI-DHFS Wisconsin Department of Health and Family Services  
WI-DOJ Wisconsin Department of Justice  
UWO University of Wisconsin-Oshkosh

# Executive Summary

## Overview

Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (PL 108-173) authorized the creation of the Background Check Pilot Program, directing the Secretary of the U.S. Department of Health and Human Services (HHS) “to establish a program to identify efficient, effective, and economical procedures” for conducting State and national background checks on prospective direct patient access employees. A major goal of the pilot was to improve on the type of screening done on direct patient access workers by requiring that a fingerprint-based State and national criminal records check be conducted, as well as a search of registries that are likely to contain disqualifying information.

Seven States participated in the pilot program: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin. The Centers for Medicare & Medicaid Services (CMS) selected these States to represent metropolitan and rural areas, as well as diverse and ethnic populations. The implementation date varied across the participating States, but most programs were operational by April 2006. The pilot ran through September 2007. The programs in Alaska, Michigan, and Wisconsin included abuse prevention training programs.

States had different reasons for participating in the pilot program. Several States used the pilot to develop and implement electronic data interchange interfaces to streamline the submission and reporting of background checks. This included methods of capturing fingerprints electronically and web-based applications for conducting initial registry checks. Other States used the pilot to extend background check requirements to additional providers and employee types.

The evaluation of the pilot program was conducted by researchers from Abt Associates and the University of Colorado at Denver and Health Sciences Center (UCDHSC) and was organized around a set of specific evaluation topics specified by the MMA legislation that created the pilot:

- (e)(1) Review the background check procedures used by the pilot States and identify the most efficient, effective, and economical procedures for conducting background checks.
- (e)(2) Assess the costs of conducting background checks.
- (e)(3) Consider issues related to whether employers or employees should be required to pay for background check costs.
- (e)(4) Consider whether the costs of conducting background checks should be allocated to both Medicare and Medicaid and identify potential methodologies for doing so.
- (e)(5) Determine the extent to which background checks result in unintended consequences, such as a reduction in the size of the available workforce.
- (e)(6) Review the forms that States use as part of their background check process to develop a model form that may be used for a national background check program. (See Appendix K)

- (e)(7) Determine the effectiveness of background checks conducted by staffing agencies<sup>1</sup> .
- (e)(8) Recommend appropriate procedures and payment mechanisms for implementing a national criminal background check program.

## Results

Below, results from the evaluation are highlighted, matching the findings to the mandated evaluation topics that they address.

***Number of Background Checks and Outcomes (e)(1) on efficiency:*** Across all of the pilot States, based on their quarterly data reports, results and fitness determinations were obtained for a total 204,339 background checks. An additional 42,859 background checks were initiated but no results were available as of the final data reports received from the States in October 2007. The statistics are therefore based on background checks for which the fitness determination decision is known. Of the 204,339 background checks, 158,476 employees were cleared for employment. This includes 158,207 employees who were cleared based on the initial background check results and an additional 269 who were initially disqualified but cleared based on the rehabilitation review and appeal processes. The pilot resulted in the disqualification of 7,463 applicants (not counting those whose disqualification was reversed through rehabilitation review or appeal). An additional 38,400 records were withdrawn prior to a final fitness determination decision. Some of the withdrawals were likely by applicants who were deterred from having a background check because they knew that they would be disqualified, however there is no estimate of numbers, and other withdrawals were likely due to unrelated reasons.

Disqualifications may occur at any point during the background check process, and employers typically terminated the background check at any stage in which they discovered disqualifying information. The majority of disqualifications were from information that was learned prior to the fingerprint-based check, from applicant self-disclosure, initial registry checks, or the name-based State criminal records check that was part of the background check process in some States. The proportion of disqualifications from sources other than the fingerprint-based check was particularly high in States that included a name-based State criminal records check as part of the initial registry checks.

***Processing Time (e)(1) efficiency:*** There was considerable variation in background check completion times. Across all of the pilot States, the median completion time was 15 days (from initiation of the background check until completion), but 25 percent of background checks took 33 or more days to complete, and 10 percent took 81 or more days. Background checks for which fingerprints were captured electronically were completed much more quickly than checks completed using fingerprint cards.

***Effectiveness (e)(1):*** While recognition of the value of background checks was nearly universal, there was some disagreement about whether the marginal benefits of a fingerprint-based check were

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<sup>1</sup> Note that, while the MMA legislation refers to background checks conducted by employment agencies, the more common term “staffing agencies” is used in this report.



worth the extra costs. This was particularly the case in Wisconsin, which had a strong name-based background check process prior to the pilot. It was not possible to measure the impact of background checks in reducing the incidence of abuse, neglect, and misappropriation of resident property, thus effectiveness was assessed using qualitative methods.

### **Background Check Procedures Used by States (e)(1) and (e)(8)**

The legislation that created the pilot program specified certain required elements of State background check programs but also gave States considerable flexibility with respect to many aspects of background check policies and procedures. In general, there was no consensus with respect to which procedures were the most efficient and effective. State programs differed with respect to:

- ***Covered employers:*** The MMA legislation specified certain employer types that were to be included in the pilot but allowed States to include additional employer types providing long-term care services, such as residential care and assisted living facilities. While the MMA legislation required that covered employers must be eligible to receive payments under title XVIII or XIX of the Social Security Act, the pilot data included all employers of the types specified for the pilot, regardless of whether they were Medicare or Medicaid certified. This is because existing laws in pilot States covered all employers of given types regardless of certification status.
- ***Definition of direct access employee:*** All States required background checks for direct care workers such as nurses, nurse aides, and home health aides, but there were differences with respect to requirements for administrative, dietary, and maintenance staff.
- ***Process for registry checks:*** There were differences in who conducted the registry checks and with respect to the registries that were checked. In some States, registry checks were conducted by the employer using a web-based application. In other States, the registry checks were completed by the State.
- ***Fingerprint collection agency and locations:*** States that used electronic methods for fingerprint collection had sites located throughout the State, in an attempt to maintain access and minimize the burden to applicants in submitting their fingerprints. In other States, employers or local law enforcement agencies collected fingerprints using fingerprint cards.
- ***Fingerprint technology:*** Four of the seven pilot States primarily used an electronic Live Scan system for collecting and transmitting fingerprints. The other three States primarily used manual fingerprinting systems (i.e., fingerprint cards).
- ***Fitness determination process:*** States varied with respect to the entity that made the fitness determination decision. In six of the pilot States, this decision was made by a government agency. In Wisconsin, employers received the State and national criminal history records and made the fitness determination decision.
- ***Criteria for fitness determination:*** The legislation specified a minimum set of convictions that would result in disqualification. All of the pilot States had additional disqualifying

offenses which bar employment, and several States mandated the number of years for which specific convictions barred employment.

- ***Consideration of pending and original charges:*** Most of the pilot States considered pending charges in the fitness determination decision in some way, either resulting in disqualification or no final decision. In two States, the consideration of pending charges was based on the judgment of the individual who was making the fitness determination decision.
- ***Process for handling cases with missing dispositions:*** There was variation regarding whether the State, the employer, or the employee had the responsibility for acquiring information on cases with missing disposition information.
- ***Provisional employment policies:*** All of the States had provisional employment policies that permitted employers to hire staff pending the completion of the background check. There was variation in the point in the background check process at which an individual could begin provisional employment and the supervision requirements for provisional hires.
- ***Rehabilitation review policies and procedures:*** Most States had a process for applicants to dispute the result of the fitness determination on the basis that they had been rehabilitated and did not pose a danger to patients. The States that did not have a rehabilitation review process had some offenses that resulted in disqualification for only a limited period of time.
- ***Time period that background checks cover:*** While the MMA required background checks for all new hires, several States allowed recent background checks to be transferable to new employers.

## **Costs of Conducting Background Checks (e) (2)**

Background check fees were established to cover the associated costs of conducting the registry checks, fingerprinting, State and national background checks, and program administration. Aside from the standard Federal Bureau of Investigation (FBI) fee of \$24 per background check, there was considerable variation across States in the costs of fingerprint collection (which was typically \$10-20) and the cost of the State background check (which ranged from \$7 to \$35). Some States had additional processing fees of up to \$35.

To inform estimates of a national background check program, cost estimates were developed using two methods: fee-based cost estimates and resource-based cost estimates. Both methods used data on the volume of background checks, and program start-up and implementation costs. The fee-based cost estimates used the background check fees in place during the pilot, while the resource-based cost estimates are based on estimates of the actual resources required to conduct background checks. The fee-based analysis includes four of the seven pilot programs (Idaho, Michigan, Nevada, and New Mexico); due to data limitations New Mexico was not included in the resource-based estimates. The cost estimates exclude the two pilot programs that were not operated statewide (Illinois, Wisconsin) and Alaska, a State with many unique features that affect the cost of its background checks. It is estimated that the four States included in this analysis would account for approximately 4 percent of overall volume in a national program.

The estimate is that the fee-based costs for expanding the pilot program nationwide would be between \$135.19 million and \$311.58 million for the first year of the program. This estimate includes \$49.5 million in start-up and implementation costs and between \$85.7 million and \$262.08 million for background check fees, depending on the volume of checks and the level of fees. Overall estimated costs across the five-years ranged from approximately \$504 million to over \$1.4 billion. The mid-range estimate is \$885 million. Cost estimates based on the resource-based approach were slightly higher than the fee-based estimates. Over a five year period, the average (mid-range) estimate was \$1.051 billion using the resource-based approach, with a range of \$832.43 million to \$1.464 billion. The higher estimate for the resource-based costs suggests that State fee structures did not cover the entire cost of conducting background checks.

These estimates are based on the assumption that the experiences of the pilot States included in this analysis are representative of other States and are a background check program like the pilot for which background checks would be required only for new applicants, not current employees, and a new background check would be required every time an individual changes jobs.

### **Payment for Background Checks (e) (3)**

Some States' pilot program operations depended heavily on the pilot grant funding from CMS, with others relying primarily on fees or State general funds. During the pilot, five States (Idaho, Illinois, Michigan, New Mexico and Wisconsin) used pilot funds to cover all or part of the background check fee for some or all employer types. In Alaska and Nevada, pilot funds were not used to cover background check fees. Employers typically covered fees that were not covered by pilot funds, although applicants may have been responsible for them in some cases.

Opinions varied with respect to the share of costs that should be paid for by the Federal government, the State, and employers. Stakeholders were generally not in favor of requiring that applicants pay fees for background checks. There was concern that an application fee would pose a burden or barrier to employment for many applicants, potentially resulting in workforce impacts that would result in greater vacancy rates for low-paying positions, potentially compromising the quality of care.

### **Allocation of Costs to Medicare and Medicaid (e) (4)**

The allocation of costs for conducting background checks was an important policy issue for the participating States. Nearly all providers of care (within the categories of providers designated for the pilot) were required to comply with program requirements regardless of whether or not they participated in Medicare or Medicaid. Additionally, for most of the Medicare and Medicaid participating providers, reimbursement rates did not specifically cover the administrative costs associated with conducting the required background checks. However, providers have looked to Medicare and Medicaid financing as means to cover program costs.

- **Medicare:** In the pilot, allocation of costs to Medicare occurred mainly through the use of pilot funds to cover the costs of program implementation and background check fees. In addition, health care providers using Medicare cost reports stated that they will include the allowable administrative costs of background checks programs on their cost reports to realize some future impact upon their Medicare rate of reimbursement (after costs are reported,

audited, and utilized in Medicare rate formulae). However, it should be noted that, currently, such costs are not now statutorily permitted for inclusion in the Medicare rate-setting process.

- **Medicaid:** In several States, Medicaid was used for covering both provider costs and State administrative costs associated with the pilot. In a manner similar to Medicare, Medicaid providers with rate structures that are dependent upon cost reporting were planning to report the allowable costs associated with required background checks (both administrative costs and any State required fees) for consideration in future rates. Additionally, when referring to providers that do not have their fees based upon cost reports, several States reported that, while no specific amount or percentage could be identified, “consideration” was made at the time of setting Medicaid fee schedules based upon the cost of required background checks and many other unrelated factors. Finally, a personal care agency in one State reported that they could bill Medicaid directly for the costs associated with background check fees.

Among State officials, there were varying levels of knowledge and use regarding the mechanisms in place to facilitate a Medicaid payment for qualifying State administrative costs (generally a 50 percent match rate) related to the background check program.

### **Model Form (e) (6)**

States developed their own forms for the pilot program, and there were two main types of forms that were used: forms to authorize the background check and applicant self-disclosure forms. The purpose of the self-disclosure forms was to obtain disqualifying information from applicants before the initiation of the background check, eliminating unnecessary checks. The types of information requested in the self-disclosure forms varied across States, reflecting differences in their fitness determination criteria. Given the flexibility that a national program may give States with respect to disqualifying crimes and fitness determination procedures, it is not clear that developing model forms for a national background check program would be appropriate or feasible.

### **Possible Unintended Consequences (e) (5)**

A concern about the pilot program at the outset was that the workforce available to the long-term care industry would be reduced as a result of the requirements for completing a background check. However, with a very few exceptions, stakeholders did not believe that the background check requirement had any unintended workforce impact. Most of the pilot States conducted some type of background check before the pilot started, and, as a result, direct care workers were accustomed to some type of pre-employment screening.

There were, however, other unintended consequences of the State background check programs in other areas, including the potential "channeling" of workers with criminal histories into employment settings for which background checks are not required and the costs that some applicants incurred related to driving long distances to be fingerprinted.

### **Effectiveness of Background Checks Conducted by Staffing Agencies (e) (7)**

All of the pilot States required a background check for staffing agency workers who have direct access to patients and residents. In most of the pilot States, however, staffing agencies were not able

to initiate background checks, as the responsibility for conducting background checks typically fell to the long-term care facility where the individual was working. This resulted in some inefficiencies, as, in some States, a new background check was required at every facility at which the individual was assigned. Staffing agencies are typically not classified as licensed health care facilities and are thus not regulated by the State, making it impractical to enforce background check requirements at the staffing agency level.

### **Points of Consideration Regarding Appropriate Procedures and Payment Mechanisms for a National Program (e) (8)**

The evaluation resulted in a number of considerations regarding appropriate procedures and mechanisms for a national background check program:

- ***Consideration: If Congress passes legislation with Federal requirements for background check programs, such legislation could include core elements and give States flexibility with respect to the specific types of procedures to use to be in compliance with the requirement (e)(1).*** Among pilot program staff and other stakeholders, there was a consensus that if a national background check program were enacted, they wanted Federal legislation to include a broad set of requirements but leave the specific details of background check procedures and disqualifying crimes to individual States. In general, the level of detail that was in the MMA legislation that created the pilot was considered appropriate—the differences in the pilot State programs illustrate the flexibility in background check procedures that was possible while meeting the MMA requirements. This flexibility was important to pilot States, as it allowed them to use the pilot to enhance existing State programs rather than develop new systems. States sought flexibility with respect to the time period covered by background checks, fitness determination criteria (e.g., the types of crimes that result in disqualification, how non-conviction information is used), the fitness determination process (e.g., the entity that makes the fitness determination decision, the types of registries that are checked), the methods used for fingerprint capture (electronic or fingerprint card), and other background check program procedures. Consideration could be given to accessing the National Practitioner Databank for information on licensed practitioners
- ***Consideration: Background checks could not be required every time an employee changes jobs, but be good for a period of time (e.g., 12 to 36 months), versus every time an employee changes jobs (e)(1).*** In the pilot program, each provider was required to conduct a background check on each new hire, regardless of when the employee's last background check occurred. After the pilot, most States have relaxed the requirement that new fingerprint-based background checks be conducted for all new hires, instead allowing a recently completed check to satisfy the background check requirement. This reflected the consensus that it was inefficient to require a new fingerprint-based background check for all new hires. Note that the cost estimates for a national program contained in Chapter 6 do not consider the impact of this consideration, but rather assume that new background checks are required every time that an individual changes jobs.

- ***Consideration: A national program could specify certain offenses that result in disqualification but give States the flexibility to add additional offenses (e)(1).*** Determining the specific offenses that could disqualify an applicant for employment involves balancing the desire to protect residents with possibly excluding applicants with a criminal record who would make good caregivers. The consensus among stakeholders was that States should have the flexibility to consider additional offenses beyond a minimum set specified by a national program.
- ***Consideration: Legislation to implement a national program could give States the flexibility to consider non-conviction information (e)(1).*** While recognizing that caregivers are innocent until proven guilty, there was strong support for preventing an applicant from being cleared for employment when pending charges for disqualifying offenses are present. Preventing the employment of those with pending charges is a potentially important safeguard in protecting residents from abuse and neglect.
- ***Consideration: States could have flexibility with respect to the supervision level of provisional hires (e)(1).*** In States that use an electronic fingerprint capture system and complete background checks quickly, it would be feasible to require direct supervision of provisional hires. In States where background checks take longer to complete, it may not be feasible to require employers to provide additional supervision.
- ***Consideration: States could have flexibility with respect to the entity that makes the fitness determination decision (e)(1).*** The MMA did not specify the entity that was to make the fitness determination decision, allowing this to be made by either a designated State agency or the employer. In most States, both the employer and a State agency had a role in the fitness determination decision (e.g., the employer reviews registries and conducts a name-based background check while the State reviews information obtained through the fingerprint check). While there are clear benefits to having the fitness determination made by experienced analysts, policymakers could leave the specifics of the fitness determination process up to individual States, as it may be appropriate for employers to have a role depending on the technology used in the background check process (e.g., whether a web-based application is used to conduct a name-based check prior to the fingerprint-based check) and the complexity of the fitness determination criteria used in the State.
- ***Consideration: While there are clear advantages of electronic fingerprint systems, it may not be appropriate to regulate fingerprint capture methods in a national program (e)(1).*** Almost all stakeholders agreed that electronic fingerprint capture should be used whenever possible, but it was also clear that universal implementation of electronic fingerprinting is not currently feasible and would be cost prohibitive in less densely populated areas. In providing technical assistance to States designing background check programs, however, it is appropriate to encourage States to adopt electronic fingerprinting systems, which allow for background check results to be processed much more quickly.

***Consideration: A national background check requirement could cover the full range of facilities/providers (e)(1).*** Feedback from stakeholders was that the background check should cover a broad range of health care providers. There was concern that those with disqualifying information

would tend to move to employment settings that are not covered by the background check requirement, putting patients in those care settings at increased risk of abuse and neglect.

***Consideration: Allow provisional employment pending completion of the background check but after completion of initial registry checks (e)(1).*** Provisional employment policies are an important part of limiting the unintended labor market effects of background checks, and employers need to be able to offer provisional employment pending completion of the background check. Requiring that the initial registry checks be completed prior to the beginning of provisional employment provides some level of screening prior to hire. States could be given flexibility with respect to the length of provisional employment, given the length of time sometimes required to complete background checks.

***Consideration: A national program could include any employee with access to, or influence over, a patient/client or the property including finances of that individual.*** State pilot programs typically included employees with access to patient's property in the definition of direct patient access employees, meaning that background checks were required for most, if not all, employees, including housekeeping, food service, maintenance, and administrative staff. Most stakeholders agreed that this type of broad background check requirement was important for ensuring patient protection.

***Consideration: A national program could specify that initial registry checks be completed prior to eligibility for provisional employment (e)(1).*** The initial registry checks were responsible for the majority of disqualifications and do not take long to complete. Requiring that the initial registry checks be completed prior to provisional employment could ensure that there is some level of screening completed for all employees prior to hire.

***Consideration: A national program could specify that volunteers who function in positions with patient/client access or access to their property including finances could be required to have a background check (e)(1).*** Stakeholders noted that most volunteers have limited access to patients and were concerned about the potential impact of fingerprinting on the ability to recruit volunteers, but the general consensus among stakeholders was that background checks are appropriate for volunteers with direct, one-on-one patient access.

***Consideration: A national program could include staffing agency employees whose duties fit into the 'direct access' type of positions (e)(1).*** As in the pilot, background checks could be required for staffing agency employees with direct patient access. By allowing background checks to be good for a period of 12-36 months (see discussion above), many of the unnecessary, duplicative checks that were conducted on staffing agency employees in some States could be avoided, assuming that States could develop procedures that allow staffing agencies to share the results of checks among all of the providers where their staff are assigned.

***Consideration: States could have the flexibility to develop their own self-disclosure forms so that they can include information that they believe would be helpful (e)(6).*** All of the pilot States required applicant self-disclosure of any disqualifying information, and this information was used to avoid unnecessary checks on applicants who disclosed information that would preclude them from passing the background check. Given the differences in fitness determination criteria across States

(e.g., whether non-conviction information is considered), this flexibility is important so that the self-disclosure forms could best meet State needs, suggesting that a national form may not be appropriate.

***Consideration: A national program could give immunity from liability to employers that deny employment based on information provided by the background check (e)(1).*** The MMA gave immunity from liability to employers that deny employment based on information provided by the background check, and this immunity was viewed by stakeholders as a critical protection for providers.

***Consideration: Employers could be prohibited from charging employees for background check costs (e)(3).*** Stakeholders were generally not in favor of requiring that applicants pay fees for background checks. There was considerable concern about the burden that paying background check costs would be for applicants, particularly those in lower wage categories and non-licensed staff. Another issue raised by many stakeholders was that, if applicants were required to pay background check costs, there would likely be workforce impacts that would result in greater vacancy rates for low-paying positions and that this would lead to lower capacity for care delivery and/or quality of care for long-term care clients.

***Consideration: Where Medicare and Medicaid are deemed an appropriate payor, allocation of costs to Medicare and Medicaid could be based on program participation (e)(4).*** While the evaluation did not reach any conclusions about whether costs should be allocated to Medicare or Medicaid, if program costs are funded by Medicare or Medicaid, allocation of costs to Medicare and Medicaid based on program participation may be the simplest and fairest method. Under this method, for employers who participate in both Medicare and Medicaid, payment to the facility could be split between the two programs. Background check costs for Medicaid-only employers could be paid by Medicaid funds; costs for Medicare-only employers could be paid for by Medicare.

An alternative mechanism to consider may be to make direct payments to the State and to the FBI for background check processing costs. This could avoid having to set up a mechanism for making payments to providers, potentially reducing the burden on employers to track the volume of background checks. Another possible alternative could be to use Medicaid and Medicare cost reports for allocation of costs, although such costs are not now statutorily permitted for inclusion in the Medicare rate-setting process. The use of cost reports could ensure that the costs of background checks are appropriately reported and able to be considered in fee structures.

***Consideration: The Federal government could provide guidance to State Medicaid directors regarding the availability of Medicaid funding for the implementation and ongoing operating of background check programs (subject to assurances that Federal requirements are met) (e)(4).*** This guidance could assure that State Medicaid Agencies are aware of any Federal requirements for background check programs, the timetable for the implementation of any Federal requirements for such programs, and the relevant State agencies that the Medicaid Agency could consider contacting to develop an appropriate State Plan Amendment to facilitate future Medicaid claiming.



## Lessons Learned in the Development of Background Check Programs

Several findings from the evaluation are not appropriate as considerations for a national background check program, but rather are lessons that pilot States learned in the development and implementation of their programs that other States could consider these as they develop background check programs.

***Allow enough time for program implementation:*** Program officials noted the importance of planning ahead and allowing adequate time for the development of background check procedures, provider training, and the development and testing of IT systems.

***Clear program policies are important:*** In some States, providers expressed confusion about specific background check requirements, particularly with respect to which staff need background checks and whether background checks are required for contractors. There was some confusion as to which employees should be considered as having direct patient access.

***Collaboration with provider stakeholders is important:*** Collaboration across State agencies and with stakeholders was an important part of the development of pilot programs. Stakeholder support was important in helping to develop grant proposals, develop and ensure passage of the required legislative changes, and helping to build support for the program among employers.

***Allow resources for training:*** Training on background check processes and requirements was an important part of program implementation in the States that made major changes to their background check processes as part of the pilot.

***Technical assistance can be useful for assisting States in program development and implementation:*** Technical assistance was made available to pilot States, and this was important to the successful implementation of programs in several States. Considering that the pilot was composed of volunteer States, most of which had strong background check programs in place prior to the pilot, the need for technical assistance may be even more important under a national program, which would include many less experienced States.

***Background check programs are complex and could require a division of labor among staff with specific skills:*** Staffing was an important element to program implementation. Programs in several States were delayed due to staffing shortages and turnover. Consistent leadership, especially during the period prior to implementation, was important.

***Web-based systems are useful for conducting initial registry checks:*** As part of the pilot, several States developed or enhanced existing web-based systems for conducting background checks. Both State agency officials and employers agreed that these web applications were successful in speeding up the processing of background checks, automating the process, and eliminating unnecessary costs.

***Electronic fingerprint capture should be used whenever feasible:*** Electronic fingerprint capture (i.e., Live Scan) allows for background check results to be processed much more quickly, increasing patient safety by reducing the need for lengthy periods of provisional employment. Almost all stakeholders agreed that electronic fingerprint capture should be used whenever possible because of the speed with which it allows background checks to be completed.

***There are benefits from contracting with a single agency to provide fingerprinting services statewide:*** Working with a single vendor provides consistency and simplifies management of the background check program. The use of a single vendor also facilitates the transmission of fingerprints to the State police, and makes it easier to track any fingerprint submission problems. Because of the economies of scale associated with collecting a large volume of fingerprints, use of a single vendor also could be a cost efficient approach.

***Supervision of provisional hires is difficult to enforce:*** State agencies have very little ability to track/enforce the increased supervisory requirements often placed upon employers for provisionally employed workers (while their background check results are pending).

***One background check program can be used across multiple agencies:*** Most States have background check requirements for several types of workers, including teachers, bus drivers, child care workers, and health care workers. These workers are typically regulated by different State agencies, each of which operates their own separate background check programs. There could be benefits from increased collaboration and information-sharing across the agencies that run background check programs.

***Procedures for allowing staffing agencies to initiate background checks are important:*** Allowing staffing agencies to initiate background checks and use the results of the background check across multiple providers (as long as the individual is still working for the same staffing agency) may improve the efficiency of background check programs. Responsibility for ensuring that background check requirements were met could still fall to the long-term care employers to which the staffing agency employees were assigned, thus allowing enforcement to continue to occur through the certification survey process.

***Many stakeholders see value in having the fitness decision made by a State agency:*** In all of the States except for Wisconsin, the fitness determination decision was made by analysts that worked either for the State health care provider regulatory agency or the State central repository. Having the fitness decision made by a State agency reduces the burden on employers associated with background checks and likely increases the consistency of fitness determination decisions, given that the analysts can develop expertise in working with courts to investigate missing dispositions and in reviewing rap sheets.

***Rehabilitation review programs are important for increasing fairness and reducing unintended workforce effects:*** Most of the pilot States had some type of rehabilitation review program that allowed individuals with a disqualifying offense at some point in the past to be cleared for employment if they were able to demonstrate that they did not pose a risk to patient safety. Rehabilitation review programs can increase the fairness of background checks programs and reduce unintended workforce effects.

***Health care students could be informed of background check requirements and given the opportunity to be screened:*** Prior to beginning their programs, students should be notified of background check requirements, including the specific types of crimes that would disqualify them from employment. This is to avoid cases where students complete a program only to subsequently learn that they cannot be cleared for employment.

***Rap-back systems could improve effectiveness and efficiency:*** Several pilot States have implemented rap-back systems that allow information on criminal history to be forwarded to employers. With this system, fingerprints are stored in a database so that in cases where the employee is arrested or convicted of a crime following the initial background check, the State can notify employers of the change in the criminal history record. Rap-back systems could improve program efficiency by eliminating the need to collect new fingerprints and complete new background checks on applicants each time they change jobs.

## **Abuse Prevention Programs**

Three of the pilot States – Alaska, Michigan and Wisconsin – received additional funding to develop and conduct abuse prevention training:

- Alaska’s Abuse Prevention Training Program developed by the University of Alaska Anchorage, School of Social Work, aimed to address the lack of a consistent, State-wide training curriculum related to abuse and neglect of adults based on Alaskan statutes. A total of 731 people attended 63 sessions.
- The Michigan Adult Abuse and Neglect Prevention Training Program (AANP) program aimed to develop a curriculum that incorporated methods of staff empowerment, culture change and person-centered care and to evaluate the impact of such a curriculum on staff knowledge and work behavior related to abuse. In total, 156 providers participated in either 8- or 4-hour training; 459 trainings were held with 7,804 direct access staff trained.
- The Wisconsin Caregiver Project aimed to develop a training approach that de-emphasized “job hierarchies.” Wisconsin utilized experiential training, which is aimed at helping each participant to experience life through a customer’s eyes to examine their own beliefs, assumptions and stereotypes concerning abuse and abuse prevention. Program administrators estimate that 2,100 caregivers attended training and that an additional 1,000 participants received training at their own facility and that 207 provider representatives were trained.

There were several key findings related to the abuse prevention programs.

***Abuse prevention training works best when it is ongoing and is a useful complement to background checks:*** Given the multiple causes of abuse and neglect, there was a consensus that abuse prevention training was a useful complement to background checks. Many caregivers are not familiar with strategies for dealing with stress in a difficult work environment, or preventing and recognizing abuse and neglect, and the State’s abuse reporting requirements.

***State-academic partnerships were an effective method of organizing abuse prevention programs:*** The development of all three programs involved collaboration between State agencies and universities, and the collaboration proved successful in all three States.

***Abuse prevention training programs had measurable outcomes:*** Evaluations of abuse prevention programs found evidence that the programs increased staff awareness of actual and potential abuse and improvements in staff ability to identify report and prevent abuse.

### **Disclaimer Concerning HHS Role**

It must be noted for the record that the views, considerations, and cost estimates stated in this report are those of Abt Associates Inc. and States that participated in the Background Check Pilot Program, and are not to be attributed to the Secretary of Health and Human Services or to the Administration. The role of the Secretary and HHS staff with respect to evaluation of the Background Check Pilot Program and to this report was limited to activities necessary to fulfill the Secretary's obligations under section 307(a) through (e) of the MMA.

# 1. Introduction

There are currently more than 1.5 million Americans in nursing homes and many more who receive care in a community or other institutional setting (e.g., intermediate nursing, assisted living, adult foster homes).<sup>2</sup> While most of their caregivers are dedicated professionals who strive to provide quality care under what are often difficult working conditions, abuse and neglect does occur in long-term care settings. Background checks are one method of ensuring that the individuals with a history of certain criminal offenses are not employed in jobs for which they would have direct access to patients. The underlying assumption is that there is a relationship between criminal history and propensity to commit abuse or property theft in the future, an assumption that was supported by a recent study that found that nurse aides with a previous criminal conviction had higher rates of substantiated abuse than nurse aides without a criminal history.<sup>3</sup>

Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (PL 108-173) authorized the creation of the Background Check Pilot Program, directing the Secretary of the U.S. Department of Health and Human Services (HHS) “to establish a program to identify efficient, effective, and economical procedures” for conducting State and national background checks on “prospective direct patient access employees.” The major goal of the pilot was to improve screening for direct patient access workers by requiring that a fingerprint-based State and national criminal records check be conducted, as well as a search of registries that are likely to contain disqualifying information.

Seven States participated in the pilot program: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin. The Centers for Medicare & Medicaid Services (CMS) selected these States to represent metropolitan and rural areas, as well as diverse and ethnic populations. The implementation date varied across the participating States, but most programs were operational by April 2006. The pilot ran through September 2007. The programs in Alaska, Michigan, and Wisconsin included abuse prevention training programs.

## 1.1. Overview of Pilot Programs

The legislation that created the pilot program specified certain required elements of State background check programs but also gave States considerable flexibility with respect to many aspects of background check policies and procedures. There are important differences in the background procedures used by the pilot States. In many ways, the evaluation examines different approaches to conducting background checks for direct care workers rather than an evaluation of a single approach implemented in seven different States. Understanding these differences and how they contribute to the effectiveness and efficiency of State programs was a critical component of the evaluation. Below is a summary of how the State programs differed with respect to key dimensions of background check procedures.

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<sup>2</sup> Source: National Center for Health Statistics.

<sup>3</sup> Source: Ensuring a Qualified Long-Term Care Workforce: From Pre-Employment Screens to On-the-Job Monitoring. The Lewin Group. May 2006 (<http://aspe.hhs.gov/daltcp/reports/2006/LTCWqual.htm>)

- ***Covered employers:*** The MMA legislation specifies that pilot programs must include nursing homes/skilled nursing facilities, home health agencies, long-term care hospitals, hospitals with swing beds, intermediate care facilities for persons with mental retardation (ICFs/MR), home and community-based service (HCBS) group homes over eight beds, and personal care agencies approved under the Medicaid State Plan. States were allowed to expand the list of facilities to include other providers of long-term care services. Thus, some States included other types of employers in their pilot program such as assisted living and long-term care residential care facilities.
- ***Employee types for which background checks are required:*** The legislation defines a direct patient access employee as “any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or employer through employment or a contract with such facility or employer.” Across all of the pilot States, this included staff such as nurses, nurse aides, home health aides, and therapists, but State policies differed with respect to whether background checks were required for non-direct care staff (e.g., housekeeping, administrative, dietary).
- ***Background check requirements for staffing agency employees:*** All States required that staffing agency employees have a background check, but the responsibility for conducting background checks typically fell to the long-term care facility where the individual was working. Staffing agencies are not classified as licensed healthcare facilities and are typically not regulated by the State. States varied with respect to whether or not staffing agency workers were required to have a separate background check at every facility at which they worked or whether the background check was good as long as they were employed with a given staffing agency.
- ***Applicant self-disclosure and authorization:*** The MMA requires the pilot State programs to require, as a condition of employment, applicants to provide a written statement disclosing any disqualifying information, and a statement authorizing the State and national fingerprint-based background check. The method for providing this information varied from paper forms that are mailed to web-based applications. States were able to use the applicant self disclosure to avoid unnecessary background checks on individuals who disclosed disqualifying information.
- ***Process for registry checks:*** In addition to the required fingerprint-based State and Federal Bureau of Investigation (FBI) check, all of the pilot programs included an initial check of the State nurse aide registry, and the Office of Inspector General (OIG) Exclusion List. Some States also included other registry searches, such as State criminal records, sex offender and child protection registries, in their review process. Several States developed or enhanced web applications for conducting the initial registry checks. The web applications contain links to on-line registries that are part of the background check, allowing these initial registry searches to be completed in just a few minutes. In most States, these were conducted by the employer.
- ***Fingerprint technology:*** The MMA legislation requires that State and national criminal history records be searched through a 10-rolled fingerprint search. States varied with respect to whether fingerprints were collected using electronic methods or via fingerprint cards. In general, States that used an electronic system for capturing and transmitting fingerprints found that these systems provided distinct advantages over manual systems utilizing ink and fingerprint cards that are scanned and forwarded to the State’s central repository. However, it

was not feasible for some States, such as Alaska and New Mexico, to use electronic fingerprint capture methods because the rural nature of these States made it impractical to provide adequate access to the few locations with electronic fingerprinting technologies. Some States used a combination of electronic and manual fingerprint collection.

- ***Fingerprint collection agency and locations:*** States that used electronic methods for fingerprint collection had sites located throughout the State, in an attempt to maintain access and minimize the burden to applicants in submitting their fingerprints. Fingerprint cards were collected by employers, local law enforcement agencies, or fingerprint vendors, and were submitted in person or by mail to the State central repository.
- ***Fitness determination process:*** The MMA legislation is not specific with respect to fitness determination procedures, thus giving States considerable flexibility. States varied with respect to the entity that makes the fitness determination decision. In five of the pilot States, this decision was made by the agency that is responsible for regulating the employer, with varying levels of employer involvement. In Nevada, the State's central repository, the Nevada Department of Public Safety (NV-DPS) made the fitness determination. In Wisconsin, employers received the State and national criminal history records and made the fitness determination decision.
- ***Criteria for fitness determination:*** The legislation specifies that potential employees with any Federal or State criminal conviction or offense described in section 1128(a) of the Social Security Act, including: felony conviction related to health care fraud, a felony conviction related to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance, criminal offense related to the delivery of an item or service under Title XVIII, or a finding of patient or resident abuse or neglect, or misappropriation of property must be disqualified for employment. All of the pilot States had additional disqualifying offenses which bar employment, and several States mandated the number of years for which specific convictions barred employment.
- ***Process for handling cases with missing dispositions:*** There was variation regarding whether the State, the employer, or the employee had the responsibility for acquiring information on cases with missing information. In States such as Alaska, where pending charges were sufficient grounds for disqualification, little effort was made to find the final outcome of cases with missing dispositions, and the burden was on the applicant to show that the final outcome indicated that they should not be disqualified. In other States, either the State agency responsible for program regulation or the State central repository attempted to obtain missing disposition information. In Wisconsin, this responsibility fell to employers.
- ***Disqualifying offenses:*** Determining the specific offenses that should disqualify an applicant for employment involves balancing the desire to protect patients from staff who may abuse them or steal their property with possibly excluding workers with a criminal record who would make good caregivers and not pose a risk to patients, thus making it more difficult to fill vacant positions. There was considerable variation in the types of disqualifying criteria used by the pilot States, and the length of the applicable disqualification time frame. Some States had lengthy lists of specific disqualifying offenses; other States had shorter lists of more general categories of convictions. Alaska, Idaho, Michigan, and Nevada had several categories of exclusions, with some crimes (e.g., murder, abuse, sexual abuse) that resulted in a lifetime disqualification and other types of offenses that resulted in disqualification for a

shorter period of time. In addition to a list of mandatory disqualifying offenses, Wisconsin allowed employers to disqualify applicants based on convictions that the employer considered to be substantially related to the caregiver's job. The evaluation was not able to draw any conclusions about what offenses should disqualify an applicant.

- ***Consideration of pending and original charges:*** Most of the pilot States considered pending charges in the fitness determination decision in some way. In Alaska, pending charges were sufficient to disqualify an applicant; in Michigan and Nevada, pending charges resulted in the State not being able to make a fitness determination, effectively putting the hiring process on hold until the disposition is known. In Idaho and Wisconsin, pending charges might be considered based on the judgment of the individual making the fitness determination decision.
- ***Information disseminated to employers:*** Five of the pilot States (Alaska, Idaho, Illinois, Nevada, New Mexico) did not make the complete criminal history available to the employer, and only indicated whether the applicant was cleared for employment or disqualified. One of the two Michigan agencies that processed background checks provided a summary of the applicant's criminal history to the employer, while the other agency gave only the fitness determination decision. The Wisconsin model of fitness determination required that the complete criminal history record be made available to employers, and they were able to consider information beyond the mandatory disqualifying convictions that might have been substantially related to the applicant's job duties.
- ***Provisional employment policies:*** All of the States had provisional employment policies that permitted employers to hire staff pending the completion of the background check, but there was variation in the level of supervision required for provisional staff and the point in the background check process at which an individual could begin provisional employment. Given the differences across States in background check completion times, the length of provisional employment varied substantially.
- ***Rehabilitation review policies and procedures:*** Five of the pilot States had a process for applicants to dispute the result of the background check on the basis that they had been rehabilitated and did not pose a danger to patients. Rehabilitation review programs can decrease the workforce effects that would result from unnecessary disqualifications. Michigan and Nevada, the two States that did not have a rehabilitation review process had some offenses that resulted in disqualification for only a limited period of time. This is an alternative approach for allowing applicants to demonstrate rehabilitation.
- ***Enforcement of background check requirements:*** All of the pilot States monitored enforcement for background check requirements via the State agency that is responsible for licensure and certification.
- ***Time period that background checks cover:*** Section 307 of the MMA, requires the pilot States to conduct a State and FBI background check upon the hire of each new direct patient access employee. However, several States allowed recent background checks to be transferable to new employers. After the pilot, most States planned to relax the requirement that new fingerprint-based checks be conducted every time an individual changes jobs.
- ***Liability limitations:*** All of the pilot States had provisions that protected employers from liability resulting from their employment decisions that were based on information obtained as part of the background check.



- **Costs of background checks:** There was considerable variation across States in the costs of background checks and whether pilot funds were used to cover these costs. All of the States had a \$24 cost for the FBI background check. There were additional charges for the State fingerprint check (\$10 - \$45), fingerprint collection (which may be as high as \$40), the State name-based check, and other fees of up to \$30. The range of total background check costs varied from \$44 in Wisconsin to up to \$124 in Alaska.
- **Payment for background checks:** Five of the pilot States (Idaho, Illinois, Michigan, New Mexico and Wisconsin) used pilot funds to cover all or part of the background check costs. In the other States, employers typically covered these costs (although, in some States, employers were allowed to pass some of the costs onto applicants).

## 1.2. Overview of Evaluation

The evaluation of the pilot program was conducted by researchers from Abt Associates and the University of Colorado at Denver and Health Sciences Center. The evaluation was organized around a set of specific evaluation topics specified by the MMA legislation (Sec. 307(e)(1)-(8) that created the pilot and, in paraphrasing, is designed to:

- Review the background check procedures used by the pilot States and identify the most efficient, effective, and economical procedures for conducting background checks.
- Assess the costs of conducting background checks.
- Consider issues related to whether employers or employees should be required to pay for background check costs.
- Consider whether the costs of conducting background checks should be allocated to both Medicare and Medicaid and identify potential methodologies for doing so.
- Determine the extent to which background checks result in unintended consequences, such as a reduction in the size of the available workforce.
- Review the forms that States use as part of their background check process to develop a model form that may be used for a national background check program.
- Determine the effectiveness of background checks conducted by staffing agencies.
- Recommend options to CMS to consider in specifying appropriate procedures and payment mechanisms for implementing a national criminal background check program (See Appendix K).

While the evaluation included quantitative analyses of the volume, outcome, and processing time of background checks, qualitative inquiry and the subsequent analyses of the qualitative data collected were central to the evaluation of the pilot program. This qualitative emphasis was appropriate given the study questions that were addressed as part of the evaluation. The information presented in this report is based on information collected as part of a comprehensive review of written materials on pilot State programs that were provided to CMS either by the States directly or through the implementation support contractor (CNAC), interviews with program officials in each of the pilot States, site visits that were made to each pilot State, and data submitted by pilot States on the volume, outcome, and

completion times of background checks. See Appendix A for a description of the methods used in the evaluation and Appendix B for the interview protocols that were used for the telephone interviews and site visits.

## 2. State Experiences in the Pre-Pilot Period and Motivations for Participating in the Pilot

As part of the analysis of State background procedures (evaluation topic (e)(1) from Section 305 of the MMA), the background check programs that existed in States prior to the pilot were reviewed. An understanding of State's pre-pilot experiences is important for understanding the types of background procedures used by States during the pilot and the goals of State pilot programs.

### 2.1. State Experiences in the Pre-Pilot Period

By design, States awarded pilot program grants by CMS had some previous experience with an existing publicly-sponsored background check program that was intended to protect vulnerable populations. While the CMS Pilot Program introduced and required some degree of uniformity and policy consistency resulting in mandatory changes to some pre-existing programs, the basic goals of these programs were consistent with those of the MMA for conducting background checks.

The evolution and development of background check programs for healthcare workers in long-term care have been underway for several years. Through these prior efforts, important innovations have been achieved to improve the effectiveness and efficiency of large-scale background check programs. Throughout this process certain challenges have emerged, and important lessons have been learned by States. These experiences provide a wealth of information that is germane to the evaluation, in that they provide:

- Important information regarding what it may require for States to begin a background check program if none is currently in place.
- Important lessons in terms of the how State officials and program users may work together to create successful programs, overcome obstacles, and assure the protection of vulnerable populations.
- Information that can inform policy options for consideration in implementing a national background check program for long term care.

### Thematic Analysis

Analysis of how the programs in the pilot States emerged prior to participation in the pilot program identified 12 cross-cutting themes related to State pre-pilot programs.

***State required background checks for long-term care (LTC) entities started in the 1990s with State mandates from general assemblies and/or executive orders from governors.***

Each of the pilot States had existing background check programs in place prior to joining the pilot program. Many of these programs began over 10 years ago with their origins in public policy initiatives from the 1990s. Stakeholders often cited specific legislative language regarding the original background check program or programs in their States. In some States, such as Idaho and Wisconsin, a single program was established to require background checks for all covered provider types.

Separate programs were established to cover various providers in other States, such as Alaska and Michigan, but with a common intention to protect vulnerable clients. For example, Michigan had two programs; one to protect nursing home residents and the other was for adult foster care and homes for the aged. Alaska had 19 different regulatory schemes covering background check programs.

***The genesis of pre-pilot background check programs was to protect children and vulnerable adults and to centralize background checks for long-term care and other healthcare workers into a single organized unit.***

Pre-pilot programs were developed due to a general concern for the safety of vulnerable populations in both long-term care (aging) and children's services. For example, the State of Idaho initiated its first background check requirement for any Medicaid-funded children's program. State officials cited a general concern for protecting long-term care clients as a major impetus for the original State programs, with particular emphasis on children and vulnerable adults. Even though many healthcare industry workers were already required to have criminal history checks as part of their licensing or certification requirements, a centralized system of screening workers that was administered at the State level was seen as important.

***Champions of initial programs included elected officials at the State and national levels, government policymakers, and selected provider groups. Critics of programs were not readily identified by stakeholders in most States.***

Protecting vulnerable populations from incidents of abuse, neglect and theft is a popular notion with clear policy support and program implementation implications. Policies to require background check screenings were grounded in popular support to protect vulnerable clients from potential harm that might be perpetrated by caregivers with a criminal history. Opposition to programs was not widely identified or cited by stakeholders in most States, as the programs were generally viewed as a way to improve patient safety and quality of care. However, the burden of costs to conduct background checks was a cited concern, particularly in States where employees might be required to pay a portion of the costs.

***Provider types required to have a background check were highly variable in participating States during their pre-pilot programs.***

Some States focused only upon workers in facilities that were funded by Medicaid or other State-sponsored programs, or the providers of child welfare services. However, some States were very comprehensive in their approach, and their programs encompassed workers in a variety of settings, regardless of the source of funding to the provider.

***None of the pre-pilot program used Live Scan technology, but relied on hardcopy prints and manual systems for processing results.***

Prior to the pilot, the States that had required a fingerprint-based background check relied primarily on fingerprints rolled using ink and paper. Live Scan technology was viewed as an upgrade to program technology in most pilot States, but there were often financial or other barriers to adopting this system of processing background checks for programs in place prior to the pilot program. Some States relied on name-based checks and did not conduct the national FBI fingerprint-based background check.

***Many pre-pilot programs benefited from uniform implementation, formalized functions, or other requirements already in place when programs began.***

Most States had a designated agency that was responsible for ensuring that the overall background check program was properly implemented and enforced. Alaska was the notable exception. In general, this designated agency was the State health department. Inter-agency agreements or other arrangements were often viewed as necessary to ensure successful implementation of all program requirements (e.g., oversight, enforcement, fitness determination, appeals, or financing). For example, State law enforcement agencies (State police, department of public safety, etc.) generally processed criminal history record requests and returned results to the primary agency responsible for screening long-term care workers.

***Background check programs were funded by a combination of grant funds and fees with minimal State general funds support (e.g., for IT/infrastructure funding to assist with start-up technology).***

Stakeholders noted that it was a strain on State agencies to implement new programs without new general funds from the State. User fees were intended to cover the costs of program operations. Due to differences in cost structures and registries checked, fees varied tremendously across States, ranging from less than \$10 (State registry name-based check only) to over \$70 in the pre-pilot programs. Fingerprinting fees were also common and varied in their collection and requirements. In some States, additional resources for program implementation (i.e., "start-up costs") were available based on legislative allocations or special budget provisions for these purposes.

***Fitness determination and appeals locus, processes, and criteria varied greatly within and across States with a broad range in standards for approval.***

Processes for fitness determination in the pre-pilot time frame varied considerably across and sometimes within States. The program in Nevada had a well-defined process with background checks centrally processed using specific statutory criteria. Only the outcome of registry checks was shared with providers, applicants, or other State agencies. In several other States, such as Alaska, the programs provided considerable leeway for judgment to be used to match unique circumstances regarding individual cases (made possible since entities requesting the background check information received the criminal history record). In Wisconsin, employers were delegated the authority to conduct the name-based registry search, review the resulting information, and exercise judgment regarding fitness for employment.

***States varied with respect to whether disqualifying convictions resulted a lifetime or time-limited ban on employment.***

In reviewing the pre-pilot programs, there were a number of barring conditions that were similar to those outlined in the MMA, and subsequently adopted by States in their pilot programs. The concept of lifetime versus time-limited criteria was embraced by a number of the States, as well. The similarities in the establishment of barring convictions, the identification of those carrying a lifetime ban from employment, and those that were time-limited evolved contemporaneously in the pilot States. The key differences in the evolution of the pre-pilot programs were the wide range of philosophical and structural approaches to the implementation of programs to allow for any form of judgment to be introduced into the background check process.

***Turnaround time was a persistent programmatic issue across States in the pre-pilot phase.***

Through the inception and ongoing development of the pre-pilot programs, there was a general frustration concerning the time frame required to conduct a comprehensive background check. The time frame required to complete a background check often required extensive periods of provisional employment for workers. These periods frequently extended from weeks to several months. Delays in completing a background check had consequences ranging from delays in the hiring process, employers losing qualified workers to other job opportunities with less burdensome pre-employment screening, to the extended exposure (up to several months) of vulnerable individuals to workers that may ultimately be found ineligible for employment based upon their criminal history.

***Many stakeholders were not sure if pre-pilot programs were effective. Reasons varied from lack of institutional memory to a lack of appropriate data.***

Stakeholders were not always able to provide details about their pre-pilot programs as some had little or no first-hand knowledge of the activities that may have occurred prior to their current assignment to the pilot program. In general, there was a sense that the pre-pilot programs had a deterrent effect that may have discouraged individuals with criminal histories from applying for positions that were subject to a background check. However, opinions regarding the effectiveness of the background check processes themselves were variable and, in some cases, the pre-pilot programs fell short of the stakeholders' expectations. It is also noteworthy that only one State could provide any data regarding the throughput and hit rates for the pre-pilot program, making it difficult for States to draw conclusions about the effectiveness of pre-pilot programs.

***There was a steady increase in demand for background checks in the pilot States during the pre-pilot phase.***

During the pre-pilot programs, the volume of background checks grew significantly. Stakeholders attributed this growth to the expansion of background check programs to include new provider types over time and full implementation of background check initiatives as the programs matured. Beyond the background check programs for long-term care workers, growth was also experienced in overall fingerprinting activities. This growth occurred for both criminal fingerprints as well as for civil fingerprints which had implications for the lead background check agency for the pre-pilot programs and for the law enforcement agencies that processed the fingerprints.

## **Lessons Learned by States in the Pre-Pilot Period**

The initial authorization and subsequent implementation of the seven pre-pilot programs provides important lessons for use by policymakers in the design of a national background check program. These lessons come from the work accomplished by State officials and stakeholders within their States as they first worked to design their initial programs and then encountered challenges and obstacles or target areas for improving their programs over time.

Based upon the qualitative data collected from stakeholders in each of the participating States, the lessons learned assisted them to make decisions regarding the background check procedures that would be the most efficient, effective, and economical as they implemented their pilot programs. These key lessons are summarized below:

***Except for Wisconsin, States learned that it was beneficial to designate a central lead agency to manage the entire background check program in order to achieve their goals for efficiency and effectiveness.***

Programs that were decentralized throughout various regions of a State and those that had different agencies in charge of background checks based upon the provider type encountered difficulty in implementing an effective program. The term “effective” in this sense refers to the ability of a State to implement and enforce a uniform set of disqualifying conditions, and to consistently enforce the intent of the program to protect vulnerable populations. Most of the pilot States supported a centralized system. One State, Wisconsin, had a decentralized program in which fitness determination decisions were made by employers, Wisconsin’s system was considered effective by almost all of those from the State that were interviewed as part of the evaluation. One other State, Idaho, was considering moving toward an employer-based fitness determination process toward the end of the pilot period. Alaska’s pre-pilot program did not have a central lead agency, and a major goal of the pilot program in that State was to designate a central lead agency to manage the background check process.

***There evolved a consensus among States during their pre-pilot programs that the use of Live Scan technology was key to reducing processing times.***

Generally speaking, States struggled to provide the results of background checks in a timely manner with any consistency. The reasons for delays ranged from time delays associated with getting the fingerprints taken by local agencies, to the handling and mailing of hard copy fingerprints, to issues of inadequate staffing for the manual processing of fingerprints and manual completion of State background checks. While the benefits of Live Scan technology were widely recognized, it was also recognized that the use of Live Scan would not be feasible in some rural areas, given the low fingerprint volume.

***Pre-pilot programs did not convey any uniformity across States regarding the use of judgment to assess an individual’s circumstances in applying these criteria.***

In general, the concept of having some types of crimes result in lifetime disqualification while others resulted in disqualification for only a specified period was embraced by the States. While there was some variability in disqualifying crimes across States, there was general consensus that there should be some minimum uniform standard imposed at a national level concerning which conditions/crimes should become barriers to employment in settings with vulnerable long-term care clients. Additionally, there was a general belief that States should be able to supplement the list to meet the needs and standards of specific States. State pre-pilot programs were diverse with respect to rules regarding fitness determination for applicants with a disqualifying crime. Some States were quite strict and did not allow any judgment to be applied, while others had rehabilitation review programs that allowed the specific circumstances of an individual to be considered in making a final fitness determination decision.

***States learned that adequate and consistent funding was a critically necessary element for the successful operation of a background check program.***

Funding could come from a number of sources, but must be sufficient to sustain the requisite staffing and information technology. In general, State agencies experienced a strain on their budgets as they attempted to implement new programs without new general funds from the State. Most pre-pilot programs were funded with a combination of user fees, and shifting of resources and/or staff from other programs or agencies; some States were able to obtain special legislative appropriations. A

consistent concern with implementation and program functioning during the pre-pilot phase was the ability to access adequate information technology support to ensure that their systems and program were able to keep up with increasing demand.

These important lessons carried States through the evolution of the pre-pilot programs to the development and implementation of the pilot program. They provide critical information for policymakers to consider in the development and implementation of a national background check program, and can be used to inform State-level decision-making during the design phase of any future effort.

## **2.2. Why Did States Participate in the Pilot Program?**

Participation in the pilot program required a significant commitment from participating States. Each participating State was required to prepare a detailed grant proposal that described how the State proposed to meet the CMS program specifications. At the outset of the pilot program, States could only estimate what the level of effort would ultimately be required, yet all were able to enumerate many of the challenges anticipated. Despite the challenges, the seven participating States remained motivated to proceed. Understanding these motives for participation is integral to understanding the needs and constraints that might exist within other States if a national background check program is mandated. This section of the thematic analysis examines the motivations for participation in the pilot program, within the overall context and shared experiences of the seven participating States.

### **What Led to State Participation in the Pilot Program?**

A number of key factors were identified by States as motivators for seeking participation in the pilot program. These included the following:

- Elected officials were particularly interested in strategies to protect vulnerable populations.
- Stakeholders saw the CMS pilot program as a mechanism to leverage Federal dollars to meet what some perceived to be the inevitable Federal requirement for States to enhance existing State-regulated and funded programs or to mandate other States to implement such programs in the future.
- State agency directors viewed the pilot program as a mechanism to enhance and automate existing programs to be more efficient and streamlined.
- Provider groups viewed the pilot program as a mechanism to subsidize the fees associated with background checks.
- State officials wanted an evaluation of the costs and benefits of conducting background checks.

### **Program Champions and Critics Played an Important Role on Program Design**

While States were not able to consistently point to any single watershed event or group of specific events that led to the decision to participate in the pilot program, many were able to identify specific program champions (beyond the elected officials and agency heads already mentioned) that were active in the State's decision to move ahead with the pilot program application, and in shaping the programs themselves. These champions included provider groups and advocates for the elderly.



Provider groups in several States advocated for participation in the pilot program due to the available funding and the possible use of funds to defray the cost of processing background checks. Elder advocates such as the State long term care ombudsman were strong supporters of the CMS Pilot Program as a mechanism to protect vulnerable adults.

The following representative quotes support these key themes:

- [The provider association] "approached [the State] and asked [us] to seek the grant."
- "Anything that [our providers] can do that will potentially keep something untoward from happening to a resident or a patient in your facility has got to be a good thing."
- "[The] ombudsman want[s] to make sure we can do preventative screenings as quickly as possible."

Not every group was supportive of implementing the pilot program, and the concerns expressed by these groups had an important effect in determining the overall design and scope of State programs. More specifically, many long-term care providers were concerned that conducting background checks would lengthen the time frame and cost associated with maintaining a workforce, increase the cost of doing business, add to workloads, ignore the needs of rural communities, and that the presence of the program may shrink applicant pools.

Some representative quotes from groups expressing concerns are presented below.

- [The program was] "another administrative nightmare [for providers]. It felt invasive in terms of what we were already doing."
- [Some long-term care] "employees feel very violated. Feel that their rights have been violated, having to give out their social security number when they've been told not to do that. She had a few employees quit over it."
- [The program would add] "substantial cost and we wanted the State to cover the cost."
- "We weren't really happy – but we complied. It was a one size fits all program – when it was created. Ramifications for rural counties were not given consideration."

### **2.3. Pragmatic Policymaking at the State Legislature and with Rulemaking Bodies**

The timing of the pilot program presented numerous challenges for States, as enabling legislation was required, as well as the implementation of regulations. It was during these policymaking events that States determined the scope and scale of the pilot programs. Due to the time constraints associated with the period for performance of the pilot program, States were required to become pragmatic in their decision-making processes, and rapidly make final decisions regarding program design. The key characteristics of these policymaking processes were as follows:

- **Enabling Legislation:** Seeking enabling legislation was a significant issue for some States, and required the re-codification of existing statutes in addition to adding new provisions.
- **Statewide versus Partial State Implementation:** While some States chose to implement the CMS Background Check Program Statewide, others chose to implement the program only in specific pilot counties deemed to be representative of the entire State. Some States also chose to phase—in their programs to spread out the workload associated with implementation.
- **Structure of State Government:** Issues of designating lead agencies, assigning specific agency responsibilities, and budgeting resources were critical issues for State legislatures to decide.
- **Background Check Fees:** Decisions regarding the inclusion of certain provider types sometimes hinged upon the use of pilot program funds to subsidize the cost to providers for background checks.
- **Employees Covered:** Legislative and rulemaking processes often included debates and discussions leading up to the final decisions regarding what employee types were required to have background checks.
- **Policymaking Processes:** Many States established advisory bodies and solicited written testimony for use in making final program design decisions.

The quotations listed below are representative of the policymaking issues faced by States as they sought the required authority to implement their programs.

- “Who should pay for the background checks? [We believed it should be the] facility, but the industry wouldn’t agree. Could they claim it on their cost report? Possibly. Costs can be passed through as part of the legislation and might be part of the new bill, too (not sure if amended or not). What about providers on a fee schedule vs. cost-based reimbursement?”
- “As a result of the statutory requirements, not just for the Department of Health, but for others, we have actually changed the way we do business because the applicant processing has become such a large part of what we do.”
- “Stakeholders noted that they won’t support [the legislation] if there’s additional costs to them.”
- “We refit the statute to fit the CMS pilot.”
- “There was a phase-in process to reach out to the providers.”
- “We thought all providers would start all on the same day, but we changed it to phase-in so we could check any challenges first on a smaller scale before the rest of the providers.”
- [Providers] “weren’t opposed to background checks, but scared of the disqualifiers. The fate of the potential employees would be in hands of a committee to decide. Those pieces were huge negotiation pieces for all parties.”
- “As part of the demonstration project, DHSS will lead a legislative initiative to reframe and rewrite the health and welfare facility and program licensing laws and regulations.”
- “[The] Implementation Committee met until spring '06, to talk about [the] nitty gritty stuff.”
- “There were 3 advisory committees.”

## 2.4. Pilot Program Goals

In addition to the goals specified by CMS for the pilot program, States had their own goals in mind for these programs as they developed their enabling legislation and implementing rules. These goals fell into the following general categories:

- ***Program Expansion:*** States sought to extend their programs for background checks and fitness determinations to improve access to fingerprinting facilities, and in some cases, to include additional providers and employee types serving vulnerable populations in long-term care settings.
- ***Enhance Programs Using Electronic Systems:*** It was a high priority for States to develop and implement electronic data interchange interfaces to streamline the submission and reporting background checks.
- ***Training:*** A critical program feature included specific efforts to effectively train staff and providers to efficiently carry out the requirements of the background check program.
- ***Compliance:*** Improving provider compliance with background check program requirements was viewed as an important area needing attention in many States.

### 3. State Program Descriptions

Section 305 (e)(1) of the MMA specified that the evaluation include a review of the procedures used by pilot States to conduct background checks. This section provides a description of each State's pre-pilot and pilot programs. A more in-depth comparison of State background check procedures is contained in Chapter 4.

The information in this chapter uses data from these sources: State grant applications and operational protocols, State final reports, telephone interviews with key informants and stakeholders from participating States, the presentations made by States at the annual State grantee conference, and information collected as part of the site visits that the evaluation team made to each pilot State.

#### 3.1. Alaska

##### Pre-Pilot Program

**Program Authority:** Under Senate Bill 125 there were many State and Federal regulations that required criminal background checks for health care employers. As required by State law, Alaska's Department Health & Social Services (AK-DHSS) maintained administrative control over the State's background check system through three of its 14 divisions: Division of Public Health (DPH), Division of Senior & Disabilities Services, and the Office of Children's Services. As part of the reorganization directed by Executive Order 108, introduced by the Governor in March 2003, AK-DHSS consolidated all of its licensing functions in an effort to streamline functions and make services more efficient and cost effective. The Section of Certification & Licensing was established in 2004 to provide administrative and regulatory oversight for conducting background checks.

**Program Description:** Prior to passage of the new legislation that consolidates program authority, the pre-pilot program for Alaska could be best described as many separate programs without uniformity with 19 programs administered through 12 statutory requirements for licensure. According to information from the transmittal letter from the Governor of Alaska for Senate Bill 125, "the complexity of the existing statutes and regulations and the absence of any clear rationale for the wide variation in standards for licensing, enforcement, and appeals resulted in a very burdensome and bureaucratic system." Alaska maintained a comprehensive, yet disparate, system of background checks including name- and fingerprint-based criminal investigations at State, regional, and national levels.

The goal of the pre-pilot program was to ensure that individuals with a disqualifying crime were not employed as direct caregivers. However, the provisions and requirements for potential employees were not consistent, and the cumbersome administrative structure created some confusion among employers. The program required background checks for employers, contractors, and volunteers at both long-term care and child care facilities, and included a range of care program and services. Included groups were: assisted living homes, long-term care services, home health agencies, swing-bed units, home care employers, older Alaskan services, adult day care/respite, personal care attendants, care coordination/case management, child placement programs. Many providers in the State offer multiple service programs and were subject to multiple statutes and regulations, and the

statutes regulating these programs sometimes had different definitions as to which crimes would disqualify an applicant for employment. As a result, employers would sometimes be able to hire individuals for one service category but not for other service categories, even though work responsibilities would be essentially the same for both jobs.

With many divergent programs, the screening process varied widely. The Alaska Department of Public Safety (AK-DPS) processed and maintained both name- and fingerprint-based criminal history records. There were other divisions under AK-DHSS with their own processes and policies. This included the Divisions of Behavioral Health, Senior Disabilities, the Office for Children Services, Child Care, and the Division of Public Health. Individual care facilities and programs developed their own procedures for obtaining name-based criminal history reports from AK-DPS. For fingerprint-based reports, potential employees typically provided rolled fingerprints obtained at the long-term care employer's place of business, from a contract employer working on behalf of the employer, or through a private fingerprint business in the State. The AK-DPS processed the fingerprints to obtain a background check. There was no electronic submittal of fingerprints.

AK-DPS performed the Alaska State criminal history record search, as well as the Western Information Network (WIN) search.<sup>4</sup> If there was no Alaska or WIN adverse information, AK-DPS then sent the fingerprints to the FBI's Integrated Automated Fingerprint Identification System (IAFIS) for search and review. The search sequence for background checks was: 1) the Alaska Public Safety Information Network (a name-based check); 2) nurse aide registries; 3) court records; 4) State and area Automated Fingerprint Identification System (AFIS); 5) Federal IAFIS. Requesting agencies or other investigative units also checked the Alaska Nurse Aide Registry and/or the Alaska Sex Offender Registration Central Registry as part of the investigative process, although they were not required to do so. Fingerprints received were processed to obtain a State as well as an FBI background check. AK-DPS queried the criminal history databases, but did not make any fitness determinations. If the search was limited to State records, AK-DPS would release the criminal history to the requesting employer, but the national searches had to be screened internally.

**Background Check Fees:** With divergent programs and requirements, the background check fees varied. The cost of a background check was at least \$59 (\$35 for the State check, \$24 for the FBI check). There was an additional charge associated with the rolling of prints, which average about \$25, but could be as low as \$5 or as high as \$40. Generally, fees for the background checks were paid by the employer, but this varied depending on the specific employer.

## **Pilot Program**

The Alaska Criminal Background Check Pilot Program was implemented with direction from Alaska's governor. With the enabling legislation in place (SB 125), the goals of the general assembly and the governor's office were aligned regarding the need to increase uniformity among Alaska's multiple background check programs and requirements. The passage of this law enabled the State to consolidate and standardize background check regulations within AK-DHSS. When these changes

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<sup>4</sup> WIN is a computerized fingerprint identification system and network containing centrally the fingerprint records of nine western States: Alaska, California, Idaho, Montana, Oregon, Nevada, Utah, Washington, Wyoming.

were occurring (early 2006), the AK-DHHS was also going through a major reorganization that brought the regulation of providers of care (acute care, hospice, home health, licensed assisted living facilities and certified long-term care) under the purview of AK-DHHS. Funding from the pilot program helped to speed up this reorganization and restructuring process. Officials in the State believe that the pilot program helped create a more efficient background check program with uniform documentation and a central clearing house where all the information is kept.

The background check requirement applied to any individual or entity that is required to be licensed or certified by the State or that receive funding from the State's DHHS. The Background Check Unit (BCU) within Certification and Licensing Section in DPH was created to implement and manage the background check program.

***Program goals and components:*** Goals of the pilot program in Alaska included:

- Establishing a single administrative unit to oversee all aspects of the background check program across divisional and program boundaries within DHSS. As a result of the reorganization, the fingerprints to be processed are now coming from a single, centralized source rather than from individual employers.
- Centralizing the fitness determination within the BCU, allowing for a more uniform fitness determination process. The appeals process was also centralized within the BCU.
- Developing uniform definitions and descriptions of disqualifying information applicable to all licensed and certified programs under the authority of AK-DHSS.
- Extending the background check requirement to managers and staff in currently unregulated programs.
- Developing a comprehensive set of measurements and reports across the various long-term care agencies and programs in AK-DHSS.
- Developing electronic data interchange interfaces for submission and reporting of background investigation requests and receipt of findings between DHSS and AK-DPS.
- Supplementing the existing State and Federal criminal history information with other potential sources of disqualifying information in the investigative process, including the addition of a specific registry of employee misconduct and access to court records in addition to conviction data.
- Improving the technology for background checks by moving to greater use of Live Scan equipment and software, allowing some fingerprints to be captured electronically, and eliminating the need for collecting redundant fingerprints from applicants by implementing a rap back system..

At the time of the evaluation team's site visit (mid-2007), AK-DHHS was performing background checks using a 10-digit electronic fingerprint card and ink rolled cards for fingerprinting, which had recently replaced manual fingerprinting and processing. Live Scan submission capabilities were slated for testing and were to be implemented by late 2007 and, thus, could not be assessed or observed by the evaluation team. Personal computers, printers, portable manual fingerprint rolling kits, and card scanning units to transmit hand rolled fingerprint cards electronically to the AK-DPS were provided to

the locations in charge of fingerprinting and background screening. The AK-DPS's role on the pilot program included the processing and maintenance of both name- and fingerprint-based criminal history records. A central electronic database was created for the pilot program, complete with applicant process information, required forms, and contact information. Access to these data were limited only to the criminal justice technician, employer, and applicants through their unique assigned access code. The AK-DPS was also in the process of implementing their rap-back system enhancements.

**Authorizing legislation:** Executive Order 108, which was introduced in March 2003, directed the State's DHHS, to establish centralized licensing and related administrative procedures for a wide variety of regulated health care employers including ambulatory surgical centers, assisted living homes, child care facilities, child placement agencies, foster homes, free-standing birth centers, home health agencies, hospices, or agencies providing hospice services or operating hospice programs, hospitals, intermediate care facilities for the mentally retarded, maternity homes, nursing facilities, residential child care facilities, residential psychiatric treatment centers, rural health clinics, and runaway shelters. Alaska State Law (Section 47.32), which became effective in July 2006, consolidated the State's licensing and certification activities.

Alaska State Law (Section 47.05), which passed in May 2005, specified that DHSS implement a single, consolidated background check process across all of its programs. The background check program became effective in March 2006. Under the statute, all service employers with direct client contact were required to submit to a background check. This included volunteers and contractors who have regular, unsupervised client contact. The legislation specified that individuals who have been "charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards for licensure or certification established by the department by regulation" may not be hired or work as an unsupervised volunteer.

**Cost:** The fees for a background check in Alaska were \$84. This fee included a fingerprint-based criminal history investigation report that covers the Alaska, a national report from the FBI, and a BCU processing fee. An additional \$25 rolling fee was applied per two sets of fingerprints. There is no charge to access the Nurse Aide Registry, the Sex Offender Registration Central Registry, or the OIG Provider Exclusion List. The provider was responsible for payment of any portion of the fees not allocated to the individual as established by the written policies of the provider.

**Who is screened and what happens:** Any candidate for a long-term care position must authorize the AK-DHHS to check appropriate registries and to perform a State and national criminal background check. Candidates were able to begin provisional employment after completion of the initial registry checks, which include a name-based check of Alaska criminal records. While working provisionally, the employee received direct supervision, must not have any unsupervised contact with patients, and must not have any access to or control over medications, financial resources, or property of a person under care.

Upon the completion of a background check, individuals with no criminal history were given a clear posting in the centralized data system (via the AK-DHHS web site) and a letter was sent to the individual, the employer, and the applicable regulatory division indicating that the individual was cleared for employment. This information was also posted on the BCU web site. The notification process was similar for those who were disqualified based on the background check. The letters

sent out by the BCU included information on the reason why the individual was disqualified, and the individual was notified about appeal procedures.

Figure 3.1 is a map of the pilot program processes used in Alaska and Table 3.1 contains a summary of the key features of Alaska's pilot program.

