

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEVADA IMPLEMENTED SOME NEW
CRIMINAL BACKGROUND CHECK
REQUIREMENTS FOR CHILDCARE
PROVIDERS, BUT CHALLENGES REMAIN
FOR UNIMPLEMENTED REQUIREMENTS**

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Report in Brief

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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. 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 Nevada's progress toward implementing new criminal background check requirements established under the CCDBG Act.

How OIG Did This Review

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

Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements

What OIG Found

Nevada implemented some 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. According to Nevada officials, these challenges include decentralization of the background check processes. (Background checks are conducted by different entities, depending on the provider type.)

Nevada currently has until September 30, 2018, to implement the new criminal background check requirements. The outstanding challenges may mean that Nevada will not fully implement the requirements before the deadline and, therefore, Nevada 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. 19, 2014)). In Nevada, the designated CCDF lead agency is the Nevada 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 (OIG) 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. (Appendix D lists related OIG reports on States' implementation of new criminal background check requirements.) 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 Nevada, 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,¹ 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.

Types of Providers in Nevada That Receive Child Care Development Fund Subsidies

In Nevada, three types of providers receive CCDF subsidies: licensed, nonlicensed, and license-exempt:²

- A *licensed provider* is licensed by the Nevada Division of Public and Behavioral Health (DPBH) to provide childcare services and must adhere to State or local childcare licensing regulations.³
- A *nonlicensed provider* may be a relative or nonrelative and may provide services in a child's home or the provider's home.
- A *license-exempt provider* provides unlicensed supervision of school-age children before or after school, on the weekend, or during breaks in the school calendar.

¹ 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 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). Accessed on August 20, 2018.

² All providers that receive CCDF subsidies are required to implement the new CCDBG Act requirements (P.L. No. 113-186 § 658H(i)(1)(B)) (Nov. 19, 2014).

³ According to the State agency, all licensed providers in Nevada are licensed by DPBH except those in Washoe County. Washoe County's licensed providers are licensed by Washoe County Child Care Licensing (WCCCL). (We refer to these providers as "Washoe County providers.") Although Washoe County providers are licensed differently, Washoe County abides by all State laws enacted by DPBH and is able to make its regulations more restrictive but not less restrictive.

Nevada's Coordination Efforts for Conducting Criminal Background Checks

The State agency said that it worked with its State partner agencies (DPBH, the Department of Public Safety (DPS), and the Division of Children and Family Services (DCFS)) as well as WCCCL to conduct criminal background checks for childcare staff members. Generally, DPS and DCFS are responsible for conducting a portion of the background checks for all provider types (for example, the national FBI criminal history fingerprint check). The following shows which entities are responsible for the remaining background checks:

- DPBH conducts the background checks for licensed providers, except those in Washoe County, and for nonlicensed providers.
- WCCCL conducts the background checks for Washoe County providers.
- Third-party contractors⁴ conduct the background checks for license-exempt providers.

The background check process includes fingerprinting for all licensed, nonlicensed, and license-exempt providers, which can be performed at local law enforcement agencies. DPS provides the results for the in-State criminal history checks.

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, August 1, 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.

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

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.

⁴ The third-party contractors are hired by the city, the county, or the providers themselves.

RESULTS OF REVIEW

The State agency implemented some 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. According to State agency officials, these challenges include decentralization of the background check processes. 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 for Background Registry Checks

Background Registry Checks	Implementation Status as of 3/1/2018⁵	Potential Implementation Status as of 10/1/2018⁶	Potential Implementation Status as of 10/1/2019⁷
FBI criminal history fingerprint check	Partially Implemented		
NCIC’s National Sex Offender Registry	Not Implemented		
In-State criminal registry	Partially Implemented		
In-State sex offender registry	Partially Implemented		
In-State child abuse and neglect registry	Partially Implemented		
Inter-State criminal registry	Partially Implemented		
Inter-State sex offender registry	Partially Implemented		
Inter-State child abuse and neglect registry	Partially Implemented		

In addition, a summary of the State agency’s implementation status for criminal background check requirements that address other Federal requirements is discussed later in the report.

⁵ *Partially implemented* indicates that at least one type of provider, but not all types, had implemented the requirement. Tables 3, 4, and 5 in Appendix B show the State agency’s implementation status as of 3/1/2018 for licensed and nonlicensed, Washoe County, and license-exempt providers, respectively.

