

**Questions and Answers on the
Invitation to Apply for
“Program for Background Checks
for
Employees with Direct Access to Individuals Who Require Long
Term Care”**

Sponsored by the:

**Centers for Medicare & Medicaid Services
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This document provides clarification on items discussed during the Applicant’s Teleconference on 8/10/04, inquiries received via email and through other inquiries.

We strongly encourage all states that are serious about improving the quality of their long-term care workforce to apply for this pilot program. We have received numerous inquiries from individual states that are concerned about the challenges inherent in meeting all the requirements of the pilot. The design of the program includes features to help states make implementation feasible, including a phased-in implementation schedule, and the flexibility to allow participation by some provider types to be voluntary on the part of the provider or the part of the state. For those categories of providers not designated as required by CMS, the state, as part of their pilot design, may elect to include them in the pilot on a voluntary or mandatory basis.

If a state has questions regarding their eligibility, the implementation phase-in, or other issue, we encourage them to contact us at backgroundchecks@cms.hhs.gov. Additionally, we encourage states to work with their Attorney General for guidance related to the specific participation requirements as they design their pilot.

A. GENERAL INFORMATION

A1. What is the purpose of the Background Check Pilot Program?

The Medicare Prescription Drug, Improvement and Modernization Act (MMA) of 2003 directs the Secretary of Health and Human Services, in consultation with the Attorney General to establish a program to identify efficient, effective, and economical procedures for long term care facilities or providers to conduct background checks.

A2. Who is CMS?

CMS is the Centers for Medicare & Medicaid Services. Formerly known as the Health Care Financing Administration (HCFA), it is the federal agency responsible for administering the Medicare, Medicaid, SCHIP (State Children's Health Insurance), HIPAA (Health Insurance Portability and Accountability Act), CLIA (Clinical Laboratory Improvement Amendments), and several other health-related programs.

CMS is the federal agency that has lead responsibility to administer the pilot program, in close collaboration with the U.S. Department of Justice and states.

A3. How does participation in the pilot program benefit a state?

Participation in the pilot provides the state with many benefits and opportunities, such as:

- Federal funds (grant awards) to pay costs of administering the program, the costs of conducting the checks, or other associated costs;
- No state matching requirement;
- Receive initial and on-going technical assistance for the development and implementation of a state background check program throughout the pilot period;
- Be linked with other pilot states on a regular basis through a number of communication channels;
- Opportunity to learn from the experiences and challenges that other states have encountered during implementation of such a program;
- Opportunity to expand the protections against abuse and neglect for the elderly and other vulnerable individuals;
- Opportunity to participate in a research program and to test new methods of abuse prevention at no financial cost to the state; and
- Opportunity to influence future Federal policy regarding comprehensive background check programs.

B. STATE PARTICIPATION REQUIREMENTS - GENERAL

B1. What criteria must a state meet to participate in the pilot program?

To be eligible to participate in the pilot program, a state must be able to comply with the basic statutory requirements set forth in section 307 of the MMA.

- States wishing to participate must have the authority (via state statute, regulation or other mechanism) to require long-term care facilities or providers included in their program, prior to employing a direct patient access employee, to conduct a background check, as defined in section 307 of the MMA, on the employee.
- Pilot states must also have the authority to protect the applicants against misuse of background check information.
- Additionally, states wishing to participate in the pilot program must demonstrate their authority to ensure that a long-term care facility or provider not be held liable in any action brought by an individual who is denied employment based on information obtained through the background check.

B2. Can you tell me if my state meets the criteria to participate in the pilot program?

Each individual state must determine if they meet the eligibility criteria set forth in section 307 of the MMA. As part of the application review and selection process, CMS will determine if the state's application demonstrates their ability to comply with the statutory requirements for participation.

B3. What if a state does not currently have the authority to meet the statutory requirements?

If a state does not currently have authority in place, or requires additional authority in order to meet the statutory requirements of section 307 of the MMA, the state must have that additional authority in place not later than the date the pilot project is fully implemented or the end of first quarter, calendar year 2006, whichever is earlier.

Additionally, the state must demonstrate in its application the strategy and timetable for gaining such authority as well as the current status of preparation and planning for the adoption the authority.

B4. How would a state demonstrate its strategy for gaining authority in its application package?

CMS will evaluate each state's strategy for gaining authority on an individual basis. At a minimum, a state's strategy should include a credible plan, firm commitment from stakeholders & a reasonable timetable.

In evaluating a state's application, CMS will look to see that it demonstrates a) a clear articulation of the necessary steps and actions needed to gain the authority, b) a specific timetable and c) the commitment of key stakeholders. For example, if new legislation is necessary, a state might include a commitment from the Governor to introduce legislation in the upcoming session. An even stronger commitment would be a commitment from the applicable committee chairpersons to sponsor and support the proposed legislation.

