

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**ALL SIX STATES REVIEWED HAD
PARTIALLY IMPLEMENTED NEW
CRIMINAL BACKGROUND CHECK
REQUIREMENTS FOR CHILDCARE
PROVIDERS, AND FIVE OF THE STATES
ANTICIPATE FULL IMPLEMENTATION
BY FISCAL YEAR 2020**

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A-05-19-00015

Office of Inspector General

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Report in Brief

Date: August 2019

Report No. A-05-19-00015

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

The Child Care and Development Block Grant Act of 2014 (CCDBG Act) added new requirements for States receiving Child Care and Development Fund (CCDF) money to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years. States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds. Background check requirements apply to any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children.

Our objective was to determine the six States' progress toward implementing new criminal background check requirements established under the CCDBG Act.

How OIG Did This Review

This review summarizes what we reported in prior audits of six States' implementation of the new criminal background check requirements that were in place as of March and October 2018. We reviewed Colorado, Georgia, Illinois, Nevada, New Hampshire, and New York.

All Six States Reviewed Had Partially Implemented New Criminal Background Check Requirements for Childcare Providers, and Five of the States Anticipate Full Implementation by Fiscal Year 2020

What OIG Found

All six States had implemented some of the new criminal background check requirements established under the CCDBG Act as of March and October 2018. Five of the six States anticipate full implementation by fiscal year 2020. However, certain criminal background check requirements for childcare providers remained unimplemented, and significant challenges may delay full implementation. These challenges included data system limitations, insufficient funds and staff to process the criminal background checks, and delays associated with making required changes to State laws or policies and procedures.

What OIG Recommends and

Administration for Children and Families Comments

We recommend that the Administration for Children and Families (ACF) (1) continue to monitor the States' actions and progress toward implementation of the new background check requirements and (2) continue to work with States and Federal partners to ensure that all remaining background check requirements are implemented.

ACF concurred with our recommendations and stated that it is working diligently to support State implementation of the background check requirements of the CCDBG Act and will continue to pursue new strategies and partnerships to strengthen the infrastructure for conducting background checks for childcare staff.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Child Care and Development Block Grant Act of 2014 (CCDBG Act) added new requirements for States receiving Child Care and Development Fund (CCDF) money to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers prior to employment and every 5 years thereafter (P.L. No. 113-186 § 658H (Nov. 2014)).

States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds. Background check requirements apply to any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children. This includes not only caregivers, teachers, and directors, but also janitors, cooks, and other employees of a childcare provider who may not regularly engage with children, but whose presence at the facility gives them the opportunity for unsupervised access. For family childcare homes, this includes the caregiver requesting a check of himself or herself, as well as other adults in the household who may have unsupervised access to children.

As part of its oversight activities, the Office of Inspector General is conducting a series of reviews to improve the program integrity of childcare and development grant programs. This review summarizes what we reported in prior audits of six States' implementation of the new criminal background check requirements.¹ For this review, we define implementation as the actions taken to establish the requirements, policies, and procedures that will be used to carry out the provisions of the CCDBG Act. We have begun a series of new audits to determine whether the States' monitoring processes ensured that providers complied with established State requirements related to criminal background checks established under the CCDBG Act.

OBJECTIVE

Our objective was to determine the six States' progress toward implementing new criminal background check requirements established under the CCDBG Act.

BACKGROUND

Reauthorized in the CCDBG Act, CCDF is the primary Federal funding source devoted to subsidizing the childcare expenditures of low-income families. Administered by the Administration for Children and Families (ACF), CCDF provides eligible low-income families with help paying for childcare at a provider of their choice while they work or participate in training

¹ The six States reviewed were Colorado, Georgia, Illinois, Nevada, New Hampshire, and New York. See Appendix B for a list of the issued reports.

or education, or both. In fiscal year (FY) 2018, ACF provided \$8.1 billion to States, territories, and Tribes to fund CCDF programs. Each month, CCDF funds go toward the care of approximately 1.4 million children under the age of 13 from 850,000 low-income working families.

New Criminal Background Check Requirements

The U.S. Department of Health and Human Services (HHS) implemented the CCDBG Act's new criminal background check requirements for States, territories, and Tribes in a final rule issued in September 2016 (45 CFR part 98). According to Federal regulations, States must have requirements, policies, and procedures in place to conduct comprehensive criminal background checks. States are required to conduct criminal background checks for childcare staff members and prospective staff members that include checks of two national registries, three in-State registries, and checks of three registries in other States as necessary (we refer to those checks as "inter-State checks") (45 CFR § 98.43(b)).

