

Department of Health and Human Services

**OFFICE OF  
INSPECTOR GENERAL**

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

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## Report in Brief

Date: August 2020

Report No. A-01-18-02505

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 received 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 Rhode Island'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 599 licensed child care centers and family 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 care center providers and 15 family home providers. In total, we reviewed supporting documentation for 589 individuals who were current employees or household members at 30 different child care provider locations.

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

### What OIG Found

Rhode Island's monitoring did not ensure provider compliance with State requirements related to criminal background checks at 18 of 30 child care provider locations we reviewed. We found that providers did not obtain or renew the required criminal background checks for 108 of 589 individuals. By not ensuring that all current employees or household members who supervised or had routine unsupervised contact with children passed all criminal background checks, Rhode Island potentially jeopardized the safety of the children in the care of the 30 selected child care providers.

### What OIG Recommends and Rhode Island Comments

We recommend that Rhode Island: (1) conduct or renew all required criminal background checks for the 108 individuals we reviewed who did not have all required checks or who had expired background checks at the time of our data request and site visits, (2) determine whether it is feasible to develop a centralized process to monitor both family homes and child care centers, (3) determine whether it is feasible to increase the ratio of State licensing inspectors to child care providers to meet industry standards so that it can review all employee criminal background checks at all child care providers, and (4) require the State licensing agency to increase the number of current employees it reviews at all child care centers to ensure child care provider compliance with criminal background check requirements.

In written comments on our draft report, Rhode Island partially agreed with our findings, addressed each of our recommendations, and identified the actions it has taken or planned to take to improve compliance. Specifically, it said it would: (1) develop a more centralized process to monitor both family child care homes and child care centers, (2) add a sixth licenser to assist with caseloads, and (3) provide training to new licensors with a focus on monitoring. Lastly, Rhode Island said it has engaged in training with State and local police departments to standardize fingerprinting procedures.

On the basis of Rhode Island's comments on our draft report, we have adjusted our findings to remove 5 individuals from the total count of 113 errors identified in our draft, leaving 108 individuals who did not complete or renew 1 or more of the required 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.<sup>1</sup>

As part of our oversight activities, we conducted a series of audits that assessed States' criminal background check requirements and reviewed their plans and actions to implement the criminal background check requirements established under the CCDBG Act. Appendix B contains a list of prior Office of Inspector General (OIG) reports relating to criminal background check requirements. We conducted this audit as a second phase of our oversight activities to assess whether State agencies' monitoring ensured provider compliance with CCDF requirements related to criminal background checks.

### OBJECTIVE

Our objective was to determine whether Rhode Island'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, education, or both. In fiscal year (FY) 2019, ACF provided \$8.2 billion to States, territories, and Tribes to fund CCDF programs. In FY 2017, the 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.<sup>2</sup> 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

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

<sup>2</sup> 45 § CFR 98.16(o).

licensed, regulated, or registered under State law or receive CCDF funds.<sup>3</sup> Criminal background check requirements apply to any staff member who is employed by a 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.<sup>4</sup>

### **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.<sup>5</sup> According to Federal regulations,<sup>6</sup> 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 the Next Generation Identification system;
- 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 the child care staff member resides and each State in which such staff member resided during the preceding 5 years:
  - the State criminal registry or repository, with the use of fingerprints being required in the State in which the staff member resides and optional in other States;
  - the State sex offender registry or repository; and
  - the State-based child abuse and neglect registry and database.

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<sup>3</sup> 45 CFR § 98.43(a)(1)(i).

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

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

<sup>6</sup> 45 CFR § 98.43.

As of October 1, 2018, Rhode Island had implemented requirements for the FBI fingerprint checks, in-State criminal registry checks, and in-State child abuse and neglect registry checks and conducts these checks for all new (prospective) child care staff in accordance with 45 CFR section 98.43. On July 1, 2019, Rhode Island amended its State statute to include the requirement for NCIC NSOR checks and in-State sex offender registry checks.<sup>7</sup>

### **Extension and Waiver Deadlines for Implementation**

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 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 Rhode Island, 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,<sup>8</sup> 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 for all existing child care staff and
- establish procedures and conduct checks of the NCIC NSOR and inter-State registries for all new (prospective) and existing child care staff.

In its 2019 through 2021 CCDF State plan, Rhode Island requested that ACF approve a waiver to allow additional time for it to become compliant with the in-State criminal history check, the in-State sex offender registry check, and the FBI fingerprint check and NCIC NSOR check for “existing” child care staff, as well as time to become compliant with the NCIC NSOR check for “new or prospective staff.” The waiver request<sup>9</sup> was approved by ACF and allowed additional time (through September 30, 2020) for Rhode Island to ensure that the in-State criminal history

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<sup>7</sup> Although these legislative amendments were implemented and went into effect on September 1, 2019, Rhode Island officials stated the NCIC NSOR and in-State sex offender registry checks were being conducted as of October 1, 2018.

