



**STATE OF MAINE
127th LEGISLATURE
SECOND REGULAR SESSION**

**Final Report of the
WORKING GROUP TO STUDY BACKGROUND
CHECKS FOR CHILD CARE FACILITIES AND
PROVIDERS**

November 2016

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Sen. Christopher K. Johnson
Rep. Aaron M. Frey, Chair
Rep. Joyce A. Maker
Rep. Joyce McCreight**



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EXECUTIVE SUMMARY

The Working Group to Study Background Checks for Child Care Facilities and Providers (hereinafter referred to as the “Working Group”) was established by Joint Order H.P., 1167 of the Second Regular Session of the 127th Legislature (*see* Appendix A). The Working Group consists of five members: two senators appointed by the President of the Senate and three house members appointed by the Speaker of the House. A list of Working Group members is set forth in Appendix B.

The Working Group was established in response to the federal government’s enactment of the Child Care and Development Block Grant Act of 2014 (CCDBG Act of 2014), which, among other things, requires states that receive Child Care and Development Fund (CCDF) grant monies to subsidize child care for low-income families to create policies and procedures to ensure that child care workers are subject to comprehensive criminal background checks prior to employment (*see* Appendix C). States have until September 30, 2017, to implement the background check requirement, although one-year extensions are available for states that make a good faith effort to comply with the deadline. States that fail to meet the statutory deadline for implementing the background check requirements are subject to an annual 5% reduction in CCDF funds. Because Maine generally receives approximately \$17 million in CCDF funds per year, Maine will lose more than \$800,000 in annual funds for subsidized child care if it does not implement the required background checks in a timely manner. Subsequently, a few weeks after passage of the Joint Order, the Legislature enacted Public Law 2015, chapter 497 over the Chief Executive’s veto, which directs the Department of Health and Human Services to adopt major substantive rules to implement the CCDBG Act of 2014 background check requirements. The duties of the Working Group, set forth in Joint Order H.P. 1167, include the following:

- Review the requirements for national criminal history background checks based on fingerprints as required by the federal CCDBG Act of 2014;
- Recommend how the required background checks should be incorporated into Maine law, specifically:
 - Who should be subject to background checks;
 - Whether the law should provide for contingent or provisional hiring while background checks are pending;
 - Who should be responsible for the payment of costs associated with background checks; and
 - How the Background Check Center within the Department of Health and Human Services can help coordinate and streamline the background check process for child care facilities and providers;
- Explore options to defray all or some of the initial and ongoing costs of background checks, including the use of federal grant funds;
- Invite the participation of and comments from stakeholders; and

- Invite the participation of the Department of Health and Human Services and the Department of Public Safety, State Bureau of Identification (SBI).

The Working Group met three times and held an evening session to gather public comments at a time more convenient for child care workers than typical, daytime legislative public hearings. The Working Group reached out to the Chief Executive in an effort to facilitate participation of the Department of Health and Human Services and the Department of Public Safety's SBI. The Chief Executive declined the request for participation, but the Department of Health and Human Services responded in writing to many of the Working Group's written questions. After gathering extensive information, including receiving technical assistance from staff at the federal Administration for Children and Families (ACF), the Working Group reached the following unanimous recommendations: (A) to enact legislation necessary to comply with federal law; (B) to guide rulemaking by the Department of Health and Human Services as it implements the background check requirements pursuant to Public Law 2015, chapter 497 and to guide the joint standing committee having jurisdiction over judiciary matters as it reviews those major substantive rules; and (C) to identify issues for further legislative review and study regarding use of CCDF funds.

A. Legislative Recommendations

The Working Group recommends enactment of legislation (*see* Appendix D) that will:

1. Amend the statute authorizing Maine's Department of Health and Human Services to adopt rules for the licensure and certification of child care facilities and family child care providers to:
 - a. Expand the categories of individuals subject to criminal background checks to match the categories of individuals for whom criminal background checks are required by the final regulations implementing the CCDBG Act of 2014; and
 - b. Repeal language pursuant to which the Department of Health and Human Services previously adopted child care background check rules that differ from and conflict with the CCDBG Act of 2014.
2. Amend the Maine Revised Statutes to extend the background check requirements of the CCDBG Act of 2014 to unlicensed individuals who receive federal or state funds for providing care to children.

B. Rulemaking Recommendations

The Working Group recommends that Maine exercise its discretion in implementing the background check requirements of the CCDBG Act of 2014 according to the following principles; these recommendations should guide the Department of Health and Human Services' rulemaking process as well as the review of the rules by the joint standing committee having jurisdiction over judiciary matters.

1. The rules should not expand the definition of “child care staff member” in 45 C.F.R. §98.43(a)(2)(ii) and should clarify that people who enter a child care business infrequently or irregularly to perform maintenance (plumbing, lawn mowing, etc.), delivery or similar tasks are not “child care staff members”, as long as these individuals are not given unsupervised access to children. The rules should also clarify that, by contrast, speech therapists, physical therapists and similar professionals who provide direct services to children are “child care staff members” who must demonstrate that they have satisfied the background check requirements before the child care provider grants these professionals access to children.
2. The rules should require the State to issue an identification card, certificate or other verifiable credential to individuals who have successfully completed the child care staff background check requirements.
3. The rules should require each child care provider to maintain proof that all staff members employed by the provider have satisfied the background check requirement.
4. The rules should adopt a process of electronic fingerprinting modeled on the fingerprinting process currently employed for Maine public school and Maine Revenue Services employees.
5. The rules should adhere to the federal regulations by permitting provisional employment of child care staff members who have completed either a Maine or FBI fingerprint-based criminal history check, provided that these provisional employees’ interactions with children are supervised.
6. The rules should require SBI to complete Maine fingerprint-based criminal history checks as expeditiously as possible to facilitate the hiring of provisional child care employees.
7. Unless a compelling reason exists not to do so, the rules should authorize appropriately supervised provisional employees to be counted toward the child to staff ratio requirements for child care facilities and family child care providers.
8. The rules should not expand the list of offenses that disqualify an individual from working as a child care staff member beyond the list in federal law.
9. The rules should establish a review process for individuals disqualified from employment as a child care staff member based upon a felony drug-related offense committed during the preceding five years to have this disqualification waived, limited to individuals whose only disqualifying offenses involved possession of drugs, not furnishing or trafficking of drugs.
10. In developing the process for individuals to appeal the accuracy of their own background check results, the Department of Health and Human Services should examine the analogous processes that already exist within the Maine Background Check Center and the Department of Education.
11. The rules should include “rap back” monitoring, perhaps modeled on the rap back program established by the Maine Background Check Center Act or the analogous program employed by the Maine Department of Education, to ensure that individuals

convicted of future offenses lose their child care background check clearances and their employers are notified of their disqualifications.

12. The rules should state that, during the first year of implementation, CCDF grant funds should be used to pay for background checks of all child care staff members. After the first year of implementation, CCDF grant funds should be used to continue to pay the costs of background checks for employees of family child care providers, but the costs of background checks for employees of child care facilities must be paid either by the child care facility or the employee or a combination thereof.
13. The Department of Health and Human Services should coordinate with the Department of Education to streamline and align the rules governing the background check processes for public school and child care personnel to prevent unnecessary duplication of background checks for individuals who work with children in both environments.

C. Recommendations for Further Investigation

The Working Group recommends further legislative investigation as follows.

1. The joint standing committee having jurisdiction over health and human services matters should investigate why Maine does not spend all of the CCDF funds allocated to the State and determine whether unspent funds can be used to enhance the child care subsidy program in any or all of the following ways (listed in order of priority):
 - a. To increase subsidy payment rates, with the goal of encouraging more providers to participate in the child care subsidy program, thereby providing low income families with a degree of access to child care services that is comparable to the access enjoyed by families that do not receive subsidies;
 - b. To increase subsidy payment rates in a manner that encourages enhancing the quality of subsidized child care programs as recommended by the federal ACF in its letter conditionally approving Maine's CCDF Plan for 2016-2018; and
 - c. If additional CCDF funds remain available, to offset the background check costs for all child care workers (including child care facilities, not just family child care providers) after the first year that Maine implements the background check requirements of the CCDBG Act of 2014.
2. The joint standing committee having jurisdiction over judiciary matters should again request that the Chief Executive allow SBI staff to participate in the committee's review of the Department of Health and Human Services' major substantive rules for child care criminal background checks in January 2017. If the Chief Executive again declines, the committee should coordinate with the joint standing committee having jurisdiction over criminal justice matters to help ensure that SBI lends its expertise to the Legislature on this subject.

I. INTRODUCTION AND WORKING GROUP PROCESS

The Working Group to Study Background Checks for Child Care Facilities and Providers (hereinafter referred to as “Working Group”) was established by Joint Order H.P. 1167 of the 127th Legislature (*see* Appendix A). The joint order was drafted, in part, in response to the federal government’s enactment of the Child Care and Development Block Grant Act of 2014 (CCDBG Act of 2014), which, among other things, requires states that receive Child Care and Development Fund (CCDF) grant monies to subsidize child care for low income families to create policies and procedures to ensure that child care workers are subject to comprehensive criminal background checks prior to employment (*see* Appendix C). States have until September 30, 2017 to implement the background check requirement, although one-year extensions are available for states that make a good faith effort to comply with the deadline. States that fail to meet the statutory deadline for implementing the background check requirements are subject to an annual 5% reduction in CCDF funds. Because Maine generally receives approximately \$17 million in CCDF funds per year, Maine will lose more than \$800,000 in annual funds for subsidized child care if it does not implement the required background checks in a timely manner.

H.P. 1167, the joint order establishing the Working Group, was read and passed in both the House and Senate on April 14, 2016. That same day, the Joint Standing Committee on Judiciary voted to adopt an amendment to LD 1689, An Act to Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by Persons Who Have Been Convicted of Crimes, which also addressed the background check requirements of the federal CCDBG Act of 2014. LD 1689, as amended by the Committee, requires that the Department of Health and Human Services adopt rules requiring, as part of the child care provider licensing process, that fingerprint-based criminal background checks for staff of child care facilities and family child care providers meet the requirements of the CCDBG Act of 2014 (*see* Appendix C for text of the federal statute).

LD 1689 was vetoed by the Chief Executive, but the veto was overridden by the House and Senate on April 29, 2016, and it became Public Law 2015, chapter 497 (*see* Appendix E). Therefore, both the joint order, which established the Working Group, and LD 1689, which amended state law to require background checks consistent with the federal CCDBG Act of 2014, became law.

The Working Group is composed of two members of the Senate and three members of the House of Representatives (*see* Appendix B). The Working Group’s duties are set forth in the joint order and include the following:

- Review the requirements for national criminal history background checks based on fingerprints as required by the federal CCDBG Act of 2014;
- Recommend how the required background checks should be incorporated into Maine law, specifically:
 - Who should be subject to background checks;
 - Whether the law should provide for contingent or provisional hiring while background checks are pending;

- Who should be responsible for the payment of costs associated with background checks; and
- How the Background Check Center within the Department of Health and Human Services can help coordinate and streamline the background check process for child care facilities and providers;
- Explore options to defray all or some of the initial and ongoing costs of background checks, including the use of federal grant funds;
- Invite the participation of and comments from stakeholders; and
- Invite the participation of the Department of Health and Human Services and the Department of Public Safety, State Bureau of Identification.

The Working Group held three public meetings in Augusta on September 14, September 28, and October 14, 2016. All meetings were open to the public and were broadcast by audio transmission over the internet. The September 28 meeting included an afternoon component, followed by public comment on the topics listed in the duties section of the joint order in the evening. Although this report contains several appendices, additional resources and background materials (including all materials distributed at the meetings) are available at: <http://legislature.maine.gov/legis/opla/childcarebgchecks.htm>.

Neither the Department of Health and Human Services nor the Department of Public Safety was authorized to participate in Working Group meetings (*see* Appendix F, letter dated August 16, 2016). Another challenge was the timing of the Working Group's meetings, which did not align well with the timeline for federal rulemaking on child care background checks. The final rules were published in the Federal Register on September 30, 2016 (*see* Appendix G for text of rule governing background checks), requiring a delay in responses from the Administration for Children and Families (ACF) to the Working Group's questions and only allowing virtual participation of ACF staff during the final meeting. Additionally, Public Law 2015, chapter 497 requires the Department of Health and Human Services to provisionally adopt and submit rules to the Legislature to require criminal background checks for all providers of care and staff members of child care facilities and family child care providers by January 12, 2017. The Department of Health and Human Services may also submit recommended legislation to the joint standing committee having jurisdiction over judiciary matters to support the rules to implement changes in the background check process for child care facilities and family child care providers. The date under which the rules must be submitted to the committee for review falls well after the Working Group's final report is due.

Operating under these limitations, Working Group members communicated with departments via letters through the Chief Executive and, as directed by the Chief Executive, followed up with specific questions for different departments addressed directly to those who had the needed expertise (*see* Appendix F). Responses were requested well ahead of the Working Group meetings; however, the Working Group received a response from the Department of Health and Human Services shortly before the second meeting to some of its questions and to additional questions shortly before the third meeting. The Working Group received no responses to its questions from the Department of Public Safety after numerous written requests.

The Working Group invited the following people to its second meeting to fill in some of the gaps left by the questions unanswered by the departments:

- Luke Lazure, Office of Fiscal and Program Review, Fiscal Analyst for the Joint Standing Committee on Health and Human Services, discussed expenditures of the Child Care and Development Block Grant within the Child Care and Development Fund program, and
- Sheriff Joel Merry, Sagadahoc County, discussed potential participation of police chiefs and sheriffs in the fingerprinting process.

