

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**LOUISIANA SHOULD IMPROVE
ITS OVERSIGHT OF NURSING
HOMES' COMPLIANCE WITH
REQUIREMENTS THAT PROHIBIT
EMPLOYMENT OF INDIVIDUALS
WITH DISQUALIFYING
BACKGROUND CHECKS**

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November 2023
A-06-21-02000

Office of Inspector General

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Report in Brief

Date: November 2023

Report No. A-06-21-02000

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

Background checks for employees are an important safety measure that can help protect some of the most vulnerable populations.

Approximately 1.4 million beneficiaries reside in long-term care facilities (nursing homes), with more than half of them relying on Medicaid to pay for their long-term care. Oversight and management of nursing homes are crucial to the safety of long-term care residents.

Our objective was to determine whether Louisiana ensured, for the period October 1, 2019, to June 30, 2021, that selected nursing homes in Louisiana complied with Federal requirements that prohibit the employment of individuals with disqualifying backgrounds.

How OIG Did This Audit

As of May 2021, 276 nursing homes were licensed in Louisiana. We selected for our audit a judgmental sample of 9 of the 276 nursing homes based on a variety of risk factors and based on the need to select nursing homes in urban and rural settings.

From the 9 nursing homes, we reviewed background checks for 209 non-licensed employees and verified the licensure status of 77 licensed employees, for a total of 286 employees. Our sample size at each nursing home varied depending on the number of employees there, but generally, we selected for review individuals who were actively employed at some point between October 1, 2019, and June 30, 2021.

Louisiana Should Improve Its Oversight of Nursing Homes' Compliance With Requirements That Prohibit Employment of Individuals With Disqualifying Background Checks

What OIG Found

Louisiana ensured, for the period October 1, 2019, to June 30, 2021, that all nine selected nursing homes in the State complied with Federal requirements that prohibit the employment of individuals with disqualifying backgrounds. In addition, we determined that 77 licensed employees whom we selected for review from the same 9 selected nursing homes were free from any disciplinary action against their professional license; thus, their licensure statuses were in good standing. Although Federal requirements do not specify the methods or types of information that should be considered for a background check to be regarded as having been satisfactorily completed, we identified potential limitations in the nursing homes' background check searches and adjudication methods for 49 of the 209 non-licensed employees we reviewed.

The limitations that we identified occurred because Louisiana did not require the review of nursing homes' compliance with background check requirements as part of its periodic nursing home surveys unless concerns had been identified relative to inadequate staffing; issues of abuse, neglect, exploitation, or misappropriation; or both.

What OIG Recommends and Louisiana Comments

We recommend that Louisiana conduct routine monitoring of nursing homes' compliance with background check requirements. We make other procedural recommendations to the State in our full report.

Louisiana concurred with all our recommendations and described actions that it planned to take to address them. Specifically, Louisiana stated that it would update its standard survey process to ensure routine monitoring of nursing homes' compliance with background check requirements by reviewing a sample of 5 percent of current non-licensed staff and by directing nursing homes to conduct self-audits of current personnel files. Louisiana also said that it would clarify with nursing homes that statewide criminal background checks are to be conducted by the State Police or authorized agencies, and added that it would conduct a training webinar with nursing homes and post informational material to its website.

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INTRODUCTION

WHY WE DID THIS AUDIT

Background checks for employees are an important safety measure that can help protect some of the most vulnerable populations who receive Federal health care benefits. Approximately 1.4 million beneficiaries reside in long-term care facilities (called “nursing homes” for this report).^{1, 2} Oversight and management of nursing homes are crucial for the safety of long-term care residents.

As part of its oversight activities, the Office of Inspector General (OIG) is conducting a series of audits nationwide regarding employment in nursing homes of individuals whose criminal background checks identified information or events that should have disqualified those individuals from hire based on Federal requirements (disqualifying backgrounds).³ This report focuses on selected nursing homes in Louisiana.

Among other things, the Patient Protection and Affordable Care Act (signed into law in 2010) enacted the National Background Check Program for Long-Term-Care Providers, to assist States in developing and improving systems to conduct Federal and State background checks.⁴ Prior OIG work has shown that not all States, Louisiana among them, chose to participate in this program.⁵

OBJECTIVE

Our objective was to determine whether the Louisiana Department of Health (State agency) ensured, for the period October 1, 2019, to June 30, 2021, that selected nursing homes in Louisiana complied with Federal requirements that prohibit the employment of individuals with disqualifying backgrounds.

¹ The nursing homes we selected for review are dually certified for participation in the Medicare and Medicaid programs.

² More than half of these nursing home beneficiaries depend on Medicaid to pay for their long-term care.

³ All references to “background checks” in this report may be understood to refer to “criminal background checks.”

⁴ Section 6201 of the Patient Protection and Affordable Care Act, P.L. No. 111-148 (Mar. 23, 2010).

⁵ See Appendix B for related OIG reports.

BACKGROUND

Federal Requirements for Long-Term Care Facilities

Nursing homes are required to comply with health and safety requirements in Federal regulations (42 CFR part 483, subpart B) to participate in the Medicare and Medicaid programs. These requirements are the foundation for improving quality and protecting the health and safety of nursing home residents. Surveyors inspect nursing homes an average of every 12 to 15 months (yearly inspections) and certify whether the nursing homes comply with health and safety requirements.