<sup>8</sup> 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 ([https://www.acf.hhs.gov/sites/default/files/occ/fy\\_2019\\_2021ccdf\\_plan\\_preprint\\_11\\_30\\_17.pdf](https://www.acf.hhs.gov/sites/default/files/occ/fy_2019_2021ccdf_plan_preprint_11_30_17.pdf)).

<sup>9</sup> Rhode Island’s waiver request was approved by ACF on November 15, 2019 (effective October 1, 2019).

check, in-State sex offender registry check, FBI fingerprint check, and NCIC NSOR registry check were completed for existing staff and also to ensure that the NCIC NSOR registry check was completed for new or prospective staff. Rhode Island did not request a waiver to allow additional time for checks of the State child abuse and neglect registry for existing employees.

Appendix C contains Rhode Island's implementation status of the new CCDF criminal background checks.

### **Rhode Island's Coordination Efforts for Conducting Criminal Background Checks**

The Rhode Island Department of Human Services (State agency) works with the Rhode Island Department of Children, Youth and Families<sup>10</sup> (State licensing agency), the primary agency responsible for the oversight of background check requirements for licensed providers. For licensed providers, child abuse and neglect clearance checks are conducted through the State licensing agency's Child Care Licensing Unit. Child care providers<sup>11</sup> are mandated to go to the Rhode Island Office of the Attorney General, Rhode Island State police, or local police department where they reside to obtain criminal background checks. A State-level fingerprint check is conducted through the Rhode Island Bureau of Criminal Identification (BCI) within the Attorney General's office. After BCI processes the fingerprints, the fingerprints are then sent to the FBI for a national criminal background check. These criminal background checks are required for child care center staff and operators as well as family child care home employees and operators.

When a family home provider or child care center is first licensed, State licensing inspectors conduct a 100-percent review of employees and household members' files or supporting documentation related to criminal background checks. However, the State licensing agency maintains all criminal background check documentation and separate monitoring reports for all visits for each family home provider, but it does not do so for child care centers. Instead, child care centers are responsible for monitoring and maintaining all documentation for criminal background checks.

In addition, the State licensing agency's subsequent monitoring of child care providers' compliance with criminal background checks is more comprehensive for family home providers than for child care centers. The differences in monitoring for the two types of providers is described in more detail below.

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<sup>10</sup> As of October 28, 2019, the statutory authority for the Rhode Island Child Care Licensing Unit was transferred from the State licensing agency to the Department of Human Services.

<sup>11</sup> For the purposes of this review, we use the term "child care provider" to include family home operators and employees and child care center operators and child care staff.

For family home providers, the State licensing agency monitors compliance with criminal background checks by conducting desk audits, not during an annual, unannounced monitoring visit. Family home providers must have all hiring approved by the State licensing agency, which requires its review and approval of all criminal background checks. This happens any time a staff change is made and is verified, at minimum at every renewal (which occurs every 2 years). At the time of the annual monitoring visit, licensing specialists validate that the individuals in the home are the individuals who are represented as part of the provider record. The State licensing agency maintains criminal background check documentation and separate monitoring reports for all visits in a paper file for each provider. Therefore, State licensing inspectors conduct a 100-percent review of criminal background checks for family home providers, which includes household members and employees, on an annual basis.

The State licensing agency monitors family home providers' compliance with criminal background check requirements by conducting desk audits, conducting annual monitoring visits, and approving all new hires. Specifically, the State licensing agency monitors family home providers' compliance with criminal background check requirements by conducting reviews of documentation it maintains for all family home providers. In addition, the State licensing agency conducts annual monitoring visits during which its inspectors validate that the individuals in the home are the individuals represented as part of the provider record. Finally, the State licensing agency must approve all family home providers' hiring. Altogether these monitoring activities result in a 100-percent annual review of criminal background checks for family home providers, which includes household members and employees.

The State licensing agency monitors child care centers' compliance with the criminal background check requirements primarily through monitoring visits, which do not all cover 100 percent of staff files. The State licensing agency conducts unannounced monitoring visits, which occur annually at minimum. State licensing inspectors have full access to program files and review the entire file for selected staff, with particular attention paid to criminal background checks. The State licensing agency does not maintain criminal background check documentation for child care center staff. Unlike monitoring of family home providers, these site visits do not result in 100-percent annual review of criminal background checks for staff at all child care centers.

State licensing inspectors base the number of staff files they review on the size of the child care center. Generally, in programs with one to three classrooms, 100 percent of staff files are reviewed; in programs with four to eight classrooms, 50 percent to 100 percent of staff files are reviewed; and in programs with nine or more classrooms, 25 percent to 50 percent of staff files are reviewed.

## HOW WE CONDUCTED THIS AUDIT

Rhode Island had 599 licensed<sup>12</sup> family homes<sup>13</sup> and child care centers<sup>14</sup> that received CCDF funding during State FY 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 to 15 family home providers, where we obtained a list of all current employees or household members. We verified this list against the list provided by the State licensing agency. We performed a walkthrough of the provider home to observe anyone in the household and discussed any challenges or obstacles the provider faced with adhering to the criminal background check requirements. In addition, we contacted 15 child care centers to obtain a list of all current employees and validated the list by requesting and reviewing a payroll report that showed all the current employees at the selected location. In total, we reviewed supporting documentation for 589 individuals who were current employees or household members at 30 different child care provider locations.<sup>15</sup>

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.

