



United States General Accounting Office  
Washington, DC 20548

Health, Education, and  
Human Services Division

B-285112

June 30, 2000

The Honorable John L. Mica  
Chairman, Subcommittee on Criminal Justice,  
Drug Policy, and Human Resources  
Committee on Government Reform  
House of Representatives

Subject: Medicare: Contractors Screen Employees but Extent of Screening Varies

Dear Mr. Chairman:

In fiscal year 1999, the Health Care Financing Administration's (HCFA) claims administration contractors managed and processed more than \$170 billion in fee-for-service Medicare claims. Several of these contractors have recently settled cases involving allegations of improper screening, processing, and payment of Medicare claims as well as falsification of reports and documentation.<sup>1</sup> Because of your continued concern about the potential vulnerability of federal funds to fraud, waste, and abuse by federal contractors, you asked us to examine the use of employee screening measures by Medicare claims administration and program safeguard contractors.<sup>2</sup> Specifically, you asked us to identify (1) the requirements HCFA has placed on Medicare contractors to conduct employee background checks, (2) the steps Medicare contractors are taking to ensure that employees are trustworthy in handling Medicare funds and sensitive information, and (3) the costs to Medicare contractors of conducting background checks or using other employee screening measures.<sup>3</sup>

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<sup>1</sup>See Medicare Contractors: Despite Its Efforts, HCFA Cannot Ensure Their Effectiveness or Integrity (GAO/HEHS-99-115, July 14, 1999) and Medicare: Improprieties by Contractors Compromised Medicare Program Integrity (GAO/OSI-99-7, July 14, 1999).

<sup>2</sup>For purposes of this letter, employee screening measures generally refer to activities employers engage in to investigate prospective employees and monitor the activities of current employees. Employee screening measures include all background checks as well as employee drug tests.

<sup>3</sup>For purposes of this letter, employee background checks generally refer to activities employers engage in to investigate prospective employees before extending an offer of employment or soon thereafter. These include employment and education verifications, reference checks, credential validations, criminal background checks, credit checks, and government debarment database reviews.

To address these questions, we examined the statutes, regulations, guidance, and contractual language governing the relationship between HCFA and its Medicare claims administration and program safeguard contractors. We also spoke to officials from HCFA who are responsible for managing the agency's Medicare contractors. To obtain information regarding the steps Medicare contractors are taking to screen their employees, we surveyed staff from a random sample of ten of the Medicare claims administration contractors. We also interviewed staff from two of the twelve program safeguard contractors, choosing two contractors that do not also serve as claims administration contractors. We performed this work between December 1999 and June 2000 in accordance with generally accepted government auditing standards.

In brief, HCFA expects its contractors to exercise sound business judgment when they make hiring decisions. As a result, the agency does not specifically require its Medicare claims administration and program safeguard contractors to conduct background checks or undertake other employee screening measures. However, HCFA does advise its claims administration contractors to adopt personnel selection safeguards, specifically employment verification and applicant certifications. The agency also requires its claims administration contractors to obtain fidelity bonds for certain employees. In addition, both Medicare claims administration and program safeguard contractors are required to collect and submit to HCFA conflict of interest information.

The Medicare claims administration and program safeguard contractors we surveyed screen their employees as a common business practice without specific requirements from HCFA to do so. Nearly all the contractors in our sample said that they perform typical screening measures, such as employment and education verification, reference checking, and credential validation. Most of the claims administration contractors we spoke to also reported that they perform more extensive screening measures, such as criminal background checks and drug tests. In contrast, the two program safeguard contractors we surveyed indicated that they do not conduct criminal background checks or require drug testing unless such requirements are included in their contracts. Both claims administration and program safeguard contractors reported that they rarely use less traditional screening measures, such as credit checks and government debarment and exclusion database reviews.

The costs associated with employee screening vary by the complexity and urgency associated with each screening measure. However, the Medicare contractors we surveyed could not calculate the total cost of their employee screening measures. The fact that employee screening efforts are conducted and continue to be recognized as a common business practice within the Medicare contractor community suggests that such measures are considered worthwhile.

