

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**COLORADO'S MONITORING DID NOT
ENSURE CHILD CARE PROVIDER
COMPLIANCE WITH STATE CRIMINAL
BACKGROUND CHECK REQUIREMENTS
AT 18 OF 30 PROVIDERS REVIEWED**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



Amy J. Frontz
Deputy Inspector General
for Audit Services

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Office of Inspector General

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Report in Brief

Date: April 2021

Report No. A-07-19-06084

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 child care providers every 5 years. Criminal background check requirements apply to any staff member who is employed by a child care provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children.

Our objective was to determine whether Colorado's monitoring process ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act.

How OIG Did This Audit

Our audit covered 1,023 child care providers (child care centers and family homes) that received CCDF funding during State fiscal year 2018. We reviewed 15 child care centers and 15 family homes (we conducted unannounced site visits at the family homes). For both types of child care providers, we worked with Colorado to identify those individuals requiring a background check who had a completed criminal background check.

Colorado's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 18 of 30 Providers Reviewed

What OIG Found

Colorado's monitoring process did not ensure provider compliance with State requirements related to criminal background checks for 18 of the 30 child care providers we reviewed. We found that 107 of 679 individuals requiring a background check did not obtain 1 or more of the required criminal background checks. Although Colorado reviewed required background checks during its annual inspections of child care providers, the providers did not always inform the State and properly obtain background checks when hiring individuals or when new individuals began to reside in family homes. Furthermore, Colorado did not retain criminal background check records for child care center individuals who required background checks and instead relied on the child care centers to retain these documents. Moreover, Colorado did not require child care providers and associated individuals to receive training on background check requirements. By not ensuring that all individuals who supervised or had routine unsupervised contact with children had passed all criminal background checks, Colorado potentially jeopardized the safety of children at these child care providers.

What OIG Recommends and Colorado's Comments

We recommend that Colorado: (1) conduct all required criminal background checks for the 107 individuals in our sample who did not have the required checks at the time of our audit (if still employed), (2) ensure that child care providers and associated individuals requiring a background check receive training on background check requirements, and (3) ensure that all required background checks are completed and retain these records until the background check expires.

Colorado concurred with all of our recommendations and described corrective actions that it had taken or planned to take. Specifically, Colorado said that it had conducted background checks for those individuals still employed in child care and added that noncompliant providers were cited and were required to submit compliance plans. Colorado also stated that it was in the process of developing training for child care providers and, for our third recommendation, described ongoing efforts to develop and modernize data systems that, when completed, would allow the State to store individual background check information for all licensed child care providers.

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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 child care 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. We conducted this audit as part of a second phase of our oversight activities to assess whether State agencies' monitoring processes ensured provider compliance with CCDF requirements related to criminal background checks.

Appendix B contains a list of Office of Inspector General (OIG) reports related to criminal background check requirements.

OBJECTIVE

Our objective was to determine whether the Colorado Department of Human Services' (State agency's) monitoring process 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 child care expenditures of low-income families. Administered by the Administration for Children and Families (ACF), the CCDF provides eligible low-income families with help paying for child care at a provider of their choice while they work or participate in training, education, or both training and education. In fiscal year (FY) 2019, ACF provided \$8.2 billion to States, territories, and Tribes to fund CCDF programs. In FY 2018, the most recent year for which nationwide data is available, CCDF served approximately 1.3 million children under the age of 13 from 813,200 low-income working families each month.

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

Under the CCDBG Act, each lead agency must certify in its State plan that it has monitoring policies and practices applicable to all child care providers² and facilities that deliver services.³ States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of child care providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds.⁴

Criminal background check requirements apply to any staff member who is employed by a child care 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 child care provider who may not regularly engage with children but whose presence at the facility gives them the opportunity for unsupervised access. For family 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.⁵

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 2016.⁶ According to Federal regulations, States must have requirements, policies, and procedures in place to conduct comprehensive background checks (45 CFR § 98.43(a)). These regulations require States to conduct criminal background checks for child care staff members and prospective child care staff members. The regulations stipulate that the criminal background checks include:

- a Federal Bureau of Investigation (FBI) fingerprint check using the Next Generation Identification system;⁷

² As defined in Federal regulations, "child care provider" is a center-based child care provider, family child care provider, or another provider of child care services for compensation on a regular basis that: (1) is not an individual related to all children for whom child care services are provided and (2) is licensed, regulated, or registered under State law or eligible to receive assistance (45 CFR § 98.43(a)(2)). In its regulations, Colorado established the categories "child care center" and "family home," which meet the requirements of the Federal definition of a child care provider. See also footnote 10 later in this report.

