

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW MEXICO'S MONITORING OF
CHILDCARE PROVIDERS GENERALLY
ENSURED PROVIDER COMPLIANCE
WITH STATE CRIMINAL BACKGROUND
CHECK REQUIREMENTS AT 30
CHILDCARE PROVIDERS REVIEWED**

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Office of Inspector General

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Report in Brief

Date: February 2020

Report No. A-06-19-07001

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



Why OIG Did This Audit

The Child Care and Development Block Grant Act (CCDBG Act) of 2014 added new requirements for States that received funding from the Child Care and Development Fund (CCDF) to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years. Criminal 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 whether New Mexico's monitoring of childcare providers ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act.

How OIG Did This Audit

We analyzed and tested a population of 796 licensed childcare centers and family homes that received CCDF funding during State fiscal year 2018. We used geographic area and total CCDF funding received to select 15 childcare center providers and 15 family home providers. In total, we reviewed supporting documentation for 327 individuals who were current employees or household members at 30 different childcare provider locations.

New Mexico's Monitoring of Childcare Providers Generally Ensured Provider Compliance With State Criminal Background Check Requirements at 30 Childcare Providers Reviewed

What OIG Found

New Mexico's monitoring process generally ensured provider compliance with the State's requirements related to criminal background checks established under the CCDBG Act for the 30 childcare provider locations we reviewed. While we had errors at 9 of the childcare providers (including one childcare provider that had errors in more than one category), the errors only related to 11 of the 327 childcare staff members reviewed.

Specifically, of 30 childcare providers reviewed, we found (1) one childcare provider did not ensure all required criminal background checks were conducted for one childcare staff member, (2) six childcare providers did not ensure all recurring criminal background checks were conducted for seven childcare staff members, and (3) three childcare providers did not ensure recurring criminal background checks were conducted timely for three childcare staff members. Additionally, we found that New Mexico was not conducting the name-based National Crime Information Center National Sex Offender Registry check.

What OIG Recommends and New Mexico Child, Youth and Families Department Comments

We recommend that the New Mexico Child, Youth, and Families Department (CYFD) conduct the missing required criminal background checks as needed and implement other procedural changes that will ensure future compliance with all criminal background check requirements, as detailed in our report.

In written comments to our draft report, CYFD concurred with our recommendations. CYFD has taken or plans to take corrective actions to address each recommendation. For example, CYFD followed up with the individual that did not have the required checks conducted within the past 5 years at the time of our review and the individual is now compliant with the requirement. Additionally, CYFD made a request to modify the EPICS system to provide notification to the State Licensing Agency one month before a childcare staff member's background check clearance expires.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Child Care and Development Block Grant Act (CCDBG Act) of 2014 added new requirements for States that receive funding from the Child Care and Development Fund (CCDF) to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years.¹

As part of our oversight activities, we conducted a series of audits that assessed States' criminal background check requirements and reviewed their plans and actions to implement the criminal background check requirements established under the CCDBG Act. Appendix B contains a list of prior Office of Inspector General (OIG) reports relating to criminal background check requirements. We conducted this audit as a second phase of our oversight activities to assess whether State agencies' monitoring ensured provider compliance with CCDF requirements related to criminal background checks.

OBJECTIVE

Our objective was to determine whether New Mexico's monitoring of childcare providers ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act.

BACKGROUND

Child Care and Development Block Grant Act

Reauthorized in the CCDBG Act, the 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), the CCDF helps eligible low-income families pay for childcare at a provider of their choice while they work or participate in training, education, or both. In fiscal year (FY) 2019, ACF provided \$8.2 billion to States, territories, and Tribes to fund CCDF programs. In FY 2017, CCDF served approximately 1.3 million children younger than 13 years of age from 796,000 low-income working families each month.

Under the CCDBG Act, each lead agency must certify in its State plan that it has monitoring policies and practices applicable to all childcare providers and facilities that deliver services.² 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

¹ P.L. No. 113-186 § 658H, enacted November 19, 2014.

² 45 CFR § 98.16(o).

licensed, regulated, or registered under State law or receive CCDF funds.³ Criminal 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 home providers, 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.⁴

Criminal Background Check Requirements as of September 30, 2016

The U.S. Department of Health and Human Services (HHS) implemented the CCDBG Act's criminal background check requirements for States, territories, and Tribes in a Final Rule issued in September 2016.⁵ According to Federal regulations,⁶ States must have requirements, policies, and procedures in place to conduct comprehensive criminal background checks. These regulations require States to conduct criminal background checks for childcare staff members and prospective childcare staff members that include:

- a Federal Bureau of Investigation (FBI) fingerprint check using the Next Generation Identification system;⁷
- a search of the National Crime Information Center's National Sex Offender Registry (NCIC NSOR); and
- a search of the following registries, repositories, or databases in the State in which the childcare staff member resides and each State in which such staff member resided during the preceding 5 years:
 - the State criminal registry or repository, with the use of fingerprints being required in the State in which the staff member resides and optional in other States;
 - the State sex offender registry or repository; and
 - the State-based child abuse and neglect registry and database.

