

March 2006

LONG-TERM CARE FACILITIES

Information on Residents Who Are Registered Sex Offenders or Are Paroled for Other Crimes





Highlights of [GAO-06-326](#), a report to congressional requesters

Why GAO Did This Study

Approximately 23,000 nursing homes and intermediate care facilities for people with mental retardation (ICF-MR) receive federal Medicare and Medicaid funding. Media reports have cited examples of convicted sex offenders residing in long-term care facilities and, in some cases, allegedly abusing other residents. Given concerns about resident safety, GAO was asked to assess (1) the prevalence of sex offenders and others on parole for non-sex offenses living in long-term care facilities and the extent of any abuse they may have caused, (2) the legal requirements for notifying facilities and others when offenders are residents, and (3) the extent to which facilities have different supervision and separation requirements for offenders. GAO analyzed a national database for sex offenders and analyzed state databases in a sample of eight states for sex offenders and parolees.

What GAO Recommends

GAO recommends that the Federal Bureau of Investigation (FBI) assess the completeness of the National Sex Offender Registry (NSOR), including state submission rates, and evaluate options to increase its comprehensiveness. The Department of Justice (DOJ) commented that these recommendations are unnecessary because of efforts already in place. GAO recognizes these efforts but maintains that the recommendations remain valid.

www.gao.gov/cgi-bin/getrpt?GAO-06-326.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Kathryn G. Allen at (202) 512-7118 or allenk@gao.gov.

LONG-TERM CARE FACILITIES

Information on Residents Who Are Registered Sex Offenders or Are Paroled for Other Crimes

What GAO Found

By analyzing the FBI's NSOR, which is a compilation of sex offender registries submitted by all states, GAO identified about 700 registered sex offenders living in nursing homes or ICFs-MR during 2005. Most identified sex offenders were male, under age 65, and living in nursing homes, and represented 0.05 percent of the 1.5 million residents of nursing homes and ICFs-MR. About 3 percent of nursing homes and 0.7 percent of ICFs-MR housed at least 1 identified sex offender during 2005. However, these estimates are understated due to data limitations. For example, because of a lack of resources or an inability to comply with certain FBI reporting requirements, states have had varying degrees of difficulty submitting their full state registries to the NSOR. While the FBI does not track NSOR submission rates, GAO compared sex offender registry data from seven of the eight states reviewed to NSOR data and found that the NSOR data included about 57 percent of sex offenders registered in these states, with submission rates ranging from 1 percent to 83 percent. Because a national data source on parolees that included address information was not available, GAO also obtained parolee databases from the eight reviewed states and identified 204 offenders on parole for non-sex offenses living in long-term care facilities. GAO could not determine the overall risk that registered sex offenders and parolees pose to other residents in long-term care facilities because offender status is not tracked with abuse reporting. Facility administrators expressed greater concern over the risk posed by cognitively impaired or mentally ill residents.

Federal law requires state law enforcement agencies to release relevant information about registered sex offenders when necessary to protect the public, but GAO did not identify a similar federal law for the parolee population. States have broad discretion in how to implement the requirement for registered sex offender notification. Therefore, the extent to which states' community notification laws apply to all registered sex offenders or explicitly include long-term care facilities varies. For example, four of the eight states GAO reviewed—California, Illinois, Minnesota, and Oklahoma—had laws that specified long-term care facilities as entities to be notified for at least some registered sex offenders who entered them. However, some facility administrators GAO contacted were uncertain as to whether they could share information with staff and others about residents who were known offenders in light of the Privacy Rule issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Long-term care facilities GAO contacted do not routinely impose different supervision or separation requirements on residents who are offenders based solely on their prior convictions. Instead, these facilities base such decisions on the demonstrated behaviors of residents. Even if long-term care facilities wanted to impose different supervision and separation requirements on offenders, their ability to do so is limited because they are not always aware of residents' prior convictions.

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Abbreviations

CMS	Centers for Medicare & Medicaid Services
FBI	Federal Bureau of Investigation
HHS	Department of Health and Human Services
HHS-OCR	Department of Health and Human Services Office for Civil Rights
HIPAA	Health Insurance Portability and Accountability Act of 1996
ICF-MR	intermediate care facility for people with mental retardation
NNHS	National Nursing Homes Survey
NORS	National Ombudsman Reporting System
NSOR	National Sex Offender Registry
OSCAR	Online Survey, Certification and Reporting system

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United States Government Accountability Office
Washington, DC 20548

March 31, 2006

The Honorable Charles E. Grassley
Chairman
Committee on Finance
United States Senate

The Honorable Henry A. Waxman
Ranking Minority Member
Committee on Government Reform
House of Representatives

The Honorable Betty McCollum
House of Representatives

Approximately 16,000 nursing homes and 6,600 intermediate care facilities for people with mental retardation (ICF-MR) participate in Medicare, Medicaid, or both, and receive federal funding to care for their residents. Federal Medicare and Medicaid funds accounted for a significant portion of total funding to these nursing homes and ICFs-MR—approximately \$43 billion of a total of over \$110 billion in 2003, with about \$37 billion spent in nursing homes and \$6 billion in ICFs-MR.¹ Because of the large amount of federal funding these long-term care facilities receive, there is a strong interest in ensuring the safety and well-being of their vulnerable residents.

Concerns about the quality of care provided to residents of long-term care facilities are long-standing. Since 1998, a number of congressional hearings have focused on ensuring the quality of care and protecting the safety and rights of nursing home residents. Recently, news outlets and others have reported accounts of convicted sex offenders residing in nursing homes and, in some cases, allegedly abusing other residents. Often, nursing home staff and residents' families were not informed when convicted sex offenders were residents. The admission to long-term care facilities of individuals on parole for non-sex offenses² raises similar concerns about

¹For this report, we refer to nursing homes and ICFs-MR together as long-term care facilities.

²For this report, we refer to registered sex offenders and other offenders on parole for non-sex offenses as offenders.

the potential for abuse. Because of your concerns about resident safety, we are providing information on (1) the prevalence of offenders living in nursing homes and ICFs-MR and the extent of abuse caused by such offenders in these long-term care facilities; (2) whether federal and state laws provide for notification of staff, residents' families, and residents when such offenders live in these long-term care facilities; and (3) the extent to which these offenders are subject to supervision or separation requirements that differ from those for other residents.

To determine the prevalence of registered sex offenders residing in these long-term care facilities nationwide, we obtained the Federal Bureau of Investigation's (FBI) National Sex Offender Registry (NSOR), a national database utilized by law enforcement that compiles information about registered sex offenders submitted by all 50 states and the District of Columbia, as of January 3, 2005. We used the NSOR to identify the home addresses of registered sex offenders and matched them with the addresses of nursing homes and ICFs-MR included in the Centers for Medicare & Medicaid Services' (CMS) Online Survey, Certification and Reporting system (OSCAR) database, which compiles the results of state nursing home surveys. To assess the completeness of the NSOR data, we requested complete sex offender registries from eight states—California, Florida, Illinois, Minnesota, Ohio, Oklahoma, New Jersey, and Utah—which we selected on the basis of a number of criteria, including variation in geographic location and in the number of registered sex offenders identified as living in these states' long-term care facilities based on our preliminary analyses. Seven of the eight states provided their sex offender registries, and we compared the total number of sex offenders on each of the state registries with the total number for each state identified through the NSOR.³ In the course of comparing the results of the NSOR and state sex offender registries analyses, we became aware that the NSOR did not include the full sex offender registries of these states. Since no national database exists for parolees that includes address information, we also obtained parolee databases from each of these eight states. We matched parolee addresses with addresses for nursing homes and ICFs-MR from OSCAR for the eight states; however, because of the limited number of states reviewed, we could not generalize these results as representative of all states. We obtained state registries and parolee databases from January through September 2005.

³California state officials did not provide us with the state's sex offender registry in view of their concerns with state privacy laws.

To gather information about the administration and content of state sex offender registries, including their submission of records to the NSOR, we interviewed state registry administrators from all eight states and submitted a questionnaire via e-mail to all other states, receiving responses from an additional 20 states. To assess the reliability of FBI and state data, we discussed data quality control procedures, reviewed relevant documentation with officials, and conducted electronic data testing. We determined that while the NSOR does not include all registered or convicted sex offenders, its records are regularly audited and are sufficiently reliable for the purposes of this report. The lack of comprehensiveness of the data was evaluated and taken into account in our discussion of the results. We determined that the OSCAR database and state parolee databases were sufficiently reliable for our purposes.

To obtain information about resident abuse perpetrated by sex offenders and parolees residing in long-term care facilities, we reviewed existing research and GAO reports and interviewed officials of industry associations and long-term care ombudsmen. Within the eight states we reviewed, we also interviewed state officials responsible for nursing home and ICF-MR licensing, as well as administrators at 29 of 32 judgmentally selected long-term care facilities—4 from each state. We also relied on these interviews, interviews with federal officials, and a review of federal and state laws to determine whether federal and state laws provide for notification of facility staff, residents, and residents' families when offenders live in these long-term care facilities and the extent to which offenders are supervised and separated from other residents. In the eight states we reviewed, we also examined states' public sex offender Web site registries to determine what information on registered sex offenders is available to the public. We conducted our work from September 2004 through February 2006 in accordance with generally accepted government auditing standards. (For additional information on our scope and methodology, see app. I.)

Results in Brief

Using the FBI's NSOR, we identified about 700 registered sex offenders living in long-term care facilities during 2005, representing 0.05 percent of the 1.5 million residents of these facilities. About 3 percent of nursing homes and 0.7 percent of ICFs-MR housed a registered sex offender during 2005. Almost 90 percent of registered sex offenders we identified lived in nursing homes and were considerably younger than the general nursing home population, with 57 percent under age 65 compared to about 10 percent of all nursing home residents. However, our count is understated because of limitations in data availability. For example, while

the NSOR is a national database that compiles information about registered sex offenders submitted by all 50 states and the District of Columbia, it does not include convicted sex offenders who are not on state registries, including those who were convicted or released from prison before registration requirements went into effect and those who are required by law to register but do not comply. While noncompliance is difficult to track, four of the eight states we reviewed estimated noncompliance rates that ranged from 4.5 percent to 25 percent of all sex offenders required to register. In addition, because of a lack of resources or an inability to comply with certain FBI reporting requirements, states have had varying degrees of difficulty submitting their full state registries to the NSOR. While the FBI does not track NSOR submission rates, our analyses of the registries obtained from seven of the eight states we reviewed indicated NSOR submission rates averaging about 57 percent, ranging from 1 percent to 83 percent, while the 20 other states that responded to our e-mail questionnaire reported NSOR submission rates ranging from 46 percent to 100 percent. Because there is no national data source on parolees that includes address information, we obtained parolee databases from all eight states we reviewed and identified 204 offenders on parole for non-sex offenses living in long-term care facilities. We could not estimate the overall risk these registered sex offenders and parolees pose to other residents in long-term care facilities because data are not available in the reviewed states on abuse perpetrated specifically by residents who have prior convictions. Facility administrators we interviewed more frequently expressed concern over the potential for abuse by residents with cognitive impairments or mental illness than those with prior convictions.