B5. Does Section 307 of the MMA provide states the authority, in absence of state law, to require LTC facilities/providers conduct background checks on prospective direct patient access employees?

Section 307(b)(2)(A) states, "The procedures established by a participating state should be designed to... (ii) require, as a condition of employment, that the employee..."

We do not believe that Section 307 provides the state the authority to require LTC facilities/providers to conduct background checks on prospective direct patient access employees. The state must establish procedures that will require these background checks. State law issues will likely dictate the mechanism that a particular state will use to establish these procedures.

B6. Can PL 105-277 provide the authority for a state to require background checks on prospective employees if a state does not currently have the authority under state law?

No. PL 105-277 permits a nursing facility or home health care agency to request, from the FBI, a criminal history records search for an applicant for employment in a position that involves direct patient care. It does not provide a state the authority to require background checks on prospective employees. Additionally, PL 105-277 covers only the search of national criminal history records and does not address the search of state criminal history records or the checking of any available registry, which are also included as part of the background check for this pilot program.

For the purposes of this pilot, a state must, through its own authority (policy, regulation or statute, in accordance with state law) be able to require that background checks be conducted on prospective direct patient access employees of long-term care facilities & providers participating in the pilot, and have the ability to enforce that requirement.

This authority must be in place not later than the date the pilot project is fully implemented or the end of the first quarter of calendar year 2006, whichever is earlier.

B7. Are there specific requirements that must be included in our states background check program?

Yes. Section 307 of the MMA states that a background check program designed by each pilot state must include procedures for the following:

1. Giving notice that the LTC facility or provider is required to perform background checks on new employees;
2. Obtaining a written statement from the applicant disclosing any disqualifying information;
3. Obtaining written permission from the applicant authorizing the facility to request state and national criminal history background checks;
4. Providing the facility or provider with a rolled set of the applicant's fingerprints;
5. Requiring the facility or provider to check any available registries (e.g., nurse aid registry); and
6. Conducting a fingerprint-based search of state criminal history records; and
7. Conducting a fingerprint-based search of national criminal history records.

Additionally, the background check program designed by each pilot state must:

1. Permit a LTC facility or provider to terminate a background check at any stage at which disqualifying information about a prospective employee is obtained;
2. Ensure that a LTC facility or provider uses information obtained on a prospective employee through the background check only for the purpose of determining suitability for employment; and
3. Ensure that a LTC facility or provider is not liable in any action brought by the individual based on the employment determination resulting from the information;
4. Establish procedures by which applicants may appeal or dispute the accuracy of the information obtained through a background check; and
5. Establish a method to monitor compliance with the requirements of the background check program.

B8. Can you provide clarification on the appeal or dispute of criminal history record information accuracy? Why is it our responsibility and not the responsibility of the FBI or state repository?

The state must include, as part of its pilot design, procedures by which applicants may appeal or dispute the accuracy of the information obtained through a background check.

At a minimum, the state agency designated as the "lead agency" for this pilot, must establish a mechanism that enables the applicant to appeal the accuracy of information to the appropriate agency (state bureau, FBI or appropriate registry) and the resultant fitness determination made at the state agency or LTC provider level.

The procedures established should ensure that appeals are processed timely, so that a potential applicant's livelihood is not unduly harmed by erroneous information obtained through the background check process.

B9. Are there any optional requirements that a state may choose to include in the design of their background check program?

Yes. Section 307 of the MMA provides a number of optional requirements that a state may choose to include in the design of their background check program:

- Permit LTC facilities and providers to provide for a provisional period of employment pending the completion of a background check;
- Establish procedures under which employment agencies may contact the state to request a background check;
- Impose penalties to enforce the requirements of the pilot program; or
- Include patient abuse prevention training program as part of the pilot program conducted in the state.

A state may choose to include any combination of the above optional requirements (including all of the above or none of the above) in the design of their pilot program.

Inclusion of any of these optional requirements could increase the competitiveness of a state's proposal since Section 307(c)(3)(ii) specifies that CMS should, to the greatest extent practicable, select states to participate in the pilot program in a manner that ensures the above optional requirements are included in some states and not included in other states.

C. SCOPE OF PILOT PROGRAM

C1. What LTC facilities and providers are included in the pilot?

The state has the flexibility to determine which provider groups will be included in the pilot. CMS has identified 6 categories of providers that must be included, but it will be the state's decision to include facility or provider types that are beyond those required in the solicitation.

