

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

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

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**July 2020
A-07-19-06085**

Office of Inspector General

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Report in Brief

Date: July 2020

Report No. A-07-19-06085

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 Utah'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 sample of 30 out of 872 licensed family child care providers and child care centers that received CCDF funding during State fiscal year 2018. We reviewed 15 family child care providers (at which we conducted unannounced site visits) and 15 child care centers.

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

What OIG Found

Utah's monitoring process generally ensured provider compliance with State requirements related to criminal background checks at the 30 child care provider locations we reviewed. Although 12 of the 30 child care providers had employees who did not have the required criminal background checks, the errors related to only 20 of 1,338 (1.5 percent) unique child care employees whom we reviewed.

These errors occurred because the child care providers did not always update the State with the necessary information to meet its requirements related to criminal background checks. Although Utah performs at least two inspections of each facility per year, it relies only on information supplied by providers and does not take advantage of wage information maintained by the Utah Department of Workforce Services to identify individuals who were paid by a child care provider, but not reported to Utah.

Thus, the safety and well-being of some children were potentially at risk because 20 individuals were providing child care without having the required criminal background checks.

What OIG Recommends and Utah's Comments

We recommend that Utah consider improving its policies and procedures for the monitoring of criminal background checks so that it routinely obtains wage information from the Utah Department of Workforce Services prior to the inspections of child care providers, so as to reduce the State's dependence on provider disclosure of prospective covered individuals.

Utah accepted our recommendation and described the actions that it planned to take to address it. These actions include establishing written policies and procedures to routinely obtain wage information from the Department of Workforce Services, which the State agency said would be reviewed prior to inspections at child care facilities as an additional method to ensure that every covered individual has passed the required background check before providing child care.

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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. 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 the Utah Department of Health's (State agency) 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 2018, CCDF served approximately 1.3 million children under the age of 13 from 813,200 low-income working families each month.

Under the CCDBG Act, each lead agency must certify in its State plan that it has monitoring policies and practices applicable to all 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 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 child care 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 (HHS) implemented the CCDBG Act's criminal background check requirements for States, territories, and Tribes in a Final Rule issued in September 2016 (CCDF Program Final Rule, 81 Fed. Reg. 67438, 67494 (Sept. 30, 2016)). According to Federal regulations (45 CFR § 98.43), States must have requirements, policies, and procedures in place to conduct comprehensive criminal background checks. These regulations require States to conduct criminal background checks for 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 (NCIC) National Sex Offender Registry; 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.

³ 45 CFR § 98.43(a)(1).

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

The State Agency’s Implementation of Criminal Background Checks

As of March 30, 2019, the State agency had implemented requirements for all criminal background check components and conducts these checks for all new child care staff (prospective covered individuals), in accordance with 45 CFR § 98.43. All prospective covered individuals must pass a criminal background check (which is completed by the Child Care Licensing (CCL) Program, part of the State agency) before becoming involved with a child care program. A criminal background check uses data from eight different sources (Appendix C), which encompass three in-State checks, two national-level checks, and three interstate checks, in accordance with Utah Code, Titles R381-100, *Child Care Center Rule Interpretation Manual*, and R430-50, *Residential Certificate Child Care Rule Interpretation Manual*. See the Table below.

