

### CMS NEWS AND ANNOUNCEMENTS

Revised Medicare and Medicaid requirements for participation for Long Term Care (LTC) facilities (42 CFR part 483, subpart B) were released on September 28, 2016 and became effective as of November 28, 2016, with a three-part phase-in of implementation dates over the next three years. These requirements include the minimum health and safety standards that LTC facilities must meet to participate in Medicaid and Medicare.

On June 30, 2017, CMS released its revised Interpretive Guidance for Nursing Home Surveyors-Appendix PP of the State Operations Manual. The Guidance includes extensive revisions related to the areas of abuse, neglect, and exploitation/misappropriation of resident property. The Guidance itself, as well as information about other initiatives at CMS, can be found on the [CMS website](#).

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## FAULTY BACKGROUND CHECK LEADS TO LAWSUIT

A recent lawsuit filed in Indiana reaffirms the importance of fingerprint-based background checks to reduce instances of inaccurate data and mismatched information. [IndyStar](#) reported that Michele Petry filed a class-action lawsuit against Indianapolis-based IDE Management due to a faulty background check. Ms. Petry applied for a nursing job at Cathedral Health Care Centers in Jasper, IN; however, she was denied employment due to a failed background check. Ms. Petry was told that her background check "revealed multiple felonies, including a felony conviction for drug paraphernalia and for theft." She requested a copy of the report to correct the inaccuracies, but was denied. Ms. Petry believes that IDE Management violated the Fair Credit Reporting Act (FCRA) legislation that governs background checks in the United States, because she was not provided a copy of the report or her rights under the FCRA. Under the FCRA, when reporting negative public record information to an employer, all consumer reporting agencies (CRA) must notify the consumer that the CRA is reporting criminal record information and to whom the report is being sent. The FCRA gives the consumer the right to request a copy of their rights under the FCRA, a copy of the report, and the ability to dispute inaccurate information. The FCRA also requires employers "to give a series of notices if they reject an applicant based upon any information found in a background check."

The [IndyStar](#) news story also mentions an April 2012 report by the National Consumer Law Center (NCLC) called "[Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses](#)." The NCLC reports that background check reports frequently contain mismatched or incomplete information, display data in a misleading way, omit crucial information, and report sealed or expunged records. Regarding mismatched reports, the NCLC report emphasizes that biometric identification, such as fingerprint data, "significantly reduces the chances of incorrectly connecting an individual to the criminal record of another." The NCLC report also includes recommendations at federal and State levels to improve accuracy in criminal background checking. The NCLC recommends that the Consumer Financial Protection Bureau (CFPB), established under the Dodd-Frank Act of 2010, use its rulemaking authority over the FCRA to "define reasonable procedures to ensure maximum possible accuracy to include requiring verification and updating of criminal records that lack disposition of data for records more than one year old." At a State level, the NCLC recommends that State repositories, counties, and other public records sources have a procedure for ensuring that sealed and expunged records are deleted.

## GRANTEE STATE HIGHLIGHTS

### MAINE

Maine has completed the rollout of a name-based background check process for Long Term Care, Hospice, Home Health, and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/ID) providers. At this point, all providers are required to use the Maine Background Check Center (MBCC) for new hires. Also, per statute, providers have 365 days from the date of their provider-type start date to perform background checks on all existing employees. As applicants and employees are checked by the system, they are added to the State rap back subscription. Maine's rap back functionality came online in the middle of May 2017, three and a half months after the MBCC system went live. Maine is currently working with Morpho Trust to develop a biometric/fingerprint-based component. Biometrics will be used initially for childcare as part of the Childcare Development Block Grant, with a target implementation of September 2017.



## OHIO REGISTRY RECHECK

In May 2017, CNA and Innovative Architects (IA) conducted the first registry recheck of the NBCP Nurse Aide Registry (NAR) for OH, which revealed two out-of-State matches for applicants enrolled in Ohio's Automated Registry Check System (ARCS).

One match was a nurse assistant from California who used her middle and last names to apply for a job in Ohio. Even with a different name, the California NAR returned a match based on social security number (SSN). The match was further verified by her license number in the CA NAR. The second match identified a West Virginia resident who applied for a job in Ohio. The recheck showed the applicant's license had been revoked in the WV NAR.

Both applicants failed to disclose their true identity or status, and they were caught because their States of origin are included in the NBCP NAR network. This expanded NBCP NAR search and registry recheck strengthens Ohio's ability to protect the most vulnerable populations and helps to improve the safety and quality of services provided by an estimated 132,000 direct patient access workers throughout Ohio.

Kudos to the team for their ongoing commitment to enhance the NBCP NAR, which currently includes 10 States: New Mexico, District of Columbia, Georgia, Utah, Ohio, Florida, Oregon, West Virginia, Oklahoma and California.

## RUTHIE'S LAW

The New York Erie County legislature passed a law in June 2017 to more effectively notify family members when loved ones are injured in a nursing home according to [McKnight's Long Term Care News](#). The name of the law originates from a case in Buffalo, NY, where Ruth Murray, 82, died from assault injuries from another resident in the dementia ward. Ms. Murray's family was not immediately notified of her injuries or the context of her injuries.

Ruthie's Law "would require nursing homes and assisted living facilities to report a patient's injuries to his or her designated representative 'as soon as practical,' but not later than two hours after the injuries were found." County Commissioner of Senior Services Timothy Hogues will also receive notifications regarding injury events and the Erie County's Department of Senior Services will enforce the law.

## QUARTERLY REPORTS DUE JULY 31, 2017

Reports for the quarter ending June 30, 2017, are due by close of business on **July 31, 2017**. Please be sure to use the new Cost Report that includes your State's name. The report templates are available on the [NBCP BGCheckInfo](#) website. Requests for extensions should be submitted to your CMS project officer at least **two weeks** before the due date.

**Reminder!**  
Graduating States must submit a final Quarterly Report to complete the closeout process!

## NBCP RESOURCES

The newly designed [BGCheckInfo Website](#) provides access to a comprehensive collection of original resource documents written specifically for existing and prospective NBCP States. These documents provide detailed information on a number of background check issues, including information on current standards of practice in the field of background checks. Please contact your CNA State Liaison if you have any questions about the new website or email [stateliasion@cna.org](mailto:stateliasion@cna.org).

### UPCOMING MEETINGS:

- Association for Health Facility Survey Agencies Annual Conference, Orlando, FL, August 21 - 23, 2017



**The National Forum for Background Check Programs (the Forum) is collaborating with the Association of Health Facility Survey Agencies (AHFSA)**

Big News! The National Forum for Background Checks has been recognized as an official workgroup within the Association of Health Facility Survey Agencies (AHFSA) per a memo sent to all AHFSA State representatives on Thursday, June 22, 2017.

The 2017 AHFSA conference on August 21-23, 2017 will include a complete track on background check issues for new States, as well as topics for mature NBCP and graduated States. The Forum is working on the sessions to make sure it has a successful track. The Forum will also conduct its 2018 planning meeting at the conference site on Wednesday, August 23, 2017.

All States are invited and encouraged to attend. Please contact your CMS project officer regarding reimbursement options. Conference registration and accommodation information can be found at <http://www.ahfsa.org/AHFSA-2017-Annual-Conference>.

For more information about the NFBCP, please visit the [Forum's website](#).