³ 45 CFR § 98.16(o).

⁴ 45 CFR § 98.43(a)(1).

⁵ CCDF Program Final Rule, 81 Fed. Reg. 67438, 67494 (Sept. 30, 2016).

⁶ CCDF Program Final Rule, 81 Fed. Reg. 67438 (Sept. 30, 2016).

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

- a search of the National Crime Information Center’s (NCIC’s) National Sex Offender Registry; and
- a search of the following registries, repositories, or databases for the State in which the child care staff member resides (in-State checks) and each State in which the staff member resided during the preceding 5 years (inter-State checks):
 - the State criminal registry or repository, with the use of fingerprints required for the State in which the staff member resides and optional for other States;
 - the State sex offender registry or repository; and
 - the State-based child abuse and neglect registry and database.

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 no later than September 30, 2017; see also footnote 9 below. The CCDBG Act allowed for the Secretary of HHS to grant a 1-year extension to the States if they demonstrate a good-faith effort to implement the requirements. In recognition of significant challenges to implementing the new background check requirements, all States, including Colorado, 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 implementation period 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,⁸ 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 1-year renewal, subject to conditions being met) to perform the following actions:⁹

- conduct FBI checks and in-State registry checks on current child care 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.

⁸ 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 child care as described in the preprint (https://www.acf.hhs.gov/sites/default/files/occ/fy_2019_2021ccdf_plan_preprint_11_30_17.pdf).

⁹ ACF, *Criminal Background Check Implementation Deadline*. Available online at <https://childcareta.acf.hhs.gov/ccdf-fundamentals/implementation-deadline> (accessed Jan. 6, 2021).

ACF has further indicated that if a review of the State plan reveals that a State is out of compliance with one or more CCDF program requirements, it may place the State on a Corrective Action Plan. If the State is not in compliance with background check requirements by September 30, 2020, ACF has the authority to impose certain penalties or sanctions. For failure to comply substantially with the criminal background check requirements, a State would be subject to a penalty of 5 percent of the total discretionary CCDF funds awarded to it for the FY following ACF's determination that noncompliance occurred (45 CFR § 98.92(b)(4)(i)).

The State Agency's Implementation of Criminal Background Check Requirements

Although the State agency had some criminal background check requirements in place before the CCDBG Act was signed into law, it had not fully implemented the new criminal background check requirements as of April 30, 2020. Specifically, the State agency had implemented requirements for the FBI fingerprint check, in-State criminal registry, in-State sex offender registry, and in-State child abuse and neglect registry for licensed child care centers and licensed family homes.¹⁰ The State agency conducts these checks for current and newly hired child care employees, owners, licensees, and any adults residing in child care facilities who are 18 years of age and older (Colorado Revised Statute (C.R.S.) § 26-6-107).¹¹

As of April 30, 2020, the State agency had not implemented the requirements of the NCIC National Sex Offender Registry check for individuals requiring a background check. Moreover, the State agency had not implemented requirements for inter-State checks of the criminal, sex offender, and child abuse and neglect registries for child care centers or family homes.

On September 30, 2019, the State agency requested a waiver to delay until September 30, 2020, the implementation of the background check requirements related to (1) the NCIC National Sex Offender Registry, (2) inter-State checks of the criminal registry or repository, (3) inter-State checks of the sex offender registry, and (4) inter-State checks of the child abuse and neglect registry. ACF approved this waiver on December 24, 2019. Furthermore, according to the State agency, it had implemented these background checks as of September 30, 2020. (See Appendix C for details on the implementation status of the State agency's CCDF criminal background checks).

¹⁰ For this audit, we focused on two types of child care providers; see also footnote 2. A "child care center" is a facility that is maintained for the care of five or more children who are not related to the owner, operator, or manager (C.R.S. § 26-6-102(5)). A "family home" is a facility for child care in a place of residence for children who are not related to the head of such home (C.R.S. § 26-6-102(13)). For simplicity, all further references to "child care centers" and "family homes" in this report are to be understood to refer to licensed child care centers and family homes.

