

WISCONSIN BACKGROUND CHECK PILOT PROGRAM FINAL REPORT

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1. 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.

Wisconsin Caregiver Law

The Wisconsin Department of Health and Family Services (DHFS) implemented the Caregiver Law on October 1, 1998, under the authority of Act 27 (1997-1999 biennial budget). The 1999 – 2001 Budget Bill, enacted as 1999 Wisconsin Act 9, became effective October 29, 1999.

The Wisconsin Caregiver Program responds 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 is intended to protect clients in health care settings from abuse, neglect or misappropriation of property by requiring employers and licensing agencies to:

- conduct caregiver background checks;
- closely examine the results of the caregiver background checks for criminal arrests and convictions or findings of misconduct by a governmental agency; and,
- make employment and licensing decisions based on the results of the background checks in accordance with the requirements and prohibitions in the law.

Therefore, the Caregiver Law requires two types of caregiver background checks:

1. Those completed by entities on their employees and contractors, and
2. Those completed by the Division of Quality Assurance (DQA) on license holders/legal representatives and nonclient residents of DQA regulated entities.

Caregivers with convictions of serious crimes or a history of improper behavior may be permanently barred from working in regulated facilities, unless clear and convincing evidence of rehabilitation has been provided to the Department, through the Rehabilitation Review process. Entities that fail to comply with the provisions of the program may be subject to program sanctions, such as a required corrective action plan, mandatory training, or the denial, revocation or suspension of the license, certification or registration by the Department.

The Caregiver Law also requires all regulated entities to report allegations of abuse, neglect or misappropriation of client property to DQA, as well as requiring employers to complete background checks for all caregivers employed by entities regulated by the Department.

The Caregiver Program is implemented under ss.50.065 and ss.146.40, Wis. Stats. and Chapters HFS 12 and 13 of the Wisconsin Administrative Code, which can be found at <http://dhfs.wisconsin.gov/caregiver/StatutesINDEX.HTM>.

Employer Driven Process

The underlying philosophy of the Caregiver Law is that employers are responsible for making sure that the individuals working in their facilities are appropriate within the state guidelines. Therefore, all regulated healthcare and daycare employers are required to complete caregiver background checks and make appropriate hiring decisions based on the results.

The Caregiver Law was designed to provide employers with the tools needed to screen out potential abusers before they have access to vulnerable adults and allow entities to make prompt employment decisions without state government involvement in the hiring decision:

- **Background Check Results** – Wisconsin is an open records state; therefore, employers have access to criminal history information, as well as administrative finding and licensing information. The Integrated Background Information System (IBIS) was designed to allow background check results to go directly to the provider. Employers request caregiver background checks, in most cases online, and receive results from the state Department of Justice, Department of Regulation & Licensing and DHFS within minutes. Employers are then able to make employment decisions based on complete information. Employers are also required to obtain criminal history info from other states if the person has resided outside of Wisconsin in the last 3 years. Because each state's process for obtaining this information is different, this can be a difficult and time-consuming process.
- **Offense List** – The Wisconsin Offenses List includes crimes of physical violence. Only those crimes and offenses on the Offenses List and comparable crimes and offenses from other states or U.S. jurisdictions are bars to employment, regulatory approval or nonclient residency. Because the list is fairly short, employers indicate they do not have difficulty identifying offenses on a prospective employee's criminal record that prohibit employment.
- **Fair Employment Law** – Under Wisconsin's Fair Employment Law, an employer may also determine if any conviction not on the Offenses List is substantially related to the duties of the job and may refuse to hire a candidate for that reason. Because employers receive the complete criminal record, they are better able to make substantially related decisions. It is believed that the employer who is interviewing the candidate, checking references, reviewing the background check results and has a clear understanding of the position requirements is in the best position to make the hiring decision. For example, an employer who is hiring for a position that transports residents may choose not to hire a candidate with driving related offenses or one who is hiring for a position that passes medication may choose not to hire someone with drug related offenses. Because these offenses are not on the Offenses List, the employer has discretion to make the most appropriate decision.
- **Rehabilitation Review** – Although the law bars employment for caregivers with convictions of serious crimes or a history of improper behavior, any caregiver who has committed a bar with rehabilitation crime, who has 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 or reside as a nonclient resident in an entity regulated by DHFS. The State of Wisconsin's position is that everyone should have the right to demonstrate proof of rehabilitation.

Entities that fail to comply with the provisions of the program may be subject to program sanctions, such as a required corrective action plan, mandatory training, or the denial, revocation or suspension of the license, certification or registration by the Department. Since October 1998, more than 2 million caregiver background checks have been completed, approximately 27,000 every month. Because the Wisconsin caregiver background check process is fairly easy and inexpensive, compliance with caregiver background check requirements is high. Of the citations issued to Wisconsin nursing homes, less than 2% concern non-compliance with the background check requirements.

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. All Wisconsin court records, including civil records, are available online. 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. The speed also reduced the potential of ineligible caregivers “gaming” the system by working for a facility for just under the time it takes to run the background check.
- **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 successfully 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. Facilities are monitored through the survey process. At each survey, a random sample of employee records is reviewed. If a problem is found, more records are reviewed. Employers who have not accurately followed the process are cited.

There are some areas that are not addressed by Wisconsin's Caregiver Law or pilot process:

- **Rap Back** – Wisconsin can not easily institute a rap back system using an employer driven process. Because no state agency maintains records of employment, it is not possible in the current system to institute a rap back process. However, the crimes on Wisconsin's Offenses List are severe. It is likely that a caregiver convicted of one of the crimes on the Offenses List would serve time in jail and the employer would know that the caregiver was no longer eligible. In addition, employers are required to run a new background check every 4 years on employees.
- **Confidentiality issues** – Under Wisconsin's system, employers receive a copy of the caregiver's full background check. In some states, this is a concern due to confidentiality reasons. Wisconsin's system is in keeping with the state's philosophy of open records. Although a state fitness determination with a rap back may limit employer's access to background checks, it requires that a state agency keep detailed records of caregiver fingerprints, background checks, and employment decisions. Many caregivers would be more concerned with a state agency maintaining a copy of their fingerprints than with the employer having a copy of their background check. This is especially true for the vast majority of caregivers who have no record. 85% of those hired have no criminal histories. Although an FBI background check is perhaps more centralized and complete, it is not the only way to access criminal history information. Most criminal history information is available and can be compiled by private firms who specialize in checking state databases. Even if the state ran the checks and made the fitness determination, many employers would still conduct background checks.

2. PROGRAM DISCUSSION: WISCONSIN BACKGROUND CHECK PILOT

Wisconsin's existing authority to meet the requirements of the CMS Background Check Pilot Program requirements is detailed in Wisconsin Statutes, section 50.065. Additional authority was required to fully implement the following CMS Background Check Pilot requirements:

Immunity Provision

Wisconsin requested a statutory change for the immunity provision as part of the Governor's Biennial Budget in February 2005. While it was anticipated that union and civil liberty groups might oppose the immunity language, arguing that Wisconsin's Fair Employment Law already allows pending criminal charges and criminal convictions to be considered in employment and licensing decisions, the change was passed by summer 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 also ensured that employers were immune from civil liability suits resulting from employment, termination or licensing determinations.

