

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**GEORGIA IMPLEMENTED MOST NEW
CRIMINAL BACKGROUND CHECK
REQUIREMENTS FOR CHILDCARE
PROVIDERS, BUT CHALLENGES
REMAIN FOR UNIMPLEMENTED
REQUIREMENTS**

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Office of Inspector General

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Report in Brief

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U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Review

The Child Care and Development Block Grant Act of 2014 (CCDBG Act) added new requirements for States receiving Child Care and Development Fund (CCDF) funds to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years. States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds. Background check requirements apply to any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children.

Our objective was to determine Georgia's progress toward implementing new criminal background check requirements established under the CCDBG Act.

How OIG Did This Review

Our review covered Georgia's implementation of the new criminal background check requirements that were in place as of March 2, 2018. In addition, we examined Georgia's plans to address the new criminal background check requirements that were not implemented by the end of our fieldwork, May 30, 2018. We also identified challenges that Georgia experienced. Our review did not address childcare providers' compliance with the new requirements.

Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements

What OIG Found

Georgia implemented most of the new criminal background check requirements established under the CCDBG Act. However, certain criminal background check requirements for childcare providers remained unimplemented as of March 2, 2018, and significant challenges may delay full implementation until 2019 or 2020. Specifically, Georgia said that there does not appear to be a solution for resolving the issue of complying with the inter-State criminal background check requirement because other States do not have an incentive to respond to an applicant's request or Georgia's request for background check information.

According to Georgia, another significant challenge is the cost of providing supervision of provisional childcare staff while background check results are pending. Georgia has until September 30, 2018, to implement the childcare providers' criminal background check requirements. The outstanding challenges may mean that Georgia will not fully implement all of the requirements before the deadline, and, therefore, Georgia may request an additional 1-year waiver from the Administration for Children and Families to address the challenges and comply with the new criminal background check requirements.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Child Care and Development Block Grant Act of 2014 (CCDBG Act) added new requirements for States receiving Child Care and Development Fund (CCDF) funds to conduct comprehensive criminal background checks on staff members and prospective staff members of childcare providers every 5 years (P.L. No. 113-186 § 658H (Nov. 2014)). In Georgia, the designated CCDF lead agency is the Georgia Department of Early Care and Learning (State agency).

States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds. Background check requirements apply to any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children. This includes not only caregivers, teachers, and directors, but also janitors, cooks, and other employees of a childcare provider who may not regularly engage with children, but whose presence at the facility gives them the opportunity for unsupervised access. For family childcare homes, this includes the caregiver requesting a check of himself or herself, as well as other adults in the household who may have unsupervised access to children.

As part of its oversight activities, the Office of Inspector General is conducting a series of reviews to improve the program integrity of child care and development grant programs. This review focuses on the State agency's implementation of the criminal background checks. For this review, we define implementation as the actions taken to establish the requirements, policies, and procedures that will be used to carry out the provisions of the CCDBG Act. Future childcare provider audits will test how the States and childcare providers have implemented these criminal background check requirements in their day-to-day operations.

OBJECTIVE

Our objective was to determine the State agency's progress toward implementing new criminal background check requirements established under the CCDBG Act.

BACKGROUND

Reauthorized in the CCDBG Act, CCDF is the primary Federal funding source devoted to subsidizing the childcare expenditures of low-income families. Administered by the Administration for Children and Families (ACF), CCDF provides eligible low-income families with help paying for child care at a provider of their choice while they work or participate in training or education, or both. In fiscal year (FY) 2016, ACF provided \$5.7 billion to States, territories, and tribes to fund CCDF programs. Each month, CCDF serves approximately 1.4 million children under the age of 13 from 850,000 low-income working families.

New Criminal Background Check Requirements

The U.S. Department of Health and Human Services (HHS) implemented the CCDBG Act's new criminal background check requirements for States, territories, and tribes in a Final rule issued in September 2016 (45 CFR part 98). According to Federal regulations, States must have requirements, policies, and procedures in place to conduct comprehensive criminal background checks. States are required to conduct criminal background checks for childcare staff members and prospective staff members that include checks of two national registries, three in-State registries, and checks of three registries in other States as necessary (we refer to those checks as "inter-State checks") (45 CFR § 98.43(b)).

The national background registry checks are:

- a Federal Bureau of Investigation (FBI) criminal history fingerprint check and
- a search of the National Crime Information Center's (NCIC's) National Sex Offender Registry.