Federal regulations at 42 CFR § 483.12(a)(3) prohibit nursing homes from employing or otherwise engaging individuals who have a history of disqualifying offenses. Specifically, this prohibition applies to individuals who:

- have been found guilty of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property by a court of law,
- have had a finding entered into the State nurse aide registry, or
- have a disciplinary action in effect against his or her professional license by a State licensure body,

as a result of a finding of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property. See Appendix C for definitions of abuse, neglect, exploitation, and related terms.

Although this provision of Federal regulations does not explicitly require that background checks of Federal or State criminal history records be conducted, the regulation's prohibition on the employment in nursing homes of individuals who have disqualifying histories implicitly means that a criminal history check must be performed to ensure that employees are free from disqualifying offenses based on 42 CFR § 483.12(a)(3). Interpretive guidelines for this regulation from the Centers for Medicare & Medicaid Services (CMS) state that "[f]acilities must be thorough in their investigations of the histories of prospective staff" (CMS, *State Operations Manual*, Appendix PP, F606).

State Agency Oversight Responsibilities and Survey Process for Nursing Home Background Checks

In Louisiana, the Health Standards Section of the State agency, which functions as the State survey agency, oversees nursing homes and is responsible for ensuring that they comply with Federal and State requirements. The State agency conducts a standard survey of each nursing home every 12 to 15 months; however, State officials told us that the standard survey does not

include a routine review of nursing homes' compliance with background check requirements unless a specific issue relevant to 42 CFR § 483.12(a)(3) has been reported.⁶

The nursing homes are ultimately responsible for ensuring the safety and well-being of the nursing home residents and for complying with Federal and State requirements. State regulations require that, before hiring an individual, nursing homes ensure that all non-licensed employees receive a background check.⁷

Nursing homes must request background checks and adjudicate the results of background checks for direct-hired non-licensed employees. However, background checks for contracted non-licensed employees are requested and adjudicated by a staffing company.⁸ State law requires nursing homes to request the Louisiana State Police, or an agency authorized by the State Police, to perform the background check.⁹ (An authorized agency is a private entity authorized by the Office of State Police to conduct background checks. Authorized agencies have access to the Louisiana Computerized Criminal History database (referred to as "State police records" hereafter in this report), which contains information on arrests, dispositions, and incarceration for individuals who have been arrested in the State of Louisiana.)¹⁰

In contrast to the provisions of State regulations regarding non-licensed employees, State regulations do not require nursing homes to request a background check on licensed employees who provide care.¹¹ These employees receive a background check from the State

⁶ "Standard survey" means a periodic, resident-centered inspection that gathers information about the quality of service furnished in a nursing home to determine its compliance with the requirements of participation in the Medicaid and Medicare programs.

⁷ Louisiana Administrative Code (LAC) Title 48, Part I, § 9759(A) and Louisiana Revised Statutes (La. R.S.) 40 § 1203.2. Non-licensed employees can be either direct-hired or contracted; examples include certified nursing assistants, housekeeping staff, kitchen staff, and office administration staff.

⁸ When a nursing home or staffing company has received a completed background check and has used the results of that check to make an employment decision for a non-licensed employee, we refer to that background check as having been "adjudicated."

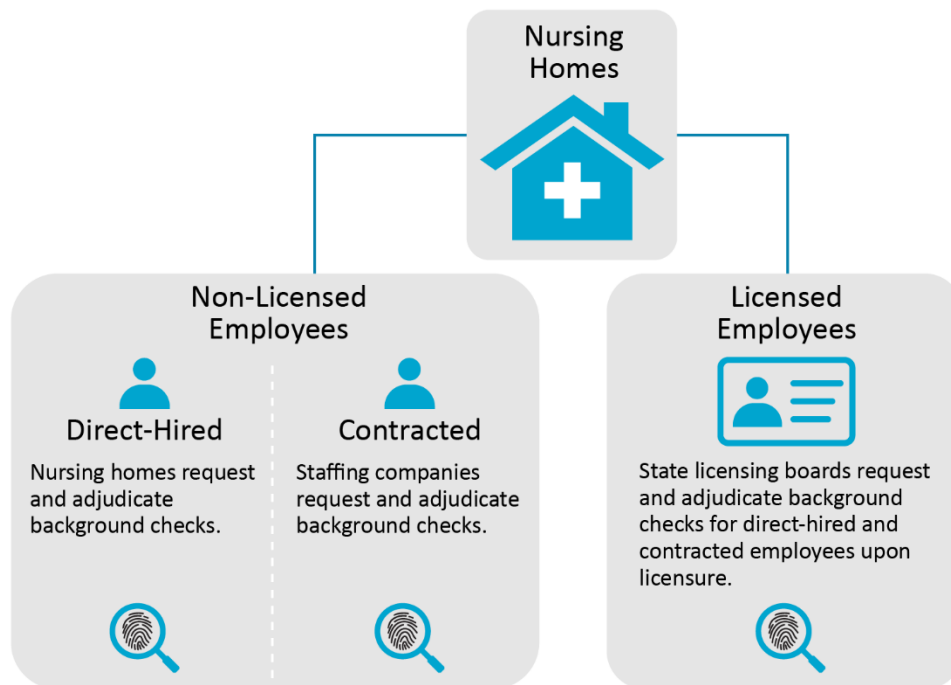
⁹ Louisiana Revised Statutes (La. R.S.) 40 §§ 1203.1 and 1203.2.

