

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**NEW HAMPSHIRE IMPLEMENTED  
MOST NEW CRIMINAL BACKGROUND  
CHECK REQUIREMENTS FOR  
CHILDCARE PROVIDERS, BUT  
CHALLENGES REMAIN FOR  
UNIMPLEMENTED REQUIREMENTS**

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# *Office of Inspector General*

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## Report in Brief

Date: July 2018

Report No. A-01-18-02500

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



### Why OIG Did This Review

The Child Care and Development Block Grant Act (CCDBG Act) of 2014 added new requirements for States receiving Child Care and Development Fund (CCDF) funds to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years. 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 New Hampshire's progress toward implementing new criminal background check requirements established under the CCDBG Act.

### How OIG Did This Review

Our review covered New Hampshire's implementation of the new criminal background check requirements that were in place as of March 1, 2018. In addition, we examined New Hampshire's plans to address the new criminal background check requirements that were not implemented by the end of our fieldwork, April 12, 2018. We also identified challenges that New Hampshire experienced. Our review did not address childcare providers' compliance with the new requirements.

## New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements

### What OIG Found

New Hampshire implemented most of the new criminal background check requirements established under the CCDBG Act. However, certain criminal background check requirements for childcare providers remained unimplemented as of March 1, 2018, and significant challenges may delay full implementation until 2019 or 2020. Specifically, these challenges include unavailable finances and staff to process the background checks, data system limitations, and required changes to State laws or policies and procedures. New Hampshire currently has until September 30, 2018, to implement the new criminal background check requirements. The outstanding challenges may mean that New Hampshire will not fully implement all of the requirements before the deadline and, therefore, New Hampshire may request an additional 1-year waiver from the Administration for Children and Families to address the challenges and comply with the new requirements.

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## **INTRODUCTION**

### **WHY WE DID THIS REVIEW**

The Child Care and Development Block Grant Act (CCDBG Act) of 2014 added new requirements for States receiving Child Care and Development Fund (CCDF) funds to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years (P.L. No. 113-186 § 658H (Nov. 2014)). In New Hampshire, the designated CCDF lead agency is the New Hampshire Department of Health and Human Services (State agency).

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 child care and development grant programs. This review focuses on the State agency's implementation of the criminal background checks. 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. Future childcare provider audits will test how the States and childcare providers have implemented these criminal background check requirements in their day-to-day operations.

### **OBJECTIVE**

Our objective was to determine the State agency's 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 or education, or both. In fiscal year (FY) 2016, ACF provided \$5.7 billion to States, territories, and tribes to fund CCDF programs. Each month, CCDF serves 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 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
- 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) that 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, these individuals will be referred to 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)). (“Five-year timeframe”)
- States must have requirements, policies, and procedures that a childcare staff member may not start work until the FBI or in-State criminal registry fingerprint check is returned as satisfactory, and 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 demonstrate a good-faith effort to implement the requirements. In recognition of significant challenges to implementing the new background requirements, all States, including New Hampshire, 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,<sup>1</sup> 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.

### **New Hampshire's Coordination Efforts for Conducting Criminal Background Checks**

The State agency said that it worked with its State partner agency, the New Hampshire Department of Safety, to conduct criminal background checks for childcare staff members. For licensed providers, all background checks were conducted through the State agency's Child Care Licensing Unit (CCLU) within the State agency, and for licensed-exempt providers, the background checks are conducted through the Bureau of Child Development and Head Start Collaboration (Lead Agency). The State's Department of Safety's Criminal Records Unit completes the state criminal background check and submits fingerprints to the FBI, then returns the results to the lead agency for license exempt providers or to CCLU for licensed providers. In addition, licensed and license-exempt providers can challenge the accuracy of a finding for criminal history, and sex offender registries through the State police.

### **HOW WE CONDUCTED THIS REVIEW**

Our review covered the State agency's implementation of the new criminal background check requirements that were in place as of March 1, 2018. In addition, we examined the State agency's plans to address the new criminal background check requirements that were not implemented by the end of our fieldwork, April 12, 2018. We also identified challenges that the State agency experienced. Our review did not address childcare providers' compliance with the new requirements.

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

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

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<sup>1</sup> The State plan is the primary mechanism that ACF uses to determine State and territory compliance with the requirements of the CCDF Act. 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 ([https://www.acf.hhs.gov/sites/default/files/occ/fy\\_2019\\_2021ccdf\\_plan\\_preprint\\_11\\_30\\_17.pdf](https://www.acf.hhs.gov/sites/default/files/occ/fy_2019_2021ccdf_plan_preprint_11_30_17.pdf)).

