
**National Background Check Program
(NBCP)**

For

Long Term Care Facilities and Providers

Frequently Asked Questions

(FAQ)

Sponsored by:
The Centers for Medicare & Medicaid Services

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All States, the District of Columbia, and U.S. Territories will be referred to as “States” in this document.

Section A - General Questions

A1: What is the National Background Check Program (NBCP)?

The National Background Check Program (NBCP) is a legislatively authorized Federal program. The Affordable Care Act (ACA), Title VI, Subtitle B, Part III, Subtitle C, Section 6201, directs the Secretary of the Department of Health and Human Services (HHS), to establish a national program to identify efficient, effective, and economical procedures for long term care (LTC) facilities and providers to conduct background checks on a statewide basis for all potential direct access employees. The NBCP is sponsored by the Centers for Medicare & Medicaid Services (CMS). The grant is not competitive. A copy of the 2010 ACA Section 6201 is included in the grant solicitation, Appendix 1 – Statutory Provisions located at: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html>.

A2: What is the purpose of the National Background Check Program (NBCP)?

The purpose of the NBCP grant program is to fund States as they develop a structured system to identify efficient, effective, and economical procedures for long term care (LTC) facilities and providers to conduct background checks on potential direct access employees prior to employment.

A3: Who is a “Direct Access Employee”?

The term “direct access employee” means any individual who has access to a resident or patient of a long term care (LTC) facility or provider through employment or through a contract and has duties that involve (or may involve) one-on-one contact with a patient or resident of the facility or provider, as determined by the State for purposes of the NBCP.

A4: Will non-participating States be required to participate in and/or meet the NBCP requirements at a later date?

At the present time, participation in the NBCP is voluntary on the part of States. It is not known if Congress, in the future, might enact requirements for States to have a background check program in place in order to receive Federal funding for health care programs. However, it would be prudent to consider legislation enacted in 2003, section 307 of the Medicare Modernization Act (MMA) provided for an earlier demonstration program, and Congress has now passed a much larger program described in the Affordable Care Act (ACA) as a national

program. Both actions point in the direction of potential national applicability. Also, CMS initiated a requirement for background checks in the new Hospice Conditions of Participation (CoPs), and is evaluating such a requirement in relation to other providers as the agency updates its various CoPs.

Section B - Eligibility

B1: Who is eligible to participate in the National Background Check Program (NBCP)?

All states may apply for funding under this grant opportunity. “State” is defined under 45 Code of Federal Regulations (CFR) 74.2 as “any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.” The “Territory or possession” includes Guam, the U.S. Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands. A State’s Office of the Governor, State Medicaid Agency, or State Survey Agency (SA) may apply for funding under this grant opportunity. Only one application per state is accepted for review and approval.

B2: What provider types are eligible for NBCP services and what is the definition of a long term care (LTC) facility or provider for purposes of the grant program?

The Patient Protection and Affordable Care Act (Pub. L. 111 - 148, enacted March 23, 2010) and the Health Care Education Reconciliation Act of 2010 (Pub. L. 111 - 152, enacted March 30, 2010), together are known as the ACA. The legislation authorized long term care (LTC) facilities and providers to obtain State and national fingerprint based background checks from potential employees whose duties include direct access to residents and patients.

For purposes of the NBCP the term long term care (LTC) facility or provider include facilities or providers that receive payment for services under Title XVIII or XIX of the Social Security Act: HR 3590-608. Provider types are defined in the grant solicitation located on the CMS NBCP website at: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html>.

Among the LTC facility or provider types eligible for the NBCP are:

1. Nursing facilities
2. Nursing homes – skilled nursing facilities (SNF) and nursing facilities (NF)
3. Home health agencies

4. Hospice care providers
5. Long term care hospitals
6. Long term care residential care providers
7. Personal care service providers
8. Adult day care service providers
9. Residential care provider that arranges for or directly provides long term care services
10. Intermediate care facilities for the individuals with intellectual disabilities, ICF/IID
11. Assisted living facilities
12. Other long term care providers and entities as specified by the State (including providers receiving home and community based waiver programs)

B3: What are the requirements to participate in the NBCP?