In-State background registry checks (applicable to the State in which the childcare staff member resides) are:

- a search of the State criminal registry using fingerprints,
- a search of the State sex offender registry, and
- a search of the State-based child abuse and neglect registry.

Inter-State background registry checks (applicable to each State in which the childcare staff member resided during the preceding 5 years) are:

- a search of each State's criminal registry (fingerprints optional),
- a search of each State's sex offender registry, and
- a search of each State-based child abuse and neglect registry.

In addition to requiring registry checks, States must comply with several other requirements laid out in Federal regulations. The requirements are described below. In parentheses, we add a descriptor of the requirement that we will use in later discussions in the report:

- Federal regulations require criminal background checks for staff members and prospective staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds. This

requirement includes any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children. Throughout the report, these individuals will be referred to as “childcare staff members” (45 CFR § 98.43(a)). (“Applicable to all childcare staff members.”)

- Federal regulations require States to include in their requirements, policies, and procedures specific factors that would cause a childcare staff member to be ineligible for employment by childcare providers (45 CFR § 98.43(c)). (“Disqualification factors.”)
- Federal regulations require criminal background checks prior to employment and at least every 5 years following employment (45 CFR § 98.43(d)(2)). (“5-year timeframe.”)
- States must have requirements, policies, and procedures that a childcare staff member may not start work until the FBI or in-State criminal registry fingerprint check is returned as satisfactory, and that a staff member be continually supervised until a determination is made on all checks (45 CFR § 98.43(d)(4)). (“Condition of employment.”)
- States are required to provide the results of criminal background checks within 45 days after the date on which the childcare provider submitted the checks (45 CFR § 98.43(e)(1)). (“Results within 45 days.”)
- States are required to provide a process for childcare staff members to appeal the results of criminal background checks (45 CFR § 98.43(e)(3)). (“Appeals process.”)
- States may charge for the costs (not to exceed actual costs) of processing applications and administering criminal background checks (45 CFR § 98.43(f)). (“Appropriate fees.”)
- States must ensure that their policies and procedures for criminal background checks are published on their websites (45 CFR § 98.43(g)). (“Transparency of State policies and procedures.”)

Extension and Waiver Deadlines for Implementation

The CCDBG Act required that all States have requirements, policies, and procedures in place that meet the criminal background check requirements not later than September 30, 2017. The CCDBG Act allowed for the Secretary of HHS to grant a 1-year extension to States as long as they demonstrate a good-faith effort to implement the requirements. In recognition of significant challenges to implementing the new background requirements, all States, including Georgia, 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 for up to 2 additional years, until September 30, 2020, assuming that the requirements for applying for the waiver are fulfilled. In its State plan

preprint,¹ ACF has indicated that if a State implements the FBI criminal history check and the three in-State background checks for prospective staff by September 30, 2018, the State may receive a time-limited waiver (1 year, with an additional year renewal, subject to conditions being met) to perform the following actions:

- conduct FBI checks and in-State registry checks on current childcare staff and
- establish procedures and conduct checks of the NCIC's National Sex Offender Registry and inter-State registries for current and prospective staff, as necessary.

Georgia's Coordination Efforts for Conducting Criminal Background Checks

The State agency said that it worked with its State partner agencies, the Georgia Department of Human Services, Division of Family and Children Services (DFCS), and the Georgia Bureau of Investigations (GBI) to conduct criminal background checks for childcare staff members. For licensed providers and license-exempt providers, the background check unit of DFCS conducted all of the background checks. The State agency worked with the Georgia Department of Human Services, and DFCS to create an interface program that gives an automatic response to the question of whether someone is on the Georgia Child Abuse Registry (GA CAR). The background check process included fingerprinting for both licensed and license-exempt providers, which was outsourced to a contracted vendor. The GBI provided the data for the in-State criminal history checks. In addition, staff members and prospective staff members may challenge the accuracy of a finding in criminal history and sex offender registries through the appeal process as outlined in Georgia law (OCGA Section 20-1A-43).

HOW WE CONDUCTED THIS REVIEW

Our review covered the State agency's implementation of the new criminal background check requirements that were in place as of March 2, 2018. In addition, we examined the State agency's plans to address the new criminal background check requirements that were not implemented by the end of our fieldwork, May 30, 2018. We also identified challenges that the State agency experienced. Our review did not address childcare providers' compliance with the new requirements.

