

DISTRICT OF COLUMBIA OFFICE OF THE INSPECTOR GENERAL

OIG Project No. 17-I-03HC

August 2017



DEPARTMENT OF HEALTH

INSPECTION OF THE HEALTH REGULATION & LICENSING ADMINISTRATION'S USE OF FEDERAL GRANT FUNDS FOR CRIMINAL BACKGROUND CHECKS OF LONG TERM CARE EMPLOYEES



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**OIG****Why the OIG Did This Inspection**

As part of an ongoing initiative to conduct grant reviews in different areas of District government during FY 2017, the OIG selected this grant for two primary reasons: (1) as a grantee (i.e., recipient of grant funds), DOH administers a substantial amount of funding each year;¹ and (2) in a September 2013 report of special evaluation, the OIG assessed DOH's progress toward implementing this grant's requirements and found obstacles to implementation that DOH had yet to address.

The objectives of the inspection were to: 1) identify how DOH spent grant funds; 2) determine whether program initiatives and process improvements that were to be funded by the grant were fully implemented; 3) assess whether any implementation problems exist, and, if so, whether the DOH has an adequate plan for addressing them; and 4) determine whether internal controls exist within the DOH to minimize risk.

What the OIG Recommends

This report presents four recommendations that are intended to improve DOH's ability to monitor and ensure compliance with grant award requirements, and improve DOH senior leadership's awareness of instances where DOH is at risk of not complying, or has not complied, with grant requirements.

DEPARTMENT OF HEALTH**Inspection of HRLA's Use of Federal Grant Funds for Criminal Background Checks of Long Term Care Employees****What the OIG Found**

While the Department of Health (DOH) complied with Centers for Medicare and Medicaid Services (CMS) requirements pertaining to the expenditure and allocation of funds awarded to DOH through the National Background Check Program (NBCP) grant, DOH failed to implement a key requirement: rap back capability, which is an automated criminal background check process managed by the Federal Bureau of Investigation that would allow DOH to continuously monitor individuals who have already undergone a fingerprint-based background check at DOH.

DOH was awarded \$3 million in federal funds and, through several requests for extension that CMS approved, a 6-year program period to implement the grant's requirements. It appears that during that period, poor communication within DOH and the lack of a single point of responsibility for all grant requirements resulted in DOH's failure to implement rap back capability. Further, DOH management inaccurately reported to CMS that all NBCP grant requirements had been met, including implementation of rap back capability.

DOH's administration and oversight of the NBCP grant highlight the need for improved processes and mechanisms within DOH to ensure (1) compliance with future grant requirements, and (2) accurate reporting of information to CMS and other external oversight entities.

¹ In information submitted to the D.C. Council during the FY 2016 performance oversight process, DOH projected it would receive over \$134 million in federal grant funds in FY 2018.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



August 31, 2017

LaQuandra S. Nesbitt, MD, MPH
Director
D.C. Department of Health
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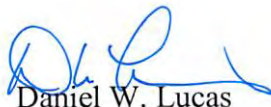
Dear Director Nesbitt:

Enclosed is our final report entitled *Inspection of the Health Regulation and Licensing Administration's Use of Federal Grant Funds for Criminal Background Checks of Long Term Care Employees* (OIG Project No. 17-I-03HC).

We provided DOH our draft report on August 10, 2017, and received your response on August 18, 2017, which is included as Appendix C of this report. DOH agreed with two of the report's four recommendations. With regard to the two recommendations that DOH did not agree with, the OIG commented on DOH's responses. Please review the OIG's comments and provide a response within 30 days of the date of this final report.

We appreciate the cooperation and courtesies extended to our staff during this project. If you have any questions concerning this report, please contact me or Edward Farley, Assistant Inspector General for Inspections and Evaluations, at (202) 727-2540.

Sincerely,


Daniel W. Lucas
Inspector General

DWL/ejf

Enclosure

cc: See Distribution List

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BACKGROUND

The Patient Protection and Affordable Care Act (the Act) includes provisions establishing a “Nationwide Program For National and State Background Checks on Direct Patient Access Employees of Long-Term Care Facilities and Providers.” Administered by the Centers for Medicare and Medicaid Services (CMS), the National Background Check Program provides grant funding to states “as they develop a structured system to identify efficient, effective, and economical procedures for long term care (LTC) facilities and providers to conduct background checks on potential direct access employees prior to employment.”²

NATIONAL BACKGROUND CHECK PROGRAM (NBCP) GRANT REQUIREMENTS

Under the NBCP grant, the District was required to complete background checks for all prospective long term care employees being hired into positions with direct patient access. The District’s background check process was to include the following components:³

- Conduct screening and criminal history background checks through fingerprint-based criminal history checks at both the state and national level.
- Searches of state-based abuse and neglect registries in all states in which a prospective employee had resided.
- Searches of the records of any proceedings in any state that contained disqualifying information about prospective employees (such as proceedings conducted by state professional licensing and disciplinary boards and state Medicaid Fraud Control Units).
- Monitor compliance by LTC facilities and providers with the procedures and requirements of the nationwide program.
- Provide for a provisional period of employment by a LTC facility or provider of a direct patient access employee, not to exceed 60 days.
- Describe and test methods to reduce duplicative fingerprinting, including providing for the development of a “rap-back” capability. The purpose is to ensure that if a direct patient access employee of a LTC facility or provider was convicted of a crime following the initial criminal history background check, the employee’s fingerprints would be

² THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, NATIONAL BACKGROUND CHECK PROGRAM FOR LONG TERM CARE FACILITIES AND PROVIDERS, FREQUENTLY ASKED QUESTIONS 3 (Jan. 2014). As explained in the frequently asked questions, “[t]he term ‘direct access employee’ means any individual who has access to a resident or patient of a long term care ... facility or provider through employment or through a contract and has duties that involve (or may involve) one-on-one contact with a patient or resident of the facility or provider, as determined by the State for purposes of the NBCP.” *Id.* Examples of an LTC facility or provider include: nursing homes, home health agencies, hospice care providers, adult day care service providers, and assisted living facilities.

³ GOV’T OF THE DISTRICT OF COLUMBIA, DEP’T OF HEALTH, DISTRICT OF COLUMBIA NATIONAL BACKGROUND CHECK PROGRAM FINAL REPORT 4 (Jan. 2011 – Dec. 2016).

matched to those on file with local law enforcement, and the District would then immediately notify the employer of the new conviction.

In 2010, DOH submitted an application requesting \$2,674,097 in federal grant funds to implement the NBCP in the District.⁴ In December 2010, CMS awarded DOH the full amount requested for use during a 2-year project period. The non-federal share, i.e., matching funds provided by the District, amounted to \$891,366, bringing the total projected program budget to \$3,565,463. Since the initial award in December 2010, DOH requested and received several no-cost extensions to the project period as well as supplemental grant funding from CMS (awarded in December 2014) in the amount of \$325,903.

The grant project period lasted 6 years (December 2010 to December 2016) and the District's total expenditures under the NBCP grant during that time totaled \$3,938,166.⁵

FINDINGS

SPENDING AND ALLOCATION OF NBCP GRANT FUNDS DURING THE 6-YEAR PROJECT PERIOD COMPLIED WITH GRANT REQUIREMENTS

The initial and subsequent notices of grant award identified the following primary categories for direct costs: personnel (salaries and fringe benefits for DOH employees); equipment; supplies; and contractual support. The team reviewed Federal Financial Reports that DOH submitted to CMS during the project period and determined that costs attributable to DOH personnel salaries and fringe benefits and "contractual support" expenses constituted a significant majority of total expenses. As of September 30, 2016, salaries and fringe benefits represented 53.5% of total expenses, while contractual support expenses accounted for 32.8% of total expenses.

During the project period, DOH contracted with a number of service providers, including:

- **Innovative Architects, LLC** - Innovative Architects provided information technology support, software development, and computer server hosting services for the background check program. As of September 30, 2016, program expenses attributed to this contractor totaled approximately \$395,000.
- **Morphotrust USA** – Morphotrust provided fingerprinting services for DOH at a total cost of roughly \$279,000, as of September 30, 2016.
- **American University** – In October 2014, a faculty member from the University's Washington College of Law completed a report on DOH's criminal background check

⁴ The grant includes a 25% state guarantee requirement, i.e., that the grant awardee contribute \$1 of "non-federal" funds for every \$3 of federal grant funds received to "cover a portion of the cost to be incurred by the State to carry out the [NBCP] in their State." THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, NATIONAL BACKGROUND CHECK PROGRAM FOR LONG TERM CARE FACILITIES AND PROVIDERS, FREQUENTLY ASKED QUESTIONS 7 (Jan. 2014). For example, if the state had an approved \$4 million budget to fund the state's background check program, the state would contribute \$1 million and CMS would match that with \$3 million. *Id.* at 8.

⁵ A Federal Financial Report sent from DOH to CMS on March 23, 2017, cites a "Federal share of expenditures" of \$2,931,308 and a "Recipient share of expenditures" of \$1,006,858.

program. One of the report's recommendations encouraged the District to prioritize passage of legislation that would allow DOH to participate in the Federal Bureau of Investigation's Next Generation Identification (NGI) Rap Back Service (see the next finding for additional discussion of DOH's efforts to implement the rap back requirement of the NBCP grant award).

Hardware and software expenditures accounted for approximately \$231,000, while management consulting expenses totaled \$90,588 as of September 30, 2016, according to a cost expenditure spreadsheet attached to an October 2016 report that DOH filed.

During our review of Federal Financial Reports that DOH filed and other documentation DOH provided, the OIG found that DOH complied with the NBCP grant's expense accounting and financial reporting requirements.

DESPITE RECEIVING MULTIPLE EXTENSIONS TO THE GRANT PROJECT PERIOD, DOH DID NOT IMPLEMENT A KEY REQUIREMENT OF THE GRANT: DEVELOPMENT AND TESTING OF A RAP BACK SYSTEM

DOH failed to comply with a significant requirement of the grant. Specifically, states receiving NBCP grant funds, among other things, are required to have procedures in place to develop and test a rap back system.

