

Best Practices for Health Care Background Screening

Warning Signs that Your Background Reports May Contain Incomplete or Non-Compliant Data

Jon Socolof / Julie Jordan

Every day, patients put their lives and trust in the hands of nurses and other health care professionals often when they are most vulnerable. As an industry confronted by high turnover, a limited candidate pool, budget constraints, and the need to rapidly hire and train staff, the challenge is to recognize and understand the risks of poor candidate screening.

Charles Cullen, a 43-year-old nurse, confessed to killing 30 to 40 patients at 10 medical facilities around the country through lethal injections. The murders allegedly occurred over a 16-year period. Cullen was fired several times and suspended once before he landed a new job at the Somerset Medical Center in Somerville, New Jersey. According to published reports, he was arrested in connection with the death of one patient and the attempted murder of another before confessing to as many as 40 other killings.

In some cases, nursing homes that hired Cullen were accused of negligence in connection with the deaths because they did not review his work history. Those that did review work history had charges dropped because reference checks of past employers did not reveal any past firings or suspensions out of feared legal liability — the so-called “see no evil, speak no evil” policy favored by health care facility attorneys.¹

Sadly, more thorough, investigative background screening already available in the health care industry would have likely uncovered Cullen's negative behavior patterns and prevented his access to patients.

Jon Socolof, a former New York City police officer, is president of ERS Hire Inc. (www.ershire.com) and has extensive experience in investigation and corporate security consulting, having managed numerous assignments for several Fortune 500 companies, major law firms, and financial institutions. He has particular expertise in employment investigation and has been a consultant to client companies and law enforcement agencies. For more information on medical background screening services, contact Jon Socolof at 973/798-6070.

Julie Jordan, principle of Spearheader, Inc., reports on trends and issues in industries including credit reporting, background screening, information technology, and others. For more information, call 720/841-2224.

STATS ON CRIMINALS IN HEALTH CARE

In statewide studies, Michigan's Attorney General Mike Cox's Health Care Fraud Division commissioned two studies to evaluate the effectiveness of Michigan's statutes in response to a disturbing series of cases. The studies uncovered the following:

- Of the more than 5,500 certified nurse's aides (CNAs) studied, 9 percent had a total of 836 outstanding criminal warrants, and 3 percent, or 170, had past criminal convictions.
- 25 percent of residential care facility employees committing crimes against residents since 2002 had past criminal convictions.
- Background checks of entire employee populations at four nursing homes across Michigan revealed 58 of 618 employees, or more than 9 percent, had 101 outstanding warrants and that 68, or 11 percent, of the staffs had past criminal convictions.

In both studies, the criminal histories included homicides, armed robberies, criminal sexual conduct, weapons violations, drug charges, and retail fraud.²

A review of 900 nurse applicant background checks, performed by ERS Hire, Inc. in July 2006, revealed 46 applicants with prior criminal convictions — just over 5 percent. Luckily, the hiring facilities in these cases were receiving this critical information prior to hiring.

Background checks must be implemented to protect patients and health care organizations alike. But how they are performed determines your success in getting the critical but potentially hidden information you seek.

With the Internet came a proliferation of employment screening Web sites promising all manner of instant record access and employee information. The difference, however, between quick database search reports and those produced by professional screeners and investigators using long established and industry recognized "best practices" will decide whether the Charles

Cullens of the world are hired or are barred from your doors.

THE CHALLENGE FOR HEALTH CARE HR

In this industry, inadequate background screening goes beyond cost, compliance, and legal liability issues. It can be a life or death decision for patients who entrust their lives to your staff. The challenge for human resource administration in health care is to become as educated as possible regarding the sources, uses, and limitations of background screening information; to choose and implement thoroughness in screening procedures and screening vendor selection; and to create an environment of disclosure rather than silence when employees do not perform adequately or appropriately.

What do HR Administrators Need to Know to Thoroughly Research the Backgrounds of Applicants?

