

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**HAWAII'S MONITORING GENERALLY
ENSURED CHILD CARE PROVIDER
COMPLIANCE WITH STATE CRIMINAL
BACKGROUND CHECK REQUIREMENTS**

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**September 2020
A-09-19-01000**

Office of Inspector General

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Report in Brief

Date: September 2020
Report No. A-09-19-01000

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 Hawaii's monitoring of child care 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 368 licensed family homes and child care centers that received CCDF funding during Federal fiscal year 2018. We used geographic area, total capacity, and total CCDF funding received to select for review 15 family homes and 15 child-care centers, for a total of 30 licensed child-care providers. In total, we reviewed supporting documentation for 550 individuals who were current employees or household members at 30 different child-care-provider locations.

Hawaii's Monitoring Generally Ensured Child Care Provider Compliance With State Criminal Background Check Requirements

What OIG Found

At 27 of the 30 child-care providers we reviewed, Hawaii's monitoring generally ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act. Of the 550 individuals whose supporting documentation we reviewed, 546 (over 99 percent) had had the required background checks completed by the time we requested the documentation and performed site visits. However, four individuals at three child-care providers had not had the required background checks conducted.

For two child-care staff members at a child care center, Hawaii officials stated that the center's director was not aware that background checks were required for minors working at the center. For one child-care staff member at a child care center, Hawaii officials stated that the staff member's background check was not performed through the State as required. For both child care centers, Hawaii sent the providers a letter reminding them that the requirement that all new staff undergo criminal background checks within 5 days of hire is a condition of licensure. In addition, for one child-care staff member at a child care center, Hawaii officials stated that the staff member's background check was not conducted because of an oversight by a licensing worker. Although this staff member was fingerprinted, the licensing unit did not perform the background check. Hawaii requested that the licensing unit responsible for the provider submit a written corrective action plan to ensure that criminal background checks are completed for all staff who have been fingerprinted. Hawaii officials informed us that these four child-care staff members were no longer employed at the child care centers.

What OIG Recommends and Hawaii Comments

We recommend that Hawaii confirm that the licensing unit responsible for the child-care-center provider that did not complete a required criminal background check has implemented a corrective action plan to ensure that background checks are completed for all staff who have been fingerprinted.

In written comments on our draft report, Hawaii stated that, in general, it concurred with our findings. Hawaii also provided information on actions that it had taken to address our recommendation, such as adding a second support staff person to assist with conducting the background checks.

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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 of Hawaii's Department of Human Services (State agency) as part of a second phase of our oversight activities to assess whether States' monitoring ensured provider compliance with CCDF requirements related to criminal background checks. Appendix B lists prior Office of Inspector General (OIG) reports related to criminal background check requirements.

OBJECTIVE

Our objective was to determine whether the State agency's monitoring of child care providers ensured provider compliance with State requirements related to criminal background checks established under the CCDBG Act.

BACKGROUND

Child Care and Development Block Grant Act

Reauthorized in the CCDBG Act, the CCDF is the primary Federal funding source devoted to subsidizing the child care expenditures of low-income families. Administered by the Administration for Children and Families (ACF), the CCDF helps eligible low-income families pay for child care at a provider of their choice while they work or participate in training or education, or both. In Federal fiscal year (FFY) 2019, ACF provided \$8.2 billion to States, territories, and Tribes to fund CCDF programs. In FFY 2017 (the most recent year for which ACF data were available), CCDF served approximately 1.3 million children younger than 13 years of age from 796,000 low-income families each month.

