

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

**GEORGIA'S MONITORING OF  
CHILDCARE PROVIDERS ENSURED  
PROVIDER COMPLIANCE WITH STATE  
CRIMINAL BACKGROUND CHECK  
REQUIREMENTS**

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# ***Office of Inspector General***

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## Report in Brief

Date: February 2020

Report No. A-04-19-03580

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 receiving 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. 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 Georgia'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 2,617 licensed childcare centers and family homes that received CCDF funding during State fiscal year (SFY) 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 312 individuals who were current employees or household members at 30 different childcare provider locations.

## Georgia's Monitoring of Childcare Providers Ensured Provider Compliance With State Criminal Background Check Requirements

### What OIG Found

Georgia's monitoring process ensured provider compliance with State requirements related to criminal background checks at 29 of 30 childcare provider locations reviewed. Of the 312 individuals we reviewed, 311 (over 99 percent) had all required checks at the time of our data requests and site visits.

For the one individual that did not meet the required checks, the provider indicated that the employee worked for 2 days and terminated her position because she found another job. The provider told Georgia that the employee had obtained a local criminal records check thinking that the local check would be good for 21 days. Georgia further said that the provider was aware of its error and understands that all employees must have either a satisfactory determination and be supervised or have a comprehensive determination letter.

Georgia would not have detected the error during its scheduled monitoring and licensing visits because the employee in question only worked during the period April 20, 2019, to May 19, 2019.

Georgia officials said that, for SFY 2019, it conducted a monitoring visit to the provider on December 19, 2018, and a licensing study on June 12, 2019. For SFY 2020, Georgia has scheduled the provider for a monitoring visit between October and December 2019 and a licensing study between April and June 2020. Therefore, this error occurred outside of Georgia's scheduled monitoring and licensing visits and appears to be an anomaly.

### What OIG Recommends

Except for one instance, Georgia's monitoring process ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act. Therefore, we have no recommendations.

Georgia did not provide formal comments on our draft report. However, Georgia told us that it did not have any disagreements with our findings.

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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.<sup>1</sup>

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 (OIG) reports that have been issued 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 Georgia's monitoring of childcare providers ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act.

### BACKGROUND

#### Child Care 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), CCDF helps eligible low-income families pay for childcare at a provider of their choice while they work or participate in training or 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 age 13 from 796,000 low-income working families each month.

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

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<sup>1</sup> P.L. No. 113-186 § 658H enacted (November 19, 2014).

<sup>2</sup> 45 CFR § 98.16(o).

licensed, regulated, or registered under State law or receive CCDF funds.<sup>3</sup> 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.<sup>4</sup>

### **Criminal Background Check Requirements as of September 30, 2016**

The U.S. Department of Health and Human (HHS) implemented the CCDBG Act's criminal background check requirements for States, territories, and tribes in a Final Rule issued in September 2016 (CCDF Program Final Rule, 81 Fed. Reg. 67438 (September 30, 2016)). According to Federal regulations (45 CFR § 98.43), 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; 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.

As of September 30, 2018, Georgia had implemented requirements for all background check components, (except the Interstate Criminal History Registry Check and the Interstate Child Abuse and Neglect Registry Check) and conducts these checks for all new (prospective) childcare staff, in accordance with 45 CFR § 98.43.

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<sup>3</sup> 45 CFR § 98.43(a)(1).

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

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

### **Georgia’s Coordination Efforts for Conducting Criminal Background Checks**

For all childcare providers<sup>5</sup> that are required to undergo comprehensive background checks, Georgia conducts a fingerprint-based criminal history search of both the national FBI and Georgia criminal repositories.

For the FBI fingerprint check, a childcare provider must do the following for all applicants:

- (1) submit a current records check application to the Georgia Department of Early Care and Learning (DECAL), either electronically or by mail;
- (2) register with Gemalto/COGENT (third-party provider) for the national and Georgia fingerprint-based criminal history screening;
- (3) pay the third-party provider the fee associated with the national and Georgia fingerprint-based criminal history screening if applicable; and
- (4) take fingerprints through the third-party provider’s fingerprint site for the national and Georgia fingerprint-based criminal history screening.

DECAL reviews each national fingerprint-based criminal history report and decides whether the applicant is satisfactory or unsatisfactory based upon that review.

The Georgia Bureau of Investigation conducts both a fingerprint-based and a name-based search of the National Crime Information Center's National Sex Offender Registry and returns the results of this search to DECAL along with the national criminal history report for all those undergoing the comprehensive background check.