The following language was added to s. 50.065:

50.065(2)br: Except as provided in subd. 2, an entity that receives information regarding the arrest or conviction of a caregiver from the Federal Bureau of Investigation in connection with a criminal history search under this section may use the information only to determine whether the caregiver's arrest or conviction record disqualifies him or her from serving as a caregiver. An entity is immune from civil liability to a caregiver for using arrest or conviction information provided by the federal bureau of investigation to make an employment determination regarding the caregiver. 2. Subdivision 1. does not apply to use by an entity of arrest or conviction information that the entity requests from the Federal Bureau of Investigation after September 30, 2007.

This immunity clause sunset with the end of the pilot. No concerns were raised about the immunity clause during the pilot.

Personal Care Worker Agencies

Personal Care Worker (PCW) providers are not included under Wisconsin's Caregiver Law. As a result, it was necessary to find an alternative means of including them in the pilot. Wisconsin DHFS first requested a waiver from CMS to exclude PCWs from the pilot. The following issues were raised:

- DHFS originally estimated 608 sets of prints related to PCWs. The revised estimate was 1,030 sets of prints. Since PCWs were not currently required to do background checks, it was not known if the new estimate was correct.
- As part of the pilot, DHFS committed to holding employers harmless in the area of cost. Employers paid the same fees they paid under the existing Caregiver Law. PCW agencies were not required to run a background check and therefore paid no fees. To be consistent with other employers, DHFS had to cover the full costs of PCW agency background checks.

The request to exempt PCWs from the pilot was denied by CMS. Due to the tight time frames, legislation was pursued to include PCW providers in the pilot (*See Appendix 1 – DHFS Legislative Request to Include PCWs*) and DHFS entered into negotiations with Medicaid-funded PCW agencies to have them voluntarily participate in the pilot.

The PCW agencies in Dane County raised the most concerns about participating in the pilot. Their concerns focused on the access to the fingerprint vendor. After significant discussions, DHFS attempted to accommodate Dane County Human Service's Request of a second fingerprint site on the north side of Madison. A PCW provider initially agreed to host the fingerprint services one evening per week. The plan was abandoned when the provider identified security issues with having non-employees enter the building in the evening. DHFS agreed to revisit the issue if transportation and hours became an issue once the pilot started. Once the pilot began, Dane County PCWs had no complaints about getting to the fingerprint site.

Ultimately, DHFS entered into agreements with all the Medicaid-funded PCW providers in Dane, Kenosha, La Crosse and Shawano counties. The PCW providers agreed to voluntarily participate in the pilot in exchange for the pilot covering the background check fees and providing free abuse and neglect prevention training. DHFS developed, in consultation with the PCW providers, a contract that included the benefits of participation (free background checks and training on prevention of abuse and neglect) and the requirement that agencies follow a prescribed background check process 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

costs of the checks completed. (See Appendix 2 – Memorandum of Agreement with La Crosse County.)

Long-term Care Hospitals

The Wisconsin Hospital Association (WHA) also asked for an exemption for Long-term Care Hospitals citing long distances to drive to fingerprint locations and potential impacts on recruiting caregivers. DHFS responded that long-term care hospitals are a required provider type and could not be exempted from the pilot. (See Appendix 3 – DHFS response to WHA.)

3. BACKGROUND CHECK PROGRAM COMPONENTS

Wisconsin's Caregiver Background Check Pilot included the provider types listed in the chart below. The numbers of providers fluctuated throughout the pilot.

Provider Type	No. Pilot Facilities Beginning of Pilot	No. Pilot Facilities End of Pilot
1. Skilled Nursing Facilities/Nursing Facilities	43	43
2. Long-Term Care Hospitals, Swing Beds	2	2
3. ICFs/MR	4	4
4. HCBS Group Homes Over 8 Beds*	108	108
5. Home Health Agencies	18	18
6. Personal Care Worker-Only Agencies and subcontractors	29	32
7. Hospices	5	6

Providers were phased into the pilot as follows:

County	Begin Date		End Date
• Dane County	March 1, 2006	–	September 30, 2007
• Kenosha County	March 1, 2006	–	September 30, 2007
• La Crosse County	February 1, 2006	–	September 30, 2007
• Shawano County	March 1, 2006	–	September 30, 2007

Douglas County was included in the original pilot design. CMS agreed to permit Douglas County to be excluded from the pilot when the PCW exemption was denied. DHFS provided the following reasons for eliminating Douglas County from the pilot:

- Wisconsin expected to get only 800-950 background checks in Douglas County (representing 5-6% of all of our background checks).
- Douglas County was repetitive of La Crosse County, which also borders Minnesota. Douglas County was also repetitive of Shawano County, which is rural.
- Because Douglas County is approximately 350 miles away from Madison, it was difficult to engage their employers in the pilot.
- Getting fingerprints scanned would be difficult in Douglas County. When Wisconsin's pilot proposal was written, Promissor, the fingerprint vendor, indicated that Douglas County would be served by the site in Duluth, MN. Promissor subsequently relayed that they could not permit the Duluth site to be used. As an alternative, employers in

Douglas County were to be served by Promissor's mobile unit. Difficulties with this process were expected, including 2 week waiting periods before appointments could be scheduled.

- Training Douglas County caregivers would have also been difficult. Douglas County is at least six hours from Madison making any training trip three days long, with travel times longer during winter months. As a result, it would have been necessary to spend a significant portion of the training budget to include Douglas County. Given the limited number of background checks, the costs were not warranted.

Phase-In Description

Wisconsin's Caregiver Background Check Pilot implementation began on February 1, 2006. Starting in February 1, 2006, all affected entities in La Crosse County were required to conduct a fingerprint-based background check for all newly hired caregivers.

Several significant start-up problems occurred in February 2006. The vendor for La Crosse County, Promissor, did not have a location secured in the city of La Crosse. The Wisconsin Department of Administration (DOA) has an ongoing contract with Promissor to provide fingerprint services for various state agencies. Promissor originally had an office in La Crosse but moved its location to Sparta, Wisconsin in May of 2005 to accommodate individuals being fingerprinted for the Wisconsin Department of Transportation. When DHFS learned of the move in August 2005, DHFS began working with DOA and Promissor to move the office back to La Crosse. By February 2006, the move had still not been made. As a result, Promissor established a temporary site in a hotel. Within a few weeks, a La Crosse County employer offered rental space to Promissor within the La Crosse city limits.

While Promissor was establishing a main office in La Crosse, their call center provided inaccurate information on whether caregivers could be fingerprinted in La Crosse. Often times providers were told that no services were available for caregivers or that the only location was in Sparta. Providers often had to make multiple phone calls or wait on the line for up to 30 minutes to make an appointment. In addition, the first round of fingerprints sent from the Wisconsin Department of Justice (DOJ) to the FBI were rejected because the FBI had not set up their system to accept the pilot fingerprints.