¹⁰ "Criminal History Checks on Nonlicensed Persons and Licensed Ambulance Personnel" (Aug. 4, 2017), Louisiana State Police guidance available online at <https://ldh.la.gov/assets/medicaid/hss/docs/CriminalHistoryChecks.pdf> (accessed on Sep. 13, 2023).

¹¹ Examples of licensed employees are registered nurses, licensed practical nurses, physical therapists, occupational therapists, speech therapists, and nursing facility administrators.

Licensing Board at the time that the individual is licensed.^{12, 13} However, State regulations require nursing homes to verify the licensure status of these employees annually; this verification may help identify offenses that can be considered disqualifying under the Federal requirements.¹⁴ The figure illustrates the background check processes for non-licensed and licensed employees.

Figure: Overview of Background Check Processes for Non-Licensed and Licensed Employees



HOW WE CONDUCTED THIS AUDIT

As of May 2021, 276 nursing homes were licensed in Louisiana. We selected for our audit a judgmental sample of 9 of the 276 nursing homes based on a variety of risk factors, including

¹² State law may require that prospective licensed employees receive a background check from the State Licensing Board as a prerequisite to licensure. La. R.S. §§ 37:920.1 and 969.1 (Registered Nurse/Licensed Practical Nurse); La. R.S. § 37:2413 (Physical Therapist); La. R.S. § 37:2659.1 (Speech Therapist); La. R.S. § 37:1277 (Occupational Therapist); and La. R.S. § 37:2505.1 (Nursing Facility Administrator).

¹³ We made attempts to contact the Louisiana State Board of Nursing regarding its background check processes during licensing; however, it did not respond.

¹⁴ LAC Title 48, Part I, § 9759(B).

CMS Star ratings, during calendar years 2019 through 2021, and based on the need to include nursing homes that operate in both urban and rural settings.¹⁵

From each of the nine nursing homes, we selected a judgmental sample of non-licensed employees and a judgmental sample of licensed employees. We reviewed background checks for 209 sampled non-licensed employees and verified the licensure status of 77 sampled licensed employees, for a total of 286 employees.¹⁶ Our sample size at each nursing home included a minimum of 30 employees, and we included additional employees, depending on the severity of self-reported incidents that specifically involved an employee of that nursing home. Generally, we selected for review individuals who were actively employed at some point between October 1, 2019, and June 30, 2021.^{17, 18}

We reviewed each sampled nursing home's internal controls, including policies and procedures, and personnel records to determine whether that nursing home properly safeguarded residents from employees who, under the provisions of applicable requirements regarding the employment of individuals with disqualifying backgrounds, were prohibited from being employed by nursing homes. Furthermore, we verified whether a license was in good standing by researching public licensing board websites. We reviewed only those internal controls that were significant to our audit objective.

We also reviewed the State agency's survey process to determine whether the State agency's oversight was designed to prevent each selected nursing home from employing anyone with a history of disqualifying offenses.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

See Appendix A for the details of our audit scope and methodology.

¹⁵ CMS developed its Five-Star Quality Rating System for Nursing Homes to provide consumers with an easy way to search for nursing homes to provide the quality of care they desire. Within the five-State area covered by OIG, Office of Audit Services, Region VI, Louisiana has the highest percentage of nursing homes with an overall rating of 1 (the lowest) and the lowest overall average rating. Our sample included nursing homes with various ratings.

¹⁶ We limited our review of these 77 licensed employees to verifying that they were free from any disciplinary action against their professional licenses because background checks for these employees are conducted by the State Licensing Board as part of the licensure process.

¹⁷ See Appendix D for additional information on the judgmental selection for each nursing home.

¹⁸ A self-reported incident is reported by any individual in response to an allegation of abuse, neglect, exploitation, mistreatment, or misappropriation of resident property regarding a resident in a nursing home.

FINDINGS

The State agency ensured, for the period October 1, 2019, to June 30, 2021, that all nine selected nursing homes in Louisiana complied with Federal requirements that prohibit the employment of individuals with disqualifying backgrounds as defined at 42 CFR § 483.12(a)(3). Specifically, all 209 non-licensed employees whom we selected for review from the 9 selected nursing homes were free from a disqualifying background. In addition, we determined that 77 licensed employees whom we selected for review from the same 9 selected nursing homes were free from any disciplinary action against their professional license; thus, their licensure statuses were in good standing (footnote 16). However, we identified potential vulnerabilities or limitations in the background search process that could risk future noncompliance with Federal requirements.

Although Federal requirements do not specify the methods or types of information that should be considered for a background check to be regarded as having been satisfactorily completed, we identified potential limitations in the nursing homes' background check searches and adjudication methods for 49 of the 209 non-licensed employees we reviewed. Specifically:

- Six nursing homes, and some of the staffing companies with which they contracted, had employee background check searches conducted that did not include a statewide search of State police records. Some searches were limited to a geographical area of one to two parishes.¹⁹ As a best practice, these searches could have included a statewide search of State police records to provide reasonable assurance that the employees were free from a disqualifying criminal history. (This limitation related to 49 sampled non-licensed direct-hired and contracted employees (footnote 7).)
- Three nursing homes contracted with staffing companies without written assurances that the background checks that the staffing companies performed on non-licensed contracted employees would be adjudicated in accordance with applicable Federal requirements. (This limitation related to eight sampled non-licensed contracted employees.)²⁰
- Two nursing homes inadvertently allowed a non-licensed employee to provide patient care to residents before the employee's background check had been completed. (This limitation related to two sampled non-licensed direct-hired and contracted employees.)