The 6 provider categories that must be included are:

- Skilled Nursing Facilities/ Nursing Facilities
- LTC Hospitals, Hospitals w/ Swing beds
- ICFs/MR
- HCBS Group Homes Over 8 beds
- Home Health Agencies
- Personal Care Agencies – Medicaid State Plan

C2. Can the pilot be limited to specific provider groups?

Yes. The state has the flexibility to determine which provider groups will be included in the pilot. CMS has identified 6 categories of providers that must be included, but it will be the state's decision to include facility or provider types that are beyond those required in the solicitation.

C3. Must a state include hospice providers in its pilot design?

No. A state is not required to include providers of hospice care in its pilot design. However, a state may choose to design its pilot in a manner that would include hospice providers.

C4. Is 100% participation of the identified provider types required?

Yes. If a state is selected to participate in the pilot program, all the LTC facilities/providers that are required by CMS and those additional categories of providers that the selected pilot state proposes to include will be required to participate in the program. The only exception to this for large states electing to design their pilot in a manner so that the background check program is only implemented in select geographic areas (See question C6 for more information to this exception).

For example, if "State A" is selected to participate in the pilot, then all Skilled Nursing Facilities and Nursing Facilities in "State A" are required to conduct background checks on all prospective employees for the pilot period.

Achievement of the 100% participation requirement may be phased-in during the implementation phase of the pilot.

C5. Is there a mechanism for providers to drop out of the pilot if a state is selected?

No. If a state is selected to participate in the pilot program, all the LTC facilities and providers that are required by CMS and, dependent upon the state's pilot design, those optional provider types the state elects to mandate background checks for, will be required to participate in the program.

For example, if "State A" is selected to participate in the pilot, then all Skilled Nursing Facilities and Nursing Facilities in "State A" are required to conduct background checks on all prospective employees for the pilot period.

C6. May a state implement a background check program in select geographic areas of the state, or is it CMS expectation that it be implemented statewide?

A state has the option to design their pilot program in a manner that to the background check program is only implemented in select geographic region(s) of the state. If proposing a select geographic design, a state should clearly articulate their rationale and methodology for selecting those specific geographic areas they wish to include.

States should be aware, however, that the purpose of the pilot program, as stated in Section 307, is to identify the most "efficient, effective, and economical procedures" in conducting a background check program. Therefore, in the selection process, states with more comprehensive programs may have a competitive advantage.

C7. Who are direct patient access employees?

A direct patient access employee is any individual (other than a volunteer) that has access to a patient or resident of a long-term care facility or provider through employment or through a contract with such a facility or provider, as determined by a participating state. Such individuals include, but are not limited to: physicians, nurses, nursing assistants, home health aides, therapists, activities personnel, and support staff (i.e., housekeeping, dietary, etc) who have direct access to patients or patient belongings.

C8. How much discretion does a state have in determining who qualifies as a direct patient access employee? Can the state limit background checks to those who provide direct patient care? Or, must all direct access employees be background checked?

For those categories of providers that participation in the pilot is mandatory, all prospective employees with direct access to patients must be included and must receive a background check.

For those additional categories of providers that the state chooses to include in their pilot design, the state has the discretion to define "direct patient access employee" in a manner they deem appropriate.

C9. How large is the universe of employees with direct access at a hospital with swing beds? Does direct access include all employees of the hospital?

In the case of hospitals with swing beds, the state has the flexibility to design their pilot in a manner that would limit the background check requirements to only those employees with direct access to the swing bed patients.

For example, if the hospital has a dedicated staff/ unit for swing beds, then the state could choose to limit the background check requirements to those employees working in that dedicated unit/staff. However, in cases where the hospital does not have a dedicated staff caring for swing bed patients and the swing beds are scattered throughout the facility, then background checks would be required for all hospital employees having direct access to the swing bed patients.

C10. Can a state choose to include volunteers as direct access employees?

Yes. A state may choose to design their pilot in a manner that would include volunteers as direct access employees. For the purposes of the national pilot program however, volunteers are not included as direct patient access employees. CMS will not view a state's application more favorably or less favorably based on the inclusion of volunteers.

C11. Are background checks required for current employees of long-term care facilities and providers?

No. For the purposes of this pilot program, background checks are required for prospective employees only. Background checks are not required for current employees under this national pilot program, however, a state may choose to require background checks for current employees as well. CMS will not view a state's application more favorably or less favorably based on the inclusion of current employees.

C12. Is a temporary worker employed through an employment agency required to undergo a background check? What if the individual is used for only a single day to remedy at staffing shortage?

Yes. Where staffing agencies are used to meet a temporary staffing shortage, the LTC provider, or the state in its pilot design, must ensure that these workers have undergone a background check prior to working for a LTC facility or provider participating in the pilot.

