



National Background Check Program

National Home and Community Based Services (HCBS)

Conference

September 3, 2015

Presenters

- ▶ Don Howard, MSW, NBCP Program Officer
- ▶ Sarah Richardson Fahrendorf, Esq. , NBCP Program Officer
- ▶ Suzanne Crisp, Director of Program Design and Implementation, National Resource Center for Participant-Directed Services, Boston College

Agenda

- ▶ Current Environment
- ▶ Interventions to Prevent Abuse and Neglect
 - ▶ Individual
 - ▶ Caregiver / Provider
 - ▶ State Protections – AARP Safe at Home?
 - ▶ Federal Protections – National Background Check Program
- ▶ AARP Study – Safe at Home?
- ▶ National Background Check Program (NBCP) Overview
 - ▶ Current stage implementation of background check systems in grantee States
 - ▶ Challenges States face to implementation
 - ▶ Examples of specific States that have excelled in different areas of implementation
- ▶ Questions & Answers

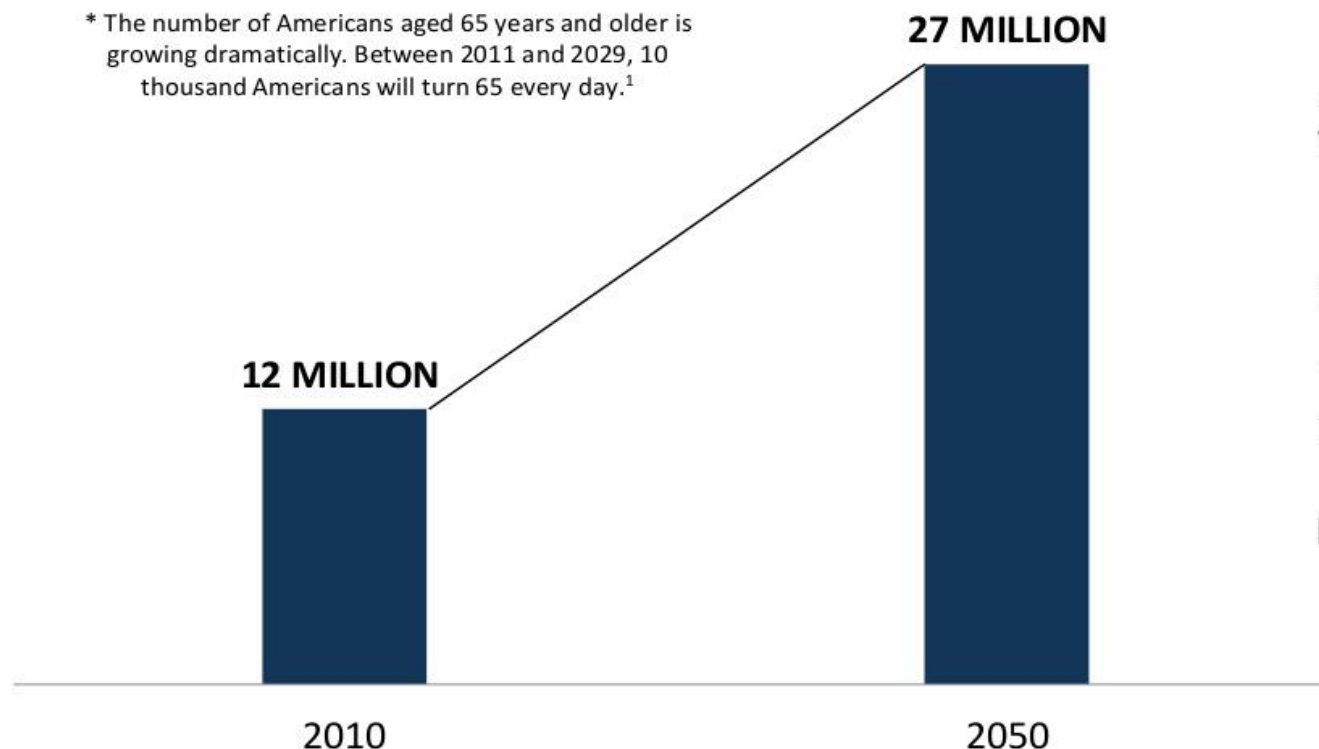
Current Environment

▶ Preaching to the choir...

- ▶ More people receive long term services and supports (LTSS) at home and in the community than in institutions.
- ▶ Trend will increase as the U.S. population ages.
- ▶ In *Olmstead vs. L.C.*, 527 U.S. 581 (1999), the U.S. Supreme Court held that public entities are required to provide integrated settings most appropriate to meet the individual's needs.
- ▶ Home and community-based services (HCBS) give participants more control of their environment.
- ▶ May be less expensive than care provided in institutional settings.