During the public comment portion of the September 28 meeting, a number of child care facility operators and family child care providers expressed the following concerns and comments:

- Child care facilities are already spending \$50/employee for background checks, which is expensive when factoring in staff turnover.
- Concerns that the fingerprinting process will require an even longer wait than the existing background check process; this increased wait time will increase difficulties in maintaining the required child to staff ratio while awaiting background check results.
- Accepting subsidies decreases the amount of money a child care provider takes in and decreases staff pay, which affects the quality of workers and care at the facility.
- It is difficult enough to find qualified employees; additional, costly burdens will not help.
- Many children miss out on quality child care when a quality provider cannot afford to accept subsidies.
- Adding more costs to background checks will not leave enough money to cover costs for quality care.
- The FBI's website reports a turnaround time for processing fingerprint-based criminal history checks of 8-12 weeks, which is much longer than the 24 hours reported to the Working Group at earlier meetings.
- Staff should be cleared in some fashion, but the federal check takes too long in many cases.
- Nobody should be allowed to work in a child care facility without a fingerprint-based background check.
- The Department of Health and Human Services is not making payments to child care providers in a timely manner for children accepted on subsidies.
- Subsidies do not pay fairly.
- When the child care operator needs to leave briefly (*e.g.* to pick up her own sick child), she has to have someone on call to cover her for 15 minutes. These individuals often have full-time jobs, so an operator might need a few on-call individuals so the provider can find someone who is available. It would be costly to pay to fingerprint people who rarely or occasionally provide coverage for 15 minutes in emergencies.

- Providers are nervous about the impact required background checks with fingerprinting will have on the small business person; the federal fingerprinting law will hurt small businesses.
- Many child care providers plan to increase rates to offset background check costs.
- Home child care providers have historically not had to pay for background checks; the State traditionally takes on this cost.
- The State should not use federal grant money to pay for background checks because it is more important to use federal grant funds to pay child care subsidies for the many families who qualify for and need the assistance of this program.
- It makes sense to take money off the top from grant money to pay for background checks.
- It is difficult for people who qualify for child care subsidies to understand how the program works, both where to find the necessary documents to apply and how to apply.
- A child care provider in Portland has two employees, but has done 30 background checks this year; the profession has a very high turnover rate.
- Is there a way to speed up the background check process with online payment or local police involvement?
- It is already difficult for providers to afford to operate; because they cannot pass fingerprinting costs on to subsidy parents, these costs may be fatal to some businesses.

Guests at the third meeting included staff from the federal ACF who participated via video conference. Participants included the following.

- Laura Landry, Child Care Program Specialist, Office of Child Care Staff, Region 1
- Shireen Riley, Regional Program Manager, Office of Child Care Staff, Region 1
- Mary Sprague, Child Care Program Specialist, Office of Child Care
- Andrew Williams, Director, Policy Division, Office of Child Care
- Moniquin Huggins, Director, Program Operations Division, Office of Child Care
- Leigh Ann Bryan, Senior Technical Assistance Specialist, National Center on Child Care Subsidy Innovation and Accountability
- Robert Frein, Technical Assistance Lead, National Center on Child Care Subsidy Innovation and Accountability
- Don Beltrame, Senior Technical Assistance Specialist, National Center on Child Care Subsidy Innovation and Accountability

Prior to the third meeting, the Working Group sent ACF a list of specific questions for discussion during the videoconference. (See Appendix H for the list of questions and summaries of the responses from ACF staff.)

II. RELEVANT FEDERAL AND STATE LAWS AND REGULATIONS

The following is a summary of the federal and state statutes and administrative rules or regulations relevant to Maine's implementation of the requirements for national criminal history background checks based on fingerprints required by the federal Child Care and Development Block Grant Act of 2014.

A. Federal law and regulations

Federal Child Care and Development Block Grant Act of 2014 (CCDBG Act of 2014). The background check requirements established by the CCDBG Act of 2014 are codified in Title 42, Section 9858f of the United States Code (*see* Appendix C). States that receive federal Child Care and Development Fund (CCDF) grant funds must create policies requiring comprehensive criminal background checks for staff members of all child care programs licensed or regulated in the state as well as other child care providers who receive federal CCDF grant funds. The Act defines "child care staff members" broadly, including individuals with unsupervised access to children and other individuals employed by child care providers for compensation. The comprehensive criminal background checks must include fingerprint-based searches of state and FBI criminal history records as well as checks of national and state sex offender registries and child abuse and neglect registries. State-level searches must be conducted in each State where the individual has resided within the past five years. States must prohibit individuals convicted of specific, enumerated felonies and misdemeanors from working for child care providers that receive CCDF funds, although states may opt to create individualized processes for waiver of drug-related felonies. States must establish a process for individuals to appeal and challenge the accuracy of background check results. States that fail to implement the Act's requirements by September 30, 2017, or to obtain or adhere to a one-year extension from the federal government, are subject to a 5% reduction in future CCDF funds.

Child Care and Development Fund (CCDF) Program Regulation. The federal regulation implementing the background check requirement of the CCDBG Act of 2014 is set forth in Title 45, Section 98.43 of the Code of Federal Regulations (*see* Appendix G). The regulation is substantively the same as the CCDBG Act of 2014 with a few exceptions, including: (a) it expands the definition of "child care staff members" subject to the background check requirements to include contract employees and self-employed individuals as well as all adults residing in a family child care home; (b) it clarifies the types of background checks that must be conducted on both the state and national levels; and (c) it authorizes States to permit child care workers to obtain provisional employment after either the state or FBI fingerprint-based criminal history check has been completed, as long as provisional employees are supervised by other staff members who have completed the requisite background checks. The commentary to the final regulation further identifies areas where States have discretion in implementing the background check requirement (*see* Appendix I, which was prepared by Working Group staff).

B. State law and rules

An Act To Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by Persons Who Have Been Convicted of Crimes, Public Law 2015, chapter 497. This Act amended Title 22, section 8302-A of the Maine Revised Statutes to require the Maine Department of Health and Human Services to adopt major substantive rules requiring a criminal background check for staff members of licensed child care facilities and certified family child care providers whose activities involve unsupervised access to children as well as each adult who has unsupervised access to children in the child care program. The Act directs the Department to ensure that the criminal background checks meet the requirements of the CCDBG Act of 2014. The Department must submit these rules to the joint standing committee having jurisdiction over judiciary matters no later than January 12, 2017. The committee may report out a bill supporting the rules, recommending amendments to the rules or taking other action to implement the criminal background checks required by CCDBG Act of 2014.

Maine Background Check Center Act. The Maine Background Check Center Act, codified in Title 22, Chapter 1691, establishes the Maine Background Check Center to complete pre-employment background checks of direct access workers employed by specified healthcare, counseling, and child care providers, including child care facilities and family child care providers. The Act defines “direct access worker” to include individuals who have direct access to protected individuals employed by the provider, but to exclude individuals performing repairs, deliveries or similar persons who do not have unsupervised access to protected individuals. The background checks conducted must include analysis of data in federal and Maine criminal record repositories, abuse and neglect and sex offender registries and employment-related registries including those maintained by professional licensing authorities. Fingerprint-based checks and searches of other state records are not required. The Act enumerates a list of offenses that disqualify an individual for employment as a direct access worker; the individual may apply for a waiver of the disqualification provided that no other federal or state law mandates the prohibition based on that offense. In addition to the waiver process, the Center must establish an appeals process through which individuals may challenge errors in the background check record. The Act authorizes the Center to utilize a rap back monitoring program to alert employers if a direct access worker commits a disqualifying offense in the future.

Rules for the Licensing of Child Care Facilities. The rules governing licensure of child care facilities, adopted by the Maine Department of Health and Human Services in 10-148 C.M.R. Chapter 32, require child care facilities to obtain and maintain in personnel files criminal history reports for each paid, unpaid, temporary or regular staff member, director or volunteer in a child care facility as well as members of the child care facility’s governing body. The criminal history reports must include non-fingerprint-based checks of Maine criminal records maintained by SBI as well as child protection reports. These rules pre-date enactment of the CCDBG Act of 2014.

Rules for the Certification of Family Child Care Providers The rules governing certification of family child care providers, adopted by the Maine Department of Health and Human Services in 10-148 C.M.R. Chapter 33, require family child care providers to obtain and maintain criminal history reports for each paid, unpaid, temporary or regular staff member or volunteer of the

family child care provider as well as for any adult living in or frequenting the family child care premises. The criminal history reports must include non-fingerprint-based checks of Maine criminal records maintained by the State Bureau of Identification as well as child protection reports. These rules pre-date enactment of the CCDBG Act of 2014.

III. RECOMMENDATIONS

The Working Group faced several challenges as it developed its recommendations for implementing the national criminal history background check requirements of the federal Child Care and Development Block Grant Act of 2014. The final regulations clarifying and implementing the CCDBG Act of 2014 were not published in the Federal Register until September 30, 2016, just two weeks before the Working Group's final meeting. Although ACF had issued a Notice of Proposed Rulemaking on December 24, 2015, the proposed rules and accompanying commentary raised more issues than they answered, particularly regarding several of the specific issues the Working Group was tasked with addressing: who should be subject to the background checks; whether and when individuals should be permitted to work on a provisional basis while background checks are pending; and whether and to what extent federal CCDF grant funds may be used to offset the costs of the background checks. After the final rules were issued, representatives from ACF were able to participate in the Working Group's final meeting and provide technical assistance on these and other issues.

In an effort to produce the best possible policy recommendations, the Working Group also reached out to both the Department of Health and Human Services and the Department of Public Safety, seeking their participation at a meeting of the group. They are the "keepers of the knowledge" with respect to many of the technical aspects of this subject area. As is explained earlier in this report, both Departments, on apparent instructions from the Chief Executive, refused to do so, and asked that any questions be submitted in writing. The Working Group did so, but timely answers to our questions were not forthcoming.

All five members of the Working Group, Republicans and Democrats alike, feel compelled to express their frustration with the Administration for its lack of meaningful cooperation in this process. Although the Legislature and Executive are separate branches of government under our Constitution, the members of the Working Group believe is axiomatic that good public policy is most likely to emerge when both branches view themselves as part of the same team with a common goal: making lives better for everyone here in Maine. Working Group members feel the Administration's lack of cooperation in this instance made it much more difficult for the group to realize that goal.

The Working Group unanimously supports three categories of recommendations. First, the Working Group proposes legislation to align Maine law with the final federal regulations implementing the CCDBG Act of 2014. Second, the Working Group presents a series of recommendations to guide the Department of Health and Human Services as it adopts rules requiring background checks of child care providers; these recommendations will also help guide the joint standing committee with jurisdiction over judiciary matters as it reviews those major substantive rules. Finally, the Working Group identifies issues regarding Maine's use of CCDF

funds that it believes warrant further investigation, perhaps by the joint standing committee with jurisdiction over health and human services matters.

A. Legislative Recommendations

The Working Group's detailed review of the CCDBG Act of 2014 and the final implementing regulations reveal that Public Law 2015, chapter 497, enacted in the Second Regular Session of the 127th Legislature, does not comport with federal requirements in two ways. First, although newly enacted 22 M.R.S. §8302-A(1)(J) and (2)(K) direct the Department of Health and Human Services to adopt major substantive rules requiring comprehensive criminal background checks for child care facilities and family child care providers that comply with the CCDBG Act of 2014 (42 U.S.C. §9858f(b)), those provisions suggest that only child care staff members whose activities involve the care or supervision of children and adults with unsupervised access to the children in the child care setting must be subject to background checks. By contrast, federal law additionally requires background checks of all child care staff members employed by a child care provider for compensation, including contract employees and self-employed individuals, as well as all adults residing in the home of a family child care provider. Unless Maine enacts legislation aligning its definition of "child care staff member" with the federal definition, the federal government may begin to withhold 5% of the CCDF grant funds allocated to Maine, or more than \$800,000 per year.

Second, Public Law 2015, chapter 497 focused on background checks for the staff of Maine's licensed child care facilities and certified family child care providers; however, the CCDBG Act of 2014 requires states to ensure that *all* individuals who regularly care for non-relative children for compensation on a regular basis submit to comprehensive criminal background checks, regardless of whether those individuals are licensed or certified. Legislative action must address this deficiency to ensure that Maine receives all of the CCDF grant funds to which it is entitled.

The Working Group therefore recommends enactment of legislation that will:

1. Amend the statute authorizing Maine's Department of Health and Human Services to adopt rules for the licensure and certification of child care facilities and family child care providers to:
 - a. Expand the categories of individuals subject to criminal background checks to match the categories of individuals for whom criminal background checks are required by the final regulations implementing the CCDBG Act of 2014; and
 - b. Repeal language pursuant to which the Department of Health and Human Services previously adopted child care background check rules that differ from and conflict with the CCDBG Act of 2014.
2. Amend the Maine Revised Statutes to extend the background check requirements of the CCDBG Act of 2014 to unlicensed individuals who receive federal or state funds for providing care to children.

(See Appendix D for proposed legislation to implement these recommendations.)

B. Rulemaking Recommendations

The Department of Health and Human Services reports that it is in the process of drafting the major substantive rules implementing the criminal background check requirements of Public Law 2015, chapter 497. By law, these rules “must meet the requirements of [the CCDBG Act of 2014].” 22 M.R.S. §8302-A(1)(J), (2)(K). While the federal statute and implementing regulations prescribe many aspects of the criminal background check process, commentary by the Administration of Children and Families accompanying the rules identified several areas of state discretion. The Working Group examined each of these areas of discretion, balancing the need to ensure the safety of Maine’s youngest citizens against the concerns of child care providers to avoid unnecessarily subjecting individuals to background checks who will not have contact with children, to create a streamlined, efficient process for necessary background checks, and to rein in costs that might otherwise cripple small business owners.

The Working Group recommends that Maine exercise its discretion in implementing the background check requirements of the CCDBG Act of 2014 according to the following principles – these recommendations should guide the Department’s rulemaking process as well as the review of those rules by the joint standing committee having jurisdiction over judiciary matters.

1. The rules should not expand the definition of “child care staff member” in 45 C.F.R. §98.43(a)(2)(ii) and should clarify that people who enter a child care business infrequently or irregularly to perform maintenance (plumbing, lawn mowing, etc.), delivery or similar tasks are not “child care staff members”, as long as these individuals are not given unsupervised access to children. The rules should also clarify that, by contrast, speech therapists, physical therapists and similar professionals who provide direct services to children are “child care staff members” who must demonstrate that they have satisfied the background check requirements before the child care provider grants these professionals access to children.
2. The rules should require the State to issue an identification card, certificate or other verifiable credential to individuals who have successfully completed the child care staff background check requirements.
3. The rules should require each child care provider to maintain proof that all staff members employed by the provider have satisfied the background check requirement.
4. The rules should adopt a process of electronic fingerprinting modeled on the fingerprinting process currently employed for Maine public school and Maine Revenue Services employees.
5. The rules should adhere to the federal regulations by permitting provisional employment of child care staff members who have completed either a Maine or FBI fingerprint-based criminal history check, provided that these provisional employees’ interactions with children are supervised.
6. The rules should require SBI to complete Maine fingerprint-based criminal history checks as expeditiously as possible to facilitate the hiring of provisional child care employees.