The national background registry checks are:

- a Federal Bureau of Investigation (FBI) criminal history fingerprint check using Next Generation Identification² and
- a search of the National Crime Information Center's (NCIC's) National Sex Offender Registry.

In-State background registry checks (applicable to the State in which the childcare staff member resides) are:

- a search of the State criminal registry using fingerprints,
- a search of the State sex offender registry, and
- a search of the State-based child abuse and neglect registry.

Inter-State background registry checks (applicable to each State in which the childcare staff member resided during the preceding 5 years) are:

- a search of each State's criminal registry (fingerprints optional),
- a search of each State's sex offender registry, and

² The FBI fingerprint check, Next Generation Identification (formerly the Integrated Automated Fingerprint Identification System), provides the criminal justice community with an electronic repository of biometric and criminal history information (<https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>). Accessed on April 1, 2019.

- a search of each State-based child abuse and neglect registry.

In addition to requiring registry checks, States must comply with several other requirements laid out in Federal regulations. The requirements are described below. In parentheses, we add a descriptor of the requirement that we will use in later discussions in the report:

- Federal regulations require criminal background checks for staff members and prospective staff members of childcare providers (other than relatives) who are licensed, regulated, or registered under State law or receive CCDF funds. This includes any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children. Throughout the report, we refer to these individuals as “childcare staff members” (45 CFR § 98.43(a)). (“Applicable to all childcare staff members.”)
- Federal regulations require States to include in their requirements, policies, and procedures specific factors that would cause a childcare staff member to be ineligible for employment by childcare providers (45 CFR § 98.43(c)). (“Disqualification factors.”)
- Federal regulations require criminal background checks prior to employment and at least every 5 years following employment (45 CFR § 98.43(d)(2)). (“5-year timeframe.”)
- States must have requirements, policies, and procedures to prevent a childcare staff member from starting work before the FBI or in-State criminal registry fingerprint check is returned as satisfactory, and to require that a staff member be continually supervised until a determination is made on all checks (45 CFR § 98.43(d)(4)). (“Condition of employment.”)
- States are required to provide the results of criminal background checks within 45 days after the date on which the childcare provider submitted the checks (45 CFR § 98.43(e)(1)). (“Results within 45 days.”)
- States are required to provide a process for childcare staff members to appeal the results of criminal background checks (45 CFR § 98.43(e)(3)). (“Appeals process.”)
- States may charge for the costs (not to exceed actual costs) of processing applications and administering criminal background checks (45 CFR § 98.43(f)). (“Appropriate fees.”)
- States must ensure that their policies and procedures for criminal background checks are published on their websites (45 CFR § 98.43(g)). (“Transparency of State policies and procedures.”)

Extension and Waiver Deadlines for Implementation

The CCDBG Act required that all States have requirements, policies, and procedures in place that meet the criminal background check requirements not later than September 30, 2017. The CCDBG Act allowed for the Secretary of HHS to grant a 1-year extension to States as long as they demonstrated a good-faith effort to implement the requirements. Because of significant challenges to implementing the new background requirements, all States applied for and received extensions through September 30, 2018. In addition, ACF has the authority to grant States a waiver of a statutory provision, including one or more criminal background check requirements, and may extend the period of implementation for the waived requirements for up to 2 additional years, until September 30, 2020, assuming that the requirements for applying for the waiver are fulfilled. In its State plan preprint and instructions,³ ACF has indicated that if a State implements the FBI criminal history check and the three in-State background checks for prospective staff by September 30, 2018, the State may receive a time-limited waiver (1 year, with an additional year renewal, subject to conditions being met) to perform the following actions:

- conduct FBI checks and in-State registry checks on current childcare staff and
- establish procedures and conduct checks of the NCIC's National Sex Offender Registry and inter-State registries for current and prospective staff, as necessary.

As of December 2018, four of the six States⁴ met the milestones and were approved for a 1-year waiver, effective October 1, 2018, to implement their remaining background registry check requirements. Illinois did not fully implement the required milestone provisions by September 30, 2018, and was placed on a corrective action plan. New York did not meet the required milestones and was issued a preliminary notice of noncompliance and notice of a potential penalty of 5 percent of CCDF discretionary funds.

Child Care and Development Fund State Plans

As of December 2018, all 50 States and the District of Columbia (States) submitted a State plan for FYs 2019 through 2021 to ACF for approval. The State plan is the primary mechanism that ACF uses to determine State and territory compliance with the requirements of the CCDBG Act. The State plan serves as the State's application for CCDF funds by providing a description of how the program will be administered in accordance with CCDF rules and regulations, including the new criminal background check requirements. In the State plan preprint instructions, ACF requested that States identify in their State Plans the criminal background check components

³ The State plan preprint provides a tool for States and territories to describe to ACF their progress on eight key functions of an integrated system of childcare as described in the preprint. Available online at https://www.acf.hhs.gov/sites/default/files/occ/ccdbg_fy2019_2021_ccdf_plan_preprint.pdf. Accessed on January 9, 2019.