Number of Americans Needing LTSS

* The number of Americans aged 65 years and older is growing dramatically. Between 2011 and 2029, 10 thousand Americans will turn 65 every day.¹



48% of Americans 40 Years or Older Say that Almost Everyone Will Need Long-Term Care as They Age, but only **35%** have set aside money²

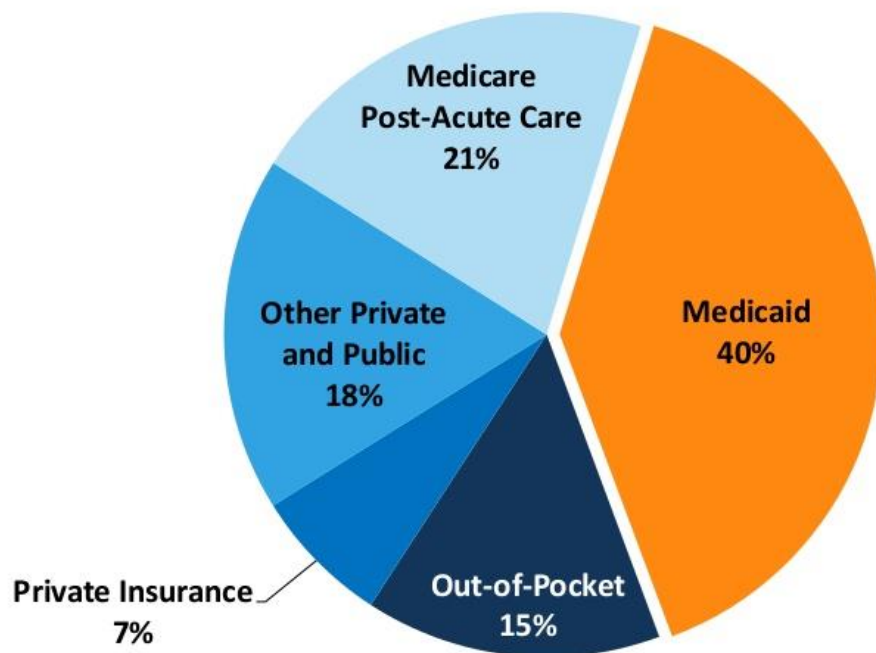
SOURCE OF GRAPHIC: Kaye H, Harrington C, LaPlante M. Long-Term Care: Who Gets It, Who Provides It, Who Pays, And How Much? Health Affairs. January 2010; 29(1):11-21.

¹ PEW Research Center. 10,000 - Baby Boomers Retire. <http://pewresearch.org/databank/dailynumber/?NumberID=1150>. Accessed May 9, 2012.

² Thompson T, Benz J, Agiesta D, Nguyen K, Lowell K. Long-Term Care: Perceptions, Experiences, and Attitudes among Americans 40 or Older. The Associated Press and NORC. April 2013.

Expenditure Breakdown for LTSS

Medicaid is the Primary Payer of Long-Term Care



Total Long-Term Care Spending, 2011 = \$357 billion

NOTE: Total LTSS expenditures include spending on residential care facilities, nursing homes, home health services, and home and community-based waiver services. Expenditures also include spending on ambulance providers. All home and community-based waiver services are attributed to Medicaid.

SOURCE: KCMU estimates based on CMS National Health Expenditure Accounts data for 2011.

The Cost of Abuse

- ▶ Direct medical costs associated with violent injuries to older adults are estimated to add more than \$5.3 billion to national health expenditures.
- ▶ Elders who experienced abuse, even modest abuse, had a 300% higher risk of death than those not abused.
- ▶ Victims of elder abuse have significantly higher levels of psychological distress and lower perceived self-efficacy than older adults who have not been victimized.

Source: <http://www.ncea.aoa.gov/Library/Data/index.aspx#abuser>

The Face of Abuse

- ▶ Case: *Ohio (Rape)*

- ▶ Case summary:

- ▶ A home health aide who was charged with raping the juvenile sister of the man he was caring for had been convicted of attacking a woman in North Carolina four years before.

- ▶ NBCP State: Yes

- ▶ NBCP Program Element: registry checks (residency requirements).

The Face of Abuse (continued)

- ▶ **Case: *New Jersey (Murder, Robbery)***
 - ▶ **Case summary:**
 - ▶ Nursing agency negligently hired an applicant for a position as a certified nursing assistant and assigned him to the plaintiffs' home without conducting an adequate pre-employment screening and criminal background check.
 - ▶ **NBCP State: No**
 - ▶ **NBCP Program Element: registry checks (professional licensing registry checks).**

Abuse and Neglect

- ▶ Many vulnerable persons receive LTSS.
- ▶ Caregivers at home or in the community may receive less supervision than in formal institutional settings.
- ▶ What interventions can prevent abuse and neglect?
 - ▶ Individual
 - ▶ Caregiver / Provider
 - ▶ State Protections
 - ▶ Federal Protections

Long-Term Services and Supports Breakdown



Institutions - Medicaid	Medicaid Home and Community-Based Services (HCBS)	Medicare
Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)	Home Health Services Mandatory State Plan Nursing Services Aide Services Medical Supplies Skilled Nursing	Home Health Services Part-time or intermittent skilled care Physical and Occupational therapies Speech language pathologies Medical social services Medical supplies
Skilled Nursing Facilities (SNF)	State Plan Personal Care (Optional)	Can pay up to 100 days in SNF for rehab
Mental Health Facilities	Waiver Services - States Define	Hospice

Interventions



► What interventions can prevent abuse & neglect?

► Individual

Individuals

- ▶ Children and adults with disabilities experience violence and abuse at least twice as often as their non-disabled peers.
- ▶ Cases involving victims with disabilities often lack witnesses or physical evidence.
- ▶ Abuse victims often suffer some degree of cognitive impairment
 - ▶ Defense claims victim “consented” to giving assets
 - ▶ Allegations are explained away as “delusions”
 - ▶ Mental illness label creates visions of untrustworthiness in jurors’ minds
 - ▶ Victims may be uncooperative if they feel humiliated or stereotyped
 - ▶ <http://www.justice.gov/elderjustice/> “Manual on Prosecuting Crimes Involving Victims with Disabilities.”