¹¹ For this report, we use the term "an individual requiring a background check" for further references to any person who requires a background check, including but not limited to an owner of a child care facility, an employee, a newly hired employee, a licensee, and any adult who is 18 years of age and older who resides in a child care facility (C.R.S. § 26-6-107).

The State Agency’s Coordination Efforts for Conducting Criminal Background Checks

During our audit, State agency officials told us that the State agency works to maintain State health and safety licensing standards, which include conducting criminal background checks for child care staff and individuals in child care centers and family homes as well as inspecting these child care providers once a year. The inspections include a review of all individuals requiring a background check to ensure that they have completed the required background checks. The State agency works with the Colorado Bureau of Investigation (CBI) to conduct criminal background checks for employees of child care providers. Specifically, the CBI is involved in the collection of fingerprint checks for the national FBI criminal history fingerprint check. As part of the FBI check, the State agency also compares the employee names to the list of registered Colorado child sex offenders maintained on the Integrated Colorado On-Line Network (ICON). According to the State agency, all required criminal background checks for employees of child care centers and family homes are conducted initially during licensing.

Another criminal background check involves the child abuse and neglect background check information that is recorded in the Colorado TRAILS database.¹² This information comes from the State of Colorado’s Child Welfare System and is connected to Colorado’s child and abuse records. TRAILS data are entered into a Microsoft Access database.

The State agency told us that individuals requiring a background check at family homes, including those individuals residing at the family homes who are 18 years of age or older, are considered to be employed by the State agency, and for that reason the State agency maintains all of those individuals' background information. For employees of child care centers, the background information is maintained at the child care facility¹³ as well as being recorded in the State agency’s records until the individual requiring a background check leaves the child care center, in which case all information regarding that individual is eliminated from the State agency’s records.

HOW WE CONDUCTED THIS AUDIT

Our audit covered 1,023 child care centers and family homes (footnote 10) that received CCDF funding during State FY (SFY) 2018.¹⁴ We reviewed 15 child care centers and 15 family homes for a total of 30 child care providers.

To determine whether all of the individuals requiring a background check at the 15 child care centers had completed criminal background checks, we obtained from the child care centers a list of all currently employed individuals who worked at the facilities since July 1, 2017, and

¹² State agency officials confirmed to us that TRAILS is not an acronym.

¹³ Child care centers are required to maintain records for 3 years (12 Colorado Code of Regulations (C.C.R.) 2509-8 § 7.702.104).

¹⁴ SFY 2018 began on July 1, 2017, and ended on June 30, 2018.

worked with the State agency to identify those individuals requiring a background check who had a completed criminal background check.

To determine whether all of the individuals requiring a background check at the 15 family homes had completed criminal background checks, we conducted unannounced site visits and, at each facility, obtained a list of all individuals requiring a background check who were present or living at the family home at the time of our visits. We worked with the State agency to identify those individuals requiring a background check who had a completed criminal background check.

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 child care provider compliance with State requirements related to criminal background checks.

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 A contains the details of our audit scope and methodology.

FINDINGS

The State agency's monitoring process did not ensure provider compliance with State requirements related to criminal background checks for 18 of the 30 child care providers (107 of the 679 individuals requiring a background check) we reviewed. Specifically, for the 107 individuals requiring a background check, we found the following errors (some individuals had more than 1 error):

- FBI and CBI criminal background checks had not been performed for 65 individuals (61 child care center employees and 4 individuals residing in family homes).¹⁵
- TRAILS child abuse and neglect background checks had not been performed for 68 individuals (66 child care center employees and 2 individuals residing in family homes).

Although the State agency attempted to verify that the required background checks had been completed during its annual inspections of child care providers, the providers did not always inform the State agency and properly obtain background checks when hiring child care center employees or when new individuals began to reside in family homes. Furthermore, the State agency did not retain criminal background check records for child care center employees once it

¹⁵ Of the 65 individuals who did not have both an FBI and CBI background check, 26 individuals also did not have a TRAILS background check (discussed just below) completed.

had been informed that an individual was no longer employed. Rather, the State agency relied on the child care centers themselves to retain these documents. If this documentation was unavailable from the provider, the State agency would not be able to provide assurance that the required background checks had been completed. Moreover, the State agency did not require child care providers and associated individuals to receive training on background check requirements.

By not ensuring that all individuals who supervised or had routine unsupervised contact with children had passed all criminal background checks, the State agency potentially jeopardized the safety of children at these child care providers.