Table: Implemented Criminal Background Checks in Utah

Utah	National	Interstate
<p>1. Criminal registry</p> <ul style="list-style-type: none"> • Uses fingerprints • Includes juvenile records • Fingerprints not required for minors, except 16- or 17- year-old caregivers 	<p>4. FBI Next Generation Identification</p> <ul style="list-style-type: none"> • Uses fingerprints • Retains fingerprints for a real-time criminal report from FBI (Rap Back service)⁵ • For individuals 18 years old and older 	<p>6. Criminal registry</p> <ul style="list-style-type: none"> • In any other State in which the individual has resided in the past 5 years • For individuals 18 years old and older
<p>2. Sex offender registry</p> <ul style="list-style-type: none"> • For individuals 12 years old and older • Checks all facility addresses for names of registered sex offenders living in vicinity of child care facility 	<p>5. NCIC National Sex Offender Registry</p> <ul style="list-style-type: none"> • For individuals 18 years old and older 	<p>7. Sex offender register registry</p> <ul style="list-style-type: none"> • In any other State in which the individual has resided in the past 5 years • For individuals 18 years old and older
<p>3. Child abuse and neglect registry and database</p> <ul style="list-style-type: none"> • For individuals 12 years old and older 		<p>8. Child abuse and neglect registry and database</p> <ul style="list-style-type: none"> • In any other State in which the individual has resided in the past 5 years • For individuals 18 years old and older

Appendix C contains a further breakdown of the State agency’s implementation status of the new CCDF criminal background checks.

⁵ The Rap Back Service, which is part of the FBI’s Next Generation Identification system, allows authorized agencies to receive notification of criminal activity on the parts of individuals who hold positions of trust (e.g., school teachers, day care workers) or who are under criminal justice supervision or investigation, thus eliminating the need for repeated background checks on a person from the same applicant agency.

The State Agency’s Coordination Efforts for Conducting Criminal Background Checks

Individuals and businesses that provide care for children are licensed and regulated by Utah’s CCL Program unless they are specifically exempt under State law. The State agency uses the CCL database to monitor covered individual criminal background checks. The CCL staff conducts one annual announced and one annual unannounced inspection for every facility. In preparation for these inspections, the CCL staff verifies the names of all covered individuals associated with the facility who are listed in the CCL database. If there are any concerns, such as denied individuals or incomplete criminal background checks, CCL staff note those names on their inspections checklist to verify during the actual inspection.

Verification of the names of all individuals present during the inspection is also part of the inspection process. All covered individuals (owners, employees, caregivers, volunteers except for the parent of the child, household members 12 years and older, and anyone who has unsupervised access with a child in care) are required to pass a criminal background check before they become involved with the facility.

Providers whose caregivers are not in compliance with these requirements receive findings and sanctions. These providers can also be disqualified from receiving CCDF assistance and can eventually lose their licenses if they do not carry out corrective actions.

HOW WE CONDUCTED THIS AUDIT

We analyzed and tested a nonstatistical sample of 30 out of 872 licensed⁶ family child care providers⁷ and child care centers⁸ that received CCDF funding during State FY (SFY) 2018. We reviewed 15 family child care providers and 15 child care centers, for a total of 30 licensed child care providers.

To ensure that all of the employees and household members of the 15 family child care providers had completed criminal background checks if required, we conducted unannounced site visits to each provider and compared the State agency’s list of individuals who had a completed criminal background check, to those individuals who were present or living at the provider’s home at the time of our visits.

⁶ We did not include license-exempt providers in this audit.

⁷ In Utah, a family child care provider is a person or persons licensed under Utah Administrative Code, Title R430-50-3, who provides child care in the home in which they reside. Federal regulations use the term “family child care provider” for these individuals; Utah regulations use the term “residential child care provider.” For this report, we will use the term “family child care provider.”

⁸ In Utah, a child care center is defined as a person or persons licensed under Utah Administrative Code, Title R381-100-3, who provide(s) care in a place other than the provider’s home or the child’s home.

To ensure that all of the employees of the 15 child care center providers had completed criminal background checks if required, we obtained from each center a list of employees who worked between January 1, 2018, and April 30, 2019, and wage information for the child care centers from the Utah Department of Workforce Services (DWS), and compared both to the information in the CCL database, which identified those individuals who had a completed criminal background check.

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.

FINDINGS

The State agency's monitoring process generally ensured provider compliance with State requirements related to criminal background checks at the 30 child care provider locations we reviewed. Although 12 of the 30 child care providers had employees who did not have the required criminal background check, the errors related to only 20 of 1,338 (1.5 percent) unique child care employees whom we reviewed.