Interventions



- ▶ What interventions can prevent abuse and neglect?
 - ▶ Caregiver / Provider

Screening Opportunities and Requirements

Federal Law and Regulation

- Hospice (42 CFR 418.114(d))
- NBCP grant requirements, Section 620I of the Affordable Care Act
- OIG List of Excluded Individuals and Entities (LEIE)
- Medicare certification – providers must comply with Federal, State, and local laws
- Federal requirements – States must maintain a Certified Nurse Aide Registry.
- Federal Bureau of Investigation (FBI) Rap Back

State Law and Regulation

- Certification – applies to both facilities and providers
- Licensure of practitioners, facilities, provider types
- Medicaid, by program.
- State Rap Back

Provider Policy

- Including criminal background checks, reference checks, interviews, signed statements about job, and/or alcohol/drug checks

Caregivers Can Help Prevent Abuse

- ▶ Third parties, not victims, most likely to report elder abuse. A 2003 National Research Council study notes that a review of substantiated APS (adult protective services) reports found:
 - ▶ 14.8% came from in-home or out-of-home services providers.
 - ▶ 8.8% came from the victims
- ▶ States have mandatory reporting requirements.
 - ▶ Ultimately, it will be up to the individual caregiver or support person.

Interventions



- ▶ What interventions can prevent abuse & neglect
 - ▶ State Protections

Screening Opportunities and Requirements

Federal Law and Regulation

- Hospice (42 CFR 418.114(d))
- NBCP grant requirements, Section 620I of the Affordable Care Act
- OIG List of Excluded Individuals and Entities (LEIE)
- Medicare certification – providers must comply with Federal, State, and local laws
- Federal requirements – States must maintain a Certified Nurse Aide Registry.
- Federal Bureau of Investigation (FBI) Rap Back

State Law and Regulation

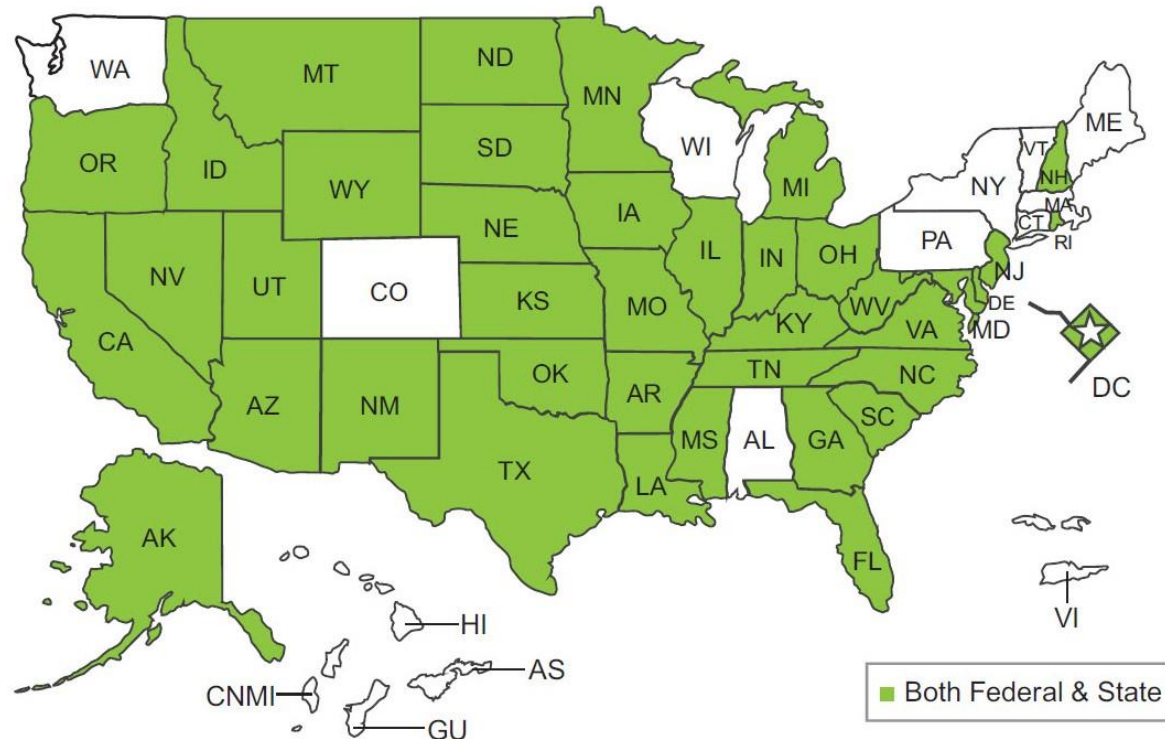
- Certification – applies to both facilities and providers
- Licensure of practitioners, facilities, provider types
- Medicaid, by program.
- State Rap Back

Provider Policy

- Including criminal background checks, reference checks, interviews, signed statements about job, and/or alcohol/drug checks

Initial Licensure for Nurses

- ▶ State criminal background check requirements



▶ Map courtesy of the National Council of State Boards of Nursing (NCSBN).

AARP Study

- ▶ *Safe at Home? Developing Effective Criminal Background Checks and Other Screening Policies for Home Care Workers*

<http://www.aarp.org/relationships/caregiving/info-09-2009/2009-12.html>

- ▶ Published by AARP Public Policy Institute.
- ▶ Highlighted the need for fingerprint-based background checks of home and community care providers, such as home health aides (HHAs).
- ▶ Fingerprint based criminal background checks can help reduce the risk of abuse.