Participating States must:

1. Guarantee non-Federal funds to cover a portion of the cost to conduct the program in their State. Refer to Section D - Grant Funds for further funding information.
2. Require Federal Bureau of Investigation (FBI) fingerprint checks as part of the criminal background check for all direct access employees.
3. Develop a plan to implement the background check program State wide and in all long term care (LTC) entities specified in section 6201 of the Affordable Care Act (ACA).
4. The State may phase-in the program over a multi-year period, and the phase-in may be accomplished by geographical location, provider type, or other factors determined by the State.
5. Each participating State is required to develop and test a rap back system. A rap-back system notifies the provider of post background check criminal convictions.
6. Each grantee State must include all provider types “as mandated in the statute”.

Note – Additional requirements are explained in the grant solicitation.

B4: Will States with existing Background Check Programs be eligible to apply?

Any State is eligible to apply for the NBCP. States that have existing background check programs are eligible to apply, as well as those States that participated in the pilot program.

B5: Are Native American Tribal Authorities eligible to apply for the NBCP grant?

A Tribal Authority is not a “State” and is not eligible to submit a grant request application to develop a background check system. Section 6201(a) (1) of the Affordable Care Act :

<http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html> provides that, as long as certain conditions are satisfied, “the Secretary of Health & Human Services (HHS) shall enter into agreements with each State” eligible to participate in the NBCP. For purposes of HHS, 45 CFR § 74.2 provides that “State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.”

The NBCP is a Federally funded grant program administered under Federal law and the laws of each participating State. A long term care (LTC) facility or provider located on a Native American reservation does not come under the contractual authority of the State survey agency for purposes of certification surveys for participation in Federal Medicare and Medicaid programs. Such facilities would not be subject to the background check requirements of the State program funded by the NBCP.

However, CMS encourages each participating NBCP grantee State to inform long term care facilities and providers located on Native American reservations within the State’s borders about the NBCP benefits in protecting vulnerable populations. States are encouraged to offer the opportunity for tribal facilities to voluntarily adhere to the State’s background check requirements.

Section C - Grant Information

C1: Where are the National Background Check program (NBCP) solicitation, grant application, general grant program, and pilot program information located?

The NBCP grant solicitation and general program information is located on the CMS Background Check website at: <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html>. Applicant States can download the application packet via the <http://www.grants.gov> website by entering the Funding Opportunity Number listed in the NBCP grant solicitation. The pilot evaluation report can be found at: <https://www.cms.gov/reports/downloads/White8-2008.pdf>

C2: What legislation authorized Federal funding for the NBCP?

Title VI, Subtitle B, Part III, Subtitle C, section 6201 of the 2010 Affordable Care Act (ACA) specified for appropriated Federal funds to be made available for each State that enters into an agreement with CMS to participate in the National Background Check Program.

C3: When is the deadline to apply for the NBCP grant?

Applications for each grant solicitation will be accepted when submitted. States are encouraged to submit applications as soon as they are ready and CMS will review each application soon after it is received in order to not delay the NBCP grant awards.

C4: Will CMS accept a partially complete application if a State is unable to provide all the information required to complete the application?

To prevent a delay in the grant award process it is important to submit a complete application. However, CMS encourages States to submit an application even if it is not fully complete.

C5: If a State applied for the grant during a prior solicitation and did not receive the funding award can the state reapply under a new solicitation?

States that did not receive a NBCP grant award during a previous solicitation can submit an application for the current solicitation. Applications should be submitted electronically at: <http://www.grants.gov>

C6: Is the grant period time limited?

Grantee States are funded for a 36 month project/budget time period.

Section D - Grant Funds

D1: What are “State guarantee requirements”?

In order to participate in this national program, a State must guarantee that it will make available non-Federal funds to cover a portion of the cost to be incurred by the State to carry out the program in their State. The participating State must make available non-Federal contributions as a condition of receiving the Federal match funds under this agreement.

