

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**VIRGINIA'S MONITORING DID NOT
ENSURE CHILD CARE PROVIDER
COMPLIANCE WITH STATE CRIMINAL
BACKGROUND CHECK REQUIREMENTS
AT 8 OF 30 PROVIDERS REVIEWED**

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Office of Inspector General

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Report in Brief

Date: February 2021

Report No. A-03-19-00253

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 Virginia'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 1,721 licensed child day centers and family day homes that received CCDF funding during State fiscal year 2018. We used geographic area, total capacity, and total CCDF funding received to select 15 child day center providers and 15 family day home providers. In total, we reviewed supporting documentation for 377 household members and employees at 30 child care provider locations.

Virginia's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 8 of 30 Providers Reviewed

What OIG Found

Virginia's monitoring process ensured provider compliance with State requirements related to criminal background checks at 22 of the 30 child care provider locations we reviewed but did not ensure provider compliance at the remaining 8. Of the 8 provider locations for which we found errors, 4 had a total of 9 violations related to background checks recorded in their 2019 inspection reports. In total, we found that 15 of the 377 household members and employees reviewed did not have a current and completed background check. These errors occurred because providers did not always request all required background checks for all employees, and Virginia did not effectively monitor child care providers to ensure that they completed all required criminal background checks. Although child care providers receive training on background checks before applying for licensure, they do not receive any periodic training on the background check requirements. By not ensuring that all child care staff members who supervised or had routine unsupervised contact with children had complete criminal background checks, Virginia potentially jeopardized the safety of children in its care.

What OIG Recommends and Virginia Comments

We recommend that Virginia: (1) conduct all required criminal background checks for the 15 individuals in our sample who did not have the required checks at the time of our review; (2) revise State guidelines to specify that inspectors should use verified information, such as payroll data, from each child day center to determine which employees' criminal background checks must be reviewed; (3) revise State guidelines to increase the number of current employees that inspectors review at all child day centers to ensure provider compliance with criminal background check requirements; and (4) provide periodic training to providers to ensure they request required background checks.

In written comments on our draft report, Virginia concurred with our recommendations and provided information on actions that it had taken to address them such as increasing the number of employee records reviewed during inspection. Virginia also provided additional support and adjustments to the number of employees needing background checks. We incorporated Virginia's adjustments, as appropriate, into our report.

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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 Virginia Department of Social 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 Development Block Grant Act

Reauthorized by 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. 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, the CCDF served approximately 1.3 million children under 13 years of age from 813,000 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 day 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.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(b)). These regulations require States to conduct criminal background checks for child care staff members and prospective child care staff members that include:

- a Federal Bureau of Investigation (FBI) fingerprint check using the Next Generation Identification system;⁷
- a search of the National Crime Information Center's (NCIC's) National Sex Offender Registry; and

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 receives CCDF funds (45 CFR § 98.43(a)(2)). In its regulations, Virginia established the categories "child day center" and "family day home," which meet the requirements of the Federal definition of a child care provider.

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 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 (interstate 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 (45 CFR § 98.43). 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 Virginia, 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 year renewal, subject to conditions being met) to perform the following actions:

- 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.⁹

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

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 45 CFR § 98.43(a)(1)(i)(2).

be subject to a penalty of 5 percent of the total discretionary CCDF funds awarded to it for the fiscal year following its determination that noncompliance occurred (45 CFR § 98.92(3)(i)).

Virginia’s Implementation of Criminal Background Check Requirements

As of September 30, 2018, the State agency had implemented requirements for all criminal background check components except the interstate checks. The State agency was conducting the implemented checks for all new and prospective child care staff in accordance with 45 CFR section 98.43. The State agency requested and was granted a waiver to delay implementation of the interstate criminal and sex offender registry background checks through September 30, 2020. The State met these requirements by implementing VA Code sections 63.2-1720.1 and 63.2-1721.1, effective July 1, 2020.¹⁰ These checks were not included as part of our review.

Appendix C contains Virginia’s implementation status for the new CCDF criminal background checks. Appendix D contains Federal and State regulations related to the new CCDF criminal background check requirements.