Review of Medicaid Law and State Law

- ▶ States are responsible for administering the Medicaid program.
- ▶ State background check practices vary widely.
- ▶ No federal Medicaid requirement mandating criminal background checks on employees.
- ▶ States that did mandate pre-employment criminal background checks had very different disqualifiers.
- ▶ States had multiple options and data sources for screening were not integrated.
- ▶ Six states exempt family members and other relatives for HCBS.

Quality and Home Care in Self-Direction

- ▶ Hire qualified and competent staff.
 - ▶ Conduct initial and on-going criminal screenings and/or criminal background checks per State requirements.
 - ▶ Develop appropriate worker/provider qualifications.
 - ▶ Provide initial and on-going worker training.
- ▶ Train participants on identifying and reporting abuse and neglect.
- ▶ Apply a risk identification and management system.
- ▶ Develop monitoring strategies on all levels.
- ▶ Frequent home visits or telephone contacts.
- ▶ If individual lacks capacity, designate a representative.

Advancing Policy

- ▶ **Additional research is needed:**
 - ▶ Incidence of abusers with a criminal history.
 - ▶ Risk of abuse from family members versus paid caregivers.
- ▶ **Acknowledge participants' rights and risks while safeguarding health and welfare.**
 - ▶ Develop a risk identification and management system.
- ▶ **Standardization across funding sources and programs will reduce program confusion and create efficiencies.**

What interventions can prevent abuse & neglect



► Protections at the Federal Level

Screening Opportunities and Requirements

Federal Law and Regulation

- Hospice (42 CFR 418.114(d))
- NBCP grant requirements, Section 620I of the Affordable Care Act
- OIG List of Excluded Individuals and Entities (LEIE)
- Medicare certification – providers must comply with Federal, State, and local laws
- Federal requirements – States must maintain a Certified Nurse Aide Registry.
- Federal Bureau of Investigation (FBI) Rap Back

State Law and Regulation

- Certification – applies to both facilities and providers
- Licensure of practitioners, facilities, provider types
- Medicaid, by program.
- State Rap Back

Provider Policy

- Including criminal background checks, reference checks, interviews, signed statements about job, and/or alcohol/drug checks

National Background Check Program

- ▶ **Affordable Care Act, Section 6201**
 - ▶ Established NBCP to improve the health and safety of long term care (LTC) residents and beneficiaries and their families by establishing a nationwide program for screening of certain applicants (direct patient access employees) seeking employment with LTC facilities and providers
 - ▶ Encompasses wide range of LTC providers

“Long-Term Care Facility or Provider”

- ▶ Affordable Care Act Section 6201(a)(6)(E)
- ▶ **LONG-TERM CARE FACILITY OR PROVIDER.**—The term “long-term care facility or provider” means the following facilities or providers which receive payment for services under title XVIII or XIX of the Social Security Act: H. R. 3590—608
 - ▶ (i) A skilled nursing facility (as defined in section 1819(a) of the Social Security Act (42 U.S.C. 1395i–3(a))).
 - ▶ (ii) A nursing facility (as defined in section 1919(a) of such Act (42 U.S.C. 396r(a))).
 - ▶ (iii) A home health agency.
 - ▶ (iv) A provider of hospice care (as defined in section 1861(dd)(1) of such Act (42 U.S.C. 1395x(dd)(1))).
 - ▶ (v) A 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))).
 - ▶ (vi) A provider of personal care services.
 - ▶ (vii) A provider of adult day care.
 - ▶ (viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility that provides a level of care established by the Secretary.
 - ▶ (ix) An intermediate care facility for the mentally retarded (as defined in section 1905(d) of such Act (42 U.S.C. 1396d(d))).
 - ▶ (x) Any other facility or provider of long-term care services under such titles as the participating State determines appropriate.