Federal law requires state law enforcement agencies to release relevant information about registered sex offenders when necessary to protect the public, but we did not identify a similar federal law for the parolee population. States have broad discretion on how to implement this requirement for registered sex offenders and often do so through a process known as community notification. Consequently, the extent to which states' community notification laws apply to all registered sex offenders or explicitly include long-term care facilities varies, and this variation was evident in the eight states we reviewed. For example, while two states we reviewed apply uniform community notification requirements to all registered sex offenders, the six remaining states vary these notification requirements depending on the crime committed by the registered sex offender or risk to re-offend. Similarly, only half of the states we reviewed specify that long-term care facilities be notified when at least some registered sex offenders are residents. Long-term care

facilities in the remaining four states, or in states where community notification of these facilities is not required for all registered sex offenders, may not be aware of residents who are offenders or must rely on other methods, such as publicly available state Web site registries, to identify such individuals. While we identified no federal law that requires community notification for parolees when they enter long-term care facilities, three of the eight states we reviewed require community notification for all or a subset of parolees. When long-term care facility residents are known offenders, opinions differ among state and long-term care officials we interviewed as to whether sharing information with other residents and staff about such offenders' prior convictions violates the Privacy Rule issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). For example, while some state agency officials indicated that the HIPAA Privacy Rule only applied to individuals' health information and not their prior convictions, some long-term care facility officials thought the HIPAA Privacy Rule prohibited the sharing of any such information in most cases. Despite concerns that they may violate the HIPAA Privacy Rule by disclosing information about the prior convictions of certain residents, some long-term care facility officials said that they would still notify staff if they became aware of such residents. We brought the issue of long-term care facilities' uncertainty regarding the applicability of the HIPAA Privacy Rule to the attention of the Department of Health and Human Services (HHS) in the event that this issue gains more prominence in the future.

Having a prior conviction typically is not sufficient to subject offenders to supervision or separation requirements that differ from those for other residents, according to long-term care facility officials we interviewed. Instead, these facilities generally base supervision and separation requirements for residents on behavioral issues as they arise. Several long-term care ombudsmen, industry association officials, and facility officials in the states we reviewed indicated that the residents they are most concerned about in terms of behavioral problems are those with mental illness, particularly dementia, for which behaviors are apt to change as the disease progresses. Officials at only 2 of the 29 long-term care facilities we contacted said they have a specific policy to separate offenders from other residents based solely on their prior convictions. Even if long-term care facility officials wanted to impose different separation and supervision requirements on offenders, their ability to do so may be limited. Not only are long-term care facilities not always notified when individuals with prior convictions enter them, the assessment tools they use to determine the health care needs of residents typically do not gather information about prior convictions. In addition, in the event that a facility obtained

such information, federal and state laws that we reviewed generally do not provide for specific supervision or separation requirements for facility residents with prior convictions.

While it was not part of our original objectives to fully evaluate the NSOR, in the course of our work using the NSOR to identify registered sex offenders residing in long-term care facilities, we became aware that the database was incomplete for the seven states we reviewed for this purpose. Therefore, to ensure that NSOR fulfills its potential as a national database on registered sex offenders, we recommend that the Attorney General direct the FBI to assess the completeness of the NSOR, including state submission rates, and to evaluate options for making it a more comprehensive national database of registered sex offenders.

In commenting on a draft of this report, the Department of Justice (DOJ) said it believes the recommendations are unnecessary because the FBI already performs assessments of the NSOR and explores options for improvement. While we acknowledge the states' and FBI's efforts and progress to date, we maintain that the intent of the recommendations remains valid based on our analysis of a sample of states that indicates some states are not submitting a significant percentage of registered sex offender records to the NSOR. However, to be more specific regarding the need to assess the completeness of NSOR, we revised the recommendations to clarify that the FBI should assess state submission rates. HHS commented that the report will help to resolve much of the uncertainty about the application of the HIPAA Privacy Rule to the disclosure of conviction information by a facility, including clarifying that information could be used for activities necessary for the safe operation of the facility or disclosures that are required by state laws.

Background

Nursing homes provide a residential setting and a range of health care services for individuals who can no longer care for themselves because of physical or mental limitations. According to the most recent National Nursing Homes Survey (NNHS), approximately 90 percent of nursing home residents were age 65 and older and more than two-thirds were female.⁴ ICFs-MR are intended to provide a residential setting for treatment, rehabilitation, and supervision of people who have mental

⁴The NNHS is conducted by the Centers for Disease Control and Prevention's National Center for Health Statistics.

retardation or other disabilities, such as seizure disorders or behavior problems. In 2005, approximately 85 percent of ICF-MR residents were from 22 to 65; only 7 percent of the total resident population was over 65 years of age. In addition, unlike the nursing home population, the majority of ICF-MR residents were male.

Approximately 1.5 million individuals lived in Medicaid- and Medicare-certified nursing homes and ICFs-MR in 2005.⁵ Federal Medicaid and Medicare funds accounted for approximately 33 percent of total spending on nursing homes, and the remaining funds were from a combination of state, local, and private sources in 2003. In the same year, ICFs-MR, which are funded almost exclusively by Medicaid, received about 58 percent of their total funding from federal Medicaid funds and the remainder from state Medicaid dollars. Medicaid, a joint federal-state program that finances health care coverage for certain categories of low-income individuals, is the primary payment source for long-term care services for older people with low incomes and limited assets. Medicaid pays for an array of long-term care services, including services to assist people with activities of daily living like eating, dressing, bathing, and using the bathroom. In contrast, Medicare, which covers a variety of health care services and items for individuals who are 65 or older, have end-stage renal disease, or are disabled, does not pay for most long-term care services. Medicare covers short-term skilled nursing care following a hospital stay.

To qualify for Medicare or Medicaid funding, these long-term care facilities must meet certain federal requirements. For example, they are required to conduct resident assessments that examine areas such as demographic information, cognition, mood and behavior, psychosocial well-being, health conditions, and physical functioning. For example, the Preadmission Screening and Resident Review, which is required by federal law to determine whether the potential resident needs nursing home care, includes an assessment of mental capacity. Although federal regulations require that a resident assessment be conducted prior to admission to ICFs-MR, there is no standardized assessment tool and admission can be based on a prior assessment by an outside source. Individuals being admitted to an ICF-MR generally meet certain criteria, including having an intellectual functioning level below 70 to 75 and significant limitations in

⁵Of the 1.5 million individuals living in these long-term care facilities in 2005, about 100,000 lived in ICFs-MR.

two or more adaptive skill areas.⁶ In addition, at a minimum, resident assessments are conducted annually by nursing home and ICF-MR facility staff after admission in order to continually address a resident's needs. For each resident for whom they receive Medicare or Medicaid funding, these long-term care facilities are also required to develop a plan of care that addresses the resident's medical, social, and other needs, as determined by the resident assessment. Long-term care facilities are also required to protect residents' rights and privacy.⁷ In addition, the Privacy Rule issued under HIPAA provides individuals with protections regarding the confidentiality of their health information and restricts the use and disclosure of individuals' health information by health care providers, including nursing homes and ICFs-MR.⁸

As a condition of Medicare or Medicaid participation, long-term care facilities must report incidents of abuse according to state requirements. CMS defines abuse as the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. Physical abuse generally includes hitting, slapping, pushing, and sexual abuse, which is nonconsensual sexual contact or nonconsensual sexual involvement of any kind. Although the commission of a sexual offense may result in an incident of abuse, a uniform definition of sexual offense does not exist, and states define sexual offenses in their respective criminal codes. Some examples of sexual offenses include rape, sexual assault, and incest.⁹ In some states, related sexual offenses include child pornography and willful indecent exposure in public.

⁶Adaptive skills include communication, self-care, home living, and social skills. The criteria specify that these conditions need to have been identified at or before the age of 18.

⁷CMS sets conditions of participation for facilities that receive federal funding. Part of the conditions of participation requires that residents have certain rights to personal privacy and the confidentiality of personal records.

⁸45 C.F.R. pts. 160 and 164 (2005).

⁹Rape is defined as forced sexual intercourse with a male or female victim. Sexual assault is defined as a variety of victimizations that involve unwanted sexual contact. Incest is defined as nonforcible sexual intercourse between persons who are related to each other to a degree where marriage is prohibited by law. Department of Justice, Bureau of Justice Statistics, *An Analysis of Data on Rape and Sexual Assault: Sex Offenses and Offenders* (Washington, D.C.: February 1997).

Federal statute established the Jacob Wetterling Crimes Against Children and Sex Offender Registration Program in 1994.¹⁰ The statute required every state to have a program to register sex offenders by September 1997, and required the Attorney General to provide states with guidelines for developing their programs.¹¹ At a minimum, an individual convicted of a criminal offense against a minor or of a sexually violent offense must register a current address for 10 years following his/her release from prison or placement on parole, supervised release, or probation. In addition, an individual who has one or more prior sexual offense convictions, has been convicted of an aggravated offense, or is determined to be a sexually violent predator must register a current address for life.¹² States may impose more stringent registration requirements on a broader class of offenders than required by federal law. The law also mandates that registered sex offenders verify their addresses at least annually and that registered offenders classified as sexually violent predators verify their addresses quarterly. Registered sex offenders must notify local law enforcement officials within their state of address changes, and those who move to a different state must comply with registration requirements in the new state. States that do not comply with the Wetterling Program requirements are subject to a 10 percent reduction in their Byrne Formula Grant law enforcement funding.¹³

The statute establishing the Wetterling Program was amended twice in 1996. The first amendment, Megan's Law, required states to release information about registered sex offenders when necessary to protect the

¹⁰For this report, we refer to the Jacob Wetterling Crimes Against Children and Sex Offender Registration Program as the Wetterling Program.