The safety and well-being of some children were potentially at risk because 20 individuals were providing child care without having the required criminal background checks.

THE STATE AGENCY'S MONITORING PROCESS GENERALLY ENSURED CHILD CARE PROVIDER COMPLIANCE WITH STATE CRIMINAL BACKGROUND CHECK REQUIREMENTS

Utah State Regulations for Criminal Background Checks

All prospective covered individuals must pass a CCL background check before becoming involved with a child care program (Utah Administrative Code, Titles R381-100, *Child Care Center Rule Interpretation Manual*, and R430-50, *Residential Certificate Rule Interpretation Manual*). Before a prospective covered individual can become involved with child care in the program, the provider is required to: (a) have the individual submit an online background check form, (b) authorize the individual's background check form, (c) pay all required fees, and (d) receive written notice from the CCL Program that the individual has passed the criminal background check.

For details on Federal and State requirements, see Appendix D.

Twelve of Thirty Child Care Providers Did Not Always Comply With State Criminal Background Check Requirements

Although the State agency's monitoring process generally ensured provider compliance with State requirements related to criminal background checks, it did not always ensure provider compliance with State requirements related to criminal background checks for 12 of the 30 child care providers (20 of the 1,338 child care employees) reviewed. (See Appendix E.) Specifically, for the 30 child care providers we found the following errors:

- Six of the 15 family child care providers were not in compliance with State criminal background check requirements because 8 employees or household members were without the required criminal background checks. During our site visits, we identified a total of 88 employees or household members at these providers. The State agency confirmed that eight of these individuals did not have the required criminal background checks.
- Six of the 15 child care centers were not in compliance with State criminal background check requirements because 12 employees were without the required criminal background checks. We identified a total of 1,250 employees at the child care centers by combining a list of employees from the centers and the wage information from DWS. The State agency confirmed that 12 of these individuals did not have the required criminal background checks.⁹

THE STATE AGENCY'S MONITORING PROCESS RELIES ON INFORMATION FROM PROVIDERS RATHER THAN EMPLOYMENT DATA THAT ARE READILY AVAILABLE

These errors occurred because the child care providers did not always update the State agency with the necessary information to meet the State requirements related to criminal background checks. Although the State agency's CCL staff performs at least two inspections of each facility per year, it relies on the (1) family child care providers to inform it when a new household member who requires a criminal background check is added and (2) child care centers to inform it when a new employee is hired.

By relying only on information supplied by providers, the State agency does not take advantage of a more complete employment data source maintained by DWS, another branch of the State's government.

⁹ The 1,250 employees worked between January 1, 2018, and April 30, 2019. We used the employment start date obtained from the child care centers and allowed 20 calendar days of employment without a criminal background check before concluding that an employee was not in compliance with the State criminal background check requirements. We determined the 20 days by allowing 1 day for the providers to submit the application; 14 days for prospective covered individuals and providers to complete the application as specified in Utah Administrative Code, Title R381-100-8; and 5 days for the State agency to complete the criminal background check.

Although the State agency generally complied with criminal background check regulations, by not ensuring that all employees or household members who supervised or had routine unsupervised contact with children met all employment regulations—to include having the required criminal background checks—the State agency potentially jeopardized the safety of some of the children in its care.

RECOMMENDATION

We recommend that the Utah Department of Health consider improving its policies and procedures for the monitoring of criminal background checks so that it routinely obtains wage information from DWS prior to the inspections of child care providers, so as to reduce the State agency's dependence on provider disclosure of prospective covered individuals.

STATE AGENCY COMMENTS

In written comments on our draft report, the State agency accepted our recommendation and described the actions that it planned to take to address it. These actions include establishing written policies and procedures to routinely obtain wage information from DWS, which the State agency said would be reviewed prior to inspections at child care facilities as an additional method to ensure that every covered individual has passed the required background check before providing child care. The State agency added that it has received approval from DWS to access the wage information and stated that it expects to implement the process by July 15, 2020. The State agency's comments appear in their entirety as Appendix F.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We considered several factors when selecting the State(s) to include in this series of OIG audits. Because Utah had completely implemented the eight requirements specified in the CCDBG Act, we did not select it as one of the six States included in OIG's prior CCDF Phase I (State implementation of CCDBG criminal background check requirements) audit series.¹⁰ We did include Utah in the CCDF Phase II (State monitoring of child care provider compliance) audit series.