D2: What are “match funds”?

CMS will provide Federal grant funds to each participating State that enters into the NBCP at three times the amount that the State guarantees, up to \$3 million in Federal grant funds for the current solicitation.

Example:

If a participating State had \$1 million of non-Federal money to fund the development or expansion of a statewide background check program and the State had an approved \$4 million budget CMS would match the money with \$3 million for the program over the three year grant period.

D3: What type of funds can a State use to meet the non-Federal match?

The funds used to meet the non-Federal match may either be provided directly through State funds (including provider taxes or certification fees) or through donations.

Further information can be found on the CMS NBCP website

<http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html> in the grant solicitation

Appendix 8 – Resource Information Related to Non-Federal Share Funds. For questions about the acceptability of a revenue source, send CMS an email at:

Background_Checks@cms.hhs.gov and include information about the source and amount of the non-Federal funds.

D4: Can grantee States use other State funds/revenues as the non-Federal share for Medicaid expenditures?

The State can choose how it wants to best utilize general fund revenues. However, a State cannot use the same general fund dollar twice as matching for Federal funds. For example, a State legislature may have appropriated general revenue funds for Medicaid match that it later determines will not be needed for the Medicaid program and could assign those funds to the background check program.

However, a State may not use the same funds to match two different Federal programs, nor may it use Federal funds provided in another program to match Federal funds in the background check program.

D5: What happens if a State has difficulty funding the required non-Federal match amount necessary to fund a successful program?

Interested States should complete an application, even if they cannot guarantee matching funds when the application is submitted. The State should include with the application, plans to acquire the necessary State matching funds. CMS will review the application and may consult further with the State if necessary. CMS may decide to award the grant but not provide any funding until such time as the State can guarantee funds. Federal funding allotment can be incremental, if portions of State funds are acquired incrementally.

D6: Will States be allowed to use Civil Money Penalty (CMP) funds to meet all or a portion of the non-Federal matching funds?

Grantee States must obtain CMS approval for use of Federal or State levied CMP funds.

CMS may approve limited use of certain Federal CMP funds as a source of the non-Federal funds for a portion of the background check program if the State provides an attestation that the CMP funds:

1. Derive entirely from that portion of CMP revenue collected by CMS and returned to the State, as the State share of total CMP revenue.
2. Apply only to the first full year of a State's implementation of the program.
3. Apply only to the share of total background check costs that are directly attributed to background checks of potential long term care (LTC) employees. The State will maintain cost-accounting systems sufficient to document the proportionate share of total costs that are attributable to the protection and benefit of long term care residents and beneficiaries. The State will report the cost-accounting documentation to CMS upon request.
4. Are approved for such use by the single State Medicaid Agency.
5. Are separately identified from other sources of the State's non-Federal matching funds reported to CMS.
6. Federal levied CMP may only be applied to that portion of the program that directly benefits long term care residents and beneficiaries and, is consistent with "#3" above. The State must have an acceptable accounting methodology to identify that portion of total costs attributable to long term care background checks. For example, a State may determine that 30% of all background checks are applicable to job candidates seeking long term care employment, and thereby calculate that 30% of the non-Federal share of funds is attributable to the protection and benefit of long term care residents and beneficiaries.

D7: Could the general revenue that supports the current State background check program be used as the State match? Also, there is a State provider assessment on nursing homes of 5.5% in our State. Could a portion of this revenue be considered for the State match and would it have to be directly dedicated for this purpose?

State general revenue funds that support an existing State background check program may be used for the grant program. As explained in the grant solicitation, CMS would expect to see an expansion or improvement in the program commensurate with the increase in Federal funds that the State obtains. For example: conversion from fingerprint cards to electronic fingerprint capture, addition of Federal Bureau of Investigation (FBI) checks to a State-only background check program, or expansion of the types of providers and number of background checks that are conducted. However, using Federal funds to replace State funds would not meet the terms of the solicitation.