Virginia’s Coordination Efforts for Conducting Criminal Background Checks

When a child care provider applies to be part of the CCDF program, it receives a document, “Steps to Apply for an Initial Child Day Center License,” which includes the link to the Background Checks for Child Welfare Agency regulation. The child care provider receives pre-application training to assist in preparing to apply for licensure. This training includes information on background checks, and the State agency’s Office of Background Investigation (OBI) staff show the provider how to locate the forms and procedures on the State agency’s website.

For all individual applicants who undergo criminal background checks, the State agency conducts a fingerprint-based criminal history search of both the national FBI and Virginia criminal repositories. For the FBI fingerprint check, child care providers must do the following for all applicants:

- submit a request for a Virginia Central Registry search,
- submit the applicant’s Release of Information form to the OBI,
- designate a criminal background investigation contact person for the provider, and
- register online with the fingerprint vendor, Fieldprint.

Fieldprint collects all identifying information on the applicant, collects fees, takes fingerprints, and electronically submits the information to the Virginia State Police, the FBI, and OBI.

¹⁰ Beginning July 1, 2021, these requirements will move to VA Code §§ 22.1-289.035 and 22.1-289.036.

The Virginia State Police conducts both a fingerprint-based and name-based search of the NCIC's National Sex Offender Registry and returns the results of this search to OBI. The FBI also returns to OBI a national criminal history record for the applicant.

OBI staff screens the applicant's criminal history received from the Virginia State Police and FBI. OBI then provides a letter to the child day center or the family day home provider stating whether the applicant is eligible to have responsibility for the safety and well-being of children.

State agency inspectors conduct semi-annual inspections, one announced and one unannounced, of all licensed child day centers and family day homes that receive CCDF funding. During these inspections, they check the condition and cleanliness of the building and the equipment and review child-to-teacher ratios and children's records. During one semi-annual inspection each year, the inspectors also conduct on-site reviews of background checks to ensure that they are updated and complete.

HOW WE CONDUCTED THIS AUDIT

Our audit covered 1,721 licensed child day centers¹¹ and licensed family day homes¹² that received CCDF funding during State FY (SFY) 2018. We reviewed 15 child day center providers and 15 family day home providers for a total of 30 licensed child care providers.

We conducted unannounced site visits at 15 licensed family day home providers. We obtained a list of all current household members and employees and performed a physical walk-through of 14 provider homes.¹³ During the physical walk-throughs, we observed the household members and employees and discussed challenges and obstacles household members and employees faced with adhering to the criminal background check requirements. We also reviewed the household members' and employees' files to verify whether they had all required criminal background checks. We also contacted 15 child day center providers to request a list of all current employees and validated the lists by requesting a payroll report and a timesheet, if available, showing all employees at the selected location. In total, we reviewed supporting documentation for 377 household members and employees at 30 child care provider locations.

¹¹ A "child day center" is a child day program that is offered to two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or that is offered to 13 or more children at any location (22 VAC § 40-185-10).

¹² A "licensed family day home" provides care for one to 12 children, excluding the provider's children and any other children who reside in the home. During the parent or guardian's absence, the licensed family day home provider assumes responsibility for the supervision, protection, and well-being of children under 13 years of age (22 VAC § 40-111-10).

¹³ When we arrived at one of the selected family day homes, the owner informed us that it was no longer in the CCDF program. We left without entering the house and without examining any records and confirmed with the State agency that the family day home was no longer part of the CCDF program.

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 objective. 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.

FINDING

The State agency's monitoring process ensured provider compliance with State requirements related to criminal background checks at 22 of the 30 child care provider locations we reviewed, but did not ensure provider compliance at the remaining 8. Of the 8 provider locations for which we found errors, 4 had a total of 9 violations related to background checks recorded in their 2019 inspection reports. Of the 377 household members and employees we reviewed, 15 did not have an updated background check completed.

These errors occurred because providers did not always request all required background checks for all employees, and the State agency did not effectively monitor child care providers to ensure that they completed all required criminal background checks. By not ensuring that all child care staff members who supervised or had routine unsupervised contact with children had complete criminal background checks, the State agency potentially jeopardized the safety of children in its care.