No Single Source of Data Will Yield a True Evaluation: The Nuts & Bolts of Background Screenings

Public records databases, while good starting points as sources of information, are most often used by competent investigators as tools or leads rather than as ends in themselves. Investigators use information from many sources to verify an applicant's identity, determine previous counties of residence, obtain actual courthouse records in those counties, and look for patterns in data from many sources. No single source of data will yield a true evaluation.

Identity Verification: Verifying an applicant's identity is a key step. Criminal records are generally maintained by name only within each state's county court system, though most jurisdictions also use the date of birth as a cross-reference. Since the Social Security Act prohibits the use of social security numbers as an identifier for criminal record-keeping purposes, positive identification of the applicant requires checking maiden names, aliases, and verifying date of birth (in lieu of sub-

mitting fingerprints through a law enforcement agency).

Though online databases are becoming more popular and can provide a wealth of information, the surprising truth is that the most accurate and up-to-date information on criminal records is at county courthouses — little changed in 200 years, even with computer and Internet technology. That's because most courthouses are not yet set up for remote database searching.

So professional employment screening investigators use human researchers, dispatched to county courthouses, to review files and transmit the results, and then review the total sum of gathered data against available database information. Best practices require this hands-on approach for even a baseline level of reliability.

In addition, every applicant should be screened in each county where they have resided, rather than just the county of current residence. What's more natural than an applicant reporting a different address in a new location to hide a criminal record?

A standard practice is to rely on the credit header, also known as the social security trace, to determine jurisdictions to search. This report is obtained from a credit bureau and consists of the name and address portion of the credit report.

Address information is provided to credit bureaus (Experian, TransUnion, and Equifax) at the time the subject applies for credit with a merchant, completes a product warranty card, subscribes to a magazine or newspaper, or submits a change of address to the post office, et cetera, over many years. If no credit application has been made or the merchant does not report to all three bureaus, the information may not be recorded, and other means must be used to uncover prior counties of residence.

Importantly, these social security traces are not the same as social security number verifications and do not cross-reference Social Security Administration records in any way. The trace report therefore does not provide a positive identification of an in-

dividual. However, telling the investigator whether an applicant's listed social security number and address match the information provided on the application is invaluable in the overall research.

Motor Vehicle Records: Maintained by each state's department of motor vehicles, these records provide excellent information about a driver's history of violation, suspension, and revocation; however, they should not be relied on for address verifications. Individuals do not often report address changes to the Department of Motor Vehicles (DMV) until license renewal, sometimes as infrequently as every four or five years. On the flip side, DMV information can also be useful in that proof of identity is typically required to obtain or renew a license.

State Repository Information: Although another source for criminal records, state repository information is not available in all states, may not be current, and may not include misdemeanor or disposition information. In addition, access to these records often requires special release forms and or fingerprints. Generally, state repositories rely on local police and state courts to forward case information to them, subjecting them to different update schedules by state or even within states.

Business Records: Many business records, such as Dun & Bradstreet and Standard & Poor's, rely on information given by the subject of the report. As such, this data should be considered a starting point or used for cross reference material. It should be noted that information provided by subjects doesn't automatically make it suspect; a trained investigator looks for consistency in the way information is reported over a period of time and over a variety of sources. Where inconsistencies appear, further investigation is needed.

NOT LEGALLY COMPLIANT: THE MYTH OF A "NATIONAL CRIMINAL RECORD SEARCH"

Chances are you have been contacted by background screening companies claiming instant results or nationwide databases.

Despite some claims, there is no national source for searching criminal records in the United States available to the public. The closest thing to it is the FBI's National Crime Information Center (NCIC) system, which contains information reported by federal, state, and local law enforcement agencies, but its use is strictly limited to law enforcement. It is illegal for a private individual or company to obtain information from the NCIC.

When background reports are provided from stored data, or claims of access to a nationwide criminal records database are made, beware. The results from this type of search should never be used for employment decision purposes.