7. Unless a compelling reason exists not to do so, the rules should authorize appropriately supervised provisional employees to be counted toward the child to staff ratio requirements for child care facilities and family child care providers.
8. The rules should not expand the list of offenses that disqualify an individual from working as a child care staff member beyond the list in federal law.
9. The rules should establish a review process for individuals disqualified from employment as a child care staff member based upon a felony drug-related offense committed during the preceding five years to have this disqualification waived, limited to individuals whose only disqualifying offenses involved possession of drugs, not furnishing or trafficking of drugs.
10. In developing the process for individuals to appeal the accuracy of their own background check results, the Department of Health and Human Services should examine the analogous processes that already exist within the Maine Background Check Center and the Department of Education.
11. The rules should include “rap back” monitoring, perhaps modeled on the rap back program established by the Maine Background Check Center Act or the analogous program employed by the Maine Department of Education, to ensure that individuals convicted of future offenses lose their child care background check clearances and their employers are notified of their disqualifications.
12. The rules should state that, during the first year of implementation, CCDF grant funds should be used to pay for background checks of all child care staff members. After the first year of implementation, CCDF grant funds should be used to continue to pay the costs of background checks for employees of family child care providers, but the costs of background checks for employees of child care facilities must be paid either by the child care facility or the employee or a combination thereof.
13. The Department of Health and Human Services should coordinate with the Department of Education to streamline and align the rules governing the background check processes for public school and child care personnel to prevent unnecessary duplication of background checks for individuals who work with children in both environments.

C. Recommendations for Further Investigation

During the course of its work, members of the Working Group grew concerned regarding the substantial amount of federal CCDF grant funds that were allocated to but unspent by the State each year. Based on the limited information provided by the Maine Department of Health and Human Services, supplemented by assistance from the Office of Fiscal and Program Review and the federal ACF, the Working Group found that in four of the five past fiscal years, Maine has spent only approximately \$12 million to \$14 million of the more than \$16 million in CCDF funds allocated to Maine annually. When Maine does not spend these funds, they either remain within the federal government or are redistributed for use by other States. While the presence of these unspent funds may at first blush suggest that Maine could offset the cost of criminal background checks for all child care providers without harming the child care subsidy program,

further investigation by the Working Group revealed areas where these funds could have a far more beneficial impact for Maine children.

Both child care providers and the federal ACF have expressed significant concerns regarding the low rate of payment to child care providers who serve Maine children through the child care subsidy program. During the public comment portion of the Working Group's second meeting, numerous child care providers reported that they are unable to accept families with child care subsidies because the rate paid by the State is too low to cover the actual cost of the child care services they provide. These providers simply cannot afford to enroll children with subsidies in their programs. The federal ACF echoed the providers' concerns in its June 10, 2016, letter conditionally approving the State's CCDF Plan for 2016-2018 (*see* Appendix J):¹

Key principles of the CCDF are to provide equal access to child care for children receiving child care assistance and to ensure parental choice. Provider payment rates set too low undermine these principles. As you are aware, the CCDBG Act of 2014 requires states and territories to take the cost of quality into account when setting rates, and to set rates based on the results of the most recent market rate survey or alternative methodology. We continue to be concerned that your rates may not allow for equal access. [The Office of Child Care] plans to make review of payment rates a priority for our upcoming implementation monitoring visits. Thus, the conditional approval of your plan does **not** constitute a final determination that your payment rates are sufficient to provide access to child care services for eligible families that are comparable to those provided to families that do not receive subsidies, as required by law.

In addition to the unacceptably low rate of child care subsidy payments, child care providers repeatedly expressed dismay that many families who meet the income requirements for the child care subsidy program are unaware of the program's existence. The Department of Health and Human Services must substantially increase the effectiveness of its outreach efforts. For example, the Department might consider automatically informing all families eligible for Cub Care health insurance² that they are almost certainly also eligible for child care subsidy assistance, given that the income qualifications for the Cub Care program are much more stringent than those for the child care subsidy program. Once Mainers are aware of this program and participation levels rise, more of Maine's low-income families will be able to afford quality child care for their young children and, as a result, join or maintain their positions within the Maine workforce. Ultimately, although these issues are beyond the scope of the Working Group's duties, these issues warrant further Legislative investigation and oversight, perhaps by the joint standing committee with jurisdiction over health and human services matters.

¹ This letter, along with the conditionally approved Maine CCDF plan, may be accessed online at <http://www.acf.hhs.gov/occ/resource/state-plans> (last visited Oct. 20, 2016).

² "Cub Care" is the program within MaineCare that provides free or low-cost health insurance to low-income pregnant women and families with children. More information on Cub Care can be found at <http://www.maine.gov/dhhs/ofc/services/cubcare/CubCare.htm> (last visited Oct. 31, 2016).

Further, the Working Group remains dismayed at the lack of participation or responsiveness of SBI within the Department of Public Safety in the Working Group process. As is explained earlier in this report, the Working Group made repeated requests for SBI's assistance in understanding the process for conducting criminal background checks and the most appropriate and efficient method for implementing the requirements of the CCDBG Act of 2014. The Working Group recommends that, when it revisits this subject during the next legislative session, the joint standing committee with jurisdiction over judiciary matters should once again request the assistance of the SBI and its response to the Working Group's questions or similar questions developed by committee members (*see* Appendix F for correspondence between the Working Group and the Executive Branch, including the unanswered questions submitted to SBI, most recently in the letter dated October 11, 2016). If SBI remains unresponsive, it may be helpful for the joint standing committee with jurisdiction over judiciary matters to confer with the joint standing committee with jurisdiction over criminal justice matters regarding the best way to obtain the necessary information.

Accordingly, the Working Group makes the following recommendations for further legislative investigation.

1. The joint standing committee having jurisdiction over health and human services matters should investigate why Maine does not spend all of the CCDF funds allocated to the State and determine whether unspent funds can be used to enhance the child care subsidy program in any or all of the following ways (listed in order of priority):
 - a. To increase subsidy payment rates, with the goal of encouraging more providers to participate in the child care subsidy program, thereby providing low income families with a degree of access to child care services that is comparable to the access enjoyed by families that do not receive subsidies;
 - b. To increase subsidy payment rates in a manner that encourages enhancing the quality of subsidized child care programs as recommended by the federal ACF in its letter conditionally approving Maine's CCDF Plan for 2016-2018; and
 - c. If additional CCDF funds remain available, to offset the background check costs for all child care workers (including child care facilities, not just family child care providers) after the first year that Maine implements the background check requirements of the CCDBG Act of 2014.
2. The joint standing committee having jurisdiction over judiciary matters should again request that the Chief Executive allow SBI staff to participate in the committee's review of the Department of Health and Human Services' major substantive rules for child care criminal background checks in January 2017. If the Chief Executive again declines, the committee should coordinate with the joint standing committee having jurisdiction over criminal justice matters to help ensure that SBI lends its expertise to the Legislature on this subject.

APPENDIX A

Authorizing Joint Order, H.P. 1167

JOINT STUDY ORDERS

JOINT STUDY ORDER TO ESTABLISH A WORKING GROUP TO STUDY BACKGROUND CHECKS FOR CHILD CARE FACILITIES AND PROVIDERS

H.P. 1167

ORDERED, the Senate concurring, that the Working Group to Study Background Checks for Child Care Facilities and Providers is established as follows.

1. Working Group to Study Background Checks for Child Care Facilities and Providers established. The Working Group to Study Background Checks for Child Care Facilities and Providers, referred to in this order as "the working group," is established.

2. Membership. The working group consists of 5 members appointed as follows:

A. Two members of the Senate appointed by the President of the Senate, including members from each of the 2 parties holding the largest number of seats in the Legislature; and

B. Three members of the House of Representatives appointed by the Speaker of the House, including members from each of the 2 parties holding the largest number of seats in the Legislature.

The members appointed must serve on the Joint Standing Committee on Judiciary, the Joint Standing Committee on Health and Human Services, the Joint Standing Committee on Education and Cultural Affairs or the Joint Standing Committee on Appropriations and Financial Affairs.

3. Working group chairs. The first-named Senator is the Senate chair of the working group and the first-named member of the House is the House chair of the working group.

4. Appointments; convening of working group. All appointments must be made no later than 30 days following passage of this order. The appointing authorities shall notify the Executive Director of the Legislative Council once all appointments have been made. When the appointment of all members has been completed, the chairs of the working group shall call and convene the first meeting of the working group. If 30 days or more after the passage of this order a majority of but not all appointments have been made, the

chairs may request authority and the Legislative Council may grant authority for the working group to meet and conduct its business.

5. Duties. The working group shall review the requirements for national criminal history background checks based on fingerprints as required by the federal Child Care and Development Block Grant Act of 2014. The working group shall invite the participation of and comments from stakeholders, including but not limited to child care facilities, family child care providers and parents. The working group shall invite the participation of the Department of Health and Human Services and the Department of Public Safety, State Bureau of Identification. The working group shall recommend how the required background checks should be incorporated into law in this State, including but not limited to who should be subject to the background checks, whether the law should provide for contingent or provisional hiring while background checks are pending, who is responsible for the payment of costs associated with the background checks and how the Background Check Center within the Department of Health and Human Services can help coordinate and streamline the background check process for child care facilities and providers. The working group shall explore options, including the application of federal grant funds, to defray all or some of the initial and ongoing additional costs.

6. Staff assistance. The Legislative Council shall provide necessary staffing services to the working group.

7. Report. No later than November 2, 2016, the working group shall submit a report that includes its findings and recommendations, including suggested legislation, to the Second Regular Session of the 127th Legislature.

**Passed by the House of Representatives April 14,
2016 and the Senate April 14, 2016.**

APPENDIX B

**Membership List, Working Group to Study Background Checks
for Child Care Facilities and Providers**

Working Group to Study Background Checks for Child Care Facilities and Providers
Joint Order, H.P. 1167

Appointments by the President

Sen. Roger J. Katz	Senate Chair
Sen. Christopher K. Johnson	Senate Member

Appointments by the Speaker

Rep. Aaron M. Frey	House Chair
Rep. Joyce A. Maker	House Member
Rep. Joyce McCreight	House Member

Staff:

Alyson Mayo
Janet Stocco

APPENDIX C

Child Care and Development Block Grant Act of 2014, 42 U.S.C. §9858f

42 U.S.C. §9858f. Criminal background checks.

(a) In general. A State that receives funds to carry out this subchapter shall have in effect--

- (1)** requirements, policies, and procedures to require and conduct criminal background checks for child care staff members (including prospective child care staff members) of child care providers described in subsection (c)(1); and
- (2)** licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in subsection (c).

(b) Requirements. A criminal background check for a child care staff member under subsection (a) shall include--

- (1)** a search of the State criminal and sex offender registry or repository in the State where the child care staff member resides, and each State where such staff member resided during the preceding 5 years;
- (2)** a search of State-based child abuse and neglect registries and databases in the State where the child care staff member resides, and each State where such staff member resided during the preceding 5 years;
- (3)** a search of the National Crime Information Center;
- (4)** a Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System; and
- (5)** a search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 [42 U.S.C. 16901 et seq.].

(c) Prohibitions

(1) Child care staff members

A child care staff member shall be ineligible for employment by a child care provider that is receiving assistance under this subchapter if such individual--

- (A)** refuses to consent to the criminal background check described in subsection (b);
- (B)** knowingly makes a materially false statement in connection with such criminal background check;
- (C)** is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 [42 U.S.C. 16901 et seq.]; or
- (D)** has been convicted of a felony consisting of--
 - (i)** murder, as described in section 1111 of Title 18;
 - (ii)** child abuse or neglect;
 - (iii)** a crime against children, including child pornography;
 - (iv)** spousal abuse;
 - (v)** a crime involving rape or sexual assault;
 - (vi)** kidnapping;
 - (vii)** arson;

(viii) physical assault or battery; or

(ix) subject to subsection (e)(4), a drug-related offense committed during the preceding 5 years; or

(E) has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.

(2) Child care providers. A child care provider described in subsection (i)(1) shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (1).

(d) Submission of requests for background checks

(1) In general. A child care provider covered by subsection (c) shall submit a request, to the appropriate State agency designated by a State, for a criminal background check described in subsection (b), for each child care staff member (including prospective child care staff members) of the provider.

(2) Staff members. Subject to paragraph (4), in the case of an individual who became a child care staff member before November 19, 2014, the provider shall submit such a request--

(A) prior to the last day described in subsection (j)(1); and

(B) not less often than once during each 5-year period following the first submission date under this paragraph for that staff member.

(3) Prospective staff members. Subject to paragraph (4), in the case of an individual who is a prospective child care staff member on or after November 19, 2014, the provider shall submit such a request--

(A) prior to the date the individual becomes a child care staff member of the provider; and

(B) not less than once during each 5-year period following the first submission date under this paragraph for that staff member.

(4) Background check for another child care provider. A child care provider shall not be required to submit a request under paragraph (2) or (3) for a child care staff member if--

(A) the staff member received a background check described in subsection (b)--

(i) within 5 years before the latest date on which such a submission may be made; and

(ii) while employed by or seeking employment by another child care provider within the State;

(B) the State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(C) the staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(e) Background check results and appeals

(1) Background check results. The State shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which such request was submitted, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) Privacy

(A) **In general.** The State shall provide the results of the criminal background check to the provider

in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in subsection (c), without revealing any disqualifying crime or other related information regarding the individual.

(B) Ineligible staff member. If the child care staff member is ineligible for such employment due to the background check, the State will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member.

(C) Public release of results. No State shall publicly release or share the results of individual background checks, except States may release aggregated data by crime as listed under subsection (c)(1)(D) from background check results, as long as such data is not personally identifiable information.

(3) Appeals

(A) In general. The State shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report.

(B) Appeals process. The State shall ensure that--

(i) each child care staff member shall be given notice of the opportunity to appeal;

(ii) a child care staff member will receive instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report; and

(iii) the appeals process is completed in a timely manner for each child care staff member.

