
42 U.S. Code § 1320a-7I

Nationwide program for national and State background checks on direct patient access employees of long-term care facilities and providers

(a) In general

The Secretary of Health and Human Services (in this section referred to as the “Secretary”), shall establish a program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks on prospective direct patient access employees on a nationwide basis (in this subsection, such program shall be referred to as the “nationwide program”). Except for the following modifications, the Secretary shall carry out the nationwide program under similar terms and conditions as the pilot program under section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173; 117 Stat. 2257), including the prohibition on hiring abusive workers and the authorization of the imposition of penalties by a participating State under subsection (b)(3)(A) and (b)(6), respectively, of such section 307:

(1) Agreements

(A) Newly participating States

The Secretary shall enter into agreements with each State—

- (i) that the Secretary has not entered into an agreement with under subsection (c)(1) of such section 307;
- (ii) that agrees to conduct background checks under the nationwide program on a Statewide basis; and
- (iii) that submits an application to the Secretary containing such information and at such time as the Secretary may specify.

(B) Certain previously participating States

The Secretary shall enter into agreements with each State—

- (i) that the Secretary has entered into an agreement with under such subsection (c)(1), but only in the case where such agreement did not require the State to conduct background checks under the program established under subsection (a) of such section 307 on a Statewide basis;
- (ii) that agrees to conduct background checks under the nationwide program on a Statewide basis; and
- (iii) that submits an application to the Secretary containing such information and at such time as the Secretary may specify.

(2) Nonapplication of selection criteria

The selection criteria required under subsection (c)(3)(B) of such section 307 shall not apply.

(3) Required fingerprint check as part of criminal history background check

The procedures established under subsection (b)(1) of such section 307 shall—

- (A) require that the long-term care facility or provider (or the designated agent of the long-term care facility or provider) obtain State and national criminal history background checks on the prospective

employee through such means as the Secretary determines appropriate, efficient, and effective that utilize a search of State-based abuse and neglect registries and databases, including the abuse and neglect registries of another State in the case where a prospective employee previously resided in that State, State criminal history records, the records of any proceedings in the State that may contain disqualifying information about prospective employees (such as proceedings conducted by State professional licensing and disciplinary boards and State Medicaid Fraud Control Units), and Federal criminal history records, including a fingerprint check using the Integrated Automated Fingerprint Identification System of the Federal Bureau of Investigation;

(B) require States to describe and test methods that reduce duplicative fingerprinting, including providing for the development of “rap back” capability by the State such that, if a direct patient access employee of a long-term care facility or provider is convicted of a crime following the initial criminal history background check conducted with respect to such employee, and the employee’s fingerprints match the prints on file with the State law enforcement department, the department will immediately inform the State and the State will immediately inform the long-term care facility or provider which employs the direct patient access employee of such conviction; and

(C) require that criminal history background checks conducted under the nationwide program remain valid for a period of time specified by the Secretary.

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