¹⁹ The State of Louisiana is divided into 64 parishes, which are analogous to counties in other States.

²⁰ These 8 non-licensed contracted employees are also included in the 49 non-licensed direct-hired and contracted employees discussed in the previous bullet.

Table 1 breaks out these results by the nine nursing homes we selected for our audit.

Table 1: Types of Limitations Identified at the Selected Nursing Homes

Facility	Background Checks Did Not Include a Statewide Search of State Police Records	Background Checks Were Performed Without Written Assurances That They Would Be Adjudicated in Accordance With Federal Requirements	Nursing Home Employees Provided Care to Residents Before the Employees' Background Checks Had Been Completed
1			
2	5	5	1
3	2	2	
4			
5	3		
6			
7	20		
8	1	1	
9	18		1
Totals	49	8	2

The limitations that we identified occurred because the State agency did not require the review of nursing homes' compliance with background check requirements as part of its periodic nursing home surveys unless concerns had been identified relative to inadequate staffing; issues of abuse, neglect, exploitation, or misappropriation; or both. These limitations increased the risk that residents at these nursing homes were vulnerable to employees who had a disqualifying criminal history that neither the State agency nor the nursing home itself had detected.

LICENSED NURSING HOME EMPLOYEES WERE FREE FROM A DISCIPLINARY ACTION AGAINST THEIR LICENSURE

Federal regulations state that a facility must not employ or otherwise engage individuals who have a disciplinary action in effect against their professional licenses by a State licensure body as a result of a finding of abuse, neglect, exploitation, mistreatment of residents, or misappropriation of resident property (42 CFR § 483.12(a)(3)(iii)).

All 77 licensed employees whom we selected for review were free from a disciplinary action against their professional license, and thus their licensure statuses were in good standing (footnote 16).

BACKGROUND CHECKS DID NOT INCLUDE A STATEWIDE SEARCH OF STATE POLICE RECORDS

Federal regulations state that a facility (i.e., nursing home) must not employ or otherwise engage individuals who “[h]ave been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law” (42 CFR § 483.12(a)(3)(i)).

State requirements direct that the employer shall request in writing that the Office of State Police or authorized agency conduct a criminal history and security check with any relevant information required to conduct the check of a non-licensed employee (La. R.S. § 40:1203.2(B)(1)).

Six of the nine selected nursing homes and some of the staffing companies with which they contracted did not include a statewide search of State police records as part of their employee background check processes. The lack of a statewide search leaves a nursing home vulnerable to hiring someone who might have committed a prohibited offense in a part of the State other than the parish or parishes searched where an individual lives or works and thus, are limited in scope to identify potential disqualifying events under 42 CFR § 483.12(a)(3). Therefore, these nursing homes could not provide reasonable assurance that their employees (49 of the 209 non-licensed employees whom we reviewed) were free from a federally disqualifying criminal history. These six nursing homes used unauthorized agencies, which did not have access to State police records, to conduct their background checks.²¹ Specifically:

- Officials from one nursing home said that they were unaware of the requirement to use an authorized agency that would have access to State police records to conduct its background checks, in spite of the fact that the State agency sent a memorandum to all nursing homes on April 20, 2017, referencing State regulations requiring the use of authorized agencies or the Office of State Police to conduct a criminal history and security check. (This issue involved 18 sampled non-licensed direct-hired employees.)
- Four nursing homes contracted with staffing companies that conducted background check searches using unauthorized agencies that did not have access to State police records. In these cases, the nursing homes did not ensure that the staffing companies used authorized agencies. Moreover, three of these staffing companies limited their background check searches to a geographical area of no more than 2 of the 64 parishes in Louisiana. The other staffing company’s background check search provided no reasonable assurance as to the number of parishes, if any, that were included. Consequently, these background check searches excluded criminal history information from all other parishes in the State that were outside of the limited range of those searches. As a best practice, the nursing homes could have verified that the staffing companies’ background check searches included a statewide search of State police records to provide reasonable assurance that the employees were free from a

²¹ The agencies to which we refer here are different from the staffing companies mentioned elsewhere in this report.

disqualifying criminal history. (This issue involved 11 sampled non-licensed contracted employees.)

- One nursing home used an authorized agency that had access to State police records, but that agency outsourced the actual conduct of the background checks to an unauthorized agency that did not have access to those records. This is a potential vulnerability because unauthorized agencies do not have access to State police records and thus are limited in scope to identify potential disqualifying events under 42 CFR § 483.12(a)(3). This issue occurred because the nursing home relied on the authorized agency to use State police records. (This issue involved 20 sampled non-licensed direct-hired employees.)