## BACKGROUND

The Medicare program is the nation's largest insurer, covering nearly 40 million beneficiaries at a total cost of more than \$200 billion. More than 82 percent of the beneficiaries elect to enroll in traditional Medicare, which pays claims on a fee-for-service basis. In fiscal year 1999, traditional, fee-for-service Medicare accounted for more than \$170 billion of the program's total expenditures.

HCFA administers its Medicare fee-for-service program with the help of contractors. Medicare claims administration contractors, called intermediaries or carriers, depending on the type of claims they process, pay an average of more than \$700 million for about 3.5 million fee-for-service claims each business day. Intermediaries, selected from among organizations nominated by provider associations, process and review claims for institutions such as hospitals and skilled nursing facilities. Carriers, selected by the Secretary of the Department of Health and Human Services (HHS), process and review claims submitted by other health care providers, such as physicians, laboratories, and suppliers of durable medical equipment.

Medicare claims administration contracts have features that distinguish them from typical federal contracts. Medicare's authorizing statute, the Social Security Act, gives the Secretary of HHS contracting authority for Medicare claims administration contracts outside the Competition in Contracting Act of 1984 (CICA) and its implementing regulations, known as the Federal Acquisition Regulation (FAR). For example, CICA permits federal agencies to enter into cost reimbursement or fixed price contracts. In addition, there is a presumption of full and open competition under CICA. In contrast, the Social Security Act sets qualification requirements for Medicare part B carriers and establishes a process by which organizations are nominated to be part A intermediaries by associations representing health care providers. In effect, these exceptions limit the pool of contractor candidates to insurance companies. The Social Security Act also provides for cost reimbursement under which contractors are reimbursed for the necessary and proper costs of carrying out Medicare activities. Finally, the act does not require that Medicare claims administration contractors be selected competitively. As a result, HCFA has continued to contract with the same entities. In fact, many of the claims administration contractors have served the Medicare program since the program's inception in 1966.

Program safeguard contracts are more in line with the general principles of CICA and FAR. Under the contracting provisions of the Medicare Integrity Program, HCFA has greater flexibility in selecting from among competing eligible entities for the performance of Medicare program safeguard activities.<sup>4</sup> Program

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<sup>4</sup>The Medicare Integrity Program was established by the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, § 202, 42 U.S.C. § 1395ddd (1999).

safeguard contractors protect the integrity of the Medicare program by carrying out activities that include reviewing providers' claims, auditing providers' cost reports, and performing Medicare secondary payer reviews to recover erroneous program payments. These contractors can be paid under a variety of pricing arrangements, including cost reimbursement, firm fixed price, and time and materials. In addition, program safeguard contracts are awarded competitively; however, HCFA can renew these contracts indefinitely without competition.

HCFA REQUIRES CONTRACTORS  
TO IMPLEMENT SAFEGUARDS  
OTHER THAN BACKGROUND CHECKS

According to HCFA officials responsible for managing the agency's contractors, HCFA expects its Medicare claims administration and program safeguard contractors to be responsible in their hiring practices and does not specifically require them to conduct background checks or use other employee screening measures. However, in the manuals HCFA provides to its claims administration contractors, HCFA advises them to implement personnel selection safeguards, such as employment verification and applicant certifications. These manuals also provide guidance to claims administration contractors regarding the requirements HCFA includes in their contracts concerning (1) the retention of a fidelity bond indemnifying Medicare funds from loss and (2) the collection and submission of conflict of interest information. Further, in the contracts HCFA negotiates with its program safeguard contractors, the agency includes a requirement for the disclosure and mitigation of conflicts of interest.

The manuals HCFA publishes to provide guidance to its claims administration contractors suggest that they implement minimum safeguards regarding personnel selection. These safeguards include obtaining authorization to verify the past employment record of prospective employees. By obtaining such authorization and verifying an applicant's employment history, claims administration contractors will be able to confirm employment dates and job descriptions and may be better able to identify discrepancies on an application before extending an offer of employment. The HCFA manuals also refer to applicant certifications, recommending that "the employment application . . . provide for the applicant's signed acknowledgement that falsification of his application could be cause for dismissal at any time after employment."<sup>5</sup>

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<sup>5</sup>HHS, HCFA, Intermediary Manual, rev. 79, sec. 2920.3(A), "Intermediary Minimal Safeguards," ch. XI, part 2 (Baltimore, Md.: HCFA, 1974), and Carriers Manual, rev. 16, sec. 5210.3(A), "Carrier Minimum Safeguards," ch. III, part 2 (Baltimore, Md.: HCFA, 1974).