THE STATE AGENCY’S MONITORING PROCESS DID NOT ENSURE PROVIDER COMPLIANCE WITH STATE CRIMINAL BACKGROUND CHECK REQUIREMENTS

Colorado Requirements for Criminal Background Checks

The State agency conducts fingerprint-based criminal history and TRAILS background checks for individuals requiring a background check (footnote 11) (C.R.S. §§ 26-6-107(1)(a)(I)(A) and (C); 12 Colorado Code of Regulations (C.C.R.) 2509-8 § 7.701.32(A)).

Applicants must submit to the FBI and the CBI a complete set of fingerprints taken by a qualified law enforcement agency or any third-party vendor approved by the CBI, including county departments of human or social services that use fingerprints to obtain criminal history records held by the FBI and the CBI (12 C.C.R. 2509-8 § 7.701.33(A)(1)).

For all required CBI fingerprint-based criminal history background checks, including those confirming the lack of a criminal history, the State agency is required to conduct a comparison search on the State Judicial Department’s court case management system and the sex offender registry of the Colorado Department of Public Safety (12 C.C.R. 2509-8 § 7.701.33(H)).

Child care providers must also submit a request to determine whether an applicant for employment or a current employee “has been found responsible for a confirmed report of child abuse or neglect in the State [agency’s] automated system [TRAILS]” (12 C.C.R. 2509-8 § 7.701.32(A)).

See Appendix D for the Federal and State requirements related to criminal background checks.

Eighteen of Thirty Child Care Providers Did Not Comply With the State Criminal Background Check Requirements

The State agency’s monitoring process did not ensure provider compliance with State requirements related to criminal background checks for 18 of the 30 child care providers (107 of the 679 individuals requiring background check) we reviewed. Specifically, for the 107

individuals requiring a background check, we found the following errors (some individuals had more than 1 error):

- For 65 of the 107 individuals requiring a background check, the FBI and CBI criminal background checks had not been performed (61 child care center members and 4 individuals residing in family homes).¹⁶
- For 68 of the 107 individuals requiring a background check, the TRAILS child abuse and neglect background checks had not been performed (66 child care center employees and 2 individuals residing in family homes).¹⁷

Appendix E breaks out the numbers of individuals at each of the 30 selected child care providers who were missing criminal background checks.

THE STATE AGENCY'S MONITORING PROCESS DID NOT ENSURE THAT INDIVIDUALS REQUIRING A BACKGROUND CHECK HAD COMPLETED CRIMINAL BACKGROUND CHECKS AND DID NOT ENSURE RETENTION OF RECORDS OF THESE CHECKS

Although the State agency reviewed required background checks during its annual inspections of child care providers, the providers did not always inform the State agency and properly obtain background checks when hiring child care center employees or when new individuals began to reside in family homes.

Furthermore, the State agency did not retain criminal background check records for child care center employees once it had been informed that an individual was no longer employed. Rather, the State agency relied on the child care centers themselves to retain these documents; see footnote 13. If this documentation was unavailable from the provider, the State agency would not be able to provide assurance that the required background checks had been completed.

¹⁶ We were unable to obtain documentation that both the FBI and CBI background checks had been completed for these 65 individuals. Documentation we obtained showed that 16 of the 65 individuals had completed the CBI criminal background check. With respect to the FBI criminal background check, though, the State agency is required to compare the individuals' names to the names that appear on the Colorado child sex offenders list. We were unable to confirm that the sex offender background check had been completed for these 65 individuals.

¹⁷ According to the State agency, it continuously checks for reports of child abuse and neglect involving individuals for whom an initial background check has been completed; however, we were unable to obtain documentation that the TRAILS child abuse and neglect background checks had been completed for these 68 members. Additionally, 26 of these individuals also lacked the FBI and CBI background checks (discussed above).

A Child Care Center (provider number 15 in Appendix E) hired an employee in September 2018. We contacted this provider in May 2019—nearly 8 months later—and then confirmed with the State agency that this individual had a TRAILS child abuse and neglect background check completed; however, the individual did not have either the FBI or the CBI criminal background check completed.

Although the State agency provided information regarding background checks requirements on its website as well as technical support to those needing a background check, the State agency did not require child care providers and associated individuals to receive training on background check requirements.