We did not review the State agency's overall internal control structure. Rather, we limited our review to determining whether the State agency implemented the new criminal background check requirements.

¹ The State plan is the primary mechanism that the Administration for Children and Families (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 8 key functions of an integrated system of child care as described in the preprint.

(https://www.acf.hhs.gov/sites/default/files/occ/ccdbg_fy2019_2021_ccdf_plan_preprint.pdf)

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

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

RESULTS OF REVIEW

The State agency implemented most of the new criminal background check requirements established under the CCDBG Act. However, certain criminal background check requirements for childcare providers remained unimplemented as of March 2, 2018, and significant challenges may delay full implementation until 2019 or 2020. Specifically, the State agency said that there does not appear to be a solution for resolving the issue of complying with the inter-State criminal background check requirement because other States do not have an incentive to respond to an applicant's request or Georgia's request for background check information.

According to the State agency, another significant challenge is the cost of providing supervision of provisional childcare staff while background check results are pending. The State agency currently has until September 30, 2018, to implement the new criminal background check requirements. The outstanding challenges may mean that the State agency will not fully implement all of the requirements before the deadline, and, therefore, the State agency may request an additional 1-year waiver from the Administration for Children and Families to address the challenges and comply with the new criminal background check requirements.

Table 1 (on the next page) provides a summary of the State agency's implementation status for the national, in-State, and inter-State background registry checks.

Table 1: The State Agency’s Implementation Status of Background Registry Checks

| Background Registry Checks | Implementation Status as of 03/02/2018 | Potential Implementation Status as of 10/01/2018² | Potential Implementation Status as of 10/01/2019³ |
|--|---|--|--|
| FBI criminal history fingerprint check | Implemented |  |  |
| NCIC's National Sex Offender Registry | Implemented |  |  |
| In-State criminal registry | Implemented |  |  |
| In-State sex offender registry | Implemented |  |  |
| In-State child abuse and neglect registry | Implemented |  |  |
| Inter-State criminal registry | Not Implemented |  |  |
| Inter-State sex offender registry | Implemented |  |  |
| Inter-State child abuse and neglect registry | Not Implemented |  |  |

THE STATE AGENCY IMPLEMENTED ALL NATIONAL BACKGROUND REGISTRY CHECKS

The State Agency Implemented the National FBI Criminal History Fingerprint Check

According to Federal regulations, States are required to conduct an FBI criminal history fingerprint check using Next Generation Identification⁴ for childcare staff members or prospective staff members (45 CFR § 98.43(b)(1)).

As of March 2, 2018, the State agency had implemented the FBI criminal history background check.

² We based Georgia’s potential implementation status on discussions we had with State agency officials, and the categories are subject to change. A “green” status indicates that the State agency had fully implemented or planned to fully implement the background registry check by the corresponding date. A “red” status indicates that the State agency did not plan to implement the background registry check by the corresponding date.

³ *Id.*

⁴ The FBI fingerprint check, Next Generation Identification (formerly the Integrated Automated Fingerprint Identification System) provides the criminal justice community with the world’s largest and most efficient electronic repository of biometric and criminal history information.

The State Agency Implemented the National Crime Information Center's National Sex Offender Registry Check

Federal regulations require States to conduct a search of the NCIC's National Sex Offender Registry for childcare staff members or prospective staff members (45 CFR § 98.43(b)(2)).

As of March 2, 2018, the State agency had fully implemented the NCIC's National Sex Offender Registry check.

THE STATE AGENCY IMPLEMENTED ALL IN-STATE BACKGROUND REGISTRY CHECKS

According to Federal regulations, States are required to conduct a search of the (1) State criminal registry (using fingerprints), (2) State sex offender registry, and (3) State-based child abuse and neglect registry in the State in which the childcare staff member or prospective staff member resides (45 CFR § 98.43(b)(3)).

As of March 2, 2018, the State agency had implemented the three in-State criminal background registry checks.

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

The State Agency Did Not Implement the Inter-State Criminal History Registry Check

According to Federal regulations, States are required to conduct a search of the criminal registry in each State (fingerprints optional) in which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

As of March 2, 2018, the State agency had not implemented the inter-State criminal history registry check because of certain challenges. For example, one major challenge involved obtaining information from other States. The State agency indicated that States are neither required to respond to another State's request for criminal history background check information nor are they required to respond within 45 days. The State agency indicated that another challenge was that it did not have the resources needed to implement this requirement. Specifically, the State agency estimated that it needed two full-time-equivalent staff members to complete this inter-State requirement. A third challenge the State agency cited was that Georgia requires applicants to request and pay for their own interstate criminal history background checks. The State agency anticipates that it will be in compliance with this requirement by October 1, 2019.