A rap back system:

provides the capability by which State law enforcement departments can monitor the legal status of individuals who have had a previous background check and can immediately inform the State of any criminal convictions against the employee that occur following the pre-employment background check. In turn a "rap back" system provides capability for the State to immediately notify the [long term care] provider when law enforcement notifies the State that an employee is convicted of a disqualifying offense after the pre-employment background check.⁶

Through a review of grant documentation and written communication between DOH and other background check process stakeholders, the OIG concluded that despite being granted several project period extensions (the initial grant period of 2 years was ultimately extended to 6 years), DOH was unable to make any notable progress toward implementing the rap back requirement, which requires both new legislative authority and IT infrastructure.

In a project narrative report submitted to CMS, DOH indicated that as of June 2013 (2½ years after the initial grant award), it had not yet started work to implement rap back capability, noting

⁶ THE CENTERS FOR MEDICARE AND MEDICAID SERVICES, NATIONWIDE PROGRAM FOR NATIONAL AND STATE BACKGROUND CHECKS FOR DIRECT PATIENT ACCESS EMPLOYEES OF LONG TERM CARE FACILITIES AND PROVIDERS, SEVENTH ANNOUNCEMENT CFDA #93.506 52 (July 2012).

that it had commenced conversations with the Metropolitan Police Department (MPD) that month.

The following events further explain DOH's lack of progress toward, and accountability for, implementing the NBCP grant's rap back requirement:

- **June 27, 2013, letter to MPD's Chief of Police** – In it, a DOH Senior Deputy Director wrote:

[DOH] was awarded a two year Federal grant in December 2010 that required the Department to conduct live-scan fingerprinting for unlicensed employees seeking employment within a long term care facility.

...

DOH has moved into a new FBI fingerprinting stage, "rap back," that requires our agencies working collectively on an IT infrastructure.

With an additional year of extension to the grant, DOH's IT plan is to develop the "rap back" program in conjunction with MPD.... DOH's plan is to have its criminal background check results hosted by MPD.

...

I ask your participation and approval of MPD's personnel in building the IT infrastructure.

- **September 2013 OIG Report of Special Evaluation** – As part of a special evaluation of DOH's HRLA, the OIG concluded that "[l]egislative obstacles and poor planning may impede HRLA's implementation of rap back ... by the end of the grant term." The OIG recommended that DOH "work with MPD and the Council to identify and resolve any legislative obstacles delaying rap back implementation [and] develop protocols defining the roles and responsibilities of each involved agency[.]"⁷
- **October 2013** – DOH discusses rap back with the District's Deputy Mayor for Public Safety.
- **January 2014 update to OIG** – In a written update to the OIG, DOH's then Chief Operating Officer said that "the 'rap back' initiative will move ahead and the Agency will continue its efforts with MPD to serve in the capacity of a 'channeler.'"⁸

⁷ DEP'T OF HEALTH: HEALTH REGULATION AND LICENSING ADMINISTRATION REPORT OF SPECIAL EVALUATION 10-12 (Sept. 2013).

⁸ "A channeler can be a government agency or private business. Channelers are not authorized recipients of criminal history information and cannot retain criminal history information, but they can be authorized to submit criminal history information to the FBI on behalf of an authorized recipient. [] The channeler that DOH currently contracts with is MorphoTrust USA." MATTHEW W. PIERCE, A REPORT ON THE HEALTH IMPLICATIONS OF THE DISTRICT OF COLUMBIA'S CRIMINAL BACKGROUND CHECK PROGRAM FOR LICENSED HEALTH PROFESSIONALS AND UNLICENSED EMPLOYEES WITH DIRECT PATIENT ACCESS 2 (2014) (citation omitted).

- **September 2014** – A senior DOH employee notes in an internal email: “Over the past year, both DOH and FBI have reached out to MPD on numerous occasions to follow up on the necessary legislation to authorize retention of fingerprint scans and images.” Citing the June 2013 letter to MPD and subsequent emails, the employee notes: “To date, there has not been a response on this issue.”
- **October 2014** – A DOH-commissioned report from American University’s Washington College of Law recommended that the District pass legislation to allow DOH to participate in the FBI’s NGI Rap Back. “The legislation should: [a]uthorize MPD or a channeler to submit fingerprints to FBI; [a]uthorize FBI to retain those fingerprints and to search those fingerprints to determine whether individuals have committed any new crimes; and [a]uthorize DOH to receive criminal history record information [] from FBI.”⁹ The report called out this recommendation as one of several that “should be the top priority in the coming months.”¹⁰
- **FY 2014 Performance Oversight Response** – When asked for a written update on the status of HRLA’s participation in the NGI Rap Back Service, DOH noted the American University report’s recommendation and that “[a]bsent legislation, HRLA cannot participate in the NGI Rap Back Program.”
- **DOH’s October 2015 request for final grant extension** – In a letter to CMS dated October 27, 2015, a senior DOH employee requested an extension of “the unobligated fund in the amount of \$599,167 to complete and graduate from the National Background Check Program. The length of time requested for the extension is 12 months, commencing January 1, 2016.” DOH indicated that during that period, one of the major tasks would be to develop the rap back capability, to include writing a “comprehensive background check law that would give [DOH] authority to participate in [NGI Rap Back.]”
- **March 2017 Final Report to CMS** – In the Grant Closeout Checklist sent to CMS, DOH stated that implementation of rap back “will not be completed,” explaining that “[n]o legal initiative has been taken by the District’s law enforcement agency, the DC Metropolitan Police Department.”

