

## INTRODUCTION

Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act (MMA) of 2003 (PL 108-173) established the framework for a program to evaluate national and state background checks on prospective employees with direct access to patients of long-term care facilities or providers. The program to identify efficient, effective, and economical procedures for conducting background checks was administered by the Centers for Medicare & Medicaid Services (CMS), in consultation with the US Department of Justice, from January 2005 through September 2007.

CMS selected seven states to participate in the Background Check Pilot Program. The states, representing rural and urban areas and ethnically and culturally diverse populations, included: Alaska, Idaho, Illinois, Michigan, Nevada, New Mexico, and Wisconsin. CMS awarded additional funding to several states to create and deliver a comprehensive abuse prevention training program to employees and managers of long term care facilities. The states selected for the additional training funds are Alaska, Michigan, and Wisconsin.

### Background Check Pilot

Wisconsin proposed a "pilot within the federal pilot" approach. Wisconsin's federal background check requirements applied to specific, geographically-located counties selected for pilot participation. Four counties were selected for rural and metropolitan representation, rapid and slow growth populations, border counties with high interstate 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 of Quality Assurance (DQA) regions. The pilot counties included Dane, Kenosha, La Crosse, and Shawano.

Wisconsin built on its existing employer driven process philosophy to design its pilot program. This philosophy operates within the atmosphere in which state criminal histories are considered open records, allowing anyone to run a criminal history background check. There were many strengths to building on the existing process including:

- **Timeliness** – Fingerprint results were posted within 24-48 hours of the appointment, allowing employers to make an immediate fitness determination and hiring decision. This timeliness increased safety because employers completed the full background check prior to hiring the individual.
- **Inexpensive** – Because employers make the fitness determination, no fees were charged for state staff to review results. Wisconsin employers have the experience and knowledge to review criminal history information and make choices that fit with their organization. Employers indicated that they would likely run a separate check if all they received from the state was a “yes” or “no” decision on the fitness determination. A state-run system would also likely slow the process, further encouraging employers to run their own checks.
- **Simple** - Wisconsin’s process is straightforward. Wisconsin’s Offenses List is relatively short and the conditions apply to everyone the same way – all the crimes are lifetime bans unless the person completes a Rehabilitation Review. Anomalies are handled on a case-by-case basis. This is a more effective process than establishing different time lines for different offenses. No records need to be kept at the state level regarding where individuals are employed and the state agency does not need to keep copies of fingerprints or background check results.
- **Employer Responsibility** – Employers are responsible for ensuring safety in their facility. Because the liability rests with them, they take an active interest in the background check. Employers have all the information they need to make the fitness determination using the Offenses List, and to make substantially related decisions. Employers know best the duties of a specific job and what convictions are substantially related to that position.

### Results of pilot background checks

Wisconsin health care employers in the four pilot counties completed background checks on:

- 14,748 individuals
- 9,998 or 68% were hired
- 4,120 or 28% not hired due to reasons other than their background check

- 640 or 4% disqualified due to the background check results
  - 277 (2% of all caregivers and 43% of all disqualified caregivers) were disqualified because they lied on their background information disclosure form about crimes that would not otherwise disqualify them
  - 56 (.4% of all caregivers and 9% of all disqualified caregivers) were disqualified because of background information found during the registry searches
  - 265 (2% of all caregivers and 41% of all disqualified caregivers) were disqualified because of background information found during the state name search
  - 42 (.3% of all caregivers and 7% of all disqualified caregivers) were disqualified in the fingerprint process: 16 refused to be fingerprinted; 24 had disqualifications on the FBI criminal history; of those, 2 had a conviction on the Wisconsin Offenses List, 2 had convictions on the Federal Exclusion List, and 20 had a substantially related offense.

Overall, of the 4% of caregivers disqualified due to background check reasons, 93% were identified during the existing WI Caregiver Law background check requirements.

### **Abuse & Neglect Prevention Training**

Wisconsin was one of three states to receive additional funding to develop and provide innovative abuse and neglect prevention training for Wisconsin's direct caregivers. The project was administered by the DHFS through a partnership with the University of Wisconsin-Oshkosh Center for Career Development (CCDET). Over 33 hours of training materials were created and more than 2,100 caregivers attended DHFS-sponsored training. In addition, approximately 1000 additional participants received in-house training in their own facilities.

In response to provider requests, the project also developed and produced a DVD to meet the needs of smaller facilities with few staff or trainers. Wisconsin also hosted a series of train-the-trainer sessions, during which representatives from healthcare providers learned how to facilitate the training developed through this pilot. At the end of the pilot, 207 provider representatives were trained. They, in turn, plan to train almost 60,000 caregivers across the state.