With regard to the 5.5% provider assessment on nursing homes - the general revenue received by the State from such assessments could be used as non-Federal matching funds for the NBCP but only so long as (a) the assessment meets the same conditions required for the use of such funds as non-Federal match for Medicaid or (b) the State requests and CMS approves a waiver from the broad-based and uniformity requirements, and (c) the State is not already using 100% of the revenue from such a provider assessment to provide non-Federal match to any other Federal program. For example, if the State has a 5.5% assessment on nursing facility services that generates \$5.0 million per year, and the State uses only \$4.0 million as non-Federal matching funds for Medicaid, then the remaining \$1.0 million that is not being used to match any other type of Federal program may be used as non-Federal match for the NBCP.

D8: May In Kind Contributions be used for the non-Federal share?

In Kind Contributions are "contributions other than cash." In kind contributions typically do not require an actual cash outlay, but they must add real value to a project commensurate with the dollar value assigned to the contribution, be necessary for the successful conduct of the program, and offset expenses that the program would of necessity incur if the In Kind contribution was not provided. They may not represent costs for functions that the contributor must otherwise provide under State or local law in the absence of the background check program (e.g., State law enforcement costs). Some examples of In Kind contributions are equipment donations, third-party contributions, and donated labor, materials, or services. The background check legislation explicitly identifies donations as a source of permissible non - Federal funds, and such donations may be in the form of cash or In Kind contributions. However, because there are many limitations on the use of In Kind contributions, States are advised to consult with CMS for approval. CMS also reserves the right to deny the acceptability of proposed In Kind match when CMS determines that the proposed use is not consistent with the intent of the background check program.

On the grant application specify the: (a) specific type of funds, (b) source of funds, (c) amount and duration (beginning and ending) of the funds, (d) how value is determined, (e) how costs will be accounted, and (f) any other pertinent information.

D9: May the salaries of current State staff used in an existing background check program be used as non-Federal match?

As long as the staff is dedicated to the State's background check program and the duties of the positions are consistent with the ACA background check legislation, the applicable salaries may represent an acceptable source of non-Federal match funds. CMS would view the salaries as a cash contribution rather than an In Kind contribution, as there is an on-going cash outlay on the part of the State for the payment of such costs.

As explained in the grant solicitation, expansion or improvement in the program is expected to be commensurate with the increase in Federal funds allotted to the State. For example: current State staff salary expenses of \$500,000 for positions that will continue in the NBCP under this grant can be used as non-Federal funds, matching \$1,500,000 in Federal funds. In this case CMS would expect to see a program budget of \$2,000,000 or greater, and an implementation plan that shows the full amount of Federal funds being used to expand or improve the existing program. Approval would not be granted to an application that simply replaced State funds with Federal funds.

D10: Can a State apply fees collected from background check processing as part of the non-Federal matching funds?

Once the grant period starts, the background check processing fees paid to the State may count as the non-Federal share as long as (a) the full amount (100%) that the State designated as non-Federal funds is used for the NBCP and (b) the fee structure used must conform to Federal requirements as noted in the grant solicitation.

With regard to fees already collected but not yet expended, the State may use accumulated funds (i.e., funds collected and not expended prior to the grant) as match once the grant period begins. However, any funds designated as match funds may only count as match if expended during the grant period and used 100% for the Background Check Program. Simply stated, the State cannot count as match for the time period of its grant award any money that it expended in a prior period (unless during the grant period it was for equipment donated at its depreciated value to the State Background Check Program as an In Kind contribution). Funds that a State already paid to the Federal Bureau of Investigation (FBI) in a prior solicitation period may not count as a non-Federal match during the upcoming grant period. Funds paid out of individual fee revenue that is used to pay the FBI during the grant period can count as matching if the State has not already spent those monies.

To be considered as non-Federal matching funds, the State must include in its application the details of how it charges fees to make sure that the fee structure is equitable and meets CMS standards. CMS must approve the plan. Further information can be found on the CMS NBCP website <http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/SurveyCertificationGenInfo/BackgroundCheck.html> in the grant solicitation

D11: May previously awarded States request an increase in funds if they did not receive the maximum allowed?