However, in the March 27, 2017, letter that transmitted grant-closure documents to CMS, DOH stated: “The District of Columbia National Background Check Program has successfully implemented all the requirements of the [...] grant.”

ABSENCE OF STATUTORY AUTHORITY REMAINS A SIGNIFICANT OBSTACLE TO IMPLEMENTATION OF RAP BACK IN THE DISTRICT

From our review of DOH progress reports and interviews with DOH employees, the primary obstacle to implementation of rap back in the District remains passage of enabling legislation. The FBI’s Criminal Justice Information Services Division summarizes the requisite authorities in

⁹ *Id.* at 14.

¹⁰ *Id.* at Executive Summary, page 1 .

the “Key Start-Up Requirements” section of its Rap Back Service Policy and Implementation Guide Version 2.1 (June 1, 2014):

Under NGI’s Rap Back Service, the non-criminal justice fingerprints submitted for searching and subscription will be retained in accordance with the requirements of the National Archives and Records Administration ... and will be searched by future submissions to NGI. These new functions require that the participating state and federal agencies and all participating entities have authority:

1. To submit the fingerprints to NGI;
2. For the fingerprints to be retained by NGI; and
3. For the fingerprints to be searched by future submissions to the NGI system and appropriate responses sent to the Submitting and Subscribing Entities. . . .^[11]

DOH’s Assistant General Counsel confirmed that the District has not yet legislated any of the authorities necessary to participate in NGI Rap Back Service.

The OIG could not determine whether the District already maintains (through MPD and/or DOH) or has access to (through a contractor such as Morphotrust) the IT infrastructure necessary to implement rap back. In July 2015, DOH entered into a contract with Innovative Architects for application support, software development, and hosting requirements for the background check system. Section C.3.6.7 of the contract’s statement of work refers to “[a]ssistance with the development of ‘rap back’ requirements and direction” and “[a]ssistance with development of ‘rap back’ platform and integration with appropriate vendors.” DOH’s final program report to CMS cites development of “an advanced IT infrastructure/system” as a program accomplishment, but the OIG does not know whether the District’s current configuration would allow DOH to participate in NGI Rap Back.

The grant period concluded in December 2016, with the District having expended nearly all of the awarded federal funds. However, the feasibility of implementing rap back in the District is uncertain due to the absence of enabling legislation and unanswered questions regarding whether the necessary IT infrastructure is in place.

To address this situation, the OIG recommends that the Director, DOH:

- Develop an implementation plan that identifies milestone dates and assigns specific responsibilities within DOH for obtaining the legislative authority, cooperation from other District entities (e.g., MPD), and any additional technology and resources needed

¹¹ *Id.* at 9. The “submitting entity” refers to a state governmental agency or an authorized contractor submitting fingerprints to NGI. The “subscribing entity” refers to those entities authorized under statute to receive criminal history record information.

for DOH to fully participate in FBI NGI Rap Back in order to protect individuals in LTC facilities.

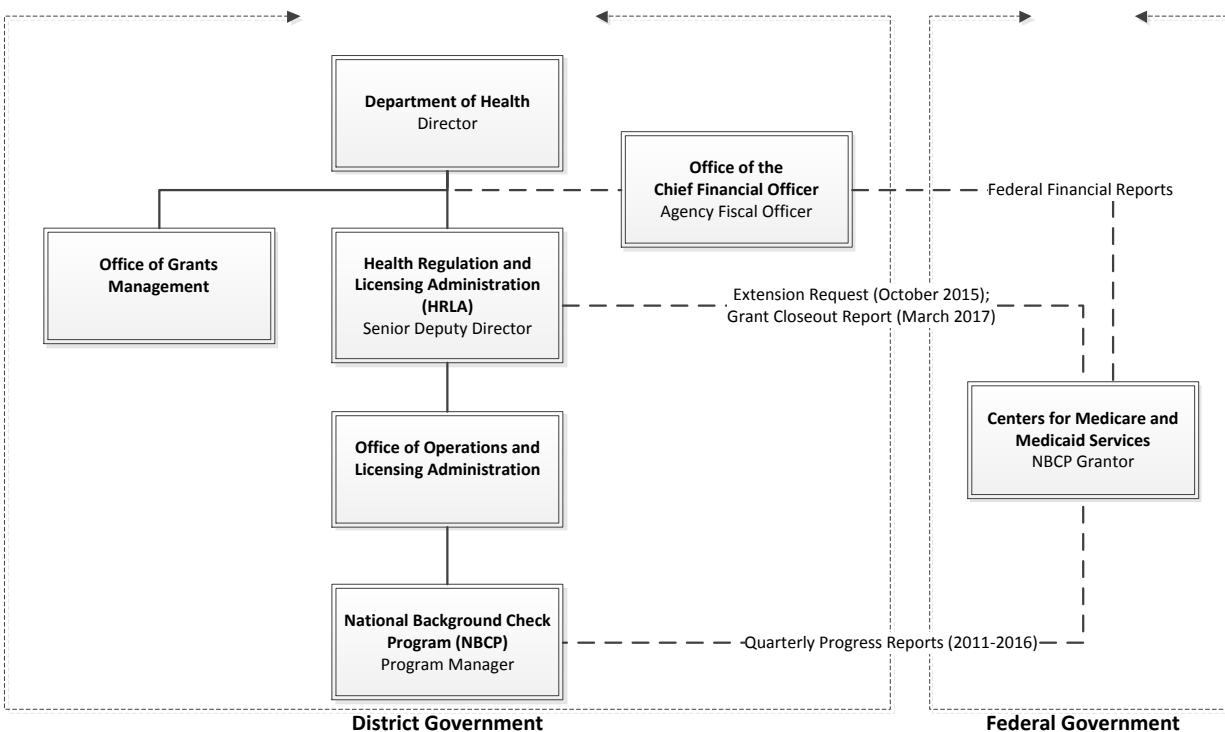
- Work with the Council of the District of Columbia's Committee on Health to introduce and enact legislation necessary for DOH to fully implement rap back capability.

