

**U.S. DEPARTMENT OF JUSTICE
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Re: JOSE

for my
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FROM:

**GREGORY J. KING
Director of Special Projects**

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DRAFT

FOR IMMEDIATE RELEASE
WEDNESDAY, APRIL 29, 1998

OJJDP
202/307-0703

**NEW GUIDELINES TO HELP PROTECT CHILDREN, ELDERLY AND DISABLED
FROM CAREGIVER ABUSE AND NEGLECT**

WASHINGTON, D.C. -- Children, the elderly and the disabled will be better protected from abuse and neglect if new guidelines released today by the Justice Department's Office of Juvenile Justice and Delinquency Prevention (OJJDP) are used. *Guidelines for the Screening of Persons Working with Children, the Elderly and Individuals with Disabilities in Need of Support* offers practical guidance for screening potential caregivers and recommendations for developing statewide screening and background check policies.

"All too often we hear how the most vulnerable in our society are victimized by those who are supposed to care for them," said OJJDP Administrator Shay Bilchik. "These guidelines are an important step to help us detect potential abusers before they can do harm."

The guidelines help different types of organizations screen caregivers by focusing on variables such as the type of contact the caregiver would have with the client, whether the care is supervised or unsupervised, and the age and condition of the client.

"The best screening methods for a juvenile mentoring program are not necessarily the best for a nursing home," added Bilchik. "The guidelines will help different organizations tailor screening procedures to best meet their needs and protect their clients."

(MORE)

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The guidelines also provide recommendations for how states can strengthen their efforts by:

- Encouraging abuse prevention training for all workers at service agencies, organizations and facilities for children and dependent adults.
- Allowing greater access to state criminal record and sex offender information.
- Creating central abuse and neglect registries for children and elderly or dependent adults.

The guidelines feature an overview of current federal and state laws. They also offer specific suggestions for screening applicants for caregiving positions, including model forms that organizations can use as part of a job application process. In addition, the guidelines provide helpful information for monitoring and preventing abuse after an individual is hired.

The 1994 Crime Law amended the National Child Protection Act of 1993 directing the Justice Department to develop these guidelines, which were prepared by the American Bar Association (ABA) under a grant from OJJDP. The ABA's Center on Children and the Law sought input from federal, state, and local agencies and organizations, including the Justice Department's Child Exploitation and Obscenity Section, the Bureau of Justice Statistics and OJJDP's Missing and Exploited Children's Division in developing the guidelines.

Copies of *Guidelines for the Screening of Persons Working with Children, the Elderly and Individuals with Disabilities in Need of Support* and information about other OJJDP publications, programs and conferences are available through the OJJDP web site at www.ncjrs.org/ojjhome.htm and from OJJDP's Juvenile Justice Clearinghouse, Box 6000, Rockville, Maryland 20857. The toll-free number is 1-800/638-8736.

(MORE)

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Information about other OJP bureaus and program offices is available at www.ojp.usdoj.gov. Media should contact OJP's Office of Congressional and Public Affairs at 202/307-0703.

Additional information about the ABA is available at www.abanet.org.

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OJDP 98119

After hours contact: Adam Spector, 202/516-6843



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEETDATE: 5/6

TO:

Neera Tanden

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FROM:

JOE GRAUPENSPERGER

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305-2643NO. OF PAGES: 1 (EXCLUDING COVER)

COMMENTS:

The Department of Justice transmitted the National Crime Prevention and Privacy Compact to Congress last October. The goal is to obtain bipartisan support for this proposal. Because of problems within the House Judiciary Committee relating to which Subcommittee has jurisdiction over this compact, the House has not yet acted on this issue. In the Senate, we are working to obtain bipartisan support for the compact prior to introduction in order to increase chances for passage.

QUESTION: If the National Crime Prevention and Privacy Compact is so important, then why has it not yet been introduced?

ANSWER: We working with Congress on a bipartisan basis before introduction in order to provide the best possible environment for passage of the compact.



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

May 1, 1998

NOTE TO: Nira Tanden
Domestic Policy Council

FROM: Harri j. Kramer, Director
Office of Congressional and Public Affairs

SUBJECT: **Copy of the Guidelines**

Here are two copies of the "Guidelines for the Screening of Persons" It is stamped draft because our policy is to stamp DRAFT on all copies until we have the actual printed version. This is, however, the final version and is a photocopy of the laser version that is at the printer. I have been advised that the printed version will be delivered to us Monday or Tuesday.

I have set in motion that which we need to do in order to deliver copies of the Guidelines to our oversight folks on the Hill. That delivery is now set for Friday afternoon, May 8.

We also put all of our documents up on the Web. I'll have this one timed to go up either Friday night or Saturday morning. (I don't yet know what our Webmaster's capabilities are in this regard.) Of course, if you have preferences, please let me know and we'll do all we can to accommodate.

Please let me know if there is anything else you need. My direct line is 202/514-6094. While I will be on two days leave Monday/Tuesday, I'll be accessible through the Justice Command Center (202/514-5000).



GUIDELINES

FOR THE SCREENING
OF PERSONS WORKING
WITH CHILDREN,
THE ELDERLY,
AND INDIVIDUALS
WITH DISABILITIES
IN NEED OF SUPPORT

Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support

Summary

Noy S. Davis, Esq., Project Director

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American Bar Association Center on Children and the Law

with

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Office of Juvenile Justice and Delinquency Prevention

December 1997

State laws also vary in specifying the types of workers to be screened. Some laws requiring criminal checks of home health aides and attendants only cover employees. Other laws may include those providing direct care and substitute caregivers. In addition, mandated settings vary. For example, many States require criminal record checks for daycare centers, some cover schools, some include licensed home healthcare facilities, and some cover any setting in which people have supervisory or disciplinary authority over a child. Specific exceptions, however, often exist. With respect to services for children, exceptions have included:

- School-based childcare.
- Youth recreation groups such as Scouting or camping organizations.
- Childcare affiliated with a religious group.
- Youth programs operated in adult facilities.
- Babysitting arrangements.
- Single-family “nanny” situations.
- Daycare situations in which fewer than a specified number of children—often three, four, or five—are cared for.

Because licensing may not always be an appropriate mechanism to encourage screening, a number of States have passed separate statutes authorizing certain screening practices. These generally include checks of State criminal records or the central child abuse and neglect registry.¹⁵ Most States do not maintain registries of persons who are being investigated for or who have committed abuse against the elderly or dependent adults.¹⁶

More than half the States have laws authorizing national criminal history checks for some type of person working with children, the elderly, or individuals with disabilities. A number of States also authorize State criminal history checks (either in lieu of or in addition to the national check). At least 12 States have enacted statutes mandating criminal background checks of nurse’s aides; several additional States have proposed legislation.¹⁷ The statutes do vary in that several require a more comprehensive background check than others. Some States set forth a more expansive listing of crimes prohibiting employment, while others broaden their scope beyond the hiring of nurse’s aides to all staff who have access to children and adults in need of supportive services—including, in certain circumstances, volunteers.

¹⁵See, e.g., ALASKA STAT. § 12.62.035 (Michie 1990) (authorizing “an interested person” to request a criminal record check—for felonies, contributing to the delinquency of a minor, and sex crimes—on a “person who holds or applies for a position of employment in which the person has or would have supervisory or disciplinary power over a minor or dependent adult”).

¹⁶All States have statutes providing for the investigation of elderly or dependent adult abuse, and an estimated 42 have some form of mandatory reporting. See L. Stiegel, “Appendix C: Chart compilations on Adult Protective Services and related statutes,” in *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*, Washington, DC: American Bar Association (written under a grant from the State Justice Institute), 1995.

¹⁷Information obtained from the National Coalition for Nursing Home Reform and Long-Term Ombudsmen programs revealed that the following States had enacted background checks for nurse’s aides (some cover other caregivers as well): California, Florida, Kentucky, Louisiana, Minnesota, Nevada, Oklahoma, Rhode Island, Texas, Vermont, Virginia, and Washington.

Because licensing may not always be an appropriate mechanism to encourage screening, a number of States have passed separate statutes authorizing certain screening practices.

Overview

Background

More than 87 million children are involved in activities provided by child and youth service organizations and agencies each year. Millions more adults, both the elderly and individuals with disabilities¹ who are in need of support, are served by many more organizations and agencies. These encounters run the gamut from relatively brief interactions with healthcare or recreation providers, to surrogate family relationships in foster care, to intensive dependent adult care services in or out of the home. The vast majority of these encounters are not harmful or abusive, but instead result in the provision of much needed services—sometimes by volunteers, often by persons who are not among society's better paid employees.

Abuses do, however, occur. Although studies are sketchy and do not provide a complete picture, one study indicated that 12.8 percent of the estimated 2 million incidents of elder abuse occurring in the home were perpetrated by service providers.² A survey of 600 nursing home staff members suggested that elder abuse is a fact of institutional life: Of the staff surveyed, 10 percent admitted to physically abusing patients and 40 percent admitted to personally committing at least one psychologically abusive act in the preceding year.³ As for children, estimates of the incidence of child sexual abuse in daycare centers, foster care homes, and schools range from 1 to 7 percent.⁴ Although the incidence of abuse may be relatively small, abuse traumatizes the victims and shakes public trust in care providers and organizations serving these vulnerable populations.

Congress has acted to address concerns about this type of abuse. In 1993, the National Child Protection Act, Pub. L. No. 103-209, was passed (see appendix A). Section 3 of the Act set forth a framework through which States can authorize criminal record checks of childcare providers by the Federal Bureau of Investigation (FBI). In 1994, the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-222, amended the 1993 act so that States could also authorize FBI criminal record checks of those working with individuals with disabilities or the elderly. In addition, the Attorney General was directed to



Although the incidence of abuse may be relatively small, abuse traumatizes the victims and shakes public trust in care providers and organizations serving these vulnerable populations.

¹For purposes of this project, we have used the definition of individuals with disabilities set forth in section 320928 of the Violent Crime Control and Law Enforcement Act of 1994: "[T]he term 'individuals with disabilities' means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks."

²Summaries of National Elder Abuse Data: An Exploratory Study of State Statistics, Washington, DC: National Aging Resource Center on Elder Abuse, 1990.

³American Association of Retired Persons (AARP) Public Policy Institute, *Fact Sheet: Elder Abuse and Neglect*, April 1993.

⁴See American Bar Association (ABA) Center on Children and the Law, *Effective Screening of Child Care and Youth Service Workers*, 1995 (citing D. Finkelhor and L.M. Williams, *Nursery Crimes: Sexual Abuse in Day Care*, Newbury Park, CA: Sage Publications, 1988); L. Baas, *Background Checks on School Personnel*, Washington, DC: U.S. Department of Education, ED 324767, 1990; D. Daro and K. McCurdy, *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1991 Annual 50 State Survey*, Chicago, IL: National Center on Child Abuse Prevention Research, National Committee for Prevention of Child Abuse, 1992; L. Margolin, "Child sexual abuse by nonrelated caregivers," *Child Abuse and Neglect* 15:213, 1991.

Legislation regarding the screening of persons working with children, the elderly, and individuals with disabilities has not been passed in all States.

encouraging States to consider screening legislation. Whether *national* checks are required or permitted continues to depend on whether there is a *State* statute, approved by the Attorney General, that specifically authorizes national (fingerprint) checks.¹² Appendix B (CJIS Information Letter 95-3) answers many questions about the National Child Protection Act.

Sex offender registration was the focus of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, passed as part of the Violent Crime Control and Law Enforcement Act of 1994. This act mandated that the Attorney General establish guidelines for State programs requiring registration of sex offenders. Among other requirements, offender registration information is to be forwarded to a designated State law enforcement agency, which in turn is to transmit the conviction data and fingerprints to the FBI. The information collected is to be treated as private data but can be disclosed to government agencies conducting confidential background checks.¹³

In addition, criminal checks for home health aides were recently added to the Medicare requirements for home health agencies.¹⁴

State laws

Legislation regarding the screening of persons working with children, the elderly, and individuals with disabilities has not been passed in all States. To the extent they exist, State screening laws may be found in licensing laws, laws governing State social welfare agencies, and laws regarding specific information systems (e.g., criminal record repositories, child or elder abuse registries, or sex offender registries).

Screening laws vary in the types of workers covered and the types of checks required. Licensing laws are obviously limited to the individuals or entities licensed. States have made differing determinations as to whom to license. Statutes that charge the human services department (or similar State agencies with child welfare and protection responsibilities) often only reach those who participate in the child protection system or residential or health organization. Typically, they may include licensed social workers, foster or adoptive parents, and persons who may work with or care for children, the elderly, or individuals with disabilities in other settings such as group homes or residential institutions.

Among the licensing and social welfare laws in effect, there is considerable variety in the type of check to be conducted. For example, some States require checks from the State central abuse and neglect registry or criminal history records. A few licensing statutes may be more detailed and require licensees to contact previous employers.

¹²See National Child Protection Act of 1993, Pub. L. No. 103-209, 107 Stat. 2490, § 3(b)(5) and Pub. L. No. 92-544, 86 Stat. 1109 (authorized national checks for noncriminal justice purposes if pursuant to State statute and through a State agency).

¹³Subpart (d) also permits disclosure to law enforcement for law enforcement purposes, and the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information (other than the victim's identity) that is necessary to protect the public concerning a specific person required to register.

¹⁴See Proposed Rule, 62 Fed. Reg. 11004-05, 62 Fed. Reg. 11035 (Mar. 10, 1997).

Report

New report fr. DOJ: which is designed to

The Justice Department is releasing this report, which is designed to
Guidelines for the Screening of Persons Working with Children, the Elderly and Individuals with Disabilities in Need of Support will help protect children, the elderly and the disabled from abuse and neglect. The guidelines offer practical guidance for screening potential caregivers and recommendations for developing statewide screening and background check policies.

Organizations can use the guidelines to develop screening procedures that best meet their needs and protect their clients. *For example, child care providers can use the guidelines to help them screen*

The guidelines were designed to assist many different types of organizations that are faced with the responsibility of selecting caregivers for children, including schools, day care facilities, foster care facilities, youth development organizations, and other volunteer organizations. The guidelines will help these organizations, and others that serve the elderly and disabled, screen caregivers by focusing on variables such as the type of contact the caregiver would have with the client, whether the care is supervised or unsupervised, and the age and condition of the client.

The guidelines also provide recommendations for how states can strengthen their efforts by *such efforts*

The recommendations include

- *1* Allowing greater access to state criminal record and sex offender information;
- *2* Encouraging abuse prevention training for all workers at service agencies, organizations and facilities for children and dependent adults, *and*
- *3* Creating central abuse and neglect registries for children and elderly or dependent adults.

One of the recommendations is that states pass legislation authorizing the use of national and state criminal record checks. ~~The decision-making model provided in the guidelines can assist states in determining if such legislation would be appropriate and shows how to balance the security needs of organizations and their clients with the privacy needs of job or volunteer applicant.~~

The report states
The guidelines include an overview of current federal and state laws. They also offer specific suggestions for screening applicants for caregiving positions, including model forms that organizations can use as part of a job application process. In addition, the guidelines provide helpful information for monitoring and preventing abuse after an individual is hired.

National Crime Prevention and Privacy Compact

The report indicates the need for the compact and specifically detail how it works
President Clinton has transmitted to Congress the National Crime Prevention and Privacy Compact to Congress, which will facilitate effective background checks on child care providers by eliminating state law barriers to the sharing of criminal history information for non-criminal purposes. Although the vast majority of child care providers are dedicated to the teaching and nurturing of children, one tragedy in child care is too many. Background checks are an important way to ensure that the people watching our children are fit for this responsibility.

The report indicates the need for the compact
As today's report points out, states vary widely in their laws regarding the release of criminal history records for purposes like background checks for employment or licensing. This means that a child care agency wishing to do a nationwide check to determine whether a potential child

care worker has a criminal history will not be able to gain direct access to all states' records but instead must go to the FBI for information. Under the compact, each ratifying state would agree to release its own criminal history information to other ratifying states for any purpose authorized by the receiving state's law. This means an agency wanting to do a nationwide need not rely on incomplete FBI records, but may gain access directly to other states' complete criminal records. In this way, the compact will vastly increase the effectiveness and efficiency of nationwide criminal background checks.

Legislative Outlook:

The Department of Justice transmitted the National Crime Prevention and Privacy Compact to Congress last October. The Department has been working over the last several months to craft bipartisan support for the bill, and to do so on a relatively low-key level in order to avoid any controversy. Justice has followed a strategy of lining up support for the bill before actual introduction. In the Senate, Judiciary Committee Chair Hatch has taken the lead on the bill and plans to introduce it before the Memorial Day recess with both Republican and Democratic co-sponsors. In the House, Representative McCollum has shown a great deal of interest in moving the bill, but because of problems within the House Judiciary Committee relating to which Subcommittee has jurisdiction, the House is chosen to wait for Senate action. At this point, while the Compact has not been a high-level priority, there has been no opposition to the legislation.

Report
Earlier this week, the Annie E. Casey Foundation released its *KIDS COUNT Data Book*, which highlights the need for safe and affordable child care for millions of America's working families, with important evidence of the growing child care problem. The report finds that every day, parents of 29 million children struggle to find safe and affordable child care so that they can go to work. The challenge is especially great for the working parents of 10 million children in low-income families. The need continues to grow: by the year 2000, 70 percent of all women with pre-school children will work outside the home. The annual report found that child care is simply unaffordable for many families, consuming as much as 25 percent of their income at an average cost of \$4,000 per child each year. Children from working poor families are most likely to suffer from inadequate child care programs yet they also are the ones who make the greatest gains in quality programs. Finally, the report notes that quality is uneven and often poor, and that inadequate care can have a dramatic impact on children's development. You released a statement on the report ~~on the day it came out.~~

after it was released.



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

Date: 5/6/98

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Harri j. Kramer, APR

Director, Office of Congressional & Public Affairs

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Number of Pages: 2

(including cover)

All if this works better

Guidelines for the Screening of Persons Working with Children, the Elderly and Individuals with Disabilities in Need of Support

Guidelines for the Screening of Persons Working with Children, the Elderly and Individuals with Disabilities in Need of Support will help protect children, the elderly and the disabled from abuse and neglect. The guidelines offer practical guidance for screening potential caregivers and recommendations for developing statewide screening and background check policies. Organizations can use the guidelines to develop screening procedures that best meet their needs and protect their clients.

The guidelines were designed to assist many different types of organizations that are faced with the responsibility of selecting caregivers for children, including schools, day care facilities, foster care facilities, youth development organizations, and other volunteer organizations. The guidelines will help these organizations, and others that serve the elderly and disabled, screen caregivers by focusing on variables such as the type of contact the caregiver would have with the client, whether the care is supervised or unsupervised, and the age and condition of the client.

The guidelines also provide recommendations for how states can strengthen their efforts by:

- Allowing greater access to state criminal record and sex offender information.
- Encouraging abuse prevention training for all workers at service agencies, organizations and facilities for children and dependent adults.
- Creating central abuse and neglect registries for children and elderly or dependent adults.

One of the recommendations is that states pass legislation authorizing the use of national and state criminal record checks. The decision making model provided in the guidelines can assist states in determining if such legislation would be appropriate and shows how to balance the security needs of organizations and their clients with the privacy needs of job or volunteer applicant.

The guidelines include an overview of current federal and state laws. They also offer specific suggestions for screening applicants for caregiving positions, including model forms that organizations can use as part of a job application process. In addition, the guidelines provide helpful information for monitoring and preventing abuse after an individual is hired.

Foreword

All too frequently, we read stories in our daily newspapers, see on the nightly news, or hear about yet another individual who is the victim of abuse at the hands of a care provider - - a care provider with a criminal history of similar abuses or who is otherwise not fit to care for vulnerable individuals. The victim may be a child in a preschool program, an elderly person who needs assisted living care, or a disabled individual who requires institutional care.

Today nearly 35 million adults come into contact with more than 70 million children in educational institutions, day care facilities, foster care homes, youth development organizations, social service agencies' medical facilities, recreation centers, religious-based programs, and juvenile detention, correctional, and law enforcement facilities. More than 5 million of the estimated 33.9 million Americans older than 65 years need some form of assisted care and an additional 2.3 million of the 36 million Americans with a disability require residential treatment. The total number of Americans in need of some care is estimated at more than 77.3 million.

When Congress introduced and passed the National Child Protection Act in 1993, it addressed concerns we all share: concerns about the qualifications of those who care for the members of our society most susceptible to abuse. The Violent Crime and Law Enforcement Act of 1994 amended the National Child Protection Act and directed the Attorney General to "develop guidelines for the adoption of appropriate safeguards by care providers and by states for protecting children, the elderly, or individuals with disabilities from abuse." With the release of these guidelines, we are taking a step forward in providing this vulnerable population with additional protection from abuse by those responsible for their care. These guidelines present a logical decision model to guide the screening decisions of individuals and organizations who hire employees or recruit volunteers to work with and provide care to children, the elderly, or the disabled.

The guidelines do not mandate criminal record checks for all care providers but do present advice on establishing a policy that provides an appropriate level of screening based upon specific situations. The suggested screening mechanisms may include the Federal Bureau of Investigation's fingerprint based criminal records check, where warranted. The first step presented in this decision model includes an assessment of "triggers" that pertain to the setting in which the care is provided, the employee's or volunteer's level of contact with the individual receiving care, and the vulnerability of the care receiver. The next step is weighing the availability of information, the costs of the screening, and the human resources needed to carry out the screening process. The third step is the analysis and selection of appropriate screening practices that would be used in addition to "Basic Screening," which includes reference checks, interviews, and a written application. These three steps lead employers and volunteer organizations through a thoughtful process of evaluating the circumstances and establishing appropriate screening measures for each care provider.

The guidelines were developed to help reduce the incidence of abuse by care providers. However, the guidelines alone will not eliminate the problem. We, as the relative or friend of an

individual receiving care, must remain aware of the potential for abuse. Screening of care providers does not remove our responsibility to talk to our children and family about what is and is not acceptable behavior from care and service providers. Similarly, service organizations and employers providing care have an ongoing responsibility to monitor those in contact with vulnerable populations. While the use of these Guidelines is a necessary first step to ensure their safety, we must remain vigilant at all times to ensure proper care.



Janet Reno
Attorney General

Acknowledgments

The Department of Justice and the American Bar Association (ABA) Center on Children and the Law are proud to present *Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support*. We want to recognize and thank those who made these guidelines possible.

These guidelines are based on work of the ABA Center on Children and the Law under the project *Effective Screening of Child Care and Youth Service Workers*, for which Westat, Inc., and the Center for Child Protection and Family Support provided considerable expertise and assistance. A subsequent project developed recommendations for guidelines for screening to prevent abuse. The projects reflected collaborative efforts by an interdisciplinary staff with informed and active advisory boards.