VIRGINIA'S MONITORING PROCESS DID NOT ENSURE THAT ALL PROVIDERS COMPLIED WITH STATE CRIMINAL BACKGROUND CHECK REQUIREMENTS

Virginia State Regulations for Criminal Background Checks

Virginia's regulations state that a comprehensive records check determination of eligibility for employment at a child care provider is based on an FBI fingerprint check, a search of the NCIC National Sex Offender Registry, a fingerprint search of the Virginia criminal registry, a search of the Virginia sex offender registry, a search of the Virginia Central Registry (child abuse and neglect database), and a search of the child abuse and neglect registry for any State an applicant lived in during the past 5 years. All applicants for employment or volunteer positions must undergo a background check, and family day homes and child day centers must not hire an applicant for an employee or volunteer position involved in day-to-day provider operations in which the employee or volunteer will be alone with children if the applicant has been

convicted of any barrier crime¹⁴ or is the subject of a founded complaint of child abuse or neglect (VA Code §§ 63.2-1720.1 and 1721.1).

Child Care Providers at 8 of 30 Locations Did Not Comply With Criminal Background Check Requirements

The State agency's monitoring process did not ensure provider compliance with State requirements related to criminal background checks at 8 of the 30 child care provider locations we reviewed.¹⁵ State agency officials stated that licensing staff conduct on-site inspections for all providers, and licensed facilities are inspected at least twice a year. Part of the State agency's inspection process is to review background check documentation for any employee or household member whose background check has not yet been reviewed in prior State inspections. Of the 8 provider locations for which we found errors, 4 had a total of 9 violations related to background checks recorded in their 2019 inspection reports. In total, we found that 15 (4 percent) of the 377 household members and employees reviewed did not have a current and completed criminal background check. (See Appendix E for the number of household members and employees who were missing updated background checks at each child care provider.)

For the 15 individuals who did not have completed background checks:

- 6 were missing State criminal history background checks;
- 6 were missing State sex offender background checks;
- 8 were missing National Sex Offender Registry checks;
- 8 were missing national FBI fingerprint background checks; and
- 11 were missing State child abuse and neglect registry background checks.

These errors occurred because providers did not always request all required background checks for all employees, and the State agency did not effectively monitor child care providers' adherence to criminal background check requirements. Although inspectors review background checks for all family day home household members and employees on an annual basis in accordance with State guidelines, those State guidelines specify only that inspectors should review all new child day center employees hired since the most recent previous inspection plus 5 to 10 percent of child care provider staff. Furthermore, the guidelines do not

¹⁴ A barrier crime is a crime that legally disqualifies a person convicted of the crime from being hired for certain jobs. For Virginia family day homes and child day centers, the list of barrier crimes can be found at VA Code §§ 19.2-392.02(A)(i) – (vi).

¹⁵ Of the remaining 22 child care provider locations, 21 complied with State requirements related to criminal background checks and 1 left the CCDF program after we selected the providers but before we collected the requested documentation.

specify how inspectors should compile the list of employees hired since the most recent inspection. Requesting payroll data would allow inspectors to obtain a verified listing of employees who are required to have background checks completed to meet the State's guidelines for employment. Inspectors did not always identify those employees and household members who were missing background checks, and they relied on lists of new employees provided by the child care providers to determine which employees were new and therefore needed to be reviewed. However, these lists were not verified, and there could have been new employees who did not appear on the lists.

In addition, although child care providers receive training on background checks before applying for licensure, they do not receive any periodic training on the background check requirements. Because of the ongoing and cyclical nature of background checks, which are required for new employees and must be renewed every 5 years, there is an ongoing need for child care providers to be trained on background check requirements. Without periodic training, not all child care providers may maintain continued awareness of the background check requirements.

By not ensuring that all child care staff members who supervised or had routine unsupervised contact with children passed all required criminal background checks, the State agency potentially jeopardized the safety of children in its care.