***Disqualifying crimes:*** Employment was denied and considered a permanent barrier crime that excluded one from consideration for employment for the following acts: criminal offenses related to delivery of an item or service under a Medicare program or any State health care program, crimes related to patient abuse, felony conditions relating to health care fraud or controlled substances, barrier crime offenses listed in 7 AAC75.215, or abuse/neglect. Individuals committing these crimes were permanently banned from long-term care employment. A centralized Employee Misconduct Registry was created by Alaska for individuals deemed "unfit" in direct patient contact within long-term care facilities.

Individuals determined unfit to work due to other offenses could only resume working after a certain time period passed (depending on crime committed, this time ranges from one to 10 years) and they have fulfilled any court requirements such as attending an anger management course. A variance request to allow the individual to begin work before the specified time frame could be made only by an employer for an individual nearing one's requirement completion. This request would be reviewed by the State oversight agency and the Variance Committee to decide whether or not the individual in question could indeed begin work. The final decision regarding the variance would be made by the Commissioner of Health and Social Services. The process could take up to 30 days to complete.

In Alaska, pending and original charges were considered in the fitness determination decision. The legislation that created the State's background check requirement specified that individuals who have been "charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards for licensure or certification established by the department by regulation" may not be hired or work as an unsupervised volunteer. When an individual is convicted of a lesser charge, the barrier and associated time frame was based on the conviction, not the original charge. Original charges are considered if an individual requests a variance (rehabilitation review) for a barrier crime.

***Appeal:*** An individual could appeal the AK-DHHS BCU decision by challenging the accuracy of the conviction, asserting an error was made in the decision to classify an offense from another jurisdiction as meeting the definition of a barrier crime in Alaska, and the individual may appeal on the basis of being rehabilitated. Appeals must have been made in writing to the AK-DHHS BCU within 10 days of receiving a notification of being unfit to work. The AK-DHHS BCU could require an individual to provide additional information after filing an appeal, which must have been provided within 30 days of the request by the BCU. If information was accepted as valid, corrections to AK-DHHS records were made and a revised fitness determination forwarded to the appropriate parties.

***Use of pilot funds:*** The State was awarded \$3,400,000 in grant funds to implement the CMS Background Check Pilot Program. The grant funding was concurrent with the State's restructuring and allowed AK-DHSS the ability to initiate a comprehensive overhaul to standardize LTC statutes



and regulations for background check requirements across all State programs, laying a foundation for a program that continues to operate after the end of the pilot. Grant funding also was used to support efforts to implement a more effective fingerprint-based criminal history records investigation and fitness determination program.

The State used the \$3.4 million as follows:

- \$1.77 million for program staff
- \$440,000 for indirect costs
- \$435,994 for the State's rural Live Scan system
- \$249,517 for program infrastructure
- \$205,810 for department core services
- \$75,750 for legislation and regulation development
- \$70,000 for State IT database enhancements

***Number of background checks and outcomes:*** The pilot program in Alaska was active between April 3, 2006 and September 30, 2007. During this period, there were 23,864 background checks initiated, an average of around 1,325 per month. More than 9,000 of these were initiated between March and May 2007, a period when some of the State's largest hospitals submitted background check requests for all of their employees.

As of September 30, 2007, 63 percent of the background checks in the State were still pending. This reflects the lengthy amount of time required to complete the background check process in the State (see Section 6.1). During the pilot, the State cleared 5,399 individuals for employment and disqualified 768 applicants. There were an additional 2,427 voluntary withdrawals; this includes those who failed to complete the authorization or disclosure forms, those who failed to submit fingerprints, and those who terminated employment while the background check was pending and no longer required the background check.

***Processing times:*** Alaska had the slowest background check completion times of the seven pilot States. The State was overwhelmed by the volume of background check requests, which was a function of the large number of provider types included in its program (many of which were for provider types that were not required under the pilot program). Due to the amended legislation, Alaska included all hospitals as opposed to only hospitals with swing-bed units) in its statewide background check program, and it also required background checks for current employees in addition to new hires.

On average, the fitness determination process in Alaska took about 196 days to complete. This included about nine days from the initiation of the process to the time fingerprints are collected, and an average of 21 days from the time that the application was initiated until registry checks were completed. The State submitted State and FBI fingerprint requests in batches, and it typically took about a month from the receipt of fingerprints until the initiation of the State and FBI background checks. On average, it took 114 days for the State response, which typically occurred about 150 days after the initial background check request. The Federal response typically took about two weeks longer. On average, employers and applicants were notified of the fitness determination process about 200 days after the initiation of the background check.

Combined with difficulties in the creation of its online application submission and database system and staff turnover, the State struggled to process background checks in a timely manner. Towards the end of the pilot, the State was increasing electronic collection of fingerprints, at least in urban areas, and this is expected to quicken processing times in the future.

**Challenges:** A general and unique challenge for the Alaska program is that the program covered an immense geographic area with many remote locations and limited highway infrastructure. The State experienced other challenges related to regulatory implementation, creation of the State's database, and staffing issues.

- **Regulatory implementation:** The Alaska statute was broad, did not create uniform definitions and only States general descriptions of disqualifying information, but did require DHSS to adopt regulations setting forth the uniform definitions and standards of barrier crimes and conditions in regulation. At the beginning of the pilot, the BCU was dealing with multiple sets of regulations which resulted in delays in the fitness determination decision. Background checks were being conducted at the same time as the new regulations were being developed and implemented, and the lack of a common set of regulations was a challenge. The drafting and implementation of one set of regulations was a lengthy and arduous process.
- **Unexpected volume of background checks:** Prior to the changes in the State's regulations, background checks were required only for new employees, but, under the new regulations, background checks were also required for current employees who had not had a fingerprint-based background check in the past six years. The regulations allowed only 60 days for current employees to request the fingerprint-based check. The BCU was overwhelmed with the volume of applications, receiving as many of 4,000 in one day. Although some portion of these background checks were outside the pilot program's requirements, the unexpected volume resulted in delays in the fitness determination process.
- **Database issues:** The State experienced difficulties related to the development and implementation of a database that would meet the operational needs of the State and CMS. There was a backlog of technical work that was created due to a lack of communication between the CMS IT technical assistance contractor, leaving the BCU with an incomplete operating system that required some manual recoding of information. Eventually, a State-based IT contract was awarded to support development of the database, and work on the database continued after the end of the pilot.
- **Initial staffing issues:** The loss of key project staff, including the project director and program manager, was devastating for the State and set progress back several months until those positions were filled. The loss of these staff presented a challenge for Alaska in meeting pilot requirements.

**Stakeholder Feedback:** Alaska officials stated that the CMS funds granted to Alaska greatly improved their criminal background check program. Feedback from interviewed providers was generally positive. All found that the reorganization of AK-DHHS was a positive step toward streamlining regulatory functions. Others gave positive feedback regarding the establishment of uniform certification and licensing requirements, a central agency to handle fingerprinting, the education that was given to providers, and the creation of a central storage location for all background check results. Though many of the comments regarding the pilot program were positive, individuals expressed some

areas of concern. Most expressed the need for electronic database submission of fingerprints (now in place in many areas of Alaska). It was cited that manual input was cumbersome, time consuming, and could lead to errors. The turnaround time for fingerprints also was a common complaint among those interviewed and again reinforced the need for electronic submission. A few stakeholders mentioned the burden of rescreening employees under the new, stricter pilot program's system, and the disruption it caused for the employees that were negatively affected.

**Post-pilot plans:** The Alaska background check program is permanent. The AK-DHSS Background Check Unit, which is responsible for implementing the background check program, is part of the organizational structure of the department and is funded by the State. The State has several plans for improving its background check program.

- **Expanded scope:** Alaska also would like to continue the expansion of the BCU to provide a centralized background check process for all direct care providers of Alaska's vulnerable population.
- **Greater use of electronic fingerprint technology:** Alaska has implemented the use of Live Scan technology so that fingerprints can be sent electronically in many areas. By December 2007, the State had 24 sites in rural areas that can collect fingerprints electronically. This was accomplished with the Office of Children's Services, which has offices in most of the rural hub communities in the State. The Live Scan machines will be used for the background checks required for both AK-DHSS and the Office of Children's Services. As of December 2007, this system was not yet operational but was in final testing.
- **Continued development of information technology infrastructure:** AK-DHSS plans continued development of the background check information technology infrastructure to improve current services and meet future needs. AK-DHSS continues to work on improving its database and improving its system, including the rap back enhancements. In 2008, DHSS plans to implement an automated billing system so that employers can be notified of how much they owe on a monthly basis.

By the end of the pilot, the volume of background check requests had stabilized, and the State reported that processing times had decreased substantially.

**Table 3.1**  
**Alaska: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Geographic area	Statewide
Covered employers	Alaska Statute 47.05.300-.390 applies to any individual or entity that is 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 department. Individual service providers, including public home care providers, providers of home and community-based waiver services, and case managers to coordinate community mental health services are also subject to this statute.
Types of employees for whom background checks are required	The background check requirement includes an employee, an independent contractor, an unsupervised volunteer, an officer, director, partner, member, or principal 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 or someone authorized to make financial decisions for the individual. The background check requirement also applies to administrators and operators.
Background check requirements for staffing agency staff	Agency workers having direct access to patients are required to have background checks, and it is the responsibility of the provider with whom they have been placed to ensure that the background check requirement has been met. Staffing agency staff must undergo a separate background check for every facility at which they work.
Technology for capturing fingerprints	During the pilot all fingerprints were captured using fingerprint cards, which were mailed to the AK-DHSS Background Check Unit. AK-DHSS is in the process of purchasing and testing Live Scan equipment that will allow some fingerprints to be captured electronically.
Fingerprint locations	Employer, local law enforcement, State Police or Volunteer Public Safety Officer, fingerprint collection vendors.
Applicant self-disclosure	Disclosure of an applicant’s disqualifying information is made on the “Release to Review Background Information” form at the time of the request for a criminal background check. Applicants are required to disclose their criminal history and to certify that they have not been “charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent” for crimes other than what has been disclosed, and that they have never been found to have neglected, abused, or exploited a child or vulnerable adult or to have committed medical assistance fraud.
Process for registry checks	<p>Upon receipt of a signed authorization from the individual authorizing criminal background check, the State runs registry and court record checks for disqualifying information. The registries checked include:</p> <ul style="list-style-type: none"> <li>• Alaska Public Safety Information Network (APSIN)</li> <li>• Alaska Court System/Court View and Name Index</li> <li>• Juvenile Offender Management Information System (JOMIS)</li> <li>• Centralized Registry (employee misconduct registry)</li> <li>• The Alaska Nurse Aide Registry and other State nurse aide registries, if applicable</li> <li>• The National Sexual Offender Registry</li> <li>• OIG Exclusion List.</li> </ul> <p>After a review of this information, a fitness determination is made. When no disqualifying information is found, the Determination Unit posts a provisional authorization on the BCU web site. This information may only be viewed by the entity with which the individual will be associated.</p>

**Table 3.1 (continued)****Alaska: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Fitness determination process	The AK-DHSS staff makes the fitness determination. Criminal Justice Technicians review criminal records to determine if there is a record for a barrier condition.
Missing dispositions	For the most part, missing dispositions are not needed to make a fitness determination, since arrests are included as a disqualifying offense. If the applicant believes the disposition of the case either exonerates the barrier or otherwise affects the fitness for the position, the applicant can provide the disposition information for evaluation.
Information disseminated to employer and applicant	If the applicant is disqualified, the employer, the applicant, and the division with oversight over the employer receive a letter stating that the individual is not cleared to work and the reason why they were not cleared. The letter describes the applicable appeal procedures.
Disqualifying offenses	In addition to the Federal disqualifying offenses, the State has a lengthy list of disqualifying offenses, which the State refers to as "barrier crimes." Some offenses result in permanent disqualification while others are 10-, 5-, or 1-year barrier crimes. See Appendix G for the complete listing of the State's barrier crimes.
Consideration of pending and original charges	<p>Pending and original charges are considered. The legislation that created the State's background check requirement specifies that individuals who have been "charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards for licensure or certification established by the department by regulation" may not be hired or work as an unsupervised volunteer.</p> <p>When an individual is convicted of a lesser charge, the barrier and associated time frame is based on the conviction, not the original charge. Original charges are considered if an individual requests a variance for a barrier crime.</p> <p>In cases where the applicant seeks a variance request (see below), the State considers whether the original charge (before any plea bargain) was a permanent barrier crime.</p>
Provisional employment policies	The State allows for provisional employment, which can begin after the employee passes the initial registry checks. The employee has up to 30 days to submit their fingerprints. The State does not regulate the level of supervision for provisional hires.
Background check costs and who pays	The cost of a background check is at least \$84 (\$35 for the State check, \$24 for the FBI check, and a \$25 Background Check Unit fee that became effective in July 2007). This does not include any charges associated with the rolling of prints, which average about \$25, but can be as low as \$5 or as high as \$40. Either the applicant or the employer pays these costs, depending on the employer's policies.

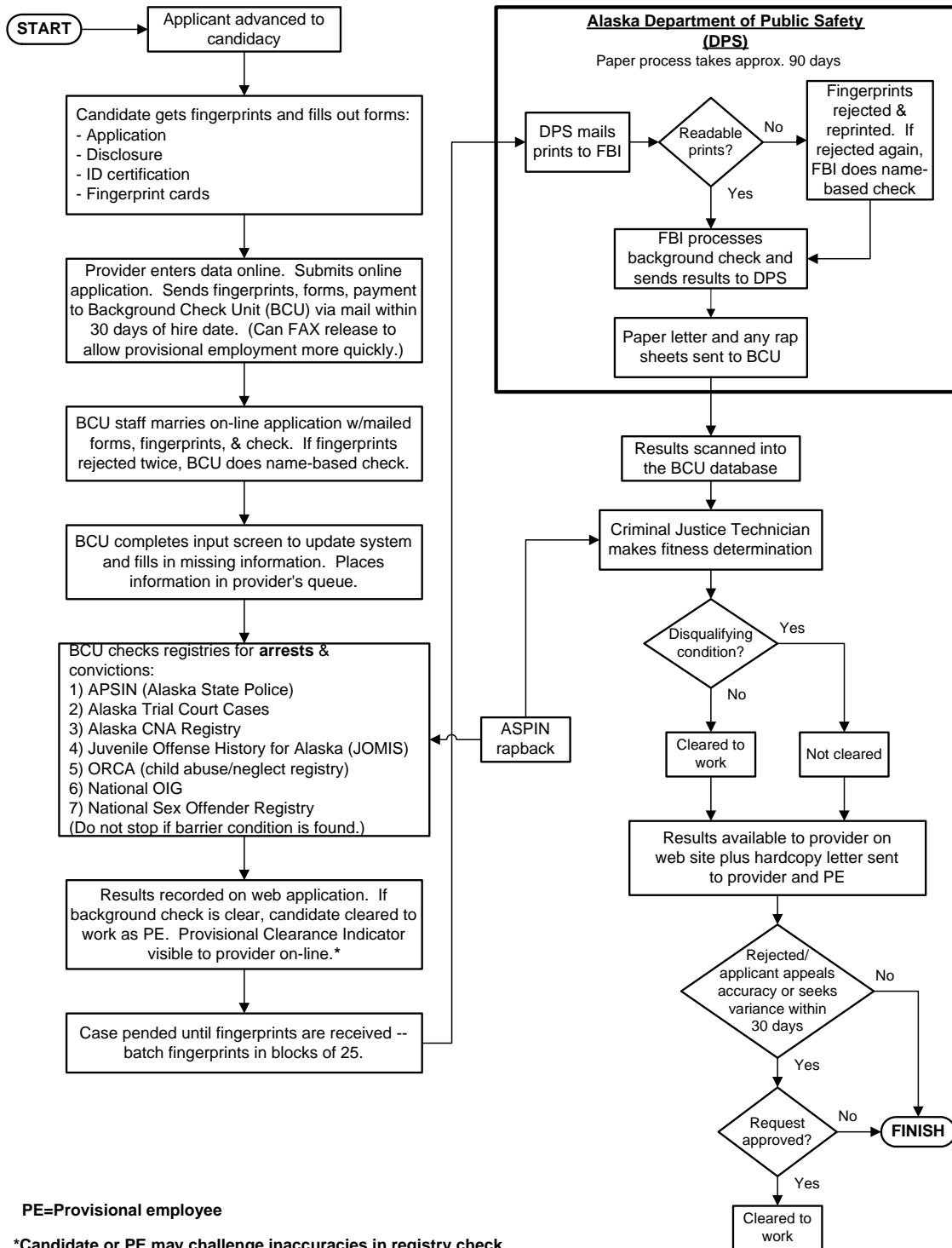
**Table 3.1 (continued)**

**Alaska: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Appeal and rehabilitation review policies and processes	<p>When an individual receives notification that a barrier to employment has been found, the notice explains they may request the AK-DHSS reconsider the determination if the individual can provide additional information to dispute a barrier exists. If the barrier information is not being disputed, the individual is directed to contact the entity they wish to be associated with to discuss employment options, such as proceeding with a variance request.</p> <p>Either the applicant or their potential employer can make a variance request. Their rationale must include copies of all known information relevant to determining whether the health or safety of residents in long term care is adequately protected, including information on the applicant's criminal and incarceration history and evidence of the individual's fitness and rehabilitation. Variances are not granted for offenses that are permanent barrier conditions or for those who have neglected, abused, or exploited a child or vulnerable adult. The State's Variance Review Committee reviews all variance requests. When barrier information is obtained on a current employee, some individuals may continue to work during a reconsideration or variance process. It is the decision of the oversight agency to require removal of the employee from contact with individuals receiving services or to permit provisional employment.</p>
Enforcement of background check requirements	<p>Pilot program monitoring is a function of the AK-DHSS. Enforcement and sanctions for noncompliant facilities/employers are enforced by AK-DHSS program managers under the appropriate program noncompliance statutes and regulations. Sanctions range from a letter of censure, to fines, closure of a facility/employer, and/or criminal charges.</p>
Time period of background check	<p>A background check is required every time an individual changes jobs.</p>
Liability limitations	<p>If an entity or individual service employer reasonably relies on the information provided under the regulations adopted by the department to deny employment to an individual who was selected for hire as an employee, including during a period of provisional employment, the entity or individual service employer is not liable in an action brought by the individual based on the employment determination resulting from the information.</p>

Source: Abt Associates/UCDHSC, 2008

**Figure 3.1: Alaska Background Check Process**



## 3.2. Idaho

### Pre-Pilot Program

**Program Authority:** The Criminal History Unit (CHU) of the Idaho Department of Health and Welfare (IDHW) has been performing background checks since the 1990s. Legislative authority for the background check program was established in 2002. Rules and regulations governing mandatory criminal history checks were adopted and made effective March 15, 2002 (IDAPA 16.05.06). These rules outline the process for collecting applicant information, making fitness determinations, and applicant appeals rights. The IDHW/CHU makes a fitness determination resulting in a clearance to work, unconditional denial for severe crimes, or a conditional denial for less severe crimes.

**Program Description:** IDHW regulates the State's background check system. Within IDHW, the Bureau of Facility Standards (BFS) maintains responsibility for licensing, certifying, and surveying long-term care facilities. Within the Bureau of Audits and Investigations, the CHU is responsible for processing and approving or denying fingerprint-based criminal history applications. State statute deems the entity the sole source of fingerprint submissions to the FBI and requires the Idaho State Police (ISP) to receive and examine fingerprint submissions and applicant information.

The goal of the pre-pilot program was to ensure that individuals shall not be permitted to provide direct care/services when their criminal history check reveals that they have pled guilty, been found guilty, or have been adjudicated of a designated crime or their equivalent in any jurisdiction regardless of whether the individual received a withheld judgment, a dismissal which resulted from a plea agreement where probation or restitution was required, or a sealed record.

Since inception of this effort, fingerprint-based background checks have been required for employees, contractors, volunteers, and other individuals providing certain services funded by the State of Idaho to vulnerable adults and children. The specific employer types for which employment required a background check included adult day care, adult day treatment facilities, alcohol/drug abuse prevention & treatment facilities serving children, certified family homes, children's residential care facilities, children's therapeutic outdoor programs, developmental disabilities agencies, emergency medical services certification applicants, emergency medical services communication specialists and managers, State institutions with IDHW employees, licensed child care employers, licensed residential or assisted living facilities, mental health clinics, personal care employers, psychosocial rehabilitation agencies, residential habilitation employers.

While nursing home employers were required to conduct background checks before hiring new applicants, the definition of background check was left to each employer and outside the purview of the IDHW/CHU. Among the types of background check performed by nursing homes were:

- Name-based checks
- Calls to local law enforcement for a check
- Internet search of private registries
- Simple checking of references



When the background check program was first implemented, IDHW required applicants to complete a hard copy criminal history “self-declaration” form (applicants could pick this up at an IDHW office or request a copy via mail). After applicants completed the form, it was typically shared with the prospective employer. The employer would then determine if the applicant was to be considered as a job candidate. If so, the applicant was sent to be fingerprinted. The IDHW/CHU obtained hard copy (rolled prints on a fingerprint card) fingerprints from the job candidate, or local law enforcement could collect the fingerprints and mail them to the IDHW/CHU for a \$10 fee.

IDHW/CHU staff would scan the self-declaration forms and fingerprints using optical character recognition software, and subsequently review the following databases for criminal history information to determine the presence of designated crimes (automatic lifetime exclusions from employment), or seven-year designated crimes (exclusion from employment for seven years following conviction):

- Driving records
- Child and adult protection registries
- State sex offender registry
- Medicaid Surveillance and Utilization Review Exclusion List

Concurrently, the hard copy fingerprints were mailed to the ISP for a background check that consisted of the following: 1) manual name check; 2) fingerprint check; 3) comparison of fingerprint results with the name-based check file (if no match, fingerprints were scanned into IAFIS to check for a match); and 4) mailing hard copy prints to the FBI for a background check.

Once completed, all background check information was compiled by the IDHW/CHU, a fitness determination was made, and the results communicated to the prospective employer via U.S. Mail. Background check results fell into three categories as follows: 1) denial (not cleared to work), 2) conditional denial (not cleared to work – pending an exemption review), and 3) cleared to work. This process proved to be very labor intensive for the IDHW/CHU and took a relatively long time to complete. The annual volume of letters was between 30,000 and 40,000, and the completion of background check required approximately 8 to 10 weeks.

***Background Check Fees:*** Prior to implementing the pilot program, the State invoiced employers monthly and employers had the flexibility to require employees to pay if they so desired. The IDHW/CHU had an automatic billing system – and employers could elect to create an account that background check fees could be charged against.

The fee was \$45 per applicant for non-volunteers and \$28 for volunteers. This fee was comprised of the following components: \$24 for the FBI check, \$10 for the State check, and \$11 for State administrative costs. The actual cost was \$55 per applicant, thus requiring a State subsidization of \$10, from the IDHW/CHU general operating budget.

## **Pilot Program**

***Program goals and components:*** The State’s pilot program was similar to the pre-pilot program described above. Under the pilot, the requirement for fingerprint-based background checks was

extended to nursing homes, home health agencies, hospices, hospitals with swing beds, or residential care and assisted living facilities. Prior to the pilot, nursing home employers were required to conduct some type of background check on prospective employees, but this sometimes included only checking the nurse aide registry or doing pre-employment reference checks. Rather than creating a new or dramatically revised program, CMS funds covered the costs of background checks for these providers.

At approximately the same time as the implementation of the pilot program, the State was also implementing an electronic web-based system to manage the existing background check programs (described under the Idaho pre-pilot program). This new electronic system was implemented – thus allowing the pilot program to begin on October 1, 2005 – using the new web-based system. Applicants could then register and complete a self-disclosure form using the web application. Applicants were required to schedule appointments for fingerprinting at one of 14 locations in seven regional areas and also could do this using the on-line web system. The new web system had several key features:

- Applicants could apply for a background check on-line or by using one of the kiosks located at many State IDHW offices. They could also make a fingerprint appointment online.
- Applicants and employers could check on the status of their criminal history background checks online. If the applicant was cleared the applicant or employer was able to print a copy of the clearance letter.
- The web-based application allowed employers to verify that the applicant has completed the background check process and also if new hires required a background check.
- Other systems changes incorporated automated checks of the various registries to include the nurse aide registry, the child protection registry, the adult protection registry, and the OIG exclusion list. These are now checked automatically, with hits identified at the time of fingerprinting rather than after the applicant is provisionally cleared to work. The previous system also involved more manual checking of databases and registries.

These were significant changes relative to the pre-pilot program, which involved extensive manual processing for IDHW staff. In the pre-pilot system, applicants were mailed a criminal history application and self-declaration form or had to come to an IDHW office to complete the form. There was also a much more manual mailing of applicant approval or denial letters, as well as letters acknowledging when applications were received.

As part of the pilot, IDHW reorganized the CHU into eleven full time positions. This included one supervisor, eight staff to collect electronic fingerprints, and two staff in a central location responsible for researching disposition information and handling the criminal history help desk. Personnel assigned to collect fingerprints were responsible for a regional area and often had several different fingerprint locations in each regional area. Field personnel also were responsible for provider and applicant training in their area.

The IDHW/CHU used the “Identicator” 10-digit inkless fingerprinting system. PCs, printers, and scanners are usual equipment provided for State agency locations charged with fingerprinting and background screening. The Idaho criminal history database was developed in conjunction with IDHW Information Systems team and is an application approved for staff use via security request and

approval. The criminal history web-based system was developed in conjunction with the IDHW Information Systems team. The central IDHW/CHU office was equipped with T-1 lines, an identified server, and an identified server at the Boise central office. The web-based system operates under real time and was available to applicants with their self-assigned log-on and password and available to providers. The images filing system was a purchased product by IDHW Information Systems.

**Legislative authority:** The State's participation in the pilot program was authorized under Section 56-1004A of the Idaho Code. The provisions of this rule were effective from October 2005 through September 2007 or until Federal funding was no longer available and mandated background checks for new employees and contractors hired after October 2005. The legislation however, did not adhere to MMA requirements as it permitted prior background check results to be transferable to a new employer, at the employer's discretion for up to one year from the date of completion. Furthermore, in January 2007, Idaho regulations expanded the timeframe to allow the criminal history and background check to be transferable to another employer for a period of three years. The new regulation also included a requirement that if an employer elected to use a previous (within three years) background check, the employer must complete a name-based State only check as an update.

**Cost:** Fees for a background check were \$48, including the cost of the State and FBI checks and the operating costs of the IDHW/CHU. The CMS pilot program allowed the IDHW/CHU to add long-term care providers to its existing and well-established background check program. Rather than creating a new or dramatically revised program, CMS funds allowed the Idaho pilot program to fund background checks for long-term care employees not previously required to have such checks.

**Who is screened and what happens:** Background checks were required for employers and contractors with direct patient access. Each employer made the determination of who they would request background checks for other than direct care employer staff. Prospective employees were required to complete a self-declaration form and undergo fingerprinting prior to providing unsupervised direct care to patients. Background checks were based upon a review of State and Federal information for the presence of convictions for designated crimes for which an unconditional denial is issued – preventing employment in long term care setting with direct patient access. Applicants had the option to withdraw their application at any time.

IDHW designed and implemented a web-based system which allowed online processing of applications. With this system, an applicant could find the requirements for a background check on the Internet, submit a background check application, schedule a fingerprint appointment at a location nearest to them, and track the status of their application. The system also sent notices to applicants and their employers informing them of the status of each application as it went through the process and allowed them to print a clearance letter if necessary. IDHW also implemented Live Scan technology to collect and transmit fingerprints electronically to the State Police. Both the web-based system and the Live Scan technology reduced much of the paper and manual processes and reduced the time frame for applicant clearances to as little as two days for those without criminal records. With the number of required registry checks, IDHW included workflow screens identifying which registry checks needed to be completed on applications and where possible, integrated certain registries into the system to allow automatic comparisons of an applicant against the registry.

After submitting the online fingerprint applications, the system provided the option to schedule a fingerprint appointment at one of the 14 fingerprint locations in the State. At the fingerprint

appointment, the CHU staff retrieved the application from the online system and reviewed the information disclosed by the applicant. The application was then printed and the applicant's signature was notarized. Fingerprints were collected electronically utilizing Live Scan technology and the fingerprint images were transmitted to the State Police for processing. A few remote locations utilized part-time staff who capture applicant fingerprints on fingerprint cards and mail them to the nearest fingerprinting location. Applicants who did not schedule a fingerprinting appointment could have their ten rolled fingerprints collected by law enforcement or their employer, and mailed to the Criminal History Unit with the notarized application.

The criminal history and background check included a 10-rolled fingerprint comparison against State and Federal crime records. The fingerprints were transmitted to the ISP who conducted a comparison of the fingerprints against Idaho crime records. The ISP then forwarded the fingerprints electronically to the FBI for comparison against national crime records. The FBI returned the results of the match to the ISP who in turn sent a "hit" or "no hit" electronic notice to the Criminal History Unit for each applicant. This information was put into the criminal history database and automatically updated each applicant record with the results of the State Police and FBI criminal record search indicating whether information was or was not found. If no criminal record was found, the criminal history database looked at the applicant's records in the database and if no registry information was found then the system automatically changes an individual's background check status to "cleared." If a "hit" was indicated, the ISP forwarded a hard copy of the crime record for those applications and the criminal history system records that information was found during the State Police and FBI crime record search. The CHU waited for the hard copy crime results in order to review the crime(s) found and complete the processing of the application. For records that had missing disposition information, the CHU contacted the entity that reported the incident or the local courts to determine the disposition.

Table 3.2 includes a description of the background check procedures used in Idaho and Figure 3.2 contains a map of the pilot program processes used in Idaho.

***Disqualifying Offenses:*** Background checks were based upon a review of State and Federal information for the presence of convictions for designated crimes for which an unconditional denial was issued—preventing employment in long-term care setting with direct patient access.

- ***Designated crimes (lifetime exclusion):*** 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; any felony punishable by death or life imprisonment; or attempt, conspiracy, or accessory after the fact.
- ***Designated 7-year crimes (7-year exclusion from date of conviction):*** Burglary; grand theft; theft; forgery or fraudulent use of a financial transaction card; insurance fraud; public assistance fraud; a felony involving a controlled substance.

Consistent with the pre-pilot program, background checks included a query of the IAFIS system and if a match was found, the record was retrieved. If the record had an FBI record associated with it, that

record also was retrieved. If the record did not have an FBI record associated with it or there was no match in the database, the record was electronically searched against the FBI database. The BCI sent records retrieved to the IDHW/CHU. The IDHW/CHU checked other databases and registries, including driving records, the State Sex Offender Registry, the Child Protection Registry, the Adult Protection Registry, and the Office of Inspector General List of Excluded Individuals/Entities.

IDHW could issue a conditional denial within 14 days of the completion of a criminal history check when the criminal history check revealed a plea, finding, or adjudication of guilt to any felony or misdemeanor, any crime other than a traffic violation which does not result in a suspension of the individual's driver's license, or a valid child protection complaint or a substantiated adult protection complaint. IDHW could issue a conditional denial when the results of the criminal history check revealed that the individual falsified or omitted information on the self-declaration form.

A conditional denial was effective immediately. An individual could request an exemption review within 14 days of the date of issuance of a conditional denial, unless good cause is shown for a delay.

***Appeal Procedures:*** Applicants issued an unconditional denial had 15 days to correct the information found. The applicant could then submit additional information for further review. If the applicant received a denial after the further review, a 28-day period existed to appeal the decision to a formal administrative review. Appeals were scheduled and heard by independent hearing officers. The next level of appeal is to District Court. An applicant could also request an exemption review within 14 days after receipt of a conditional denial. After the applicant presented additional information regarding their circumstances, the exemption review hearing officer could issue either a denial of the application or a clearance. Evidence of rehabilitation could be considered in an exemption review.

Applicants who have a pending criminal action for a crime that would be disqualifying were issued a notice of inability to proceed. The applicant could not be cleared for employment until the matter was resolved. The CHU made a fitness determination decision after receiving documentation that the pending criminal action had been resolved.

At any stage of the background check, applicants can withdraw their applications. Some applicants chose to withdraw after disclosing a disqualifying offense during the fingerprint appointment. If a denial was issued at any time during the application process or an applicant withdraws from the process, the employer was notified by e-mail and telephone to ensure that they are aware of the denial or withdrawal; the applicant also received written notification.

***Stakeholder Feedback:*** In addition to the interviews conducted by the evaluation team, the Idaho program also conducted a survey of providers and included feedback from that survey in their final report to CMS. A brief summary of this information is provided here, as it addresses key questions also asked by the evaluation team. Most providers who responded to the State survey reported that the background check requirement did not impact the number of people who picked up a job application (74 percent), but that the requirement did successfully screen potential workers (86 percent). Most (63 percent) reported that the background check requirement did increase the quality of the workforce and that it should continue even if funding were not available (61 percent). In addition, 73 percent of respondents indicated that they would continue to conduct a background check if it was optional with a fee.

Though the State has designed a system with improved technology and received generally positive feedback from providers interviewed by the evaluation team, some respondents reported that the web-based system is difficult for some users to access and use. Language barriers, lack of computer literacy, and access to technology were three of the related issues that respondents cited as impediments to using the web-based system for background check processing. Most reported that human resources personnel were designated to assist applicants who were required to undergo screening.

***Use of pilot funds:*** IDPH was awarded \$2,072,026 in Federal grant dollars. As of September 2007, the State had spent a total of \$2,004,071. Expenditures included:

- Costs of the eight fingerprinting staff who were added to the existing CHU to support the added efforts associated with the pilot (\$649,967).
- System requirements and the development of the new web-based criminal history system (\$330,171). (Note that \$145,515 was paid by the State for eight portable Live Scan devices and a store and forward server, but this was not charged to the pilot.)
- A total of \$545,844 to cover the costs of background checks.
- Indirect costs of \$450,593. These included costs related to motor pool, attorneys, accounting support, management, human resources, office space and other indirect costs.
- Other operating costs of \$27,496. These costs included travel expenses to the annual grantee conferences.

***Number of background checks and outcomes:*** Idaho was the first State to begin their pilot program operations. During the 24-month pilot period pilot (October 2005 - September 2007), based on the State's quarterly data reports, there were 21,111 background checks started, an average of about 850 background checks per month. The volume was relatively constant each month, except for a substantial drop in December 2006. The State processed background checks fairly quickly, and the final outcome was known for all but 406 checks. Of the background checks for which the fitness determination decision was known, 97.7 percent were cleared, 1 percent were disqualified, and 1.2 percent voluntarily withdrew their application.

Many of the voluntary withdrawals occurred because applicants learned that they have disqualifying information that will cause them not to pass the background check. Analysts at the State's BCU do a name-based background check while the applicant is at their fingerprinting appointment, and they encourage those with disqualifying information to withdraw from the process prior to the submission of fingerprints—these applicants are counted as voluntary withdrawals. This is likely one reason why the disqualification rate is lower in Idaho than in other pilot States.

The State's data do not allow us to distinguish conditional and unconditional denials, nor do they report whether the applicant was disqualified due to the registry checks, the State background check, or the Federal background check.

***Processing times:*** Analysts at the State's Background Check Unit completed the initial registry checks at the time of fingerprinting and submitted the fingerprints electronically to the State and to the

FBI. On average, the background check process in Idaho took about 30 days to complete, and the median completion time was just under 19 days. This included an average of 11.5 days from the initiation of the background check until applicant fingerprinting (the median time for this was seven days), and an average of about two weeks for the State response (median 9.5 days). Background check processing times decreased during the course of the pilot—the median completion time was 35 days in the first six months of the program compared to 21 days in the second six months.

In Idaho, the Federal background check request was not typically made until the results of the State check were reviewed. Typically, this occurred about 16 days after the initiation of the background check, although there were some records that took longer, pushing the average time for the FBI request to 26 days after the initiation of the background check. The FBI response typically occurred within two to three days of the request for electronic fingerprints and six days for fingerprint cards.

**Post-pilot plans:** The Idaho Bureau of Facility Standards, the State licensing and certification unit, implemented regulations to continue background checks for employees at skilled nursing facilities, intermediate care facilities for the mentally retarded, residential care and assisted living facilities, and home health agencies. This decision was based on the need to protect clients in long-term care settings, and results from a provider survey that the State administered that showed that 86 percent of employers believed that the background check requirement was successful in screening potential workers and that 61 percent believed that the background check requirement should continue, even if funding was not available.

The new regulations went into effect on October 1, 2007, just after the sunset of the Federal pilot project regulations. During negotiations with providers some stakeholders such as the skilled nursing facility industry, wanted to be able to continue utilizing private background check companies to conduct the pre-employment background checks instead of the current system. As a result, the regulations implemented in Idaho allow a provider to have the background check conducted by an entity other than the CHU as long as the background check included a fingerprint-based search of State and Federal criminal records. It is important to note that most of the private background check companies conduct only name-based searches, and these would not be sufficient to meet the State's requirements. This issue was still under negotiation as of January 2008.

There are three major changes in the State's post-pilot program:

- **Payment for background checks:** The State used grant funds to cover the costs of background checks. With the pilot over, the responsibility for paying the \$48 background check cost shifted to the employee, although many employers cover this cost. The new regulations have no fiscal impact on the State since the fees cover the State's costs.
- **Duration of background checks:** Fingerprint-based background checks in Idaho are good for three years. Although the MMA requires employers to conduct a new State and national background check for each new hire, this change was implemented in January 2007 to reduce costs and eliminate unnecessary background checks. It is up to the employer to decide whether to require the employee to go through a new background check or decide to accept the current background check. A new Idaho name-based check is required for all new hires.

- ***Fitness determination process:*** The State has made changes to the fitness determination process. The State reviews the criminal record to determine whether there are any disqualifying crimes based on the State’s designated crime list. During the pilot, the State only shared the fitness determination decision with the employer, but now the complete State criminal record is shared. This gives employers the flexibility to consider crimes other than those on the State’s designated crime list.

**Table 3.2**  
**Idaho: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Geographic area	Statewide
Covered employers	Home health agencies, hospices, nursing homes/skilled nursing facilities, hospitals with swing beds, intermediate care facilities for the mentally retarded, residential care and assisted living facilities. Background checks for personal care agencies were required before the pilot started.
Types of employees for whom background checks are required	Employers and contractors who have direct patient access. Each employer makes the determination of who they will request background checks for other than direct care employer staff. Other employee types (dietary, administrative, housekeeping, maintenance) may or may not have direct patient access at individual employers.
Background check requirements for staffing agency staff	Background checks are required for staffing agency staff. The process is the same as for other direct patient access employees. It is the responsibility of the provider to ensure all direct employees or contracted staffing agency staff who have access to patients undergo a background check
Technology for capturing fingerprints	Most fingerprints are captured at the IDHW’s offices using Live Scan equipment. A few remote locations utilize part time staff who capture applicant fingerprints on fingerprint cards and mail them to the nearest fingerprinting location. Also, a few applicants had their fingerprints collected by law enforcement or their employer via fingerprint card.
Fingerprint locations	Idaho has 14 fingerprint locations throughout seven regional areas where criminal history unit personnel roll fingerprints electronically utilizing Live Scan technology and transmit the fingerprint images to the State Police for processing.
Applicant self-disclosure	Applicants complete a self-declaration form on-line or at an IDHW office. Disclosure questions are: <ul style="list-style-type: none"> <li>• Have you ever been arrested or received a citation for any misdemeanor or felony offense?</li> <li>• Have you ever pled guilty or been convicted of a crime as an adult or juvenile?</li> <li>• Do you have criminal charges pending or any warrants against you currently?</li> <li>• Have you ever been on probation in this or any other State?</li> <li>• Have you or anyone in your home ever been involved in a child protection action with the Department of Health &amp; Welfare?</li> <li>• Have you or anyone in your home ever been involved in an Adult Protection Action?</li> <li>• Have you ever had a Medicaid/Medicare employer exclusion from Health &amp; Human Services Office of Inspector General?</li> <li>• Has your driver’s license ever been suspended or revoked?</li> </ul> <p>Once an individual completes the application on-line and it is submitted, the system provides them the option to schedule a fingerprint appointment at one of the locations.</p>



**Table 3.2 (continued)**  
**Idaho: Key Background Check Pilot Program Features**

Program Feature	Description
Process for registry checks	<p>The State processes the registry check. The registries that are checked include the</p> <ul style="list-style-type: none"> <li>• OIG Exclusion List</li> <li>• Idaho Nurse Aide Registry</li> <li>• Idaho Adult Protection Registry</li> <li>• Idaho Child Protection Registry</li> <li>• Idaho Sex Offenders Registry</li> <li>• Idaho Department of Transportation Driving Records</li> </ul> <p>The criminal history system includes a work flow engine which lists all applications where registry checks still need completion. The applicants are displayed from the oldest received to the most recent by each registry. This allows a registry check to be completed by any of the Criminal History Unit staff around the State, not just for applicants at their fingerprint locations.</p>
Fitness determination process	<p>The State makes the fitness determination, but the employer may also have a role. IDHW staff review the criminal history results and make the fitness determination. An application goes through several reviews for fitness.</p> <ul style="list-style-type: none"> <li>• Initial review of disclosures and interview with applicant at fingerprinting. Based upon the nature of the disclosures, IDHW staff performing the fingerprinting can choose provisional clearance, conditional denial, pending criminal action denial.</li> <li>• Disclosures are reviewed again when received at the IDHW Central Criminal History Unit (CHU). If IDHW staff are unclear about disclosures or have concerns about the disclosures, they can choose to call and talk further with the field staff, or talk with the applicant, issue a conditional denial or prepare an unconditional denial if something was overlooked by the fingerprint staff. This occurs more regularly with those applicants who were not fingerprinted by IDHW directly but by their employer agency, or law enforcement.</li> <li>• Review occurs again for every application at the point a rap sheet or disposition information is received. Options available to staff include clearance, interviewing the applicant for additional information, issuing a conditional denial, issuing a pending criminal action notice (background check results have confirmed an outstanding arrest warrant), or preparing unconditional denial notice based upon a designated crime.</li> </ul> <p>Sometimes employers will review the self-declaration form and disqualify individuals who disclose a disqualifying offense.</p>
Missing dispositions	<p>IDHW staff review the rap sheets for disposition information. If not available on the rap sheet, a request for the information is made to the court jurisdiction listed on the rap sheet or on the applicant’s supplemental form. This includes out-of-State court jurisdictions. They also conduct web searches for those jurisdictions that have a web-based records system.</p>
Information disseminated to employer and applicant	<p>Written notice is not issued to applicants or employers for those applicants who clear. Applicants and employers can check the status of their background check on the IDHW web site. Written notice is always sent to both the applicant and employer for any denial action. Applicant notices are always sent certified mail return/receipt.</p>

**Table 3.2 (continued)**  
**Idaho: Key Background Check Pilot Program Features**

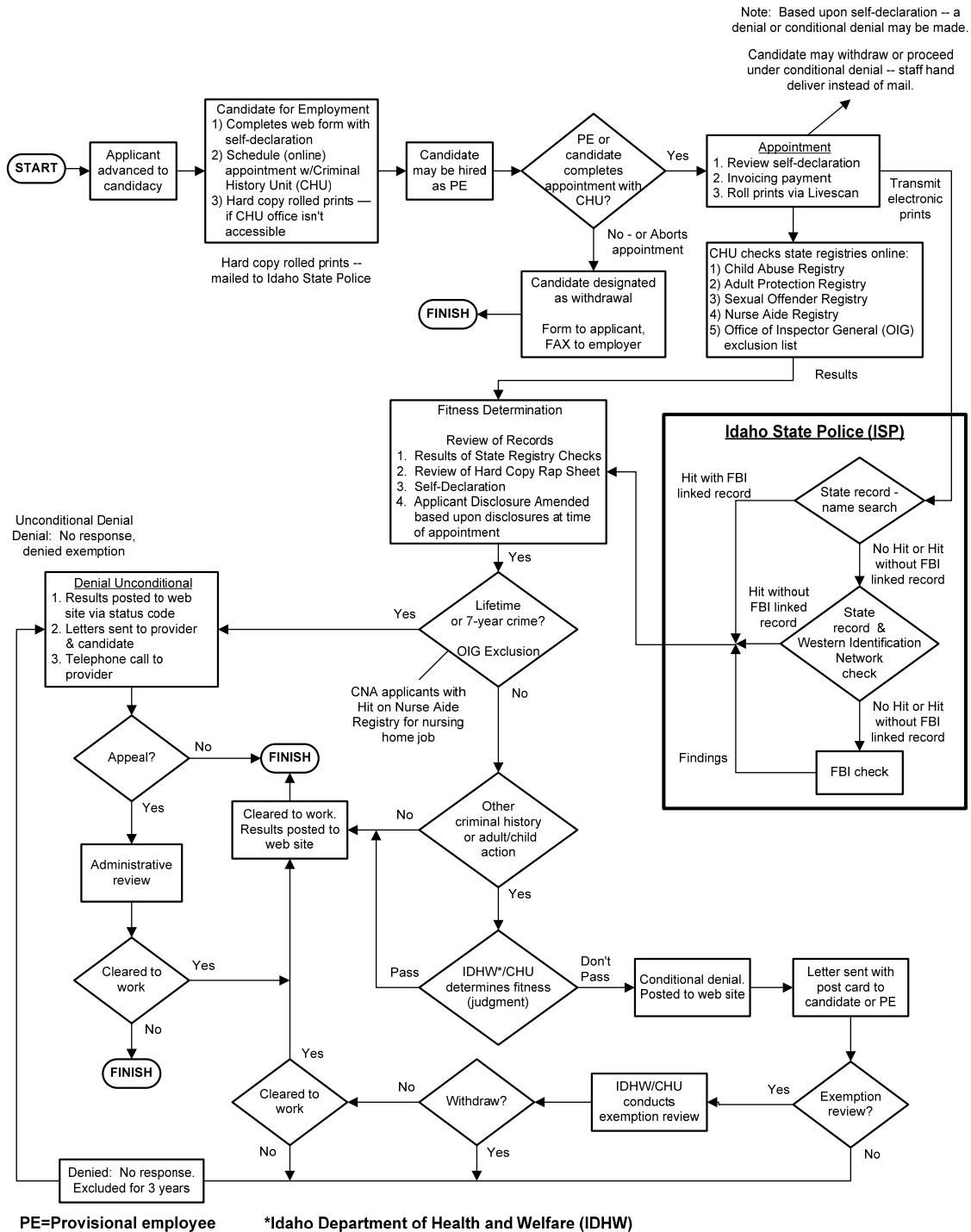
Program Feature	Description
Disqualifying offenses	<p>In addition to the Federal disqualifying offenses, an unconditional denial is issued for the following crimes:</p> <ul style="list-style-type: none"> <li>• Abuse, neglect or exploitation of a vulnerable adult</li> <li>• Aggravated, first degree and second-degree arson</li> <li>• Crimes against nature</li> <li>• Forcible sexual penetration by use of a foreign object</li> <li>• Incest</li> <li>• Injury to a child, felony or misdemeanor</li> <li>• Kidnapping</li> <li>• Lewd conduct with a minor</li> <li>• Mayhem</li> <li>• Murder in any degree, voluntary manslaughter, assault or battery with intent to commit a serious felony</li> <li>• Poisoning</li> <li>• Possession of sexually exploitative material</li> <li>• Rape</li> <li>• Robbery</li> <li>• Felony stalking</li> <li>• Sale or barter of a child</li> <li>• Sexual abuse or exploitation of a child</li> <li>• Any felony punishable by death or life imprisonment</li> <li>• Attempt, conspiracy, or accessory after the fact to commit any of the designated crimes</li> </ul> <p>An Unconditional Denial will be issued if any of the following crimes are found within seven (7) years of the application:</p> <ul style="list-style-type: none"> <li>• Burglary</li> <li>• Grand theft</li> <li>• Theft</li> <li>• Forgery of and fraudulent use of a financial transaction card</li> <li>• Forgery and counterfeiting</li> <li>• Insurance fraud</li> <li>• Public assistance fraud</li> <li>• A felony involving a controlled substance</li> </ul> <p>The IDHW may issue a conditional denial when the criminal history records check reveals a plea, finding or adjudication of guilt to any felony or misdemeanor, any crime other than a traffic violation which does not result in a suspension of the individual's driver's license, or a valid child protection complaint or a substantiated adult protection complaint. IDHW may issue a conditional denial when the results of the criminal history check reveal that the individual has falsified or omitted information on the self-declaration form.</p>
Consideration of pending and original charges	<p>At the discretion of the staff conducting the background check, pending and original charges may be considered in the fitness determination, depending upon the seriousness of the pending charges. If the State can confirm a plea bargain occurred for a lesser charge, then the initial charge may be considered in making the fitness determination. For pending charges that are considered serious, a letter is sent to the applicant and the employer advising that the applicant is not available. The applicant can request reconsideration when the case disposition is known.</p>

**Table 3.2 (continued)**  
**Idaho: Key Background Check Pilot Program Features**

Program Feature	Description
Provisional employment policies	Applicants are allowed to begin provisional employment once the self-declaration is signed and notarized. Fingerprints must be submitted to the department within 20 days. The individual may provide unsupervised services once the fingerprints have been submitted.
Background check costs and who pays	The pilot program grant funds were used to cover the \$34 background check fees (\$10 for the State background check and \$24 for the FBI check). In addition, IDHW used grant funds to cover the program administrative costs. The background check fee for non-pilot entities was \$48 (\$10 for State background check, \$24 for the FBI check, and \$14 administrative fees). There may be an additional fingerprinting fee for applicants who do not have their fingerprints collected at an IDHW office.
Appeal and rehabilitation review policies and processes	<p>If a conditional denial is issued, an applicant may request an exemption review, which provides the applicant and IDHW the opportunity to discuss the circumstances around the applicant's criminal history. A self-addressed stamped post card is included with each conditional denial notice to the applicant that can be used to request an exemption review. A majority of the exemption reviews have to do with repeated alcohol related offenses, drug offenses or theft offenses that do not fall under the designated crime disqualifying list.</p> <p>At an exemption review hearing, the applicant also is able to present additional information to the IDHW staff person regarding the items found during the background check. An exemption review is not an option if there is an unconditional denial because of a designated crime.</p>
Enforcement of background check requirements	IDHW Facility Standards and Criminal History Unit conduct audits to ensure compliance. Penalties are determined on a case-by-case basis and may include acceptance of a plan of correction, recoupment of Medicaid money for service provided by an employee not in compliance, revocation of provider agreement, license, or certification, or prosecution for failing to disclose crimes (for applicants).
Time period of background check	Although the MMA required a new State and national background check for each new hire, at the beginning of the pilot, Idaho regulations allowed a background check to be transferable between employers for up to one year if the individual changed employment. In January 2007, Idaho regulations expanded this time frame to allow a criminal history and background check to be transferable to another employer for a period of three years. The regulations also required that if an employer elected to utilize a previous fingerprint-based background check completed within three years, the employer must complete a name-based State only check on the individual as an update to the fingerprint-based check.
Liability limitations	According to Idaho Code 56-1004, IDHW, employers and applicants who act in reasonable reliance on the results of the criminal history and background check in making an employment decision are immune from liability for that decision when it is based on such results.

Sources: Abt Associates/UCDHSC, 2008

**Figure 3.2: Idaho Background Check Process**



### 3.3. Illinois

#### Pre-Pilot Program

**Program Authority:** The legislative authority for the State’s pre-pilot program was derived from the Health Care Worker Background Check Act, which is administrated by the Illinois Department of Public Health (IDPH), applies to “all individuals employed or retained by a health care employer as home health care aides, nurse aides, personal care assistants, private duty nurse aides, or day training personnel, or an individual working in any similar health-related occupation where he or she provides direct care.” This program specified name-based background checks for direct care workers but did not cover licensed staff because they were not regulated by the IDPH. The Health Care Worker Background Check Act does not prohibit the employer from asking for a fingerprint-based check, but law only requires name-based check. If an applicant opposed paying for fingerprint check, health facilities could not force the applicant to undergo the fingerprint-based check.

**Background Check Fees:** The costs for conducting background checks under the IDPH Health Care Worker Background Check Program varied depending on whether the request was submitted electronically or by paper and if it was a name-based or fingerprint-based check:

- Name-based inquiries - electronic submission \$10
- Name-based inquiries - paper submission \$16
- Fingerprint-based inquiries - electronic submission \$15
- Fingerprint-based inquiries - paper submission \$20

**Program Description:** The State’s Health Care Worker Background Check required that employers conduct a State name-based criminal history record check for non-licensed, direct care staff within 10 days of the first day of employment. The legislation applied to health care employers who are regulated by IDPH.

IDPH defined “direct care” as the provision of nursing care or assistance with feeding, dressing, movement, bathing, toileting, or other personal needs. Employers were to establish policies defining employees who provide direct care based on the employee’s job responsibilities, whether the employee is required to or has the opportunity to be alone with patients/residents “to provide nursing care or to assist with feeding, dressing, movement, bathing, toileting or other personal needs,” and whether the employee’s responsibilities include physical contact with patients/residents. In practice, the background check requirement applied to nursing assistants and rehabilitation aides employed in hospitals, assisted living facilities and other long-term care employers regulated by IDPH. The Act did not apply to licensed staff (e.g., registered nurses, licensed practical nurses, social workers, etc.). Licensed staff were not regulated by IDPH, but by the Department of Financial and Professional Regulations.

IDPH posted the results of the fitness determination for nurse aides and other non-credentialed workers on the Illinois Nurse Aide Registry. When someone applied for a direct care position, the employer would check the Illinois Nurse Aide Registry to determine whether the applicant had undergone a background check in the past year. If not, the employer would submit a request for a

name-based background check by providing the applicant's name, sex, race, and date of birth to the Illinois State Police (ISP).

Once received, ISP processed the name-based background check through their database, as required by Uniform Conviction Information Act (UCIA). UCIA was enacted in 1981 to allow the general public and private entities access to Illinois criminal conviction information. If the name-based check pointed to multiple individuals, then the process required the requestor to submit a set of applicant's fingerprints. Applicants typically went to a private Live Scan fingerprinting vendor, which are located throughout the State, to get fingerprints. If the name-based check did not point to multiple individuals, then the ISP would either disseminate a criminal history record or rap sheet response if the person was convicted or a no record response. The law only permitted dissemination of conviction information as opposed to arrest information that resulted in non-conviction. When there was a hit, the ISP furnished the details to the employer, which determined whether the information included a disqualifying offense. For non-disqualifying criminal records, the employer could not deny employment according to State law but could ask the applicant about the offense. The employer sent copies of all criminal history records to the IDPH so that the employment eligibility decisions could be posted on the Illinois Nurse Aide Registry.

## **Pilot Program**

***Program goals and components:*** In August 2005, the State amended the Health Care Worker Act so that direct access workers in licensed and certified long-term care facilities are required to undergo a background check as of January 2006. A new section was added to accommodate the terms of the pilot program. The legislation expanded the definition of direct access workers to include licensed professionals except for physicians. Due to concerns from the health care industry regarding the potential cost of the background check pilot requirements, CMS and IDPH negotiated a reduced scope to the pilot program, and applied the change only to the 10 counties that participated in the pilot (Boone, Carroll, Jo Daviess, Lake, Lee, McHenry, Ogle, Stephenson, Whiteside, and Winnebago). These counties were selected based on their representative population, number of facilities, and border State traffic patterns. The amended Health Care Worker Act requirements expired when the pilot program ended. The legislation did not change the disqualifying conditions or the employer types for whom background checks are required.

In designing its grant program, IDPH and ISP worked with several health care industry associations, including the Illinois Association for Rehabilitation Facilities, the Illinois Community Living Facilities, the Illinois Council on Long-term Care, the Illinois Health Care Association, the Illinois Hospital Association, Life Services Network, and the County Nursing Home Association of Illinois. The departments worked with these groups to get provider opinions on issues related to background checks and kept them updated on the State's progress in implementing the program. Some of these associations were supportive of IDPH's participation in the pilot initially, but later believed that the costs of conducting background checks on all new hires would be prohibitive.

The pilot program built on the State's existing system in three key ways:

- Only fingerprint-based criminal background checks (both State and national) were conducted. This was to increase the accuracy of results, avoiding both "false positives" and missing

convictions committed under an alias. By using a fingerprint-based system, the State used a system based on a unique identifier that never points to multiple individuals and based on positive identification regardless of aliases used by the applicant. Under the pilot, the fitness determination decision was made by the State, not by employers as in the pre-pilot program.

- The fingerprint-based application was submitted to the ISP and any future criminal convictions by the applicant were reported to IDPH via ISP's Automated Fingerprint Information System (AFIS) rap-back system. IDPH posted any disqualifying convictions on the Illinois Nurse Aide Registry, which was renamed the Illinois Health Care Worker Registry, and was expanded to include information on all direct access employees. This saved health care employers from re-fingerprinting applicants once a criminal history records check was completed.
- All health care workers who had "direct access" to residents, patients, or clients were subject to a full background check (registry search, State and FBI criminal history check). "Direct access" was defined as individuals who were able to have access to residents, patients, or clients, which included both direct care and non-direct care employees, licensed and non-licensed employees, and contractual employees. Before the pilot program, background checks were not required for licensed staff, such as nurses, pharmacists, social workers, and physicians or for non-direct care staff (e.g., housekeeping, food service, laundry, maintenance).

After the amendments to the Health Care Worker Background Check Act had been drafted, a series of hearings were held around the State. Some industry groups favored the State's participation in the pilot while others were opposed. The biggest concern was the cost of the program, particularly since a new background check was required every time an individual changed jobs. Some employers were unwilling to pay these costs given the high turnover in the industry -- especially direct care workers with low wage rates, and there was concern about making the employees pay the cost.

**Legislative authority:** In the Fall of 2005, the Act was amended to add the provisions for Illinois to participate in the CMS Background Check Pilot Program. Under the pilot provisions the amendment required a fingerprint background check submitted as a fee applicant request for all workers with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents. This included licensed and unlicensed personnel. Physicians (who are generally not an employee of the long-term care facility) and volunteers were omitted from the background check requirements for the pilot.

**Cost:** Background checks cost \$46.95 (\$15 for the ISP check, \$24 for the FBI check, and \$7.95 for fingerprint collection). These costs were paid for by the pilot, except for nurse aides, who were required to pay the \$15 ISP fee, which had been required before the pilot program and was also required in non-pilot program counties.

**Who is screened and what happens:** Background checks were required for direct access workers, defined as any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents. Direct access workers included direct care workers, individuals licensed by the State's Department of Financial and Professional Regulation (nurses, social workers, physical therapists, occupational therapists, and

pharmacists), non-direct care workers such as those who work in environmental services, food service, and administration, and agency staff. It did not include physicians or volunteers.

After the applicant signed an authorization and disclosure form, the background check process began with the employer logging into the State's Health Care Worker Registry to conduct the initial registry searches. The employer was required to initiate the search within ten days of hire. Note that, to support the State's rap-back system, IDPH was indicated as the requestor of the background check.<sup>5</sup> For applicants that passed the initial registry checks, the facility printed a Live Scan Request Form, which the applicant took to the State's fingerprint vendor.

Fingerprints were collected and transmitted electronically within one business day to the Illinois State Police (ISP). IDPH was also notified of the fingerprint submissions. The State used a single statewide fingerprint vendor. Applicants were not required to travel more than 35 miles to have their fingerprints collected. In areas that were more than 35 miles from a permanent office, mobile units were available to collect fingerprints at least once every two weeks.

ISP sent the results to IDPH electronically. If there was no hit (no convictions), an email was automatically sent that informed the employer that the applicant was cleared to work. During the pilot, the fitness determination decision was made by the trained State employees rather than by the health care employers, which was the practice in non-pilot counties. Employers in the State were in a good position to compare the two models of fitness determination, and most of them seemed satisfied to have the fitness determination decision made by the State. This reduced the burden on facility staff and made for more consistent fitness determination decisions.

Employers entered the employment information for the new hire (date of hire and position) and were supposed to annually enter a date into the employment verification field of the employment record to verify that the employee was still employed at that facility, for receiving future rap-back notifications.

Table 3.3 includes a summary of the key features of Illinois' Pilot Program and Figure 3.3 contains a map of the pilot program processes used in the State.

***Disqualifying Offenses:*** In addition to the Federal disqualifying offenses, there was a lengthy list of disqualifying offenses that included murder-related offenses, kidnapping, child sexual offenses, battery, home invasion, sexual assault, abuse, neglect, kidnapping, ritual mutilation, theft/burglary, financial exploitation, forgery, arson, unlawful use of weapons, receiving stolen credit cards, pretending to be a nurse, and controlled substance/drug-related offenses. A conviction for any of these resulted in the applicant being disqualified for employment, regardless of how long ago it occurred, although applicants could apply for a waiver. There are no offenses that would automatically disqualify an applicant for life.

***Appeals:*** An applicant could request a waiver of the prohibition against employment by submitting a completed Waiver Application and the results of a fingerprint background check. Illinois used a

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<sup>5</sup> With the rap-back system, the Illinois State Police notifies IDPH of any future convictions associated with the fingerprints. IDPH uses information that employers entered on the work history portion of the web application to notify current employers via email of future convictions.



committee of individuals comprised of representatives of the legal department, the Health Care Worker Registry (HCWR), and the complaints investigation. This committee reviewed the completed application giving consideration to whether fines, restitutions, rehabilitation and parole had been successfully completed. Additionally the committee evaluated the mitigating circumstances involved.

**Challenges:** The State experienced a number of problems in getting their program operational. The State worked with technical assistance contractor CNAC to develop a web application for employers to use to initiate the background checks and conduct the initial registry searches. The first version of this application was delivered in August 2006, but it took several months after that before the system was working the way that the State anticipated. The State experienced considerable technical difficulties in getting its system operational. It took the State's IT department about a month to transfer data files from the mainframe to the new database. Many applicants were entered into the State's database multiple times, primarily due to data entry errors or incorrect information on background checks that were submitted for manual entry. Upgrades to State police systems caused additional delays. The State's fingerprint vendor lost their technical support person, and, as a result, they were not able to transmit fingerprints for about three weeks.

The program's official starting date was September 1, 2006, but the first background checks were not conducted until October and the web site was not fully functional until January 2007. Throughout the pilot, IDPH was hampered by staff turnover combined with a State hiring freeze that made it difficult to process background checks.

**Use of pilot funds:** In November 2006, following negotiations with CMS on the scope of its pilot program, the State was awarded total grant funding of \$3 million. As of September 2007, the State had spent only \$1,290,414, less than half of the funded amount. Grant funds were used to cover State personnel salaries and fringe benefits (\$665,670), temporary employees (\$140,045), general expenses (\$144,828), equipment (\$123,488), background check costs (\$124,574), fingerprint collection costs (\$39,954), and software (\$32,437). Similar to other States, not all cost invoices had been processed as of September 2007.

**Number of background checks and outcomes:** The Illinois pilot started later than other States, with the first background checks started in October 2006. During the 12 months that the pilot was active, based on the State's quarterly data reports, there were 6,315 background checks initiated, an average of around 525 background checks per month. The volume increased during the course of the pilot before dropping off in the last month of the pilot. Overall, 74 percent of applicants were cleared, 3.6 percent were disqualified, and 19 percent were voluntary withdrawals. There were 933 background checks left pending, including 70 that had ended or were pending with rejected fingerprints. The Illinois data do not identify those who were disqualified based on the initial registry checks conducted by employers; this is because the State's web application that is used to track background checks is designed in such a way that if the user reports that the applicant is not qualified due to results from the registry check then the record does not save. As a result, the disqualification rates reported for the State are an underestimate of the actual number who disqualified.

**Processing times:** On average, it took 32 days from the initiation of background checks to the final fitness determination decision, and the median processing time was 16.7 days. This included an average of 22 days for fingerprinting, a figure that was skewed by some outliers (the median time for fingerprinting was only seven days). The State used a fingerprint vendor to collect fingerprints

electronically, and typically received the results of the State and Federal background checks within two days of the request. Note that the State's data do not include those who were disqualified based on the initial registry checks that employers conduct using the State's web application.

**Stakeholder Feedback:** The providers that were interviewed in the State were supportive of the State's program and generally believed that it was effective at protecting residents. Given the limitations of the name-based checks in the State (e.g., due to common names which prevent a unique match on the name-based search), most believed that the fingerprint check was appropriate. There were concerns, however, about the costs of background checks. Pilot funds covered these costs during the pilot, but this burden shifted to employers or applicants after the pilot. Some providers indicated that these costs would be difficult for them to cover and most were reluctant to pass on the costs to their employees. Cost issues were a major concern.

Several providers indicated that there were difficulties getting registered to use the State's web application. There were reports that some providers delayed registering until several months after the pilot started because it was difficult for the State to track who had registered.

Providers were uncertain whether fingerprint-based checks would be required after the pilot ended or whether the State would use the name-based background check processes that were used in the non-pilot counties. They also were concerned about whether the background check processing time would increase if the program went statewide.

**Post-pilot plans:** Illinois intends to institute a fingerprint-based background check requirement statewide, as the results from the pilot suggest that name-based checks do not provide the desired degree of protection for long-term care clients. The State amended its Health Care Worker Background Check Act (Act) in the fall of 2007 to require fingerprint-based background checks (HB 1728). The Act would require a fingerprint-based check conducted by the ISP but not an FBI background check. The FBI check was not included due to concerns about costs and because of the lack of an FBI rap-back system. With the State's rap-back system, the State hopes that employees should only have to be fingerprinted one time, as the background check will remain continually up-to-date as long as the employee stays active on the Health Care Worker Registry (HCWR) in order to receive notifications about changes in the employees' criminal history record resulting from the rap back system. This will require employers to update their employment information with the State. Amendments to the Act allow the State police to store fingerprints in their registry, allowing the rap-back system to be operational.

The background check requirements will extend to additional provider types that were not included in the pilot, including assisted living and shared housing establishments, children's respite homes, freestanding emergency centers, hospices, hospitals, life care facilities, post-surgical recovery care facilities, and sub-acute care facilities. There are additional health care providers that are affected by this Act that are regulated by the Illinois Department of Labor, Illinois Department on Aging, Illinois Department of Healthcare and Family Services and the Illinois Department of Human Services.

As of January 2008, the new background check requirements were not yet operational, and implementation of the new law was on hold. As a result, only the name-based check that was used in

non-pilot counties (and in pilot counties prior to the pilot) was required. The delays are due to technology issues and the need to select a statewide fingerprinting vendor.

**Table 3.3**  
**Illinois: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Geographic area	Ten counties in the State (Boone, Carroll, Jo Daviess, Lake, Lee, McHenry, Ogle, Stephenson, Whiteside, and Winnebago).
Covered employers	Home health agencies, nursing homes/skilled nursing facilities, long-term care hospitals/hospitals with swing beds, ICFs/MR.  Note: There are no home and community-based services facilities with more than eight beds or personal care agencies under the Medicaid State Plan in the pilot counties.
Types of employees for whom background checks are required	Background checks are required for direct access workers, defined as any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents. Direct access workers includes direct care workers, individuals licensed by the State's Department of Financial and Professional Regulation (nurses, social workers, physical therapists, occupational therapists, and pharmacists), non-direct care workers such as those who work in environmental services, food service, and administration, and agency staff. It does not include physicians or volunteers.
Background check requirements for staffing agency staff	Staffing agency workers in the 10-county pilot are required to have a fingerprint-based State and national background check, the same as is required for direct patient access employees hired by the facility. The facility is ultimately responsible for ensuring that a full background check has been conducted on the staffing agency direct access worker.
Technology for capturing fingerprints	Fingerprints are captured using Live Scan. A sole State Live Scan vendor, is contracted through the Illinois Department of Central Management Services' master contract, and collects the fingerprints.
Fingerprint locations	The State's fingerprint vendor has permanent offices in the more metropolitan areas within the 10-county scope of the pilot. For the more rural counties the vendor uses mobile units that allow collection of fingerprint images at various locations. The vendor will schedule periodic visits at public locations, making their services available at least once per week in all of the 10 counties. Applicants do not have to travel more than 35 miles for the fingerprint services.
Applicant self-disclosure	The applicant completes a disclosure and authorization form. Disclosure questions are: <ul style="list-style-type: none"> <li>• Have you ever had an administrative finding of abuse, neglect, or theft? If yes, provide full details and State.</li> <li>• Have you ever been convicted of a criminal offense other than a minor traffic violation (do not include convictions that have been expunged or a juvenile conviction)? If yes, provide full details and State.</li> </ul>
Process for registry checks	Initiating a background check required that the facility check these registries: <ul style="list-style-type: none"> <li>• Illinois Health Care Worker Registry</li> <li>• Health and Human Services Office of Inspector General Exclusions List</li> <li>• Illinois Sex Offenders Registration</li> <li>• Illinois Department of Corrections Sex Registrant, Inmate Search and Wanted Fugitives</li> <li>• National Sex Offender Public Registry</li> </ul>

**Table 3.3 (continued)****Illinois: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Fitness determination process	Employers conducted the initial registry checks; criminal records were reviewed and fitness decisions made by trained State employees. If there are no disqualifying conditions on the registry checks, a fingerprint-based background check is initiated. IDPH makes the fitness determination based on the results of this background check, reviewing criminal records to determine if any are disqualifying based on State law. Note that this is different than the State's program in non-pilot counties, for which the employer review the criminal history records and make the fitness determination decision.
Missing dispositions	If a disposition is missing or incomplete, the ISP will work with circuit clerks and other entities to complete the record. The complete conviction will then be forwarded to IDPH to make the fitness determination.
Information disseminated to employer and applicant	<p>If there are disqualifying convictions the applicant is sent a letter stating that he or she has disqualifying convictions and is not eligible to work as a direct access worker. Under the pilot, IDPH sends a copy of the rap sheet and a waiver application to the applicant.</p> <p>The Health Care Worker Registry issues an automated message to the employer, indicating whether the applicant is eligible based on the criminal history record or other disqualifying offenses.</p>
Disqualifying offenses	In addition to the Federal disqualifying offenses, there is a lengthy list of disqualifying offenses that include murder-related offenses, kidnapping, child sexual offenses, battery, home invasion, sexual assault, abuse, neglect, kidnapping, ritual mutilation, theft/burglary, financial exploitation, forgery, arson, unlawful use of weapons, receiving stolen credit cards, pretending to be a nurse, and controlled substance/drug-related offenses. A conviction for any of these will result in the applicant being disqualified for employment, regardless of how long ago it occurred, although applicants can apply for a waiver (see below). There are no offenses that would automatically disqualify an applicant for life. See Appendix H for the complete list of disqualifying conditions.
Consideration of pending and original charges	Illinois bases their determination only on convictions.
Provisional employment policies	Employers can employ an individual provisionally after checking if the applicant does not have any disqualifying information based on the initial registry checks. If there are no disqualifying findings, the health care employer may allow provisional employment for up to three months if a fingerprint-based criminal history record check is conducted within 10 days of the first day of employment.
Background check costs and who pays	In the pilot counties, the direct access workers' background check fees are paid through the pilot funds, except for nurse aides, for whom State background checks were previously required. For nurse aides in the pilot counties, grant funds are used to pay only the increased background costs, including the Live Scan fee (\$7.95) and the FBI check (\$24), but not the State check conducted by the ISP (\$15), as this fee was required before the pilot program and is currently required in non-pilot program counties.