DECAL conducts:

- a name-based search of the Georgia sex offender registry for all those undergoing the comprehensive background check;
- a name-based search of the Georgia child abuse and neglect registry for all those undergoing the comprehensive background check; and

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<sup>5</sup> Georgia defines childcare providers as any Child Care Learning Center, any Family Child Care Learning Home or any other provider of child care services for compensation and on a regular basis that is licensed or regulated under Georgia law or is eligible to receive assistance through the Georgia Childcare and Parent Services (CAPS) program. (See *DECAL Policy Manual*, Policy ID # CBC-001, “Conducting Comprehensive Background Checks for the Child Care Industry in Georgia,” effective March 2, 2018. Available online at <http://dec.al.ga.gov/documents/attachments/crcpolicy.pdf>. Accessed on November 15, 2019.) Policies and procedures for comprehensive background checks are laid out in the DECAL Policy Manual.

- a name-based check of interstate sex offender registry sites for all those requesting a comprehensive background check and who have resided within a State, territory, or tribal land other than Georgia within the previous five years.

DECAL notifies the applicant and the applicant's Center Director by letter regarding whether the applicant's comprehensive records check determination was satisfactory or unsatisfactory.

If an applicant's comprehensive records check indicates that he or she does not have a criminal record,<sup>6</sup> the applicant will be designated as having a "satisfactory determination." If the comprehensive records check determination indicates that the applicant has a criminal record, the applicant will be designated as having an "unsatisfactory determination" and the applicant is not allowed to be present at the facility while any child is present for care or to reside in the facility until he or she either has obtained a satisfactory comprehensive records check determination or has had the unsatisfactory determination reversed (GA Code § 20-1A-39).

Georgia law defines provisional employee as "an individual other than a director whose duties involve personal contact between that person and any child being cared for at the facility and who is hired for a limited period of time" (GA Code § 20-1A-30(13)). The provisional employee must have a satisfactory national fingerprint background check determination and must always be supervised by staff with a satisfactory comprehensive determination.

Georgia rules and regulations say that a childcare program may hire a provisional employee, and the provisional employee may begin to work at the program upon receipt of a satisfactory national fingerprint-based, criminal history determination. If the provisional employee only has this part of the clearance, she or he must always be supervised by someone with a satisfactory comprehensive background check clearance (*DECAL Rules and Regulations*, 591-1-1-.09(l)(d) and 290-2-3-.21(l)(d)).

Annually, DECAL Child Care Consultants conduct two unannounced onsite visits of each licensed childcare center and family childcare learning home. One unannounced visit entails a rule-by-rule licensing inspection of each licensed childcare learning center. DECAL performs these licensing inspections to ensure compliance with the State's rules and regulations (*DECAL Policy Manual*, Policy ID # CCS-1600, III. D and IV). According to a DECAL official, the Child Care Consultants also provide technical assistance, if needed, to ensure the health and safety of children at the facilities. The Child Care Consultants evaluate the entire facility and all services provided at that time.

A DECAL official said that its Child Care Consultants are also required to perform another unannounced monitoring visit of each licensed childcare learning center and family childcare learning home. The Consultants review a facility's compliance with criminal records check requirements on both its monitoring and licensing inspection visits. During the licensing

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<sup>6</sup> Under O.C.G.A. 20-1A-30(4) "criminal record" means a conviction; arrest and pending charge; or arrest, charge, and sentencing for a crime in which the defendant pleaded nolo contendere or in which a plea was withheld or not entered for certain offenses in certain circumstances.

inspections and the monitoring visits, Child Care Consultants are responsible for reviewing applicable background check documentation to verify that all staff have received a satisfactory comprehensive or provisional background check. Prior to visiting the facility, the Child Care Consultant obtains from DECAL's electronic system, a list of the facility's employees that have satisfactory comprehensive or provisional background checks. Upon arrival at the facility, the Consultant requests the facility director to provide the employment files for each of its employees. The Consultant compares the DECAL list of employees with a satisfactory comprehensive or provisional background check to the provider's employee files to verify that each employee has a satisfactory comprehensive or provisional background check.

## **HOW WE CONDUCTED THIS AUDIT**

We analyzed and tested a population of 2617 licensed<sup>7</sup> childcare learning centers<sup>8</sup> and family childcare learning homes<sup>9</sup> that received CCDF funding during State FY (SFY) 2018. We reviewed 15 childcare center providers and 15 family childcare learning home providers for a total of 30 licensed childcare providers.