The advisory boards, which provided sound advice and at times spirited comments and discussion, comprised a broad mix of service providers, experts, and advocates concerned with screening workers to prevent the abuse of children, the elderly, and individuals with disabilities. Many, many thanks to those who participated on one or both project boards: Nancy Coleman and Lori Stiegel, ABA Commission on the Legal Problems of the Elderly; James Gardner, Accreditation Council on Services to People with Disabilities; Elinor Ginzler, Elder Abuse Project Coordinator, Prince Georges County Department of Family Services; Greg Giuliano, National Association of Adult Protective Services; Gwendolyn Gregory, National School Boards Association; Gerald Hotelling, Family Research Lab; Michael Kennedy, Syracuse University Center on Human Policy; Kathryn McCarty and John Parry, ABA Commission on Mental and Physical Disability Law; Thomas McKenna, Big Brothers Big Sisters of America; Tibby Milne, National McGruff House Network; Mindy Morrell, Maryland Developmental Disabilities Council; Lawrence Potts, Boy Scouts of America; Gordon Raley, National Collaboration for Youth; Andrea Sedlak, Westat, Inc.; Toshio Tataru, American Public Welfare Association; Joyce Thomas, Center for Child Protection and Family Support; Rud Turnbull, University of Kansas Beach Center; Clarice Walker, former commissioner of Social Services, Department of Human Services of the District of Columbia; Robert Wettstein, Western Psychiatric Institute; Barbara Willer, National Association for the Education of Young Children; and Rosalie Wolf, National Committee to Prevent Elder Abuse—Institute on Aging.

A number of Federal employees participated in meetings or discussions during one or both projects: Kevin Avery, Office of Legislative Affairs, Kimberly Lesnak, Executive Office of U.S. Attorneys, and Michael Medaris, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice (DOJ); James X. Dempsey, former staff to the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary; James Gray and Beth Haley, Access Integrity Unit, Criminal Justice

Information Services Division, Federal Bureau of Investigation; Carol Kaplan and Dave Murphy, Bureau of Justice Statistics, Office of Justice Programs, DOJ; and Marsha B. Liss and Judith D. Schretter, Child Exploitation and Obscenity Section, DOJ.

The original project was directed by Susan J. Wells, Ph.D., with assistance from Noy S. Davis, Esq. Kimberly Dennis, M.P.A., formerly with the ABA Center on Children and the Law, had the monumental task of surveying approximately 3,800 child-serving organizations and drafting large portions of the final report to the project. Marsha Liss, Esq., formerly a consultant with the ABA Center on Children and the Law, was instrumental in the development of the screening model. Robert Chipman and Claire Sandt provided invaluable assistance on the Department of Defense and Registry surveys (respectively). Cheryl Hinton and Jennifer Gilligan Twombly assisted with production.

The subsequent project was led by Noy S. Davis, Esq., with considerable advice and assistance from Kathi Grasso, Esq. Many thanks to Susan J. Wells, Ph.D., formerly with the ABA Center on Children and the Law and now with the Children and Families Research Center, University of Illinois School of Social Work, and Howard Davidson, Director of the ABA Center on Children and the Law, who provided thoughtful and much appreciated comments. Interns Claudia Schoeffel and Tina Shanahan provided invaluable assistance.

Finally, the project monitor, Jeffrey Slowikowski, provided expertise and assistance in all phases of this endeavor.

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Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and Congress through the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, Public Law 93-415, as amended. Located within the Office of Justice Programs of the U.S. Department of Justice, OJJDP's goal is to provide national leadership in addressing the issues of juvenile delinquency and improving juvenile justice.

OJJDP sponsors a broad array of research, program, and training initiatives to improve the juvenile justice system as a whole, as well as to benefit individual youth-serving agencies. These initiatives are carried out by seven components within OJJDP, described below.

Research and Program Development Division develops knowledge on national trends in juvenile delinquency; supports a program for data collection and information sharing that incorporates elements of statistical and systems development; identifies how delinquency develops and the best methods for its prevention, intervention, and treatment; and analyzes practices and trends in the juvenile justice system.

Training and Technical Assistance Division provides juvenile justice training and technical assistance to Federal, State, and local governments; law enforcement, judiciary, and corrections personnel; and private agencies, educational institutions, and community organizations.

Special Emphasis Division provides discretionary funds to public and private agencies, organizations, and individuals to replicate tested approaches to delinquency prevention, treatment, and control in such pertinent areas as chronic juvenile offenders, community-based sanctions, and the disproportionate representation of minorities in the juvenile justice system.

State Relations and Assistance Division supports collaborative efforts by States to carry out the mandates of the JJDP Act by providing formula grant funds to States; furnishing technical assistance to States, local governments, and private agencies; and monitoring State compliance with the JJDP Act.

Information Dissemination Unit informs individuals and organizations of OJJDP initiatives; disseminates information on juvenile justice, delinquency prevention, and missing children; and coordinates program planning efforts within OJJDP. The unit's activities include publishing research and statistical reports, bulletins, and other documents, as well as overseeing the operations of the Juvenile Justice Clearinghouse.

Concentration of Federal Efforts Program promotes interagency cooperation and coordination among Federal agencies with responsibilities in the area of juvenile justice. The program primarily carries out this responsibility through the Coordinating Council on Juvenile Justice and Delinquency Prevention, an independent body within the executive branch that was established by Congress through the JJDP Act.

Missing and Exploited Children's Program seeks to promote effective policies and procedures for addressing the problem of missing and exploited children. Established by the Missing Children's Assistance Act of 1984, the program provides funds for a variety of activities to support and coordinate a network of resources such as the National Center for Missing and Exploited Children; training and technical assistance to a network of 47 State clearinghouses, nonprofit organizations, law enforcement personnel, and attorneys; and research and demonstration programs.

The mission of OJJDP is to provide national leadership, coordination, and resources to prevent juvenile victimization and respond appropriately to juvenile delinquency. This is accomplished through developing and implementing prevention programs and a juvenile justice system that protects the public safety, holds juvenile offenders accountable, and provides treatment and rehabilitative services based on the needs of each individual juvenile.

Although screening to weed out potentially abusive individuals is important, it should supplement, not substitute for, an evaluation of skill development or competency.

“develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse.” In developing these guidelines, the Attorney General was further directed to “address the availability, cost, timeliness, and effectiveness of criminal history background checks and recommend measures to ensure that fees for background checks do not discourage volunteers from participating in care programs.”

These guidelines supplement and incorporate those issued on July 17, 1995 (see Criminal Justice Information Services (CJIS) Information Letter 95-3, appendix B). They assist those faced with screening decisions by suggesting a decision-making model to use for an analysis of screening issues. The guidelines’ main virtue lies in presenting a framework for making decisions about whom to screen and how. Examples are provided to illustrate how the model can be utilized in making screening decisions.

The decisionmaking model begins with factors that trigger the need for screening, such as the level of direct worker-consumer contact,⁵ the characteristics of the consumer served, and the amount of worker supervision present. These triggering factors set the stage for determining the types and extent of screening to perform. The next step is to consider the intervening factors that may limit the ability to perform certain kinds of screening, including cost, access, and time constraints. In providing an opportunity to consider intervening factors, the model recognizes that the most optimal screening approaches may not, in fact, be realistic options for all settings. By considering both triggering and intervening factors, the best possible screening approach can be selected.

The model assumes that all organizations undertake at least basic screening (interview, verified application, reference checks) in even those situations requiring the most cursory review. Thus, although some might suggest that no screening is necessary for situations in which the prospective volunteer or employee is known to the organization or agency, such an informal approach to screening is not advisable. A formal review and reference process, such as that recommended with the basic screening practices, should be undertaken. Further, with respect to basic screening, organizations and professional associations are encouraged to develop model screening procedures and interview questions as part of their hiring or volunteer placement procedures (see appendixes C and D for suggestions for implementing screening and for sample screening forms, respectively).

Two caveats must be given. First, although screening to weed out potentially abusive individuals is important, it should supplement, not substitute for, an evaluation of skill development or competency. Second, all screening practices have limitations. Their use cannot guarantee that individuals who pass through the screening will not abuse children, the elderly, or individuals with disabilities

⁵Whenever possible, words needing no special definition have been employed in these guidelines. For clarity, the term “workers” refers to persons serving children, the elderly, or individuals with disabilities, including employees and volunteers.

in need of support. Thus, continuing to protect against abuse using posthiring screening and prevention procedures is warranted.⁶

Before examining the specific guidelines, organizations should understand the purpose of screening and the scope of specific practices that can be used to screen individuals. In addition, because some practices include access to information held by the government (e.g., criminal records), an overview of the legal framework is also included. This document reviews the purpose and specific types of screening practices and the legal framework for those practices and sets forth specific screening guidelines and a decisionmaking model. The appendixes include appendix A, The National Child Protection Act of 1993, Pub. L. 103-209—Dec. 20, 1993, and Extracts from the Amendment of the National Child Protection Act; appendix B, Criminal Justice Information Services (CJIS) Information Letter 95-3; appendix C, Some Suggestions for Implementing Screening in the Organization; appendix D, Sample Forms; and appendix E, Posthiring Practices.

Purpose: Protection of children, the elderly, and individuals with disabilities

The underlying reason for screening prospective workers who may come into contact with children, the elderly, or individuals with disabilities in need of support is the same—to identify potentially abusive individuals. When an individual entrusted with the care of someone abuses that person and then is found to have abused others previously, questions arise. How could such a person be in a position of caring for children or other vulnerable individuals? How can this be prevented from happening again?

Efforts by States, coalitions, and individual organizations to answer these questions have led to a number of additional inquiries: How much screening should be done and who should decide? Should all who may or do come into contact with these vulnerable populations be screened? Volunteers versus employees? Individual service providers or group and institutional providers? What kind of screening should be done? Federal and State criminal checks? State central child abuse registry checks? In which States? Who should have access to these information data bases? What kinds of limitations should be placed on access to this information? Should these decisions be made at the Federal, State, or local level? What determinations should be left to individual organizations? Should a worker be “on the job” in a paid or volunteer capacity pending the results of screening? Who should bear the cost of the various screening practices?

These guidelines provide background information and a structure for analysis of these and other screening issues. These materials are intended to give those in a position to decide screening matters a solid base from which to make their decisions.



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⁶Although a detailed description of these continuing activities is outside the scope of this document, some activities are noted in appendix E, Posthiring Practices.

Typically, when background "screening" is discussed, the focus is on the use of information from criminal history records (e.g., FBI fingerprint checks). It is important to recognize, however, that many other practices can weed out potentially abusive workers and volunteers.

Screening practices

Typically, when background "screening" is discussed, the focus is on the use of information from criminal history records (e.g., FBI fingerprint checks). It is important to recognize, however, that many other practices can weed out potentially abusive workers and volunteers. These range from standard interviewing and reference checking to more complex and controversial procedures such as screening against child abuse, reviewing dependent adult abuse and sex offender registries, psychological testing, drug testing, and home visits. (Not all of these practices can be undertaken in all States, however. The discussion of the legal framework below provides additional information on these practices.)

Consideration of the following screening methods is incorporated into the guidelines, particularly in discussion of the decisionmaking model: (1) practices

Some Types of Background Screening Mechanisms

Basic Screening Practices

- Employment reference checks
- Personal reference checks
- Personal interviews
- Confirmation of education
- Written application
- On-the-job observation

Frequently Used Practices

- Local criminal record check
- State criminal record check
- FBI criminal record check
- State central child/dependent adult abuse registry check
- State sex offender registry check
- Nurse's aide registry record check
- Motor vehicle record check
- Professional disciplinary board background check

Infrequently Used Practices

- Alcohol/drug testing
- Psychological testing
- Mental illness/psychiatric history check
- Home visits

that can be considered basic screening, (2) more extensive background checks that are frequently used (e.g., criminal history checks), and (3) special methods that are used infrequently or for special types of workers only. Information about the practices currently being used is primarily limited to those used by organizations and agencies serving children and youth. A study funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Effective Screening of Child Care and Youth Service Workers*,⁷ surveyed approximately 3,800 child- and youth-serving organizations and agencies nationwide on the screening mechanisms they used (the study explored cost, timeliness of information, quality, and perceived effectiveness). The study's findings indicated some differences in the practices used to screen employees and those used to screen volunteers:

■ **For potential employees:**

- Almost all conducted what can be called basic screening of potential employees: personal interviews (98 percent); reference checks with past employers (93 percent); personal reference checks (86 percent); confirmation of educational status (80 percent); and observation of the applicant in the job position (70 percent).
- Overall, 60 percent conducted at least one type of criminal record check on employee applicants; State and local checks were used more often than FBI checks. This figure reflects a range—almost all juvenile detention/corrections facilities (94 percent) conducted criminal record checks on employees, compared with only 43 percent of private schools and 50 percent of youth development organizations.
- Fewer than 10 percent used psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or State sex offender registry checks on employees. (However, 86 percent of foster care agencies reported conducting home visits of prospective foster care and adoptive homes.)

■ **For potential volunteers:**

- To screen volunteers, 76 percent of the respondents used personal interviews and 54 percent used personal reference checks.
- More than one-third (35 percent) conducted at least one type of criminal record check on volunteer applicants; State and local checks were used more often than FBI checks. Again, this figure reflects a range. Most juvenile detention/corrections facilities (83 percent) conducted criminal record checks on volunteers, compared with only 12 percent of private schools, 23 percent of public school districts, and 28 percent of hospitals.
- No more than 6 percent used psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or State sex offender registry checks to screen volunteers.

A study funded by OJJDP indicated some differences in the practices used to screen employees and those used to screen volunteers.

⁷ABA Center on Children and the Law, Washington, DC, 1995 (study funded by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 92-MC-CX-0013).

Attempts to determine who should be screened rapidly reveal the multitude of settings in which abuse might be perpetrated.

The universe of persons having contact with children, the elderly, and individuals with disabilities in need of support

Attempts to determine who should be screened rapidly reveal the multitude of settings in which abuse might be perpetrated. A partial list of settings in which individuals come into contact with children, the elderly, and individuals with disabilities gives a sense of the enormity of the contact points:

- **Daycare:** childcare, senior citizen centers, and community day programs for adults.
- **Health/mental health care:** hospitals, nursing homes/facilities, intermediate care, congregate care, board and care, group homes, psychiatric hospitals, residential treatment facilities, and "in-home" healthcare.
- **Foster care:** placements for adults in need of support services or for children under the care of the State as a result of abuse or neglect or as a consequence of delinquency.
- **Other out-of-home settings:** assisted living units/community living programs and semi-independent and independent living programs.
- **Schools:** public and private, including preschool and nursery school.
- **Shelters:** homeless or domestic violence shelters.
- **Youth development:** community or volunteer organizations serving youth (e.g., Court Appointed Special Advocates (CASA), Boy Scouts of America, Girl Scouts USA, Big Brothers Big Sisters).
- **Volunteer programs (for the elderly or individuals with disabilities):** Social Security representative payee, American Association of Retired Persons bill payer and representative payee money management, Meals on Wheels, and other community/volunteer programs.

Considering that these and other settings can encompass services provided in or out of the home by volunteers or employees, the number of instances in which screening may be considered is extensive. State efforts to coordinate screening are strongly encouraged.

The legal framework

State social welfare and licensing agencies have increasingly required that certain practices be used to screen at least some types of prospective employees, and in a number of States, statutes require that certain screening practices be used for some types of workers. Some of the screening methods involve the use of information that is held by government entities and that may require legislative or administrative action before it can be accessed. Specifically, checks of criminal records and State central abuse registries (which maintain information on "founded" or "substantiated" reports of abuse or neglect) involve such governmental compilations of information. Similarly, sex offender registries (stemming from statutes requiring convicted sex offenders to register with law

enforcement agencies where they reside, e.g., Megan's Law) often require legislative or administrative action to authorize their use for screening.

With a few rare exceptions, the information systems mentioned above were originally established for purposes other than the screening of workers. Criminal recordkeeping was developed to assist law enforcement or criminal justice entities in tracking crime and criminals; central child abuse registries were established to assist State agencies responsible for child welfare in tracking children about whom allegations of child abuse or neglect may have been made; and sex offender registration requirements were designed to aid law enforcement in investigating sex crimes by tracking persons convicted of sexual offenses.⁸

As a result of the different purposes for which these information sources were developed, their use to identify potentially abusive individuals has raised questions, spawning the development of procedures that attempt to provide information in a fair manner. Moreover, developing legislation on the appropriate uses of these information compilations raises sometimes conflicting public policies—the protection of children, the elderly, and individuals with disabilities from potentially abusive individuals, the rehabilitation of offenders, “due process” issues, and privacy interests. Given these conflicting policy goals, it is no surprise that State laws and regulations vary widely in the type and scope of screening required.

Federal laws

Screening, at least with respect to childcare workers, has been a topic of Federal legislation for some time.⁹ Recent Federal action has focused on criminal records and sex offender registration. The National Child Protection Act of 1993,¹⁰ which was amended by the Violent Crime Control and Law Enforcement Act of 1994,¹¹ addressed national criminal record checks. The National Child Protection Act, as amended, enhanced the existing national criminal check process through which States may authorize national criminal checks on persons providing care to children, the elderly, or individuals with disabilities. This act, as amended, did not itself permit or require that any such checks be done, but maintained respect for State policymaking in this area while

Screening, at least with respect to childcare workers, has been a topic of Federal legislation for some time. Recent Federal action has focused on criminal records and sex offender registration.

⁸See the discussion of each type of registry discussed herein. See generally SEARCH Group, *Criminal Justice Information Policy: Original Records of Entry*, NCJ-125626, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, November 1990 (criminal records); SEARCH Group, *Criminal Justice Information Policy: Privacy and the Private Employer*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1981 (criminal records); and National Center for State Courts, *Central Registries for Child Abuse and Neglect: National Review of Records Management, Due Process Safeguards and Data Utilization*, Washington, DC: U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, 1988 (central child abuse registries).

⁹See Pub. L. No. 98-473, tit. IV, § 401(c)(2)(A), 1984 U.S.C.A.N. (to get title XX funds, States must have background check procedures for childcare facility employees) and the Crime Control Act of 1990, Pub. L. No. 101-647 (criminal checks required of employees at federally operated and contracted childcare facilities).

¹⁰National Child Protection Act of 1993, 42 U.S.C. § 5119a, Pub. L. No. 103-209, 107 Stat. 2490 (1993) (also known as the “Oprah Bill”).

¹¹For the text of the National Child Protection Act, as amended by the Violent Crime Control and Law Enforcement Act of 1994, see appendix A.

At a minimum, States are encouraged to require basic screening practices, consider the adoption of statutes authorizing criminal record checks, and encourage abuse prevention education and training.

State Policies and Legislation

Basic principles of screening

To prevent abuse and to reduce the corresponding fiscal burdens of investigations, prosecutions, and treatments for the victims and their families, it is in the interest of States to analyze their screening laws and to pass new or amended legislation, as appropriate. The decisionmaking model outlined in these guidelines can assist legislators and others in such an analysis. At a minimum, however, States are encouraged to require basic screening practices, consider the adoption of statutes authorizing criminal record checks, and encourage abuse prevention education and training.

- States are encouraged to have statutes and regulations requiring the use of basic screening practices such as appropriately developed applications, personal interviews, and reference checks for all workers, including volunteers. Depending on the circumstances, additional screening practices may be warranted for specific types of workers in certain settings. As outlined in the decisionmaking model, confirmation of education status may also be an appropriate screening practice.

Methods to encourage screening could include incentive programs that provide funds and/or recognition for the use of model screening practices. Screening practices could also be included in certification or licensing requirements, with penalties for noncompliance. Generally, these statutes and regulations should apply to all workers, including volunteers.

- In keeping with the spirit of the National Child Protection Act of 1993, States should consider the adoption of statutes and regulations authorizing the use of national and/or State criminal record checks, as appropriate. The decisionmaking model provides a mechanism to assist States in determining when legislation authorizing such checks might be appropriate.
- In authorizing screening practices, States are encouraged to prescribe appeal and review procedures that meet constitutional muster, which may include written notification to applicants concerning any records that will be searched and may provide the applicant an opportunity to refute the information found, as appropriate.

Moreover, notification that records will be searched may act as a deterrent to unsuitable applicants. (If the process conveys a sense of respect for the applicant while explaining the need for screening, it need not alienate prospective workers.)

- States are urged to consider enacting and implementing statutes and regulations that encourage abuse prevention training for all workers (including employees and volunteers) at service agencies, organizations, and facilities for children and dependent adults.

Criminal record repositories

An accurate and complete criminal record repository with records that can be efficiently accessed is the goal. Toward this end, States are encouraged to consider:

- Passing or revising statutes and regulations on the appropriate use of criminal history information and developing specific criteria for using these records to screen persons working with children, the elderly, and individuals with disabilities. States should review the National Child Protection Act, as amended (see appendix A), for limitations on the use/disclosure of FBI criminal record checks and the requirements to complete records lacking disposition data.
- Passing laws allowing access to State criminal record information to permit broad screening of persons who work with children, the elderly, and individuals with disabilities. Such laws are warranted because the current national criminal record system does not include all records in all States (many States have limited computerized records).
- Reducing the financial burden of conducting background checks. This could be done by incorporating at-cost fees and providing discounts for both volunteers at nonprofit organizations and workers at daycare centers in poverty areas and by providing volume discounts to employers. For States requiring checks, the cost to those seeking the checks should be minimal and subsidized by the State, to the extent feasible.

State central abuse and neglect registries

Almost all States currently have central child abuse and neglect registries. In addition, although most States do not maintain elder or dependent adult abuse registries, all have statutes providing for the investigation of elder or dependent adult abuse and almost all have some form of mandatory reporting of abuse. States are encouraged to consider:

- Creating and maintaining registries where they do not exist.
- Establishing clear policies for abuse, licensing, and certification registries for purposes of screening. These policies should include definitions and specific guidelines consistent with due process in regard to the use of registries for screening and guidelines on retention of information, including methods for purging names and cases and methods for accurately reflecting the results of dispositions, hearings, and appeals by those listed in the registries.
- Separating the employment or volunteer screening function from the use of civil abuse and neglect registries as a tool for research, diagnosis, and risk assessment.
- Collaborating with other jurisdictions to create standardized definitions of abuse. This would make registries more consistent and ease the exchange of information among jurisdictions. A national network of abuse registry directors or other interstate panels could facilitate the development of these standardized definitions.



An accurate and complete criminal record repository with records that can be efficiently accessed is the goal.

All States currently have laws requiring sex offenders released from custody to register with State or local law enforcement agencies where they reside.

- Defining "abuse" in registries of dependent adult abuse to include fiduciary abuse or exploitation and mental harm.
- Ensuring that abuse registries are indexed by perpetrator, nature of offense, and locale to ease access to information; enacting statutes or implementing policies and procedures enabling cross-referencing between child and adult abuse registries.

State sex offender registration

All States currently have laws requiring sex offenders released from custody to register with State or local law enforcement agencies where they reside. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act), 42 U.S.C. 14071, sets forth Federal law requirements for these registries. States are encouraged to consider:

- Permitting access to organizations serving children and dependent adults for screening purposes.
- Developing a flagging system for those sex offenses in which the victim was a child or dependent adult.
- Compiling an automated, up-to-date, statewide listing of registered sex offenders to facilitate screening.
- Implementing procedures that ensure offender compliance with registration requirements. One method of ensuring compliance would be to increase awareness among local jurisdictions and offenders regarding registration requirements immediately after every move. One possibility would be not only to require the individual offender to register, but also to require the institution from which he or she was released or the legal entity that rendered the offender guilty of a sex crime to forward the information. Another compliance measure is the address verification process found in the Wetterling Act.
- Increasing the sharing of information among criminal justice agencies, particularly from the local to the State level, to enable screening to be conducted.

Information, interstate communication, and coordination

In conjunction with Federal guidelines, States have the power to enhance communication both within their own State agencies and with other States. In order for interstate information to be accessed effectively through registries, criminal record repositories, and other data banks used in screening, States are encouraged to consider:

- Establishing a mechanism to develop appropriate, common statutory definitions of abuse and neglect and to clarify the rights and responsibilities of all parties.