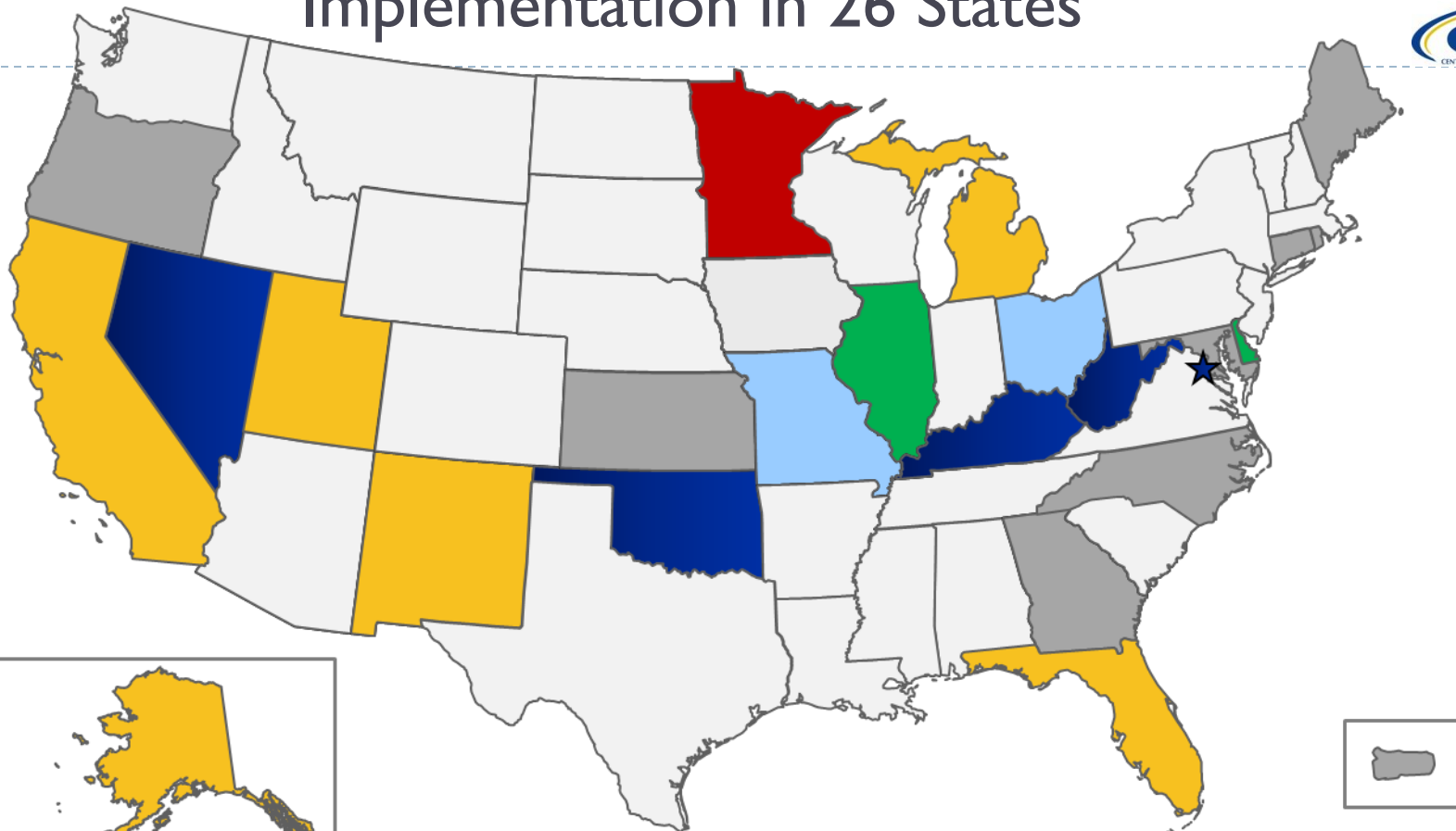
Affordable Care Act Section 6201(a)(6)(D)

- ▶ Covers prospective “direct patient access employees”
- ▶ **DIRECT PATIENT ACCESS EMPLOYEE.**—The term “direct patient access employee” means any individual who has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such facility or provider and has duties that involve (or may involve) one-on-one contact with a patient or resident of the facility or provider, as determined by the State for purposes of the nationwide program. Such term does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct patient access employee and those duties involve (or may involve) one-on-one contact with a patient or resident of the long-term care facility or provider.

National Background Check Program

- ▶ Participation by 26 States
- ▶ Over \$50 million in grant awards
- ▶ Technical Assistance available to grantee States and States interested in applying
- ▶ Nurse Aide Registry Pilot
- ▶ CMS Regional Collaborative

National Background Check Program Implementation in 26 States



Gray	States in Planning & Development: CT, GA, HI, KS, MD, ME, NC, OR, PR, RI
Red	States in Pilot Phase: MN
Light Blue	States Live w/Implementation of Registries: MO, OH,
Dark Blue	States Live w/Implementation of Registries, Integration of Criminal History Record Information (CHRI): DC, KY (Voluntary), OK, NV, WV
Yellow	States Live w/Implementation of Registries, Integration of CHRI and Statewide Rap Back: AK, CA, FL, MI, NM, UT
Green	State Graduated: DE, IL

Program Overview

- ▶ NBCP created under the Affordable Care Act (Section 6201)
- ▶ Managed by U.S. Department of Health and Human Services (HHS) Centers for Medicare and Medicaid Services (CMS)
- ▶ Grant program in effect from 2010 until funds are expended

Program Overview - Purpose

- ▶ Help States protect vulnerable populations in long term care from abuse, neglect and exploitation
- ▶ To identify efficient, effective, and economical processes for States to conduct background screening activities
- ▶ Establish standardized framework for States to conduct comprehensive, fingerprint-based background checks on all prospective direct access employees of long term care facilities and providers

Program Overview - History

- ▶ NBCP Pilot (2004-2007) with 7 States
 - ▶ A variety of approaches
- ▶ HHS Office of Inspector General (OIG) report on Nursing Facilities' Employment of Individuals with Criminal Convictions (2009 – 2011)
 - ▶ Nursing facilities in KS, NE, IA, MO (130,000 total employees)
 - ▶ Findings suggested that insufficient background checks were performed
- ▶ Subsequent OIG report on prior criminal convictions of certified nurse aides (CNAs) having administrative findings on State nurse aide registries (NARs)

State Agencies Involved in NBCP

- ▶ **State Coordinating Agency:**
 - ▶ Department of Health
 - ▶ Department of Social Services
 - ▶ Department of Human Services
 - ▶ Department of Medicaid
 - ▶ Department of the Attorney General
 - ▶ Department of Licensing and Regulatory Affairs
- ▶ **State Criminal Justice Information Services (CJIS) Organization:**
 - ▶ State Bureau of Investigation
 - ▶ State Police
- ▶ **State IT Organization**