C13. Can a background check be used for multiple providers? For example, if a RN works at two different nursing homes, can the same background check be used for both places?

Each long-term care provider participating in the pilot is required to conduct a background check on each prospective direct patient access employee.

The state, as part of its pilot design, could potentially develop procedures to follow in the circumstance where a prospective direct patient access employee is applying for employment with multiple long-term care providers concurrently so that the background check process, once initiated by each provider, could be coordinated

among multiple providers, thereby eliminating the necessity for the applicant to provide multiple sets of fingerprints.

This does not mean that a background check conducted on a direct access employee at one provider may subsequently be used by the individual when seeking employment at another provider in the future, regardless of the length of time that has passed.

Only if employment at multiple providers is sought at the same time, may the background check be used for multiple providers.

C14. Does a licensed physician hired by the facility have to submit fingerprints?

To the extent that a licensed physician is employed by a long-term care facility and is a direct access employee as defined by the state, that physician would be subject to the same background check requirements as any other direct patient access worker, which includes a fingerprint-based criminal history records search.

C15. Does a licensed physician hired by the facility resident have to submit fingerprints?

No. Individuals who are hired by a patient or resident functioning as an employer are not required to undergo the background check process.

C16. In the circumstances where a resident or patient is functioning as an employer, can a state use this program to provide the patient or resident a choice to pursue a background check?

Yes. While not required for the purposes of the national pilot program, a state may choose to use this program as a vehicle to provide the patient or resident acting as an employer the choice to pursue a background check.

C17. Can a state use this program as a vehicle to perform background checks on guardians for the elderly?

Yes. While not required for the purposes of the national pilot program, a state may choose to use this program as a vehicle to perform background checks on guardians for the elderly.

D. CONDUCTING BACKGROUND CHECKS

D1. What is included in a background check?

For the purposes of this program, a background check includes:

- Checking of any available registries (e.g., nurse aid registry); and
- State criminal history records; and
- National criminal history records.

D2. Must a state's program include all three components (i.e., checking registries, checking state criminal history records and national criminal history records)?

Yes. The checking of any available registry, and both national level and state level criminal history record checks must be included in the design of the state's pilot program.

D3. What do you mean by "any available registry"?

The background check must include the checking of any available registries that would be likely to contain disqualifying information about an individual applicant. Available registries include, but are not limited to, the state's Nurse Aid Registry, or other registries maintained by the state that list physicians, nurses, psychologists and other professionals who are considered to have direct patient access.

In addition, other national databases that may be checked when appropriate include the HHS OIG Exclusions Database, Healthcare Integrity and Protection Data Bank (HIPDB), or the National Practitioner Data Bank (NPDB). While CMS expects that these databases would be checked in only limited circumstances, a brief description of each is provided below:

HHS OIG Exclusion Database

The US Department of Health and Human Services, through its Office of Inspector General (OIG) has the authority to exclude certain individuals from participation in Medicare, Medicaid and other Federal health care programs. No payment will be made by any Federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity. The practical effect of an OIG exclusion is to preclude, under almost all circumstances, a health care provider that receives reimbursement from any Federal health care program from employing, or contracting with, an excluded individual or entity. The OIG maintains the List of Excluded Individuals/Entities (LEIE), a database which provides information to the public, health care providers, patients and others relating to parties excluded from participation in the Medicare, Medicaid and all Federal health care programs.

The database provides the basis for an exclusion, so parties checking the database can determine whether an exclusion is based on a conviction for an offense described in section 1128(a) of the Social Security Act. If the exclusion is based on another type of offense, for example, section 1128(b) of the Social Security Act, reference to additional sources will likely be required to determine if the offense in question constitutes disqualifying information about a prospective direct patient access employee.

Healthcare Integrity and Protection Data Bank (HIPDB)

The Healthcare Integrity and Protection Data Bank (HIPDB) is intended to provide a “one-stop-shop” database for public information on the imposition of health care sanctions. It contains final adverse action information, including: health care-related criminal convictions and civil judgments, government health care program exclusions (such as Medicare and Medicaid exclusions), adverse licensure or certification actions, and certain other public, adjudicated, negative actions and findings related to health care, by Federal or State agencies and by health plans.

The information reported to the HIPDB pertains to individuals or entities that are health care providers, suppliers, or practitioners. HIPDB data is available to health plans, Federal and State licensing or certification agencies, the Department of Justice, HHS, certain other Federal agencies, State Medicaid Fraud Control Units (MFCUs), and to health care providers, suppliers, and practitioners for self-queries only. The cost of querying the HIPDB is \$4.25/query.