NURSING HOME CONTRACTS WITH STAFFING COMPANIES DID NOT INCLUDE ASSURANCES THAT BACKGROUND CHECKS WOULD BE ADJUDICATED IN ACCORDANCE WITH FEDERAL REQUIREMENTS

Federal regulations state that a facility (i.e., nursing home) must not employ or otherwise engage individuals who “[h]ave been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law” (42 CFR § 483.12(a)(3)(i)).

State requirements direct that nursing homes shall only contract for staffing services provided by businesses that comply with criminal history check requirements contained at La. R.S. §§ 40:1203.1 through 1203.7 (La. R.S. § 40: 1203.2(F)).

Three nursing homes (of the six nursing homes discussed in the preceding finding) contracted with staffing companies without written assurances in their contracts or additional documentation that the background checks that the staffing companies performed on non-licensed contracted employees would be adjudicated in accordance with applicable Federal requirements.²² Furthermore, these staffing companies did not have policies and procedures that addressed how the results of background check searches would be adjudicated. Thus, these nursing homes could not provide reasonable assurance that the employees were free from a federally disqualifying criminal history. (This issue involved eight sampled non-licensed contracted employees (footnote 20).)

²² Two additional nursing homes contracted with staffing companies without written contractual assurances; however, these contracts did not affect employees sampled at these additional nursing homes.

TWO NURSING HOMES INADVERTENTLY ALLOWED EMPLOYEES TO PROVIDE CARE TO RESIDENTS BEFORE THE EMPLOYEES' BACKGROUND CHECKS HAD BEEN COMPLETED

Federal regulations state that a facility (i.e., nursing home) must not employ or otherwise engage individuals who “[h]ave been found guilty of abuse, neglect, exploitation, misappropriation of property, or mistreatment by a court of law” (42 CFR § 483.12(a)(3)(i)).

State requirements direct that prior to a nursing home making an offer to employ or to contract with a non-licensed person to provide nursing care, health-related services, medic services, or supportive assistance to any individual, the nursing home shall request that a criminal history and security check be conducted on the non-licensed person, which must be completed within 30 days of receiving notification to conduct the check (La. R.S. §§ 40: 1203.2(A)(1) and (D)(2)). Under La. R.S. 40 § 1203.2(C), a nursing home may make an offer of temporary employment to a non-licensed person pending the results of the background check.

Two nursing homes inadvertently allowed a non-licensed employee (one at each of these nursing homes, which did not offer temporary employment to these employees) to provide patient care, without supervision, to residents before the employee’s background check had been completed. Although these non-licensed employees did not have any disqualifying offenses once their background checks were complete, if any of these employees did have a disqualifying background, the nursing homes would not have been aware of that fact until after these employees had already provided direct care to patients. Specifically:

- At one nursing home, a non-licensed contracted employee provided patient care for 4 days before the staffing agency had completed its background check. This issue occurred because the nursing home did not confirm whether or not the staffing agency had completed this employee’s background check.
- At another nursing home, a non-licensed direct-hired employee provided patient care for almost 14 months before nursing home officials became aware that the employee’s background check was incomplete—a fact that was discovered during a routine internal audit of employee records.

UNLESS CERTAIN CONCERNS HAD BEEN IDENTIFIED, THE STATE AGENCY DID NOT ROUTINELY REVIEW NURSING HOMES' EMPLOYMENT FILES TO MONITOR WHETHER BACKGROUND CHECK REQUIREMENTS HAD BEEN MET

State agency officials told us that they did not review nursing homes’ compliance with background check requirements as part of periodic nursing home surveys unless concerns had been identified relative to inadequate staffing; issues of abuse, neglect, exploitation, or misappropriation; or both. In addition to the State agency’s review of compliance with 42 CFR § 483.12(a)(3), under the State requirements, the State agency shall review the employment

files of any facility required to obtain criminal history records to ensure that such facilities comply with State rules (La. R.S. § 40:1203.5).

The lack of a periodic review and the limitations identified in this report increased the risk that residents at six of the nine nursing homes we reviewed were vulnerable to employees who had a disqualifying history, as defined at 42 CFR § 483.12(a)(3), that was not detected and of which neither the State agency nor the nursing home itself was aware. It is incumbent on the State agency to address the limitations we identified because effective oversight of background check requirements is critical to ensuring the safety of nursing home residents.

RECOMMENDATIONS

We recommend that the Louisiana Department of Health:

- conduct routine monitoring of nursing homes' compliance with background check requirements,
- advise nursing homes to ensure that all background checks are conducted by authorized agencies and include a search of State police records,
- advise nursing homes to contractually require staffing companies to conduct background check searches that include State police records and to adjudicate the results of background checks in accordance with Federal and State requirements,
- advise nursing homes to verify that contracted employees' background checks are completed in a timely manner and in accordance with applicable requirements, and
- make training or informational material available to nursing homes on the applicable Federal and State regulations for background checks of employees.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency concurred with all of our recommendations and described actions that it planned to take to address them. In addition, the State agency's comments caused us to revise a sentence that had appeared in two places in our draft report. Specifically, our draft report had stated that the State agency did not include compliance with background checks as part of its periodic nursing home surveys unless a specific issue relevant to background checks has been reported. In response to the State agency's written comments, we have revised that sentence for this final report to say that

background checks are reviewed during all surveys when concerns had been identified relative to inadequate staffing; to issues of abuse, neglect, exploitation, or misappropriation; or both.