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

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

## FINDINGS

Rhode Island's monitoring did not ensure provider compliance with State requirements related to criminal background checks at 18 of 30 child care provider locations we reviewed. We found

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<sup>12</sup> We did not include license-exempt providers in this audit.

<sup>13</sup> A family child care provider is one or more individual(s) who provide child care services for fewer than 24 hours per day, per child in a private residence other than the child's residence, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

<sup>14</sup> A child care center is a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day, per child in a nonresidential setting, unless care in excess of 24 hours is due to the nature of the parent(s)' work.

<sup>15</sup> Our audit focused on 15 family homes with 87 current employees or household members and 15 child care centers with 502 current employees.

that providers did not obtain or renew the required criminal background checks for 108 of 589 individuals. Specifically, we found the following criminal background checks were not conducted or renewed:

- in-State sex offender registry checks—for 48 individuals, we found no evidence that the in-State sex offender registry checks were conducted;
- NCIC NSOR checks—for 48 individuals, we found no evidence that the NCIC NSOR checks were conducted;
- in-State criminal history checks—for 31 individuals, in-State criminal history checks were not conducted;
- FBI fingerprint checks—for 25 individuals, FBI fingerprint checks were not conducted; and
- in-State child abuse and neglect registry checks—for 15 individuals, the in-State child abuse and neglect registry checks were not conducted.<sup>16</sup>

In addition, we found that 4 of 15 child care centers did not ensure 39 individuals renewed their expired criminal background checks in a timely manner. Specifically, at these 4 child care centers, we found:

- in-State child abuse and neglect checks for 33 individuals were expired and not renewed,
- FBI background checks for 25 individuals were expired and not renewed, and
- in-State criminal history checks for 19 individuals were expired and not renewed.

These errors occurred because Rhode Island did not effectively monitor the child care provider criminal background checks. By not ensuring that all current employees or household members who supervised or had routine unsupervised contact with children passed all criminal background checks, the State agency potentially jeopardized the safety of children in the care of the 30 selected child care providers.

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<sup>16</sup> The total exceeds 108 because more than 1 type of criminal background check was not completed for 105 individuals.

## **RHODE ISLAND'S MONITORING DID NOT ENSURE PROVIDER COMPLIANCE WITH STATE CRIMINAL BACKGROUND CHECK REQUIREMENTS**

### **Rhode Island State Regulations for Criminal Background Checks**

Any person seeking to operate a facility that is, or is required to be, licensed or registered with the State licensing agency must apply to the Rhode Island Bureau of Criminal Identification or the Department of Children, Youth, and Families for a nationwide criminal-records check. The check must conform to the applicable Federal standards, including the taking of fingerprints to identify the applicant, and any expense associated with providing the criminal-record check must be paid by the applicant or the requesting agency (Rhode Island General Law (RIGL) § 40-13.2-4).

Any person seeking employment, if that employment involves supervisory or disciplinary power over a child or children or involves routine contact with a child or children without the presence of other employees, in any facility that is, or is required to be, licensed or registered with the department, or seeking that employment at the training school for youth, must, after acceptance by the employer of the affidavit required by section 40-13.2-3, apply to the Bureau of Criminal Identification of the State police or the local police department, or the Department of Children, Youth, and Families, for a nationwide criminal-records check. The check will conform to applicable Federal standards, including the taking of fingerprints to identify the applicant (RIGL § 40-13.2-5(a)).

### **Child Care Providers at 18 of 30 Locations Did Not Comply With State Criminal Background Check Requirements**

Rhode Island's monitoring did not ensure provider compliance with State requirements related to criminal background checks for 108 individuals across 18 child care provider locations. Of the 30 child care providers we reviewed, 18 did not meet 1 or more criminal background check requirements for 108 employees.<sup>17</sup>

For the 15 family home providers we reviewed, 27 percent (4 of 15 providers) were not in compliance with State criminal background check requirements. Of the 87 employees or household members reviewed, 5 individuals (6 percent) had not obtained 1 or more of the required criminal background checks.<sup>18</sup>

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<sup>17</sup> The 18 child care providers had current employees or household members who did not complete or did not renew expired criminal background checks as required.

<sup>18</sup> Despite annual unannounced inspections that include a 100-percent review of employee or household member criminal background check documentation, it is still possible for providers to hire individuals or have household members in the home without the State's knowledge during the time between these annual inspections. We found 100 employees or household members who had not obtained 1 or more of the required criminal background checks.

For the 15 child care centers we reviewed, 93 percent (14 of 15 providers) were not in compliance with State criminal background check requirements. Of the 502 employees reviewed, 103 individuals (21 percent) had either not obtained or not renewed 1 or more of the required criminal background checks.