Under the CCDBG Act, each lead agency must certify in its State plan that it has monitoring policies and practices applicable to all child care providers and facilities that deliver services.² States must have requirements, policies, and procedures in place to conduct criminal background checks for staff members of child care providers (other than relatives) that are

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

² 45 CFR § 98.16(o).

licensed, regulated, or registered under State law or receive CCDF funds.³ Criminal background check requirements apply to any staff member who is employed by a 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 home providers, this includes the caregiver requesting a check of himself or herself as well as other adults in the household who may have unsupervised access to children.⁴

Criminal Background Check Requirements as of September 30, 2016

The U.S. Department of Health and Human Services implemented the CCDBG Act's criminal background check requirements for States, territories, and Tribes in a final rule issued in September 2016.⁵ According to Federal regulations,⁶ States must have requirements, policies, and procedures in place to conduct comprehensive criminal background checks. These regulations require States to conduct criminal background checks for child care staff members and prospective child care staff members that include:

- a Federal Bureau of Investigation (FBI) fingerprint check using Next Generation Identification;⁷
- a search of the National Crime Information Center's National Sex Offender Registry (NCIC NSOR); and
- a search of the following registries, repositories, or databases in the State in which a child care staff member resides and each State in which that staff member resided during the preceding 5 years:
 - the State criminal registry or repository (with the use of fingerprints being required in the State in which the staff member resides and optional in other States),
 - the State sex offender registry or repository, and
 - the State-based child abuse and neglect registry and database.

³ 45 CFR § 98.43(a)(1).

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

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

⁶ 45 CFR § 98.43.

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.

Extension and Waiver for Implementation of Criminal Background Check Requirements

The CCDBG Act required all States to have requirements, policies, and procedures in place no later than September 30, 2017, that meet the criminal background check requirements. The CCDBG Act allowed for the Secretary of Health and Human Services to grant a 1-year extension to States as long as they demonstrate a good-faith effort to implement the requirements. Because of significant challenges in implementing the new background check requirements, all States, including Hawaii, applied for and received extensions through September 30, 2018.

In addition, ACF has the authority to grant States a waiver of a statutory provision, including one or more criminal background check requirements, and may extend the period of implementation for the waived requirements for up to 2 additional years, until September 30, 2020, assuming that the requirements for applying for the waiver are fulfilled. In its State plan preprint,⁸ ACF stated that if a State implements the FBI criminal history check and the three in-State background checks for prospective child-care staff by September 30, 2018, the State may receive a time-limited waiver (1 year, with an additional 1-year renewal, subject to conditions being met) to perform the following actions:

- conduct FBI checks and in-State registry checks on current child-care staff and
- establish procedures and conduct checks of the NCIC NSOR and inter-State registries for current and prospective staff, as necessary.

As of September 30, 2018, the State agency had implemented requirements for all criminal background check components (except for the NCIC NSOR check, the inter-State criminal registry check, and the inter-State child abuse and neglect registry check) and conducts these checks for all “new (prospective)” child care staff, in accordance with Federal regulations (45 CFR § 98.43). Additionally, the State agency had implemented requirements for the in-State sex offender registry check and the in-State child abuse and neglect check for “existing” child care staff in accordance with Federal regulations (45 CFR § 98.43). In its CCDF State plan for 2019 through 2021, the State agency requested and ACF approved waivers until September 30, 2020, to allow additional time to implement the remainder of the criminal background check requirements. (See Appendix C for details on the State agency’s extension and waiver deadlines and the implementation status of its CCDF criminal background checks.)

⁸ The State plan is the primary mechanism that ACF uses to determine State and territory compliance with the requirements of the CCDF Act. The State plan preprint provides a tool for States and territories to describe to ACF their progress on eight key functions of an integrated system of child care as described in the preprint. Available at https://www.acf.hhs.gov/sites/default/files/occ/fy_2019_2021ccdf_plan_preprint_11_30_17.pdf on May 6, 2020.

Hawaii's Coordination Efforts for Conducting Criminal Background Checks

Within the State agency, the Benefit, Employment and Support Services Division's Child Care Program Office (Program Office) is responsible for ensuring that criminal background checks are conducted and completed for child care staff members. The Program Office uses a computerized eligibility system, Hawaii Automated Network of Assistance (HANA), for storing the criminal background check status and relevant information for child care staff members in Hawaii.

Applicants for positions in licensed child-care centers and family homes must be fingerprinted within 5 days of hire and may begin working on a provisional basis until satisfactory results on either the FBI fingerprint check or the in-State criminal registry check are received. Applicants must submit a form, Authorization for Background Check and to Release Information (Form 948), to the Program Office's licensing unit to initiate the national and State criminal background and registry checks.