National Practitioner Data Bank (NPDB)

The National Practitioner Data Bank (NPDB) contains reports of medical malpractice payments, adverse licensure actions, adverse clinical privilege actions and adverse professional society membership actions against physicians, dentists and, in some cases, other health care practitioners.

NPDB data is available to hospitals, professional societies, state licensing boards, and health care practitioners for self-queries only. State Medicaid agencies do not have access to this database.

A query to the NPDB might be included as part of the background check for a physician or other health care practitioner with direct patient access employed by a hospital that provides long-term care services (i.e., long-term care hospital or swing-bed hospital), but would not be included for other employee categories (e.g., nurses).

D4. Must a state be able to perform both national and state level criminal history checks?

Yes. Both national level and state level criminal history record checks are included in this pilot program.

D5. Do we have to perform a national check on applicants who have lived in our state for more than 10 years?

Yes. A search of both state criminal history records and national criminal history records is required for all applicants, regardless of how long the applicant has lived in the state.

D6. Are fingerprints required for the search of state criminal history records?

Yes. The background check must also include a search of state criminal history records through a 10-rolled fingerprint search.

D7. Are fingerprints required for the search of national criminal history records?

Yes. The background check must also include a search of national criminal history records through a 10-rolled fingerprint search. Fingerprinting may either be done electronically using “live scan” technology or via paper and ink, “hard cards”, but must consist of “rolled” impressions of all 10 fingertips, and must meet requirements as set forth by the Federal Bureau of Investigation (FBI).

D8. How is the search of national criminal history records completed?

The national criminal history records search utilizes the Integrated Automated Fingerprint Identification System (IAFIS) of the FBI.

D9. Will the requests for FBI information need to be submitted through the State Bureau or will the requests be submitted directly to the FBI?

IAFIS protocol dictates that contributors transmit fingerprint submissions to the FBI through their state bureau. Fingerprint submissions transmitted directly to the FBI will be rejected by the FBI, and returned to the state bureau for appropriate processing.

D10. The application describes “rolled prints”, our state uses “live-scan” technology – can we submit scanned fingerprints?

Yes. A “rolled” fingerprint impressions are made by rolling the thumb or finger from nail edge to nail edge. Rolled impressions give all the needed ridge characteristics for accurate classification.

Dependent upon the technology available in the participating state, fingerprints may be submitted to the FBI either electronically via live-scan or card-scan, or through the mail.

If fingerprints are submitted electronically, the agency submitting the fingerprints must be able to meet the IAFIS interface specifications for operational concepts, image quality, field edits and systems security requirements. Additional information regarding the IAFIS Interface specifications can be found on the FBI, Criminal Justice Information Services Division (CJIS) website at: <http://www.fbi.gov/hq/cjisd/about.htm>.

D11. The FBI is positioning themselves to accommodate "flat-fingerprints" for non-criminal justice purposes and is expected to be ready to accept these from states in the next few months. Will this pilot be modified to accommodate for flats or is it set in stone that they must be 10-print?

Section 307 of the MMA specifies the use of "10-rolled" fingerprints for this pilot. Modifying the pilot to accommodate "flat" fingerprints would require a statutory change, which we do not anticipate at this point in time.

D12. May we submit fingerprints electronically to the FBI?

Yes. Fingerprints may be submitted electronically to the FBI via live-scan or card-scan. If fingerprints are submitted electronically, the agency submitting the fingerprints must be able to meet the IAFIS interface specifications for operational concepts, image quality, field edits and systems security requirements. Additional information regarding the IAFIS Interface specifications can be found on the FBI, Criminal Justice Information Services Division (CJIS) website at: <http://www.fbi.gov/hq/cjisd/about.htm>.

D13. Are we required to submit fingerprints electronically to the FBI?

No. States do not have to transmit fingerprints to the FBI electronically. Fingerprints may be transmitted to the FBI either electronically or via hard card.

For states not currently submitting fingerprints to the FBI electronically, this pilot could be an opportunity for the state to test electronic submission.

D14. In absence of live-scan technology, what type of fingerprint cards must be used?

In the absence of live-scan technology, the FD-258, standard fingerprint form must be used to submit fingerprints to the FBI for the national criminal history records check. Whether or not the FD-258 must be used for searching the state criminal history records is at the discretion of the participating state.

D15. What is the expected response time for fingerprint submissions to the FBI?

If fingerprints are submitted electronically (via live-scan or card-scan technology), the expected response time is within 24 hours.

If fingerprints are submitted in hard copy format, the expected FBI/CJIS processing time is 3-5 business days, from the point that CJIS receives the submission to the time a response is sent to the requesting entity.

D16. Does the FBI charge a fee for searching the national criminal history records?

