

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NEW HAMPSHIRE'S MONITORING DID
NOT ENSURE CHILDCARE PROVIDER
COMPLIANCE WITH STATE CRIMINAL
BACKGROUND CHECK REQUIREMENTS
AT 21 OF 30 PROVIDERS REVIEWED**

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Office of Inspector General

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Report in Brief

Date: April 2020

Report No. A-01-18-02504

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 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. 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 Hampshire'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 463 licensed childcare centers and family homes that received CCDF funding during State fiscal year 2018. We used geographic area, total capacity, and total CCDF funding received to select 15 childcare center providers and 15 family home providers. In total, we reviewed supporting documentation for 614 individuals who were current employees or household members at 30 different childcare provider locations.

New Hampshire's Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 21 of 30 Providers Reviewed

What OIG Found

New Hampshire's monitoring did not ensure provider compliance with State requirements related to criminal background checks at 21 of 30 childcare provider locations we reviewed. We found that 98 of 614 individuals did not obtain or renew 1 or more of the required criminal background checks. By not ensuring that all current employees or household members who supervised or had routine unsupervised contact with children passed all criminal background checks, New Hampshire potentially jeopardized the safety of the children in the care of the 30 selected childcare providers.

What OIG Recommends and New Hampshire Comments

We recommend that New Hampshire (1) conduct or renew all required criminal background checks for the 98 individuals who did not have all required checks or who had expired background checks at the time of our data requests and site visits; (2) develop a system that provides notifications to providers, employees, and department staff when criminal background checks need to be renewed or information to complete the required checks has not been submitted; (3) determine whether it is feasible to increase the ratio of State licensing inspectors to childcare providers to meet industry standards so that it can review all employee criminal background checks at all childcare centers; and (4) require the State's Child Care Licensing Unit to increase the number of current employees it reviews at all childcare centers to ensure childcare provider compliance with criminal background check requirements.

In written comments on our draft report, New Hampshire concurred with recommendations one, two, and four and said it partially concurred with our third recommendation. New Hampshire also explained the actions it has taken and plans to take to improve compliance. Specifically, the State agency will be implementing a new system no later than September 2020 that will allow for notifications to providers, individuals, and State agency staff when background checks need to be renewed, additional checks need to be completed, or information is missing.

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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 Hampshire'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 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;
- 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)(i).

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.

As of September 30, 2018, New Hampshire 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 45 CFR § 98.43.

Extension and Waiver Deadlines for Implementation

The CCDBG Act required all States to have requirements, policies, and procedures in place no later than September 30, 2017, that meet the criminal background check requirements. 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,⁷ 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.

In its 2019 through 2021 CCDF State plan, New Hampshire requested that ACF approve a waiver to allow additional time for “existing” childcare staff to become compliant with the FBI fingerprint check and the NCIC NSOR check. The waiver request⁸ was approved by ACF and allowed additional time (through September 30, 2020) for New Hampshire to ensure existing staff completed the FBI fingerprint check and the NCIC NSOR registry check. New Hampshire did not request additional time for checks of the State criminal registry, the State child abuse and neglect, or the State sex offender registry.

Appendix C contains New Hampshire’s implementation status of the new CCDF criminal background checks.

⁷ 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).

⁸ New Hampshire’s initial waiver request was approved by ACF on October 30, 2018 (effective October 1, 2018), and the extension of the waiver was approved by ACF on November 15, 2019.

New Hampshire's Coordination Efforts for Conducting Criminal Background Checks

The New Hampshire Department of Health and Human Services (State agency) works with its State partner agency, the New Hampshire Department of Safety, to conduct criminal background checks for childcare staff members. For licensed providers, all criminal background checks are conducted through the State agency's Child Care Licensing Unit (State licensing agency). For license-exempt providers, the criminal background checks are conducted through the Bureau of Child Development and Head Start Collaboration (lead agency).

The State Department of Safety's Criminal Records Unit completes the State criminal background check, submits fingerprints to the FBI, and then returns the results to the lead agency for license-exempt providers or to the State licensing agency for licensed providers to determine whether the applicant is suitable to work with children.

The State licensing agency monitors a childcare provider's compliance with the criminal background check requirements by having State licensing inspectors conduct a 100-percent review of employees and household members' files or supporting documentation related to criminal background checks at the time of the initial licensing and when the provider renews its license (every 3 years), regardless of the size of family homes and childcare centers.⁹ In addition, licensed childcare providers (family homes and childcare centers) are also subject to unannounced inspections each year.