Contractors With Access to Medicare  
Funds Must Indemnify Losses

Because of claims administration contractors' direct access to Medicare funds as claims processors and payers, HCFA requires them to obtain fidelity bonds. Fidelity bonds guarantee the return of Medicare funds taken by employee embezzlement, theft, and other misdeeds. HCFA requires its claims administration contractors to have bonds covering, at a minimum, employees who certify claims for payment as well as employees who disburse funds in payment of claims. When underwriting fidelity bond coverage, issuing institutions often require information from applicants, including information concerning employee screening measures and internal controls. As a result, HCFA's fidelity bond requirement for its claims administration contractors may indirectly impose a requirement on these contractors to engage in some degree of employee screening.

HCFA Requires Contractors to  
Identify Conflicts of Interest

In its contracts, HCFA requires both its Medicare claims administration and program safeguard contractors to submit data detailing any organizational and employee conflicts of interest. This requirement ensures that HCFA and its Medicare contractors are aware of any conflicts that may compromise a contractor's integrity. HCFA's conflict of interest requirement works to prevent Medicare contractors and their employees from using their positions to further their private business interests and from accepting gifts or gratuities that may bias the award of Medicare subcontracts.

Using a questionnaire, claims administration contractors are required by contract to collect conflict of interest information from their employees. The information collected must include (1) the names of officers and certain employees who have received gifts, payment, or entertainment (other than what may be considered a reasonable common business courtesy) from people or companies doing business with the contractor involving Medicare funds and (2) the names of officers and certain employees who have outside employment in organizations receiving Medicare funds. This information must be compiled into a report, which the claims administration contractors submit annually to their HCFA Regional Office.

HCFA also includes a detailed conflict of interest requirement in the contracts that it negotiates with its program safeguard contractors. This requirement calls for the disclosure and mitigation of actual, apparent, and potential conflicts of interest that may negatively affect the perception of the integrity of the work the contractor performs. HCFA requires its program safeguard contractors to complete an Organizational Conflict of Interest Certificate when a proposal is first

submitted.<sup>6</sup> This document is later incorporated into the program safeguard contract as an attachment. The certificate must include a description of all the program safeguard contractor's business and contractual relationships or activities that could be considered conflicts as well as a plan to mitigate such conflicts. The contractor must also have a plan in place to monitor its compliance and the compliance of its subcontractors. Additionally, HCFA requires its program safeguard contractors to certify that all work performed under their contracts is free of unresolved conflicts of interest.

MEDICARE CONTRACTORS SCREEN  
THEIR EMPLOYEES, WITH SOME  
CONDUCTING EXTENSIVE SCREENING

Our survey of ten Medicare claims administration contractors and two program safeguard contractors suggests that Medicare contractors perform some form of employee screening as a common business practice, although HCFA does not specifically require this. Nearly all our survey respondents said that they use screening measures typical of the hiring process, such as employment and education verification, reference checking, and credential validation. Most of the claims administration contractors we surveyed reported that they routinely perform additional screening measures, such as criminal background checks and drug tests. The two program safeguard contractors we surveyed were less vigorous when it came to employee screening, often indicating that criminal background checks or drug tests would be conducted only if required by contract. Both claims administration and program safeguard contractors reported that they rarely use less traditional screening measures such as credit checks and government debarment database reviews.

Traditional Employee Screening  
Measures Are Widely Used

Generally, employers carry out a variety of screening measures to ensure that applicants meet the necessary qualifications for a given job. Confirming an applicant's past employment history and verifying an applicant's academic record are common checks used to assist an employer in making an informed hiring decision. Reference checking is another screening measure employers often use to obtain information about prospective employees. It is also common for employers to validate a job applicant's credentials or licenses to ensure that the applicant satisfies the required job qualifications.

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<sup>6</sup>HCFA also requires a certificate to be submitted (1) when its contracting officers request revisions in the certificate, (2) as part of a compliance audit performed by an independent auditor, and (3) 45 days before there is any change in the information previously submitted.