Yes. The FBI charges a fee of \$24 for each fingerprint-based criminal history records search.

D17. How will fees/payment to the FBI for processing be handled?

The FBI bills each state's central repository via an established account number for fingerprint submissions transmitted by the state to the FBI for processing.

D18. Will a separate payment be required for each submission, or a monthly billing?

Generally, the FBI bills each state's central repository on a monthly basis.

D19. Will the FBI automatically be issuing ORI numbers to the approved participants?

No. The FBI will not automatically issue ORI numbers to the approved participants; to obtain ORI numbers, participants should submit a written request with supporting documentation to the FBI.

D20. Additionally, if it is determined that the providers/facilities will be responsible for conducting the background checks, will the FBI issue individual ORI numbers for each and every provider/facility?

To facilitate the tracking and analysis of program transactions and financial-related matters, the FBI recommends that each participating state bureau be assigned a single ORI number to be used exclusively for this program by state contributors when transmitting fingerprint submissions to the FBI for processing. In accord with this protocol, the FBI recommends the OCA field (20 character limit) be included in transactions for the purpose of tracking fingerprint submissions and responses.

The FBI will not limit the issuance of ORI numbers should participating states choose to employ an alternative protocol.

D21. Is this something that will easily be obtained or will each facility have to go through the request and approval process to obtain an ORI number?

To request an ORI number, participating state bureaus must submit a written request to the FBI's Office of General Counsel. The request should include: (1) purpose for the ORI(s); (2) requesting agency's address and phone number; (3) point of contact; and (4) approximate number of fingerprint cards needed. The request can be mailed to the address below, or faxed to (304) 625-3944. After processing the request, the OGC will advise the state bureau of ORI assignment via letter. Questions can be directed to Marilyn Walton at (304) 625-3616.

FBI Office of General Counsel
1000 Custer Hollow Road, Module E-3
Clarksburg, WV 26306
Attn.: Marilyn Walton

D22. Will the FBI results be forwarded directly to the provider/facility?

The FBI will forward the results of the fingerprint search to the participating state bureau. The state bureau is then responsible for channeling the results to the appropriate providers/facilities if they have been elected by the state to perform the fitness determinations.

D23. If the entity capturing the fingerprints uses live scan/electronic submission to the FBI, will the results still be returned to the requestor (agency/provider of ORI number) or the entity submitting via electronic submission?

IAFIS protocol dictates that contributors transmit fingerprints submissions to the FBI through their state bureau. The FBI then transmits the IAFIS search results to the state bureau, and the state bureau is responsible for channeling the results to the contributor.

D24. And how will the results be returned, in electronic format or hardcopy/ paper format?

When a contributor uses live scan/electronic submission format to transmit fingerprints to the FBI, the FBI will transmit the IAFIS search results electronically to the state bureau. The state bureau can then channel the results to the contributor through the state's normal protocol.

D25. If in electronic format, would each requestor need special secure software to receive results in some secure format?

Whether the state bureau channels the IAFIS search results to the contributor via electronic, or hard copy format, the contributor must adhere to CJIS security policy.

E. DISQUALIFYING INFORMATION & FITNESS DETERMINATIONS

E1. What is considered “disqualifying information”?

Disqualifying information includes any Federal or state criminal conviction for offenses described in section 1128(a) of the Social Security Act, any substantiated finding of abuse or neglect, and other such offenses a participating state may specify.

E2. What does “conviction for a relevant crime” mean?

This means any Federal or State criminal conviction for any offense described in section 1128(a) of the Social Security Act (42 U.S.C. 1320a-- 7); and other such types of offenses a participating State may specify for purposes of conducting the pilot program in that state.

The offenses described in section 1128(a) of the Social Security Act include convictions for criminal offenses related to the delivery of an item or service under the Medicare program or any state health care program (e.g., Medicaid), convictions related to patient abuse, felony convictions relating to health care fraud and felony convictions relating to controlled substances.

E3. What is the definition of “conviction”?

A conviction is the final judgment entered after a finding of guilt. Each state should determine what constitutes a conviction for the purpose of this pilot, in accordance with state law.

E4. What about convictions held in abeyance? Is there a particular length of time for which a conviction is relevant?

In the design of the pilot program, each state should determine how the it will handle convictions held in abeyance and the length of time a conviction is relevant, in accordance with state law. It is likely that convictions for certain offenses would result in the individual being ineligible for a direct access position for life, whereas convictions for other offenses may permit flexibility and discretion on the part of the state, in accordance with state law.

E5. May a state expand the definition of “disqualifying information” to include additional crimes that are not mentioned in Section 307 of the MMA.