Once an applicant is fingerprinted, the fingerprints are sent electronically to the FBI for the national criminal history record check and to the Hawaii Criminal Justice Data Center for the State criminal history record check. Simultaneously, the Program Office's licensing unit sends a copy of Form 948 to the Social Services Division's Child Welfare Services (CWS). CWS then runs the in-State child abuse and neglect registry check and sends the results to the licensing unit. The licensing unit runs all the other background checks.

If there are any criminal history records that show up on either the national or State background checks for an applicant, a licensing worker reviews the results and assesses whether the applicant poses a risk. If the licensing worker is unable to determine whether the applicant poses a risk, the licensing worker conducts an interview with the applicant either in person or by phone. Based on the licensing worker's assessment (along with the assessments of the worker's supervisor, the Statewide Branch Administrator, and the Acting Division Administrator), the licensing unit determines whether the applicant poses a risk.

If the applicant does not pose a risk, the background check is cleared. However, if the applicant does pose a risk, the licensing unit sends a "poses a risk" letter to the applicant and the provider, denying the background check clearance. Once the provider receives notification that an applicant has not been cleared, the individual must stop working immediately. If it is determined that a provider employs an individual who was not cleared, the provider's license can be suspended or revoked.

As part of the required annual licensing inspections of child care providers, the licensing worker verifies the background check status of child care staff members.

HOW WE CONDUCTED THIS AUDIT

Hawaii had 368 licensed⁹ family homes¹⁰ and child care centers¹¹ that received CCDF funding during FFY 2018 (October 1, 2017, through September 30, 2018). We reviewed 15 family home providers and 15 child-care centers, for a total of 30 licensed child-care providers.

We conducted unannounced site visits at 15 family-home providers, where we obtained a list of all current employees or household members for each provider. We compared this list with the list provided by the State agency to verify that they were the same. We performed a walkthrough of each family home to observe anyone in the household and discussed any challenges or obstacles that the provider faced with adhering to the criminal background check requirements. In addition, we contacted 15 child-care-center providers to request a list of all current employees at each provider and verified this list against the list provided by the State agency. In total, we reviewed supporting documentation for 550 individuals who were current employees or household members at 30 different child-care-provider locations.

We limited our review of internal controls to obtaining an understanding of the laws and regulations concerning the State agency's monitoring process to ensure child care provider compliance with State requirements related to criminal background checks.

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

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

⁹ We did not include license-exempt providers or providers that had a pending license in our audit.

¹⁰ A family child-care provider in a day care home is an individual who provides child care services in a private home to two to six children at the same time during any part of a 24-hour day in which the relationship of the child and family child-care provider is not by blood, marriage, or adoption. A family child-care provider in a group child-care home is an individual who provides child care services in a facility that may be an extended or a modified family child-care home and provides care to no more than 12 children during any part of a 24-hour day (Hawaii Administrative Rules § 17-892.1-1). We refer to these private and group homes as "family homes."

¹¹ A child care center is a place maintained by an individual, organization, or agency for the purpose of providing child care during any part of a 24-hour day (Hawaii Administrative Rules § 17-892.1-1).

FINDINGS

The State agency's monitoring generally ensured provider compliance with State requirements related to criminal background checks at 27 of 30 child-care-provider locations we reviewed. Of the 550 individuals whose supporting documentation we reviewed, 546 (over 99 percent) had had the required background checks completed by the time we requested the documentation and performed site visits. However, four individuals at three child-care providers had not had the required background checks conducted.

HAWAII'S MONITORING GENERALLY ENSURED PROVIDER COMPLIANCE WITH STATE CRIMINAL BACKGROUND CHECK REQUIREMENTS

Hawaii State Requirements for Criminal Background Checks

Hawaii State law requires all licensed child-care providers and adult household members of family child-care homes and staff of child care centers to have required background checks completed, including criminal and adult or child abuse and neglect records clearance checks (Hawaii Revised Statutes (HRS) §§ 346-151 and 346-154).