In response to an overwhelmingly positive response from providers regarding the effectiveness of this training, Wisconsin is using state funds to continue the abuse prevention training effort after the pilot ended in September 2007. Wisconsin will continue to host train-the-trainer events across the state to get the training materials out to as many providers, and ultimately to their direct caregivers, as possible.

### **CONCLUSION**

The Caregiver Program was implemented in October 1998 and more than 2,600,000 caregiver background checks have been completed since its implementation. The Caregiver Law was designed to provide Wisconsin employers with the tools needed to screen out potential abusers before they have access to residents and to allow entities to make prompt employment decisions. However, little data had been gathered to evaluate the overall effectiveness of conducting background checks, including whether the safety of residents and their quality of care has improved.

Through the Caregiver Background Check Pilot, Wisconsin received funding to expand its background check requirements for caregivers in four counties – Dane, Kenosha, La Crosse and Shawano. The remaining funding was used to develop and provide innovative training on abuse and neglect prevention for direct caregivers in the pilot counties. Beginning in February and March of 2006, all newly hired caregivers in the four pilot counties had to pass a fingerprint-based state and FBI background check in addition to Wisconsin's existing Caregiver Law background check requirements. DHFS worked closely with the WI Department of Justice to establish a streamlined system to run fingerprint based background checks and return the results directly to employers. All prints were submitted electronically and the results were posted within 24-48 hours.

Despite employers initial concerns that the fingerprint based background check would slow the hiring process, employers who participated in the pilot found the background check process easy to complete. 90% of pilot

employers said they did not experience a reduction in prospective candidates because of the fingerprinting requirement. Only a handful of candidates refused to be fingerprinted during the pilot period. 70% of the pilot employers said that they would be willing to continue to run fingerprint based background checks if the costs were the same as the Caregiver Background Check. Another 20% said they would be willing to continue if fingerprinting was optional.

The federal background check pilot provided Wisconsin with the opportunity to evaluate its current background check requirements and identify the following best practices:

- **Staged background check process:** During the pilot, Wisconsin gathered data to track background check results and entity employment decisions to properly evaluate both the pilot requirements and the existing Caregiver Program's impact and effectiveness. Despite initial concerns, caregivers were willing to be fingerprinted. Most caregivers, who were disqualified due to their background check results, were disqualified before the fingerprint background check. The staged pilot process allowed employers to stop the process as soon as any disqualifying information was found. Many employers indicated that they will continue the up-front free registry searches post-pilot. The overall results of the pilot verify the effectiveness of the existing Wisconsin Caregiver Law requirements.
- **Employer-driven process:** Wisconsin established an automated system for entities to receive prompt, economical fingerprint-based background checks. Electronically submitted results provided a quick turnaround of 24 to 48 hours. It was challenging, but doable, to establish a process in which the employer receives the background check results. Wisconsin employers prefer receiving the full background check results, making the employment fitness determination and appropriate substantially related decisions.
- **Limit fingerprinting:** The pilot increased assurance to long term care employers that employees providing direct care did not have a history of committing abuse, neglect, or stealing client property. Many of the participating employers indicated they appreciated getting more criminal history information through the FBI background search. Even when disqualifying information was not found, employers felt reassured by the additional FBI background check. The national background check provided by the FBI eliminated the need to track down out of state results for caregivers who have lived outside of Wisconsin. Overall, employers indicated that they found FBI background checks most beneficial when the individual had resided outside of Wisconsin.

Wisconsin's experience with the Abuse and Neglect Prevention pilot project demonstrated a critical need for direct caregivers, especially those who are non-credentialed, to receive training that offers the behavioral and interpersonal skills to respond positively in potentially abusive situations.

While all caregivers receive some level of clinical training to provide for the physical needs of residents and clients, many do not have the life experience or training to offer the emotional and social support necessary to establish a positive relationship with those in their care. Providing those skills is likely to reduce many incidents of abuse and neglect, which often result from lack of training and support.

Wisconsin's efforts to provide meaningful training to direct caregivers and their supervisors and managers received an extremely positive response. The response was so great, and the need for training resources so clear, that the Department identified additional funding to continue training for trainers through 2008.

## **Summary**

Wisconsin has required background checks for caregivers working in regulated healthcare and daycare settings since 1998 and supports a requirement for all caregivers nationwide to undergo a thorough background check. For states that currently do not require background checks, federal legislation will have a significantly positive impact.

As a result of Wisconsin's participation in the pilot, Wisconsin recommends that federal legislation require states to achieve certain outcomes but allow states flexibility in program design, including the option of an employer driven process model such as Wisconsin's Caregiver Law.