Yes. A state may specify, in its pilot design, additional crimes that would be considered “disqualifying information” that are not mentioned in Section 307 of the MMA.

E6. What is a fitness determination?

For the purposes of this program, a fitness determination is a determination that a prospective employee is or is not eligible for employment as a direct patient access employee of a long-term care facility or provider based on the information received through the background check.

E7. How is the fitness determination made?

The determination that an applicant is eligible for employment as a direct patient access employee in a long-term care facility or provider must be based on the absence of any disqualifying information being found during the course of the background check.

E8. Who makes the fitness determination?

The fitness determination may be made by either a designated state agency or the long-term care facility or provider, dependent on the design of the background check program in each participating pilot state.

E9. Does the State agency have to make the fitness determination, or can this responsibility be delegated to the LTC provider/facility?

The fitness determination may be made by a designated state agency or the long-term care facility or provider, or, dependent on the design of the background check program in each participating pilot state, in accordance with state law.

E10. May the results of the FBI check be disseminated to the LTC facility or provider?

For the purposes of this pilot program, and in accordance with state law, a participating pilot state may disseminate the CHRI (criminal history record information) received from the FBI to the LTC facility or provider for the purpose of making the employment determination only.

Additionally, the pilot state may elect not to disseminate the CHRI to the LTC facility or provider, but rather make the fitness determination at the state agency level, and communicate the determination only to the LTC provider or facility.

In either case, the pilot state should, as part of their proposal to CMS, clearly describe their procedures for handling the CHRI, how the information or results of the fitness determination will be disseminated to the LTC facility or provider, what procedures will be in place to protect the applicant from misuse of background check information, and the procedures for tracking missing dispositions.

F. STATES WITH EXISTING BACKGROUND CHECK PROGRAMS

F1. Is a state expected to change the existing systems and statutes in order to participate in the pilot?

Regardless of the methodology used, the end result must be compliance with the requirements of the pilot program. To the extent that a state must modify a current system or statutes to meet the requirements of the pilot (e.g., conducting fingerprint-based checks), then yes, it would be expected.

F2. Can a state participate utilizing their existing background check program with emphasis of enhancements being that of the abuse prevention-training program?

Yes. Provided that the state's existing background check program meets the legislatively mandated requirements (MMA Section 307), and the state agrees to cooperate with, and provide data for, the national evaluation of the overall pilot, the state could apply for the pilot with the emphasis of enhancements being the abuse prevention training component. We strongly encourage states with existing background check programs to apply, as it will enable us to include programs of various stages of development in our overall evaluation.

F3. Would a proposal to identify and decrease inconsistencies among statutes and types of providers be considered?

A proposal that, in addition to meeting the requirements of the pilot (MMA Section 307), includes a strategy for identifying and decreasing inconsistencies among state statutes as a way to improve the state's existing background check program would be considered for inclusion in the pilot program.

F4. Would this grant provide for a state agency to use the grant monies for the purpose of conducting a feasibility study on doing FBI checks for all applicants?

A state must conduct FBI checks on prospective direct patient access employees in order to participate in the pilot and receive grant funding. If such a state is currently conducting FBI checks on certain LTC providers or categories of employees and chooses to expand their program (e.g., adding additional provider types) as part of their pilot participation, that state may include a feasibility study as an incidental part of their overall pilot design, provided that the participation requirements are met.

F5. Our state currently has two payment mechanisms for covering fingerprint costs – either that the provider pays or the prospective employee pays. Does this exclude us based on the criteria that the state must have a variety of payment mechanisms for covering the costs?

Section 307 of the MMA states that the Secretary must establish selection criteria that will ensure... “the evaluation of a variety of payment mechanisms for covering the costs of conducting the background checks required under the pilot program.”

CMS does not interpret this statement to mean that a variety of payment mechanisms must exist within a participating state, but rather, we must ensure that we will be able to evaluate a variety of payment mechanisms are used to cover the costs in the overall (national) pilot program.

G. USE OF GRANT FUNDS

G1. Can the funds be used for the purchase of hardware to record and electronically export fingerprints to the FBI for checks?

Yes. Section IV.5.(a).1 of the solicitation (page 17) states that grant funds may be used for the costs of data collection & transmission. This could include hardware for fingerprint capture & submission to the FBI.

G2. Is there a restriction on multiple uses of technology bought using grant \$\$? For example, if a state uses grant \$\$ to buy live-scan machines. Would they also be able to use the technology for fingerprint capturing not related to the pilot (in addition to its pilot use)?

There is no restriction for incidental uses of technology for related functions, provided the incidental use does not interfere with the pilot.

G3. Is upgrading our data base search capabilities an allowable expense?