(4) Review. The State may allow for a review process through which the State may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in subsection (c)(1)(D)(ix) is eligible for employment described in subsection (c)(1), notwithstanding subsection (c). The review process shall be consistent with title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.].

(5) No private right of action. Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) Fees for background checks. Fees that a State may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs to the State for the processing and administration.

(g) Transparency. The State must ensure that the policies and procedures under this section are published on the Web site (or otherwise publicly available venue in the absence of a Web site) of the State and the Web sites of local lead agencies.

(h) Construction

(1) Disqualification for other crimes. Nothing in this section shall be construed to prevent a State from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Rights and remedies. Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

(i) Definitions

In this section--

(1) the term “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 receives assistance provided under this subchapter; and

(2) the term “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; or

(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.

(j) Effective date

(1) In general. A State that receives funds under this subchapter shall meet the requirements of this section for the provision of criminal background checks for child care staff members described in subsection (d)(1) not later than the last day of the second full fiscal year after November 19, 2014.

(2) Extension. The Secretary may grant a State an extension of time, of not more than 1 fiscal year, to meet the requirements of this section if the State demonstrates a good faith effort to comply with the requirements of this section.

(3) Penalty for noncompliance. Except as provided in paragraphs (1) and (2), for any fiscal year that a State fails to comply substantially with the requirements of this section, the Secretary shall withhold 5 percent of the funds that would otherwise be allocated to that State in accordance with this subchapter for the following fiscal year.

APPENDIX D

Recommended Draft Legislation

PROPOSED LEGISLATION

An Act To Implement the Background Check Requirements of the Federal Child Care and Development Block Grant Act of 2014

Sec. 1. 22 MRSA §8302-A, sub-§1, as amended by PL 2015, c. 497, § 2, is further amended to read:

1. Rules for child care facilities. Rules for child care facilities must include, but are not limited to, rules pertaining to the following:

- A. Child to staff ratios;
- B. The health and safety of the children and staff, including training on communicable diseases;
- C. Water for drinking and cooking;
- D. Wastewater;
- E. Rabies vaccinations for pets;
- F. The quality of the program provided;
- ~~G. The age, criminal record and personal history of the provider of care for children and staff members;~~
- H. The administration of medication;
- I. Licensing procedures; and
- J. Requiring a criminal background check for:

(1) Each child care staff member, ~~whose activities involve the care or supervision of children; and~~

~~(2) Each adult who has unsupervised access to children who are cared for or supervised by a child care facility.~~

(3) For the purposes of this paragraph, "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 facility for compensation, including contract employees or self-employed individuals; or

(b) whose activities involve the care or supervision of children for the child care facility or unsupervised access to children who are cared for or supervised by the child care facility.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, except that rules adopted pursuant to paragraph J to comply with 42 United States Code, Section 9858f(b) are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 2. 22 MRSA §8302-A, sub-§2, as amended by PL 2015, c. 497, §3, is further amended to read:

2. Rules for family child care providers. Rules for family child care providers must include, and are limited to, rules pertaining to the following:

- A. Cardiopulmonary resuscitation;
- B. Water for drinking and cooking;
- C. Wastewater;
- D. Rabies vaccinations for pets;

PROPOSED LEGISLATION

- E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for;
- F. Ongoing training for providers on health and safety issues, including training on communicable diseases. This training must be offered at times that are convenient to the providers;
- G. Child to staff ratios;
- H. Health and safety of the children and staff;
- I. Procedures for waivers of rules and for suspension and revocation of certification; and
- ~~J. The age, criminal record and personal history of the family child care provider, staff and members of the household; and~~
- K. Requiring a criminal background check for:
 - (1) The family child care provider; and
 - (2) Each child care staff member, ~~whose activities involve the care or supervision of children;~~ and
 - (3) ~~Each adult who has unsupervised access to children who are cared for or supervised by the family child care provider.~~
 - (4) For the purposes of this paragraph, “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 family child care provider for compensation, including contract employees or self-employed individuals;
 - (b) whose activities involve the care or supervision of children for the family child care provider or unsupervised access to children who are cared for or supervised by the family child care provider; or
 - (c) who is age 18 or older and who resides in the home of the family child care provider.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A and rules adopted pursuant to paragraphs G to K are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 3. 22 MRSA §8302-B, sub-§1, as amended by PL 1997, c. 494, §§11 & 15, is further amended to read:

A person who provides day care in that person’s home for one or 2 children whose care is paid for by state or federal funds is not required to be certified as a family child care provider pursuant to section 8301-A but is subject to the provisions of this section.

1. Investigation. The provider and any child care staff members of the provider must pass a background investigation check by the State Bureau of Investigation, ~~a check for involvement with child protective services and a motor vehicle record check that complies with the rules adopted by the Department for family child care providers pursuant to section 8302-A, subsection 2, paragraph K.~~

APPENDIX E

Public Law 2015, chapter 497

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1154 - L.D. 1689

An Act To Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by Persons Who Have Been Convicted of Crimes

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the safety of children cared for and supervised by child care providers in this State is of the utmost importance; and

Whereas, child care facilities and family child care providers, as well as the families who rely on them, need to know that the providers of care and staff members do not have disqualifying criminal records from other states; and

Whereas, the 2014 reauthorization of the Child Care and Development Fund program through the federal Child Care and Development Block Grant Act of 2014 has identified that best practices for background checks include fingerprint-based national criminal background checks for all child care providers who supervise children and all persons who have unsupervised access to children who are cared for or supervised by a child care provider; and

Whereas, the transition to the criminal background check process required by federal law raises significant questions, not the least of which are the employment needs of child care providers while waiting for background check results and the costs involved in the more rigorous criminal background checks than the checks currently required under state law; and

Whereas, it is the intent of the Legislature to ensure that the additional criminal background check process will be cost-effective and will not create an undue burden on parents or child care providers; and

Whereas, the development of major substantive rules to comply with the federal Child Care and Development Block Grant Act of 2014 by September 2017 should include the participation of child care facilities and family child care providers; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §7702-A, sub-§3, ¶C, as enacted by PL 1999, c. 363, §3, is amended to read:

C. Section 8302-A, subsection 1, paragraphs B to ~~I~~ J and subsection 2, paragraphs A to F and H to ~~J~~ K.

Sec. 2. 22 MRSA §8302-A, sub-§1, as amended by PL 2005, c. 530, §8, is further amended to read:

1. Rules for child care facilities. Rules for child care facilities must include, but are not limited to, rules pertaining to the following:

- A. Child to staff ratios;
- B. The health and safety of the children and staff, including training on communicable diseases;
- C. Water for drinking and cooking;
- D. Wastewater;
- E. Rabies vaccinations for pets;
- F. The quality of the program provided;
- G. The age, criminal record and personal history of the provider of care for children and staff members;
- H. The administration of medication; ~~and~~
- I. Licensing procedures; ~~and~~
- J. Requiring a criminal background check for:

(1) Each child care staff member whose activities involve the care or supervision of children; and

(2) Each adult who has unsupervised access to children who are cared for or supervised by a child care facility.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, except that rules adopted pursuant to paragraph J to comply with 42 United States Code, Section 9858f(b) are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 3. 22 MRSA §8302-A, sub-§2, as amended by PL 2005, c. 530, §8, is further amended to read:

2. Rules for family child care providers. Rules for family child care providers must include, and are limited to, rules pertaining to the following:

- A. Cardiopulmonary resuscitation;
- B. Water for drinking and cooking;
- C. Wastewater;
- D. Rabies vaccinations for pets;
- E. Recording the times, reasons and numbers of children involved when more than 12 children are cared for;
- F. Ongoing training for providers on health and safety issues, including training on communicable diseases. This training must be offered at times that are convenient to the providers;
- G. Child to staff ratios;
- H. Health and safety of the children and staff;
- I. Procedures for waivers of rules and for suspension and revocation of certification; ~~and~~
- J. The age, criminal record and personal history of the family child care provider, staff and members of the household; and
- K. Requiring a criminal background check for:
 - (1) The family child care provider;
 - (2) Each child care staff member whose activities involve the care or supervision of children; and
 - (3) Each adult who has unsupervised access to children who are cared for or supervised by the family child care provider.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A and rules adopted pursuant to paragraphs G to J ~~K~~ are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 4. Department of Health and Human Services; adoption of rules.

The Department of Health and Human Services shall adopt rules required by the Maine Revised Statutes, Title 22, section 8302-A, subsections 1 and 2 to require criminal background checks for all providers of care and staff members of child care facilities and family child care providers, to be effective September 1, 2017. The rules must be provisionally adopted and submitted to the Legislature for review by the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 12, 2017. The department may submit to the committee recommendations for

legislation to support the rules to implement changes in criminal background checks in a manner that is effective for the department and child care facilities and family child care providers.

Sec. 5. Implementing legislation. The joint standing committee of the Legislature having jurisdiction over judiciary matters may submit a bill, including recommendations provided by the department pursuant to section 4, to the First Regular Session of the 128th Legislature to implement the criminal background checks required by 42 United States Code, Section 9858f(b). In developing the bill, the committee shall take into account the concerns of child care providers, including but not limited to employment needs while waiting for background check results, and shall explore options, including the application of federal grant funds, to defray all or some of the initial and ongoing additional costs.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

APPENDIX F

Correspondence between Working Group and Executive Branch

SEN. ROGER J. KATZ, CHAIR
SEN. CHRISTOPHER K. JOHNSON



REP. AARON M. FREY, CHAIR
REP. JOYCE A. MAKER
REP. JOYCE McCREIGHT

STATE OF MAINE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
SECOND REGULAR SESSION

WORKING GROUP TO STUDY BACKGROUND CHECKS FOR CHILD CARE FACILITIES AND PROVIDERS

August 10, 2016

Hon. Paul R. LePage, Governor
Office of the Governor
1 State House Station
Augusta, ME 04333-0001

Re: Request for Sarah Taylor, Director of the Division of Licensing and Regulatory Services, Department of Health and Human Services and Matthew Ruel, Director of the State Bureau of Identification (SBI), Department of Public Safety to attend the August 31, 2016 meeting of the Working Group to Study Child Care Background Checks for Child Care Facilities and Providers established by HP 1167.

Dear Governor LePage:

As chairs of the Working Group to Study Child Care Background Checks for Child Care Facilities and Providers, on behalf of the working group, we are writing to request your administration's participation in the study process. Specifically, we would like to invite Sarah Taylor, Director of the Division of Licensing and Regulatory Services and Matthew Ruel, Director of the State Bureau of Identification to the first meeting of the working group on August 31, 2016 at 1:00 pm.

This working group of five legislators was created through HP 1167, in part, as a vehicle to provide an opportunity for public input to those who felt excluded during the legislative process regarding LD 1689, the bill that proposed background checks for childcare facilities and family childcare providers. The working group was also created to address specific issues regarding fingerprinting of childcare workers that the Judiciary Committee did not have time to explore in detail at the end of session including: who should be subject to background checks; who is responsible for payment of background checks and whether federal grant funds can be used for payment; whether the law should provide for contingent or provisional hiring while background checks are pending; and how the Background Check Center within the Department of Health and Human Services can help coordinate the process.

We are requesting that Director Taylor and Director Ruel attend the August 31st meeting to provide the working group with general information regarding the current background check process and the Department of Health and Human Services' rulemaking efforts under PL 2015, chapter 497 (the law that eventually derived from LD 1689). The working group may also have follow-up questions once they hear details from Director Taylor and Director Ruel.

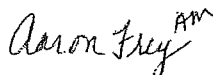
Participation from your administration is important in order to work collaboratively to decide whether and how to comply with federal law governing background checks of childcare workers. Director Taylor and Director Ruel have the knowledge and experience to help educate the working group and to assist the working group in its development of recommendations for the Judiciary Committee.

Should you require additional information on any of the above, please contact working group staff, Alyson Mayo or Janet Stocco at 287-1670. Thank you for your attention to this important matter.

Sincerely,

 ^{AM}

Senator Roger Katz
Senate Chair

 ^{AM}

Representative Aaron Frey
House Chair

cc: Mary Mayhew, Commissioner, Department of Health and Human Services
John E. Morris, Commissioner, Department of Public Safety
Sarah Taylor, Director of the Division of Licensing and Regulatory Services, Department
of Health and Human Services
Matthew Ruel, Director of the State Bureau of Identification, Department of Public
Safety
Stephanie Ham, Executive Assistant to the Governor
Janet Stocco, Legislative Analyst, Office of Policy and Legal Analysis
Alyson Mayo, Legislative Analyst, Office of Policy and Legal Analysis



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage

GOVERNOR

Sen. Roger Katz
3 State House Station
Augusta, ME 04333

Rep. Aaron Frey
2 State House Station
Augusta, ME 04333

August 16, 2016

Dear Sen. Katz and Rep. Frey:

I decline your invitation for members of the Executive Branch to attend the meeting of your working group regarding LD 1689, the bill recently enacted as PL 497 over my objection which will impose fingerprinting requirements on family child care providers.

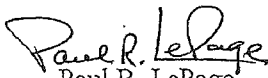
I am unclear on the purpose of your "working group." The Legislature already held a public hearing on LD 1689 and was contacted by numerous child care providers. If anybody "felt excluded" by this process, it was because the Legislature ignored their pleas, not because there was no public hearing or opportunity to contact lawmakers.

If you oppose this new law, you are welcome to support my forthcoming legislation to repeal it. There will presumably be a public hearing and work session(s) for that bill as well next year when the 128th Legislature goes into session.

Maine's Department of Health and Human Services (DHHS) is in the process of drafting major substantive rulemaking to govern the implementation of PL 497. If you are interested in the implementation and details surrounding this law, then you are welcome to voice those concerns when that rulemaking comes before the 128th Legislature for approval.

As always, you are welcome to submit written questions to the DHHS officials you name and they will do their best to answer your questions.