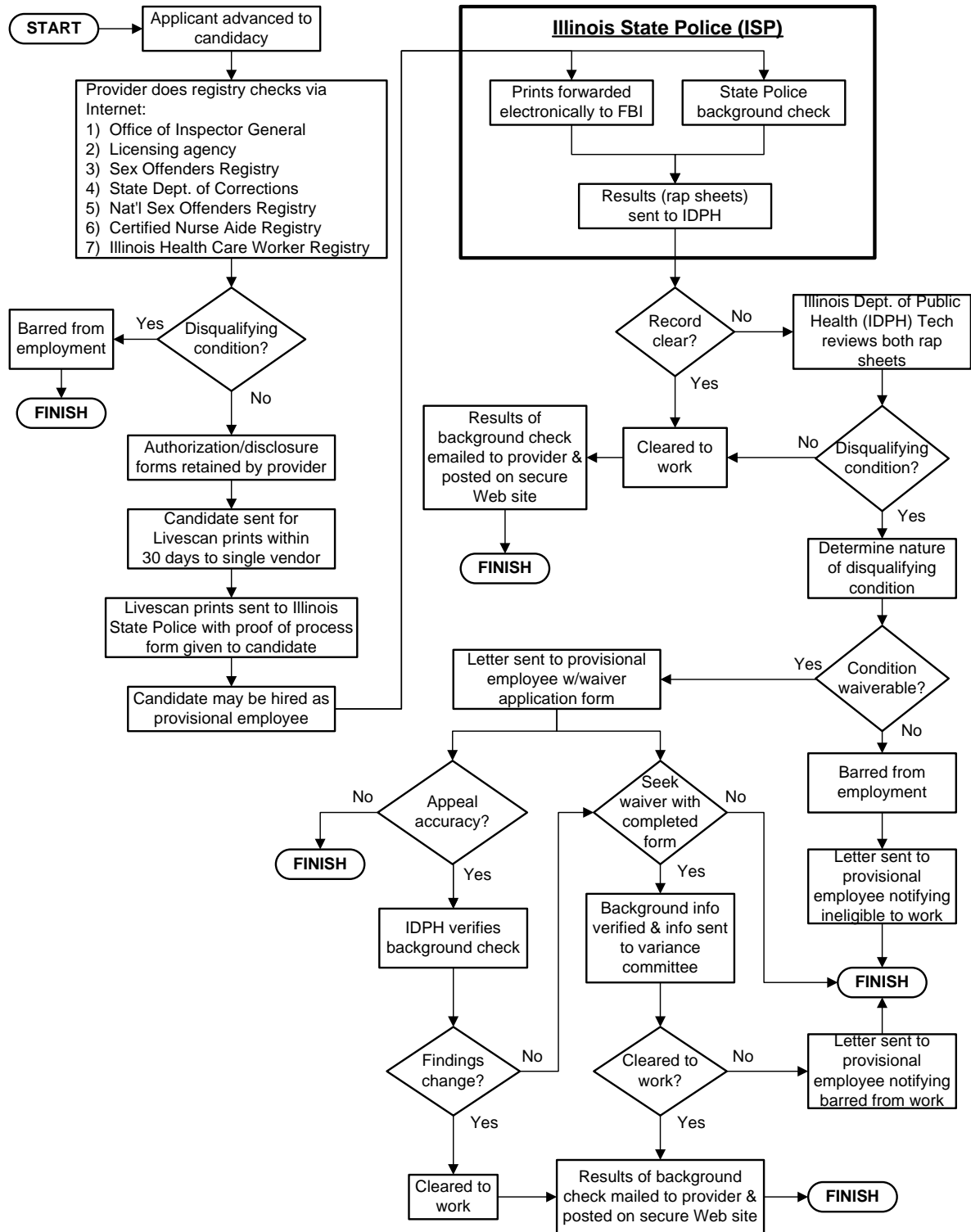
**Table 3.3 (continued)**

**Illinois: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Appeal and rehabilitation review policies and processes	<p>The Health Care Worker Background Check Act allows a waiver for individuals with disqualifying criminal convictions. There is no provision for issuing waivers for individuals with findings of abuse, neglect, or misappropriation of property. A waiver may be granted based on mitigating circumstances such as 1) the age of the individual when the crime was committed; 2) the circumstances surrounding the crime; 3) the length of time since the conviction; 4) the applicant's criminal history since the conviction; 5) current employment references; 6) character references; 7) nurse aide registry results; and 8) other information that shows that the applicant does not pose a threat to the health or safety of residents.</p> <p>Applicants are not allowed to work during the appeal's process. State statutes require that the applicant be dismissed if already working and cannot work until a waiver has been granted; unless the individual can provide documented proof (documents from prosecutors or arresting law officials, etc.) that satisfactorily verifies that the background check (name-based) is incorrect. The fingerprint-based check and waiver is processed at the same time.</p>
Enforcement of background check requirements	<p>Surveyors select from the list of most recently employed individuals at the facilities and examine whether the individual met background check requirements.</p>
Time period of background check	<p>A new background check is required every time the applicant changes jobs. Note that this was a contentious issue in the State, which has a rap-back system for State background checks and was concerned about the costs of background checks given the turnover among direct care staff.</p>
Liability limitations	<p>Employers are not liable for the failure to hire or retain a worker who was disqualified based on the background check. If an employee is suspended pending results of the background check and the results that prompted the suspension are found to be inaccurate, the employee is entitled to recover back pay.</p>

Sources: Abt Associates/UCDHSC, 2008

**Figure 3.3: Illinois Background Check Process**



## 3.4. Michigan

### Pre-Pilot Program

**Program Authority:** Michigan’s Public Health Code and the Adult Foster Care Licensing Act required nursing homes, homes for the aged, county medical care facilities, and adult foster Care facilities to conduct background checks for all direct care worker applicants as a condition of employment. These laws also provided liability protection to employers and protected applicants against misuse of the background information similar to the requirements of MMA section 307 (4) (a) and (b) and allowed for provisional employment while the background check was being processed. The Adult Foster Care Licensing Act did not require an FBI fingerprint background check unless the applicant had not been a resident of the State for at least three years. Important to the implementation of any expanded background check, Michigan Public Act 120 of 1935 required any sheriff or police agency to provide fingerprinting service to any resident upon request.

There are several State acts that give Michigan the authority to conduct background checks:

- Act 203 of 2002 (which amended Act 368 of 1978 Public Health Code) provided for background checks in nursing homes, county medical care facilities, and homes for the aged.
- Act 59 of 2004 (amends Act 218 of 1979) – the Adult Foster Care Facility Licensing Act— requires criminal background checks for adult foster care homes.
- Act 519 of 1982 Adult Protective Services Act (amends Act 280 of 1939 Social Welfare Act) defines and provides for the reporting and investigation of allegations of abuse, neglect, or financial exploitation, of vulnerable adults.
- Acts 203 and 59 of these acts give employer immunity.

**Program Description:** Prior to the pilot, Michigan Department of Community Health (MDCH) and Michigan Department of Human Services (MDHS) operated a name-based background check system except in cases where a job applicant reported not having lived in Michigan for at least three years. This system had been in place since 2002. Background checks were required for those who applied for employment or as an independent contractor with nursing homes, county medical care facilities, homes for the aged, and adult foster care homes, if that person “provides direct services to patients or residents” in the facility. Employees covered by these regulations included physicians, nurses, direct care staff and others who provide direct services to facility residents.

In most cases, MDCH conducted a name-based search using a computerized information database, the Michigan Law Enforcement Information Network (LEIN). For each entry, the subject's full name, sex, race, and date of birth were required. The LEIN response provided all personal descriptors on file and a list of cases for which the subject had been convicted and all recorded data related to that conviction. This search included only convictions recorded in Michigan and did not include driving records or convictions received in other States.

Fingerprint-based FBI criminal record checks were required only for new direct care employees, persons with clinical privileges, or independent contractors who had not lived in Michigan for at least three years prior to employment. For adult foster care facilities licensed for six or fewer residents, a

newly hired employee who had not lived in Michigan for at least three years, the licensee (facility) must obtain a criminal background check from each State where the individual had lived over the last five years. These job applicants and contractors were required to provide 10-rolled fingerprints, which were then processed through both the Michigan State Police (MSP) and the FBI. The fingerprints were submitted to the MSP by the requesting facility or agency. If the employer chose to hire the applicant, they made an offer of employment conditional on a satisfactory background check. The applicant then went to a local law enforcement agency or other designated vendor of their choosing for electronically scanned fingerprints. Applicants were able to begin provisional employment after they provided the employer with proof that they had requested the background check.

As with pre-pilot programs in other States, the time required to complete background checks was a limitation. MDCH reported in its grant application that it generally took up to four weeks for the background check to be completed. Employers were faced with the choice of hiring someone on a provisional basis who had not been cleared by the background check process or of causing hardship to applicants by not allowing them to work until the background check was complete.

MSP disseminated the “no-hit” results of background checks to the requesting facilities so that they could make determinations of eligibility for employment. In situations where a “hit” (a criminal record) was found, MSP sent the response to the governing State agency that then summarized the information given in the report and forwarded that summary to the requesting agency that made a determination of eligibility.

***Background Check Fees:*** The fee for name-based checks was \$10 per request, but was waived for non-profit charitable agencies who utilize volunteers or who work with vulnerable populations. For those applicants who had not lived in Michigan for three years, the fee for a State fingerprint-based criminal background check was \$30. The FBI fee is \$24. Michigan’s statute did not allow facilities to charge job applicants for the costs of the criminal background checks.

## **Pilot Program Description**

***Program goals and components:*** Michigan Public Acts 26, 27, 28 and 29 of 2006 made changes to the State’s background check program in order to be compliant with the pilot program provisions. These changes became effective April 1, 2006.

The State’s pilot program had several main goals:

- ***Expand the categories of workers for whom background checks are required.*** With the pilot, the types of employees for whom background checks were required was changed from staff who provided “direct services” to staff who have “direct access,” a category that includes housekeeping, dietary and other non-direct care staff, as well as student nurses and interns. The State believed that the expanded screening resulted in better care for long-term care residents, and a more professional workforce.
- ***Expand the employer types for which background checks are required.*** The legislation added background check requirements for direct access workers of hospices, psychiatric hospitals, long-term care hospitals, ICFs/MR, home health agencies, and home help workers to



the existing requirements for nursing homes, homes for the aged, medical care facilities, and adult foster care facilities.

- ***Making changes to the criteria used for making the fitness determination decision.*** Previously, the State mandated that applicants with any type of felony conviction within 15 years of the background check application be disqualified. This resulted in the exclusion of some prospective workers who had non-violent convictions, including convictions for felonies such as non-payment of child support, welfare fraud, or other felonies that were likely not predictive of the type of care that the individual would provide. This may have resulted in unintended impacts on the size of the available workforce. The State updated the disqualifying offenses considered in the fitness determination decision.
- ***New web-based application.*** The Michigan State University (MSU) partnered with MDCH to develop a web-based Long Term Care Workforce Background Check application (<https://miltcpartnership.org/>), that employers could use to enter applicant information, conduct registry searches, conduct a name-based criminal background check, make a preliminary hiring decision, request fingerprints, view background check results, and make the final hiring decision. Employers conducted name-based checks using the MSP Internet Criminal History Access Tool (ICHAT) system, which allowed instantaneous access to Michigan criminal history records. The web-based process allowed background checks to be completed more quickly, more accurately, more economically, and tracked the results at each step of the process. The web site also included forms, instructions, updates, an online tutorial, frequently asked questions, and other information related to State's background check policies. By computerizing much of the process, the State greatly accelerated the timing for the background check process, so that checks could be completed in approximately 48 hours.
- ***Electronic fingerprint capture and transmission.*** In the pre-pilot program, fingerprints were manually processed, with fingerprints collected at local law enforcement agencies. The applicant would then either take the fingerprint card back to their employer to mail to the MSP or mail it directly to the MSP themselves. This left open the possibility that an applicant could tamper with the card before it reached the MSP. In the pilot program, fingerprints were captured by Identix, the State's fingerprint vendor, using Live Scan equipment and were electronically submitted to MSP at the time of capture. No applicant had to drive more than 50 miles (one way) to be fingerprinted, although most applicants did not have to travel this far.
- ***Stricter background check requirements.*** The pilot program required a fingerprint-based background check for all direct access workers regardless of how long they had lived in the State. In the pre-pilot program, fingerprints were required only for applicants who had not been in the State for at least three years.
- ***New analyst division.*** Under the pilot, MDCH created an analyst division to handle background checks, which streamlined and standardized the process. The analysts used the web-based application described above to track the background checks that they conducted and to notify employers with a summary of their findings.

In Michigan, background check programs were run by the two agencies (MDCH and MDHS) that have regulatory oversight over the providers in the pilot. The bifurcated nature of the State's system, in which fitness determination decisions were made by two separate agencies, may have resulted in

some inefficiencies. The processes used by the two agencies are almost identical, but the two agencies were not able to enforce background check requirements except for the providers that they regulate.

**Legislative authority:** The pilot program requirements necessitated a change in existing Michigan background check statutes. In order to be in compliance with the pilot program provisions the statute needed to be changed to broaden the scope of the background checks to include hospices, hospitals with swing beds, psychiatric hospitals and home health agencies and to enhance the background check requirements to include a State and national fingerprint-based check on all prospective employees. In addition, the new legislation needed to create an appeals process to dispute incomplete or inaccurate criminal history records. The Michigan Legislature responded by enacting legislation which was signed by Governor Granholm as Public Acts 27, 28 and 29 of 2006. These changes became effective April 1, 2006.

**Cost:** The fee for a background check in Michigan was \$70-80 (\$10 for the State ICHAT name-based check, \$24 for the FBI check, \$16 for fingerprint collection, and a \$30 State fingerprint-based background check fee). The \$10 ICHAT fee was waived for non-profit employers. Costs to cover the background checks were paid directly by MDCH to Identix, the fingerprint vendor, since State legislation did not allow costs to be charged either to the applicant or the employer.

**Who is screened and what happens:** The Michigan Workforce Background Check Program consisted of two major components: a web-based application that allowed employers to search available registries for potentially disqualifying information and a State and Federal fingerprint-based criminal history search. The web-based application, developed by MSU is a state-of-the-art system that was designed to facilitate the background check process by providing a user-friendly interface with a “dashboard” design. Job applicants first disclosed their criminal background history and consented to a fingerprint-based background check. The employer determined if the applicant had any disqualifying offenses based on disclosure and created an application on the background check web site and ran a name-based registry checks through the web site. Employers conducted background checks that involved registries using the State’s web-based Workforce Background Check system. The user clicked on a link to each registry, which automatically launched a check of the registry. Results of the registry check appeared in a secondary window. The registries were listed in the order they were to be checked. If disqualifying information was found in a registry, the employer discontinued the process.

If the applicant cleared the name-based registry checks, he/she continued through the process and had fingerprints captured by Identix, the State’s fingerprint vendor, using Live Scan equipment. Fingerprints were electronically submitted to MSP at the time of capture. No applicant had to drive more than 50 miles (one way) to be fingerprinted.

If “hits” were discovered during the background check process the information was sent directly to the State licensing agency, which prepared a summary of the findings to send to the applicant and the employer. There were background check analysts in both the Department of Community Health and the Department of Human Services, who were trained to review records with “hits” and to summarize the findings and notify long-term care employers. Employers made the final determination of whether to hire an applicant and had discretion to not hire individuals even if they were cleared for hiring by the background check process. They could not, however, hire someone who was disqualified by the background check.

The MSP utilized a rap-back system that retained fingerprints and provided notice to the appropriate enforcing agency regarding any change to the employee's criminal record. Fingerprinting as a result of a subsequent arrest is compared against the long-term care database. Agency analysts review the updated record and notify the provider when the new information changes employability or if the new information constitutes a felony arrest or arraignment, or a conviction for a relevant crime.

Staffing agencies were not regulated and were not able to access the State's system. The burden of ensuring that staffing agency staff had a background check fell to the facility at which they were working. As a result, staffing agency employees who worked in multiple facilities over time had to have new background checks for each provider at which they worked, unless the provider was under the same owner.

***Disqualifying offenses:*** The State has lifetime, 15, 10, 5 and 3-year exclusions, with the times measured as of the completion of the sentence for the crime. Lifetime exclusions included Federal barring offenses described in the MMA, such as patient abuse, health care fraud, felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance (felony or misdemeanor), fraud, theft, embezzlement, financial misconduct, obstruction of investigation, license revocation/suspension, or exclusion under Federal or State health care program. Examples of offenses that resulted in a 15-year exclusion felony convictions for intent to cause death or serious impairment, cruelty/torture, criminal sexual misconduct, use of a firearm, and diversion/adulteration of a prescription drug. Misdemeanor convictions for these types of offenses typically resulted in a 10-year exclusion.

Note that the State counted the time period beginning after the individual had completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction. For example, if an individual served 10 years in prison for an offense that resulted in a 15-year exclusion, the individual would not be eligible to work until 15 years after the end of their prison sentence, not 15 years from the conviction date. In the event that a missing disposition for a charge involving disqualifying conviction occurred, the MDCH and MDHS background check analysts resolved any incomplete or incorrect information.

***Appeals:*** Applicants could appeal exclusion of employment based on only two factors: 1) an incorrect record or 2) a record that has been expunged or set aside. In order to file an appeal, the applicant had to complete and sign an appeal request form for inaccuracies and send it to the appropriate State agency within 15 business days after receiving the employment exclusion notice. Applicants could continue to work during the informal appeal process, which could take up to 15 days. They could not continue to work during the formal process, which could take up to three months to complete.

***Stakeholder Feedback:*** Providers in the State generally found Michigan's system to be easy-to-use, quick, and effective. Feedback on the State's web site was overwhelmingly positive. Because the State covered the costs of background checks, there were no cost-related concerns. Some stakeholders encouraged the State to adopt a rehabilitation review program, as they were concerned about the impacts of the program on the size of the available workforce. There was some confusion over State policies regarding background checks for staffing agency staff.

**Use of pilot funds:** MDCH was awarded a \$3,500,000 grant to implement a pilot program to require background checks for direct access workers in long-term care facilities. The pilot program ran from January 2005 through September 2007, with the background check pilot operations beginning on April 2006. The total cost of the pilot program was \$9,665,633, which exceeded the grant amount. Expenditures included:

- Administrative costs: \$2,678,520 (includes agency staff, system development, project management);
- Cost of background checks: \$6,881,445 (Includes \$306,345 for registry checks, \$2,817,900 for State background checks, \$2,254,320 for FBI checks, and \$1,502,880 for fingerprinting).

**Number of background checks and outcomes:** In Michigan, background checks were conducted for an 18-month period (April 2006 - September 2007). During this period, the State initiated a total of 145,722 background checks, a much higher volume than any of the other pilot States. During the pilot, the State cleared 86,612 applicants. There were 4,715 disqualifications, 34,505 voluntary or system withdrawals, and 19,890 applications that were pending at the end of the pilot. For most (15,178) of the pending applications, fingerprints had not yet been collected. The rate of withdrawals was higher in Michigan than in other States, and it includes applicant and provider withdrawals, as well as some system withdrawals. Most of the applications that were withdrawn were done so by the employer prior to fingerprinting—our discussions with the State indicated that many of these may have been applications that the employer had to repeat due to data entry errors on the part of the employer. As a result, the volume of fingerprints reported by the State overstates the number of applicants who underwent background checks. Most of the disqualifications were due to information identified during the initial registry checks conducted by employers, which, in Michigan, included a name-based criminal history check using the State’s Internet Criminal History Access Tool (ICHAT) and the Offender Tracking Information System (OTIS).

**Processing times:** Michigan had the shortest completion times of the six States that provided individual background check data. On average, the background check process in Michigan, from the employer’s search of the Long-Term Care Workforce background Check Registry to the fitness determination, took about 28 days to complete, and the median time was 15 days. These times include an average of 17.5 days for fingerprinting (median 9 days). Processing times decreased during the pilot—median completion time was 15 days for months 7-12 and 11 days for months 13-15 of the program.

The use of digital Live Scan devices enabled information from State and Federal background checks to be received quickly, and the State’s web application helped to eliminate unnecessary background checks by ending the process at the point in which disqualifying information was discovered. The time between the request for and receipt of the State background and Federal background check were particularly quick.

**Moving Forward:** By law, the Michigan background check program for long-term care and hospice workers is permanent. The background check costs are paid for by the State, with no cost to either employers or prospective employees. There have been no major changes to the State’s program since

the pilot ended. Efforts to secure funding are ongoing, and the State is considering ways of sharing the costs of background checks with employers as well as securing other general fund resources. Currently, the amount that the State allocated to cover background check costs is not sufficient, and other funding sources are being explored. Changes to the current legislation will be necessary in order to share the costs with providers, but may be feasible if the cost of conducting background checks remains as a reimbursable Medicaid expense through the Medicaid cost report settlement process.

Due to the costs associated with multiple fingerprinting, the State wants to make changes that allow for background checks to be carried over to multiple employers for a specified time period to reduce the time and expense of processing repeated checks on one individual. The State’s rap-back system is one way of managing background check costs. With the rap-back system, it is not necessary to collect new fingerprints each time an applicant changes jobs.

**Table 3.4**  
**Michigan: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Geographic area	Statewide
Covered employers	Nursing homes, home health agencies, hospices, hospitals with swing beds, ICFs/MR, adult foster care facilities, homes for the aged, county medical care facilities, psychiatric hospitals.  Note: Michigan has no HCBS group homes over eight beds or personal care agencies approved under the Medicaid State Plan.
Types of employees for whom background checks are required	Background checks are required for “direct access” workers, defined to include direct care workers, housekeeping, dietary and other non-direct care staff, as well as student nurses and interns. Students whose clinical training exceeds 120 hours are subject to the background check requirements.
Background check requirements for staffing agency staff	Staffing agencies are not regulated and were not able to access the State’s system. The burden of ensuring that staffing agency staff had a background check fell to the facility at which they were working. As a result, staffing agency staff who worked in multiple facilities over time had to have new background checks for each provider at which they worked, unless the provider was under the same owner.  Staffing agency employees do not need a background check if the services for which they are contracted does not allow for direct patient access (e.g., independent contractors who provide maintenance services).
Technology for capturing fingerprints	Live Scan equipment is used to capture fingerprints by the fingerprint collection vendor. Hard card for fingerprints taken by local law enforcement agencies that lack Live Scan equipment.
Fingerprint locations	Identix Identification Services (IIS) is under contract with the State of Michigan to provide fingerprinting capture services for the fingerprint-based criminal history checks. IIS has 38 locations throughout Michigan serviced by mobile units. As part of the agreement with the State, appointments will be available within 10 days of the request for services, and IIS will provide locations within 50 miles of any individual requiring fingerprinting services. Also, some sheriff departments and local law enforcement agencies have elected to provide automated applicant fingerprint submissions.

**Table 3.4 (continued)**

**Michigan: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Applicant self-disclosure	Applicants complete the Long Term Care Workforce Background Check Application Form. Applicants are asked to certify that they have not been convicted of a crime that would prohibit their employment, that they do not have any findings of “not guilty by reason of insanity” for any crime, and that they have not been the subject of a State or Federal agency substantiated finding of patient or resident neglect, abuse, or misappropriation of property. They are asked to disclose all offenses for which they have been convicted, including all terms and conditions of sentencing, parole and probation therefore, and/or any substantiated finding of patient or resident neglect, abuse, or misappropriation of property.
Process for registry checks	<p>Employers search selected registries using the State’s web-based Long-Term Care Workforce Background Check system. The user clicks on a link to each registry, which automatically launches a search. Results of the registry search appear in a secondary window. The registries are listed in the order they are to be checked. If disqualifying information is found in a registry, the employer discontinues the process.</p> <p>Employers use Michigan’s Long-Term Care Workforce Background Check Web site to check the OIG Exclusion List, the Michigan Nurse Aide Registry, the Michigan Public Sex Offenders Registry, the Michigan Offender Tracking Information System (OTIS) and the Michigan ICHAT.</p>
Fitness determination process	<p>If “hits” are discovered during the background check process the information is sent directly to the State licensing agency, which prepares a summary of the findings to send to the applicant and the employer. There are Background Check analysts in both the MDCH and the MDHS. They are trained to review records with “hits” and to summarize the findings and notify long-term care employers. Their fitness determinations are based on established guidelines created from State and Federal laws, and their summaries refer to the statutory requirements.</p> <p>Employers make the final determination of whether to hire an applicant and have discretion to not hire individuals even if they are cleared for hiring by the background check process. They cannot, however, hire someone who is disqualified by the background check.</p>
Missing dispositions	Part of the duties of the background check analysts include checking for missing disposition information. They have access to legal consultants and other regulatory agency resources to assist in resolving any incomplete or incorrect information.
Information disseminated to employer and applicant	<p>For applicants screened by MDCH, providers only receive notification of the disqualification status. For applicant screened by DHS, the letter contains the complete State criminal history rap sheet (but not any information from the FBI check).</p> <p>The information sent to applicants contains a summary of the results of the registry checks and a statement of the severity of the disqualifying conviction (felony or misdemeanor). A notice includes an attachment regarding the applicant’s right to appeal, the process for requesting an appeal and the appeal forms. Instructions for requesting a copy of the rap sheet are part of the boilerplate disqualification notice.</p>

**Table 3.4 (continued)****Michigan: Key Background Check Pilot Program Features**

Program Feature	Description
Disqualifying offenses	<p>In addition to the Federal disqualifying offenses, the State has lifetime, 15-, 10-, 5- and 3-year exclusions, with the time frames measured as of the completion of the sentence for the crime.</p> <p>Lifetime exclusions include Federal barring offenses described in section 1128(A) of the Social Security Act (4.2. U.S.C.) such as patient abuse, health care fraud, felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance,, fraud, theft, embezzlement, financial misconduct, obstruction of investigation, license revocation/suspension, or exclusion under Federal or State health care program.</p> <p>Examples of offenses that result in a 15-year exclusion include felony convictions for intent to cause death or serious impairment, cruelty/torture, criminal sexual misconduct, fuse or a firearm, and diversion/adulteration of a prescription drug. Misdemeanor convictions for these types of offenses typically results in a 10-year exclusion.</p> <p>Five-year offenses include cruelty (if under age 16), home invasion, embezzlement, negligent homicide, larceny, retail fraud (2<sup>nd</sup> degree), and other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance.</p> <p>Three-year offenses include assault if there was no use of firearm or a dangerous weapon and no intent to commit murder, retail fraud (3<sup>rd</sup> degree), and larceny or retail fraud if the individual was under age 16 at the time of conviction.</p> <p>See Appendix H for the complete list of disqualifying offenses.</p>
Consideration of pending and original charges	<p>The language of the supporting legislation allows for exclusion based on a disqualifying conviction; however the determination is not based on pending cases. The MDCH or the MDHS notifies the employer and the applicant that a determination cannot be made due to pending charges, and requests that the applicant provide documentation of the final disposition of the case. The applicant is not disqualified, but the employer may choose to terminate employment.</p>
Provisional employment policies	<p>An applicant can begin provisional employment after the employer completes the check of all of the on-line registries pending results of the fingerprint-based background check. The MDCH or MDHS does not regulate the supervision level of provisional hires.</p>
Background check costs and who pays	<p>The cost is \$70-80 (\$10 for the State ICHAT name-based check, \$24 for the FBI fingerprint-based check, \$16 for fingerprint collection, and a \$30 State AFIS fingerprint-based check fee). The \$10 ICHAT fee is waived for non-profit employers.</p> <p>Costs to cover the background checks are paid directly by MDCH to Identix Identification Services, since State legislation does not allow costs to be charged to either the applicant or the employer.</p>
Appeal and rehabilitation review policies and processes	<p>Applicants may appeal exclusion of employment based on only two factors: 1) an incorrect record or 2) a record that has been expunged or set aside. In order to file an appeal, the applicant must complete and sign an appeal request form for inaccuracies and send it to the appropriate State agency within 15 business days after receiving the employment exclusion notice. Applicants may continue to work during the informal appeal process, which can take up to 15 days. They may not continue to work during the formal process, which can take up to three months to complete.</p>

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**Table 3.4 (continued)****Michigan: Key Background Check Pilot Program Features**

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<b>Program Feature</b>	<b>Description</b>
Enforcement of background check requirements	Monitoring of the program is conducted by the State agencies that oversee licensing and also the State's electronic background check data collection system, which can track the number of registry checks and fingerprint requests generated by individual employers.  Employers found to be non-compliant by failing to conduct background checks on new hires will be guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$5,000 or both.
Time period of background check	The statute provided for provisional employment and provided immunity from liability for facilities conducting background checks under the Act, but facilities were permitted to share results of the State background check if the results were less than 24 months old.
Liability limitations	Except for a knowing or intentional release of false information, the employer has no liability in connection with a criminal background check conducted or the release of criminal history record information as long as the background check was done consistent with the relevant State legislation.

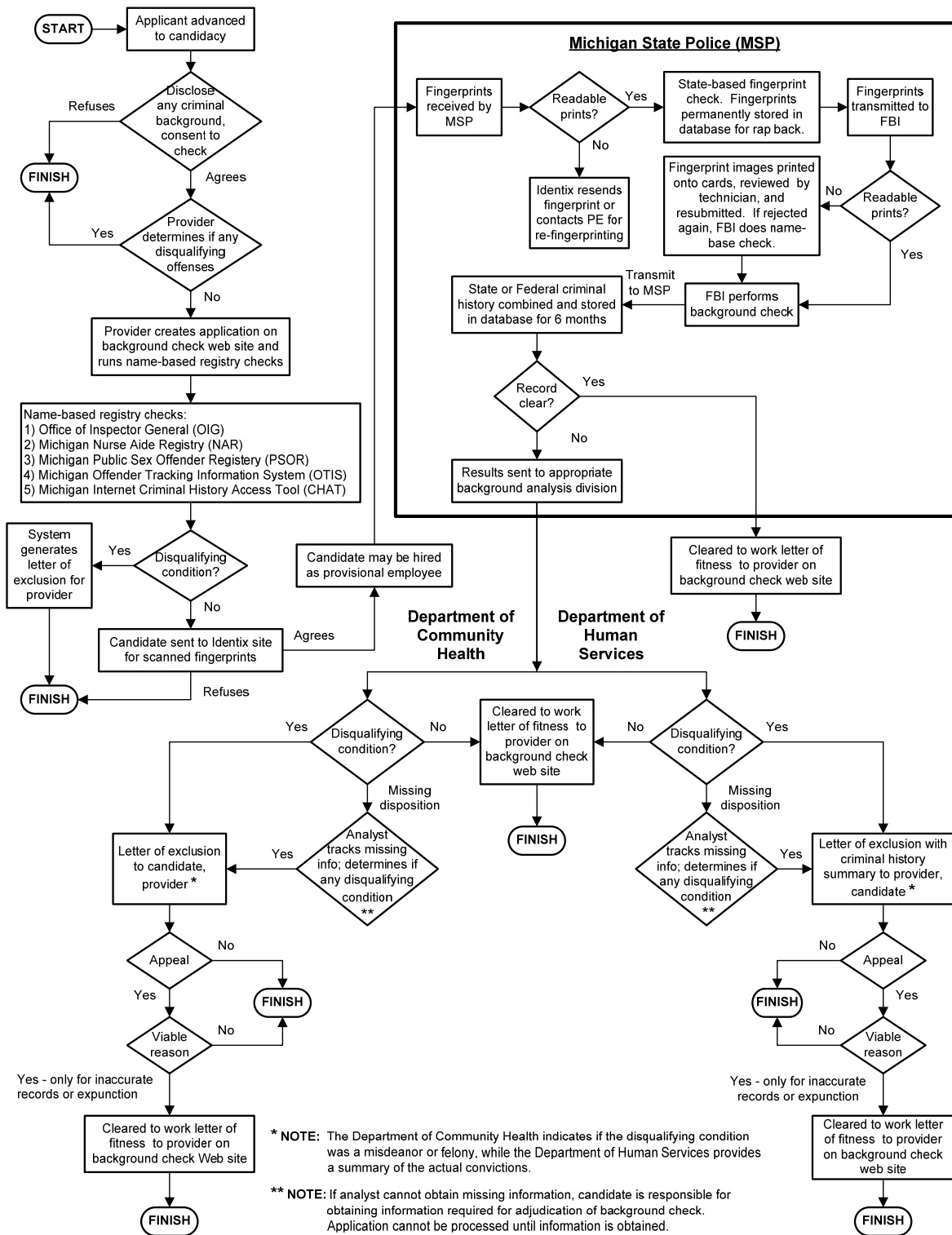
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Sources: Abt Associates/UCDHSC, 2008

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**Figure 3.4 Michigan Background Check Process**



## 3.5. Nevada

### Pre-Pilot Program

**Program Authority:** In 1997, State Assembly Bill 155 mandated that operators of intermediate care facilities, skilled facilities, residential group homes, and all employees of agencies that provide in-home nursing care must have a fingerprint-based criminal history check through the State central repository. Since implementation in 1998, Nevada has required that all long-term care facilities conduct a fingerprint-based criminal history background check on each employee and independent contractor at time of employment and at least every five years thereafter. Nevada's State law requires that the Nevada Department of Health and Human Services (NV-DHHS), State Health Division, Bureau of Licensure and Certification (BLC) be responsible for the licensure and certification of health care agencies and facilities. Therefore, if a facility hires and continues to employ a disqualified applicant, as revealed through the State survey process, the NV-DHHS can elect to suspend, revoke, or not act against the license to enforce the requirement.

One respondent described the reason for the original program as follows,

“The Legislature was concerned for the safety of the community, meaning citizens of the State, and they enacted certain background checks, and it has grown. We have a transient population. Gaming is naturally very important to the State, so it started first with the gaming requirements to require background checks, and it has grown from there. People have said it would serve value in their industry to also have that public safety factor added of criminal background checks being performed.”

Thus, the program built on the requirements and, to some extent, infrastructure in place to conduct background screenings of employees in other industries.

**Program Description:** The Nevada Department of Public Safety (NV-DPS) Records and Identification Bureau (the Central Repository) and the NV-DHHS were the two State agencies that governed the program. The employer submitted the individual's fingerprints to the NV-DPS Records and Identification Bureau within 10 days of hiring the individual and at least every five years thereafter. The NV-DHHS enforced statutory requirements through its licensing of the individual long-term care facilities. All background checks were centrally processed at the DPS. The DPS ran the criminal history check and made the fitness determination. It was “cut and dry,” according to one respondent, meaning that there was no judgment or room for appeals other than based on the accuracy of the information in the determination process. The NV-DHHS was not authorized to access the criminal histories. The only exception to this would be if they took action and the facility challenged that action. Then the NV-DHHS could subpoena the criminal history.

Under the pre-pilot program, background checks were conducted using a manual system. No civilian prints were processed electronically and it generally required 90-150 days to complete processing and conduct the fitness determination. Employers would generally send applicants to local law enforcement agencies for fingerprinting on fingerprint cards. For fingerprint-based checks, the Nevada Highway Patrol, law enforcement agencies, and State-approved agencies were authorized to collect fingerprints, which were then transmitted to and processed at the NV-DPS. Background checks were

completed in the following order: 1) Nevada Criminal Justice Information System and National Crime Information Center Check checks (State and Federal name-based checks); 2) the WIN Automated Fingerprint Identification System; and the FBI IAFIS check (Federal fingerprint-based check). The Nevada Nurse Aide Registry and other State credentialing board checks are conducted separately (State registry search).

NV-DPS would print the criminal history record and check it against criteria for a disqualifying conviction based on the crimes listed in governing statutes. For applicants with a history of disqualifying offenses, the Applicant Fingerprint Response was also transmitted to the NV-DHHS, which then sent a notice to the facility administrator requesting information about the action taken in regard to the prospective employee, which was either to terminate the prospective employee or allow for a challenge to the finding based on the accuracy of the information. No appeals were allowed based on any other criteria (e.g., rehabilitation). A response from the facility administrator was required within 10 days. Employees were allowed to work while the background check was being processed, which could often be as long as six months.

Upon receiving information from the NV-DPS or evidence from any other source that the employee/contractor was convicted of a disqualifying crime, the facility was required to terminate the employment or contract of that person. The NV-DHHS had authority to deny or revoke a facility's license to operate if the facility continued to employ a person who had been convicted of a crime.

Intensive information technology (IT) infrastructure was generally not needed, according to a key respondent, because almost everything was done on paper. NV-DPS made the determination and sent a letter to the applicant's employer with one of three dispositions: clear, disqualify, or undecided. A photocopy of the letter was sent to NV-DHHS for follow up only for cases that were disqualified – they were required to verify that the applicant was not working there. The NV-DHHS tracked the letters with an Excel spreadsheet, but that was the extent of the IT functionality.

**Background Check Fees:** The NV-DPS fee for processing the State criminal history check and registry search was \$21, and the FBI fingerprint-based background check fee was \$24. The fingerprinting fee ranged from \$5 to \$30, depending on the agency that performed the service. By law, the employer was required to pay the background check fee, but could recover up to 50 percent of the fee from the applicant. In discussions with employers and employer groups, it seemed that fee recovery was not generally sought from the employees.

## **Pilot Program**

**Program goals and components:** Nevada's grant application identified four key objectives:

- Develop electronic fingerprint capture and transmission for prospective employees of long-term care facilities through an internal network of agencies within the NV-DHHS.
- Expand electronic fingerprint capture and transmission for prospective employees of long-term care facilities through an external network of health care providers.
- Develop a statewide database of disqualified prospective employees and develop a process to address incomplete background checks to determine appropriate follow-up.

- Promote stakeholder involvement to provide input on background check process improvement and to address required legislative action for statutory changes, as needed.

The third objective was abandoned in favor of improving processing time for background checks. State statutes only authorize issuing the results of background checks to the employer, so this database would have required statutory change. Given the processing time for background checks, the State determined that the database would not be effective.

The administrative structure of Nevada's program for screening long-term care workers did not change for the pilot program. As with the pre-pilot program, the NV-DHHS served as the primary government entity overseeing the program. The pilot program began its implementation in January 2005, and included provisions to streamline the existing processes and improve the turn-around time for processing applications and determining fitness for employment. Though the primary processes and systems for background checks have not changed, the program elected to implement a grants program for private entities to purchase and use Live Scan equipment to reduce processing time for background checks.

The Nevada pilot program built upon its pre-pilot structure incrementally, but increased the technology available for fingerprinting through Live Scan machine rebates and other IT innovations at the State level. Grant funding supported a total of a total of 37 new Live Scan sites. Eleven of Nevada's 17 counties participated in the rebate program. Of the six counties that did not participate, three already had Live Scan equipment for civil applicants and the other three did not have any healthcare facilities that were part of the background check program or a population that was too small to justify the equipment.

**Legislative authority:** Legislative authority was provided by the Nevada Revised Statutes 449 (NRS 449). Since the State conducted fingerprint-based State and national criminal history background checks on workers in long-term health care facilities since 1997, no new legislation was needed for the pilot program.

**Cost:** The fee structure for background checks, \$45, did not change when the pilot program was implemented. NV-DPS billed \$21 for the processing fee and \$24 for the FBI check. By statute, the employer was required to pay for the fees, but could recover up to 50 percent from the employee. This fee did not include the fingerprinting fee, which was typically about \$10 per card when applicants went to local law enforcement agencies for printing. To save this cost, some providers rolled their own employee prints. Implementation of Live Scan technology rebates did not lower the fees for background checks, but was more cost-effective due to reduced data entry time and fewer instances of re-printing, making it possible for the State to avoid fee increases. Nevada's Live Scan grant program required that participants not charge this service fee to health care workers through the end of the pilot.

Nevada's statutes required that the provider pay the NV-DPS fee for the background check but did not specify who should pay any costs associated with fingerprint collection and printing. Providers were allowed to collect up to 50 percent of the NV-DPS fee from the employee and, if they did so, must allow the employee to pay this over time. Some providers only collected the fee from employees if they were terminated within 30 or 60 days of hiring.

**Who is screened and what happens:** All newly hired employees or contractors of long-term care facilities were required to have a background check. As with the pre-pilot program, applicants

provided a statement of criminal history that was confirmed verbally and in writing, submitted fingerprints, allowed registry checks by the State and FBI, and repeated the process every five years. Though the NV-DHHS served as the overseer of the background check program, the NV-DPS performed the registry checks, reviewed the criminal history for any disqualifying events, and issued a letter to the facility that indicated either no disqualifying criminal history, disqualification based on NRS 449.188, or a missing disposition. The NV-DHHS, as with the pre-pilot program, received only the status from NV-DPS and based its enforcement activities upon the reported results from DPS. If a disqualifying letter was issued, the employer responded to NV-DHHS indicating their disposition of the employee as either not hired, terminated, or the intent to challenge the accuracy of the information upon which NV-DPS made the determination. Failure for the employer to comply with that requirement was grounds for BLC to take action against the facility license.

The specific process for manual background checks (upon successful fingerprint submission) was that NV-DPS simultaneously mailed a fingerprint card to the FBI and electronically checked the Nevada registries. The time to complete this was approximately 120 days. To reduce processing time, the pilot program used grant funds to increase the availability of Live Scan equipment. The initial plan was for the State to purchase 21 Live Scan machines, one for each county and more for larger counties. During pilot implementation, the State decided to allow a rebate on equipment if sites bought a machine. These sites were required to submit electronic fingerprints as term of the rebate. This modification of the planned program provided a faster implementation of machines and allowed the machines to be placed where there was demonstrated demand for them. Thus, the same funding as originally planned allowed the State to subsidize more fingerprinting locations. Most rebates went to law enforcement agencies, to allow them to buy a second Live Scan machine for civil applicants. One of the terms of the rebate was that prints for civil applicants must be submitted electronically. The maximum rebate given was \$15,800.

Table 3.5 contains a summary of the key features of Nevada's pilot program and Figure 3.5 is a map of the State's pilot program processes.

**Disqualifying Offenses:** The statutes in Nevada specified lifetime and 7-year bans for specific disqualifying conditions:

- **Lifetime ban:** murder, voluntary manslaughter or 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 and neglect of a child or contributory delinquency; and violation of statutes addressing elder abuse and neglect.
- **Seven-Year Ban:** violation of any Federal or State law regulating the possession, distribution or use of any controlled substance or any dangerous drug, within the past seven years; fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property, within the immediately preceding seven years; or any other felony involving the use of a firearm or other deadly weapon.

**Appeals:** The State did not have a rehabilitation review program and allowed appeals only to challenge the accuracy of criminal records. The use of time limits for some crimes was the State's alternative to a rehabilitation review program, as this ensured that individuals with convictions for these crimes had not been convicted for a disqualifying crime in the past 7 years. As in all the pilot States, if an employee believed that the background check information was incorrect, they could

inform their employer, who was required to give them at least 30 days to correct the information before employment was terminated.

**Stakeholder Feedback:** When asked about innovations, successes, and challenges, stakeholders had many positive things to say about the Nevada program. The move to more direct electronic submission of fingerprints is one innovation that was mentioned often. According to one respondent, “There may be other avenues that are discovered by this process.” Another respondent mentioned an early success in reducing the processing time for receiving dispositions as follows: “We're just thrilled that the time frame is already so much shorter than it used to be.”

One problem mentioned by a respondent is that the NV-DPS may not be able to receive fingerprints electronically so they still have to manually process them. “A person has to go through and sort the cards, let them stack up, and send them out, mail them, and they have to get physically received. My understanding is that's where the bottleneck is now....” According to the NV-DPS respondent, the State averages about 8,000 criminal fingerprints and 12,000 civil fingerprints a month, with a couple months at 16,000. Thus, the volume of applications was a concern for timely processing of applications. However, employers that were interviewed suggested that the processing time has decreased under the pilot program.

Another problem was the issue of uniformity across professions. A separate Nevada State law governed background checks for businesses that are not regulated, such as personal care attendants that are self-employed. Similarly, nursing pools weren't subject to the pilot program statute, so until a nurse went to work for a facility, a background check was not required. The hiring facility was responsible for running a background check if the nursing pool did not, as it was the employer that was bound by the statute, not the individual. However, documentation could move with the individual to a different facility. To obtain a nursing license, a background check was required, but the facilities required a separate background check. The check for licensure was looking for different things, so could not be combined with the criminal history check. Also, the statute did not specifically cover volunteers, only employees and independent contractors that were paid by the entities. As with the pre-pilot program, the flexibility in making fitness determinations resided with the information on the criminal history and did not offer flexibility in overturning those decisions except for in cases of inaccurate information. Thus, several stakeholders mentioned the problem of convictions for crimes that disqualify an applicant for life but occurred many years ago and were unlikely to lead to further crimes against long-term care clients.

**Use of pilot funds:** Nevada was awarded grant funds in the amount of \$1,891,018 to cover the costs of the pilot for the period of January 2005 through September 30, 2007, with the State's background check pilot operations beginning in January 2006. Through September 2007, the State had spent only \$1,202,618, less than what they originally anticipated. The lower expenditures resulted from the change in program focus from having the State install, operate, and maintain Live Scan equipment to using the grant program to contract with various agencies to perform this function. Personnel costs also were lower because the State used a higher skilled contract employee rather than the four full-time managerial and administrative employees originally planned. Similar to other States, not all cost invoices had been processed as of September 2007.

**Number of background checks and outcomes:** The Nevada quarterly data reports covered a 21-month period from January 2006 – September 2007. During this period, a total of 25,406 background checks

were initiated, an average of 1,400 background checks per month. The volume increased after the first three months of the pilot and was relatively constant in 2006 and 2007 up until the last month of the pilot. Overall, 97.2 percent of completed background checks cleared, 2.8 percent were disqualified. There is not a clear breakdown of disqualifications based on the State or FBI background check results. There were 4,901 background checks pending at the end of the pilot including 937 that had ended or were pending with rejected fingerprints. The State's data do not identify applicants who voluntarily withdrew their application.

The Nevada data did not capture any information on registry checks. In Nevada, the registry checks were conducted by employers, and thus were not captured in the State's background check data system. The data did not include anyone who withdraws from the background check process prior to being fingerprinted and do not identify those who voluntarily withdraw from the background check process. Applicants who withdrew from the process prior to being fingerprinted did not show up in the State's database.

**Processing times:** Nevada had one of the higher completion times for background checks. On average, the background check process in Nevada took about 89 days. This included an average of more than 40 days between when fingerprints were collected until the background check request was submitted to the State and to the FBI (the median time was much lower—10 days for the State and 11 days for the FBI). Processing times did decrease over the course of the pilot— the average completion time was 120 days for months 1-6 (median 79 days), 75 days in months 7-12 (median 51 days), and 44 days in months 13-15 (median 28 days).

Most of the fingerprints in the State were collected via fingerprint card, and the lack of electronic fingerprint capture is likely one reason for the fairly lengthy completion times in the State. By the end of the pilot, the State was able to reduce average processing time to around 20 days.

**Post-pilot plans:** The Nevada pilot program structure was incrementally built upon its pre-pilot program structure. Major changes included increasing the access to technology available for fingerprinting through Live Scan machine rebates and other IT innovations at the State level. Current challenges as the program goes forward include the ability for fingerprinting entities to submit the captured prints electronically to the DPS for processing and some concerns raised about the limited information released to the BLC and employer regarding the criminal history record for disqualified applicants.

**Table 3.5**  
**Nevada: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Geographic area	Statewide
Covered employers	Nursing homes, home health agencies, hospices, LTC hospitals/hospitals with swing beds, ICFs/MR, personal care agencies.
Types of employees for whom background checks are required	All newly hired employees or contractors of long-term care facilities are required to have a background check. Volunteers and individuals hired by residents independent of a facility are excluded.
Background check requirements for staffing agency staff	Every employee and independent contractor is subject to the criminal history background check. While staffing agencies can conduct background checks, the burden is on the facility to ensure that background checks are completed for staffing agency staff.
Technology for capturing fingerprints	<p>Most applicants obtain fingerprints from their potential employer or local law enforcement agencies using either Live Scan or fingerprint cards.</p> <p>Through the pilot program, the State sought to make electronic fingerprint submission more accessible. Funding was available to assist health care facilities and other fingerprinting sites to acquire Live Scan equipment and upgrade hardware and software in existing Live Scan equipment. The maximum available rebate was \$15,800.</p>
Fingerprint locations	Employers, local law enforcement. It is the State's intention to have a mobile Live Scan service to travel to the rural areas to provide an additional site for fingerprinting.
Applicant self-disclosure	The employer obtains a written statement from employees and independent contractors stating whether they have been convicted of any crime that would disqualify them for employment.
Registry checks	Nursing homes check the Nevada Nurse Aide Registry directly.
Fitness determination process	NV-DPS reviews the criminal history for disqualifying information and makes the fitness determination.
Missing dispositions	Facilities may hire applicants with an undecided criminal finding that would result if there was missing disposition information. The State requires self-attestation by the employee if they have an undecided finding in the record search. If the employee reveals a disqualifying conviction, and then he or she must be terminated.
Information disseminated to employer and applicant	DPS issues a letter to the employer that indicates 1) no disqualifying criminal history; 2) a conviction for a disqualifying condition; or 3) the results of the background check are undecided due to a missing disposition. The employer does not get the complete criminal history, only whether the applicant was approved or not.

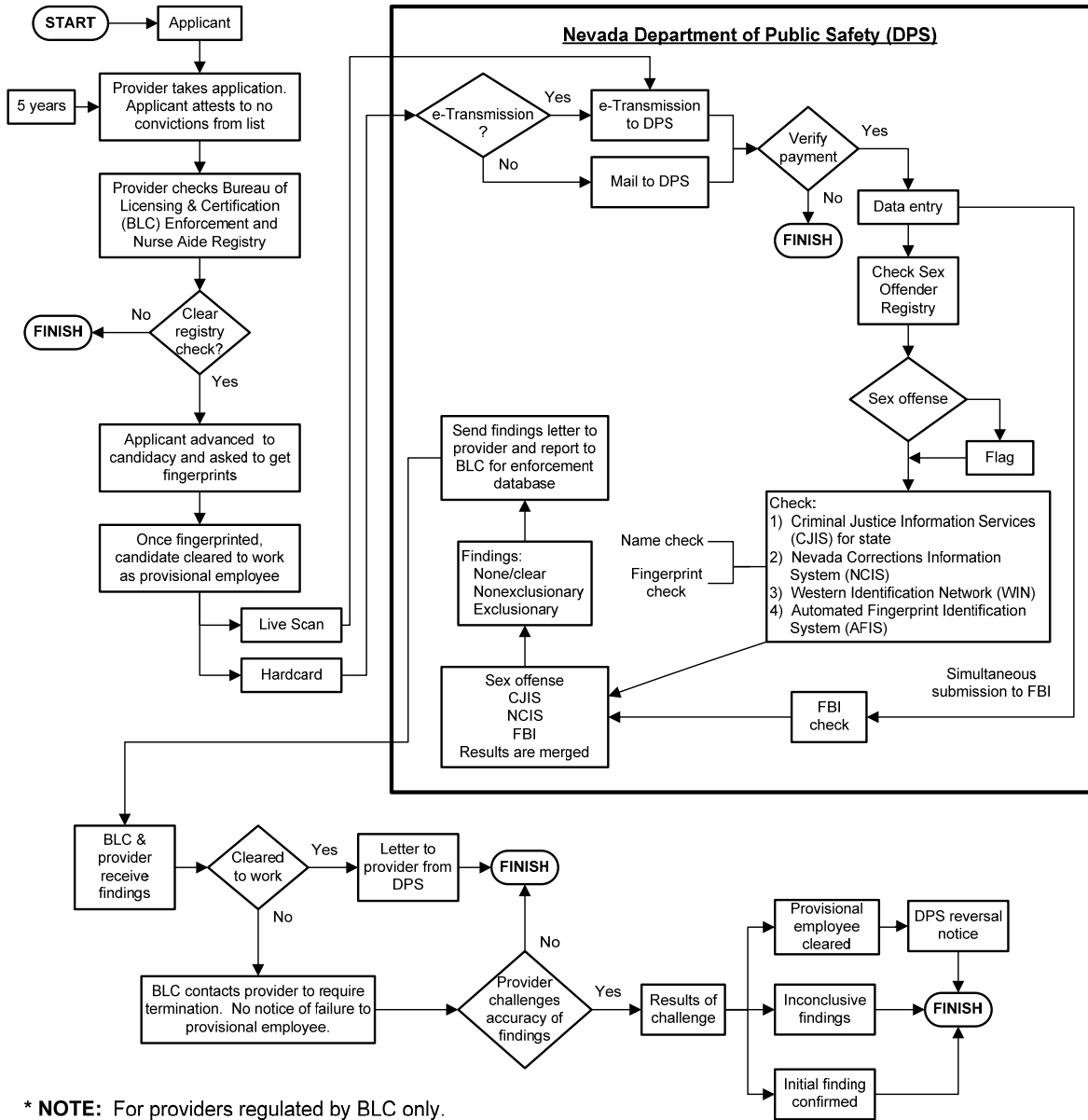


**Table 3.5 (continued)****Nevada: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Disqualifying offenses	<p>There are lifetime and seven-year disqualifications. Lifetime disqualifications include</p> <ul style="list-style-type: none"><li>• Unlimited convictions</li><li>• Murder, voluntary manslaughter or mayhem</li><li>• Assault with intent to kill or to commit sexual assault or mayhem</li><li>• Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime</li><li>• Abuse or neglect of a child or contributory delinquency</li><li>• Elder abuse and neglect</li></ul> <p>Seven-year crimes include:</p> <ul style="list-style-type: none"><li>• Any violation of any Federal or State law regulating the possession, distribution or use of any controlled substance or any dangerous drug</li><li>• Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property</li><li>• Any other felony involving the use of a firearm or other deadly weapon</li></ul>
Consideration of pending and original charges	<p>Pending charges do not disqualify an individual, but the employer is notified that the criminal history status is “undecided” (as distinct from “positive” or “negative”). The employer may choose whether to hire the individual.</p>
Provisional employment policies	<p>An employee is allowed to continue working while the background check is in process and for at least 30 days if they challenge the results of the background check. The level of supervision for provisional hires is not regulated.</p>
Background check costs and who pays	<p>Background checks cost up a minimum of \$69 (\$45 for the State criminal history, \$24 for the FBI check). There may be an additional charge of up to \$30 for the fingerprint capture. The \$45 fee is charged to the employer, who may recover up to 50 percent of it from each applicant.</p>
Appeal and rehabilitation review policies and processes	<p>There is no appeal or rehabilitation process in the State except to challenge the accuracy of criminal records. If an employee believes that the background check information is incorrect, then the employee may inform his/her employer, who must give the employee at least 30 days to correct the information before employment is terminated.</p>
Enforcement of background check requirements	<p>BLC monitors compliance by conducting onsite surveys and reviewing a sample of personnel files to ensure compliance with the statutes requiring fingerprint background checks.</p>
Time period of background check	<p>Any employee or independent contractor must undergo the check for each employer, unless the individual can provide proof of a clean background that is less than six months old. Although not required under the pilot program, current employees are subject to a background check at least every five years.</p>
Liability limitations	<p>An employer that complies with the State’s background check laws may not be held civilly or criminally liable based solely upon the ground that the agency or facility allowed an employee or independent contractor to work.</p>

Sources: Abt Associates/UCDHSC, 2008

**Figure 3.5 Nevada Background Check Process**



## 3.6. New Mexico

### Pre-Pilot Program

**Program Authority:** The New Mexico Department of Health (NM-DOH) was responsible for the administration of the Caregiver Criminal History Screening Program (CCHSP), which included State and national name- and fingerprint-based criminal investigations, since 1999. The purpose of the Caregivers Criminal History Screening Act 29-17-2 to 29-17-5 NMSA 1978 and its requirement that caregivers undergo a nationwide criminal history check was to ensure to the highest degree possible the prevention of abuse, neglect or financial exploitation of care recipients. The legislation covered a wide array of employer types and gave the NM-DOH authority to manage and operate the CCHSP. The Caregivers Criminal History Screening Act authorized the NM-DOH to promulgate regulations to implement the Act. The rules, entitled "Caregiver Criminal History Screening Requirements," effective August 15, 2002, clarified various aspects of the CCHSP.

Stakeholders reported that the main reason for the program was a push by State legislators to “come in line” with rest of the country to protect a vulnerable population. No specific incident prompted the passage of the authorizing legislation.

**Program Description:** The background check screening was required for care employers designated under the legislation, which included skilled nursing facilities, intermediate care facilities, ICFs/MR psychiatric facilities, rehabilitation facilities, home health agencies, homemaker agencies, homes for the aged or disabled, group homes, adult foster care homes, guardian service employers, case management entities that provide services for people with developmental disabilities, private residences that provide personal care, adult residential care and nursing care for two or more persons, adult day care centers, boarding homes, adult residential care homes, residential service or rehabilitation service authorized to be reimbursed by Medicaid or any licensed Medicaid-certified entity or any program funded by the State Agency on Aging that provides respite, companion, or personal care services, or programs funded by the Children Youth and Families Department that provides homemaker or adult day care services. General acute care hospitals, resident care facilities performing services exclusively for a correctional facility, outpatient treatment facilities, diagnostic and treatment facilities, ambulatory surgical centers and facilities, end-stage renal dialysis and treatment facilities, rural health clinics, private physicians' offices or other clinics operating in the same manner as private physician offices in group practice settings were not included as covered employer types.

CCHSP required hard copy fingerprint cards. Each employer was responsible for fingerprinting their own employees or contracting with third-party contractors for fingerprinting. The New Mexico Department of Public Safety (NM-DPS) did not accept electronic fingerprint card submissions. A complete application packet included four items: (1) three complete fingerprint cards, (2) copy of a photo ID, (3) a signed authorization for Release of Information form, (4) \$65 fee for each application submitted. If all four items were not present, the application packet was considered incomplete and returned to the care employer. Applications were run on a dual track: two fingerprint cards were kept for scanning into the Interim Distribution Imaging System, one fingerprint card was sent to NM-DPS. If rap sheets came back clear or with no disqualifying convictions, a clearance was processed and sent out to the applicant and care employer. If a disqualifying conviction was on the individual's criminal

history, a disqualification letter was processed and sent out to the applicant and employer. Prescribed time frames were dependent on workloads; turnaround could take several weeks. There were no time limits for processing.

The background check process required that one set of fingerprints was scanned and submitted electronically to the FBI. The FBI would then respond directly to the contributor with either a no record or a rap sheet if there was a criminal history record. At the State level, the NM-DOH had Internet access to a company that has access to the name-based registry. They would conduct a name-based search for the individual, and if there was no criminal history record, they would get a no record response. If a hit was generated through the name index, then they were requested to forward the appropriate documentation, which was either the fingerprint cards and/or the release form to NM-DPS, at which point, a NM-DOH employee would review the record and update it if necessary. In addition to the required State and FBI checks, nursing home employers were required to check the New Mexico Nurse Aide Registry prior to hiring nurse aides. While the New Mexico Nurse Aide Registry was used extensively, it was not tied into the criminal history screening process.

Provisional employment was allowed under the State's regulations. An employer could not employ a caregiver unless the caregiver first authorized a request for a nationwide criminal history screening prior to beginning employment. The length of the conditional employment was contingent upon the receipt of written notice issued by the NM-DOH regarding the fitness determination. In the case of an administrative reconsideration, it was at the discretion of the employer whether an applicant, whose nationwide criminal history reflected a disqualifying conviction and who has requested administrative reconsideration, could continue to be employed during the period of the reconsideration.

The NM-DOH was responsible for making the fitness determination for all caregiver applicants. Only screening status information was communicated to employers: either cleared or disqualified. For the pre-pilot program, there was a 30-day window to submit rejected applicants for reconsideration based on a decision letter and packet. This often took more than 30 days because disposition of the case was often requested and allowed an additional 30 days to respond after disposition was known.

Criteria for disqualifying an applicant included: homicide; trafficking controlled substances; kidnapping, false imprisonment, aggravated assault or aggravated battery; rape, criminal sexual penetration, criminal sexual contact, incest, indecent exposure or other related sexual offenses; crimes involving adult abuse, neglect or financial exploitation; crimes involving child abuse or neglect; robbery, larceny, extortion, forgery, embezzlement, credit card fraud or receiving stolen property.

The most significant criticism of the pre-pilot program by stakeholders was that the process was labor-intensive and a paper-intensive process that included too little automation. In addition, there were general and non-specific concerns that employers did not follow the intentions of the statutes. However, they pointed to the deterrent effects of having a background check program in place as the successes of the program and saw the pilot program as a mechanism to repair or address some of the glitches in their existing program.

**Background Check Fees:** Caregivers Criminal History Screening Requirements 7.1.9.8.D NMAC did not allow the background check application fee to exceed \$74. During the pre-pilot period, the NM-DOH charged \$65 for a caregiver's criminal history screening. Of that \$65, \$24 covered the FBI

screening, \$7 was the fee for the State criminal history records check, a \$3 per transaction fee was charged to allow NM-DOH transmit data to NM-DPS through a secure transmission, and NM-DOH charged \$31 to cover the costs of processing and administrating CCHSP. The \$65 reflected the “break-even” point for processing. The fee had to be paid at the time of the fingerprint application by cashier’s check, funds transfer arrangements, or a business check. Cash and personal checks from applicants were not allowed. Fees could be covered by the applicant, employer, or a combination of the two. No funds were appropriated to the program from the State. As an example, part of the \$31 fee was allotted to an employee hired by the NM-DOH and stationed at the NM-DPS to process criminal history screenings for health care facility applicants.

## **Pilot Program**

***Program goals and components:*** The New Mexico Background Check Pilot Program was derived from the Caregivers Criminal History Screening Program. It required that caregivers undergo a nationwide criminal history screening to ensure to the highest degree possible the prevention of abuse, neglect, or financial exploitation of care recipients. The New Mexico Department of Health (NM-DOH) was the lead agency for the pilot program, as well as for the existing CCHS efforts that fell outside the CMS pilot project. As with several of the pilot States, the governor’s office was a proponent of participation and encouraged the NM-DOH to pursue the CMS pilot program grant for use in improving the CCHS program. The CMS funds allowed for the integration of various entities into one organizational structure that includes operations (data entry, training), legal (dispositions and appeals), and card scan (actually running the background checks). New Mexico’s program incorporated 453 group living providers and 426 community program providers into the pilot program.

The technology and processes for conducting the background check screenings did not change for the pilot program; employees continued to be fingerprinted via ink and hard fingerprint cards. Applicants were required to submit four items for background check processing, including three fingerprint cards, a photocopy of a picture identification card, a self-disclosure and release form, disclosing any offenses and authorizing release of the criminal history record information, and the \$65 fee. The fee structure for the background check did not change under the pilot program.

The pilot program in New Mexico, in contrast to some of the other pilot programs, was aimed to improve employer compliance and education and improve the IT infrastructure to support the program. One of the aims was to create a Consolidated Online Registry (COR) for the State registry check. The COR system is a web-based registry that uses both internal and external data sources for a single registry check. The databases include the Caregivers Criminal History Screening Registry, Employee Abuse Registry, New Mexico Sex Offender Registry, the OIG List of Excluded Individuals/Entities (LEIE), and the New Mexico Nurse Aide Registry. The goal of the COR is to provide access for care providers and State agencies to a “one-stop repository for care providers to quickly ascertain employment suitability for new caregivers.” New Mexico worked with the CMS technical assistance contractor to develop the COR system.

Through the Providing Assistance, Communication and Training Program (PACT), NM-DOH planned to reduce fingerprint card rejection rates by providing fingerprinting technical assistance to employers, reducing background check processing time. They also planned to improve compliance with the

State's existing background check requirements. NM-DOH issued a Fingerprint Techniques Manual intended to inform employers how to capture fingerprints.

The pilot program required that within the required settings, no caregiver would be employed by a care provider unless they had first submitted to a request for a nationwide criminal history screening prior to beginning employment or unless the caregiver had submitted to a nationwide criminal history. The New Mexico CCHS required individuals to submit three (3) sets of 10-digit fingerprints. Fingerprint scanners, upgraded software, laptop computers, and specialized equipment were purchased using the CMS funds. CMS funds were also used to further the advancement of New Mexico's centralized criminal history database, which now includes 450,000 records for individuals. The database is used by both direct care providers and NM-DOH personnel. Its creation has substantially decreased the workload for CCHS personnel, although they are still working out some of the data collection issues. Table 3.6 includes a summary of the key features of New Mexico's pilot program.

**Legislative authority:** Under the amended New Mexico CCHSP legislation, covered employers included all those provider types that were included in the pre-pilot program and added background check requirements for general acute care hospitals. The legislative authority for applicant caregiver background checks covered 23 types of providers. However, NM-DOH was not successful in amending the State's legislation regarding the twelve-month State and FBI background check exemption for prospective direct access employees, to conform with the MMA statutory requirements to conduct a new State and national background check upon each new hire. A substitute bill was submitted, and passed into law, which closed the 12-month exemption for State background checks, but continued the caregivers' 12-month exemption for a nationwide criminal history screening. There was public concern over the cost of conducting both State and national background checks due to the high turnover rates for direct care staff. The substitute bill provided a compromise for the providers, and supporters contended that, since direct care staff had a nationwide criminal screening within 12 months and likely had been living in the State, a statewide check would be sufficient. The NM-DOH legal counsel determined that the Department had the authority to also conduct a nationwide criminal history screening, based on the authorization form. CMS and NM-DOH negotiated a reduced scope, whereby, for the purpose of the pilot, NM-DOH would conduct both State and national background checks for all caregiver applicants for the mandatory provider types required under the pilot (i.e., nursing homes, home health agencies, hospices, personal care service providers and ICFs/MR). It was agreed that pilot funds would be used to cover the \$24 fee for the additional FBI background checks plus an administrative fee, for the caregivers that were affected by the 12-month FBI background check exemption.

**Cost:** Fees for a background check were \$65, the same as for the pre-pilot program. This covered the costs of State and Federal criminal history checks, the administrative process involved in fitness determination, and the processing of a second set of fingerprint cards should the first be unreadable. In New Mexico, there is a statutory requirement that fees must be under \$74. Pilot funds were used to cover the cost of the \$24 FBI fee and a \$21 administrative fee; other costs are paid for by the employer, who can recover this cost from the employee at their discretion.

**Who is screened and what happens:** New Mexico defined a caregiver as a person whose employment or service includes direct care or routine and unsupervised physical or financial access to any care

recipient services by that employer. This could include compensated workers, paid contractors, employees of contractors, or operators of facilities that are routinely on site.

The pilot program mirrored the existing CCHS by requiring all job applicants to submit a hard copy of 10-rolled fingerprint impressions that can be scanned for the identification processing. CCHS processed all background check requests. Each care provider was responsible for fingerprinting its own employees or contracting with third-party contractor to conduct fingerprinting. Electronic fingerprint card submissions were currently not accepted at the time of the evaluation team visit (mid 2007).

If no findings of disqualifying convictions result for a background check, a clearance was processed and sent to the applicant and care provider. If a disqualifying conviction was identified in an individual's criminal history, a disqualification letter was processed and sent to the applicant and care provider.

Disqualification convictions included: homicide, trafficking controlled substances, kidnapping, false imprisonment, aggravated assault or sexual offenses, crimes involving adult abuse, neglect or financial exploitation, crimes involving child abuse, neglect, robbery, larceny, extortion, forgery, embezzlement, credit card fraud or receiving stolen property.

In the event that a missing disposition for a charge involving a disqualifying conviction occurred, CCHS requested the applicant provide court documentation of the final outcome of the case. If there was no response in 14 days, final disqualification letters were sent to the provider and applicant. If the applicant provided appropriate court documentation that there was no conviction, the applicant was cleared by disposition, and clearance letters were sent to both the provider and applicant.

***Disqualifying Offenses:*** Disqualification convictions included: homicide, trafficking controlled substances, kidnapping, false imprisonment, aggravated assault or sexual offenses, crimes involving adult abuse, neglect or financial exploitation, crimes involving child abuse, neglect, robbery, larceny, extortion, forgery, embezzlement, credit card fraud or receiving stolen property.

The State did not grant a clearance to individuals who had a pending charge for a potentially disqualifying conviction for which no final disposition had been made. In these cases, the employer was notified by certified mail that an employment clearance had not been granted. Clearance could be granted if the individual submitted documentation showing that the final disposition of the crime means that it was no longer a disqualifying offense.

***Appeals:*** Any alleged inaccuracies found after a criminal history record was run were grounds for appeal—as were findings that a conviction has no bearing upon fitness for employment. An applicant with a disqualifying conviction could appeal by submitting a written request for an administrative reconsideration within 30 days of the postmark of the initial disqualification letter or a final disqualification letter would be mailed. The individual could continue to work only at the discretion of the employer. If the reconsideration proceeding resulted in a determination by NM-DOH that the applicant's or caregiver's nationwide criminal history record inaccurately reflected a disqualifying conviction of a crime, that the employee presents no risk of harm to a care recipient, or that the

conviction does not directly bear upon the applicant's or caregiver's fitness for employment, the individual could resume work.

**Stakeholder Feedback:** Results of on-site interviews with New Mexico providers of care indicated that most of them were pleased with the progress that the State made. Before the pilot program began, the Information Technology (IT) office for CCHS was decentralized. CMS funds allowed the centralization and streamlining of the IT functions. Others mentioned that they were able to improve their compliance as a result of better training and understanding of the process, the ease of communication with State officials, and the refinement of the appeals process.

There were still some areas of concern in New Mexico after the initiation of the pilot program including the need for continued improvement in compliance, data collection/gaps in the database, commence electronic submission of fingerprints to the FBI (efforts underway between NM-DOH and NM-DPS), lack of an infrastructure and timeliness within the NM-DPS, protracted turnaround time for some providers to receive background check results, lack of consistency within State statutes governing background checks, and mechanisms for providing supervision to those in provisional employment.

**Use of pilot funds:** The State was awarded a total of \$1,070,459 in grant funds. Information on expenditures was not available from the State, but the State did report that employee salaries and fringe benefits comprised 78 percent of overall grant spending. This was for the additional employees that the State's pilot activities required. Travel accounted for 11 percent of expenditures, equipment accounted for 6 percent, and other expenditures made up 5 percent of the State's total grant spending.