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- Increasing communication, coordination, and cooperation between the various repositories, other law enforcement/criminal justice entities, State regulatory/licensing bodies, and community agencies.
 - Working with interstate organizations representing State interests (e.g., National Governors Association) toward the development of uniform offense codes, reporting procedures, and standardized training for personnel who enter and document data in criminal record repositories and other information registries.
 - Modifying current criminal history information systems so that all records containing crimes involving children, the elderly, and individuals with disabilities are flagged for easy and immediate identification during background screening.
 - Developing computer systems that efficiently and quickly transmit screening information and that may ultimately help decrease the cost of accessing this information. In the 1990's, the number and extent of online computer systems has increased significantly. Facilitating access to specialized computer networks would be one means of increasing the number of organizations able to use this information. Some States are experimenting with assisting agencies in accessing computer networks and could continue this trend by creating specialized user lists for organizational access to certain information in the registries.

Special considerations

In addition to directly encouraging or requiring screening by agencies serving children and youth, States regulate a wide range of activities that also impact screening. States may wish to consider using these other regulatory powers further to systematize identification of unsuitable workers:

- Increase the role of State licensing agencies. Many aspects of services provided to children, the elderly, or individuals with disabilities are subject to licensing regulations and professional certification. The following efforts could be useful:
 - Establish clear procedures for timely disposition of abuse cases.
 - Implement a system for sharing reported complaints of abuse among social services and agencies. This system should include appropriate due process safeguards, a clear statement of investigative responsibilities, and a checklist of the duties to notify other agencies regarding those committing relevant crimes.
 - Adopt clearly written policies on information sharing between agencies.
 - Develop and implement mechanisms within and between States to track convicted offenders and prevent their continued work with children, the elderly, and individuals with disabilities.
 - Develop licensing/registration laws and regulations that include minimum staff qualifications, professional and personal reference checks, training (includes abuse-awareness instruction), clearly defined



Computer systems that efficiently and quickly transmit screening information may ultimately help decrease the cost of accessing this information.

State regulations encouraging insurance coverage of employers may promote careful review of agency screening mechanisms and consequences of screening in order to maintain coverage.

requirements for adequate supervision, a written application with a signed affidavit verifying the truthfulness and accuracy of the information in the application coupled with a clear statement that untruthfulness is a basis for suspension or termination of employees/volunteers, and authorization of the licensing agency to impose fiscal penalties and/or revocation of the license.

In revising licensing/registration laws, particular consideration should be given to reviewing existing exemption or exception clauses so that licensing/registration provisions will encompass entities providing services to children, the elderly, and individuals with disabilities, as appropriate. In addition, agencies should be equipped with sufficient staff to monitor compliance with laws and regulations.

- Consider developing incentives for insurance companies to expand their role in providing coverage to entities providing services to children, the elderly, and individuals with disabilities. State regulations encouraging insurance coverage of employers may promote careful review of agency screening mechanisms and consequences of screening in order to maintain coverage. The insurance industry could take the lead in addressing concerns regarding the suitability of persons to work with or around vulnerable populations.
- Consider statutory amendments that would require employers to report employee or volunteer terminations from employment due to inappropriate conduct toward a consumer.

Guidelines for Organizations Developing Screening Policies

Levels of screening

Organizations providing care or services to children, the elderly, and individuals with disabilities should adopt a screening policy. The three-part decisionmaking model discussed later in this report is a useful guide for organizations in developing such a policy.

Issues appropriate for a screening policy include:

- Statements on minimum required screening standards.
- Guidelines on when more extensive screening practices should be used.
- Provisional hiring policies.
- Guidelines on how to assess background screening information once it is received.
- Maintenance and dissemination of background screening records.
- Standards for working with vulnerable populations.

Applicants should be advised of the organization's screening policy. Reviewing this policy annually—and as new information on available mechanisms arises—is also appropriate.

All applicants who are seeking a position to work or volunteer with children, the elderly, or individuals with disabilities should be screened at a basic level. Basic screening includes:

- A comprehensive application form with a signed statement.
- A thorough personal interview that examines an applicant's past employment or volunteer experience and explores other indicators of potential problem behavior.
- Reference checks with past employers (or appropriate reference checks for volunteers and young adults) and personal contacts.

Each applicant's references should be checked completely. In addition, a confirmation of education status may be appropriate.

Additional screening practices may also be warranted. Thorough consideration of all relevant factors will assist an organization in determining whether additional screening is warranted for some or all of its workers. The decisionmaking model (see page 18) can guide organizations in making this determination. Organizations using additional screening mechanisms (e.g., personality or psychological testing, criminal records checks) are advised to do so in conjunction with basic screening practices and with a full understanding of the limitations of each of the screening practices used.

Results of screening

Once screening information is received, it is important to have strategies for dealing with the information, especially when the screening process has yielded questions about the applicant. An organization's strategies for dealing with screening results should be set forth clearly in written policies.

To the extent possible, the hiring or placement of an applicant should be delayed until the screening process is completed. If this is not possible, the applicant, pending completion of the screening process, should be restricted to supervised situations or situations in which one other worker is present. The applicant should never be alone with vulnerable individuals. In addition, the organization is advised to retain the right to terminate the worker or volunteer if the screening yields adverse information or reveals that incorrect information was provided by the applicant. As a minimum standard, automatic disqualification of a potential worker or volunteer is appropriate when the screening results indicate that the individual, as an adult, perpetrated any crime involving a child or a dependent adult, regardless of how long ago the incident occurred, or any violent crime within the past 10 years.

It is recommended that disqualification for all other crimes and/or questionable behavior be discretionary, with incidents evaluated on the basis of consultation with appropriate professionals and the following factors:



Automatic disqualification of a potential worker or volunteer is appropriate when screening indicates that the individual, as an adult, perpetrated any crime involving a child and/or a dependent adult, regardless of how long ago the incident occurred, and/or any violent crime within the past 10 years.

The decisionmaking model is designed to facilitate a serious, careful examination focusing on opportunities for harm. This model is not the only set of steps that could be developed.

- The relationship between the incident and the type of employment or service that the applicant will provide.
- The applicant's employment or volunteer history before and after the incident.
- The applicant's efforts and success at rehabilitation.
- The likelihood that the incident would prevent the applicant from performing his or her responsibilities in a manner consistent with the safety and welfare of the consumers served by the agency.
- The circumstances and/or factors indicating the incident is likely to be repeated.
- The nature, severity, number, and consequences of the incidents disclosed.
- The circumstances surrounding each incident, including contributing societal or environmental conditions.
- The age of the individual at the time of the incident.
- The amount of time elapsed since the incident occurred.

Decisionmaking Model

The number of persons who may have contact with children and vulnerable adults is extensive. Countless different professions and types of organizations serve these populations. Given the need to protect children and vulnerable adults from abuse in a variety of settings and the significant differences in organizational purpose, staffing needs, and available resources, these guidelines present a decisionmaking model rather than a list of screening practices to be used in every circumstance. The model poses questions to ask when deciding which background screening practices to utilize. The model assumes that screening for any position will include at least a written application with a signed statement, professional and personal reference checks, and an interview. Supplemental screening measures may also be warranted.

The decisionmaking model provides a framework for analyzing when to conduct supplemental screening practices. As a framework to assist States, organizations, and others in developing screening policies, the model reflects the desire of Congress to encourage screening practices while maintaining deference to the States on this issue.¹⁸ The decisionmaking model is designed to facilitate a serious, careful examination focusing on opportunities for harm. This model is not the only set of steps that could be developed. States, coalitions, associations, and organizations are encouraged to develop screening practices for use in particular settings. Screening for specific settings and types of workers (employees or volunteers) could also incorporate evaluations of competence for particular tasks; however, this model does not directly address competence goals.

¹⁸Although this decisionmaking model was drafted for States, organizations, and others, some language may pertain to organizations only.

Further, screening must be placed in context. It is one tool aimed at preventing harm. Others include education (of staff and volunteers, parents and guardians, children and vulnerable adults) and abuse prevention policies (discouraging opportunities for abuse and encouraging children and vulnerable adults to voice concerns about inappropriate behavior). Appendix C, Some Suggestions for Implementing Screening in the Organization, and appendix E, Posthiring Practices, present additional information that may be useful. These are suggestions for consideration; there may be many other ways to implement screening.

Preparation steps before using the model

Review tasks and positions

Reviewing the types of positions in the organization and the general tasks and characteristics of each is useful before beginning to assess the screening required for a particular type of position. Screening to prevent harm should supplement selection procedures aimed at evaluating the qualifications of an applicant for a particular task or job. This decisionmaking model focuses on the former.

Review harms

Before beginning to use the model, it is also useful to ask: What are the harms that are being screened against? Physical, sexual, and emotional abuse? Theft and other property offenses? Arson, assault, or murder? A clear understanding of the specific potential for harm associated with particular positions will help to focus the discussion of screening issues. For example, concerns about theft may be especially important in certain programs serving the elderly.

The model

Step 1: Assessment of triggers

The screening decisionmaking model includes three major steps. The first step requires an assessment of the presence and degree of screening “triggers.” These triggers can be divided into three categories—those involving the setting, those pertaining to the worker’s contact with the adult or child, and special considerations.

Setting considerations:

- Will others (adults or children) be present during the contact (the opportunity for abuse is increased if no one else is present)?
- Who are those other people (the opportunity for abuse may still be exceptionally high if young children or certain vulnerable adults are the only others present)?
- Will the worker be closely monitored and supervised?
- What is the precise nature of the worker’s involvement with the organization and with the client population (whether the worker is an employee or volunteer may be part of this assessment)?



A clear understanding of the specific potential for harm associated with particular positions will help to focus the discussion of screening issues.

Decisionmaking Model in Continuum Form

Step 1: Assess Presence and Degree of Screening Triggers

	Setting	Worker/ Consumer Contact	Special Considerations
Screening Triggers	■ Supervision. ■ Number of people present. ■ Staff turnover. ■ Type of staff (employee/volunteer).	■ Duration. ■ Frequency. ■ Contact type.	■ Consumer vulnerabilities. ■ Age, mental, or developmental disability. ■ Other screening agencies (State licensing/certification).

Step 2: Evaluate Impact of Intervenor

Intervenor to Decisionmaking	
	■ Availability/accessibility of information. ■ Financial/human resources. ■ Immediate need for staff (timing). ■ Liability concerns. ■ Worker characteristics (e.g., residency status, prior experience, number of moves). ■ Prior incidents of abuse perpetrated by staff. ■ Presence of other risk-reduction measures (e.g., written policies, periodic evaluation, degree of supervision).

Step 3: Select Screening To Be Used

	Basic Screening (Required Minimum Standard)		
Screening Options	■ Written application with signed statement. ■ Reference checks with telephone contact. ■ Comprehensive personal interviews.		
	Supplemental Measures To Be Used as Needed* <table border="1"> <tbody> <tr> <td> ■ Confirm educational status. ■ Confirm licensing/certification status. ■ Check motor vehicle records. ■ Check criminal records: ■ Local. ■ State. ■ FBI. ■ Check other registries: ■ Central child abuse. ■ Adult/elder abuse. ■ Nurse and home health aide. ■ Sex offender. ■ Professional disciplinary board. ■ Other specialized checks. </td> <td> ■ Conduct observations: ■ On-the-job supervision. ■ Probation. ■ Home visits. ■ Initial and periodic training. ■ Advocate access to consumer. ■ Other: ■ Psychiatric history check. ■ Alcohol/drug testing. ■ Psychological testing. </td> </tr> </tbody> </table>	■ Confirm educational status. ■ Confirm licensing/certification status. ■ Check motor vehicle records. ■ Check criminal records: ■ Local. ■ State. ■ FBI. ■ Check other registries: ■ Central child abuse. ■ Adult/elder abuse. ■ Nurse and home health aide. ■ Sex offender. ■ Professional disciplinary board. ■ Other specialized checks.	■ Conduct observations: ■ On-the-job supervision. ■ Probation. ■ Home visits. ■ Initial and periodic training. ■ Advocate access to consumer. ■ Other: ■ Psychiatric history check. ■ Alcohol/drug testing. ■ Psychological testing.
■ Confirm educational status. ■ Confirm licensing/certification status. ■ Check motor vehicle records. ■ Check criminal records: ■ Local. ■ State. ■ FBI. ■ Check other registries: ■ Central child abuse. ■ Adult/elder abuse. ■ Nurse and home health aide. ■ Sex offender. ■ Professional disciplinary board. ■ Other specialized checks.	■ Conduct observations: ■ On-the-job supervision. ■ Probation. ■ Home visits. ■ Initial and periodic training. ■ Advocate access to consumer. ■ Other: ■ Psychiatric history check. ■ Alcohol/drug testing. ■ Psychological testing.		

*Selection of supplemental screening will vary according to circumstances and presence of triggers and intervenors.

-
- What is the physical location of the contact (e.g., in a classroom, a camp, anywhere—care should be taken in considering all activities and their different physical locations, including transportation to and from events)?

Contact considerations:

- The duration of the contact (how much time is spent with the client per occasion).
- The frequency of the contact and the length of the relationship (e.g., one-time only, once a week for a year).
- The type of contact (e.g., does the worker have direct contact with children or vulnerable adults or does he or she have administrative or other duties that support the activities of the organization? With the latter, is there in fact one-on-one contact?).

Special considerations. Are there special circumstances that should be factored into the screening decision? At this point, an examination of the vulnerability of the individuals served is important. Those whose ability to communicate is impaired because of age, infirmity, life history, or other reasons may be exceptionally vulnerable to abuse. For example, children with certain learning disabilities or those with a history of abuse or neglect may fall into this category.

There may also be State laws or regulations that require certain screening practices to be used, triggering the use of a certain screening method. For example, States may require that State or Federal criminal record checks be done. If a State license or certification is required, statutory or regulatory requirements may also be in place.

Step 2: Evaluation of intervenors to decisionmaking

With the triggers in mind, consideration moves to the second step of evaluating “intervenors,” or items that may limit or affect the screening decision:

- **Unavailable or inaccessible information.** Certain screening mechanisms may not be available. For example, a number of States simply do not authorize criminal record checks for a number of types of persons serving children, the elderly, or individuals with disabilities.
- **Unexpected absences or departures.** An immediate need for staff may also “intervene” in the screening decisionmaking process.¹⁹
- **Liability concerns.** The risk of liability may affect screening decisions. Federal, State, or local laws may give applicants and employees certain legal rights. For example, certain questions may not be asked during an interview/application process, and generally all inquiries must be relevant to the task or position at hand. Liability concerns could also stem from negligent hiring torts; organizations have been sued when a client was injured by an employee or volunteer they selected.

Certain screening mechanisms may not be available. A number of States simply do not authorize criminal record checks for a number of types of persons serving children, the elderly, or individuals with disabilities.

¹⁹To reduce the utilization of unscreened individuals in emergency situations, childcare centers and others that frequently have unexpected personnel departures may form relationships with umbrella organizations or private groups to maintain a roster of screened individuals who can provide personnel support. A screened staff person may also be designated as a “floater” to fill in as needed.

Circumstances in which repeated one-on-one contact occurs between one worker and one child or dependent adult, often in very private surroundings, will merit supplemental screening practices.

- **Presence of other risk-reduction measures.** A consideration of other risk-reduction measures in place is helpful in evaluating the need for specific screening practices. However, risk-reduction measures as intervenors do not necessarily obviate the need for supplemental screening. Rather, their presence is a pragmatic consideration in evaluating the screening practices used. Risk-reduction measures may include training programs or levels of supervision.
- **Financial or human resources.** The practical impact that financial and human resources may have on screening is also a factor to be considered.

Step 3: Analysis and selection of screening practices

The third step puts information gleaned from steps 1 and 2 together with various screening options. The model assumes that, based on this information, supplemental screening practices may be warranted. The advantages and disadvantages of each screening practice should be reviewed at this time.

As the extent and number of triggers increase, supplemental screening measures are appropriate. For example, circumstances in which repeated one-on-one contact occurs between one worker and one child or dependent adult, often in very private surroundings, will merit supplemental screening practices.²⁰ Supplemental screening practices might include the following:

- Confirmation of a person's educational status (this may be particularly appropriate for young workers for whom a professional reference may not be available or for situations in which the educational degree is relevant to the task to be performed by the applicant).
- Motor vehicle record check.
- Local, State, or FBI criminal record check.
- Check of the central child or dependent adult abuse registries.
- Sex offender registry check.
- Home visits.
- Psychological testing.
- Alcohol or drug testing.
- Psychiatric history check.

An example using the decisionmaking model

A mentoring program in which mentors are matched with children offers a good illustration of the use of the decisionmaking model. The goal is to foster one-on-one relationships between children and supportive nonfamilial persons to build the children's self-esteem and expand their view of the world. This

²⁰Some local chapters of Big Brothers Big Sisters have developed extensive screening procedures. For example, Big Brothers Big Sisters of Greater Lowell, Massachusetts, has developed a comprehensive interview screening tool (see appendix D). Further, where authorized by law to do so, Big Brothers Big Sisters generally obtains criminal record checks on their volunteers and staff.

example assumes that the mentoring program is an offshoot of another organization and is limited to one city in one State. The program has an extremely limited budget with very few paid staff (mostly a percentage of the time of three individuals who have other duties as well). All of the mentors are volunteers.

Step 1: Assessment of triggers

Setting considerations:

- Will others be present during the contacts? Although mentor programs vary widely, assume that in this case, the contacts are set up directly by the mentor and child—perhaps the first Saturday afternoon of the month for outings. Although the organization encourages educational or sports activities (e.g., visits to the library, museum, bowling) in which other adults or children are generally present, these “public” activities need not take place. The mentor and child might choose to go hiking or sit in a park and play cards.
- Who else might be present? Under this scenario, it could be anyone or no one.
- Will the mentor be closely monitored and supervised? In this case, assume that the initial meeting between a mentor and child takes place with someone from the sponsoring organization. After that, the mentor will check in with someone at the organization, at least by telephone, to report on how the visits with the child are going. Every few months, the mentor meets with this “monitor.” In addition, the mentor and child attend group events that may be sponsored by the organization. For example, a picnic takes place during the summer. These events occur once or twice a year. Further, the mentor picks the child up for each visit and drops the child off afterward and may briefly see the child’s guardian at those pickup and dropoff times. More often at first, and then every few months, someone at the sponsoring organization calls the child and his or her parent or guardian to see how the visits are going.
- How will the mentor be involved with the organization? In this case, the mentor will be a volunteer who spends at least several hours once a month with a child. Some additional time will be spent conversing with staff at the sponsoring organization about how the visits are going and how best to work with a child of that age.
- Where will the visits take place? Because the mentor picks up and drops off the child, the visits will include several different physical locations: the child’s residence; the mentor’s vehicle (or a bus or cab); and a variety of other locations such as a restaurant, sports facility, park, hiking trail, zoo, museum, or movie theater. The visits could, in fact, take place at the mentor’s home (for example, the mentor and child decide they want to learn to make pizza).

Contact considerations:

- How much time will the mentor spend with the child on each visit or outing? Under this scenario, anywhere from 1 to 6 hours.



mentoring program in which mentors are matched with children offers a good illustration of the use of the decisionmaking model.

Several factors would trigger supplemental screening practices: repeated, direct, one-on-one contact over a period of a year; limited ability of the organization to monitor the visits; and children who may be particularly vulnerable to abuse.

- What will the scope and frequency of the contacts be? At least once a month for a period of a year.
- What type of contact will the mentor have? Each mentor will have direct, one-on-one contact with a single child.

Special considerations. In this scenario, the children are preteen youth. Generally, they have experienced some neglect or abuse and have been referred to the sponsoring organization for matching with an adult through social service workers, foster parents, and school counselors. Their personal histories may make them particularly vulnerable to abuse.

Summary of step 1: Assessing the presence and degree of screening triggers. In reviewing the answers to the series of questions that constitute the first step, it becomes clear that in this case, several factors would trigger supplemental screening practices: repeated, direct, one-on-one contact over a period of a year; limited ability of the organization to monitor the visits; and children who may be particularly vulnerable to abuse.

Step 2: Evaluation of intervenors

The second step is to examine the factors that may “intervene” and affect the ability to screen. This scenario assumes that certain information—State central child abuse registry and sex offender registry information—is not available. Likewise, it assumes that State criminal record checks (done by name, not fingerprint) are not required but are available for a fee of \$5 per name. In this example, Federal (fingerprint) checks are not authorized by State statute.

Step 3: Analysis and selection of screening practices

The basic screening practices should be utilized. In addition, under the scenario outlined above, supplemental screening is warranted. The repeated one-on-one contact, which may take place anywhere at various times of the day, presents risks. Because there is limited ability to monitor the mentor and the fee assessed for a State criminal check is relatively modest, use of this check would appear to be warranted. A check with the Department of Motor Vehicles (if the information is available in the State) may also be appropriate.

A different set of facts might lead to a different decision. For example, if the applicants were high school students (generally age 15 to 17 at the time they applied), some evaluators might find that criminal checks were not warranted. Others would view the cost as being minimal (and able to be passed on to the applicant without causing the loss of volunteers) and would proceed with the criminal check.

Conclusion

Screening those who work with children, the elderly, and individuals with disabilities is an important component in the prevention of abuse. Such practices, from basic screening methods (written applications, interviews, and reference checks) to other, more extensive or specialized practices (checks of criminal

records, abuse registries, or sex offender registries), send a clear message that society values children, the elderly, and individuals with disabilities and will not tolerate their abuse.

These guidelines highlight the importance of screening practices and, through the decisionmaking model, provide a useful tool that States, organizations, and others can use when developing their own screening policies and practices. Because screening is not a guarantee that abuse will not occur, it is critical for all concerned to incorporate screening as a part of broader abuse prevention policies and practices (see appendix E, Posthiring Practices).



Because screening is not a guarantee that abuse will not occur, it is critical for all concerned to incorporate screening as a part of broader abuse prevention policies and practices.

Appendix A: The National Child Protection Act of 1993, Pub. L. 103-209—Dec. 20, 1993 and Extracts from the Amendment of the National Child Protection Act

107 STAT. 2490 PUBLIC LAW 103-209—DEC. 20, 1993

PUBLIC LAW 103-209
103d Congress

An Act

To establish procedures for national criminal background checks for child care providers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “National Child Protection Act of 1993”.

SEC. 2. REPORTING CHILD ABUSE CRIME INFORMATION.

(a) **IN GENERAL.**—In each State, an authorized criminal justice agency of the State shall report child abuse crime information to, or index child abuse crime information in, the national criminal history background check system.

(b) **PROVISION OF STATE CHILD ABUSE CRIME RECORDS THROUGH THE NATIONAL CRIMINAL HISTORY BACKGROUND CHECK SYSTEM.**—(1) Not later than 180 days after the date of enactment of this Act, the Attorney General shall, subject to availability of appropriations—

(A) investigate the criminal history records system of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line basis through the national criminal history background check system;

(B) in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records and other procedures for carrying out this Act; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of each State timetable that the State—

(A) by not later than the date that is 3 years after the date of enactment of this Act, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

Dec. 20, 1993
(H.R. 1237)

National Child
Protection Act
of 1993.
Intergovernmental
relations.
42 USC 5101 note.
42 USC 5119.

(B) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) **LIAISON.**—An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse for the exchange of technical assistance in cases of child abuse.