All our survey respondents, including both claims administration and program safeguard contractors, told us that they verify an applicant's past employment, while eight of the eleven contractors that responded indicated that they check an applicant's education. All eleven of the claims administration and program safeguard contractors that responded said they check an applicant's references, although one contractor indicated that it limits such checks to leadership positions. In addition, nearly all our survey respondents, including both claims administration and program safeguard contractors, reported that they validate the credentials of job applicants.

#### Claims Administration Contractors Conduct Additional Screening

Criminal background checks and drug testing are additional tools employers use to investigate the background of prospective employees. Because they are more intrusive, these tools are often limited to particular types of positions to protect job applicants and current employees from discrimination and abuse. A little more than half of the claims administration contractors we surveyed said that they require criminal background checks and drug testing for all employees. The program safeguard contractors we surveyed did not routinely conduct either screening measure.

Private employers are generally not given access to law enforcement criminal databases, although these employers can access criminal conviction records. Such records must often be obtained county by county, requiring a trip to each county courthouse and a search of the records each court maintains. Although some states have statewide databases for public use, they are commonly recognized to be inaccurate and incomplete, serving merely as depositories for the counties that choose to participate.

Despite these limitations, most of the claims administration contractors we surveyed reported that they conduct some kind of criminal background check as a regular part of their hiring process. Some of these claims administration contractors indicated that they limit the use of criminal background checks, checking only certain positions or conducting checks only if applicants respond on an application or an affidavit that they have been convicted of a crime. As insurance companies, Medicare claims administration contractors may be inquiring about past criminal convictions and conducting criminal background checks to comply with the insurance fraud provisions of the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA).<sup>7</sup> Under this law, insurance companies can be fined or their officers can be imprisoned if they employ someone who has been convicted of a felony that involves dishonesty or a breach

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<sup>7</sup>18 U.S.C. § 1033.

of trust.<sup>8</sup> Although HCFA does not require criminal background checks, Medicare can indirectly benefit from the VCCLEA provisions and its claims administration contractors' compliance with them.<sup>9</sup> This occurs when contractors conduct criminal background checks as a standard practice across the company, checking employees who work on the private side of their business as well as those working on Medicare claims processing.

Preemployment drug testing is yet another screening measure employers use to help inform their hiring decisions and avoid potential problems, such as workplace violence, accidents, absenteeism, poor productivity, and high health insurance claims. Many states have enacted laws permitting particular kinds of drug testing, job applicant testing being the most common. Other drug testing may include testing based on reasonable suspicion, fitness for duty, completion of a drug rehabilitation program, and on-the-job injuries or accidents. Some state laws also permit testing employees randomly. Although some states actually require employers to conduct drug tests for specific purposes, most states that have enacted drug testing laws give employers the option of implementing testing programs that meet certain conditions.<sup>10</sup> Some of these conditions include the collection and testing of samples by approved laboratories, the requirement that test results be kept confidential, and the confirmation or verification of positive test results. Many states also require employers to notify employees and applicants of their drug testing policy by giving them a written statement that describes the policy in detail. (See enclosures I and II for additional information concerning state laws related to drug testing.)

Six of the ten claims administration contractors surveyed reported that they require all applicants and employees to be tested for illegal drugs, while an additional three are considering implementing a drug testing program. Both program safeguard contractors indicated that they do not require preemployment drug testing. One of these contractors added that it notifies its employees that

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<sup>8</sup>VCCLEA penalizes insurance companies that hire individuals with criminal felony convictions involving dishonesty, breach of trust, or insurance fraud. Section 1033 (e)(1)(B) of title 18 states that "any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation" of any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section "shall be fined as provided in this title or imprisoned not more than 5 years, or both."

<sup>9</sup>Claims administration contractors act as payers rather than insurers when serving the Medicare program. VCCLEA applies to employers engaged in the business of insurance, which is defined as including the writing of insurance or the reinsuring of risk. See 18 U.S.C. § 1033(f)(1) and (2).

<sup>10</sup>At least eleven states (Alabama, Arkansas, Florida, Georgia, Idaho, Mississippi, Ohio, South Carolina, Tennessee, Virginia, and Washington) require employers to conduct certain kinds of drug tests in order to qualify for workers' compensation insurance premium discounts.



random drug testing can be implemented at any time. According to our survey respondents, very few applicants or employees have tested positive for drugs. However, most of the contractors we surveyed do not track the actual number of individuals tested or the results of those tests and, therefore, could not provide us with data. One claims administration contractor did have such data, reporting three cases of positive test results of the 157 tests conducted in 1999.