**Number of background checks and outcomes:** New Mexico had difficulty in producing the quarterly data reports and provided data for a 14-month period (July 2006 - September 2007). During this period, based on the quarterly reports, there were 10,018 background checks started, an average of 775 checks per month. The volume was highest in April 2006, when 1,408 background checks were started. During the pilot, 7,947 applicants were approved for employment, 615 were disqualified (Table 7.28). There were 1,456 applications that were still pending at the end of the pilot. The New Mexico data do not identify applicants who voluntarily withdrew their application.

**Processing times:** On average, the background check process in New Mexico took about 73 days to complete, and the median completion time is 52 days (Table 4.7). Since employers collect fingerprints in New Mexico, this processing time represents the length of time from fingerprint collection until the fitness determination decision. The State had a considerable backlog in the submission of fingerprints to the State police and the FBI, and this accounted for most of the processing time. The median number of days from receipt of fingerprints to the FBI background check request was 41 days and the median was 50 days for the State background check. The State and Federal responses tended to occur quickly—the Federal fitness determination was made an average of four days after the Federal background check request date. For cases that went to appeal, it took an average of 82 days from the initiation of the background check until the appeal decision date.

**Post-pilot plans:** According to the State's Final Report, the CCHSP program will continue to operate as it did prior to the pilot program. NM-DOH has made a commitment to continue to support provider training to ensure future operations. In addition, an Information Technology Support



Division staff position has been identified to support the COR system and provide future enhancements.

The State plans to move forward and implement the use of Live Scan technology. This will greatly improve the way fingerprints are processed, as New Mexico hopes to have 90 percent of providers submitting electronically in the future. New Mexico stakeholders believe that there is a need to initiate an AFIS rap-back enhancement to protect vulnerable populations.

**Table 3.6**  
**New Mexico: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Geographic area	Statewide
Covered employers	The pilot program covers nursing homes, long-term care hospitals/swing beds, ICFs/MR, home health agencies, hospices, home and community-based group homes over eight beds, and personal care agencies under the Medicaid State Plan. Other provider types are covered by the State's Caregivers Criminal History Screening Act, but these were not considered part of the State's pilot program,
Types of employees for whom background checks are required	Background checks are required for caregivers, defined to include "any person whose employment or contractual services includes direct care or routine and unsupervised physical or financial access to any care recipient served by that employer." This definition includes most employees.
Background check requirements for staffing agency staff	The Caregivers Criminal History Screening Act requires that staffing agency staff be screened, although regulations do not require a new background check if the applicant had undergone a background check and been cleared for employment within the previous 12 months.  Clearance is issued to the staffing agency and can be used at multiple facilities while working for that staffing agency. Staffing agency staff must provide documentation of their clearance to each facility where they are placed. The care provider is responsible to ensure and retain a record that a criminal history screening was conducted on any individual who provides care to a care recipient and that a clearance from the CCHSP has been obtained.
Technology for capturing fingerprints	Fingerprint cards.
Fingerprint locations	Employers, at their discretion, can either collect fingerprints on the fingerprint cards issued by NM-DOH internally, using staff to collect the fingerprints or contract with a fingerprint collection agency.
Applicant self-disclosure	NM-DOH revised its Authorization for Release of Information form to collect information on the date, nature, and place for all felony offenses (i.e., felony convictions and substantiated findings).
Process for checking registries	Employers check the Consolidated Online Registry, which searched the Caregivers Criminal History Screening Registry, Employee Abuse Registry, New Mexico Sex Offender Registry, the OIG List of Excluded Individuals/Entities (LEIE), and the New Mexico Nurse Aide Registry. These searches are run at the same time as the applicant's information is reviewed by the employer.
Fitness determination process	NM-DOH staff make the fitness determination. They review the criminal check information against the disqualifying convictions set forth in the statute to determine if there are disqualifying charges, convictions or other offenses.

**Table 3.6 (continued)****New Mexico: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Missing dispositions	If there are records without a final disposition, NM-DOH staff send a disposition request letter to the applicant, requesting court documentation of the final outcome of the case. The applicant has 14 days to provide the appropriate documentation or they are disqualified for employment.
Information disseminated to employer and applicant	If disqualifying information is found, then a disqualification letter is sent to the applicant and the employer. The applicant is notified of the barring disqualification information. The applicant also receives a form letter and instructions that detail the administrative reconsideration process, including what items need to be submitted and the procedures that they must follow. The employer is notified only that the applicant has a disqualifying conviction but not specific details of the conviction. It is the choice of the applicant to share the specific information with a care provider. In such cases, the CCHSP will notify the applicant/caregiver of the specific disqualifying conviction(s).
Disqualifying offenses	In addition to the Federal disqualifying offenses, the State list of disqualifying offenses includes homicide, convictions related to controlled substances, rape and related crimes, crimes involving adult abuse, neglect or financial exploitation, crimes involving fraud, burglary, robbery, forgery, and related crimes. Changes enacted in 2005 expanded the list of disqualifiers to include an attempt, solicitation, or conspiracy involving any of the felonies listed above.
Consideration of pending and original charges	The State does not grant a clearance to individuals who have a pending charge for a potentially disqualifying conviction for which no final disposition has been made. In these cases, the employer is notified by certified mail that an employment clearance has not been granted. Upon administrative reconsideration, if the individual submits documentation showing that the crime was pled down and is no longer a disqualifying offense, NM-DOH will clear the individual without prejudice.
Provisional employment policies	Caregivers can begin provisional employment after they submit to a request for a nationwide criminal history check. They can continue working provisionally until the employer is notified of the results of the background check. NM-DOH does not regulate the supervision level for provisional hires.
Background check costs and who pays	Background checks cost \$65 (\$31 to support Caregivers Criminal History Screening Program activities, \$24 FBI check, \$10 for the State background check). The fee payment must accompany the fingerprint application and may be paid by either the employer or the employee. Pilot funds are being used to cover the cost of the \$24 FBI fee, along with a \$21 administrative fee, for each caregiver that is affected by the 12-month exemption period. Note: Home and community based services providers bill Medicaid \$75 to defray the cost of conducting background checks.
Appeal and rehabilitation review policies and processes	Applicants can request reconsideration of the results of their background check. They must submit a signed declaration that describes their criminal felony convictions and other offenses, along with any additional information to be considered such as information on the final disposition of charges that showed up as pending on the criminal records, any mitigating circumstances when the offense was committed, rehabilitation and employment history since the offense. NM-DOH's Reconsideration Committee meets weekly and will issue an employment clearance determination based upon the completed request for reconsideration and all supporting documents submitted. Applicants are allowed to work provisionally while the appeal is pending.
Enforcement of background check requirements	Failure to comply with NM-DOH's requirements may result in the suspension or revocation of the employer's license and the imposition of fines. Sanctions are imposed through the certification survey process for facilities and the review process for community-based employers.

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**Table 3.6 (continued)****New Mexico: Key Background Check Pilot Program Features**

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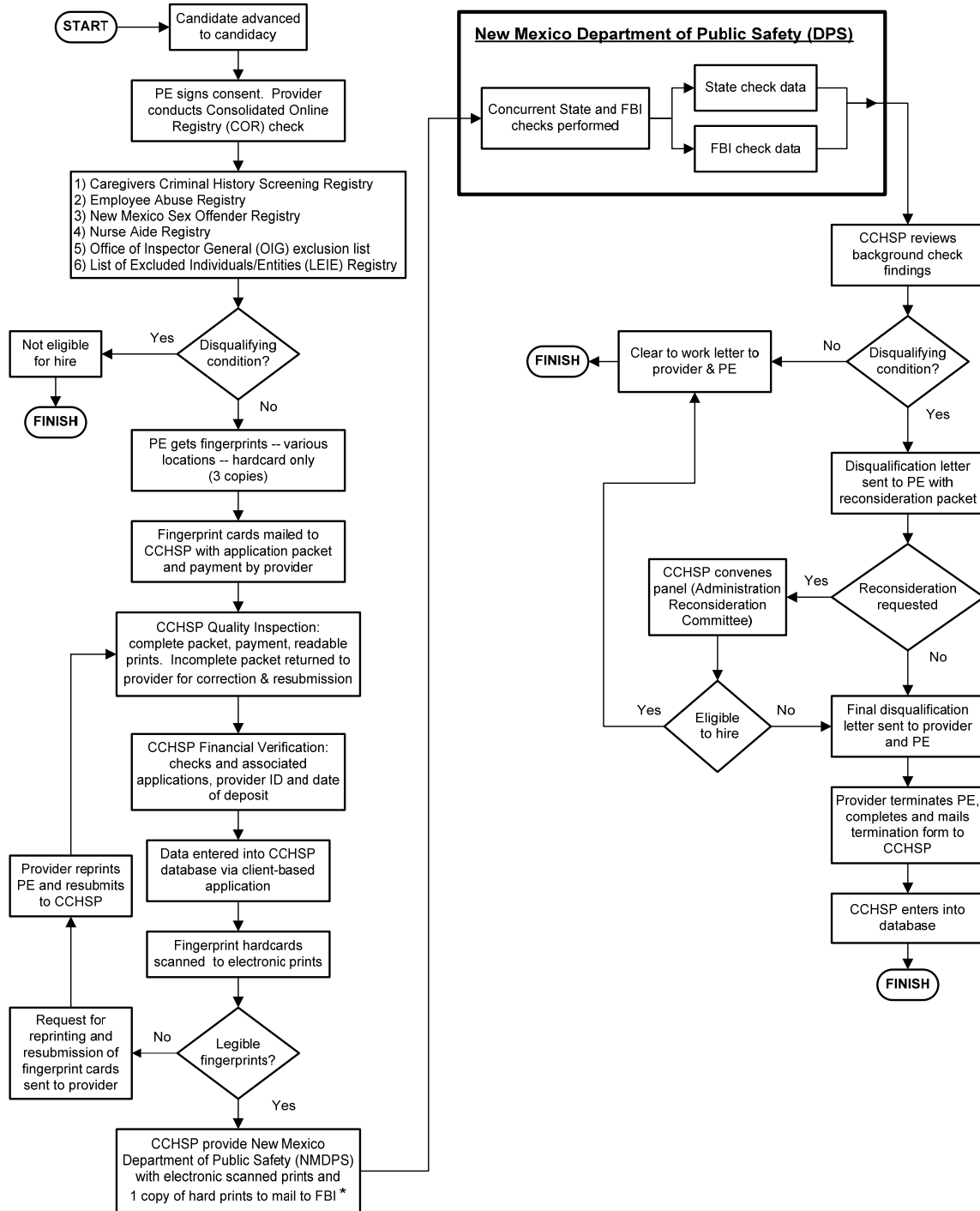
<b>Program Feature</b>	<b>Description</b>
Time period of background check	Applicants applying for employment within 12 months of their most recent national background check that did not list any disqualifying convictions were required only to have a statewide criminal history screening. At the discretion of the employer, a nationwide screening could also be requested. However, based on negotiations between CMS and NM-DOH, the State used their authority to complete FBI background checks on the applicants affected by the 12-month exception.  Prior to the pilot, no new background check (State or Federal) was required for those who had cleared a background check within the past 12 months.
Liability limitations	A care employer, including its administrators and employees, is not civilly liable to an applicant or a caregiver for a good faith decision to employ, not employ or terminate employment pursuant to the Caregivers Criminal History Screening Act.

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Sources: Abt Associates/UCDHSC, 2008

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**Figure 3.6 New Mexico Background Check Process**



PE=Provisional employee

CCHSP=Caregivers Criminal History Screening Program

\* NOTE: Testing for electronic transmission to FBI underway.

## 3.7. Wisconsin

### Pre-Pilot Program

**Program Authority:** The Wisconsin Department of Health and Family Services (WI-DHFS) implemented the Caregiver Law in October 1998 (amended on October 29, 1999). The Caregiver Law required that covered entities conduct background checks on all potential employees and contractors who met the definition of a caregiver. Entities must examine the background check results for barring offenses and make employment decisions based on the results.

**Program Description:** According to the *Wisconsin Caregiver Program Manual*, the purpose for the State's program was to respond to "the potential for physical, emotional and financial abuse of vulnerable citizens by persons who have been convicted of serious crimes or have a history of improper behavior." The Caregiver Law was intended to protect patients and residents from abuse, neglect, and misappropriation of property by requiring that employers and licensing agencies conduct background checks, examine the results of background checks for criminal records and findings of misconduct, and make employment decisions in accordance with the requirements of the Caregiver Law. Since the law went into effect, covered employers have been required to complete background checks on all new hires. After the initial background check at the time of employment or contracting, employers must conduct new caregiver background checks at least every four years, or more frequently if the employer has reason to believe that a new background check is warranted. There are five components to the Wisconsin Caregiver Program: 1) background checks for caregiver; 2) employment and licensing limitations; 3) the State's Rehabilitation Review process; 4) investigating and reporting caregiver misconduct; and 5) the State's Caregiver Misconduct Registry. The Caregiver Law requires a name-based background check, although employers are allowed to use fingerprint cards at their discretion. It prohibits employment and licensing for individuals who have been convicted of disqualifying crimes or that have governmental findings of misconduct. The State's rehabilitation review process is described in Chapter 4 below. The Caregiver Misconduct Registry contains information on the names of nurse aides and other non-credentialed caregivers with a substantiated finding of abuse, neglect, or misappropriation.

The Caregiver Program covers all health care employers regulated by WI-DHFS, including:

- Alcohol and other drug abuse services
- Community-based residential facilities and four bed adult family homes
- Community mental health programs
- Community support programs
- Developmental disability programs
- Emergency mental health services programs
- Home health agencies (including personal care and supportive home care services provided by the agency)
- Hospices

- Hospitals
- ICFs/MR
- Mental health day treatment services for children
- Nursing homes
- Residential care apartment complexes
- Rural medical centers

In addition, the Caregiver Law also covers day care and foster care providers. Entities must complete caregiver background checks on all persons who meet the definition of a caregiver at the time of hire and every four years thereafter. A caregiver is defined as a person who meets all of the following:

- Is employed by or under contract with an entity;
- Has regular, direct contact with the entity's clients or the personal property of the clients; and
- Is under the entity's control.

This definition includes all employees providing direct care and may include housekeeping, maintenance, dietary, administrative staff, and contractors, if those persons are under the entity's control and have regular, direct contact with clients or the client's property. The State specifies that background checks are not required for individuals who perform solely clerical, administrative, maintenance, or other support functions and who are not expected to have regular, direct contact with clients or clients' personal property. Also excluded are those who provide "infrequent or occasional services" such as delivery, maintenance, grounds keeping, or other similar services that are not directly related to the care of a client. Health care students (e.g., nursing or nurse aide students) are considered contractors, as their training program contracts with the health care facility for a clinical site and the students have regular, direct access to residents. Thus, health care students also are subject to the background check requirements.

Under the Caregiver Law, employees of staffing agencies are considered contractors and are subject to the background check requirements. However, as the staffing agency is considered to be the employer, its employees do not have to undergo a new check when placed at a different provider. Background checks are completed every four years and the staffing agency can share the results with multiple entities during that period.

For applicants that indicate residency in another State or U.S. Jurisdiction, the employer must make a good faith effort to obtain the out-of-State background check results, but these results can be difficult to obtain, especially from closed record States. Some States will not share their background check results with Wisconsin employers.

Individuals with convictions of serious crimes or a history of improper behavior are barred from working as a caregiver in regulated facilities, unless they can provide clear and convincing evidence of their rehabilitation through the WI-DHFS rehabilitation review process. The rehabilitation review process does not provide a remedy for the Federal permanent ban for nursing homes to employ nurse aides with a substantiated finding of abuse, neglect, or misappropriation of property.

Entities that fail to comply with the program's requirements may be subject to sanctions, such as a corrective action plan, mandatory training, or the denial, revocation or suspension of the entity's license, certification or registration.

**Background Check Fees:** Most health care employers pay the background check fee for their potential employee. The current fees for conducting an online name-based caregiver background check are \$2 for non-profit organizations, \$5 for government agencies, and \$13 for all others. In addition, all entities must pay a \$2.50 fee for the automated Integrated Background Check Information System (IBIS) data query.

## **Pilot Program**

**Program goals and components:** Wisconsin's four-county pilot program built on the existing Caregiver Program, which has operated statewide for nearly ten years. It addressed two limitations of the existing program: 1) the challenge entities face in collecting out-of-State conviction information and 2) the absence of feedback from employers (who make their own fitness determinations) on the outcomes of background checks.

The WI-DHFS contracted with the University of Wisconsin-Oshkosh to assist in managing the pilot program. The pilot was implemented in four counties: Dane, Kenosha, La Crosse, and Shawano. The counties were selected for rural and metropolitan representation, rapid and slow growth populations, border counties with high inter-State movement, and a variety of commuting patterns. The pilot counties were also selected based on their proximity to fingerprint scanning processing centers, and distribution among the State survey agency (the Division Office of Quality Assurance) regions.

Employers in pilot counties were required to conduct both name-based and fingerprint-based background checks. The FBI-based fingerprint check that was conducted as part of the pilot program permitted comparison of the results of a name-based and a fingerprint-based background check system. Providers in pilot counties collected and reported data on background check results and entity employment decisions, allowing the State to evaluate the effectiveness and impact of Wisconsin's Caregiver Law.

Table 3.7 contains a summary of the key features of Wisconsin's Pilot Program.

Wisconsin's goal for the background check pilot was to test the added value of conducting a fingerprint-based background check in addition to the existing screening process. The program was implemented in four counties – Dane, Kenosha, La Crosse and Shawano - in the CMS-required provider types (nursing homes, long term care hospitals, ICFs/MR, home health agencies, CBRFs with nine beds or more, and personal care agencies under the State Medicaid Plan) as well as with hospice providers.

Wisconsin's personal care workers were not covered under the pre-pilot Caregiver Law and thus had to be brought under the pilot. For the pilot, Wisconsin entered into agreement with all the Medicaid funded personal care worker providers in the participating counties to obtain their voluntary participation in exchange for State pilot funds covering the background check fees and providing free abuse and neglect prevention training. Personal care agencies were expected to follow the background

check requirement and report their results to DHFS on a quarterly basis. Agencies that failed to comply with the background check requirements would be billed for the cost of the checks completed.

All fingerprints were collected using Live Scan technology. Two of the pilot counties contracted with Promissor and two utilized the services of the Department of Administration's Division of Gaming. No fingerprint cards were accepted.

**Legislative authority:** Wisconsin requested a statutory change for the immunity provision as part of the Governor's Biennial Budget in February 2005. The statutory language change ensured that employers in the pilot program using Federal background checks for employment determinations used it only for the purpose of determining the suitability of the individual for employment. The language ensured that employers were immune from civil liability suits resulting from employment, termination or licensing determinations.

**Cost:** The fee for the existing Caregivers Program name-based search ranged from \$4.50 to \$15.50, which was paid directly by employers to the Wisconsin Department of Justice (WI-DOJ). Pilot funds covered the \$24 FBI fingerprint search fee, the \$18 Promissor fingerprint capturing fee, or the \$5 Division of Gaming capture fee. Pilot funds were also used to cover the \$4.50 to \$15.50 background check fee for personal care workers, who were not previously subject to caregiver background check requirements. The WI-DOJ waived the \$15 fingerprint-based State background check fee for employers in the pilot counties.

**Who is screened and what happens:** Employers in the pilot counties were required to conduct both name-based and fingerprint-based background checks on all newly hired staff who have "regular, direct contact with clients/residents or their personal property." Excluded were staff who perform purely administrative, clerical, maintenance, or other support functions without regular, direct contact. Also excluded were volunteers and students completing internships or clinical training (these individuals were subject to the regulations in the non-pilot counties under the existing Caregiver Law). Wisconsin employers were allowed to determine which applicants are considered to have "regular, direct" contact.

The process began with the applicant self-disclosure. If no barring offenses were revealed, the employer conducted a check of the web-based Wisconsin Nurse Aide Registry, OIG Exclusion List, and nurse aide registries in any other States that the applicant lived in the previous three years). If no exclusionary offenses were found, the employer submitted the applicant's name to the Integrated Background Check Information System (IBIS) to conduct an automated name-based search, which produced a letter with results of any substantiated findings that were posted on the Wisconsin Caregiver Misconduct Registry or another State (if known), denials or revocations of operating licenses for WI-DHFS programs, including adult programs and child programs, rehabilitation review findings, and the status of professional credentials, licenses or certifications maintained by the Department of Regulation and Licensing, and results of any Wisconsin Department of Justice criminal history records, including the Wisconsin Sex Offender Registry. If there were no exclusionary findings at this point, the applicant was sent for fingerprinting.

In Wisconsin, employers received the State and national criminal history records through access to a secure web site. If there was no criminal history the employer received a "no record found" response. Employers reviewed any criminal history information and made the fitness determination decision.



Missing dispositions were the responsibility of the employer as well. Employers could consider information beyond disqualifying convictions that were substantially related to the applicant's job duties. Wisconsin's State criminal history records and caregiver records are open to the public, and the employers could share the results of the State background check with other employers. Federal regulations did not permit employers to share the results of the FBI background checks.

Applicants with a "clean" self-disclosure were allowed to work for up to 60 days, under supervision, pending receipt of the criminal history results. The level of required supervision varied with each program type and each covered entity had to follow its own program supervision requirements.

A new State and national fingerprint-based background check was required every time an employee changed jobs. After the initial background check at the time of employment or contracting, entities were required to conduct new name-based background checks on current employees at least every four years, or at any time within that period that the employer had reason to believe that a new background check is appropriate.

Figure 3.7 is a map of the pilot program processes used in Wisconsin.

***Disqualifying Offenses:*** Disqualifying offenses included convictions for homicide (1st degree intentional, 1st and 2nd degree reckless), felony murder, battery (felony), assisting suicide, sexual exploitation by therapist, sexual assault, abuse of vulnerable adults (misdemeanor or felony), abuse of residents of a penal facility, abuse or neglect of patients and residents (misdemeanor or felony), 1st degree sexual assault of a child, repeated acts of sexual assault of a child, physical abuse of a child – intentional. Also disqualified were individuals with a finding by a governmental agency of abuse or neglect of a client or misappropriation of a client's property, or child abuse or neglect.

An employer could consider pending charges that were substantially related to the duties of the job when making a hiring decision. If a current employee was convicted of a crime that was a disqualifying offense, the employer was required to immediately dismiss the employee. If the crime was not a disqualifying offense, but substantially related to the duties of the job, the employer had the discretion whether to dismiss the employee at that time.

***Appeal:*** Caregivers with offenses on the Wisconsin or Federal exclusion list could apply for a Rehabilitation Review to seek approval for employment. Applicants completed the rehabilitation review application, which collected information on the applicant's criminal history and/or history of a substantiated finding of abuse/neglect. Applicants were required to submit a written explanation of these offenses and why they believed that they have been rehabilitated, along with three character references and letters from current and former employers.

The rehabilitation review panel considered all of the submitted information to determine whether there was sufficient evidence of rehabilitation. The application could be approved, denied or the decision deferred. Applicants were not allowed to work during the appeals process.

***Enforcement:*** Compliance with the background check requirement was monitored by the State survey agency, the Division of Quality Assurance. Entities that did not follow the provisions of the Caregiver Law were subject to: 1) a forfeiture not to exceed \$1,000; 2) a requirement that the entity submit a written corrective action plan; 3) attendance at agency-designated personnel screening training; 4)

denial, revocation, non-renewal or suspension on the entity's license or certification; and/or 5) a requirement that the entity use an agency for screening and hiring personnel.

***Use of pilot funds:*** The State was awarded a total of \$1,500,000 to implement their background check pilot program. Information on total expenditures was not available, but Wisconsin did report spending a total of \$250,080 for fingerprint background check fees. \$34,458 for fingerprint capture, and \$12,965 in costs related to name-based searches for personal care workers. Similar to other States, total cost reports are still pending.

***Number of background checks and outcomes:*** Wisconsin was different from the other pilot States in terms of its source of data on background checks and the types of data that were available. Because employers conducted the background checks and made the fitness determination, the WI-DHFS does not have information on the volume or outcome of individual checks, and it was not possible to have individual level background check data like in the other pilot States. Instead, employers in the pilot counties provided aggregated data to the WI-DHFS on the volume and outcome of the background checks that they conducted. Because the data are collected from employers, in addition to the results of the registry search, the Wisconsin data permit analysis of the hiring decisions for applicants who undergo a background check, data that are not available for any of the other pilot States.

During the pilot period, there were a total of 14,758 background checks initiated. Overall, 95.7 percent of applicants were cleared, and 4.3 percent were disqualified based on the background check (Table 7.34). An additional 28 percent of applicants were disqualified from employment for non-background check reasons, and 67.8 percent of all individuals for whom a background check was started were hired.

***Processing times:*** During the pilot, employers reported that the background check process took about four days to complete, including time for processing the FBI check. Because the process is employer-driver, the State does not have data on the amount of time required to complete the individual background checks, but must rely on employer reports. According to the State, fingerprint results were posted on the web-based system within 24-48 hours of collection of fingerprints, and employers reported that the process took an average of about 4 business days to complete, or a total of 6-7 days for the entire background check and fitness determination process.

***Stakeholder Feedback:*** According to a survey administered by WI-DHFS, most providers found the fingerprint-based process easy or somewhat easy to implement. Providers in the State were split almost evenly on whether running the fingerprint-based background check was effective. Many providers believed that the name-based check that is part of the Caregiver Law is adequate and that the benefits of the fingerprint-based check are not worth the additional costs. Others appreciated the more detailed information that is available through a fingerprint-based check and liked not having to do multi-State background checks on applicants who had lived in another State, which was not necessary given that the FBI check is a national check.

Some providers found that the locations and hours for fingerprinting were inconvenient. There was also concern about the financial impact of fingerprint-based checks. Among respondents to a survey conducted by the State, 56 percent wanted to see the fingerprint requirement continue and 44 percent

did not. Only 11 percent of respondents, however, indicated that they would be willing to continue conducting fingerprint-based checks if the cost were \$20 or more.

**Post-pilot plans:** After the pilot, Wisconsin returned to the name-based checks required under the Caregiver Law. The State notified employers that they should revert back to the name-based background check process after September 30, 2007. Because the fees and billing were the same during the pilot as they were under the State’s Caregiver Law, no changes in billing procedures were required at the end of the pilot.

**Table 3.7**  
**Wisconsin: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Geographic area	The pilot program is operating in four counties—Dane, Kenosha, La Crosse, and Shawano.
Covered employers	In the four pilot counties, covered employers include nursing homes, home health agencies, long-term care hospitals, ICFs/MR, hospices, community-based residential facilities with eight or more beds, personal care agencies-Medicaid State Plan.
Types of employees for whom background checks are required	In the four pilot counties, the fingerprint-based State and FBI background checks are required for newly hired caregivers who are employed or under contract with an entity, have regular, direct contact with the entity’s clients or the personal property of the clients, and who are under the entity’s control. This excludes staff who perform purely administrative, clerical, maintenance, or other support functions who are not expected to have regular, direct contact with clients.  Under the pilot program, background checks are not required for volunteers or students who are completing internships or clinical training at covered entities. These individuals are subject to the same name-based background checks as the non-pilot counties that operate under the existing Caregiver Law.
Background check requirements for staffing agency staff	Staffing agencies are permitted to initiate and conduct background checks under Wisconsin’s existing Caregiver Law, and the pilot did not result in any changes to background check requirements for staffing agency staff. The staffing agency indicated in writing that the caregiver had no offenses on the Offenses List and was eligible for employment. Staffing agency staff were not required to undergo fingerprint-based background checks as part of the pilot.
Technology for capturing fingerprints	Live Scan
Fingerprint locations	In Dane and Kenosha counties, fingerprints are captured via live scan equipment by the Wisconsin Department of Administration’s Division of Gaming. In La Crosse and Shawano counties, WI-DHFS has contracted with a Live Scan vendor, Promissor, Inc. to capture fingerprints.

**Table 3.7 (continued)****Wisconsin: Key Background Check Pilot Program Features**

Program Feature	Description
Applicant self-disclosure	<ul style="list-style-type: none"> <li>• The applicant completes the Background Information Disclosure (BID) form. Disclosure questions are:</li> <li>• Do you have pending criminal charges against you or have you ever been convicted of a crime? If yes, list the crime, dates, jurisdiction.</li> <li>• Were you ever found to be delinquent by a court of law on or after your 10th birthday for a crime or offense? If yes, list the crime, dates, jurisdiction.</li> <li>• Has any government or regulatory agency ever found that you committed child abuse or neglect? This only asked for certain employer types.</li> <li>• Has any government or regulatory agency ever found that you abused or neglected a client? Has any government or regulatory agency ever found that you misappropriated property?</li> <li>• Has any government or regulatory agency ever found that you abused an elderly person?</li> <li>• Do you have a government credential that is not current or that is limited so as to restrict you from providing care to clients?</li> <li>• Has any governmental or regulatory agency ever denied or revoked your license, certification, or registration to provide care?</li> <li>• Has any governmental or regulatory agency ever restricted your ability to live on the premises of a care providing facility?</li> <li>• Have you ever requested a rehabilitation review?</li> </ul> <p>Explanations are required for all yes responses.</p>
Process for registry checks	<p>The employer conducts a search of the Wisconsin Nurse Aide Registry, other State nurse aide registries, and the OIG Exclusion List. The employer also submits the applicant's name to the Integrated Background Information System to conduct an automated name-based search of the Wisconsin Caregiver Misconduct Registry, WI-DHFS adult and child program licensure database, WI Department of Regulation professional licensure database, and a name-based search of Wisconsin Department of Justice criminal history records, including the Wisconsin Sex Offender Registry.</p>
Fitness determination process	<p>The results of the State and FBI background check are posted on-line on the employer's account with the WI-DOJ. It is the employer's responsibility to thoroughly review the criminal history results, make the fitness determination and hiring decision.</p>
Missing dispositions	<p>Employers must make a good-faith attempt to obtain the disposition information from the appropriate jurisdiction in cases where the applicant discloses a crime that does not appear on the criminal record or the disposition of a serious crime is not clearly indicated.</p>
Information disseminated to employer and applicant	<p>The complete criminal record is disseminated to the employer, and they make the fitness determination. If there is no criminal record, then the WI-DOJ sends a "no record found" response. Wisconsin's State criminal history records and caregiver records are open to the public, and the employers can share the results of the State background check with other employers. Employers are not permitted to share the results of the FBI background checks.</p>
Disqualifying offenses	<p>Disqualifying offenses include convictions for homicide, murder, battery (felony), sexual exploitation by therapist, sexual assault, and abuse/neglect. Also, any finding by a governmental agency of abuse or neglect of a client, or misappropriation of a client's property, or child abuse or neglect.</p>

**Table 3.7 (continued)**

**Wisconsin: Key Background Check Pilot Program Features**

<b>Program Feature</b>	<b>Description</b>
Consideration of pending and original charges	<p>An employer can consider pending charges that are substantially related to the duties of the job when making a new hiring decision. If a current employee is convicted of a crime that is a disqualifying offense, the employer must immediately dismiss the employee. If the crime is not a disqualifying offense, but substantially related to the duties of the job, the employer has the discretion whether to dismiss the employee at that time.</p> <p>With respect to the original crime with which an applicant was charged, in determining whether a conviction is substantially related to the duties of the job, the circumstances behind the conviction may be considered. For example, in the case of an originally charged serious crime that was plea-bargained down, the nature of the person's behavior as well as the circumstances of the arrest and conviction may be considered in making a decision.</p>
Provisional employment policies	<p>Applicants who have a "clean" Background Information Disclosure may be allowed to work for up to 60 days, under supervision, pending receipt of the WI-DOJ criminal record search results, the WI-DHFS letter or other necessary documentation. The level of required supervision varies with each program type and each covered entity must follow its own program supervision requirements.</p>
Background check costs and who pays	<p>Covered employers in the four pilot counties continue to conduct a name-based background check. WI-DOJ's fee for a name-based search varies from \$4.50 to \$15.50, which is paid directly by employers to the State.</p> <p>Pilot funds are used to cover the increased costs under the pilot, including the \$24 FBI fingerprint-based background check fee, the \$18 fingerprint capturing fee. WI-DOJ waived the current \$15 State fingerprint-based fee for the pilot counties. Pilot funds were also used to cover the \$4.50 to \$15.50 name-based background check fee for personal care workers, who were not previously subject to the caregiver background check requirements</p>
Appeal and rehabilitation review policies and processes	<p>Applicants who are disqualified for employment may apply to WI-DHFS for a rehabilitation review to seek approval for employment. Applicants must complete the rehabilitation review application, which collects information on the applicant's criminal history and/or history of abuse/neglect. Applicants must submit a written explanation of these crimes and why they believe that they have been rehabilitated, along with three character references and letters from current and former employers.</p> <p>The WI-DHFS rehabilitation review panel considers all of the submitted information to determine whether there was sufficient evidence of rehabilitation. The WI-DHFS may approve, deny, or defer the rehabilitation review application.</p> <p>A rehabilitation review approval does not ensure that the applicant will be hired by an entity or receive permission to reside at an entity. Caregivers who are denied approval may not reapply for one calendar year after the denial date.</p> <p>Applicants are not allowed to continue working during the appeals process.</p>
Enforcement of background check requirements	<p>The potential sanctions under the pilot were the same as those under the State's Caregiver Law and included:</p> <ul style="list-style-type: none"><li>• A forfeiture not to exceed \$1,000</li><li>• A requirement that the entity submit a written corrective action plan</li><li>• Attendance at agency-designated personnel screening training</li><li>• Denial, revocation, non-renewal or suspension on the entity's license or certification</li><li>• A requirement that the entity use an agency for screening and hiring personnel</li></ul>

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**Table 3.7 (continued)****Wisconsin: Key Background Check Pilot Program Features**

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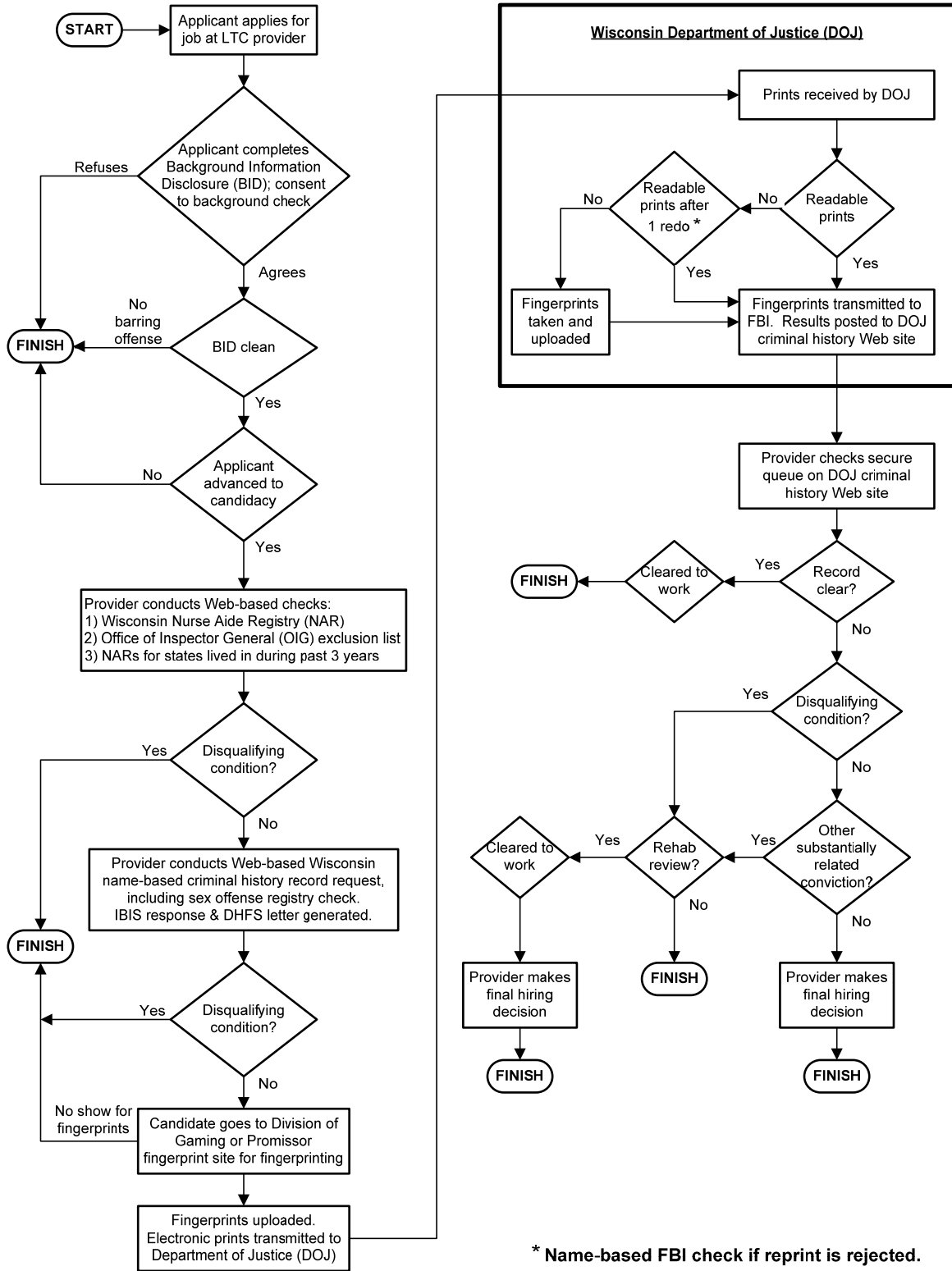
<b>Program Feature</b>	<b>Description</b>
Time period of background check	<p>A new State and national background check is required every time that an employee changes jobs.</p> <p>After the initial background check at the time of employment or contracting, entities must conduct new caregiver background checks at least every four years, or at any time within that period that the employer has reason to believe that a new background check is appropriate.</p>
Liability limitations	<p>On December 2005, as a means of conforming to the requirements of the MMA for participation in the pilot, the Wisconsin Legislature added language to the Caregiver Law stating that employers are immune from civil liability to a caregiver for using arrest or conviction information provided by the FBI to make an employment determination regarding the caregiver. This provision was no longer in effect once the pilot ended.</p>

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Sources: Abt Associates/UCDHSC, 2008

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**Figure 3.7 Wisconsin Background Check Process**



## 4. Background Check Procedures Used by States

Section 305 (e)(1) of the MMA specified that the evaluation include a review of the procedures used by pilot States to conduct background checks and to identify the most efficient, effective, and economical procedures. The MMA legislation that created the pilot program specified certain required elements of State background check programs but also gave States considerable flexibility with respect to many aspects of background check policies and procedures. There are important differences in the background procedures used by the pilot States. This chapter presents a comparison of the background check procedures used by pilot States.

### 4.1. Employer Types That Must Do Background Checks

According to Section 307(g)(5)(A)(i-viii) of the MMA, the types of long-term care providers that are included in the pilot refers to the following types of facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act:

- Nursing homes/skilled nursing facilities
- Home health agencies
- Hospices
- 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))
- Personal care services providers
- Residential care providers
- Intermediate care facilities for the mentally retarded

Table 4.1 shows the covered providers reported by the pilot States as covered under the background check program. The shaded areas indicate the provider groups required by CMS. With these exceptions, pilot programs included these required provider types.

- The background check programs in Illinois and Nevada did not include hospices.
- In Nevada, hospices are not covered by the enabling statute for background checks (NRS 449.179). Personal care workers in the State are not licensed, but because of Medicaid contracts were subject to the requirement of the background check or were voluntarily submitting background checks.
- Idaho, Michigan, and New Mexico did not have any HCBS group homes with more than 8 beds, and Illinois did not have any HCBS group homes with more than 8 beds in the participating pilot counties.
- Illinois and Michigan do not have any personal care agencies covered by their Medicaid State plans.



The legislation gave States the flexibility to expand the list to other types of long-term care providers, and the pilot programs in Alaska, Michigan, and New Mexico included several additional providers. The programs in Alaska and New Mexico included general acute hospitals, while Michigan's program included psychiatric hospitals and psychiatric units in general hospitals. As part of the pilot, Alaska created the Background Check Unit, a single administrative unit to oversee all aspects of the background check program across divisional and program boundaries within AK-DHSS, adopting uniform background check procedures across all licensed and certified programs under the agency's authority. Reflecting this consolidation of licensing functions, Alaska's amended legislation was very broad and included hospitals, rural health clinics, and ambulatory surgical centers, and providers of care to children such as foster homes and child care facilities. As the MMA covered only employers that provided long-term care services, most of these additional provider types were not required under the pilot program and, in the case of New Mexico, data were not submitted on the additional provider types.

A limitation of across-State comparisons is that States differ with respect to their regulatory structure, and it may be that, while a State may not appear to cover a particular provider, the provider is subject to a background check requirement but is regulated by a different agency that was not participating in the pilot.

**Table 4.1  
Background Check Covered Providers by Pilot States**

Covered Provider	Alaska	Idaho	Illinois	Michigan	Nevada	New Mexico	Wisconsin
Skilled nursing facilities/nursing facilities	X	X	X	X	X	X	X
Home health agencies	X	X	X	X*	X	X	X
Hospices	X	X		X		X	X
Long-term care hospitals, hospitals with swing beds	X	X	X	X	X	X	X
ICF/MR	X	X	X	X	X	X	X
HCBS group homes over 8 beds	X	N/A	N/A	N/A	X	N/A	X
Residential care facilities	X	X		X	X	X	X
Personal care agencies	X	X**	N/A	N/A	X	X	X
Adult boarding homes						X	
Adult day care/respite	X						
Adult halfway homes						X	
Ambulatory surgical centers	X						
Care coordination/case management	X						
Child care facilities	X						
Child placement agencies	X						
Foster homes	X						
Freestanding birth centers	X						
Guardianship providers						X	
Hospitals	X			X***		X	
Individual home health aides****				X			
Maternity homes	X						
Residential child care facilities	X						
Residential psychiatric treatment facilities	X						
Rural health clinics	X						
Runaway shelters	X						
Supported living homes	X						

Note: Shaded cells indicate provider types specified by the MMA legislation that created the pilot.

N/A: Not applicable because there were no providers of the specified type in the State (or pilot counties for Illinois and Wisconsin)

\*: Michigan's program covers only Medicare certified home health or home help agencies.

\*\* : Idaho has required background checks on personal care workers since 1995, and they were not considered a covered provider under the pilot.

\*\*\*: Psychiatric hospitals and psychiatric units in general hospitals.

\*\*\*\*: Hired by older adults and persons with disabilities and paid under Medicaid.

Sources: *Abt Associates, 2008*

## 4.2. Employees Who Must Have Background Checks

### *Direct Access Employees*

The MMA defines a direct patient access employee as “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.” All States required background checks for direct care workers such as nurses, nurse aides, and home health aides, but there were differences with respect to requirements for administrative, dietary, and maintenance staff. See Appendix E for State definitions of direct access employees.

- Alaska required background checks for all employees and independent contractors.
- In Idaho, background checks were required for all employees who provide direct care services. Given the variety of other employee types and roles, each provider was responsible for making the determination of which staff would be required to have background checks.
- In Illinois, direct access workers were defined as those “with duties that involve or may involve residents or access to the living quarters, financial, medical, or personal records of residents.” This included contract workers and non-direct care workers, such as those who work in environmental services, food service, and administration.
- Michigan defined direct access staff as those with “access to the individual or the property” of the patient through employment or through a contract, a fairly broad definition that meant that almost all staff were required to be checked.
- Nevada required background checks for all employees and independent contractors.
- New Mexico defined caregivers as someone “whose employment or contractual service with a care employer includes direct care or routine and unsupervised physical or financial access to any care recipient served by that employer.”
- In Wisconsin, background checks are required for employees who have “regular, direct contact” with patients or their personal property and who are under the employer’s control. This includes direct care workers and may include housekeeping, maintenance, dietary, administrative staff, and contractors, if those persons are under the entity's control and have regular, direct contact with clients or the client's property.

In States where background checks were not required for all employees, there was occasional confusion about which employees should receive background checks. There were questions about “how much access is access?” Some employers sought clear policies with respect to the definition of direct access employees. One employer stated that “even when they call [the State Agency] – they get three different answers. It leaves them still confused.”

However, in States that required background checks for all employees, there was a desire on the part of some stakeholders for employers to have discretion as to which staff were required to be checked so as to avoid what they believed were unnecessary checks. There was a belief among some that background checks should not be required for employees without direct access to patients such as business office staff.

There was considerable variation in how States handled volunteers and students.

- **Volunteers:** While the MMA explicitly excluded volunteers from the background check requirement, the programs in Alaska and Wisconsin included background checks for some volunteers. Alaska required background checks for volunteers with “regular unsupervised

contact.” Note that Wisconsin’s background check requirements for volunteers were not included in the pilot but rather are requirements of the State’s Caregiver Law.

- Stakeholders noted that most volunteers have limited access to patients and were concerned about the potential impact of fingerprinting on the ability to recruit volunteers, but the general consensus was that background checks are appropriate for volunteers with direct patient access. In States that require background checks for some volunteers, there was confusion regarding which volunteers needed to be put through the background check.
- **Students:** Two States included students in their pilot programs. Alaska required it for students with “regular unsupervised contact.” Michigan required background checks for student nurses and interns. Michigan students doing clinical training were given an exemption if the clinical training did not exceed 120 hours. Three States (Idaho, Nevada, and Wisconsin) did not require background checks for students under their pilot programs (although Wisconsin covered students who were completing clinicals for longer than 60 days under the statewide Caregiver Law requirements). Two States (Illinois and New Mexico) did not explicitly address the issues in their operational protocols. Stakeholders in several States expressed concerns about students not being informed about background check requirements before beginning their programs, and a desire to avoid cases where students complete a program only to subsequently learn that they cannot be cleared for employment.

### 4.3. Applicant Self-Disclosure and Authorization

The MMA mandated that State pilot programs require that prospective employees provide a written statement disclosing any disqualifying information and authorize the State and national fingerprint-based background check. All of the States had some type of applicant self-disclosure as an initial step in the background check. Information from the self-disclosure could be used to terminate the background check early in the process, eliminating unnecessary background checks. Most States combined the requirement for self-disclosure and consent to conduct a background check into a single form completed by the applicants. Some States had applicants fill out a paper-based disclosure form, and other States used a web-based application. Table 4.2 outlines elements of the self-disclosure forms used by the pilot States. The disclosure processes used by each State are summarized below.

**Alaska:** Alaska used a “Release of Information Authorization” form that required applicants to list any criminal history. Applicants were asked to list their criminal history and to certify that they have not been “charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent” for crimes other than what they disclose and that they have never been found to have neglected, abused, or exploited a child or vulnerable adult or to have committed medical assistance fraud.

**Idaho:** In Idaho, the disclosure and consent was typically completed on the criminal history web site and submitted electronically, although a few applicants used a paper form and mailed it to the Criminal History Unit. The State reported that disclosure information was used both by employers and the IDHW, to terminate some background check requests very early in the process. The form has a series of yes/no questions about applicant’s criminal history, and, for those who answer yes to any of these questions, a supplemental page where details of the incident are listed.

**Illinois:** The disclosure process was part of the web-based application system in Illinois. An applicant printed a standardized authorization form from the web. Applicants were required to make a full disclosure of convictions and administrative findings on this form.

**Michigan:** Michigan used a single web-based system for all aspects of the background check process, including the disclosure process. Disclosure of disqualifying convictions and consent to the background check was the first step in the background check process in Michigan. If no disqualifying crimes were listed, the employer created an application on the background check web site and proceeded with the full background check.

**Nevada:** In Nevada, employers obtained a written statement from each applicant, stating whether he/she had been convicted of a disqualifying crime, as well as oral confirmation of the information that was disclosed.

**New Mexico:** The New Mexico disclosure process required the applicants to list the date, title and location of any felony convictions, and all known substantiated findings of abuse, neglect or exploitation.

**Wisconsin:** Wisconsin uses a Background Information Disclosure (BID) form that collects detailed information on applicant’s criminal history and administrative findings. Applicants whose disclosure form included any criminal conviction or findings related to abuse, neglect or misappropriation could not begin working, even provisionally, until the full background check was completed.

Please see Appendix F for examples of the self-disclosure forms used by States.

**Table 4.2**  
**Background Check Program Features: Applicant Self-Disclosure**

State	Description
Alaska	Disclosure of an applicant’s disqualifying information will be made on “Release of Information Authorization” form and will be made at the time of request for a Criminal Background Check request. The form includes asking individuals to list their criminal history and to certify that they have not been “charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent” for crimes other than what they disclose and that they have never been found to have neglected, abused, or exploited a child or vulnerable adult or to have committed medical assistance fraud.
Idaho	Applicants complete a self-declaration form on-line or at an IDHW office. Disclosure questions are: <ul style="list-style-type: none"> <li>• Have you ever been arrested or received a citation for any misdemeanor or felony offense?</li> <li>• Have you ever plead guilty or been convicted of a crime as an adult or juvenile?</li> <li>• Do you have criminal charges pending or any warrants against you currently?</li> <li>• Have you ever been on probation in this or any other State?</li> <li>• Have you or anyone in your home ever been involved in a child protection action with the Department of Health &amp; Welfare?</li> <li>• Have you or anyone in your home ever been involved in an Adult Protection Action?</li> <li>• Have you ever had a Medicaid/Medicare employer exclusion from Health &amp; Human Services office of Inspector General?</li> <li>• Has your driver’s license ever been suspended or revoked?</li> </ul>

**Table 4.2 (continued)**  
**Background Check Program Features: Applicant Self-Disclosure**

State	Description
Illinois	<p>The applicant completes a disclosure and authorization form. Disclosure questions are:</p> <ul style="list-style-type: none"> <li>• Have you ever had an administrative finding of Abuse, Neglect, or Theft? If yes, provide full details and State.</li> <li>• Have you ever been convicted of a criminal offense other than a minor traffic violation (do not include convictions that have been expunged or a juvenile conviction)? If yes, provide full details and State.</li> </ul>
Michigan	<p>Applicants complete the Long Term Care Workforce Background Check Application Form. Applicants are asked to certify that they have not been convicted of a crime that would prohibit their employment, that they do not have any findings of "not guilty by reason of insanity" for any crime, and that they have not been the subject of a State or Federal agency substantiated finding of patient or resident neglect, abuse, or misappropriation of property. They are asked to disclose all offenses for which they have been convicted, including all terms and conditions of sentencing, parole and probation therefore, and/or any substantiated finding of patient or resident neglect, abuse, or misappropriation of property.</p>
Nevada	<ol style="list-style-type: none"> <li>1. Obtain a written statement indicating whether the individual has been convicted of any crime in NRS 449.188.</li> <li>2. Obtain oral and written confirmation of that statement.</li> </ol>
New Mexico	<p>For the pilot, the State revised its Authorization for Release of Information to collect information on the date, nature, and place for all felony convictions and gather information regarding substantiated findings.</p>
Wisconsin	<p>The applicant completes the Background Information Disclosure form. Disclosure questions are:</p> <ul style="list-style-type: none"> <li>• Do you have pending criminal charges against you or have you ever been convicted of a crime? If yes, list the crime, dates, and jurisdiction.</li> <li>• Do you have criminal charges pending against you, or were you ever convicted of any crime anywhere, including Federal, State, local, military and tribal courts?</li> <li>• Were you ever found to be (adjudicated) delinquent by a court of law on or after your 10th birthday for a crime or offense?</li> <li>• Has any government or regulatory agency (other than the police) ever found that you committed child abuse or neglect?</li> <li>• Has any government or regulatory agency (other than the police) ever found that you abused or neglected any person or client?</li> <li>• Has any government or regulatory agency (other than the police) ever found that you misappropriated (improperly took or used) the property of a person or a client?</li> <li>• Has any government or regulatory agency (other than the police) ever found that you abused an elderly person?</li> <li>• Do you have a government credential that is not current or that is limited so as to restrict you from providing care to clients?</li> <li>• Has any governmental or regulatory agency ever denied or revoked your license, certification, or registration to provide care, treatment or educational services?</li> <li>• Has any governmental or regulatory agency ever restricted your ability to live on the premises of a care providing facility?</li> <li>• Have you ever been discharged from a branch of the US Armed Forces, including any reserve component?</li> <li>• Have you had a caregiver background check done within the last 4 years?</li> <li>• Have you ever requested a rehabilitation review with the Wisconsin Department of Health and Family Services, a county department; a private child placing agency, school board, or DHFS designated tribe?</li> </ul> <p>Explanations are required for all yes responses.</p>

Source: Abt Associates/UCDHSC, 2008

## 4.4. Fingerprinting

### Fingerprinting Technology

Four of the seven pilot States used an electronic Live Scan system for collecting and transmitting fingerprints. The other three States primarily used manual fingerprinting systems, although they recognized the benefits of Live Scan and were moving towards greater use of electronic fingerprinting systems. Table 4.3 summarizes the fingerprint collection methods used by the pilot States.

In Alaska, Nevada, and New Mexico, fingerprints were collected primarily using fingerprint cards.

- Towards the end of the pilot, Alaska had begun the process of purchasing some Live Scan equipment and was working with the Office of Children Services (OCS) to provide Live Scan fingerprint services in 23 rural communities. The Live Scan system uses a combination of vendor Live Scan services and OCS offices. Given the large geographic area and limited road system in the State, it will likely be impossible to ever have all fingerprints collected using Live Scan.
- During the pilot, New Mexico did not have the infrastructure to support Live Scan equipment. The NM-DOH reported extended processing time, errors using fingerprint cards, and a desire to evolve to an electronic system.
- As of its third quarter data submission, all Nevada fingerprints had been captured using fingerprint cards. Later in the pilot program, Nevada used pilot funds to make electronic fingerprinting more accessible. The State made funding available to assist health care employers and other fingerprint sites to acquire Live Scan equipment and upgrade hardware and software in existing equipment.

The other four States use Live Scan equipment to capture fingerprints.

- In Illinois, Michigan and Wisconsin, all of the fingerprints were collected using Live Scan. These States used contracted fingerprint vendors to collect fingerprints and did not accept fingerprint cards.
- Idaho initiated a Live Scan system around the time that the pilot started and reported that the transition to an electronic fingerprint system had significantly reduced errors and processing time. To minimize access issues, Idaho accepted fingerprints submitted using fingerprint cards, but most fingerprints in the State were captured using Live Scan.

Use of Live Scan technology dramatically reduced background check processing times and increased the accuracy of prints (see Chapter 5). Processing times in States with electronic fingerprint capture were sometimes as short as one day from the receipt of fingerprints. In Alaska, the average processing time was more than six months. Nevada reported that its processing time was substantially quicker for background checks with electronic fingerprints, decreasing from around 60 days to around a week.

An issue that several States noted was that there was no way to know when fingerprints that were submitted electronically were rejected by the FBI. This was a primary cause of lengthy processing times for electronically submitted fingerprints.

**Table 4.3**  
**Background Check Pilot Program: Method Used To Collect Fingerprints**

State	Description
Alaska	Throughout the pilot, most fingerprints were captured using fingerprint cards, which had to be mailed to the AK-DHSS. Later in the pilot, the State purchased some Live Scan equipment, giving 23 rural communities access to Live Scan fingerprint services.
Idaho	Most fingerprints are captured at the IDHW offices using Live Scan equipment. The IDHW also accepts hard fingerprint cards that are taken at local law enforcement agencies or by employers. The IDHW has portable Live Scan equipment and staff who cover remote areas take the Live Scan equipment out to the remote location with them several days per week.
Illinois	Fingerprints are captured using Live Scan. A sole State Live Scan vendor contracted through the Illinois Department of Central Management Services' master contract collected the fingerprints.
Michigan	The State of Michigan contracts with Indentix Identification Services, which captures fingerprints using Live Scan equipment.
Nevada	Most applicants obtain fingerprints from their potential employer or local law enforcement agencies using either Live Scan or fingerprint cards. The State made funding available to assist health care facilities and other fingerprinting sites to acquire Live Scan equipment and upgrade hardware and software in existing Live Scan equipment. Some facilities now use Live Scan for fingerprinting.
New Mexico	New Mexico used Ink and hard fingerprint cards to collect prints.
Wisconsin	The State of Wisconsin contracted with Promissor Inc, to capture fingerprints for the pilot program in two counties, using Live Scan equipment. The Wisconsin Department of Administration, Division of Gaming also captured fingerprints via Live Scan equipment in two of the pilot counties.

Source: Abt Associates/UCDHSC, 2008.

### **Fingerprint Collection Agency and Locations and Access to Fingerprinting**

The pilot States had different approaches with respect to the entity that was responsible for collecting the fingerprints and fingerprinting locations (Tables 4.4).

- Alaska used a combination of employers, fingerprint collection vendors, local law enforcement agencies, State police, and volunteer public safety officers to collect fingerprints. Even with all of these options, there were still issues with access to fingerprinting in some of the more remote areas of the State.
- Idaho collected most fingerprints using Live Scan at the Department of Health and Welfare. Additional fingerprint collection sites were located across the State and the State also accepted fingerprint cards from employers and law enforcement agencies.
- Illinois used a fingerprint vendor that has some permanent offices in the pilot counties and also travels to public locations in the more rural areas. They made their services available at



least once per week in all of the pilot counties. Applicants did not have to travel more than 35 miles one way for fingerprint services.

- Identix Identification Services, Michigan’s fingerprint collection vendor, provided fingerprinting locations such that no applicant had to drive more than 50 miles, with fingerprinting appointments available within 10 days of the request.
- In Nevada, fingerprints were collected either by employers or local law enforcement agencies.
- In New Mexico, employers collected fingerprints via ink and fingerprint card, either directly or by contracting with a fingerprint collection agency.
- Wisconsin contracted with Promissor, Inc., a fingerprint collection vendor, for two pilot counties and the Division of Gaming for the other two pilot counties.

State selection of fingerprinting locations was directly related to the type of fingerprinting technology used. In States with manual systems, there was no need for a fingerprint collection vendor, and fingerprints could be collected by the employer or by local law enforcement agencies. This approach is not feasible in States with electronic fingerprinting systems, although, through its grant program, Nevada had placed Live Scan machines with some employers.

States that used a single vendor for fingerprinting services reported several benefits to this approach. Working with a single vendor provides consistency and simplifies management of the background check program. The use of a single vendor also facilitated the transmission of fingerprints to the State police, and made it easier to track any fingerprint submission problems.

**Table 4.4**  
**Background Check Program Features: Fingerprint Locations**

State	Description
Alaska	Employer, local law enforcement, State Police or Volunteer Public Safety Officer, fingerprint collection vendors.
Idaho	Applicants and employer agencies encouraged but not required to use IDHW’s locations to collect fingerprints. There are 8 locations staffed by IDHW staff and 5 travel locations. IDHW staff accept any viable applicant fingerprint card that is printed at an employer agency or law enforcement agency.
Illinois	The State’s fingerprint vendor has permanent offices in the more metropolitan areas within the 10 county scope of the grant. For the more rural counties, the vendor used mobile units that allow collection of fingerprint images at various locations. The vendor scheduled periodic visits at public locations, making their services available at least once per week in all of the ten counties, and applicants do not have to travel more than 35 miles one way.
Michigan	Identix Identification Services (IIS) is under contract with the State of Michigan to provide fingerprinting services for the fingerprint-based criminal history checks. IIS has 38 locations throughout Michigan serviced by mobile units. As part of the agreement with the State, appointments are available within 10 days of the request for services, and IIS provides locations within fifty miles of any individual requiring fingerprinting services. Also, some sheriff departments and local law enforcement agencies elected to provide automated applicant fingerprint submissions.
Nevada	Employers, local law enforcement. It is the State’s intention to have a mobile Live Scan service to travel to rural areas to provide additional sites for fingerprinting.

**Table 4.4 (continued)**  
**Background Check Program Features: Fingerprint Locations**

State	Description
New Mexico	Employers, at their discretion, can either collect fingerprints on the fingerprint cards issued by the Department internally, using staff to collect the fingerprints or contract with a fingerprint collection agency.
Wisconsin	In Dane and Kenosha counties, fingerprints were taken at the Department of Administration's Division of Gaming. In La Crosse and Shawano, they were taken at Promissor fingerprinting sites, the contracted vendor.

Source: Abt Associates/UCDHSC, 2008

#### 4.5. Fitness Determination Process

The MMA required that State background check processes include a check of “any available registries that would be likely to contain disqualifying information about a prospective employee” and also specified that the background check should include State and national criminal history background checks through a fingerprint check that utilizes State criminal records and the FBI’s Integrated Automated Fingerprint Identification System (IAFIS).

The MMA left it up to the States to determine the fitness determination process assuming that the State has the relevant type of information in a registry. In all of the States, the background check included the nurse aide registry search, the OIG Exclusion List, and also a fingerprint-based check of State criminal records and a national criminal history that utilized the FBI’s IAFIS system. In addition to the different procedures for registry checks, the States differ with respect to the entity that examined the criminal records to determine whether the applicant had disqualifying information, how much information the applicant and employer receive, whether pending charges or initial charge information was used in the determination, and the process for handling missing dispositions.

There were opposing views across States among the State agency staff and employers on the role of employers in the fitness determination and whether and how much criminal history information should be provided to them. Opinions ranged from employers having no role and no information other than a Yes/No disqualification notification to employers receiving the full criminal history and making the fitness determination themselves.

#### Entity Making the Fitness Determination Decision

In all of the States except for Wisconsin, the fitness determination decision was made by analysts that worked either for the regulatory agency or the State police.

- In Alaska, Idaho, Illinois, Michigan, and New Mexico, the fitness determination was made by the State agency responsible for regulating the employer. The role of the employer in the fitness determination process varied:
  - o In Alaska and Idaho the employer did not have a role in the fitness determination process, as employers did not conduct either the initial registry checks or criminal history records.

- o In Illinois, Michigan, and New Mexico the employer conducted the initial registry checks and, if no disqualifying conditions were found, a fingerprint-based background check was conducted and the review of criminal records was conducted by the regulatory State agency.
- In Nevada, the State’s Department of Public Safety made the fitness determination. The employer conducted an initial registry check. The State regulatory agency did not have a role in the fitness determination process.
- In Wisconsin, employers conducted the registry search, conducted the background checks, and made the fitness determination.

Except in Wisconsin, many stakeholders saw value in having the fitness decision made by a State agency. Having the fitness decision made by a State agency reduces the burden on employers associated with background checks and likely increases the consistency of fitness determination decisions, given that the analysts can develop expertise in working with courts to investigate missing dispositions and in reviewing rap sheets. One employer stated that it is helpful in small towns for an entity, other than the employer, to make the decision because it depersonalizes the decision making. A State background check program representative mirrored this view and said that providers should not complete the fitness determination because the process could “lose standardization and equity.” Leaving employers out of the process eliminates the possibility that one applicant could be disqualified by one provider but not another.

In Wisconsin, employers reviewed the State and national rap sheet and made the fitness determination decision. The providers that were interviewed in the State were confident of their ability to read criminal history records and make accurate fitness determination decisions, and they did not report that the amount of time that they spent reviewing criminal history records was unreasonable. This may have been because employers in the State were accustomed to reviewing criminal history records and making fitness determinations—they had been doing this as part of the State’s Caregiver Law since 1998. It may also be because the State’s list of disqualifying crimes is fairly short, making it easier for employers to identify offenses that prohibit employment. Wisconsin employers feel that it is extremely important to have full knowledge regarding the history of their employees.

There were also differing opinions on whether providers are capable of making proper fitness determinations, and these may reflect differences across States in the number of conditions and time periods considered in making the fitness determination decision.

**Table 4.6  
Background Check Program Features: Fitness Determination Process**

State	Description
Alaska	The State makes the fitness determination. Criminal Justice Technicians review criminal records to determine whether there is a record for a barrier condition. Alaska does not provide criminal history information to the providers.
Idaho	<p>The State makes the fitness determination, but the employer may also have a role. IDHW staff review the criminal background and make the fitness determination. An application goes through several reviews for fitness.</p> <ul style="list-style-type: none"> <li>• Initial review of disclosures and interview with applicant at fingerprinting. Based upon the nature of the disclosures, IDHW staff performing the fingerprinting can choose provisional clearance, conditional denial, or pending criminal action denial.</li> <li>• Disclosures are reviewed again when received at IDHW Central CHU. If Central CHU staff are unclear about disclosures or have concerns about the disclosures, they can choose to call and talk further with the field staff, or talk with the applicant, issue a conditional denial or prepare an unconditional denial if something was overlooked by the fingerprint staff. This occurs more regularly with those applicants who were not fingerprinted by IDHW directly but by their employer agency, or law enforcement.</li> <li>• Review occurs again for every application at the point a rap sheet or disposition information is received. Options available to staff include clearance, interviewing the applicant for additional information, issuing a conditional denial, issuing a pending criminal action notice (background check results have confirmed an outstanding arrest warrant), or preparing unconditional denial notice based upon a designated crime.</li> </ul>
Illinois	The State and the employer have a role in the fitness determination process. The employer checks the Illinois Nurse Aide Registry, the Department of Financial and Professional Regulation Web site, OIG Exclusion List, and the Illinois Sex Offender Registry. If there are no disqualifying conditions, a fingerprint based background check is initiated. The State makes the fitness determination based on the results of this background check, reviewing criminal records to determine if any are disqualifying based on State law. An IDPH employee reviews all background check results that have a criminal record to make the determination as to whether there is a disqualifying conviction. Note that this is different than the State's program in non-pilot counties, for which the employer makes the fitness determination decision.
Michigan	<p>Employers use the Long Term Care Workforce Registry to conduct a registry search and request State and national background checks. If "hits" are discovered during the background check process the information is sent directly to the State-licensing agency. There are background check analysts in both the MDCH and the MDHS, who are trained to review records with "hits" and to summarize the findings and notify long-term care employers. Their fitness determinations are based on established guidelines created from State and Federal laws, and their summaries refer to the statutory requirements. MDCH analysts review records and send a letter to employers with the fitness determination.</p> <p>Employers make the final determination of whether to hire an applicant and retain the discretion not to hire individuals even if they are cleared for hiring by the background check process. They cannot, however, hire someone who is disqualified by the background check.</p>
Nevada	The Nevada employers review the Nurse Aide Registry for disqualifying information. The NV-DPS reviews the criminal history for disqualifying information and makes the fitness determination.
New Mexico	NM-DOH staff makes the fitness determination. They review the criminal check information against the disqualifying convictions set forth in the statute to determine if there are disqualifying charges or convictions.
Wisconsin	The employers conduct searches of the relevant registries, conduct the State and national background check requests, and review those results, which are posted on-line at the employer's account with the WI-DOJ. It is the employer's responsibility to compare the background check results to the disqualification offenses, and make the appropriate fitness determination and hiring decision

Source: Abt Associates/UCDHSC, 2008

## Information Shared with the Employer

States varied with respect to the level of detail about an applicant's criminal history that was shared with employers (Table 4.7).

- In Alaska, Idaho, Illinois, Nevada, and New Mexico, employers did not have access to the complete criminal history, only whether the individual was disqualified or not.
- In Michigan, the information shared with employers depends on which agency, Department of Community Health or the Department of Human Services, licenses and regulates the employer. Employers regulated by the Department of Human Services received a summary of the applicant's criminal history. Employers regulated by the Department of Community Health received only notification on whether the individual was disqualified or not.
- In Wisconsin, employers received the full State and FBI criminal history records to review the results and make the fitness determinations.

Note that the programs in Illinois, Michigan, New Mexico, and Wisconsin included a name-based State criminal records check that employers complete on-line, thus potentially giving them access to information on the applicant's State criminal history.

Employers' opinions about the desired level of criminal history detail were mixed. Some wanted to see the entire rap sheet, believing that this would allow employers to have complete information to inform the hiring decision. Some employers have higher standards than those imposed by State requirements. Providing criminal history information would reduce the need for the private background companies that some employers use in addition to the State check.

Other employers opposed providing any criminal records information to employers. There was a concern that some employers would not hire anyone with a criminal record, regardless of whether it is disqualifying. Some did not desire any information other than the result of the fitness determination decision. A stakeholder shared the thinking that seeing the applicant's criminal history was "more responsibility" than they wanted to have. A particular concern was preserving the confidentiality of the information.

**Table 4.7**  
**Background Check Program Features: Information Disseminated to Employer**

State	Description
Alaska	If the applicant is disqualified, the employer receives a letter stating that the individual is not cleared to work and the reason why the applicant was not cleared.
Idaho	Written notice is not issued to employers for those applicants who clear. Employers can check the status of their background check on the IDHW Web site. Written notice is always sent to the employer for any denial action.
Illinois	If there are disqualifying convictions the applicant is sent a letter stating that he or she has disqualifying convictions and is not eligible to work as a direct access worker. Under the pilot, IDPH automatically sends the applicant a copy of the rap sheet and a waiver application. For applicants with background check hits, the Health Care Worker Background Check Registry system automatically emails the employer stating whether or not the applicant is eligible for employment.
Michigan	Once the MDCH or MDHS background check analyst has determined that an applicant is disqualified based on the applicant's criminal history report, a notice explaining their disqualification status is sent to the applicant and the provider via regular mail. The notice contains a summary of the results of the registry checks and a statement of the severity of the disqualifying conviction (felony or misdemeanor.) The applicant's right to appeal, the process for requesting an appeal and appeal forms are attached to the notice. Instructions for requesting a copy of the rap sheet are part of the boilerplate disqualification notice.
Nevada	NV-DPS issues a letter to the employer that indicates whether 1) there was no disqualifying criminal history; 2) there was a conviction for a disqualifying condition; or 3) the results of the background check are undecided due to a missing disposition. The employer does not get the complete criminal history, only whether the applicant was approved or disqualified.
New Mexico	If the rap sheets show no disqualifying information, a clearance notice is processed and sent to the applicant and the employer. If disqualifying information is found, then a disqualification notice is sent to the applicant and the employer.
Wisconsin	The WI-DOJ disseminates the complete State and FBI criminal record to the employer so that they can make the fitness determination. If there is no criminal record, then the WI-DOJ sends a "no record found" response. In Wisconsin, State criminal history records and caregiver records are public records, and the employers can share the results of the State background check with other employers. Federal regulations do not permit employers to share FBI criminal history records. In the non-pilot counties, in cases where the background checks have been conducted within the previous four years, entities are required to share the State background checks results (i.e., the DOJ criminal history response, DHFS letter, other documentation) with other entities on request. The caregiver must complete a new self-disclosure form for the new employer.