According to Hawaii State law, the State agency shall develop standards that shall include criminal history records checks in accordance with section 846-2.7, sex offender registry checks, and child abuse records checks for prospective employees and household members of a child care facility (HRS § 346-154(a)). The criminal history record check shall include the submission of fingerprints to: (1) the FBI for a national criminal history record check and (2) the Hawaii Criminal Justice Data Center for a State criminal history record check that shall include nonconviction data¹² (HRS § 846-2.7).

Hawaii regulations require a State name-based criminal history record check and a child abuse/neglect history check to be conducted at least once every year on all required individuals (Hawaii Administrative Rules §§ 17-891.1-3(d) and 17-892.1-3(d)).

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

¹² "Nonconviction data" means arrest information without a disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending; or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals (HRS § 846-2.1).

An Individual Who Was Not Required To Have Background Checks Regularly Visited a Family Home

During an unannounced site visit to one of the selected family homes, we encountered the provider's ex-husband in one of the rooms. During our visit, the provider had five children in care, including her grandson. The provider stated that the ex-husband visited the home approximately two times a month. Because he was not a household member, he was not required to have criminal background checks completed. After our visit, the State agency completed the ex-husband's criminal background checks and cleared him.

Child Care Providers at 3 of 30 Locations Did Not Comply With Criminal Background Check Requirements

At 27 of the 30 child-care providers we reviewed, the State agency's monitoring generally ensured provider compliance with State requirements related to criminal background checks. Of the 550 individuals whose supporting documentation we reviewed, 546 (over 99 percent) had had the required background checks completed by the time we requested the documentation and performed site visits. However, four staff members at three child-care centers had not had any of the required criminal background checks (FBI, in-State criminal history, in-State sex offender, in-State child abuse and neglect, and inter-State sex offender) conducted by the time of our data requests and site visits (Appendix E):

- For two child-care staff members at a child care center, State agency officials stated that the center's director was not aware that background checks were required for minors working at the center. The State agency sent the provider a letter reminding the provider that the requirement that all new staff undergo criminal background checks within 5 days of hire is a condition of licensure.
- For one child-care staff member at a child care center, State agency officials stated that the staff member's background check was performed through the Roman Catholic Diocese but not through the State agency as required. The State agency sent the provider a letter reminding the provider that the requirement that all new staff undergo criminal background checks within 5 days of hire is a condition of licensure.
- For one child-care staff member at a child care center, State agency officials stated that the staff member's background check was not conducted because of an oversight by the licensing unit. Although this staff member was fingerprinted, the licensing unit did not perform the background check. The State agency requested that the licensing unit responsible for this provider submit a written corrective action plan to ensure that criminal background checks are completed for all staff who have been fingerprinted.

The State agency informed us that these four child-care staff members were no longer employed at the child care centers.

RECOMMENDATION

We recommend that the Hawaii Department of Human Services confirm that the licensing unit responsible for the child-care-center provider that did not complete a required criminal background check has implemented a corrective action plan to ensure that background checks are completed for all staff who have been fingerprinted.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency said that, in general, it concurred with our findings. The State agency also provided information on actions that it had taken to address our recommendation. Specifically, the State agency said that because of the large volume of background checks that the licensing unit conducts, a second support staff person was assigned to assist with conducting background checks. The State agency also said that the licensing unit has established duties for each support staff person to ensure that all background check requests are logged, tracked, and cross-checked for completion of all the required background checks.

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

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

In selecting which State or States to include in an audit, each OIG audit team conducted an analysis of the States within its region and considered the following factors:

- States with a “partial” or “substantial” implementation status for criminal background check requirements in their 2016 through 2018 CCDF State plans,
- States in which OIG may not have conducted criminal background check work recently or those in which we had findings related to criminal background check requirements in foster care or Head Start audits,
- States in which news reports have raised concerns related to criminal background check requirements,
- total CCDF funding within each State, and
- total children served by CCDF within each State.