RECOMMENDATIONS

We recommend that the Virginia Department of Social Services:

- conduct all required criminal background checks for the 15 individuals in our sample who did not have the required checks at the time of our review;
- revise State guidelines to specify that inspectors should use verified information, such as payroll data, from each child day center to determine which employees' criminal background checks must be reviewed;
- revise State guidelines to increase the number of current employees that inspectors review at all child day centers to ensure provider compliance with criminal background check requirements; and
- provide periodic training to providers to ensure they request required background checks.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, the State agency concurred with our recommendations and provided information on actions that it had taken to address them. The State agency also provided additional support and adjustments to the number of employees needing background checks. We incorporated the State agency's adjustments, as appropriate, into our report.

In response to our first recommendation, the State agency stated that all individuals who are still working at noted facilities that are open have completed satisfactory background checks.

The State agency outlined corrective actions that it has taken and plans to take to address the other three recommendations. These corrective actions include: (1) developing procedures to cross-reference the list of employees provided by providers by using payroll data and timesheets, (2) increasing the number of employee records reviewed during inspection, and (3) providing to all current child care providers ongoing training on required background checks.

The State agency stated that cross-referencing the lists of employees with payroll data and timesheets will enable licensing inspectors to ensure that all employees are addressed during the inspection. The State agency also stated that increasing the number of employee records reviewed will improve provider compliance with background check requirements.

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 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 the 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 States¹⁶ 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 Virginia. We selected and reviewed a nonstatistical sample of 30 child care providers that received funding during SFY 2018 and reviewed background check records for employees and household members who were active during the period of our request. We based our provider selection on the following factors:

- **Geographic Area:** We judgmentally selected the providers based on regional location. We selected providers who lived in large cities and small as well as providers that provided care to a large number of children and providers that provided care to a small number of children.
- **Total Capacity (the maximum number of children to be served at the provider location):** For child day centers, we judgmentally selected the providers with the highest and lowest funding amounts. For family day home providers, we judgmentally selected homes with a large number of children and homes with a small number of children as well as homes with high and low funding amounts.

We used these factors to judgmentally select 15 child day centers and 15 family day home providers for a total of 30 licensed child care providers.

¹⁶ The six States included in CCDF Phase I were New York, Nevada, Colorado, Georgia, New Hampshire, and Illinois. (See Appendix B.)

We conducted unannounced site visits at 15 family day home providers. We obtained from the State agency inspectors a list of all current household members and employees at 14 family day homes. One provider left the CCDF program after we selected our sample but before the date of our unannounced visit, and we did not obtain records for this provider. We performed a physical walk-through of each the remaining 14 provider homes to observe the household members and employees and discussed challenges and obstacles household members and employees faced with adhering to the criminal background check requirements. We reviewed the files of all 51 household members and employees to verify whether they had all required background checks.

We contacted 15 child day center providers to request a list of all current employees and validated the lists by requesting a payroll report and a timesheet, if available, showing all employees at the selected location. We reviewed all 326 employees of these 15 centers to verify whether they had all required background checks.

We performed fieldwork at the State agency in Richmond, Virginia, and at 15 family day home providers in Virginia from April 2019 through June 2019.

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 the State agency has fully implemented;
- interviewed State agency officials to gain an understanding of the State’s monitoring process 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 day home providers and child day center providers to identify any challenges or barriers they experienced complying with the new CCDF criminal background check requirements;
- obtained supporting documentation and evidence from the State licensing agency’s system to determine whether all required criminal background checks were completed

for the 377 individuals who were current employees or household members at the 30 child care providers selected;

- reviewed and analyzed a nonstatistical sample of 30 out of 1,721 licensed family day homes and child care centers that received CCDF funding from SFY 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: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
<i>Hawaii's Monitoring Generally Ensured Child Care Provider Compliance With State Criminal Background Check Requirements</i>	<u>A-09-19-01000</u>	09/03/2020
<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 Childcare 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
<i>Tennessee's Monitoring Ensured Compliance With Criminal Background Check Requirements at 28 of the 30 Childcare Providers Reviewed</i>	<u>A-04-19-02023</u>	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>	<u>A-05-19-00015</u>	8/23/2019
<i>New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers</i>	<u>A-02-17-02011</u>	1/8/2019
<i>Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-09-17-01003</u>	9/19/2018