Sellers of reports based on the so-called national databases usually fail to disclose that their "online access to every court with external data access" reflects perhaps only 14 percent of courthouses in the country — a tiny portion of a true national search. In addition, these sources don't guarantee the accuracy or completeness of their records and specifically prohibit the reselling of this data.

What some background screening vendors call a "national criminal file" search is data compiled from certain online databases or purchased indexes from criminal record sources, including fugitive files, sex offender registries, Department of Corrections records, proprietary information, and data from state agencies. Reports based on these sources have a great risk of being incomplete, inaccurate, or not up to date and are insufficient to recommend or bar an individual from employment.

What's more, reports from these types of searches are specifically not FCRA compliant, a key legal compliance issue. The Federal Trade Commission (FTC) has issued an opinion that using information of this type for employment purposes violates Section 613(a)(2) of the Fair Credit Reporting Act (FCRA).³

Here's why. The FCRA requires "the best possible source" be used when conduct-

ing a pre-employment background check. The FTC has issued an opinion letter specifically on the use of criminal databases and has taken the position that so called national criminal file database searches do not comply with FCRA but could be used as a pre-screening tool to "generate leads" and should be used for that purpose only. Online "national" database searches cannot be considered the best possible source of data because:

- Database information is not updated frequently or at all; *i.e.*, only every six months or more.
- Using prisoner lists as source data is incomplete. Prisoner lists represent a fraction of the total number of criminal convictions. In many cases the only names that show up are those sentenced to serve more than one year in state prison. If a person's case resulted in a misdemeanor conviction, probation, or fine, the chances are close to 100 percent that the name will not show up.
- The data is often incomplete and usually does not include identifiers, such as social security numbers or dates of birth. Therefore, if you run a search on someone with a common name, you'll likely receive many records completely unrelated to your applicant.
- The database is neither compliant nor legal, as in the case of the FBI's NCIC database which, as mentioned previously, is illegal for use in background checks by anyone but approved law enforcement agencies.

With regard to the use of the NCIC database information, the FBI states, "The commercial dissemination of state or federal hot file records obtained from NCIC (CJIS Systems) is prohibited. Information derived for other than law enforcement purposes from national hot file records can be used by authorized criminal justice personnel only to confirm the status of a person or article, *i.e.*, wanted or stolen. Any advertising of services providing "data for dollars" is prohibited. The request for bulk

data is prohibited. Authorized agencies are allowed to charge a processing fee for disseminating data for authorized purposes.”

In addition, “The wholesale marketing of data for profit is not permitted, as in the example of a pre-employment screening or background checking company requesting that wanted person checks from NCIC be conducted on individuals for various non-criminal justice employment,” according to the 2001 FBI advisory policy board.

If you decide not to hire an individual based upon information reported as the result of a national criminal record search, you are still compelled under the Fair Credit Reporting Act (FCRA) to give the applicant a copy of the report, a summary of their rights under the law, and an “adverse action letter.” The applicant has the right to dispute the accuracy of the information and you are required to verify the accuracy of the information with the source that provided the original data. If you don’t comply with these provisions of FCRA, then you are subject to a lawsuit by the applicant and civil penalties by the FTC.

STEPS TO AVOID CATASTROPHIC HIRES

Each of the following screening methods has a potential role to play in determining if an applicant is capable of performing required tasks, while at the same time identifying any issues that may increase risk (security or otherwise) from hiring that individual.

Criminal Background Checks: Criminal background checks are the single most important component of a thorough screening process. Properly conducted by experienced screeners and investigators, these searches can provide comprehensive coverage and are essential in identifying “at-risk” applicants, especially in health care. Since prior behavior is often the best indicator for future behavior, criminal records are the first records searched by litigant attorneys and the press after an accusation is made against an employee. The cost of a missed record for a quick database or poorly conducted record search

can be devastating.