Source: Abt Associates/UCDHSC, 2008

### Information Shared with the Applicant

The States also varied with respect to the process for sharing the results of background checks with applicants and the level of detail that was shared (Table 4.8). In most of the States, applicants who were disqualified as the result of the background check received detailed information on the reasons why they were disqualified and the process for challenging the results of the background check. In Wisconsin, the burden fell on the employer to notify the employee of the results of the background check. Given that the employer makes the fitness determination in Wisconsin, this was the most practical method of notifying the applicant of the results of the background check.

**Table 4.8  
Background Check Program Features: Information Disseminated to Applicant**

State	Description
Alaska	Applicants who are disqualified receive a notice from AK-DHSS stating that they are disqualified for employment and the reasons for the disqualification. The notice describes the applicable appeal procedures.
Idaho	IDHW issues a written notice to both the applicant and employer for any denial action. These notices are always sent certified mail return/receipt and contain details on the reason for the denial. Written notice is not issued to applicants who clear the background check process.
Illinois	If there are disqualifying convictions IDPH issues the applicant a notice stating that he or she has disqualifying convictions and is not eligible to work as a direct access worker. A copy of the State criminal history records check and an edited copy of the FBI check (that only lists convictions) are provided to the applicant. If the offense may be waived, a copy of a waiver application is included.
Michigan	If there is a criminal history record, the MDHS or MDCH sends a notice that summarizes the background check results to the applicant. The applicant can obtain a copy of his/her FBI report by submitting a written request to the appropriate State agency. The employer also notifies the applicant that the hiring process is terminated because of the background check results; this notice includes information of the applicant's right to an appeal, and an official appeal form. For applicants with no criminal history, a notice will show up on the Michigan Long Term Care Workforce Background Check web site, stating that no disqualifying information was identified. A hard copy notice is also generated and sent to the applicant.
Nevada	The NV-DPS informs the employer of the background check results, and notifies the applicant. If the applicant believes that the information is incorrect, then they inform the employer, who must give the employee at least 30 days to correct the State central repository's criminal history information.
New Mexico	If disqualifying information is found, NM-DOH sends a disqualification notice to the applicant and the employer. The applicant's notice identifies the conviction information. The applicant also receives a form letter and instructions that detail the administrative reconsideration process. The instructions provide guidance on the items that need to be submitted and the procedures that they must follow.
Wisconsin	The employer notifies the applicant of the disqualifying information and their right to apply for a Rehabilitation Review. In Wisconsin, State criminal history records and caregiver records are open to the public, and the employers can share the results of the background check with other employers. Under the pilot, employers are not permitted to share the results of the FBI check with other employers. The applicant can receive a copy of their full State and FBI background check results.

Source: Abt Associates/UCDHSC, 2008

### Consideration of Pending and Original Charges

The legislation that created the pilot program did not specify whether the fitness determination decision should be based only on convictions or was also to consider pending charges and/or the original crime with which an individual was charged (Table 4.9). Most of the pilot States considered pending charges in the fitness determination decision in some way. In Alaska, pending charges were sufficient to disqualify an applicant; in Michigan and Nevada, pending charges resulted in the State not being able to make a fitness determination. In Idaho and Wisconsin, pending charges could be considered based on the judgment of the individual making the fitness determination decision. In

general, pilot States based their fitness determinations on actual convictions but a few States also considered the original crime with which an individual was charged.

- Alaska considered both pending and original charges, as the legislation that created the State’s background check requirement specified the disqualification of individuals who had been charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for any of the barrier conditions listed in Appendix G. For charges for which the final disposition was known, the fitness decision was based on the conviction, not the original charge, but the original charge could be considered if the applicant requested a variance request (the State’s rehabilitation review process).
- The Idaho CHU staff could consider the original crime with which an individual was charged in the fitness determination process, potentially issuing a conditional denial if they could confirm that there was a plea bargain for a lesser charge. If there were pending charges, the State sent a letter to the applicant and the employer advising that the applicant was not available. The applicant could apply for reconsideration when the case disposition became known.
- Illinois considered only convictions.
- In Michigan, if there were pending charges, the State notified the employer and the applicant that a fitness decision could not be made due to the pending charges. The applicant would be asked to provide documentation of the final disposition of the case. While the applicant was not formally notified, the employer could choose to terminate employment.
- Nevada applicants who had pending charges were not disqualified, but the employer was notified that the criminal history status was “undecided.”
- New Mexico denied employment approval to individuals who had a pending charge for a potentially disqualifying crime.
- In Wisconsin, the employers making the fitness determination decision could consider pending charges that were substantially related to the duties of the job for new hires. They could also consider the original crime with which an applicant was charged, using this information to determine whether a conviction was substantially related to the duties of the job.

Stakeholders reported differing opinions regarding the use of pending and original charges in the fitness determination. The general consensus was that pending charges, at least for more serious disqualifying offenses, should prevent an applicant from being cleared for employment. This was seen as a potentially important safeguard in protecting residents from abuse and neglect. Most opposed the consideration of the original charge in the fitness determination decision.



**Table 4.9**  
**Background Check Program Features: Consideration of Pending and Original Charges**

State	Description
Alaska	<p>Pending and original charges are considered. The legislation that created the State's background check requirement specifies that individuals who have been "charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, a crime that is inconsistent with the standards for licensure or certification established by the department by regulation" may not be hired or work as an unsupervised volunteer.</p> <p>When an individual is convicted of a lesser charge, the barrier and associated time frame is based on the conviction, not the original charge. Original charges are considered if an individual requests a variance for a barrier crime.</p> <p>In cases where the applicant seeks a variance request, the State considers whether the original charge before any plea bargain was a barrier for which a variance would be a permanent barrier crime.</p>
Idaho	<p>At the discretion of the staff conducting the background check, pending and original charges may be considered in the fitness determination, depending upon the seriousness of the pending charges. If the State can confirm a plea bargain occurred for a lesser charge, then the initial charge may be considered in making the fitness determination. For pending charges that are considered serious, a letter is sent to the applicant and the employer advising that the applicant is not available. The applicant can request reconsideration when the case disposition is known.</p>
Illinois	<p>Illinois bases their determination only on convictions.</p>
Michigan	<p>The language of the supporting legislation allows for exclusion based on a disqualifying conviction; they do not base the determination on pending cases. The State department notifies the employer and the applicant that a determination cannot be made due to pending charges, and requests that the applicant provide documentation of the final disposition of the case. The applicant is not disqualified, but the employer may choose to terminate employment.</p>
Nevada	<p>Pending charges do not disqualify an individual, but the employer is notified that the criminal history status is "undecided" (as distinct from "positive" or "negative"). The employer may choose whether to hire the individual.</p> <p>Nevada does not consider initial crimes for which the applicant was charged, only convictions.</p>
New Mexico	<p>The State does not grant a clearance to individuals who have a pending charge for a potentially disqualifying conviction for which no final disposition has been made. In these cases, the employer is notified by certified mail that an employment clearance has not been granted.</p> <p>New Mexico will not grant clearance to an individual who has an open obligation to the courts. In these cases, the background check does not result in a final determination. The State notifies the employer and applicant by certified mail that an employment clearance has not been granted. Upon Administrative Reconsideration, if the individual submits documentation showing that the crime was pled down and is no longer a disqualifying offense, New Mexico will clear the individual without prejudice.</p>
Wisconsin	<p>An employer can consider pending charges that are substantially related to the duties of the job when making a hiring decision. With respect to the original crime with which an applicant was charged, in determining whether a conviction is substantially related to the duties of the job, the circumstances behind the conviction may be considered. For example, in the case of an originally charged serious crime that was plea-bargained down, the nature of the person's behavior as well as the circumstances of the arrest and conviction may be considered in making a decision.</p>

Source: Abt Associates/UCDHSC, 2008

## Process for Handling Cases with Missing Dispositions

States vary with respect to how they handled cases with missing dispositions. Across the seven pilot programs, there are examples of the regulatory agency, the State police, employers, and/or the applicant having the lead responsibility for securing information on cases with missing dispositions (Table 4.10).

- In Alaska, there was little follow-up on cases with missing dispositions. This is because an individual can be disqualified for employment based on being charged with a disqualifying crime. The burden is on the applicant to show that the final outcome of a case with a missing disposition would enable them to be qualified for employment.
- In Idaho and Michigan, staff from the State agency that made the fitness determination attempted to acquire disposition information from courts, web searches, and the applicant's self-disclosure. This included both in and out-of-State records.
- The Illinois State Police worked with the courts to obtain missing disposition information before forwarding the background check information to IDPH to make the fitness determination.
- In Nevada, the fitness determination was based on convictions and did not consider pending charges. Employers were allowed to employ individuals with pending charges, although individuals whose self-disclosure indicated a disqualifying conviction were ineligible to work even if the criminal record had a missing disposition.
- In New Mexico, the burden was on the applicant to provide appropriate court documentation for cases with missing dispositions. They had 14 days to provide the information or else they were disqualified for employment.
- In Wisconsin, the burden was on employers to pursue missing disposition information, and they were required to make a good faith effort to obtain disposition information for crimes that were disclosed by the applicant but that do not appear on the criminal record.

**Table 4.10**  
**Background Check Program Features: Process for Handling Cases with Missing Dispositions**

State	Description
Alaska	For the most part, missing dispositions are not needed to make a fitness determination, since the Alaska barrier crime statute includes “charged with” as a barrier condition. If the applicant believes the disposition of the case either exonerates the barrier or otherwise affects fitness for the position, the applicant can provide the disposition information for evaluation.
Idaho	IDHW staff reviews the rap sheets for disposition information. If not available on the rap sheet, a request for the information is made to the court jurisdiction listed on the rap sheet or on the applicant’s supplemental form. This includes out-of-State court jurisdictions. They also conduct Web searches for those jurisdictions that have a web-based records system.
Illinois	If a disposition is missing or incomplete, the ISP will work with circuit court clerks and other entities to complete the record. The complete conviction will then be forwarded to IDPH to make the fitness determination.
Michigan	Part of the duties of the MDCH and MDHS background check analysts include checking for missing disposition information. They have access to legal consultants and other regulatory agency resources to assist in resolving any incomplete or incorrect information.
Nevada	Employers may employ individuals with an undecided criminal finding that would result if there was missing disposition information. The State requires self-attestation by the employee if they have an undecided finding in the record search, and, if the employee reveals a disqualifying conviction, the individual is allowed up to 30 days to correct the State central repository criminal history record before terminating the employee.
New Mexico	If there are records without a final disposition, NM-DOH staff sends a disposition request letter to the applicant, requesting court documentation of the final outcome of the case. The applicant has 14 days to provide the appropriate documentation or they are disqualified for employment.
Wisconsin	Employers must make a good-faith attempt to obtain the disposition information from the appropriate jurisdiction in cases where the applicant discloses a crime that does not appear on the criminal record or the disposition of a serious crime is not clearly indicated.

Source: Abt Associates/UCDHSC, 2008

#### 4.6. Fitness Determination Criteria

The MMA stipulates that a long-term care facility or provider may not knowingly employ any direct patient access employee who has any “disqualifying information,” defined as a conviction for a relevant crime or a finding of patient or resident abuse. The term "conviction for a relevant crime" means any Federal or State criminal conviction for any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a-7) and include the following:

- *Conviction of program-related crimes:* Any individual or entity that as been convicted or a criminal offense related to the delivery of an item or service under title XVIII [42 U.S.C. § 1395 et. Seq] or under any State health care program.
- *Conviction relating to patient abuse:* Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.
- *Felony conviction related to health care fraud:* Any individual or entity that has been convicted for an offense which occurred after the date of the enactment (August 21, 1996) of

the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

- *Felony conviction related to controlled substance:* Any individual or entity that has been convicted for an offense which occurred after the date of the enactment (August 21, 1996) of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.
- *Finding of patient or resident abuse:* 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; and (B) such other types of offenses as a participating State may specify for purposes of conducting the pilot program in such State.
- *Conviction for a relevant crime:* This means any Federal or State criminal conviction for any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a- 7); and other such types of offenses a participating State may specify for purposes of conducting the pilot program in that State. The offenses described in section 1128(a) of the Social Security Act are convictions for criminal offenses related to the delivery of an item or service under the Medicare program or any State health care program (e.g., Medicaid), convictions related to patient abuse, felony convictions relating to health care fraud and felony convictions relating to controlled substances.

This section presents a discussion of the disqualifying conditions used by the pilot States in determining whether an applicant was eligible for employment. Table 4.11 contains a summary of the disqualifying offenses that the States used.

## **Alaska**

- Alaska has a lengthy list of disqualifying offenses, including arrests, which the State refers to as “barrier crimes” These include several categories of offenses:
  - o Offenses against individuals (e.g., murder, manslaughter, kidnapping, assault, sexual crimes, robbery, stalking, custodial interference, online enticement of a minor, extortion, coercion)
  - o Property offenses (e.g., theft, unlawful possession, forgery, trespassing, arson, fraud, fraudulent use of an access device, criminal impersonation, bribery, defrauding creditors, indecent exposure, online enticement of a minor)
  - o Offenses against family and vulnerable adults (e.g. child endangerment, non-payment or child support, contributing to the delinquency of a minor)

- o Offenses against public administration (e.g., bribery, perjury, violating a protective order, misuse of confidential information, permitting an escape, tampering with evidence or otherwise hindering prosecution)
- o Offenses against public order (e.g., harassment, rioting, distribution of child pornography, indecent viewing or photograph, cruelty to animals, misconduct involving a corpse)
- o Offenses against public health and decency (prostitution, promoting gambling, possession of gambling records)
- o Controlled substance offenses
- o Miscellaneous offenses and other crimes (e.g., interfering with the rights of the physically or mentally handicapped, insurance fraud, operating a vehicle, aircraft, or watercraft while impaired, failure to stop at direction of a peace officer, opening the contents of a sealed letter)

Depending on the level (e.g., first degree, second degree, third degree) and type of crime, an applicant may be permanently barred, barred for 10 years, barred for five years, barred for three years, or barred for one year. These are examples of types of crimes that fall into each of these time periods:

- Permanent: Murder, manslaughter, criminally negligent homicide, kidnapping, assault (first or second degree), sexual assault, online enticement of a minor, indecent exposure, child endangerment that results in death, serious injury, or sexual abuse, child pornography, controlled substance (first degree).
- Ten year: First degree theft, felony conviction for issuing a bad check, burglary, forgery (first degree), bribery, misconduct involving weapons (first degree), prostitution, controlled substance (second or third degree), criminal insurance acts (second degree), defrauding creditor (Class B felony), misconduct involving weapons (first or second degree).
- Five year: Assault (fourth degree), reckless endangerment, theft (second degree), unlawful possession (Class C felony), vehicle theft (first degree), burglary (second degree), forgery (second degree, Class C felony), falsifying business records, defrauding creditor (Class C felony), aiding the non-payment of child support (first degree), misconduct involving weapons (third degree), operating a vehicle while intoxicated.
- Three year: Theft (third degree), unlawful possession (Class C felony), vehicle theft (second degree), forgery (second degree, misdemeanor), unlawful possession (Class A misdemeanor), defrauding creditor (Class A misdemeanor), issuing a bad check (Class A misdemeanor), aiding the non-payment of child support (second degree), resisting arrest, misconduct involving weapons (fourth degree), interfering with constitutional rights.
- One year: Theft (fourth degree), receiving stolen property, unlawful possession (Class B misdemeanor), issuing a bad check (Class B misdemeanor), harassment (Class B misdemeanor), misconduct involving weapons (fifth degree), interfering with the rights of a physically or mentally challenged person, refusing to submit to a preliminary breath test at the request of law enforcement.

## Idaho

Idaho issues unconditional denials to individuals who were convicted of certain designated crimes no matter when the conviction occurred and issues unconditional denial for certain other crimes that occurred within five years of the application (Table 5.11). Idaho changed the time frame for unconditional denials from seven years to five years during the course of the pilot.

- Designated Crimes (Lifetime Exclusion): 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; any felony punishable by death or life imprisonment; or attempt, conspiracy, or accessory after the fact. The State is considering a lifetime exclusion for some additional crimes, including identity theft, child enticement and enticement over the Internet.
- Designated 5-Year Crimes (five-year exclusion from date of conviction): Burglary; grand theft; theft; forgery or fraudulent use of a financial transaction card; insurance fraud; public assistance fraud; a felony involving a controlled substance. Idaho changed this time period from seven years to five years.

There is no rehabilitation review process for individuals who receive an unconditional denial. The State may also issue a conditional denial if the criminal history check reveals a plea, finding, or adjudication of guilt to any felony or misdemeanor, any crime other than a traffic violation which does not result in a suspension of the individual's driver's license, or a valid child protection complaint or a substantiated adult protection complaint. The State may also issue a conditional denial when the results of the criminal history check reveal that the individual falsified or omitted information on the self-declaration form.

## Illinois

The State has a lengthy list of disqualifying offenses (see Appendix H) that was developed based on the perceived likelihood that the offense is related to the risk of abuse, neglect, or misappropriation of property. The list of disqualifying offenses includes murder-related offenses, kidnapping, child sexual offenses, battery, home invasion, sexual assault, abuse, neglect, kidnapping, ritual mutilation, theft/burglary, financial exploitation, forgery, arson, unlawful use of weapons, receiving stolen credit cards, pretending to be a nurse, and controlled substance/drug-related offenses, and food tampering.

A conviction for any of these will result in the applicant being disqualified for employment, regardless of how long ago it occurred, although applicants can apply for a waiver. Unlike Idaho and Alaska, there are no offenses that would automatically disqualify an applicant for life, nor are there offenses that, if they occurred long enough in the past, would not be considered in the fitness determination decision.

## Michigan

Michigan prohibits the employment of any direct care worker who has been convicted on any of the following:

- A relevant crime described under 42 USC 1320a-7. This includes convictions related to patient abuse, health care fraud, controlled substance (felony or misdemeanor), fraud, theft, embezzlement, misappropriation of property, financial misconduct, obstruction of investigation, license revocation/ suspension, or exclusion under Federal or State health care program.
- Conviction for certain types of felonies, an attempt or conspiracy to commit any of those felonies, or any other State or Federal crime that is similar to the felonies listed in the legislation. Examples of offenses that result in a 15-year exclusion include felony convictions for intent to cause death or serious impairment, cruelty/torture, criminal sexual misconduct, use of a firearm, and diversion/adulteration of a prescription drug. Appendix I contains the complete list of disqualifying offenses for the State.
- Other types of felony convictions that do not result in a 15-year exclusion result in a 10-year exclusion. Also, certain types of misdemeanor convictions (e.g., use of a firearm or dangerous weapon, abuse, neglect, assault, battery, cruelty, or criminal sexual conduct against anyone or fraud or theft against a vulnerable adult (as defined under the Michigan Penal Code) result in a ten-year exclusion.
- Some types of misdemeanor convictions result in a 5-year exclusion (e.g., cruelty if the individual was less than 16 years of age, home invasion, embezzlement, negligent homicide, larceny, second degree retail fraud (shoplifting between \$200 and \$1,000), other misdemeanors involving assault, fraud, theft, or the possession or delivery of a controlled substance).
- The State also has some misdemeanor convictions that result in a 3-year exclusion, including misdemeanor assault if there was no use of a weapon and no intent to commit murder or inflict great bodily harm, third degree retail fraud (less than \$200), and a misdemeanor involving the creation, delivery, or possession with intent to manufacture or deliver a controlled substance.
- One-year exclusions result from these type of misdemeanor convictions: misdemeanor involving the creation, delivery, or possession with intent to manufacture or deliver a controlled substance if the individual was under 18 at the time of conviction, retail fraud if the individual was under age 16 at the time of conviction.

Note that the State counts the time period beginning after the individual has completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction. For example, if an individual served 10 years in prison for an offense that resulted in a 15-year exclusion, the individual would not be eligible to work until 15 years after the end of their prison sentence, not 15 years from the conviction date.

## **Nevada**

Nevada has a shorter list of disqualifying convictions than pilot States such as Alaska, Illinois and Michigan. No covered employer can hire individuals with any of these offenses:

- Murder, voluntary manslaughter or 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
- A violation of any provision of NRS 422.450 to 422.590, addressing specific Medicare and Medicaid offenses. These offenses were added in 2007.

The State also has seven-year convictions. Workers with any of these convictions within the past seven years are disqualified for employment:

- Any violation of any Federal or State law regulating the possession, distribution or use of any controlled substance or any dangerous drug
- 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

## **New Mexico**

In developing its list of disqualifying crimes, the State's goal was to disqualify applicants that posed an unreasonable risk. Specific crimes that result in disqualification are:

- 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
- Crimes involving child abuse or neglect
- Crimes involving robbery, larceny, extortion, burglary, fraud, forgery, embezzlement, credit card fraud or receiving stolen property

Changes enacted in 2005 expanded the list of disqualifiers to include an attempt, solicitation, or conspiracy involving any of the felonies listed above.



While there is no time limit specified in the State’s legislation, applicants can request a reconsideration of the background check decision. One of the factors considered in reconsideration proceedings is the time elapsed since the last disqualifying conviction or since discharge of the sentence (see discussion of the State’s policies for rehabilitation review below).

## **Wisconsin**

Employment as a caregiver is prohibited until rehabilitation approval is received for individuals with convictions for any of these offenses:

- 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 and residents (misdemeanor or felony)
- 1st degree sexual assault of a child
- Repeated acts of sexual assault of a child
- Physical abuse of a child – intentional – cause great bodily harm
- Finding by a governmental agency of neglect or abuse of a client, misappropriation of a client’s property, or child abuse or neglect.

Also, if the background check results showed that the applicant was convicted of any of the offenses immediately below within five years before the information was obtained, the employer is required to contact the clerk of courts to obtain a copy of the criminal complaint and judgment of conviction relating to that conviction:

- Misdemeanor battery
- Battery to an unborn child
- Battery, special circumstances
- Reckless endangerment
- Invasion of privacy
- Disorderly conduct
- Harassment

In Wisconsin, employers make the fitness determination. In addition to the crimes listed above, State law permits employers to deny employment to an individual who has been convicted of a crime that is “substantially related” to the duties of the job. The Wisconsin Offenses List includes crimes of physical violence only. The State believes that the employer has a clear understanding of the position

requirements and thus is in the best position to judge whether a conviction, although not on the Offenses List, is substantially related to the responsibilities and activities of the job. A conviction or pending charge for any of these crimes that are substantially related may result in disqualification.

State law does not specify a time period for any of these offenses, but one of the factors that the State's Rehabilitation Review Panel considers is the amount of time since the crime occurred.

## **Discussion**

Given the lack of knowledge on the relationship between certain types of convictions and the propensity to commit abuse, neglect, or misappropriation, most stakeholders did not have a strong opinion for a more or less stringent list of disqualifying crimes.

There was general support that it was appropriate for a national background check program to specify a core set of disqualifying offenses, but the consensus among stakeholders was that States should be given the flexibility to consider additional types of crimes. However, there were a few providers who stated they would like to see more uniformity and consistency across the States to prevent applicants who might cross State lines to work in more lenient States.

While there was general consensus that the disqualifying offenses were the appropriate offenses, some providers and other stakeholders suggested a few changes. One provider was concerned that domestic violence was not a disqualifying offense in their State and another suggested including misdemeanor drug offenses related to prescription drug problems. There were several home health agencies that suggested that burglary and other theft convictions were appropriate as disqualifying crimes for employees working in other people's homes. In Nevada, some sexually related crimes that would result in lifetime disqualification were misdemeanors, and this seemed unfair to some, particularly given that the State has no rehabilitation review program.

Alaska, Idaho, Michigan, and Nevada have time frames indicated for certain disqualifying offenses. Stakeholders agreed that in some cases a tiered system that has varying time periods that require automatic disqualification for different severity of crimes makes sense. In Nevada, some expressed concern that the 7-year time period starts the day of the offense so if an individual was imprisoned for seven years, they can go back to work as soon after they are released. This was a concern.

**Table 4.11**  
**Background Check Program Features: Disqualifying offenses**

State	Description
Alaska	<p>The State includes the Federal disqualifying offenses identified under section 307 of the MMA, as well as a lengthy list of disqualifying offenses, which the State refers to as “barrier crimes.” Some offenses result in permanent disqualification while others are 10-, 5-, 3-, or 1- year barrier crimes. See Appendix G for the complete listing of the State’s barrier crimes.</p>
Idaho	<p>In addition to the list of disqualifying Federal offenses identified under section 307 of the MMA, an unconditional denial is issued for the following crimes:</p> <ul style="list-style-type: none"> <li>• Abuse, neglect or exploitation of a vulnerable adult</li> <li>• Aggravated, first degree and second-degree arson</li> <li>• Crimes against nature</li> <li>• Forcible sexual penetration by use of a foreign object</li> <li>• Incest</li> <li>• Injury to a child, felony or misdemeanor</li> <li>• Kidnapping</li> <li>• Lewd conduct with a minor</li> <li>• Mayhem</li> <li>• Murder in any degree, voluntary manslaughter, assault or battery with intent to commit a serious felony</li> <li>• Poisoning</li> <li>• Possession of sexually exploitative material</li> <li>• Rape</li> <li>• Robbery</li> <li>• Felony stalking</li> <li>• Sale or barter of a child</li> <li>• Sexual abuse or exploitation of a child</li> <li>• Any felony punishable by death or life imprisonment;</li> <li>• Attempt, conspiracy, or accessory after the fact to commit any of the designated crimes.</li> </ul> <p>An unconditional denial will be issued if any of the following crimes are found within five (5) years of the application:</p> <ul style="list-style-type: none"> <li>• Burglary</li> <li>• Grand theft</li> <li>• Theft</li> <li>• Forgery of and fraudulent use of a financial transaction card</li> <li>• Forgery and counterfeiting</li> <li>• Insurance fraud</li> <li>• Public assistance fraud</li> <li>• A felony involving a controlled substance</li> </ul> <p>The IDHW may issue a conditional denial when the criminal history records check reveals a plea, finding or adjudication of guilt to any felony or misdemeanor, any crime other than a traffic violation which does not result in a suspension of the individual’s driver’s license, or a valid child protection complaint or a substantiated adult protection complaint. IDHW may issue a conditional denial when the results of the criminal history check reveal that the individual has falsified or omitted information on the self-declaration form.</p>

**Table 4.11 (continued)**  
**Background Check Program Features: Disqualifying offenses**

State	Description
Illinois	<p>In addition to the list disqualifying Federal offenses identified under section 307 of the MMA, there is a lengthy list of disqualifying offenses that include murder-related offenses, kidnapping, child sexual offenses, battery, home invasion, sexual assault, abuse, neglect, kidnapping, ritual mutilation, theft/burglary, financial exploitation, forgery, arson, unlawful use of weapons, receiving stolen credit cards, pretending to be a nurse, and controlled substance/drug-related offenses. See Appendix H for the complete listing of disqualifying conditions.</p> <p>A conviction for any of these will result in the applicant being disqualified for employment, regardless of how long ago it occurred, although applicants can apply for a waiver (see below). There are no offenses that would automatically disqualify an applicant for life.</p>
Michigan	<p>The State has lifetime, 15-, 10-, 5- and 3-year exclusions, with the times measured as of the completion of the sentence for the crime. See Appendix I for the complete list of disqualifying conditions.</p> <p>Lifetime exclusions include Federal barring offenses described in the MMA, such as patient abuse, health care fraud, felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance (felony or misdemeanor), fraud, theft, embezzlement, financial misconduct, obstruction of investigation, license revocation/suspension, or exclusion under Federal or State health care program.</p> <p>Examples of offenses that result in 15-year exclusion felony convictions for intent to cause death or serious impairment, cruelty/torture, criminal sexual misconduct, fuse or a firearm, and diversion/adulteration of a prescription drug. Misdemeanor convictions for these types of offenses typically results in a 10-year exclusion.</p> <p>Five-year offenses include cruelty (if under age 16), home invasion, embezzlement, negligent homicide, larceny, retail fraud (2nd degree), and other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance.</p> <p>Three-year offenses include assault if there was no use of firearm or a dangerous weapon and no intent to commit murder, retail fraud (3rd degree), and larceny or retail fraud if the individual was under age 16 at the time of conviction.</p>
Nevada	<p>The list of disqualifying offenses include the Federal offenses identified under section 307 of the MMA, There are also lifetime and 7-year disqualifications. Lifetime disqualifications include:</p> <ul style="list-style-type: none"> <li>• Unlimited convictions</li> <li>• Murder, voluntary manslaughter or mayhem</li> <li>• Assault with intent to kill or to commit sexual assault or mayhem</li> <li>• Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime</li> <li>• Abuse or neglect of a child or contributory delinquency</li> <li>• Elder abuse and neglect</li> </ul> <p>Seven-year crimes include:</p> <ul style="list-style-type: none"> <li>• Any violation of any Federal or State law regulating the possession, distribution or use of any controlled substance or any dangerous drug</li> <li>• Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property</li> </ul> <p>Any other felony involving the use of a firearm or other deadly weapon</p>

**Table 4.11 (continued)**  
**Background Check Program Features: Disqualifying offenses**

State	Description
New Mexico	<p>The list of disqualifying offenses include the Federal offenses identified under section 307 of the MMA, homicide, convictions related to controlled substances, rape and related crimes, crimes involving adult abuse, neglect or financial exploitation, crimes involving fraud, burglary, robbery, forgery, and related crimes.</p> <p>Changes enacted in 2005 expanded the list of disqualifiers to include an attempt, solicitation, or conspiracy involving any of the felonies listed above.</p>
Wisconsin	<p>Disqualifying conditions include the Federal offenses identified under section 307 of the MMA, convictions for homicide, murder, battery (felony), sexual exploitation by therapist, sexual assault, and abuse/neglect. Also, any finding by a governmental agency of abuse or neglect of a client, child abuse or of misappropriation of a client's property disqualifies one for employment.</p>

Source: Abt Associates/UCDHSC, 2008

## 4.7. Enforcement of Background Check Requirements

### Enforcement Process

Compliance with background check requirements occurs through the State survey agencies. As part of the survey process, surveyors typically review a sample of personnel records and check to make sure that the facility was in compliance with background check requirements according to their State regulations. Federal Citations that may be given to non-compliant facilities include F-tags 223 (right to be free from abuse), 224 (staff treatment of residents), or 225 (no employment of persons who have been found guilty of abuse) for facilities out of compliance with the background check requirement as well as the generic cite under failure to follow State law. Since all of the States were doing some type of background check prior to the pilot, these processes did not change during the pilot.

Several States reported using additional monitoring procedures which included the checking of the State's electronic background check data collection system. One State tracked the number of registry checks and fingerprint requests generated by individual employers. Other States looked at 'hits' prior to the survey. In one State, "Surveyors find out before going to a facility whether there was anything they should specifically look at – if employees that had a hit and the facility was the place that they last worked. The [background check system] allows surveyors to pull a report on this information before they go in." Alaska has pending regulations that would allow them to pull the facility record and take it to the facility to match it up with the personnel list to make sure they had submitted all the names of the personnel that they have employed there.

### Enforcement Actions

Penalties for non-compliance vary by State, and, in most States, may include fines and licensing restrictions (Table 4.12). In some States, potential penalties include a restriction on new employees (Alaska), recovery of Medicaid payments (Idaho), criminal charges (Michigan), and a requirement to attend a training session (Wisconsin).

## Provider Compliance

State agency staff differed in their opinions regarding provider compliance. One State reported having compliance issues at the beginning of the pilot, but that compliance improved once providers understood the requirements. “They thought all they had to do was submit the fingerprints and then not worrying about the results.” Some reported that compliance among provider-types varied and noted problems with agency staff (Idaho), residential facilities (Nevada), and assisted living facilities (Idaho). Others reported it was not limited to any one provider type in general but was present across the board. Wisconsin noted in their final report that only five health care employers or two percent of the 211 employers who participated in the pilot were cited for background check related deficiencies between March 2006 and September 2007.

**Table 4.12**  
**Compliance and Enforcement**

	Alaska	Idaho	Illinois	Michigan	Nevada	New Mexico	Wisconsin
Employer (Provider) is monitored for program compliance	X	X	X	X	X	X	X
Employee (Caregiver) is monitored						X	
Type of Enforcement Penalties:							
Fines	X		X	X		X	X
Licensing	X	X	X		X	X	X
Service Limitation	X						X
Administrative Sanctions					X		
New Admissions Restriction	X						
Recoupment of Medicaid Money		X					
Plan of Correction		X					X
Prosecution for Failing to Disclose Crimes		X					
Prosecution of Misdemeanor				X			
Requirement to Use staffing agency							X
Additional Training							X
Enforcement Authority Resides with:							
Dept. Of Health				X		X	X
Survey, Certification, and Licensing	X	X	X		X		
State Police							
Providers Self-Regulate						X	X

Source: Abt Associates/UCDHSC, 2008

## 4.8. Provisional Employment

Under the pilot program, States could permit employers to provide for a provisional period of employment pending the completion of background checks. Provisional employment policies were an important part of limiting the unintended labor market effects of background checks. All of the pilot States had provisional employment policies that permitted employers to hire staff pending the completion of the background check (see Table 4.13). These programs differed with respect to when

the period of provisional employment began and the level of supervision required for provisional hires and the status of provisional employment during an appeal. In some of the pilot States, it was taking several months for the fingerprint results to come back, resulting in extended periods of provisional employment that raised concerns about resident safety.

Most of the employers interviewed liked being able to employ individuals before getting the background check results. However, several employers told us that they feel vulnerable waiting for the background check results to come back, given the direct access to patients that was allowed once individuals show up for fingerprinting. Another was concerned that “violent predators” knew that they could work provisionally for up to a week (assuming that they lied on their self-disclosure and cleared the registry checks) pending the results of the background check. “That person can scope out the people and the building, notice the jewelry, possessions, come in and clean these people out and disappear.”

Providers’ concerns regarding provisional employment centered on issues around timing and labor market impact, employer liability for client safety, supervision, and lost training costs. Employers often expressed their need to bring new hires on the job as quickly as possible, so as not to lose them to other employers. One trade association expressed, “In that first week, someone may move on to another job while they’re waiting to hear from the Background Check Unit... We want to make sure our employers have a fair shot at hiring folks and not lose them to others.” With respect to liability, there was some concern about whether the employer would be liable for the actions of a provisional hire, and several employers reported waiting for the results before letting the applicant begin employment. They understood that the applicant may go somewhere else, but did not want the potential liability exposure.

### **When Did Eligibility for Provisional Employment Begin?**

- In Alaska, Illinois, and Michigan, provisional employment began after the employee passed the initial registry checks. In Alaska, the employee had up to 30 days to submit fingerprints, meaning that there could be a lengthy period of provisional employment. In Illinois, the employee could work provisionally for 30 days if the fingerprint-based check was initiated within 10 days of employment.
- In Idaho, provisional employment was allowed after the self-declaration was signed and notarized—this typically happened at the fingerprinting appointment. The applicant could provide unsupervised services once fingerprints had been submitted. Wisconsin also allowed provisional employment for applicants who didn’t reveal any disqualifying information on their self-disclosure.
- Provisional employment was allowed in Nevada while the background check was being conducted if fingerprinting was done within 10 days.
- In New Mexico, applicants were allowed to begin working provisionally after submitting a request for a nationwide criminal history check.

## **What Supervision Level Did States Require for Provisional Hires?**

According to State operational protocols, none of the States regulated the level of supervision for provisional hires, leaving employers to determine the appropriate level of supervision.

Most employers reported that supervision is not any different for provisional hires and other new employees. Generally, however, new employees (regardless of their provisional status) spend the first few weeks of their employment in an orientation program that provides a higher level of supervision. For example, initially, nurse aides in nursing homes were often paired with other nurse aides or assignments that “don’t take the individual into the patient room to do care.” One employer stated that, if at the completion of orientation, the provisional status is not in place, the employee is basically “on standby waiting for approval. There was some concern about the training costs incurred by those who are ultimately disqualified.

Non-facility-based settings (e.g., home care, hospice, personal care services) where no other staff are present to provide oversight, were faced with even greater supervision challenges. One employer said they “cannot let their provisional status disrupt the care to clients.” But other employers found that their staffing patterns were affected by delays in background check processing times. One agency expressed frustration that “we may have a client who is in dire need of help and we can’t start them.” One home health agency reported, “Supervision is done telephonically because you can’t send a supervisor along with every home health visit.”

If background check results come back quickly (i.e., within one week), prior to the completion of employee orientation, then most of the concerns about the supervision level of provisional hires are greatly diminished, given the limited one-on-one direct patient access that staff are likely to have in their first week.

## **Could Provisional Hires Continue to Work During the Appeal Process?**

States varied with respect to whether they allowed provisional employment for applicants who were disqualified but challenged the accuracy of the criminal history. Idaho, Illinois, and Wisconsin did not allow the employee to work during the appeal process. Alaska left the decision of employment during appeal to the provider. Michigan allowed employment under their informal appeal process (which takes approximately 15 days), but not under the formal appeal process, which could take up to three months. Both Nevada and New Mexico permitted provisional hires to continue working during the appeal process. Nevada employees were allowed 30 days to correct inaccurate information before termination.



**Table 4.13**  
**Background Check Program Features: Provisional Employment Policies**

State	Description
Alaska	The State allows for provisional employment, which can begin after the employee passes the initial registry checks. The employee has up to 30 days to submit their fingerprints. The State does not regulate the level of supervision for provisional hires.
Idaho	Applicants are allowed to begin provisional employment once the self-declaration is signed and notarized. Fingerprints must be submitted to the Department within 20 days. The individual may provide unsupervised services once the fingerprints have been submitted.
Illinois	Employers can employ an individual provisionally after checking if the applicant does not have any disqualifying information based on the initial registry checks. If there are no disqualifying findings, the health care employer may allow provisional employment for up to 3 months if a fingerprint-based criminal history record check is conducted within 10 days of the first day of employment.
Michigan	An applicant can begin provisional employment after the employer completes the check of all of the on-line registries pending results of the fingerprint-based background check. The State does not regulate the supervision level of provisional hires. The applicant must sign a statement which affirms that he or she does not have a conviction that would prohibit employment; and understands that he or she may be terminated if the report finds otherwise unless he or she can prove the information is incorrect. Provisional hiring is not allowed for agency staff. The State does not regulate the supervision level for provisional hires.
Nevada	An employee is allowed to continue working while the background check is in process and for at least 30 days if they challenge the results of the background check. The level of supervision for provisional hires is not regulated.
New Mexico	Employees can begin provisional employment after they submit to a request for a nationwide criminal history check. They can continue working provisionally until the employer is notified of the results of the background check. The State does not regulate the supervision level for provisional hires.
Wisconsin	Applicants who have a "clean" Background Information Disclosure may be allowed to work for up to 60 days, under supervision, pending receipt of the DOJ criminal record search results, the DHFS letter or other necessary documentation. The level of required supervision varies with each program type and each covered entity must follow its own program supervision requirements.

Source: Abt Associates/UCDHSC, 2008

#### **4.9. Rehabilitation Review Procedures for Background Check for Background Check Programs**

All of the States allowed applicants to appeal the accuracy of information obtained as part of the background check. Five States also had rehabilitation review programs that allowed applicants who were disqualified by the background check to demonstrate that they should be allowed to work because they do not pose a danger to patients or their property. States with rehabilitation review policies varied with respect to the types of convictions that may be subject to review, procedures for initiating the process, the review process and time frame, and the criteria for determining whether someone has been rehabilitated.

## **State Rehabilitation Review Programs and Policies**

Five States (Alaska, Idaho, Illinois, New Mexico, and Wisconsin) had rehabilitation review programs with policies related to hiring. Within this group, there was considerable variation in terms of which crimes could be appealed after completing rehabilitation (Table 4.14). In Alaska and Idaho, there were certain severe offenses that disqualified one from eligibility for a rehabilitation review. Illinois, New Mexico, and Wisconsin allowed applicants to request reconsideration of the results of their background check regardless of the specific crime committed, although, in practice, approval was unlikely for those with convictions for serious crimes.

Michigan worked to develop a rehabilitation review process, but this was drastically changed in the State legislation that was revised to meet the requirements of the pilot program, and permitted appeals only for inaccurate information. While the new State legislation did not contain a formal appeals board, the laws allowed for a tiered system of exclusionary time periods based on the severity of an offense, and included a process for appeal and reconsideration due to an inaccurate record, an expunction of the record, or a conviction that was set aside.

In four States (Alaska, Illinois, Michigan, Nevada), there were time limits on exclusions associated with certain types of crimes. Michigan and Nevada used these time-related exclusions to serve as an alternative to rehabilitation reviews conducted on a case-by-case basis. When the time limit had passed, the worker was eligible for employment in the same manner as an individual without a criminal history. Alaska utilized its disqualifying crime time limits in conjunction with rehabilitation review. Alaska providers could appeal on behalf of an individual with a barrier crime prior to the end point of the time limit if the individual could demonstrate they were no longer a danger to residents/clients by, for example, showing successful accomplishment of all court-related requirements and letters of reference. By the end of the pilot, Illinois was moving towards a system of “automatic waivers” that would be given to applicants whose criminal history meets certain guidelines (based on the number, type, and date of convictions).

**Table 4.14**  
**Background Check Pilot States' Rehabilitation Review Processes – Crimes and Related Time Limits**

<b>State</b>	<b>Crimes for Review/Appeal</b>	<b>Time Related Exclusions</b>
Alaska	Permanent exclusion crimes cannot be appealed; all others can be appealed.	1-, 3-, 5-, 10-year and permanent exclusions
Idaho	No rehab review for unconditional crimes; Conditional crimes may be appealed.	Unconditional denial (Lifetime, 7 years) and conditional denial
Illinois	Waivers are not granted for certain serious crimes; other waivers must follow certain time frames. Waivers not meeting requirements may be allowed based on mitigating circumstances.	Single disqualifying misdemeanor conviction– 1 year 2-3 disqualifying misdemeanor convictions – 3 years More than 3 disqualifying misdemeanor convictions – 5 years Single disqualifying felony conviction – 3 years 2-3 disqualifying felony conviction – 5 years More than 3 disqualifying felony convictions – 10 years
Michigan	No rehab review. Appeal only the accuracy of the record or expunged or set aside record	1-, 3-, 5-, 10-, 15-year and lifetime exclusions
Nevada	No rehab review. Appeal based on accuracy only	Permanent and 7-year exclusions
New Mexico	All crimes can be appealed	No time-related exclusions
Wisconsin	All crimes can be appealed	No time-related exclusions

Source: Abt Associates/UCDHSC, 2008

### **Rehabilitation Review Procedures**

Except in Idaho, rehabilitation review decisions were made by a committee consisting of at least three State employees. In Illinois, the decision of the review committee can be overridden by the governor, although this has never happened. In Idaho, a single hearing officer handled exemption review hearings. Table 4.15 describes the rehabilitation review procedures used by States.

The general criterion for deciding rehabilitation review cases was whether the applicant posed a risk to patient safety. This could include the amount of time since the crime, employment history, the age of the person when the crime was committed, personal reference, and other evidence of rehabilitation (e.g., a successful treatment program, community service, volunteer work). A goal was to ensure that a single relatively minor mistake not be held against someone for their entire life.

**Table 4.15  
Rehabilitation Review Procedures and Decision Processes**

<b>State &amp; Process</b>	<b>Rehabilitation Review Procedure</b>	<b>Decision Process</b>
Alaska Variance Process	Applicants may request a variance through their prospective employer. Applicants submit information on their criminal and incarceration history and evidence of individual's fitness and rehabilitation that includes at least two letters of recommendation.	Committee of at least three department employees (at least one employee from each department office responsible for licensing, certification, approval, or finding of eligibility to receive payments). Committee reviews and makes a recommendation to the Commissioner to approve or deny.
Idaho Exemption Review	Exemption Review may consist of a review of documents and supplemental information, a telephone interview or in-person interview. Applicant may bring legal counsel or any one else they chose to provide testimony on their behalf.  At an exemption review hearing, the applicant is able to present additional information to the hearing officer regarding the items found during the background check. The hearing officer travels to and holds the review at the IDHW office closest to the applicant.	The Background Check Program Supervisor acts as the Hearing Officer and conducts exemption review hearings.
Illinois Waiver Review Process	The waiver application includes an explanation of the circumstances for each conviction; if alcohol or drug related, proof of a rehabilitation program; recent employment reference and character reference; copies of significant accomplishments since conviction; work history, and criminal history.	Waiver determination is made by a group of IDPH staff which include an attorney from the Department's legal division, and staff at the Office of Health Care Regulation, the HCWBC Program manager, a staff member (RN) from the Special Investigations Unit, and a Quality Review staff member (RN). Their decision can be overridden by the governor.
New Mexico Reconsideration	Applicants may appeal by submitting a written request for an administrative reconsideration within 30 days of the postmark of the initial disqualification letter. Applicant must include a signed declaration, identifying with specificity, any criminal felony convictions and any additional documentation to be considered. Age at the time of each disqualifying conviction, any mitigating circumstances, any court imposed sentence or punishment and if completed, when, any rehab since the offense, full employment history and other relevant materials.	Reconsideration Committee consists of DHI Deputy Division Director, Representative from the Department office of General Counsel, Administrative Services Bureau Chief, CCHSP Program Manager and CCHSP Legal Assistant.

**Table 4.15  
Rehabilitation Review Procedures and Decision Processes**

State & Process	Rehabilitation Review Procedure	Decision Process
Wisconsin Rehabilitation Review	<p>Applicants who are disqualified for employment may apply for a Rehabilitation Review to seek approval for employment. Applicants must complete the Rehabilitation Review application, which collects information on the applicant’s criminal history and/or history of abuse/neglect. Applicants must submit a written explanation of these crimes and why they believe that they have been rehabilitated, along with 3 character references and letters from current and former employers.</p> <p>The State’s Rehabilitation Review panel considers all of the submitted information to determine whether there is sufficient evidence of rehabilitation. They may approve, deny, or defer the Rehabilitation Review application.</p> <p>A Rehabilitation Review approval does not ensure that the applicant will be hired by an entity or receive permission to reside at an entity. Caregivers who are denied approval may not reapply for one calendar year after the date of denial.</p>	<p>Decisions are made by the Rehabilitation Review Panel. The panel includes representatives from the WI-DHFS Office of Legal Counsel, WI-DHFS Division of Quality Assurance, WI Department of Regulation and Licensing, and Department of Workforce Development, if applicable.</p> <p>If there is sufficient evidence of rehabilitation, the application is approved; the Panel may specify conditions or limitations to the approval. If the Panel did not receive sufficient evidence of rehabilitation, it may deny or defer the application. Decisions can be deferred for up to six months to gather additional information or for other reasons.</p>
	<p>Applicants are not allowed to continue working during the appeals process.</p>	

Source: Abt Associates/UCDHSC, 2008

### Discussion of Rehabilitation Review Programs and Procedures

Most supported having a rehabilitation review process, citing the potential of rehabilitation review provisions to increase the fairness of background checks programs and reduce unintended workforce effects. By allowing individuals to present their cases, the rehabilitation review provides an opportunity for individuals to avoid continued punishment for crimes committed in youth, has a positive impact on current workforce shortages and acts as an incentive to those individuals with past problems. One State noted that, “[The] waiver process makes sense because young stupid mistakes don’t need to be held against them for an entire life – no automatic waiver, but should be looked into to ensure that one bad decision that is fairly minor isn’t a lifetime ban.” Another respondent stated, “The effort is worth it because the waivers that are not granted do protect health and safety of long term care clients.” One employer stated that individuals with a disqualifying condition should go through the waiver process, regardless of how much time had passed since the crime. This would let the employer know that the applicant did something like that in the past and allow the State to make a determination about whether the individual poses any risk to patients.

Rehabilitation review programs also give officials the flexibility to consider types of offenses that result in disqualification but that are not consistent with the spirit of the law. For example, in Nevada, a single misdemeanor conviction for skinny dipping can result in lifetime disqualification, as this is classified as a sexually related crime.

Most contacts reported being satisfied with their State’s appeal/rehab process. There were some concerns related to which crimes could be appealed. In one State, stakeholders noted that individuals who are banned from employment due to certain criminal history (e.g., drug related crimes), might be desirable for particular employment working with similarly affected clients. There were also comments that, in the case of certain offenses, like domestic battery, a review process was very helpful to sort out the specific details of the case because enforcement and circumstances vary significantly. A review process provides a way to find out if a person had “stolen from a store one time, (or from) a person in their care, or had a general theft pattern.” Another State commented that, “It’s better not to be so cut and dry on disqualifications and appeal process because you need to be able to look at people’s circumstances.”

There was some disagreement about the benefits of rehabilitation review programs. One State expressed concern about the burden to conduct these reviews. Others noted that if the time frame associated with specific types of offenses is reasonable, then rehabilitation review programs are unnecessary. One provider stated they were, “more inclined to set reasonable time frames and make everyone wait until the time has gone by.” Others were concerned that once the specified time period goes by, the provider will have no knowledge of the applicant’s criminal history since the applicant would pass the background check. Some employers may want to know that the applicant has a criminal history, regardless of the time lapse.

Rehabilitation review hearings occur relatively infrequently, and most of the providers supported the concept but had no direct experience with the process. There were, however, a few concerns that they identified:

- In Alaska, employers had to sponsor applicants for a variance, and there was concern at the time required for this process. The employer has to prepare written documentation for why the employee should continue to work at the facility, and this “takes the manager a lot of time... The administrator has to edit it, give the manager feedback and direction on what’s needed to present a complete picture.” Employers in Alaska reported that they were required to post information on employees who were hired after going through the variance process in a “conspicuous location,” along with the facility’s licensure information. Employers did not like having to post this information—one described it as a “most wanted wall,” and did not like the image that it created for the facility.
- One Idaho employer expressed concern that the State did not use a committee like other States did, stating, “Only one person is the judge, jury, and executioner.”
- Several commented on the ease of getting a waiver. “Those scare me – it seems like almost anyone can get a waiver. There’s a pretty high waiver rate.” When another was asked if she would hire someone with a waiver, she said she’d try not to (hire them).

Other providers had concerns with hiring someone who had been through the rehab review process. One person stated he didn't want his signature attached to a waiver where a future bad act would be related to it.”

#### **4.10. Background Check Procedures for Staffing Agency Staff**

Many of the providers use staffing agencies to assist them in meeting their staffing needs. The individuals supplied by these agencies may be used as infrequently as to cover one eight-hour shift or may be assigned at the facility for days, weeks or months. The provider may know in advance that temporary staffing will be needed or have as little notice as a few hours. The staffing agency is expected to respond to the provider's needs with the appropriately qualified individual in whatever time frame is presented. Individuals who work for staffing agencies may work for more than one agency, and may accept work in one or more facilities.

All of the pilot States required a background check for workers from staffing agencies who had direct access to patients and residents. In Wisconsin and Illinois, fingerprint-based checks were not required; rather staffing agency employees in pilot counties were subject to the same requirement as for staffing agency workers in non-pilot counties. In most of the pilot States, however, staffing agencies were not able to initiate background checks, as the responsibility for conducting background checks typically fell to the long-term care facility where the individual was working. Staffing agencies are typically not classified as licensed health care facilities and are thus not regulated by the State, making it impractical to enforce background check requirements at the staffing agency level.

Procedures for obtaining background checks for staffing agency staff varied across the States and, in some cases, led to some confusion among providers. Providers reported uncertainty around the fingerprint requirement, who was responsible for obtaining the background check, who was authorized to submit the fingerprints and receive the results, and how frequently the background needed to be done e.g., with every assignment change or at the end of some specified time frame. Note that the pilot programs in Illinois and Wisconsin, both of which operated in only part of the State, did not include staffing agency staff. In these two States, staffing agency employees were only required to have the type of background check that was required for the non-pilot counties in those States.

#### **Who is Responsible for Obtaining the Background Check?**

While CMS allowed the States the option of establishing procedures for temporary staffing agencies to conduct background checks on their staff, most States did not allow staffing agencies to initiate fingerprint-based checks during the pilot. This was because staffing agencies are typically not classified as licensed healthcare facilities and are thus not regulated by States. New Mexico was the exception—the staffing agency was allowed to obtain the background check and to share the results of it with the licensed health care provider, which was required to maintain documentation that the criminal screening was conducted.

In other States, there was no mechanism for enforcing background check requirements directly through the staffing agency. The responsibility for compliance typically fell to the long-term care facility where the individual was working.

## **Who is Responsible for Submitting the Background Check and Receiving Results?**

Providers reported that provisions in their contracts with staffing agencies often addressed a background check requirement, making it the responsibility of the staffing agency to provide evidence of a clean check. Given that, in most States, staffing agencies were not able to submit background checks, both the agency and the provider were left in a tenuous position. Some staffing agencies would run non-pilot name-based checks on their staff, but these checks did not meet the requirements of the pilot. Since staffing agencies in most States were not able to initiate pilot background checks, the concerns on the part of providers appear justified. “How extensive is the background check that the agency does? We have our doubts.”

These concerns apparently led to some creative maneuvering of the system. One provider gave the following comment on staffing agencies:

“In our contract with the agency, they ensure that a name check had been done. That was confusing at first; agencies were sending for fingerprinting and then were not covered under the grant so (their contracts were) changed to do just the name check. We coordinated with all our agencies and we started sending in background checks for them because we could get it for free. It was for the common good. Then we sent the letter to the agency.”

When providers submitted fingerprints for staffing agency staff, who were not employees of the provider, they could be said to be acting outside the law. Facilities were responsible under the pilot for ensuring that independent contractors were background checked. However, staffing agency employees are not independent contractors hence leaving the provider with the choice of performing the check illegally or risk having individuals in the building who are not cleared and thus open for citation in the State survey and certification process.

Other providers reported running names through registries and county records and even submitting fingerprints, even though the staffing agency had stated that it had conducted its own name-based background check. To avoid this type of duplicative effort, one provider explained they tried to work out an arrangement with a sister facility so that “if a contract person had worked for a sister facility, maybe they wouldn’t need it to work in the other facility.” Their attorney, however, had said, that if there’s any doubt, “it’s best to just do the background check.”

## **How Frequently Are Background Checks Required for Staffing Agency Staff?**

In two pilot States, new background checks were required every time a staffing agency employee began working at a new facility. This was clearly redundant and an inefficient use of resources, especially given the large number of facilities at which some agency staff work. In other States, background checks could be used at multiple providers while employed by the same agency, there were still concerns about background check procedures for staffing agency staff.



#### **4.11. Use of Technical Assistance**

CMS contracted with the CNA Corporation (CNAC) to provide technical assistance to the States participating in the Background Check Pilot program, and this technical assistance was an important component of program implementation in several States. Technical assistance was provided to pilot States upon request. CNAC indicated that they provided technical assistance to five of the pilot States: Alaska, Illinois, New Mexico, Michigan, and Wisconsin. (Idaho and Nevada did not request any TA from CNAC.) Most of the TA involved IT issues, although Illinois also requested assistance with the drafting of regulations and Wisconsin requested assistance with the development of the data collection tool that employers in the pilot counties used to report information on the volume and outcome of background checks. Through August 2007, a total of \$2.34 million was spent on technical assistance.

## 5. Efficiency of Background Check Procedures

The MMA does not specify a time period within which background checks must be completed. However, a goal of the MMA was to create efficient processes for conducting background checks. Further, background check completion times have an impact on costs to providers, safety of residents, and staffing. For these reasons, completing background checks in a timely manner is an important goal of any background check system. As part of the assessment of efficient background check procedures (evaluation topic (e)(1) from Section 305 of the MMA), background check completion times across pilot States were compared and the sources of differences in completion times were analyzed.

Reflecting differences across States with respect to technology, the amount of time required for fingerprint capture and the learning curve associated with developing and implementing new programs, the time required to complete a background check varied considerably among the pilot States. Some of the most significant of these included: the type of technology used for conducting background checks, whether or not the background check identified any potentially disqualifying information, and whether or not an applicant appealed the background check findings. Of these factors, the use of Live Scan versus fingerprint cards for fingerprint collection and transmission seemed to make the biggest difference in processing times.

### 5.1. Average Completion Times

There is information on the time required to complete a background check for six of the pilot States. (Note: Limited completion time information is available for Wisconsin because their process is employer-driven with employers conducting registry checks, reviewing criminal history records and making fitness determination decisions, and the pilot did not require the Wisconsin employers to report individual applicant data, and instead permitted aggregate data, by special terms and conditions of the Wisconsin pilot.) Alaska took the longest to complete background checks, with an average processing time of 196 days and a median processing time of 183 days (Table 5.1). New Mexico and Nevada also had fairly lengthy completion times—the average number of days from initiation of the background check to final fitness determination notification was 89 days in Nevada and 73 days in New Mexico. It is noteworthy that, in all three of these States, fingerprints were collected primarily using fingerprint card rather than electronic fingerprint capture. In each of these three States, the fitness determination process (i.e., the time between collection of fingerprints and the final fitness determination decision) took more than twice as long as the fitness determination process in Idaho, Illinois, and Michigan, three States that collected fingerprints electronically (Figures 5.1 and 5.2).

Michigan had the lowest background check completion times among the six pilot States, with an average of 28 days and a median of 15 days. The average completion time was 33 days in Illinois (with a median of 17 days), and the average was 30 days in Idaho (median 19 days). A description of the time required for individual components of State background check programs is contained below.

**Table 5.1**  
**Average Number of Days to Complete Background Check**

Event	Alaska	Idaho	Illinois	Michigan	Nevada	New Mexico
Number of Days (Average)	195.6	29.5	32.6	28.2	72.8	89.2
Number of Days (Median)	183	19	17	15	61	52

Note that no data on average background check completion times is available for Wisconsin.

Source: State Quarterly Data Reports

**Figure 5.1: Average Background Check Completion Times By State**

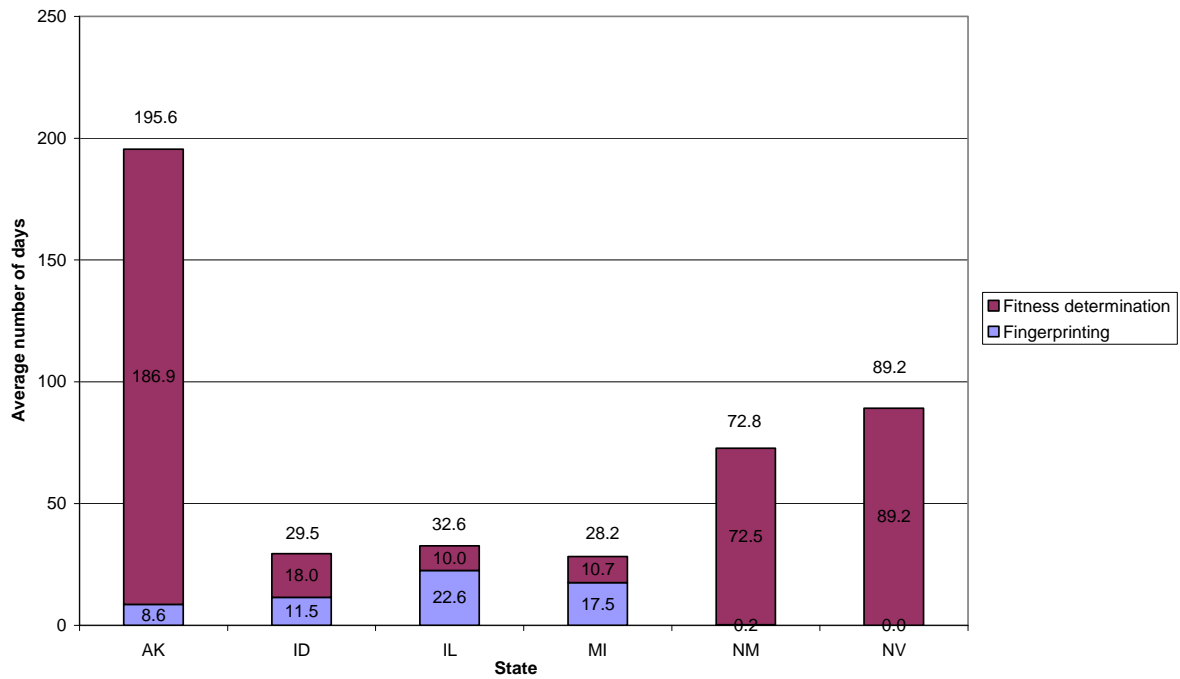
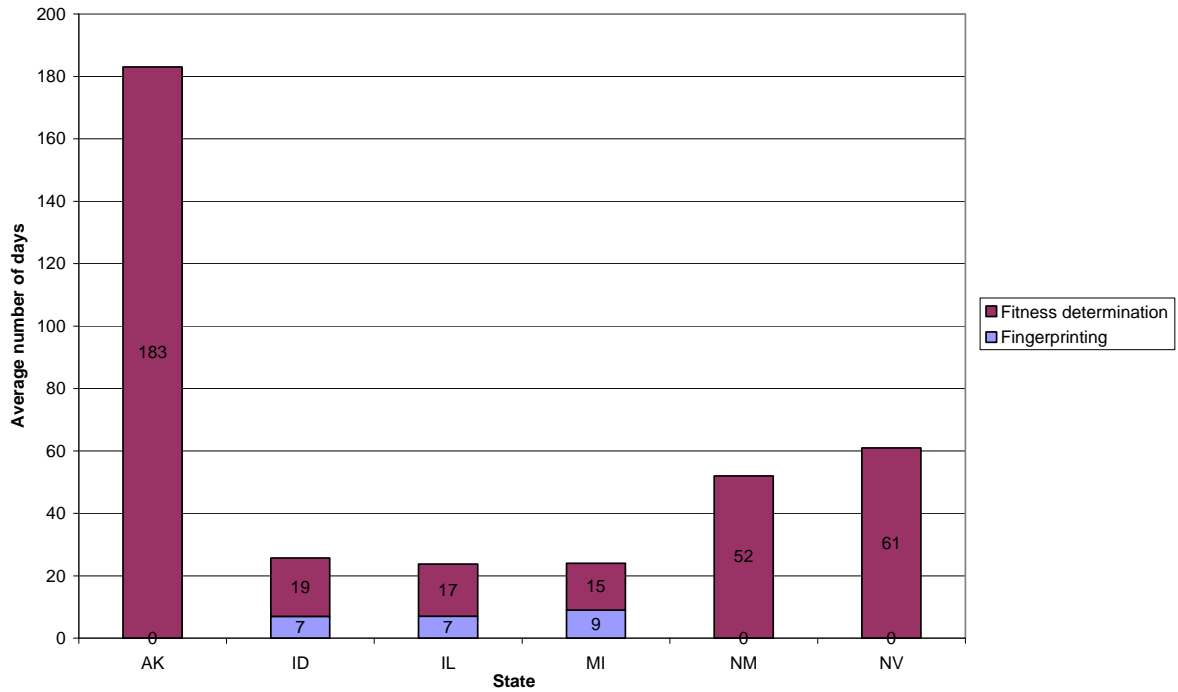


Figure 5.2: Median Background Check Completion Times By State



## Alaska

Alaska had the longest background check completion times of the seven pilot States. On average, the fitness determination process in Alaska took about 196 days to complete. This included about nine days from the initiation of the process to the time fingerprints are collected, and an average of 21 days from the time that the application was initiated until registry checks were completed (Table 5.2). The State submitted State and FBI fingerprint requests in batches, and it typically took about a month from the receipt of fingerprints until the initiation of the State and FBI background checks. On average, it took 114 days for the State response, which typically occurred about 150 days after the initial background check request. The Federal response typically took about two weeks longer. On average, employers and applicants were notified of the fitness determination process about 200 days after the initiation of the background check.

The State was overwhelmed by the volume of background check requests, which was a function of the large number of provider types included in its program. Alaska’s legislation included many provider types that were not required under the pilot in its background check program, and it also required background checks for current employees in addition to new hires. Combined with difficulties in the creation of its on-line application submission and database system and staff turnover, the State struggled to process background checks in a timely manner. Towards the end of the pilot, the State was increasing electronic collection of fingerprints, at least in urban areas, and this may lead to quicker processing times in the future.

**Table 5.2**  
**Alaska: Background Check Completion Times**

<b>Days from starting date to:</b>	<b>Mean</b>	<b>Median</b>
Registry checks completed	21	11
Fingerprinting	9	0
State background check request date	45	32
State background check response date	158	150
State fitness determination	192	182
Federal background check request date	44	32
Federal background check response date	174	162
Federal fitness determination	175	162
Fitness determination (both State and Federal)	196	183
Fitness determination notification	200	198
Voluntary withdrawal	N/A	N/A
Appeal	107	84
Appeal decision	129	107

Source: State Quarterly Data Reports

## Idaho

Idaho had relatively quick background check processing times, which was made possible by their use of Live Scan machines for fingerprint capture and the use of a sequential process that disqualified some applicants based on initial registry searches of information from the applicant self-disclosure. In addition, analysts encouraged some applicants who would not have been able to pass the background check to withdraw from the process voluntarily at the time of the fingerprinting appointment. In other States, where fingerprints were collected by fingerprint collection vendors or employers, it is likely that fewer applicants withdrew prior to fingerprint collection, although the available data do not permit direct comparisons across States.

Analysts at the State’s Background Check Unit completed the initial registry checks at the time of fingerprinting and submitted the fingerprints electronically to the State and to the FBI. On average, the background check process in Idaho took about 30 days to complete, and the median completion time was just under 19 days (Table 5.3). This included an average of 11.5 days from the initiation of the background check until applicant fingerprinting (the median time for this was seven days), and an average of about two weeks for the State response (median 9.5 days). In Idaho, the Federal background check request is typically not made until the results of the State check are reviewed. Typically, this occurred about 16 days after the initiation of the background check, although there were some records that took longer, pushing the average time for the FBI request to 26 days after the initiation of the background check. The FBI response typically occurred within two to three days of the request for electronic fingerprints and six days for fingerprint cards.

<b>Days from starting date to:</b>	<b>Mean</b>	<b>Median</b>
Registry checks completed	0	0
Fingerprinting	12	7
State background check request date	11	7
State background check response date	26	16
State fitness determination	28	18
Federal background check request date	26	16
Federal background check response date	30	19
Federal fitness determination	30	19
Fitness determination (both State and Federal)	30	19
Fitness determination notification	27	17
Voluntary withdrawal	12	7
Appeal	21	13
Appeal decision	67	56

Source: State Quarterly Data Reports

## Illinois

In Illinois, the average length of time for the fitness determination decision was 32 days from the initiation of the background check and the median time was 16.7 days (Table 5.4). This included an average of 22 days for fingerprinting, a figure that was skewed by some outliers in terms of the number of days between the initiation of the record and the fingerprint capture date (the median time for fingerprinting was only seven days) (Table 5.4). The State used a fingerprint vendor to collect fingerprints electronically, and typically received the results of the State and Federal background checks within two days of the request. Note that the State’s data do not include those who were disqualified based on the initial registry checks that employers conduct using the State’s web application.

On average, it took the State about four days to review the criminal records from the State to make the fitness determination decision. The State cited the automation of the fitness determination process (i.e., templates for the general letters that are sent out) as one reason for why they were able to process background checks quickly. The web application helped the State to reduce the amount of manual processes that were required.

Cases that went to appeal took longer, with an average of 65 days from the initiation of the record until the appeal decision. This was partly due to the loss of a staff person from the State’s waiver program whose position was not filled due to a hiring freeze.

<b>Days from starting date to:</b>	<b>Mean</b>	<b>Median</b>
Registry checks completed	0	0
Fingerprinting	23	7
State background check request date	25	8
State background check response date	26	10
State fitness determination	30	15
Federal background check request date	25	9
Federal background check response date	28	11
Federal fitness determination	28	11
Fitness determination (both State and Federal)	33	17
Fitness determination notification	35	19
Voluntary withdrawal	59	41
Appeal	60	49
Appeal decision	66	64

Source: State Quarterly Data Reports

## Michigan

Michigan had the shortest completion times of the six pilot States that provided individual applicant data. On average, the background check process in Michigan took about 28 days to complete, and the median time was 15 days (Table 5.5). These times include an average of 17.5 days for fingerprinting (median 9 days). The use of digital Live Scan devices enabled information from State and Federal background checks to be received quickly, and the State’s web application helped to eliminate unnecessary background checks by ending the process at the point in which disqualifying information is discovered.

The time between the request for and receipt of the State background and Federal background check were particularly quick. The State check averaged six days, and for the Federal check averaged six days.

Michigan did not have a rehabilitation review program, but had a small number of appeals based on the accuracy of the criminal history. For cases that went to appeal, the average completion time was 69 days for an appeal decision.

Especially considering the large volume of background checks processed in the State (Michigan accounted for more than 50 percent of total volume across the seven pilot States), the efficiency of Michigan’s program is impressive and offers several promising practices for other States that may be considering fingerprint-based background checks, including electronic fingerprint capture and the use of a web application that enables employers to get information from registries and name-based criminal records almost instantly, before the applicant begins provisional employment.

**Table 5.5**  
**Michigan: Background Check Completion Times**

<b>Days from starting date to:</b>	<b>Mean</b>	<b>Median</b>
Registry checks completed	2	0
Fingerprinting	18	9
State background check request date	19	10
State background check response date	25	13
State fitness determination	28	15
Federal background check request date	19	10
Federal background check response date	25	13
Federal fitness determination	25	13
Fitness determination (both State and Federal)	28	15
Fitness determination notification	28	15
Voluntary withdrawal	75	42
Appeal	57	48
Appeal decision	69	59

Source: State Quarterly Data Reports

## **Nevada**

Nevada had one of the higher completion times for background checks. On average, the background check process in Nevada took about 89 days (Table 5.6). This included an average of more than 40 days between when fingerprints were collected until the background check request is submitted to the State and to the FBI (the median time was much lower—10 days for the State and 11 days for the FBI). Most of the fingerprints in the State were collected via fingerprint card, and the lack of electronic fingerprint capture is likely one reason for the fairly lengthy completion times in the State. The State reported fewer rejections and faster turnaround times for fingerprints that were captured electronically. For cases that went to appeal, the average completion time was 126 days for an appeal decision.