⁶ We based Nevada’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 “yellow” status indicates that the State agency planned to partially 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.

⁷ *Id.*

THE STATE AGENCY DID NOT FULLY IMPLEMENT ALL NATIONAL BACKGROUND REGISTRY CHECKS

The National FBI Criminal History Fingerprint Check Was Partially Implemented

According to Federal regulations, States are required to conduct an FBI criminal history fingerprint check using Next Generation Identification⁸ for childcare staff members or prospective staff members (45 CFR § 98.43(b)(1)).

As of March 1, 2018, the State agency had partially implemented the FBI criminal history fingerprint check. Specifically, the State agency had implemented this requirement for licensed, nonlicensed, and Washoe County providers but not for license-exempt providers. The State agency indicated that the background check process in Nevada 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 that the provider is located in. Thus, the State agency indicated that it has been difficult to implement the new requirements for these providers. The State agency is meeting with all of the license-exempt providers to train them on the new background check requirements and to ensure compliance. The State agency anticipates that it will be in compliance by September 30, 2018.

The National Crime Information Center's National Sex Offender Registry Check Was Not 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 not implemented the NCIC's National Sex Offender Registry check. The State agency initially misunderstood this requirement and thought that it had implemented this requirement. The State agency is now in discussions with DPS, the agency that will conduct this check, and anticipates that it will be in compliance by September 30, 2019.

THE STATE AGENCY DID NOT FULLY IMPLEMENT 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

⁸ 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.

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 partially implemented the three in-State criminal background registry checks. Specifically, the State agency had implemented these three registry checks for licensed, nonlicensed, and Washoe County providers but not for license-exempt providers. The State agency stated that because of the decentralization of the background check process, it has been challenging to implement the background check requirements for all provider types. The State agency is working with the license-exempt providers and anticipates that it will be in compliance by September 30, 2018.

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

Inter-State Criminal History Registry Check Was Partially 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 partially implemented the inter-State criminal history registry check. Specifically, the State agency had implemented this requirement for licensed and nonlicensed providers but not for Washoe County and license-exempt providers.

For licensed and nonlicensed providers, when a childcare staff member or prospective staff member disclosed that he or she resided in a different State in the past 5 years, DPBH required that the staff or prospective staff member complete an “Out of State Verification Form” and obtain his or her own out-of-State criminal background check. However, State agency officials stated that the inter-State checks have been a challenge to obtain because of differences in State laws. If a staff or prospective staff member is unable to obtain an out-of-State criminal history registry check because of the privacy laws in the other State, he or she is required to indicate on the “Out of State Verification” form why he or she was unable to obtain the background check and have the form notarized.

For Washoe County and license-exempt providers, the State agency said that because of the decentralization of the background check process, it has been a challenge to implement the background check requirements for all provider types. The State agency is working with the Washoe County and license-exempt providers and anticipates that it will be in compliance by September 30, 2019.

Inter-State Sex Offender and Child Abuse and Neglect Registry Checks Were Partially 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 partially implemented the inter-State sex offender and child abuse and neglect registry checks. Specifically, the State agency had implemented these two registry checks for licensed and nonlicensed providers but not for Washoe County and license-exempt providers.

For licensed and nonlicensed providers, to comply with the inter-State sex offender background check requirement, the State agency indicated that it searched the U.S. Department of Justice's National Sex Offender Public Website to find the names of childcare staff members or prospective staff members. Additionally, the State agency said that when a childcare staff member or prospective staff member discloses that he or she resided in a different State in the past 5 years, Nevada requires that the staff or prospective staff member complete the "Out of State Verification Form" and obtain his or her own inter-State child abuse and neglect registry check. State agency officials stated that inter-State checks have been a challenge to obtain because of differences in State laws. If a staff or prospective staff member is unable to obtain an out-of-State child abuse and neglect registry check because of privacy laws in the other State, he or she is required to indicate on the "Out of State Verification" form why he or she was unable to obtain the background check and have the form notarized.

For Washoe County and license-exempt providers, the State agency said that because of the decentralization of the background check process, it has been a challenge to implement the background check requirements for all provider types. The State agency is working with the Washoe County and license-exempt providers and anticipates that it will be in compliance by September 30, 2019.