Sincerely,


Paul R. LePage
Governor



PRINTED ON RECYCLED PAPER

PHONE: (207) 287-3531 (Voice)

TTY USERS CALL 711
www.maine.gov

FAX: (207) 287-1034

SEN. ROGER J. KATZ, CHAIR
SEN. CHRISTOPHER K. JOHNSON



REP. AARON M. FREY, CHAIR
REP. JOYCE A. MAKER
REP. JOYCE McCREIGHT

STATE OF MAINE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
SECOND REGULAR SESSION

WORKING GROUP TO STUDY BACKGROUND CHECKS FOR CHILD CARE FACILITIES AND PROVIDERS

September 6, 2016

Sarah Taylor, Director
Division of Licensing and Regulatory Services
Department of Health and Human Services

via email (sarah.taylor@maine.gov)

Re: Questions for the Department of Health and Human Services from the Working Group to Study Background Checks for Child Care Facilities and Providers established by HP 1167

Dear Ms. Taylor:

On August 5, 2016, the Governor indicated that you would be willing to answer written questions from the Working Group to Study Background Checks for Child Care Facilities and Providers. We are grateful for your time and assistance.

The Working Group would appreciate receiving your responses to the following questions prior to our meeting on September 14, 2016:


1. How much money has been allocated to Maine through the federal Child Care and Development Block Grant for each of the past 5 years?
 - a. How is this money used? (*I.e.*, what amount or percentage of the funds is spent on administrative expenses, child care subsidies, child care provider training, etc.)
 - b. What amount, if any, of the grant funds allocated to Maine was unexpended in each of the past 5 years?
 - c. How much federal money has been returned to the federal government in the last 2 years?
 - d. Are there any funds held in accounts rather than spent or returned, and if so, how much and what accounts?
2. How much money has been allocated to Maine for the upcoming fiscal year from the federal Child Care and Development Block Grant?
 - a. How much grant money would Maine lose if the State did not implement the fingerprint-based national criminal history background check required by the federal Child Care and Development Block Grant Act of 2014?

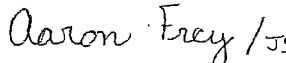
3. What progress has the Department made toward promulgating the rules for fingerprint-based background checks of child care providers required by P.L. 2015, ch. 497?
 - a. What is the Department's anticipated rulemaking timeline?
 - b. Does the Department plan to address the issues of provisional hiring pending background check results and who bears the responsibility for the costs of the background checks in these new rules?
 - c. Does the Department believe that any additional state statutory amendments will be necessary to implement the fingerprint-based background checks required by the federal Child Care and Development Block Grant Act of 2014?
4. Has the Department submitted to the federal government, or does it plan to submit, an amendment to the Maine State CCDF Plan for 2016-2018 reflecting the State's commitment in P.L. 2015, ch. 497 to implement fingerprint-based background checks of child care providers?
5. What progress has been made toward implementing the Maine Background Check Center Act, Title 22, Chapter 1691, and drafting the rules necessary to achieve the purposes of the Act?
 - a. When does the Department plan that the Center will become operational?
 - b. Does the Department have any suggestions regarding how the Maine Background Check Center can help coordinate and streamline the background check process for child care facilities and providers required by the federal Child Care and Development Block Grant Act of 2014?
6. How much does the Department charge for a state child abuse background check and how long does it take to obtain the results of the check?
7. What is the process for applying, processing applications, and commencing payment of subsidies for individuals who wish to receive subsidies to assist in paying child care costs?

Please submit your responses either via email or in writing, whichever is more convenient, to Working Group Staff Janet Stocco and Alyson Mayo of the Office of Policy and Legal Analysis.

Should you require additional information on any of the above, please do not hesitate to contact Janet Stocco or Alyson Mayo at 287-1670. Thank you for your attention to this important matter.

Sincerely,


Senator Roger Katz
Senate Chair


Representative Aaron Frey
House Chair

cc (via email): Nicholas Adolphsen, Director, Government Relations and Policy,
Department of Health and Human Services
Janet Stocco, Legislative Analyst, Office of Policy and Legal Analysis
Alyson Mayo, Legislative Analyst, Office of Policy and Legal Analysis

SEN. ROGER J. KATZ, CHAIR
SEN. CHRISTOPHER K. JOHNSON

REP. AARON M. FREY, CHAIR
REP. JOYCE A. MAKER
REP. JOYCE McCREIGHT



STATE OF MAINE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
SECOND REGULAR SESSION

WORKING GROUP TO STUDY BACKGROUND CHECKS FOR CHILD CARE FACILITIES AND PROVIDERS

September 6, 2016

Matthew Ruel, Director
State Bureau of Identification
Department of Public Safety

via email (matthew.r.ruel@maine.gov)

Re: Questions for the State Bureau of Identification from the Working Group to Study Background Checks for Child Care Facilities and Providers established by HP 1167

Dear Mr. Ruel,

On August 5th, 2016 the Governor indicated that you would be willing to answer questions from the Working Group to Study Background Checks for Child Care Facilities and Providers. We are grateful for your time and assistance.

The Working Group would appreciate receiving your responses to the following questions prior to our meeting on September 14th, 2016:

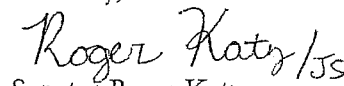
1. What type of background check services does State Bureau of Identification (SBI) currently provide?
2. How much does each of the following types of background check, which are required by the Child Care and Development Block Grant Act of 2014, cost:
 - a. a search of the State criminal and sex offender registry;
 - b. a search of the National Crime Information Center;
 - c. a Federal Bureau of Investigation fingerprint check using Next Generation Identification; and
 - d. a search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006?
3. How long does it generally take to receive the results of each type of check listed above?
4. What are the differences in the information that can be obtained from each type of check?

5. Should there be any additional language in state statute, beyond the language of P.L. 2015, ch. 497, to ensure that the process for background checks of child care providers complies with other federal and state laws governing criminal history information?
6. What is the status of the Maine Background Check Center, established by P.L. 2015, ch. 299?
 - a. What progress has been made toward establishing the Maine Background Check Center?
 - b. If the Center is operational, what is the user fee amount? (If the Center is not operational, does SBI have a recommendation for the user fee amount?)
7. For how many people and in which professions or kinds of employment are background checks currently conducted?
 - a. Does SBI have any specific recommendations regarding the process or record-keeping for fingerprint background checks for childcare providers that would optimize the ability to be interchangeable with checks currently conducted for school employees or required for other professions or occupations?

Please submit your responses either via email or in writing, whichever is more convenient, to Working Group Staff Janet Stocco and Alyson Mayo of the Office of Policy and Legal Analysis.

Should you require additional information on any of the above, please do not hesitate to contact Janet Stocco or Alyson Mayo at 287-1670. Thank you for your attention to this important matter.

Sincerely,


Senator Roger Katz
Senate Chair


Representative Aaron Frey
House Chair

cc (via email): John E. Morris, Commissioner, Department of Public Safety
Janet Stocco, Legislative Analyst, Office of Policy and Legal Analysis
Alyson Mayo, Legislative Analyst, Office of Policy and Legal Analysis

SEN. ROGER J. KATZ, CHAIR
SEN. CHRISTOPHER K. JOHNSON

REP. AARON M. FREY, CHAIR
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REP. JOYCE McCREIGHT



STATE OF MAINE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
SECOND REGULAR SESSION

WORKING GROUP TO STUDY BACKGROUND CHECKS FOR CHILD CARE FACILITIES AND PROVIDERS

September 15, 2016

Sarah Taylor, Director
Division of Licensing and Regulatory Services
Department of Health and Human Services

via email (sarah.taylor@maine.gov)

Re: Follow up to September 6 Letter Requesting Responses to Questions for the Department of Health and Human Services from the Working Group to Study Background Checks for Child Care Facilities and Providers established by HP 1167

Dear Ms. Taylor:

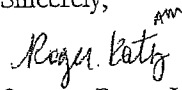
On September 6, we submitted questions to you as a follow-up to the Governor's letter of August 16. We hoped to have your responses prior to our first meeting, which took place yesterday, September 14.

Our next meeting will take place on the afternoon of Wednesday, September 28 and will be followed by an opportunity for public comment on the issue of background checks for childcare providers later that evening. We would very much appreciate having responses to our questions by Thursday, September 22, to allow both Working Group members and members of the public time to review your responses prior to these meetings. Your expertise and input on the questions will be invaluable in providing the Working Group and members of the public crucial details necessary to understand oversight of and use of grant funds to subsidize childcare. This will enable the Working Group to make recommendations to the Judiciary Committee that incorporate Department feedback and lead to a smoother process for all involved, including the Department of Health and Human Services.

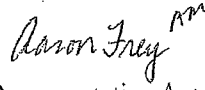
Please submit your responses either via email or in writing, whichever is more convenient, to Working Group Staff Janet Stocco and Alyson Mayo of the Office of Policy and Legal Analysis.

Should you require additional information on any of the above, please do not hesitate to contact Janet Stocco or Alyson Mayo at 287-1670. Thank you for your attention to this important matter.

Sincerely,

 ^{RM}

Senator Roger Katz
Senate Chair

 ^{RM}

Representative Aaron Frey
House Chair

cc (via email): Nicholas Adolphsen, Director, Government Relations and Policy,
Department of Health and Human Services
Janet Stocco, Legislative Analyst, Office of Policy and Legal Analysis
Alyson Mayo, Legislative Analyst, Office of Policy and Legal Analysis

SEN. ROGER J. KATZ, CHAIR
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STATE OF MAINE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
SECOND REGULAR SESSION

WORKING GROUP TO STUDY BACKGROUND CHECKS FOR CHILD CARE FACILITIES AND PROVIDERS

September 15, 2016

Matthew Ruel, Director
State Bureau of Identification
Department of Public Safety

via email (matthew.r.ruel@maine.gov)

Re: Follow-up to September 6 Letter Requesting Responses to Questions for the State Bureau of Identification from the Working Group to Study Background Checks for Child Care Facilities and Providers established by HP 1167

Dear Mr. Ruel,

On September 6, we submitted questions to you as a follow-up to the Governor's letter of August 16. We hoped to have your responses prior to our first meeting, which took place yesterday, September 14.

Our next meeting will take place on the afternoon of Wednesday, September 28 and will be followed by an opportunity for public comment on the issue of background checks for childcare providers later that evening. We would very much appreciate having responses to our questions by Thursday, September 22, to allow both Working Group members and members of the public time to review your responses prior to these meetings. Your expertise and input on the questions will be invaluable in providing the Working Group and members of the public crucial details necessary to understand the current background check process and the steps necessary to implement the process of fingerprinting of child care workers. This will enable the Working Group to make recommendations to the Judiciary Committee that incorporate Department feedback and lead to a smoother process for all involved, including the State Bureau of Identification.

Please submit your responses either via email or in writing, whichever is more convenient, to Working Group Staff Janet Stocco and Alyson Mayo of the Office of Policy and Legal Analysis.

Should you require additional information on any of the above, please do not hesitate to contact Janet Stocco or Alyson Mayo at 287-1670. Thank you for your attention to this important matter.

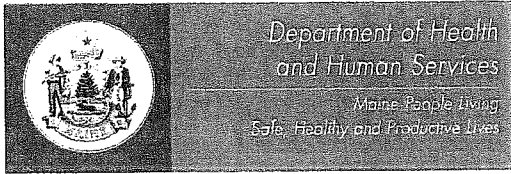
Sincerely,


Senator Roger Katz
Senate Chair


Representative Aaron Frey
House Chair

cc (via email):

The Honorable Paul R. LePage, Governor, State of Maine
John E. Morris, Commissioner, Department of Public Safety
Janet Stocco, Legislative Analyst, Office of Policy and Legal Analysis
Alyson Mayo, Legislative Analyst, Office of Policy and Legal Analysis



Paul R. LePage, Governor Mary C. Mayhew, Commissioner

Department of Health and Human Services
 Commissioner's Office
 221 State Street
 11 State House Station
 Augusta, Maine 04333-0011
 Tel.: (207) 287-3707; Fax (207) 287-3005
 TTY Users: Dial 711 (Maine Relay)

September 28, 2016

TO: Senator Roger J. Katz, Senate Chair
 Representative Aaron Frey, House Chair

FROM: Nick Adolphsen, Director of Government Relations and Policy, DHHS

RE: Response to Questions for the Department of Health and Human Services from the Working Group to Study Background Checks for Child Care Facilities and Providers established by HP 1167

1. How much money has been allocated to Maine through the federal Child Care and Development Block Grant for each of the past 5 years?
 - a. How is this money used? (*I.e.*, what amount or percentage of the funds is spent on administrative expenses, child care subsidies, child care provider training, etc?)
 - b. What amount, if any, of the grant funds allocated to Maine was unexpended in each of the past 5 years?
 - c. How much federal money has been returned to the federal government in the last 2 years?
 - d. Are there any funds held in accounts rather than spent or returned, and if so, how much and what accounts?

Response:

Federal Fiscal Year	Annual Allocations	Administrative Expenses (% of total expenses)	Licensing Services	Child Care Expenses (% of total expenses)	Total Expenses
2011	\$16,215,696.00	\$334,949 2.2%	\$707,315 4.7%	\$13,955,083 93.1%	\$14,997,347
2012	\$16,835,723.00	\$722,148 4.3%	\$2,250,174 13.4%	\$13,834,315 82.3%	\$16,806,637
2013	\$16,157,880.00	\$329,791 2.7%	\$1,427,906 11.8%	\$10,293,571 85.4%	\$12,051,268
2014	\$16,520,075.00	\$53,996 0.4%	\$976,394 8.0%	\$11,224,764 91.6%	\$12,255,154
2015	\$16,408,669.00	\$188,348 1.3%	\$1,618,746 11.4%	\$12,364,606 87.2%	\$14,171,700

Generally speaking, the Department does not draw down any additional funding other than what is needed to reimburse program expenses. Expenses are projected on a weekly basis and funding is drawn down respectively. Additionally, there are not any funds held in accounts as asked in question 1, part d.

It's important to consider that the Administration on Children and Families just released its final rules and changes to the CCDBG on September 23, 2016. The Department is actively evaluating these changes in order to identify federal requirements that will increase financial pressure and administrative burden on the program. For example, changes to eligibility, market rates and payments which will directly affect Maine's ability to manage overall program expenses. The Department expects that there will be an increased need for funding based on these changes in the federal rule. In addition, incentive-payments as an avenue to increase quality within child care centers continues to be a priority within the CCDBG. An increase in financial resources supporting these incentives may be required as the Department implements the changes made through the federal reauthorization.