¹¹Violent Crime and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 170101, 108 Stat. 1796, 2038 (1994) (codified at 42 U.S.C. § 14071).

¹²Criminal offenses against minors include criminal sexual conduct toward a minor and solicitation of a minor to engage in sexual conduct. "Sexually violent offenses" include offenses that consist of aggravated sexual abuse or sexual abuse. A "sexually violent predator" is defined as a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. 42 U.S.C. § 14071(a)(3).

¹³Under the Byrne Formula Grants Program, the DOJ's Bureau of Justice Assistance provides federal financial assistance to grantees for the purpose of enforcing state and local laws that establish offenses similar to offenses established under the Controlled Substances Act and to improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders. In fiscal year 2004, all 50 states, the District of Columbia, and the U.S. territories received financial assistance through Byrne Grants.

public, but this law did not specify how states must give notification.¹⁴ The second amendment, the Pam Lychner Sexual Offender Tracking and Identification Act of 1996,¹⁵ mandated the FBI's creation of a national database now known as the NSOR.¹⁶ According to the FBI, this national database combines sex offender registries from all of the states to help law enforcement officials track sex offenders on a national level.

Research on sex offender recidivism suggests that the majority of individuals previously convicted of sex offenses do not commit additional sex offenses, with one such study estimating that about 14 percent had a new sex offense charge or conviction within 5 years of their release from prison, increasing to 27 percent after 20 years. At the same time, however, research also indicates that sex offenses are underreported. While it is difficult to predict re-offense for any individual, certain factors such as sexual deviancy, antisocial orientation, and an adverse family environment may contribute to a higher likelihood of a re-offense. Those who have strong social supports, such as a supportive family and a stable job, may be less likely to re-offend. In addition, the likelihood of re-offending may diminish as the sex offender ages.

Federal law requires that registered sex offenders be tracked on a national and state level; however, parolees are generally monitored and supervised by each state. Individuals released from prison prior to the completion of their sentences may be subject to certain conditions and supervised as parolees for a specified period. Typically the length of time states set for parole is 1 to 3 years, although certain crimes and sentencing situations may require more or less time. An individual can be convicted of a range of crimes from fraud or forgery to murder and be eligible for parole. As of December 2003, about 775,000 adults were on parole from federal and state prisons nationwide.

¹⁴Pub. L. No. 104-145, § 2, 110 Stat. 1345 (1996) (codified at 42 U.S.C. § 14071).

¹⁵For this report, we refer to the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 as the Lychner Act.

¹⁶Pub. L. No. 104-236, § 2, 110 Stat. 3093 (1996) (codified at 42 U.S.C. § 14072). The NSOR is a nationwide system that links the states' sex offender registration and notification programs. The system uses a person's FBI number to connect the registration information in the National Criminal Information Center with the registrant's criminal history information that includes his/her fingerprints. According to the DOJ the NSOR should be used to enhance a state's ability to locate offenders in its jurisdiction who may be violating the law by not registering.

Identification of Offenders Living in Long-Term Care Facilities and Assessment of the Risk They Pose Limited by Data Shortcomings

Using the NSOR, we identified 683 registered sex offenders living in long-term care facilities during 2005. However, this understates the national prevalence of convicted sex offenders residing in long-term care facilities for a number of reasons. While the NSOR is a national database that compiles information about registered sex offenders submitted by all 50 states and the District of Columbia, it does not include convicted sex offenders who are not on state registries, including those sex offenders who are required by law to register but choose not to comply. It also does not include all registered sex offenders, as states have had varying degrees of difficulty submitting their records to the NSOR because of technical problems, lack of resources, or inability to provide the required FBI number for certain offenders. Because there is no national data source on parolees that includes address information, we also obtained parolee databases from the eight states we reviewed and identified 204 offenders on parole for non-sex offenses living in long-term care facilities. The risk of abuse within nursing homes or ICFs-MR by residents with prior convictions is unclear because states we reviewed do not report the prior convictions of residents who commit abuse; however, facility administrators we interviewed more frequently expressed concern about the potential for abuse by residents with cognitive impairments or mental illness than by residents with prior convictions.

Most Sex Offenders Identified Were Male, Were under Age 65, and Resided in a Small Number of Nursing Homes and ICFs-MR

Using the NSOR, we identified 683 registered sex offenders living in long-term care facilities during 2005, representing about 0.05 percent of the total 1.5 million residents of nursing homes and ICFs-MR. (See app. II.) Of the approximately 16,000 nursing homes and 6,600 ICFs-MR that participate in Medicare or Medicaid, we identified 3 percent of nursing homes (470) and 0.7 percent of ICFs-MR (46) as housing at least 1 registered sex offender during 2005.

About 88 percent of the registered sex offenders we identified resided in nursing homes, while the remaining 12 percent resided in ICFs-MR. Sex offenders living in nursing homes were younger than the general nursing home population, while those in ICFs-MR had a similar age distribution as the general ICF-MR population. About 57 percent of registered sex offenders we identified as living in nursing homes were under age 65, compared to about 10 percent of the general nursing home population, and 30 percent were under age 50. Most sex offenders—95 percent—identified as living in ICFs-MR were under age 65, which is similar to the age distribution in the general population of these facilities. Similarly, nearly all—99 percent—registered sex offenders we identified as residing in long-term care facilities were male, which is consistent with the gender of

registered sex offenders overall. Among registered sex offenders for whom we had information on the nature of their crimes, the majority of convictions were for rape and sexual assault of adults and minors.

Number of Offenders Identified as Living in Long-term Care Facilities Is Understated

The number of offenders that we identified as living in long-term care facilities is understated because of shortcomings in the data. Specifically, although national in scope, the NSOR does not include certain convicted sex offenders who are not on state registries because the registries did not exist at the time they were convicted or released from prison or because their registration period has expired. The NSOR also does not include all of the records of sex offenders who are registered in the states' registries because some states have had difficulty submitting their records to the NSOR. NSOR records for convicted sex offenders who chose not to comply with registration requirements may be incomplete or missing. In addition, since no national data source for parolees exists that includes parolee residence information, our data only include numbers of parolees from the eight states we reviewed.

State Registries Do Not Include All Convicted Sex Offenders

While some states already had sex offender registries in place, the Wetterling Program statute mandated that all states implement a registry by September 1997.¹⁷ Most state registries only include those sex offenders convicted or released from prison after a specified date, generally after 1990.¹⁸ Consequently, those convicted or released before the specified date were not required to register and therefore are not included in our analysis. This limitation may help explain the age distribution of registered sex offenders we identified as living in nursing homes. While the majority of offenders identified in nursing homes were under the age of 65, this could be a consequence of the limited period that sex offender registries have existed rather than an accurate reflection of the age distribution of convicted sex offenders living in nursing homes, since many elderly sex offenders would not be registered if their convictions predated the implementation of their state's registry.

¹⁷States could apply for a 2-year extension of the statutory deadline from the DOJ if they had made good faith efforts to comply but were unable to meet the original deadline for implementing a state sex offender registry.

¹⁸Scott Matson and Roxanne Lieb, *Sex Offender Registration: A Review of State Laws* (Olympia, Wash.: Washington State Institute for Public Policy, 1996). Department of Justice, Bureau of Justice Statistics, *Summary of State Sex Offender Registries, 2001* (Washington, D.C.: 2002).

State Submissions to the NSOR
Do Not Include All Registered
Sex Offenders

The nearly 700 registered sex offenders we identified through the NSOR database as living in long-term care facilities also do not include convicted sex offenders whose registration period expired or whose information was missing because they did not comply with registration requirements. While noncompliance is difficult to track, four of the reviewed states provided us with estimated noncompliance rates ranging from 4.5 percent to 25 percent. Similarly, the advocacy organization, Parents for Megan's Law, released estimates in 2003 that 24 percent of sex offenders nationally fail to comply with registration requirements. Sex offenders may fail to comply for several reasons, including a lack of understanding about registration requirements or to avoid the possible negative consequences experienced by some registered sex offenders, such as the loss of a job, harassment, social stigmatization, or physical assault.

We found a range of submission rates by state registries to the NSOR, which suggests that the NSOR may be missing a portion of sex offenders who are registered in states. Registry administrators from the 20 states that responded to our e-mail questionnaire estimated their submission rates to be from 46 percent to 100 percent of the total number of records in their state registries. Most reported that at least 80 percent of their records were submitted, while 2 states reported that they were only able to submit about half of their records. We also compared the total number of sex offenders included in the state registries to the number included in the NSOR for 7 of the 8 states we reviewed. (See table 1.) The NSOR included about 57 percent of sex offenders registered in these states, with submission rates ranging from 1 to 83 percent. For example, Utah had submitted about 1 percent of its registry to the NSOR. While the state intends to fully submit its registry to the NSOR in the future, it currently lacks the resources to do so, according to a state official. However, the FBI considers state participation in the national database to be in compliance with federal requirements if a state has submitted at least one record to the NSOR.¹⁹ A DOJ official confirmed that all states have been determined to be in compliance with NSOR submission requirements, based on FBI notifications regarding each state's participation in the NSOR, and was not aware of any state that had been penalized with the loss of Byrne Formula Grant law enforcement funding solely on the basis of the extent of state NSOR participation.

¹⁹An FBI official explained that the submission of one record demonstrates that the state has completed the reprogramming of its database to conform to NSOR standards.

Table 1: Estimated Submission Rates to NSOR, by States Reviewed, 2005

State	Number of sex offenders listed on state registry	Number of sex offenders listed on NSOR, January 3, 2005	State's submission rate to NSOR (percentage)
Florida	34,810	25,494	73
Illinois	20,690	13,349	65
Minnesota	^a	9,769	^a
New Jersey	11,382	9,454	83
Ohio ^b	16,864	2,409	14
Oklahoma	5,235	4,234	81
Utah	7,409	49	1
Average			57

Sources: GAO analysis of the FBI's NSOR as of January 3, 2005; state sex offender registries as submitted by states to GAO from January through August 2005.