According to the State licensing agency, during the annual unannounced inspection of family home providers and small childcare centers (providers with fewer than five staff), State licensing inspectors will review supporting documentation for 100 percent of all employees and household members to verify that all criminal background checks have been conducted. However, during the annual unannounced inspection at larger childcare centers (more than five employees), a 100-percent review is not conducted. Instead, the State licensing inspectors will generally review supporting documentation for specific types of employees, including those who open or close the facility, new employees, and one or two employees in each classroom, for compliance with the criminal background check requirements. Both reviews take place at the provider locations.

⁹ New Hampshire will conduct additional site visits if a complaint is filed and will follow up with a childcare provider to verify that any deficiencies found during site visits are corrected.

HOW WE CONDUCTED THIS AUDIT

New Hampshire had 463 licensed¹⁰ family homes¹¹ and childcare centers¹² 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.

We conducted unannounced site visits to 15 family home providers, where we obtained a list of all current employees 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 any challenges or obstacles the provider faced with adhering to the criminal background check requirements. In addition, we contacted 15 childcare center providers to request a list of all current employees and validated the list by requesting a payroll report that showed all the current employees at the selected location. In total, we reviewed supporting documentation for 614 individuals who were current 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 the State agency'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.

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 Hampshire's monitoring did not ensure provider compliance with State requirements related to criminal background checks at 21 of 30 childcare provider locations we reviewed. We found that 98 of 614 individuals did not obtain or renew 1 or more of the required criminal

¹⁰ We did not include license-exempt providers in this audit.

¹¹ A family childcare provider is one or more individual(s) who provide childcare services for fewer than 24 hours per day, per child in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

¹² A childcare center is a provider licensed or otherwise authorized to provide childcare services for fewer than 24 hours per day, per child in a nonresidential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

background checks. Specifically, we found that the following checks were not conducted or renewed:

- in-State sex offender registry checks for 90 individuals (64 individuals never had the in-State sex offender registry check conducted, and 26 individuals had expired in-State sex offender registry checks);
- in-State child abuse and neglect registry checks for 87 individuals (61 individuals never had the in-State child abuse and neglect registry check conducted, and 26 individuals had expired in-State child abuse and neglect checks);
- FBI fingerprint checks for 55 individuals (40 individuals never had the FBI fingerprint check conducted, and 15 individuals had expired FBI background checks that must be renewed before September 30, 2020);
- NCIC NSOR checks for 53 individuals (18 individuals never had the NCIC NSOR check conducted, and 35 individuals were not required to obtain this check at the time of hire but must complete it before September 30, 2020, for New Hampshire to become compliant with this requirement); and
- in-State criminal history checks for 52 individuals (40 individuals never had the in-State criminal history check conducted, and 12 individuals had expired in-State criminal history checks that were not renewed).¹³

These errors occurred because New Hampshire did not effectively monitor the childcare provider criminal background checks. By not ensuring that all current employees or household members who supervised or had routine unsupervised contact with children passed all criminal background checks, the State agency potentially jeopardized the safety of children in the care of the 30 selected childcare providers.

NEW HAMPSHIRE'S MONITORING DID NOT ENSURE PROVIDER COMPLIANCE WITH STATE CRIMINAL BACKGROUND CHECK REQUIREMENTS

New Hampshire State Regulations for Criminal Background Checks

Childcare providers that are required to be licensed must submit to the State agency, prior to the date an individual is responsible for, or has regular contact with, children, the names, birth names, birth dates, and addresses during the preceding 5 years of such individuals. These individuals must submit an FBI fingerprint check through a qualified law enforcement agency or an authorized employee of the Department of Safety. The Department of Safety must

¹³ The total exceeds 98 because more than 1 type of criminal background check was not completed for 93 individuals.

complete the criminal history record check and forward such record, if any, to the State agency (N.H. Rev. Stat. § 170-E:7(I-a)).

For every individual listed on a provider's application for licensure, the Department of Safety must search the New Hampshire sex offender and abuse and neglect registries, the sex offender and abuse and neglect registries of each State where the individual resided in the past 5 years, and the NCIC NSOR (N.H. Rev. Stat. § 170-E:7(II)(a)). Appendix D contains the full details of the Federal and State regulations cited in the report.