Job Application Review: A good job application form, when completed by the applicant and adequately reviewed by the employer, is a critical component. Applicants with issues to hide or with suspicious backgrounds are often inclined to lie about certain issues or to omit these issues from their application. It’s the employer’s responsibility to review this information and to verify the facts as presented. Since HR laws change frequently, this is an area that must be monitored to ensure that your application is acceptable and that your processes are current. Some estimates are that 30 to 40 percent of all job applications and resumes include some false or inflated facts.⁴

Reference Checks: References are often requested as part of an application or otherwise. Conducting a thorough review of these references, whether personal or professional, is a source of valuable information. References, even as provided by an applicant, should not be assumed to support the applicant. Although there are significant limitations on what a past employer may legally divulge, many references will provide information that may be useful in evaluating a candidate. In addition, since the Cullen case, legislation is pending or has been enacted in some states enabling more truthful disclosure about problem employees in health care reference checks. (In New Jersey, for example, the “Health Care Professional Responsibility and Reporting Enhancement Act” was passed in response to the Cullen case and is known as the Cullen law.)

Credit checks: Credit files include a considerable amount of information. Predictive models use some of this data to identify individuals who are more careless by nature, who might be more inclined to file a fraudulent workers’ compensation claim, or who might be inclined to embezzle money as a result of personal financial problems.

Substance Abuse Screening: Substance abuse is acknowledged as a significant problem in the general population. Studies have

shown that those with a substance abuse problem are more likely to have injuries and diminished performance. The importance of substance abuse screening can be demonstrated by the following statistics.

- More than six percent of the population over 12 years of age (13.9 million people) has used drugs within the past 30 days. Rates of use remain highest among persons aged 16 to 25 — the age group entering the work force most rapidly.⁵
- Seventy-three percent of all current drug users aged 18 and older (8.3 million adults) were employed in 1997. This includes 6.7 million full-time workers and 1.6 million part-time workers.⁶
- According to the results of a National Institute on Drug Abuse (NIDA)-sponsored survey, drug-using employees are 2.2 times more likely to request early dismissal or time off, 2.5 times more likely to have absences of eight days or more, three times more likely to be late for work, 3.6 times more likely to be involved in a workplace accident, and five times more likely to file a workers' compensation claim.⁷

Personality Tests: A growing number of health care facilities now use personality tests to find candidates most likely to behave honestly, kindly, or with compassion, especially for hands-on positions. Though many candidates can ace an interview and demonstrate a history of employment, personality testing can reveal more behavioral traits and guide hiring of better candidates.

Professional License Checks: Regulatory and licensing agencies can provide a wealth of information about an individual including any record of complaints, violations, disciplinary actions, or sanctions not recorded elsewhere. In almost all cases these agencies will report current license or renewal status and any restrictions.

OIG & GSA Sanctions List (Medicare/Medicaid Fraud Exclusions): Congress has worked diligently to protect the health and welfare of the nation's elderly and poor by implementing legislation to prevent cer-

tain individuals and businesses from participating in federally funded health care programs. The U.S. Department of Health and Human Services and the Office of Inspector General have established a database for individuals and businesses excluded or sanctioned from participating in Medicare, Medicaid, or other federally funded programs. This search is vital for the health care industry because new Medicare guidelines require that hospital policies "prohibit the employment of individuals who...are listed as debarred, excluded or otherwise ineligible for participation in federal health care programs."

The difference between implementing an adequate screening process over an inadequate one pays off. Those not adequately screening applicants pay many multiples of better screening costs to consequences of poor performance, fraud, injuries, judgments, damages and more.

SCREEN THE SCREENER

An employee background investigation is one of the most cost-effective tools to combat workplace violence, tighten security, avoid costly or negligent mis-hires, and mitigate employee-related risks. Generally, employers don't have internal access to the resources necessary to thoroughly investigate applicant backgrounds and rely on professional investigators or screening companies for this information.