³ 45 CFR § 98.43(a)(1).

⁴ CCDF Program Final Rule, 81 Fed. Reg. 67438, 67494 (Sept. 30, 2016).

⁵ CCDF Program Final Rule, 81 Fed. Reg. 67438 (Sept. 30, 2016).

⁶ 45 CFR § 98.43.

⁷ The FBI fingerprint check, Next Generation Identification (formally the Integrated Automated Fingerprint Identification System) provides the criminal justice community with the world's largest and most efficient electronic repository of biometric and criminal history information.

As of September 30, 2018, New Mexico had implemented requirements for all criminal background check components (except for the inter-State criminal history registry check) and conducts these checks for all new (prospective) childcare staff, in accordance with Federal regulations.⁸ At the time of our review, New Mexico allowed employment prior to criminal background checks being conducted.⁹ New Mexico received a waiver from ACF and was working toward implementing a two-step eligibility process¹⁰ for provisional employment whereby a provisional clearance would be issued within 24-hours of submitting fingerprints followed by a final clearance decision. The waiver is effective through October 1, 2019, with the ability to be extended through October 1, 2020.

Appendix C contains New Mexico's implementation status of the new CCDF criminal background checks.

New Mexico's Coordination Efforts for Conducting Criminal Background Checks

In New Mexico, the Children, Youth and Families Department (CYFD) is responsible for ensuring criminal background checks are conducted and completed for childcare staff members.¹¹ The CYFD Background Check Unit (BCU) uses two electronic systems—*Enterprise Provider Information and Constituent Services (EPICS)* and *EDrawer* for storing the criminal background check status and documentation for childcare staff members in New Mexico. *EPICS* is used to track the criminal background check process and clearance dates. *EDrawer* is a documentation storage system which maintains all relevant documentation including the Background Check Investigations Worksheet.

All applicants for positions in licensed childcare centers and family homes must undergo fingerprinting and submit an Applicant Written Statement and an Employer Statement¹² from the childcare provider to the BCU to initiate the national and State criminal background and registry checks.

CYFD works with New Mexico Department of Public Safety (DPS) to conduct both national and in-State background checks for childcare applicants. Applicants must visit a fingerprint

⁸ 45 CFR § 98.43.

⁹ New Mexico Administrative Code (NMAC) § 8.8.3.11 A. In this report, we cite to the provisions of the NMAC as they were codified on March 28, 2019. After this date, some provisions we cite have been recodified.

¹⁰ The two-step eligibility process will require satisfactory results on either the FBI fingerprint check or a fingerprint check of the State's criminal registry to be completed prior to prospective staff members being allowed to work on a provisional basis (if supervised at all times).

¹¹ All licensed childcare center employees, licensed family home childcare providers and household members will be referred to as childcare staff members.

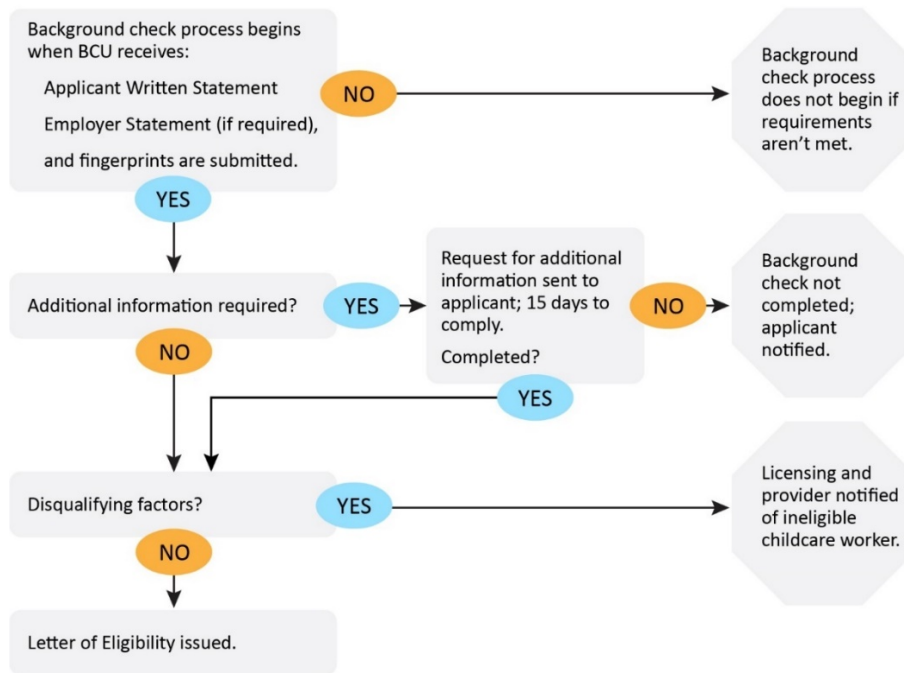
¹² An Employer Statement is required for an applicant for employment, an employee, contractor or volunteer with a licensed facility.

processing center to have their fingerprints taken and the fingerprints are submitted to DPS for criminal history checks to be conducted. The fingerprints are checked against the FBI criminal history records and New Mexico's criminal history registry. DPS provides the results of the FBI criminal history and New Mexico criminal history checks to BCU through the *Gemalto* system. A BCU Investigator checks the State sex offender registry, and the State child abuse and neglect registry. New Mexico child abuse and neglect registry checks are conducted by BCU using the Family Automated Client Tracking System.