To address the La Crosse County concerns, DHFS convened a meeting with Promissor and the employers in La Crosse on April 4, 2005. Nearly all of the La Crosse providers attended. During the meeting, the issues were discussed and potential resolutions were identified. This meeting resolved the majority of concerns raised by La Crosse providers.

Starting March 1, 2006, all affected employers in Dane, Kenosha and Shawano Counties were required to conduct a fingerprint-based background check for all newly hired caregivers. No significant start-up issues arose in the Dane, Kenosha or Shawano Counties. All affected employers in the four pilot counties began submitting quarterly data reports in April 2006.

Covered Direct Patient Access Employees

Under Wisconsin's Caregiver Law and the pilot, a caregiver is defined as a person who meets all of the following: 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 following groups of potential caregivers were not subject to the pilot requirements although they may be subject to Wisconsin's existing Caregiver Law: caregivers hired by an affected employer to provide services exclusively in a non-pilot county, students, volunteers and owners/operators of regulated facilities (whose background checks are run by DHFS)

4. BACKGROUND CHECK PROCESS

The following procedures provide a step-by-step description of Wisconsin's Caregiver Background Check Pilot process.

Written Disclosure & Authorization

All newly hired caregivers completed a Background Information Disclosure (BID) Form ([Attachment 1](#)) before beginning work. If the prospective employee's BID disclosed a state or federal conviction or finding by a governmental agency of client abuse, neglect or misappropriation, or child neglect or abuse findings that require a Rehabilitation Review or license limitations that prevent a person from working in a position requiring a license, the prospective employee did not begin employment until the full background check was completed.

Caregivers with a clean BID were able to be employed for up to 60 days, pending receipt of the background check results and the fitness determination. The entity kept a copy of the BID in the individual's file.

Entity officials notified the individual that their fingerprints were used to check the criminal history records of the state and FBI. An authorization form was issued for this purpose and kept on file with the results for as long as is necessary to keep the record.

Collection of Fingerprints & Technology

Wisconsin pilot counties used FBI compliant live scan equipment, utilizing Wavelet Scalar Quantization (WSQ) to compress the images at a 15:1 ratio. Fingerprint scanning centers were equipped to capture fingerprints in a digital mode and transmit the electronic file to Wisconsin DOJ's server for processing.

- Promissor, Inc. was authorized by the State of Wisconsin to collect digital fingerprints for the federal background check pilot. Promissor collected pilot prints for La Crosse and Shawano Counties.
- Department of Administration (DOA), Division of Gaming (DOG) was authorized by the State of Wisconsin to collect digital fingerprints for the federal background check pilot. DOG collected pilot prints in Dane and Kenosha Counties.

Originally, DHFS planned to use Promissor in all the pilot counties. However, employers in Kenosha County complained that the closest Promissor location was in Milwaukee. (See *Appendix 4 – Kenosha Answers*.) Given the traffic, it could take caregivers more than an hour to

drive from Kenosha to the Promissor Milwaukee location. At the time, Promissor was unable open a fingerprint scanning location in Kenosha.

WI DOJ suggested that DHFS speak to the Department of Administration's Division of Gaming which collects fingerprints for their own program's purposes. In addition, the Division of Gaming has a fingerprint scanning location in Kenosha at the Dairyland Greyhound Race Track. Division of Gaming agreed to collect caregiver prints in both Dane and Kenosha at a significantly reduced rate.

Fingerprint Collection Locations

County	Provider	Location
Dane	Division of Gaming	Madison - Division of Gaming Madison Office, Hwy 18/19 and Fish Hatchery Road (on a bus line) Madison – Community Living Alliance (PCW Provider), corner of East Washington and Stoughton Road (on a bus line) *within 25 miles of all providers
Kenosha	Division of Gaming	Kenosha - Dairyland Greyhound Park 5522 104th Avenue, Kenosha, WI *within 25 miles of all providers
La Crosse	Promissor	La Crosse – Promissor Office 811 Monitor Street, Suite 206 La Crosse, WI 54601 *within 25 miles of all providers
Shawano	Promissor	Green Bay – Promissor Office 2350 University Avenue #100 Green Bay, WI 54302 Wausau – Promissor Office 2620 Stewart Avenue Suite 118 Wausau, WI 54401 *within 50 miles of all providers

Shawano Medical Center, a long-term care hospital in Shawano County made a formal request through the Wisconsin Hospital Association (WHA) and the Rural Wisconsin Health Cooperative (RWHC), to be exempt from the pilot. Shawano Medical Center argued that the travel to Green Bay or Wausau to be fingerprinted was too far for caregivers. Prior to receiving the formal request, pilot staff had offered to meet with Shawano Medical Center to talk about alternative fingerprint collection methods to reduce the burden on Shawano providers. Shawano Medical Center declined to meet and instead decided to send a formal letter. (See Appendix 5 – DHFS response to WHA & RWHC.)

After the letter was received, DHFS entered into negotiations with Shawano Medical Center and Promissor to set up a mobile fingerprint cite at Shawano Medical Center once every 6 weeks. Fingerprint services in Shawano County were provided from December 2006 through September 2007 once every 6 weeks. Appointments often went unfilled and the Shawano site experienced a much higher no-show rate than the Green Bay and Wausau locations.

Transmittal Methods

After the applicant's identity was authenticated, the applicant was fingerprinted. The digital fingerprint record was transmitted to the Wisconsin repository and the FBI via the WI Department of Justice (DOJ). The state and federal fingerprint background check results were then posted on the secure WI DOJ Criminal History website. Employers logged onto the website to get their results. Pilot employers were required to set up an account with the WI DOJ.

The original pilot proposal intended to use the BadgerNet state server system to relay results back to providers. During the development of the proposal and in subsequent meetings in January and February of 2005, WI DOJ staff were cooperative and stated that their system could handle the changes needed to implement this pilot. In late April 2005, however, WI DOJ staff raised concerns about DOJ's ability to implement large portions of the original design, including: tracking requests by employer; using BadgerNet or another secure website to provide background check results to the employer that requested the search; billing employers; and returning results in a reasonable time frame. WI DOJ staff indicated they had a 2 week delay in returning civil background check results.

Until meeting on 4/26/05, no mention was made of a cost associated with BadgerNet. At that meeting, WI DOJ staff stated that it would cost each provider roughly \$2,300 to get BadgerNet installed plus a \$1,100 monthly fee. Materials on WI DOJ's website indicate that there is no cost involved with BadgerNet.

The INCH system which hosts the Criminal History website was also discussed as a possible vehicle for sending results but it was dismissed with little explanation. Another issue at the time was the billing. Originally, DHFS planned to have providers run only a state and national fingerprint search and offset the costs by continuing to charge providers for the Caregiver Law name-based search. DOJ staff indicated that their billing system could not run one check but bill for a different check.