Our analysis of the errors at each provider type (family home providers versus larger child care centers)<sup>19</sup> shows that noncompliance was 71 percent higher for child care centers than for family home providers.

These errors occurred because the State agency's process for monitoring of the criminal background check process for child care centers was not as comprehensive as its process for monitoring family home providers. Specifically, the State agency required the owners of child care centers to obtain all required criminal background checks and to maintain supporting documentation for themselves and for their staff. In addition, Rhode Island limited its review of employee criminal background checks at larger day care centers because it did not have enough staff to review 100 percent of the employees. In Rhode Island, the ratio of State inspectors to child care providers was 1:183, which is below the national recommended average of 1:50–60.<sup>20</sup>

By not ensuring that all current employees or household members who supervised or had routine unsupervised contact with children passed all criminal background checks, the State agency potentially jeopardized the safety of children in the care of the 30 selected child care providers.

## RECOMMENDATIONS

We recommend that the Rhode Island Department of Human Services:

- conduct or renew all required criminal background checks for the 108 individuals we reviewed who did not have all required checks or who had expired background checks at the time of our data request and site visits,
- determine whether it is feasible to develop a centralized process to monitor both family homes and child care centers,

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<sup>19</sup> We selected larger child care centers to include the highest number of children being serviced.

<sup>20</sup> The National Association for Regulatory Administration (NARA) recommends an average caseload not to exceed 50–60. *NARA's Call to Action – Strong Licensing: The Foundation for a Quality Early Care and Education System* (2010). Available online at [https://www.naralicensing.org/assets/docs/call\\_to\\_action\\_2010.pdf](https://www.naralicensing.org/assets/docs/call_to_action_2010.pdf). Last accessed August 8, 2019.

- determine whether it is feasible to increase the ratio of State licensing inspectors to child care providers to meet industry standards so that it can review all employee criminal background checks at all child care providers, and
- require the State licensing agency to increase the number of current employees it reviews at all child care centers to ensure child care provider compliance with criminal background check requirements.

### **RHODE ISLAND COMMENTS**

In written comments on our draft report, the State agency said that on October 27, 2019, the duties of licensing and monitoring child care facilities transitioned from the State licensing agency to the State agency “to ensure more comprehensive and efficient business and monitoring practices for licensed child care providers statewide.” In addition, both the State agency and the State licensing agency said they partially agree with our findings and described the actions the State agency has taken or plans to take in response to our recommendations. These actions include: (1) developing a more centralized process to monitor both family child care homes and child care centers, (2) adding a sixth licenser to assist with caseloads, and (3) providing training to new licensers with a focus on monitoring. The State agency also engaged in training with Rhode Island State Police and local police departments to standardize fingerprinting procedures. The State agency also said that it has completed all the background checks for the individuals identified in our audit.<sup>21</sup>

In response to our findings, the State agency commented that since it assumed legal responsibility for child care licensing, significant programmatic improvements have been made, including improvements to better comply with criminal background check requirements. The State licensing agency stated that there were compounding factors that contributed to our findings and that some of those factors were not within its control. Specifically, the State licensing agency stated that although the process and components of a background check were widely communicated and applied in State and local law enforcement, the notification letters that came from law enforcement agencies were not consistent. This resulted in instances in which OIG found Rhode Island noncompliant with background check requirements because even when some of the components of the checks were conducted, they were not properly documented.

Additionally, the State licensing agency said it facilitated State and NCIC NSOR checks for all child care center staff, based on submitted staff lists. In some cases, the program did not submit the name to be cleared. The State licensing agency attributed some of our findings to the timing of annual monitoring. It stated that the annual reviews may have occurred before

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<sup>21</sup> We did not verify that the State agency completed these checks.

an individual was hired, “making it impossible for the [S]tate’s established oversight entity to determine if the program was out of compliance when a staff list was submitted.”

Rhode Island’s comments are included in their entirety as Appendix F.

### **OFFICE OF INSPECTOR GENERAL RESPONSE**

On the basis of the State agency’s response, we conducted additional analysis of background check documentation that the State licensing agency provided during our fieldwork. We have updated our draft report findings related to the in-State sex offender registry checks, the NCIC NSOR checks, the FBI fingerprint checks, and the in-State criminal history checks, resulting in the removal of 5 individuals from the total count of 113 individuals without required background checks identified in our draft report, leaving 108 individuals for whom providers did not complete or did not renew 1 or more of the required background checks. We have not verified the State agency’s statement that it has conducted all of the required criminal background checks for the 108 individuals mentioned in this report.

Specifically, of the 108, we could not determine whether 43 individuals obtained either of the required sex offender registry checks at the time of our request because the notification letters did not mention which components of the background check were completed. Because there was a lack of specificity in the notification letters, we contacted the associated law enforcement agencies to obtain an understanding of the background check process at each of law enforcement agencies and determined that not all law enforcement agencies were conducting the sex offender checks as the State licensing agency expected. Furthermore, we did not receive any additional documentation from the State licensing agency to support that it facilitated the in-State sex offender and NCIC NSOR checks by submitting staff lists for all child care center staff. Therefore, we had no assurance the checks were conducted and stand by our findings.