^aMinnesota initially submitted to GAO only those offenders residing in Minnesota who could potentially be identified as nursing home residents, which was the purpose of our request for the data, and therefore excluded offenders who were listed as out of state, deported, homeless, civilly committed, in the witness protection program, or address unknown. Consequently, we could not determine an overall submission rate. As of February 2006, Minnesota reported that 73 percent of its active registrants had been accepted by the NSOR.

^bAs of January 3, 2005, Ohio had not submitted the majority of its sex offender registry because of technical problems, but a state official reported that the state submitted registry data on computer disk in August 2005.

Registry administrators from among the 8 states we reviewed and the 20 additional states that responded to our e-mail questionnaire reported that several factors complicate their efforts to submit complete sex offender registries to NSOR. For example, registry administrators frequently responded that they were not able to submit records of registered sex offenders who did not have FBI numbers. FBI numbers are required by the FBI for all records submitted to the NSOR to ensure positive identification of individuals for the purposes of employment background checks.²⁰ States may lack FBI numbers for several types of offenders, such as juvenile sex offenders who do not receive FBI numbers or sex offenders from other states. If a sex offender comes from out of state, his/her FBI number can

²⁰Under the Lychner Act, NSOR information must also be disclosed for employment background checks. To ensure that information released in background checks is accurate, a person's identification is verified using fingerprints. The FBI number provides the necessary link between the sex offender registry record and an offender's fingerprint records to technically achieve the inclusion of an offender's NSOR records in employment background checks.

be obtained from the state where the conviction occurred, but it can be labor-intensive if the other state does not cooperate or never submitted fingerprint information to establish the offender's FBI number.²¹ Registry administrators in two of the states we reviewed estimated that in recent years about 30 percent of the records they submitted to the NSOR were rejected as incomplete.²² In addition, states are required to verify information, including home address, for each registered offender at least annually and quarterly for registered offenders classified as sexually violent predators, a process that can also be labor-intensive.²³ If states are unable to verify an offender's address information, the offender should be considered noncompliant, and the NSOR record will not be up-to-date nor reflect current address information. Some states have also experienced technical difficulties submitting their registry records to the NSOR. An FBI official told us that states that had registries prior to the creation of the NSOR had difficulty reprogramming their registry databases to conform to the NSOR formats. One of the states we reviewed did not realize until 2005 that only a fraction of its records were being submitted to the NSOR because of a technical problem, and it is currently submitting records on computer disks while making plans to implement a system for automatic electronic submission of its full sex offender registry to the NSOR.

Although the FBI does not track states' submission rates to the NSOR, it does periodically assess state participation in the NSOR and provides assistance to help states improve the comprehensiveness and accuracy of their registries. In addition to the requirement that states annually validate registry records, we were informed that the FBI conducts triennial audits of states' participation in the NSOR. During fiscal year 2005, the FBI also conducted a fiscal audit, assessed states' level of participation in the NSOR and requested information from states about what assistance they need to

²¹States also have the option of searching for an offender's FBI number by conducting inquiries of the FBI's Fingerprint Identification Record System using name and date of birth or fingerprints.

²²According to NSOR data documentation provided by the FBI certain pieces of information are mandatory for state registry records to be accepted into the NSOR, including: offender's name; physical characteristics, including gender, height, weight, eye, and hair color; race; date of birth; registration beginning and ending dates; FBI number; and conviction information. The NSOR also includes other information, such as vehicle license plate numbers and home address, but will accept records even if this information is not provided.

²³In addition to annual address verification, states are required to validate information in the NSOR on an annual basis to ensure the accuracy and completeness of the information.

Approximately 200 Parolees Identified as Living in Long-term Care Facilities in Eight States

improve their participation. DOJ provides grants to help states improve their law enforcement information systems, which states have utilized for enhancements to their sex offender registries such as enabling the automatic transmission of records to the NSOR and for monitoring data accuracy. DOJ informed us that it also provides training and technical assistance to states, and that the FBI has an advisory group that is reviewing issues such as state submission of data to the NSOR and the process for the verification and validation of NSOR records.

Using data provided by each of the eight states we reviewed, we identified 204 parolees as residents of long-term care facilities. (See table 2.) Because there is no national source of data on parolees that includes their home address information, our numbers are limited to the eight states and cannot be generalized as representative of all states. Among parolees for whom we had information on the nature of their crimes, the convictions were most commonly for burglary, assault, murder, or drug-related offenses.

Table 2: Parolees Identified as Living in Long-term Care Facilities in States Reviewed, 2005

State	Nursing homes	ICFs-MR	Total ^a
California	63	4	67
Florida	7	0	7
Illinois	70	4	74
Minnesota	2	0	2
New Jersey	2	1	3
Ohio	42	1	43
Oklahoma	6	0	6
Utah	2	0	2
Total	194	10	204

Sources: GAO analysis of parolee databases for eight reviewed states, January through September 2005; CMS's OSCAR database, 2004.

^aResults do not include parolees who were also listed on state sex offender registries or the NSOR.

Abuse by Offenders Who Live in Long-term Care Facilities Not Tracked, but Risk May Not Be Widespread

Long-term care facilities participating in Medicare or Medicaid are required to report all allegations of abuse and neglect to officials in accordance with applicable state law and, in the case of nursing homes, this includes reporting to the state.²⁴ This requirement would encompass the reporting of abuse committed by staff or residents. In the eight states we reviewed, long-term care facilities do stratify reported abuse into categories, such as physical, sexual, financial, or resident-to-resident abuse; however, they do not report information on whether residents alleged to have caused abuse have prior convictions. The National Ombudsman Reporting System (NORS) also collects nursing home abuse data on a national level and includes various categories of abuse, such as incidents that occur between residents and incidents perpetrated by nursing home staff. Similar to the states we reviewed, NORS does not track whether residents alleged to have abused other residents have prior convictions.

Because data are not available nationally or in our reviewed states on abuse perpetrated specifically by residents who have prior convictions, the potential risk for abuse by offenders residing in long-term care facilities cannot be accurately estimated. However, based on a number of factors, including the small percentage of facilities identified as housing offenders, the risk may not be widespread. For example, offenders residing in nursing homes or ICFs-MR who have significant physical limitations may be unable to commit abuse against other residents. In addition, research on recidivism by sex offenders also suggests that most do not re-offend and that the risk of re-offending may decline with age.

In our interviews with officials of long-term care facilities, state nursing home associations, and state ombudsmen for long-term care, concern was more frequently expressed about the behavior and potential for abuse by cognitively impaired and mentally ill residents than about abuse by residents with prior convictions. Several of those interviewed mentioned they were concerned about the potential for abuse by residents with Alzheimer's disease or dementia, a disease for which their behavior may change significantly after their admission and original assessment. The administrator of a facility in Ohio that specializes in residents with behavioral issues and that has housed multiple offenders said that he has had fewer problems with his residents who are identified sex offenders than with other residents who have behavioral problems. Several sources,

²⁴ 42 C.F.R. §§ 483.13(c)(2), 483.420(d)(2).

including ombudsmen, a researcher, and a nursing home advocate, suggested that a resident's behavioral issues are sometimes not fully disclosed to a nursing home upon admission or that some nursing homes with low occupancy may be more likely than others to accept mentally ill patients in order to increase their occupancy levels.

Long-term care facility officials we interviewed, some of whom knew they have had offenders as residents and some of whom spoke hypothetically, said they would use their judgment to determine whether a registered sex offender or parolee could appropriately be cared for in their facilities. Several long-term care facility administrators told us that if they discovered a resident was an offender, they would evaluate the potential risk posed by that individual on a case-by-case basis. For example, the facility administrator may determine the degree of safety risk on the basis of whether the offender's health status is such that the individual cannot move independently. If the administrator determines that the risk is greater than the long-term care facility can manage, the facility may choose not to admit the offender.

States Required to Notify Community about Registered Sex Offenders, but Extent of Notification Varies

Federal law requires state law enforcement agencies to release relevant information about registered sex offenders when necessary to protect the public, but we did not identify a similar federal requirement pertaining to the parolee population. The federal requirement for registered sex offender notification allows states to implement this requirement at their discretion, within broad federal guidelines. Consequently, the extent to which states' community notification laws apply to all registered sex offenders or explicitly include nursing homes and ICFs-MR varies. Absent direct notification, these facilities may not know they house offenders or may only become aware of offenders through other means. For example, in the case of registered sex offenders, facilities may identify some offenders by reviewing publicly available Web sites, while for parolees, they may become aware of the person's criminal background from a parole officer. When facility residents are known offenders, differing interpretations exist among states, industry, and long-term care facility officials as to whether sharing information about their prior convictions may violate the Privacy Rule issued by HHS under HIPAA.

Federal Law Requires States to Provide Community Notification for Registered Sex Offenders, but Direct Notification to Long-term Care Facilities Varied

Megan's Law, a 1996 amendment to the Wetterling Program statute, required each state to release information about registered sex offenders when necessary to protect the public. The law applied specifically to registered sex offenders and not to convicted sex offenders who were not obligated to register.²⁵ Although Megan's Law stipulated that information about the victims of registered sex offenders was not to be released, it otherwise did not specify the information to be disseminated about registered sex offenders, did not mandate that community notification be uniform for all registered sex offenders, and did not specify how states were to release information.

Consequently, states' community notification laws vary, particularly in terms of the extent to which notification by law enforcement entities applies to all registered sex offenders. Such variation was evident in the notification laws of the eight states we reviewed. While two states we reviewed—Illinois and Utah—apply community notification requirements to all registered sex offenders uniformly in each state,²⁶ the community notification requirements in the remaining six states—California, Florida, Minnesota, New Jersey, Ohio, and Oklahoma—vary depending on the crime committed by the registered sex offender.²⁷ For example, New Jersey classifies its registered sex offenders into three categories based on their assessed risk of re-offending. For sex offenders determined to be lowest risk, state law requires notification of law enforcement agencies. In contrast, for the highest risk sex offenders, the law requires notification of additional entities, including schools, religious and youth organizations, and those likely to encounter the offender. Similarly, Florida's law explicitly requires broad community notification when individuals designated to be sexual predators reside in the community, but it does not require broad notification for other sex offenders.

Variation also exists in the extent to which state community notification laws explicitly require the notification of long-term care facilities. Four states we reviewed—California, Illinois, Minnesota, and Oklahoma—

²⁵The federal law requires the registration of sex offenders convicted of criminal offenses against minors or of sexually violent offenses or those designated as sexually violent predators.