NBCP Program Requirements

- ▶ Define direct patient access employee
- ▶ Include all long-term care entities specified
- ▶ Fingerprint-based search of State and Federal criminal history
- ▶ Search of abuse/neglect registries
 - ▶ Federal (OIG List of Excluded Individuals and Entities – LEIE)
 - ▶ State (including Professional licensing boards)
 - ▶ Prior States if any (including Professional licensing boards)
- ▶ Develop and test rap back capability and other methods to reduce duplicate checks (State and Federal)
- ▶ Independent appeal process
- ▶ Provisional employment
- ▶ Monitor provider compliance with NBCP
- ▶ Security and privacy safeguards

Impact of State Rap Back in MI and FL

- ▶ **MI state rap back between Jan. 2014 – June 2014**
 - ▶ 50,517 new applications filed
 - ▶ 5,227 rap back hits – 483 individuals (9%) were deemed ineligible
- ▶ **FL state rap back, January 2013 - May 2014:**
 - ▶ Processed 259,321 applications
 - ▶ 4,353 rap back hits
 - ▶ 1,337 individuals (30%) went from Eligible to Not Eligible for offenses including:
 - ☐ Grand Theft
 - ☐ Battery and Assault
 - ☐ Sex Offenses
 - ☐ Exploitation of the Elderly

Challenges States Face in Implementation

- ▶ **Enabling legislation**
 - ▶ NBCP grant does not require States to have authorizing legislation in place prior to award. Most States begin legislative initiatives shortly after grant award.
 - ▶ Only Alaska did not require any new State-level legislation.
 - ▶ 9 NBCP States do not have enabling legislation to meet all NBCP requirements
- ▶ **Fingerprint-based checks**
 - ▶ 12 States currently submit fingerprints for both State and Federal (FBI) criminal history checks for all applicants
 - ▶ 14 States currently do not submit all fingerprints to the State and FBI
- ▶ **Criminal History Record Information (CHRI) Integration with State Bureaus of Investigation**
- ▶ **Resistance from Stakeholders**
 - ▶ Executives, Legislature, providers, or workers

State Examples - Delaware

- ▶ First State to graduate.
- ▶ Met all the requisite terms of NBCP
- ▶ Created an Advisory Board composed of State agency stakeholders and provider end users, to enhance communication and seek input on and build consensus for the goals of the grant.