⁴ Colorado, Georgia, Nevada, and New Hampshire.

that were implemented and identify what components are still pending in their FYs 2019 through 2021 State plans. Additionally, ACF noted that all requirements not fully implemented by the October 1, 2018, deadline are subject to compliance actions such as corrective action plans or penalties in accordance with CCDF regulations.

As of December 21, 2018, ACF conditionally approved State plans for all States for FYs 2019 through 2021.⁵ According to the approval letters, ACF determined that:

- 2 States met all 8 of the required criminal background registry checks;
- 35 States met the milestones and were approved for a 1-year waiver, effective October 1, 2018, to implement criminal background registry check requirements;
- 10 States were not fully meeting at least 1 of the 4 milestone components and were placed on corrective action plans; and
- 4 States were provided a preliminary notice of noncompliance and notice of potential 5-percent penalty of CCDF discretionary funds that will be imposed in FY 2020 if the States are not in compliance with the criminal background check requirements by September 30, 2019.

Appendix C provides the status of criminal background registry check requirements and 1-year waivers for each State according to the State plan approval letters issued by ACF as of December 21, 2018.

Administration for Children and Families Initiatives To Help States Implement the New Criminal Background Checks

ACF indicated that the background check provisions in the CCDBG Act were challenging to implement because they included checks of both criminal and sex offender records and child abuse and neglect records. ACF said that these records are typically housed by separate State agencies, and therefore different approaches and solutions are required to obtain the records. Further, ACF said that the inter-State checks are complicated by differences in State laws and processes and a lack of automation and infrastructure across States. Lastly, ACF said that the burdens of implementation and consequences of noncompliance with the background checks fall on the State childcare agencies even though they may have no direct authority or control over the records and registries necessary to conduct the checks.

⁵ A conditionally approved plan is a fully approved plan with conditions related to unmet requirements. The conditions will be deemed fully met once all provisions in the CCDBG Act and CCDF final rule are fully implemented.

To help States overcome these challenges, ACF issued policy guidance to clarify the requirements, provided technical assistance to States through meetings and webinars, and provided targeted assistance to individual States. Additionally, ACF is actively engaged in partnerships and meetings with key stakeholders, including the FBI Criminal Justice Information Services Division and the Compact Council for the National Crime Prevention and Privacy Compact.⁶

ACF initiated a new research project, *Implementation Study of Child Care Interstate Background Checks*, to document States' challenges with the implementation of inter-State background checks and identify solutions for full compliance. Primary deliverables for this project include reports about each project activity that will:

- summarize the existing literature around challenges to implementing inter-State background checks and explore inter-State data systems and resources that could be leveraged for childcare purposes;
- provide in-depth information about which components of the inter-State background checks process States are most challenged to implement and identify solutions that could be supported at the Federal level to address these challenges; and
- evaluate potential solutions, including feasibility and cost, and develop recommendations to address common challenges across ACF offices and programs regarding both in-State and inter-State background registry checks.

HOW WE CONDUCTED THIS REVIEW

This review summarizes what we reported in prior audits of six States' implementation of the new criminal background check requirements that were in place as of March and October 2018.⁷ During those audits, we examined the six States' plans to address the new criminal background check requirements that had not been implemented by the end of our fieldwork and also identified challenges that the six States experienced. Our audits did not address childcare providers' compliance with the new requirements.

We did not review the six States' overall internal control structure. Rather, we limited our review to determining whether the States implemented the new criminal background check requirements.

Appendix A contains the details of our audit scope and methodology.

⁶ The National Crime Prevention and Privacy Compact Council was established under the National Crime Prevention and Privacy Compact Act of 1998 (Compact). The Compact provides an infrastructure by which States can exchange criminal records for noncriminal justice purposes.

⁷ Our audits in Colorado, Georgia, Illinois, Nevada, and New Hampshire reviewed the States' implementation status as of March 2018. Our audit in New York reviewed the State's implementation status as of October 2018.

















































We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS OF REVIEW

All six States had implemented some of the new criminal background check requirements established under the CCDBG Act as of March and October 2018. Five of the six States anticipate full implementation by FY 2020. However, certain criminal background check requirements for childcare providers remained unimplemented, and significant challenges may delay full implementation. These challenges included data system limitations, insufficient funds and staff to process the criminal background checks, and delays associated with making required changes to State laws or policies and procedures.