By not ensuring that all individuals who supervised or had routine unsupervised contact with children had passed all criminal background checks, the State agency potentially jeopardized the safety of children at these child care providers.

RECOMMENDATIONS

We recommend that the Colorado Department of Human Services:

- conduct all required criminal background checks for the 107 individuals in our sample who did not have the required checks at the time of our audit (if still employed),
- ensure that child care providers and associated individuals requiring a background check receive training on background check requirements, and
- ensure that all required background checks are completed and retain these records until the background check expires.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency concurred with all of our recommendations and described corrective actions that it had taken or planned to take. Specifically, the State agency concurred with our first recommendation and said that it had conducted background checks on 30 of the 107 individuals who were still employed in child care. (The State agency said that the remaining 77 of the 107 individuals in our sample were no longer employed in child care and added that the State agency does not have the authority to conduct additional background checks or access the results of background checks for those 77 individuals).

The State agency also stated that noncompliant child care providers were cited for either not submitting background checks or for not maintaining documentation. These providers “were

mandated to comply with the requirements of submitting background checks for individuals still employed” within 24 hours and to submit compliance plans to ensure that all background check documentation is maintained as required by current child care rules and regulations.

For our second recommendation, the State agency concurred and said that it is in the process of developing training for child care providers that covers the comprehensive information and frequently asked questions regarding background check requirements currently provided online. The State agency added that this training would also be posted online when it has been developed, and said that it would also include a section of training on background check requirements in the new pre-licensing training under development for licensed family child care home providers. Furthermore, the State agency said that it would continue to provide technical assistance and resources through its child care licensing specialists and administrative guides.

For our third recommendation, the State agency concurred and described ongoing efforts to develop and modernize data systems that, when completed, would allow the State agency to store individual background check information for all licensed child care providers. Once these systems have been completed, the State agency “will no longer need to rely on child care providers to retain background check clearance information.” The State agency said that it anticipated that it would have the ability to maintain background check information “independently of child care providers” by early 2022.

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

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

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

- States with a “partial” or “substantial” implementation status for criminal background check requirements in their 2016 through 2018 CCDF State plans,
- 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 the CCDF within the State.

In addition to the factors above, the six States¹⁸ included in our previous CCDF Phase I (State implementation of CCDBG criminal background check requirements) audit series were included in the CCDF Phase II (State monitoring of child care provider compliance) audits. Based on our review of these factors, we selected Colorado.

We selected and reviewed a nonstatistical sample of 30 of 1,023 child care centers and family homes (footnote 10) that received CCDF funding during SFY 2018 to improve our understanding of the State’s monitoring of child care provider compliance with State criminal background check requirements. We reviewed 15 child care centers and 15 family homes for a total of 30 child care providers, which we selected based on the geographic area and the amount of CCDF funding received for SFY 2018. Furthermore, we limited our selection to one child care center and one family home per county.

To determine whether all of the employees of the 15 child care centers had completed criminal background checks if required, we obtained from the child care centers a list of all currently employed individuals as well as those employed since July 1, 2017, and worked with the State agency to identify those individuals who had a completed criminal background check.

To determine whether all of the employees and individuals residing in family homes of the 15 family homes had completed criminal background checks if required, we conducted

¹⁸ The six States included in CCDF Phase I were Colorado, Georgia, Illinois, New Hampshire, New York, and Nevada. (See Appendix B).

unannounced site visits and, at each facility, obtained a list of all individuals requiring a background check who were present or living at the family home at the time of our visits. We worked with the State agency to identify those individuals requiring a background check who had a completed criminal background check.

In total, we reviewed supporting documentation obtained from the State agency's system for 679 individuals requiring a background check at 30 different child care providers.

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 child care provider compliance with State requirements related to criminal background checks.

We conducted our audit, which included fieldwork at the State agency and various child care centers and family homes throughout Colorado, from December 2018 through December 2020.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- identified whether State-required criminal background check requirements had been fully implemented within the State;
- interviewed State agency officials to gain an understanding of the State's monitoring process (including frequency of inspections) over provider compliance with criminal background check requirements established under the CCDBG Act;
- reviewed the State agency's inspection reports for the selected child care providers;
- interviewed State agency officials to identify any challenges or barriers that the State agency experienced monitoring providers to ensure that the new criminal background check requirements are being met;
- conducted reviews at 15 child care centers to obtain lists of all individuals requiring a background check;
- conducted unannounced site visits at each of the 15 family homes to obtain current lists of all individuals requiring a background check;
- obtained supporting documentation and evidence from the State agency's system to determine whether all the required criminal background checks were completed for 679 individuals requiring a background check at 30 different child care providers;

- reviewed and analyzed a nonstatistical sample of 30 out of 1,023 child care centers and family homes that received CCDF funding for SFY 2018 to determine whether all of the required criminal background checks were completed; and
- discussed the results of our audit with State agency officials on October 15, 2020.