Childcare Providers at 21 of 30 Locations Did Not Comply With State Criminal Background Check Requirements

Of the 30 childcare providers we reviewed, 21 did not meet 1 or more criminal background check requirements¹⁴ for 98 employees.

For the 15 family home providers we reviewed, 40 percent (6 of 15 providers) were not in compliance with State criminal background check requirements. Of the 85 employees or household members reviewed, 9 individuals (11 percent) had not obtained or renewed 1 or more of the required criminal background checks.¹⁵

For the 15 childcare centers we reviewed, 100 percent (all 15 providers) were not in compliance with State criminal background check requirements. Of the 529 employees reviewed, 89 individuals (17 percent) had not either obtained or renewed 1 or more of the required criminal background checks (Appendix E).

Our analysis of the errors at each provider type (family home providers versus larger childcare centers) shows that noncompliance was 55 percent higher for childcare centers than for family home providers.

New Hampshire's monitoring did not ensure provider compliance with State requirements related to criminal background checks for 98 individuals across 21 childcare provider locations.¹⁶ State licensing inspectors conduct a 100-percent review of employees and

¹⁴ The 21 childcare providers had current employees or household members who did not complete or did not renew expired criminal background checks as required.

¹⁵ Despite annual unannounced inspections that include a 100-percent review of employee or household member criminal background check documentation, it is still possible for providers to hire individuals or have household members in the home without the State's knowledge during the time between these annual inspections. We found that nine employees or household members had not obtained one or more of the required criminal background checks.

¹⁶ Our audit focused on 15 family homes with 85 current employees or household members and 15 childcare centers with 529 current employees.

household members' criminal background check documentation at the time of initial licensing and when the provider renews its license (every 3 years), regardless of the size of family home providers and childcare centers. In addition, State licensing inspectors also conduct annual unannounced inspections; however, during the annual unannounced inspections only family home providers and small childcare centers receive a 100-percent review of all employees and household members' criminal background check documentation. For larger childcare centers,¹⁷ like the ones we reviewed, State licensing inspectors review only specific types of employees, including those who open or close the facility, new employees, and one or two employees in each classroom.

New Hampshire did not have dedicated staff to provide oversight of the criminal background check process or a system to ensure that (1) an existing provider or employee is required to renew their criminal background check or (2) a previously submitted employee or household member has turned 18 years of age and, therefore, is required to complete a criminal background check. In addition, New Hampshire limited its review of employee criminal background checks at larger childcare centers because it did not have enough staff to review 100 percent of the employees. New Hampshire's staffing level of State licensing inspectors to childcare providers was 1:70–85, which does not meet the national recommended average of 1:50–60.¹⁸

By not ensuring that all current employees or household members who supervised or had routine unsupervised contact with children passed all criminal background checks, the State agency potentially jeopardized the safety of children in the care of the 30 selected childcare providers.

RECOMMENDATIONS

We recommend that the New Hampshire Department of Health and Human Services:

- conduct or renew all required criminal background checks for the 98 individuals we reviewed who did not have all required checks or who had expired background checks at the time of our data requests and site visits;
- develop a system that provides notifications to providers, employees, and department staff when criminal background checks need to be renewed or information to complete the required checks has not been submitted;

¹⁷ We selected larger childcare centers to include the highest number of children being serviced.

¹⁸ The National Association for Regulatory Administration (NARA) recommends an average caseload not to exceed 50–60. NARA's *Call to Action—Strong Licensing: The Foundation for a Quality Early Care and Education System* (2010). Available online at https://www.naralicensing.org/assets/docs/call_to_action_2010.pdf. Last accessed on August 8, 2019.

- determine whether it is feasible to increase the ratio of State licensing inspectors to childcare providers to meet industry standards so that it can review all employee criminal background checks at all childcare centers; and
- require the State licensing agency to increase the number of current employees it reviews at all childcare centers to ensure childcare provider compliance with criminal background check requirements.

NEW HAMPSHIRE COMMENTS

In written comments on our draft report, the State agency concurred with our first, second, and fourth recommendations and partially concurred with our third recommendation. It also described the actions it has taken and plans to take to improve compliance. Specifically, the State agency will be implementing a new system no later than September 2020 that will allow for notifications to providers, individuals, and State agency staff when background checks need to be renewed, additional checks need to be completed, or information is missing. In addition, the State agency will send a communication to providers informing them of their obligations in completing and renewing background checks, and the potential for fines to be imposed if checks are not completed as required. The State agency said that it has completed all the background checks for the individuals identified in the audit.¹⁹

The State agency did not concur with our finding that 104 individuals were missing 1 or more background checks. The State agency said it identified five individuals who should not have been included in one provider's list of current employees because these individuals did not work with children and worked in a different part of the provider's organization.