The inter-State sex offender registry and inter-State child abuse and neglect registry are conducted on a case-by-case basis with the respective State per applicant. New Mexico received a waiver from ACF for the inter-State criminal registry check. However, BCU has been working with other States in order to develop protocols for receiving criminal history registry check results when applicants reported to have lived in a State(s) other than New Mexico during the previous 5 years. The BCU conducts any required inter-State sex offender registry checks online through the National Sex Offender Public Website which is connected to individual State sex offender registry websites.

Once the BCU Investigator has documented all criminal background checks, the file is reviewed by the BCU Program Monitor and a decision is made as to whether (1) additional information is needed, (2) clearance is granted, or (3) the applicant is determined to be ineligible and clearance is not granted. If additional information is needed or further review is warranted before a final clearance determination can be made, the file is transferred to the BCU Assessment Coordinator. The BCU Assessment Coordinator will request additional documentation from the applicant and review additional information to determine eligibility. If clearance is granted, a Letter of Eligibility is sent to the applicant to be maintained in the childcare staff member's file. If the applicant is determined to be ineligible, BCU contacts The State Licensing Agency and the childcare provider to notify them of the applicant's ineligibility and has the applicant removed from the provider. See Figure 1 for a flowchart of New Mexico's criminal background check process.

Figure 1: New Mexico's Criminal Background Check Process



The State Licensing Agency monitors a childcare provider's compliance with the criminal background check requirements by having State licensing surveyors conduct a 100 percent review of childcare staff members' and household members' files for the Letter of Eligibility during the annual inspection.¹³ Additionally, during the semi-annual inspection State licensing surveyors review new childcare staff members' and household members' files for the Letter of Eligibility.

HOW WE CONDUCTED THIS AUDIT

New Mexico had 796 licensed¹⁴ family homes¹⁵ and childcare centers¹⁶ that received CCDF funding during State FY 2018. We reviewed 15 family home providers and 15 childcare centers for a total of 30 licensed childcare providers with 327 childcare staff members.

¹³ New Mexico will conduct additional site visits if a complaint is filed and will follow up with a childcare provider to ensure any deficiencies found during site visits are corrected.

¹⁴ We did not include license-exempt providers for this audit.

¹⁵ Family homes include both family and group childcare homes. Both family and group childcare homes are private dwellings required to be licensed by the State that provides care, services and supervision for no more than 6 children per family home and for at least 7 but no more than 12 children in a group home. The licensee will reside in the home and be the primary educator. NMAC § 8.16.2.7 CC, EE.

¹⁶ A childcare center is a facility required to be licensed that provides care, services, and supervision for less than 24-hours a day to children in a non-residential setting. NMAC § 8.16.2.7 I.

We conducted unannounced site visits to 15 family home providers, where we obtained a list of all current childcare staff or household members. We verified this list against the list provided by the State agency. We performed a walkthrough of the provider home to observe anyone in the household and discussed with the provider their understanding of the criminal background check process. We reviewed the childcare staff or household members' files to verify whether they had the required Letter of Eligibility. In addition, we conducted unannounced site visits of 15 childcare centers from which we obtained a list of all current employees. We reviewed the childcare staff members' personnel files to verify whether the Letter of Eligibility was in the file.

For both family homes and childcare centers, we verified that current childcare staff members or household members had the required criminal background checks by reviewing information in the *EPICS* and *EDrawer* systems where the criminal history record check dates are maintained by the BCU. In total, we reviewed supporting documentation for 327 individuals who were current childcare staff members employees or household members at 30 different childcare provider locations.

We limited our review of internal controls to obtaining an understanding of the laws and regulations concerning CYFD's monitoring process to ensure childcare provider compliance with State requirements related to criminal background checks.

Appendix A contains the details of our audit scope and methodology; Appendix D contains the Federal and State requirements; and Appendix E contains a count of childcare staff with missing background checks or checks not conducted timely for the 30 childcare providers.

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.

FINDINGS

New Mexico's monitoring process generally ensured provider compliance with the State's requirements related to criminal background checks established under the CCDBG Act for the 30 childcare provider locations we reviewed. While we had errors at 9¹⁷ of the childcare providers, the errors only related to 11 of the 327 childcare staff members reviewed. Specifically, of the 30 childcare providers reviewed, we found:

- one childcare provider did not ensure all required criminal background checks were conducted for one childcare staff member;

¹⁷ One childcare provider had errors in more than one category.