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 OFFICE OF INSPECTOR GENERAL REPORTS RELATING TO
CRIMINAL BACKGROUND CHECK REQUIREMENTS**

| Report Title | Report Number | Date Issued |
|---|--------------------------------------|--------------------|
| <i>Virginia's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 8 of 30 Providers Reviewed</i> | <u>A-03-19-00253</u> | 2/19/2021 |
| <i>Hawaii's Monitoring Generally Ensured Child Care Provider Compliance With State Criminal Background Check Requirements</i> | <u>A-09-19-01000</u> | 9/3/2020 |
| <i>Indiana's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 17 of 30 Providers Reviewed</i> | <u>A-05-19-00012</u> | 8/26/2020 |
| <i>Rhode Island's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 18 of 30 Providers Reviewed</i> | <u>A-01-18-02505</u> | 8/17/2020 |
| <i>New Jersey's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 9 of 30 Providers Reviewed</i> | <u>A-02-19-02004</u> | 7/24/2020 |
| <i>Utah's Monitoring Process Generally Ensured Child Care Provider Compliance With State Criminal Background Check Requirements</i> | <u>A-07-19-06085</u> | 7/21/2020 |
| <i>Illinois' Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 12 of 30 Providers Reviewed</i> | <u>A-05-19-00016</u> | 4/29/2020 |
| <i>New Hampshire's Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 21 of 30 Providers Reviewed</i> | <u>A-01-18-02504</u> | 4/3/2020 |
| <i>New Mexico's Monitoring of Childcare Providers Generally Ensured Provider Compliance With State Criminal Background Check Requirements at 30 Child Care Providers Reviewed</i> | <u>A-06-19-07001</u> | 2/19/2020 |
| <i>Georgia's Monitoring of Childcare Providers Ensured Provider Compliance With State Criminal Background Check Requirements</i> | <u>A-04-19-03580</u> | 2/12/2020 |

| Report Title | Report Number | Date Issued |
|--|-------------------------------|-------------|
| <i>Tennessee’s Monitoring Ensured Compliance With Criminal Background Check Requirements at 28 of the 30 Childcare Providers Reviewed</i> | A-04-19-02023 | 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</i> | A-05-19-00015 | 8/23/2019 |
| <i>New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers</i> | A-02-17-02011 | 1/8/2019 |
| <i>Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i> | A-09-17-01003 | 9/19/2018 |
| <i>Colorado Implemented Many New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i> | A-07-17-06076 | 9/17/2018 |
| <i>Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i> | A-04-18-03578 | 7/27/2018 |
| <i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i> | A-01-18-02500 | 7/9/2018 |
| <i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i> | A-05-17-00047 | 6/4/2018 |

APPENDIX C: THE STATE AGENCY'S IMPLEMENTATION STATUS OF CHILD CARE AND DEVELOPMENT FUND CRIMINAL BACKGROUND CHECKS

| Criminal Background Check Requirements | Implementation Status as of 4/30/2020 | OIG Analysis of State's Implementation Status (Includes a Review of Colorado's Laws, Regulations, and Guidance) |
|--|--|--|
| FBI Criminal History Fingerprint Check 45 CFR § 98.43(b)(1) | Implemented | Colorado Revised Statute 26-6-107 |
| NCIC's National Sex Offender Registry 45 CFR § 98.43(b)(2) | Implemented After Audit Period | The State agency indicated that it had implemented these background checks as of September 30, 2020. |
| In-State Criminal Registry 45 CFR § 98.43(b)(3) | Implemented | Colorado Revised Statute 26-6-107 |
| In-State Sex Offender Registry 45 CFR § 98.43(b)(3) | Implemented | Colorado Revised Statute 26-6-107 |
| In-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3) | Implemented | Colorado Revised Statute 26-6-107 |
| Inter-State Criminal Registry 45 CFR § 98.43(b)(3) | Implemented After Audit Period | The State agency indicated that it had implemented these background checks as of September 30, 2020. |
| Inter-State Sex Offender Registry 45 CFR § 98.43(b)(3) | Implemented After Audit Period | The State agency indicated that it had implemented these background checks as of September 30, 2020. |
| Inter-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3) | Implemented After Audit Period | The State agency indicated that it had implemented these background checks as of September 30, 2020. |

APPENDIX D: FEDERAL AND STATE REQUIREMENTS

FEDERAL REGULATIONS

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

“Child care provider” means a center-based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that (A) is not an individual who is related to all children for whom child care 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)).