²⁶730 ILCS Stat. Ann. § 152/120 (West 2005); Utah Code Ann. § 77-27-21.5 (2003).

²⁷Cal. Penal Code § 290.45 (Dearing 2005); Fla. Stat. Ann. § 944.606 (West 2005); Minn. Stat. Ann. § 244.052 (West 2003); N.J. Stat. Ann. § 2C: 7-8 (West 2005); Ohio Rev. Code Ann. §§ 2950.081, 2950.11 (Anderson 2005); Okla. Stat. Ann. Tit. 57, § 584 (West 2005-2006).

passed laws in summer and fall 2005 that specified long-term care facilities as entities to be notified for at least some registered sex offenders who entered them.^{28, 29} Notification in these states is conducted by individual facility officials, state or law enforcement officials, or registered sex offenders themselves. For example, Illinois' law requires long-term care facilities to determine whether each resident or potential resident is a registered sex offender and to notify staff, residents or their legal guardians, and facility visitors when offenders are residents.³⁰ Similarly, Oklahoma's law requires notification of these facilities by several methods. For example, the Department of Corrections must notify the Department of Health when any person in its custody seeks placement in these facilities, and the Department of Health must then notify the facility of the potential for the placement of a registered sex offender. When residents are determined to be registered sex offenders, information about them must be displayed in the facility in an area that is accessible to staff, visitors, and residents. The law in California also requires state officials to notify long-term care facilities when registered sex offenders are released to them from the Department of Corrections and Rehabilitation, the State Department of Mental Health, or other state-operated places of confinement. The law does not provide for such notification when sex offenders enter long-term care facilities from the community. Unlike other states we reviewed, Minnesota's law requires registered sex offenders to disclose their status if seeking admission to long-term care facilities. Upon receiving such notification from certain registered sex offenders, long-term care facilities are responsible for sharing this information with other residents or their legal guardians. Minnesota also requires law enforcement officials to notify health care facilities if they become aware that a registered sex offender has been admitted for care.

²⁸2005 Cal. Adv. Legis. Serv. c. 466 (Dearing); 2005 Ill. Legis. Serv. 94-163 (West); 2005 Minn. Laws c. 243.166; 2005 Okla. Sess. Laws Serv. c. 465 (West).

²⁹Requirements in state community notification laws specifying that nursing homes and ICFs-MR be notified about registered sex offenders who were residents appear to be a recent trend. For example, a 2001 review of state community notification laws by the Bureau of Justice Statistics found that states generally did not notify nursing homes or ICFs-MR when offenders entered the facilities.

³⁰Emergency rules implementing this law require licensed long-term care facilities, such as nursing homes and ICFs-MR, to check the background of potential residents through the state sex offender database. 77 Ill. Reg. § 300.625 (as added for emergency rules published on Sept. 2, 2005). These rules expired on December 7, 2005, and have not yet been replaced by permanent rules.

The other four states we reviewed—Florida, New Jersey, Ohio, and Utah—do not specifically require the notification of long-term care facilities when registered sex offenders enter them. Long-term care facilities in these states, or in states where community notification of such facilities is not required for all registered sex offenders, may not be aware of residents who are offenders or must rely on other methods to identify such individuals. For instance, administrators we interviewed at 8 of the 29 long-term care facilities indicated that one or more registered sex offenders had lived in their facilities for some period. Each of these 8 long-term care facilities was notified about the registered sex offenders, although the method of notification varied. For example, while 4 facilities were notified before the offenders entered them, either by offenders' family members or the state department of corrections, the 4 remaining facilities were notified after the registered sex offenders were admitted, either by local law enforcement officials who were verifying sex offenders' residential addresses or by an advocacy group conducting research on registered sex offenders living in certain long-term care facilities.

Long-term care facilities may access states' publicly available sex offender registry Web sites to determine where registered sex offenders reside. A 2003 amendment to the Wetterling Program statute required states to maintain a publicly available Web site with information about registered sex offenders.³¹ The law did not provide instruction on how these Web sites should be designed or what specific information should be included.³² Depending on the state, these Web sites provide varying amounts of information to the public about registered sex offenders. For example, the Web site registry in each of the eight states we reviewed included some address information for all or a portion of the state's adult registered sex offenders. Five states we reviewed—Florida, Illinois, Ohio, Oklahoma, and Utah—provided the full residential address of all the state's adult registered sex offenders, while three others—California, Minnesota, and New Jersey—included certain registered sex offenders on their Web sites and in some cases did not always list their full addresses. For example, Minnesota separates offenders into three levels and includes Level 3 offenders—those deemed predatory or most likely to re-offend—on its Web site. Approximately 6 percent of the registered sex offenders in this

³¹The Prosecutorial Remedies and Other Tools to End the Exploitation of Children Today Act of 2003, Pub. L. No. 108-21 § 604, 117 Stat. 650, 688.

³²DOJ has published proposed guidelines in the *Federal Register* with respect to state Internet sites for sex offender information at 70 Fed. Reg. 12721 (2005).

state who are living in the community are assigned the highest risk level. Similarly, New Jersey includes certain moderate and all high-risk registered sex offenders on its Web site, which, according to a state official, represents about 16 percent of all registered sex offenders in the state. In California, a state official told us that its Web site registry includes at least some address information for approximately 74 percent of the state's registered sex offenders, including full address information for about 57 percent who committed crimes considered to be the most serious. The remaining approximately 26 percent of the state's registered sex offenders are not posted on the Web site because they committed less severe offenses or are excluded from the Web site for various reasons, such as not being designated sexually violent predators. In addition, for the registered sex offenders listed on the Web sites of the eight states we reviewed, information is included about the crimes registered sex offenders committed; their names, nicknames, or aliases, when applicable; date of birth or age; and race or ethnicity.

While the NSOR database is not directly accessible by the general public, long-term care facilities can access the recently developed National Sex Offender Public Registry maintained by the DOJ.³³ This Web site, which was first launched in May 2005, seeks to compile public sex offender registry information available through state Web sites, and as of January 2006, it included public registry data from all but two states. Although this Web site provides the public with one-stop access to states' online sex offender registries, it may be of limited usefulness because states' sex offender registry Web sites, as described above, do not always include a comprehensive list of registered sex offenders.

Although Community Notification of Parolees Not Uniformly Required, Parolees in Long-term Care Facilities Often Identified by Law Enforcement

We did not identify a federal law specifying community notification requirements for law enforcement when parolees enter the community that was similar to the federal law for registered sex offenders. However, three of the eight states we reviewed—Illinois, Minnesota, and Oklahoma—passed laws in summer 2005 that require community notification for offenders who have committed crimes other than sex offenses, including some offenders who are parolees.³⁴ Illinois' law requires the state Department of Corrections to give some information to

³³See <http://www.nsopr.gov/>.

³⁴2005 Ill. Legis. Serv. 94-163 (West); 2005 Minn. Laws c. 243.166; 2005 Okla. Sess. Laws Serv. c. 465 (West).

certain long-term care facilities when parolees or certain other offenders become residents. In addition, these long-term care facilities are required to notify the other residents when parolees reside in their facilities. In Minnesota and Oklahoma, long-term care facilities receive community notification for some individuals convicted of non-sex offenses, including some parolees, under the same requirements as those for registered sex offenders. Minnesota's law applies to individuals convicted of some crimes, including murder or kidnapping. Oklahoma's law requires notification for individuals who are required to register under the Mary Rippy Violent Crime Offenders Registration Act, which includes individuals convicted of crimes such as murder or manslaughter in the first degree.

Department of Corrections' officials or other authorities in each of the eight states we reviewed stated that as a matter of practice, they generally notified long-term care facilities when individuals released from prison, including parolees, are placed in such facilities. For example, according to officials in Ohio's Department of Rehabilitation and Corrections, when an inmate who needs long-term care is paroled, a parole officer works with the facility to ensure that medical records are transferred and that a plan of care is established to meet the needs of the parolee.

Officials Uncertain about Ability of Long-term Care Facilities to Disclose Offender Information under the HIPAA Privacy Rule

While the HIPAA Privacy Rule applies to individually identifiable health information, differing interpretations exist among state, industry, and long-term care facility officials we interviewed in the eight states regarding the applicability of the rule to facilities' efforts to notify others about residents who have prior convictions, such as those who are registered sex offenders or parolees. These difficulties existed regardless of whether this information was obtained from a medical record or in another way, such as from a law enforcement official. For instance, long-term care agency officials from three states we reviewed indicated that protection of health information under the HIPAA Privacy Rule did not extend to information on prior convictions. In addition, long-term care facility and other agency officials from these and three other states we reviewed maintained that it was permissible to disclose information about a resident's prior convictions to employees in a long-term care facility who needed to know in order to provide care for the resident. Yet other officials in six of the eight states we reviewed told us they were either unsure whether the HIPAA Privacy Rule would be violated by sharing information about the prior convictions of any offender living in a facility or that they believed the HIPAA Privacy Rule did not apply to disclosing such information about residents who are offenders. Officials at 11 of the 29 long-term care

facilities we interviewed in eight states said that they were concerned they would violate the HIPAA Privacy Rule if they disclosed information about the prior convictions of offenders living in their respective facilities, but indicated that they would notify staff if they became aware of such residents.

We brought the issue of long-term care facilities' uncertainty regarding the applicability of the HIPAA Privacy Rule to the attention of an official of the Department of Health and Human Services Office for Civil Rights (HHS-OCR), the federal entity responsible for implementing and enforcing the HIPAA Privacy Rule. The official indicated that HHS-OCR has not published regulations or other guidance specifically regarding the applicability of the HIPAA Privacy Rule to the disclosure of information related to prior convictions of long-term care facility residents. However, the official stated that to the extent that such information is maintained by long-term care facilities as protected health information under the HIPAA Privacy Rule, such information could be used or disclosed for specifically permitted purposes, such as when necessary to run the health care operations of a facility or required by another federal or state law. In addition, the HHS-OCR official indicated that affected entities, such as long-term care facilities, would need to make the determination on a case-by-case basis as to whether the information is protected health information, and if so, whether its intended use or disclosure is permitted by the HIPAA Privacy Rule. The official added that long-term care facilities should consult their legal counsel if they have questions in making this determination. Although HHS-OCR does maintain a list of answers to frequently asked questions about the HIPAA Privacy Rule on its Web site, it does not cover this specific issue. In commenting on a draft of this report, Department of Corrections officials from one state we reviewed stated that it would be helpful for HHS-OCR to describe some situations in which it believes HIPAA would not be applicable with regard to the disclosure of information about offenders admitted to health care facilities. They stated that HHS-OCR's direction to approach each case individually is not very helpful and that additional guidance would be very useful.