- six childcare providers did not ensure all recurring criminal background checks were conducted for seven childcare staff members; and
- three childcare providers did not ensure recurring criminal background checks were conducted timely for three childcare staff members.

These errors occurred because New Mexico did not have processes in place to ensure that (1) childcare staff members completed the two steps required to initiate the background check process or (2) childcare providers failed to track when recurring background checks were due.

Additionally, we found that New Mexico is not conducting a name-based check of the NCIC NSOR. However, New Mexico received results for a fingerprint search of the NCIC NSOR. By not ensuring all childcare staff members who supervised or had routine unsupervised contact with children met all employment regulations, New Mexico potentially jeopardized the safety of children in its care.

ONE OF THIRTY CHILDCARE PROVIDERS DID NOT ENSURE ALL REQUIRED CRIMINAL BACKGROUND CHECKS WERE CONDUCTED FOR ONE CHILDCARE STAFF MEMBER

Child day care providers who are licensed by the State are required to submit an electronic fingerprint submission receipt and the required forms for all direct providers of care, household members in licensed and registered child care homes, or any staff member, employee or volunteer present while care recipients are present or other adult as required by the applicable regulations prior to the commencement of service, whether employment or contractual, or volunteer.¹⁸

Of the 30 childcare providers reviewed, 1 provider did not ensure all required criminal background checks were completed. Of the 327 individuals reviewed, 1 childcare staff member¹⁹ at a licensed childcare center did not have the required criminal background checks at the time of our site visits. Specifically, this childcare staff member²⁰ did not have the FBI fingerprint check, NCIC NSOR check, in-State criminal history, in-State sex offender registry, and in-State child abuse and neglect registry checks conducted.

This error occurred because the Applicant Written Statement was not submitted to the BCU to initiate the background check. The State relies on the childcare staff member to submit the

¹⁸ NMAC § 8.8.3.10 B(1).

¹⁹ A criminal background check was subsequently completed for the childcare staff member and a Letter of Eligibility issued on June 10, 2019.

²⁰ The childcare staff member did not report living in another State in the previous 5 years, therefore inter-State checks were not required.

Applicant Written Statement and the childcare provider to submit the Employer Statement to inform the BCU when a new childcare staff member is hired, or a new household member is added for the State to conduct the required criminal background checks. By not ensuring that all childcare staff members or household members who supervised or had routine unsupervised contact with children met all employment regulations, CYFD potentially jeopardized the safety of children in its care.

SIX OF THIRTY CHILDCARE PROVIDERS DID NOT ENSURE ALL RECURRING CRIMINAL BACKGROUND CHECKS WERE CONDUCTED FOR SEVEN CHILDCARE STAFF MEMBERS

New Mexico regulations require center providers to keep a complete file for each staff member, including substitutes and volunteers working more than 6 hours of any week and having direct contact with children. Records will contain, in part, documentation of a background check and employment history verification; if a background check is in process then documentation showing that it is in process, such as a submission receipt, shall be placed in file. A background check is to be conducted at least once every 5 years on all required individuals.²¹ For family home providers, New Mexico regulations requires on file documentation of a background check and employment history verification for all staff members and all adults living in the home. A background check must be conducted at least once every 5 years on all required individuals.²²

Of the 30 childcare providers reviewed, 6 providers did not ensure that recurring background checks were completed for 7 childcare staff members.²³ Specifically, 3 family homes did not have a background check conducted within the past 5 years for 4 of their 8 childcare staff members or household members, and 3 child care centers did not have background check conducted with the past 5 years for 3 of their 54 childcare staff members. Specifically, these 7 childcare staff members did not have the FBI fingerprint check, NCIC NSOR check, in-State criminal history, in-State sex offender registry, and in-State child abuse and neglect registry checks conducted within the past 5 years.

Four of these errors occurred due to human error; the childcare staff members failed to have their fingerprints processed and submit the required documentation to the BCU to initiate the background check process. Two of these errors occurred because two childcare staff had their fingerprints processed, however, did not submit the Applicant Written Statement to the BCU to initiate the background check process. One of these errors occurred because the childcare staff member submitted an incomplete Applicant Written Statement, (one page of the Applicant

²¹ NMAC § 8.16.2.22 F(1)(e)(f).

²² NMAC § 8.16.2.31 A(3) & 8.16.2.32 E(1).

²³ Criminal background checks were subsequently completed for 6 of the 7 childcare staff members. The 7 childcare staff members did not report living in another state in the previous 5 years, therefore inter-State checks were not required.

Written Statement was missing). According to BCU staff, attempts were made to contact the childcare staff member and no response was received, therefore the check was not completed. The safety and well-being of children were potentially at risk because New Mexico did not ensure that recurring criminal background checks were performed on licensed childcare staff members.