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**

The State agency implemented most of the new criminal background check requirements established under the CCDBG Act. However, certain criminal background check requirements for childcare providers remained unimplemented as of March 1, 2018, and significant challenges may delay full implementation until 2019 or 2020. Specifically, these challenges include unavailable finances and staff to process the background checks, data system limitations, and required changes to State laws or policies and procedures. The State agency also said that a low unemployment rate makes it difficult for childcare providers to wait up to 45 days to hire qualified applicants while they wait for the results of all the required criminal background record checks. The State agency currently has until September 30, 2018, to implement the new criminal background check requirements. The outstanding challenges may lead the State agency to request an additional 1-year waiver from ACF to address the challenges and comply with the new requirements.

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

**Table 1: The State Agency’s Implementation Status of Background Registry Checks**

<b>Background Registry Checks</b>	<b>Implementation Status as of 3/1/2018</b>	<b>Potential Implementation Status as of 10/1/2018*</b>	<b>Potential Implementation Status as of 10/1/2019**</b>
FBI criminal history fingerprint check	Implemented		
NCIC's National Sex Offender Registry	Implemented		
In-State criminal registry	Implemented		
In-State sex offender registry	Implemented		
In-State child abuse and neglect registry	Implemented		
Inter-State criminal registry	Not Implemented		
Inter-State sex offender registry	Implemented		
Inter-State child abuse and neglect registry	Implemented		
<p>* We based New Hampshire’s potential implementation status on discussions we had with State agency officials, and the categories are subject to change. A “green” status indicates that the State agency had fully implemented or planned to fully implement the background registry check by the corresponding date. A “red” status indicates that the State agency did not plan to implement the background registry check by the corresponding date.</p> <p>** <i>Id.</i></p>			

**THE STATE AGENCY IMPLEMENTED ALL NATIONAL BACKGROUND REGISTRY CHECKS**

**The National FBI Criminal History Fingerprint Check Was Implemented**

According to Federal regulations, States are required to conduct an FBI criminal history fingerprint check using Next Generation Identification<sup>2</sup> for childcare staff members or prospective staff members (45 CFR § 98.43(b)(1)).

As of March 1, 2018, the State agency had implemented the FBI criminal history background check.

<sup>2</sup> The FBI fingerprint check, Next Generation Identification (formerly 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.

## **The National Crime Information Center's National Sex Offender Registry Check Was Implemented**

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)).

As of March 1, 2018, the State agency had implemented the NCIC's National Sex Offender Registry check.

## **THE STATE AGENCY 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)).

As of March 1, 2018, the State agency had implemented the three in-State criminal background registry checks.

## **THE STATE AGENCY DID NOT FULLY IMPLEMENT ALL INTER-STATE BACKGROUND REGISTRY CHECKS**

### **Inter-State Criminal History Registry Check Was Not Implemented**

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)).

As of March 1, 2018, the State agency had not implemented the inter-State criminal history registry check because of challenges it experienced. Specifically, the State agency indicated that the resources needed to implement this requirement were unavailable. The State agency estimated that it needed three full-time-equivalent staff members to complete all the background check requirements, especially once the inter-State requirement is added, and that the resulting financial impact was being discussed. State statute governing criminal history record checks needs to be amended to include the inter-State requirement, along with administrative rule changes to reflect the revised statute. In addition, the State partner agency identified the need to develop a process for completing the inter-State check, including how to process any fees from the other States associated with those checks. The State agency anticipates that systems and form revisions are needed to be in compliance. The State agency plans to make these changes in statute with its State partner agency by June 30, 2019. Once the statute is adopted, administrative rules will be revised to reflect the statute by September 30, 2019. The State agency anticipates that it will be in compliance with this requirement by September 30, 2019.

## **Inter-State Sex Offender and Child Abuse and Neglect Registry Checks Were Implemented**

According to Federal regulations, States are required to conduct a search of each State's sex offender registry and 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)).

As of March 1, 2018, the State agency had implemented these two inter-State background registry checks.

The State agency indicated that searching the National Sex Offender Public Website for childcare staff members or prospective staff members was used to comply with the inter-State sex offender background check requirement.