In recent years, the Department has expanded the resources provided to families and providers with this funding. We have developed a website that provides direction and resources. It is an excellent resource for parents and guardians who need to choose a childcare provider and for those who want to stay informed about their provider. The database includes all licensed providers and shares information regarding quality of care and licensing history.

- The Child Care Choices website allows consumers to look up licensing details by provider. License histories, violations, written notification letters, and corrective action plans are available to be viewed by the public.
- Child Care Licensing regulatory requirements are easily accessible on the website and are available to be downloaded, viewed, and saved by consumers.
- Frequently asked questions on the consumer education website are focused on licensing information and help consumers understand processes for licensing, background checks, monitoring, and offenses that prevent individuals from being approved as providers.
- Data is available on the Child Care Choices website in an easy-to-understand format. The data points include number of deaths, serious injuries, and substantiated incidences of child abuse that occurred in child care settings.
- The website allows consumers to search for providers by zip code, city, and address. Additional filters are available including QRIS rating, type of provider, and ages served. A full site search feature is available as well as frequently asked questions, definitions, a color-coded legend, program types and concrete examples along with plain language throughout.

In May 2014, 16 new staff were hired, utilizing resources from the CCDBG, in the Children's Licensing Program including thirteen Child Care Licensing Specialists, two Supervisors and one administrative support person. This additional staff allowed the program to reduce caseloads of over 200 per worker to an average of 80 per worker which aligns with national standards – ensuring greater oversight and safer child care resources. The increase in staff has allowed the program to start using a differential monitoring inspection model in the field which is risk-based and allows Licensors to only visit those providers that need more assistance.

2. How much money has been allocated to Maine for the upcoming fiscal year from the federal Child Care and Development Block Grant?
 - a. How much grant money would Maine lose if the State did not implement the fingerprint-based national criminal history background check required by the federal Child Care and Development Block Grant Act of 2014?

Response: Grant amounts are unknown until the beginning of the Federal Fiscal year. In our experience, we have never seen a state penalized in this fashion, despite obvious non-compliance with the Federal requirements and with the state's own "state plan." In this instance, approximately \$800,000 – not the entire grant – could potentially be at risk.

3. What progress has the Department made toward promulgating the rules for fingerprint-based background checks of child care providers required by P.L. 2015, Ch. 497?
 - a. What is the Department's anticipated rulemaking timeline?
 - b. Does the Department plan to address the issues of provisional hiring pending background check results and who bears the responsibility for the costs of the background checks in these new rules?
 - c. Does the Department believe that any additional state statutory amendments will be necessary to implement the fingerprint-based background checks required by the federal Child Care and Development Block Grant Act of 2014?

Response: The Department is in the process of drafting the required rules and are currently on track to meet the guidelines outlined in P.L. 2015, Chapter 497. In drafting, the Department will consider options, within the constraint of current law, to ensure the least burden possible on the business owner.

4. Has the Department submitted to the federal government, or does it plan to submit, an amendment to the Maine State CCDF Plan for 2016-2018 reflecting the State's commitment in P.L. 2015, Ch. 497 to implement fingerprint-based background checks of child care providers?

Response: On August 8, 2016 the Department submitted a revised plan for the State of Maine CCDF State Plan reflecting a commitment to fulfill these federal changes.

5. What progress has been made toward implementing the Maine Background Check Center Act, Title 22, Chapter 1691, and drafting the rules necessary to achieve the purposes of the Act?
 - a. When does the Department plan that the Center will become operational?
 - b. Does the Department have any suggestions regarding how the Maine Background Check Center can help coordinate and streamline the background check process for child care facilities and providers required by the federal Child Care and Development Block Grant Act of 2014?

Response: The Department is implementing the MBCC without final rules as the statute is very robust. There will be a staged implementation, with long term care providers being the first group, followed by assisted housing/adult day providers, home health care and hospice agencies, ICF/IIDs, personal care and placement agencies, and temporary nurse agencies. Once these groups are up and running, there will be another staged on-boarding for behavioral health providers, drug treatment centers and all of the child care providers. The reason for this prioritization relates to the CMS funding for the program, through the National Background Check Program that aims to protect residents/clients receiving care within a long-term care setting.

At present, the MBCC system is designed to incorporate biometrics.

The MBCC is meant to be a one-stop site for conducting background checks, which will include access to various registries, the SBI, the OIG excluded providers list, etc. The Department is still working on the process of integrating the Adult Protective Services and Child Protective Services substantiated abuse, neglect, misappropriation of property offenders into the MBCC; this will be done through the CNA registry (ALMS). For many providers, this will allow for a streamlined approach. Also, the rap-back, once implemented, will ensure that employers of direct care workers are kept apprised of crimes committed after an initial background check has been completed. The rap-back isn't up and running yet, but it is anticipated that it will be available within the next few months. It is common for background check programs to go live with the basic components and then subsequently add to the program as additional components are available.

6. How much does the Department charge for a state child abuse background check and how long does it take to obtain the results of the check?

Response: It takes an average of 24 hours to 3 business days to complete a state child abuse background check and costs \$15.00.

7. What is the process for applying, processing applications, and commencing payment of subsidies for individuals who wish to receive subsidies to assist in paying child care costs?

Response: Below is information that we give to individuals inquiring about Maine's Child Care Subsidy Program. It addresses eligibility, application, and payments.

Maine's Child Care Subsidy Program

The Child Care Subsidy Program helps eligible families to pay for child care so they can work, go to school or participate in a job training program.

Who is eligible to receive Child Care Subsidy?

Eligible families must meet the income guidelines

And

At least one of the following activities:

- work
- school
- job training program

*Generally speaking, the amount of child care subsidy received is commensurate to the number of hours either worked, in school or in job training. For example, if a individual is working (or going to school or job training) 1-5 hours per week, the individual would be eligible for 25% of a full-time child care slot. Equally, if they are attending one of these activities 6-10 hours per week, the individual would be eligible for 50% of a full-time child care slot. In order to access a full-time child care slot, an individual must be engaged in a combination of these activities 29 hours a week or more.

Who can I choose as my child care provider?

- Licensed or certified child care centers
- Licensed or certified family child care homes
- Adults who provide care in their own homes
- Adults who come to your home to provide care
- Relatives over the age of 18

How do I apply?

Step 1

- Apply for Child Care Subsidy in one of the following ways:
 - At local DHHS office (Office of Family Independence-OFI)
 - Online at www.maine.gov/MyMaineConnection
- Once you are determined to be **financially eligible**, proceed to step 2

Step 2

- Complete the Child Care Subsidy Program Application (you can get this from OFI or OCFS) and return it to the Office of Child and Family Services (OCFS):
 - Fax: 207-287-6308
 - Email: CCSP.DHHS@maine.gov
 - Mail: 2 Anthony Avenue SHS#11 Augusta, ME 04333-0011
- Once you are determined to be **program eligible**, and the provider you choose is approved, payments will be made directly to your provider on your behalf.

How much will the Child Care Subsidy Program pay to my child care provider?

You pay your co-payment to your provider and the Child Care Subsidy Program will pay the rest to your provider, up to the Market Rate, for your area.

How do I find a child care provider?

For help with locating child care visit:

Child Care Choices or call 1-877-680-5866

What are the rules of the Child Care Subsidy Program?

Child Care Subsidy Program Rules

How is the Child Care Subsidy Program funded?

The Child Care Development Fund (CCDF) is a federal block grant that provides funding for states aimed at improving access to quality child care for high-need children and families.

Who do I contact with questions?

Contact us:

- By phone at 1-877-680-5866 or 207-624-7999
- By email CCSP.DHHS@maine.gov
- By fax 207-287-6308

A report that can be found at

https://nwlc.org/wp-content/uploads/2015/08/nwlc_2014statechildcareassistancereport-final.pdf/ which provides additional detail about these programs nationally giving a broader context. Page 22 in particular highlights the income eligibility limits and where we stand nationally.

8. Please provide the number of individuals employed by the child care facilities in Maine. If the number of child care staff is not available, then please provide the total number of child care facilities (both center-based and home based) that have a current active license in Maine.

Response: We do not have data that reflects the total number of staff employed at licensed/certified child care programs in the State. As of September 1, 2016 there are 1,109 family child care providers, 781 facilities, and 64 nursery schools.

SEN. ROGER J. KATZ, CHAIR
SEN. CHRISTOPHER K. JOHNSON



REP. AARON M. FREY, CHAIR
REP. JOYCE A. MAKER
REP. JOYCE McCREIGHT

STATE OF MAINE

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SECOND REGULAR SESSION

WORKING GROUP TO STUDY BACKGROUND CHECKS FOR CHILD CARE FACILITIES AND PROVIDERS

October 4, 2016

Hon. Paul R. LePage, Governor
Office of the Governor
1 State House Station
Augusta, ME 04333-0001

Re: Request for Sarah Taylor, Director of the Division of Licensing and Regulatory Services, Department of Health and Human Services and Matthew Ruel, Director of the State Bureau of Identification (SBI), Department of Public Safety to attend the October 14, 2016 meeting of the Working Group to Study Child Care Background Checks for Child Care Facilities and Providers established by HP 1167.

Dear Governor LePage:

As chairs of the Working Group to Study Child Care Background Checks for Child Care Facilities and Providers, on behalf of the working group, we are writing to request your administration's participation in the final scheduled meeting of the Working Group on October 14 at 1pm. Specifically, we would like to again invite Sarah Taylor, Director of the Division of Licensing and Regulatory Services and Matthew Ruel, Director of the State Bureau of Identification to the meeting, both of whom we previously requested attend our September 14 meeting in our August 10 letter to you.

While we appreciated having written responses immediately before our second meeting on September 28 from the Department of Health and Human Services (in response to our September 6 email request to Sarah Taylor prior to the first meeting), we have a number of additional questions and find it would be most helpful to have someone from the Department participate in our next meeting. Additional questions arise during discussions that we can't foresee and it is crucial we're able to ask these questions in real time. The more assistance the Department provides, the more likely our recommendations to the Judiciary Committee will align with the current process for background checks for other professions as much as possible, as well as with federal requirements. This will result in an easier and smoother process for your Departmental staff.

We also have not heard back from the State Bureau of Identification, Department of Public Safety regarding questions we submitted to Matt Ruel on September 6. We would like to invite Matt Ruel from the State Bureau of Identification to attend our October 14 meeting. If he or someone with similar expertise is not available, we would still like responses to our submitted questions prior to the October 14 meeting.

We know the legislature can benefit from the institutional knowledge of the departments. We are all supposed to be on the same team to ensure the health and safety of Maine children. The departments' participation will assist us in our duty to protect Maine children in the most effective and efficient way without unnecessarily burdening Executive Branch staff.

Should you require additional information on any of the above, please contact working group staff, Alyson Mayo or Janet Stocco at 287-1670. Thank you for your attention to this important matter.

Sincerely,


Senator Roger Katz
Senate Chair


Representative Aaron Frey
House Chair

cc: Mary Mayhew, Commissioner, Department of Health and Human Services
John E. Morris, Commissioner, Department of Public Safety
Sarah Taylor, Director of the Division of Licensing and Regulatory Services, Department of Health and Human Services
Matthew Ruel, Director of the State Bureau of Identification, Department of Public Safety
Stephanie Ham, Executive Assistant to the Governor
Janet Stocco, Legislative Analyst, Office of Policy and Legal Analysis
Alyson Mayo, Legislative Analyst, Office of Policy and Legal Analysis



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

October 7, 2016

Senator Roger Katz, Chair
Representative Aaron Frey, Chair
Working Group to Study Background Checks for Child Care Facilities and Providers
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

Dear Senator Katz and Representative Frey:

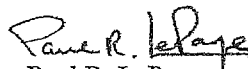
Thank you for your letter requesting the attendance of two Executive Branch employees at the next meeting of your Legislative Working Group. I appreciate your directing this request to me.

As you know, the Maine Constitution creates three separate branches of government. Moreover, our Constitution provides the Governor with the authority to direct Executive Branch employees via Article V, Part First, Section 1 and grants the Governor (not inferior State officers) the authority to recommend to the Legislature such measures as the Governor may judge expedient pursuant to Article V, Part First, Section 9.

Executive Branch employees will not actively participate in this Legislative Working Group. In an attempt to assist the Working Group as best we can, however, please send your questions in writing to me and I will assure that they are answered.

Thank you for your attention to this letter.

Sincerely,


Paul R. LePage
Governor

cc: Commissioner Mayhew
Commissioner Morris



SEN. ROGER J. KATZ, CHAIR
SEN. CHRISTOPHER K. JOHNSON

REP. AARON M. FREY, CHAIR
REP. JOYCE A. MAKER
REP. JOYCE McCREIGHT



STATE OF MAINE

ONE HUNDRED AND TWENTY-SEVENTH LEGISLATURE
SECOND REGULAR SESSION

WORKING GROUP TO STUDY BACKGROUND CHECKS FOR CHILD CARE FACILITIES AND PROVIDERS

October 11, 2016

Hon. Paul R. LePage, Governor
Office of the Governor
1 State House Station
Augusta, ME 04333-0001

Re: Questions for the State Bureau of Identification from the Working Group to Study Background Checks for Child Care Facilities and Providers established by HP 1167

Dear Governor LePage:

We acknowledge receipt of your letter of October 7, 2016. Although we are disappointed that the Working Group to Study Background Checks for Child Care Facilities and Providers will not benefit from the in-person assistance of members of the Executive Branch, we are glad for your personal assurance the questions we submit to you will be answered by the knowledgeable individuals within the Executive Branch within a timely fashion.

As you may recall, in your letter dated August 16 you invited the Working Group to submit written questions to the officials we had named in our first request for Executive Branch assistance. We availed ourselves of this opportunity, submitting written questions both to Sarah Taylor, Director of the Division of Licensing and Regulatory Services within the Department of Health and Human Services and to Matthew Ruel, Director of the State Bureau of Identification (SBI) within the Department of Public Safety. In response, Department of Public Safety Commissioner Morris, to whom we had submitted a courtesy copy of our written questions to Mr. Ruel, requested that we submit the questions directly to your office for approval. We immediately complied, sending an electronic copy of the written questions to your office.