THREE OF THIRTY CHILDCARE PROVIDERS DID NOT ENSURE RECURRING CRIMINAL BACKGROUND CHECKS WERE CONDUCTED TIMELY FOR THREE CHILDCARE STAFF MEMBERS

New Mexico regulations require center providers to keep a complete file for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with children. Records will contain, in part, documentation of a background check and employment history verification; if background check is in process then documentation showing that it is in process, such as a submission receipt, shall be placed in file. A background check to be conducted at least once every 5 years on all required individuals.²⁴ For family home providers, New Mexico regulations requires on file documentation of a background check and employment history verification for all staff members and all adults living in the home. A background check must be conducted at least once every 5 years on all required individuals.²⁵

Of the 30 childcare providers reviewed, 3 providers did not ensure all recurring background checks were completed timely for 3 childcare staff members.²⁶ Specifically, 2 family homes and 1 child care center each had 1 childcare staff member that had the required criminal background checks, but the checks were not performed within 5 years of the previous check. The checks ranged from 14 days to 10 months late. One of the three errors was due to human error on the part of the childcare provider; however, for the other two errors, we were unable to determine if the errors were related to the childcare provider or the State's monitoring. Implementing a process to remind providers when background checks expire could prevent this error from occurring in the future. The safety and well-being of children were potentially at risk because New Mexico did not ensure that recurring criminal background checks were performed on licensed childcare staff members.

²⁴ NMAC § 8.16.2.22 F(1)(e)(f).

²⁵ NMAC § 8.16.2.31 A(3) & 8.16.2.32 E(1).

²⁶ The three childcare staff members did not report living in another State in the previous 5 years, therefore inter-State checks were not required.

NEW MEXICO DID NOT COMPLY WITH THE NATIONAL CRIME INFORMATION CENTER NATIONAL SEX OFFENDER REGISTRY CHECK REQUIREMENT

States are required to have policies and procedures to conduct a check of the NCIC NSOR.²⁷ In the Final Rule issued September 30, 2016, ACF clarified that while there is overlap between the FBI fingerprint check and the NCIC NSOR check, there are individuals in the NCIC NSOR who are not identified by solely conducting an FBI fingerprint search. ACF noted that it is important to require separate searches of an FBI fingerprint check and a name-based search of the NCIC NSOR.

DPS was not conducting a separate name-based search of the NCIC NSOR, as it thought the check was being done as part of the FBI fingerprint check. Subsequent to ACF's final rule, CYFD officials reached out to DPS officials to ensure CYFD was in compliance with the new requirement. As part of that correspondence, DPS officials stated that results received as part of the FBI fingerprint check include a check of the NCIC NSOR. However, in our conversations with FBI Criminal Justice Information Services (CJIS) division officials, we learned that when a fingerprint submission is received by the FBI Next Generation Identification system, a name-based search of the NCIC NSOR is also conducted. However, if there is a potential match, a message indicating a possible match is sent to the record owning law enforcement agency²⁸, but not to the agency that submitted the fingerprints. As such, unless DPS was the record owning law enforcement agency, it was not receiving the results of a name-based search of the NCIC NSOR.

The FBI CJIS division is working to develop and implement a technical solution to assist States with fulfilling the NCIC NSOR requirement of the CCDBG Act. The solution will provide a match or no match notification to the agency that submitted the fingerprint. States will have the option to implement the technical solution or an alternative process to conduct the NCIC NSOR check. One alternative process is to have law enforcement conduct a name-based search of the NCIC NSOR. In September 2019, New Mexico DPS officials confirmed to us that it was not conducting a name-based search of the NCIC NSOR for childcare applicants.

RECOMMENDATIONS

We recommend that New Mexico's Children, Youth, and Families Department:

- ensure all required background checks are conducted for the 1 individual that did not have the required checks within the past 5 years at the time of our review;

²⁷ 45 CFR § 98.43(b)(2).

²⁸ The record owning law enforcement agency is the agency that entered the individual into the NCIC NSOR.

- determine if the fingerprint system has the ability to notify BCU when fingerprints for childcare providers are submitted to DPS and if so implement this process;
- develop a process for BCU to notify the State Licensing Agency and the childcare provider when a background check is not completed due to lack of documentation or childcare staff member non-response;
- determine if the EPICS system can track and notify the child care provider one month before a childcare staff member's background check clearance expires and if so implement this process; and
- implement name-based checks of the NCIC NSOR and complete checks on all childcare staff members.

NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT COMMENTS

In written comments to our draft report, CYFD concurred with our recommendations. CYFD has taken or plans to take corrective actions to address each recommendation. For example, CYFD followed up with the individual that did not have the required checks conducted within the past 5 years at the time of our review and the individual is now compliant with the requirement. Additionally, CYFD made a request to modify the EPICS system to provide notification to the State Licensing Agency one month before a childcare staff member's background check clearance expires. CYFD's comments are included in their entirety as Appendix F.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

In selecting which State(s) to include in our audit, each OIG audit team was to conduct an analysis of the States within its region and consider the following factors:

- States with a “partial” or “substantial” implementation status for criminal background check requirements in the 2016 through 2018 CCDF State Plan,
- States in which we may not have conducted criminal background check work recently or those in which we had findings related to criminal background check requirements in foster care or Head Start audits,
- States where news reports have raised concerns related to criminal background check requirements,
- total CCDF funding within the State, and
- total children served by CCDF within the State.