We selected and reviewed a nonstatistical sample of 30 out of 872 family child care providers and child care centers (footnotes 7 and 8) that received CCDF funding between July 1, 2017, and June 30, 2018 (SFY 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 selection of providers on the following risk factors:

- **Geographic area (the geographic division of the State identified by the State agency):** For licensing purposes, Utah is divided into six geographic areas. We used the State-identified list of providers for each region and selected a minimum of two family child care providers and two child care center providers within each geographic area to ensure coverage across the State.
- **CCDF funding received (the total amount of CCDF funding received for SFY 2018):** We selected the providers with the highest dollar amount received per region that did not have a State audit completed between January 1, 2019, and March 31, 2019, which was immediately prior to our intended site visits.

We conducted unannounced site visits at the 15 family child care providers, where we compared the State agency's list of employees or household members to those individuals who were present or living at the providers at the time of our visits. We performed a walkthrough of each provider home to observe persons in the household and, when possible, discussed any challenges or obstacles the provider faced in complying with the criminal background check requirements.

To ensure that all of the employees of the 15 child care center providers had completed criminal background checks if required, we obtained from each center a list of employees who worked between January 1, 2018, and April 30, 2019, and wage information for the child care centers from DWS, and compared both to the information in the CCL database, which identified those individuals who had a completed criminal background check.

¹⁰ The six States included in CCDF Phase I were New York, Nevada, Colorado, Georgia, New Hampshire, and Illinois (Appendix B).

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 Utah Department of Health in Salt Lake City, Utah, and at various family child care providers, from February 2019 through April 2020.

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 whether State-required criminal background check requirements have been fully 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 that the new criminal background check requirements are being met;
- conducted unannounced site visits at 15 family child care providers and
 - identified the employees or household members at these providers and compared those individuals to a list we obtained from the State agency that contained the names of individuals in each home who had criminal background checks,
 - performed a walkthrough of each provider home to observe persons in the household and to ensure that they had criminal background checks if required, and
 - interviewed family child care providers to identify any challenges or obstacles they experienced in complying with the criminal background check requirements;

- contacted 15 child care centers and
 - obtained from each center a list of all employees who worked between January 1, 2018, and April 30, 2019,
 - obtained wage information for each of the 15 child care centers from DWS, and
 - compared the CCL database to (1) the information we obtained from the child care centers and (2) the information received from DWS to determine whether the employees of child care centers that we reviewed had undergone complete criminal background checks;

- discussed the results of our audit with State agency officials on February 24, 2020.