The State agency said that in cases when an applicant, a childcare staff member, or prospective staff member discloses that he or she resided in a different State in the past 5 years, the staff member or prospective staff member would complete the forms found on the CCLU website and submit the paperwork back to the CCLU (except for Ohio, which requires the forms to be submitted directly by the staff member, prospective staff member or applicant) so the forms can be sent out to each state in which the staff member or prospective staff member used to reside.

## **THE STATE AGENCY DID NOT FULLY IMPLEMENT ALL 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. As of March 1, 2018, the State agency implemented seven of the eight background check requirements.

Table 2 (on the next page) provides a summary of the State agency's implementation status for these background check requirements.

**Table 2: The State Agency’s Implementation Status of Background Check Requirements**

<b>Background Check Requirements</b>	<b>Implementation Status as of 3/1/2018</b>	<b>Potential Implementation Status as of 10/1/2018*</b>	<b>Potential Implementation Status as of 10/1/2019**</b>
Applicable to all childcare staff members	Implemented		
Disqualification factors	Implemented		
Five-year timeframe	Implemented		
Condition of employment	Not Implemented		
Results within 45 days	Implemented		
Appeals process	Implemented		
Appropriate fees	Implemented		
Transparency of State policies and procedures	Implemented		
<p>* We based New Hampshire’s potential implementation status on discussions we had with State agency officials, and the categories are subject to change. A “green” status indicates that the State agency had fully implemented or planned to fully implement the background registry check by the corresponding date. A “red” status indicates that the State agency did not plan to implement the background registry check by the corresponding date.</p> <p>** <i>Id.</i></p>			

**One Background Check Requirement Was Not Implemented**

*Condition of Employment*

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)).

As of March 1, 2018, the State agency had not implemented the condition of employment procedure. Specifically, the State agency needs to change to its laws and policies and procedures to require either the FBI criminal history fingerprint check or the in-State criminal history check prior to employment and to require that staff members be supervised while waiting for the results of the remaining background check components to implement this

procedure. The State agency anticipates to be in compliance with this requirement by June 30, 2019.

## **Seven Background Check Requirements Were Implemented**

### *Applicable to All Childcare Staff Members*

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)).

As of March 1, 2018, the State agency had implemented this criminal background check requirement.

### *Disqualification Factors*

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)).

As of March 1, 2018, the State agency had implemented this criminal background check requirement.

### *Five-Year Timeframe*

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)).

As of March 1, 2018, the State agency had implemented this criminal background check requirement.

### *Results Within 45 Days*

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)).

As of March 1, 2018, the State agency had implemented this criminal background check requirement.

### *Appeals Process*

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)).

As of March 1, 2018, the State agency had implemented this criminal background check requirement.

### *Appropriate Fees*

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)).

As of March 1, 2018, the State agency had implemented this criminal background check requirement.

### *Transparency of State Policies and Procedures*

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)).

As of March 1, 2018, the State agency had implemented this criminal background check requirement.

## **CONCLUSION**

As of March 1, 2018, the State agency had implemented most of the new criminal background check requirements established under the CCDBG Act. Specifically, the State agency implemented both national background registry checks, three in-State background registry checks, two inter-State background registry checks, and seven other background check

requirements. However, significant challenges remain for the unimplemented background check requirements, and these challenges may delay full implementation until 2019 or 2020. The State agency plans to continue to work with State partner agencies, State administrators, and ACF to ensure that all remaining background check requirements are implemented in a timely manner. We will continue to monitor the State agency's actions and progress toward implementation of the new criminal background check requirements.

## **APPENDIX: AUDIT SCOPE AND METHODOLOGY**

### **SCOPE**

Our review covered the State agency's implementation of the new criminal background check requirements that were in place as of March 1, 2018. In addition, we examined the State agency's plans to address the new criminal background check requirements that were not implemented by the end of our fieldwork, April 12, 2018. We also identified challenges that the State agency experienced. Our review did not address childcare providers' compliance with the new requirements.

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

We conducted our audit, which included fieldwork at the State agency office in Concord, New Hampshire, December 2017 through April 2018.

### **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal regulations and ACF guidance;
- reviewed applicable State laws, regulations, policies, and procedures;
- identified the new criminal background check requirements that were implemented by the State agency as of March 1, 2018;
- identified the new criminal background check requirements that were not implemented by the State agency as of March 1, 2018;
- interviewed State agency officials to gain an understanding of the challenges that the State agency experienced and the State agency's plans to address unimplemented criminal background check requirements;
- interviewed ACF officials to discuss the State agency's progress toward implementing the new criminal background check requirements; and
- discussed the results of our review with the State agency.

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.