In addition to these factors, the six States¹³ included in OIG’s prior CCDF Phase I (State implementation of CCDBG criminal background check requirements) audit series were included in CCDF Phase II (State monitoring of child care provider compliance). Based on our review of these factors, we selected Hawaii for audit.

We selected and reviewed a nonstatistical sample of 30 out of 368 family homes and child care centers that received CCDF funding during FFY 2018 to improve our understanding of the State agency’s monitoring of child care provider compliance with State criminal background check requirements. We based our provider selection on geographic area. For licensing purposes, Hawaii is divided into six geographic areas. We determined the geographic area that each provider was located within and grouped the providers by area accordingly. We selected at least two family-home providers and one child-care center provider within each geographic area to ensure coverage across the State. We used the following factors when making the selection within each geographic area:

- **Total capacity (the maximum number of children to be served at the provider location):** We sorted the list of providers based on the highest number of children being served and selected the provider with the highest capacity (i.e., the larger family homes and larger child-care centers).

¹³ The six States in CCDF Phase I were New York, Nevada, Colorado, Georgia, New Hampshire, and Illinois (Appendix B).

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

We conducted unannounced site visits at 15 family-home providers, where we obtained a list of all current employees or household members for each provider. We compared this list with the list provided by the State agency to verify that they were the same. We performed a walkthrough of each family home to observe anyone in the household and discussed any challenges or obstacles that the provider faced with adhering to the criminal background check requirements.

In addition, we contacted 15 child-care center providers to request a list of all current employees at each provider and verified this list against the list provided by the State agency. In total, we reviewed supporting documentation for 550 individuals who were current employees or household members at 30 different child-care-provider locations.

We performed fieldwork at the State agency office in Honolulu, Hawaii, and at various family-home providers in April and May 2019.

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.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal and State laws, regulations, and guidance;
- identified criminal background check requirements that had been fully implemented by the State agency;
- identified criminal background check requirements that had not yet been implemented by the State agency;
- interviewed State agency officials to gain an understanding of the State's monitoring process for provider compliance with criminal background check requirements established under the CCDBG Act;
- conducted site visits at each of the 15 family-home-provider locations to obtain a current list of all employees or household members and obtained supporting documentation or evidence from HANA to determine whether all of the required criminal background checks were completed;

- contacted 15 child-care-center providers to obtain a list of all current employees at each center and obtained supporting documentation from HANA to determine whether all of the required criminal background checks were completed;
- reviewed and analyzed a nonstatistical sample of the records of 550 employees from the 15 child-care centers and 15 family homes that received CCDF funding during FFY 2018 to determine whether all the required criminal background checks were completed; and
- discussed the results of our audit with State agency officials.

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

**APPENDIX B: PRIOR OFFICE OF INSPECTOR GENERAL REPORTS RELATED TO
CRIMINAL BACKGROUND CHECK REQUIREMENTS**

Report Title	Report Number	Date Issued
<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

Report Title	Report Number	Date Issued
<i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	A-01-18-02500	7/9/2018
<i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	A-05-17-00047	6/4/2018

APPENDIX C: HAWAII'S WAIVER AND IMPLEMENTATION STATUS OF CHILD CARE AND DEVELOPMENT FUND CRIMINAL BACKGROUND CHECKS

In its 2019 through 2021 CCDF State plan, the State agency requested that ACF approve a waiver to allow additional time for new and existing child-care staff to become compliant with the NCIC NSOR check, the inter-State criminal registry check, and the inter-State child abuse and neglect registry check.¹⁴ The State agency also requested additional time for existing child-care staff to become compliant with the FBI fingerprint check and the in-State criminal registry check every 5 years. The waiver request was approved by ACF¹⁵ and allowed additional time (through September 30, 2020) for the State agency to ensure that new and existing staff completed the NCIC NSOR check, the inter-State criminal registry check, and the inter-State child abuse and neglect registry check and to ensure that existing staff completed the FBI fingerprint check and the in-State criminal registry check every 5 years. The State agency did not request additional time for checks of the State child abuse and neglect registry or the State sex offender registry.