The State Agency Implemented the Inter-State Sex Offender Registry Check

According to Federal regulations, States are required to conduct a search of each State's sex offender registry in the State(s) in which the childcare staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

As of March 2, 2018, the State agency had implemented the inter-State sex offender registry check.

The State agency indicated that it complied with the inter-State sex offender registry check requirement by searching the National Sex Offender Public Website for childcare staff members or prospective staff members.

The State Agency Did Not Implement the Inter-State Child Abuse and Neglect Registry Check

According to Federal regulations, States are required to conduct a search of 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)).

As of March 2, 2018, the State agency had not implemented the inter-State child abuse and neglect registry checks.

The State agency indicated that when a childcare staff member or prospective staff member discloses that he or she resided in a different State in the past 5 years, the State agency contacts that State to obtain an inter-State child abuse and neglect registry check. This process involves completing and submitting any forms and providing documentation requested by the other State. The State agency said that one of the challenges to fully implementing an inter-State child abuse and neglect registry check is that some States do not have a process that allows other States to request that information.

THE STATE AGENCY DID NOT FULLY IMPLEMENT ALL BACKGROUND CHECK REQUIREMENTS

In addition to accessing national, in-State, and inter-State registries, States are required to implement criminal background check requirements that address other Federal requirements. As of March 2, 2018, the State agency implemented five of the eight background check requirements.

Table 2 (on the next page) provides a summary of the State agency's implementation status for these background check requirements.

Table 2: The State Agency’s Implementation Status of Background Check Requirements

| Background Check Requirements | Implementation Status as of 03/02/2018 | Potential Implementation Status as of 10/01/2018⁵ | Potential Implementation Status as of 10/01/2019⁶ |
|---|---|--|--|
| Applicable to all childcare staff members | Not Implemented |  |  |
| Disqualification factors | Implemented |  |  |
| Five-year timeframe | Implemented |  |  |
| Condition of employment | Not Implemented |  |  |
| Results within 45 days | Not Implemented |  |  |
| Appeals process | Implemented |  |  |
| Appropriate fees | Implemented |  |  |
| Transparency of State policies and procedures | Implemented |  |  |

The State Agency Did Not Implement Three Background Check Requirements

Applicable to All Childcare Staff Members

Federal regulations require States to have requirements, policies, and procedures in place to conduct criminal background checks for staff members of childcare providers (other than relatives) that are licensed, regulated, or registered under State law or receive CCDF funds. Background check requirements apply to any staff member who is employed by a childcare provider for compensation or whose activities involve the care or supervision of children or unsupervised access to children (45 CFR § 98.43(a)).

As of March 2, 2018, the State agency had not implemented this criminal background check requirement. Current State policy excludes employees hired for a limited period of time,

⁵ We based Georgia’s potential implementation status on discussions we had with State agency officials, and the categories are subject to change. A “green” status indicates that the State agency had fully implemented or planned to fully implement the background check requirement by the corresponding date. A “yellow” status indicates that the State agency planned to partially implement the background check requirement by the corresponding date.

⁶ *Id.*

defined as provisional employees. Current policy only requires provisional employees to obtain a satisfactory National Fingerprint Records Check Determination. On and after October 1, 2018, every provisional employee must submit all information relevant to conduct a comprehensive background check. Also effective October 1, 2018, the provisional employee will be supervised at all times by someone with a satisfactory comprehensive records check determination until the provisional employee receives a satisfactory comprehensive records check determination.

Condition of Employment

Federal regulations state that a prospective staff member may begin work for a childcare provider after completing either the FBI criminal history fingerprint check or the in-State criminal history check. Until all background check components have been completed, the staff member must be supervised at all times by an individual who has received a qualifying result on a background check within the past 5 years (45 CFR § 98.43(d)(4)).

As of March 2, 2018, the State agency had not implemented the condition of employment requirement. The State agency said that the Federal Government did not provide funds for Georgia to comply with this condition of employment standard and that Georgia was attempting to reallocate State funds to comply. It further said that it anticipates being in compliance with this requirement by October 1, 2018. Current State policy says that, effective October 1, 2018, the provisional employee will be supervised at all times by someone with a satisfactory comprehensive records check determination until the provisional employee receives a satisfactory comprehensive records check determination.