A portion of a state’s grant award may be used to upgrade their data base search capabilities, provided the upgrade would result in an improvement in the ability of the state to administer the background check program.

G4. Is there a matching requirement?

No. There is no cost sharing, cost matching or cost participation requirements associated with this grant.

G5. If there is no matching requirement, why do the sample budget forms include columns for “non-federal funds”?

The columns were included on the sample budget forms to provide CMS with an idea of the full enterprise of the state’s undertaking. States are not required to provide matching funds in any budget line item.

G6. How will grant funds be distributed among the selected pilot states?

Grant funds will be distributed to states based on a variety of factors, including: a) the projected budget and resource justification of each selected state, b) the scope of the pilot in each state, c) the substantive undertaking involved in relation to pilot scope and design, and d) the number of LTC facilities and providers that will be included in the pilot.

H. SOLICITATION & APPLICATION

H1. Who is eligible to apply?

A State’s Office of the Governor or State Survey Agency (SA) may apply to participate in this pilot program.

Certain other state agencies (e.g., the State Medicaid Agency, the State Identification Bureau, State Control Terminal Agency, State Office of the Attorney General, State Social Service Block Grant recipients, or the State Department of Health) may apply as well, provided they have an agreement with the State Survey Agency for the conduct of the pilot.

H2. On page 10 under “Eligible Applicants” it states, “If the application is from an applicant that is not the Office of the Governor or the State Survey Agency, a letter of endorsement from the Governor or the State Survey Agency Director must accompany the application”.

Can you please clarify if the letter from the Governor's Office is sufficient or does it need to be the State Survey Agency?

A letter of endorsement from either the Governor’s office or the State Survey Agency is sufficient.

H3. When will pilot states be selected?

CMS anticipates selection of pilot states to occur in October – November 2004. Awards to those states submitting successful applications will be made during October – November 2004.

H4. How long will the pilot last?

The pilot will last through September 2007.

H5. When is the deadline to submit applications?

The deadline for interested states to submit their applications to CMS is Thursday, September 30, 2004. Unfortunately because of the time needed to process, review, and select the pilot states, we will not be able to extend the application due date.

H6. Is the work plan part of the project narrative?

No. The Project Work Plan/Timeline should be submitted as an appendix and does not count toward the project narrative 40-page limit. However, the project narrative should provide a narrative description of the project goals and management & staffing plan. (See Appendix 3, section B of the solicitation for more information).

H7. Does the required electronic copy ONLY include the Project Narrative?

The electronic copy of the application must include at least the following:

- Applicant's cover letter & title page
- Letter of endorsement or support from the Governor or State Survey Agency Director
- Project Abstract
- Project Narrative
- Budget Narrative/ Justification
- Budget Forms
- Required Appendices
- Optional Proposal for Abuse Prevention Training Program

To the extent possible, we request that the Standard Forms, as listed on page 12 of the solicitation and letters of agreement/support be also included in the electronic submission. However, if you are not able to include these forms/letters electronically, it is permissible to send a hard-copy version, clearly stating they are to accompany the electronic version of the application.

H8. The evaluation activities seem fairly involved. One of the best ways to ensure high quality performance on the evaluation requirements would be to contract with an "independent" evaluator to do both "process" and "outcome" evaluation. Is such a strategy definitely permitted or advised or NOT permitted or advised?

CMS will be hiring a national contractor to conduct the formal evaluation of the pilot, as is statutorily required. For states, the basic requirement is that each state agrees to cooperate with the national evaluator, and provide data that is requested.

While we welcome a state's effort to augment our ability to evaluate the pilot through their own mechanisms, it is not required.

H9. Page 12 of the announcement refers to “Additional Assurances” in the application kit. Are any “additional assurances’ required to respond to this announcement?

Yes. The additional assurances form can be found at:
<http://www.cms.hhs.gov/states/letters/certns.pdf>

H10. Where can I find a suggested format for the Biographical Sketch that is referred to on page 12 of the solicitation?

The Biographical Sketches form may be found at:
<http://www.nih.gov/grants/funding/phs398/biosketch.pdf>

Of you choose not to use this form, please substitute abbreviated resumes or curriculum vitae.

H11. How can I ask additional questions about the solicitation?

Please send questions to our email address at: backgroundchecks@cms.hhs.gov

H12. How can I ask additional questions about the application form and related materials?

Questions regarding application forms and related materials may be directed to:

Background Check Pilot Program
Attn: Judith Norris
Centers for Medicare & Medicaid Services
OOM, AGG, Grants Management Staff
Mail Stop: C2-21-15
7500 Security Boulevard
Baltimore, MD 21244
(410) 786-5130
E-mail: jnorris1@cms.hhs.gov