After speaking with the Division Administrator at DOJ, DHFS and DOJ agreed to use the INCH system to post results. DHFS also decided to require both the name-based Caregiver Background Check and the state and federal fingerprint searches. This decision eliminated the billing complications. WI DOJ billed providers for the name search as usual, costs of the FBI fingerprint search were paid by pilot funds, and DOJ agreed to waive the state fingerprint search fee. The Division Administrator also assured DHFS that results would be sent back in a timely manner with a 24-hour turn around time for results. Once these decisions were made, the development and implementation went smoothly.

Records Check

The following describes the process for conducting the search of registries, other databases, state and national criminal history records under the Wisconsin Caregiver Background Check Pilot:

Registry/Database Check

List of registries:

1. Wisconsin Nurse Aide Registry – online search – no cost
2. Other state's nurse aide registry, if prospective employee indicated living in another state –

- online search – no cost
3. US HSS Office of Inspector General (OIG) List of Excluded Individuals/Entities – online search – no cost

Affected health care employers were responsible for checking the registries listed above, all of which are on-line searches. Health care employers completed the registry searches after the prospective employee submitted their Background Information Disclosure (BID) form and before the fingerprint background check was initiated. The employer evaluated the information in the registries. If the prospective employee had a finding in any of the registries listed above, the entity denied deny employment and did not have to proceed further with the background check.

If the individual passed the registry review, employers sent them to get their fingerprints scanned. All fingerprint scans were forwarded by the:

- Vendor to WI DOJ which ran the prints through the state fingerprint database;
- WI DOJ to the FBI for a federal fingerprint search; and,
- WI DOJ to DHFS for an Integrated Background Check Information System (IBIS) check.

IBIS Database:

1. Findings of Abuse or Neglect of a Client, or Misappropriation of a Client's Property listed on the Caregiver Misconduct Registry (a subsystem of the Wisconsin Nurse Aide Registry)
2. Denials or Revocations of Operating Licenses for Adult Programs
3. Denials or Revocations of Operating Licenses for Child Programs
4. Rehabilitation Review Findings
5. Status of Professional Credentials, Licenses or Certifications

The results from the IBIS check were posted on a secure website along with the results of the state and federal fingerprint background checks. The employer evaluated all of the information received from the caregiver background check to make the employment decision.

State Criminal Records Check

The health care employer was responsible for requesting the state criminal records check, evaluating the information, and making a hiring decision based on the results of this and other checks. Promissor and the WI Division of Gaming were responsible for capturing the fingerprints and submitting them to WI DOJ. WI DOJ was responsible for conducting the state criminal records check and posting the results on the secure website within 24 hours. Findings were transmitted via a secure website to the employer that requested the background check.

National Criminal Records Check

The health care employer was responsible for requesting the state criminal records check, evaluating the information, and making a hiring decision based on the results of this and other checks. Promissor and the Division of Gaming were responsible for capturing the fingerprints and submitting them to DOJ. WI DOJ was responsible for submitting the request to the FBI, receiving the results and posting the results on the secure website within 24 hours. Findings were transmitted via a secure website to the entity that requested the background check.

Checking Sequence

Federal Background Check Pilot Program Pilot Background Check Process

Affected employers followed a seven step Pilot Background Check Process. The background check process could be stopped at any of the 7 steps below if disqualifying information was found. Providers checked state and federal background check results against:

- Wisconsin Offenses List, and
 - OIG Exclusion List
1. Caregiver completes the form HFS-64 Background Information Disclosure (BID) and Authorization for Release of Federal Bureau of Investigation (FBI) Information ([Attachment 2](#))
 2. Employer checks free registries to see if caregiver has any substantiated incidents of abuse or neglect, including:
 - Wisconsin Caregiver Misconduct Registry
 - Office of Inspector General (OIG) Exclusion List
 - Other state Misconduct Registry, if appropriate
 3. Employer completes name-based Caregiver Background Check, which includes:
 - Response from the Department of Justice Wisconsin Criminal History Record Request name search
 - A letter from the Department of Health and Family Services that reports the status of a caregiver's administrative findings or licensing restrictions
 4. Employer makes arrangements for the caregiver to be fingerprinted
 5. Caregiver attends fingerprint appointment
 6. Fingerprints are checked against Wisconsin's criminal records and FBI criminal records and are sent back to the employer via a secure website
 7. Employer makes final hiring decision
 - These steps were covered extensively in the pilot technical training. Instructions were also posted on the pilot website for providers to follow. Technical assistance was given to providers with questions. Within the first quarter, however, most providers had a good handle on the new process and very few questions arose.

Employers referred caregivers with questions to the Applicant Fact Sheet ([Attachment 3](#)).

Elimination of Unnecessary Checks

Background checks were completed in seven stages (see above). The employer could terminate the background check at any point that disqualifying information (substantiated findings or criminal convictions barring employment as a caregiver) was verified. The employer notified the prospective employee of the disqualifying information. The offense itself was shared. The individual could also request a copy of their background check from the employer.

During the pilot process, employers were required to submit quarterly data on hiring decisions based on background check results. With a few early exceptions, most employers followed the steps of the process and did not continue with the background check once disqualifying information was found.

Background Check Costs and Fees

The costs associated with each level of Wisconsin Caregiver Background Check (i.e., state registries, state criminal records, FBI national records), included the following;

Background Check Component	Fees	
Digital Fingerprint Capture	\$18.00	*
Nurse Aide Registry	\$0.00	
OIG Exclusions List	\$0.00	
State Name-based Criminal History Check	\$2.00 – 13.00	**
Other Registry/Databases (IBIS – listed below)	\$2.50	
State Fingerprint Criminal History Check (waived)	\$15.00	***
FBI IAFIS Check	\$24.00	
Other	NA	

*Promissor billed DHFS \$18 per appointment, for individuals who attended appointments and for those who failed to show. Division of Gaming did not charge for capture services; DHFS paid for the limited-term employee salaries.

**Non-profits pay \$2; government entities pay \$5; for-profits pay \$13 under both the Caregiver Law and the pilot process.

***WI DOJ waived the \$15 state fingerprint criminal history check fee for purposes of the pilot.

Other Registries/Databases included the state IBIS check:

- Findings of Abuse or Neglect of a Client, or Misappropriation of a Client's Property listed on the Caregiver Misconduct Registry (a subsystem of the Wisconsin Nurse Aide Registry)
- Denials or Revocations of Operating Licenses for Adult Programs
- Denials or Revocations of Operating Licenses for Child Programs
- Rehabilitation Review Findings
- Status of Professional Credentials, Licenses or Certifications

Fee Payment Process

Health care employers continued to pay the current rates for the caregiver background check state name-based criminal history check and regulatory search. However, pilot funds for Personal Care Worker-Only Agencies were used to cover this fee, as it was a new cost to these agencies that were not currently part of the WI Caregiver Law. DHFS used pilot funding to cover all the remaining costs (Fingerprint Capture and FBI IAFIS Check).