- Regarding our first recommendation, the State agency said that it would update its standard survey process to ensure routine monitoring of nursing homes' compliance with background check requirements by reviewing a sample size of 5 percent of current non-licensed staff. In addition, the State agency said that it would direct nursing homes to conduct self-audits of current personnel files to ensure compliance with Federal and State regulations.
- Regarding our second recommendation, the State agency said that it would send a memorandum to all nursing homes clarifying that statewide criminal background checks are to be conducted by the State Police or authorized agencies.
- Regarding our third recommendation, the State agency stated that it would use that same memorandum to advise nursing homes that they should receive and maintain letters from staffing businesses certifying that contracted staff have undergone and passed criminal background checks as required by law.
- Regarding our fourth recommendation, the State agency said that, in the same memorandum, it would advise nursing homes to complete background checks in a timely manner in accordance with applicable requirements.
- Regarding our fifth recommendation, the State agency stated that informational material has been available on its website at <https://ldh.la.gov/page/criminal-background-check-information>. The State agency also said that it would conduct a training webinar with nursing homes to advise them of the information included in the State agency's responses to our recommendations, and added that it would post the webinar to this website.

We thank the State agency for its cooperation throughout our audit and for the actions it plans to take to address our recommendations.

OTHER MATTERS

ANALOGOUS OUT-OF-STATE CHARGES

While conducting this audit, we discovered an instance (through our SmartLinx checks (Appendix A; footnote 26 later in this report) that were not available to the nursing homes) in which an employee we reviewed had been charged and found guilty of two battery charges in another State. However, these charges were not specifically listed as disqualifying offenses under Federal or Louisiana State regulations (42 CFR § 483.12(a)(3) or La. R.S. § 40:1203.3). The fact that nursing homes are required by the State to conduct only a Louisiana State Police check

may limit relevant information if someone lived or committed an offense outside of the State. Although these charges were not disqualifying offenses, as a best practice a nursing home may consider this type of criminal information invaluable when determining whether an individual is suitable to work in a nursing home environment.

BACKGROUND CHECK FREQUENCY

We also noted that Federal requirements (42 CFR § 483.12(a)(3)) and Louisiana State requirements (La. R.S. § 40:1203.2 and LAC Title 48, part I, § 9759) do not require employees to undergo an additional background check after their initial background check has been completed and they have begun to work at a nursing home. During our audit period, 37 non-licensed sampled employees at 8 nursing homes had been employed for timeframes ranging from 5 to 26 years.²³ The fact that Louisiana does not require background checks on non-licensed employees—other than when they are hired—increases the risk that nursing homes may employ individuals who commit a disqualifying offense after their initial employment date.

²³ All of the other 249 employees in our sample were employed for less than 5 years.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

As of May 2021, 276 nursing homes were licensed in Louisiana. We selected for our audit a judgmental sample of 9 of the 276 nursing homes based on a variety of risk factors, including CMS Star ratings (footnote 15), during calendar years 2019 through 2021, and based on the need to include nursing homes that operate in both urban and rural settings.

From each of the nine nursing homes, we selected a judgmental sample of non-licensed employees and a judgmental sample of licensed employees. We reviewed background checks for 209 sampled non-licensed employees (footnote 7) and verified the licensure status of 77 sampled licensed employees (footnotes 11 and 16), for a total of 286 employees. Our sample size at each nursing home included a minimum of 30 employees, and we included additional employees, depending on the severity of self-reported incidents (footnote 18) that specifically involved an employee of that nursing home and that occurred during our audit period. Generally, we selected for review individuals who were actively employed at some point between October 1, 2019, and June 30, 2021.

We reviewed each sampled nursing home's internal controls, including policies and procedures, and personnel records to determine whether that nursing home properly safeguarded residents from employees who, under the provisions of applicable requirements regarding the employment of individuals with disqualifying backgrounds, were prohibited from being employed by nursing homes. Furthermore, we verified whether a license was in good standing by researching public licensing board websites. We reviewed only those internal controls that were significant to our audit objective.

We also reviewed the State agency's survey process to determine whether the State agency's oversight ensured nursing home compliance with the Federal requirements regarding the employment of individuals with disqualifying offenses.

We conducted our audit work, which included contacting the State agency in Baton Rouge, Louisiana, from March 2021 to October 2023.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State requirements;
- interviewed State agency officials to gain an understanding of the State agency's oversight of nursing homes' background check processes and internal controls;

- obtained from the State agency a list of nursing homes licensed in Louisiana and selected a judgmental sample of nine nursing homes to review;
- interviewed administrators and other officials from the selected nursing homes to gain an understanding of each nursing home’s background check policies and procedures;
- obtained lists of employees (including contracted employees hired through staffing companies) from the nursing homes that we selected for review;
- selected a judgmental sample of employees from the selected nursing homes to determine whether the nursing homes complied with Federal and State requirements with respect to their conduct and adjudication of background checks; and, for each:
 - reviewed background check documentation associated with non-licensed employees at the selected nursing homes, including those employees who were terminated during our audit period, to determine whether the nursing homes adjudicated the results of any criminal history checks on direct-hired employees and contracted employees (footnote 8);
 - determined whether or not the nursing homes and staffing companies used the Louisiana State Police, or a Louisiana State Police-authorized agency, to conduct background checks;
 - reviewed the contracts between the nursing homes and staffing companies, along with the staffing companies’ policies and procedures related to background checks;
 - verified with the Louisiana State Board of Nursing via the Nursys’s database (<https://www.nursys.com>) as to whether licensed nurses employed by the selected nursing homes had a disciplinary action currently in effect against their professional licenses;²⁴
 - verified with the Louisiana Physical Therapy Board via the website (<https://www.laptboard.org>) as to whether licensed physical therapists employed by the selected nursing homes had a disciplinary action currently in effect against their professional licenses;