We conducted unannounced site visits at 15 family child care learning home providers where we obtained a list of all current employees or household members. We performed a walk-through of the provider home to observe anyone in the household and discussed any challenges or obstacles they 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 312 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 DECAL's monitoring process to ensure provider compliance with State requirements related to criminal background checks.

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<sup>7</sup> We did not include license-exempt providers for this audit.

<sup>8</sup> A "child care learning center" is any place operated by an individual or business entity recognized under Georgia law that receives for pay 7 or more children under 18 years old for group care for fewer than 24 hours per day without transfer of legal custody and which is required to be licensed. A child care learning center also includes any day care center previously licensed by the Department of Human Resources and transferred pursuant to Code section 20-1A-1 et seq (*DECAL Policy Manual*, Policy ID # CBC-001, (4) (a)).

<sup>9</sup> A "family child care learning home" is a private residence operated by any person who receives at least 3 but not more than 6 children under 13 years old for pay for supervision and care fewer than 24 hours per day, without transfer of legal custody, and the guardians are not related to such children and whose parents or guardians are not residents in the same private residence; provided, however, that the total number of unrelated children cared for in such home, for pay and not for pay, may not exceed 6 children under age 13 at one time (*DECAL Policy Manual*, Policy ID # CBC-001, (4) (j)).

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 objective. We believe that the evidence obtained provides reasonable basis for our findings and conclusions based on our audit objectives.

## FINDINGS

Georgia's monitoring process ensured provider compliance with State requirements related to criminal background checks at 29 of 30 childcare provider locations we reviewed. Of the 312 individuals we reviewed, 1 did not have all required background checks.

### **GEORGIA'S MONITORING PROCESS ENSURED PROVIDER COMPLIANCE WITH STATE BACKGROUND CHECK REQUIREMENTS**

#### **Georgia State Regulations for Criminal Background Checks**

Georgia defines a comprehensive records check determination as a satisfactory or unsatisfactory determination by DECAL based upon an FBI fingerprint check, a search of the National Crime Information Center's National Sex Offender Registry, and a search of the following registries, repositories, or data bases in the State where the actual or potential employee or director resides and in each State where such individual resided during the preceding 5 years: criminal registry or repository, with the use of fingerprints being required in the State where the individual resides and optional in other States; State sex offender registry or repository; and State-based child abuse and neglect registry and data base (GA Code § 20-1A-30(1)).

Georgia rules and regulations<sup>10, 11</sup> for family childcare learning homes and childcare learning centers provide that a licensed or commissioned early care and education program may not allow any person to be present at a facility while children are present for care or to reside in a facility as a director or an employee unless there is on file in the early care and education program an employment history and a satisfactory comprehensive records check determination or proof that an unsatisfactory determination has been reversed.

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<sup>10</sup> *DECAL Rules and Regulations*, "Child Care Learning Centers," chapter 591-1-1-.09, updated October 1, 2018. Available online at <http://dec.al.ga.gov/documents/attachments/CCLCRulesandRegulations.pdf>. Accessed on August 29, 2019.

<sup>11</sup> *DECAL Rules and Regulations*, "Family Child Care Learning Homes," chapter 290-2-3-.21, updated October 1, 2018. Available online at <http://dec.al.ga.gov/documents/attachments/FCCLHRulesandRegulations.pdf>. Accessed on August 29, 2019.

## **One of 30 Providers Did Not Comply With Background Check Requirements**

Georgia's monitoring process ensured provider compliance with State requirements related to criminal background checks at 29 of 30 childcare provider locations reviewed. Of the 312 individuals we reviewed, 311 (over 99 percent) had all required checks at the time of our data requests and site visits. (See Appendix B.) However, one childcare center, Provider #16, had an employee whose application for a comprehensive background check was not in DECAL's electronic system. A provider official told us that the employee never worked at the center, but the provider's payroll records showed that the provider had paid the employee \$916 for 111 hours worked from April 20, 2019, through May 19, 2019.

For the one individual that did not meet the required checks, the provider indicated that the employee worked for 2 days and terminated her position because she found another job. The provider told DECAL that the employee had obtained a local criminal records check thinking that the local check would be good for 21 days. DECAL further said that the provider was aware of its error and understands that all employees must have either a satisfactory determination and be supervised or have a comprehensive determination letter.

DECAL would not have detected the error during its scheduled monitoring and licensing visits because the employee in question only worked during the period April 20, 2019, to May 19, 2019. DECAL officials said that, for SFY 2019, it conducted a monitoring visit to the provider on December 19, 2018, and a licensing study on June 12, 2019. For SFY 2020, DECAL has scheduled the provider for a monitoring visit between October and December 2019 and a licensing study between April and June 2020. Therefore, this error occurred outside of DECAL's scheduled monitoring and licensing visits and appears to be an anomaly.

