

Contact Attorney Regarding
This Matter:

Robert T. Strang III
404.873.8582 - direct
404.873.8583 - fax
ribert.strang@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

OIG Releases Report on Nursing Homes' Employment of People with Criminal Convictions

The Office of Inspector General (OIG) recently released the results of its evaluation of Medicare and Medicaid nursing facilities to determine the existence of employees with criminal convictions at facilities nationwide. The study consisted of a stratified random sample of 260 nursing facilities from the universe of 15,728 Medicare-certified nursing facilities and included data on all individuals who were employed by the sampled nursing facilities on June 1, 2009.

The purpose of the OIG evaluation was to determine whether and to what extent nursing facilities employed individuals with criminal convictions. Federal regulation prohibits Medicare and Medicaid nursing facilities from employing individuals found guilty of abusing, neglecting or mistreating residents by a court of law, or who have had a finding entered into the State nurse aide registry concerning abuse, neglect or mistreatment of residents or misappropriation of their property.

The Centers for Medicare & Medicaid Services (CMS) provides guidelines stemming from the Federal regulation that state, "[nursing] facilities must be thorough in their investigations of the past histories of individuals they are considering hiring." However, Federal law does not require that nursing facilities conduct State or Federal Bureau of Investigation (FBI) criminal background checks. State background check requirements vary in terms of what record sources must be checked and who must be checked.

The OIG used FBI-maintained criminal history records to determine only the existence of a criminal record; not to determine whether the individuals were in violation of Federal regulations. That is because FBI records do not contain sufficiently-detailed information, such as whether the victim of a crime was a nursing facility resident, to determine whether the conviction would bar an individual from nursing facility employment under the Federal regulation.

A summary of the OIG findings:

- FBI-maintained criminal history records revealed that 92 percent of nursing facilities employed at least one individual with at least one criminal conviction. And nearly half of nursing facilities employed five or more individuals with at least one conviction.

- Overall, five percent of nursing facility employees had at least one conviction in FBI-maintained criminal history records. Five percent of staff identified by the nursing facilities as direct-care employees had criminal convictions, which mirrors the conviction rate for nursing facility staff in general.
- Most criminal convictions occurred prior to employment. Eighty-four percent of employees with criminal convictions had their most recent conviction prior to their beginning date of employment.
- The most common offense (44 percent) was a crime against property, such as burglary, shoplifting or writing bad checks, according to the report. Of those with criminal convictions, approximately one in eight had been convicted of a crime against person, such as assault. Roughly 16 percent had been convicted of a crime while employed at a nursing facility. Nearly 85 percent of those sampled were women, and almost 70 percent were considered direct-care employees.
- Most states required, and/or nursing facilities reported conducting, some type of background check despite the fact that there were no Federal requirements for nursing facilities to conduct criminal background checks at the time of this study.

The OIG recommended that CMS develop background check procedures that define employee classifications for those tasked with direct patient access; and work with participating states to develop a list of convictions for disqualifying an individual from nursing facility employment with timeframes in which each conviction bars the individual from employment.

CMS agreed with the OIG's recommendation and stated it will work with states through the National Background Check Program—created through healthcare reform—to assist them in developing lists of convictions that disqualify individuals from employment.

A likely consequence of the OIG's recommendation is that nursing home providers will be forced to delegate more resources to performing more frequent background checks on all employees with direct patient access. While most providers likely perform background checks on some employees, it seems probable that the scope of employees with "direct patient care access" will be broadly interpreted to encompass almost any employee in a nursing home. It is recommended that each nursing home designate a point person to efficiently manage these more onerous and extensive background check efforts.

To view the report, visit the [OIG website](http://oig.hhs.gov/oei/reports/oei-07-09-00110.pdf).¹

¹ <http://oig.hhs.gov/oei/reports/oei-07-09-00110.pdf>

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