Table 1 on the next page provides a summary of the six States' implementation status for the national, in-State, and inter-State background registry checks.

Table 1: Implementation Status of Criminal Background Registry Checks

Background Registry Checks	Implementation Status ⁸					
FBI criminal history fingerprint check						
NCIC's National Sex Offender Registry						
In-State criminal registry						
In-State sex offender registry						
In-State child abuse and neglect registry						
Inter-State criminal registry						
Inter-State sex offender registry						
Inter-State child abuse and neglect registry						

THE STATES DID NOT IMPLEMENT ALL NATIONAL CRIMINAL BACKGROUND REGISTRY CHECKS

The National FBI Criminal History Fingerprint Check Was Not Fully Implemented in Two States

According to Federal regulations, States are required to conduct an FBI criminal history fingerprint check using Next Generation Identification for childcare staff members or prospective staff members (45 CFR § 98.43(b)(1)).

⁸ We based States' implementation status on discussions we had with State officials during our audits as of March 2018 and October 2018 (New York only). A green circle indicates that the State had implemented the background registry check by the corresponding date. A red square indicates that the State had not implemented the background registry check by the corresponding date. A yellow triangle indicates that the State had partially implemented the background registry check by the corresponding date. "Partially implemented" indicates that some aspects of the requirement had been implemented.

Four of the six States had implemented the FBI criminal history background check (Colorado, Georgia, Illinois,⁹ and New Hampshire); Nevada and New York had partially implemented this requirement for at least one type of provider.

Nevada had implemented this requirement for licensed, nonlicensed, and Washoe County providers, but not for license-exempt providers. Nevada indicated that its background check process is decentralized. Depending on the provider type, different entities conduct the background checks, including different third-party contractors for the license-exempt providers. Additionally, for license-exempt providers, the requirements and processes differ depending on the city or county in which the provider is located. Thus, Nevada stated that implementation of the new requirements for these providers has been difficult. Nevada is meeting with all of the license-exempt providers to train them on the new background check requirements and to verify compliance.

New York had implemented this requirement for certain licensed New York City day care centers but not for other licensed, legally exempt informal and legally exempt group providers in the State. New York said that it needed to change its State laws to create the authority to fully implement this check. New York stated that it will continue to pursue the needed statutory amendments to implement all CCDBG Act requirements but was unable to provide an estimated implementation date.

The National Crime Information Center's National Sex Offender Registry Check Was Not Fully Implemented in Four States

Federal regulations require States to conduct a search of the NCIC's National Sex Offender Registry for childcare staff members or prospective staff members (45 CFR § 98.43(b)(2)).

Two of six States had implemented the NCIC's National Sex Offender Registry check (Georgia and New Hampshire). The remaining four States had not implemented the NCIC's National Sex Offender Registry check because of challenges they experienced. These challenges included data system limitations, insufficient staff to process this registry check, and delays associated with making required changes to State laws or policies and procedures.

THE STATES IMPLEMENTED OR PARTIALLY IMPLEMENTED ALL IN-STATE BACKGROUND REGISTRY CHECKS

According to Federal regulations, States are required to conduct a search of the (1) State criminal registry (using fingerprints), (2) State sex offender registry, and (3) State-based child abuse and neglect registry in the State in which the childcare staff member or prospective staff member resides (45 CFR § 98.43(b)(3)).

⁹ On November 9, 2018 (after we issued our audit report to Illinois), ACF placed Illinois on a corrective action plan because the State did not fully implement the FBI criminal history check, the NCIC National Sex Offender Registry check, and the inter-State criminal registry check for all applicable childcare providers by September 30, 2018.

Four of the six States had implemented the in-State criminal background registry check, the in-State sex offender registry check, and the in-State child abuse and neglect registry check (Colorado, Georgia, Illinois, and New Hampshire); Nevada and New York had partially implemented these in-State registry checks for at least one type of provider.

Nevada had implemented these three registry checks for licensed, nonlicensed, and Washoe County providers but not for license-exempt providers. Nevada stated that it has been challenging to implement the background check requirements for all provider types because of the decentralization of the background check process.

New York had partially implemented the three in-State criminal background registry checks for at least one type of provider. New York indicated that changes were needed to its State laws to create the authority to fully implement these registry checks, and it will continue to work to pursue the needed statutory amendments to implement all CCDBG Act requirements, but it was unable to provide an estimated implementation date.