<b>Days from starting date to:</b>	<b>Mean</b>	<b>Median</b>
Registry checks completed	N/A	N/A
Fingerprinting	0	0
State background check request date	41	10
State background check response date	82	59
State fitness determination	82	59
Federal background check request date	44	11
Federal background check response date	44	11
Federal fitness determination	44	11
Fitness determination (both State and Federal)	89	61
Fitness determination notification	44	11
Voluntary withdrawal	N/A	N/A
Appeal	94	72
Appeal decision	126	107

Source: State Quarterly Data Reports

## **New Mexico**

On average, the background check process in New Mexico took about 73 days to complete, and the median completion time is 52 days (Table 5.7). Since employers collect fingerprints in New Mexico, this processing time represents the length of time from fingerprint collection until the fitness determination decision. (This is contrast to other States, where there is often a gap between when the background check is initiated and when the fingerprints are collected.) The State had a considerable backlog in the submission of fingerprints to the State police and the FBI, and this accounted for most of the processing time. The median number of days from receipt of fingerprints to the FBI background check request was 41 days and the median was 50 days for the State background check. The State and Federal responses tended to occur quickly—the Federal fitness determination was made an average of 4 days after the Federal background check request date. For cases that went to appeal, it took an average of 82 days from the initiation of the background check until the appeal decision date.

<b>Days from starting date to:</b>	<b>Mean</b>	<b>Median</b>
Registry checks completed	N/A	N/A
Fingerprinting	0	0
State background check request date	73	50
State background check response date	N/A	N/A
State fitness determination	71	52
Federal background check request date	63	41
Federal background check response date	67	45
Federal fitness determination	67	45
Fitness determination (both State and Federal)	73	52
Fitness determination notification	71	52
Voluntary withdrawal	N/A	N/A
Appeal	56	50
Appeal decision	82	75

Source: State Quarterly Data Reports

## Wisconsin

Because Wisconsin has an employer-driven process for completing background checks, the WI-DHFS does not have data on the amount of time required to complete background checks. Instead, the State asked employers to track the number of days required to complete the fingerprint-based background check. On average, employers reported that this process took four days to complete. It is not possible to break this time estimate into the time required for individual components of the background check as was possible for the other States.

According to the State Final Report, the timeframe began when the entity received the completed Background Information Disclosure (BID) form from the prospective employee. Name based results were returned within minutes. The fingerprint process resulted in criminal histories being posted within 24-48 hours of the fingerprints being submitted to WI DOJ. Employers typically made final fitness determinations within 24-48 hours unless there was missing disposition information that needed to be pursued. The employer can view the results online and make an immediate fitness determination decision when all necessary information is available. On average, without missing dispositions, cumulative average time to complete the background check was four days.

## 5.2. Factors That Contributed to Differences in Background Check Completion Times

### Technology

The use of Live Scan technology versus fingerprint cards to capture and transmit fingerprints stood out as the most significant factor in reducing the number of days to complete the background check. States that did not use Live Scan, or used it only for some fingerprints, had significantly longer

completion times for background checks than those that used primarily Live Scan. Michigan, Illinois, Idaho, and Wisconsin all used Live Scan processing, and had low turn around times for background checks.

As part of the pilot, several States moved to electronic fingerprint systems. These States reported that processing time went down significantly as a result. For example, Michigan reported that, with the manual system, the average processing time was 46 days. With the electronic system, background checks were sometimes completed in as short as two days, exceeding the State's expectations. In comparison, background check processing times were much longer in Alaska, Nevada, and New Mexico, where most fingerprints were collected via fingerprint card. These manual processes tended to be cumbersome and time consuming.

## **Learning Curve**

For all of the pilot States except for New Mexico, average processing times were less in the second six month of pilot programs than in the first six months (Table 5.8), suggesting the possible presence of a learning curve with respect to processing background checks that resulted in improved efficiency.

- In Alaska, the average completion time was reduced from 213 days in the first six months to 200 days in months 7-12. Due to the data censoring resulting from a large number of pending checks, it was not possible to measure completion time for checks initiated after the program's first year.
- In Idaho, mean completion time was reduced from 45 to 35 days, and median completion time was 21 days in months 7-12. This includes an average of 11.7 (median 7 days) for fingerprinting.
- In Illinois, the median processing time was 34 days in the first six months, compared to 14 days in months 7-12.
- The mean processing time in Michigan dropped by half between the first and second six months, decreasing from 36 to 18 days. In months 7-12, median completion time was 15 days, of which 9 days was for the collection of fingerprints.
- Nevada's average processing time decreased from 120 to 79 days, and the median time fell from 75 to 51 days.
- In New Mexico, there was not evidence of a learning curve, as completion times were longer in months 7-12 than in months 1-6. The background checks conducted under the pilot were essentially the same as those conducted during the pre-pilot period, so there were no additional learning-curve related efficiencies to be gained during the pilot.

**Table 5.8**  
**Completion Times in First Six and Second Six Months of Pilot Programs**

State	Mean Completion Time		Median Completion Time	
	Months 1-6	Months 7-12	Months 1-6	Months 7-12
Alaska	213	177	200	172
Idaho	45	31	35	21
Illinois	30	34	21	14
Michigan	36	28	18	15
Nevada	120	75	79	51
New Mexico	51	96	35	62

Note: This information was not available for Wisconsin.

Source: State Quarterly Data Reports

### Length of Time for Fingerprint Capture

The length of time for fingerprint capture depended mainly on four factors: 1) use of Live Scan technology, 2) access to fingerprinting equipment/locations, 3) use of web-based registry searches and 4) fingerprint rejection rates.

Although use of Live Scan machines led to much faster processing time for fingerprints than fingerprint cards, at the beginning of the pilot, access to Live Scan fingerprinting equipment was an issue in some States. In Idaho, Michigan, and Illinois, three States where applicants had to travel off-site for fingerprinting, the median length of time between the initiation of the background check and fingerprinting was between seven and nine days (Table 5.9). Some employers reported that access to fingerprinting locations was a concern, as some fingerprinting offices were only open one or two days a week, and sometimes required applicants to travel 30 or more miles to reach them. Some States used mobile Live Scan machines to improve access in rural areas. Several States reported that the use of a single fingerprint vendor helped to improve access in rural areas by allowing the State to negotiate contract terms that guaranteed access to fingerprinting by applicants. For example, Michigan required that applicants be fingerprinted within 10 days of an appointment, and that applicants had to drive no more than 50 miles for a fingerprinting appointment, although most applicants had to travel less than 25 miles to be fingerprinted.

**Table 5.9**  
**Mean Number of Days to Complete Fingerprint Capture**

Event	Alaska	Idaho	Illinois	Michigan
Number of Days (Mean)	9	12	23	18
Number of Days (Median)	0	7	7	9

Note that this information is not available for Nevada, New Mexico, or Wisconsin.

Source: State Quarterly Data Reports

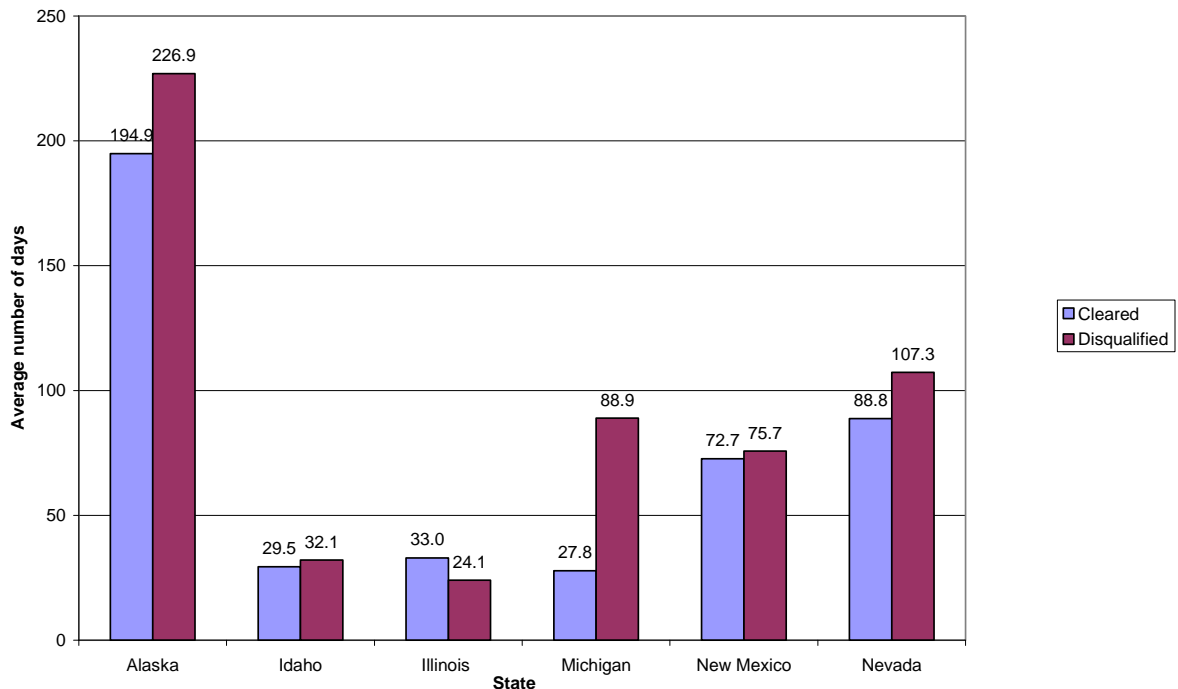
## Length of Time for Background Checks with a Criminal Record

In some States, the fitness determination decision was considerably quicker for applicants who did not have any disqualifying information. The difference was especially large in Michigan, Alaska, and Nevada. See Figure 5.3 for the average number of days of applicant disqualification/cleared by State.

- In Michigan, the average completion time was 28 days for applicants with no disqualifying information and 89 days for those who were disqualified based on the State background check.
- In Alaska, the average completion time was 195 days for those with no disqualifying crime and 227 days for applicants who were disqualified based on the State background check.
- In Nevada, the average completion time was 89 days for those who cleared the State check and 107 days for those who were disqualified.

The longer processing time was reportedly because of the backlog of criminal records with State analysts, time spent reviewing rap sheets, and time spent tracking down missing disposition information. Note that the data do not permit us to examine completion times for those with and without any criminal records, only based on whether they were disqualified or cleared.

**Figure 5.3: Average Background Check Completion Times By State and Whether the Applicant Was Cleared or Disqualified**



Note: In New Mexico and Nevada, the starting date for background checks is the same as the fingerprinting date.

## **Use of Web Application for Registry Searches**

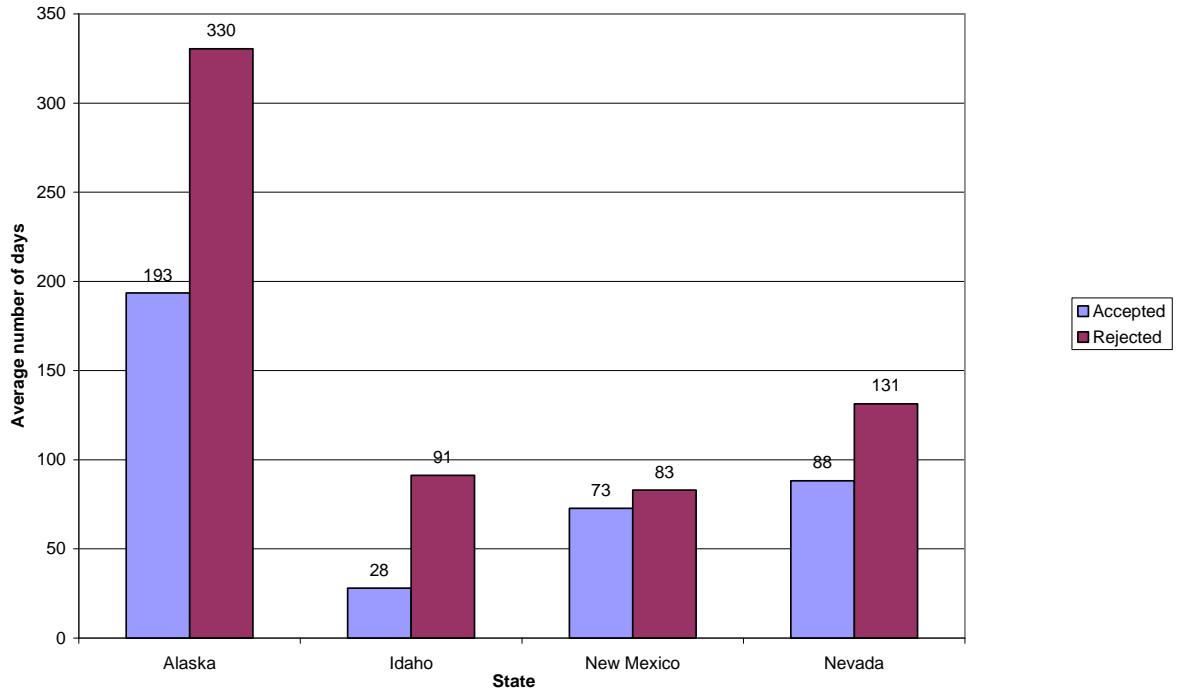
In several States, employers used these web-based applications to conduct the initial registry searches and to conduct name-based criminal record searches. The web applications contain links to all of the on-line registries that need to be checked as part of the background check, and, in some States, include name-based criminal record searches, and allow employers to enter the results of these registry checks. One goal of these systems is to allow for an incremental approach to conducting background checks. Employers can terminate the background check at any point at which disqualifying information is discovered, eliminating unnecessary fingerprint-based checks and the accompanying costs.

The median processing time for applicants disqualified based on the initial registry checks was five days in Alaska and same-day completion in Michigan, the only two States for which this information was available. Data from these two States illustrate the value of the initial registry checks in getting quick preliminary background check results back through the web application. In both of these States, more applicants were disqualified based on the registry checks than on the fingerprint-based background check.

## **Fingerprint Rejections and Processing Time**

Fingerprint rejection can result if fingerprints are not captured correctly, and these rejections slow down the background check process due to the need to notify the applicant of the fingerprint rejection and collect another set of fingerprints. In Alaska, applications with rejected fingerprints took an average of 330 days to complete versus 193 days for non-rejected fingerprints; in Idaho, applications with rejected prints took an average of 91 days vs. 28 days for other applications (Figure 5.4). Processing times in Nevada and New Mexico were also longer for applications that had rejected fingerprints. The lower fingerprint rejection rate associated with Live Scan is another benefit of electronic fingerprinting.

**Figure 5.4: Average Background Check Completion Times By State and Whether Initial Fingerprint Submission Was Rejected**



Note: No fingerprint rejection information was available for Wisconsin; no fingerprint rejections were reported for Illinois or Michigan.

## **6. Program Financing, Costs, and Who Pays?**

The MMA legislation related to the background check pilot program included several issues related to financing (evaluation topics (e)(2), (e)(3), and (e)(4)). These considerations for evaluation of the pilot program included issues of who should pay, whether and how costs should be allocated between the Medicare and Medicaid program, and the attendant issues related to resource allocation and efficiency for various State programs. The evaluation of financial aspects of background check programs, therefore, was a central part of the interviews with key informants in each pilot State. The pilot program's quarterly financial reports were important for understanding the level of expenditures by category.

### **6.1. Program Financial Structures Varied By State**

Financial structure varied by State. All of the pilot States had a background check program in place before the pilot which meant that some level of infrastructure existed at the State-level. Some States' pilot program operations depended heavily on the pilot grant funding from CMS, with others relying primarily on fees or State general funds. Many States reported that they were seeking a combination of funding from these various sources to run the pilot program and wanted to ensure continued viability after the pilot program was complete. States with well-established programs and procedures tended to use the CMS funding for incremental program expenditures, such as paying for the background checks for workers not covered under the pre-pilot program or to develop better information technology systems for processing applications.

### **6.2. Expenditures for the Pilot Program**

This section discusses the sources of funds that covered pilot program expenditures. The funding sources varied because each State had already developed such a program using State funds before the pilots were funded. Some States had their pre-pilot program funded through a single source that did all background checks within a State including police, health-related, and teaching personnel. Other States had background check programs within each sector such as a program dedicated to health care workers.

Therefore, the Federal pilot funds covered a number of different expenditures under the pilot depending on how each pilot State needed their program to be enhanced. The individual CMS grants to each pilot State identified some State-specific needs that could be covered. The evaluation identified several differences in how expenditures were covered through review of the individual grants, through site visit and conference call interviews and through the exit interviews with key informants.

At least three States reported that their actual expenditures for the program were below their projected budgets for the program. Reasons for under-spending relative to the pilot program budget varied, with one State reporting that a change in operations to shift resources from a State-program to one that would be sustained through industry reduced the planned expenditures considerably. Another State under-spent grant funds relative to the projected budget due to a reduced scale of operations, compressed time frame, and fewer background checks compared to the original proposal plans.



### 6.3. Medicaid as a Source of Funding for Background Check Programs

Medicaid reimbursement methods varied by State and provider type, with some having costs reimbursed through cost reports and some through other mechanisms. Stakeholders in several States reported that Medicaid was already a payment source for certain types of long-term care providers, such as those working in nursing homes and other settings where Medicaid is a major payer. The mechanism in place for these payments is based on nursing home cost reports, which rely on historical cost reports for settlement of current payment requests. Thus, there is often a lag between a new expenditure type being included on the cost report and adjustment of payments to reimburse those costs. Another consideration for Medicaid financing is that the State-based matching rate varies across States (See Appendix J for a list of Medicaid match rates in the pilot States). In at least one State, there was a general fee increase that would have covered the cost of background checks. Stakeholders in one State reported that nursing home providers could bill Medicaid directly for background check fees.

In discussions with the State agency officials in the pilot States, it was noted that there were varying levels of knowledge regarding the mechanisms in place to facilitate a Medicaid payment for State administrative fees (generally a 50 percent match rate) related to the background check program. Selected quotes from discussions regarding Medicaid financing of background checks and program costs are included below:

- "Nothing is allocated to Medicare or private payers. But Medicaid pays for their share of the record costs. This goes outside the cost reporting – the billing is allowed every six months or quarterly. We can charge Medicaid the cost of the fee and incidentals – ink and equipment. Medicare is a prospective rate and is on a national level so includes States with and without criminal history requirements."
- "For long-term care most of the revenue is from Medicaid, so we set rates to include background checks. For hospitals, we have no Medicaid reimbursement. The funding is general relief. Consideration was made for those increased costs – I am not sure how it will play out."
- "For providers whose rates are set in regulation...if and when to set rates...is it reasonable to increase rates for programs like the background checks? I can't say right now if it would justify a rate increase.... It varies how entities capture or meet that expense. Some may put it back on the employee, others may cover the expense themselves."
- [How significant is the Medicaid claiming money to the BC program?] "We just get the general budget – we'll see more of it when the pilot is over. 50% billed to Medicaid – administrative costs (50/50 match). I'd say 1/3 of operating costs. We did a cost work-up – fees, general funds – about 1/3 of the Medicaid match will be paid for."
- "The difficulty we've had is trying to figure out how you determine what percentage administrative costs are appropriate for Medicaid. We looked at the providers and if the recipients were Medicaid, to try to calculate the administrative costs...it was difficult for us coming from different divisions. We're not positive on how it's going to play out."
- "Having worked with providers and agencies for many years, it's become recently harder to find the right person to talk to about certain programs and issues. This is because there has been a lot more turnover in State positions, so the knowledge base has largely disappeared for some of the more technical aspects of program. I would like to think of new and innovative ways to find additional monies for financing the programs."

## **6.4. Allocation of Costs to Medicare and Medicaid**

There are two major dimensions of cost to consider when discussing the allocation of the cost of background checks between Medicare and Medicaid. They are the State administrative costs associated with the cost of running background check programs, and the operating costs borne by providers of care that comply with the requirements of background check programs. Each of these is briefly discussed below:

### **State Administrative Costs**

There are identifiable costs associated with the implementation and operation of background check programs by States that are reported, and successfully claimed from the Federal government for the Medicaid Program. This is possible as States administer the Medicaid program, and share the administrative expenses with the Federal government. As the Federal government administers the Medicare program, no such analogue currently exists for recovering such State administrative costs from that program. This appears to render Medicaid as a viable mechanism for seeking Federal financial participation.

The policies, procedures, and processes associated with claiming and recovering administrative expenses from the Federal government for a share (typically 50 percent) of Medicaid administrative costs are complex, thus making the process of recovering these costs a process requiring both expertise and foresight. Successful efforts to claim administrative costs associated with background check programs may require the appropriate filing and approval of a State Plan amendment, the successful development of cost allocation mechanisms, and attention to accounting procedures to assure that only the appropriate amounts are claimed. While some of the pilot States are rather sophisticated in these efforts, others have not even considered the possibility of such Medicaid claiming activities.

For many pilot States, these issues were not that important, as the grants covered many of the administrative expenses associated with the State programs. However, after the pilot, claiming Medicaid matching funds for such expenses may become more important for the sustainability of background check programs.

Many of the Medicaid directors who were interviewed as part of the evaluation were not familiar with options regarding the availability of Medicaid funding for the implementation and ongoing operating of background check programs. If the Federal government does pass legislation for background check programs at some point in the future, then guidance will need to be given to the State Medicaid Directors and relevant State agencies to ensure that they are informed of Federal requirements for background check programs and the timetable for the implementation. Also, State agencies may need to develop an appropriate State Plan Amendment to facilitate future Medicaid claiming for a background check's program expenses or a portion thereof.

### **Provider Operating Costs**

Long-term care providers subject to the requirements of the pilot program have incurred specific and identifiable costs associated with these programs. These costs are related to the payment of State processing fees, human resource costs related to guiding applicants through the background check

process and interacting with the State background check program to assure regulatory compliance, and other related administrative expenses. For some States, the costs associated with the State processing fees were waived during the pilot - and thus were not an incurred provider cost. With the end of the pilot, the recoupment of State processing fees by providers will become a very important issue.

For institutional long-term care providers (e.g., nursing homes and home health agencies), there are cost reporting mechanisms for both Medicare and Medicaid - designed to assure that rates of reimbursement are correlated with the costs of providing care. For Medicare, currently there is no statutory authority in place that allows costs of background checks to be included in the rate setting process. There are various mechanisms in these cost reports that are designed to assure that costs are allocated to the appropriate payer, and specific thresholds and caps to assure to limit the amounts that may be claimed in specific areas (e.g., administrative and operating vs. direct service provision). While these cost reporting mechanisms are generally codified in State and Federal regulation, and sometimes in statute, they are often contested and continue to evolve over time.

The presence of these cost reporting mechanisms, while not perfect, provide existing and well-tested mechanisms for the recovery and appropriate allocation of provider operating costs associated with background check programs. The specific weaknesses of such mechanisms may be their lack of sensitivity to covering the full costs associated with any specific program, and the time delays associated with the filing and auditing of Medicaid cost reports before any new costs incurred find their way into the rate structure. The Medicaid costs report represent the best available process of assuring that the costs of background check programs are appropriately reported and considered in the fee structure.

The remaining long-term care providers (those without cost based reimbursement) are typically paid on a fee schedule that is set by Medicare and by Medicaid. Quite often, Medicaid programs will mirror or base their fees schedules on Medicare fee schedules - but this is not always the case. States with background check pilot programs report that providers of care have requested increased reimbursement from Medicaid based, in part, upon the costs associated with the background check program. The results have been variable, with some States reporting that general rate increases were given based upon mounting costs of doing business - including those associated with the background check programs. Others have stated that no reimbursement increases were made, or would likely be considered, based upon the costs of the background check program. Stakeholders believed that, in the case of these types of providers, State Medicaid officials could consider future rate increases in the context of any requirements for providers to meet the regulatory requirements of background checks. However, the costs of these efforts are difficult to quantify, and may not constitute a singular justification for a rate increase, but rather may be part of overall discussions between providers of care policymakers (both State and Federal) that consider many other factors.

## **6.5. Provider Funding for Background Checks**

The evaluation team interviewed multiple providers and representatives of provider associations in each of the pilot States. Providers generally reported that they bear real administrative costs related to the conduct of background checks for their workers. These costs include human resources (HR) personnel time, costs associated with conducting multiple background checks (e.g., licensing checks, State criminal history checks, private background checks), HR time spent working with applicants to provide instructions regarding the background check application and process, HR time spent working

with State agencies to assure processing of the checks, and administrative costs associated with ensuring proper documentation of background check completion for staff. Even though providers could list the various components of these costs, most responded that it would be difficult to quantify a dollar amount per hire related to these costs. Many providers, particularly those that were affiliated with national corporations, reported that they also conduct a private background check for their workers and that the HR staff are involved in that process as well. Therefore, it was difficult for some providers to disentangle the administrative time costs for the two background check processes.

For the grant program, pilot States varied in their financing arrangements, with some States using grant funds to pay direct fees for background checks and other States requiring providers to finance the fees for their prospective employees. Many States had a provision that would allow providers to recover part or all of the costs of a background check from workers, though few reported that this was standard practice in an industry that has relatively low wages for many workers and a high vacancy rate. State programs generally required that providers pay the initial fee for the background check through a pre-arranged account with the State agency responsible for the registry check. At least one State indicated a challenge related to continued licensing for providers who were in payment default with the State public safety agency. As mentioned above, some providers were able to recover costs for background check through their Medicaid rate structure.

## **6.6. Who Should Pay for Background Checks?**

In an attempt to address (e)(4) of the MMA mandate to consider whether costs of future background checks should be allocated between Medicare and Medicaid, the evaluation team, posed the question of who should pay for background checks to most stakeholders interviewed by the evaluation team.

Pre-pilot programs varied in financing mechanisms, with many relying on more than one funding source from the State, and some were fee-based. Throughout the pilot some States continued to use State Agency or State university funding along with the Federal funds from the CMS grant.

Responses from the stakeholders did not provide a clear answer to this question. They did indicate that if the States are going to have to have a background check program, and especially if it is going to include FBI background checks, then Federal funds should cover a major proportion of the program costs. The stakeholders were speaking specifically to checks conducted on health care workers, and not on other types of workers in the States. The stakeholders recognized that while their States have a functioning background check program and would not need start-up funding, some other States would need both start-up and operating funding.

Though no theme emerged for identifying the best division of financial responsibility under a national program, three categories that were commonly reported as preferred options for funding: Federal government, State government, and providers. Although there was no mention of other non-profit, or private sector funding for background checks by the stakeholders, this option may exist. This evaluation has no data to consider the feasibility of funding other than public sector.

Reasons provided for Federal financing were generally related to the source of the CMS grant requirements, which were Congressionally mandated. Many stakeholders stated that the program was a Federal mandate, and therefore should be funded by the Federal government either directly through fee-based reimbursements allocated in some manner to the costs for each patient in the care of these employees, or as grants to States.

In other responses, State government funding was listed by some stakeholders as the preferred option because most current programs are operated by State agencies and States tend to regulate the long-term care provider types that are covered by the background check program. Still others suggested that background checks are a cost of doing business for providers and, therefore, should be considered the responsibility of the employer.

Stakeholders were generally not in favor of requiring that applicants pay fees for background checks. If this mechanism were selected, most suggested that the costs would need to be shared between the applicant and provider. A major concern regarding applicant-financed background checks was that the fee would pose a burden or barrier to employment for many applicants, particularly those in lower wage categories and non-licensed staff. Another issue raised by many of the stakeholders discussing applicants paying for the background check was that there would likely be workforce impacts that would result in greater vacancy rates for low-paying positions and that this would lead to lower capacity for care delivery and/or quality of care for long-term care clients. Another reason cited by some stakeholders was that the background check results did not belong to the applicant (i.e., the results of the background check were not transferable to the applicant if they seek employment elsewhere).

- "Checks through ADP (Automatic Data Processing, Inc.) were \$30. The facility paid since (its) corporate (headquarters) required [the check]. When the pilot is over, we'll continue to pay. It's the right thing to do. It would be hard for the applicant to afford."
- [He explained that he gets perturbed when told that he has to do the background check and pay for it when he could have done it himself for cheaper. He] "wouldn't mind splitting the cost with the State or achieving some kind of balance."
- "It would be nice to have a combination between the government and provider. You have to get [a background check] every time you hire someone."
- "They've decided in this State that it's the provider who should pay. It may be reimbursed by Medicare or Medicaid to some extent."
- "Since it's a low cost and one time thing, providers can manage it."
- "A lot of providers do recover [the background check] cost from the employee."
- "The State or [Federal government] should pay."
- "If the government requires it, the government should pay. (The facility) elects to do certain things (like drug testing) and pays for those expenses.]"
- "The facility should pay because they have the best opportunity to recoup the cost through their service fees for their clients – the consumer will ultimately pay for that higher price."
- If we required (applicants) to pay – it would be very difficult for us. They would go work in retail instead. These employers offer a bit more salary and offer better benefits package.
- [Should the applicant pay?] "No, it's not standard practice across any health care organization. Our workforce is at a lower entry level, pays little more than minimum. CNA is the dominant position in nursing homes. It's very hard to recruit people, there's lots of turnover. We'd have a hard time recruiting people if they had to pay for a background check."
- [Employers would pass along costs to Medicaid/State rather than ask workers to pay for it. It would be a] "deal-breaker" [to make employees pay.]
- "To charge [employees] any part of the fee is not in their philosophy"

## 6.7. Allocation of Costs to Medicare and Medicaid

The allocation of background check costs to Medicare and Medicaid was not a major issue in pilot States, which used grant funding as a source of Federal funds to supplement State funds. As a result, the evaluation was not able to reach conclusions about the question of whether costs of conducting background checks should be allocated between Medicare and Medicaid. If Medicare and Medicaid are used to fund all or part of background check costs, two alternatives were highlighted for how costs might be allocated between the two programs. These include calculating payments based upon either program participation or actual utilization.

- ***Program participation:*** One approach could be to base the allocation of costs on the basis of program participation. If an employer participates in Medicare and Medicaid, then any direct payments made to the facility would be covered equally between the two programs. Background check costs for Medicaid-only employers would be paid by Medicaid funds; costs for Medicare-only employers would be paid for by Medicare. A rationale for this approach is that the requirement to conduct background checks can be viewed as a basic program participation requirement and included in the rate setting process if Medicare is given the appropriate authority. This is the method that is used to allocate costs to Medicare and Medicaid for survey and certification activities. It is an approach that greatly simplifies administration and reduces delays associated with waiting for cost reports to be finalized, a process that can take several years.
- ***Utilization-based allocation:*** Another method could be to allocate payment by the number of patient days/visits paid for by Medicare or Medicaid. Under this method, payments would be based on a provider's actual utilization of resources for services provided to Medicare and Medicaid. This method could rely on provider cost reports, although it may be preferable to adopt a method that that would be faster than the cost report settlement process so that payments would be more immediate and would not be reduced or eliminated through the cost reporting process.

## 6.8. Methods for Reimbursement of Background Check Costs

If policymakers choose to fund a background check program, there are several potential methods that could be used to reimburse providers for their background check costs:

- ***Direct payments to State police and the FBI:*** States and the Federal government could cover background check costs by making direct payments to States and to the FBI. With this method, employers would not be responsible for paying background check costs, and it would not be necessary to use mechanisms such as cost reports (see discussion below) to allow employers to recover these expenses, reducing the administrative burden to employers. It would also free providers from having to front the costs of conducting the background check, removing a potential disincentive to employers' using the background check system. Under this approach, an allocation could be made to each State, perhaps through the survey and certification budget allocation process, to pay for the cost of maintaining the system. Payment to the FBI could be made through Inter-Agency Agreement. The amount of payment could be tied to the volume of background check requests or other agreed upon formula. Allocation of costs to Medicare (given statutory authority) and Medicaid could be

made based either on program participation or the number of patient days, based on data from the previous year. An end-of-the-year adjustment would allow for corrections to estimates.

- ***Medicare and/or Medicaid cost reports:*** For institutional long-term care providers (e.g., nursing homes and home health agencies), there are cost reporting mechanisms for both Medicare and Medicaid that are designed to assure that reimbursement rates are correlated with the costs of providing care. For these employers, another option would be to reimburse employers for the costs of background checks through the Medicare and Medicaid cost reporting mechanisms. The cost reports use various mechanisms to assure that costs are allocated to the appropriate payer, and have specific thresholds and caps to assure to limit the amounts that may be claimed in specific areas, such as, administrative and operating vs. direct service provision. They are an existing mechanism that can be used to allow employers to recover provider operating costs associated with background check programs.

Potential limitations of the cost report mechanisms may be their lack of sensitivity to covering the full costs associated with any specific program, and the time delays associated with the filing and auditing of cost reports before any new costs incurred find their way into the rate structure. Another limitation is that costs may be reported on the Medicare cost report for both Medicare-only and dually certified facilities, but such costs are not now statutorily permitted for inclusion in the Medicare rate-setting process.

It is important to note that, even in States where background check fees were covered by pilot funds, employers incurred administrative costs related to conducting background checks on their employees, such as human resource costs related to guiding applicants through the process and interacting with the State program officials to assure regulatory compliance. Thus, even if direct payments are made to the State police and FBI to cover their background check processing costs, cost reports could be a mechanism that could be used to reimburse providers for these costs if that were considered appropriate and is allowable.

- ***Considering background check costs in determination of fee schedules:*** In the case of providers for which specific fees schedules are set without formal cost reports, both State Medicaid and Medicare officials could consider future rate increases in the context of any requirements for providers to meet the regulatory requirements of background checks. However, the costs of these efforts are difficult to quantify, and may not constitute a singular justification for a rate increase, but rather may be part of overall discussions between providers of care and policymakers at the State and Federal levels who will place this issue in the broader context of funding health care.

## **6.9. Costs of Conducting Background Checks**

Aside from the standard FBI fee of \$24 per background check, each pilot State had a distinct fee structure for the background check program. Most programs relied on a fee structure that was in place prior to the pilot program implementation, with some States funding background check fees with grant funds. The tables below show the fees associated with background checks prior to the pilot program and during the pilot program. Cross-State comparisons of fee structures are difficult to make due to differences in program structures and types of registries searched. Excluding the standard FBI fee and fingerprinting fees that vary greatly even within most States, State fingerprint-based background check fees ranged from \$15 in Illinois and Wisconsin to \$60 in Alaska.

**Table 6.1****Background Check Program Features: Background Check Direct Costs for an Individual Application and Who Pays Under the Pilot**

<b>State</b>	<b>Description</b>
Alaska	The total cost of a background check is at least \$84 (\$35 for the State check, \$24 for the FBI check, and a \$25 Background Check Unit fee effective in July 2007). This does not include any charges associated with the rolling of prints, which average about \$25, but could be as low as \$5 or as high as \$40. Either the applicant or the employer pays these costs, depending on the employer's policies.
Idaho	The pilot program covers the \$45 cost of background checks (\$10 for the State background check, \$24 for the FBI check, and \$11 for administrative costs). There may be an additional fingerprinting fee for applicants who do not have their fingerprints collected at an IDHW office.
Illinois	In the pilot counties, direct access workers background checks were paid for by the pilot program, except for nurse aides, for whom background checks were previously required. For nurse aides in the pilot counties, grant funds were used to pay for the costs of the Live Scan check (\$10-20) and the FBI check (\$24), but not the State check conducted by the ISP (\$15), as this was already in place as a statewide requirement.
Michigan	The cost is \$70-80 (\$10 for the State ICHAT name-based check, \$24 for the FBI check, \$16 for fingerprint collection, and a \$30 State background check fee). The \$10 ICHAT fee is waived for non-profit employers.  Costs to cover the background checks are paid directly by the State to Identix, the fingerprint vendor, since State legislation does not allow costs to be charged either to the applicant or the employer.
Nevada	Background checks cost a minimum of \$69 (\$45 for the State criminal history, \$24 for the FBI check). There may be an additional charge of up to \$30 for the fingerprint capture. The \$45 fee is charged to the employer, who may recover up to 50 percent of it from each applicant.
New Mexico	Background checks cost \$65 (\$31 to support Caregivers Criminal History Screening Program activities, \$24 FBI check, \$10 for the State background check). The fee payment must accompany the fingerprint application and may be paid by either the employer of the employee.
Wisconsin	The fee for the existing Wisconsin Caregivers Program name-based search ranges from \$4.50, to \$15.50, which is paid directly by employers to the WI-DOJ.  Pilot funds covered the \$24 FBI fingerprint search fee, the \$18 Promissor fingerprint capturing fee, or \$5 Division of Gaming capture fee. Pilot funds were used to cover the \$4.50 to \$15.50 name-based background check fee for personal care workers, who were not previously subject to caregiver background check requirements. The WI-DOJ waived the \$15 fingerprint-based State background check fee for employers in the pilot counties.

Source: Abt Associates/UCDHSC, 2008.



**Table 6.2  
Comparison of Pre- and Pilot Background Check Component Direct Costs for an Individual Application by State**

	Alaska		Idaho		Illinois		Michigan		Nevada		New Mexico		Wisconsin	
	Pre-Pilot	Pilot	Pre-Pilot	Pilot	Pre-Pilot	Pilot	Pre-Pilot	Pilot	Pre-Pilot	Pilot	Pre-Pilot	Pilot	Pre-Pilot	Pilot
FBI Check (\$)		\$24	\$24	\$24		\$24	\$24	\$24	\$24	\$24	\$24	\$24	\$0	\$24
State Background Check Fee (State central repository)	\$20 (name- based)	\$35 (finger- print- based)	\$10	\$10	\$10 - \$20 (name- based)	\$15 finger- print- based)	\$10 (name- based)	\$30 finger- print- based	\$16	\$45 (finger- print- based)	\$7	\$10	\$4.50 - \$15.50 (name- based)	\$4.50 - \$15.50 (name- based)
Fingerprinting Fee	\$0 - \$35	\$5-\$40	\$0	\$0	\$0	\$7.95	\$0	\$16	\$5 - \$30	\$0 - \$30	\$0	\$0	\$0	\$5 - \$18
Processing Fee/Other	\$0	*\$25	\$11	\$11	\$0	\$0	\$0	\$0-10**	\$0	\$0	\$31	\$31	\$0	\$0
Total cost	\$20-\$55	\$89-124	\$45	\$45	\$10-20	\$49-59	\$34	\$70-\$80	\$45-70	\$69-99	\$62	\$65	\$2.5-\$15.5	\$44-\$57

\* Alaska began charging a \$25 administrative fee effective July 2007

\*\* Michigan charges for-profit entities \$10 for the ICHAT on-line check. This is not charged to non-profit entities.

Source: Abt Associates/UCDHSC, 2008.

## 6.10. Background Check Costs

To inform estimates of a national background check program, two methods of estimating background check costs were used.

- ***Fee-based cost estimates:*** The first method was based on the background check fees in place during the pilot and used data on the volume of background checks, fees, and information on program start-up and implementation costs. The analysis includes four of the seven pilot programs (Idaho, Michigan, Nevada, and New Mexico), excluding two pilot programs that were not operated statewide (Illinois, Wisconsin) and Alaska, a State with many unique features that effect the cost of its background checks.
- ***Resource-based cost estimates:*** Resource-based costing methods are based on the actual resources required to conduct background checks, which in some cases are different from the actual background check fees. Resource-based cost estimates were examined across the subset of three pilot states (Idaho, Michigan, and Nevada)<sup>6</sup> for which there was adequate information to obtain meaningful estimates. The primary distinction for the resource-based costing method from the fee-based method is in the approach to assessing costs used in the calculations. The purposes of these additional analyses were to (a) determine whether the alternative approach to estimating program costs would provide consistent and more precise cost estimates and (b) provide an alternative estimate for potential costs of a national background check program that is based on the resources required to conduct background checks rather than background check fees.

The cost estimates presented in this section are estimates of the total costs of background checks. This includes costs that might be paid for the Federal government, States, employers, and applicants. They are not estimates of the total Federal costs associated with a national background check program.

### 6.10.1. Methods

#### *Cost measures*

Two major categories of cost were considered in this analysis:

- ***Start-up and implementation expenditures.*** These costs include expenditures related to State program development using State-specific pilot grant funds as well as technical support provided via CMS funds to a technical support contractor. Estimates of program start-up and implementation costs were derived from multiple data sources, with reporting accuracy varying by State. One State provided detailed information with categorical expenditures for both start-up and operating expenses, while others provided expenditures by category as part of the final report that they submitted to CMS.

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<sup>6</sup> Note that there were not adequate data to determine resource-based operating costs for New Mexico. As with the fee-based cost estimates, Alaska, Illinois, and Wisconsin were also excluded.

- **Background check fees:** Information on the background check fees charged in the four States included in this analysis was used, including fees for fingerprint collection, the FBI and State Police criminal records checks, and any other fees charged by States. These fees were \$45 in Idaho, \$70 in Michigan<sup>7</sup>, \$84 in Nevada, and \$65 in New Mexico (see Table 6.2). Note that the estimates include the entire background check fee regardless of whether this was paid for by the Federal government (through grant funds), State funds, employers, or applicants. No attempt was made to separately estimate Federal and State costs, as this would depend on how these costs were allocated in a national program.

**Cost calculations: Fee-based cost estimates**

The fee-based costs of background checks for the four pilot States included in this analysis were calculated and used to estimate the costs of a national background check program. The cost for the pilot States was a function of their start-up and implementation expenditures, the volume of background checks, and their background check fees. The cost calculations do not include the impact of having background check results remain valid for a 12-36 month period (versus requiring a new background check every time an employee changes jobs). Rather, the calculations assumed that each potential hire must have a background check. The following methodology was utilized:

- **Annualized fee-based costs of background checks:** Provider types were categorized as nursing homes, other provider types required by the MMA<sup>8</sup> and optional provider types that were not required in the MMA legislation (e.g., assisted living facilities). Annualized fee-based costs are equal to the anticipated volume of background checks multiplied by the background check fee. Data on the volume of background checks conducted in each State over the duration of the pilot program were used to determine the average volume of checks per month. This was based only on the number of background checks that advanced to fingerprinting, as this step is generally the point in the process where fees would be assessed. Monthly volume estimates were annualized by multiplying the monthly estimate by 12. As an example, if a pilot program operated for 18 months and conducted 24,000 checks during that timeframe, the annual number of checks would be calculated as 16,000 (24,000 divided by 18 and multiplied by 12). For each State, annual costs for the fee-based costs of background checks are equal to the annualized volume of background checks times the fee charged in the State.
- **Five-year costs estimates:** Estimates of five-year costs rely on these assumptions:
  - **Background check fees over time:** To account for likely increases in fees and expenses to run State programs over time, the five-year estimates of costs include an overall inflation rate of 3 percent per year.
  - **Volume of background checks over time:** The analyses assumed that the volume of background checks would remain constant over the five years. Under the pilot

<sup>7</sup> Note that the background fee in Michigan is \$70 for non-profit employers and \$80 for for-profit entities.

<sup>8</sup> These include home health agencies, long-term care hospitals, hospitals with swing beds, intermediate care facilities for persons with mental retardation (ICFs/MR), home and community-based service (HCBS) group homes over eight beds, and personal care agencies approved under the Medicaid State Plan.

program, background checks were required for all new hires, and volume was relatively constant throughout the pilot (see Chapter 7 for further details). This is contrast to many pilot programs and demonstrations in which participation increases gradually over time. With background checks required for all new hires, the volume of background check is a function of the total number of direct access workers and their level of turnover, both of which are expected to remain relatively stable across time.

National costs were estimated using this methodology:

- ***Volume of background checks:*** National estimates were extrapolated based on the volume of nursing home background checks in the four states, of the proportion of background checks that are for nursing home applicants, and an estimate of the proportion of nationwide nursing home checks represented by the four States,
  - ***Volume of nursing home background checks in the four States:*** This was based on data from the pilot States on the number of background checks initiated for nursing home applicants. In the four states, annualized volume of nursing home checks was 41,558 (Table 6.3). These programs required background checks only for new applicants, not current employees. Estimates for a background check requirement that included current employees would be higher than the estimates reported in this section.
  - ***Proportion of nursing home background checks represented by the four States:*** The proportion of nursing home background checks in the four States ranged from 33 to 49 percent, with an average of 42.7 percent (Table 6.3). Estimates of national volume assume that overall volume (across all employer types) will be two to three times the volume of nursing home checks.
  - ***Proportion of nationwide nursing home checks represented by the four States:*** Calculations to reflect national volume of background checks rely on data from the CMS Online Survey, Certification, and Reporting System (OSCAR) on the proportion of full-time equivalent (FTE) nursing staff (RN, LPN, nurse aide) that are represented in the four States included in this analysis. Using OSCAR data from 2007, there are an estimated 37,122 FTE nursing staff in the four pilot States and 943,710 nationwide. Thus, the four States represent approximately 4 percent of the national nursing home care workforce.
- ***Costs:*** Both start-up/implementation costs and the costs associated with background check fees were considered.
  - ***Start-up and implementation costs:*** The estimate of program start-up costs assumes the start-up and implementation costs of the four pilot States are representative of the start-up costs that would be incurred by other States. Thus, the start-up and implementation costs from the four States are equal to 8 percent (4/50) of the start-up and implementation costs for a national program. Many of the implementation activities involve capital investment and other fixed start-up costs that would be largely independent of State size. These estimates also assume that pilot States would be eligible to receive additional start-up funds.

- **Background check fees:** The national estimates reflect a range of fees observed in the four pilot States included for the four-State cost estimate. Cost estimates based on the \$24 FBI fee that was in place during the pilot and the \$19.25 fee for electronically submitted fingerprints that became effective in October 2007 are presented. (Because it is anticipated that many States will submit fingerprints electronically, estimates for the \$32.25 fee for manually submitted fingerprints that also became effective in October 2007 are not presented.) Based on the four-State estimate, the lower-bound national cost estimate assumes a \$40.25 fee per check (this is based on the \$45.00 fee in Idaho, adjusted for the lower FBI fee for electronically submitted fingerprints), and \$84 is the upper-bound fee estimate. The mid-range fee estimate is \$61.25 per check.

***Cost calculations: Resource-based cost estimates***

Components of the resource-based cost estimates included:

- Start-up costs related to creating or modifying a State background check program.
- Operating costs related to ongoing administration and overhead for a State background check program (fixed costs) and conducting background checks (variable costs).
- Fees associated with State and FBI registry checks conducted outside of the State agency that runs the program for long-term care workers.

Our approach to this task included a detailed review of State final reports, interim expenditure reports, site visit interview data, and process flow diagrams. Detailed data regarding personnel costs, overhead, and implementation resources were included to the extent available. The basic method was similar to that used for the fee-based cost estimates, but the resource-based cost estimates used a different method of determining the costs of conducting background checks:

- The variable costs per background check were determined by costing the individual steps included in the State-specific process for background checks, with a focus on estimating the costs for those steps in the background check process that would necessitate incremental resources from the State program such as staff time or postage.
- Resource costs related to steps involving State program employee time relied on calculations of average hourly wage rates (including benefits) by State based on expenditures reported in State final reports. Further, time estimates were based on the evaluation team’s observations of processes in the pilot States during site visits to the various pilot programs. However, to simplify the resource-based costing approach, time estimates assumed that most processes required for typical background checks were related to minimal time per background check (5 minutes or less). Time estimates for non-typical background checks that included a disqualification, appeal, or review assumed that detailed review processes required a dedicated hour of State program employee time.
- Some steps required to conduct a background check, such as FBI processing of records and conduct of State registry checks by State police, could not be disaggregated with data

available to the evaluation team. In such situations, a fee-based estimate of resource costs was used. The assumption that resource costs are approximately equal to fees is grounded in the legal requirement among many State and Federal programs that fees cannot exceed costs.

- Because actual resources related to start-up were not reliably reported by most of the pilot States, the average start-up costs across states based on the costs reported by States (an average of \$990,010 per State) is reported.
- As with the fee-based cost estimates, an annualized measure of program operating costs was calculated. This was based on the combined operating expenses reported by States during the timeframe for the pilot program. Annual operating cost estimates were then divided by the annual number of checks to determine the "fixed" component of resources related to each check. This component of costs includes capital equipment such as printers or scanners, office overhead, telephones, and other fixed costs of program operations that are largely independent of background check volume. Since staff time was generally included as part of the variable background check cost, it was not included as part of the fixed program cost except for salaries to direct/administer the program. These estimates relied on data collected as part of the evaluation to determine the allocation of personnel costs as either a fixed or variable cost.

While the resource-based costing method is intended to provide more precise estimates of costs than the fee-based estimates, there are a number of assumptions regarding the value of resources that are required to make the estimates. For instance, these estimates assume that average hourly wage is an appropriate valuation for State program staff time and that time estimates for various procedures are, on average, correct. Program overhead, administration, and capital equipment are assumed to be fixed costs that can be divided by annual volume of checks to approximate an average fixed cost per check. The estimates assume that the administrative and overhead costs do not vary according to the disposition of the check. In practice, a State program office may be charged with more than one civilian applicant program and may use their office space and equipment for multiple programs.

#### **6.10.2. Fee-Based Estimates of Background Check Costs for Pilot States**

- The total annualized volume of background checks across the four States was 96,362 and the total fees were \$6.66 million (Table 6.3). The volume of checks varied from fewer than 8,000 checks per year in the lowest-volume State (New Mexico) to almost 63,000 checks per year in Michigan.<sup>9</sup>
- Start-up costs varied across states, with some states using start-up funds to provide only incremental enhancements and others making extensive modifications to an existing program. The evaluation team observed during the pilot program that the majority of States favored enhancements to their information technology systems as a primary use of start-up and

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<sup>9</sup> The estimated annual volume of background checks for New Mexico was lower than expected for the State population size relative to the other three States included in the estimate, which provides a rough guideline for scale of program operations to be expected across States. A lower-than-expected volume of background checks suggests that background check costs for New Mexico are a lower-bound estimate of costs for this State.

technical support resources. While some States requested extensive technical support via the CMS technical support contractor, others had inter-agency agreements or internal State agency staff available to assist with program enhancements. One pilot program (Nevada) offered grants for the purchase of LiveScan fingerprinting equipment, which resulted in equipment purchases as the major start-up expenditure category for that particular program. The average cost of implementation during the pilot program for the four-State analysis was approximately \$990,000 per State. Estimated start-up and implementation costs ranged from \$352,454 in Idaho to \$1.9 million in Michigan, and total start-up and implementation costs were \$3.96 million across the four States (Table 6.4).

- The estimated total annual cost of the initial year background check program for the four pilot states ranged from less than \$824,000 to over \$6.3 million (Table 6.5). After implementation, annual program costs to conduct background check screenings would range from around \$515,000 to almost \$5 million per state. The volume of background checks and intensity of start-up activities are the primary reasons for large ranges in estimated costs. The large difference in estimated costs reflects a real difference in program size and resources for program enhancement.
- Overall estimated costs across five years ranged from \$2.85 million in Idaho to \$25.2 million in Michigan. Total costs across the four States were estimated to be \$39.23 million. This included \$3.96 million for start-up and implementation costs and \$35.28 million for background check fees.

**Table 6.3**  
**Estimated Annual Fees for Background Checks, Initial Year**

	Idaho	Michigan	Nevada	New Mexico	Total
<b>1. Provider Types</b>					
Percentage Nursing Home	48.8%	45.7%	33.7%	33.3%	42.7%
Percentage Other Required providers	51.2%	54.3%	56.3%	56.8%	54.7%
Percentage Other Optional providers	0.0%	0.0%	10.0%	9.9%	2.88%
Total	100%	100%	100%	100%	100%
<b>2. Background Check Annualized Volume</b>					
Nursing Home	5,112	28,691	5,112	2,643	41,558
Other Required Providers	5,363	34,091	8,540	4,509	52,502
Optional Provider Types	0	0	1,517	786	2,303
Total for all provider types	10,475	62,782	15,168	7,938	96,362
<b>3. Background Check Fees (per Check)</b>					
FBI Background Check	\$24	\$24	\$24	\$24	
State Background Check(s)	\$10	\$30	\$45	\$10	
Other (fingerprinting, administrative)	\$11	\$16	\$15	\$31	
Total	\$45	\$70	\$84	\$65	
<b>4. Total fees by provider type and overall</b>					
Nursing Home	\$245,074	\$3,071,424	\$429,376	\$185,974	\$2,839,608
Other Required Providers	\$257,126	\$3,649,416	\$717,325	\$317,217	\$3,638,064
Optional Provider Types	\$0	\$0	\$127,411	\$55,290	\$178,490
Total for all provider types	\$502,200	\$6,720,840	\$1,274,12	\$558,480	\$6,656,162

Notes:

1. Percentages based on overall observed volume of checks according to provider type and MMA specifications
2. Average volume of background checks per month multiplied by 12 months, based on all months with data reported for the pilot.
3. Fees per background check are based on actual fees during pilot demonstration period. NV fingerprinting fees estimate is the mid-range of fees reported to the evaluation team
4. Total fees by provider type are the volume of checks multiplied by the total fee per check

Source: State Quarterly Data Reports, information on background check fees from State Operational Protocols



**Table 6.4**  
**Estimated Start-up and Implementation Costs by State for all Pilot States**

Start-up Costs	CMS Technical Support		State Total
	CMS Grant to State	Contract	
Idaho	\$344,026	\$8,428	\$352,454
Michigan	\$1,902,152	\$8,428	\$1,910,580
Nevada	\$1,000,395	\$8,428	\$1,008,823
New Mexico	\$517,223	\$170,956	\$688,180
Total (4 states)	\$3,763,796	\$196,242	\$3,960,038

Notes:

1. Detailed data were provided by Idaho regarding initial start-up costs. Interim budget and expense reports and State final reports provided data for other States, from which calculations of expenditures related to start-up activities were made. Nevada's CMS grant funds for start-up included the purchase of Live-Scan equipment provided to vendors via a State grant program.
2. Non-State specific fees for the CMS technical support contract were divided among the 7 pilot States for a single fiscal year of the pilot program. State-specific fees are added where applicable for the same fiscal year. Because CMS support contract costs are presented for a single year of the evaluation program, this estimate of technical support costs represents a lower-bound estimate of actual costs to the CMS Support Contract.
3. For fiscal year 2007, the CMS technical support contractor reported over \$2.39 million in total support to the seven pilot states, with state-specific support ranging from \$0 to \$308,000.
4. Note that one reason why the Michigan start-up costs were higher than those of the other States was because of Michigan's implemented a rap-back system.

Source: Abt/UCDHSC (2008)

**Table 6.5**  
**Estimated Annual Fees for Background Checks, Initial Year**

	<b>Idaho</b>	<b>Michigan</b>	<b>Nevada</b>	<b>New Mexico</b>	<b>Overall Total</b>
<b>Year 1</b>					
Start-up	\$352,454	\$1,910,580	\$1,008,823	\$688,180	\$3,960,038
Background Checks	\$471,377	\$4,394,729	\$1,274,112	\$515,945	\$6,656,162
Total	\$823,831	\$6,305,309	\$2,282,935	\$1,204,124	\$10,616,200
<b>Year 2</b>					
Background Checks	\$485,518	\$4,526,571	\$1,312,335	\$531,423	\$6,855,847
<b>Year 3</b>					
Background Checks	\$499,659	\$4,658,413	\$1,350,559	\$546,901	\$7,055,532
<b>Year 4</b>					
Background Checks	\$513,801	\$4,790,254	\$1,388,782	\$562,380	\$7,255,217
<b>Year 5</b>					
Background Checks	\$527,942	\$4,922,096	\$1,427,005	\$577,858	\$7,454,902
<b>Total Over Initial Five-Year Period</b>					
Start-up	\$352,454	\$1,910,580	\$1,008,823	\$688,180	\$3,960,038
Background Checks	\$2,498,297	\$23,292,063	\$6,752,794	\$2,734,506	\$35,277,660
Total	\$2,850,751	\$25,202,643	\$7,761,617	\$3,422,686	\$39,237,698

Notes:

1. Percentages based on overall observed volume of checks according to provider type and MMA specifications
2. Average volume of background checks per month multiplied by 12 months, based on all months with data reported for the pilot.
3. Fees per background check are based on actual fees during the pilot period. NV fingerprinting fees estimate is the mid-range of fees reported to the evaluation team
4. Total fees by provider type are the volume of checks multiplied by the total fee per check

Source: State Quarterly Data Reports, information on background check fees from State Operational Protocols

### 6.10.3. Fee-Based Estimates of National Background Check Costs

Results from the analyses are provided in Tables 2 and 3. Table 1 is provided as a reference to the calculation methods used for the estimates of costs for four pilot States. Highlights include:

- Estimated volume varies from approximately 2.13 million checks to 3.12 million total background checks per year (Table 6.6). The mid-range estimate reflects 2.57 million annual background checks. The estimate of total background check costs for the first year of the program is between \$85.7 and \$262.08 million, with a mid-range estimate of \$157.6 million. The \$85.7 million estimate assumes the lower bound for both volume of background checks and fees; the \$262.08 million figure assumes the upper bound for both volume and fees.
- The initial year start-up and implementation costs are estimated to be \$49.5 million (Table 6.7). It is assumed that States would be ready to move with reasonably fast implementation and that these costs would be incurred in Year 1. If there are some States in which start-up takes longer, then the start-up and implementation costs would be stretched out over a longer period of time.
- Total costs for Year 1 would range between \$135.19 million and \$311.58 million. After initial implementation, annual national program costs to conduct background check screenings would range from \$88.26 million to \$269.95 million in year 1 and between \$95.98 million by year 5. Overall estimated costs across the five-years ranged from approximately \$504 million to over \$1.4 billion. The mid-range estimate is \$885 million.

**Table 6.6**  
**National Background Check Cost Estimates: Year 1**

	Upper Bound	Average	Lower Bound
<b>Provider Types</b>			
Percentage Nursing Home	33.30%	40.38%	48.80%
Percentage Other Required Providers	56.70%	54.65%	51.20%
Percentage Other Optional Providers	10.00%	4.98%	0.00%
Total	100%	100%	100%
<b>Background Check Annualized Volume</b>			
Nursing Home	1,038,949	1,038,949	1,038,949
Other Required Providers	1,769,021	1,406,280	1,090,045
Optional Provider Types	311,997	128,019	-
Total for All Provider Types	3,119,967	2,573,248	2,128,994
<b>Fees</b>			
Total Fees per Check (\$24 FBI fee)	\$84.00	\$66.00	\$45.00
Total Fees per Check (\$19.25 FBI fee)	\$79.25	\$61.25	\$40.25
<b>Total Fees by Provider Type and Overall (\$24 FBI fee)</b>			
Nursing Home	\$87,271,717	\$68,570,635	\$46,752,705
Other Required Providers	\$148,597,788	\$92,814,494	\$49,052,019
Optional Provider Types	\$26,207,723	\$8,449,261	-
Total for All Provider Types	\$262,077,228	\$169,834,389	\$95,804,724
<b>Total Fees by Provider Type and Overall (\$19.25 FBI fee)</b>			
Nursing Home	\$82,336,709	\$63,635,627	\$41,817,698
Other Required Providers	\$140,194,937	\$86,134,663	\$43,874,306
Optional Provider Types	\$24,725,738	\$7,841,170	-
Total for All Provider Types	\$247,257,385	\$157,611,460	\$85,692,003

Notes:

1. Provider type percentages are based on the actual distribution of background checks from four pilot States.
2. OSCAR nursing home workforce data were used to estimate the number of nursing home checks.
3. The national volume of checks for non-nursing home providers was estimated based on the provider type percentages.
4. Fee ranges are based on fees in place for four pilot states during the pilot and with the current \$19.25 FBI fee in place for electronic submissions.
5. Total fees are calculated as the volume of checks multiplied by the fee per check.

Source: Abt/UCDHSC (2008)

**Table 6.7  
National Background Check Program Overall Five-Year Cost Estimates to Cover All Fees and Start-Up Costs**

	Upper Bound	Average	Lower Bound
<b>Year 1</b>			
Start-up	\$49,500,500	\$49,500,500	\$49,500,500
Background Checks	\$262,077,228	\$157,611,460	\$85,692,003
Total	\$311,577,728	\$207,111,960	\$135,192,503
<b>Year 2</b>			
Background Checks	\$269,939,545	\$162,339,804	\$88,262,764
<b>Year 3</b>			
Background Checks	\$277,801,862	\$167,068,147	\$90,833,524
<b>Year 4</b>			
Background Checks	\$285,664,178	\$171,796,491	\$93,404,284
<b>Year 5</b>			
Background Checks	\$293,526,495	\$176,524,835	\$95,975,044
<b>Total Over Initial Five-Year Period</b>			
Start-up	\$49,500,500	\$49,500,500	\$49,500,500
Background Checks	\$1,389,009,308	\$835,340,737	\$454,167,618
Total	\$1,438,509,808	\$884,841,237	\$503,668,118

Notes:

1. These are estimates of total background check costs, including Federal and State costs, as well as any costs paid by employers and applicants.
2. Across estimates, Year 1 start-up costs per State assume the average start-up cost for the four pilot States, or \$990,010 per State.
3. Cost estimates include a 3% inflation rate per year after Year 1.
4. The lower-bound estimate assumes a \$19.25 FBI fee with a \$40.25 total fee, 2128994 initial checks with constant volume of checks over time.
5. The mid-range estimate assumes a \$19.25 FBI fee with a \$61.25 total fee, 2573248 initial checks with constant volume of checks over time.
6. The upper-bound estimate assumes a \$24 FBI fee with a total \$84 fee, 3119967 initial checks with constant volume of checks over time.

Source: Abt/UCDHSC (2008)

#### 6.10.4. Resource-Based Estimates of Background Check Costs for Pilot States

Results are summarized in Tables 6.8 through 6.12, which are similar in layout to the presentation of findings using the fee-based methodologies. Highlights include:

- The range of resource-based costs ranged from approximately \$17 per check to \$81 per check (Table 6.8). The resource differences are primarily related to the outcomes of checks that result in a clearance, denial, or appeal. While most checks clear, additional processing for barring employment among those who are denied and/or time required to complete the appeals process can require extensive time for State program staff.
- The total resource-based costs and fee estimates in Table 6.8 suggest that fees may not cover total operating costs in some States. For example, total fees in Idaho are \$45 per check. The data suggest that this fee structure covers the variable cost of background checks (e.g., fingerprinting appointments), but that fixed costs are derived from other sources. This

observation is consistent with data collected as part of the site visit and telephone interviews with key informants in that State. For example, the State did not charge applicants for the collection of fingerprints, but the State did incur costs associated with eight staff hired to staff the 14 fingerprint locations in the State (see Section 4.2 for more details on the Idaho background check process).

- Table 6.9 provides State-specific estimates of annual program costs for all provider types using resource-based costs and fixed fees based on the estimates provided in Table 1. Excluding the fees for State and FBI background checks, annual resource-based costs for screening would range from approximately \$262,000 in Nevada to over \$1.3 million for Michigan. With the fees included, the annual cost estimate for both Michigan and Nevada are similar to the fee-based estimate for annual costs. The estimated cost for Idaho is approximately \$300,000 per year higher compared to the fee-based estimate.
- The five-year cost estimates were \$4.50 million for Idaho, \$26.85 million for Michigan, and \$7.75 million for Nevada (Table 6.10). As with the fee-based cost estimates, these estimates assume a 3 percent annual rate of inflation and otherwise stable program operations costs.
- Table 6.11 provides a national cost estimate for a single year of program operations. As with the fee-based estimates, the analyses assume that all start-up and implementation costs will be incurred in the first year. The implicit assumption is that States would be ready to move ahead with reasonably fast implementation, but it may be that these costs would be incurred over a longer period of time. The range for these estimates is narrower and more costly than that suggested by the fee-based approach. The lower-bound estimate of \$832.43 million reflects a total cost of \$70 per check with approximately 2 million annual screenings, whereas the upper-bound estimate reflects a total cost of \$86 per check and over 3 million annual screenings for a total cost of over \$1.46 billion. The mid-range estimate of \$1.05 billion reflects a total cost of \$74 per check and approximately 2.6 million annual screenings.
- The national 5-year cost estimates using the resource-based costing approach suggest a lower-bound estimate (\$832.43 million) that is closer to the mid-range estimate for the fee-based approach (\$884.84 million). The upper-bound estimate for both approaches was approximately \$1.4 billion over a 5-year timeframe (Table 6.12). This suggests a more-precise estimate of national program costs than the fee-based methodology with generally consistent results across the two approaches to cost assessment.

**Table 6.8**  
**Resource-based Costs and Fees per Background Check for Select Pilot States**

	Idaho			Michigan			Nevada		
	Applicant Cleared	Applicant Denied	Applicant Appeals	Applicant Cleared	Applicant Denied	Applicant Appeals	Applicant Cleared	Applicant Denied	Applicant Appeals
<b>Resource-Based Components</b>									
Variable Costs per									
Check	\$9.02	\$12.51	\$49.57	\$14.79	\$18.37	\$39.86	\$0.50	\$1.00	\$37.21
Fixed Costs per Check	\$31.64	\$31.64	\$31.64	\$6.15	\$6.15	\$6.15	\$16.79	\$16.79	\$16.79
Subtotal	\$40.65	\$44.15	\$81.21	\$20.94	\$24.52	\$46.01	\$17.29	\$17.79	\$54.00
<b>Fee-Based Cost Components</b>									
FBI Background Check	\$24.00	\$24.00	\$24.00	\$24.00	\$24.00	\$24.00	\$24.00	\$24.00	\$24.00
State Background									
Check	\$10.00	\$10.00	\$10.00	\$30.00	\$30.00	\$30.00	\$45.00	\$45.00	\$45.00
Subtotal	\$34.00	\$34.00	\$34.00	\$54.00	\$54.00	\$54.00	\$69.00	\$69.00	\$69.00
<b>Total Costs per Check</b>	<b>\$74.65</b>	<b>\$78.15</b>	<b>\$115.21</b>	<b>\$74.94</b>	<b>\$78.52</b>	<b>\$100.01</b>	<b>\$86.29</b>	<b>\$86.79</b>	<b>\$123.00</b>

Notes:

1. Wage rates for program staff in each State were calculated from pilot grant reports of budgets and expenditures and include fringe benefits.
2. Variable costs were calculated by assigning time estimates and wage rates to activities that include State employees.
3. Variable costs also include per-unit of background check costs related to postage, supplies, and/or printing.
4. Fixed costs per check in Michigan reflect the relatively high volume of background check compared to Idaho and Nevada across which operating costs are divided.
5. External fees include the FBI and State background checks, for which specific resources are not known.
6. For each State, a range of resource-based costs are provided to reflect the typical case for cleared applicants, rarer case of denials, and rarest case of appeals.
7. Resource-based costs per check in Nevada exclude fingerprinting, since fingerprinting of applicants was conducted outside of State program auspices.
8. All subsequent analyses included with these estimates focus on the typical case in which an applicant is cleared to work.

Source: Abt/UCDHSC (2008)

**Table 6.9**  
**Estimated Annual Fees for Background Checks, Initial Year**

	Idaho	Michigan	Nevada	Total (3 states)
<b>1. Provider Types</b>				
Percentage Nursing Home	48.8%	45.7%	33.7%	43.75%
Percentage Other Required providers	51.2%	54.3%	56.3%	54.33%
Percentage Other Optional providers	0.0%	0.0%	10.0%	1.93%
Total	100%	100%	100%	100.00%
<b>2. Background Check Annualized Volume</b>				
Nursing Home	5,112	28,691	5,112	38,915
Other Required Providers	5,363	34,091	8,540	47,993
Optional Provider Types	0	0	1,517	1,517
Total for all provider types	10,475	62,782	15,168	88,425
<b>3. Background Check Fees (per Check)</b>				
FBI Registry Check Fee	\$24.00	\$24.00	\$24.00	
State Background Check Fee(s)	\$10.00	\$30.00	\$45.00	
Resource-Based Variable Cost	\$9.02	\$14.79	\$0.50	
Resource-Based Fixed Cost	\$31.64	\$6.15	\$16.79	
Total Estimated Cost per Check	\$74.66	\$74.94	\$86.29	
<b>4. Total fees by provider type and overall</b>				
Nursing Home	\$381,648	\$2,150,126	\$441,081	\$2,972,856
Other Required Providers	\$400,418	\$2,554,745	\$736,881	\$3,692,044
Optional Provider Types	\$0	\$0	\$130,885	\$30,885
Total for all provider types	\$782,066	\$4,704,871	\$1,308,847	\$6,795,784

Notes:

1. Percentages based on overall observed volume of checks according to provider type and MMA specifications.
2. Average volume of background checks per month multiplied by 12 months, based on all months with data reported for the pilot.
3. Cost per background check are based on actual fees for FBI and State background checks during the pilot period and resource-based costs of conducting checks using state-specific procedures for each State.
4. Cost per background check includes fingerprinting in Idaho and Michigan. Fingerprinting is conducted outside the State program in Nevada, so is excluded from resource-based variable costs.
5. Total fees by provider type are the volume of checks multiplied by the total cost per check.

Source: Abt/UCDHSC (2008)



**Table 6.10**  
**Five-Year Resource-Based Cost Estimates for Background Check Programs in Select Pilot States**

	<b>Idaho</b>	<b>Michigan</b>	<b>Nevada</b>	<b>Overall Total</b>
<b>Year 1</b>				
Start-up	\$352,454	\$1,910,580	\$1,008,823	\$3,271,858
Background Checks	\$782,066	\$4,704,871	\$1,308,847	\$6,795,784
Total	\$1,134,521	\$6,615,452	\$2,317,670	\$10,067,643
<b>Year 2</b>				
Background Checks	\$805,528	\$4,846,017	\$1,348,112	\$6,999,658
<b>Year 3</b>				
Background Checks	\$828,990	\$4,987,163	\$1,387,378	\$7,203,531
<b>Year 4</b>				
Background Checks	\$852,452	\$5,128,310	\$1,426,643	\$7,407,405
<b>Year 5</b>				
Background Checks	\$875,914	\$5,269,456	\$1,465,908	\$7,611,278
<b>Total Over Initial Five-Year Period</b>				
Start-up	\$352,454	\$1,910,580	\$1,008,823	\$3,271,858
Background Checks	\$4,144,952	\$24,935,817	\$6,936,888	\$36,017,657
Total	\$4,497,407	\$26,846,398	\$7,945,711	\$39,289,515

Notes:

1. Estimates include 3% annual inflation. Estimates assume stable processes for resource-based cost and fee structures and program infrastructure/staffing over the five-year period.
2. Start-up costs are listed for Year 1, but include all costs related to start-up and implementation during the pilot program timeframe.