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

Federal regulations require States to conduct two national checks: (1) an FBI criminal history fingerprint check using Next Generation Identification (45 CFR § 98.43(b)(1)), and (2) a search of the NCIC’s National Sex Offender Registry for child care 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 child care 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 child care staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

STATE REQUIREMENTS

Colorado Requirements for Criminal Background Checks

A child care provider must ensure that a criminal background check is obtained for him- or herself and all adults who are 18 years of age and older including any owner, employee, newly hired employee, licensee, and any adult who is 18 years of age and older who resides in the licensed facility (C.R.S. §§ 26-6-107(1)(a)(I)(A) and (C)). The State agency conducts fingerprint-based criminal history and TRAILS background checks for individuals requiring a background check (footnote 11) (C.R.S. §§ 26-6-107(1)(a)(I)(A) and (C); 12 C.C.R. 2509-8 § 7.701.32(A)).

State regulations state:

Each applicant listed below must submit to the Colorado Bureau of Investigation (CBI) and the Federal Bureau of Investigation (FBI) a complete set of fingerprints taken by a qualified law enforcement agency or any third party vendor approved by CBI including county departments of human or social services that use fingerprint machines pursuant to Section 19-3-406(1)(c), (2), C.R.S., to obtain any fingerprint criminal history record held by the CBI and FBI. If a third party takes the individual's fingerprints, the fingerprints may be electronically captured using CBI's approved LiveScan equipment. Payment of the fee for the criminal record check is the responsibility of the individual being checked, identified as follows:

- (a) Each applicant for an original license for a center, facility, or agency and any adult eighteen (18) years of age or older who resides in the licensed center, facility or agency (12 C.C.R. 2509-8 § 7.701.33(A)(1)).

For all CBI fingerprint-based criminal history record checks, including those confirming a criminal history as well as those confirming the lack of a criminal history, the State agency is required to conduct a comparison search on the State Judicial Department's court case management system and the sex offender registry of the Colorado Department of Public Safety (12 C.C.R. 2509-8 § 7.701.33(H)).

"An operator of a licensed facility, guest child care facility as defined in C.R.S. § 26-6-102(16), or an exempt family child care home provider must submit a request to determine if an operator, applicant for employment or current employee has been found responsible for a confirmed report of child abuse or neglect in the State [agency's] automated system [TRAILS]" (12 C.C.R. 2509-8 § 7.701.32(A)).

**APPENDIX E: NUMBER OF INDIVIDUALS MISSING REQUIRED OR RECURRING CRIMINAL
BACKGROUND CHECKS AT 30 SELECTED PROVIDERS**

| Provider Number | Provider Type | Number of Individuals Reviewed | Number of Individuals Missing One or More Required Criminal Background Checks | Number of Individuals Missing One or More Recurring Criminal Background Checks Within the Last 5 Years |
|---|----------------------|---------------------------------------|--|---|
| 1 | Child care center | 36 | 8 | 8 |
| 2 | Child care center | 35 | 3 | 3 |
| 3 | Child care center | 79 | 10 | 10 |
| 4 | Child care center | 14 | 2 | 2 |
| 5 | Child care center | 18 | 3 | 3 |
| 6 | Child care center | 36 | 7 | 7 |
| 7 | Child care center | 61 | 0 | 0 |
| 8 | Child care center | 122 | 8 | 8 |
| 9 | Child care center | 14 | 6 | 6 |
| 10 | Child care center | 54 | 5 | 5 |
| 11 | Child care center | 50 | 27 | 27 |
| 12 | Child care center | 41 | 10 | 10 |
| 13 | Child care center | 23 | 1 | 1 |
| 14 | Child care center | 21 | 9 | 9 |
| 15 | Child care center | 30 | 3 | 3 |
| Total for Child Care Centers | | 634 | 102 | 102 |
| 16 | Family home | 2 | 0 | 0 |
| 17 | Family home | 2 | 1 | 1 |
| 18 | Family home | 6 | 0 | 0 |
| 19 | Family home | 5 | 2 | 2 |
| 20 | Family home | 2 | 1 | 1 |
| 21 | Family home | 1 | 0 | 0 |
| 22 | Family home | 4 | 1 | 1 |
| 23 | Family home | 4 | 0 | 0 |
| 24 | Family home | 2 | 0 | 0 |
| 25 | Family home | 3 | 0 | 0 |
| 26 | Family home | 3 | 0 | 0 |
| 27 | Family home | 3 | 0 | 0 |
| 28 | Family home | 3 | 0 | 0 |
| 29 | Family home | 3 | 0 | 0 |
| 30 | Family home | 2 | 0 | 0 |
| Total for Family Homes | | 45 | 5 | 5 |
| Combined Total for Child Care Centers and Family Homes | | 679 | 107 | 107 |