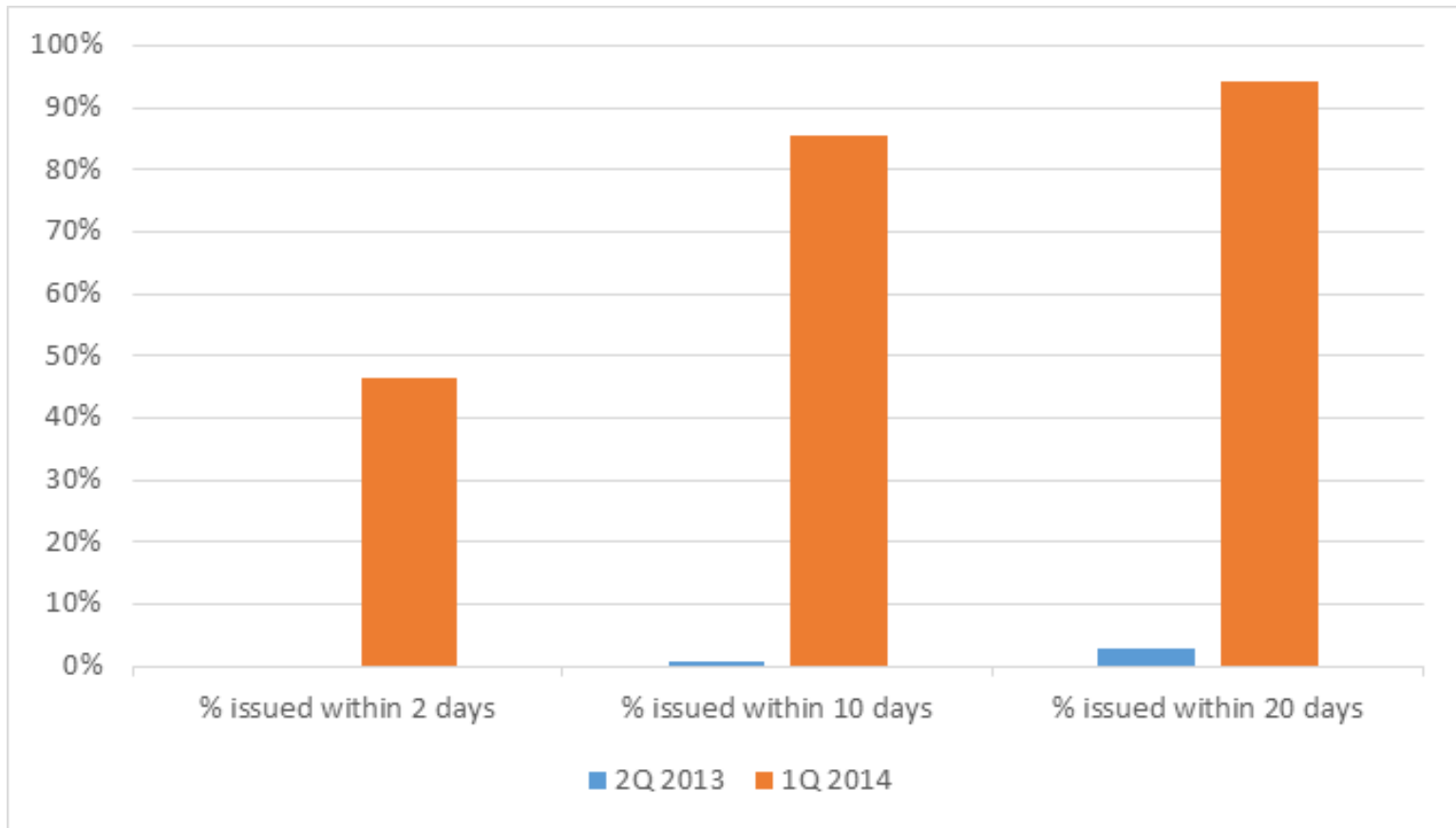
State Examples – New Mexico

- ▶ Implemented a Statewide fingerprint based program and a technical assistance-provided background check system during the fall of 2013.
- ▶ Results:

New Mexico CCHSP determinations	Before system upgrades (2Q 2013)	After system upgrades (1Q 2014)
Total issued	2,307	8,367
Eligible determinations	2,255	8,284
Ineligible determinations	52	83

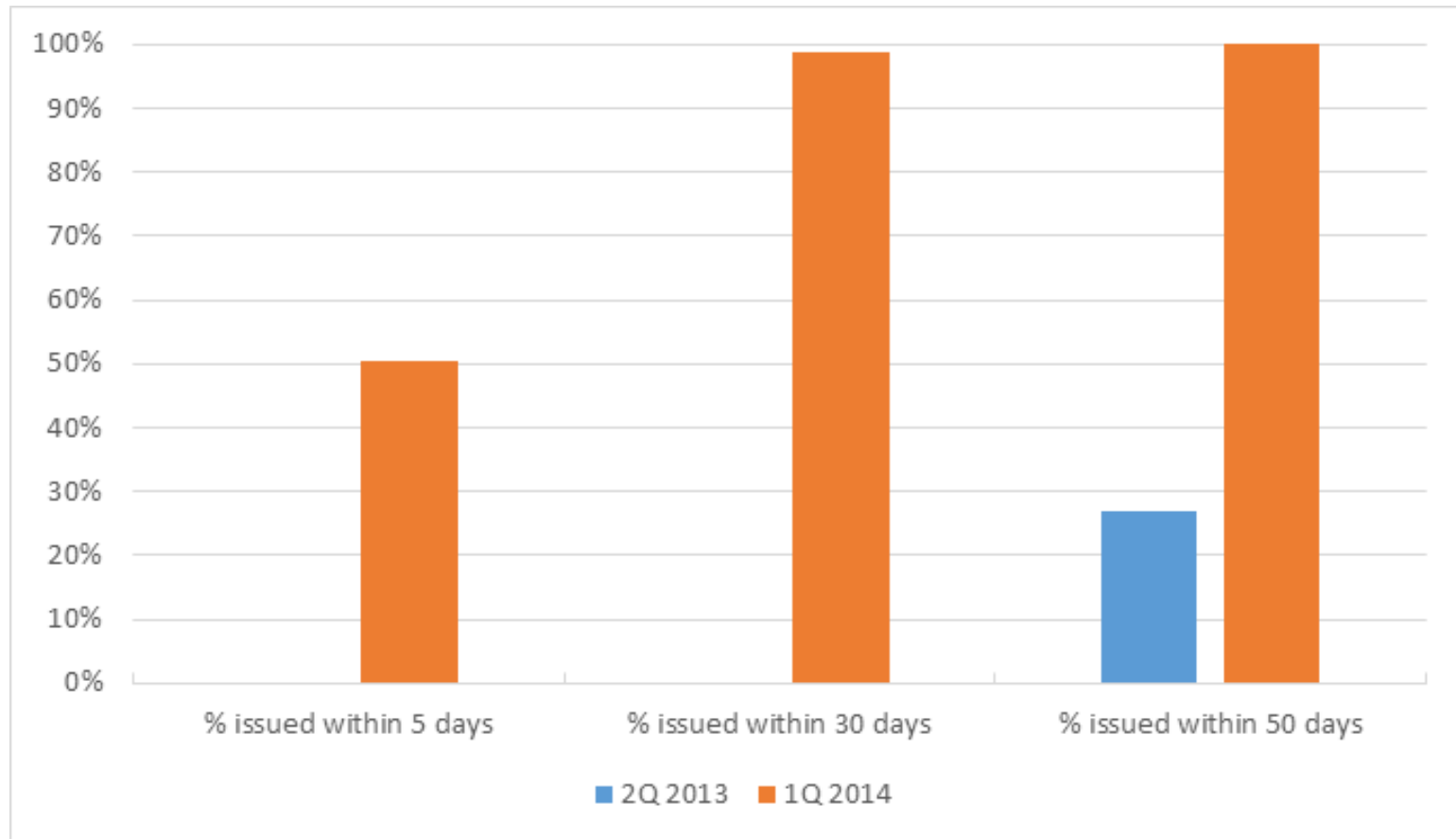
New Mexico, (cont')

- Cumulative percentage of eligible determinations issued before and after system upgrades (at selected intervals), 2Q 2013 vs. 1Q 2014



New Mexico, (cont')

- Cumulative percentage of ineligible determinations issued before and after system upgrades (at selected intervals), 2Q 2013 vs. 1Q 2014



State Examples – DC and NM

- ▶ Streamlined screenings based on an existing fingerprint-based check, January–June 2014