See the table on the following page for the implementation status of the State agency's CCDF criminal background checks as September 30, 2018.

¹⁴ Hawaii had also requested additional time for prospective and existing child care staff to become compliant with the inter-State sex offender registry check. However, during our review, Hawaii officials received clarification on what this check entailed and determined that they were already in compliance with this requirement.

¹⁵ ACF approved Hawaii's initial waiver request on October 30, 2018 (effective October 1, 2018) and the extension of the waiver on February 19, 2020.

**Table: Hawaii’s Implementation Status of Child Care and Development Fund
Criminal Background Checks**

Criminal Background Check Requirements	Implementation Status as of 09/30/2018	OIG Analysis of State Agency’s Implementation Status (Includes a Review of Hawaii’s Laws and Regulations)
FBI Criminal History Fingerprint Check 45 CFR § 98.43(b)(1)	Partially Implemented ¹⁶	HRS § 846-2.7
NCIC’s National Sex Offender Registry 45 CFR § 98.43(b)(2)	Not Implemented	Hawaii has a waiver of the deadline for implementing this requirement until September 30, 2020.
In-State Criminal Registry 45 CFR § 98.43(b)(3)	Partially Implemented	HRS §§ 346-154 and 846-2.7
In-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	HRS § 346-154
In-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	HRS § 346-154
Inter-State Criminal Registry 45 CFR § 98.43(b)(3)	Not Implemented	Hawaii has a waiver of the deadline for implementing this requirement until September 30, 2020.
Inter-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	HRS § 346-154
Inter-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Not Implemented	Hawaii has a waiver of the deadline for implementing this requirement until September 30, 2020.

¹⁶ As of September 30, 2018, Hawaii had implemented the FBI criminal history fingerprint check for new (prospective) child-care staff members. Hawaii currently has a waiver in place until September 30, 2020, to implement the requirement that the FBI and in-State criminal history fingerprint checks be performed every 5 years for existing employees.

APPENDIX D: FEDERAL AND STATE REQUIREMENTS RELATED TO CRIMINAL BACKGROUND CHECKS

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)).

“Childcare 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)).

“Childcare 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 Identification¹⁷ (45 CFR § 98.43(b)(1)) and (2) a search of the NCIC’s NSOR 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) the State criminal registry (using fingerprints), (2) the State sex offender registry, and (3) the State-based child abuse and neglect registry in the State in which the child care staff member or prospective staff member resides (45 CFR § 98.43(b)(3)).

In addition, States are required to conduct a search of three inter-State registries: (1) the criminal registry in each State (fingerprints optional), (2) each State’s sex offender registry, and (3) each State’s child abuse and neglect registry in the State(s) in which the child care staff member or prospective staff member resided during the preceding 5 years (45 CFR § 98.43(b)(3)).

¹⁷ 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.

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

STATE REQUIREMENTS

According to the Hawaii Revised Statutes:

The [State agency] shall develop standards to ensure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, household members, and new employees or household members of the provider after registration or licensure, which shall include criminal history records checks in accordance with section 846-2.7, sex offender registry checks, child abuse records checks, and adult abuse perpetrator checks (HRS § 346-154(a)).

The criminal history record check shall include the submission of fingerprints to: (1) the FBI for a national criminal history record check and (2) the Hawaii Criminal Justice Data Center for a State criminal history record check that shall include nonconviction data (HRS § 846-2.7).

Hawaii regulations require a State name-based criminal history record check and a child abuse/neglect history check to be conducted at least once every year on all required individuals (Hawaii Administrative Rules §§ 17-891.1-3(d) and 17-892.1-3(d)).