²⁴ Nursys (www.nursys.com) is a national database for verification of nurse licensure. Participating nursing boards send scheduled updates to the database, which includes information on newly licensed nurses and changes to existing licensed nurse information, such as name changes, renewed license expiration dates, and disciplinary information. All nursing boards, including non-participating boards, have access to information within the database and can enter or edit discipline-related information.

- verified with the Louisiana Board of Examiners for Speech-Language Pathology and Audiology via the website (<https://www.lbespa.org>) as to whether speech therapists employed by the selected nursing homes had a disciplinary action currently in effect against their professional licenses;
 - verified with the Louisiana State Board of Medical Examiners via the website (<https://www.lsbme.la.gov>) as to whether occupational therapists employed by the selected nursing homes had a disciplinary action currently in effect against their professional licenses;
 - verified with the Louisiana Board of Examiners of Nursing Facility Administrators via the website (<https://www.labenfa.com>) as to whether any nursing home administrators had a disciplinary action currently in effect against their professional licenses;
 - reviewed the Certified Nurse Aide Registry to determine whether any of the nursing homes' certified nurse aide employees were on the registry (<https://tlc.dhh.la.gov/>);²⁵
 - reviewed the Direct Service Worker Registry to determine whether any non-licensed employees were on the registry (<https://adverseactions.ldh.la.gov/SelSearch>) (footnote 25);
 - conducted a name-based criminal record check via SmartLinx for the licensed and non-licensed employees in our sample to determine whether they had a disqualifying criminal history;²⁶ and
 - conducted a name-based record check via CMS's Medicare Exclusion Database to determine whether any non-licensed or licensed employees were excluded; and
- discussed the results of our audit with State officials and administrators of the nine judgmentally selected nursing homes.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions

²⁵ The Certified Nurse Aide Registry and Direct Service Worker Registry are databases, maintained by the State agency, of unlicensed people who have a finding placed against them of abuse, neglect, misappropriation, exploitation, or extortion while employed as a certified nurse aide or direct service worker, respectively, at a licensed health care facility.

²⁶ SmartLinx is a web-based program that offers a search of individuals that includes, among other things, their criminal records.

based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>National Background Check Program for Long-Term-Care Providers: An Interim Assessment</i>	<u>OEI-07-20-00181</u>	5/9/2022
<i>National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2019</i>	<u>OEI-07-20-00180</u>	9/4/2020
<i>National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded in 2017 and 2018</i>	<u>OEI-07-18-00290</u>	8/21/2019
<i>National Background Check Program for Long-Term-Care Providers: Assessment of State Programs Concluded Between 2013 and 2016</i>	<u>OEI-07-16-00160</u>	4/22/2019
<i>National Background Check Program for Long-Term-Care Employees: Interim Report</i>	<u>OEI-07-10-00420</u>	1/19/2016

APPENDIX C: GLOSSARY OF DEFINITIONS

The terms “abuse,” “neglect,” “exploitation,” “mistreatment,” and “misappropriation of resident property” are defined under Federal regulations (42 CFR § 483.5) as follows (italics in original):

- *Abuse*. Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish. It includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology. *Willful*, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.
- *Neglect* is the failure of the [nursing home], its employees or service providers to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.
- *Exploitation*. Exploitation means taking advantage of a resident for personal gain through the use of manipulation, intimidation, threats, or coercion.
- *Mistreatment* means inappropriate treatment or exploitation of a resident.
- *Misappropriation of resident property* means the deliberate misplacement, exploitation, or wrongful, temporary, or permanent use of a resident’s belongings or money without the resident’s consent.

APPENDIX D: JUDGMENTAL SAMPLE SELECTION

Table 2: Judgmental Sample Selection From the Selected Nursing Homes

Facility	Number of Direct-Hired Nursing Home Employees	Number of Contracted Employees at Nursing Home	Sample Size	Number of Non-Licensed Employees in Sample*	Number of Licensed Employees in Sample*
1	281	123	33	18	15
2	195	308	30	18	12
3	233	54	31	21	10
4	434	0	34	24	10
5	245	49	30	23	7
6	474	24	38	29	9
7	385	0	30	23	7
8	202	16	30	28	2
9	126	56	30	25	5
Totals	2,575	630	286	209	77

* This includes direct-hired and contracted employees.

APPENDIX E: STATE AGENCY COMMENTS

John Bel Edwards
GOVERNOR



Stephen R. Russo, JD
SECRETARY

State of Louisiana Louisiana Department of Health Office of the Secretary

November 1, 2023

Patricia Wheeler
Regional Inspector General for Audit Service
Office of Audit Services
Region VI 1100 Commerce Street, Room 632
Dallas, TX 75242

Report Number: A-06-21-02000

Dear Ms. Wheeler

Thank you for the opportunity to respond to the draft report (A-06-21-02000), *Louisiana Should Improve Its Oversight of Nursing Homes' Compliance With Requirements That Prohibit Employment of Individuals With Disqualifying Background Check*.