In addition to the factors above, the six States²⁹ included in OIG’s prior CCDF Phase 1 (State implementation of CCDBG criminal background check requirements) audit series were included in the CCDF Phase II (State monitoring of childcare provider compliance). Based on our review of these factors, we selected New Mexico. We selected and reviewed a nonstatistical sample of 30 out of 796 family homes and childcare centers that received CCDF funding during 2017 and 2018 (State fiscal year 2018) to improve our understanding of the State’s monitoring of childcare provider compliance with State criminal background check requirements. Our provider selection was based on the following risk factors:

- **Geographic area (the geographic division of the State identified by the State licensing agency):** There are four regions in New Mexico. For each provider, we identified the corresponding area based on the physical location and sorted our provider list based on geographical area.
 - **CCDF funding received (the total amount of CCDF funding received for State FY 2018):** We selected the provider with the largest amount of CCDF funding received in each of the four regions. We then selected the provider in each region who received the second largest amount of CCDF funding if they were not in the same city as the provider who received the largest amount of CCDF funding. We selected

²⁹ The six States included in CCDF Phase I were New York, Nevada, Colorado, Georgia, New Hampshire, and Illinois (Appendix B).

the remaining providers who received mid to low CCDF funding within the four regions to ensure adequate coverage of the State.

We conducted unannounced site visits at 15 family home providers, where we obtained a list of all current household members or childcare staff. We verified this list against the list provided by CYFD. We performed a walkthrough of the provider home to observe anyone in the household and discussed with the provider their understanding of the criminal background check process. We reviewed the childcare staff or household members' files to verify whether they had the required Letter of Eligibility.

In addition, we conducted unannounced site visits at 15 childcare centers from which we obtained a list of all current employees. We reviewed the childcare staff members' personnel files to verify whether the Letter of Eligibility was in the file. For the 30 licensed childcare providers, we verified that current childcare staff members had the required criminal background checks by reviewing information in the EPICS and EDrawer systems maintained by the BCU. In total, we reviewed supporting documentation for 327 individuals who were current childcare staff or household members at 30 different childcare provider locations.

We performed fieldwork at the New Mexico CYFD offices in Santa Fe, New Mexico and at the various childcare centers and family homes from April 1 through June 6, 2019.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- reviewed applicable State laws, policies, and procedures related to CCDF criminal background check requirements;
- identified criminal background check requirements that have been fully implemented within the State;
- identified criminal background check requirements that have not yet been implemented by the State;
- interviewed CYFD officials to gain an understanding of the State's monitoring process (including frequency of visits) over provider compliance with criminal background check requirements established under the CCDBG Act;
- interviewed CYFD officials to identify any challenges or barriers that the State experienced with monitoring providers to ensure that the new criminal background check requirements are being met;

- conducted site visits at each of the 15 family home provider locations, to obtain a current list of all childcare staff or household members and obtained the Letter of Eligibility from the BCU providing criminal background check clearance;
- performed a walkthrough of the provider's home to observe anyone in the household and discussed with the provider their understanding of the criminal background check process;
- conducted site visits at 15 childcare centers from which we obtained a list of all current employees. We reviewed the employee personnel files to determine if the file contained the Letter of Eligibility from the BCU providing criminal background check clearance;
- reviewed and analyzed a nonstatistical sample of 327 childcare staff members from the 15 family homes and 15 childcare centers that received CCDF funding during State FY 2018 to determine whether all the required criminal background checks were completed; and
- discussed the results of our audit with CYFD officials.

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: PRIOR OIG ISSUED REPORTS RELATING TO CRIMINAL
BACKGROUND CHECK REQUIREMENTS**

Report Title	Issue Date
<i>Tennessee's Monitoring Ensured Compliance With Criminal Background Check Requirements at 28 of the 30 Childcare Providers Reviewed (A-04-19-02023)</i>	1/15/2020
<i>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)</i>	8/23/2019
<i>New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers (A-02-17-02011)</i>	1/8/2019
<i>Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-09-17-01003)</i>	9/19/2018
<i>Colorado Implemented Many New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-07-17-06076)</i>	9/17/2018
<i>Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-04-18-03578)</i>	7/27/2018
<i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-01-18-02500)</i>	7/9/2018
<i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-05-17-00047)</i>	6/4/2018