In addition, the State agency reviewed each finding category and provided further clarification about the type of error that occurred. For each of the background check categories in the draft report, the State agency identified the number of individuals who never completed the required checks and the individuals who had expired background checks at the time of our review. The State agency determined these individuals had previous background checks completed; however, the individuals did not renew the checks.

The State agency did not fully concur with our third recommendation to determine whether it is feasible to increase the ratio of State licensing inspectors to childcare providers. The State agency concurred with the idea of hiring additional staff, but it did not concur that additional State licensing inspectors would be necessary. Instead, the State agency has hired a full-time employee and has begun the process to hire a part-time employee, both of whom will be dedicated to processing background checks and monitoring provider compliance.

The State agency's comments are included in their entirety as Appendix F.

¹⁹ We have not verified that these checks were completed.

OFFICE OF INSPECTOR GENERAL RESPONSE

We have updated our findings to remove five individuals who should not have been included in the providers' list of current employees. Based on our analysis of additional information received, we removed 1 additional individual from the error count as we determined this individual obtained the required background checks, leaving 98 individuals who did not complete or did not renew 1 or more of the required background checks. We have clarified our findings to reflect that some of these individuals did not complete the required checks, whereas others did not renew expired checks.

We also updated our report to reflect that New Hampshire received ACF approval for waivers that allowed the State agency additional time to comply with the FBI fingerprint check and the NCIC NSOR check for existing employees. We removed these individuals from our error calculations.

We agree that the State agency's approach to hire additional staff dedicated to processing and monitoring criminal background checks for childcare providers and staff is likely to result in the review of all background checks at all childcare centers.

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 States²⁰ included in OIG’s prior CCDF Phase I (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 Hampshire. We selected and reviewed a nonstatistical sample of 30 of 463 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):** For licensing purposes, New Hampshire is divided into 12 geographic areas. We determined the geographic area each provider was located within and grouped the providers by area accordingly. We selected at least one family home provider and one childcare center provider within each geographic area to ensure coverage across the State. We used the following factors when making the selection within each geographic area:
 - **Total capacity (the maximum number of children to be served at the provider location):** We sorted the list of providers based on the highest number of

²⁰ The six States included in CCDF Phase I were New York, Nevada, Colorado, Georgia, New Hampshire, and Illinois (Appendix B).

children being served and selected the provider with the highest capacity (i.e., the larger family homes and larger childcare centers).

- **CCDF funding received (the total amount of CCDF funding received for State FY 2018):** We sorted the list based on the amount of CCDF funding received per provider and selected the provider with the highest amount of CCDF funding received.

We conducted unannounced site visits at 15 family home providers, where we obtained a list of all current household members or employees. 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 any challenges or obstacles the provider faced with adhering to the criminal background check requirements. In addition, we contacted 15 childcare center providers to request a list of all current employees and validated the list by requesting a payroll report that showed all current employees at the selected locations. In total, we reviewed supporting documentation for 614 individuals who were current employees or household members at 30 different childcare provider locations. We performed fieldwork at the New Hampshire Department of Health and Human Services in Concord, New Hampshire, and various family home providers from September 4 through November 20, 2018.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State 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 State agency 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 State agency 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;

- interviewed family home providers to identify any challenges or barriers they experienced complying with the new CCDF criminal background check requirements;
- contacted 15 childcare center providers to obtain a payroll list of all current employees at each of the centers and obtained supporting documentation from the State's system to determine whether all the required criminal background checks were completed;
- conducted site visits at each of the 15 family home provider locations to obtain a current list of all employees or household members and obtained supporting documentation or evidence from the State's system to determine whether all the required criminal background checks were completed;
- reviewed and analyzed supporting documentation for all 614 employees/household 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 State agency 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>Georgia's Monitoring of Childcare Providers Ensured Provider Compliance With State Criminal Background Check Requirements (A-04-19-03580)</i>	2/12/2020
<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 HAMPSHIRE'S IMPLEMENTATION STATUS OF
CCDF CRIMINAL BACKGROUND CHECKS**