5. FITNESS DETERMINATION

Affected health care employers in the four pilot counties (Dane, Kenosha, La Crosse, Shawano) reviewed the results of the state and federal background checks, made the appropriate fitness determination and hiring decision for their prospective caregiver employees. Concerns were raised that providers might have a difficult time reviewing the results of the FBI search. These issues were covered by the pilot technical training and employers contacted DOJ directly with any questions regarding the background check. No systemic issues were identified.

Unlike other pilot states where state agencies made the fitness determination, Wisconsin employers had full discretion, within the limits of the state's employment laws and Caregiver Law, to make a hiring decision using the information from the background check. According to the Caregiver Program Manual:

- Only those crimes and findings by governmental agencies on the Offenses List and comparable crimes and offenses from other states or other U.S. jurisdictions are bars to employment, regulatory approval and nonclient residency.
- Any conviction not on the Offenses List may be determined to be substantially related to the duties or the circumstances of the job. This may result in:
 - Refusal to hire a candidate for that reason, although an employer is not required to bar the person from employment;
 - Denial, revocation or suspension of a license, certificate or approval or registration; or
 - Denial of residency of a nonclient resident.

Health care employers submitted summary data to WI DHFS on a quarterly basis. In a qualitative survey conducted in April 2007, providers said that they found the fingerprinting process: 31% easy; 46% somewhat easy; 21% somewhat difficult, and 2% difficult.

Missing Dispositions

Health care employers made a good-faith attempt to obtain the disposition information, including conviction records, from the appropriate jurisdiction such as the county clerk of courts, tribal jurisdiction, or armed services branch when:

1. The person reports a charge or conviction of a serious crime that does not appear on the DOJ or NCIC criminal history record request;
2. The DOJ or NCIC report does not clearly indicate the disposition of a serious crime;
3. The BID, DOJ or NCIC response indicates a conviction that occurred five years or less from the date on which the information was obtained of:
 - Misdemeanor battery s. 940.19 (1), Stats.
 - Battery to an unborn child s. 940.195, Stats.
 - Battery, special circumstances s. 940.20, Stats.
 - Reckless endangerment s. 941.30, Stats.
 - Invasion of Privacy s. 942.08, Stats.
 - Disorderly conduct s. 947.01, Stats.
 - Harassment s. 947.013, Stats.
 where the conviction occurred five years or less from the date on which the information was obtained; or,
4. The military discharge was other than “honorable.”

The employer obtained complete information to make determination. Health care employers were familiar with tracking down missing disposition information. When providers had questions, they contacted the WI DOJ directly. Information on interpreting responses may also be viewed on DOJ's website at <http://www.doj.state.wi.us/dles/cib/forms/cib/reading.pdf>.

Disqualifying Information

In addition to the disqualifying offenses listed in the MMA, the following disqualifying information was used to bar employment under Wisconsin's Caregiver Background Check Pilot:

Citation	Wisconsin Disqualifying Offenses
940.01	First degree intentional homicide
940.02	1 st degree reckless homicide
940.03	Felony murder

940.05	2 nd degree intentional homicide
940.12	Assisting suicide
940.19 (2) – (6)	Battery (felony)
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report
940.225 (1), (2) or (3)	1 st , 2 nd or 3 rd sexual assault
940.285	Abuse of vulnerable adults (misdemeanor or felony)
940.29	Abuse of residents of a penal facility
940.295	Abuse or neglect of patients and residents (misdemeanor or felony)
948.02(1)	1st degree sexual assault of a child
948.025	Repeated acts of sexual assault of a child
948.03 (2)(a)	Physical abuse of child – intentional – cause great bodily harm
	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property.
	Finding by a governmental agency of child abuse or neglect.

Timeliness

The timeframe began when the entity received the completed Background Information Disclosure (BID) form from the prospective employee. Name based results were returned within one (1) hour. The fingerprint process resulted in criminal histories being posted within 24-48 hours of the fingerprints being submitted to WI DOJ. Employers made final fitness determinations within 24-48 hours.

The time frame was longer when prints were rejected by the FBI. The FBI ran a manual search for individuals whose prints are rejected for image quality twice. For the first several months, DHFS contacted Susan Larsen, the CMS Background Check Pilot Director, who coordinated the process with the FBI. After that, WI DOJ handled the process. Due to a systems limitation between WI DOJ and the FBI, this process was not automated. Instead, WI DOJ had to wait until they received a monthly invoice from the FBI to request the manual search. As a result, manual FBI searches could take up to 45 days to complete. WI DOJ is in the process of updating this system, which will dramatically reduce the processing time.

6. EMPLOYMENT/STAFFING AGENCIES

Employment agencies, including temporary staffing agencies, were permitted to initiate and conduct background checks under Wisconsin's Caregiver background Check Pilot. If an employment agency supplied health care providers with caregiver staff, those staff were subject to the existing state background check requirements. The employment agency indicated in writing that the caregiver had no offenses on the Offenses List and was eligible for employment. The agency advised the entity of any convictions in the person's background, to allow a fitness determination and consider whether any convictions were substantially related to the duties of the job. Employment agencies had access to the same background check information as an entity if the employment agency is hiring a caregiver.

Entities could contract the caregiver background check duties to an employment agency or third party (e.g., technical college, background check service, etc.), but the entity was ultimately responsible for the completion and accuracy of the background check process. If the entity contracted with another party to conduct and maintain the background checks, a written

agreement must be on file, allowing the party to retain the required background information. The health care employer is ultimately responsible for the completion and accuracy of the background check process. Reviews of background check information were done during regular site visits.

7. PROVISIONAL EMPLOYMENT

With only a few exceptions, all background checks were completed within the 60-day time period. A handful of cases missed this deadline due to either processing mistakes by the employer (all of which were resolved) or because the employer was waiting for a manual FBI search because the caregiver's prints were rejected twice by the FBI.

Entities provided supervision during the 60-day period pending receipt of complete state and federal background check results. At a minimum, this supervision included periodic direct observation of the person. The definition of supervision varies with each program type and each covered entity must follow its own program supervision requirements.

8. BACKGROUND CHECK ACCURACY

Promissor and the Division of Gaming completed a quality assurance check on all submitted prints before forwarding them to DOJ. If the applicant wished to challenge the accuracy of the FBI background check record, s/he appealed to the FBI by writing to the FBI, NICS Operations Center. The FBI investigated the matter by contacting the agency that denied the transaction or the data source. 28 CFR 16.34 provides the following instructions for persons wishing to challenge the record's accuracy:

- If the person believed his/her identification record is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, s/he should apply directly to the agency that contributed the questioned information.
- The subject of a record may also direct his/her challenge regarding the accuracy or completeness of any entry on his/her record to the FBI, Criminal Justice Information Services (CJIS) Division.
- The FBI forwarded the challenge to the agency that submitted the data and requested that agency verify or correct the challenged entry.
- Upon receipt of an official communication from the agency that contributed the original information, the FBI CJIS Division makes the necessary changes.

Wisconsin's pilot program staff are not aware that any individual challenged the validity of their background check during the pilot.