Any previously awarded State that received funds less than the maximum permitted may at any time request an increase up to the maximum allowed by law provided that (a) the State submits a proposed modification to its plan that details and justifies the increase, (b) the State provides the required matching funds from acceptable sources, (c) CMS will evaluate submitted proposals and (d) CMS reserves the right to fund less than requested.

D12: Our State has monies that it would like to obligate to meet the NBCP State match requirement. Would CMS allow a State to obligate its entire State match during the first grant year—this would mean that the State would meet its financial contribution obligation in the first year?

Yes, CMS would allow a State to obligate its entire State match in the first year. However, CMS would not allow a State to withhold State match until the final year of the grant award. Since the NBCP is a shared Federal and State effort, the State is expected to contribute funding throughout the grant period unless it meets its obligation early on.

D 13: Would the amount of NBCP funding awarded to the State be limited if the State did not have legislated authority to implement a statewide background check program?

NBCP grant funds may be limited if the State did not have legislated authority to implement a statewide background check program. CMS would work with the State to identify the portion of the grant funds that would be available immediately, and additional funds that would become available when the program implementation authority was in place.

D14: Is funding available for States that participated in the pilot NBCP under section 307 of the Medicare Modernization Act (MMA)?

States that participated in the pilot program are eligible for a maximum Federal match of \$1.5 million.

Section E - Technical Support & Training

E1: Is technical assistance and training available for grantee states?

Technical assistance (TA) is a fully funded service offered by the Centers for Medicare and Medicaid Services (CMS) through the CMS technical contractor. Among the services offered by the CMS contracted service are: technical assistance for the development, implementation, operation, and reporting of State systems to conduct background checks on potential long term care or provider direct access employees.

The States have the option to use grant funds to contract with a private technical assistance organization. CMS provides scheduled training for grantee States to address pertinent National Background Check Program (NBCP) issues and lessons learned.

E2: Is technical assistance available to assist a State in applying to the solicitation announcement?

Technical assistance (TA) may be available upon request and on a limited basis to assist the applicant State respond to the solicitation with the understanding that the State will submit a completed application proposal. A State that is in need of TA to complete the NBCP grant application proposal can contact CMS by sending the request to the NBCP email address at: Background_Checks@cms.hhs.gov

E3: Does Technical Assistance (TA) include guidance to develop state legislation or administrative rules if current grantee State laws do not provide implementation authority for the State's background check program?

Often grantee States require changes to State law or administrative rules in order to participate fully in all or some aspects of the NBCP. CMS has obtained the services of a technical assistance (TA) contractor to assist the States with administrative rules and law development. States are advised to develop specific legislation plans that include the expected timetable for the legislation or administrative rules to be proposed and acted upon.

Examples of legislative development issues that TA services could facilitate with the State:

1. A State has authority to require certain providers to participate immediately in the NBCP and needs additional legislated authority (or administrative rule-making) before other provider types are required to participate.
2. A State may determine that it does not have authority to require any provider type to participate in the background check program, but could start implementing the program on a voluntary basis with providers willing to participate.

E4: Can Grantee States use NBCP grant funds to contract with a private technical assistance vendor for technical assistance (TA) services?

Grantee States have the option to use a portion of their awarded grant funds to contract with a private technical assistance organization and not utilize the no cost technical assistance services arranged by CMS. CMS does not reimburse the State for a technical assistance contract. In required reports and at meetings the State must be consistently transparent and provide CMS with information as well as documentation of work completed by the contractor in a timely manner.

E5: After a contract has been arranged between a Grantee State and a private Technical Assistance (TA) vendor can the TA vendor attend NBCP meetings and trainings?

With the permission of the grantee state and acting solely as the representative of the state the TA vendor is allowed to attend most NBCP meetings and trainings. CMS expressly prohibits marketing of vendor services during meetings or at the trainings. TA attendance at the scheduled monthly CMS - Grantee State meeting would occur only by invitation of the CMS Project Officer.