THE STATES DID NOT IMPLEMENT ALL INTER-STATE BACKGROUND REGISTRY CHECKS

The Inter-State Criminal Registry Check Was Not Fully Implemented in Six States

According to Federal regulations, States are required to conduct a search of the criminal registry in each State (fingerprints optional) in which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

Only one of the six States had partially implemented the inter-State criminal registry check (Nevada¹⁰). The remaining five States had not implemented the inter-State criminal registry check because of challenges they experienced. These challenges included insufficient funds and staff to process this registry check and delays associated with making required changes to State laws or policies and procedures.

The Inter-State Sex Offender Registry Check Was Not Fully Implemented in Three States

According to Federal regulations, States are required to conduct a search of each State's sex offender registry in the State(s) in which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

Three of the six States had implemented the inter-State sex offender registry check (Georgia, Illinois, and New Hampshire). Nevada had partially implemented this registry check for at least one type of provider. The remaining two States had not implemented this registry check because of challenges they experienced, including insufficient funds and staff to process the registry checks and needed changes to State laws or policies and procedures.

¹⁰ As of March 2018, Nevada had implemented this requirement for licensed and nonlicensed providers but not for Washoe County and license-exempt providers.

The Inter-State Child Abuse and Neglect Registry Check Was Not Fully Implemented in Four States

According to Federal regulations, States are required to conduct a search of each State's child abuse and neglect registry in the State(s) in which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

















































Two of the six States had implemented the inter-State child abuse and neglect registry check (Illinois and New Hampshire). Nevada had partially implemented this registry check for at least one type of provider. The remaining three States had not implemented this registry check because of challenges they experienced, including data system limitations, insufficient funds and staff to process the registry checks, and delays associated with making required changes to State laws or policies and procedures.

THE STATES DID NOT IMPLEMENT ALL ADDITIONAL BACKGROUND CHECK REQUIREMENTS

In addition to accessing national, in-State, and inter-State registries, States are required to implement criminal background check requirements that address other Federal requirements. The six States had implemented some of these background check requirements, but some of the checks remained unimplemented because of challenges the States experienced. These challenges included insufficient funds and staff to process the background check requirements and delays associated with making required changes to State laws or policies and procedures.

Table 2 on the next page provides a summary of the six States' implementation status for these background check requirements.

Table 2: Implementation Status of Background Check Requirements

Background Check Requirements	Implementation Status ¹¹					
Applicable to all childcare staff members						
Disqualification factors						
5-year timeframe						
Condition of employment						
Results within 45 days						
Appeals process						
Appropriate fees						
Transparency of State policies and procedures						

The Applicable to All Childcare Staff Members Requirement Was Not Fully Implemented in Three States

Federal regulations require States to have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds. Background check requirements apply to any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children (45 CFR § 98.43(a)).

¹¹ We based States' potential implementation status on discussions we had with State officials during our audits as of March 2018 and October 2018 (New York only). A green circle indicates that the State had implemented the background check requirement by the corresponding date. A red square indicates that the State had not implemented the background check requirement by the corresponding date. A yellow triangle indicates that the State had partially implemented the background check requirement by the corresponding date. "Partially implemented" indicates that some aspects of the requirement had been implemented.

Three of the six States had implemented this background check requirement (Colorado, Illinois, and New Hampshire); Nevada and New York had partially implemented this background check requirement; and Georgia had not implemented this background check requirement.

Nevada had partially implemented this background check requirement for at least one type of provider and said that it has been a challenge to implement this requirement for all provider types because of the decentralization of the background check process.

New York partially implemented this background check requirement for at least one type of provider and said it needs to advance statutory amendments to create the authority to implement this requirement.

Georgia had not implemented this background check requirement because State policy excluded provisional employees from obtaining all of the background checks.

The Disqualification Factors Requirement Was Not Fully Implemented in Three States

Federal regulations list disqualification factors for childcare staff members employed by providers receiving CCDF assistance. The factors include refusing a background check or knowingly providing a materially false statement in connection with a background check; being registered, or being required to be registered, on the State or National Sex Offender Registry; having been convicted of a felony consisting of murder, child abuse or neglect, a crime against children, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault, or a drug-related offense committed during the preceding 5 years; and having been convicted of a violent misdemeanor committed as an adult against a child (e.g., child abuse, child endangerment, sexual assault, child pornography) (45 CFR § 98.43(c)(1)).

Three of the six States had implemented this background check requirement (Colorado, Georgia, and New Hampshire); Nevada had partially implemented this background check requirement; and Illinois and New York had not implemented this background check requirement.

Nevada had partially implemented this background check requirement for at least one type of provider and said that it has been a challenge to implement this requirement for all provider types because of the decentralization of the background check process.

