

Long-Term Care Survey Alert

Risk Management: Is Your Facility Harboring a Criminal? OIG Report Uncovers a Disturbing Finding

3 steps can help prevent this scenario from occurring on your watch.

A March Office of Inspector General report indicates that the vast majority -- 92 percent -- of sampled nursing facilities had employed at least one person with a criminal conviction.

The majority of the convictions were for property crimes, such as shoplifting, bouncing checks, or burglary (see the table on page 27). The OIG discovered the convictions by reviewing the FBI database.

What the regs required: The OIG report notes that under federal regulations, nursing facilities that participate in Medicare and Medicaid can't employ people found guilty in a court of law of abusing, neglecting, or mistreating residents. Neither can they hire people who've been reported to the state nurse aid registry for those offenses or for misappropriating residents' property. "Interpretive guidelines from CMS for this regulation state that '[nursing] facilities must be thorough in their investigations of the past histories of individuals they are considering hiring,'" states the OIG.

Irony: "Despite this guidance," the report continues, "Federal law does not require that nursing facilities conduct FBI or statewide criminal background checks." (To read what the OIG suggests CMS do to bolster background checks, see the sidebar below.)

Take These Protective Steps

So what can your facility do, if it hasn't already, to avoid having people in the building who could pose a threat to others?

1. Be familiar with and follow state-specific requirements, advises attorney **Joseph Bianculli**, in private practice in Arlington, Va. His own research of states' background check requirements found that states varied considerably on numerous parameters; these included who to check and in what databases, who should do the check, when and how far back -- and whether to check the FBI database, he says. States also differed on what "charges or convictions disqualify them from employment and for how long, and whether applicants can appeal. Some states do the checks as part of annual licensure for nurses, therapists, physicians, etc."

Also: You might think that states would require facilities to do background checks on anyone with access to residents, but that's not the case for every state, Bianculli says. "A few states do require facilities to ask prospective residents about convictions and bar certain criminals from nursing facilities," he adds. "But none requires third party checks of all applicants."

2. Make use of public databases. Bianculli points out that "most states have reasonably accessible public websites that list offenders, convictions, locations, etc., and sometimes even arrests. There also are easily accessible portals to sex offender registries, including via the U.S. Justice Department." He recommends that all facilities check these databases as part of their hiring decision for every employee, volunteers, and vendors who have access to residents.

Also use the databases to check out prospective residents, Bianculli advises.

Eye-opener: As part of his research, Bianculli plugged in his home zip code into the Virginia sex offender database, which reports offenders' home and work addresses. And he found a registered sex offender who appeared to be working at one of his client's nursing facilities. "The facility lickety split looked for him, but found no record they ever had employed him, at least under that name," he says. "They speculate that maybe he works or worked for an outside cleaning contractor."

Caution: Don't over-rely on commercial databases. In his research, Bianculli found numerous commercial databases that charge a fee for what they claim to be a comprehensive background check. Yet he also found several commentators noted that the reliability and completeness of the database checks "is questionable at best." For example, "one service claims to have 200 million records, but was found to be less than 80 percent accurate; most others are well under 50 percent accurate."

3. Ask applicants and employees about arrests and convictions. "Also have a policy regarding what offenses disqualify" a person from being hired, advises Bianculli.

Tip: If a facility borders another state or has a lot of people working there who live in a nearby state, it should do criminal background checks on prospective employees in both states, suggests **Joy Cornelius**, a risk management consultant for Robinson Adams Insurance, in Birmingham, Ala. That's especially true if you see a gap in the person's employment record, she adds.