9. APPEALS

Wisconsin's Caregiver Background Check Pilot provided the following process for an applicant to appeal the results of a background check or fitness determination:

Criminal Fingerprint Appeal

Persons who were arrested and fingerprinted by a Wisconsin criminal justice agency and subsequently released without charges being filed, or the charges were dismissed or the person was acquitted by a court, may have the arrest removed from the record. However, to qualify, all of the charges listed on the arrest fingerprint card must have been dismissed or not charged. If an arrest record qualifies for removal, a *Fingerprint Record Return Request* form ([Attachment 4](#)), and a copy of the documentation substantiating the arrest disposition qualifies for removal, must be completed and sent to the Crime Information Bureau. When processed, the arrest fingerprint card and all related information related will be deleted. If the arrest information was forwarded to the FBI, they will be notified and will destroy their record. Expungement of a case in court does not satisfy the statutory requirements for removing arrest information from the criminal record.

The DOJ Crime Information Bureau (CIB) reviewed the request and checked state records to ensure that the individual was released without charges being filed, if the charges were dismissed or the individual was acquitted by a court. To qualify, all of the charges listed on the arrest fingerprint card must have been dismissed or not charged. Charges amended to a lesser offense do not qualify for removal. Expungement of a case in court does not satisfy the statutory requirements for removal of arrest information from an individual's criminal record. Expungement by the court only removes the information from the court record, not from the Wisconsin criminal history database. Appeals are tracked by the DOJ CIB. Criminal fingerprint appeals did not increase during the pilot period.

Caregiver Misconduct Appeal

Caregivers may appeal a misconduct substantiated finding decision listed on the Wisconsin Caregiver Misconduct Registry by requesting a fair hearing with the Department of Administration, Division of Hearings and Appeals. Fair hearings must be requested within 30 days. The caregiver is allowed to work pending the fair hearing decision.

Appeals are processed by the Department of Administration, Division of Hearings and Appeals which has 90 days to schedule the hearing and 30 days after the hearing is held to issue a decision. DHFS cannot post the individual's name on the misconduct registry until the decision is issued. Appeals are tracked by the Division of Hearing and Appeals. Caregiver misconduct appeals did not increase during the pilot period.

Regulatory Appeal

A person who has been denied regulatory approval or whose regulatory approval has been revoked and believes discrimination has occurred, may appeal the decision through their licensing agency. Regulatory appeals did not increase during the pilot period.

Employment Appeal

Any person who has been refused employment or terminated from employment and believes discrimination has occurred, may file a complaint under s. 111.335, Stats. Appeals are filed by contacting the Wisconsin Department of Workforce Development (DWD), Division of Equal Rights. An appeal must be filed within 300 days of the employment action. The complaint is assigned to an equal rights officer to be investigated. The investigator acts impartially and independently, and represents neither the complainant (person filing the complaint) nor the respondent (employer being complained against). The investigator cannot give legal advice to the parties. An attorney should be contacted if either party needs legal advice. (The Division can provide a list of attorneys who handle fair employment cases). After the division receives a

complaint, a copy is sent to the respondent, who must provide a written answer to the complaint. The investigator may contact the complainant after receiving this answer and may request more information from the parties or any witnesses. The investigator may ask the parties if they wish to resolve the case through a settlement.

If a case is not settled, the equal rights officer completes an investigation and drafts an initial determination of whether there is “Probable Cause” or “No Probable Cause” to believe that the law has been violated.

- Probable Cause (PC) is not a finding of discrimination. It means there was enough believable information about discrimination to send the case on for a hearing on its merits.
- No Probable Cause (NPC) This finding means there wasn’t enough evidence of discrimination. It does not always mean there was no discrimination. The case is dismissed, unless the complainant files a written appeal within 30 days.

Discrimination hearings are similar to a court proceeding. Both parties present evidence under oath before an administrative law judge (ALJ). The ALJ reviews the evidence and hears testimony of witnesses, then issues a decision on whether or not discrimination occurred. All relevant evidence and testimony must be presented at this hearing as it is the only chance for the parties to do so. Information given earlier to the investigator is not considered at the hearing. The ALJ cannot represent either party. Legal counsel may be advisable at this point, but is not required.

If discrimination is proven by a complainant under state law, an ALJ can award wages lost, interest on lost wages, attorney fees and costs. A job offer may also be ordered, if appropriate. Either party may appeal the ALJ's decision. Additional relief for damages such as humiliation and emotional pain or for punitive damages may be awarded only if a case is filed in federal court. Appeals are tracked by the Department of Workforce Development, Division of Equal Rights. Employment appeals did not increase during the pilot period.

10. REHABILITATION REVIEW

Wisconsin’s Caregiver Background Check Pilot provided a rehabilitation provision, permitting employment for individuals with previous disqualifying behaviors or offenses. An individual completes a [Rehabilitation Review Application](#) form ([Attachment 5](#)) and submits it to the DHFS Office of Legal Counsel. The individual has 90 days from the date the application was submitted to provide a complete set of their supporting materials.

HFS12.12(4)(d) The Rehabilitation Review Panel considers information, such as:

- Evidence of successful parole, probation, incarceration or work release privileges.
- Proof the person has not had subsequent contacts with law enforcement agencies.
- Whether the person is on the sexual offender registry or a similar registry in another jurisdiction.
- Evidence of rehabilitation, such as a successful treatment program, public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts of restitution.
- The amount of time between the crime, or offense, the request for Rehabilitation Review, and the age of the person at the time of the offense.

- Personal reference checks and comments from employers, agencies, statements from therapists, counselors and other professionals.
- Employment history, including evidence of acceptable performance or competency and dedication to the person's profession.

Each application for appeal is handled on a case-by-case basis by the DHFS Office of Legal Counsel. Once the Rehabilitation Review Application is received, the applicant is notified of the time and location of the Rehabilitation Review panel meeting and is given an opportunity to answer the panel's questions.

HFS12.12(5) After reviewing all of the materials and conducting a Rehabilitation Review panel meeting, the panel issues a written decision indicating one of the following:

- *Approval:* If the Panel received sufficient evidence of rehabilitation, the panel approves the Rehabilitation Review application and may specify conditions or limitations to the approval.
- *Denial:* If the Panel did not receive sufficient evidence of rehabilitation, the decision lists the denial reasons and informs the applicant of his/her right to file an appeal within 10 days of the decision.
- *Deferred:* The Panel may defer a final decision for up to six months to gather additional information or for other reasons.

Requests and decisions are tracked by the DHFS Office of Legal Counsel. DHFS submits a report to the state legislature every year that specifies the number of persons in the previous year who have requested a rehabilitation review, the number of persons who successfully demonstrated that they have been rehabilitated, and the reason for each person's success or failure. Rehabilitation review applications did not increase during the pilot period.