Unfortunately, we did not receive a response to any of our questions prior to the Working Group's first meeting on September 14. The next day, we submitted follow-up letters, once again urging the named Executive Branch officials to lend their expertise to the Working Group's task of implementing the criminal background check component of the federal Child Care and Development Block Grant Act of 2014. As you know, if Maine does not implement these requirements by September of 2017, the State will lose more than \$800,000 in federal Child Care and Development funds each year, which could impact the ability of low-income, working Mainers to afford high-quality child care for their children.

We were glad to receive responses to our questions from DHHS on the day of our second Working Group meeting. Those responses, as well as the Working Group's own research, generated additional questions, which we submitted directly to Nicholas Adolphsen, DHHS's Director of Government Relations and Policy on October 3. A copy of those questions is attached to this letter for your review.

Despite our repeated requests, we have not yet received any answers from the SBI. Their expertise in the field of criminal background checks cannot be overstated; the Working Group would truly benefit from SBI's assistance in implementing the new federal background check requirements.

In the meantime, on September 23, the federal government issued its final regulations implementing the background check requirements of the Child Care and Development Block Grant Act of 2014. In light of these final regulations, as well as the information the Working Group has gathered at its first two meetings, we have made slight changes to the questions we originally submitted to Mr. Ruel on September 6. We therefore request your assistance in securing answers to the following questions:

1. What is the cost of each of the following types of background check, which are required by the federal regulations implementing the Child Care and Development Block Grant Act of 2014:
 - a. A Federal Bureau of Investigation fingerprint check using Next Generation Identification;
 - b. A search of the National Crime Information Center's National Sex Offender Registry; and;
 - c. A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding 5 years:
 - i. State criminal registry or repository, with the use of fingerprints being required in the State where the staff member resides, and optional in other States;
 - ii. State sex offender registry or repository; and
 - iii. State-based child abuse and neglect registry and database.
2. How long does it generally take to receive the results of each type of check listed in question 1?
3. Does Maine currently conduct each of the types of background check listed in question 1 for any other profession in Maine?
 - a. If any of these checks are performed for other professions, would it be possible to use the same process to perform checks on child care workers?
 - b. If any of these checks are not currently performed in Maine, do you anticipate any obstacles to implementing that type of check for child care workers?
4. Should there be any additional language in state statute, beyond the language of P.L. 2015, ch. 497, to ensure that the process for background checks of child care providers complies with other federal and state laws governing access to criminal history information?
5. What is the status of the Maine Background Check Center, established by P.L. 2015, ch. 299?
 - a. What progress has been made toward establishing the Maine Background Check Center?
 - b. If the Center is operational, what is the user fee amount? (If the Center is not operational, does SBI have a recommendation for the user fee amount?)
6. For how many people and in which professions or kinds of employment are background checks currently conducted?

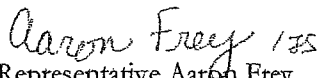
- a. Does SBI have any specific recommendations regarding the process or record-keeping for fingerprint background checks for childcare providers that would optimize the ability to be interchangeable with checks currently conducted for school employees or required for other professions or occupations?
7. Can you briefly explain the background check process for individuals employed in public elementary and secondary schools in Maine?
- a. What types of criminal history are checked (Maine criminal history, other-state criminal history, federal criminal history, fingerprint-based, etc.)?
 - b. Are electronic or paper fingerprints used? Where must the individuals go to get their prints taken?
 - c. How much does the entire process cost?
 - d. How long does it take for the results to be obtained?
 - e. Would it be possible to implement a similar process for Maine's child care workers?

We look forward to timely responses from either Mr. Ruel or another SBI or DPS expert before our final Working Group meeting this Friday, October 14. We are happy to receive responses either via email or in writing, whichever is more convenient, to Working Group Staff Janet Stocco and Alyson Mayo of the Office of Policy and Legal Analysis.

Should you require additional information on any of the above, please do not hesitate to contact Janet Stocco or Alyson Mayo at 287-1670. Thank you for your attention to this important matter.

Sincerely,


Senator Roger Katz
Senate Chair


Representative Aaron Frey
House Chair

cc (*via email*): Matt Ruel, Director, State Bureau of Identification
John E. Morris, Commissioner, Department of Public Safety
Mary Mayhew, Commissioner, Department of Health and Human Services
Janet Stocco, Legislative Analyst, Office of Policy and Legal Analysis
Alyson Mayo, Legislative Analyst, Office of Policy and Legal Analysis

Mayo, Alyson

From: Mayo, Alyson
Sent: Monday, October 03, 2016 2:07 PM
To: Adolphsen, Nick
Cc: Stocco, Janet
Subject: Working Group Background Checks for Child Care Facilities and Providers --Questions

Hi Nick,

I'm contacting you on behalf of the Working Group to Study Background Checks for Child Care Facilities and Providers.

Thank you for the written response to our questions on September 28.

The Working Group has some additional questions and requests a response by Wednesday, October 12 in order to review them prior to their third meeting on Friday, October 14.

- Could you provide a copy of the August 8, 2016 revised plan for the State of Maine CCDF State Plan referenced in your September 28 document to the Working Group chairs?
- How much money does DHHS currently budget and also actually spend on (non-fingerprint) background checks for childcare workers? Where do these funds come from?
- Is there currently a waiting list for background checks?
- What was the source of the 85% state median income figure in the "income guidelines" link under "Who is eligible to receive Child Care Subsidy?" referenced in your September 28 document to the Working Group chairs? We noted that these figures are from page 60 of the State Plan under 85% of State Median Income. We would like to know where these numbers came from.
- Does DHHS have an estimate of staff turnover rates for childcare facilities, perhaps from the number of background checks done?

Thank you very much,
Alyson and Janet

Alyson Mayo
Legislative Analyst
Office of Policy and Legal Analysis
Maine Legislature
(207) 287-1670



STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

Paul R. LePage
GOVERNOR

October 12th, 2016

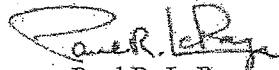
By Electronic Mail

Dear Ms. Stocco,

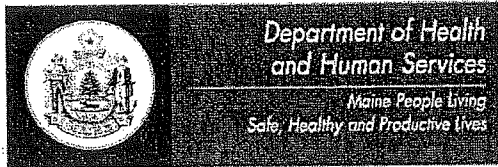
I am writing in response to the most recent letter that was sent to me from Sen. Katz and Rep. Frey on behalf of the Working Group to Study Background Checks for Child Care Facilities and Providers. That letter was dated yesterday, October 11th, 2016. My office received it yesterday and I just read it this morning, October 12th. By the terms of the letter, I am asked to provide answers to lengthy, complex questions by 1:00 P.M. this coming Friday, October 14th, 2016.

Frankly, the requested timeline is a bit short. The Executive Branch will begin gathering answers to these questions to the extent that such answers can be gathered on such a short timeframe. Answers that can be obtained will be sent to the Working Group.

Sincerely,


Paul R. LePage
Governor





Paul R. LePage, Governor

Mary C. Moyhew, Commissioner

Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
Augusta, Maine 04333-0011
Tel.: (207) 287-3707; Fax (207) 287-3005
TTY Users: Dial 711 (Maine Relay)

October 14, 2016

TO: Senator Roger J. Katz, Senate Chair
Representative Aaron Frey, House Chair

FROM: Nick Adolphsen, Director of Government Relations and Policy, DHHS

Re: Response to Questions for the Department of Health and Human Services from the September 28, 2016 Working Group to Study Background Checks for Child Care Facilities and Providers established by HP 1167

1. Could you provide a copy of the August 8, 2016 revised plan for the State of Maine CCDF State Plan referenced in your September 28 document to the Working Group chairs?

Response: The current plan can be found at <http://www.maine.gov/dhhs/ocfs/ec/occhs/child-care.html>. The revised plan is not yet approved and currently under consideration by our Federal program officer.

2. How much money does DHHS currently budget and also actually spend on (non-fingerprint) background checks for childcare workers? Where do these funds come from?

Response: In SFY 16, approximately \$48,000 in CCDF was expended to support child care provider background checks.

3. Is there currently a waiting list for background checks?

Response: At this time, there is not a waiting list for child protective background checks to be completed.

4. What was the source of the 85% state median income figure in the "income guidelines" link under "Who is eligible to receive Child Care Subsidy?" referenced in your September 28 document to the Working Group chairs? We noted that these figures are from page 60 of the State Plan under 85% of State Median Income. We would like to know where these numbers came from.

Response: Please see the attached. A family of four can earn up to \$64,000, more than 250% of the Federal Poverty, to be eligible to receive a subsidy.

5. Does DHHS have an estimate of staff turnover rates for childcare facilities, perhaps from the number of background checks done?

Response: We do not have this data.

CLIENT INCOME ELIGIBILITY CRITERIA

Individuals eligible for child care subsidy from the Department of Health and Human Services must comply with income eligibility criteria below.

Funds	Child Care Development Funds (CCDF) Fund for a Healthy Maine (FHM) Temporary Assistance to Needy Families (TANF) State Funds (SPSS)
Income Eligibility	All families must meet income guidelines of gross family income at or below 85% of the State Median Income based on the current adjusted State Median Income estimates and calculations used in the Low Income Home Energy Assistance Program (LIHEAP) ¹
Fee Assessment	Fees are assessed to all families.

MAXIMUM INCOME GUIDELINES – CHILD CARE SERVICES

Effective July 1, 2015 until further notice

FAMILY SIZE	ANNUAL INCOME	MONTHLY INCOME (ANNUAL/12)	WEEKLY INCOME (ANNUAL/52)
1	\$33,793.11	\$2,816.09	\$649.87
2	\$44,190.99	\$3,682.58	\$849.83
3	\$54,588.87	\$4,549.07	\$1,049.79
4	\$64,986.75	\$5,415.56	\$1,249.75
5	\$75,384.63	\$6,282.05	\$1,449.70
6	\$85,782.51	\$7,148.54	\$1,649.66
7	\$87,732.11	\$7,311.01	\$1,687.16
8	\$89,681.72	\$7,473.48	\$1,724.65
9	\$91,631.32	\$7,635.94	\$1,762.14
10	\$93,580.92	\$7,798.41	\$1,799.63

For families with more than one child in care, the youngest child is always considered the first child enrolled. The total amount of assessed fees to a family shall not exceed 10% of the family's gross income for all of their children.

Weekly fee assessments must be rounded down to the nearest dollar. All assessed parent fees shall be paid directly to the caregiver by the parent.

¹ SMI DATA: <https://www.federalregister.gov/articles/2015/06/10/2015-14187/the-low-income-home-energy-assistance-program-announces-the-state-median-income-estimates-for-ffv2016>

APPENDIX G

45 C.F.R. §98.43

45 C.F.R. §98.43 Criminal background checks.¹

- (a) (1) States, Territories, and Tribes, through coordination of the Lead agency with other State, territorial, and tribal agencies, shall have in effect:
- (i) 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 under [Title 45, Part 98 of the Code of Federal Regulations] as described in paragraph (a)(2) of this section;
 - (ii) Licensing, regulation, and registration requirements, as applicable, that prohibit the employment of child care staff members as described in paragraph (c) of this section; and
 - (iii) Requirements, policies, and procedures in place to respond as expeditiously as possible to other States', Territories', and Tribes' requests for background check results in order to accommodate the 45 day timeframe required in paragraph (e)(1) of this section.
- (2) In this section:
- (i) 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; and
 - (ii) 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.
- (b) A criminal background check for a child care staff member under paragraph (a) of this section shall include:
- (1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;
 - (2) A search of the National Crime Information Center's National Sex Offender Registry; and
 - (3) A search of the following registries, repositories, or databases in the State where the child care staff member resides and each State where such staff member resided during the preceding five years:
 - (i) State criminal registry or repository, with the use of fingerprints being:
 - (A) Required in the State where the staff member resides;
 - (B) Optional in other States;
 - (ii) State sex offender registry or repository; and
 - (iii) State-based child abuse and neglect registry and database.

¹ See Child Care and Development Fund (CCDF) Program, 81 Fed. Reg. 67438, 67584-85 (Sept. 30, 2016).

- (c) (1) A child care staff member shall be ineligible for employment by child care providers of services for which assistance is made available in accordance with this part, if such individual:
- (i) Refuses to consent to the criminal background check described in paragraph (b) of this section;
 - (ii) Knowingly makes a materially false statement in connection with such criminal background check;
 - (iii) Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry; or
 - (iv) Has been convicted of a felony consisting of:
 - (A) Murder, as described in section 1111 of title 18, United States Code;
 - (B) Child abuse or neglect;
 - (C) A crime against children, including child pornography;
 - (D) Spousal abuse;
 - (E) A crime involving rape or sexual assault;
 - (F) Kidnapping;
 - (G) Arson;
 - (H) Physical assault or battery; or
 - (I) Subject to paragraph (e)(4) of this section, a drug-related offense committed during the preceding 5 years; or
 - (v) Has been convicted of a violent misdemeanor committed as an adult against a child, including the following crimes: Child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.
- (2) A child care provider described in paragraph (a)(2)(i) of this section shall be ineligible for assistance provided in accordance with this subchapter if the provider employs a staff member who is ineligible for employment under paragraph (c)(1) of this section.
- (d) (1) A child care provider covered by paragraph (a)(2)(i) of this section shall submit a request, to the appropriate State, Territorial, or Tribal agency, defined clearly on the State or Territory Web site described in paragraph (g) of this section, for a criminal background check described in paragraph (b) of this section, for each child care staff member (including prospective child care staff members) of the provider.
- (2) Subject to paragraph (d)(3) of this section, the provider shall submit such a request:
- (i) Prior to the date an individual becomes a child care staff member of the provider; and
 - (ii) Not less than once during each 5-year period for any existing staff member.
- (3) A child care provider shall not be required to submit a request under paragraph (d)(2) of this section for a child care staff member if:
- (i) The staff member received a background check described in paragraph (b) of this section:
 - (A) Within 5 years before the latest date on which such a submission may be made; and
 - (B) While employed by or seeking employment by another child care provider within the State;

(ii) The State provided to the first provider a qualifying background check result, consistent with this subchapter, for the staff member; and

(iii) The staff member is employed by a child care provider within the State, or has been separated from employment from a child care provider within the State for a period of not more than 180 consecutive days.