(d) **ANNUAL SUMMARY.**—(1) The Attorney General shall publish an annual statistical summary of child abuse crimes.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) **ANNUAL REPORT.**—The Attorney General shall, subject to the availability of appropriations, publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal history background check system.

(f) **STUDY OF CHILD ABUSE OFFENDERS.**—(1) Not later than 180 days after the date of enactment of this Act, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State; and

(C) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 1 year after the date of enactment of this Act, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

Reports.

42 USC 5119a.

SEC. 3. BACKGROUND CHECKS.

(a) **IN GENERAL.**—(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a provider has been convicted of a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(b) **GUIDELINES.**—The procedures established under subsection (a) shall require—

(1) that no qualified entity may request a background check of a provider under subsection (a) unless the provider first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of title 18, United States Code) of the provider;

(B) the provider has not been convicted of a crime and, if the provider has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the provider that the entity may request a background check under subsection (a);

(D) notifies the provider of the provider's rights under paragraph (2); and

(E) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care;

(2) that each provider who is the subject of a background check is entitled—

(A) to obtain a copy of any background check report; and

(B) to challenge the accuracy and completeness of any information contained in any such report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(3) that an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) and the results thereof shall be handled in accordance with the requirements of Public Law 92-544.

(c) REGULATIONS.—(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this Act, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

(d) LIABILITY.—A qualified entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a provider, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof, be liable in an action for damages for the failure of a qualified entity to take action adverse to a provider who was the subject of a background check.

(e) FEES.—In the case of a background check pursuant to a State requirement adopted after the date of the enactment of this Act conducted with

fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed the actual cost of the background check conducted with fingerprints. The States shall establish fee systems that insure that fees to non-profit entities for background checks do not discourage volunteers from participating in child care programs.

42 USC 5119b.

SEC. 4. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.

(a) **USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.**—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

(1) in paragraph (2) by striking “and” after the semicolon;

(2) in paragraph (3) by striking the period and inserting “; and”; and

(3) by adding at the end the following new paragraph:

“(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the child abuse crime records required under the National Child Protection Act of 1993 with the Attorney General for the purpose of implementing the National Child Protection Act of 1993.”.

(b) **ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.**—(1) The Attorney General shall, subject to appropriations and with preference to States that, as of the date of enactment of this Act, have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases, make a grant to each State to be used—

(A) for the computerization of criminal history files for the purposes of this Act;

(B) for the improvement of existing computerized criminal history files for the purposes of this Act;

(C) to improve accessibility to the national criminal history background check system for the purposes of this Act; and

(D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal history background check system for the purposes of this Act.

Appropriation
authorization.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of \$20,000,000 for fiscal years 1994, 1995, 1996, and 1997.

(c) **WITHHOLDING STATE FUNDS.**—Effective 1 year after the date of enactment of this Act, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 that is not in compliance with the requirements of this Act.

42 USC 5119c.

SEC. 5. DEFINITIONS.

For the purposes of this Act—

(1) the term “authorized agency” means a division or office of a State designated by a State to report, receive, or disseminate information under this Act;

(2) the term “child” means a person who is a child for purposes of the criminal child abuse law of a State;

(3) the term "child abuse crime" means a crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person;

(4) the term "child abuse crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, or convicted of, a child abuse crime;

(5) the term "child care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children by persons having unsupervised access to a child;

(6) the term "national criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(7) the term "provider" means—

(A) a person who—

(i) is employed by or volunteers with a qualified entity;

(ii) who owns or operates a qualified entity; or

(iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

(i) seeks to be employed by or volunteer with a qualified entity;

(ii) seeks to own or operate a qualified entity; or

(iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(8) the term "qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services; and

(9) the term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

Approved December 20, 1993

LEGISLATIVE HISTORY—H.R. 1237.

HOUSE REPORTS: No. 103-393 (Comm. on the Judiciary)

CONGRESSIONAL RECORD. Vol. 139 (1993):

Nov. 20. considered and passed House and Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS. Vol. 29 (1993):

Dec. 20. Presidential remarks.

SEC. 320928. AMENDMENT OF THE NATIONAL CHILD PROTECTION ACT OF 1993.

(g) GUIDELINES.—

(1) IN GENERAL.—The Attorney General, in consultation with Federal, State, and local officials, including officials responsible for criminal history record systems, and representatives of public and private care organizations and health, legal, and social welfare organizations, shall develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse.

(2) MATTERS TO BE ADDRESSED.—In developing guidelines under paragraph (1), the Attorney General shall address the availability, cost, timeliness, and effectiveness of criminal history background checks and recommend measures to ensure that fees for background checks do not discourage volunteers from participating in care programs.

(3) DISSEMINATION.—The Attorney General shall, subject to the availability of appropriations, disseminate the guidelines to State and local officials and to public and private care providers.

Appendix B: Criminal Justice Information Services (CJIS) Information Letter 95-3



U.S. Department of Justice
Federal Bureau of Investigation
Criminal Justice Information Services (CJIS) Division
Identification Services

Letter to All Fingerprint Contributors

July 17, 1995

RE: National Child Protection Act of 1993

Attached to this letter are guidelines for implementing the National Child Protection Act (NCPA) as amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act). The guidelines address the child abuse crime reporting requirements of the NCPA. The NCPA also encourages states to effect national background check procedures that will enable employers to learn beforehand an individual applicant's fitness to care for the safety and well-being of children, the elderly, or individuals with disabilities. Information is set forth in the guidelines relating to the implementation of such background checks of care providers.

The Crime Control Act requires the Attorney General to disseminate guidelines for protecting children, the elderly, or individuals with disabilities from abuse to state and local officials and to public and private care providers. The FBI strongly recommends that recipients make copies of the guidelines widely available to any "authorized agency," "qualified entity," or "provider" as those terms are defined near the end of the guidelines. Section III of the guidelines is set apart from other sections so it can be easily reproduced and disseminated to private entities interested in conducting care provider background checks.

C. David Evans
Acting Assistant Director
Criminal Justice Information
Services Division

CJIS Information Letter 95-3

**GUIDELINES FOR IMPLEMENTING THE
NATIONAL CHILD PROTECTION
ACT OF 1993
(P.L. 103-209)
AS AMENDED BY THE
VIOLENT CRIME CONTROL AND
LAW ENFORCEMENT ACT OF 1994
(P.L. 103-322)**

**I. CHILD ABUSE CRIMES REPORTING REQUIREMENTS BY
CRIMINAL JUSTICE AGENCIES**

A. Agencies That Must Report Or Index Child Abuse Crimes

Section 2(a) of the National Child Protection Act (NCPA) of 1993 requires that an "authorized criminal justice agency" of the state shall report or index child abuse crime information in the national criminal history background check system. The authorized criminal justice agency is the state identification bureau (SIB) in those states where the arresting agencies are required to forward all criminal fingerprint cards and related document submissions (e.g., final dispositions, expungements, and death notices) to the SIB for transmittal to the FBI. Such states are generally referred to as "single-source" states. As of July 1, 1995, the following 42 states met this criteria:

Alabama	Maryland	Oklahoma
Alaska	Michigan	*Oregon
Arizona	Minnesota	Pennsylvania
Arkansas	Missouri	South Carolina
California	Montana	South Dakota
Colorado	Nebraska	Tennessee
Connecticut	Nevada	Texas
Delaware	New Hampshire	Utah
*Florida	New Jersey	Vermont
Georgia	New Mexico	Virginia
Idaho	New York	Washington
Illinois	*North Carolina	West Virginia
Iowa	North Dakota	Wisconsin
Kansas	Ohio	Wyoming

* States under the National Fingerprint File Program that "index" rather than report child abuse crime information.

In the nonsingle-source states of Hawaii, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, and Rhode Island, and in the District of Columbia and Puerto Rico, each local and state law enforcement agency is the authorized criminal justice agency.

B. Child Abuse Crime Information That Must Be Reported

Section 2(a) of the NCPA of 1993 was amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act) to include the following clarification, "A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions." Therefore, those states that are submitting all felony and serious misdemeanor arrest and disposition data to the FBI need not be concerned about submitting crimes against children independently. However, those states not submitting all such data to the FBI are reminded that the reporting or indexing of child abuse crime information in the national criminal history background check system is mandated by the NCPA. As defined in the NCPA, a "child abuse crime" is: "A crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person." The NCPA defines an "identifiable child abuse crime case" as "a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record." These definitions are consistent with criminal justice information gathering methodologies in use and contain widely accepted terminology.

C. Method For Reporting Child Abuse Crimes

The reporting of child abuse crimes will be accomplished by the submission of criminal fingerprint cards and disposition report forms, both of which are used nationally to report offender-specific crime information, including demographic data, details of charges, and fingerprint impressions. The contents on the criminal fingerprint card and disposition report form must include the following information: the arrestee's full name, originating agency identifier (ORI), date of birth, literal terms describing the child abuse crime or charge for which the person has been arrested or has been convicted, and a complete set of fingerprint impressions on the card with any amputations noted. The following data should be included on the fingerprint card and/or the final disposition report form to the extent possible: any known aliases, race, sex, height, weight, eye color, hair color, social security number, scars, marks, tattoos, the signature of the person fingerprinted, statute citation, and the disposition of the charge when known. States may report or index any other information that they believe would be useful in identifying persons arrested for, or convicted of, a child abuse crime in the appropriate information blocks provided on the criminal fingerprint card and disposition report form. An alternate method of submitting final disposition information to the FBI is by magnetic tape. The vast majority of final disposition data from the states is provided to the FBI via magnetic tape submissions.

II. COMPLETENESS OF RECORDS

Section 2(b) of the NCPA mandates that the Attorney General, subject to the availability of appropriations, investigate the criminal history record system of each state and determine for each state a timetable by which the state should be able to provide child abuse crime records including final dispositions on an

on-line basis through the national criminal history background check system. As amended by the Crime Control Act, Subsection (2) requires that as a part of each timetable the state:

- A. by not later than the date that is five years after the date of enactment of the NCPA, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last five years;
- B. continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding five years; and
- C. take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

The Bureau of Justice Statistics (BJS) within the Office of Justice Programs (OJP) of the Department of Justice is administering these requirements. In this capacity, BJS conducted a survey of criminal history information systems in each state, and on the basis of the findings in the survey, developed a timetable for each state to meet the goals set by the NCPA. In June 1994, the Attorney General advised each Governor of the timetable applicable to his or her state.

Section 4(b) of the NCPA establishes a grant purpose to help states improve the quality and availability of criminal records. Although the act authorized \$20 million, to date no funds have been appropriate for this purpose.

However, funds available under the National Criminal History Improvement Program (NCHIP), another program administered by the BJS, can be used to meet the goals of the NCPA. Under the NCHIP, funds will be made available to each state to help improve its criminal history information and to support the establishment of the National Instant Criminal Background Check System. NCHIP awards will be made to the state agency designated by the Governor to administer NCHIP funds. Funds awarded under the NCHIP may not be used to cover costs associated with conducting background checks pursuant to the NCPA. For further information about the NCHIP or for information relating to state timetables, contact BJS at (202) 307-0759.

III. CARE PROVIDER BACKGROUND CHECKS

A. General Provisions

Under the National Child Protection Act (NCPA) as amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act), a state is encouraged to have in effect national background check procedures that enable a qualified entity to determine whether an individual applicant is fit to care for the safety and well-being of children, the elderly, or individuals with disabilities. The procedures would permit a "qualified entity" to ask an authorized state agency to request a nationwide background check on an applicant provider. The authorized agency shall access and review state and federal

criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to an inquiry within 15 business days. The NCPA was enacted to, among other things, encourage states to require nationwide background checks to determine the suitability of a potential child care provider. Section 3(a)(1) of the NCPA was amended by the Crime Control Act to include care providers for the elderly and individuals with disabilities.

B. Background Check Guidelines

1. The procedures established by a state must require that no qualified entity may request a background check of a provider unless the provider first furnishes a complete set of fingerprints and completes and signs a statement that:

- a. contains name, address, and date of birth appearing on a valid identification document issued by a governmental entity;
- b. the provider has not been convicted of a crime, or if so, furnishes a description of the crime and the particulars of the conviction;
- c. notifies the provider:
 - i. that the qualified entity may request a background check;
 - ii. of the provider's rights (see paragraph 2 below); and
 - iii. that prior to the completion of the background check, the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides care.

2. Each provider who is subject to a background check is entitled to:

- a. obtain a copy of any background check report; and
- b. challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made by the authorized agency.

3. An authorized agency shall:

- a. upon receipt of a background check report lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data; and
- b. make a determination whether the provider has been convicted of or is under pending indictment for a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities, and convey that determination to the qualified entity.

4. Any nationwide background check and its results shall be handled in accordance with the requirement of Public Law (Pub. L.) 92-544.

C. Public Law 92-544 Requirements

The authority for the FBI to conduct a criminal record check for a non-criminal justice licensing or employment purpose is based upon Pub. L. 92-544. Pursuant to Pub. L. 92-544, the FBI is empowered to exchange identification records with officials or state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General's authority to approve the statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j). The standards employed by the FBI in approving Pub. L. 92-544 authorizations have been established by a series of memoranda issued by the Office of Legal Counsel, Department of Justice. The standards are:

1. The authorization must exist as the result of legislative enactment (or its functional equivalent);
2. The authorization must require fingerprinting of the applicant;
3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
4. The authorization must not be against public policy;
5. The authorization must not be overly broad in its scope; it must identify the specific category of applicants/licensees.

Fingerprint card submissions to the FBI under Pub. L. 92-544 must be forwarded through the SIB. The state must also designate an authorized governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant's suitability for employment or licensing.

D. Regulations

Section 3(c) of the NCPA states that the Attorney General may by regulation prescribe measures as may be required to carry out the purposes of the NCPA, including measures relating to the security, confidentiality, accuracy, use, misuse and dissemination of information, and audits and recordkeeping. Since NCPA background checks are to be handled in accordance with the requirements of Pub. L. 92-544, which was enacted in 1972, the FBI is of the view that the regulations implemented pursuant to Pub. L. 92-544 give adequate guidance. The standards used to approve state statutes for access to criminal history record information (CHRI) under Pub. L. 92-544 and the regulations set out below demonstrate a concern for the proper use, security, confidentiality, etc. of such information. Both Pub. L. 92-544 and Title 28, Code of Federal Regulations (CFR), Section 20.33 provide that dissemination of FBI CHRI outside the receiving governmental department or related agency is prohibited. Further, the exchange of CHRI is subject to cancellation if such unauthorized dissemination is made. Regulations found at Section 50.12 of Title 28 contain

additional requirements regarding the use and dissemination of CHRI. Section 50.12 provides, among other things, that:

The CHRI may be used only for the purpose requested. Officials authorized to submit fingerprints and receive CHRI must notify the individual fingerprinted that the fingerprints will be used to check the criminal history records maintained by the FBI. Officials making the determination of suitability for employment or licensing must provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials should not deny employment or the license based on information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so. If the applicant wishes to challenge the accuracy or completeness of the record, the official must advise the applicant that the procedures to change, correct, or update the record are set forth in Title 28, CFR, Section 16.34.

A caveat incorporating the above use and dissemination restrictions and challenge requirements is placed on each FBI identification record disseminated for employment and licensing purposes. Further, because updates to the records are made on a continuous basis, an authorized agency should obtain a current background check any time the individual applies for a new job.

E. Fees For Processing Background Checks

The FBI routinely charges \$24 (\$22 for billing states) for processing each fingerprint card submission under Pub. L. 92-544. Payment is made either by direct payment or billed to the SIB, depending on arrangements made between the FBI and each SIB, such as the execution of a Memorandum of Understanding for billing. With respect to the user fee for processing the fingerprints of a "volunteer" care provider, Section 3(e) of the NCPA has been amended by the Crime Control Act to read, "In the case of a background check pursuant to a State requirement adopted after the date of the enactment of this Act conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed eighteen dollars, respectively, or the actual cost, whichever is less." (underlining added for emphasis) The FBI has interpreted this language to allow both the FBI and the states to charge the \$18 or the actual cost, whichever is less. Based on a recommendation from the Department of Justice and for purposes of uniformity and consistency in administering this provision of the NCPA, the FBI has decided to also apply the \$18 fee to a volunteer care provider's fingerprints processed under the authority of a state statute adopted before the date of enactment of the NCPA.

Therefore, it is incumbent upon each SIB to notify in writing the Access Integrity Unit, Programs Support Section, Criminal Justice Information Services (CJIS) Division, if previously approved or future Pub. L. 92-544 statutes relating to individuals applying to provide care to children, the elderly, or disabled persons include "volunteers." If so, that information will be added to our list of approved Pub. L. 92-544 statutes so that the reduced fee for processing the fingerprints of volunteer care providers can be implemented as required by the NCPA.

It is the contributor's responsibility to ensure that the reason the applicant is being fingerprinted, the state statute citation, and if appropriate, the word "volunteer" are clearly indicated in the "Reason Fingerprinted" block of the card. The CJIS Division's automated system is in the process of being reprogrammed to allow for billing only \$18 (\$16 for billing states) for "volunteer" care provider submissions. Until the programming is completed, billing statements will be adjusted accordingly. If the contributor of a card fails to indicate that the applicant is a "volunteer," our regular user fee of \$24 will be charged for processing the card. **The above procedures and fee structure will become effective for fingerprint cards received at the FBI on or after the first day of our next billing period. A new billing period always begins on the first day of each month.**

F. Definitions

For the purposes of the NCPA—

1. The term "authorized agency" means a division or office of a state designated by a state to report, receive, or disseminate information under this Act.
2. The term "care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.
3. The term "individuals with disabilities" means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks.
4. The term "national criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.
5. The term "provider" means:
 - a. a person who is employed by or volunteers with a qualified entity, owns or operates a qualified entity, or has or may have unsupervised access to children, the elderly, or individuals with disabilities; and
 - b. a person who seeks to be employed by or volunteer with a qualified entity, seeks to own or operate a qualified entity or seeks to have or may have unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care.
6. The term "qualified entity" means a business or organization, whether public, private, for profit, not-for-profit, or voluntary, that provides care or placement services for children, the elderly, or individuals with disabilities, including a business or organization that licenses or certifies others to provide care or placement services.

G. Current Status

There are currently 38 states that have approved child care statutes; 8 states have approved statutes relating to care of the elderly; and 13 states have approved statutes relating to the care of disabled persons. Each SIB may expect to receive inquiries from various care providers, qualified entities, and others with questions concerning the NCPA. The CJIS staff believes that the information in these guidelines will answer most questions. Therefore, any assistance that recipients may provide in making copies of the guidelines available to affected care providers and qualified entities would be appreciated. It may also be helpful if each SIB would make available to interested parties a list of the categories of care providers and corresponding employment and licensing statutes which have been approved by the FBI as meeting the requirements of Pub. L. 92-544.

Appendix C: Some Suggestions for Implementing Screening in the Organization

Although it may seem simple to endorse the concept of performing careful worker screening prior to hiring the worker, in practice there are many details to consider. This section sets forth a series of steps for an organization to consider in implementing screening practices. This does not establish a standard of practice, nor is it the only set of steps for screening that can be developed. Rather, these suggestions are intended to further the dialog on screening in a concrete and practical way. Thus, organizations are encouraged to consider these (and other) ideas in developing screening practices and comprehensive abuse prevention measures. In addition, States, coalitions, and associations whose members serve the many discrete types of persons working (or volunteering) with vulnerable populations are encouraged to develop screening practices or policies aimed at those particular settings.

- Designate a person(s) within the organization who is responsible for receiving, reviewing, and acting on background screening information. Typically, an individual in the human resources or personnel department has responsibility for receipt and review of background screening information. This person should thoroughly understand all staff positions and roles so as to adequately assess the relevance of background information obtained. This person would also be responsible for developing and adhering to a screening/hiring policy based on the three-step decisionmaking model discussed in the body of this report. Making one person responsible for overseeing the process ensures that a consistent approach is taken, the screening policy is used appropriately, and the confidentiality of employee/volunteer records is maintained. In smaller settings, the director or assistant director should assume the centralized role of “keeper” of confidential worker information.
- Develop a comprehensive written application form that informs applicants of the organization’s screening policies and facilitates the ensuing background screening process. Matters to consider in the initial application process include:
 - An explanation of the hiring/selection process, including a written release giving consent to verify the information provided on the application (signed by the applicant) and to search criminal history and registry records (and conduct other checks), if appropriate.
 - An application form that includes a signed statement verifying the applicant’s understanding that falsifying information is grounds for dismissal and/or other action.
- Conduct personal interviews that probe for more indepth information that may not be available through other screening mechanisms. Interview questions should be tailored to the needs of the setting and the role of the worker or volunteer.

[REDACTED]

A standardized interview process would promote consistency among applicant interviews and help eliminate subjectivity associated with using multiple interviewers. Training on effective interview techniques, especially when delving into sensitive topic areas, would be of assistance. If possible, use of a team approach would increase objectivity, obtain different perspectives, and promote adequate documentation. Followup interviews may be needed as information surfaces through other background screening practices.

- Conduct reference checks (and, if appropriate, educational status checks).
 - When asking applicants for references, a verbal or written statement that references will be checked may deter unsuitable applicants and reduce fabrication.
 - Centralizing the reference-checking process and providing training would permit responsible staff to become persistent and deft in their inquiries. Fear of defamation or other lawsuits may limit the amount or detail of information a reference is initially willing to supply. Obtaining an applicant's written consent allowing for the release of information by previous employers may make for more effective reference checks. Some agencies ask references whether they know of any reason why the person should not be hired to work with the particular consumer population.
- Draft organizational policies on the appropriate use of criminal history information or other registry information to the extent this information is available, and develop specific criteria for using this information for screening purposes.

Appendix D: Sample Forms

These forms are based on those developed by the Missing and Exploited Children Comprehensive Action Program and the National School Safety Center under a grant from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice (see *Hiring the Right People, Guidelines for the Selection and Screening of Youth-Serving Professionals and Volunteers*, 1994). They are included as a starting point for the development of forms by States, agencies, associations, organizations, coalitions, or individuals serving children, the elderly, and individuals with disabilities in need of support.

[Insert agency name/logo/address]

AUTHORIZATION TO RELEASE INFORMATION

REGARDING:

Applicant's name: _____

Applicant's current address: _____

Applicant's social security number: _____

Agency contact person: _____

Authorization expiration date: _____

I, the undersigned, authorized and consent to any person, firm, organization, or corporation provided a copy (including photocopy or facsimile copy) of this **Authorization to Release Information** by the above-stated agency to release and disclose to such agency any and all information or records requested regarding me, including, but not necessarily limited to, my employment records, volunteer experience, military records, criminal information records (if any), and background. I have authorized this information to be released, either in writing or via telephone, in connection with my application for employment or to be a volunteer at the agency.

Any person, firm, organization, or corporation providing information or records in accordance with this authorization is released from any and all claims or liability for compliance. Such information will be held in confidence in accordance with agency guidelines.

This authorization expires on the date stated above.

Signature of Prospective Employee

Date

Witness to Signature

Date

[Insert agency name/logo/address]

APPLICANT DISCLOSURE AFFIDAVIT

(Please read carefully)

Our agency screens prospective employees and volunteers to evaluate whether an applicant poses a risk of harm to the children and youth it serves. Information obtained is not an automatic bar to employment or volunteer work, but is considered in view of all relevant circumstances. This disclosure is required to be completed by applicants for positions in order to be considered. Any falsification, misrepresentation, or incompleteness in this disclosure alone is grounds for disqualification or termination.