Section F - Federal Bureau of Investigation (FBI)

F1: How will the FBI fingerprint process work for the National Background Check Program (NBCP)?

The Patient Protection and Affordable Care Act authorized long term care facilities and providers to obtain State and national fingerprint based background checks on potential direct access employees. The facility/provider will forward the fingerprints to their respective State Criminal Justice Information Services (CJIS) Systems Agency/ Criminal Systems Agency (CSA)/State Identification Bureau (SIB) for a State check. Subsequent to the State check, the CSA/SIB will forward the fingerprints to the FBI for the national background check.

F2: Are rolled fingerprints required for all national background checks?

Rolled fingerprints are required because they yield the needed ridge impression for accurate classification. Flat fingerprints do not provide all the needed ridge characteristics required by State criminal history record repositories and the FBI, to obtain the most accurate

classification.

F3: Will the fingerprints submitted for FBI record checks be used for any purpose other than the civil background studies?

Noncriminal justice fingerprint submissions will be checked against the Criminal Master File, the Civil File, and the Unsolved Latent File. The information that is indexed in the unidentified latent file consists of cold case data, crime scene prints, etc. If a state does not opt out of unidentified latent file searches, the information is provided to the appropriate authorities who follow up on the information.

F4: What is “rap back”?

A rap back system notifies the provider of post background check criminal convictions. The Affordable Care Act requires that NBCP grantee States describe and test methods for the development of rap back capability for LTC direct access employees.

F5: Are the fingerprint images destroyed after the rap back subscription period ends for a person?

When the rap back subscription is cancelled via an Electronic Biometric Transmission Specification (EBTS) type of transaction (TOT), it will cancel the subscription but the fingerprints will remain on file. A separate EBTS TOT would need to be submitted to remove the fingerprints Civil Event Deletion request. Some of these prints may be used to replace existing criminal prints if they are of better quality.

F6: Will there be any notifications or sharing of data by the FBI with other government agencies based on the fingerprint identification?

The FBI IAFIS (Integrated Automated Fingerprint Identification System) communicates with the DHS IDENT (Department of Homeland Security Automated Biometric Identification System). The Federal government employment office, The Office of Personnel Management (OPM), is the only noncriminal justice agency currently authorized to search IDENT at this time.

F7: What is the role of each State’s Criminal Justice Information Service Systems Agency (CJIS)/Criminal Systems Agency (CSA)/State Identification Bureau (SIB) in establishing and implementing “National and State Background Checks for Long-Term Care (LTC) Direct Access Employees”?

Within each State a central repository maintains criminal history records on all State offenders. Repositories are housed in agencies referred to as Criminal Systems Agencies (CSA) and State Identification Bureau (SIB) which function as the focal point for criminal and noncriminal justice information services within each State. The repository is generally responsible for State-level identification services. NBCP Grantee States often work with the CSAs/SIBs to develop procedures for conducting fingerprint based background check.

The NBCP requires LTC facilities and providers to obtain State and national fingerprint background checks on potential direct access employees, including abuse and neglect registry checks in all States in which the potential employee resided. CSAs/SIBs perform State record checks on NBCP fingerprint submissions received from potential direct access employees of LTC facilities/providers. The fingerprints are forwarded to the FBI for national record checks against the Integrated Automated Fingerprint Identification System.

F8: Will the ACA Subtitle C, Section 6201 authority for the NBCP FBI fingerprinting expire when the grant program concludes?

The DHHS/CMS Office of General Council has determined that there is no expiration date for activities that meet the requirements of the National Background Check Program (NBCP). Once a State has established laws, regulations and processes necessary to meet the terms of its NBCP grant, the state is free to continue operating a NBCP compliant program under the NBCP authorization even after the federal grant program concludes.

Section G – Additional Questions

Please send questions to the NBCP email address: (Background_Checks@cms.hhs.gov). CMS will periodically review submitted questions and post updated versions of the Frequently Asked Questions (FAQ) document on the National Background Check Program (NBCP) website.