The State appreciates the Office of the Inspector General (OIG) allowing the Louisiana Department of Health (LDH), Health Standards Section (HSS) the opportunity to review the OIG findings for the audit periods reviewed. Throughout the report, references are made indicating that Louisiana does not include compliance with background checks as part of its periodic nursing home surveys unless a specific issue relevant to background checks had been reported. This summarization does not reflect an accurate account of when a background check would be included as part of the survey during routine and/or periodic surveys. Louisiana's survey process is that background checks are to be reviewed during all surveys when concerns are identified relative to inadequate staffing and/or abuse/neglect/exploitation/misappropriation. As stated in your report, Louisiana ensured, for the period of October 1, 2019 to June 30, 2021, that all nine selected nursing homes in the State complied with Federal requirements that prohibit the employment of individuals with disqualifying backgrounds.

As instructed by your letter dated October 18, 2023, attached are LDH's written comments, which include a statement of concurrence with each of the recommendations, and the improvement activities that the State has developed and/or will develop to ensure that LDH addresses the potential limitations identified in the audit.

LDH/HSS appreciates the opportunity to respond to this audit. You may contact Tasheka Dukes, HSS Director, by telephone at (225) 342-4997 or by email at Tasheka.Dukes@LA.Gov with any questions concerning this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "SR", written over a blue line.

Stephen R. Russo, JD

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Attachment A
State of Louisiana responses to
OIG recommendations
Report Number: A-06-21-02000

Recommendation #1: Conduct routine monitoring of nursing homes' compliance with background check requirements.

State Response: The State concurs with this recommendation.

The State will update its standard survey process to ensure routine monitoring of nursing homes' compliance with background check requirements by reviewing a sample size of 5% of current non-licensed staff, including staffing agency employees or contracted staff, with a hire or assignment date on or after the previous standard survey. Additionally, a survey tool will be created for surveyors to document all survey sampled unlicensed staff, staff agency employees, or contracted staff, and to obtain the names, and hire/assignment dates of unlicensed staff.

In addition, during a scheduled training webinar (see recommendation #5), the State will direct nursing homes to conduct a self-audit of current personnel files to ensure compliance with federal and state regulations. Nursing homes will be given 90 days to complete the self-audit and provide to the Department an attestation that they have completed the self-audit and are in current compliance.

Recommendation #2: Advise nursing homes to ensure that all background checks are conducted by authorized agencies and include a search of State police records.

State Response: The State concurs with this recommendation.

The State will send a memorandum to all nursing homes stating that state-wide criminal background checks are to be conducted by the State Police or authorized agencies. The memorandum will include the following:

- 1) Federal and state requirements
- 2) an attachment of State Police authorized agencies.

Recommendation #3: Advise nursing homes to contractually require staffing companies to conduct background check searches that include State police

<p>records and to adjudicate the results of background checks in accordance with Federal and State requirements.</p>
<p>State Response: The State concurs with this recommendation.</p> <p>The State will advise nursing homes, within the above mentioned memorandum, that under La. R.S. 40:1203.2(F), a nursing home should receive and maintain letters from staffing businesses, certifying that the contracted staff meet license or certification standards of their profession and have undergone and passed criminal background checks as required by law.</p> <p>In addition, during the 2022 State Legislative session, Act No. 577 was enacted relative to the licensure and regulation of nurse staffing agencies by the Louisiana Department of Health. Licensing standards for Nurse Staffing Agencies (LAC Tit 48:I.Chapter 77) were promulgated and published in the Louisiana Register Vol. 49, No. 10 October 20, 2023. In accordance with the nurse staffing agency licensing regulations at LAC Tit. 48.I.7735 B, the governing body of nurse staffing agencies shall ensure federal and statewide criminal background checks on all unlicensed persons providing direct care and services to clients in accordance with R.S. 40:1203.1 et seq., or other applicable current state law upon hire.</p>
<p>Recommendation #4: Advise nursing homes to verify that contracted employees' background checks are completed in a timely manner and in accordance with applicable requirements.</p>
<p>State Response: The State concurs with this recommendation.</p> <p>The State will advise nursing homes within the above mentioned memorandum in response to Recommendation #3.</p>
<p>Recommendation #5: Make training or informational material available to nursing homes on the applicable Federal and State regulations for background checks of employees.</p>
<p>State Response: The State concurs with this recommendation.</p> <p>Currently, and during the audit period, informational material is and was available on the Department's website located at https://ldh.la.gov/page/criminal-background-check-information. The nursing home specific criminal background check memorandum created in response to Recommendation #3, based on the OIG recommendations, will be posted to the website.</p> <p>A training webinar will be conducted with nursing homes to advise the nursing homes of the information included in the State's responses to the OIG</p>

recommendations. This webinar will be posted to the Departments website. The training will include the OIG recommended best practices, which are not regulatory, that nursing homes include language within their nurse staffing agency contracts to address criminal background checks and the use by nursing homes of national criminal background checks for prospective unlicensed staff.