**APPENDIX C: NEW MEXICO'S IMPLEMENTATION STATUS OF CHILD CARE AND
DEVELOPMENT FUND CRIMINAL BACKGROUND CHECKS**

Criminal Background Check Requirements	Implementation Status as of 09/30/2018	OIG Analysis of State's Implementation Status - Includes a review of New Mexico's Laws, Regulations, and Guidance
FBI Criminal History Fingerprint Check 45 CFR § 98.43(b)(1)	Implemented	Title 8, Social Services, Chapter 8, Part 3-10B
NCIC's National Sex Offender Registry 45 CFR § 98.43(b)(2)	Implemented	Title 8, Social Services, Chapter 8, Part 3-8
In-State Criminal Registry 45 CFR § 98.43(b)(3)	Implemented	Title 8, Social Services, Chapter 8, Part 3-10B
In-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	Title 8, Social Services, Chapter 8, Part 3-10B
In-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Partially Implemented	Title 8, Social Services, Chapter 8, Part 3-10B
Inter-State Criminal Registry 45 CFR § 98.43(b)(3)	Not Implemented	New Mexico will implement regulation changes once the challenges for inter-State criminal registry checks have been resolved.
Inter-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	Title 8, Social Services, Chapter 8, Part 3-3
Inter-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	Title 8, Social Services, Chapter 8, Part 3-3

APPENDIX D: FEDERAL AND STATE REGULATIONS

FEDERAL REGULATIONS

According to Federal regulations, States must have in effect requirements, policies, and procedures to require and conduct criminal background checks for childcare staff members, including prospective childcare staff members of all licensed, regulated, or registered childcare providers and all childcare providers eligible to deliver services for which assistance is provided (45 CFR § 98.43(a)(1)).

“Childcare provider” means a center based childcare provider, a family childcare provider, or another provider of childcare services for compensation and on a regular basis that (A) is not an individual who is related to all children for whom childcare services are provided; and (B) is licensed, regulated, or registered under State law or eligible to receive assistance provided under this subchapter (45 CFR § 98.43(a)(2)(i)).

“Childcare staff member” means an individual (other than an individual who is related to all children for whom childcare services are provided) (A) who is employed by a childcare provider for compensation, including contract employees or self-employed individuals; (B) whose activities involve the care or supervision of children for a childcare provider or unsupervised access to children who are cared for or supervised by a childcare provider; or (C) any individual residing in a family childcare home who is age 18 and older (45 CFR § 98.43(a)(2)(ii)).

Federal regulations require States to conduct two national checks: (1) an FBI criminal history fingerprint check using Next Generation Identification (45 CFR § 98.43(b)(1)), and (2) a search of the NCIC’s NSOR for childcare staff members or prospective staff members (45 CFR § 98.43(b)(2)).

According to Federal regulation, States are required to conduct a search of three in-State registries: (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)).

In addition, States are required to conduct a search of three inter-State registries: (1) criminal registry in each State (fingerprints optional), (2) each State’s sex offender registry, and (3) each State’s child abuse and neglect registry in the State(s) which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

STATE REGULATIONS

New Mexico Administrative Code § 8.8.3.10 B(1)

Child day care providers who are licensed by the State are required to submit an electronic fingerprint submission receipts and the required forms for all direct providers of care,

household members in licensed and registered child care homes, or any staff member, employee or volunteer present while care recipients are present or other adult as required by the applicable regulations prior to the commencement of service, whether employment or contractual, or volunteer. In the case of a licensed child care home the licensee must submit an electronic fingerprint submission receipt and the required forms for new household members or for any adult who is required to obtain a background check as applicable.

New Mexico Administrative Code § 8.8.3.10 C

If there is a need for any further information from an applicant at any stage of the process, the BCU shall request the information in writing from the applicant. If the BCU does not receive the requested information within fifteen calendar days of the date of the request, the BCU shall deny the application and send a notice of background check denial.

New Mexico Administrative Code § 8.16.2.22 F(1)(e)(f)

New Mexico regulations require Center providers to keep a complete file for each staff member, including substitutes and volunteers working more than six hours of any week and having direct contact with children. Records will contain, in part, documentation of a background check and employment history verification; if background check is in process then documentation showing that it is in process, such as a submission receipt, shall be placed in file. A background check to be conducted at least once every 5 years on all required individuals.

New Mexico Administrative Code § 8.16.2.31 A(3)

New Mexico regulations require family home licensees, staff members, educators, volunteers, and prospective staff members, educators, volunteers, and any person who may have unsupervised physical access to children, and all adults residing in the home to undergo a background check and conduct a new background check at least once every 5 years.