Criminal Background Check Requirements	Implementation Status as of 9/30/2018	OIG Analysis of State's Implementation Status (Includes a Review of New Hampshire's Laws, Regulations, and Guidance)
FBI Criminal History Fingerprint Check 45 CFR § 98.43(b)(1)	Implemented	Title II, Public Safety and Welfare, Chapter 170-E:7, (I)(a)
NCIC's National Sex Offender Registry 45 CFR § 98.43(b)(2)	Implemented	Title II, Public Safety and Welfare, Chapter 170-E:7, (II)(a)
In-State Criminal Registry 45 CFR § 98.43(b)(3)	Implemented	Title II, Public Safety and Welfare, Chapter 170-E:7, (I)(a)
In-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	Title II, Public Safety and Welfare, Chapter 170-E:7, (II)(a)
In-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	Title II, Public Safety and Welfare, Chapter 170-E:7, (II)(a)
Inter-State Criminal Registry 45 CFR § 98.43 (b)(3)	Not Implemented	Statute revised and signed into law on August 2, 2019. Inter-State background checks will be implemented in January 2020.
Inter-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	Title II, Public Safety and Welfare, Chapter 170-E:7, (II)(a)
Inter-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	Title II, Public Safety and Welfare, Chapter 170-E:7, (II)(a)

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 Identification²¹ (45 CFR § 98.43(b)(1)), and (2) a search of the NCIC’s National Sex Offender Registry 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) in which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

²¹ 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.

STATE REGULATIONS

Childcare providers who are required to be licensed or registered according to the provisions of the New Hampshire State Statute, chapter 170-E, must, prior to the date an individual is responsible for the care of, or has regular contact with children, and upon adding new household members or other individuals who will have regular contact with children, submit to the department the names, birth names, and addresses during the preceding 5 years of such individuals and other information required by the department as prescribed by rules adopted by the commissioner under RSA 541-A (the Administrative Procurement Act) (N.H. Rev. Stat. § 170-E:7(I)).

The persons described in the paragraph above must submit directly to the Department of Safety (the department) a notarized criminal history records release form, as provided by the New Hampshire division of State police, which authorizes the release of the person's criminal records, if any, to the department. The individuals described above must complete an FBI fingerprint check using the Integrated Automated Fingerprint Identification System through a qualified law enforcement agency or an authorized employee of the department. The department must complete the criminal history records check and forward such record, if any, to the department. In the event that the first set of fingerprints is invalid due to insufficient pattern, a second set of fingerprints must be necessary to complete the criminal history records check. If, after two attempts, a set of fingerprints is invalid due to insufficient pattern, the department may, in lieu of the criminal history records check, accept police clearances from every city, town, or county where the person has lived during the past 5 years (N.H. Rev. Stat. §170-E:7(I-a)).

For every name submitted on an application, in the registration process, and for each individual for whom information is required, the State agency must search for such persons against the New Hampshire sex offender and child abuse and neglect registries, the sex offender and child abuse and neglect registries of each State where the individual resided in the past 5 years, and the National Sex Offender Registry (N.H. Rev. Stat. § 170-E:7(II)(a)).

**APPENDIX E: NUMBER OF INDIVIDUALS NOT IN COMPLIANCE WITH CRIMINAL BACKGROUND
CHECK REQUIREMENTS AT 30 SELECTED PROVIDERS**

Provider Number	Provider Type	Number of Individuals* Reviewed	Number of Individuals Not in Compliance With Criminal Background Check Requirements
1	Family home	4	0
2	Family home	8	1
3	Family home	4	0
4	Family home	18	2
5	Family home	3	1
6	Family home	8	3
7	Family home	5	0
8	Family home	3	0
9	Family home	2	1
10	Family home	5	0
11	Family home	6	0
12	Family home	3	0
13	Family home	5	0
14	Family home	7	0
15	Family home	4	1
Totals for Family Homes		85	9
16	Childcare center	43	5
17	Childcare center	28	3
18	Childcare center	37	21
19	Childcare center	47	4
20	Childcare center	60	5
21	Childcare center	31	2
22	Childcare center	39	5
23	Childcare center	15	9
24	Childcare center	11	2
25	Childcare center	23	5
26	Childcare center	95	14
27	Childcare center	11	1
28	Childcare center	16	2
29	Childcare center	47	9
30	Childcare center	26	2
Totals for Childcare Centers		529	89
Combined Totals for Family Homes and Childcare Centers		614	98
*The term “individuals” refers to the current number of employees or household members included in our audit.			