We also recognize the inherent risk that exists for the State when child care providers hire new individuals between monitoring inspections, which results in periods during which the State relies on the provider to follow State rules and regulations. We agree with the State agency’s approach to hire additional staff dedicated to processing and monitoring criminal background checks for child care providers and staff and to develop a more centralized process to monitor both family child care homes and child care centers. These steps are likely to result in an increased review of all criminal background checks at all child care centers.

## APPENDIX A: AUDIT SCOPE AND METHODOLOGY

### SCOPE

In selecting which State(s) to include in our 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 the 2016 through 2018 CCDF State Plans,
- States in which we may not have conducted criminal background check work recently or those in which we had findings related to criminal background check requirements in foster care or Head Start audits,
- States where news reports have raised concerns related to criminal background check requirements,
- total CCDF funding within the State, and
- total children served by CCDF within the State.

In addition to the factors above, the six States<sup>22</sup> included in OIG’s prior CCDF Phase I audit series (State implementation of CCDBG criminal background check requirements) were included in CCDF Phase II (State monitoring of child care provider compliance). Based on our review of these factors, we selected Rhode Island. We selected and reviewed a nonstatistical sample of 30 of 599 family homes and child care centers that received CCDF funding during 2017 and 2018 (State FY 2018) to improve our understanding of the State’s monitoring of child care provider compliance with State criminal background check requirements. Our provider selection was based on the following risk factors:

- **Geographic area (the geographic division of the State identified by the State licensing agency):** For licensing purposes, Rhode Island is divided into five geographic areas. We determined the geographic area each provider was located within and grouped the providers by area accordingly. We selected at least one family home provider and one child care 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).

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<sup>22</sup> The six States included 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 State FY 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 household members or employees. We verified this list against the list provided by the State agency. We performed a walkthrough of the provider home to observe anyone in the household and discussed any challenges or obstacles the provider faced in adhering to the criminal background check requirements. In addition, we contacted 15 child care center providers to request a list of all current employees and validated the list by requesting and reviewing a payroll report that showed all current employees at the selected location. In total, we reviewed supporting documentation for 589 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 performed fieldwork at the Rhode Island Department of Human Services in Cranston, Rhode Island, and various child care providers from January 31 through September 20, 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 have been fully implemented within the State;
- identified criminal background check requirements that have not yet been implemented within the State;
- interviewed State agency officials to gain an understanding of the State's monitoring process (including frequency of visits) over provider compliance with criminal background check requirements established under the CCDBG Act;
- interviewed State agency officials to identify any challenges or barriers that the State experienced with monitoring providers to ensure the new criminal background check requirements are being met;

- interviewed child care centers and family home providers to identify any challenges or barriers they experienced complying with the new CCDF criminal background check requirements;
- contacted 15 child care center providers to obtain a payroll list of all current employees at each of the centers and obtained supporting documentation from the State's system to determine whether all the required criminal background checks were completed;
- 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 the State's system to determine whether all the required criminal background checks were completed;
- reviewed and analyzed supporting documentation for all 589 employees/household members from 15 family homes and 15 child care centers that received CCDF funding during State FY 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 OIG ISSUED REPORTS RELATING TO  
CRIMINAL BACKGROUND CHECK REQUIREMENTS**

<b>Report Title</b>	<b>Issue Date</b>
<i>New Jersey's Monitoring Did Not Ensure Child Care Provider Compliance With State Criminal Background Check Requirements at 9 of 30 Providers Reviewed (A-02-19-02004)</i>	7/24/2020
<i>New Hampshire's Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 21 of 30 Providers Reviewed (A-01-18-02504)</i>	4/3/2020
<i>New Mexico's Monitoring of Childcare Providers Generally Ensured Provider Compliance With State Criminal Background Check Requirements at 30 Child care Providers Reviewed (A-06-19-07001)</i>	2/19/2020
<i>Georgia's Monitoring of Childcare Providers Ensured Provider Compliance With State Criminal Background Check Requirements (A-04-19-03580)</i>	2/12/2020
<i>Tennessee's Monitoring Ensured Compliance With Criminal Background Check Requirements at 28 of the 30 Childcare Providers Reviewed (A-04-19-02023)</i>	1/15/2020
<i>All Six States Reviewed Had Partially Implemented New Criminal Background Check Requirements for Childcare Providers, and Five of the States Anticipate Full Implementation by Fiscal Year 2020 (A-05-19-00015)</i>	8/23/2019
<i>New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers (A-02-17-02011)</i>	1/8/2019
<i>Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-09-17-01003)</i>	9/19/2018
<i>Colorado Implemented Many New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-07-17-06076)</i>	9/17/2018
<i>Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-04-18-03578)</i>	7/27/2018
<i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-01-18-02500)</i>	7/9/2018
<i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements (A-05-17-00047)</i>	6/4/2018