DOH DID NOT SATISFY ALL NBCP GRANT REQUIREMENTS AND REPORTED INACCURATE GRANT COMPLIANCE INFORMATION TO CMS

While the OIG found no indication that DOH spent or allocated NBCP grant funds improperly, DOH's failure to satisfy the grant's rap back requirement was due to mismanagement. Specifically, in October, 2015, DOH requested an extension of unobligated funds to implement rap back. However, almost 18 months later, DOH had not implemented the Rap Back system due to inadequate oversight of the NBCP grant.

Further, DOH officials incorrectly reported to CMS that it had satisfied the requirements when closing out the grant. It appears that a lack of regular, accurate communication among DOH's senior leadership, its Office of Grants Management, and DOH's NBCP staff, caused DOH's inaccurate reporting to CMS regarding progress toward rap back implementation.

The assessment of DOH's system of controls that emerged from our interviews and document reviews is one where individual DOH entities reported information to each other, yet, none was affirmatively responsible for ensuring that DOH fulfilled all NBCP grant requirements. Figure 1, on the following page, illustrates the fundamental system of controls that monitored and reported on DOH's use of NBCP grant funds.

Figure 1: NBCP Grant Oversight Entities

Source: OIG Analysis

Agency financial personnel appear to have collaborated directly with DOH's NBCP program manager to ensure proper expenditure and allocation of grant funds; participated in monthly financial oversight meetings with DOH's Office of Grants Management (OGM)¹², during which grant fund expenditure rates and other fiscal indicators were discussed for all program grants; and submitted requisite reports to CMS regarding NBCP grant funds.

DOH's NBCP program manager routinely submitted quarterly grant milestone reports to CMS. We could not determine whether HRLA management reviewed the reports before the program manager submitted them to CMS; DOH's OGM said the program manager submitted the reports directly to CMS without OGM review. This apparent lack of oversight is significant because the OIG noted conflicting accounts of progress communicated to CMS. For example, DOH's report covering the period July-September 2013 states that implementation of rap back was "in process" and "on schedule;" the report for the June-September period 1 year later indicates that DOH had "not started on this yet" and that activity was "behind schedule," noting, "[n]ow that MPD has responded positively, DOH will engage MPD in rap back implementation." The program manager reported in early 2016 that DOH had "not started" implementation of rap back, and was "not aware that MPD is planning for a District Rap Back."

¹² The DOH OGM is located within the Department of Health's Office of the Director. OGM is the central oversight and processing unit for DOH's grants.

Information communicated to CMS at the conclusion of the NBCP grant period strongly illustrates the need for improved internal controls and grant monitoring at DOH, to ensure that DOH senior leadership, OGM personnel, and DOH program managers share an accurate and complete understanding of DOH's compliance with both fiscal and programmatic requirements of the grants they receive.

In the March 27, 2017, letter that communicated grant closure information to CMS, the HRLA Senior Deputy Director wrote: **“The District of Columbia National Background Check Program has successfully implemented all the requirements of the above referenced grant.”** (Emphasis added.) The HRLA Senior Deputy Director did not respond to several requests for an interview, therefore, the team could not determine whether s/he was aware that DOH had not complied with the requirement to develop and test rap back capability, nor whether more senior DOH leadership (i.e., the DOH Director) was aware of the conflicting information communicated to CMS regarding DOH's compliance with the NBCP grant's rap back requirement. The final report that summarizes the District's NBCP again states that the District “successfully implemented the grant requirements,” as it, among other things, “[i]nited discussions about Rap Back[.]”

Other documentation that DOH submitted to CMS provides a different narrative. The NBCP Grant Closeout Checklist DOH's NBCP program manager submitted on March 31, 2017, states that implementation of rap back “will not be completed,” as “[n]o legal initiative has been taken by the District's law enforcement agency, the DC Metropolitan Police Department.” This statement misplaces responsibility, because as the requestor and recipient of the CMS grant, DOH was ultimately responsible for ensuring implementation of the grant's requirements.