Illinois had not implemented one of the disqualification factors. Specifically, Illinois needed to add arson to its list of disqualifying offenses, which will require changes to its administrative rules.

New York did not have mandatory disqualification factors as listed in the Federal regulations but had presumptive disqualification factors. Specifically, New York stated that, on a case-by-case basis, it considered the duties of the applicant and whether a past offense might jeopardize the health and safety of children.

The 5-Year Timeframe Requirement Was Not Fully Implemented in Three States

Federal regulations require States to have requirements, policies, and procedures in place to conduct criminal background checks for childcare staff members and prospective staff members prior to employment and at least once every 5 years (45 CFR § 98.43(d)(2)).

Three of the six States had implemented this background check requirement (Georgia, Illinois, and New Hampshire); Nevada and New York had partially implemented this background check requirement; and Colorado had not implemented this background check requirement.

Nevada had partially implemented this background check requirement for at least one type of provider and said that it has been a challenge to implement this requirement for all provider types because of the decentralization of the background check process.

New York had partially implemented this background check requirement for at least one type of provider and said it needs to advance statutory amendments to create the authority to implement this requirement.

Colorado had not implemented this background check requirement because the State was promulgating State-level requirements mandating that FBI checks be conducted every 5 years for all individuals who are working with children in licensed or qualified exempt facilities.

The Condition of Employment Requirement Was Not Implemented in Six States

Federal regulations state that a prospective staff member may begin work for a childcare provider after completing either the FBI criminal history fingerprint check or the in-State criminal history check. Until all background check components have been completed, the staff member must be supervised at all times by an individual who has received a qualifying result on a background check within the past 5 years (45 CFR § 98.43(d)(4)).

None of the six States had implemented this background check requirement because of challenges the States experienced. These challenges included insufficient funds and staff to process the background check requirements and delays associated with making required changes to State laws or policies and procedures.

The Results Within 45 Days Requirement Was Not Implemented in Four States

Federal regulations require States to carry out the request of childcare providers for a criminal background check as expeditiously as possible and within 45 days after the date on which the provider submitted the request. Also, States must provide the results of the criminal background check to the provider and to the current or prospective staff member (45 CFR § 98.43(e)(1)).

Two of the six States had implemented this background check requirement (Colorado and New Hampshire). The remaining four States had not implemented this background check requirement.

Georgia and Illinois said that changes to their administrative rules and policy guidance were required and that system edits were needed to electronically track and monitor compliance.

Nevada initially misunderstood the requirement and was in the process of determining the steps it needed to take to implement this requirement.

New York said it needs to advance statutory amendments to create the authority to implement this requirement.

The Appeals Process Requirement Was Not Fully Implemented in Two States

Federal regulations require States to provide a process for childcare staff members and prospective staff members to appeal the results of criminal background checks and to challenge the accuracy or completeness of the information contained in the member's criminal background report (45 CFR § 98.43(e)(3)).

Four of the six States had implemented this background check requirement (Colorado, Georgia, Illinois, and New Hampshire); Nevada and New York had partially implemented this requirement.

Nevada said that it has been a challenge to implement this background check requirement for all provider types because of the decentralization of the background check process.

New York's regulations provide childcare staff members the right to appeal the results of the in-State registry checks. However, New York did not have written policies and procedures in place for providers on how to make such an appeal.

The Appropriate Fees Requirement Was Not Fully Implemented in One State

Federal regulations allow States to charge up to the actual costs of processing applications and administering the criminal background checks (45 CFR § 98.43(f)).

Five of the six States had implemented this background check requirement. Nevada had partially implemented this background check requirement for at least one type of provider. Nevada said that it has been a challenge to implement this background check requirement for all provider types because of the decentralization of the background check process.

The Transparency of State Policies and Procedures Requirement Was Not Fully Implemented in Two States

Federal regulations require States to ensure that their policies and procedures for criminal background checks are published on the State and local lead agency websites (45 CFR § 98.43(g)).

Four of the six States had implemented this background check requirement (Colorado, Georgia, Illinois, and New Hampshire); Nevada and New York had partially implemented this requirement.

Nevada said that it has been a challenge to implement this background check requirement for all provider types because of the decentralization of the background check process.

New York had current background check requirements published on its websites but is waiting until legislative authority is established to post the new requirements on its website.

RECOMMENDATIONS

We recommend that the Administration for Children and Families:

- continue to monitor the States' actions and progress toward implementation of the new background check requirements and
- continue to work with States and Federal partners to ensure that all remaining background check requirements are implemented.

ACF COMMENTS

In written comments on our draft report, ACF concurred with our recommendations and stated that it is working diligently to support State implementation of the background check requirements of the CCDBG Act and will continue to pursue new strategies and partnerships to strengthen the infrastructure for conducting background checks for childcare staff.