Kerrin A. Rounds
Acting Commissioner

APPENDIX F: NEW HAMPSHIRE COMMENTS

STATE OF NEW HAMPSHIRE DEPARTMENT OF HEALTH AND HUMAN SERVICES OFFICE OF THE COMMISSIONER

129 PLEASANT STREET, CONCORD, NH 03301-3857
603-271-9200 1-800-852-3345 Ext. 9200
Fax: 603-271-4912 TDD Access: 1-800-735-2964 www.dhhs.nh.gov

December 20, 2019

Office of Audit Services, Region 1
JFK Federal Building
15 New Sudbury Street, Room 2425
Boston, MA 02203

RE: Office of the Inspector General Audit of Background Checks for licensed child care staff

In response to the Draft Report (A-01-18-02504), dated November 2019, the department will describe what improvements were being implemented prior to and during the audit period, and what additional measures the department will implement based on audit recommendations.

The Department Response to What OIG Found

New Hampshire was aware prior to the audit commencing that our monitoring of provider compliance with state requirements related to background checks required improvement. We will respond to the specific errors identified in the audit later in the document, however we want to emphasize these errors did not occur because NH did not have dedicated staff to provide oversight of background checks or a system in place. There were a combination of reasons, which we will describe as well.

The Department Response to What OIG Recommends

1. New Hampshire concurs with this recommendation. The department has completed all background checks as required for the individuals identified in the audit.
2. New Hampshire concurs with this recommendation. The department will be implementing a new system no later than September 2020 that will allow for notifications to providers, individuals, and department staff when background checks need to be renewed, additional checks completed, or information is missing. In addition, the department will send a communication to providers informing them of their obligations in completing and renewing background checks, and the potential for fines to be imposed if not completed as required.
3. New Hampshire concurs that additional staff may be required, but it does not concur that additional licensing inspectors are needed at this time. The department has a full time, dedicated staff for background checks as of April 2019, and is currently hiring a part-time staff to assist with background check processing. These positions were identified as necessary in 2018, prior to the audit. The department believes it currently has sufficient licensing inspectors and other staff to increase monitoring of background checks in 2020 so that that all staff and household members will be reviewed when the programs are inspected. The department will continuously monitor this additional review to determine if additional staff will be required.
4. New Hampshire concurs with this recommendation. The department will review all staff and household members at all visits starting in 2020 for compliance with background check requirements.

The Department Response to Findings

Since the Child Care and Development Block Grant Act (CCDBG Act) of 2014 added new requirements for background checks, the department has been diligently working to change legislation and regulations in response. The department made legislative changes to the requirements for background checks seven times between 2006 and 2019. These changes to the requirements, which at times required changes to the process for submission, resulted in confusion for providers as to how they needed to submit staff and household members to complete background checks, and when the checks needed to be completed again for previously submitted staff. The department identified the need to revise how programs submit background checks to eliminate part of the process being missed. Prior to January 2019, programs were required to submit criminal records checks directly to the Department of Safety (DOS), and then programs had to submit another form to the CCLU to provide notification of a new staff or household member. This bifurcated system resulted in many individuals completing the criminal background check through DOS but failing to notify the CCLU as well. The notification to the CCLU was necessary to complete the in-state sex offender registry and in-state abuse and neglect registry. The department worked with the DOS to change the submission process so the CCLU reviews all forms first, which ensures that all individuals submitted by programs to complete a background check will complete all components required. Had this system been in place prior to January 2019, the errors due to 36 individuals who completed a criminal background check but were not checked on the in-state registries would not have occurred.

In December 2018, the department identified that the IT system in use for background checks needed to change. One of the business requirements for the new system is to allow for notifications to the individuals, the child care programs, and the CCLU staff when an individual is turning 18 and a criminal check is required, along with notification as to when a background check is expiring. The CCLU and the Bureau of Child Development and Head Start Collaboration found a common need for a new system for child care providers and their employees, and identified funds allocated through the CCDBG Act for this purpose and have been working on developing the system since April 2019. The system will be operational no later than September 2020, and may be ready prior to that date.

As part of the work on the new system, by July 2020 the CCLU will request from providers a current list of employees and household members to compare against what the CCLU has on file, to ensure the current system has the most updated information. Prior to the request, the CCLU will communicate to providers about this upcoming review and that if background checks have not been submitted as required at the time of the review, the program will be fined. The initial fine is \$500 per individual, with an additional \$100 per day if the background check is not submitted within five business days and the individual continues to work in the program. In addition to obtaining current data to be transferred from our system to the new one, it will also help to ensure that current employees and household members have completed their background checks. The CCLU provided a detailed communication to providers via a child care newsletter in June 2019 that addressed many of the issues noted in the audit, along with providing resources to providers on where to go online for more information and how to reach our office if they had additional questions.