**APPENDIX C: RHODE ISLAND'S IMPLEMENTATION STATUS OF  
CCDF CRIMINAL BACKGROUND CHECKS**

<b>Criminal Background Check Requirements</b>	<b>Implementation Status as of 9/30/2018</b>	<b>OIG Analysis of State's Implementation Status (Includes a Review of Rhode Island's Laws, Regulations and Guidance)</b>
FBI Fingerprint <i>45 CFR 98.43(b)(1)</i>	Implemented	RI General Law 40-13.2-4 and 40-13.2-5
NCIC's National Sex Offender Registry <i>45 CFR 98.43(b)(2)</i>	Implemented	RI General Law 40-13.2-2, 40-13.2-4 and 40-13.2-5*
In-State Criminal Registry <i>45 CFR 98.43(b)(3)(i)</i>	Implemented	RI General Law 40-13.2-4 and 40-13.2-5
In-State Sex Offender Registry <i>45 CFR 98.43(b)(3)(ii)</i>	Implemented	RI General Law 40-13.2-2, 40-13.2-4 and 40-13.2-5*
In-State Child Abuse and Neglect Registry <i>45 CFR 98.43(b)(3)(iii)</i>	Implemented	RI General Law 40-13.2-4 and 40-13.2-5
Inter-State Criminal Registry <i>45 CFR 98.43(b)(3)(i)</i>	Implemented	RI General Law 40-13.2-2, 40-13.2-4 and 40-13.2-5*
Inter-State Sex Offender Registry <i>45 CFR 98.43(b)(3)(ii)</i>	Implemented	RI General Law 40-13.2-2, 40-13.2-4 and 40-13.2-5*
Inter-State Child Abuse and Neglect Registry <i>45 CFR 98.43(b)(3)(i)</i>	Implemented	RI General Law 40-13.2-2, 40-13.2-4 and 40-13.2-5*

\* The table above lists Rhode Island's legislative language in effect as of September 1, 2019. Because these legislative amendments were implemented after we concluded our fieldwork, we did not use them for the audit. Rather, we used the language that was in effect at the time.

## 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<sup>23</sup> (45 CFR § 98.43(b)(1)) and (2) a search of the NCIC NSOR for child care staff members or prospective staff members (45 CFR § 98.43(b)(2)).

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

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

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<sup>23</sup> The FBI fingerprint check, Next Generation Identification (formally the Integrated Automated Fingerprint Identification System), provides the criminal justice community with the world’s largest and most efficient electronic repository of biometric and criminal history information.

## STATE REGULATIONS

All individuals who are responsible for the direct supervision of children and are to be included in staff/child ratio are required to be cleared and approved in accordance with the Rhode Island Department of Children, Youth and Families' policies on Criminal Records Check and Clearance of Agency Activity checks, prior to the assignment of child care duties, and every 5 years thereafter (RIGL § 40-13.2-4).

The applicant and any proposed assistants, including emergency assistants, must undergo statewide and nationwide criminal records checks, including fingerprinting. All members of the applicant's household must undergo a statewide criminal record check through the Attorney General's Bureau of Criminal Identification. Results of all required criminal records checks must be received prior to licensure for the operator and household members and prior to employment for assistants and emergency assistants (RIGL § 40-13.2-5(a)).

Any person seeking to operate a facility that is, or is required to be, licensed or registered with the department, must apply to the Rhode Island Bureau of Criminal Identification, or the Department of Children, Youth and Families, for a nationwide criminal-records check. The check will conform to the applicable Federal standards, including the taking of fingerprints to identify the applicant, and any expense associated with providing the criminal-records check must be paid by the applicant or requesting agency (RIGL § 40-13.2-4).

Any person seeking employment, if that employment involves supervisory or disciplinary power over a child or children or involves routine contact with a child or children without the presence of other employees, in any facility that is, or is required to be, licensed or registered with the department, or seeking that employment at the training school for youth, must, after acceptance by the employer of the affidavit required by § 40-13.2-3, apply to the Bureau of Criminal Identification of the State police or the local police department, or the Department of Children, Youth and Families, for a nationwide, criminal-records check. The check will conform to applicable Federal standards including the taking of fingerprints to identify the applicant (RIGL § 40-13.2-5(a)).

The employer will maintain on file, subject to inspection by the department, evidence that criminal-records checks have been initiated on all employees seeking employment after August 1, 1985, and the results of the checks (RIGL § 40-13.2-5(d)).

It will be the responsibility of the Bureau of Criminal Identification of the State police or the local police department, or the Department of Children, Youth and Families, to conduct the nationwide, criminal records check pursuant to this section. The nationwide, criminal-records check will be provided to the applicant for employment without charge (RIGL § 40-13.2-5(f)).