Supervision and Separation of Long-Term Care Facility Residents Largely Based on Behavior, Not Prior Convictions

Residents' prior convictions alone would not be sufficient in most cases to subject them to supervision or separation requirements that differed from other residents, according to facility officials we interviewed.

Administrators at only 2 of the 29 long-term care facilities we contacted indicated that they have a specific policy to separate offenders from other residents based solely on their prior convictions. Instead, long-term care facilities in the eight states we reviewed typically base supervision and separation decisions on behavioral issues that arise. For example, in the states we reviewed, several long-term care ombudsmen, industry association officials, and facility officials we interviewed indicated that the residents they have particular concerns about, in terms of behavioral problems, are those with mental illness, such as dementia, for which behaviors are apt to change as the disease progresses.

Although most officials we spoke with at long-term care facilities in the eight states we reviewed do not supervise or separate offenders based solely on their prior convictions, some officials indicated the potential for a future need for residential facilities separate from long-term care facilities exclusively for certain offenders. For instance, Minnesota state officials said that some long-term care facilities may be hesitant to accept sex offenders as residents in the future, believing that certain sex offenders pose a risk to the safety of other residents. Therefore, a state commission has recommended the development of secure health care settings that would serve people who have committed certain sex offenses and who may not otherwise have access to services. In order to establish this facility, state officials are working with federal officials to resolve issues related to balancing resident rights with the safety interests of the larger community.

Even if long-term care facility officials wanted to impose different supervision and separation requirements on offenders, numerous factors could affect their ability to do so. For example, as previously noted, long-term care facilities were not always notified when individuals with prior convictions entered them. Federal laws we reviewed do not require long-term care facilities to obtain information about prior convictions, and among the eight states we reviewed, only Illinois had such a requirement.³⁵ In addition, assessment tools long-term care facilities in these eight states

³⁵77 Ill. Reg. §§ 300.615, 300.625 (as added by emergency rules published Sept. 2, 2005). These rules expired on December 7, 2005, and have not yet been replaced by permanent rules.

use to determine the health care needs of residents usually are not designed to gather information about prior convictions. Even if facilities obtained such information, federal and state laws that we reviewed generally do not provide for specific supervision or separation practices for facility residents with prior convictions.

Conclusions

Each incident of resident abuse committed by offenders living in nursing homes—even if isolated or infrequent—is of concern. However, while long-term care facilities may learn that certain of their residents are sex offenders or parolees through required community notification or through other means, our findings did not indicate that residents with prior convictions are more likely than other residents to commit abuse within these facilities. Absent such evidence, it may be more appropriate to focus on residents' behaviors versus their prior convictions when assessing the potential for committing abuse. Facility officials we interviewed more frequently expressed concerns about the behavior and potential for abuse by cognitively impaired and mentally ill residents than by offenders who may have no behavioral issues. Facilities already document problematic behaviors and assess the risk of individuals through resident assessments and care planning procedures, and when they accept residents with behavioral issues or such issues arise after admission, they must appropriately address those behaviors through the care planning for these individuals or transfer them to facilities better equipped to handle such residents. In addition, focusing on prior convictions alone can be problematic in that some offenders, such as those with certain physical impairments, likely do not pose a risk to other residents. Nonetheless, in the interest of identifying potential risks and taking precautionary measures, four states we reviewed—California, Illinois, Oklahoma, and Minnesota—enacted measures in 2005 to require notification to long-term care facilities when offenders are residents. Assessing their experiences as they implement these measures over time, including any negative impact on offenders' access to long-term care, may be instructive for other states with similar concerns.

While it was not part of our original objectives to fully evaluate the NSOR, it was our primary data source for identifying registered sex offenders residing in long-term care facilities. In the course of our analysis, we became aware that the FBI's NSOR, which links states' sex offender registration programs so that law enforcement agencies can identify sex offenders regardless of which state maintains their registration, was incomplete for the seven states we reviewed for this purpose. States face various barriers to fully submitting their registry records to the NSOR,

including difficulties such as obtaining the required FBI number for each offender and a lack of staff resources. While the FBI has been reviewing issues related to states' submission of records to the NSOR, it currently does not track submission rates, so the proportion of state records missing from the NSOR is not precisely known. Continued improvements in the comprehensiveness of the NSOR can enhance the ability of local law enforcement agencies to identify offenders and notify the community, including long-term care facilities, where appropriate.

Recommendations for Executive Action

We recommend that the Attorney General direct the FBI to take the following two actions:

- assess the completeness of the NSOR, including state submission rates, and
- evaluate options for making it a more a comprehensive national database of registered sex offenders.

Agency and State Comments and Our Evaluation

We provided copies of a draft of this report for comment to DOJ; HHS; and the eight states we reviewed: California, Florida, Illinois, Minnesota, New Jersey, Ohio, Oklahoma, and Utah. We received written responses from DOJ and HHS, which are included in this report as appendixes III and IV, respectively. We also received comments from California, Florida, Illinois, Minnesota, New Jersey, and Oklahoma. These agency and state comments and our evaluation follow.

DOJ commented that the recommendations are unnecessary because the FBI already performs assessments of the NSOR and explores options for improvement. For example, DOJ said that the FBI conducts triennial audits of states' NSOR participation, provides training and technical assistance to states, and seeks input from states about what assistance they need to improve their level of participation in the NSOR. DOJ characterized our evaluation as incomplete because we did not ask for information about the entire NSOR program or include a more extensive discussion in the draft report of their efforts to improve the NSOR. We obtained information about these efforts over the course of our work through interviews with FBI staff, documents available on their Web site, and through state officials. Because a comprehensive evaluation of the NSOR was not one of our reporting objectives, we did not include a complete listing of the FBI's assistance to states in our draft report. To respond to DOJ's comments, we revised the report to include additional information about the FBI's initiatives to assist states in data submission

and to assess the accuracy of NSOR records. Including this additional information, however, does not alter our overall finding concerning the discrepancy between state sex offender registries and states' NSOR submissions.

We acknowledge, as DOJ pointed out in its comments, that there may be valid reasons for a certain amount of discrepancy between state registries and their NSOR submissions, such as if a state chooses not to submit the records of sex offenders still incarcerated since their whereabouts do not need to be tracked by the NSOR until their release. We also acknowledge the challenge states face in maintaining current and accurate information about registered sex offenders. However, we continue to believe that the intent of the recommendations remains valid because of the evidence we analyzed for a sample of states that a significant percentage of registered sex offender records are not being successfully submitted by some states to the NSOR, despite the states' and FBI's efforts to date. We believe the FBI needs to track state submission rates to the NSOR as a measure of comprehensiveness that can quantify the remaining gap as well as improvements over time. We therefore revised the first recommendation to specify that we are recommending that the FBI assess state submission rates as a means of assessing the completeness of NSOR.

DOJ commented on three additional issues:

- **The risk posed by offenders residing in long-term care facilities.** DOJ suggested that GAO discounted the risk posed by sex offenders residing in long-term care facilities based on insufficient evidence. We agree that the placement of a sex offender into a long-term care facility requires careful evaluation, particularly as the often-frail condition of long-term care residents makes them vulnerable to victimization. Based on our research and interviews with administrators of long-term care facilities, it is our view that the risk posed by offenders should be considered on a case-by-case basis. The presumption that offenders pose a threat to other residents could lead facilities to unnecessarily deny admission to low-risk offenders or unnecessarily seclude them from other residents. DOJ did not provide any new evidence to support its assertion that sex offenders pose a greater threat than the analysis we presented in the report.
- **The likelihood that convicted sex offenders will commit additional sex offenses after their release from prison.** DOJ objected to our citation of sex offender recidivism rates of 14 percent because they were based on only a 5-year post-incarceration period, saying the period was too short to be the basis of inferences about the likelihood that a sex offender will commit additional sex offenses, and because of evidence that

sex offenses are underreported. We revised the report to clarify that the same research also cites 20-year sex offender recidivism rates of 27 percent.

- **The usefulness of the NSOR in assisting law enforcement to identify sex offenders residing in long-term care facilities.** DOJ questioned GAO's assertion that improvements in the comprehensiveness of the NSOR would improve the ability of local law enforcement to identify sex offenders residing in nursing homes, commenting that offenders would either already be on the state registry and thus identifiable or they would not be registered and therefore not included in the NSOR. We believe that a more comprehensive NSOR would improve the tracking of sex offenders who enter long-term care facilities in the same way it improves the tracking of sex offenders generally. If offenders are registered in one state but move to another state and fail to register, their records could be in the NSOR from the original state but not on the registry of the second state. A more comprehensive NSOR thus better ensures the national tracking of sex offenders who may choose to cross state lines.

HHS commented that this report brought to its attention the uncertainty that some long-term care facility officials have about the application of the HIPAA Privacy Rule to the disclosure of conviction information, as well as the issue that future guidance may be needed. HHS commented that the report will help to resolve the uncertainty about the HIPAA Privacy Rule, including clarifying that disclosures could be allowed for activities necessary for the safe operation of the facility or as required by state laws.

DOJ, HHS, and the states also provided technical comments, which we incorporated as appropriate.

As arranged with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days after its issue date. At that time, we will send copies to the Attorney General, the Secretary of Health and Human Services, and other interested parties. We will also make copies available to others upon request. This report is also available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staffs have any questions about this report, please contact me at (202) 512-7118 or allenk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix V.



Kathryn G. Allen
Director, Health Care

Appendix I: Scope and Methodology

To determine the prevalence of registered sex offenders residing in long-term care facilities nationwide, we matched the addresses of registered sex offenders listed in the Federal Bureau of Investigation's (FBI) National Sex Offender Registry (NSOR) as of January 3, 2005, with the addresses of nursing homes and intermediate care facilities for people with mental retardation (ICF-MR) listed in the Centers for Medicare & Medicaid Services' (CMS) Online Survey, Certification and Reporting system (OSCAR) database. After standardizing address spellings and abbreviations, we used SAS, a statistical analysis program, to compare registered sex offender and long-term care facility addresses. Using a SAS function that quantifies the magnitude of difference between two text variables, we identified exact matches as well as near matches where the addresses differed slightly. We manually reviewed the addresses that differed slightly to determine if they were the same address.