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 RELATING TO
CRIMINAL BACKGROUND CHECK REQUIREMENTS**

Report Title	Report Number	Date Issued
<i>Illinois' Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 12 of 30 Providers Reviewed</i>	<u>A-05-19-00016</u>	4/29/2020
<i>New Hampshire's Monitoring Did Not Ensure Childcare Provider Compliance With State Criminal Background Check Requirements at 21 of 30 Providers Reviewed</i>	<u>A-01-18-02504</u>	4/3/2020
<i>New Mexico's Monitoring of Childcare Providers Generally Ensured Provider Compliance With State Criminal Background Check Requirements at 30 Childcare Providers Reviewed</i>	<u>A-06-19-07001</u>	2/19/2020
<i>Georgia's Monitoring of Childcare Providers Ensured Provider Compliance With State Criminal Background Check Requirements</i>	<u>A-04-19-03580</u>	2/12/2020
<i>Tennessee's Monitoring Ensured Compliance With Criminal Background Check Requirements at 28 of the 30 Childcare Providers Reviewed</i>	<u>A-04-19-02023</u>	1/15/2020
<i>All Six States Reviewed Had Partially Implemented New Criminal Background Check Requirements for Childcare Providers, and Five of the States Anticipate Full Implementation by Fiscal Year 2020</i>	<u>A-05-19-00015</u>	8/23/2019
<i>New York Has Not Fully Implemented New Criminal Background Check Requirements for Childcare Providers</i>	<u>A-02-17-02011</u>	1/8/2019
<i>Nevada Implemented Some New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-09-17-01003</u>	9/19/2018
<i>Colorado Implemented Many New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-07-17-06076</u>	9/17/2018
<i>Georgia Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-04-18-03578</u>	7/27/2018
<i>New Hampshire Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-01-18-02500</u>	7/9/2018
<i>Illinois Implemented Most New Criminal Background Check Requirements for Childcare Providers, but Challenges Remain for Unimplemented Requirements</i>	<u>A-05-17-00047</u>	6/4/2018

APPENDIX C: THE STATE AGENCY'S IMPLEMENTATION STATUS OF CHILD CARE AND DEVELOPMENT FUND CRIMINAL BACKGROUND CHECKS

Criminal Background Check Requirements	Implementation Status as of 3/30/2019	OIG Analysis of State's Implementation Status—Includes a Review of Utah's Laws, Regulations, and Guidance
FBI Criminal History Fingerprint Check 45 CFR § 98.43(b)(1)	Implemented	Utah Child Care Licensing Act 26-39-404 Child Care Licensing Administrative Rules R381 and R430 R381-100 Child Care Centers and R430-50 Residential Certificate Child Care Rule Interpretation Manuals
NCIC's National Sex Offender Registry 45 CFR § 98.43(b)(2)	Implemented	R381-100 Child Care Centers and R430-50 Residential Certificate Child Care Rule Interpretation Manuals
In-State Criminal Registry 45 CFR § 98.43(b)(3)	Implemented	R381-100 Child Care Centers and R430-50 Residential Certificate Child Care Rule Interpretation Manuals
In-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	R381-100 Child Care Centers and R430-50 Residential Certificate Child Care Rule Interpretation Manuals
In-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	R381-100 Child Care Centers and R430-50 Residential Certificate Child Care Rule Interpretation Manuals
Inter-State Criminal Registry 45 CFR § 98.43 (b)(3)	Implemented	R381-100 Child Care Centers and R430-50 Residential Certificate Child Care Rule Interpretation Manuals
Inter-State Sex Offender Registry 45 CFR § 98.43(b)(3)	Implemented	R381-100 Child Care Centers and R430-50 Residential Certificate Child Care Rule Interpretation Manuals
Inter-State Child Abuse and Neglect Registry 45 CFR § 98.43(b)(3)	Implemented	R381-100 Child Care Centers and R430-50 Residential Certificate Child Care Rule Interpretation Manuals

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 Identification¹¹ (45 CFR § 98.43(b)(1)), and (2) a search of the NCIC’s National Sex Offender Registry for child care staff members or prospective child care 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 child care staff member resides (45 CFR § 98.43(b)(3)).

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

¹¹ 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

The CCL Program regulates and monitors both family child care providers and child care centers under Utah Code § 26-39. According to Utah statute, “child care” means continuous care and supervision of five or more qualifying children. Utah code (§ 26-39-401) states that a person shall be licensed or certified if the person provides or offers child care.

Before a prospective covered individual becomes involved with licensed or certified child care in the program, the provider shall: (a) have the individual submit an online background check form, (b) authorize the individual’s background check form, (c) pay all required fees, and (d) receive written notice from the CCL Program that the individual has passed the criminal background check (Utah Code, Titles R381-100-8 and R430-50-8).

If a covered individual fails to pass a CCL background check, including that the individual has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, the provider shall prohibit that individual from being employed by the child care program or residing at the facility until the reason for the denial is resolved (Utah Code, Titles R381-100-8 and R430-50-8).