ACF's comments are included in their entirety as Appendix D.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

This review summarizes what we reported in prior audits of six States' implementation of the new criminal background check requirements that were in place as of March and October 2018.¹² During those audits, we examined the six States' plans to address the new criminal background check requirements that had not been implemented by the end of our fieldwork and also identified challenges that the six States experienced. Our audits did not address childcare providers' compliance with the new requirements.

We did not review the six States' overall internal control structure. Rather, we limited our review to determining whether the States implemented the new criminal background check requirements.

We conducted our audit, which included fieldwork at the six State agency offices, and ACF regional and Headquarters offices, from November 2017 through March 2019.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal regulations and ACF guidance;
- reviewed applicable State laws, regulations, policies, and procedures for the six States;
- identified the new criminal background check requirements that were implemented by the six States as of March and October 2018;
- identified the new criminal background check requirements that were not implemented by the six States as of March and October 2018;
- interviewed State agency officials to gain an understanding of the challenges that the six States experienced and the States' plans to address unimplemented criminal background check requirements;
- interviewed ACF officials to discuss the progress toward implementing the new criminal background check requirements;

¹² Our audits in Colorado, Georgia, Illinois, Nevada, and New Hampshire reviewed the States' implementation status as of March 2018. Our audit in New York reviewed the State's implementation status as of October 2018.

- identified the status of criminal background registry check requirements for all States according to the State plan approval letters issued by ACF as of December 21, 2018; and
- discussed the results of this review with ACF.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers</i>	<u>A-02-17-02011</u>	1/8/2019
<i>Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-09-17-01003</u>	9/19/2018
<i>Colorado Implemented Many New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-07-17-06076</u>	9/17/2018
<i>Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-04-18-03578</u>	7/27/2018
<i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-01-18-02500</u>	7/9/2018
<i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-05-17-00047</u>	6/4/2018

**APPENDIX C: STATUS OF CRIMINAL BACKGROUND REGISTRY CHECK REQUIREMENTS
AS OF DECEMBER 21, 2018¹³**

Met All Background Registry Checks¹⁴	Approved for a 1-Year Waiver¹⁵			Corrective Action Plan¹⁶	Subject to a Penalty¹⁷
Louisiana	Alaska	Kentucky	Oregon	Alabama	Kansas
Utah	Arizona	Maryland	Pennsylvania	Arkansas	Maine
	California	Michigan	South Dakota	Connecticut	Nebraska
	Colorado	Minnesota	Tennessee	Illinois	New York
	Delaware	Missouri	Texas	Massachusetts	
	District of Columbia	Montana	Vermont	Mississippi	
	Florida	Nevada	Virginia	New Jersey	
	Georgia	New Hampshire	Washington	New Mexico	
	Hawaii	North Carolina	West Virginia	Rhode Island	
	Idaho	North Dakota	Wisconsin	South Carolina	
	Indiana	Ohio	Wyoming		
	Iowa	Oklahoma			
2 States	35 States			10 States	4 States

¹³ From the State plan approval letters issued by ACF as of December 21, 2018.

¹⁴ ACF determined that these States have implemented all eight of the required criminal background registry checks.

¹⁵ ACF determined that these States met the milestones and were approved for a 1-year waiver, effective October 1, 2018, to implement criminal background registry check requirements.

¹⁶ ACF determined that these States were not fully meeting at least one of the four milestone components and were placed on corrective action plans.

¹⁷ ACF determined that these States were provided a preliminary notice of noncompliance and notice of potential 5-percent penalty of CCDF discretionary funds that will be imposed in FY 2020 if the States are not in compliance with the criminal background check requirements by September 30, 2019.

APPENDIX D: ACF COMMENTS



ADMINISTRATION FOR **CHILDREN & FAMILIES**

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July 17, 2019

Ms. Gloria L. Jarmon
Deputy Inspector General for Audits
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Ms. Jarmon:

The Administration for Children and Families (ACF) appreciates the opportunity to respond to the Office of Inspector General (OIG) **draft** report titled, *All Six States Reviewed Had Partially Implemented New Criminal Background Check Requirements for Childcare Providers, and Five of the States Anticipate Full Implementation by Fiscal Year 2020, (A-05-19-00015)*.

The following are ACF's responses to the OIG's two recommendations:

Recommendation 1:

Continue to monitor the States' actions and progress toward implementation of the new background check requirements.

Response:

ACF concurs with this recommendation and is in the process of monitoring the states' actions and progress towards implementing the new background check requirements.