Relapse of Offenders

An agency or tribe that granted a person a rehabilitation approval may immediately temporarily rescind the rehabilitation approval when the agency or tribe has knowledge that the person has done either of the following:

1. The person has failed to comply with or abide by any conditions or limitations imposed with the rehabilitation approval.
2. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise could or would have affected the review panel's decision to grant the rehabilitation approval. No additional steps are taken by DHFS.

11. BACKGROUND CHECK PROCESS FLOW

See Background Check Flow Chart ([Attachment 6](#)).

12. COMPLIANCE MONITORING & FEEDBACK

Program Monitoring Activities

The federal background check results and documents were retained by the employer, to document their compliance. The employer determined where and how the background check records are maintained, but the records must be readily available to DQA staff upon request.

During survey, DQA staff reviewed the personnel records of a sample of caregivers (nurse aides, nurses, housekeeping staff, etc.) and documented their findings to ensure program compliance. During these reviews DQA staff checked for the following issues:

- Obtaining written disclosure
- Obtaining written authorization
- Obtaining 10 rolled fingerprints
- Referring/conducting applicants for background check determination (as applicable)
- Making fitness determination (as applicable)
- Making appropriate hiring, termination decisions, etc.

Entity Sanctions and Feedback

A pilot health care employer may be subject to sanction if it failed to adhere to the provisions of Wisconsin's Caregiver Background Check Pilot requirements, including failure to:

- Hire, employ, or contract with a caregiver, or permit a nonclient resident to reside at the entity when the entity knew or should have known that the person is barred from doing so; or
- Violate any provision of initial background information gathering under the federal background check requirements.

If an entity failed to adhere to the requirements listed above, the following sanctions may be imposed, including:

- A forfeiture not to exceed \$1,000;
- A requirement for the entity to submit a corrective action plan specifying corrections the entity will make to their screening practices;
- Background check training or other appropriate training, at the entity's expense;
- Conditions or limitations placed on the license, certification or registration, including denial, revocation, or suspension; and/or
- A requirement for the entity to use a temporary employment agency for screening and hiring personnel.

Only five (5) health care employers, or 2% of the 211 employers who participated in the pilot, were cited for background check related deficiencies between March 2006 and September 2007. The five employers were located in Dane and Kenosha counties; no healthcare employers were cited for background check requirements in La Crosse or Shawano counties.

Unintended Negative Effects

DHFS worked diligently to ensure easily accessible fingerprint sites in all of the pilot counties. Individuals using Promissor were able to schedule an appointment using an 800 number or the Internet. Individuals using DOA, Division of Gaming in Kenosha and Dane were not required to make an appointment as services were provided on a drop-in basis with set hours. Entities in Shawano County that were not close to a Promissor site or that could not schedule a timely appointment with Promissor were permitted to submit ink rolled fingerprints to DOG for scanning.

In a qualitative survey conducted in April 2007, providers indicated that they found the fingerprinting process: 31% easy; 46% somewhat easy; 21% somewhat difficult, and 2% difficult. Sample comments included:

- We notified managers in meetings and updated staff on the new pilot program so employees understood the purpose. That was the easy part. The part that was a bit more difficult was finding extra time to go over the process with each new employee. Adding more time to an already busy day was difficult to find, but we figured it out.
- Applicants have a hard time understanding why they need to do it. In addition, many complaints were received regarding the Promissor staff and scheduling for an appointment. The quarterly report gets confusing but is manageable.
- Easy enough to instruct new applicants on what it was for, and how to do it.
- I find that implementing the process is fairly easy but getting employees to go to the Division of Gaming during their open hours has been difficult because many of our employees have full time day jobs and the Division of Gaming is only open from 8a to 4p or 4:15p M-F.

Utilizing digital fingerprint services by a private agency reduced the stigma prospective employees may experience by providing customer-focused fingerprint scanning services, rather than requiring contact with busy law enforcement agencies.

In a qualitative survey conducted in April 2007, 90% of providers said that they did not experience a reduction in prospective candidates because of the fingerprinting requirements. Sample comments included:

- Very minimal negative impact on prospective candidates.
- Some candidates didn't want to drive to the printing site or be printed twice. Some of our applicants work per diem and it can be a drawback for a part time position.
- Not unless people decided not to apply or continue with the employment process because of this requirement. (I may or may not know about that.)
- Once we mentioned that this would be included in our background checks; a handful of people did not continue the process.

DHFS promoted the benefits of the background check program through three advisory committees, through presentations to various provider groups, and through technical training for the pilot. All informational materials about the pilot also promoted the benefits of the background check program.

In a qualitative survey conducted in April 2007, 56% of providers said that they would like the fingerprint requirement to continue. Sample comments included:

- I like the extra set of precautionary review that the fingerprinting offers.
- We believe the State BG check is sufficient. The fingerprint process is timely and in our case, can cost money and loss of potential staff.
- Yes and no.....yes, because as the person running the background checks, I only had to complete the WI check and then send them for fingerprinting. No, because I am worried about the cost.
- We would see no problem with the requirement continuing if the cost is minimal and works like it has been. The fact that it brings up results that the criminal check we conduct does not always shows that it is useful. But the fact that it hasn't brought up something that was disqualifying that wasn't on the name-based check would make more sense to be free than to pay extra for this.

Applicants were not required to pay any fees for the fingerprint process. The applicant's responsibilities were outlined in the Applicant Fact Sheet.

13. EDUCATION & TECHNICAL ASSISTANCE PLAN

Communication – Public Awareness

DHFS continued to partner and collaborate with the Wisconsin DOJ and DRL to develop the federal background check pilot policies, procedures, and system requirements. In addition, input was sought from Wisconsin's Ombudsman Program and appropriate health care associations, to ensure facility buy-in and successful pilot background check implementation. A one-page summary was widely shared ([Attachment 7](#)).

Direct mailings – All affected entities received a letter of introduction about the project. The letter was sent in June 2005. (See *Appendix 6 – Introduction Letter*.) Another letter was sent in October 2005 with detailed information on steps providers needed to take to prepare for the pilot. (See *Appendix 7 – Tech Training Letter Oct 2005*.) A month before the pilot began, providers received a third letter reminding them of the pilot steps and the data collection. (See *Appendix 8 – Pilot Reminder Letter Feb 2006*.) After the pilot began, remaining correspondence was handled via e-mail. On a quarterly basis, providers received e-mail reminders on filling out the quarterly data collection forms ([Attachment 8](#)).

Website – DHFS established a website for this project. The website includes general information about the pilot with links to CMS. All of the materials from the technical trainings are posted including all of the forms and links providers need to complete the full background check. To see the full website, go to: <<http://dhfs.wisconsin.gov/caregiver/fedBCpilot.htm>>. A question and answer document listing the most common questions is also posted. (See *Appendix 9 – Pilot Q & A*.)

Committees/Workgroups –

- *Background Check Pilot Planning Committee* – Provide input on the big picture issues related to the background check pilot including developing policy, and communicating that policy to entities. 8-12 members met 4 times in 2005.
- *Background Check Implementation Committee* – Provide input on the more technical and implementation aspects of policy, procedures and data collection associated with the background check pilot. 15-20 members met 6 times throughout the project.
- *Abuse Prevention Training Planning Committee* – Provide input on the training plan for the abuse prevention aspect of the pilot including the Experiential Training and the Topical Training. 15-20 members met 4 times. Individual members were called upon for their expertise throughout the pilot.