Source: Abt/UCDHSC (2008)

**Table 6.11**  
**Resource-Based Cost Estimates of National Background Check Annual Costs**

	Upper Bound	Average	Lower Bound
<b>1. Provider Types</b>			
Percentage Nursing Home	33.30%	40.38%	48.80%
Percentage Other Required Providers	56.70%	54.65%	51.20%
Percentage Other Optional Providers	10.00%	4.98%	0.00%
Total (should be 100%)	100%	100%	100%
<b>2. Background Check Annualized Volume</b>			
Nursing Home	1,038,949	1,038,949	1,038,949
Other Required Providers	1,769,021	1,406,280	1,090,045
Optional Provider Types	311,997	128,019	-
Total for All Provider Types	3,119,967	2,573,248	2,128,994
<b>3. Resource Based Costs, State Police and FBI Fee per Check</b>			
Total Fees (includes \$24 FBI Fee)	\$86	\$79	\$75
Total Fees (includes \$19.25 FBI fee)	\$81	\$74	\$70
<b>4a. Total cost by provider type and overall (\$24 FBI Fee)</b>			
Nursing Home	\$89,349,615	\$82,076,972	\$77,567,933
Other Required Providers	\$152,135,831	\$111,096,136	\$81,382,750
Optional Provider Types	\$26,831,716	\$10,113,509	\$0
Total for All Provider Types	\$268,317,162	\$203,286,618	\$158,950,683
<b>4b. Total cost by provider type and overall (\$19.25 FBI Fee)</b>			
Nursing Home	\$84,154,870	\$76,882,227	\$72,726,431
Other Required Providers	\$143,290,724	\$104,064,735	\$76,303,140
Optional Provider Types	\$25,271,733	\$9,473,414	\$0
Total for All Provider Types	\$252,717,327	\$190,420,376	\$149,029,571

Notes:

1. Provider type percentages are based on the actual distribution of background checks from four pilot States
2. OSCAR nursing home workforce data was used to estimate the number of nursing home checks
3. The national volume of checks for non-nursing home providers were estimated based on the provider type percentages
4. Fee ranges are based on fees in place for four pilot states during the pilot and with the current \$19.25 FBI fee in place for electronic submissions
5. Total fees are calculated as the volume of checks multiplied by the total cost and fees per check

Source: Abt/UCDHSC (2008)

**Table 6.12**  
**National Background Check Five-Year Costs Based on Resource-Based Cost Estimates**

	Upper Bound	Average	Lower Bound
<b>Year 1</b>			
Start-up	\$42,570,430	\$42,570,430	\$42,570,430
Background Checks	\$268,317,162	\$190,420,376	\$149,029,571
Total	\$310,887,592	\$232,990,806	\$191,600,001
<b>Year 2</b>			
Background Checks	\$276,366,677	\$196,132,987	\$153,500,458
<b>Year 3</b>			
Background Checks	\$284,416,192	\$201,845,598	\$157,971,345
<b>Year 4</b>			
Background Checks	\$292,465,706	\$207,558,210	\$162,442,233
<b>Year 5</b>			
Background Checks	\$300,515,221	\$213,270,821	\$166,913,120
<b>Total Over Initial Five-Year Period</b>			
Start-up	\$ 42,570,430	\$42,570,430	\$42,570,430
Background Checks	\$1,422,080,958	\$1,009,227,992	\$789,856,727
Total	\$1,464,651,388	\$1,051,798,422	\$832,427,157

Notes:

1. These are estimates of total background check costs, including Federal and State costs, as well as any costs paid by employers and applicants
2. Across estimates, Year 1 start-up costs per State assume the average start-up cost for the four pilot States, or \$990,010 per State.
3. Cost estimates include a 3% inflation rate per year after Year 1.
4. The lower bound estimate assumes a \$19.25 FBI fee with a \$70 total cost per check, 2,128,994 initial checks with constant volume of checks over time.
5. The mid-range estimate assumes a \$19.25 FBI fee with a \$74 total cost per check, 2,573,248 initial checks with constant volume of checks over time.
6. The upper bound estimate assumes a \$24 FBI fee with a \$86 total cost per check, 3,119,967 initial checks with constant volume of checks over time.
7. Start-up cost estimates assume that the seven pilot States would not require additional start-up funds.

Source: Abt/UCDHSC (2008)

### 6.10.5. Discussion

To inform estimates of a national background check program, cost estimates were developed using two methods: fee-based cost estimates and resource-based cost estimates. Both methods used data on the volume of background checks and information on program start-up and implementation costs. The fee-based cost estimates used information on the background check fees in place during the pilot. The resource-based estimates were based on the actual resources required to conduct background checks, which in some cases are different from the actual background check fees.

The fee-based analysis includes four of the seven pilot programs (Idaho, Michigan, Nevada, and New Mexico), excluding two pilot programs that were not operated statewide (Illinois, Wisconsin) and Alaska, a State with many unique features that affect the cost of its background checks. Due to data limitations, it was not possible to include New Mexico in the resource-based cost estimates.

The estimate is that the fee-based costs for a nationwide background check program would be between \$135.19 million and \$311.58 million for the first year of the program. This estimate includes \$49.5 million in start-up and implementation costs and between \$85.7 million and \$262.08 million for background check fees, depending on the volume of checks and the level of fees. Overall estimated costs across the five-years ranged from approximately \$504 million to over \$1.4 billion. The mid-range estimate is \$885 million. Cost estimates based on the resource-based approach were slightly higher than the fee-based estimates. Over a five year period, the average (mid-range) estimate was \$1.051 billion using the resource-based approach. The analyses suggested that State fee structures covered the variable costs of background checks (e.g., fingerprinting appointments) but not necessarily the fixed costs.

The analysis has several important limitations. It is not known how representative the experiences of the four States included in the analysis would be of other States in terms of background check volume, fees, and start-up/implementation costs. Because many of the assumptions for the national estimates are based on data from these States, readers should interpret results understanding that the procedures and costs for these selected State programs may not reflect actual procedures or costs that would be expected in all State programs. Also, while the analyses assume that the volume of background checks will remain constant over time, this may not be the case if there are changes in staffing or turnover levels over time. Because the cost estimates are based on volume estimates from the pilot States, they implicitly assume that a national program would have the same background check requirements as the pilot. That is, background checks would be required only for new applicants, not current employees, and a new background check would be required every time an individual changes jobs. Cost estimates for a national program that required background checks for current employees would be higher than the estimates presented in this section; estimates for a program that allowed background checks to be good for 1-3 years would be considerably lower.

## 7. Volume and Outcome of Background Checks

The MMA did not specifically include analysis of the volume and outcome of background checks in the list of topics to be covered in the evaluation. However, in considering the effectiveness of the pilot program and in the identifying efficient, effective, and economical procedures (evaluation topic (e)(1) from Section 305 of the MMA), it is important to consider the number of prospective employees that underwent background checks and what the results of those background checks were. Data submitted by States were used to analyze a variety of volume and outcome-related measures:

- The number of background checks initiated in each State, by employer and (for some States) employee type
- The result of the initial registry searches that are part of State background checks
- The results of the State fitness determination process
- The results of the Federal (FBI) fitness determination process
- Information on whether applicants withdrew from the background check process prior to its completion
- Information on the type of fingerprint collection (card or scanned)
- Information on the volume and outcome of appeal requests

The data submitted by the States also allowed examination of the length of time required to complete background checks. These results are discussed in Chapter 5.

Note that the results discussed in this chapter are based on the States' accumulated quarterly data reports which were submitted in October 2007.

### 7.1. Data and Methods

CMS developed a set of standardized data elements to measure the volume and outcome of background checks. Most of the pilot States began submitting quarterly data to CMS beginning in April 2006 and the data cover through the September 2007 end date of the pilot. Each State developed their own procedures for producing the specified data file and there were some differences across States in the types of information that they were able to report.

The following definitions were used in the analyses:

- **Approved:** The applicant passed the State registry/database search, the State fitness determination, and the Federal fitness determination.
- **Disqualified:** Applicant failed the State registry/database search, the State fitness determination, or the Federal fitness determination.

- Voluntary withdrawal: The applicant voluntarily withdrew from the hiring process. This does not include applicants who were disqualified based on the background check results or who had rejected fingerprints.
- Pending: The results for the registry check, the State fitness determination, or the FBI fitness determination are not known, so it cannot be determined whether the applicant was approved or disqualified. This excludes those with rejected fingerprints and those who voluntarily withdrew from the hiring process.
- Disqualified based on registry results: The applicant was disqualified for employment based on the results of the State registry/database search
- Disqualified based on fingerprint-based background check: The applicant was disqualified for employment based on the State or FBI fitness determinations.
- Disqualified based only on State registry/database checks: The applicant was disqualified solely on the basis of information from the State registry/database checks.
- Disqualified based only on State fitness determination: The applicant was disqualified solely on the basis of information from the State background check (i.e., not from information from the State registry/database checks or the Federal background check).
- Disqualified based only on Federal fitness determination: The applicant was disqualified solely on the basis of information from the Federal background check.

In addition, information on the number and outcome of appeals based on the accuracy of criminal history information and State rehabilitation review programs was measured.

## **7.2. Alaska**

The pilot program in Alaska was active between April 3, 2006 and September 30, 2007. During this period, across all employer types, there were 23,864 background checks initiated, an average of around 1,325 per month. More than 9,000 of these were initiated between March and May 2007 (Figure 8.1), a period when some of the State's largest hospitals submitted background check requests for all of their employees. Note that the data do not identify which applications were for new employees or for the current employees that were also subject to the State's background check requirement, but were outside the pilot requirements.

As of September 30, 2007, 63 percent of the background checks in the State were still pending. This reflects the lengthy amount of time required to complete the background check process in the State (see Section 5.1). During the pilot, the State cleared 5,399 individuals for employment and disqualified 768 applicants. There were an additional 2,427 voluntary withdrawals; this includes those who failed to complete the authorization or disclosure forms, those who failed to submit fingerprints, and those who terminated employment while the background check was pending.

Of the background checks for which the fitness determination decision was known (i.e., excluding background checks that were still pending), 63 percent were cleared, 28 percent were voluntarily withdrawn, and 8.9 percent were disqualified (Table 7.2). Most of the 768 disqualifications were due to results from the State's registry checks. Overall, there were 590 applicants disqualified due to the

registry checks, including 261 (three percent of applicants for which the final status is known) who were disqualified only based on information from the registry checks. According to information from the State<sup>10</sup>, 92 percent of the registry disqualifications were due to information from the Alaska Public Safety Information Network (ASPIN), six percent resulted from information from the State's Juvenile Offender Management Information System (JOMIS), and the remaining two percent were from the Office of Inspector General's exclusion list and the National Sex Offender Registry.

There were 507 applicants who were disqualified based on information from the fingerprint-based check, including 178 who cleared the registry checks but were disqualified based on information from the fingerprint check. The State's data do not identify whether this disqualifying information from the background checks was based on the State or FBI check.

Of the 768 applicants who were disqualified, 42 worked with their prospective employer to apply for a variance (Table 7.3). This is the State's rehabilitation review program. Overall, 31 individuals were cleared as a result of the variance request and 11 were denied.

In Alaska, 16,734 fingerprints were collected during the pilot (Table 7.4). The State used a combination of Live Scan fingerprint collection for high density areas and fingerprint card scan for more remote areas. The majority of fingerprints collected in the State were submitted electronically for processing (57 percent). The fingerprint rejection rate was much higher for fingerprints collected via fingerprint card—fingerprint cards accounted for 42.5 percent of fingerprint submissions but 73 percent of rejected fingerprints.

Long-term care hospitals, personal care agencies, assisted living facilities, and hospitals without swing beds were the most common employer types that requested background checks, accounting for more than 50 percent of the total volume (Table 7.5). Note that the State's background check pilot data did not exclude hospitals and other providers included, but not required under the pilot, nor background check data for most current employees; thus the proportion of background checks requested by hospitals is much higher in Alaska than in the other pilot States.

The Alaska data include information on the employee type. Personal care workers accounted for 31.7 percent of background checks (Table 7.6). This high percentage reflects the low number of nursing homes and other institutional providers in the State, which is likely the result of the State's low population density. RNs, clerical workers, nurse aides, and transportation workers were the next most common employee types for which background checks were conducted.

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<sup>10</sup> Source: State presentation at the June 2007 CMS Background Check Pilot State Annual Conference.

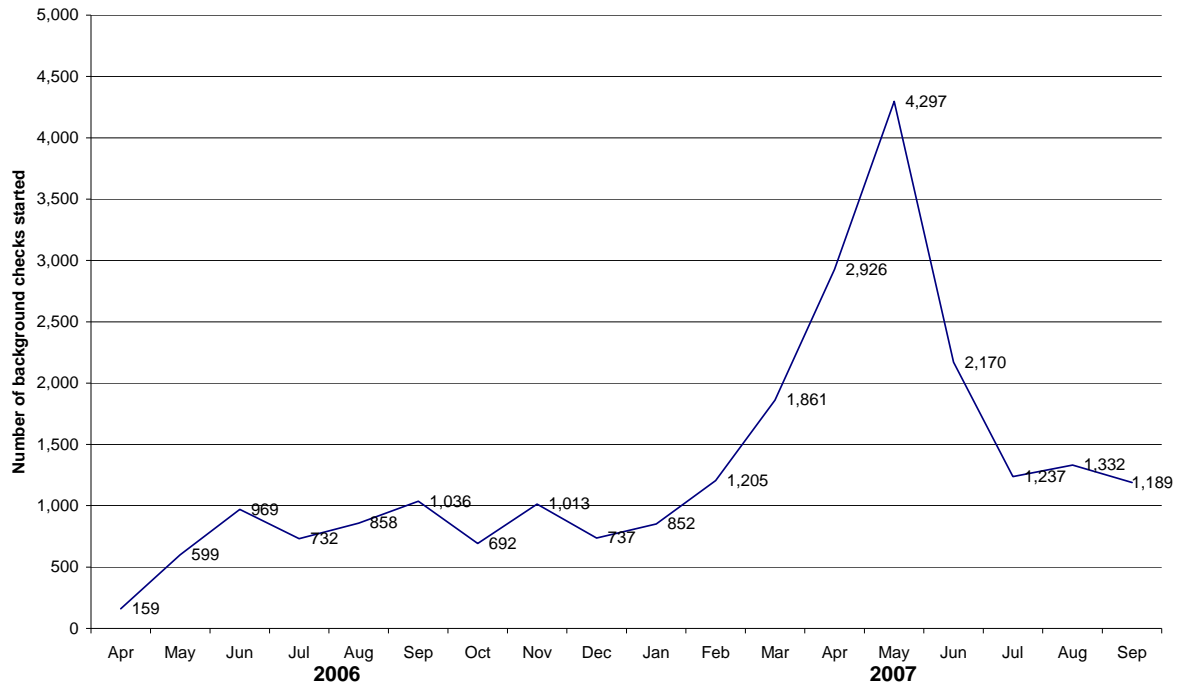
**Table 7.1**  
**Alaska: Number and Outcome of Background Checks**

	Number	Percent
Cleared	5,399	62.8%
Disqualified	768	8.9%
Voluntary withdrawals	2,427	28.2%
Total completed checks	8,594	100.0%
Background checks with pending outcomes	15,270	

n=23,864 total background checks initiated.

Source: State Quarterly Data Reports. April 2006 - September 2007.

**Figure 7.1: Alaska: Volume of Background Checks By Month**



Source: State Quarterly Data Reports



**Table 7.2**  
**Alaska: Reasons for Disqualification**

Source of disqualifying information	Number	Percent*
Total number disqualified	768	100%
Disqualified by registry checks <sup>a</sup>	590	76.8%
Disqualified by registry checks only	261	34.0%
Disqualified by registry checks and fingerprint check	329	42.8%
Disqualified by fingerprint check <sup>b</sup>	507	66.0%
Disqualified by fingerprint only	178	23.2%

\* Percent of total, excluding background checks that are pending.

<sup>a</sup>: Registry searches include the Alaska Public Safety Information Network (APSIN), the Alaska Court System/Court View and Name Index, the Juvenile Offender Management Information System (JOMIS), the State's Centralized Registry (employee misconduct registry), the Certified Nurses Aide (CNA) Registry, the National Sex Offender Registry (NSOR), and the Office of Inspector General (OIG) exclusion list.

<sup>b</sup>: Note that the Alaska data do not report whether the fingerprint disqualification was due to the State or to the FBI fingerprint check.

Source: State Quarterly Data Reports. Data cover April 2006 - September 2007.

**Table 7.3**  
**Alaska: Results of Rehabilitation Review**

	Number	Percent
Cleared after appeal	31	73.8%
Denied after appeal	11	26.2%
Total	42	100.0%

Source: State Quarterly Data Reports. April 2006 - September 2007.

**Table 7.4**  
**Alaska: Fingerprint Capture Method and Fingerprint Rejection Rates**

	Rejected	Not Rejected	Total
Scanned	64 (0.7%)	9,537 (99.3%)	9,601 (100%)
Rolled	173 (2.4%)	6,960 (97.6%)	7,133 (100%)
Total	237 (1.4%)	16,497 (98.6%)	16,734 (100%)
(Missing)	20	12	32

Source: State Quarterly Data Reports. April 2006 - September 2007.

**Table 7.5**  
**Alaska: Number of Background Checks by Employer**

	<b>Number</b>	<b>Percent</b>
Long Term Care Hospitals	5,513	16.8
Personal Care Agencies	4,000	15.9
Assisted Living Facilities	3,796	12.5
Hospitals without swing beds	2,974	9.4
Care Coordination - Medicaid	2,231	5.7
Grant Programs (other)	1,363	5.5
Case Management	1,320	2.9
Residential Child Care	682	2.1
Hospice Agencies	509	2.0
Nursing Facilities	471	1.4
Treatment and Recovery	321	1.1
Home Health Agencies	270	0.4
Specialized Hospitals	100	0.4
Respite	98	0.4
Ambulatory Surgical Center	86	0.1
Transportation	33	0.1
Outpatient Physical Therapy	25	0.1
Direct Entry Midwifery Center	17	0.0
Freestanding Birth Center	9	0.0
Staffing Agency	9	0.0
Waiver Service Provider	8	0.0
Child Placement Agencies	6	0.0
Foster Homes	3	0.0
Grant Meals	2	0.0
Chore Services	1	0.0
Day Treatment Centers	1	0.0
<b>Total</b>	<b>23,848</b>	<b>100 %</b>

Source: State Quarterly Data Reports. April 2006 - September 2007.

**Table 7.6**  
**Alaska: Number of Background Checks by Employee**

	<b>Number</b>	<b>Percent</b>
Personal Care Worker	3,472	31.7
RN	1,673	15.3
Clerical	1,015	9.3
Nurse Aide	983	9.0
Transportation	695	6.4
Bus manager	494	4.5
LPN	375	3.4
Mental Health Professional	219	2.0
CNA in Training	201	1.8
Physician	196	1.8
Janitor	192	1.8
Radiology Tech	158	1.4
Cleaner	127	1.2
Cook	119	1.1
Social Worker	103	0.9
Phys Therapist	100	0.9
Laboratory Tech	99	0.9
Medication Aide/Tech	94	0.9
Pharmacist	91	0.8
Food Service	88	0.8
Occupational/Vocational Therapist Assistant	65	0.6
Occupational/Vocational Therapist	52	0.5
Dentist	49	0.4
Orderly Attendant	45	0.4
Dietitian	44	0.4
Administrator	37	0.3
Speech/Lang Pathologist	37	0.3
Physician Extender	31	0.3
Maid	22	0.2
Medical Director	19	0.2
Physical Therapy Assistant	15	0.1
Physical Therapy Aide	12	0.1
Occupational/Vocational Therapy	10	0.1
Waiter/ Waitress	8	0.1
Podiatrist	2	0.0
Feeding Assistant	2	0.0
<b>Total</b>	<b>10,944</b>	<b>100.0%</b>

Note: Total does not include employees characterized as 'Other'.  
Source: State Quarterly Data Reports. April 2006 - September 2007.

### 7.3. Idaho

During the pilot, there were 21,111 background checks initiated, an average of about 850 background checks per month (Table 7.7). The volume was relatively constant each month, except for a substantial drop in December 2006 (Figure 7.2). The State processed background checks fairly quickly, and the final outcome was known for all but 406 checks. Of the background checks for which the fitness determination decision was known, 97.7 percent were cleared and 2.3 percent were disqualified or voluntarily withdrawn (Table 7.7). Many of the voluntary withdrawals occur because applicants learn that they have disqualifying information that will cause them not to pass the background check. Analysts at the State's Background Check Unit do a name-based background check while the applicant is at their fingerprinting appointment, and they encourage those with disqualifying information to withdraw from the process prior to the submission of fingerprints—these applicants are counted as voluntary withdrawals. As a result, the disqualification rate in Idaho (1.07 percent) is lower than the other pilot States. As with other States, it is also not possible to know how many prospective applicants were deterred from applying for employment in a long-term care setting prior to applying for a job but after learning about the background check requirement.

The data do not allow us to distinguish conditional and unconditional denials, nor do they report whether the applicant was disqualified due to the registry checks, the State background check, or the Federal background check. As a result, it is not possible to determine how many applicants were disqualified by the FBI background check that would have been cleared for employment if only a State check were used or how many individuals were excluded on the basis of information from the registry checks as opposed to the check of criminal records.

Of the 222 applicants who were initially disqualified, 192 appealed the denial (Table 7.8). Fifty-eight applicants were cleared after the appeal and 47 were denied. It is not clear whether the remaining appeals are pending or whether the applicant initiated but did not complete the appeal process.

Most of the fingerprints in the State were captured using Live Scan technology, and 2.8 percent of fingerprints captured by Live Scan were rejected because of poor fingerprint image quality (Table 7.9). Reliable information on the rejection rate for fingerprints collected using cards was not available. Almost 90 percent of those whose fingerprints were rejected resubmitted fingerprints and were cleared for employment.

Almost 50 percent of the pilot background checks were for nursing home employees, and another 26 percent were for workers in assisted living facilities (Table 7.11). Hospices had the smallest number of background checks, with just 718 (3.2 percent of the total).

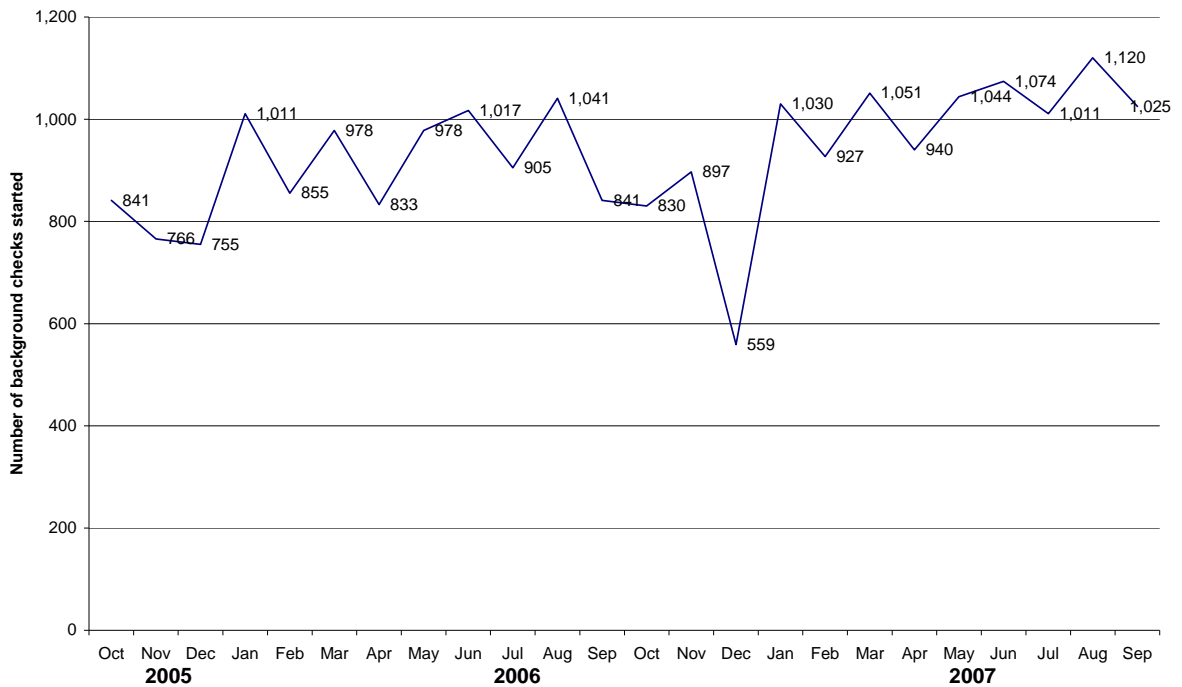
**Table 7.7**  
**Idaho: Number and Outcome of Background Checks**

	Number	Percent
Cleared	20,228	97.70%
Disqualified	222	1.07%
Voluntary withdrawals	255	1.23%
Total completed checks	20,705	100.0%
Background checks with pending outcomes	406	

n=21,111 total background checks initiated.

Source: State Quarterly Data Reports. Data cover October, 2005 - September 2007.

**Figure 7.2: Idaho: Volume of Background Checks By Month**



Source: State Quarterly Data Reports

**Table 7.8**  
**Idaho: Rehabilitation Reviews**

	Number	Percent
Cleared after appeal	58	30.2%
Denied after appeal	47	24.5%
Total	192	100.0%

Source: State Quarterly Data Reports. Data cover October, 2005 - September 2007.

**Table 7.9**  
**Idaho: Fingerprint Capture Method and Fingerprint Rejection Rates**

Fingerprint Capture Method	Number	Percent*
Total number of fingerprints collected <sup>a</sup>	19,794	
Total number rejected	545	2.8%

\*: Percentage of total fingerprints collected

<sup>a</sup>: Note that in Idaho, all fingerprints were submitted electronically to the FBI. Of the fingerprints collected in the State, 88 percent were collected utilizing Live Scan and 12 percent were received on hard paper cards, which were scanned and submitted electronically to the FBI (Source: State Final Report). The data do not identify the method of fingerprint collection.

Source: State Quarterly Data Reports. Data cover October, 2005 - September 2007

**Table 7.10**  
**Idaho: Fingerprint Capture Method and Fingerprint Rejection Rates**

	Rejected	Not Rejected	Total <sup>a</sup>
Scanned	545 (2.8%)	19,249 (97.2%)	19,794 (100.0%)
Rolled	N/A	N/A	N/A
Total	545 (2.8%)	19,249 (97.2%)	19,794 (100.0%)

<sup>a</sup>: Note that in Idaho, all fingerprints were submitted electronically to the FBI. Of the fingerprints collected in the State, 88 percent were collected utilizing Live Scan and 12 percent were received on hard paper cards Source: State Final Report). The data do not identify the method of fingerprint collection.

Source: State Quarterly Data Reports. Data cover October, 2005 - September 2007

**Table 7.11**  
**Idaho: Number of Background Checks by Employer**

	<b>Number</b>	<b>Percent</b>
Skilled Nursing Facility	11,068	48.8
Assisted Living	6,105	26.9
Swing Bed Hospital	1,745	7.7
Home Health Agency	1,596	7.0
Intermediate Care Facility for People with Mental Retardation (ICF/MR)	1,430	6.3
Hospice	718	3.2
<b>Total</b>	<b>22,662</b>	<b>100.0%</b>

Source: State Quarterly Data Reports. Data cover October, 2005 - September 2007.

#### **7.4. Illinois**

The Illinois pilot started later than other States, with the first background checks started in October 2006. During the 12 months that the pilot was active, there were 6,315 background checks initiated, an average of around 525 background checks per month (Table 7.12). The volume increased during the course of the pilot before dropping off in the last month of the pilot (Figure 7.3). Overall, 74 percent of applicants were cleared, 3.6 percent were disqualified, and 19 percent were voluntary withdrawals. There were 933 background checks left pending, including 70 that had ended or were pending with rejected fingerprints. The Illinois data do not identify those who were disqualified based on the initial registry checks conducted by employers; this is because the State’s web application that is used to track background checks is designed in such a way that if the user reports that the applicant is not qualified due to results from the registry check then the record does not save. As a result, the disqualification rates reported for the State are an underestimate of the actual number who disqualified.

Overall, 85 applicants (43.1 percent of disqualified applicants) were disqualified based on information from only the State background check, 33 applicants (16.8 percent of disqualified applicants) were disqualified based only on information from the FBI background check, and 79 applicants (40.1 percent of disqualified applicants) were disqualified based on information from both the State and FBI checks (Table 7.13).

In Illinois, prospective employees may request a waiver of the prohibition against employment by submitting a completed Waiver Application. Of the 197 individuals who were disqualified based on the background check results, 108 requested a waiver. In the State, 84 of these requests were granted, 12 were denied, 11 were pending, and 1 was revoked (Table 7.14). Given the successful waiver applications, the fingerprint background checks in the State resulted in the disqualification of 113 applicants.

All of the fingerprints in Illinois were collected electronically, and the fingerprint rejection rate was 1.7 percent (Table 7.15).

More than 80 percent of the State’s background check applications were for nursing home employees (Table 7.16). ICF/MR facilities accounted for 9.5 percent of the total volume, home health agencies accounted for 6.3 percent, and hospitals with LTC units accounted for 1.8 percent.

Background checks were requested for a wide range of employees. Certified nurse aides were the most common employee type for whom background checks were requested, accounting for almost 40 percent of the State’s volume (Table 7.17). Kitchen workers accounted for 8.6 percent of background check requests, Registered Nurses (RNs) accounted for 7 percent, and Licensed Practical Nurses (LPNs) accounted for 6.5 percent. Disqualification rates were higher for staff such as cooks (11 percent) and kitchen workers (4.2 percent) than for RNs (1 percent). The disqualification rate was 4.5 percent for personal care workers, 2.9 percent for CNAs, and 3.9 percent for LPNs.

**Table 7.12**  
**Illinois: Number and Outcome of Background Checks**

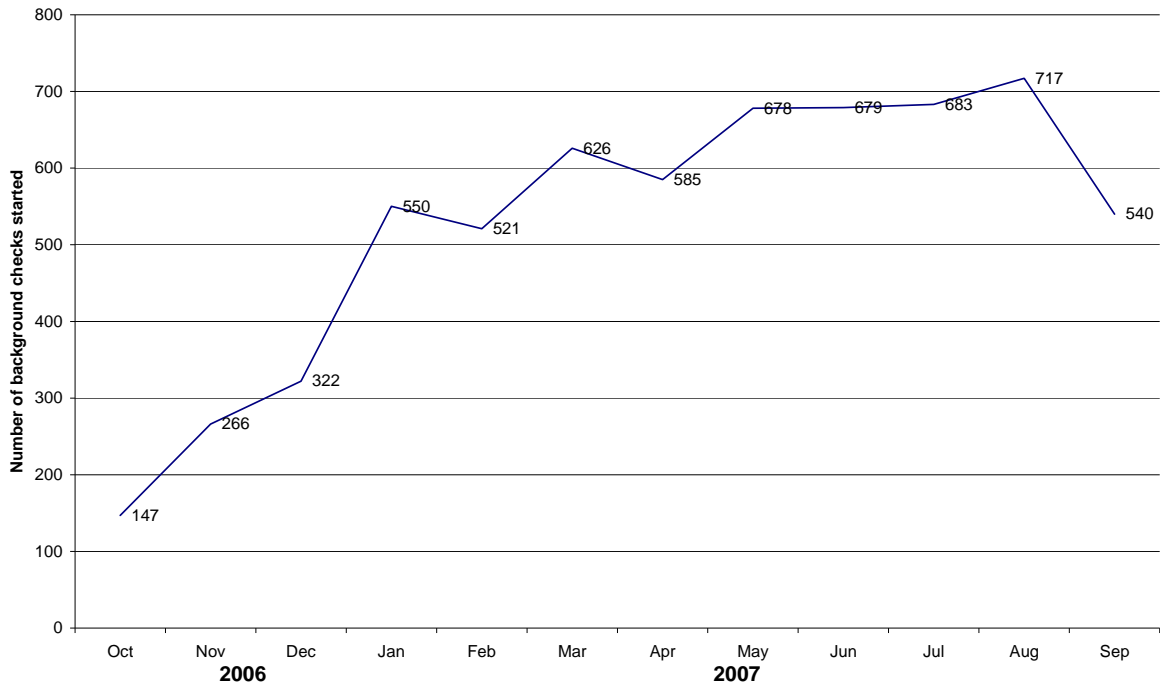
	<b>Number</b>	<b>Percent</b>
Cleared	3,975	73.9%
Disqualified	197	3.6%
Voluntary withdrawals	1,210	22.5%
Total completed checks	5,382	100.0%
Background checks with pending outcomes	933	

n=6,315 total number of background checks initiated.

Source: State Quarterly Data Reports. Data cover October 2006 - September 2007.



**Figure 7.3: Illinois: Volume of Background Checks By Month**



Source: State Quarterly Data Reports

**Table 7.13  
Illinois: Reasons for Disqualification**

Source of disqualifying information	Number	Percent of Total*
Total number disqualified	197	100%
Disqualified by registry checks <sup>a</sup>	N/A	
Disqualified on fingerprint check <sup>b</sup>	197	100%
Disqualified on both registry and fingerprint check	N/A	
Disqualified on State fingerprint only	85	43.1%
Disqualified on FBI fingerprint only	33	16.8%
Disqualified on both State and FBI fingerprint	79	40.1%

<sup>a</sup>: Percent of total, excluding background checks that are pending.

<sup>b</sup>: Note that the total number excluded due to registry checks is not available in the Illinois data.

Source: State Quarterly Data Reports. Data cover October 2006 - September 2007.

**Table 7.14**  
**Illinois: Rehabilitation Review**

	Number	Percent*
Denied	12	N/A
Granted	84	N/A
Pending	11	N/A
Revoked	1	N/A
Total	108	N/A

\*Note that it is not possible to calculate the percentage of disqualified individuals who appealed in Illinois due the lack of information on the number of individuals who were disqualified due to the registry checks.

Source: State Quarterly Data Reports. Data cover October 2006 - September 2007.

**Table 7.15**  
**Illinois: Fingerprint Capture Method and Fingerprint Rejection Rates**  
**Fingerprint Capture Method and Fingerprint Rejection Rates**

	Rejected	Not Rejected	Total
Scanned	74 (1.7%)	4,373 (98.3%)	4,447 (100.0%)
Rolled	N/A	N/A	N/A
Total	74 (1.7%)	4,373 (98.3%)	4,447 (100.0%)

Source: State Quarterly Data Reports. Data cover October 2006 - September 2007

**Table 7.16**  
**Illinois: Number of Background Checks by Employer**

	Number	Percent
Skilled Nursing Facility	5,200	82.3
Intermediate Care Facility for People with Mental Retardation (ICF/MR)	603	9.5
Home Health Agency	400	6.3
Hospitals with LTC Units or Swing Beds	112	1.8
Total	6,315	100.0%

Source: State Quarterly Data Reports. Data cover October 2006 - September 2007.

**Table 7.17**  
**Illinois: Number of Background Checks by Employee**

	<b>Number</b>	<b>Percent</b>
Certified Nurse Aide	2,520	39.9
Kitchen Worker, Food Preparer	543	8.6
Registered Nurse	442	7.0
Licensed Practical/Licensed Vocational Nurse	409	6.5
All Other Types	387	6.1
Personal Care Worker	372	5.9
Other	289	4.6
Cleaner	217	3.4
Nurse Aide in Training	162	2.6
Waiter, Waitress	158	2.5
DD Aide	146	2.3
Clerical	131	2.1
Cook	110	1.7
Unknown	72	1.1
Maid	67	1.1
Janitor	57	0.9
Miscellaneous duties	46	0.7
Director/Business Manager	25	0.4
Physical Therapist	25	0.4
Occupational/Vocational Therapist	24	0.4
Radiology Technician	14	0.2
Speech/Language Pathologist	14	0.2
Laboratory Technician	13	0.2
Nursing Home Administrator	12	0.2
Occupational/Vocational Therapy Aide	12	0.2
Social Worker	10	0.2
Orderly, Attendant	7	0.1
Medication Aide/Technician	6	0.1
Dietitian	5	0.1
Feeding Assistant	5	0.1
Physical Therapy Aide	4	0.1
Mental Health Professional	3	0.0
Pharmacist	2	0.0
Physical Therapy Assistant	2	0.0
Medical Director	1	0.0
Occupational/Vocational Therapy Assistant	1	0.0
Physician Extender	1	0.0
<b>Total</b>	<b>6,314</b>	<b>100.0%</b>

Source: State Quarterly Data Reports. Data cover October 2006 - September 2007.

## 7.5. Michigan

In Michigan, background checks were conducted for an 18-month period (April 2006 - September 2007). During this period, the State initiated a total of 145,722 background checks, a much higher volume than any of the other pilot States. During the pilot, the State cleared 86,612 applicants (Table 7.18). There were 4,715 disqualifications, 34,505 voluntary or system withdrawals, and 19,890 pending applications at the end of the pilot. For most (15,178) of the pending applications, fingerprints had not yet been collected. The rate of withdrawals was higher in Michigan than in other States, and it includes applicant and provider withdrawals, as well as some system withdrawals. Most of the applications that were withdrawn were done so by the employer prior to fingerprinting—our discussions with the State indicated that many of these may have been applications that the employer had to repeat due to data entry errors on the part of the employer.

Of the 125,832 applications for which the fitness determination result was known, 68 percent of applicants were cleared, 27 percent were voluntarily withdrawn, and 3.8 percent were disqualified (Table 7.18). Most of the disqualifications were due to information identified during the initial registry checks conducted by employers, which, in Michigan, includes a name-based criminal history check using the State's Internet Criminal History Access Tool (ICHAT) and the Offender Tracking Information System (OTIS). In the State, 81.6 percent of disqualified applicants were disqualified based on the registry checks and 18.4 percent were disqualified based on the fingerprint check. According to information from the State, the majority of registry-based disqualifications were due to information from ICHAT or OTIS—ICHAT accounted for 64 percent of registry check exclusions and OTIS accounted for 16 percent. Other registry-based disqualifications included the OIG exclusion list (7.5 percent), the Michigan Nurse Aide Registry (6.4 percent), and the Public Sex Offender Registry (5.6 percent).<sup>11</sup>

The State's data do not allow us to determine whether the disqualification was due to the FBI or the State fingerprint check, but the State reported that 50 percent of those who were disqualified based on the fingerprint check were disqualified based only on information from the State, 23 percent were disqualified based only on information from the FBI, and 27 percent were disqualified based on information from both the State and FBI.<sup>12</sup> Although State criminal history records are typically more complete than the FBI records, in Michigan, there were many disqualifying convictions for arrests in the State that were reported only on the FBI criminal record. According to MSP, this was the result of a breakdown in the process for local law enforcement agencies in part of the State reporting arrests to the Law Enforcement Information Network (LEIN) system. Some agencies sent a set of fingerprints directly to the FBI, but did not send prints or information to MSP. MSP is addressing this problem by developing software that compares local records with the LEIN system records and automatically includes information that was missing from the LEIN system. Until that process is completed, continued checks of the FBI system are necessary in order to receive the most comprehensive criminal history information.

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<sup>11</sup> Michigan's Workforce Background Check Program, Final Report.

<sup>12</sup> Ibid.

Michigan does not have a rehabilitation review program, and allows appeals only for challenging the accuracy of the criminal history information used to make the fitness determination. The volume of appeals was low--there were a total of 30 appeals reported in the State (Table 7.20). Nine applicants were cleared following appeal, while 11 appeals were denied.

During the pilot, a total of 95,287 fingerprints were collected (Table 7.21). These were all collected electronically. No information on fingerprint rejection rates was available.

Almost half of the background checks were conducted for prospective employees of nursing homes (Table 7.22). Group homes were the next most common employer type, accounting for 28 percent of all background checks. Home health agencies accounted for almost 11 percent of the State's background checks, and there were also background checks initiated for employees of homes for the aged, hospitals, hospices, and ICF/MR facilities.

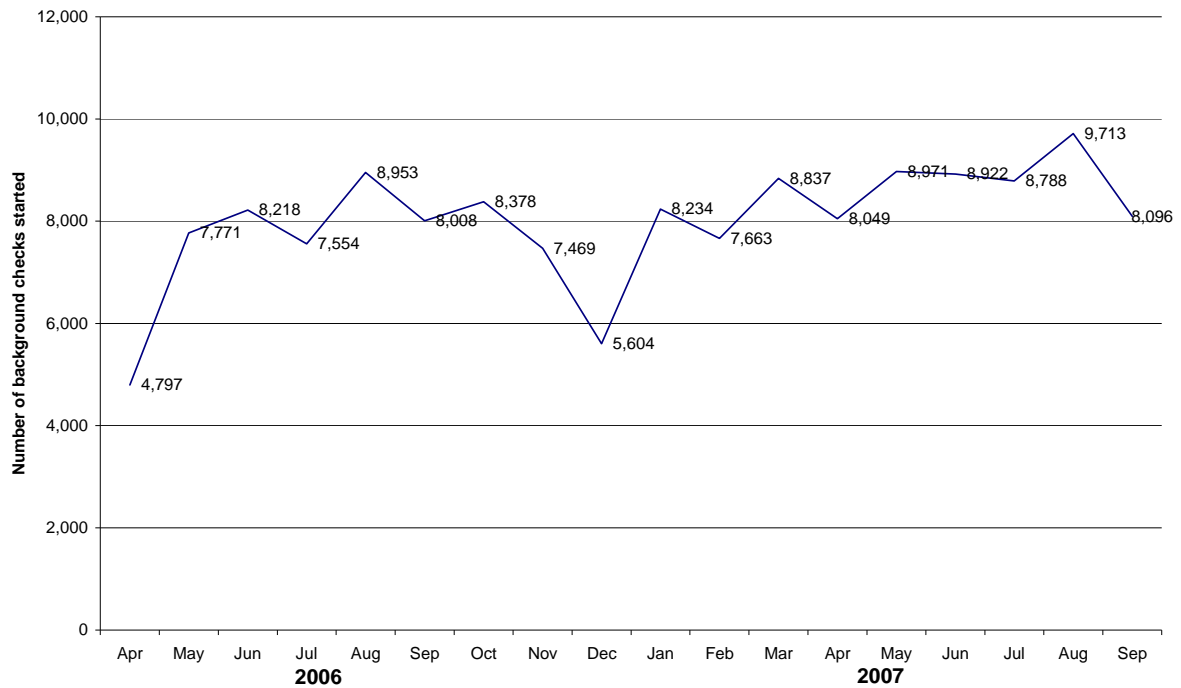
**Table 7.18**  
**Michigan: Number and Outcome of Background Checks**

	<b>Number</b>	<b>Percent</b>
Cleared	86,613	68.8%
Disqualified	4,716	3.8%
Voluntary withdrawals	34,508	27.4%
Total completed checks	125,837	100.0%
Background checks with pending outcomes	19,893	

n=145,730 number of background checks initiated.

Source: State Quarterly Data Reports. Data cover April 2006 - September 2007.

**Figure 7.4: Michigan: Volume of Background Checks By Month**



Source: State Quarterly Data Reports

**Table 7.19  
Michigan: Reasons for Disqualification**

	Number	Percent*
Total number disqualified	4,716	100.0%
Disqualified by registry checks	3,850	81.6%
Disqualified by fingerprint check	867	18.4%

\*: Percentage of total, excluding background checks that are pending.

Note that the Michigan data do not identify whether the fingerprint denial was due to the State or the FBI background check.

Source: State Quarterly Data Reports. Data cover April 2006 - September 2007.

**Table 7.20  
Michigan: Rehabilitation Review**

	Number	Percent
Denied after review	11	36.7%
Granted after review	9	30.0%
Pending	10	33.3%
Total	30	100.0%

Note that Michigan does not have a rehabilitation review program.

Source: State Quarterly Data Reports. Data cover April 2006 - September 2007

**Table 7.21**  
**Michigan: Fingerprint Capture Method and Fingerprint Rejection Rates**

	Rejected <sup>a</sup>	Not Rejected	Total*
Scanned	N/A	N/A	N/A
Rolled	N/A	N/A	N/A
Total	N/A	N/A	95,287 (100.0%)

N/A Not available

\*: Percentage of total fingerprints collected

<sup>a</sup> Note that the Michigan data do not report any fingerprint rejections.

Source: State Quarterly Data Reports. Data cover April 2006 - September 2007.

**Table 7.22**  
**Michigan: Number of Background Checks by Employer**

	Number	Percent
Skilled Nursing Facility	66,653	45.7
Group Home*	41,438	28.4
Home Health Agency	15,864	10.9
Homes for the aged	10,811	7.4
Hospital <sup>a</sup>	8,020	5.5
Hospice	2,870	2.0
Intermediate Care Facility for People with Mental Retardation (ICF/MR)	60	0.0
Other	14	0.0
Total	145,730	100.0%

\*: Group homes include group homes, family homes, and congregate living facilities.

<sup>a</sup>: Includes psychiatric hospitals and hospitals that provide swing-bed services.

Source: State Quarterly Data Reports. Data cover April 2006 - September 2007.

## 7.6. Nevada

The Nevada data covered a 22-month period from January 2006 – September 2007. During this period, a total of 25,406 background checks were initiated, an average of 1,400 background checks per month. The volume increased after the first three months of the pilot and was relatively constant in 2006 and 2007 up until the last month of the pilot (Figure 7.5). Overall, 97.2 percent of completed background checks cleared, 2.8 percent were disqualified. There were 4,901 background checks pending at the end of the pilot including 937 that had ended or were pending with rejected fingerprints (Table 7.23). The State’s data do not identify applicants who voluntarily withdrew their application.

Most of the 574 applicants who were disqualified based on background check results were disqualified due to information in both the State and FBI background check—341 applicants were disqualified based on information in the State and FBI background check (59.4 percent of disqualified

applicants), 207 were disqualified based only on the FBI background check (36.1 percent of disqualified applicants), and 26 were disqualified solely based on information from the State (4.5 percent of disqualified applicants) (Table 7.24). (Note that these were all records for which the FBI check was reported as still pending, so these are not necessarily cases for which the information was not in the FBI database.)

The Nevada data do not capture any information on registry checks. In Nevada, the registry checks are conducted by employers, and thus are not captured in the State’s background check data system. The data do not include anyone who withdraws from the background check process prior to being fingerprinted and do not identify those who voluntarily withdraw from the background check process. Applicants who withdraw from the process prior to being fingerprinted do not show up in the State’s database.

Nevada does not have a rehabilitation review policy and permits appeals only on the basis that the criminal record contains incorrect information. There were a total of 85 appeals reported—47 of these were denied, 15 were granted, 4 were no longer relevant due to termination of employment, and 19 were still pending (Table 7.25).

The State has a relatively high fingerprint rejection rate, and 4.5 percent of records had a rejected fingerprint (Table 7.26). This is likely because more than 99 percent of the fingerprints that were collected in the State were collected via rolled fingerprints rather than electronic fingerprint capture. No fingerprint rejections were reported for the 142 fingerprints that were collected electronically.

Nursing homes were the most common employer type for pilot background checks, accounting for 34 percent of all checks (Table 7.27). Of providers for which the type is known, residential facilities for groups were the next most common, accounting for almost 12 percent of all checks. Home health agencies accounted for 11.1 percent of background checks, and ICF/MR facilities accounted for 5 percent. More than 28 percent of background checks were initiated by employers who were participating voluntarily in the pilot program, and the specific employer type is not reported for these employers. Provider type information was not available for an additional 7 percent of records. The Nevada data do not include information on employee type.

**Table 7.23**  
**Nevada: Number and Outcome of Background Checks**

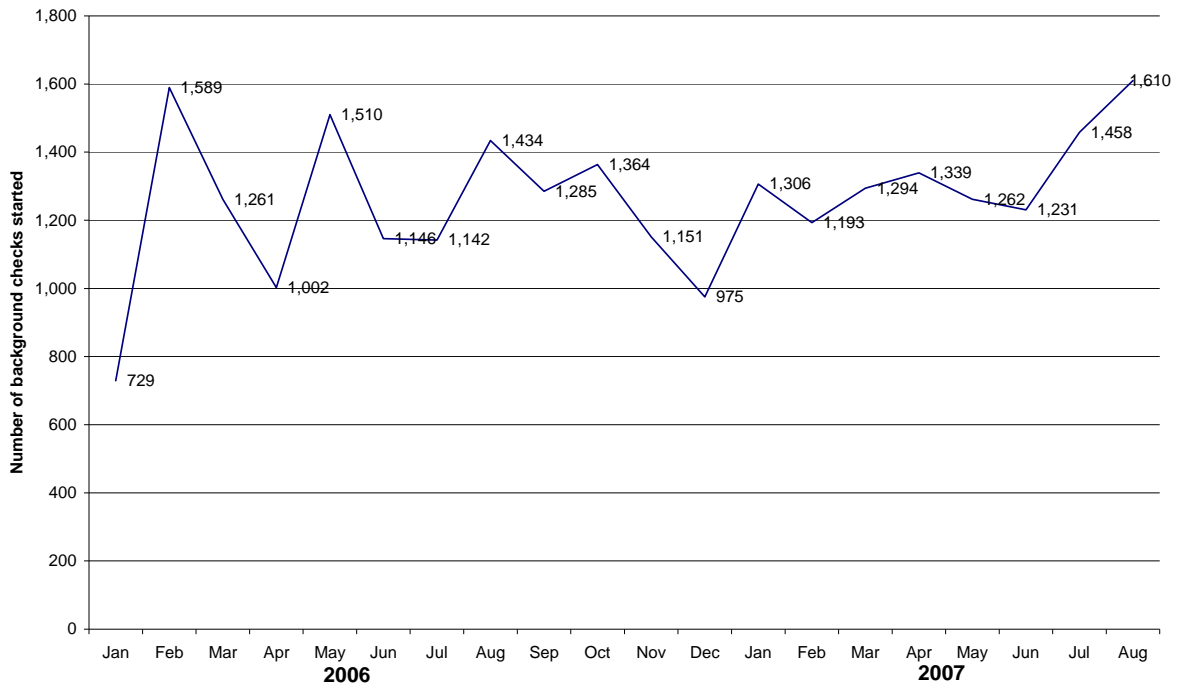
	<b>Number</b>	<b>Percent</b>
Cleared	19,931	97.2%
Disqualified	574	2.8%
Voluntary withdrawals	0	0
Total completed checks	20,505	100.0%
Background checks with pending outcomes	4,901	

n=25,406 total number of background checks initiated.

Source: State Quarterly Data Reports. Data cover January 2006 - September 2007.



**Figure 7.5: Nevada: Volume of Background Checks By Month**



Source: State Quarterly Data Reports

**Table 7.24  
Nevada: Reasons for Disqualification**

	Number	Percent*
Total number disqualified	574	100.0%

\*: Percentage of total, excluding background checks that are pending.

Note that information on the number of individuals excluded due to registry checks is not available for Nevada. Also, Nevada ran State and FBI background checks on all applicants who had a fingerprint-based background check, so their data on the source of disqualifying information (State or Federal) are not useful for estimating the incremental benefits of the FBI check.

Source: State Quarterly Data Reports. Data cover January 2006 - September 2007.

**Table 7.25**  
**Nevada: Appeals**

	<b>Number</b>	<b>Percent</b>
Denied after appeal	47	55.3%
Granted after appeal	15	17.6%
Other (resigned, leave of absence, reassigned)	4	4.7%
Pending	19	22.4%
<b>Total</b>	<b>85</b>	<b>100.0%</b>

Note that Nevada does not have a rehabilitation review program, and the data report appeals of the accuracy of background checks.

Source: State Quarterly Data Reports. Data cover January 2006 - September 2007.

**Table 7.26**  
**Nevada: Fingerprint Capture Method and Fingerprint Rejection Rates**

	<b>Rejected<sup>a</sup></b>	<b>Not Rejected</b>	<b>Total*</b>
Scanned	N/A	142 (100.0%)	142 (100.0%)
Rolled	1,259 (4.5%)	26,471 (95.5%)	27,730 (100.0%)
<b>Total</b>	<b>1,259</b> <b>(4.5%)</b>	<b>26,613</b> <b>(95.5%)</b>	<b>27,872</b> <b>(100.0%)</b>

\*: Percentage of total fingerprints collected

<sup>a</sup>: Note that the type of fingerprint was not reported for two records

Source: State Quarterly Data Reports. Data cover January 2006 - September 2007.

**Table 7.27****Nevada: Number of Background Checks by Employer**

	Number	Percent
Skilled Nursing Facility	8,563	33.7
Not available*	7,213	28.4
Residential Facility for Groups	3,027	11.9
Home Health Agency	2,814	11.1
Information not available	1,788	7.0
Intermediate Care Facility for People with Mental Retardation (ICF/MR)	1,244	4.9
Staffing Agency/Nursing pool	551	2.2
Halfway House for Recovering Alcohol and Drug Abuse	26	0.1
Dialysis Facility	96	0.4
Registered Laboratory	76	0.3
Home for Individual Residential Care	8	0.0
Total	25,406	100.0%

\*: This category includes employers for which the employer type is not known and employers that are not licensed by the Bureau of Licensure and Certification but that are participating voluntarily in the pilot.

Shaded area includes providers that were not required to perform background checks under the pilot but participated voluntarily in it

Source: State Quarterly Data Reports. Data cover January 2006 - September 2007.

## 7.7. New Mexico

Due to data reporting challenges, data for the pilot program in New Mexico covered only a 14-month period (July 2006 - September 2007), but the data from the State only include applications that were initiated between July 2006 and August 2007. During this period, there were 10,018 background checks started, an average of 775 checks per month. The volume was highest in April 2006, when 1,408 background checks were started (Figure 7.6). During the pilot, 7,947 applicants were approved for employment, 615 were disqualified (Table 7.28). There were 1,456 applications that were still pending at the end of the pilot. The New Mexico data do not identify applicants who voluntarily withdrew their application.

Of applications for which the final fitness determination decision was known, 93 percent of applicants were cleared, and 7.2 percent were disqualified (Table 7.28). This excludes applicants who were disqualified based on registry checks, as this information is not reported in the State's data. Of the 615 applicants who were disqualified based on the fingerprint check, 272 were disqualified based on information from both the State and FBI checks, 283 were excluded based solely on information from the FBI, and 60 were disqualified solely based on information from the State. (For 22 of these records, the results of the FBI check were still pending.)

New Mexico allows applicants who are disqualified based on their criminal record to submit a written request for administrative reconsideration. The State reported a total of 70 requests for administrative reconsideration—27 of these were denied, 40 were granted, and 3 were still pending (Table 7.30).

All of the 10,018 fingerprints in New Mexico were captured via rolled fingerprints, and the State reported a fingerprint rejection rate of 1.2 percent. (Table 7.31)

Skilled nursing facilities were the most common employer type requesting background checks, accounting for 33 percent of the State’s volume (Table 7.32). Home health agencies accounted for 30 percent of background checks, personal care agencies accounted for 26 percent, and ambulatory surgical facilities accounted for 10 percent. There were only 25 background checks initiated for employees of long-term care hospitals and ICF/MR facilities in the State.

More than 95 percent of the background checks initiated in New Mexico were for one of these job categories: personal care attendant, home health aide, caregiver, home provider, or Certified Nursing Assistant (Table 7.33). Personal care attendants were the most common employee type, accounting for 28 percent of all background checks initiated in the State.

**Table 7.28**  
**New Mexico: Number and Outcome of Background Checks**

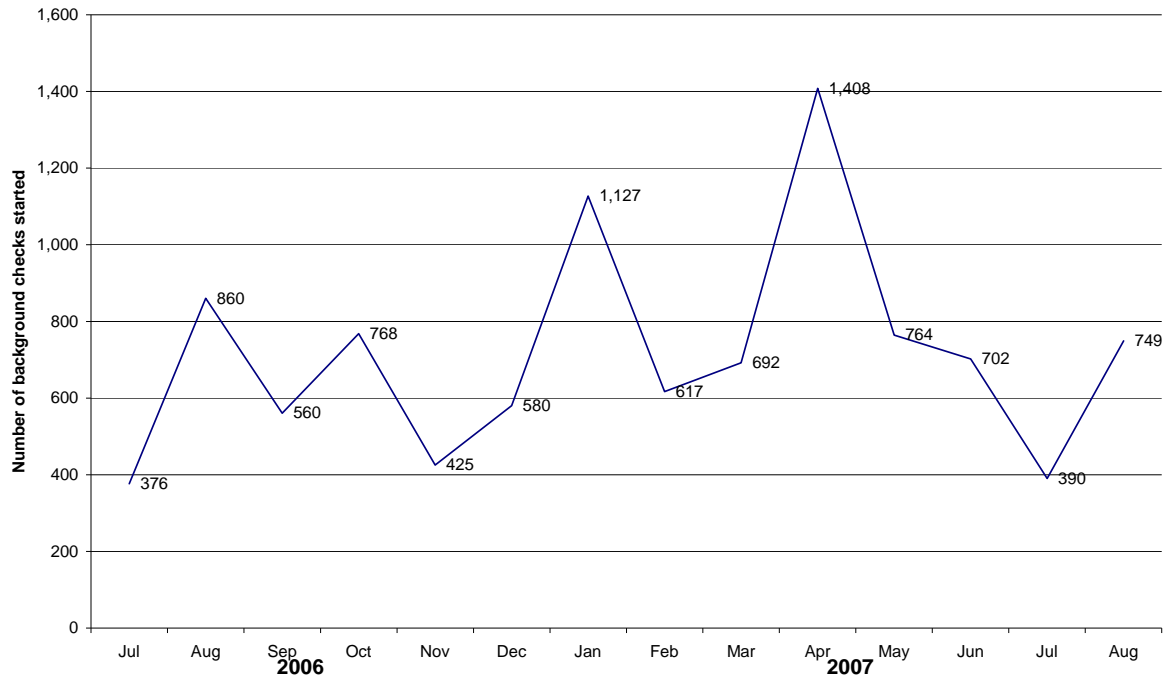
	<b>Number</b>	<b>Percent</b>
Cleared	7,947	92.8%
Disqualified	615	7.2%
Voluntary withdrawals <sup>a</sup>	0	0
Total completed checks	8,562	100.0%
Background checks with pending outcomes	1,456	

n=10,018

<sup>a</sup>: New Mexico data do not report voluntary withdrawals.

Source: State Quarterly Data Reports. Data cover July 2006 - September 2007. (Note that the data do not include information on applications that were started in September 2007 but do track the outcome of background checks through the end of the pilot.)

**Figure 7.6: New Mexico: Volume of Background Checks By Month**



Source: State Quarterly Data Reports

**Table 7.29  
New Mexico: Reasons for Disqualification**

	Number	Percent*
Total number disqualified	615	100.0%
Based on registry checks	N/A	
Based on fingerprint check <sup>a</sup>	615	100.0%
Based on both FBI and State fingerprint checks	272	44.2%
Based on FBI fingerprint check only	283	46.0%
Based on State fingerprint check only	60	9.8%

\*: Percentage of total, excluding background checks that are pending.

<sup>a</sup>: Note that the New Mexico data do not report voluntary withdrawals

Source: State Quarterly Data Reports. Data cover July 2006 - September 2007. (Note that the data do not include information on applications that were started in September 2007 but do track the outcome of background checks through the end of the pilot.)

**Table 7.30**  
**New Mexico: Rehabilitation Review**

	Number	Percent
Denied after review	27	38.6%
Granted after review	40	57.1%
Pending	3	4.3%
Total	70	100.0%

Source: State Quarterly Data Reports. Data cover July 2006 - September 2007. (Note that the data do not include information on applications that were started in September 2007 but do track the outcome of background checks through the end of the pilot.)

**Table 7.31**  
**New Mexico: Fingerprint Capture Method and Fingerprint Rejection Rates**

	Rejected	Not Rejected	Total*
Scanned	N/A	N/A	N/A
Rolled	124 (1.2%)	9,894 (98.8%)	10,018 (100.0%)
Total	124 (1.2%)	9,894 (98.8%)	10,018 (100.0%)

\*: Percentage of total fingerprints collected

Source: State Quarterly Data Reports. Data cover July 2006 - September 2007. (Note that the data do not include information on applications that were started in September 2007 but do track the outcome of background checks through the end of the pilot.)

**Table 7.32**  
**New Mexico: Number of Background Checks by Employer**

	Number	Percent
Skilled Nursing Facility	3,334	33.3
Home Health Agency	3,037	30.3
Personal Care Agency	2,628	26.2
Ambulatory Surgical Facilities	994	9.9
Long-Term Care Hospital	17	0.2
Intermediate Care Facility for People with Mental Retardation (ICF/MR)	8	0.1
Total	10,018	100.0%

\*: Group homes include group homes, family homes, and congregate living facilities. Includes psychiatric hospitals and hospitals that provide swing-bed services.

Source: State Quarterly Data Reports. Data cover July 2006 - September 2007. (Note that the data do not include information on applications that were started in September 2007 but do track the outcome of background checks through the end of the pilot.)

**Table 7.33**  
**New Mexico: Number of Background Checks by Employee**

	<b>Number</b>	<b>Percent</b>
Personnel Care Attendant	2,275	28.3
Home Health Aide	2,090	26.0
Caregiver	1,666	20.7
Home Provider	867	10.8
Certified Nursing Assistant	755	9.4
Caregiver	188	2.3
Other	47	0.6
Personal Care Worker	44	0.5
Other Unlicensed Health Care	33	0.4
Physical Therapy Aide	12	0.1
Nurse Aide	10	0.1
Janitor	7	0.1
Homemaker	6	0.1
Registered Nurse	6	0.1
Maid/ Personal Care Worker	3	0.0
Waiter, Waitress	3	0.0
Cleaner	2	0.0
Dietary Aide	2	0.0
Maid	2	0.0
Medication Aide/ Tech.	2	0.0
Service Coordinator	2	0.0
CNA Maid/ Personal Care Worker	1	0.0
Clerical	1	0.0
Clerk	1	0.0
HMK	1	0.0
Laboratory Technician	1	0.0
Licensed Practical/Licensed Vocational Nurse	1	0.0
Physical Therapy Assistant	1	0.0
Plant Operations	1	0.0
Social Worker	1	0.0
Support Staff	1	0.0
<b>Total</b>	<b>8,032</b>	<b>100.0%</b>

Source: State Quarterly Data Reports. Data cover July 2006- September 2007.  
 (Note that the data do not include information on applications that were started in September 2007 but do track the outcome of background checks through the end of the pilot.)

## 7.8. Wisconsin

Wisconsin was different from the other pilot States in terms of its source of data on background checks and the types of data that are available. Because employers conduct the background checks and make the fitness determination, the WI-DHFS does not have information on the volume or outcome of individual checks, and it was not possible to have individual level background check data like in the other pilot States. Instead, employers in the pilot counties provide aggregated data to the WI-DHFS on the volume and outcome of the background checks that they conducted. Because the data are collected from employers, in addition to the results of the registry search, the Wisconsin data permit analysis of the hiring decisions for applicants who undergo a background check, data that are not available for any of the other pilot States.

During the pilot, there were a total of 14,758 background checks initiated. Overall, 95.7 percent of applicants were cleared, and 4.3 percent were disqualified based on the background check (Table 7.34). An additional 28 percent of applicants were disqualified from employment for non-background check reasons, and 67.8 percent of all individuals for whom a background check was started were hired.

The Wisconsin data are unique in the level of detail on the outcome of background checks at various stages of the process:

- Of the 9,998 applicants who were hired, 8,492 (85 percent) had no convictions or findings and 15 percent had a conviction, but not for an offense that was disqualifying or substantially related to their job.
- Of the 640 applicants who were denied employment as a result of the background check:
  - 277 (1.9 percent of all background checks or 43.3 percent of disqualified applicants) were disqualified based on information from the applicant self-disclosure form (Table 7.35).
  - 56 (0.4 percent of all background checks or 8.8 percent of disqualified applicants) were disqualified based on the registry searches.
  - 265 (1.8 percent of all background checks or 41.4 percent of disqualified applicants) were disqualified based on a name-based search (the name-based search that is used in the State's non-pilot counties). Almost all of these individuals had a disqualifying conviction, although there were six applicants who had a substantiated finding of abuse/neglect or a licensing limitation.
- Of the 265 individuals who had a disqualifying conviction revealed as part of the name-based search, 183 had a conviction for one of the crimes specifically noted on the State's list of disqualifying crimes, 70 had a conviction for a substantially related crime, and two had a conviction on the Federal exclusion list.
- There were 42 individuals disqualified based on information from the fingerprint-based background check. Sixteen of these individuals refused to have their fingerprints taken or missed their appointment, 24 had disqualifying information based on the FBI background check, and two had disqualifying information based on the State check



The State’s program allows caregivers who were disqualified due to a disqualifying crime, a finding of misconduct, or who has a child abuse or neglect finding may apply for a Rehabilitation Review to seek approval to work as a caregiver. During the pilot, there were 27 applicants who were hired following a successful rehabilitation review (Table 7.36). Note that information on the total number of rehabilitation reviews conducted was not available for the State.

Almost 39 percent of the background checks were for nurse aides and 30 percent were for other direct care staff (Table 7.37). Thirty percent were for other direct care staff (including personal care workers and community based residential facility staff), 14.6 were for other facility staff (e.g., housekeeping, maintenance), and 9.3 percent were for RNs.

**Table 7.34**  
**Wisconsin: Number and Outcome of Background Checks**

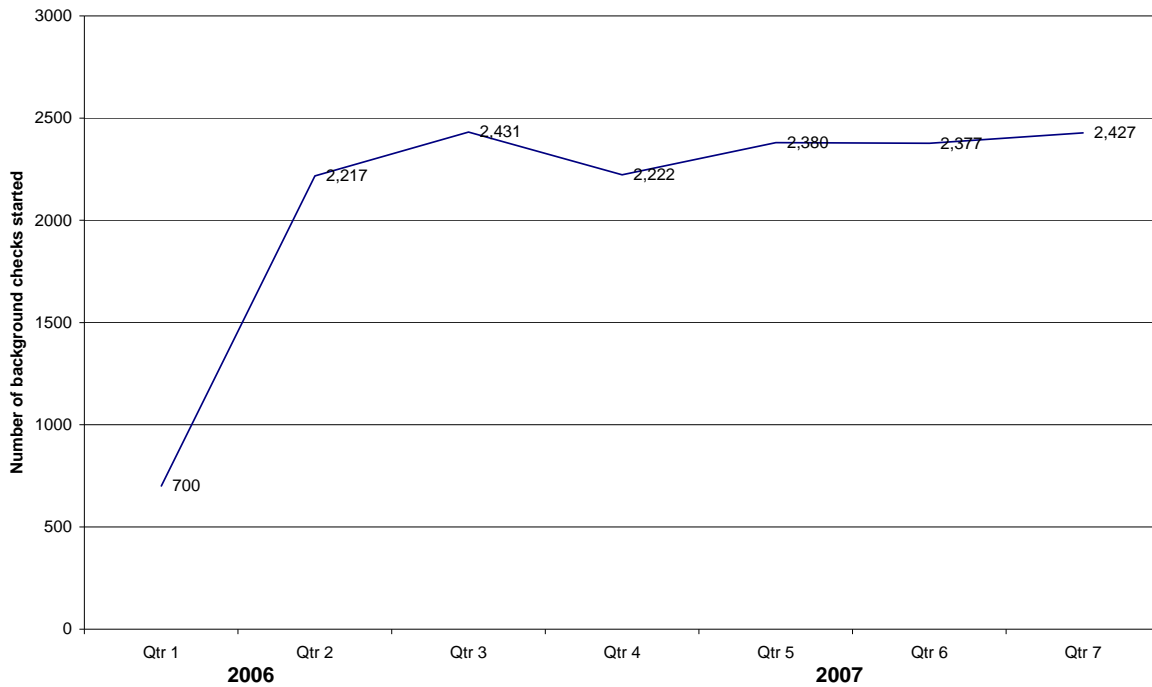
	<b>Number</b>	<b>Percent</b>
Cleared	14,118	95.7%
Hired	9,998	67.8%
Disqualified for non-background check reasons	4,120	27.9%
Disqualified	640	4.3%
Voluntary withdrawals	N/A	0
Total completed checks	14,758	100.0%
Background checks with pending outcomes	N/A	

n=14,758 total number of background check initiated.

N/A: Not available (Wisconsin data do not report voluntary withdrawals or pending applications.)

Source: State Quarterly Data Reports. Data cover part of the first quarter of 2006 - September 2007.

**Figure 7.7: Wisconsin: Volume of Background Checks By Month**



Source: State Quarterly Data Reports

**Table 7.35  
Wisconsin: Reasons for Disqualification**

	Number	Percent*
Number disqualified	640	100.0%
Based on applicant self-disclosure	277	43.3%
Based on registry checks	56	8.8%
Based on name-based search	265	41.4%
Based on fingerprint check <sup>a</sup>	42	6.5%
Refused/failed to sign FBI release/attend appt	16	2.5%
Based on State fingerprint check	2	0.2%
Based on FBI fingerprint check	24	3.8%

<sup>a</sup>: Note that the Wisconsin data do not report voluntary withdrawals

Source: State Quarterly Data Reports. Data cover part of the first quarter of 2006 - September 2007.

**Table 7.36**  
**Wisconsin: Rehabilitation Review**

	Number	Percent
Denied after review	N/A	N/A
Approved after review	27	N/A
Pending	N/A	N/A
Total	N/A	N/A

N/A: Not available (Note that only information on the number of approved rehabilitation reviews was available for the State.)

Source: State Quarterly Data Reports. Data cover part of the first quarter of 2006 - September 2007.

**Table 7.37**  
**Wisconsin: Number of Background Checks by Employee**

	Number	Percent
CNAs	5,734	38.9
Other Direct Care Staff (CBRF staff, PCW, etc.)	4,450	30.2
Other Facility Staff (maintenance, housekeeping, etc)	2,149	14.6
RNs, LPNs	1,375	9.3
Administration Staff (HR, office staff, etc.)	396	2.7
Other Licensed Staff	316	2.1
Managers	199	1.3
Social Workers	128	0.9
Doctors	7	0.0
Total	14,754	100.0%

Source: State Quarterly Data Reports. Data cover part of the first quarter of 2006 - September 2007.

## 7.9. Overall Results

Across the pilot States, there were a total of 247,198 background checks initiated, and 158,476 employees cleared for employment (Table 7.38). This includes 158,207 employees who were cleared based on the initial background check results and an additional 269 who were initially disqualified but cleared based on the rehabilitation review and appeal processes. The pilot resulted in the disqualification of 7,463 applicants (not counting those whose disqualification was reversed through rehabilitation review or appeal). There were an additional 38,400 records that were withdrawn prior to the completion of the background check. At the end of the pilot, there were 42,859 background check applications that were pending, including 1,352 that were pending with rejected fingerprints.

Of background checks for which the final fitness determination is known, 77.6 percent of applicants were cleared, 3.7 percent were disqualified, and 18.8 percent were withdrawn. Differences in the level of detail across States on the source of disqualifying information make it impossible to provide

data across all of the pilot States for the number that were disqualified based on registry checks, information from the State background check, and information from the Federal background check. Figure 7.8 summarizes background check results across States—differences across States in the types of data that are available (e.g., whether information on voluntary withdrawals is available) complicate across-State comparisons.