APPLICANT: _____

Please print complete name and social security number.

The undersigned applicant affirms that I HAVE NOT at ANY TIME (whether as an adult or juvenile):

Yes	No	<i>(Initial answer under "yes" or "no" and provide brief explanation for a "yes" answer below.)</i>
___	___	Been convicted of;
___	___	Pleaded guilty to (whether or not resulting in a conviction);
___	___	Pleaded nolo contendere or no contest to;
___	___	Admitted;
___	___	Had any judgment or order rendered against me (whether by default or otherwise);
___	___	Entered into any settlement of an action or claim of;
___	___	Had any license, certificate, or employment suspended, revoked, terminated, or adversely affected because of;
___	___	Been diagnosed as having or been treated for any mental or emotional condition arising from; or
___	___	Resigned under threat of termination of employment or volunteer work for;

Any allegation, any conduct, matter, or thing (irrespective of the formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

Yes	No	<i>(Initial answer under "yes" or "no" and provide brief explanation for a "yes" answer below.)</i>
___	___	Any felony.
___	___	Rape or other sexual assault.
___	___	Drug- or alcohol-related offenses.
___	___	Abuse of a minor or child, whether physical or sexual.
___	___	Incest.
___	___	Kidnaping, false imprisonment, or abduction.
___	___	Sexual harassment.
___	___	Sexual exploitation of a minor.



- ☐ ☐ Sexual conduct with a minor.
- ☐ ☐ Annoying/molesting a child.
- ☐ ☐ Lewdness and/or indecent exposure.
- ☐ ☐ Lewd and lascivious behavior.
- ☐ ☐ Obscene literature.
- ☐ ☐ Assault, battery, or other offense involving a minor.
- ☐ ☐ Endangerment of a child.
- ☐ ☐ Any misdemeanor or other offense classification involving a minor or to which a minor was a witness.
- ☐ ☐ Unfitness as a parent or custodian.
- ☐ ☐ Removing children from a State or concealing children in violation of a law or court order.
- ☐ ☐ Restrictions or limitations on contact or visitation with children or minors.
- ☐ ☐ Similar or related conduct, matters, or things.
- ☐ ☐ Accusation of any of the above.

Explanations:

(If you answered "yes" to any of the above, please explain. If none, write "none.")

Description

Dates

The above statements are true and complete to the best of my knowledge.

Date: _____

Applicant's signature

Date: _____

Witness to signature



Publications From OJJDP

Corrections and Detention

Conditions of Confinement Teleconference (Video). 1993, NCJ 147531 (90 min.), \$14.00.

Desktop Guide to Good Juvenile Detention Practice. 1996, NCJ 161408 (218 pp.).

Effective Programs for Serious, Violent and Chronic Juvenile Offenders Teleconference (Video). 1996, NCJ 160947 (120 min.), \$17.00.

Evaluation of the Disproportionate Minority Confinement (DMC) Initiative. \$15.00 each, \$39.00 for set of five.

Arizona Final Report. 1996, NCJ 161564 (111 pp.).

Florida Final Report. 1996, NCJ 161563 (84 pp.).

Iowa Final Report. 1996, NCJ 161562 (115 pp.).

North Carolina Final Report. 1996, NCJ 161561 (97 pp.).

Oregon Final Report. 1996, NCJ 161560 (71 pp.).

Evaluation of the Impact of Boot Camps for Juvenile Offenders. \$19.00 each.

Cleveland Interim Report. 1996, NCJ 160928 (160 pp.).

Denver Interim Report. 1996, NCJ 160927 (108 pp.).

Mobile Interim Report. 1996, NCJ 160926 (119 pp.).

Juvenile Arrests 1995. 1997, NCJ 163813 (12 pp.).

Juvenile Boot Camps Teleconference (Video). 1996, NCJ 160949 (120 min.), \$17.00.

Juvenile Detention Training Needs Assessment. 1996, NCJ 156833 (60 pp.).

Juvenile Probation: The Workhorse of the Juvenile Justice System. 1996, NCJ 158534 (6 pp.).

Juveniles Taken Into Custody: Fiscal Year 1993 Report. 1995, NCJ 154022 (195 pp.).

A Resource Manual for Juvenile Detention and Corrections: Effective and Innovative Programs. 1995, NCJ 155285 (164 pp.), \$15.00.

Courts

Beyond the Bench: How Judges Can Help Reduce Juvenile DUI and Alcohol and Other Drug Violations (Video and discussion guide). 1996, NCJ 162357 (16 min.), \$17.00.

Juvenile Court Statistics 1994. 1996, NCJ 163709 (95 pp.).

Offenders in Juvenile Court. 1994, 1996, NCJ 162423 (12 pp.).

Delinquency Prevention

1996 Report to Congress: Title V Incentive Grants for Local Delinquency Prevention Programs. 1997, NCJ 165694 (100 pp.).

Allegheny County, PA: Mobilizing To Reduce Juvenile Crime. 1997, NCJ 165693 (12 pp.).

Combating Violence and Delinquency: The National Juvenile Justice Action Plan (Report). 1996, NCJ 157106 (200 pp.).

Combating Violence and Delinquency: The National Juvenile Justice Action Plan (Summary). 1996, NCJ 157105 (36 pp.).

Communities Working Together Teleconference (Video). 1996, NCJ 160946 (120 min.), \$17.00.

Creating Safe and Drug-Free Schools: An Action Guide. 1996 (134 pp.). Available from the U.S. Department of Education (800-624-0100).

Keeping Young People in School: Community Programs That Work. 1997, NCJ 162783 (12 pp.).

Matrix of Community-Based Initiatives. 1995, NCJ 154816 (51 pp.).

Mentoring—A Proven Delinquency Prevention Strategy. 1997, NCJ 164386 (8 pp.).

Mobilizing Communities To Prevent Juvenile Crime. 1997, NCJ 165928 (8 pp.).

Reaching Out to Youth Out of the Education Mainstream. 1997, NCJ 163920 (12 pp.).

Title V Delinquency Prevention Program Community Self-Evaluation Workbook. 1996, NCJ 160125 (162 pp.).

Treating Serious Anti-Social Behavior in Youth: The MST Approach. 1997, NCJ 165151 (8 pp.).

Youth Environmental Service in Action. 1996, NCJ 159762 (38 pp.).

Youth Environmental Service Technical Assistance Package. 1996, NCJ 159763 (72 pp.).

Youth-Oriented Community Policing Teleconference (Video). 1996, NCJ 160947 (120 min.), \$17.00.

Gangs

1995 National Youth Gang Survey. 1997, NCJ 164728 (41 pp.).

Gang Members and Delinquent Behavior. 1997, NCJ 165154 (6 pp.).

General Juvenile Justice

Female Offenders in the Juvenile Justice System. 1996, NCJ 160941 (28 pp.).

Juvenile Justice, Volume III, Number 2. 1997, NCJ 165925 (32 pp.).

Juvenile Offenders and Victims: 1997 Update on Violence. 1997, NCJ 165703 (32 pp.).

Juvenile Offenders and Victims: A National Report. 1995, NCJ 153569 (188 pp.).

State Challenge Activities. 1996, NCJ 163055 (8 pp.).

Missing and Exploited Children

Addressing Confidentiality of Records in Searches for Missing Children. 1995, NCJ 155183 (284 pp.), \$15.00.

The Compendium of the North American Symposium on International Child Abduction: How To Handle International Child Abduction Cases. 1993, NCJ 148137 (928 pp.), \$17.50.

Court Appointed Special Advocates: A Voice for Abused and Neglected Children in Court. 1997, NCJ 164512 (4 pp.).

Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies. 1996, NCJ 161475 (126 pp.).

In the Wake of Childhood Maltreatment. 1997, NCJ 165257 (16 pp.).

Obstacles to the Recovery and Return of Parentally Abducted Children. 1994, NCJ 143458 (21 pp.).

Portable Guides to Investigating Child Abuse: An Overview. 1997, NCJ 165153 (8 pp.).

Using Agency Records To Find Missing Children: A Guide for Law Enforcement. 1995, NCJ 154633 (20 pp.).

Status Offenders

Curfew: An Answer to Juvenile Delinquency and Victimization? 1996, NCJ 159533 (12 pp.).

Truancy: First Step to a Lifetime of Problems. 1996, NCJ 161958 (8 pp.).

Unlocking the Doors for Status Offenders: The State of the States. 1995, NCJ 160803 (85 pp.), \$16.50.

Violence and Victimization

Child Development—Community Policing: Partnership in a Climate of Violence. 1997, NCJ 164380 (8 pp.).

Conflict Resolution Education: A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings. 1996, NCJ 160935 (134 pp.).

Conflict Resolution for Youth Teleconference (Video). 1996, NCJ 161416 (150 min.), \$17.00.

Epidemiology of Serious Violence. 1997, NCJ 165152 (12 pp.).

Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders. 1995, NCJ 153571 (6 pp.).

Reducing Youth Gun Violence: An Overview of Programs and Initiatives. 1996, NCJ 154303 (74 pp.).

State Responses to Serious and Violent Juvenile Crime. 1996, NCJ 161565 (61 pp.).

OJJDP also publishes Fact Sheets, two-page summaries on agency programs and initiatives. Contact JJC for titles and further information.

The Office of Juvenile Justice and Delinquency Prevention Brochure (1996, NCJ 144527 (23 pp.)) offers more information about the agency.

The OJJDP Publications List (BC000115) offers a complete list of OJJDP publications and is also available online.

Through OJJDP's Clearinghouse, these publications and other information and resources are as close as your phone, fax, computer, or mailbox.

Phone:

800-638-8736
(Monday-Friday, 8:30 a.m.-7:00 p.m. ET)

Fax:

301-519-5212

Fax-on-Demand:

800-638-8736, select option 1 for
Fax-on-Demand instructions

Online:

OJJDP Home Page:
<http://www.ncjrs.org/ojjhome.htm>

E-mail:

askncjrs@ncjrs.org
JUVJUST Mailing List:
[e-mail to listproc@ncjrs.org](mailto:e-mail%20to%20listproc@ncjrs.org)
leave the subject line blank
type subscribe juvjust (your name)

Mail:

Juvenile Justice Clearinghouse/NCJRS,
P.O. Box 6000, Rockville, MD 20849-6000

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(518) 432-2979

[Insert agency name/logo/address]

REQUEST FOR INFORMATION

TO:

APPLICANT:

Name: _____ Social Security Number: _____

Dates of Employment: _____ Immediate Supervisor: _____

Our agency *[insert name]*, is requesting information regarding the above-mentioned applicant who is seeking a position. This agency serves children and youth and, accordingly, undertakes background investigations to determine whether the individual poses a risk of harm to those who would be served.

We are interested in receiving any information or records that would reflect on the applicant's fitness to work with children and youth. Please complete the attached EMPLOYER DISCLOSURE AFFIDAVIT and return it to our agency at your earliest convenience. Although any information you wish to provide is welcome, we are especially interested in any conduct, matter, or things that involve an established or reasonable basis for suspecting physical, psychological, or sexual misconduct with respect to children or youth.

You may receive a separate written or telephone request from our agency for an employment reference regarding the applicant. Please respond to each request independently.

With this request is an authorization executed by the applicant. This releases you from any liability for your reply, either in writing or via telephone.

Thank you for your assistance.

Very truly yours,

Failure by your agency or organization to provide information requested may result in automatic disqualification of the applicant.

[Insert agency name/logo/address]

EMPLOYER DISCLOSURE AFFIDAVIT

(Please read carefully)

Our agency screens prospective employees and volunteers to evaluate whether an applicant poses a risk of harm to the children and youth it serves. Information obtained is not an automatic bar to employment or volunteer work, but is considered in view of all relevant circumstances. This disclosure is required to be completed by former employers in order for the applicant to be considered.

APPLICANT: _____

Please print complete name and social security number.

As an agent of the former employer of the undersigned applicant, I affirm to the best of my knowledge that the undersigned applicant HAS NOT at ANY TIME:

Yes No (Initial answer under "yes" or "no" and provide brief explanation for a "yes" answer below.)

- | | | |
|-----|-----|--|
| ___ | ___ | Been convicted of; |
| ___ | ___ | Pleaded guilty to (whether or not resulting in a conviction); |
| ___ | ___ | Pleaded nolo contendere or no contest to; |
| ___ | ___ | Admitted; |
| ___ | ___ | Had any judgment or order rendered against him or her
(whether by default or otherwise); |
| ___ | ___ | Entered into any settlement of an action or claim of; |
| ___ | ___ | Had any license, certificate, or employment suspended,
revoked, terminated, or adversely affected because of; |
| ___ | ___ | Been diagnosed as having or been treated for any mental or
emotional condition arising from; or |
| ___ | ___ | Resigned under threat of termination of employment or
volunteer work for; |

Any allegation, any conduct, matter, or thing (irrespective of the formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

Yes No (Initial answer under "yes" or "no" and provide brief explanation for a "yes" answer below.)

- | | | |
|-----|-----|--|
| ___ | ___ | Any felony. |
| ___ | ___ | Rape or other sexual assault. |
| ___ | ___ | Drug- or alcohol-related offenses. |
| ___ | ___ | Abuse of a minor or child, whether physical or sexual. |
| ___ | ___ | Incest. |
| ___ | ___ | Kidnaping, false imprisonment, or abduction. |
| ___ | ___ | Sexual harassment. |
| ___ | ___ | Sexual exploitation of a minor. |
| ___ | ___ | Sexual conduct with a minor. |
| ___ | ___ | Annoying/molesting a child. |
| ___ | ___ | Lewdness and/or indecent exposure. |

- ____ Lewd and lascivious behavior.
____ Obscene literature.
____ Assault, battery, or other offense involving a minor.
____ Endangerment of a child.
____ Any misdemeanor or other offense classification involving a
minor or to which a minor was a witness.
____ Unfitness as a parent or custodian.
____ Removing children from a State or concealing children in
violation of a law or court order.
____ Restrictions or limitations on contact or visitation with children
or minors.
____ Similar or related conduct, matters, or things.
____ Accusation of any of the above.

Explanations:

(If you answered "yes" to any of the above, please explain. If none, write "none.")

Description

Dates

The above statements are true and complete to the best of my knowledge.

Date: _____

Applicant's signature

Name: _____ Title: _____

Company: _____ Address: _____

City/State/ZIP: _____ Phone: _____

Appendix E: Posthiring Practices

Preemployment screening is only one aspect of identifying unsuitable workers and protecting vulnerable populations. Some individuals, such as first-time offenders, may not have a history of abuse. Effective child abuse prevention should also include ongoing prevention practices and continued screening efforts after the worker is hired. Some posthiring practices to consider include the following:

- **Best practices and management guides for each organization based on organizational needs or on policies developed for similar groups.** These guides may take the form of written policies that include (1) a code of conduct for staff relating to their behavior with the vulnerable client population(s); (2) policies on reporting suspected abuse; (3) policies on investigating staff or applicants concerning abuse; and (4) policies on hiring staff previously accused of or found guilty of abuse.
- **Written organizational policies regarding abuse by staff.** These policies would require employees and volunteers to attend an orientation and sign a statement that they have read and understood the agency's written policies regarding appropriate treatment of the vulnerable clients served (e.g., management of difficult behavior) and the State's reporting laws. A clear and concise policy that sets the parameters for provision of care should be included in the organizational guides. It should also inform employees and volunteers that the agency will cooperate with local officials (child protective services, adult protective services, and law enforcement) in investigation of cases.
- **Staff (or volunteer) training.** Risk-reduction strategies engender confidence among individuals who use and depend on the services to children and vulnerable adults. These strategies include staff education and training. Ongoing personnel training topics might include the facility's crisis management techniques, identification and reporting of suspected abuse by employees and volunteers, effective communication techniques, and diversity issues. In addition, education and training on specific issues associated with working with a particular client population may be appropriate.

For those providing services to the elderly and individuals with disabilities, educational programs may encompass information on the nature of the illness or disability, so that the care provider is better able to respond to the individual's needs.

- **On-the-job supervision and monitoring.** Ongoing staff supervision should be implemented to supplement preemployment background screening.
- **Procedures for periodic updating and review of workers.** Abuse and other relevant information revealed through screening should be updated with periodic checks for new information. This information can be obtained through traditional registries (e.g., child abuse and neglect and criminal record registries) and, if available, alternative (occupation-specific)

registries. In the future, this information may be available through flagging systems.

- **Efforts to increase parental, relative, and advocate involvement and communication.** For example, some organizations may adopt an open-door policy for these individuals to make unannounced visits to the facility at any time.

**U.S. Department of Justice
Office of Justice Programs
Office of Juvenile Justice and Delinquency Prevention
810 Seventh Street NW.
Washington, DC 20531**

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Attorney General
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Office of Juvenile Justice and Delinquency Prevention

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The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.

not as distributed

PRESIDENT CLINTON ANNOUNCES NEW EFFORTS TO IMPROVE CHILD CARE AND GIVE PARENTS PEACE OF MIND

This weekend, millions of Americans will celebrate Mother's Day and take time to recognize the critically important role that mothers play in the lives of their children. To give our nation's mothers the peace of mind they deserve, President Clinton today announced new steps to help parents choose safe, appropriate child care and again urged Congress to take action on child care legislation this year.

The President Announced New Justice Department Report to Help Protect Children in Child Care. The Justice Department report is designed to help protect children, the elderly and the disabled from abuse and neglect in care. Although the vast majority of child care providers are dedicated to the teaching and nurturing of children, one tragedy in child care is too many. Background checks are an important way to ensure that the people watching our children are fit for this responsibility. *Guidelines for the Screening of Persons Working with Children, the Elderly and Individuals with Disabilities in Need of Support* offers practical guidance for screening potential caregivers and makes recommendations for developing statewide screening and background check policies. The new report underscores the need for the National Crime Prevention and Privacy Compact, which the President transmitted to Congress last fall, has strong bipartisan support, and now awaits congressional action. The Compact will facilitate effective background checks on child care providers by eliminating state law barriers to the sharing of criminal history information for non-criminal purposes.

The President Announced New HHS Efforts To Help Parents Choose Child Care. Studies confirm that consumer education is a key ingredient to child care quality. Today, HHS releases two documents to help parents get the information they need to choose child care that is right for their children:

- **New guide will help parents select high quality child care.** The guide recommends four simple steps for parents in choosing child care: (1) interview the potential caregivers; (2) check references; (3) evaluate how the caregiver meets your child's needs; and (4) stay involved. The guide will be available to parents through the Internet.
- **New report highlights model consumer education efforts in the states and urges greater action.** The new report, *Reaching Parents with Child Care Consumer Education*, will help states improve parent education. It highlights successful state approaches and makes recommendations to states and child care administrators on ways to provide information to parents on how to assess their child care needs, locate services, obtain subsidies for income-eligible families, evaluate quality, and choose the best, appropriate care for their children.

The President Urged Congress to Protect Child Support Collection. The President called on Congress to join him in opposing a provision in proposed bankruptcy reform legislation that may undermine the ability of single parents to collect child support and alimony. The Administration supports responsible bankruptcy reform, but under one bill in the House of Representatives, some parents who try to collect child support from former spouses who file for bankruptcy could find themselves in competition with large credit card companies. Since 1992, child support collection has increased by 68 percent, and the President is committed to safeguarding that important progress.

The President Called for Congressional Action on Child Care. Millions of Americans, struggling to be both good parents and good workers, rely on child care and after-school programs for part of each day. As part of his balanced budget request, the President called for significant new investments in child care -- to help working families pay for child care, build a good supply of after-school programs, improve the safety and quality of care, and promote early learning. Today, the President renewed his call on Congress to put aside partisan differences and take action on child care this year.



U.S. Department of Justice

Office of Justice Programs

Washington, D.C. 20531

Date: 5/6

FAX

TO:

Nora Jordan

Phone:

456 6275

Fax:

456-2878

FROM:

Harri j. Kramer, APR

Director, Office of Congressional & Public Affairs

Phone:

202/307-0703 (Direct Line: 202/514-6094)

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202/514-5958

Number of Pages:

2

(including cover)

JUL CMOUOALTON

DRAFT

Guidelines for the Screening of Persons Working with Children, the Elderly and Individuals with Disabilities in Need of Support

Guidelines for the Screening of Persons Working with Children, the Elderly and Individuals with Disabilities in Need of Support will help protect children, the elderly and the disabled from abuse and neglect. The guidelines offer practical guidance for screening potential caregivers and recommendations for developing statewide screening and background check policies. Organizations can use the guidelines to develop screening procedures that best meet their needs and protect their clients.

The guidelines were designed to assist many different types of organizations that are faced with the responsibility of selecting caregivers for children, elderly or the disabled, including schools, day care facilities, hospitals, nursing homes, assisted living providers, youth development organizations, and other volunteer organizations. The guidelines will help these organizations screen caregivers by focusing on variables such as the type of contact the caregiver would have with the client, whether the care is supervised or unsupervised, and the age and condition of the client.

The guidelines also provide recommendations for how states can strengthen their efforts by:

- Encouraging abuse prevention training for all workers at service agencies, organizations and facilities for children and dependent adults.
- Allowing greater access to state criminal record and sex offender information.
- Creating central abuse and neglect registries for children and elderly or dependent adults.

The guidelines include an overview of current federal and state laws. They also offer specific suggestions for screening applicants for caregiving positions, including model forms that organizations can use as part of a job application process. In addition, the guidelines provide helpful information for monitoring and preventing abuse after an individual is hired.

The 1994 Crime Law amended the National Child Protection Act of 1993 directing the Justice Department to develop these guidelines, which were prepared by the American Bar Association (ABA) under a grant from OJJDP. The ABA's Center on Children and the Law sought input from federal, state, and local agencies and organizations, including the Justice Department's Child Exploitation and Obscenity Section, the Bureau of Justice Statistics and OJJDP's Missing and Exploited Children's Division in developing the guidelines.

Need a sentence or 2 on what the report says on state issues.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FAX COVER SHEETDATE: 5/6

TO:

Neera Tanden

PHONE NO.

456 - 2878

FAX NO.

FROM:

JOE GRAUPENSPERGER

PHONE NO.

514-3951

FAX NO.

305-2643NO. OF PAGES: 1 (EXCLUDING COVER)

COMMENTS:

The Department of Justice transmitted the National Crime Prevention and Privacy Compact to Congress last October. The goal is to obtain bipartisan support for this proposal. Because of problems within the House Judiciary Committee relating to which Subcommittee has jurisdiction over this compact, the House has not yet acted on this issue. In the Senate, we are working to obtain bipartisan support for the compact prior to introduction in order to increase chances for passage.

THE WHITE HOUSE

WASHINGTON

May 7, 1998

TAPED WEEKLY RADIO ADDRESS

DATE: May 8, 1998
LOCATION: Oval Office
TIME: 9:30 AM
FROM: Bruce Reed
Megan Moloney

I. PURPOSE

In honor of Mother's Day this Sunday, you will discuss how all Americans must take responsibility for the care of our children -- through protecting child support collection and taking action on child care.