Ad Hoc Presentations – Whenever possible, pilot staff addressed associations, committees, and entity groups to discuss the pilot project.

Technical Assistance Methods

DHFS provided initial training to participating entities during 9 training sessions across the 4 pilot counties. Over 220 provider representatives were trained. To facilitate participation, pre-implementation training sessions were conducted at locations near pilot entities. The training consisted of MS PowerPoint presentation, case examples, open discussion and handouts.

The content of the training was focused on the following:

- Collection of scanned fingerprints,
- National record check provisions,
- Making appropriate employment decisions,
- Informing employees of background check requirements,
- Differences/similarities between federal background check pilot policies and Wisconsin's current background check requirements,
- Other components, e.g., appeals, Rehabilitation Reviews, compliance, enforcement and reporting requirements,
- Data Collection requirements, and
- Overview of abuse prevention training with instructions on how to enroll staff.

The response to the technical training was positive. The statement "I understand the steps I have to take to be in compliance with the pilot" received a 3.6 on a four-point scale. Comments included:

- Donna and Becca were very knowledgeable and presented the material in an organized and understandable manner. Well Done! Keep up the good work.
- The presenters communicated the materials in a concise, organized and relevant manner. Very enjoyable personalities.
- Presenters are sensitive to provider needs.
- All questions were answered. Trainer knew information.
- This met my expectations. I thought it was thorough.

Ongoing technical assistance was provided in the following ways:

- Supplied all training attendees with comprehensive handouts.
- Provided participants with appropriate state agency contact information.
- Compiled a directory of facilities within the pilot region.
- Included Federal Background Check Pilot Program information on the Department's website.
- Created a computer-based training module for entities, surveyors and other interested parties on an as-needed basis for current or new entity staff.

Training for Surveyors was provided through a webcast. On-going support for surveyors has handled by adding a Federal Background Check Pilot module to existing New Employee Orientation for all newly hired surveyors during the pilot period.

14. SYSTEM INFRASTRUCTURE

Wisconsin pilot counties used FBI compliant live scan equipment, utilizing Wavelet Scalar Quantization (WSQ) to compress the images at a 15:1 ratio. Fingerprint scanning centers were equipped to capture fingerprints in a digital mode and transmit the electronic file to Wisconsin DOJ's server for processing. DHFS and DOJ enhanced the IBIS system to recognize requests stemming from the fingerprint search, conduct a query based on that request and post the IBIS results to a secure email server. DOJ used their existing secure website to post the background check findings. Only minor systems changes were needed at DOJ to implement the pilot. The total costs were under \$50,000.

Information was tracked by existing data systems:

- DOJ collected data on the number of background checks;
- DHFS financial systems tracked the costs of the background checks and the total costs of the pilot;
- ACTS tracked the resident and family complaints,;
- the Office of Caregiver Quality (OCQ) tracked incident reports and substantiated findings;
- ASPEN tracked deficiency citations.

15. FINAL PILOT DATA & COST

Number and results of pilot background checks conducted:

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. (See *Appendix 10 – Date Narrative and Appendix 11 – WI Cumulative Data spreadsheet.*)

Cost of background check/fingerprint capture:

Promissor billed DHFS for fingerprint capture appointments in La Crosse and Shawano counties. The DOG did not bill DHFS for fingerprint capture services in Dane and Kenosha counties; DHFS paid the salary of the limited-term employees hired to capture the prints.

	<i>Actual Cost</i>	<i>Potential Cost</i>
Fingerprint Capture	34,488 (La Crosse & Shawano)	187,560
PCW Name-based Search	12,965	40,191.50
Fingerprint BC Fee	250,080 (State fee waived)	406,380 (State & Fed)
TOTAL	297,533	634,131.50

(See *Appendix 12 – CBC Fingerprint Fees spreadsheet.*)

16. PILOT PHASE-DOWN PLAN

Wisconsin's Caregiver Background Check Pilot requirements sunset at the end of pilot period. Entities in the 4 pilot counties continue to comply with the Wisconsin Caregiver Law requirements. DHFS ensured that all caregivers who completed the final hiring decision (including the 60-day provisional hire period) before September 30, 2007 completed a fingerprint-based background check. Entities received a notice in August 2007 that at the end of the pilot they should revert back to the name-based background check process. (See *Appendix 13 – Close-Down letter.*) DHFS worked with entities to ensure that they understand this change. The fingerprint scanning provider was informed of the pilot's end date and did not take any new customers after September 27, 2007.

Health care employers were paying the same fees during the pilot that they did under standard Wisconsin regulations. The employers were billed in the same way. As such, the billing procedures did not have to end with the pilot as they are the same procedures normally in place. The CMS grant was not billed after the pilot because Wisconsin will no longer be conducting finger-print background checks.

All written communication to entities clearly stated that the pilot ended on September 30, 2007. Entities were issued written notification in August 2007 that the pilot ended at the end of September. Information was also available on the website:

- Wisconsin pilot legislation sunset September 30, 2007.
- All regulated health care providers continue to adhere to the Wisconsin Caregiver Background Check requirements.

17. 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 turn-around 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.

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.

18. ATTACHMENTS

Attachment Number	Attachment Title
1.	Background Information Disclosure (BID) Form
2.	Fingerprint authorization form
3.	Applicant Fact Sheet
4.	Fingerprint Return Request Form
5.	Rehabilitation Review Application form
6.	Background Check Process Flowchart
7.	WI Caregiver Background Check One Page Description
8.	Quarterly Data Collection Tool

19. APPENDICES

Appendix	Section	Description	File Name
1	2	Legislative request for inclusion of PCWs in pilot	DHFS Legislative Request to Include PCWs.doc
2	2	PCW MOA with La Crosse County	CBC PCW MOA.doc
3	2	DHFS response to Wisconsin Hospital Association letter	06-0427068_Leitch.doc
4	4	Question and Answer document for providers in Kenosha	Answers for Kenosha.doc
5	4	DHFS response to WHA and Rural Healthcare Cooperative letter	06-080101_WHA&RWHC.doc
6	13	Introduction letter sent to all providers before the pilot began	Intro Letter June 2005.doc
7	13	Letter to providers with details on pilot and technical training	Tech Training Letter Oct 2005.doc
8	13	Letter to providers reminding them that the pilot is beginning	Pilot Reminder Letter Feb 2006.doc
9	13	Question and Answer document	Pilot Q&A 1-07-06.doc
10	15	Pilot data narrative	Data Narrative_2007.doc
11	15	Cumulative data summary	WI Cumulative Data_06-07.xls
12	15	Costs associated with fingerprint background checks	CBC Fingerprint Fees LTD.xls
13	16	Close-down letter	Close Down Letter.doc