To evaluate the comprehensiveness of the NSOR, we requested the full state sex offender registries from 8 states—California, Florida, Illinois, Minnesota, Ohio, Oklahoma, New Jersey, and Utah—in order to compare the number of records in each registry to the number of records in the NSOR for that state. We chose these 8 states on the basis of a number of criteria, including variation in geographic location and in the number of registered sex offenders identified as living in long-term care facilities based on our preliminary analyses. California state officials did not provide us with the state's sex offender registry in view of their concerns with state privacy laws. We also interviewed FBI staff about the management of the NSOR database. To obtain information about the administration and content of state registries, including their submission of records to the NSOR, we interviewed state registry administrators from the 8 states we reviewed and submitted a questionnaire via e-mail to the remaining 42 states, receiving responses from 20 of them.

Since no national data source on parolees that includes address information exists, we obtained parolee databases from each of the eight states we reviewed. We matched parolee addresses to nursing homes and ICFs-MR in OSCAR using the same methods we used for our analysis of NSOR and state sex offender registries.

We excluded some records from our analysis because there was no valid domestic address for the offender. Table 3 shows the number of records we analyzed from all data sources for both registered sex offenders and parolees, and the number of records excluded from each source because of missing, invalid, or otherwise unusable address information.

Table 3: Validity of Offender Address Data by Data Source

Validity of offender address data	NSOR		Parolee data from eight reviewed states	
	Number of records	Share of total	Number of records	Share of total
State abbreviation does not match one of 50 states or Washington, D.C.	27,141	7%	-	-
Offender incarcerated or deported	23,863	6%	529	0%
Offender transient, homeless, or address unknown	5,936	2%	1,653	1%
Address listed is invalid	8,775	2%	11,879	5%
City/state does not match zip code	327	0%	12	0%
Valid address	304,489	82%	248,290	95%
All	370,531	100%	262,363	100%

Sources: GAO analysis of the NSOR, 2005; GAO analysis of parolee databases for eight reviewed states obtained March through September 2005.

To obtain information about resident abuse perpetrated by registered sex offenders and parolees, we reviewed existing research and prior GAO reports. We also interviewed long-term care facility administrators in the eight states we reviewed, including administrators at facilities with registered sex offenders as residents, as well as state department of health and industry association officials and ombudsmen. To identify facilities for administrator interviews, we initially chose four long-term care facilities in each of the eight states we reviewed. These facilities were chosen from two groups of facilities based on our initial analysis of NSOR and OSCAR data. One group comprised facilities with registered sex offender matches and the other group did not have any such matches, and when possible, we selected two facilities from each grouping. If a selected facility refused our request for an interview, we selected another facility as a replacement from the same group. If a state did not have enough facilities with or without sex offenders to complete two interviews from each group of facilities, we used facilities from the other group. In all, we interviewed administrators at 29 long-term care facilities, 11 with registered sex offender matches and 18 without matches. We achieved a 91 percent response rate for the facility interviews.

To determine whether federal laws provide for notification of facility staff, residents, and residents' families when sex offenders or parolees live in long-term care facilities or for the supervision and separation of sex offenders and parolees living in these facilities, we reviewed federal laws and interviewed Department of Justice and CMS officials. We also interviewed Department of Health and Human Services Office for Civil Rights officials about the applicability of the Health Insurance Portability and Accountability Act of 1996 Privacy Rule to the notification of facilities about residents who are sex offenders or parolees.

To determine whether states we reviewed have laws or long-term care facilities have practices that provide for notification of these individuals and to determine the extent to which these individuals are subject to supervision and separation requirements that differ from those for other residents, we reviewed laws and interviewed state officials responsible for long-term care facility licensing, industry officials, long-term care ombudsmen, and the administrators at 29 long-term care facilities, which were chosen based on the criteria discussed above. We also interviewed Department of Corrections' officials regarding their efforts to inform facilities about their placement of parolees in them. To determine what information on sex offenders is available to the public, we also reviewed state sex offender Web site registries available in the states we reviewed.

The key sources used to identify registered sex offenders and parolees living in long-term care facilities included CMS's OSCAR database, the NSOR, and parolee databases from selected states. To assess the reliability of these data, we conducted electronic data testing, reviewed relevant documentation, and interviewed knowledgeable agency officials about the data quality control procedures. We determined that while the NSOR does not include all registered or convicted sex offenders, its records are regularly audited and are sufficiently reliable for the purposes of this report. The lack of comprehensiveness of the data was evaluated and taken into account in our discussion of the results. The OSCAR database and state parolee databases were also found to be sufficiently reliable for our purposes.

We conducted our work from September 2004 through February 2006 in accordance with generally accepted government auditing standards.

Appendix II: Registered Sex Offenders Living in Nursing Homes and ICFs-MR

To determine the prevalence of registered sex offenders residing in long-term care facilities nationwide, we matched the addresses of registered sex offenders listed in the NSOR as of January 3, 2005, with the addresses of nursing homes and ICFs-MR listed in CMS's OSCAR database. Using this methodology we identified 683 registered sex offenders living in long-term care facilities. The number of registered sex offenders identified as residing in long-term care facilities in each state varied considerably, ranging from 0 to 144, as demonstrated in table 4.

Table 4: Registered Sex Offenders Identified as Living in Nursing Homes and ICFs-MR, by State, 2005

State	Nursing homes	ICFs-MR	Total
Alabama	1	0	1
Alaska	3	0	3
Arizona	15	0	15
Arkansas	10	1	11
California	141	3	144
Colorado	9	6	15
Connecticut	9	2	11
Delaware	6	0	6
District of Columbia	0	0	0
Florida	31	4	35
Georgia	14	0	14
Hawaii	0	0	0
Idaho	5	7	12
Illinois	78	2	80
Indiana	3	1	4
Iowa	9	5	14
Kansas	9	1	10
Kentucky	5	0	5
Louisiana	11	2	13
Maine	3	0	3
Maryland	2	0	2
Massachusetts	0	0	0
Michigan	18	1	19
Minnesota	22	3	25
Mississippi	0	0	0
Missouri	19	2	21

**Appendix II: Registered Sex Offenders Living
in Nursing Homes and ICFs-MR**

State	Nursing homes	ICFs-MR	Total
Montana	1	0	1
Nebraska	0	0	0
Nevada	0	0	0
New Hampshire	4	0	4
New Jersey	12	0	12
New Mexico	13	2	15
New York	10	23	33
North Carolina	10	0	10
North Dakota	0	0	0
Ohio	3	0	3
Oklahoma	10	1	11
Oregon	6	0	6
Pennsylvania	0	0	0
Rhode Island	1	0	1
South Carolina	1	3	4
South Dakota	11	0	11
Tennessee	1	0	1
Texas	61	8	69
Utah	0	0	0
Vermont	0	0	0
Virginia	7	2	9
Washington	8	0	8
West Virginia	1	0	1
Wisconsin	20	1	21
Wyoming	0	0	0
Total	603	80	683

Sources: GAO analysis of the FBI's NSOR as of January 3, 2005; CMS's OSCAR database, 2004.

Appendix III: Comments from the Department of Justice



U.S. Department of Justice

Washington, D.C. 20530

March 9, 2006

Ms. Kathryn G. Allen
Director
Health Care
United States Government Accountability Office
Washington, D.C. 20548

Re: GAO REPORT 06-326

Dear Ms. Allen:

Thank you for the opportunity to review the Government Accountability Office (GAO) draft report entitled "LONG-TERM CARE FACILITIES: Information on Residents Who Are Registered Sex Offenders or Paroled for Other Crimes." The draft report has been reviewed by various components of the Department of Justice (Department), including the Federal Bureau of Investigation (FBI) and its Criminal Justice Information Services (CJIS) Division. This letter serves as the formal comments of the Department, and it is requested that this letter be included by the GAO in its final report.

The Department set out its comments in two sections. The first section addresses the recommendation relating to the National Sex Offender Registry (NSOR). The second section discusses the treatment of issues of sex offender recidivism and potential danger.

Support for the Recommendation and the Completeness of Information About the NSOR.

The draft GAO report includes a two part recommendation that "the Attorney General direct the FBI to take the following two actions: (1) assess the completeness of the NSOR and (2) evaluate options for making it a more comprehensive national database of registered sex offenders." [Numbering added for clarification.]

We believe the recommendation is unnecessary. Had the GAO conducted a comprehensive review of the NSOR program it most likely would have discovered that the FBI already performs assessments and explores options to improve the NSOR.

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The CJIS Division regularly assesses the competencies of NSOR and suggests improvements for its operations that would increase the registry's value to the end users. For example, during fiscal year 2005, CJIS assessed the states' level of participation in the NSOR and requested specific information as to what assistance was needed to improve their level of participation. While the majority of the states responded to the request for information, a side-by-side comparison of record counts (state registries against the NSOR, the methodology of the GAO) may not accurately identify the level of participation. For example, many states chose not to include all of their records in the NSOR, such as those regarding incarcerated offenders and those included in the NSOR by new state of registry, stating they would be of no value at the national level. As such, when these states responded to NSOR they included only those released and registered. Consequently, it is understandable that a discrepancy exists between the states' numbers and those in NSOR. Further, 11 states indicated that NSOR's database requirements limited the states' ability to include all of their sex offenders in the NSOR. CJIS has been advised by these states that they need additional funding for training and personnel before they can improve their level of participation.

In addition to the fiscal 2005 audit, the CJIS Division conducts triennial audits of the states' participation in the NSOR. These audits include evaluations of the accuracy, completeness, and timeliness of the information in the NSOR.

Regarding the second part of the recommendation, CJIS already evaluates options for making NSOR a more comprehensive national database. The CJIS Division operates under a shared management concept and an Advisory Policy Board (APB) that is formed under the Federal Advisory Committee Act. The CJIS APB makes recommendations regarding general policy to the FBI Director with respect to CJIS philosophy, concept, and operational principles. Further, the CJIS APB has created an ad hoc task force to address the states' concerns with the NSOR. As such, the CJIS APB already provides a forum to discuss and develop any changes to the NSOR and all 50 states have representation in this APB process.