The Use of Other Employee Screening Measures Is Less Prevalent

Credit reports and government debarment and exclusion databases are also sources of information regarding prospective employees. Credit reports, like criminal conviction records, are sensitive and can be a discriminatory basis for hiring decisions if the inquiry is not related to the required job qualifications. Government debarment and exclusion databases assist federal agencies and their contractors in identifying individuals or entities that have been debarred from contracting with the federal government. In addition, claims administration contractors should ensure that job applicants have not been excluded from the Medicare or Medicaid programs because, if they fail to do so, they risk exposing themselves to liability for civil monetary penalties.

Only four of the ten claims administration contractors we surveyed review an applicant's credit report when making hiring decisions. According to our survey respondents, this review is often limited to upper level management positions or positions in which an employee may have access to funds. Only two of the four claims administration contractors that conduct credit checks indicated that such checks are run on all job applicants. Neither program safeguard contractor reported that it checks an applicant's credit report. Only five of the eleven claims administration and program safeguard contractors that responded reported that they check government debarment and exclusion databases.

THE COSTS OF SCREENING MEASURES VARY BY COMPLEXITY AND RESPONSE TIME

According to many of the contractors we surveyed, the complexity and urgency associated with a particular screening measure dictate its cost. Consequently, expedited results and comprehensive examinations increase the price of criminal background checks and drug tests. Because the Medicare contractors we surveyed did not collect data concerning their use of employee screening measures, we could not estimate the overall cost to the Medicare program if these or other screening measures were required.

Our survey respondents indicated that the cost of a criminal background check could range between \$10 and \$125, with the checks that involve multicounty

reviews or prompt responses being the most expensive. The price range for drug tests was identified as being between \$30 and \$90, with the price of retests falling on the high end of this range. Just as with criminal background checks, more comprehensive drug screens as well as expedited test results would increase the price of the drug test.

The Medicare claims administration and program safeguard contractors we surveyed were not able to calculate the total cost of their employee screening measures. This was partly because of the contractors' lack of data tracking the number and use of criminal background checks and drug tests as well as the contractors' inability to isolate the costs of such screening measures from their overall human resources budgets. The fact that employee screening efforts are conducted and continue to be recognized as a common business practice suggests that Medicare contractors consider such measures to be worthwhile.

#### AGENCY COMMENTS

In commenting on this correspondence, HCFA stressed its continuing commitment to protect the Medicare trust fund from fraudulent and abusive practices and activities. The agency expressed an intention to continue to evaluate the effectiveness of its mechanisms to ensure that only competent and trustworthy persons are selected to work for its Medicare contractors. HCFA agreed that it does not require specific criminal background checks and drug tests in its program safeguard contracts. However, HCFA said it used various tools, such as the debarred, suspended, and sanctions lists and the Fraud Investigation Database, to screen key contractor personnel. HCFA also said it will review its program safeguard contract provisions to ensure that employees' backgrounds are adequately investigated. HCFA provided technical comments as well that we incorporated where appropriate.

In its comments, HCFA expressed a desire to obtain access to the Federal Bureau of Investigation's National Crime Information Center, a nationwide criminal justice information system that the agency could use to run criminal background checks, not only on its contractor personnel but also possibly on providers and their employees. According to HCFA, obtaining this access would require legislative change, but it would provide the agency with another tool to ensure that the agency is doing business with qualified and credible entities. Because a review of this proposal was not within the scope of our work, it was not addressed in this correspondence.

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We are sending copies of this report to the Honorable Nancy-Ann Min DeParle, Administrator of HCFA, and other interested congressional committees. We will also make copies available to others on request.

B-285112

Please contact me at (312) 220-7600 if you or your staff have any questions about this letter. Major contributors to this correspondence were Sheila Avruch and Erin Kuhls.

Sincerely yours,

A handwritten signature in black ink that reads "Leslie G. Aronovitz". The signature is written in a cursive style with a large initial 'L' and 'A'.