II. BACKGROUND

Your Mother's Day radio address provides an opportunity to focus on child care, urge congressional action, and make two announcements aimed at giving parents greater peace of mind on child care:

- (1) *Background Checks for Child Care Workers:* You will release Department of Justice guidelines for screening child care workers and other caregivers, designed to reduce the incidence of abuse by care providers. This report demonstrates the need for the National Crime Prevention and Privacy Compact, which you transmitted to Congress last fall and which now awaits congressional action. The Compact is designed to facilitate effective background checks on child care providers by eliminating state law barriers to the sharing of criminal history information for non-criminal purposes.
- (2) *Parent Education on Child Care:* You will release two HHS documents: a new guide for parents on what to look for in choosing quality child care, and a report for states on improving child care consumer education.

You will also make a statement on pending bankruptcy

reform legislation and the Administration's opposition to one aspect of a bill in the House of Representatives. Under this provision, certain credit card debts would be nondischargeable under Chapter 7 and thus elevated to the same priority as taxes, educational loans, and child support and alimony. Former spouses could find themselves in competition with large credit card companies to receive their family support. Your advisers recommend strong opposition to this provision; however, such opposition should not be seen as inconsistent with our support for responsible bankruptcy reform.

III. PARTICIPANTS

Briefing (9:15-9:30 am)

The President
Rahm Emanuel
Ann Lewis
Bruce Reed
Jen Klein
Jeff Shesol
Nicole Rabner

Radio Address (9:30 am)

The President
Megan Moloney
Rebecca Cameron
White House Communications Agency (WHCA) Staff
White House Television (WHTV)
White House photographer
Approx. 30 guests (see attached for list)

IV. PRESS PLAN

The ABC, AP, C-CPAN, CBS, NBC/Mutual/Westwood One, NPR, UPI, USA, American Urban Radio and Standard News networks will carry the address in its entirety to their thousands of stations across the country this Saturday at 10:06 AM ET.

V. SEQUENCE OF EVENTS

Briefing
Deliver Radio Address
Greet Guests

VI. REMARKS

To be forwarded by the Office of Speechwriting

Welfare Reform: States' Efforts to Expand Child Care Programs (Letter Report, 01/13/98, GAO/HEHS-98-27).

Pursuant to a congressional request, GAO reviewed states' implementation of child care subsidy programs, focusing on: (1) how much federal and state funding is being spent on child care subsidy programs and how they are allocating these resources among welfare families, families making the transition from welfare to work, and working poor families; (2) how states are trying to increase the supply of child care to meet the projected demand under welfare reform; and (3) the extent to which states are changing standards for child care providers in response to welfare reform.

GAO noted that: (1) the seven states it reviewed have used federal and state funding to increase overall expenditures on their fiscal year (FY) 1997 child care subsidy programs, with increases ranging from about 2 percent to 62 percent over FY 1996 expenditures; (2) six of the seven states also reported an increase in the number of children served under these programs, although detailed data on the extent of this expansion are not available; (3) all seven states expected to meet the FY 1997 child care needs of families required to work under welfare reform and those of families transitioning off welfare; (4) states vary, however, in the extent to which they will provide subsidies to nonwelfare, working poor families, and all seven states are unable to fund child care for all families meeting the federal eligibility criteria who might benefit from such assistance; (5) to allocate their limited resources, states are controlling access to their child care programs through various state-defined criteria or by the manner in which they distribute subsidies to families; (6) the seven states' ability to meet child care needs beyond FY 1997 is unknown and will depend partially on future state funding levels for child care as well as changes in demand for child care subsidies resulting from welfare reform's work participation requirements; (7) to meet the future demand for child care among welfare families required to work and to address existing difficulties with finding certain types of child care, states have initiated various efforts to expand the supply of providers; (8) the seven states report that the supply of child care providers will generally be sufficient to meet the needs of welfare parents required to work; (9) however, in the future, additional providers may be needed as states comply with increasing numbers of welfare families become employed; (10) the seven states do not know whether their efforts to expand the supply of providers will be sufficient to meet the increased demand expected to result from welfare reform; (11) as state child care subsidy programs expand, some states are making incremental changes to strengthen their standards for child care providers; (12) some child care advocates and officials remain concerned that efforts to expand the supply of providers will result in larger numbers of children in care of unknown quality; and (13) the effect of welfare reform on states' efforts to protect children in child care still needs to be assessed.

----- Indexing Terms -----

REPORTNUM: HEHS-98-27
TITLE: Welfare Reform: States' Efforts to Expand Child Care Programs
DATE: 01/13/98
SUBJECT: Child care programs
Welfare recipients
Public assistance programs
Block grants
State-administered programs
Subsidies
Standards evaluation
Disadvantaged persons
Eligibility criteria
Funds management

IDENTIFIER: Child Care and Development Block Grant
 Job Opportunities and Basic Skills Training Program
 HHS Temporary Assistance for Needy Families Program
 Aid to Families with Dependent Children Program
 Head Start Program
 Texas
 California
 Connecticut
 Louisiana
 Maryland
 Oregon
 Wisconsin

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*****
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Cover

===== COVER

Report to the Ranking Minority Member, Subcommittee on Children and
 Families, Committee on Labor and Human Resources, U.S. Senate

January 1998

WELFARE REFORM - STATES' EFFORTS
 TO EXPAND CHILD CARE PROGRAMS

GAO/HEHS-98-27

Welfare Reform and Child Care

(106907)

Abbreviations

===== ABBREV

AFDC - Aid to Families With Dependent Children
 APWA - American Public Welfare Association

CCDBG - Child Care and Development Block Grant
CCDF - Child Care and Development Fund
CCR&R - child care resource and referral agency
HHS - Department of Health and Human Services
JOBS - Job Opportunities and Basic Skills Training program
NICHD - National Institute of Child Health and Human Development
SMI - state median income
TANF - Temporary Assistance for Needy Families

Letter

===== LETTER

B-276385

January 13, 1998

The Honorable Christopher J. Dodd
Ranking Minority Member
Subcommittee on Children and Families
Committee on Labor and Human Resources
United States Senate

Dear Senator Dodd:

Under welfare reform legislation passed in 1996, many more welfare families, including those with very young children, will be expected to seek and keep jobs than ever before. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193) made sweeping changes to national welfare policy by ending the Aid to Families With Dependent Children (AFDC) program, under which \$19.9 billion in payments were made in calendar year 1996 to a monthly caseload of about 4.6 million families with about 8.7 million children. In its place, the act created Temporary Assistance for Needy Families (TANF) block grants, which provide federal funds to states to help needy families. To avoid financial penalties, states must place 25 percent of adults receiving TANF benefits in work and work-related activities in fiscal year 1997. This required participation rate rises to 50 percent in fiscal year 2002, representing a much more stringent work requirement than existed under previous law.

Recognizing the important role that child care plays in helping families support themselves through work, the Congress revised existing child care subsidy programs to provide states greater flexibility in developing programs that support low-income parents' work efforts. The new law combined four programs with different target populations into one program--the Child Care and Development Block Grant (CCDBG)--with a single set of eligibility criteria and requirements. Although named CCDBG in the legislation, this program is now called the Child Care and Development Fund (CCDF). This block grant will make up to about \$20 billion in federal funds available to the states for child care programs between fiscal years 1997 and 2002. These changes are expected to increase opportunities for states to support low-income parents' efforts to work by operating child care programs for all eligible families--including both welfare and nonwelfare families--through one integrated system rather than through several separate programs.

The act's sweeping changes raise many questions about how states will implement subsidy programs to help an increasing number of low-income families meet their child care needs. To provide information on states' programs, you asked us to determine (1) how much federal and state funds states are spending on child care subsidy programs and how they are allocating these resources among welfare families, families making the transition from welfare to work, and working poor

families; (2) how states are trying to increase the supply of child care to meet the projected demand under welfare reform; and (3) the extent to which states are changing standards for child care providers in response to welfare reform.

To respond to this request, we focused on the efforts of seven states--California, Connecticut, Louisiana, Maryland, Oregon, Texas, and Wisconsin--to modify their child care subsidy programs under the new welfare reform law. These states represent a range of socioeconomic characteristics, geographic locations, and experiences with state welfare reform initiatives. In addition, we reviewed information about the child care subsidy programs of all 50 states and the District of Columbia contained in the new CCDF plans they submitted to the Department of Health and Human Services (HHS).\2 We performed our work between December 1996 and October 1997 in accordance with generally accepted government auditing standards. See appendix I for further discussion of our methodology.

\1 Three of the four child care programs--(1) AFDC/Job Opportunities and Basic Skills Training program (JOBS) child care, which provided child care assistance to welfare families involved in work or approved education or job training activities; (2) Transitional Child Care, which provided 1 year of child care assistance to families leaving AFDC because of employment; and (3) At-Risk Child Care, which assisted low-income working families who were deemed to be at risk of becoming dependent on welfare without child care assistance--were repealed. The new law modified the fourth existing child care program, the CCDBG, which previously had assisted families with incomes at or below 75 percent of the state median income who were working or in approved education and training.

\2 For convenience, we count the District of Columbia as one of "51 states" in sections of this report that discuss information from the District and the 50 states' CCDF plans.

RESULTS IN BRIEF

----- Letter :1

The seven states we reviewed have used federal and state funding to increase overall expenditures on their fiscal year 1997 child care subsidy programs, with increases ranging from about 2 percent to 62 percent over fiscal year 1996 expenditures. Six of the seven states also reported an increase in the number of children served under these programs, although detailed data on the extent of this expansion are not available. All seven states expected to meet the fiscal year 1997 child care needs of families required to work under welfare reform and those of families transitioning off welfare. The states vary, however, in the extent to which they will provide subsidies to nonwelfare, working poor families, and all seven states are unable to fund child care for all families meeting the federal eligibility criteria who might benefit from such assistance. To allocate their limited resources, states are controlling access to their child care programs through various state-defined criteria or by the manner in which they distribute subsidies to families. The seven states' ability to meet child care needs beyond fiscal year 1997 is unknown and will depend partially on future state funding levels for child care as well as changes in demand for child care subsidies resulting from welfare reform's work participation requirements.

To meet the future demand for child care among welfare families required to work and to address existing difficulties with finding certain types of child care, states have initiated various efforts to

certain types of child care, states have initiated various efforts to expand the supply of providers. These efforts include new provider recruitment; fiscal incentives for providers and businesses to establish or expand child care facilities; and initiatives to increase the use of early childhood development and education programs, such as Head Start and prekindergarten programs, as partners in child care delivery. For now, the seven states report that the supply of child care providers will generally be sufficient to meet the needs of welfare parents required to work. However, in the future, additional providers may be needed as states comply with the work participation requirements of federal welfare reform and increasing numbers of welfare families become employed. The seven states do not know whether their efforts to expand the supply of providers will be sufficient to meet the increased demand expected to result from welfare reform.

As state child care subsidy programs expand, some states are making incremental changes to strengthen their standards for child care providers. For example, Texas plans to increase the minimum number of staff required at licensed child care centers between 1997 and 1999. Also, some states are conducting criminal background checks on providers generally exempt from regulation and licensing to better ensure the health and safety of children in this informal type of care. Nonetheless, some child care advocates and officials remain concerned that efforts to expand the supply of providers will result in larger numbers of children in care of unknown quality. The effect of welfare reform on states' efforts to protect children in child care still needs to be assessed.

BACKGROUND

----- Letter :2

The cost of child care often creates an employment barrier for low-income parents attempting to support their families through work. To help low-income families meet their child care needs, the Congress authorized four child care subsidy programs between 1988 and the passage of the new welfare reform legislation. Under three of these programs--AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care--states were entitled to receive federal matching funds based on their own expenditures. States could receive matching federal funds through an open-ended entitlement for AFDC/JOBS and Transitional Child Care expenditures but were limited in the amount of matching federal funds for expenditures on At-Risk Child Care. For the fourth program--the CCDBG--states received capped federal allocations without state spending requirements. Under the previous child care programs, federal and state program guidelines determined that AFDC clients were entitled to child care assistance if they met the necessary work, education, or training requirements or left AFDC because of employment, while non-AFDC clients received child care subsidies if funds were available. Funding from federal and state governments for these four child care programs totaled about \$3.1 billion in fiscal year 1995, the most recent year for which data were available.

Our previous work has suggested that child care subsidies can be an important factor in poor mothers' decisions to find and keep jobs.\3 Yet we found that the multiple and conflicting requirements of the four previous programs discouraged states from creating systems that gave continuous help with child care needs as families' welfare status changed. In addition, in part because of state budget constraints, states often emphasized meeting the needs of welfare families, who were entitled to subsidies, rather than those of nonwelfare families who, although not entitled to aid, were often at risk of losing their jobs and going on welfare because of lack of assistance with child care costs.

The new CCDF provides federal funds to states for child care subsidies for families who are working or preparing for work and who have incomes of up to 85 percent of a state's median income, which is an increase from 75 percent under previous law. This consolidated program with one set of eligibility criteria primarily based on income affords greater opportunities for a state to operate an integrated child care system. Such a system, often called a seamless system, could enable all potentially eligible families--welfare clients whose welfare status may change over time as well as families who do not receive welfare benefits--to access program services under the same procedures, criteria, and requirements. Such programs could enhance parents' abilities to achieve and maintain self-sufficiency and promote continuity of care for their children.\4

The CCDF provided states with about \$3 billion in federal funds in fiscal year 1997--\$605.7 million more than was available in 1996 under previous law. In the future, the amount of federal CCDF funds available could rise from about \$3.1 billion in fiscal year 1998 to about \$3.7 billion in fiscal year 2002. Each state's yearly federal allocation consists of separate discretionary, mandatory, and matching funds.\5 A state does not have to obligate or spend any state funds to receive CCDF discretionary and mandatory funds. However, to receive matching funds--and, thus, its full CCDF allocation--a state must maintain its expenditure of state funds for child care programs at specified previous levels and spend additional state funds above those levels.\6 As figure 1 shows, states are entitled to receive a total of about \$2.2 billion in federal discretionary and mandatory funds without spending any of their own funds. An additional \$723 million in federal matching funds is available for states that continue child care investments from their funds. If states obligated or spent the state funds necessary to receive their full allocation, the various CCDF funding streams would make a total of about \$4.4 billion in federal and state funds available for state child care programs in fiscal year 1997.

Figure 1: CCDF Funds Available
for Fiscal Year 1997

(See figure in printed
edition.)

Note: In millions. Percentages do not add to 100 because of rounding. Total = \$4,355 million.

Source: Administration for Children and Families, HHS.

The CCDF provision that states may provide child care assistance to families whose income is as high as 85 percent of the state median income (SMI) allows states to assist families at both the lowest and more moderate income levels. Nationwide, for fiscal year 1997, 85 percent of SMI for a family of four ranged from a low of \$31,033 in Arkansas (1.93 times the federal poverty level) to a high of \$52,791 in Connecticut (3.29 times the federal poverty level).\7 At the same time, the CCDF requires states to use at least 70 percent of their mandatory and matching funds to provide child care to welfare recipients, those in work activities and transitioning from welfare, and those at risk of going on welfare. It also requires that a substantial portion of discretionary funds and of the remaining 30 percent of mandatory and matching funds be used to assist nonwelfare, low-income working families.\8

Other provisions of the new welfare law that require states to place increasing numbers of welfare families in work activities may provide incentives for states to focus child care resources on welfare families. Families now receive assistance through the new TANF block

grants, which have a federally mandated 5-year lifetime limit on assistance and require that families be working if they have been receiving TANF benefits for 2 years or longer.\9 In addition, states risk losing some of their TANF allocations unless they place specified percentages of welfare families in work activities. The new law also required that 25 percent of a state's entire adult TANF caseload participate in work and work-related activities in fiscal year 1997, and the required rate increases by 5 percentage points annually to 50 percent in fiscal year 2002.\10

Along with these requirements, the welfare law provides states the flexibility to transfer up to 30 percent of their TANF block grant allocations to the CCDF, or use TANF funds directly for child care programs.\11 In addition, states may spend more state funds for child care than the amount required in order to draw down the federal funds. The new welfare reform law requires states to spend at least 4 percent of their CCDF expenditures on activities to improve the quality and availability of child care and to limit their administrative costs to 5 percent of their funds.

\3 Child Care: Child Care Subsidies Increase Likelihood That Low-Income Mothers Will Work (GAO/HEHS-95-20, Dec. 30, 1994).

\4 Child Care: Working Poor and Welfare Recipients Face Service Gaps (GAO/HEHS-94-87, May 13, 1994).

\5 A state's discretionary fund is allotted according to formulas specified in the CCDBG Act while its mandatory allocation is based on the federal share of its expenditures for AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care for fiscal year 1994 or 1995 or the average of fiscal years 1992-94. The matching fund is distributed on the basis of the former At-Risk Child Care formula. The Congress appropriated \$13.9 billion in mandatory and matching funds for fiscal years 1997 to 2002. During the same period, an additional \$6 billion in discretionary funds is authorized to be appropriated in annual increments of \$1 billion.

\6 To access federal matching funds, a state must (1) obligate its entire amount of mandatory funds by the end of the fiscal year; (2) maintain state child care expenditures at its 1994 or 1995 level (whichever was higher) for its AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care programs; and (3) spend additional state funds.

\7 As of Mar. 1997, the federal poverty level for a family of four was \$16,050 in the 48 contiguous states and the District of Columbia, \$20,070 in Alaska, and \$18,460 in Hawaii.

\8 Although the CCDF will require states to report to HHS on this issue in the future, the data are not yet available to show whether welfare or other low-income families are being served. HHS is not providing guidance to the states on how to distribute these funds, nor does it intend to regulate beyond the statutory requirements on this issue.

\9 According to HHS officials, many states have time limits of between 2 and 5 years, and some states have implemented work requirements to begin earlier than the federal 2-year limit.

\10 A separate and much higher minimum work participation rate is specified for two-parent families: 75 percent in fiscal year 1997, rising to 90 percent in fiscal year 1999. States' minimum work participation rates are lowered if their welfare caseloads decrease.

California	\$542.9	\$189.1	\$353.8
Connecticut	59.8	27.3	32.5
Louisiana	10.0	10.0	0
Maryland	28.5\	37.0	0\
Oregon	38.1	16.7	21.4
Texas	67.7\	67.7	0\
Wisconsin	22.8\	25.8	0\

Note: Dollars in millions.

\a Because state and federal fiscal years sometimes differ, some states will not spend enough state money during state fiscal year 1997 to receive the full federal allocation during this year. However, they expect to spend sufficient state funds to do so by the end of the next federal fiscal year.

\b Figure reflects expenditures or obligations of state funds.

Source: GAO analysis of data from state child care administrators and HHS.

States are expanding their child care programs through various combinations of federal and state funds. Texas and Louisiana will increase state funding for child care during federal fiscal year 1997 to obtain their full allocation of federal CCDF funds. California, Connecticut, and Oregon have also increased their state funding and will exceed the amount required to maximize their federal CCDF allocation.\13 Nationwide data from the APWA survey show that 20 of 48 responding states have appropriated or plan to appropriate state funds beyond the levels necessary to obtain their full federal CCDF allocations.\14

Some states are using the flexibility provided under welfare reform to fund child care programs. For those states that have experienced welfare caseload declines in recent years, more funds are available per family in fiscal year 1997 from TANF than were available from AFDC, Emergency Assistance, and JOBS before welfare reform because federal TANF allocations are based on previous federal expenditures in the state for these programs. While Wisconsin will expand its child care funding by 38 percent between state fiscal years 1996 and 1997, the increase will come from federal, not state, funding sources. Because of significant declines in TANF caseloads over the last few years, Wisconsin will use \$13 million directly from its TANF block grant for child care. Similarly, Oregon, another state that has recently experienced substantial welfare caseload declines, plans to use \$17.2 million directly from its TANF block grant for child care during state fiscal year 1997. Other states, including Texas, Connecticut, and California, also expect to use some TANF funds for child care programs in the future.\15 Similarly, 12 of 48 states responding to the APWA survey indicated they would transfer TANF funds to the CCDF; 2 said they would spend money for child care directly from the TANF block grant; and 1 plans to transfer some TANF funds to the CCDF and use some TANF funds directly on child care programs.\16

According to child care officials, additional child care funds from these various federal and state sources have allowed most of the seven states to expand the number of children served under their child care subsidy programs. Detailed data on the number of children served in fiscal years 1996 and 1997 that are comparable across all seven states are not available. However, some data indicate that six of the seven states reviewed increased the number of children served under these programs by an average of about 17 percent between fiscal years 1996 and 1997. Only Maryland experienced a decrease in the

number of children served under its child care programs during this period. According to a Maryland child care official, the decreased number of children resulted from an unexpected decline in AFDC caseloads combined with cost containment measures that froze non-AFDC child care in an effort to reduce a projected deficit. Although the state had some additional funds available for child care, they were not sufficient to both cover the increased costs of child care and provide benefits to additional families.

\12 John Sciamanna and Elena Lahr-Vivaz, The Child Care Challenge: States Leading the Way (Washington, D.C.: Government Affairs Department, APWA, July 1997), p. 1.

\13 According to Connecticut officials, state funds represent about 95 percent of the increase in Connecticut's total child care expenditure between state fiscal years 1996 and 1997.

\14 Sciamanna and Lahr-Vivaz, p. 2.

\15 California expects to expend about \$114 million of TANF funds on child care in state fiscal year 1997-98.

\16 Sciamanna and Lahr-Vivaz, p. 2.

STATES USE VARIOUS MEANS TO
ALLOCATE LIMITED CHILD CARE
RESOURCES

----- Letter :3.2

Even though the seven states are expanding their programs, they are still unable to provide child care subsidies for all families meeting federal eligibility criteria who might benefit from such assistance. A recent Urban Institute study estimated that only about 48 percent of the potential child care needs of low-income families would be met if states maximized federal dollars available under welfare reform.\17 To allocate resources, states have controlled access to their child care subsidy programs through state-defined criteria or by the manner in which they distribute child care subsidies to families. Key factors that states are using to allocate their program resources include the following:

- setting maximum family income for eligibility,
- requiring family copayments,
- providing guarantees, or entitlements, to specific groups,
- establishing priorities for specific groups,
- committing state resources to specific groups,
- establishing provider reimbursement rates, and
- instituting time-limited benefits.

For additional information on how the seven states' programs use these key factors to control access to child care subsidies, see appendix III. In addition, states may close programs to new applicants or maintain long waiting lists when their resources do not meet the demand for child care services.

\\17 Sharon Long and Sandra Clark, The New Child Care Block Grant: State Funding Choices and Their Implications (Washington, D.C.: The Urban Institute, July 1997). The researchers made the following assumptions: (1) income eligibility was based on the number of families with incomes less than 150 percent of the federal poverty level in the 1996 Current Population Survey, a figure that encompasses most, but not all, eligible families; (2) an approximation of the number of children in paid child care arrangements was based on the number of children in low-income working families using nonrelative care in the 1992-93 Survey of Income and Program Participation; and (3) families in the current AFDC caseload who have earnings are all working the number of hours required under welfare reform law. However, according to the researchers, since some of the families in the current AFDC caseload with earnings will likely need to increase their hours worked, the study underestimates the increased need for child care under welfare reform.

INCOME ELIGIBILITY
CRITERIA AND COPAYMENTS
ARE KEY FACTORS USED TO
LIMIT PROGRAM ACCESS

----- Letter :3.2.1

Income eligibility criteria and family copayments for child care are important means of limiting program access. Although the CCDF allows states to extend eligibility for subsidized child care to families earning up to 85 percent of SMI, not all states extend their eligibility to this level. Of the seven states, only Oregon has established income eligibility limits that allow subsidies for families with incomes this high. Louisiana will increase its eligibility to this level in fiscal year 1998.