As a result of poor communication and grant monitoring, DOH did not develop and test rap back capability, even though the project was awarded a 6-year performance period and nearly \$3 million in federal funds to meet this requirement. Following DOH's October 2015 request for an additional year to spend \$599,167 of unobligated funds and “complete and graduate from the National Background Check Program,” DOH appears to have made no further progress toward implementing the rap back capability after spending nearly all of the remaining grant funds.

To improve performance in this area, the OIG recommends that the Director, DOH:

- Identify, document, and implement improvements to grant oversight and progress reporting mechanisms that (1) provide senior DOH leadership with greater visibility into DOH's compliance with grant terms, and (2) promote accountability and a shared awareness of grant compliance information being reported outside the agency.
- Ask CMS whether (a) DOH should submit an amended grant closeout report to correct inaccuracies in the original report, and (b) DOH could be subject to penalty or other corrective action due to its failure to comply with the grant's rap back requirement.

CONCLUSION

While DOH complied with CMS requirements pertaining to the expenditure and allocation of NBCP grant funds, DOH failed to implement the development and testing of rap back capability. Rap back would allow DOH to continuously monitor individuals who have already undergone a fingerprint-based background check through participation in a federal program that looks for matches between retained fingerprints and those of newly arrested individuals. The continual monitoring of individuals afforded by the rap back would greatly reduce the potential risk to vulnerable individuals in LTC facilities.

Two and a half years after receiving the initial grant, DOH notified MPD of “DOH’s plan to have its criminal background check results hosted by MPD.” Throughout the 6-year grant period (2010-2016), DOH’s NBCP personnel and HRLA managers were aware of the need for additional authority that required new legislation, yet the OIG could discern no coordinated effort by DOH to lead an initiative seeking passage of the necessary legislation, which is concerning given that DOH is the District agency that applied for and received nearly \$3 million in federal grant funds. In progress reports to CMS, DOH seems to shift responsibility for passage of the necessary enabling legislation to MPD. The October 2014 report from American University to DOH does not identify MPD as responsible for, or an impediment to, passage of the necessary legislation; it recommends that “the District” prioritize passage of legislation allowing DOH to participate in the FBI’s NGI Rap Back.

DOH’s NBCP program manager submitted quarterly reports to CMS that, for the most part, accurately communicated DOH’s failure to make progress toward implementing the rap back requirement. In October 2015, an HRLA senior manager requested an extension of \$599,167 of unobligated funds “to complete and graduate from the National Background Check Program,” then wrote to CMS in March 2017 that DOH “has successfully implemented all the requirements” of the grant.

DOH’s failure to implement the rap back requirement, given the 6-year grant period and nearly \$3 million in federal funds, missed an opportunity to successfully leverage non-District resources. Furthermore, the inconsistent narratives that DOH communicated to CMS regarding the District’s progress toward implementing rap back represent a risk to the integrity of DOH operations, and expose the need for improved processes and mechanisms within DOH’s grants management function. DOH leadership should ensure that the agency complies with both fiscal and programmatic requirements, and have confidence that information reported to external oversight entities, such as CMS, is accurate.

SUMMARY OF RECOMMENDATIONS

Therefore, we recommend that the Director of DOH:

- (1) Develop an implementation plan that identifies milestone dates and assigns specific responsibilities within DOH for obtaining the legislative authority, cooperation from other District entities (e.g., MPD), and any additional technology and resources needed for DOH to fully participate in FBI NGI Rap Back.

Agree _____ Disagree X

Excerpt from DOH's August 2017 Response, As Received:¹³ *The implementation of Rap Back in the District of Columbia is dependent upon the designated State Identification Bureau, the Metropolitan Police Department, seeking legal authority to receive, retain and store fingerprint images. To date, that has not occurred.*

OIG Comment: The OIG disagrees with DOH's assertion (see the second page of Appendix C) that "[w]ithout MPD, as the designated [State Identification Bureau], serving as a Submitting Entity with legal authority to receive, retain and store fingerprint images, DOH could not implement the Rap Back during the grant period nor can it attempt to do so...."

First, in a January 2014 update provided to the OIG, DOH summarized a meeting it held with MPD and agents from the Federal Bureau of Investigation. DOH's Chief Operating Officer wrote: "[T]he FBI agents noted that legislation would be needed from the District to retain fingerprints submitted directly by MPD **or** [emphasis added] a 'channeler' (contractor) of DOH. The FBI's information gave merit that MPD could be omitted in the process with a channeler's services in use."

Also, the October 2014 report from American University's Washington College of Law states that "[b]ased on interviews with MPD and DOH officials ..., the most likely approach would be to designate MPD as the submitter. MPD and DOH have both expressed interest in participating in NGI Rap Back,¹¹ and their combined support for the legislation may help its passage. Channelers, however, can also be authorized as submitters.¹² To make the legislation as flexible as possible, the DC Council should allow MPD *or* [emphasis included] a DOH-approved channeler to submit fingerprints to FBI. This flexibility could allow DOH and MPD to participate in NGI Rap Back on their own timelines."¹⁴

¹³ The full text of DOH's response to the draft report is Appendix C.