**APPENDIX E: NUMBER OF INDIVIDUALS NOT IN COMPLIANCE WITH CRIMINAL  
BACKGROUND CHECK REQUIREMENTS AT 30 SELECTED PROVIDERS**

<b>Provider Number</b>	<b>Provider Type</b>	<b>Number of Individuals* Reviewed</b>	<b>Number of Individuals Not in Compliance With Criminal Background Check Requirements</b>
1	Family home	9	2
2	Family home	6	0
3	Family home	6	0
4	Family home	4	0
5	Family home	5	0
6	Family home	5	0
7	Family home	5	0
8	Family home	5	1
9	Family home	4	0
10	Family home	8	0
11	Family home	5	0
12	Family home	4	0
13	Family home	8	0
14	Family home	6	1
15	Family home	7	1
<b>Totals for Family Homes</b>		<b>87</b>	<b>5</b>
16	Child care center	38	4
17	Child care center	14	1
18	Child care center	28	2
19	Child care center	23	10
20	Child care center	21	3
21	Child care center	43	6
22	Child care center	46	2
23	Child care center	44	10
24	Child care center	46	12
25	Child care center	20	0
26	Child care center	19	1
27	Child care center	27	3
28	Child care center	27	6
29	Child care center	41	5
30	Child care center	65	38
<b>Totals for Child Care Centers</b>		<b>502</b>	<b>103</b>
<b>Combined Totals for Family Homes and Child Care Centers</b>		<b>589</b>	<b>108</b>
* The term "individuals" refers to the current number of employees or household members included in our audit.			

## APPENDIX F: RHODE ISLAND COMMENTS



To: David Lamir  
Regional Inspector General for Audit Services

From: Courtney Hawkins, Director  
Rhode Island Department of Human Services (DHS)

CC: Kevin Aucoin, Acting Director  
Rhode Island Department of Children, Youth and Families (DCYF)

RE: Draft Report from Office of Inspector General (OIG) Background Report, Department of Health and Human Services, regarding review of Rhode Island's Compliance with State Criminal Background Checks

Report Number A-01-18-02505

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### **BACKGROUND:**

The Rhode Island Department of Human Services (DHS) serves as the CCDF lead agency for the State of Rhode Island. As such, RI DHS administers the Child Care Assistance Program (CCAP,) RI's subsidized child care benefit program, serving more than 12,000, low-income and working families each month.

On October 27, 2019, the Child Care Licensing Unit transitioned from Rhode Island's Department of Children, Youth and Families to the Rhode Island Department of Human Services. This move was established to ensure more comprehensive and efficient business and monitoring practices for licensed child care providers statewide. Transitioning the licensing unit provided DHS with a unique opportunity to revisit the policies and procedures and develop concrete process improvement plans to streamline day to day monitoring and enforcement of child care services.

This audit represents activities occurred from January 31, 2019 to September 20, 2019, prior to the transition of the Licensing Unit to DHS.

**The draft OIG report indicates that Rhode Island's monitoring did not ensure child care provider compliance with State Criminal Background Check Requirements for at least 18 of 30 providers reviewed.**

### **RI DEPARTMENT OF HUMAN SERVICES' RESPONSE:**

The Rhode Island Department of Human Services partially agrees with the findings and respectfully suggests that since DHS assumed legal responsibility in this area significant programmatic improvements have been made with regard to compliance with Criminal Background Check Requirements.

### **RI DCYF's RESPONSE:**

The Rhode Island Department of Children, Youth and Families (DCYF) is in partial consensus related to the findings of the recent audit by the Office of the Inspector General related to comprehensive background checks on employees of Child Care Centers and Family Child Care Homes. It is significant to note that there are compounding factors that contribute to these issues, and that the DCYF does not agree some factors were in the Department's control.

First, while the process and components of a background check were widely communicated and applied in state and local law enforcement, the notification letters that came from law enforcement agencies were not consistent. Ultimately, this resulted in the citations of non-compliances where the DCYF believes a component of a background check was conducted, but not properly documented (e.g. in state criminal and national fingerprint checks).

Additionally, the DCYF facilitated state and national Sex Offender Registry checks for all child care center staff, based on the submitted staff lists from the licensed programs. In some cases, the programs did not submit the name to be cleared. While annual monitoring visits do include a review of background check documentation, the annual reviews may have occurred before an individual was hired, making it impossible for the state's established oversight entity to determine if the program was out of compliance when a staff list was submitted.

As a result, the DCYF, in its ongoing effort to ensure children's health and safety, fully supported the transition of the Child Care Licensing Unit to the RI Department of Human Services, which was better poised to invest additional resources into the unit and address some of the larger systemic challenges for background check compliance.

#### **CHRONOLOGY OF EVENTS:**

As the Draft Report indicates, the review of the 30 child care providers occurred from January 31, 2019 to September 20, 2019. As of October 27, 2019, per the passage of Article 4 in the State of Rhode Island's FY2020 State Budget in June 2019, the duties of licensing and monitoring child care facilities transitioned from the Department of Children, Youth, and Families (DCYF) to the Department of Human Services (DHS).