Leslie G. Aronovitz  
Associate Director, Health Financing and  
Public Health Issues

Enc. - 2

**DRUG TESTS THE 50 STATES PERMIT OR REQUIRE**

State	Job applicant	Reasonable suspicion	Fitness for duty	Completion of rehabilitation program	On-the-job injury or post-accident	Random
<b>Alabama</b>	<b>R<sup>a</sup></b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	X
<b>Alaska</b>	X	X	X		X	X
<b>Arizona<sup>b</sup></b>	X	X	X		X	X
<b>Arkansas</b>	<b>R<sup>a</sup></b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	X
<b>California<sup>c, d, e</sup></b>	<b>X<sup>a</sup></b>	X	X			
<b>Colorado<sup>c</sup></b>	<b>X<sup>a</sup></b>					
<b>Connecticut</b>	X	X		X		<b>X<sup>f</sup></b>
<b>Delaware<sup>c</sup></b>						
<b>District of Columbia<sup>c</sup></b>						
<b>Florida<sup>b, e</sup></b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>		X
<b>Georgia<sup>e</sup></b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	X
<b>Hawaii<sup>g</sup></b>	X					
<b>Idaho<sup>g</sup></b>	X	X	X	X	X	X
<b>Illinois<sup>c, e</sup></b>	X			X		
<b>Indiana<sup>c</sup></b>	X	X	X	X	X	X
<b>Iowa<sup>e</sup></b>	<b>X<sup>a</sup></b>	X		X	X	X
<b>Kansas<sup>c, e</sup></b>	X	X	X	X	X	X
<b>Kentucky<sup>c</sup></b>						

State	Job applicant	Reasonable suspicion	Fitness for duty	Completion of rehabilitation program	On-the-job injury or post-accident	Random
<b>Louisiana<sup>e</sup></b>	X	X		X	X	
<b>Maine<sup>g</sup></b>	X <sup>a</sup>	X		X		X <sup>f</sup>
<b>Maryland<sup>e</sup></b>	X					
<b>Massachusetts<sup>c</sup></b>	X <sup>h</sup>					X <sup>h</sup>
<b>Michigan<sup>c</sup></b>						
<b>Minnesota<sup>g</sup></b>	X <sup>a, b</sup>	X	X	X	X	X <sup>f</sup>
<b>Mississippi<sup>g</sup></b>	X <sup>a</sup>	X	X	X		X
<b>Missouri<sup>c</sup></b>						
<b>Montana<sup>i</sup></b>	X	X		X	X	X <sup>b</sup>
<b>Nebraska</b>		X				
<b>Nevada<sup>c, e</sup></b>						
<b>New Hampshire<sup>c</sup></b>						
<b>New Jersey<sup>c</sup></b>	X					
<b>New Mexico<sup>c, e</sup></b>						
<b>New York<sup>c</sup></b>	X	X	X	X	X	X
<b>North Carolina<sup>g</sup></b>	X					
<b>North Dakota<sup>c</sup></b>						
<b>Ohio<sup>b, e</sup></b>	<b>R</b>	<b>R</b>		<b>R</b>	<b>R</b>	<b>R<sup>j</sup></b>
<b>Oklahoma<sup>g</sup></b>	X <sup>a</sup>	X	X	X	X	X
<b>Oregon<sup>c, e</sup></b>	X					

State	Job applicant	Reasonable suspicion	Fitness for duty	Completion of rehabilitation program	On-the-job injury or post-accident	Random
<b>Pennsylvania</b> <sup>c</sup>						
<b>Rhode Island</b> <sup>g</sup>	X <sup>a</sup>	X				
<b>South Carolina</b> <sup>c, e</sup>						<b>R</b>
<b>South Dakota</b> <sup>c, e</sup>						
<b>Tennessee</b> <sup>g, e</sup>	<b>R</b> <sup>a</sup>	<b>R</b>	<b>R</b>	<b>R</b>	<b>R</b>	X
<b>Texas</b> <sup>c</sup>						
<b>Utah</b> <sup>b, e</sup>	X <sup>a</sup>	X	<b>R</b>		X	
<b>Vermont</b>	X <sup>k</sup>	X		X		
<b>Virginia</b> <sup>c</sup>						
<b>Washington</b> <sup>e</sup>	<b>R</b> <sup>a</sup>	X		<b>R</b>	<b>R</b>	X
<b>West Virginia</b> <sup>c</sup>		X	X			
<b>Wisconsin</b> <sup>c, e</sup>						
<b>Wyoming</b> <sup>c</sup>						

Note: X = permitted.