Results Within 45 Days

Federal regulations require States to carry out the request of childcare providers for a criminal background check as expeditiously as possible and within 45 days after the date on which the provider submitted the request. Also, States must provide the results of the criminal background check to the provider and to the current or prospective staff member (45 CFR § 98.43(e)(1)).

As of March 2, 2018, the State agency had not implemented the requirement to provide background check results within 45 days. Specifically, the State agency said that changes to its administrative rules and policy guidance were required and that system edits were needed to electronically track and monitor compliance. The State agency said that it plans to make these changes during the renegotiation of its current background check agreement with its State partner agency (DFCS) by June 30, 2018. The State is concerned that, unless other States are required to respond to the State's request within 30 days, it may not be able to meet the 45-day requirement.

The State Agency Implemented Five Background Check Requirements

Disqualification Factors

Federal regulations list disqualification factors for childcare staff members employed by providers receiving CCDF assistance. The factors include refusing a background check or knowingly providing a materially false statement in connection with a background check; being registered, or being required to be registered, on the State or National Sex Offender Registry; having been convicted of a felony consisting of murder, child abuse or neglect, a crime against children, spousal abuse, a crime involving rape or sexual assault, kidnapping, arson, physical assault, or a drug-related offense committed during the preceding 5 years; and having been convicted of a violent misdemeanor committed as an adult against a child (e.g., child abuse, child endangerment, sexual assault, child pornography) (45 CFR § 98.43(c)(1)).

As of March 2, 2018, the State agency had implemented this criminal background check requirement.

Five-Year Timeframe

Federal regulations require States to have requirements, policies, and procedures in place to conduct criminal background checks for childcare staff members and prospective staff members prior to employment and at least once every 5 years (45 CFR § 98.43(d)(2)).

As of March 2, 2018, the State agency had implemented this criminal background check requirement.

Appeals Process

Federal regulations require States to provide a process for childcare staff members and prospective staff members to appeal the results of criminal background checks and to challenge the accuracy or completeness of the information contained in the member's criminal background report (45 CFR § 98.43(e)(3)).

As of March 2, 2018, the State agency had implemented this criminal background check requirement.

Appropriate Fees

Federal regulations allow States to charge up to the actual costs of processing applications and administering the criminal background checks (45 CFR § 98.43(f)).

As of March 2, 2018, the State agency had implemented this criminal background check requirement.

Transparency of State Policies and Procedures

Federal regulations require States to ensure that its policies and procedures for criminal background checks are published on the State and local lead agency websites (45 CFR § 98.43(g)).

As of March 2, 2018, the State agency had implemented this criminal background check requirement.

CONCLUSION

As of March 2, 2018, the State agency had implemented most of the new criminal background check requirements established under the CCDBG Act. Specifically, the State agency implemented one national background registry check, three in-State background registry checks, two inter-State background registry checks, and five other background check requirements. However, significant challenges remain for the unimplemented background check requirements, and these challenges may delay full implementation until 2019 or 2020. The State agency plans to continue to work with its partner State agencies and ACF to ensure that all remaining background check requirements are implemented in a timely manner. We will continue to monitor the State agency's actions and progress toward implementation of the new criminal background check requirements.

APPENDIX: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our review covered the State agency's implementation of the new criminal background check requirements that were in place as of March 2, 2018. In addition, we examined the State agency's plans to address the new criminal background check requirements that were not implemented by the end of our fieldwork, May 30, 2018. We also identified challenges that the State agency experienced in implementing the requirements. Our review did not address childcare providers' compliance with the new requirements.

We did not review the State agency's overall internal control structure. Rather, we limited our review to determining whether the State agency implemented the new criminal background check requirements.

We conducted our audit, which included fieldwork at the State agency office in Atlanta, Georgia, from November 2017 through May 2018.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal regulations and ACF guidance;
- reviewed applicable State laws, regulations, policies, and procedures;
- identified the new criminal background check requirements that were implemented by the State agency as of March 2, 2018;
- identified the new criminal background check requirements that were not implemented by the State agency as of March 2, 2018;
- interviewed State agency officials to gain an understanding of the challenges that the State agency experienced;
- interviewed State agency officials to determine the State agency's plans to address unimplemented criminal background check requirements; and
- discussed the results of our review with the State agency.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions

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