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

Provider Number	Provider Type	Number of Employees or Household Members Reviewed	Number of Employees or Household Members Missing Required Criminal Background Checks
1	Family Home	3	0
2	Family Home	5	0
3	Family Home	2	0
4	Family Home	4	0
5	Family Home	2	0
6	Family Home	4	0
7	Family Home	4	0
8	Family Home	3	0
9	Family Home	4	0
10	Family Home	4	0
11	Family Home	4	0
12	Family Home	2	0
13	Family Home	4	0
14	Family Home	2	0
15	Family Home	2	0
Total for Family Homes		49	0
16	Center	52	0
17	Center	44	0
18	Center	16	0
19	Center	50	0
20	Center	21	2
21	Center	38	0
22	Center	13	0
23	Center	14	0
24	Center	29	0
25	Center	12	0
26	Center	112	1
27	Center	18	0
28	Center	37	1
29	Center	32	0
30	Center	13	0
Total for Child Care Centers		501	4
Combined Totals		550	4

APPENDIX F: STATE AGENCY COMMENTS

DAVIDY IOE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

Office of the Director
P.O. Box 339
Honolulu, Hawaii 96809-0339

BESSD 20.C0801

August 7, 2020

Lori A. Ahlstrand
Regional Inspector General
Region IX Office of Audit Services
90 7th Street, Suite 3-650
San Francisco, California 94103

Dear Ms. Ahlstrand:

RE: Report No. A-09-19-01000- Office of Inspector General draft report "Hawaii's Monitoring Generally Ensured Child Care Provider Compliance with State Criminal Background Check Requirements"

The Hawai'i Department of Human Services (DHS) appreciates the opportunity to provide comments to the Office of Inspector General (OIG) on its draft report.

Ensuring the health and safety of children receiving child care and improving their quality of care are paramount for Hawai'i DHS, which oversees the child care subsidy, child care licensing, and child care quality initiatives programs under the Child Care and Development Block Grant (CCDBG) Act of 2014 for the funding from the Child Care and Development Fund (CCDF). In Hawai'i, comprehensive background checks are conducted for both licensed and registered child care providers, staff, and household members, as well as unregulated child care providers (i.e. friend, family, or neighbors) who care for children whose families receive CCDF child care subsidies from Hawai'i DHS.

Hawai'i DHS in general concurs with the OIG report findings and is pleased that the findings indicated that the required background checks were completed for over 99 percent of the 550 individuals selected for OIG's review process. This figure highlights the department's child care licensing staff understanding of the importance of the comprehensive background checks and commitment to ensuring the health and safety of children in child care.

AN EQUAL OPPORTUNITY AGENCY

For the child care licensing office that due to an oversight did not conduct the required background checks for the one staff person noted that did complete fingerprinting at that licensing office, the following corrective action plan was implemented in June 2019:

Previously, only one support staff person was assigned to manage the processing of the required background checks for all individuals undergoing background checks for the entire office. Due to the large volume of background checks that the office processes, a second support staff was assigned to assist with conducting the background checks and the office established duties for each support staff to ensure that all background check requests are logged, tracked, and cross-checked for completion of all of the required background checks. The office noted that since the implementation of its corrective action plan, there have been no further instances where Hawai'i DHS failed to conduct and document the completion of the required background checks.

Hawai'i DHS is also pleased to report that it continues to make progress toward full compliance with the CCDBG Act of 2014 background check requirements. Effective October 2019, through our continued partnership with the Hawai'i Criminal Justice Data Center (HCJDC) within the Department of the Attorney General, Hawai'i DHS began conducting the National Crime Information Center's National Sex Offender Registry (NCIC NSOR) checks for new hires. Hawai'i DHS and HCJDC continue to work together toward establishing the process to complete the NCIC NSOR checks every five (5) years as required by CCDBG for any individual that continues to provide child care as well as for conducting the initial NCIC NSOR check for the existing child care workforce already providing care.

If you have any questions regarding this subject, please contact Scott Nakasone, Assistant Administrator of the Benefit, Employment and Support Services Division, by phone at (808) 586-7083 or by e-mail at snakasone2@dhs.hawaii.gov or Dana Balansag, Child Care Program Administrator by phone at (808) 586-7188 or by e-mail at dbalansag@dhs.hawaii.gov.

Sincerely,

/Cathy Betts/ for

Pankaj Bhanot
Director