¹⁴ MATTHEW W. PIERCE, A REPORT ON THE HEALTH IMPLICATIONS OF THE DISTRICT OF COLUMBIA'S CRIMINAL BACKGROUND CHECK PROGRAM FOR LICENSED HEALTH PROFESSIONALS AND UNLICENSED EMPLOYEES WITH DIRECT PATIENT ACCESS 13-14 (2014).

The OIG will also refer this report to the Council of the District of Columbia's Committee on the Judiciary and Public Safety, as they oversee the Metropolitan Police Department. Any legislative impediments can be addressed jointly between the Council Committees overseeing DOH and MPD.

- (2) Work with the Council of the District of Columbia's Committee on Health to introduce and enact legislation necessary for DOH to fully implement rap back capability.

Agree _____ Disagree X

Excerpt from DOH's August 2017 Response, As Received: It is DOH's position that, given its positive benefit on public safety, "Rap Back" should be a District-wide initiative and led by the MPD, the State Identification Bureau. Rap Back not only reduces duplicative fingerprinting, but also provides added security to residents and visitors of the District. Until then and as an alternative to Rap Back, DOH has been aggressively pursuing a different approach that is nearly as effective and much less expensive to the District.

OIG Comment: Within 30 days of publication of this report, please provide the OIG with an overview of the alternative approach to rap back that the DOH has been pursuing.

- (3) Identify, document, and implement improvements to grant oversight and progress reporting mechanisms that (a) provide senior DOH leadership with greater visibility into DOH's compliance with grant terms, and (b) promote accountability and a shared awareness of grant compliance information being reported outside the agency.

Agree X Disagree _____

Excerpt from DOH's August 2017 Response, As Received: The Department of Health is a strong proponent of continuous quality improvement and doing whatever necessary to mitigate risk to the District. The agency has begun to review its protocol for current and future grant awards with the goal of ensuring full compliance and transparency.

- (4) Ask CMS whether (a) DOH should submit an amended grant closeout report to correct inaccuracies in the original report, and (b) DOH could be subject to penalty or other corrective action due to its failure to comply with the grant's rap back requirement.

Agree X Disagree _____

Excerpt from DOH's August 2017 Response, As Received: On August 15, 2017, DOH reached out to CMS to ask: (a) whether DOH should submit an amended grant closeout report to correct inaccuracies in the original report, and (b) if DOH could be subject to penalty or other corrective action due to its failure to comply with the grant's Rap Back requirement. Their response is still pending.

OIG Comment: Please provide the OIG with a copy of CMS's response when you receive it.

APPENDIX A. OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the inspection were to: 1) identify how the DOH allocated grant funds during the period of the grant; 2) determine whether CBC program initiatives and process improvements funded by the grant have been fully implemented; 3) assess whether any implementation problems exist, and, if so, whether the DOH has an adequate plan for addressing them; and 4) determine whether internal controls exist within the DOH to minimize risk.

The scope of this inspection included DOH's expenditure of grant funds during the period from December 31, 2010, through December 30, 2016. It also included the status, at the end of the grant, of the DOH CBC program initiatives and process improvements that were intended to be funded by the CMS grant funds.

The team interviewed four DOH and MPD employees and conducted a conference call with employees of the Federal Bureau of Investigation (FBI). The team also reviewed pertinent District laws and regulations; DOH performance and budget oversight testimony; CMS grant criteria and requirements; grant-specific application documentation submitted by DOH to CMS; federal financial reports; quarterly program reports from DOH to CMS; FBI NGI program information; and emails.

Our inspection was conducted in accordance with standards established by the Council of the Inspectors General on Integrity and Efficiency. As a matter of standard practice, our inspections pay particular attention to the quality of internal control.¹⁵

¹⁵ "Internal control" is defined by the U.S. Government Accountability Office (GAO) as comprising "the plans, methods, policies, and procedures used to fulfill the mission, strategic plan, goals, and objectives of the entity" and is not one event, but a series of actions that occur throughout an entity's operations. Furthermore, internal control is a process that provides reasonable assurance that the objectives of an entity will be achieved, serves as the first line of defense in safeguarding assets, and is an integral part of the operational processes management uses to guide its operations. U.S. GOVERNMENT ACCOUNTABILITY OFFICE, STANDARDS FOR INTERNAL CONTROL IN THE FEDERAL GOVERNMENT 5-6, GAO-14-704G (Sept. 2014).

APPENDIX B. ACRONYMS AND ABBREVIATIONS

CMS	Centers for Medicare and Medicaid Services
DOH	Department of Health
FBI	Federal Bureau of Investigation
FY	Fiscal Year
HRLA	Health Regulation and Licensing Administration
LTC	Long Term Care
MPD	Metropolitan Police Department
NBCP	National Background Check Program
NGI	Next Generation Identification
OIG	Office of the Inspector General

APPENDIX C. DOH RESPONSE TO DRAFT REPORT



Government of the District of Columbia
Department of Health



Office of the Director

August 18, 2017

Daniel W. Lucas
Inspector General
Office of the Inspector General
717 14th Street, NW
5th Floor
Washington, DC 20005

Dear Mr. Lucas:

Thank you for the Office of the Inspector General's August 10, 2017 draft report entitled *Inspection of the Health Regulation and Licensing Administration's Use of Federal Grant Funds for Criminal Background Checks of Long-Term Care Employees (OIG Project No. 17-I-##HC)*. Please find the Department of Health's response below.