#### **DRAFT AUDIT RECOMMENDATIONS:**

- **Conduct or renew all required criminal background checks for the 113 individuals we reviewed who did not have all required checks or who had expired background checks at the time of our data request and site visits,**

**CORRECTIVE ACTION:** All criminal background checks have been completed for the 113 individuals mentioned in the Draft Report.

#### **DRAFT REPORT RECOMMENDATION:**

- **Determine whether it is feasible to develop a centralized process to monitor both family homes and child care centers,**

## **CORRECTIVE ACTION:**

Upon transfer of the responsibilities DHS focused its attention on the creation of a Business Plan to develop a more centralized process to monitor both family child care homes and child care centers. DHS contracted with Public Consulting Group, Inc. of Boston, Massachusetts to create the **Rhode Island Department of Human Services Child Care Licensing Unit Business Plan** for the DHS Child Care Licensing Unit.

The Business Plan:

- Created a mission, vision and values for the unit;
- Created a strong onboarding plan to teach licensors how and what to license from the ground up as soon as they were hired, which also involved extensive time to practice their skills;
- Established workflows for every critical task in the Department;
- Streamlined paperwork;
- Audited the computer system and files to ensure awareness of what information DHS had and what was needed to get moving forward; and
- Established accountability systems for all team members to routinize basic standards set for the department.

The Business Plan addresses all aspects of child care licensing and monitoring. Standard 1.11 entitled “Staff Qualifications and Ongoing Professional Development” particularly addresses the concerns set forth in the Draft Report pertaining to Criminal Background Checks. All individuals who are responsible for direct supervision of children are to be included in staff/child ratio, are required to be cleared and approved in accordance with Department’s policies on Criminal Records Checks and Clearance of Agency Activity Checks, prior to the assignment of child care duties, and every five years thereafter. Within thirty (30) days of written notice of disqualifying information, the applicant or staff may appeal the findings of the Criminal Records Checks and/or the Clearance of Agency Activity Check. DHS conducts an orientation which includes information regarding:

- a) DHS Child Care and School Age Regulations for Licensure;
- b) state law governing child abuse and neglect and reporting procedures; and
- c) program policies, procedures, and operations, as documented in the DHS Handbook.

## **DRAFT REPORT RECOMMENDATION:**

- **Determine whether it is feasible to increase the ratio of State licensing inspectors to child care providers to meet industry standards so that it can review all employee criminal background checks at all child care providers, and**

At the present time DHS employs five full time licensors, an assistant administrator, an administrator and an implementation aide; a 6<sup>th</sup> licensor position is presently moving through the ranks for hire. At no point in 2019 did DCYF have a full monitoring staff. In addition, we are adding the 6<sup>th</sup> licensor, we have extensively worked with licensors regarding effective time management in the field and have given the assistant administrator a small caseload to help ease the caseload.

## RECOMMENDATION

- Require the State licensing agency to increase the number of current employees it reviews at all child care centers to ensure child care provider compliance with criminal background check requirements.

## CORRECTIVE ACTION:

In addition to the staffing changes referred to above, DHS edited the monitoring reports, onboarded new licensors and taught them what to look for when they are out monitoring, and included in the new universal application for centers the need to send any background checks for new employees once a year.

On June 26, 2020 DHS and the Rhode Island Office of the Attorney General ( OAG ) executed a Memorandum of Understanding (MOU) for comprehensive multilevel criminal backgrounds checks to be performed by the OAG Bureau of Criminal Identification (BCI )located in the recently opened Julius C. Michelson Customer Service Center, a 26,000 square foot state of the art building located adjacent to DHS' headquarters in the Pastore Complex in Cranston, RI. The MOU provides for transfer of funds from DHS to OAG for the installation, software and maintenance of a fingerprint machine and funding for the cost of a contract employee at BCI to assure compliance with comprehensive child care background checks required pursuant to 42 USC 9858(f). Pursuant to the MOU the OAG will email to DHS the results of all background checks for registered/licensed day care providers, employees and individuals who are present in the home and may have access to children who are cared for by a child care provider. In addition, upon receipt of the results of the comprehensive criminal background checks the OIG will notify the child care owner or operator of the results.

DHS has also engaged in training with Rhode Island State Police and local police departments to standardize the procedures to be followed when an individual who is subject to the assortment of statutorily mandated criminal background checks appears at the State Police Headquarters or at a local police department for purposes of fingerprinting. The DHS Assistant Administrator for Child Care Licensing ensured that all of the incorrect background checks identified as part of the audit were corrected and assured that every center implemented a plan to obtain the correct fingerprints for their teams.

With the benefit of the HHS OAG Draft Audit report and legislative changes Rhode Island has quickly moved to take measures to put into place a comprehensive plan to ensure compliance with State Criminal Background Check Requirements which will serve to enhance the protection of children receiving day care services.

Please reach out to my Executive Assistant, Cristina LaPaz with any questions or concerns. She can be reached by email at [Cristina.Lapaz@dhs.ri.gov](mailto:Cristina.Lapaz@dhs.ri.gov).

Sincerely,



Courtney E. Hawkins  
Director, RI Department of Human Services