**APPENDIX E: NUMBER OF CHILDCARE STAFF MEMBERS WITH MISSING OR CRIMINAL
BACKGROUND CHECKS NOT CONDUCTED TIMELY AT 30 SELECTED PROVIDERS**

Provider Number	Provider Type	Number of Individuals* Reviewed	Number of Individuals Missing One or More Required Criminal Background Checks	Number of Individuals Missing One or More Recurring Criminal Background Checks	Number of Individuals Whose Recurring Criminal Background Checks Were Not Conducted Timely
1	Family home	2		1	
2	Family home	5			1
3	Family home	5			
4	Family home	3			
5	Family home	4		1	
6	Family home	2		2	
7	Family home	3			
8	Family home	3			
9	Family home	2			
10	Family home	5			
11	Family home	5			
12	Family home	3			
13	Family home	2			
14	Family home	2			
15	Family home	3			1
Totals for Family Homes		49	0	4	2
16	Childcare center	6	1	1	
17	Childcare center	25		1	
18	Childcare center	42			
18	Childcare center	12			
20	Childcare center	31			
21	Childcare center	13			
22	Childcare center	34			
23	Childcare center	11			
24	Childcare center	30			1
25	Childcare center	23			
26	Childcare center	7			
27	Childcare center	9			
28	Childcare center	5			
29	Childcare center	6			
30	Childcare center	24		1	
Totals for Childcare Centers		278	1	3	1
Combined Totals for Family Homes and Childcare Centers		327	1	7	3
* The term "individuals" refers to the current number of employees or household members included in our review.					

APPENDIX F: NEW MEXICO CHILDREN, YOUTH AND FAMILIES DEPARTMENT RESPONSE

State of New Mexico CHILDREN, YOUTH and FAMILIES DEPARTMENT

MICHELLE LUJAN GRISHAM
GOVERNOR

HOWIE MORALES
LIEUTENANT GOVERNOR



BRIAN BLALOCK
CABINET SECRETARY

TERRY LOCKE
DEPUTY SECRETARY

Patricia Wheeler
Regional Inspector General for Audit Services
Department of Health and Human Services
Office of the Inspector General
1100 Commerce Street, Room 632
Dallas, TX 75424

Dear Ms. Wheeler,

Thank you for the opportunity to respond to the December 16, 2019 U.S. Department of Health and Human Services, Office of Inspector General (OIG) -(A-06-19-07001) draft report addressing New Mexico's compliance with State Criminal Background Check Requirements. We appreciate the recommendations in the report and have included in this letter our statements of concurrence or nonconcurrence along with a description of the corrective action taken or planned for each of the recommendations.

RECOMMENDATIONS

The HHS Office of the Inspector General recommends that New Mexico's Children, Youth, and Families Department:

- Ensure all required background checks are conducted for the 1 individual that did not have the required checks within the past 5 years at the time of our review.

Children, Youth and Families Department (CYFD) concurs with this recommendation.

CYFD – Licensing Authority followed up with the 1 individual that did not have the required checks within the past 5 years at the time of the review. She has since complied with the requirement.

- Determine if the fingerprint system has the ability to notify Background Checks Unit (BCU) when fingerprints for childcare providers are submitted to Department of Public Safety (DPS) and if so implement this process.

CYFD concurs with this recommendation.

Children, Youth and Families Department Secretary, and the Secretary Designate for the new Early Childhood Education and Care Department, are currently working with Governor Lujan Grisham's Office and the Department of Public Safety to develop procedures and steps necessary to ensure that CYFD Background Checks Unit receive notification from Gemalto (Digital Security Company) when fingerprints are submitted to DPS using CYFD's Originating Agency Identification number.

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- Develop a process for BCU to notify The State Licensing Agency and the childcare provider when a background check is not completed due to lack of documentation or childcare staff member non-response.

CYFD concurs with this recommendation.

Background Checks Unit sends a letter of denial to the State Licensing Agency and the Child Care Provider when an applicant fails to provide sufficient documentation or there is a non-response. BCU and the Child Care Services Bureau will write the procedure specifying notification steps and verification process to ensure all staff is aware of the expectation, in preparation for the Child Care Services Bureau and the Child Care Background Checks Unit transitioning to the new Early Childhood Education and Care Department on July 1, 2020.

- Determine if the EPICS system can track and notify the child care provider one month before a childcare staff member's background check clearance expires and if so implement this process.

CYFD concurs with this recommendation.

CYFD is in the process of cleaning up the EPICS database to inactive all educators who have received a background clearance and are no longer working in facilities/homes. A request has been made to modify EPICS to provide notification to the Licensing Authority one month before an educators background check clearance expires. The Child Care Services Bureau Chief and the Information Governance Bureau Chief will meet by the end of February 2020 to identify the necessary changes to the system and create the data modification requests to begin implementation by July 1, 2020.

- Implement name-based checks of the NCIC NSOR and complete checks on all childcare staff members.

CYFD concurs with this recommendation.

CYFD, Division of Early Childhood Services, is currently working with Governor Lujan Grisham's Office to coordinate discussions with the Department of Public Safety (DPS) and develop procedures and steps necessary to ensure that CYFD Background Checks Unit obtains information on name-based checks for the National Crime Information Center (from FBI's name check) and from the National Sex Offender Registry. The name check is taking place, however, the information is not being accessible to the CYFD Background Checks Unit. As a result of these conversations CFYD BCU will receive the results of the name-based background checks from DPS.

In closing, I want to personally thank you for the professionalism and support of your staff during the monitoring visit.

Sincerely,



Brian Blalock, Cabinet Secretary

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