What else should you look for when evaluating screening agencies? Here's a list of warning signs that can indicate that your resulting background reports will be based on database information, with substantial risk of incomplete or non-compliant data:

- The vendor promises instant results or all reports come back within minutes.
- You get multiple pages of unrelated or irrelevant information.
- The words "possible match" appears with each result.
- There are no special forms for you to fill out for driver's license requests.

CONTINUED ON PAGE 61

Once the list has been revised to include only those areas of risk specific to their laboratory, an audit should be designed to ensure requirements with the Stark or anti-kickback regulation that is applicable for each remaining area of risk. Some common problem areas include the following:

- Fair market value has not been properly assessed.
- Contracts or agreements have expired and have not been renewed.
- Gifts and entertainment expenses have not been tracked or properly document-

ed for each referral source for all departments within a hospital or health system that shares the same referrals sources.

The laboratory compliance officer must have monitors and audits in place and regularly monitor these risk areas. Further, she must make certain that any arrangement or relationship that might be included in these risk areas, contemplated by any laboratory employee, is brought to her attention *before* the physician or entity is approached or as early in the process or discussion as possible.

SOCOLOF/JORDAN

CONTINUED FROM 10

- The vendor tells you there are no state's criminal, motor vehicle, or local court fees.
- The vendor tells you that there are no forms to fill out for statewide criminal conviction histories.
- The vendor tells you that the subject will never know a search was conducted.
- The vendor has no clearly explained dispute procedure.
- The vendor tells you its "nationwide" criminal conviction search is FCRA compliant.
- The prices are unbelievably low compared to other vendors.
- The vendor does not fully inform you of laws such as FCRA, DPPA, ADA, et cetera.
- The vendor does not do any type of inspection of your business or require any service agreements.
- The vendor only offers Web-based searches or does not have complete contact information for its company.
- The vendor does not have a system that forces compliance with federal law and does not provide you with all necessary forms for the background screening process, like adverse action letters, release forms, FCRA disclosures, et cetera.

Employers must be careful when selecting outside agencies to conduct employ-

ment investigations and should inquire as to license status, experience, and the agency's knowledge of applicable laws. In addition, employers should check with their state police or Department of State to verify licensing requirements, license status, and any record of complaints.

The best screening vendors will have experience in law enforcement or security. Experience in licensed private investigative work is also a good indicator of professional acumen, as it indicates required skill in delving passed surface information to identify suspicious information, allowing the investigator to follow up with more research appropriately. Although information technology processes are important for smooth, efficient administration of screening activities, do not make them the priority in your vendor selection; instead, look for thorough research and data evaluation first.

Endnotes

1. http://www.crimelibrary.com/notorious_murders/angels/male_nurses.
2. http://www.consumeraffairs.com/news04/2005/mi_nursing_homes.html.
3. <http://www.ftc.gov/os/statutes/fcra/allan.htm>.
4. Fact Sheet 16: Employment Background Checks, © 1994-2005. Privacy Rights Clearinghouse/UCAN, December 1994. Revised June 2004.
5. National Household Survey on Drug Abuse. U.S. Department of Health and Human Services. Rockville, MD. August 1998.

6. National Household Survey on Drug Abuse. U.S. Department of Health and Human Services. Rockville, MD. August 1998.
7. Backer, T.E. Strategic Planning for Workplace Drug Abuse Programs, p. 4. National Institute on Drug Abuse. Rockville, MD. 1987.