### **CONCLUSION**

Except for one instance, Georgia's monitoring process ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act. Therefore, we made no recommendations.

### **GEORGIA DEPARTMENT OF EARLY CARE AND LEARNING COMMENTS**

Georgia did not provide formal comments on our draft report. However, Georgia told us that it did not have any disagreements with our findings.

## 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 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 States<sup>12</sup> included in the 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 Georgia. We selected and reviewed a nonstatistical sample of 30 of 2,617 childcare learning centers and family childcare learning homes that received CCDF funding during SFY 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:

- (1) **Geographic Area: (the geographic division of the State identified by the State’s licensing unit).** There are 6 geographic areas in Georgia. For each provider, we identified the corresponding area based on the physical location and sorted our provider list based on geographical area. We then split the list between childcare learning centers and family childcare learning home providers. We selected at least one provider from each of the 6 geographic areas.
- (2) **Total Capacity (the maximum number of children to be served at the provider location).** We sorted the list again based on the highest number of children being served and selected the provider with the highest capacity.

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<sup>12</sup> The six States included in CCDF Phase I were New York, Nevada, Colorado, Georgia, New Hampshire, and Illinois (Appendix B).

(3) **Divided by Provider Type.** We separated the list into childcare learning centers and family childcare learning home providers.

We conducted unannounced site visits of 15 family childcare learning home providers where we obtained a list of all current household members or employees. We performed a walk-through of the provider home to observe anyone in the household and discussed any challenges or obstacles the home faced with adhering to the criminal background check requirements. In addition, we contacted 15 childcare learning center providers to request a list of all current employees and validated the lists by requesting a payroll report that showed all the current employees at the selected childcare provider location.

In total, we reviewed supporting documentation for 312 individuals who were current employees or household members at 30 different childcare provider locations. We performed fieldwork at DECAL in Atlanta, Georgia, and at various family home providers from April 2019 through May 2019.

## **METHODOLOGY**

To accomplish our objective, we:

- reviewed applicable Federal laws, regulations, and guidance;
- reviewed applicable State laws, policies, and procedures related to CCDF criminal background check requirements;
- identified criminal background record check requirements that have been fully implemented within Georgia;
- identified which criminal background check requirements have not yet been implemented by Georgia;
- interviewed DECAL 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 DECAL 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 childcare learning home providers to identify any challenges or barriers they experienced complying with the new CCDF criminal background check requirements;
- contacted 15 childcare learning center providers to obtain a payroll list of all current employees at each of the centers and obtained supporting documentation from the

DECAL's system to determine whether all the required criminal record checks were completed;

- conducted site visits at each of the 15 family childcare learning home provider locations to obtain a current list of all employees or household members and obtained supporting documentation or evidence from DECAL's system to determine whether all the required criminal record checks were completed;
- reviewed and analyzed a nonstatistical sample of the records of 312 employees from the 15 childcare learning centers and 15 family childcare learning homes that received CCDF funding during SFY 2018 to determine whether all the required criminal background checks were completed; and
- discussed the results of our audit with DECAL 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 REPORTS RELATING TO CRIMINAL  
BACKGROUND CHECK REQUIREMENTS**

Report Title	Issue Date
<i>Tennessee's Monitoring Ensured Compliance With Criminal Background Check Requirements at 28 of the 30 Childcare Providers Reviewed</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: GEORGIA'S IMPLEMENTATION STATUS OF CCDF CRIMINAL BACKGROUND CHECKS**

<b>Background Check Registry Requirement</b>	<b>Implementation Status as of 9/30/2018</b>	<b>OIG Analysis of State's Implementation Status Includes a Review of Georgia's Laws, Regulations and Guidance</b>
FBI Criminal History Fingerprint Check 45 CFR § 98.43 (b)(1)	Implemented	(O.C.G.A. 20-1A-30(1))
NCIC's National Sex Offender Registry 45 CFR § 98.43 (b)(2)	Implemented	(O.C.G.A. 20-1A-30(1))
In-State Criminal Registry 45 CFR § 98.43 (b)(3)	Implemented	(O.C.G.A. 20-1A-30(1))
In-State Sex Offender Registry 45 CFR § 98.43 (b)(3)	Implemented	(O.C.G.A. 20-1A-30(1))
In-State Child Abuse and Neglect Registry 45 CFR § 98.43 (b)(3)	Implemented	(O.C.G.A. 20-1A-30(1))
<b>Interstate Criminal Registry 45 CFR § 98.43 (b)(3)</b>	<b>Not Implemented</b>	<b>DECAL said that its key challenge to fully implementing the interstate background check requirements was the failure to receive timely responses from other States, territories, and tribal lands.</b>
Interstate Sex Offender Registry 45 CFR § 98.43 (b)(3)	Implemented	(O.C.G.A. 20-1A-30(1))
<b>Interstate Child Abuse and Neglect Registry 45 CFR § 98.43 (b)(3)</b>	<b>Not Implemented</b>	<b>DECAL said that its key challenge to fully implementing the interstate background check requirements was the failure to receive timely responses from other States, territories, and tribal lands.</b>