Income eligibility criteria can be misleading, however, since eligibility does not guarantee access to services. States with a relatively high income ceiling may not actually provide services to many families at the high end of the eligible income range. Because states use other factors in combination with their income eligibility criteria to allocate resources, even though families apply and have incomes below the state established ceiling, they may not obtain child care subsidies.

For example, states also use family copayments for child care services to control access to child care subsidies and manage child care funds. Copayments from subsidized families can help states offset some of the costs of child care subsidies and thereby increase the number of families that states can afford to serve. In addition, some child care officials believe that copayment requirements, particularly for welfare families who also face work participation requirements, reinforce the concepts of self-sufficiency and responsibility for managing household budgets. According to some child care experts, however, if the family share of the cost of child care is too high a percentage of household income, a family may not be able to afford subsidized child care even if it is eligible under state eligibility rules. In some instances, the required copayment may ultimately become so large that families seek child care outside the state subsidized system.

Wisconsin and Oregon both rely primarily on income as a means of determining eligibility for child care subsidies. Wisconsin has established relatively low entry-income eligibility criteria, coupled with copayments designed to make subsidized child care accessible to all eligible families. Wisconsin lowered its entry-income

eligibility level, which was 75 percent of SMI before welfare reform, to about 53 percent of SMI for a family of three under the CCDF.\18 In addition, Wisconsin's copayments range from 6 to 16 percent of a family's gross income in an effort to make the program more affordable for all eligible families. With these new program requirements, Wisconsin expects to serve all income-eligible families with no waiting lists, in accordance with its welfare-to-work philosophy, which bases aid on parents' demonstrated efforts toward self-support.

In Oregon, where welfare reform efforts are also focused on self-sufficiency for all low-income families, eligibility for child care subsidies has been extended to three-person families with income up to 85 percent of SMI. This relatively high entry-income eligibility is offset, however, by a relatively high family copayment level that discourages higher-income families from remaining in the subsidized child care program. Here, the family copayment requirements rise as incomes rise and can ultimately reach over 30 percent of family income. Given current budget constraints, Oregon officials said that the copayment serves to effectively target child care subsidies to the state's poorest families, who pay proportionately lower copayments.

Wisconsin and Oregon's child care programs, which are primarily based on income eligibility, are integrated, seamless programs that enable all potentially eligible families to access program services under the same procedures, criteria, and requirements. The CCDF gives states the opportunity to create and operate such seamless child care programs to accommodate their work-based welfare reform efforts. Unlike the previous four federal child care funding programs, which segmented working low-income families into different service categories on the basis of welfare status, the CCDF provides flexibility that allows states to eliminate such artificial distinctions and create integrated programs that serve all families in similar economic circumstances.\19 Such programs are important to ensure that families who have never been on welfare are not penalized for their work efforts and that families can move easily from welfare to self-sufficiency.

In addition to the seven states we reviewed, other states also appear to be moving toward the creation of seamless programs. A study of child care in the 10 states with the largest welfare populations found that 3 of these states--Illinois, Michigan, and Washington--plan to develop child care programs with eligibility primarily based on income.\20 In these three states, all families with income under state-established income ceilings will be eligible for subsidized child care, regardless of their welfare status.

\18 Some states, including Wisconsin, have more generous income eligibility levels for families who are already in their child care program. Wisconsin families may remain in the state's subsidized system until their income exceeds about 65 percent of SMI.

\19 We previously reported on problems with such service gaps and artificial distinctions in GAO/HEHS-94-87, May 15, 1994.

\20 See Margy Waller, *Welfare-To-Work and Child Care: A Survey of the Ten Big States* (Washington, D.C.: The Progressive Policy Institute, July 1997).

SOME STATES WILL GIVE
PRIORITY TO WELFARE AND

FORMER WELFARE FAMILIES

----- Letter :3.2.2

Some of the seven states we reviewed will continue to provide subsidies that target different groups of low-income families. Although all seven states expect their child care resources to be sufficient to meet welfare-related child care needs in fiscal year 1997, they vary in the extent to which they can provide subsidies to the nonwelfare working poor. For the near term, Louisiana, Maryland, Oregon, and Wisconsin report that they have sufficient funds to serve all families who seek services and meet state eligibility requirements, and, to date, they have not had to decide how to allocate funds among the different low-income groups. However, according to Louisiana state officials, many nonwelfare, working poor families are not aware that the state's child care waiting lists have been eliminated and that they are eligible for subsidies under this program. Therefore, many eligible Louisiana families may not yet have applied for child care subsidies, and the demand could exceed the state's resources in the near future.

The remaining states--California, Connecticut, and Texas--said they have insufficient resources and are not currently serving all nonwelfare families who meet individual state eligibility requirements. California allocates funds specifically for welfare-related child care and although revising its separate programs into one child care system as of January 1998, still expects to operate distinct components for its welfare and nonwelfare populations. Because California's resources are limited, it has over 200,000 families--mostly the nonwelfare working poor--on its waiting list for child care subsidies, and families may wait up to 2 years.\21 Texas operates one child care program funded by multiple funding streams that are essentially invisible to clients and child care providers. However, Texas targets portions of its funds to current and former welfare recipients and provides greater access to care for some groups, such as JOBS participants. Texas' waiting list for subsidized child care contained about 37,000 children as of June 1997.

Although it plans to create a seamless child care program in the future, Connecticut currently operates three separate subsidy programs for welfare-related child care and serves its nonwelfare population through a fourth program that pays higher subsidy rates. However, because of limited resources, Connecticut's nonwelfare child care program has been closed to applicants since 1993, except for two periods when about 5,000 new applicants were processed, although not all were approved.\22

\21 This count may overstate the need because families who already receive TANF child care may also be on these waiting lists for care received through a program component targeted to nonwelfare families. Also, children may be double-counted if families have registered them for care in more than one location. California officials noted that the state intends to fully fund the child care necessary for welfare recipients to participate in welfare-to-work activities and to transition to work.

\22 Connecticut's program for nonwelfare families has remained open for teen parents completing high school and for families who exhausted their 12 months of transitional child care.

REIMBURSEMENT RATES AND
TIME LIMITS ARE ALSO USED

----- Letter :3.2.3

States also manage child care funds by limiting reimbursement rates for providers. The AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care programs required states to conduct biennial market surveys to establish reimbursement rates for providers.\23

However, although states conducted these surveys as required, some reimbursed providers on the basis of relatively old surveys. Lower reimbursement rates allow states to provide subsidies to more families than they could serve if current market rates were used. However, according to some researchers, reimbursement policies can make a difference in parents' child care options, particularly in how easily parents can obtain care and in how willing providers are to accept children who receive subsidies.\24

At the time of our review, of the seven states reviewed, only Wisconsin and California were using the most current market rate surveys--those conducted in 1996--to establish reimbursement rates for their providers. Although the remaining five states were basing provider rates on market surveys conducted in 1991 or 1992, three had already updated or intended to update these surveys, while one indicated that it might revise its rate-setting methodology in the future. HHS is proposing that states also conduct biennial market surveys for the new CCDF and that they base rates for any 2-year period on surveys conducted not earlier than the previous 2-year period.

Finally, at least one of the seven states is considering instituting time limits so more families have the opportunity to benefit from child care subsidies. Although some states have time limits for specific types of care, none of the seven states categorically limits the number of years a family can receive child care subsidies. In fact, some states have removed previous limits on the length of time that families transitioning from welfare can receive subsidies. In these states, if a subsidized family never exceeds the state's maximum income eligibility criteria, it may continue to receive subsidies for years--until its youngest child becomes too old for program benefits, providing continuity of care for this family. However, with limited resources available, other families may be excluded from such benefits.

 \23 Although the requirement for a state survey did not apply to the former CCDBG, some states used these same surveys for setting rates for CCDBG programs.

\24 See Helen Blank, "Child Care in the Context of 'Welfare Reform,'" Child Care in the Context of Welfare "Reform" (New York City: Cross National Studies Research Program, Columbia University School of Social Work, 1997).

STATES' ABILITY TO MEET
 FUTURE CHILD CARE NEEDS IS
 UNKNOWN

----- Letter :3.3

The seven states reported that increased federal funds for child care and declining welfare caseloads were helping them expand their child care subsidy programs this fiscal year. Also, some states with declining welfare caseloads have additional TANF funds this year that they can use for child care subsidies. As a result, states reported that they could meet the immediate child care needs of welfare

families and those of at least some other low-income families.

The states' ability to fund child care programs adequately in the long term, however, remains unknown. It will depend on the impact of various factors on the demand for child care--such as the size of TANF caseloads and work participation rates--as well as on future levels of federal and state child care funding. Although TANF caseloads have generally been falling, this trend may not continue. Also, TANF's requirement that states place increasingly higher percentages of their caseloads in work activities, combined with the capping of federal child care funds, could strain the states' capacity to expand child care programs in future years. Moreover, in the longer term, states may face additional pressures to provide child care assistance to support working families who are no longer eligible for time-limited federal cash assistance under TANF. As demand for child care subsidies increases, states will have to make difficult decisions about the levels and allocations of scarce resources. These pressures could be mitigated by any funds that become available from further possible reductions in TANF caseloads or from healthy state economies that increase the seven states' revenues.

Most of the seven states had not established funding levels for child care subsidy programs beyond 1997 at the time of our review, so their ability to meet future child care needs has not been determined.²⁵ The effect of welfare reform's work participation rates on demand for subsidized child care will not fully materialize for several years. The challenges states will face in meeting the required work participation rates will vary on the basis of previous welfare caseload reduction and current work participation levels among their welfare caseloads. For example, Oregon and Wisconsin have already experienced significant caseload reductions and, as a result, will face lower participation requirements, as allowed under TANF rules.²⁶ Moreover, these states already have a higher proportion of their welfare caseloads in welfare-to-work activities than do the other states reviewed. The other states, such as California, have experienced smaller percentage reductions in their caseloads and have placed proportionately fewer participants in welfare-to-work activities.

²⁵ In fall 1997, Wisconsin approved a state budget that will provide \$177 million for child care in 1998-99, a tripling of the funds available at the beginning of fiscal year 1996-97.

²⁶ In any given year, the participation rate that a state must meet is reduced by the number of percentage points its caseload has fallen between that year and fiscal year 1995.

STATES ARE INITIATING EFFORTS TO ENSURE ADEQUATE SUPPLY OF PROVIDERS

----- Letter :4

The seven states we reviewed expect demand for child care subsidies to increase under welfare reform as more families become subject to work requirements and as states attempt to provide assistance to other nonwelfare working poor families. These states also recognize that certain types of child care arrangements on which working welfare families are likely to rely, such as those involving infants or nonstandard hours, are already scarce in some areas. Consequently, they have initiated a variety of efforts to expand their supply of providers. In addition, the states expect that

informal child care arrangements will remain an important child care option for many low-income working families. Although the provider supply appears to be adequate to meet families' immediate needs, the states do not know whether it will be adequate to meet low-income families' long-term child care needs.

DEMAND FOR CHILD CARE
SUBSIDIES IS EXPECTED TO
INCREASE UNDER WELFARE
REFORM

----- Letter :4.1

As we previously reported, more welfare participants are likely to need child care assistance as states try to meet the new work participation requirements under welfare reform.\27 The child care administrators in the seven states we reviewed also expect this to occur. Although most of the states have not formally estimated how much the demand for child care is expected to increase over the next few years, some data suggest that the increase could be significant. For example, in the seven states, several of which had initiated their own welfare reform efforts before federal welfare reform, the number of children served by the federally funded Transitional Child Care program for families leaving welfare because of employment grew from 21,112 to 27,673--about 31 percent-- between fiscal years 1993 and 1995. In Oregon, which began in 1992 to require more welfare parents to participate in welfare-to-work activities and has emphasized child care assistance as a way to help welfare and other low-income families support themselves through work, the number of children served by the state's Employment-Related Day Care program increased from 9,005 to 21,322--137 percent--from July 1992 to February 1997.\28 Connecticut has estimated that an additional 5,000 TANF-related families will need child care assistance during its next two fiscal years, and Maryland estimates the number of families needing child care will more than double from 1997 to 1999. Oregon, Texas, and Wisconsin sometimes offer child care assistance in lieu of immediate cash benefits to families who apply for welfare.

\27 Welfare Reform: Implications of Increased Work Participation for Child Care (GAO/HEHS-97-75, May 29, 1997), pp. 1, 4, 5.

\28 Oregon's Employment-Related Day Care program served both families who left AFDC for employment and nonwelfare low-income working families.

SOME TYPES OF CHILD CARE ARE
IN SHORTER SUPPLY

----- Letter :4.2

Although six of the seven states expect that the general supply of child care will be adequate to meet short-term needs, all the states reported that certain types of child care already can be difficult to find. These types include child care for infants, sick children, and children with special needs, as well as child care during nonstandard hours or in rural areas. According to some child care administrators, child care providers are less inclined to offer these types of care for various reasons. For example, providing infant care can involve more staff-intensive or less profitable arrangements. We previously reported that shortages of such types of child care can make it difficult to meet the child care needs of working welfare families.\29

Some child care administrators are concerned that the work participation requirements of federal welfare reform could particularly exacerbate existing problems in finding infant care. Under federal welfare reform legislation, states may opt to exempt single welfare parents with infants under 1 year old from work participation requirements. Four of the seven states we reviewed--Connecticut, Louisiana, Maryland, and Texas--have chosen to grant such an exemption. In contrast, Oregon and Wisconsin have chosen to exempt welfare parents from work requirements only until a child is 3 months old. In California, individual counties decide the child's age up to which parents are exempted from work requirements, which can range from 3 to 12 months. Consequently, the demand for infant child care in these last three states may be greater than in the four other states.

Requiring welfare families to work could also increase the demand for child care during nonstandard work hours. According to some child care experts and researchers, many welfare parents, because of their low job skills and experience, are likely to find jobs in the service industry, working at hotels, restaurants, hospitals, and discount department stores where nonstandard hours and shift work are common.³⁰ However, child care arrangements corresponding to these work hours are generally more difficult to find in more regulated settings, such as child care centers, which generally operate on a standard business schedule and only during weekdays.³¹

 \29 See Welfare to Work: Child Care Assistance Limited; Welfare Reform May Expand Needs (GAO/HEHS-95-220, Sept. 21, 1995), pp. 4-6, and GAO/HEHS-97-75, May 29, 1997, pp. 8-10.

\30 Department of Labor, Women's Bureau, Care Around the Clock: Developing Child Care Resources Before 9 and After 5 (Washington, D.C.: Department of Labor, 1995); Institute for Women's Policy Research, Welfare to Work: The Job Opportunities of AFDC Recipients (Washington, D.C.: Mar. 1995); C. Lee, S. Ohlandt, and A. Witte, Parents Receiving Subsidized Child Care: Where Do They Work? (Tallahassee, Fla.: Florida Children's Forum, 1996).

\31 We previously reported on difficulties associated with care during nonstandard hours in GAO/HEHS-95-220, Sept. 21, 1995, and GAO/HEHS-97-75, May 29, 1997.

STATES ARE ADDRESSING
 SHORTAGES AND PREPARING FOR
 INCREASED DEMAND THROUGH
 VARIOUS INITIATIVES

----- Letter :4.3

Recognizing the challenges of the increasing child care demand among welfare families required to work and the difficulties in finding certain types of care, the seven states are pursuing diverse activities to expand the supply of child care. The states are funding these activities in part through the CCDF, which requires them to spend at least 4 percent of their total allocations on activities to improve the availability and quality of child care.³² Planned activities include efforts to recruit new providers, fiscal incentives to establish or expand child care facilities, and collaboration with early childhood development and education programs. Most of the seven states are also planning to fund activities that involve or expand child care resource and referral agencies (CCR&R), organizations that assist states in developing strategies to increase child care capacity and help families find

child care. In some of the states, particularly California and Oregon, local planning organizations are also involved in activities to expand child care in cooperation with the state. According to documents that the 50 states and the District of Columbia submitted to HHS detailing their plans for implementing programs under the CCDF, 48 states plan to fund activities involving CCR&Rs.

All seven states are funding efforts to support and encourage the entrance of new child care providers into the market. Specifically, the seven states plan to fund activities involving training and technical assistance for existing or potential child care providers. In some states, such as California, Oregon, Texas, and Wisconsin, these programs involve such forms of assistance as offering formal accreditation and scholarships and helping develop mentor relationships for child care providers in an attempt to make the field more attractive to potential entrants. California funds separately support training programs targeting providers of care for school-aged children, care for infants and toddlers, and family child care. In Oregon, counties are funneling state grants at the local level to child care providers for start-up and ongoing program operations and to CCR&Rs for activities that increase and stabilize the supply of child care. These grants emphasize infant and toddler care, school-aged child care, nonstandard hours care, and extended day care linked with Head Start or other preschool programs. Some states, such as California, Texas, and Wisconsin, are also experimenting with programs to train TANF recipients to become child care providers. These programs aim to help welfare recipients meet their work participation requirements while simultaneously increasing the supply of child care providers. According to the CCDF plans of the 51 states, California, Connecticut, Maryland, and Wisconsin, along with 15 other states, plan to offer funds to help child care providers increase staff compensation. In addition, all 51 states plan to fund efforts involving training and technical assistance for existing or potential child care providers.

Some states are working to engage the private sector in expanding or improving the provider supply. Six of the seven states we reviewed plan to make grants or loans available to providers or businesses to establish or expand child care facilities. For example, Connecticut has recently established a Child Care Facilities Loan Fund that provides grants or loans to help providers meet state and local standards. The fund offers three loan programs: tax-exempt bonds for constructing, renovating, or expanding nonprofit child care facilities; loan guarantees for capital and noncapital loans; and a small revolving loan program for noncapital loans. Connecticut also offers tax credits for businesses to establish child care facilities on or near their work sites. Maryland funds a grant program to help registered family child care providers comply with regulations and to enhance or expand their child care services. The National Conference of State Legislatures reported a variety of similar approaches that state lawmakers have used to create incentives for employers to provide child care assistance and make the work environment responsive to family needs. These approaches include loan and grant programs, corporate tax incentives, policies to require or encourage developers to set aside space for child care centers in business sites, and information referral and technical assistance to increase private sector involvement.³³ Overall, according to their CCDF plans, 38 of the 51 states plan to make grants or loans available for establishing or expanding child care facilities.³⁴

Finally, some of the seven states are also attempting to expand child care opportunities through increased collaboration between the child care community and existing early childhood development and education programs, such as Head Start and preschool programs.³⁵ The economic circumstances of welfare families and families with children eligible

for Head Start or some state-subsidized preschool programs are often similar.\36 Consequently, many welfare families who are required to participate in work activities could place their children in such programs to help meet their child care needs. However, most Head Start and preschool programs are not currently structured to meet the needs of working families. For example, Head Start programs are generally open to children between the ages of 3 and 5 and are half-day, school-year programs, while working welfare families may have younger children and generally need full-day, year-round programs. Similarly, preschool programs are generally open only during the school year and are restricted to children of certain ages.

Some of the seven states' collaborative initiatives involve expanding local Head Start or other preschool programs so that they offer services on the full-day, full-year basis that working welfare parents need. At the time of our review, several of the seven states had already received Head Start collaboration grants from HHS to explore such initiatives, and Head Start received additional funds for this purpose in fiscal year 1997.\37 However, according to some child care experts, differences between child care and Head Start program requirements and philosophies can make such collaboration difficult.

\32 States support some of these initiatives, including those involving facility construction, with state funds that are not used as a match for CCDF funds.

\33 Shelley L. Smith, Mary Fairchild, and Scott Groginsky, Early Childhood Care and Education: An Investment that Works (Denver, Colo., and Washington, D.C.: National Conference of State Legislatures, Jan. 1997).

\34 For a detailed discussion of several states' approaches to helping finance child care facilities, see Anne Mitchell, Louise Stoney, and Harriet Dichter, Financing Child Care in the United States: An Illustrative Catalog of Current Strategies (Kansas City, Mo.: Ewing Marion Kauffman Foundation, and Philadelphia, Pa.: The Pew Charitable Trusts, 1997), pp. 97-111.

\35 Head Start is a national, federally funded program that provides comprehensive developmental and social services for low-income preschool children and their families. HHS awards Head Start grants to local public or private nonprofit agencies to operate local Head Start programs, which involve education, parental involvement, and health and social services. For more information on Head Start, see Head Start: Research Provides Little Information on Impact of Current Program (GAO/HEHS-97-59, Apr. 15, 1997).

\36 The Head Start Statistical Fact Sheet issued by HHS's Head Start Bureau reports that 61.9 percent of Head Start families had annual incomes of less than \$9,000 and 77.7 percent had incomes of less than \$12,000 during the 1995-96 operating period. According to an estimate by the Congressional Research Service, the median maximum gross income for the states in July 1996 over which a family would not be eligible for AFDC benefits was \$14,364 for a family of three and \$16,032 for a family of four.

\37 The Head Start Statistical Fact Sheet reports that, in the 1995-96 operating period, 61 percent of Head Start programs already provided some child care services directly or through arrangement with other child care providers.

INFORMAL PROVIDERS WILL
CONTINUE TO BE IMPORTANT IN
MEETING CHILD CARE NEEDS

----- Letter :4.4

Child care administrators and researchers expect that informal providers will meet some of the increased demand for child care. States differ in their definition of and requirements for informal providers, many of whom are relatives. In addition, neighbors and family friends who provide care in their own or the child's home are considered informal providers, who are usually subject to fewer registration, certification, or regulatory requirements than other more formal child care providers, such as child care centers.\38

In some states, informal care arrangements are widely used by welfare families. For example, in Connecticut, state officials estimated that about 80 percent of welfare families using child care services used such informal arrangements. Similarly, state officials in Oregon estimated that nearly half of their JOBS program clients used informal care.\39

Regardless of income level or subsidy status, families choose informal child care arrangements over more formal providers for various reasons. Researchers report that some families prefer informal child care providers because they offer more flexible arrangements than formal providers--particularly, care during nonstandard work hours or on weekends.\40 In other instances, informal providers may be geographically close to parents, solving transportation problems associated with getting children to and from their providers. In addition, some families prefer informal providers because they are trusted and well known, are willing to care for infants, or charge lower fees than formal providers. Some researchers believe that many welfare families who are required to work will be more likely to choose informal child care arrangements, since they are likely to find work during nonstandard work hours, experience transportation difficulties, need infant care, or earn less than other parents and be unable to afford more formal arrangements.\41 Nevertheless, as discussed in the next section, some child care officials and advocates are concerned about the relative lack of standards for informal child care providers, despite the benefits they offer some families.

\38 Not all states subject informal providers to registration requirements. As a result, some states maintain few data on the frequency of, or individuals involved in, these arrangements.

\39 What we refer to as "informal care" in these two states is noninstitutional child care arrangements that are not subject to state licensing or regulatory requirements. In Connecticut, such informal care refers to child care provided in a child's own home or in a relative's home. In Oregon, such informal care refers to arrangements involving providers who (1) care for children from one family only, (2) care for three or fewer children from more than one family, (3) are relatives of the children cared for, (4) care for children fewer than 70 days in a calendar year, (5) give care in the home of a child, or (6) are under age 18.

\40 Ellen E. Kisker and Christine M. Ross, "Arranging Child Care," The Future of Children, Vol. 7, No. 1 (Los Altos, Calif.: Center for the Future of Children, The David and Lucile Packard Foundation, spring 1997), and Arthur C. Emlen and Paul E. Koren, Patterns of Flexibility (Portland, Ore.: Portland State University, for the

Oregon Child Care Research Partnership, Mar. 7, 1997, and Apr. 8, 1997).