The GAO may wish to undertake additional information gathering and analyses of the entire NSOR program. The GAO draft report reaches conclusions and makes findings that reflect an imperfect understanding of the NSOR program. This may be the case because the GAO based its findings on information that could have been far more complete. The GAO obtained information from select state governments and from the CJIS Division. There is nothing in the report to suggest that the GAO collected and evaluated additional information. While the Department cannot be sure what information the states provided, the Department knows that the CJIS Division supplied the GAO with legislative background, database records from the NSOR, and information regarding technical functionality of the data, and nothing more. This is all the GAO requested. The GAO did not ask for information about the entire NSOR program. The Department believes the GAO failed to collect enough data to allow it to prepare a thorough analysis of the NSOR program and, therefore, an accurate report.

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For example, the GAO proceeded without asking for information about the relationship between the CJIS Division and the state sex offender registries. This may explain why the draft is silent about the training and technical assistance that the FBI provides to the states for the purpose of helping them include their information in the NSOR. The absence of any discussion about the assistance provided by the Department suggests that the Department has failed to provide such assistance. In fact, such assistance is provided. Moreover, as a result of working with the states to facilitate their data reporting, the Department has developed a wealth of information about NSOR. The Department would have given such information to the GAO had it asked.

Sex Offenders, Recidivism, and Potential Danger.

The report acknowledges an inability to obtain any definite information about the likelihood that registered sex offenders or other convicts will engage in abuse of other residents in long-term care facilities, because the available information about incidents of abuse does not show whether the perpetrators have prior criminal convictions. See “Highlights” summary; pp. 5, 11, 17. Nevertheless, the discussion and conclusions in the report seem to discount on inferential grounds any risk such offenders may pose to other residents. The report also attempts to tie in its findings and recommendations concerning the NSOR to the original subject of the report by stating that “improvements in the comprehensiveness of the NSOR can enhance the ability of local law enforcement agencies to identify offenders and notify the community, including long-term care facilities, where appropriate.” Page 28. Neither conclusion is warranted by the information in the report.

Regarding the suggested low-risk status of convicted sex offenders, the report relies in part on empirical study which it sees as suggesting that convicted sex offenders “typically” do not commit more sex offenses.

By way of illustration, a study is cited in which it was estimated that “about 14 percent [of sex offenders] had a new sex offense charge or conviction within 5 years of their release from prison.” Page 10. Whether a 14 percent re-offense rate could properly be regarded as a small concern in relation to offenses as serious as sexual assaults is certainly a debatable matter and, in any event, the information provided by studies of this type is limited by the duration of the follow-up period for which recidivism is reckoned – in this case, 5 years. For example, assume for the sake of discussion that a sex offender lives on average about 35 years following his release from prison. That would be 7 times as long as the 5 year follow-up period considered in the study. Multiplying the study's recidivism figure of 14 percent over a 5-year period by 7 would then yield a lifetime recidivism rate for sex offenders of virtually 100 percent (7 times 14 percent equals 98 percent). Such an inference would, of course, be invalid because (among other reasons) the likelihood of sex offenders committing more sex offenses later in their lives may not be the same as their likelihood of doing so within a few years of their release from imprisonment. But the example illustrates the hazards of making inferences about the overall risk of recidivism based on recidivism figures reckoned for relatively short periods. In inferring from the cited data

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that sex offenders “typically” do not reoffend, the report implicitly makes a contrary assumption – that a sex offender who does not commit more sex offenses within a few years of release probably will never do so. The report does not substantiate this assumption.

A second limitation of the cited data is that, as the report itself notes, “research also indicates that sex offenses are underreported.” Page 10. Reliance on re-arrest figures shows only the number of cases in which the offenses committed by sex offenders are reported or otherwise detected by the authorities, and the case is successfully investigated, resulting in the identification of the offender and his being charged with the crime. Researchers have attempted to go beyond this type of incomplete information through such methodologies as self-reports by sex offenders under assurances of confidentiality, and comparison of reported crime figures with data from victimization surveys. Studies of this type indicate that a large proportion of sex offenses never come to light, or do not result in the arrest of the offender. There is a comparable problem in the draft report’s inference of a relatively low recidivism rate for sex offenders without any serious effort to determine how much of their actual recidivism is not reflected in re-arrest figures and the like.

The report also downplays the risk convicted offenders may pose to other residents of long-term care facilities by noting that such offenders may be incapable of committing crimes because of physical infirmity or impairment. Pages 17-18, 27. This notion may be undercut to some extent by the report’s observation that registered sex offenders identified as living in nursing homes “were considerably younger than the general nursing home population, with 57 percent under age 65 compared to about 10 percent of all nursing home residents.” Pages 4-5; but cf. p. 13 (discussing possible reason). In any event, in assessing the risk of victimization, the condition of potential victims – not just the condition of potential offenders – needs to be taken into account. The resident population in long-term care facilities must include many individuals who are especially vulnerable to victimization, and who may be attractive targets for sexually violent criminals present in such facilities, because of mental and/or physical frailty or impairment. Hence, any reduced risk resulting from infirmity of potential offenders must be balanced against any increased risk resulting from infirmity of potential victims.

A final point made by the report on this question is that the facility administrators who were interviewed more frequently expressed concern about residents with presently observable cognitive impairments or mental illness (such as dementia), as opposed to residents with past criminal convictions. But this information as well would not support reliable inferences about the actual risk posed by residents with criminal histories. One reason such residents may not rank high among administrators’ concerns is that the administrators do not know that they have such residents. As the report recounts, facility administrators may not have this information because the state in which the facility is located does not give notice concerning registered sex offenders to long-term care facilities, or because the state notifies such facilities only concerning a subclass of sex offenders, or because the sex offenders in such facilities are not registered since their convictions occurred prior to the states’ establishment of sex offender registration programs. Pages 2, 6-7, 13, 19-22. Also, even if there is awareness of the presence of such offenders in a

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facility, an administrator may be unable to judge to what extent the conviction entails a present risk to others, and it would be understandable if such residents were accordingly viewed as a lesser concern than residents with manifest current conditions that dispose them to violent behavior. But neither of these reasons would imply anything about the actual degree of danger to other residents posed by the presence of such offenders in long-term care facilities, or that they are probably not enough of a danger to worry about much, as the report seems to suggest. See page 27. The report turned up no information sufficient to support policy conclusions on this issue, and it would be more appropriate to acknowledge this point straightforwardly.

Finally, there is the report's assertion that "[c]ontinued improvements in the comprehensiveness of the NSOR can enhance the ability of local law enforcement agencies to identify offenders and notify the community, including long-term care facilities, where appropriate." Without questioning the importance of ensuring that the information in NSOR is as comprehensive as possible, it is difficult to see how that could have the particular significance asserted in this statement. If a sex offender residing in a long-term care facility registers as required with the state in which the facility is located, then local law enforcement agencies (or other agencies responsible for sex offender notification) have access to that information through the state system, and it makes no difference for this purpose whether the information is also in NSOR. The other possibility is that a sex offender in such a facility will fail to register his current address with the state, in which case NSOR cannot have the information either, because the information in NSOR comes from the state systems. So the report should either explain the logical justification for this statement, or delete it.

Thank you for the opportunity to comment on your report.

Sincerely yours,



Paul R. Corts
Assistant Attorney General
for Administration

Appendix IV: Comments from the Department of Health and Human Services



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

FEB 27 2006

Ms. Kathryn G. Allen
Director, Health Care
U.S. Government Accountability Office
Washington, DC 20548

Dear Ms. Allen:

Enclosed are the Department's comments on the U.S. Government Accountability Office's (GAO) draft report entitled, "LONG-TERM CARE FACILITIES: Information on Residents Who Are Registered Sex Offenders or Paroled for Other Crimes" (GAO-06-326). These comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

The Department provided several technical comments directly to your staff.

The Department appreciates the opportunity to comment on this draft report before its publication.

Sincerely,

A handwritten signature in cursive script that reads "Daniel R. Levinson".

Daniel R. Levinson
Inspector General

Enclosure

The Office of Inspector General (OIG) is transmitting the Department's response to this draft report in our capacity as the Department's designated focal point and coordinator for U.S. Government Accountability Office reports. OIG has not conducted an independent assessment of these comments and therefore expresses no opinion on them.

**COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
ON THE U.S. GOVERNMENT ACCOUNTABILITY OFFICE'S DRAFT
REPORT ENTITLED, "LONG-TERM CARE FACILITIES INFORMATION ON
RESIDENTS WHO ARE REGISTERED SEX OFFENDERS OR PAROLED FOR
OTHER CRIMES" (GAO-06-326)**

The Department of Health and Human Services (HHS) appreciates the opportunity to comment on the draft report. The comments that follow represent HHS's responses to the draft report. We note that the draft GAO Report contains no conclusions or recommendations concerning the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule.

HHS appreciates GAO's bringing to our attention the uncertainty of some long-term care facility officials with respect to the application of the HIPAA Privacy Rule in the uncommon circumstances outlined in the proposed Report. We also appreciate GAO's suggestion that future guidance may be needed should this issue gain in prominence.

We believe the Report will contribute to resolving much of the uncertainty based on the discussion on page 25 of the relevant Privacy Rule provisions, including that, even to the extent conviction information is maintained by the long-term care facility as protected health information, it could still be used within the facility or disclosed to others for specific purposes permitted by the HIPAA Privacy Rule. This includes activities necessary for the safe operation of the facility or disclosures that are required by other law, such as certain of the State laws referenced elsewhere in the draft Report.

However, in the Results in Brief section of the proposed Report, on page 6, the statement that some long-term care facility managers would notify facility staff of a resident's prior conviction "[d]espite concerns that they may violate the HIPAA Privacy Rule" may wrongfully suggest that these disclosures would, in all cases, violate the HIPAA Privacy Rule. Such a misinterpretation could be avoided by including in the sentence that follows a reference to the explanation of the application of the HIPAA Privacy Rule that appears later on page 25.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Kathryn G. Allen, (202) 512-7118 or allenk@gao.gov

Acknowledgments

In addition to the contact named above, Susan T. Anthony, Assistant Director; George Bogart; Katherine Crumley; Michaela M. Monaghan; Elizabeth T. Morrison; Sari B. Shuman; and Kara Sokol made key contributions to this report.

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