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, for the eight background check requirements, the State agency had partially implemented six requirements and had not implemented two 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 for Background Check Requirements

Background Check Requirements	Implementation Status as of 3/1/2018⁹	Potential Implementation Status as of 10/1/2018¹⁰	Potential Implementation Status as of 10/1/2019¹¹
Applicable to all childcare staff members	Partially Implemented		
Disqualification factors	Partially Implemented		
Five-year timeframe	Partially Implemented		
Condition of employment	Not Implemented		
Results within 45 days	Not Implemented		
Appeals process	Partially Implemented		
Appropriate fees	Partially Implemented		
Transparency of State policies and procedures	Partially Implemented		

Six Background Check Requirements Were Partially 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)).

⁹ *Partially implemented* indicates that at least one type of provider, but not all types, had implemented the requirement. Tables 6, 7, and 8 in Appendix C show the State agency’s implementation status as of 3/1/2018 for licensed and nonlicensed, Washoe County, and license-exempt providers, respectively.

¹⁰ We based Nevada’s potential implementation status on discussions we had with State agency officials, and the category is subject to change. A “green” status indicates that the State agency had fully implemented or planned to fully implement the background check requirement by the corresponding date.

¹¹ *Id.*

As of March 1, 2018, the State agency had partially implemented this criminal background check requirement. Specifically, it had implemented this requirement for licensed, nonlicensed, and Washoe County providers but not for license-exempt providers. The State agency said that because of the decentralization of the background check process, it has been a challenge to implement the background check requirements for all provider types. The State agency is working with the license-exempt providers and anticipates that it will be in compliance by September 30, 2018.

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, or child pornography) (45 CFR § 98.43(c)(1)).

As of March 1, 2018, the State agency had partially implemented this criminal background check requirement. Specifically, it had implemented this requirement for licensed and nonlicensed providers but not for Washoe County and license-exempt providers. The State agency said that because of the decentralization of the background check process, it has been a challenge to implement the background check requirements for all provider types. The State agency is working with the license-exempt providers and anticipates that it will be in compliance by September 30, 2018.

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 partially implemented this criminal background check requirement. Specifically, it had implemented this requirement for licensed, nonlicensed, and Washoe County providers but not for license-exempt providers. The State agency said that because of the decentralization of the background check process, it has been a challenge to implement the background check requirements for all provider types. The State agency is working with the license-exempt providers and anticipates that it will be in compliance by September 30, 2018.

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 partially implemented this criminal background check requirement. Specifically, it had implemented this requirement for licensed, nonlicensed, and Washoe County providers but not for license-exempt providers. The State agency said that because of the decentralization of the background check process, it has been a challenge to implement the background check requirements for all provider types. The State agency is working with the license-exempt providers and anticipates that it will be in compliance by September 30, 2018.

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 partially implemented this criminal background check requirement. Specifically, it had implemented this requirement for licensed, nonlicensed, and Washoe County providers but not for license-exempt providers. The State agency said that because of the decentralization of the background check process, it has been a challenge to implement the background check requirements for all provider types. The State agency is working with the license-exempt providers and anticipates that it will be in compliance by September 30, 2018.

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 partially implemented this criminal background check requirement. Specifically, it had implemented this requirement for licensed, nonlicensed, and Washoe County providers but not for license-exempt providers. The State agency said that because of the decentralization of the background check process, it has been a challenge to implement the background check requirements for all provider types. The State agency is working with the license-exempt providers and anticipates that it will be in compliance by September 30, 2018.

Two Background Check Requirements Were 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 requirement. The State agency initially misunderstood the requirement and thought that it had implemented this requirement. The State agency is in the process of determining the steps it needs to take to implement this requirement and anticipates being in compliance by September 30, 2018.

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 not implemented the requirement to provide results within 45 days. The State agency initially misunderstood the requirement and thought that it had implemented this requirement. The State agency is in the process of determining the steps it needs to take to implement this requirement and anticipates being in compliance by September 30, 2018.

CONCLUSION

As of March 1, 2018, the State agency had implemented some of the new criminal background check requirements established under the CCDBG Act:

- For licensed and nonlicensed providers, the State agency had implemented one national background registry check, three in-State background registry checks, three inter-State background registry checks, and six other background check requirements.
- For Washoe County providers, the State agency had implemented one national background registry check, three inter-State background registry checks, and five other background check requirements.