\41 Kisker and Ross, "Arranging Child Care," The Future of Children; Emlen and Koren, Patterns of Flexibility; and Deborah A. Phillips, ed., Child Care for Low Income Families: Summary of Two Workshops (Washington, D.C.: National Academy Press, 1995).

STATES' SUCCESS IN EXPANDING
PROVIDER SUPPLY IS UNKNOWN

----- Letter :4.5

Welfare and child care program officials in six of the seven states report that with the additional funds available under the CCDF, the supply of child care appears so far to have kept pace with increases in demand. They noted that they have granted few exemptions from work requirements because of unavailability of child care, and most did not expect to grant such exemptions on a large scale in the near future. According to welfare and child care program staff in some states, instances of parents with problems finding child care arrangements have involved children with special needs, infants, or families living in remote locations. In these cases, some welfare and child care program staff report that they have generally made alternative arrangements for parents to meet work requirements, rather than granting exemptions. In addition, most of the seven states are emphasizing the use of CCR&Rs to help families find suitable child care arrangements. Therefore, for the near term, the supply of providers appears adequate to meet demands resulting from welfare reform.

In the longer term, however, as the full effects of work participation requirements materialize and states' welfare reform programs evolve, the adequacy of the child care supply is uncertain. Questions remain about how much child care will actually be needed and how the child care market will respond over time to increased demand. Moreover, it is not yet known how effective the efforts of these and other states will be in increasing the supply overall and for those types of care often in short supply.

MOST STATES ARE MAINTAINING OR
INCREASING STANDARDS FOR CHILD
CARE PROVIDERS

----- Letter :5

Under the new welfare reform law and CCDF regulations, states retain primary responsibility for the regulation and oversight of child care providers.\42 As under the former CCDBG, states must still establish minimum child care standards for CCDF-subsidized care in the areas of physical premise safety, control of infectious disease, and provider health and safety training.\43 Some advocates and researchers are concerned that states may lower standards for providers to ease their entry into the expanding child care market. They are also concerned that welfare families, with their lower incomes and inexperience with child care choices, may be more likely--or feel pressured by state policies--to choose informal child care arrangements that are subject to fewer regulatory requirements than are other types of providers. Furthermore, advocates note that informal care arrangements may offer fewer developmental opportunities for children.\44

Some of the seven states are making incremental changes to their standards for child care providers as they expand their child care subsidy programs. Most of these changes will tend to maintain or strengthen existing standards. According to some child care

officials, pressure from the public regarding abuse or neglect in child care settings is encouraging states to strengthen, rather than weaken, standards for child care providers. For example, to encourage and reward efforts to improve quality, Wisconsin has initiated a statewide requirement that maximum reimbursement rates for child care providers be set 10-percent higher for child care programs accredited as meeting high-quality standards. Similarly, APWA reported that its survey of all states showed that quality standards have generally been maintained and, in many cases, enhanced.

Some of the seven states may be making changes in staffing ratios at child care facilities and in the size of their state regulatory staff. For example, Texas officials reported that between 1997 and 1999 they will phase in a new requirement that will increase the number of staff per child served at licensed child care centers. As of September 1997, the ratio of staff to infants changed from one staff person for five infants up to 6 months old to one staff person for four infants. In September 1999, Texas plans to increase the minimum staff required for children aged 13 to 17 months from one staff person for six children to one staff person for five children.

To be effective, standards for child care providers must be enforced. Enforcement is important to ensure that standards are maintained and children receive adequate care. Recognizing this, none of the seven states plans to reduce the size of its staff responsible for inspecting or regulating child care providers. In fact, in the last year, Wisconsin has increased the number of regulatory and inspection staff from 46.5 to 60. Nevertheless, some child welfare advocates remain concerned about the adequacy of state enforcement of standards for child care providers. We previously reported, for example, that 20 states did not conduct at least one unannounced visit to each child care center every year.⁴⁵ Appendix II provides additional information on state regulatory staffing.

Generally, not all child care providers in a state are equally regulated. Parents can choose from three types of child care settings: in-home care, where a child is cared for in the child's home; family care, where the child is cared for in the home of a provider; and center care, where a child is cared for in a nonresidential setting. Additionally, care can be provided in family child care or in-home settings by someone related to the child other than the parents, which is called relative care. Most states regulate only a small portion of their providers and may exempt a significant number of providers from their standards. Also, in-home care and care provided by relatives are almost always exempt, although a relative provider must be at least 18 years old to receive CCDF-funded subsidies. Other types of child care that states may exempt are those sponsored by religious organizations, in government entities like schools, or operating for part of the day. Further, for those providers that are regulated, different standards apply to different types of providers. Centers generally must meet more rigorous standards than other types of providers, in that states license and conduct regular inspections of the facilities. Standards for family providers vary among the states, but family providers generally receive fewer inspections than child care centers.

To address concerns about informal child care providers who generally are regulated only minimally, some states impose additional requirements on those that receive subsidies. For example, to better ensure the safety of children in informal care arrangements, California and Oregon conduct background checks on the criminal histories of subsidized providers, some of whom are otherwise exempt from regulatory or licensing requirements. In one state, such checks on informal providers have revealed that about 10 percent of the

applicants were known criminals. In these instances, after due process, the state refuses to reimburse the provider if his or her appeal is denied and works with the parents to find other, more appropriate care for their children. Additionally, to help monitor providers who care for children receiving subsidies more closely and prevent fraud, Maryland, Oregon, and Wisconsin reimburse most of these providers directly instead of issuing reimbursements to parents and expecting the parents to reimburse the provider.\46

One of the seven reviewed states, Wisconsin, recently created a new category of child care provider that is subject to less stringent training requirements than its other categories of providers are. Wisconsin imposes training requirements on all licensed and certified providers. Until recently, certified day care providers, who received subsidies and cared for three or fewer unrelated children under the age of 7 primarily in the providers' homes, were required to complete 15 hours of training before receiving permanent certification. To help meet the expected demand for child care from welfare clients who are expected to work, Wisconsin now has an additional category of day care providers who are "provisionally certified." These providers are subject to the same inspection requirements as are regularly certified day care providers but are not required to complete any training. Provisionally certified providers are reimbursed at two-thirds the rate of regularly certified day care providers. According to Wisconsin officials, however, standards for these provisionally certified providers are still among the highest in the nation for small family day care settings that are exempt from state licensing. Further, provisionally certified providers who complete 15 hours of training receive a 50-percent increase in reimbursement rates, an incentive that many providers are exercising.

The effect of welfare reform on states' efforts to regulate and ensure that children receive quality child care is as yet unknown. As we previously reported, fiscal pressures could ultimately lead states to devote fewer state resources to monitoring and regulating child care providers in the future.\47 Some child care advocates and researchers are also concerned that decisions to expand the supply of state-subsidized child care could create more providers that are exempt from state licensing or regulatory requirements, leaving no protection in place for children in these settings.\48 Further concerns are that some low-income families may choose informal child care arrangements over more regulated providers because these arrangements are less costly.

It is not yet known what types of child care providers will be used by families affected by welfare reform. As the supply of child care providers grows to meet the new demand, some of the growth may be in that part of the market that states already exempt from standards. Increasing numbers of children may be placed with child care providers about which states have little information. As we noted in 1994 as welfare reform was being considered, assessing state efforts to protect children in child care in the face of expanding child care services is critical.\49

\42 For providers who are regulated, all states set minimum health standards (for example, immunization requirements) and minimum safety standards (for example, building and fire code requirements). Many states regulate other programmatic aspects of care, such as the ratio of staff to children, provider qualifications, and organization of the facility. Specific requirements, however, vary from state to state. See Child Care: States Face Difficulties Enforcing Standards and Promoting Quality (GAO/HRD-93-13, Nov. 20, 1992).

\43 Under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, states are permitted to exempt certain relatives--grandparents, great grandparents, aunts, uncles, and siblings who live in a separate residence from the child in care--from health and safety requirements.

\44 See Helen Blank, "Child Care in the Context of Welfare `Reform,'" Child Care in the Context of Welfare "Reform," and Helen Blank, Helping Parents Work and Children Succeed: A Guide to Child Care and the 1996 Welfare Act. Also, the National Institute of Child Health and Human Development (NICHD) recently reported on the importance of quality child care, defined as care involving a high degree of positive interaction between caregivers and children, on young children's cognitive development and use of language in Mother-Child Interaction and Cognitive Outcomes Associated with Early Child Care: Results of the NICHD Study, a poster symposium presented at the Biennial Meeting of the Society for Research in Child Development, Washington, D.C., April 1997.

\45 Child Care: States Face Difficulties Enforcing Standards and Promoting Quality (GAO/HRD-93-13, Nov. 20, 1992).

\46 In its July 23, 1997, proposed regulations for the CCDF, HHS strongly discourages, but does not prohibit, cash payments to parents for child care.

\47 See Child Care Quality: States' Difficulties Enforcing Standards Confront Welfare Reform Plans (GAO/T-HEHS-94-99, Feb. 11, 1994).

\48 Blank, Helping Parents Work and Children Succeed, p. 23.

\49 GAO/T-HEHS-94-99, Feb. 11, 1994.

CONCLUSIONS

----- Letter :6

Child care subsidy programs are critical to the success of states' overall welfare reform efforts. The infusion of additional federal funds for child care has provided states with an opportunity to better meet the child care needs of low-income families. Our findings from seven states provide an early indication that these states are using additional federal dollars and their own funds to expand their child care programs to serve both increasing numbers of welfare recipients required to work and at least some of the working poor. In addition, states are making efforts to further increase the supply of child care. At the same time that states are expanding their programs and attempting to increase supply, they appear to be maintaining child care standards and enforcement practices.

It is too early to know, however, how effective states' programs will be in meeting the child care needs of low-income families. Even as states began to expand their programs, they already faced tough choices about balancing the needs of welfare and nonwelfare families in ways that best support families' work efforts. In addition, although states have many initiatives under way to expand the supply of child care providers, the outcomes of their efforts are not yet known. It is also too early to assess the types of child care that states and parents will rely on as more and more parents are expected to support themselves through work. States' efforts to increase the number of children receiving child care services while at the same time ensuring safe care for children will deserve attention as welfare reform evolves.

States' initial efforts under welfare reform have been assisted by declining welfare caseloads, which have provided some states with additional funds to invest in child care. Much remains unknown, however, about the impact of economic conditions, TANF caseload size, work participation requirements, and the capping of federal child care funds on child care demand and states' ability to fund programs over the long term. An economic downturn could cause welfare caseloads to rise at the same time that states are required to place increasing percentages of their caseloads in work activities. These pressures could force states to use more funds for welfare benefits and, thus, make it difficult for them to maintain current levels of child care spending as welfare reform progresses.

COMMENTS FROM HHS AND THE
STATES AND OUR EVALUATION

----- Letter :7

We obtained comments on a draft of this report from HHS and child care officials in the seven states we reviewed. HHS officials said that the report's findings reflect some of the child care issues that they have heard across the country, such as states facing difficult choices in balancing the child care needs of welfare and nonwelfare families to best support these families' work efforts; concerns about the ability of and opportunity for all families to select safe, high-quality child care; the gap between the supply and demand for infant and school-aged child care and child care during nonstandard work hours; and the impact of economic conditions, work participation requirements under federal welfare reform, and capped federal child care funds on state efforts to expand the supply of safe, high-quality child care. HHS officials also noted that this report and earlier GAO reports are important in identifying the critical role child care plays in the lives of working families. HHS' written comments appear in appendix IV.

State officials generally agreed with our report and some provided information on recent developments in their child care programs, which we noted in the report as appropriate. We emphasize that our findings present an early look at states' child care programs and that states will continue to modify them as their welfare reform efforts progress.

HHS and the states also provided technical comments, which we incorporated in the report as appropriate.

----- Letter :7.1

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to the Secretary of Health and Human Services, the Chairmen and Ranking Minority Members of the House Committees on Ways and Means and Education and the Workforce, and the Chairmen and Ranking Minority Members of the Senate Committees on Finance and Labor and Human Resources. We will also make copies available to others upon request.

If you have any questions concerning this report or need additional information, please call me on (202) 512-7215. Major contributors to this report are listed in appendix V.

Sincerely yours,

Mark V. Nadel

Associate Director, Income Security Issues

SCOPE AND METHODOLOGY

===== Appendix I

To meet our objectives, we focused our work on the efforts of seven states--California, Connecticut, Louisiana, Maryland, Oregon, Texas, and Wisconsin--to modify their child care subsidy programs under the new welfare reform law. We chose these states because they represent a diverse range of socioeconomic characteristics, geographic locations, and experiences with state welfare reform initiatives. According to U.S. Bureau of the Census and Department of Health and Human Services (HHS) estimates, the states ranged in population from about 3.2 million (Oregon) to about 31.9 million (California) in 1996; in median income for three-person families, from about \$33,377 (Louisiana) to about \$52,170 (Connecticut) in fiscal year 1997; and in overall poverty rates, from 8.5 percent (Wisconsin) to 19.7 percent (Louisiana) in 1995. Some states, such as Wisconsin, have had reform initiatives in place for several years that include elements similar to those in federal welfare reform legislation, such as time limits for welfare benefits and work participation requirements; others, such as Louisiana, have been operating more traditional cash assistance programs with welfare-to-work components and were beginning more extensive reform efforts in fiscal year 1997.

We obtained information from the seven states through a combination of site visits, personal interviews, telephone conversations, and written correspondence involving officials from state and county child care, budget, regulatory, and welfare offices. We also reviewed program data and documents. In addition, we interviewed and obtained data from representatives of child care and resource and referral agencies (CCR&R) and child advocacy organizations. We did not independently verify the data we obtained from these various sources.

To obtain nationwide data on state child care subsidy programs under welfare reform, we reviewed the Child Care and Development Fund (CCDF) plans submitted to HHS by all 50 states and the District of Columbia. We also reviewed work conducted by a variety of researchers, experts, and other organizations related to federal and state welfare programs and child care subsidy programs.

BACKGROUND INFORMATION ON SEVEN STATES

===== Appendix II

	State median income (three- person family), FY 1997\ a	Estimated percentage of population in poverty, 1995\ b	Monthly average number of AFDC families, FY 1996\ c	Estimated population under 13 years of age in poverty as of 7/1/ 96\ d	Estimate of federal payments a allocatio to stat for chi car federal 1996 (thousands)
California	\$40,954	16.7	895,960	1,116,343	\$214,8
Connecticut	52,170	9.7	58,117	57,261	27,6
Louisiana	33,377	19.7	70,581	171,190	48,4
Maryland	48,679	10.1	74,106	95,922	41,8
Oregon	37,323	11.2	33,444	64,072	32,3
Texas	35,759	17.4	254,953	689,857	168,2

Wisconsin	41,145	8.5	60,058	80,123	38,7
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\a Source: GAO analysis of HHS, Administration for Children and Families, "Notice of Estimated State Median Income for FY 1997," Federal Register, Vol. 61, No. 54 (Mar. 19, 1996).

\b Source: U.S. Bureau of the Census, Poverty 1995, Table B, "Percent of Persons in Poverty, by State: 1993, 1994, and 1995" (Washington. D.C.: U.S. Bureau of the Census, 1996).

\c Source: Administration for Children and Families, HHS.

\d Source: GAO analysis of data from U.S. Bureau of the Census, "ST-96-19 Estimates of the Population of U.S. and States by Single Year of Age and Sex" (Washington, D.C.: U.S. Bureau of the Census, July 1, 1996), and Poverty 1995, Table B.

\e Source: GAO analysis of data from the Administration for Children and Families, HHS, presented in tables 10-13, 10-15, and 10-22 of the 1996 Green Book: Background Material and Data on Programs Within the Jurisdiction of the Committee on Ways and Means (Washington, D.C.: Committee on Ways and Means, U.S. House of Representatives, Nov. 4, 1996). Includes payments for AFDC, Transitional Child Care, and At-Risk Child Care and allocations for Child Care and Development Block Grant (CCDBG) funds based on estimated preliminary data.

\f Source: GAO analysis of data from "Estimated FY 1997 State Allocations for the Child Care and Development Fund," Administration for Children and Families, HHS. To receive all federal CCDF funds allocated, states must maintain their own spending at the greater of fiscal year 1994 or 1995 spending levels and provide a state match for a portion of the federal funds.

\g Source: Data from the Congressional Research Service presented in table 8-12 of the 1996 Green Book.

\h Source: Data from the Administration for Children and Families, HHS, presented in tables 10-14 and 10-16 of the 1996 Green Book. Some states pay additional funds for a special needs child. Excludes CCDBG programs.

\i Source: GAO analysis of "State Profiles," prepared by the National Child Care Information Center at the Annual Meeting of State Child Care Administrators, July 14-15, 1997, Washington, D.C. Based on data from the 1997 Child Day Care Center Licensing Study and the 1996 Family Child Care Licensing Study, Children's Foundation, and state officials. Includes licensed child care centers and family child care providers.

\j Source: State child care administrators.

\k Applies only to families receiving TANF assistance. Payments to transitional and nonwelfare families are subject to market-based limits. Also, higher limit (\$435) applies to children with special needs.

\l No statewide limit for At-Risk Child Care.

\m Plus an additional 4,000 "certified" family child care homes.

KEY ELEMENTS OF SEVEN STATES'
CHILD CARE SUBSIDY PROGRAMS
AFFECTING COVERAGE OF LOW-INCOME
FAMILIES AS OF JULY 1, 1997

===== Appendix III

	State guarantee or entitlement of child care subsidies to specific groups of low-income families	State priority for providing child care subsidies to eligible low-income families	Maximum annual income level at initial application for 3- person family, as % of SMI\ a and in \$	Maximum annual income level at redeterminatio n for 3- person family, as % of SMI\ b and in \$	Minimum maximum copaymen 3-person expresse of famil or % of care
----- California	State intends to provide sufficient funding for child care assistance to TANF families who are working or transitionin g to work.\c	For California Department of Education programs, priority is given to (1) child protective services and (2) families with lowest incomes (by special needs, then time on waiting list); for California Department of Social Services programs (TANF), priority is given to TANF recipients or transitional families.	75% of SMI; \$30,036	75% of SMI; \$30,036	No copay required is below poverty of SMI); others, day if i 50% of S \$20.80/d income e greater of SMI.
Connecticut	None, but state treats TANF child care funding as an entitlement.	Priority is given to (1) working TANF and transitional families; (2) teen parents completing high school; (3) pregnant women in substance abuse programs; (4) special needs children or families with incomes	75% of SMI; \$39,168	75% of SMI; \$39,168	No copay required recipien others, of incom

		less than 25% of SMI; (5) children in protective services or foster care and families with multiple children in child care; and (6) other eligible families.			
Louisiana	Guaranteed to TANF families in work activities if funds available.	Priority is given to children with special needs and families whose eligibility for transitional child care has expired before other eligible low-income groups.	75% of SMI; \$26,100\	75% of SMI; \$26,100\	No copay required is below 10% to 1 cost of income i poverty.
Maryland	None	Priority is given to (1) TANF families, (2) transitional families, and (3) families at risk of welfare dependency. Within each group, children with disabilities receive priority.	38% of SMI; \$18,409	46% of SMI; \$22,436	No copay required recipien others f \$291, de income, state, a child.
Oregon	State intends to provide sufficient funding for child care assistance to TANF families who are working or making a	Copayment structure effectively gives priority to poorest of working low- income families; additional priority	85% of SMI; \$33,012	85% of SMI; \$33,012	No copay required recipien high-ris income p (see pri for othe \$25 to \$ of incom \$2,042) of cost

	transition to work and to other families who are eligible.	given to teen parents, migrant and seasonal farm workers, and children at risk because of prenatal substance abuse.			(if inco greater \$2,042).
Texas	State guarantees child care to former TANF families transitionin g to work.	No priorities, but groups are "targeted" by separate funding allocations: (1) entitlement for transitional families fully funded by state; (2) legislature appropriates separate funds for TANF; (3) child care funds remaining allocated to "at-risk" groups, such as teens, child protective services, and general low-income families.	75% of SMI; \$27,484	75% of SMI; \$27,484	No copay required recipien others, gross in families subsidiz and 11% income f families or more children
Wisconsin	None	No priorities are assigned since all eligible low-income families are being served.	53% of SMI; \$21,996	65% of SMI; \$26,660	6%-16% o income

 \a SMI = state median income.

\b States periodically redetermine a family's eligibility for subsidies once it starts receiving those subsidies. In some states, such as Maryland and Wisconsin, the income eligibility criteria for families at redetermination are less restrictive than at initial application.

\c TANF = Temporary Assistance for Needy Families.

\d Effective January 1998; families remain eligible for transitional child care until their income exceeds 75% of the state median income.

\e Louisiana increased its maximum income eligibility criteria to 85 percent of SMI for a family of three in October 1997.

\f Oregon increased its monthly reimbursement rates in October 1997.

\g Oregon approved a 6% increase for 1997-98.

Source: GAO analysis of data from state child care administrators and state CCDF plans submitted to HHS.

(See figure in printed edition.)Appendix IV
COMMENTS FROM THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES

===== Appendix III

(See figure in printed edition.)

(See figure in printed edition.)

GAO CONTACTS AND STAFF
ACKNOWLEDGMENTS

===== Appendix V

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ACKNOWLEDGMENTS

In addition to the persons named above, David G. Artadi coauthored the report and contributed significantly to all data-gathering and analysis efforts.

RELATED GAO PRODUCTS

Welfare Reform: Three States' Approaches Show Promise of Increasing Work Participation (GAO/HEHS-97-80, May 30, 1997).

Welfare Reform: Implications of Increased Work Participation for Child Care (GAO/HEHS-97-75, May 29, 1997).

Head Start: Research Provides Little Information on Impact of Current Programs (GAO/HEHS-97-59, Apr. 15, 1997).

Early Childhood Programs: Multiple Programs and Overlapping Target Groups (GAO/HEHS-95-4FS, Oct. 31, 1995).

Welfare to Work: Child Care Assistance Limited; Welfare Reform May Expand Needs (GAO/HEHS-95-220, Sept. 21, 1995).

Early Childhood Programs: Many Poor Children and Strained Resources Challenge Head Start (GAO/HEHS-94-169BR, May 17, 1995).

Early Childhood Centers: Services to Prepare Children for School Often Limited (GAO/HEHS-95-21, Mar. 21, 1995).

Child Care: Child Care Subsidies Increase Likelihood That Low-Income Mothers Will Work (GAO/HEHS-95-20, Dec. 30, 1994).

Child Care: Promoting Quality in Family Child Care (GAO/HEHS-95-93, Dec. 9, 1994).

Child Care: Working Poor and Welfare Recipients Face Service Gaps (GAO/HEHS-94-87, May 13, 1994).

Infants and Toddlers: Dramatic Increases in Numbers Living in Poverty (GAO/HEHS-94-74, Apr. 7, 1994).

Child Care Quality: States' Difficulties Enforcing Standards Confront Welfare Reform Plans (GAO/T-HEHS-94-99, Feb. 11, 1994).

Poor Preschool-aged Children: Numbers Increase but Most Not in Preschool (GAO/HRD-93-111BR, July 21, 1993).

Child Care: States Face Difficulties Enforcing Standards and Promoting Quality (GAO/HRD-93-13, Nov. 20, 1992).

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