<i>Colorado Implemented Many New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-07-17-06076</u>	9/17/2018
<i>Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-04-18-03578</u>	7/27/2018
<i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-01-18-02500</u>	7/9/2018
<i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-05-17-00047</u>	6/4/2018

**APPENDIX C: VIRGINIA'S IMPLEMENTATION STATUS OF CHILD CARE AND
DEVELOPMENT FUND BACKGROUND CHECKS**

Criminal Background Check Requirements	Implementation Status as of 9/30/2018	OIG Analysis of the State's Implementation Status (Includes a Review of Virginia's Laws, Regulations, and Guidance)
FBI Criminal History Fingerprint Check 45 CFR § 98.43(b)(1)	Implemented	VA Code § 63.2-1720.1 VA Code § 63.2-1721.1
NCIC's National Sex Offender Registry 45 CFR § 98.43(b)(2)	Implemented	VA Code § 63.2-1720.1 VA Code § 63.2-1721.1
In-State Criminal Registry 45 CFR § 98.43(b)(3)	Implemented	VA Code § 63.2-1720.1 VA Code § 63.2-1721.1
In-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	VA Code § 63.2-1720.1 VA Code § 63.2-1721.1
In-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	VA Code § 63.2-1720.1 VA Code § 63.2-1721.1
Interstate Criminal Registry 45 CFR § 98.43(b)(3)	Not Implemented	Implemented on July 1, 2020 VA Code § 63.2-1720.1 VA Code § 63.2-1721.1
Interstate Sex Offender Registry 45 CFR § 98.43(b)(3)	Not Implemented	Implemented on July 1, 2020 VA Code § 63.2-1720.1 VA Code § 63.2-1721.1
Interstate Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	VA Code § 63.2-1720.1 VA Code § 63.2-1721.1

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 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 regulations, 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 interstate 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 child care staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

STATE REGULATIONS

Virginia regulations state that criminal history check determination of eligibility for employment at a child care provider is based on an FBI criminal history check and checks of NCIC’s National Sex Offender Registry, the State criminal registry, the State sex offender registry, and the State

child abuse and neglect registry for any State the individual has lived in during the past 5 years (VA Code §§ 63.2-1720.1 and 1721.1).

If an applicant's records check indicates that he or she does not have a criminal record, the applicant will be determined to be eligible. If the comprehensive records check indicates that the applicant has a criminal record, the applicant will be determined to be "not eligible," and the applicant will not be allowed to work with children until the applicant has been determined to be "eligible" (VA Code §§ 63.2-1720.1 and 1721.1).

All applicants for employment, employees, applicants to serve as volunteers, and volunteers must undergo a background check before being employed or beginning to serve as a volunteer and every 5 years thereafter (VA Code §§ 63.2-1720.1 and 1721.1).

If any person hired or permitted to serve as a volunteer at a licensed child day center or family day home has been convicted of any barrier crime as defined in VA Code § 19.2-392.02 or is known to have a conviction record of child abuse or neglect within or outside Virginia and serves in a position: (1) involved in the day-to-day operation of the center or home and (2) in which the person will be alone with, in control of, or supervising children, then that person must notify the child day center or the family day home of the conviction (VA Code § 63.2-1720.1).