COLORADO
Department of Human Services

March 8, 2021

RE: Report Number: A-07-19-0608

Mr. Patrick J. Cogley
Regional Inspector General for Audit Services
Office of Inspector General
Department of Health and Human Services

Dear Mr. Cogley:

Enclosed is the Colorado Department of Human Services (Department) response to the draft report *Colorado's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 18 of 30 Providers Reviewed*.

Please find the Department's written comments on each of the recommendations contained in the draft report. The Department has provided a statement of concurrence or nonoccurrence, as well as a statement describing the nature of the corrective action or planned correction the Department has taken for each recommendation.

In response to the first recommendation, *conduct all required criminal background checks for the 107 individuals in our sample who did not have the required checks at the time of our audit (if still employed)*, The Department concurs with this recommendation. The Department confirmed that 40 of the 107 staff members included in the sample were not employed or are no longer employed at the licensed child care program, and an additional 37 staff members were employees at licensed programs that have closed and are no longer in operation. (This does not necessarily mean they did not have the required checks, it just means the Department cannot access those results any longer.) Therefore, 77 of the 107 individuals are no longer employed in child care and the Department does not have the authority to conduct an additional background check on these individuals. As they are no longer caring for children, they do not pose a risk to children.

The Department conducted background checks for the remaining 30 individuals that continued caring for children. Licensed Programs that were non-compliant were cited for either not submitting background checks or for not maintaining documentation. Programs were mandated to comply with the requirements of submitting background checks for individuals still employed within 24-hours. Also, programs were mandated to submit a compliance plan to ensure that all background check documentation is maintained as required by current child care rules and regulations.

For the second recommendation, *ensure that child care providers and associated individuals requiring a background check receive training on background check requirements*, the



Department concurs with this recommendation. The Department is in the process of developing training for child care providers that covers the comprehensive information and frequently asked questions regarding background check requirements currently provided on the Office of Early Childhood (OEC) website. Once completed, this training will be posted on the OEC website for on-demand access to assist with provider compliance in submitting and maintaining background checks. The Department also includes a section of training on background check requirements in the new pre-licensing training under development for licensed family child care home providers. The Department will also continue providing technical assistance and resources through our child care licensing specialists and Administrative Guides to assist programs in complying with all background check requirements.

Lastly, in response to the final recommendation, *ensure that all required background checks are completed and retain these records until the background check expires*, the Department concurs with this recommendation. The Department has been mapping out and securing funding for a comprehensive IT solution for the storage of background check information over the past few years. The Department is currently in the process of modernizing both the Colorado Child Care Licensing System (CCCLS) and Professional Development Information System (PDIS), allowing the Department to store individual background check information for all licensed child care providers. Once the IT builds of these two systems are completed, the Department will no longer need to rely on child care providers to retain background check clearance information. The Department will keep the background checks housed within these two systems. The Department anticipates the ability to maintain background check information independently of child care providers by early 2022.

If you have any questions or concerns about this response, please feel free to contact Carin Rosa, Child Care Licensing Director, at carin.rosa@state.co.us, or by phone at 720-470-8028.

Sincerely,

Michelle
Barnes

Digitally signed by Michelle
Barnes
Date: 2021.03.08 10:22:00
-07'00'

Michelle Barnes
Executive Director
Colorado Department of Human Services