Out of the 104 individuals noted in the audit that were missing one or more background checks, the department does not concur with the finding that five of those individuals, identified as employees of the same child care program, are required to complete background checks. These individuals do not work in the child care program, nor do they work with the children. Their offices are located on a separate level from the program and they do not have unsupervised access to the child care space. The program incorrectly submitted the individuals as working for the child care program, but they work for the licensed entity in another capacity.

The department further clarifies:

- out of now 99 individuals that were missing at least one component of the background checks, **only 38** individuals from 14 programs did not complete any background check at some time during their employment or as members of a household, out of the 30 programs reviewed.
- the remaining 61 individuals failed to either:
 - renew their background check, or
 - submit their information to the Child Care Licensing Unit (CCLU) to complete the in-state sex offender registry and abuse and neglect registry checks, or
 - complete their criminal background check.

The findings of each missing background check component is addressed in more detail below. All the background checks have since been completed as required.

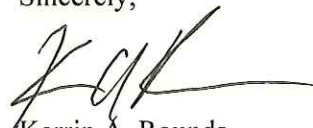
- **In-state sex offender registry checks for 96 individuals**
 - The state does not concur that 96 individuals were not checked against the in-state sex offender registry, as it was determined 5 individuals did not require a background check as stated previously. The state does concur that out of 91 individuals, 65 had never been checked against the registry. Twenty-six (26) individuals were completed previously but the state did not receive notification from the program that the individual was still employed in order to renew the individual and complete the in-state sex offender registry check.
- **In-state child abuse and neglect registry checks for 93 individuals**
 - The state does not concur that 93 individuals were not checked against the in-state child abuse and neglect registry, as it was determined 5 individuals did not require a background check as stated previously. The state does concur that out of 88 individuals, 62 had never been checked against the registry. Twenty-six (26) individuals were checked previously but the state did not receive notification from the program that the individual was still employed in order to renew the individual and complete the in-state abuse and neglect registry check.
- **FBI fingerprint checks for 61 individuals**
 - The state does not concur that 61 individuals did not complete a FBI fingerprint check as it was determined 5 individuals did not require a background check as stated previously. The state does concur that out of 56 individuals, 41 had never completed a FBI fingerprint check. Fifteen (15) individuals did complete a FBI fingerprint check previously, but did not renew their FBI check once expired.
- **National Sex Offender Registry checks for 59 individuals**
 - The state does not concur that 59 individuals did not complete the National Sex Offender Registry check as it was determined that 5 individuals did not require a background check as stated previously. The state does concur that 54 individuals did not complete this check.
- **In-state criminal history checks for 58 individuals**
 - The state does not concur that 58 individuals did not complete the in-state criminal history check, as it was determined that 5 individuals did not require a background check as stated previously. The state does concur that out of 53 individuals, 41 never completed an in-state criminal history record check. Twelve (12) individuals did complete an in-state criminal history check previously, but did not renew this check once expired.

The department provides the following context along with the corrective action taken:

- Ten individuals that did not obtain the required background checks were younger than 18 years of age. These individuals are not allowed to be unsupervised with children at any time.
 - Child Care Licensing Unit (CCLU) will ensure providers understand their obligation to notify us of all household members between the ages of 10-17 and any employees younger than 18 years of age by sending a reminder to all licensed programs. CCLU staff will be retrained to check all staff and household members at all visits in 2020.
- Four individuals younger than 18 years of age upon hire received the appropriate background checks; however, they did not complete the criminal records check when they turned 18 years old, at which time they would not yet have a criminal record since they just turned 18 years old.
 - CCLU will ensure providers understand their obligation to have current staff and household members complete a criminal background check when they turn 18 years old. CCLU staff will begin to check all staff and household members at all visits in 2020.

New Hampshire is confident that the changes to processes that have been implemented, along with the corrective action as stated above, will provide the oversight needed to ensure providers complete background checks as required. If the department finds that providers have not completed background checks as required, the department will hold the providers accountable as provided in statute and regulations. The department will continue to review its policies and procedures to ensure compliance.

Sincerely,



Kerrin A. Rounds
Acting Commissioner