**APPENDIX E: NUMBER OF INDIVIDUALS MISSING REQUIRED 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
1	Family Day Home	3	0
2	Family Day Home	2	0
3	Family Day Home	2	0
4	Family Day Home	7	0
5	Family Day Home	4	0
6	Family Day Home	3	0
7	Family Day Home	0	0
8	Family Day Home	3	0
9	Family Day Home	2	0
10	Family Day Home	3	0
11	Family Day Home	11	0
12	Family Day Home	5	0
13	Family Day Home	1	1
14	Family Day Home	3	0
15	Family Day Home	2	0
Totals for Family Day Homes		51	1
16	Child Day Center	21	0
17	Child Day Center	43	4
18	Child Day Center	14	2
19	Child Day Center	38	1
20	Child Day Center	24	2
21	Child Day Center	29	2
22	Child Day Center	40	0
23	Child Day Center	15	1
24	Child Day Center	5	0
25	Child Day Center	18	0
26	Child Day Center	16	2
27	Child Day Center	3	0
28	Child Day Center	33	0
29	Child Day Center	18	0
30	Child Day Center	9	0
Totals for Child Day Centers		326	14
Combined Totals for Family Day Homes and Child Day Centers		377	15
* The term "individuals" refers to the number of employees and household members included in our audit.			

APPENDIX F: STATE AGENCY COMMENTS



COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

S. Duke Storen
Commissioner

January 11, 2021

Nicole Freda, Regional Inspector General for Audit Services
Office of Audit Services, Region III
801 Market Street, Suite 8500
Philadelphia, Pennsylvania 19107-3134

Re: Report Number A-03-19-00253

Dear Ms. Freda:

This is in reply to the Office of Inspector General (OIG) Draft Report titled “Virginia’s Monitoring Did Not Ensure Child Care Provider Compliance with State Criminal Background Check Requirements.” The Virginia Department of Social Services’ Division of Licensing Programs (DOLP) appreciates the opportunity to respond to the draft report. Virginia concurs with the recommendations and will respond with the current and future strategies addressing child care provider compliance with state criminal background check requirements.

OIG Recommendation 1: “Conduct all required criminal background checks for the 23 individuals in our sample who did not have the required checks at the time of the review.”

Response: All individuals who are still working at the noted facilities that are open have completed satisfactory background checks. We have reviewed the criminal background checks for the 23 individuals who were missing background checks. One individual’s file could not be reviewed because the facility is closed due to the national health pandemic caused by COVID-19. The status of the background checks for the 22 remaining individuals is as follows:

1. One individual’s central registry background check was completed timely using OASIS, Virginia’s automated database that houses the Central Registry for child abuse and neglect findings prior to May 2018.
2. Nine individuals had already completed their background checks. One of these individuals had a background check under a different name that had been completed in a timely manner. Two of these individuals had completed background checks at the time of the audit.

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Nicole Freda
January 11, 2021
Page Two

3. Ten individuals are no longer employed at the respective facility.
4. Two individuals were not hired by the respective facility.

OIG Recommendation 2: “Revise State guidelines to specify that inspectors should use verified information, such as payroll data, from each child day center to determine which employees’ criminal background checks must be reviewed.”

Response: We will develop procedures to cross-reference the list of employees provided by providers by using payroll data and timesheets. This will enable licensing inspectors to compare names of employees against the provider’s list of employees to ensure all employees are addressed during the inspection.

OIG Recommendation 3: “Revise State guidelines to increase the number of current employees that inspectors review at all child day centers to ensure provider compliance with criminal background check requirements.”

Response: Virginia concurs with the recommendation to increase the number of employee records reviewed. Currently, Virginia reviews a sample of current employee files at each inspection. Sample sizes will be increased. In addition to the sample selection for current staff, inspectors review background checks for all new staff at each inspection. If the inspector finds background check non-compliance, he or she follows up with the provider within 10 days of the inspection date to ensure the background check is completed. The follow-up continues until the program is compliant with background check requirements.

The state will reinforce and educate providers and licensing staff about the follow-up process and required compliance. The state is working on a new information system that will include a provider portal for providers to upload background check information and staff listings, which will facilitate and expedite a more efficient review of background check requirements.

OIG Recommendation 4: “Provide periodic training to providers to ensure they request required background checks.”

Response: In addition to the pre-applicant training on criminal background check requirements, the state will provide ongoing training on the required background checks for all current child care providers.

Thank you again for the opportunity to review and reply to the OIG’s Draft Report.

Sincerely,

S. Duke Storen

SDS:af

cc: Tara Ragland, Director, Division of Licensing Programs
Denise Branscome, Associate Director, Sr, Benefit Programs