

CMS Long Term Care Criminal Convictions Work Group

Mark Gritz, PhD and Rebecca Ward, RN
National Background Check Program Training
Meeting
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Presenters

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Overview

- **Background**
- **Mission**
- **Consolidated Option**
- **Comparison of Options**
- **Status Update**
- **Next Steps**

Background

- Formed in response to the March 2011 HHS Office of the Inspector General report on individuals with criminal convictions working in nursing homes
- Composed of 11 State volunteers and 2 CMS Regional Officers
- Held 5 meetings from July 2011 to September 2012
 - Developed preliminary and consolidated options

Mission

- To work closely with designated CMS Central and Regional Office staff to provide CMS with options to consider in developing:
 - Common definitions of a “direct access employee”; and
 - A list of State convictions that should disqualify individuals from direct access employment with long term care (LTC) facilities and providers, the conviction types that should be considered for mitigation or rehabilitation, and the time period for which each conviction should disqualify individuals from employment

Definition of Direct Access Employee

Consolidated Option:

- An individual who has direct access to a resident or beneficiary through ownership, employment, or a contract/agreement with an LTC facility or provider
- This does not include:
 - Volunteers or students, unless they perform regular or unsupervised functions equivalent to those of “direct access employees”
 - Contractors performing repairs, deliveries, installations, or similar services [only] for the facility or provider

Definition of Direct Access Employee (continued)

Consolidated Option (continued):

- Direct access is having, or expecting to have, duties that involve one-on-one contact with a resident or beneficiary, or access to the resident or beneficiary's property, personally identifiable information, or financial information
- This definition applies to LTC facilities and providers identified in the Affordable Care Act

Comparison of Definitions of Direct Access Employee

Preliminary and consolidated options incorporate:

- **An outcome-based approach**
 - This was preferable to a list of job titles or duties
- **Similar definition of “access”**
 - Inclusion criteria varies for access to personal information and medical records
- **Similar types of employees**
 - Inclusion criteria varies for contractors, volunteers, students, owners, licensed individuals, and professionals providing services

Comparison of Definitions of Direct Access Employee (continued)

Preliminary and consolidated options incorporate:

- **Different facility and provider types**
 - All facilities and provider types receiving Medicare and Medicaid funding
 - All LTC facilities identified in the Affordable Care Act

Disqualifying Convictions and Rehabilitation Factors (continued)

Consolidated Option:

- **Used categories of disqualifying convictions organized by against whom or what the crime was committed (e.g., crimes against care-dependent or vulnerable individuals)**
 - Disqualification categories primarily include felonies
- **Disqualification time periods vary by category**
 - Time periods start from date of conviction or the date of release from imprisonment, whichever is later
 - All applicants can apply for a variance

Disqualifying Convictions and Rehabilitation Factors (continued)

Consolidated Option (continued):

- Rehabilitation factors include:
 - Passage of time
 - Extenuating circumstances
 - Demonstration of rehabilitation
 - Relevancy of the particular disqualifying information with respect to the current employment of the individual

Comparison of Disqualifying Convictions and Rehabilitation Factors

Preliminary and consolidated options incorporate:

- Categories of disqualifying convictions with disqualification time periods and rehabilitation factors
- Federal minimums allowing States to enact stricter parameters, if desired
- Felony convictions
- Variance process
- Rehabilitation factors

Comparison of Disqualifying Convictions and Rehabilitation Factors (continued)

Preliminary and consolidated options include differences among:

- Organizational structures of the categories and types of categories
- Inclusion of misdemeanors
- Approach to disqualification time periods
- Disqualification start date
- Eligibility for employment following the end of the disqualification time period
- Approach to variance process and rehabilitation factors

Status Update

- Final report submitted by CNA to CMS December 2012
- Final report submitted for CMS publication and clearance March 28, 2013
- S & C Memo 13-24-NH posted April 12, 2013 to Survey & Certification Website
- Report is also posted on <http://bgcheckinfo.cna.org>

Next Steps

- **CMS is soliciting input**
- **Comments from stakeholders and public**
- **Review and submit via email to background_checks@cms.hhs.gov**
- **Comment period through June 30, 2013**