R = required in order to qualify for a workers' compensation insurance premium discount.

<sup>a</sup> An employer must extend an offer of employment before requiring an applicant to submit to drug testing.

<sup>b</sup> A drug testing policy must be applied equally to all employee classifications.

<sup>c</sup> No law addresses applicant or employee drug testing by private employers specifically. This information was derived from related state statutes and case law.

<sup>d</sup> California case law indicates that there are no California statutes that prohibit, or place general limitations on, employer-mandated drug testing. *Loder v. City of Glendale*, 927 P.2d 1200, 1211 (1997).

<sup>e</sup> State law refers to a drug testing policy or program for state and public employees, applicants for state and public positions, and state contractors.

<sup>f</sup> State law limits the use of random or arbitrary testing.

<sup>g</sup> Only drug test policies that meet all the requirements of state law are permissible (unless the testing is conducted pursuant to federal drug testing regulation).

<sup>h</sup> Massachusetts case law suggests that preemployment, “for cause,” and random testing are permissible. In addition, Massachusetts case law balances the general interest of businesses to protect the safety of their employees with the privacy interests of employees subject to random drug testing.

<sup>i</sup> State law regarding drug testing refers only to employees engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position for an employer.

<sup>j</sup> This kind of testing is required only for Level 2 and Level 3 testing programs.

<sup>k</sup> Applicant drug testing is permissible only if all the following conditions are met: (1) the applicant is extended a conditional offer of employment, (2) the applicant receives notice of the drug test, (3) the drug test is part of a physical exam, and (4) the test is administered consistent with state law requirements.

Source: The information in this table was compiled by searching a commercial electronic legal database and is limited by the search terms. In a few cases, we contacted the state agencies responsible for labor and employment issues to confirm the information, or lack of information, we discovered through the electronic search.

**FEATURES OF DRUG TESTING PROGRAMS**  
**STATES FIND ACCEPTABLE**

State	Written policy	Collection and testing procedures by approved laboratories	Confirm positive results	Confidentiality	Explain or refute test results	Results and refusal as basis for decision to dismiss or not to hire	Employer pays for testing	Workers' compensation insurance premium discounts
<b>Alabama</b> <sup>a, b, c</sup>	X	X	X	X	X		X	X
<b>Alaska</b> <sup>c</sup>	X	X	X	X	X	X	X	
<b>Arizona</b> <sup>d</sup>	X	X	X	X	X	X	X	
<b>Arkansas</b>	X	X	X	X	X	X	X	X
<b>California</b> <sup>e</sup>				X	X	X		
<b>Colorado</b> <sup>e</sup>								
<b>Connecticut</b>		X	X	X		X		
<b>Delaware</b> <sup>e</sup>								
<b>District of Columbia</b> <sup>e</sup>								
<b>Florida</b>	X	X	X	X	X	X	X	X
<b>Georgia</b> <sup>a, b, c</sup>	X	X	X	X	X		X	X
<b>Hawaii</b>	X	X	X <sup>f</sup>	X			X	
<b>Idaho</b>	X	X	X	X	X	X	X	X
<b>Illinois</b> <sup>e</sup>	X							
<b>Indiana</b> <sup>e</sup>	X							
<b>Iowa</b> <sup>a, b, c</sup>	X	X	X	X	X	g	X	
<b>Kansas</b> <sup>e</sup>		X		X				
<b>Kentucky</b> <sup>e</sup>								