Across all of the pilot States, there were a total of 483 appeals based on State rehabilitation review programs (Table 7.39). These appeals were much more likely to be approved (245 approvals) than denied (94). There were a total of 115 appeals that challenged the accuracy of information in the criminal record; 24 of these were approved and 58 were rejected.

**Table 7.38**  
**All Pilot States: Number of Background Checks**

	<b>Number</b>	<b>Percent</b>
Initially cleared	158,207	77.4%
Initially disqualified	7,732	3.8%
Initially disqualified but cleared following rehabilitation review	245	0.1%
Initially disqualified but cleared following appeal based on errors in criminal record	24	0.01%
Total number cleared	158,476	77.6%
Total number disqualified (net of rehabilitation reviews and appeals)	7,463	3.7%
Voluntary withdrawals	38,400	18.8%
Total completed checks	204,339	100.00
Background checks with pending outcomes	42,859	

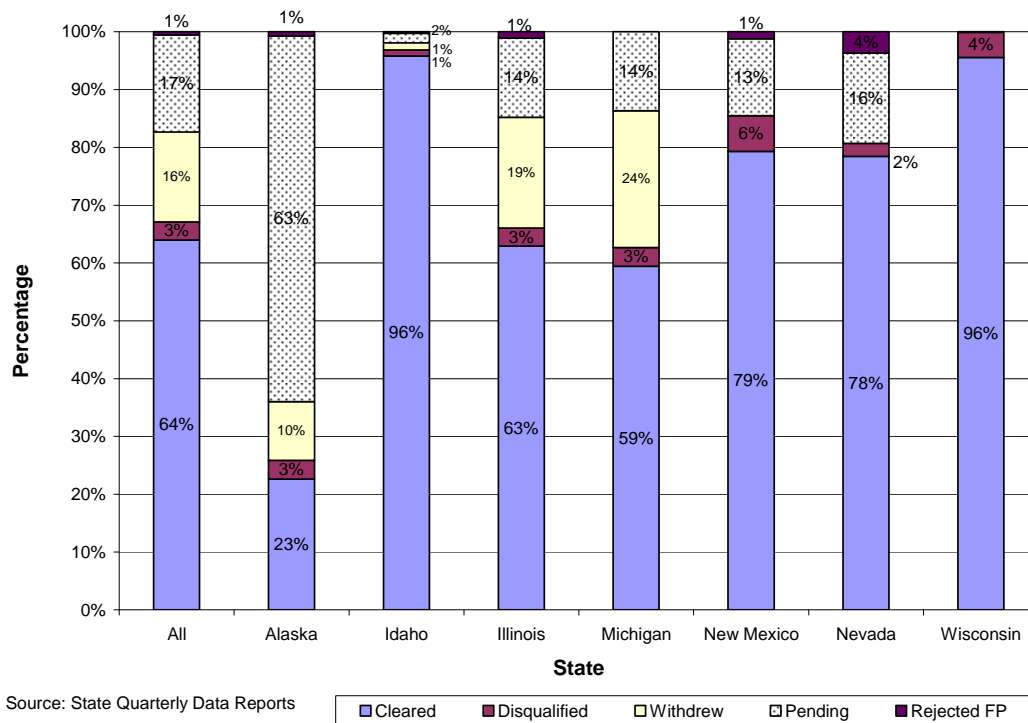
n=247,198 total number of background checks initiated.  
Source: State Quarterly Data Reports.

**Table 7.39**  
**All Pilot States: Appeal and Rehabilitation Reviews**

	Number	Percent
<b>Rehabilitation Review</b>		
Approved	245	50.7%
Denied	94	19.5%
Pending/other	144	29.8%
Total	483	100.0%
<b>Appeals based on errors in criminal record</b>		
Approved	24	20.9%
Denied	58	50.4%
Pending/other	33	28.7%
Total	115	100.0%

Source: State Quarterly Data Reports.

**Figure 7.8: Status of Background Checks At End of Pilot**



## 7.10. Costs Per Disqualification

Information on background check costs from chapter 6 was combined with the results of background checks described in this chapter to analyze the costs per disqualified applicant and the additional benefits of a fingerprint-based check.

- Reflecting differences in disqualification rates across States, the cost per disqualified applicant varied across States, from a low of \$438 in New Mexico to a high of \$1,364 in Michigan (Table 7.40). Note that voluntary withdrawals were not included in this analysis, as it is not possible to determine the reason for the voluntary withdrawal. Also, the data from Illinois, New Mexico, and Nevada do not include disqualifications that resulted from registry checks, resulting in an underestimate of the costs per disqualification for applicants in those States.
- While this information was not available for several States, it appears that most of the disqualifications were due to information from the applicant self-disclosure or the initial registry checks. For example, Michigan had a total of 4,716 disqualifications (including system withdrawals that likely indicate some type of data entry error on the part of the employer), but only 867 of these were due to information from the fingerprint check. In Wisconsin, only 26 of the 640 disqualifications came from information discovered during the fingerprint check (there were also 16 disqualifications from applicants who would not consent to the FBI check or who did not show up for their fingerprinting appointment) and 43 percent of the disqualifications were due to information from the applicant's self-disclosure form.
- There was considerable variation in the cost per applicant disqualified due to the fingerprint-based check. This ranged from \$438 in New Mexico to \$29,376 in Wisconsin. Like several other pilot States, Wisconsin's program includes a name-based State criminal records check, and this, perhaps combined with a less geographically mobile workforce and the limited set of disqualifying crimes that Wisconsin considered likely explains the difference.

These findings may raise questions about whether the incremental benefits of a fingerprint-based check (relative to a name-based check) were worth the extra costs, particularly in Wisconsin, although it is not possible to know how many applicants who would have been disqualified were deterred by the requirement for a national fingerprint-based background check.

**Table 7.40**  
**Background Check Costs Per Disqualification**

<b>Item</b>	<b>Alaska</b>	<b>Idaho</b>	<b>Illinois</b>	<b>Michigan</b>	<b>New Mexico</b>	<b>Nevada</b>	<b>Wisconsin</b>
<b>Total costs<sup>a</sup></b>	\$714,584	\$898,830	\$199,256	\$6,432,790	\$564,330	\$1,383,060	\$763,776
<b>Results</b>							
Total disqualifications	768	255	197	4,716	615	574	640
Disqualifications due to fingerprinting	178	N/A	197	867	615	574	26
<b>Cost/disqualified applicant</b>	\$930	\$2,663	\$1,011	\$1,364	\$438	\$2,410	\$1,193
<b>Cost/disqualified applicant due to fingerprinting</b>	\$3,049		\$1,011	\$7,420	\$438	\$2,410	\$29,376

<sup>a</sup>: Total costs are based on the cost per background check and the volume of background checks in States (from Table 6.2) and the number of fingerprints conducted in each State.

Source: Abt/UCDHSC (2008)

## 8. Abuse Prevention Programs

The MMA directed the Secretary, to the extent possible, to select at least one State that includes patient abuse prevention training (including behavior training and interventions) for managers and employees of long-term care facilities and providers as part of the pilot program conducted in that State (Sec 307(c)(3)(B)(ii)(I)) of the Social Security Act. Three of the pilot States – Alaska, Michigan and Wisconsin – received additional funding to develop and conduct patient/client abuse prevention training. CMS opted to evaluate these training programs because the Agency viewed this as an important component of abuse prevention programs, however the MMA did not mandate this part of the evaluation.

This section contains the individual State training program descriptions including program products, implementation, evaluation strategy, evaluation results, sustainability, and lessons learned. Table 8.1 compares the State program across key components.

**Table 8.1**  
**Key Components of States' Abuse Prevention Programs**

	Alaska	Michigan	Wisconsin*
Budget	\$1,499,844	\$1,500,000	\$858,260
Funds Spent	\$1,079,012	\$1,500,000	\$742,459
Structure	University of Alaska Anchorage School of Social Work	Michigan State University, MI Office of Services to the Aging, BEAM (subsidiary of MPRO, Michigan's Quality Improvement Organization)	Department of Health and Family Services in partnership with University of Wisconsin- Oshkosh Center for Career Development
Products	Curriculum consists of three modules: 1) Supporting Vulnerable Adults; 2) Abuse Prevention and Intervention; and 3) Supporting the Workforce. A long-term care facility version of the training was also produced and distributed to all trainers.	Training products include: 1) 8-hour Adult Abuse Neglect Prevention training program (AANP); 2) 4-hour Preventing Adult Abuse and Neglect (PAAN) program; 3) Supervisor Neglect and Adult Abuse Training (SNAAP); 4) 12 one-hour Facilitator Instruction Modules (FIMS); and 5) Research on MI's formal system for reporting abuse	Training products include: 1) Abuse and Neglect Experiential Training (eight reality-based scenarios); 2) Behavioral Training and Intervention Workshops including "Supporting the Professional Caregiver," "Responding to Challenging Situations," "Keys to Profession Caregiving," and "Conducting Internal Investigations;" 3) Abuse and Neglect Prevention DVD; and



**Table 8.1  
Key Components of States' Abuse Prevention Programs**

			4) Train-the-trainer Sessions
Number of Sessions	63	459	28 (12 Experiential trainings and 16 topical trainings)
Number of Participants	731	7,804	3,100
Number of Trainers trained	25	76	139 trainers attended Experiential Training; 68 attended Topical Training, (some may have attended both)
Evaluation activities	Course participant feedback regarding the training itself; Pre-, post-, and follow-up tests of trainees; follow-up assessments with the supervisors of the trainees; and a larger field test of knowledge acquisition.	Pre-post knowledge tests; longitudinal automated phone survey; trainer surveys, provider surveys and Continuing Education Unit (CEU) feedback	On-site post training surveys and 4-months follow-up training surveys for Experiential Training and Topical Trainings; Train-the-trainer on-site and follow-up surveys.
Continuing education credits	Yes	Yes	Yes

Notes: Wisconsin's training program was implemented in four pilot counties, although later during the pilot, the train-the-trainer programs were expanded to non-pilot counties.

Sources: *Abt Associates/UCDHSC, 2008.*

## 8.1. Alaska Abuse Prevention Training Program

Alaska's program, developed by the University of Alaska Anchorage, School of Social Work, aimed to address the lack of a consistent, State-wide training curriculum related to abuse and neglect of adults based on Alaskan statutes. Developers cited the diversity of the Alaskan workforce, the geographic challenges and scarcity of relief staff, and aimed to make the program flexible and responsive to each training situation. They aimed to incorporate training into certificate and degree programs, develop a train-the-trainer program and expand the number of training venues. The program identified specific goals and objectives that focused on increasing awareness of what constitutes abuse and neglect according to Alaska statute, who are mandatory reporters; how to identify risk factors for abuse and neglect; how to prevent abuse/neglect from occurring and how to intervene if abuse is suspected.

### *Program Description*

Alaska's program targets a broad audience of caregivers working in a variety of settings. It includes an essential core of information that, based on delivery style, can be adjusted according to audience needs and capability and available time frame. It consists of 1) train-the-trainer activities; 2) the

addition of abuse and neglect prevention strategies to existing academic course work; and 3) continuing education through workshops at existing conferences. The curriculum developed consists of three modules:

- Supporting Vulnerable Adults;
- Abuse Prevention and Intervention; and
- Supporting the Workforce.

Topics include the aging process including physical and psychological changes; cultural sensitivity; dealing with lack of services in small communities; ethics; differences in State and Federal abuse definitions and reporting requirements; and focusing on individual as well as institutional risk factors for abuse or neglect. Training materials consist of a notebook of handouts, copy of PowerPoint slides, activities, video materials to initiate discussion, supplementary resources, and a CD and DVD containing all materials and video clips. A long-term care facility version of the training was also produced and distributed to all trainers.

### ***Program Implementation***

Twenty-five individuals from a broad spectrum of providers (assisted living, hospitals, Alzheimer's care organizations, independent living centers, regional senior care organization, State adult protective services, and long-term care offices) attended 3-day train-the-trainer sessions. A total of 731 people attended 63 sessions, along with the 25 trainers.

### ***Program Evaluation***

The program evaluation consisted of 1) course participant feedback; 2) pre-, post- and follow-up tests of trainees; 3) follow-up assessments with supervisors of trainees; and 4) field test of knowledge acquisition (pre-post).

- The process evaluation consisted of a one-page evaluation form to gather information on the trainee (job type and agency) and trainer feedback, overall knowledge gained and open ended comments on presentation and content. The five questions asked the trainee to rank the trainer in specific areas on a five-point scale, one overall question asking how much the participant thought they had learned and two open-ended questions assessing potential improvements.
- Trainee tests – Trainees completed a pre-test and post-test immediately after the training. Consenting trainees provided contact information for an additional survey to be completed six months after the training.
- Follow-up with supervisors was conducted with a sample of consenting trainees. Telephone interviews were conducted with supervisors within one month of the 6-month anniversary of the training. The trainee had to have been under the supervisor's management in the month prior to the interview.
- Knowledge field tests were developed by subject matter experts with content validity checked by a second panel of experts, which were then pilot tested. 7000 paper surveys were mailed to a variety of long-term care facilities and agencies. Links to the survey were included on the paper copy and posted on web pages of various State

agencies. Field tests conducted in March-April 2006, before the training began and in October-November at the end of the grant period.

### ***Evaluation Results***

- Participant Feedback – 412 trainees completed at least part of the feedback form. Overall trainees reported favorable impressions of the trainers’ presentation with many positive responses to open-ended questions.
- Knowledge field tests – A total of nearly 1500 surveys were returned (715 pre-tests and 784 post-tests). Scores on pre- and post-tests were similar. Researchers concluded that there was relative unfamiliarity with how to identify risk factors and signs of abuse, and with recognizing and reporting abuse and factors related to preventing abuse. They also concluded that knowledge did not increase during the project period. Although the trainings were offered to as many individuals as possible, they noted that there were many others eligible for training who did not complete it. They had hoped that those who did complete the training would share their knowledge with colleagues, but field tests did not find any evidence that that had happened.
- Trainee tests – Researchers noted problems with the number of completed pre-post and 6-month post-tests. A number of trainees completed pre-tests without completing the consent form or completed post-tests without entering their name to match it to the pre-test. Furthermore, a number of tests were returned with only one or two items completed. Four hundred and thirteen valid pre-tests, 382 post tests and 118 six-month follow-up tests were analyzed. Average pre-test score was 63 percent with the average post-test score 66 percent out of a possible 100 percent. The 6-month post-test score mean was 68 percent. Researchers pointed out, however, that there was no statistically significant evidence of knowledge gained.
- Supervisor interviews consisted of 17 items using a Likert-type scale to rank the trainee’s knowledge and abilities. Seventy-three interviews were completed. The majority of responses gave high ratings to the trainees. Mean ratings for the 17 items ranged from 5.48 to 6.8 on a scale of 1-7. Trainees ranked lowest in knowing how to avoid stress, recognizing stress level, and cultural awareness. They scored highest in not taking out anger/stress on residents, awareness of statutory responsibilities and recognizing harm that should be reported, which program developers cited as representative of the core goals of the program.

### ***Sustainability***

Program developers envision the training continuing through 1) the trainers who will continue to offer trainings in their agencies and at conferences; 2) dissemination of the curriculum to every skilled nursing facility; 3) incorporation into a credentialing program in Health and Development Disabilities under a Department of Labor Grant entry-level workforce training grant received by the University’s Center for Human Development; 4) inclusion in the multi-disciplinary Geriatric Certificate; and 5) in a Sociology Department course on “Abuse Across the Lifespan.”

### *Lessons Learned*

Researchers point out that the formal evaluation did not capture the benefits that were reported anecdotally. They reported that participants “appreciated the chance for dialogue and relationship building offered by the trainings.” Furthermore, they noted that the formal knowledge assessment may not have been sensitive enough to the “actual gains made by trainees and the wider field” in areas of “dialogue, relationship-building, problem solving, [and] understanding.”

## **8.2. Michigan Adult Abuse and Neglect Prevention Training Program (AANP)**

Michigan aimed to develop a curriculum that incorporated methods of staff empowerment, culture change, and person-centered care and to evaluate the impact of such a curriculum on staff knowledge and work behavior related to abuse. The curriculum highlights those aspects of staff work and life that workers have some measure of control over and provides strategies to use to recognize and defuse stress. The program curriculum aimed to go beyond identification and reporting of abuse to include information on prevention utilizing principles of adult learning.

### *Program Description*

Michigan’s abuse prevention training program was a collaborative effort between Michigan State University/College of Human Medicine, Michigan Office of Services to the Aging and Bringing the Eden Alternative to Michigan (BEAM), a wholly owned subsidiary of MPRO, Michigan’s Quality Improvement Organization. BEAM was responsible for developing and executing all the training operations with the University responsible for the training evaluation. The Office of Services to the Aging provided oversight of training activities and served as liaison to the Michigan Department of Community Health and to CMS during the pilot. A variety of products were developed, which included:

- 8-hour Adult Abuse and Neglect Prevention (AANP) Training Program
- 4-hour Preventing Adult Abuse and Neglect (PAAN) Training Program
- Supervisor Training - Supervisor Neglect and Adult Abuse Prevention (SNAAP)
- Twelve 1-hour Facilitator Instruction Modules (FIMS) on:
  - Person centered care
  - Identifying potential signs of abuse and neglect
  - Abuse and neglect – defining and reporting
  - Stress triggers and trigger busters – life influences
  - Stress triggers and trigger busters – job challenges
  - Stress triggers and trigger busters – client behaviors
  - Stress trigger signals
  - Active listening
  - De-escalation – conflict resolution
  - De-escalation – client behaviors
  - When abuse happens
  - Active Communication – learning circle
- Report on the State’s formal system for reporting abuse

Michigan selected a curriculum developed by an independent organization, the Center for Advocacy for the Rights and Interests of the Elderly (Competence with Compassion: an

abuse prevention training program for long-term care staff) and updated it to include information on culture change and principles of person-centered care. Developers pointed out their belief in the importance of including information and training on those aspects of a direct care worker's work environment or life that may contribute to abuse, but that they may be able to modify or control. Training encompassed principles of empowerment that workers could use in work situations as well as in their personal lives.

The 4- and 8-hour trainings consisted of a series of lecture, large and small group discussions and exercises, and role play. The objectives were to ensure that participants 1) were clear on their agency's policies regarding reporting requirements; 2) could recognize abuse/neglect; 3) could identify abuse triggers (life influences, job challenges, client behaviors) and develop skills to defuse them; 3) could identify personal triggers and signals; and 4) could respond appropriately if abuse occurred.

Many providers indicated that it was difficult to participate in the 8-hour trainings because of the required time commitment, and the 4-hour training was developed in response to this feedback. The supervisor training is a 4-hour training focused on the role of the supervisor in abuse prevention. The Facilitator Instruction Modules (FIMS) were designed for use by staff educators for in-service training.

### ***Program Implementation***

Eight-hour training sessions were held from April 2006 through July 2007 and 4-hour sessions from July 2007 to August 2007. In total, 156 providers participated in either an 8- or 4-hour training; 459 trainings were held with 7,804 direct access staff trained. Seventy-six specialized trainers were hired and trained and 55 of these trainers stayed active in AANP throughout the duration of the project.

### ***Program Evaluation***

Program evaluation consisted of a pre-post knowledge test administered to training participants, a longitudinal automated phone survey conducted with a subset of training participants as well as surveys for trainers and providers, and feedback collected in conjunction with continuing education credits (CEs).

- Pre-post tests aimed to capture knowledge changes in participants. Responses to 35 questions that followed the curriculum were gathered as well as information on demographics, employment status, and a course evaluation.
- The longitudinal phone survey was implemented to measure if knowledge was sustained and the impact of training on work performance related to abuse. Phone numbers were collected from the pre-post test forms and respondents were contacted with an automated voice message inviting them to participate in the survey. Respondents were asked to call a toll-free number once per month for up to six months to take the automated survey. The content included items from the training curricula with focus on actual (or suspected) incidents of abuse and how these incidents were handled. There were also several open ended questions on what participants thought would reduce abuse. Responses were automatically downloaded into a secure database. Participants were paid \$5 per survey and a \$5 bonus if they completed all six surveys.

- The provider survey was developed to understand the provider factors that contributed to the decision to hold (or not hold) a training session.
- The trainer survey was a set of open-ended questions to provide feedback on their training, scheduling communication, materials, distribution, and response time by BEAM staff.
- CE credits were made available to nurses and administrators/licenseses of adult foster care homes for each of the training products (4- and 8-hour training programs, supervisor training and facility instructor modules). Other individuals were encouraged to seek approval of CE credits on their own with reports that nursing home administrator, social worker, registered dietician, emergency medical technician, and activities personnel were able to get approval.

### ***Evaluation Results***

*Pre-Post Knowledge Tests.* 4,638 participant responses were analyzed according to change in the three areas of interest – identification, reporting and prevention. Significant improvements were noted in all three domains. Differences between the 4- and 8-hour training were minimal and although statistically significant (primarily because of the large sample size), researchers cautioned that the results lack real meaning. They did note that individuals with less than a high school education may benefit more from the 8-hour training, possibly related to having additional time to use more interactive teaching modes and to develop comfort with discussing sensitive topics.

Pre-post tests were also utilized to measure abuse prevalence based on what participants had observed. Questions were asked about the frequency and type of abuse that they had witnessed or observed over the course of their career and in the past month. Nearly one quarter of survey respondents reported witnessing or observing some form of abuse in the past month with verbal or emotional abuse the most common form.

*Longitudinal Phone Survey.* A total of 2,049 trainees consented to participate in the phone survey, however only 304 actually took the survey at least one time. Thirty-four participants took the survey two times and 12 took the survey three times. Over 90 percent of respondents rated the training as good or excellent and indicated improvement in their ability to identify, report, and prevent abuse. Similar to the pre-post test results, 20 percent of respondents reported witnessing some type of abuse since the training session with verbal abuse noted most often. Respondents were asked if they had reported the abuse and if not, why. Approximately half reported the abuse to a supervisor, with the remaining respondents citing that, “It wouldn’t have made any difference” and “It wasn’t serious enough” as the most common reasons for not reporting the abuse.

Responses to open ended questions on what changes could prevent abuse in the future included education followed by increasing the size of the staff. Respondents also suggested that support services be provided to staff, such as anger management training, reassurance to staff that there will be no retaliation for reporting abuse, more referrals to social workers, and better screening of potential workers including family member caregivers.

*Provider surveys.* The response rate was 10 percent (277 responses), which included providers who had sent staff to a training session as well as those who had not. The majority of providers who had sent staff were satisfied or very satisfied with the program. More than half reported they had noticed a positive change in staff behavior or performance, particularly related to staff/client relationships. Providers indicated a preference for shorter training sessions held on-site with an outside presenter.

*Trainer Survey.* Trainers responded that they felt prepared to conduct the sessions, materials were appropriate and communication with BEAM was helpful. They raised some concern with certain aspects of preparation time and initial scheduling which improved as the program got underway.

*CE evaluations.* Feedback on CE forms indicated that the majority of participants reported they had reached their training goals and that the trainer was effective.

*Formal Reporting Systems Report.* Another product of the State's program was a description on the reporting of abuse across the various settings. The report focused on the six organizations that maintain legal jurisdiction over reporting of abuse in the State. Key findings include: 1) there is no single accepted definition of abuse in Michigan; 2) there are few standardized procedures across agencies; and 3) there is no a central database for storing abuse related data and hence, data cannot be easily shared.

### ***Sustainability***

Michigan has a number of systems in place for continuing the abuse training and others that they are exploring. Information on the 4- and 8-hour trainings and how to arrange for consultation services or schedule a training session are posted on the BEAM web site. Slides, notes and handouts for each of the 12 FIMS are available for downloading from the BEAM web site as well. BEAM will continue to host the web site and is in the process of applying for additional funds for web maintenance. BEAM is also considering continuing oversight of the training including updating of materials and scheduling of trainers using a fee-for-service model.

Licensing bureaus list the AANP training as a recommended option for facilities seeking abuse training. The Michigan Long Term Care Advisory Commission's Workforce Workgroup and Office of Services to the Aging (OSA) are considering adding the AANP training to the current nurse aide training certification curricula.

### ***Conclusions and Lessons Learned***

Program developers point to the State-academic-community partnership as very key to their success as well as their partnership with an organization (BEAM) capable of executing the training operations. They also recognize the need for highly skilled trainers and a strong curriculum that imparts knowledge on abuse prevention, person-centered care and empowerment utilizing adult teaching methods. Their partnership with the university provided a strong evaluation component leading to evidence of the value of abuse training.

Participants, trainers, and providers reported high rates of satisfaction with the training. The program observed significant measures of change of knowledge with improvement in knowledge more evident with respect to identifying abuse and recognizing abuse as compared to reporting abuse and note the need to explore further the reasons that workers don't report abuse. They found little difference between the 4- and 8-hour training sessions in terms of knowledge change. Lastly, they were pleased with the automated phone survey and saw it was a promising way to collect data on the prevalence of abuse in the future.

### **8.3. Wisconsin Caregiver Project**

Wisconsin aimed to develop a training approach that de-emphasized “job hierarchies.” Wisconsin utilized experiential training, which is aimed at helping each participant to experience life through a customer's eyes to examine their own beliefs, assumptions, and stereotypes concerning abuse and abuse prevention. They also wanted to offer behavior training and interventions for both direct access caregivers and managers. Additionally, Wisconsin aimed to develop a program with measurable outcomes and a product that could be replicated by other States.

#### ***Program Description***

Wisconsin's abuse prevention program was administered by the Department of Health and Family Services (DHFS) partnered with the University of Wisconsin-Oshkosh Center for Career Development (CCDET). The program developed three abuse training products as well as train-the-trainer sessions:

- The Abuse and Neglect Prevention Experiential Training- Utilizing experiential learning, participants interact with each other in eight reality-based scenarios (typically two scenarios are utilized in a 4-hour training). Scenarios take place in a variety of care settings with participants taking on the role of caregiver, manager, resident/consumer, or family member to address various types of abuse (emotional, mental, physical, sexual, verbal) neglect and misappropriation. Participants are provided with scripts and props to ‘act’ out their role with facilitators leading discussion at various points to highlight identification of abuse and neglect, understanding and utilizing appropriate responses when abuse or neglect is observed (or suspected), strategies and techniques to prevent abuse and practices to promote resident and staff safety, dignity, respect and health. Training materials may be downloaded from the DHFS web site at <http://dhfs.wisconsin.gov/caregiver/training/trgIndex.HTM>. Examples of scenarios include:
  - Barbara Blue – CBRF – Domestic Abuse. A resident temporarily staying at a CBRF while recovering from surgery. The resident seems distressed at her husband's reaction to her stay. Participants learn the signs of domestic abuse and how reporting concerns about the husband's behavior can lead to professional intervention and help for the patient.
  - Paula Plummer – Home Health – Misappropriation of a patient's property. A caregiver is accused of stealing from her patient after Paula's daughter comes to visit her mother. Participants learn boundaries can protect a caregiver and lead to a more helpful relationship with clients.



- Rosa Rosario – Facility for Persons with Developmental Disabilities – Resident Abuse. A frustrated caregiver grabs Rosa's arm and forces her to leave another patient's room. Two other caregivers walking by the room observe the scene but do not intervene. Participants learn to spot a potentially abusive situation before it happens and observe and practice ways to step in when another caregiver seems stressed.
- Behavior Training and Intervention Workshops – There are four topical training workshops that were developed based on examples from the State's misconduct report records. These are 4-hour trainings that can be subdivided into smaller segments. Teaching methods include lecture, hands-on activities, mixed media presentations, written materials and large and small group discussions. At the end of the pilot, materials for each workshop were posted on the DHFS web site and include a facilitator guide, PowerPoint presentation, learning points poster, participant guide, handouts and for some topics, and a video clip. Topics include:
  - Supporting the Professional Caregiver, which is directed at managers and supervisors to develop skills needed to support their staff.
  - Responding to Challenging Situations, which deals with the challenges around caring for dementia patients. It's geared to direct care workers, as well as managers and supervisors.
  - Keys to Professional Caregiving, focused on communication skills for direct caregivers.
  - Conducting Internal Investigations of Caregiver Misconduct, targeted to managers and supervisors.
- Abuse and Neglect Prevention DVD – This product includes six of the eight experiential training scenarios noted above. Participants watch an introduction and the first three scenes of the scenario. At that point, the participant is prompted to pause the DVD to answer several questions: What could the caregiver have done to avoid this situation? What were the red flags that misconduct was about to occur? How can caregivers support each other in situations like this? The remaining scenes are then watched where the participant is able to see how caregivers could have acted appropriately. Each scenario is estimated to take 30-40 minutes. Each DVD includes a facilitator's guide with instructions on how to engage staff in a discussion about the scenario. The DVD is offered on the DHFS web site <http://dhfs.wisconsin.gov/caregiver/Training/dvdtrg.htm> for a charge of \$5 to cover postage and handling charges.
- Train-the-Trainer Events – 2-day experiential training sessions are offered to facility trainers, administrators, social workers, and other staff responsible for making training decisions. Trainees participate in a scenario and then practice facilitating a scenario. A full day train-the-trainer session was developed for the topical trainings and includes training tips and guidelines. Trainers receive a manual, facilitator guide and instructions for downloading all materials from the DHFS web site.

### ***Program Implementation***

Wisconsin's Background Check Pilot Program was implemented in four of the State's counties. The training programs were offered only in the four pilot counties, but later during the pilot, the train-the-trainer sessions were expanded beyond the pilot. Program administrators estimate that 2,100 caregivers attended training and that an additional 1,000 participants received training at their own facility. 207 provider representatives were trained.

The experiential training was offered 12 times. Each of the four topical training sessions was offered in each of the pilot counties (16 presentations). 1200 copies of the DVD have been distributed. Train-the-trainer sessions for the experiential training were offered at least twice in each of the four pilot counties and for the topical training at least once in each of the four pilot counties as well as several non-pilot counties.

### ***Program Evaluation***

Training participants were surveyed immediately post training and again at four months after each training. Surveys were specific to the type of training. "On-site" surveys asked participants to rank several questions on a scale of 1-5 in terms of how much they learned in the session along with feedback on using the training materials, style of training and recommendation to a co-worker. Follow-up surveys consisted of demographic information and several questions that asked respondents to rank on a scale of 1- 5 how they have used information since the training session.

### ***Evaluation Results***

Program administrators reported that as a result of the abuse prevention training program:

- Staff at all levels have a heightened awareness of actual and potential abuse;
- Training surveys indicate the likelihood of reduced incidents of abuse, neglect and misappropriation of property; and
- Measurable outcomes that show better communication between administration and staff, improved employee morale, lowered staff turnover and improved quality of life and care for residents/patients.

There were 2,004 responses from on-site surveys and 321 responses to follow-up surveys. Responses to the on-site surveys gave all the products (experiential training and topic trainings) high marks in terms of content and training style. Using a 5-point scale, participants ranked the programs at overall averages between 4.2 and 4.5.

Follow-up surveys, although, fewer in number, showed similar results. Individual question responses on using the information presented in their daily work ranged from 3.6 – 4.4.

There were 175 responses from trainers ranking their train-the-trainer sessions. They ranked the experiential training at an overall average of 4.6 (on a 1-5 scale) and the topical training at 4.4.

### *Sustainability*

As noted above, all training materials are posted on the DHFS web site and available for download. The training DVD may be ordered from DHFS for a minimal charge to cover postage and handling. DHFS provided \$200,000 of additional funding to continue sessions through June 30, 2008. They expect to conduct 13-14 sessions between October 2007 and Spring 2008. Participants in the train-the-trainer sessions estimated they would reach approximately 60,000 caregivers, supervisors, and managers in and outside of the State.

### *Conclusions and Lessons Learned*

Program developers concluded that there exists a real need for direct caregiver training in the social and emotional skills needed to reduce incidents of abuse and neglect. The training programs were rated highly by participants and sessions filled up quickly. Additional train-the-trainer sessions were funded through the Spring of 2008 in response to provider interest. Providers prefer short, flexible training that they can deliver themselves and were not put off by the amount of materials involved in the Experiential Training. Program administrators credit their partners – the advisory committee for content development and their LTC Workforce Alliance for marketing the training. Lastly, they aimed to make the training “serious fun” by supporting a wide variety of learning styles and providing encouragement and support for caregivers doing a difficult and important job. They promoted the caregiver as the “expert” and handed out bumper stickers that said, “Proud to be a Wisconsin Caregiver.”

## **8.4. Evaluation/Effectiveness of Abuse Prevention Programs**

Abuse prevention programs generally aim to increase awareness and understanding of abuse, neglect and misappropriation issues among providers and direct care workers and thus, as a result aim to reduce the incidence of abuse, neglect and misappropriation. Each of the States included an evaluation component in their program which consisted of gathering trainee (and in some cases, supervisors’, providers’ and trainers’) self-reports of knowledge gained and behaviors changed. None of the States attempted to measure the effectiveness of abuse prevention by looking at abuse or neglect complaints or citations recognizing that abuse prevention training, by heightening worker awareness, may actually increase the reporting of abuse. These self-reports, although variable from State to State, generally provide an overall favorable response to training programs. Stakeholders across all three States reacted positively to the training sessions with participants reporting improvement in knowledge related to identification, reporting and prevention of abuse. Supervisors and providers reported that trainees had improved in knowledge and in their awareness of statutory responsibility and ability to recognize harm as well improvement in behavior particularly related to staff client relationships.

Despite these positive reports, one State found in two different evaluation methods that 20 and nearly 25 percent of staff reported witnessing some form of abuse in the past month with verbal abuse the most common form reported. Approximately half of these workers had not reported the abuse to a supervisor, which indicates a continuing need for research to explore why workers are hesitant to follow through on their reporting responsibilities.

## 9. Conclusions and Lessons Learned

Most of the conclusions and lessons learned relate to the identification of effective, efficient, and economical procedures for conducting background checks (evaluation topic (e)(1)) from Section 305 of the MMA. An assessment of the unintended consequences of background checks on the size of the available workforce (evaluation topic (e)(5)) was also included in the analysis of program effectiveness.

### 9.1. Effectiveness of Pilot Programs

A key question is whether the pilot State programs were effective in reducing the number of incidents of neglect, abuse, and misappropriation of resident property of vulnerable long-term care clients. This has implications for *whether* a national background check program modeled on the pilot should be considered. However, the evaluation could not address this question because the reporting requirements of States did not include reported incidents of neglect, abuse, or misappropriation of patient/client property. Thus, no quantitative measures of the effectiveness of the pilot program in reducing the incidence of abuse, neglect, and misappropriation of property were available. The evaluation team considered attempting to analyze effectiveness using nursing home survey deficiency data, but determined that these analyses would not provide useful measures of program effectiveness. This is because certification surveys occur infrequently (every 9-15 months for nursing homes and less frequently for other provider types), the citation rate for abuse and neglect is low, and the anticipated impact of background check programs is gradual, given that the requirement applies only to new employees in most States.

As an alternative, qualitative methods were used to collect information on program effectiveness. Site visit and telephone interviews included several questions related to program effectiveness:

- What is your impression of the background check pilot program?
- How effective do you believe the background check pilot program is?
  - (If the program is considered effective) What makes the pilot program effective?
  - (If the program is not considered effective) What would improve the pilot program?
- How effective do you believe the background check program is in reducing the incidence of abuse, neglect, and misappropriation of patient/client funds?

#### **Pilot Programs Were Effective in Protecting Residents, but There Was Disagreement about the Benefits of a Fingerprint-Based Check**

Recognition of the value of background checks was nearly universal among the stakeholders, and most believed that the program in their State was effective. There was some disagreement about whether the benefits of a fingerprint-based check were worth the extra costs, particularly in Wisconsin, which had a strong name-based background check process prior to the pilot.

- Those who believed that a fingerprint-based check was appropriate tended to recognize limitations in name-based checks and to believe there was a relationship between crimes in the past and conduct in the future. Several cited benefits related to peace of mind to families and residents that the background checks provide as one benefit of a fingerprint-based check. These stakeholders tended to believe that the fingerprint check was worthwhile even if the number of applicants disqualified based on them is low; several noted that the program would be worthwhile even if nobody were disqualified, as there could still be a large benefit resulting from deterrent effects.
- Those who questioned the value of fingerprint-based checks were almost all from States with web-based applications that include a name-based criminal records check and had not had any applicants disqualified by the fingerprint check. Some stakeholders believed that investments in abuse and neglect training or increased staffing would have a larger impact on reducing abuse and neglect than the fingerprint-based background checks. Others questioned the extent to which abuse and neglect are committed by those who would be screened out by a background check.

The representative quotations from a number of the stakeholders in different States below are selected responses to questions about the effectiveness of pilot background check programs.

- “It helps having our staff checked. It makes the families feel better.”
- (Is the program effective at protecting people?) “Yes, definitely... We need to weed out the bad people to protect residents.”
- “I’m not sure if they have statistical proof, but there is definitely a feeling that the program is beneficial in its attempt to protect vulnerable patients”
- “(The program) provides a level of screening (not protection, but screening), due diligence, peace of mind.”
- “In this industry, with this vulnerable population, if there is minimal work involved and minimal cost, but the information provided is vital, why in the world would you discontinue this process?”
- “This population is just so vulnerable. Any bad person would want to work in home care.”
- “It’s a good requirement.”
- “The fingerprinting process helped us identify an out-of- State applicant with an extensive criminal past... The fact that we were able to exclude hiring even one person makes this whole program worthwhile”
- “Background checks do keep potentially problematic individuals out of LTC.
- “The fingerprint-based background check gives us a better sense of relief, knowing we have covered every State and all past criminal activity. There is a better sense of protection for our residents and staff.”
- “I like the fingerprints better. It’s a more thorough check, and it ends up saving time in the long run to just get the fingerprint in the first place.”
- “Anything that you can do that will potentially keep something untoward from happening to a resident or a patient in your facility has got to be a good thing.”

- “Any time we can prevent a crime against a vulnerable person it is worth it. We should do everything possible.”
- “Although this is time consuming, I would like to see it continue for the safety of our residents. If I find just one candidate that would be disqualified ... it would be worth all the work just to have our residents safe.”
- “It helps us get a better percentage of good employees and weed out bad employees before they’re here for very long.”
- “(Background checks) provide a sense of security for consumers.”
- “(Background checks) are very effective at protecting patients.”
- “If you get one hit, it’s worth it”
- Although we have had few negative results, the added security in the screening process is beneficial.”

These representative quotes are from several stakeholders in different States who questioned the value of fingerprint-based checks.

- “Better protection would be to get the police to understand elder abuse to make them understand that a person/patient with mild dementia can still be believed.”
- “There’s not enough bang for the buck... Right now, it doesn’t seem like it’s worth it.”
- “In most cases we believe the State (name-based) background check is sufficient. We did not obtain any more information from the fingerprint checks that didn’t already show up on the State check.”
- “Are the background checks effective? Yes, to a certain extent. There are people without any background check issues, but can do bad things.”
- “I haven’t screened anyone out who wouldn’t be by State police check.”
- “Our applicants don’t have a lot of criminal history, so the name-based search has been sufficient.”
- “(Background checks) makes society feel better; families and staff feel better. Does it really protect them? I don’t know.”
- “Are patients safer? Not necessarily. We just didn’t have that many cases of abuse or the opportunity for abuse.”
- “Probably better to invest in staffing ratios and other ways to improve patient care.”

**Background Check Results Need to Come Back Quickly to Be Effective**

There was a consensus among stakeholders that background check results needed to come back quickly (i.e., within 1-2 weeks) to be effective. States that used electronic fingerprinting systems were generally able to meet this time frame, while, in States in which fingerprints were collected manually, results generally took longer. For States that were not able to complete background checks quickly, employees often had lengthy periods of provisional employment. These employees had

typically cleared the initial registry checks, but the results of their criminal history screening were not known. Most employers that the evaluation team interviewed indicated that no additional supervision was given to provisional hires, meaning a potential threat to patient safety. Stakeholders expressed concern at the threat to patient safety that results from lengthy periods of provisional employment. Quick processing of background checks would also reduce employer's need to supplement State background checks with name-based checks conducted by private companies that some employers use.

- "I'm not convinced that the extra assurance of using the fingerprints is worth the expense of exposing the patients to employees who we don't know the result yet."
- "A lot of damage could be done in 4-6 weeks and we can't wait that long to hire someone."
- "It would be nice if the results would come back quickly before the individual starts working. We would rather not spend money on orientation if later disqualified."
- "The whole idea behind the background check program is to get the information quickly and protect seniors – and that isn't always happening."
- "Should improve the turnaround time – stop job hoppers; 2 weeks would be a good turnaround time."
- "They are effective if done in a timely manner."
- "Health care workers know the rules. They know how long the background check takes and move on."
- "The timeliness of response has been slower than private companies. Some local companies ... do it more timely."

## **Background Checks Appear To Have A Deterrent Effect**

Statistics on the number of individuals disqualified from employment based on background check results likely understates the impact of background checks in protecting residents. This is because some applicants are deterred from seeking employment due to the background check requirement while others voluntarily withdraw from the background check process prior to fingerprinting.

Many employers provide information on background check requirements to prospective hires. Several reported that the background check did appear to have a deterrent effect, as some individuals have chosen not to proceed with the employment process after learning about the background check. While it is speculative, it is likely that some of these applicants would have been disqualified from employment based on the background check results, although there are likely qualified applicants who are deterred as well (i.e., due to a mistaken belief that any past violation might disqualify them, fears about a loss of privacy, difficulties getting to the fingerprint location).

## **9.2. Unintended Consequences**

A concern about the background check pilot program at the outset was that the workforce available to the long-term care industry would be reduced as a result of the requirements for completing a background check. The evaluation team queried stakeholders to gain insight into any unintended

consequences resulting from State programs. With a very few exceptions, stakeholders did not believe that the background check requirement had any unintended workforce impacts. The following representative quotes illustrate this point:

- “The improvements ...in no way cause negative or unintended results with regard to impairment to recruitment of prospective, qualified workers into long term care”
- “Don’t think background checks keep applicants away because they are aware and come from other facilities.”
- “No [impact on the labor pool], because we had the same qualifications before the pilot, our expectation of our candidates hasn’t changed. The applicants have the extra step to get fingerprinted. We ask a lot of them – prior employment, drug test and now fingerprints. It is not a deterrent – they seem to accept it. If they’ve worked in other health care facilities they seem to accept it.”

The stakeholders reported that there were unintended consequences of the State background check programs in other areas. These included the following:

- ***Unanticipated Workload and Subsequent Processing Delays:*** Some States dramatically underestimated the work required to implement their programs, the volume of background checks that they would receive, and the time it would take to put the electronic mechanisms into place resulting in some significant backlogs and processing delays.
- ***Possible “Channeling” of Workers with Criminal Histories into Other Industries:*** A concern was expressed by many States that as the general knowledge amongst the population of long-term care workers of the background check program increased that these individuals would seek employment in industries without such regulatory requirements.
- ***Cost to Applicants Related to Driving Long Distances for Fingerprinting:*** In some areas, prospective employees did not have ready access to fingerprinting. Individuals had to travel significant distances and to incur unanticipated travel costs. While a few employers reported that they would reimburse applicants for these travel costs, this was rare, and the travel costs could represent a significant burden to some applicants.

### **9.3. Lessons Learned in Implementing a Background Check Program**

There are a number of lessons that the pilot States reported learning in the development and implementation of their pilot programs that other States could consider as they develop background check programs.

#### **Allow Enough Time for Program Implementation**

Program officials noted the importance of planning ahead and allowing adequate time for the development of background check procedures, provider training, and the development and testing of IT systems. Several States noted that a formal planning period is needed prior to implementation.



This formal planning period should include stakeholders and partner agencies. The pilot program started in January 2005, but, with the exception of Idaho, States did not begin conducting background checks until 2006.

Several States found that the development of IT systems for background checks was a complicated process that took longer than expected. Attempting to implement new IT systems at the same time that the background check program was active was a challenge. Several States received assistance from the pilot program's technical assistance vendor to assist in the development of IT systems.

### **Clear Program Policies Are Important**

Most employers want to comply with background check requirements, but, in some cases, there was confusion about who needs background checks, particularly with respect to contractors and volunteers. In addition, in several States, there was confusion about the background check requirements for staffing agency workers.

### **Collaboration with Provider Stakeholders is Important**

Collaboration across State agencies and with stakeholders was an important part of the development of pilot programs. Several States collaborated with stakeholders in developing the initial grant proposals, and stakeholder support was important in helping to develop and ensure passage of the required legislative changes, and helping to build support for the program among employers.

- In Alaska, providers were not included in the committee that developed background check procedures. A lesson learned in the State was that if stakeholders had been involved earlier in the process, then this would have allowed stakeholder concerns to be identified earlier, likely allowing the regulations to be created more quickly. Collaboration with the Alaska State Hospital and Nursing Home Association (ASHNA) helped to build support for the pilot.
- In Idaho, provider input was important in ensuring public and legislative support for the pilot.
- Provider groups in Illinois encouraged the State's participation and were instrumental in getting information about the pilot to employers. Their support was important for creating a positive atmosphere towards the pilot.
- Michigan formed an advisory committee to provide guidance and contacts for implementing the new background check program. The advisory committee addressed issues related to legislation, communicated and shared information, and gathered statewide data on abuse, neglect, and exploitation of residents in long-term care. Members included representatives from State agencies, provider groups, consumer advocates, and worker organizations.
- The New Mexico Health Care Association, the New Mexico Association for Home & Hospice Care, and the New Mexico Hospital Association had an integral role in the rule promulgation process and in helping to develop program procedures.
- Wisconsin used a planning committee to provide input on the "big picture" issues related to background checks and an implementation committee to provide input on background check policies and procedures.

Note that the Nevada pilot program was very similar to the pre-pilot program, making stakeholder collaboration less important in the development of policies and procedures.

### **Training is Important**

Training on background check processes and requirements was an important part of program implementation in the States that made major changes to their background check processes as part of the pilot. In developing background check programs, States recognized that they needed adequate time and resources for the training. Some training sessions were informational, focusing on regulatory changes and employer background check requirements. For the States that developed new web applications as part of the pilot, training and technical assistance were important to ensuring that users could access the system and know how to use it.

There were several training-related lessons learned from the pilot States:

- The importance of ensuring that adequate staff are available for providing training and answering user questions.
- The importance of ongoing training, given the turnover among facility staff that conduct background checks, and having ongoing training are important. Several States found it useful to make training materials available on-line.
- It is important not to underestimate the computer skills and equipment of users. Many questions that arose were general questions about how to access the internet in general and more specifically to State web sites.

### **Background Check Programs Are Complex and Require a Division of Labor Among Staff With Specific Skills**

Background check staff had a number of responsibilities, including

- Developing background check policies and procedures;
- Developing and updating databases;
- Reviewing criminal histories and making fitness determination decisions;
- Providing training and technical assistance to employers;
- Providing clerical/support activities (e.g., communicating with employers and employees on such things as the results of the background check);
- Accounting was more complex (in States where pilot funds did not cover background check costs);
- Reviewing applications for rehabilitation review;
- Coordinating and communicating with other State agencies involved in background check programs; and

- Processing criminal history record applications (at the agency that is the central repository for State records).

Staffing was an important element to program implementation. Programs in several States were delayed due to staffing shortages and turnover. In Alaska, the resignation of the initial project director and program manager had a “devastating impact,” according to the State’s final report. A lesson learned in the State was the importance of consistent leadership, especially when the program is new. Staffing shortages were also a top challenge in Illinois. The loss of key staff, combined with a State hiring freeze, resulted in a backlog of data to be entered into the State’s Healthcare Worker Registry, causing delays in implementation. States may want to have a number of staff that can handle specific tasks so that the loss of a critical staff person does not impede program implementation.

Some States hired additional staff or changed the skill mix of their staff as a result of the pilot. Michigan hired new analysts to review criminal records and make fitness determination decisions. As a result of the more automated system developed as part of the pilot, Idaho reduced the number of staff for processing applications and increased the number of staff in the field for fingerprint collection and provider training.

The evaluation team asked program officials what skills they thought were important for a background check program director. Among the necessary skills cited by stakeholders were communication skills, computer/IT skills, general management skills, and mediation/negotiation skills. The program director needs to have good leadership and organizational skills, and have a good relationship with law enforcement agencies and provider associations. Also important is an IT background so that communications with IT staff can be effective. Interestingly, a background in law enforcement or health care was seen as less important than these more general skills.

### **Use Electronic Fingerprint Capture Whenever Feasible**

Electronic fingerprint capture (i.e., Live Scan) allows for background check results to be processed much more quickly, increasing patient safety by reducing the need for lengthy periods of provisional employment. Background check programs in Alaska and Nevada, which mainly used fingerprint cards during the pilot, have been moving towards greater use of electronic fingerprint systems, recognizing that this will markedly reduce processing times and lower fingerprint rejection rates.

Almost all stakeholders agreed that fingerprints should be captured electronically (i.e., via Live Scan) whenever possible. Officials from pilot State programs consistently suggested that States beginning a background check program from scratch use Live Scan machines for fingerprint collection. States that captured fingerprints electronically typically had a vendor or State agency where individuals would go to be fingerprinted. While there was some concern about access to fingerprinting locations, particularly in rural areas, in general, the programs that had electronic fingerprinting systems were more effective than programs in other States in terms of the time required to process background checks. The median background check processing time (from initiation of the background check to the final fitness determination) was 18.8 days in Idaho, 16.7 days in Illinois, and 15 days in Michigan, compared to 198 days in Alaska, 52 days in New Mexico, and 61 days in Nevada. In Idaho, Illinois, and Michigan, results are typically returned within a few days of fingerprinting, particularly for

records that come back without any hits. Wisconsin's employer-driven background check processing time was, on average four business days, based on aggregated data reported by Wisconsin employers. Idaho, Illinois, Michigan, and Wisconsin used electronic fingerprint capture systems, while most fingerprints in Alaska, Nevada, and New Mexico were captured via fingerprint card.

Nevada used pilot funds for a rebate program that allowed private employers to install Live Scan equipment. The rebate amount was fixed, and, in most cases, employers paid some of the costs of the equipment. This is one option for increasing the availability of Live Scan machines, particularly for States that want to increase the availability of Live Scan machines but that do not want to hire fingerprint collection vendors.

In October 2007, the FBI lowered the fingerprint processing fee for fingerprints that were submitted electronically from \$24 to \$19.25, while raising the cost of manually submitted fingerprints from \$24 to \$32.25. The lower cost of electronically submitted fingerprints is another reason to encourage States to implement electronic methods.

### **Web-Based Systems Are Useful for Conducting Initial Registry Checks and Communicating Results to Employers and Providers**

As part of the pilot, several States developed or enhanced existing web-based systems for conducting background checks. Both State officials and providers in these States generally found that these web applications were successful in speeding up the processing of background checks, automating the process, and eliminating unnecessary costs.

In several States, employers used these web applications to conduct the initial registry searches and to conduct name-based criminal record searches. The web applications contain links to all of the on-line registries that need to be checked as part of the background check, and, in some States, include name-based criminal record searches and allow employers to enter the results of these registry checks. Providers generally reported that these web sites were user-friendly and fairly quick to use.

These initial registry searches can typically be completed in just a few minutes and accounted for the majority of disqualifications in the States. By allowing employers to conduct the initial registry searches, an initial screening is completed prior to the applicant beginning work. This reduces the risk associated with provisional hires.

The web-based systems allow for an incremental approach to conducting background checks. Employers can terminate the background check at any point at which disqualifying information is discovered, eliminating unnecessary fingerprint-based checks. Several States used a web application to exchange information on fitness determination decisions with employers, reducing the amount of paperwork that is required to manage the background check process.

### **There Are Benefits from Contracting With a Single Agency to Provide Fingerprinting Services Statewide**

Several States contracted with a vendor to provide fingerprint collection services. These States were satisfied with these vendors, finding that working with a single vendor provides consistency and

simplifies management of the background check program. The use of a single vendor also facilitated the transmission of fingerprints to the State police and made it easier to track any problems in fingerprint submission that might occur.

The use of a single fingerprinting vendor could potentially improve access to rural areas, where the low volume of applicants means that fingerprints are more costly to collect. Specifications about access to rural areas could be written into vendor contracts. For example, States established goals that applicants not have to drive more than a certain distance (e.g., 35 or 50 miles) to be fingerprinted. In rural areas, vendors had mobilized units that were available to collect fingerprints at regular intervals.

### **One Background Check Program Can Be Used Across Multiple State Agencies**

Most States have background check requirements for several types of workers, including teachers, bus drivers, child care workers, and health care workers. These workers are typically regulated by different State agencies, each of which operates its own separate background check programs. In addition, there are often multiple background check requirements for health care workers. For example, nurses have to undergo a background check to be licensed and then a second background check when they start employment. Currently, there is limited information-sharing across these agencies, resulting in redundant, unnecessary background checks according to stakeholders.

There could be clear benefits within a State from increased collaboration and information-sharing across the agencies that run background check programs. The background check programs that States developed for the pilot could be used to provide background checks for other agencies, even if a different set of fitness determination criteria are used. Having a single background check program across a State operated by a single State agency could increase program efficiency. For example, the background check unit could issue clearance that is specific to certain types of jobs as appropriate. Allowing background checks to be good across multiple agencies may reduce costs with little or no impact on the quality of the screening. It could also improve access to fingerprinting locations, by combining the locations that are available for individual State agencies. For example, a motivation for the pilot in Alaska was the impetus for that State's combining different background check programs into a single statewide program resulting in efficiencies and cost-savings.

### **Procedures for Allowing Staffing Agencies To Initiate Background Checks Are Important**

In most of the pilot States, staffing agencies were not able to initiate background checks. All States required that staffing agency staff have a background check, but the responsibility for conducting background checks typically fell to the long-term care facility where the individual was working. Staffing agencies are generally not classified as licensed health care facilities and thus were not regulated by the State. As a result, there is no mechanism for enforcing background check requirements directly through the staffing agency. In some States, the legislation authorizing background checks did not cover staffing agencies.

In some pilot States, new background checks were required every time a staffing agency employee began working at a new facility. Stakeholders agreed that this was clearly redundant and an

inefficient use of resources, especially given the large number of facilities at which some of these staff work. Allowing staffing agencies to initiate background checks and use the results of the background check across multiple providers as long as the individual is still working for the same staffing agency could improve the efficiency of background check programs for this employer type.

Given the lack of regulatory oversight of staffing agencies, the responsibility of ensuring compliance with background check requirements would remain with the facility/provider rather than the staffing agency. As with regular facility employees, compliance can be monitored through the survey and certification process. Staffing agency staff can provide documentation of their clearance to each long-term care facility at which they work.

### **Many Stakeholders Saw Value in Having the Fitness Decision Made by a State Agency**

In all of the States except for Wisconsin, the fitness determination decision was made by analysts that worked either for the regulatory agency or the State police. These analysts reviewed criminal history records and established relationships with local courts, which was important when it was necessary to seek information on records with missing dispositions. In some States, the list of disqualifying offenses was lengthy, and there were specific time periods associated with specific offenses. Staff in these States expressed concern with having the provider review the criminal record given the complexity that was involved. They also expressed concern about the ability of employers to accurately read rap sheets and to know how to track down missing dispositions through local courts.

In Wisconsin, employers reviewed the rap sheet and made the fitness determination decision. The providers that were interviewed in the State were confident of their ability to read criminal history records and make accurate fitness determination decisions, and they did not report that the amount of time that they spent reviewing criminal history records was unreasonable. This may be because employers in the State are accustomed to reviewing criminal history records and making fitness determinations—they have been doing this as part of Wisconsin’s Caregiver Law since 1998. It may also be because the State’s list of disqualifying crimes is fairly short, making it easier for employers to identify offenses that prohibit employment. The experiences of Wisconsin suggest that policymakers may want to leave the specifics of the fitness determination process up to individual States.

### **Rehabilitation Review Programs Are Important for Increasing Fairness and Reducing Unintended Workforce Effects**

Most of the pilot States had some type of rehabilitation review program that allowed individuals with a disqualifying offense at some point in the past to be cleared for employment if they were able to demonstrate that they did not pose a risk to patient safety. Officials in most States believed that a national background check program should permit States to have a rehabilitation review program.

Rehabilitation review programs were believed to increase the fairness of background checks programs. In several States, stakeholders described individual caregivers who were excellent employees who were only able to work because of the rehabilitation review program. By allowing these individuals to work as direct access workers, the workforce effects that would result from unnecessary disqualifications are reduced.

## **Informed Health Care Students of Background Check Requirements and Given the Opportunity to Be Screened**

Prior to beginning their programs the States agreed that students should be notified of background check requirements, including the specific types of crimes that would disqualify them from employment. This is to avoid cases where students complete a program only to subsequently learn that they cannot be cleared for employment.

## **Rap-Back Systems Can Improve Effectiveness and Efficiency**

Three pilot States (Alaska, Illinois and Michigan) have implemented rap-back systems that will allow information on criminal history to be forwarded to employers. With a rap-back system, fingerprints are stored in a database so that in cases where the employee is arrested or convicted of a crime following the initial background check, the State can notify employers of the conviction. These systems are a potentially important enhancement to patient safety, as most of the pilot States only required background checks for new employees, and employers might not know about crimes committed by current employees.

Particularly in States that require periodic background checks on current employees, they noted that rap-back systems can improve program efficiency by eliminating the need to collect new fingerprints on applicants each time they change jobs. Due to limitations on the FBI background check information that can be shared across employers, they were less clear that rap-back systems could eliminate the need for background checks for new employees. For this to work, a system would be needed so that the rap-back notification is sent to the new employer. Illinois is exploring this type of system, which would require employers to update employee histories using the State's background check web application, but it was not operational as of the end of the pilot. The FBI noted that it is also developing a rap-back system, but this system is not expected to be operational for several years.

## 10. Points of Consideration on Background Check Procedures and Payment Mechanisms

The evaluation topics mandated in the MMA included recommendations about appropriate procedures and payment mechanisms for implementing a national criminal background check program for such facilities and providers (evaluation topic (e)(8) of Section 305 of the MMA). Findings from the evaluation support a number of considerations related to appropriate background check procedures and payment mechanisms.

Stakeholders consistently reported that they appreciated the benefits of having a core set of requirements while leaving the specific details of background check procedures to individual States. In general, it was thought that the level of detail that was in the MMA legislation that created the pilot was appropriate. The differences in the pilot State programs illustrate the flexibility in background check procedures that was possible while meeting the MMA requirements. This flexibility was important to pilot States, as it allowed them to be compliant with, and in some instances, to enhance existing State programs rather than developing a new system.

### Background Check Procedures

- ***If Congress passes legislation with Federal requirements for background check programs such legislation could include core elements and give States flexibility with respect to the specific types of procedures to use to be in compliance with the requirement***
  - ***Background checks could not be required every time an employee changes jobs, but be good for a reasonable period of time (e.g., 12 to 36 months) versus every time an employee changes jobs.*** In the pilot program, each provider was required to conduct a background check on each new hire, regardless of when the employee's last background check occurred. Given the high turnover rate of direct access workers, in some cases, multiple background checks were conducted for the same individual within a short amount of time. To most stakeholders, the requirement of conducting a new background check for those who had recently received a background check seemed inefficient and led to unnecessary background checks. In addition to the high turnover level in the industry, many long-term care workers are employed at multiple facilities, and the redundant checks were a source of frustration to both employees and employers. Note that the cost estimates for a national background check program do not include the impact of the longer time period but rather assume that a new background check would be required every time an individual changes jobs. Costs would be lower if background checks were good for 12-36 months.
  - ***A national program could specify certain offenses that result in disqualification but give States the flexibility to add additional offenses.*** There was variation across the pilot States with respect to the types of offenses that would result in disqualification and the time period associated with specific convictions. Providers and other stakeholders were asked whether they believed their State's list of disqualifying offenses was appropriate. Many stakeholders did not have a strong



opinion for a more or less stringent list of crimes or that the time frames should be changed, and there was a general sense among stakeholders that the disqualifying conditions in their State were appropriate. Most stakeholders supported giving States the discretion to determine the list of disqualifying offenses, perhaps with legislation stipulating certain types of serious offenses that must disqualify an applicant.

- ***Legislation to implement a national program could give States the flexibility to consider non-conviction information.*** The majority of pilot States considered pending charges in the fitness determination decision in some way, and stakeholders reported differing opinions regarding the use of pending and original charges in the fitness determination. Some State agency representatives reported they believe a person is innocent until proven guilty and that only conviction information should be used in the fitness determination. Most believed that pending charges, at least for more serious disqualifying offenses, should prevent an applicant from being cleared for employment.
- ***States could have flexibility with respect to the supervision level of provisional hires.*** The MMA gave States flexibility with respect to the level of supervision for provisional hires, specifying that “provisional employment was subject to such supervision during the employee’s provisional period of employment as the participating State determines appropriate.” The level of supervision required for provisional hires was another area that most stakeholders believed should be left up to individual States.
- ***States could have flexibility with respect to the entity that makes the fitness determination decision.*** The MMA did not specify the entity that was to make the fitness determination decision, allowing this to be made by either a designated State agency or the employer. In several States, both the employer and a State agency had a role in the fitness determination decision. While there are clear benefits to having the fitness determination made by experienced analysts, policymakers may want to leave the specifics of the fitness determination process up to individual States, as it may be appropriate for employers to have a role depending on the technology used in the background check process (e.g., whether a web-based application is used to conduct a name-based check prior to the fingerprint-based check) and the complexity of the fitness determination criteria used in the State.
- ***While there are clear advantages of electronic fingerprint systems, it may not be appropriate to regulate in a national program.*** Almost all stakeholders agreed that electronic fingerprint capture should be used whenever possible, but it was also clear that universal implementation of electronic fingerprinting is not currently feasible. In providing technical assistance to States designing background check programs, however, it is appropriate to encourage States to adopt electronic fingerprinting systems which allow for background check results to be processed much more quickly, increasing patient safety by reducing the need for lengthy periods of provisional employment.
- ***A national program could include the full range of long-term care facilities/providers.*** Any background check program that leaves some providers outside the requirement raises the concern that individuals with disqualifying

offenses may move to employment settings that are not covered by the background check requirement, putting patients in those care settings at increased risk of abuse and neglect.

- ***A national program could include any employee with access to, or influence over, a patient/client or the property including finances of that individual.*** States typically included employees with access to patient's property in the definition of direct patient access employees, meaning that background checks were required for most, if not all, employees, including housekeeping, food service, maintenance, and administrative staff. Most stakeholders agreed that this type of broad background check requirement was important for ensuring patient protection.
- ***A national program could specify that volunteers who function in positions with patient/client access or access to their property including finances could be required to have a background check.*** While some stakeholders wanted to see all volunteers included in the background check requirement, the general consensus was that background checks should not be required for all volunteers, but are appropriate for volunteers with direct patient access. Stakeholders noted that most volunteers have limited access to patients and were concerned about the potential impact of fingerprinting on the ability to recruit volunteers if background checks were required for all volunteers.
- ***A national program could include staffing agency employees whose duties fit into the 'direct access' type of positions.*** As in the pilot, background checks could be required for staffing agency employees with direct patient access. By allowing background checks to be good for a period of 12-36 months (see discussion above), many of the unnecessary, duplicative checks that were conducted on staffing agency employees in some States would be avoided, assuming that States could develop procedures that allow staffing agencies to share the results of checks among all of the providers where their staff are assigned.
- ***States could have the flexibility to develop their own self-disclosure forms so that they can include information that they believe would be helpful.*** All of the pilot States required applicant self-disclosure of any disqualifying information, and this information was used to avoid unnecessary checks on applicants who disclosed information that would preclude them from passing the background check. Given the differences in fitness determination criteria across States (e.g., whether non-conviction information is considered), this flexibility is important so that the self-disclosure forms can best meet State needs.
- ***A national program could specify that initial registry checks be completed prior to eligibility for provisional employment.*** Several pilot States developed or enhanced web applications for conducting the initial registry checks, allowing registry checks to be completed in just a few minutes. Both State officials and providers in these States generally found that these web applications were successful in speeding up the processing of background checks, automating the process, and eliminating unnecessary costs. Consideration may also be given to accessing the Health Practitioner Databank for information on licensed staff.
- ***A national program could give immunity from liability to employers that deny employment based on information provided by the background check.*** The MMA gave immunity from liability to employers that deny employment based on information provided by the background check, and this immunity and this immunity was viewed as a critical protection for providers.

- ***A national program could provide sufficient funding to offer States the necessary technical assistance to implement such a background check program.*** The CMS technical assistance contractor, CNAC provided several of the seven pilot States with technical assistance – especially in the area of IT system and web development. Expanding the pilot to a national program will likely require substantive technical assistance for some States – especially those with less sophisticated systems.

The question of whether legislation to implement a national program should require a national, fingerprint-based criminal history background check is a complex one that depends on a number of factors, including the value that policymakers place on protecting long-term care residents and the relationship between past criminal history and committing abuse, neglect, or misappropriation (or the extent to which these acts are committed by staff who would have been screened out by a national, fingerprint-based background check). The majority of stakeholders supported the national, fingerprint-based check, but some believed that investment in abuse prevention training, improved staffing levels, or other programs would be more effective at reducing abuse and neglect. The data available for the evaluation do not permit a measure of the number of instances of abuse and neglect that were avoided as a result of the pilot, nor do they permit comparison of the return to investments in background screenings vs. other programs intended to improve patient safety. As a result, while the evaluation did find that the fingerprint-based national background check did result in additional disqualifications, the Abt/UCDHSC evaluation team does not believe that the findings support a recommendation that legislation to implement a national program require a national, fingerprint-based background check.

## **Payment Mechanisms**

The MMA called for the pilot to evaluate “a variety of payment mechanisms for covering the costs of conducting the background checks required under the pilot program.” Pilot programs varied with respect to who paid for background checks—in some States, pilot grant funds covered the costs of background checks; in other States, these costs were paid for by employers or applicants. For many pilot program States, these issues were not that important, as the grants covered many of the administrative expenses associated with the State program. However, with the pilot reaching conclusion, claiming Medicaid matching funds for such expenses will become more important.

### ***Payment for background checks: Employers could be prohibited from charging employees for background check costs***

As part of the site visit interviews, most stakeholders interviewed by the evaluation team were asked who they thought should pay for background checks. While there was a consensus that applicants/employees should not have to pay background check costs, no theme emerged for identifying the best division of financial responsibility for under a national program.

- ***Applicants/Employees:*** Stakeholders expressed considerable concern about the burden that paying background check costs would be for applicants, particularly those in lower wage categories and non-licensed staff. Another issue raised by many of the stakeholders discussing applicants paying for the background check was that there would likely be workforce impacts that would result in greater vacancy rates for low-paying positions and

that this would lead to lower capacity for care delivery and/or quality of care for long-term care clients.

- **Employers:** Some stakeholders suggested that background checks are a cost of doing business for providers and, therefore, should be considered the responsibility of the employer. This belief was much more common in States in which employers were paying the costs of background checks during the pilot. Given the divergence of opinions about the extent to which employers should pay background check costs and the inability to measure the impact of different payment approaches, the evaluation did not reach any conclusions about the extent to which employers should contribute to overall background check costs.
- **State government:** Some stakeholders believed that background check costs should be paid for by the State government. Most of the long-term care employer types that were included in the pilot are regulated by State agencies, and obtaining reimbursement through the State is more feasible than reimbursement from the Federal government for non-Medicare certified employers.
- **Federal government:** Reasons provided for Federal financing (e.g., through the Medicare program) were generally related to the source of the requirement, as many stakeholders stated that the program was a Federal mandate, and therefore should be funded by the Federal government either directly or by making payments to States to cover the costs attributable to background checks.

It is important to note that, even in States where background check fees were covered by pilot funds, employers incurred administrative costs related to conducting background checks on their employees, such as human resource costs related to guiding applicants through the background check process and interacting with the State background check program to assure regulatory compliance. Thus, even if the background check fees were covered by the State or Federal government, there would be some cost sharing with employers, who might or might not be reimbursed for the administrative costs associated with the background check program.

***Where Medicare and Medicaid are deemed an appropriate payor, allocation of costs to Medicare and Medicaid could be based on program participation:*** If policymakers choose to have Medicaid and Medicare fund all or part of a background check program, allocation of costs based on program participation may be the simplest and fairest method. Under this method, for employers who participate in both Medicare and Medicaid, payment to the facility is split equally between the two programs. Background check costs for Medicaid-only employers would be paid by Medicaid funds; costs for Medicare-only employers would be paid for by Medicare, if authorized. A rationale for this approach is that the requirement to conduct background checks can be viewed as a basic program participation requirement. This method would be administratively simple and would reduce delays waiting for cost reports to be finalized, a process that can take several years.

An alternative mechanism to consider would be to make direct payments to the State and to the FBI for background check processing costs. This approach would free employers from the need to pay background check costs up-front, removing a potential disincentive to program participation. It would also avoid the need to set up a mechanism for making payments to providers and would reduce the burden on employers to track the volume of background checks. The share of these costs paid by Medicare and Medicaid could be based on program participation. Another possible alternative may

be to use Medicaid and Medicare cost reports for allocation of costs, although such costs are not now statutorily permitted for inclusion in the Medicare rate-setting process.

***The Federal government could provide guidance to State Medicaid directors regarding the availability of Medicaid funding for the implementation and ongoing operating of background check programs.*** There are identifiable costs associated with the implementation and operation of background check programs by States that are reported, and successfully claimed from the Federal government for the Medicaid Program. This occurs as States administer the Medicaid program and share the administrative expenses with the Federal government. As the Federal government administers the Medicare program, no such analogue currently exists for recovering such State administrative costs from that program. This renders Medicaid as the only currently viable mechanism for seeking Federal financial participation.

The policies, procedures, and processes associated with claiming and recovering administrative expenses from the Federal government for share (typically 50 percent) of Medicaid administrative costs are complex, thus making the process of recovering these costs a process requiring both expertise and foresight. Successful efforts to claim administrative costs associated with background check programs may require the appropriate filing and approval of a State Plan amendment, the successful development of cost allocation mechanisms, and attention to accounting procedures to assure that only the appropriate amounts are claimed. While some of the pilot States are rather sophisticated in these efforts, others have not even considered the possibility of such Medicaid claiming activities. For many pilot program States, these issues were not that important, as the grants covered many of the administrative expenses associated with the State program. However, with the pilot reaching conclusion, claiming Medicaid matching funds for such expenses will become more important.

In summary, nearly all stakeholders viewed a background check program as essential for protecting safety of vulnerable individuals and their property. While there are a number of alternative approaches to implementation, most stakeholders would support legislation that would provide a set of overall program requirements for States and employers to follow in adopting background check programs.