State	Number of fingerprint-based checks conducted	Number of screenings based on existing checks	Notes
District of Columbia	1,937	328	Did not include connections that did not report a registry check status or date. Most existing checks were eligible, the others were pending
New Mexico	9,580	1,142	All existing checks were eligible
Total	11,517	1,470	13% of applicants did not require fingerprints

- ▶ Cost Savings (based on fees avoided):
 - ▶ District of Columbia - \$16,400
 - ▶ New Mexico - \$37,686

Data Collection Efforts

- ▶ Collect and analyze data quarterly. Develop a Cross-State Comparison Report.
- ▶ 12 out of 26 States are submitting a data file:
 - ▶ 5 States provide data that is comparable
 - ▶ 7 States currently provide data that cannot be assessed:
 - ▶ Inconsistencies in report queries
 - ▶ Limited numbers of applicants and/or data elements
 - ▶ System start-up issues
 - ▶ Late submission of data.

Quarterly Report, June 2014

Measure	Alaska	District of Columbia	Georgia	Michigan	New Mexico
Number of records	44,126	14,331	2,667	121,375	28,642
Number eligible	20,382	9,845	2,617	90,204	22,590
Number ineligible	1,740	89 ^a	27	2,668 ^b	260 ^c
Number pending	987	433	20	— ^d	922
Number disqualified but waived	0	0	0	0	147
Number blank determinations	17,695	2,085	3	13,019	2,026
Number closed with no determination	3,322	1,879	0	14,284	2,697

a. The District of Columbia had 41 applicants who failed the registry check and either were classified as closed with no determination or had a blank determination. For comparability with other States, these 41 applicants should be added to the ineligible total and subtracted from the blank and no determination totals.

b. Michigan had 525 applicants who failed the registry check and either were classified as closed with no determination or had a blank determination. For comparability with other States, these 525 applicants should be added to the ineligible total and subtracted from the other two.

c. New Mexico had 9 applicants who failed the registry check whose applications were closed with no determination. For comparability with other States, these 9 applicants should be added to the ineligible total and subtracted from the no determination total.

d. Michigan does not currently use a designation of pending. Of its records with a blank fitness determination, most reflected applications that underwent a rap back process and were found still to be eligible for employment; however, at least 903 records would have been categorized as pending by most states based on having had a registry search conducted or fingerprints collected.

Quarterly Report, June 2014 (cont')

Measure	Alaska ^a	District of Columbia	Georgia	Michigan	New Mexico
Number of appeals	N/A	13	10	256 ^b	232
Number of rehabilitation appeals	N/A	0	7	0	231
Number of error-related appeals	N/A	13	3	256	1
Number granted	N/A	10	5	193	144
Number denied	N/A	0	3	63	51
Number pending	N/A	3	2	0	19
Number referred	N/A	0	0	0	0
Blank appeal decisions	N/A	0	0	0	18

a. AK does not currently have the capability to report information on appeals.

b. MI includes appeals filed for rap back checks.

Select Data Analysis Results

- ▶ Analysis of the data available (even legacy) is showing results:
 - ▶ Three States reported “streamlined screenings” in Q1 2014
 - ▶ Total of 13,316 fingerprint-based checks
 - ▶ Total of 2,660 subsequent screenings of same individuals – no fingerprints required
 - ▶ Four States reported FBI determination results in Q1 2014:
 - ▶ 165 individuals with “eligible” State CHRI, were disqualified due to FBI CHRI.

HCBS Specific Data Results

State	Facility/Provider Type	Number of Records	Number Eligible	Number Ineligible
Alaska (November 2014–March 2015)	Home Health Agency	82	81	1
	Hospice	28	28	0
	Personal Care	1,699	1,629	70 ^{a,b,c}
District of Columbia (June 2012–March 2015)	Home Health Agency	9,629	9,615	14
	Hospice	97	95	2
	Personal Care	0	0	0
Michigan (May 2013–March 2015)	Home Health Agency	18,344	18,260	84
	Hospice	5,923	5,911	12
	Personal Care	N/A	N/A	N/A
New Mexico (October 2015–March 2015)	Home Health Agency	14,682	14,402	280
	Hospice	1,370	1,359	11
	Personal Care	1,099	1,091	8

- 48 of these records had a final overall ineligible determination status; 7 were pending; 6 were found ineligible after the end of the quarter; 6 were waived (appeal granted); 3 were left blank (2 of these were closed).
- An additional 7 were found ineligible based on criminal history and overall fitness determination.
- Another 3 were found ineligible based on criminal history; 2 of them were waived and 1 is still pending.

Positive Case Scenario– Criminal History



▶ Case: *Recent Arrest*

▶ Case summary:

- ▶ New employee called into work on her first day for a “family emergency.” Requested a new start date for the following day.
- ▶ FL background check system received notice the same day under the State rap back program that she had been arrested for Exploitation of the Elderly.

▶ NBCP State: Florida

▶ NBCP Program Element: State criminal history rap back.

Ongoing Opportunities for the States

▶ Current solicitation

- ▶ Posted on Grants.gov and CMS website at <https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html>
- ▶ Applications accepted until solicitation is cancelled
- ▶ CMS will review applications and make awards on a flow basis

▶ 6th Year Grant Extension

- ▶ CMS is now accepting applications for a 6th year grant extension
- ▶ Purpose: Allow States to reach their milestones and maximize the use of their grant funds.

Thank you!



For further information:

CMS Background Check email:
background_checks@cms.hhs.gov