State	Written policy	Collection and testing procedures by approved laboratories	Confirm positive results	Confidentiality	Explain or refute test results	Results and refusal as basis for decision to dismiss or not to hire	Employer pays for testing	Workers' compensation insurance premium discounts
<b>Louisiana</b>		X	X <sup>h</sup>	X	X	X	X <sup>h</sup>	
<b>Maine</b> <sup>a, i</sup>	X	X	X	X	X	g	X	
<b>Maryland</b>	X	X	X	X	X			
<b>Massachusetts</b> <sup>e</sup>		X <sup>j</sup>						
<b>Michigan</b> <sup>e</sup>								
<b>Minnesota</b>	X	X	X	X	X	g	X	
<b>Mississippi</b> <sup>a, b, c</sup>	X	X	X	X	X	X	X	X
<b>Missouri</b> <sup>e</sup>								
<b>Montana</b>	X	X	X	X	X	k	X	
<b>Nebraska</b>		X	X	X		X		
<b>Nevada</b> <sup>e</sup>								
<b>New Hampshire</b> <sup>e</sup>								
<b>New Jersey</b> <sup>e</sup>	X					X	X	
<b>New Mexico</b> <sup>e</sup>								
<b>New York</b> <sup>e</sup>				X		l		
<b>North Carolina</b>		X	X		X			
<b>North Dakota</b> <sup>e</sup>							X	
<b>Ohio</b> <sup>a, b, c, m</sup>	X	X	X	X				X <sup>n</sup>

State	Written policy	Collection and testing procedures by approved laboratories	Confirm positive results	Confidentiality	Explain or refute test results	Results and refusal as basis for decision to dismiss or not to hire	Employer pays for testing	Workers' compensation insurance premium discounts
<b>Oklahoma<sup>a</sup></b>	X	X	X	X	X	X	X	
<b>Oregon<sup>e</sup></b>		X	X					
<b>Pennsylvania<sup>e</sup></b>								
<b>Rhode Island</b>	X	X	X	X	X	<b>g</b>	X	
<b>South Carolina</b>	X	X		X				X
<b>South Dakota<sup>e</sup></b>								
<b>Tennessee</b>	X	X	X	X	X	X	X	X
<b>Texas<sup>e</sup></b>	X							
<b>Utah</b>	X	X	X	X		X	X	
<b>Vermont<sup>a</sup></b>	X	X	X	X	X	<b>g</b>		
<b>Virginia<sup>e</sup></b>		X	X					X <sup>o</sup>
<b>Washington<sup>a, b, c</sup></b>	X	X	X	X	X	<b>g</b>	X	X
<b>West Virginia<sup>e</sup></b>								
<b>Wisconsin<sup>e</sup></b>								
<b>Wyoming<sup>e</sup></b>								

Note: X = provision in state law.

<sup>a</sup> An employee assistance program or information detailing employee assistance providers or resources must be maintained.

<sup>b</sup> Employee substance abuse education is required.

<sup>c</sup>Supervisor training on detecting employee substance abuse, documenting and collaborating signs of employee substance abuse, and referring abusing employees to proper treatment providers is required.

<sup>d</sup>Compliance with state law regarding drug testing is voluntary.

<sup>e</sup>No law addresses employee or applicant drug testing by private employers specifically. This information was derived from related statutes and case law.

<sup>f</sup>Failure to adopt or adhere to the procedures identified invalidates the test result.

<sup>g</sup>The law says that an employer shall not take adverse employment action so long as the employee complies with the requirements of rehabilitation and successfully completes such rehabilitation.

<sup>h</sup>An employer may choose not to confirm a positive test result of a preemployment drug screen test and offer the job applicant the opportunity to pay for confirmation of that initial test.

<sup>i</sup>The Department of Labor must approve the employer's substance abuse policy.

<sup>j</sup>Massachusetts case law favors drug testing procedures that ensure accuracy and do not unreasonably interfere with an employee's privacy.

<sup>k</sup>No adverse action, including follow-up testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by the illegal use of controlled substances.

<sup>l</sup>Before taking adverse personnel actions, employers are encouraged to use employee leave of absence and required attendance at a rehabilitation program along with a last chance agreement requiring acceptable performance and attendance upon the employee's return.

<sup>m</sup>In addition to the employee assistance program, Level 2 drug-free workplace program employers are required to have established a referral relationship with an employee assistance services provider, and Level 3 drug-free workplace program employers are required to offer health care coverage to employees, which includes chemical dependency counseling and treatment services.

<sup>n</sup>Eligibility for the discount is limited to state fund employers.

<sup>o</sup>To be eligible for workers' compensation insurance premium discounts, an employer must institute a drug-free workplace program that satisfies the criteria established by the insurer.

Source: The information in this table was compiled by searching a commercial electronic legal database and is limited by the search terms. In a few cases, we contacted the state agencies responsible for labor and employment issues to confirm the information, or lack of information, we discovered through the electronic search.

(201020)