ELLIOTT FEATURE

CONTINUED FROM 16

Endnotes

1. American Hospital Association, 2006. Billing, collection, and tax-exempt status [On-line]. Available at http://www.aha.org/aha/advocacy-grassroots/advocacy/content/5_1_06_sb_billingcoll.pdf.
2. American Hospital Association, 2006. Hospital billing and collection practices [On-line]. Available at http://www.aha.org/aha/key_issues/bcp/content/guidelinesfinalweb.pdf.
3. A "How Am I Doing?" Guide for Ethics Czars, Fall 2005. Business Ethics, 19 (3), 11.
4. Clarke, R., 2005. An accounting of benefits. Modern Healthcare, 32.
5. Council on Medical Service, June 2005. Offsetting the costs of providing uncompensated care (Resolution 918, 1-04). Washington, DC: Author.
6. Davino, M., 2005. Suits against non-profit hospitals for collecting unpaid bills: how can a hospital protect itself? Compliance Today, 7 (1), 11-13.
7. Guadagnino, C., September 2004. Lawsuits indict hospital charity care. Physician's News Digest [On-line]. Available at <http://www.physiciansnews.com/cover/904.html>.
8. Hospital charity care practices challenged, November 27, 2004. KARE 11 News [On-line]. Available at http://www.kare11.com/news/news_article.aspx?storyid=72216.
9. Hospital lawsuits- charity care., 2003. Williams, Love, O'Leary, Craine & Powers P.C. [On-line]. Available at <http://www.wdolaw.com/cases/hospital-lawsuits.htm>.
10. IRS questioning tax-exempt hospitals and auditing bond programs, June 30, 2006. Vital Signs: A Dorsey Health Law Monthly Report, 2.
11. Krave, J., 2004. Nonprofit hospital systems subject to class action litigation based on treatment of uninsured and inadequate charity care. Compliance Today, 6 (10), 6-8.
12. Orbuch, D., 2005. Charity or fraud? When good deeds won't go unpunished. New Orleans: Presentation for Health Care Compliance Association Compliance Institute.
13. Patient and visitor info: charity care program, 2006. Thomas Jefferson University Hospital [On-line]. Available at <http://www.jeffersonhospital.org/patient/article6897.html>.
14. Rackl, L., 2006. Study fuels hospital charity care debate. The Naperville Sun [On-line]. Available at <http://www.suburbanchicagonews.com/sunpub/>

- naper/news/6_1_NA30_Hospitals_S1.html.
15. Shriner v. ProMedica Health Sys., January 21, 2005. Horty Springer [On-line]. Available at http://www.hortyspringer.com/data/cases/summary4/shriner_v_promedica_01212005.htm.
16. The charity-care conundrum: strategies to improve collection policies and practices for the uninsured. (2004, Complimentary Issue). Strategies for Health Care Compliance, 1-4.
17. Washington v. Medical Center of Central Georgia, January 21, 2005. Horty Springer [On-line]. Available at http://www.hortyspringer.com/data/cases/summary4/washington_v_medctr_cga_01212005.htm.
18. Zismer, D., 2004. Capital regeneration: the most pressing challenge for U.S. not-for-profit health systems and trustees. Discovery, 1-7.

SCOTT/TABUENA

CONTINUED FROM 22

such as formulary support activities and decision making, and relationships with physicians.

A plan sponsor may want to develop monitoring, auditing, and data analysis techniques for oversight over conflict of interest management. An advanced method would be to perform data file matches of related data elements between employee, physician, contractor, and vendor data files to identify potentially inappropriate relationships.

As methods of fraud become increasingly elaborate, resources to detect and prosecute claims fraud should keep pace and remain vigilant. One of the significant challenges facing an effective compliance and FWA program will be staying current on common and emerging Part D fraud schemes.

Endnotes

1. As required under 42 CFR § 423.504(b)(4)(vi). The final version of the manual can be found at http://www.cms.hhs.gov/PrescriptionDrugCov/Contra/Downloads/PDBManual_Chapter9_FWA.pdf.
2. See final chapter 9 guidance, section 20.
3. See final chapter 9 guidance, section 40.
4. Refers to a Part D PDP Sponsor, MA organization offering a MA-PD plan, a PACE organization offering a PACE plan including qualified prescription drug coverage, and a cost plan offering prescription drug coverage. This includes employer and union sponsored plans. (see 42 C.F.R. § 423.4).

Copyright of *Journal of Health Care Compliance* is the property of Aspen Publishers Inc. and its content may not be copied or emailed to multiple sites or posted to a listserv without the copyright holder's express written permission. However, users may print, download, or email articles for individual use.