(4) A prospective staff member may begin work for a child care provider described in paragraph (a)(2)(i) of this section after completing either the check described at paragraph (b)(1) or (b)(3)(i) of this section in the State where the prospective staff member resides. Pending completion of all background check components in paragraph (b) of this section, the staff member must be supervised at all times by an individual who received a qualifying result on a background check described in paragraph (b) of this section within the past five years.

(e) *Background check results.* (1) The State, Territory, or Tribe shall carry out the request of a child care provider for a criminal background check as expeditiously as possible, but not to exceed 45 days after the date on which the provider submitted the request, and shall provide the results of the criminal background check to such provider and to the current or prospective staff member.

(2) States, Territories, and Tribes shall ensure the privacy of background check results by:

(i) Providing the results of the criminal background check to the provider in a statement that indicates whether a child care staff member (including a prospective child care staff member) is eligible or ineligible for employment described in paragraph (c)(1) of this section, without revealing any disqualifying crime or other related information regarding the individual.

(ii) If the child care staff member is ineligible for such employment due to the background check, the State, Territory, or Tribe will, when providing the results of the background check, include information related to each disqualifying crime, in a report to the staff member or prospective staff member, along with information on the opportunity to appeal, described in paragraph (e)(3) of this section.

(iii) No State, Territory, or Tribe shall publicly release or share the results of individual background checks, except States and Tribes may release aggregated data by crime as listed under paragraph (c)(1)(iv) of this section from background check results, as long as such data is not personally identifiable information.

(3) States, Territories, and Tribes shall provide for a process by which a child care staff member (including a prospective child care staff member) may appeal the results of a criminal background check conducted under this section to challenge the accuracy or completeness of the information contained in such member's criminal background report. The State, Territory, and Tribe shall ensure that:

(i) Each child care staff member is given notice of the opportunity to appeal;

(ii) A child care staff member will receive clear instructions about how to complete the appeals process if the child care staff member wishes to challenge the accuracy or completeness of the information contained in such member's criminal background report;

(iii) If the staff member files an appeal, the State, Territory, or Tribe will attempt to verify the accuracy of the information challenged by the child care staff member, including making an effort to locate any missing disposition information related to the disqualifying crime;

(iv) The appeals process is completed in a timely manner for each child care staff member; and

(v) Each child care staff member shall receive written notice of the decision. In the case of a negative determination, the decision should indicate the State's efforts to verify the accuracy of

information challenged by the child care staff member, as well as any additional appeals rights available to the child care staff member.

(4) States, Territories, and Tribes may allow for a review process through which the State, Territory, or Tribe may determine that a child care staff member (including a prospective child care staff member) disqualified for a crime specified in paragraph (c)(1)(iv)(I) of this section is eligible for employment described in paragraph (c)(1) of this section, notwithstanding paragraph (c)(2) of this section. The review process shall be consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(5) Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) *Fees for background checks.* Fees that a State, Territory, or Tribe may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs for the processing and administration.

(g) *Transparency.* The State or Territory must ensure that its policies and procedures under this section, including the process by which a child care provider or other State or Territory may submit a background check request, are published in the Web site of the State or Territory as described in § 98.33(a) and the Web site of local lead agencies.

(h) *Disqualification for other crimes.* (1) Nothing in this section shall be construed to prevent a State, Territory, or Tribe from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in paragraph (c)(1) of this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members or prospective staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

APPENDIX H

Questions from Working Group to Federal Administration for Children and Families
(with summaries of answers)

**QUESTIONS FROM WORKING GROUP TO
FEDERAL ADMINISTRATION FOR CHILDREN AND FAMILIES**
with summaries of answers provided at Oct. 14, 2016 Working Group meeting

1. What portion of the CCDF Funds allocated to Maine in each of the past three years has not been spent? What happens to the unspent funds? Does having unspent money affect future allocations?

Summary of answer: In fiscal year 2013 Maine did not spend \$4.1 million of the CCDF funds allocated to the State and in fiscal year 2014 Maine did not spend \$4.2 million of its allocated funds. A final accounting of fiscal year 2015 funds has not yet occurred, but ACF anticipates that there will be unspent funds. A portion of the CCDF funds allocated to Maine that are not spent are redistributed among other states, the remainder of unspent funds remain with the federal government.

2. Does the definition of "child care staff member" in § 98.43(a)(2)(ii) of the final rules include contractors who are employed by a family child care provider for home maintenance and similar purposes?
 - a. For example, is a background check required for: (a) a plumber hired by a family child care provider to fix a sink in the residence portion of the home, (b) a plumber hired to fix a drain in the childcare portion of the home, (c) a person hired to plow the driveway, or (d) a person hired to mow the lawn where the childcare playground equipment is located?
 - b. Does it make a difference whether the family childcare is open or closed when these professionals are working on site?

Summary of answer: No, the definition of "child care staff member" in the federal rule does not include people who enter a child care business infrequently or irregularly to perform maintenance and similar tasks, provided that these individuals are not given unsupervised access to the children. If the individual is given unsupervised access, then a background check must be conducted. This answer is not dependent on whether the child care program is open or closed when the maintenance or similar individual is on the premises.

3. Does the definition of "child care staff member" in § 98.43(a)(2)(ii) include a speech therapist or other special education professional hired by an education agency (*i.e.*, not employed by the childcare facility or family child care provider) who provides service to the child in the childcare setting? Does the answer depend on whether the special educator is supervised or unsupervised while working with the child?

Summary of answer: Yes, special education and other therapy or counseling professionals are included within the definition of "child care staff member" in the federal rule because their "activities involve the care or supervision of children." This answer is not dependent on whether the professional is actually employed by the child care program, another entity, or works as a contractor. If the entity for whom the therapist or counselor works has performed a background check consistent with the CCDBG Act of 2014, the child care program need not perform an additional background check on the professional.

4. The final rule extends the background check requirement to childcare staff members under age 18, but not to individuals residing in a family child care home who are less than 18 years of age. Why has ACF chosen to make this distinction?

Summary of answer: ACF removed the word “adult” from the final rule defining child care employees in an effort not to prevent states from allowing teenagers to work in child care facilities or family child care homes. Comments ACF received during the rulemaking process supported the requirement for background checks of adults residing in family child care homes but not checks of minors. States have discretion to extend the background check requirements to minors, however.

5. In Maine, juvenile offenses are not “crimes”, “misdemeanors” or “felonies” in the traditional sense of those words. May an individual’s Maine juvenile record therefore be ignored in determining whether a staff member is eligible for employment under 42 U.S.C. § 98585f(c)(1)(D) or (E) and the implementing regulation?

Summary of answer: Maine has the flexibility to decide whether to include juvenile offenses in the list of offenses that disqualify individuals from working as “child care staff members” for child care providers who receive CCDF funds.

6. The commentary to the proposed federal rules and the final federal rules suggests that CCDF funds can be used to pay the cost of background checks for childcare workers. Can you confirm this is the case? Are there any limitations on the use of CCDF funds for this purpose? Can a State use CCDF Funds to buy electronic fingerprinting equipment for use in implementing the background check requirement of the CCDBG Act of 2014?

Summary of answer: Generally, yes, CCDF grant funds may be used to pay the cost of background checks and the cost of equipment for conducting background checks, as long as no less than 70% of discretionary and mandatory CCDF funds are used for child care subsidies as required by law.

7. How long does it take to process an FBI fingerprint check? (The commentary to the final rules indicate electronic fingerprint results can be obtained within 24 hours, yet the FBI website advertises a several-month timeframe for an individual to obtain his or her own fingerprint-based background check results.)

Summary of answer: If electronic fingerprints using “livescan” technology are employed, the FBI can typically provide background check results within 24-hours of receiving the fingerprints. Paper prints take significantly longer to process and the rejection rate—necessitating the taking of new fingerprints—is much higher for these non-electronic prints. In addition, requests from individuals seeking their own background check results are not given the same priority as state-submitted background check requests.

8. Does ACF know or have an estimate for the cost of an NCIC-National Sex Offender Registry search and the timeframe for processing that type of search?

Summary of answer: Not at this time, ACF is awaiting further guidance from the FBI on this issue.

APPENDIX I

Discretionary Issues for States Identified in Commentary to Federal Rules

DISCRETIONARY ISSUES FOR STATES IDENTIFIED IN COMMENTARY TO FEDERAL RULES

1. *Whether to expand definition of “staff member” – i.e., who should be checked?*
 - For example, States may require checks of: minors residing in family provider homes or volunteers who have only supervised access to children.
2. *Whether to expand the list of disqualifying offenses?*
 - States may add, for example, other crimes or substantiated findings of abuse.
3. *Whether to restrict employment at child care facilities that do not receive CCDF funds?*
 - Federal rules require all licensed facilities/providers and providers that receive CCDF funds to conduct background checks of staff members, but only disqualifies individuals with criminal histories from being employed by the facilities/providers that receive CCDF funds. State may choose to extend disqualifications to providers that do not receive CCDF funds.
4. *Whether to use a “rap back” program?*
 - Federal rules strongly encourage enrolling child care staff members in a “rap back program” to provide notification of subsequent criminal activity.
 - *Note: Maine Background Check Center Act has a rap back program. 22 M.R.S. § 9056.*
5. *Whether to impose stricter guidelines for provisional employment?*
 - Federal rules allow provisional employment after FBI or State fingerprint-based check has been complete, provided employee is supervised at all times.
 - States may impose stricter requirements.
 - Federal rules require results of all background checks to be complete in 45 days.
 - States may allow provisional employees to keep working if checks are delayed.
6. *Should background check results be shared with child care employers?*
 - Federal CCDBG Act and federal rules only permit employer to be told whether employee is eligible for work; the employee receives detailed criminal history results. This limitation might not apply if the State uses a different federal law as authority to conduct the FBI fingerprint-based background check. States could use the National Child Protection Act/Volunteers for Children Act (42 U.S.C. § 5119a) as the authority to conduct checks and share results with employers if the State has a “VECHS program” in place and employees consent to information-sharing.
7. *Whether to permit waiver of felony drug offenses committed in past 5 years?*
8. *Whether to add details to appeals process?*
 - States must create process for individuals to challenge accuracy of criminal record
 - States have discretion regarding, for example, a specific timeframe between filing an appeal and the hearing; deadline for issuance of decision after the hearing; and whether provisional employees may continue to work pending the appeal decision.
9. *Who Pays for the Background Check?*
 - States have flexibility to charge provider or employee or to use CCDF grant funds.

APPENDIX J

**June 10, 2016 Letter from ACF
Conditionally Approving Maine CCDF State Plan for 2016-2018**



ADMINISTRATION FOR
CHILDREN & FAMILIES

330 C Street, S.W., Washington DC 20201 | www.acf.hhs.gov

June 10, 2016

Mary C. Mayhew, Commissioner
Department of Health and Human Services
11 State House Station
Augusta, Maine 04333

Dear Commissioner Mayhew:

The Office of Child Care (OCC) recognizes that there are many new requirements included in the Child Care and Development Block Grant (CCDBG) Act of 2014 that you are working to implement during this Plan period. We appreciate the time and energy that you put into developing your Child Care and Development Fund (CCDF) Plan to reform and effectively administer your program. I am pleased to inform you that the Maine CCDF Plan for the period of June 1, 2016, through September 30, 2018, has been conditionally approved. A "conditionally approved" plan is a fully approved plan with conditions to be met based on your waiver requests, if applicable, and implementation plans for unmet requirements. The conditions will be deemed fully met once all provisions in the CCDBG Act of 2014 are fully implemented and implementation plan action steps are completed. At that time the Maine CCDF Plan will be approved without conditions. OCC gave careful consideration to the statutory conditions outlined in the Act, as well as the length of time requested, with the goal of having all provisions related to the Act fully implemented by October 1, 2018 corresponding to the start of the FY2019-2021 CCDF Plan period.

The following conditions apply to your CCDF Plan:

- Health and Safety Training Corrective Action Plan – The Administration for Children and Families considers health and safety training critical to reducing risk of injury and death for children receiving assistance. According to the Program

Instruction CCDF-ACF-PI-2015-09 issued December 2015, all new and existing caregivers and teachers serving children receiving CCDF assistance must have completed these training requirements by this date. Maine will not meet the health and safety training provision by the effective date of September 30, 2016; therefore you will be on a Corrective Action Plan starting October 1, 2016. You will now have an additional year to achieve this goal. You have 60 days following receipt of this letter to formally submit your extended timeline for implementing this requirement, not to exceed one year, by completing or revising the Implementation Plan at 5.1.6b in the ACF-118 system.

Key principles of the CCDF are to provide equal access to child care for children receiving child care assistance and to ensure parental choice. Provider payment rates set too low undermine these principles. As you are aware, the CCDBG Act of 2014 requires states and territories to take the cost of quality into account when setting rates, and to set rates based on the results of the most recent market rate survey or alternative methodology. We continue to be concerned that your rates may not allow for equal access. OCC plans to make review of payment rates a priority for our upcoming implementation monitoring visits. Thus, the conditional approval of your Plan does **not** constitute a final determination that your payment rates are sufficient to provide access to child care services for eligible families that are comparable to those provided to families that do not receive subsidies, as required by law.

You will receive a Notice of Grant Award in October 2016 from the Office of Administration in the Administration for Children and Families. The notice will include the amount of your award and any additional terms and conditions for the receipt of CCDF program funds. During the effective period of this plan, any substantial changes to the Maine program must be submitted as a plan amendment to your Regional Office for approval in accordance with 45 CFR 98.18(b).

We remind you that your CCDF-funded child care program for in-home providers must comply with all applicable Federal laws and regulations, including Federal wage and income tax laws governing domestic workers. Questions regarding Federal wage laws should be directed to your local or district office of the Wage and Hour Division within the U.S. Department of Labor. Likewise, questions regarding Federal income tax laws should be directed to your local or district office of the Internal Revenue Service.

We look forward to working together toward implementation of the CCDBG Act of 2014 and promoting the early learning and development of children along with family economic stability and success. If you have any questions, please contact Shireen Riley, Child Care

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Program Manager, Office of Child Care at (617) 565-1152 or shireen.riley@acf.hhs.gov.
Thank you for all you do each day for children and families.

Sincerely,

Rachel Schumacher
Director
Office of Child Care

cc: Elissa Wynne, Child Care Services Team Leader
Liz Ray, TANF/ASPIRE Senior Program Manager
Shireen Riley, Regional Program Manager, Office of Child Care Region I