In 2010, the District was awarded a grant by the Centers for Medicare and Medicaid Services (CMS) with a requirement to conduct background checks for all prospective long term care employees being hired into positions with direct patient access. The District's background check process was to include implementation of "Rap Back" as a requirement of the CMS grant.

To implement Rap Back requires that the participating state and federal agencies and all participating entities have authority¹:

1. To submit the fingerprints to Next Generation Identification (NGI) Rap Back Service;
2. For the fingerprints to be retained by NGI; and,
3. For the fingerprints to be searched by future submissions to the NGI system and appropriate responses sent to Submitting and Subscribing Entities. These future searches include latent fingerprint searches.

Additionally, only a State Identification Bureau (SIB) or Federal Bureau of Investigation (FBI) NGI program can serve as a repository for such fingerprint images. In the District of Columbia, the recognized SIB is the Metropolitan Police Department (MPD).² Non-enforcement agencies, such as the Department of Health, can only subscribe to Rap Back service but cannot serve as a SIB by receiving and retaining images.

OIG Found that DOH Did Not Implement a Key Requirement of the Grant: Development and Testing of a Rap Back System

Since receiving the Notice of Grant Award in 2010, DOH aggressively pursued all avenues to ensure full agency compliance. When the OIG performed its Special Evaluation of the District of Columbia National Background Check Program (DC NBCP) in September 2013, though successful in achieving most all grant requirements at that point, DOH was transparent in disclosing to the OIG obstacles the agency faced to develop and test Rap Back. Prior to and subsequent to the Evaluation, DOH persistently pursued

¹ Next Generation Identification Program Policy and Implementation Guide - <http://www.search.org/files/pdf/NGIRapBackNon-CriminalJusticePolicyandImplementationGuide--Version2-1.pdf>
² State Identification Bureau (SIB) - <https://www.fbi.gov/services/cjis/identity-history-summary-checks/state-identification-bureau-listing>

APPENDIX C. DOH RESPONSE TO DRAFT REPORT

collaboration with our sister District agency, the Metropolitan Police Department (MPD). DOH's efforts to overcome these obstacles are well documented and were communicated to both, the OIG and CMS.

As the OIG's aware, since November 2011, DC NBCP began reaching out to the MPD apprising them that DOH was a recipient of a federal grant requiring the health agency to subscribe to and participate in the NGI Rap Back Service. At that time, MPD advised the DOH that it did not have the legal authority to retain images and serve as the repository of the images. In subsequent meetings, and in writing, DOH offered MPD financial, technical and third-party consulting support to encourage them to become a Submitting Entity³ for the District.

For example, cognizant of the Rap Back implementation challenges faced by DOH, in March 2014, FBI's NGI Program Management Analyst reached out to MPD via email to facilitate and stated:

"The DOH is very interested in participation in FBI's Rap Back Service. However, they are dependent upon DC participating in Rap Back. We know the hurdles that are in front of DC to become involved as far as legislation and personnel, but the DOH is hoping they can provide some resources to alleviate those issues. They are offering anything they can to assist the state with preparedness. You may want to reach out to them directly to identify what assistance they will provide to help you toward participation in FBI Rap Back."

To further illustrate DOH's proactive efforts to pursue Rap Back, the agency's legal counsel took the initiative to draft and forward proposed legislation to MPD.

In short, the District of Columbia National Background Check Program (DC NBCP) could not participate in the NGI-Rap Back Service because its SIB was devoid legal authority to receive, retain and serve as the state repository for fingerprint images.

Without MPD, as the designated SIB, serving as a Submitting Entity with legal authority to receive, retain and store fingerprint images, DOH could not implement the Rap Back during the grant period nor can it attempt to do so in the post-grant award period.

In OIG's draft report, it makes mention of the various efforts over a period of several years that DOH made towards Rap Back implementation and the numerous attempts that it made towards outreach and partnership with MPD, but the conclusion seems to assign responsibility and blame primarily towards DOH.

OIG Recommendations:

(1) Develop an implementation plan that identifies milestone dates and assigns specific responsibilities within DOH for obtaining the legislative authority, cooperation from other District entities (e.g., MPD), and any additional technology and resources needed for DOH to fully participate in FBI NGI Rap Back.

Agree

Disagree X

DOH Response #1: The implementation of Rap Back in the District of Columbia is dependent upon the designated State Identification Bureau, the Metropolitan Police Department, seeking legal authority to receive, retain and store fingerprint images. To date, that has not occurred.

³ Submitting Entity or Submitter: refers to the SIB, Federal Submitting Agency, or Authorized CHRI Contractor submitting fingerprints and Rap Back transactions for Subscribing Entities. All NGI Rap Back transactions must come to NGI through an authorized Submitting Entity. In some instances the Submitting Entity may also be the Subscribing Entity.