On August 31, 2018, states were required to submit CCDF Plans (i.e., applications for funding) for FY 2019-2021. Evaluating state compliance with the background check provisions was prioritized during the review of the FY 2019-2021 CCDF State Plans.

During this process, ACF's Office of Child Care (OCC) determined the current status of implementation, including the number of states that were compliant with the background check provisions, the number of states that met the background check milestones and were approved for a time-limited waiver, the number of states that were placed on a corrective action plan, and the number of states that were non-compliant and subject to a penalty.

OCC worked with the Department of Health and Human Services' Office of General Counsel and the ACF Office of Grants Management to develop timelines and monitoring protocols for implementing penalties for non-compliant states, consistent with the Child Care and Development Block Grant Act of 2014 (CCDBG) and the CCDF regulations.

As stated in the "Child Care and Development Fund State Plans" section of the OIG report:

2 States are Fully Compliant with the CCDBG Background Check Requirements

OCC identified two states that reported conducting all components of the background check requirements.

35 States met the Required Milestones

OCC identified 35 states that reported meeting the required milestones. Meeting the milestones demonstrates that the state has requirements in place for a portion of the components (including Federal Bureau of Investigation (FBI) fingerprint and three in-state checks), and that they are conducting checks for new staff on those components.

States that met these milestones were allowed to request time-limited waivers of up to two years, in one year increments (i.e., potentially through September 30, 2020) for the inter-state checks, the National Crime Information Center's National Sex Offender Registry, and to clear the backlog of existing providers. Separately, OCC also allowed states to request time-limited waivers from the provisional hire requirement as long as a background check is requested before an individual begins working under supervision.

During the summer 2019, OCC will monitor states' progress towards implementing the requirements before renewing the waivers for an additional year.

10 States Met a Portion of the Required Milestones

OCC identified 10 states that reported meeting a portion of the milestones or meeting milestones for only a subset of child care staff. These non-compliant states were required to submit a corrective action plan (CAP) for OCC approval. As a condition of receiving CAP approval, states and territories were required to provide regular updates on progress towards the achievement of the background check requirements. OCC will monitor states' CAP progress through monthly phone calls and quarterly reports.

For the 10 states with CAPs not to exceed one year, notices of possible penalty will be sent in early FY 2020 if the states are not compliant.

4 States Have Received Notice of Possible Penalty

Four states have received notices of possible penalty for failure to implement the FBI fingerprint checks. OCC will continue to monitor states' progress towards complying with the FBI fingerprint background check provision, before imposing a penalty of 5 percent of Discretionary CCDF funding in FY 2020 for states that do not come into compliance.

Recommendation 2:

Continue to work with States and Federal partners to ensure that all remaining background check requirements are implemented.

Response:

ACF concurs with this recommendation and continues to work with states and federal partners to ensure all remaining background check requirements are implemented through the following activities:

- Actively engaging in partnerships and meeting with key federal stakeholders, including the FBI Criminal Justice Information Services Division and the Compact Council for the National Crime Prevention and Privacy Compact.
- Encouraging states to participate in the National Fingerprint File (NFF) program, which eases administrative burden since it satisfies the requirement to perform an interstate check

of another state's criminal history record repository if the responding state participates in the NFF program.

- Educating states on the availability of increased child care funding (provided by Congress in FY 2018 and FY 2019) to support full implementation of the CCDBG Act, including activities to improve the quality, health, and safety of child care programs.
- Collaborating with ACF's Office of Planning, Research and Evaluation to launch a research contract to collect key data and in-depth information about state implementation status and challenges, and to identify solutions to help states comply with the background check requirements.
- Coordinating an Inter-Agency Child Abuse and Neglect (CAN) Registry Workgroup comprised of programs across ACF to evaluate potential solutions and develop recommendations to address common challenges regarding in-state and inter-state CAN registry checks.
- Facilitating regional meetings to encourage peer sharing, capture technical assistance needs, and understand state practices.
- Holding a series of national calls to provide a national overview of implementation status, and to highlight examples of effective partnerships within states.
- Providing formal policy guidance to clarify the requirements as well as targeted technical assistance to individual states.
- Publishing and updating a list of state contacts to facilitate the interstate checks.

Summary

In closing, OCC is working diligently to support state implementation of the background check requirements of the reauthorized CCDBG Act and continues to pursue new strategies and partnerships to strengthen the infrastructure for conducting background checks for child care staff.

Again, thank you for the opportunity to review this draft report. Please direct any follow-up inquiries to Shannon Christian, Director, Office of Child Care, at (202) 795-7610.

Sincerely,

/s/

Lynn A. Johnson
Assistant Secretary
for Children and Families