However, for license-exempt providers, the State agency had not implemented any background registry checks or other background check requirements.

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 A: 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, August 1, 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 Reno, Nevada, from February 2018 through June 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.

APPENDIX B: THE STATE AGENCY’S IMPLEMENTATION STATUS FOR BACKGROUND REGISTRY CHECKS BY PROVIDER TYPE

Tables 3, 4, and 5 show the State agency’s implementation status for the national, in-State, and inter-State background registry checks for each type of provider: licensed and nonlicensed providers, Washoe County providers, and license-exempt providers. (See footnote 6 for an explanation of the “green” and “red” status indicators.)

Table 3: The State Agency’s Implementation Status for Background Registry Checks for Licensed and Nonlicensed Providers

Background Registry Checks	Implementation Status as of 3/1/2018	Potential Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
FBI criminal history fingerprint check	Implemented		
NCIC’s National Sex Offender Registry	Not Implemented		
In-State criminal registry	Implemented		
In-State sex offender registry	Implemented		
In-State child abuse and neglect registry	Implemented		
Inter-State criminal registry	Implemented		
Inter-State sex offender registry	Implemented		
Inter-State child abuse and neglect registry	Implemented		

Table 4: The State Agency’s Implementation Status for Background Registry Checks for Washoe County Providers

Background Registry Checks	Implementation Status as of 3/1/2018	Potential Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
FBI criminal history fingerprint check	Implemented		
NCIC’s National Sex Offender Registry	Not 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	Not Implemented		
Inter-State child abuse and neglect registry	Not Implemented		

Table 5: The State Agency’s Implementation Status for Background Registry Checks for License-Exempt Providers

Background Registry Checks	Implementation Status as of 3/1/2018	Potential Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
FBI criminal history fingerprint check	Not Implemented		
NCIC’s National Sex Offender Registry	Not Implemented		
In-State criminal registry	Not Implemented		
In-State sex offender registry	Not Implemented		
In-State child abuse and neglect registry	Not Implemented		
Inter-State criminal registry	Not Implemented		
Inter-State sex offender registry	Not Implemented		
Inter-State child abuse and neglect registry	Not Implemented		

APPENDIX C: THE STATE AGENCY’S IMPLEMENTATION STATUS FOR BACKGROUND CHECK REQUIREMENTS BY PROVIDER TYPE

Tables 6, 7, and 8 show the State agency’s implementation status for background check requirements for each type of provider: licensed and nonlicensed providers, Washoe County providers, and license-exempt providers. (See footnote 10 for an explanation of the “green” status indicator.)

Table 6: The State Agency’s Implementation Status for Background Check Requirements for Licensed and Nonlicensed Providers

Background Check Requirements	Implementation Status as of 3/1/2018	Potential Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
Applicable to all childcare staff members	Implemented		
Disqualification factors	Implemented		
Five-year timeframe	Implemented		
Condition of employment	Not Implemented		
Results within 45 days	Not Implemented		
Appeals process	Implemented		
Appropriate fees	Implemented		
Transparency of State policies and procedures	Implemented		

Table 7: The State Agency’s Implementation Status for Background Check Requirements for Washoe County Providers

Background Check Requirements	Implementation Status as of 3/1/2018	Potential Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
Applicable to all childcare staff members	Implemented		
Disqualification factors	Not Implemented		
Five-year timeframe	Implemented		
Condition of employment	Not Implemented		
Results within 45 days	Not Implemented		
Appeals process	Implemented		
Appropriate fees	Implemented		
Transparency of State policies and procedures	Implemented		

Table 8: The State Agency’s Implementation Status for Background Check Requirements for License-Exempt Providers

Background Check Requirements	Implementation Status as of 3/1/2018	Potential Implementation Status as of 10/1/2018	Potential Implementation Status as of 10/1/2019
Applicable to all childcare staff members	Not Implemented		
Disqualification factors	Not Implemented		
Five-year timeframe	Not Implemented		
Condition of employment	Not Implemented		
Results within 45 days	Not Implemented		
Appeals process	Not Implemented		
Appropriate fees	Not Implemented		
Transparency of State policies and procedures	Not Implemented		

APPENDIX D: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<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