## 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)(i)).

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

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

Federal regulations require States to conduct two National checks: (1) an FBI criminal history fingerprint check using Next Generation Identification<sup>13</sup> (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) which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

### STATE REGULATIONS

Georgia defines a comprehensive records check determination as a satisfactory or unsatisfactory determination by DECAL based upon an FBI fingerprint check, a search of the

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<sup>13</sup> 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.

National Crime Information Center's National Sex Offender Registry, and a search of the following registries, repositories, or data bases in the State where the actual or potential employee or director resides and in each State where such individual resided during the preceding five years: criminal registry or repository, with the use of fingerprints being required in the State where the individual resides and optional in other States; State sex offender registry or repository; and State-based child abuse and neglect registry and data base (GA Code § 20-1A-30).

Georgia rules and regulations for family child care learning homes and child care learning centers provide that a licensed or commissioned early care and education program may not allow any person to be present at a facility while children are present for care or to reside in a facility as a director or an employee unless there is on file in the early care and education program a satisfactory comprehensive records check determination (Ga. R. and Regs. 290-2-3-.21 (1)(b)(c) and 591-1-1-.09(l)(b)(c)).

If an applicant's comprehensive records check indicates that he or she does not have a criminal record, the applicant will be designated as having a "satisfactory determination." If the comprehensive records check determination indicates that the applicant has a criminal record, the applicant will be designated as having an "unsatisfactory determination" and the applicant is not allowed to be present at the facility while any child is present for care or to reside in the facility until he or she either has obtained a satisfactory comprehensive records check determination or has had the unsatisfactory determination reversed. (GA Code § 20-1A-39)

Georgia law defines provisional employee as "an individual other than a director whose duties involve personal contact between that person and any child being cared for at the facility and who is hired for a limited period of time" (GA Code § 20-1A-30(13)). The provisional employee must have a satisfactory national fingerprint background check determination and must always be supervised by staff with a satisfactory comprehensive determination.

Georgia rules and regulations say that a childcare program may hire a provisional employee, and the provisional employee may begin to work at the program upon receipt of a satisfactory national fingerprint-based, criminal history determination. If the provisional employee only has this part of the clearance, she or he must always be supervised by someone with a satisfactory comprehensive background check clearance (*DECAL Rules and Regulations*, 591-1-1-.09(l)(d) and 290-2-3-.21(l)(d)).

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

<b>Provider #</b>	<b>Provider Type</b>	<b>Number of Individuals* Reviewed</b>	<b>Number of Individuals Missing 1 or More Required Criminal Background Checks</b>
1	Family Home	1	0
2	Family Home	4	0
3	Family Home	3	0
4	Family Home	1	0
5	Family Home	3	0
6	Family Home	5	0
7	Family Home	2	0
8	Family Home	3	0
9	Family Home	6	0
10	Family Home	1	0
11	Family Home	3	0
12	Family Home	2	0
13	Family Home	2	0
14	Family Home	2	0
15	Family Home	2	0
<b>Totals for Family Homes</b>		<b>40</b>	<b>0</b>
16	Childcare Center	31	1
17	Childcare Center	12	0
18	Childcare Center	15	0
19	Childcare Center	15	0
20	Childcare Center	23	0
21	Childcare Center	25	0
22	Childcare Center	22	0
23	Childcare Center	7	0
24	Childcare Center	23	0
25	Childcare Center	16	0
26	Childcare Center	8	0
27	Childcare Center	18	0
28	Childcare Center	21	0
29	Childcare Center	21	0
30	Childcare Center	15	0
<b>Totals for Childcare Center</b>		<b>272</b>	<b>1</b>
<b>Combined Totals for Family Homes and Childcare Centers</b>		<b>312</b>	<b>1</b>
* The term "individuals" refers to the current number of employees or household members included in our audit.			