The State agency performs a minimum of two inspections a year, one announced and one unannounced, in which all individuals who are required to have a criminal background check are reviewed. In addition, the State agency conducts a Pre-License Inspection and may conduct four additional inspections: a Followup Inspection for rule violations, a Complaint Investigation as a result of an alleged rule violation, a Monitoring Inspection for a specific compliance issue for providers under a conditional license, or a Focus Inspection for a specific issue. If a prospective covered individual is involved with the child care program without passing a criminal background check, the provider could receive a citation and a civil monetary penalty and the individual must leave the facility (Utah Code, Title R381-100-8 and R430-50-8).

A violation of any rule is punishable by an administrative civil monetary penalty of up to \$5,000 per day as provided in Utah Code § 26-39-601 (Utah Code, Title R430-50-5).

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

Provider Number	Provider Type	Number of Individuals* Reviewed	Number of Individuals Missing the Required Criminal Background Checks
1	Family child care	3	0
2	Family child care	3	0
3	Family child care	6	0
4	Family child care	6	1
5	Family child care	3	0
6	Family child care	8	0
7	Family child care	6	0
8	Family child care	15	2
9	Family child care	3	0
10	Family child care	10	0
11	Family child care	4	0
12	Family child care	5	1
13	Family child care	5	1
14	Family child care	3	1
15	Family child care	8	2
Totals for Family Child Care Providers		88	8
16	Child care center	53	1
17	Child care center	35	0
18	Child care center	87	0
19	Child care center	81	0
20	Child care center	67	2
21 & 26	Child care center	516	3
22	Child care center	90	1
23	Child care center	17	0
24	Child care center	71	0
25	Child care center	29	0
27	Child care center	77	0
28	Child care center	20	0
29	Child care center	54	5
30	Child care center	53	0
Totals for Child Care Centers		1,250	12
Combined Totals for Family Child Cares and Child Care Centers		1,338	20
* The term "individuals" refers to the number of employees or household members included in our audit.			



State of Utah

GARY R HERBERT
GovernorSPENCER J. COX
Lieutenant GovernorUtah Department of Health
Executive Director's OfficeJoseph K. Miner, M.D., M.S.P.H., F.A.C.P.M.
*Executive Director*Marc E. Babitz, M.D.
*Deputy Director*Nate Checketts
Deputy Director
Director, Medicaid and Health Financing

June 18, 2020

Patrick J. Cogley
Regional Inspector General for Audit Services
Office of Audit Services, Region VII
601 East 12th Street, Room 0429
Kansas City, MO 64106

Dear Mr. Cogley,

Thank you for the opportunity to review and respond to the U.S. Department of Health and Human Services, Office of Inspector General (OIG), draft report titled *Utah's Monitoring Process Generally Ensured Childcare Provider Compliance With State Criminal Background Check Requirements* (Report A-07-19-06085). We appreciate the effort and professionalism of your office on this review and value the insight this report provides for areas needing improvement.

We accept the recommendation in this report. Our response describes the actions the Utah Department of Health plans to take to implement the recommendations.

Recommendation

We recommend that the Utah Department of Health consider improving its policies and procedures for the monitoring of criminal background checks so that it routinely obtains wage information from the Utah Department of Workforce services prior to the inspections of childcare providers, so as to reduce the State agency's dependence on provider disclosure of prospective covered individuals.

Department Response

To avoid relying solely on information supplied by providers, the Child Care Licensing Program will establish written policies and procedures to routinely obtain wage information from the Utah Department of Workforce Services (DWS). This information will be reviewed prior to conducting inspections at childcare facilities as an additional method to ensure every covered individual has passed the required background check before providing childcare.

We have received approval from DWS to access the wage information and initiated the process to establish a memorandum of understanding (MOU). We expect this MOU to be signed by both agencies no later than July 15, 2020. Written policies and procedures will also be established and implemented by July 15, 2020.

Sincerely,

Joseph K. Miner, M.D.