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Child Care Criminal Background Check Bill Must Assure Due Process and Protect Immigrant Families

S.8804-A (Helming/A.11242 (Jaffee); A.11055 (Jaffee)

In order to comply with the requirements of the federal Child Care and Development Block Grant, New York State must pass a bill enacting the criminal background check provisions of the CCDBG no later than September 30, 2018. An OCFS Program bill has been introduced as S.8804-A (Helming) and the Assembly has a “same as” bill A.11242 (Jaffee). The Assembly has also introduced a separate bill – A.11055 (Jaffee), which provides critical due process protections as well as protection to immigrant families. The consequences of not passing a bill could be significant: the state could face fines of \$12M, which would be pulled from scant child care resources. The legislature must act, but should do so in a way that provides due process and protects immigrant families. Empire Justice Center urges the legislature to pass the additional provisions contained in A.11055 to meet the federal requirement for the reasons listed below.

Due Process

Pursuant to Social Services Law (SSL)390(10) when the Office of Children and Family Services (OCFS) becomes aware of a conviction or pending criminal charge, it can deny, limit, suspend, revoke, reject or terminate the license or registration of a family or group family child day care home, child day care center or school age child care program. Currently these child care providers are entitled to a hearing when such action is taken.

Both bills expand the scope of a criminal background check extending the authority of OCFS to deny an application on the basis of a criminal history record to enrolled legally exempt providers and both require that OCFS provide all staff/providers (including enrolled legally exempt providers) with a copy of the criminal background check, and notice of how to CORRECT the criminal history. However, under S.8804-A /

A.11242, the newly covered legally exempt providers would be denied a hearing in the event that their enrollment is denied or revoked¹, while providing such a hearing to all other providers. This creates an obvious inequity in the proposed law.

In contrast, A11055 requires OCFS to provide staff/providers with notice of the results of the criminal background check, and instructions on how to correct, and also the right to a hearing. This extends the opportunity for the legally exempt provider to make the case to OCFS that he/she should not be denied license/employment due to the crime being in the distant past, to show that the person has reformed, has lived a law-abiding life ever since, etc.), in the same manner as all other covered providers.

Background checks should not be expanded beyond what federal law requires.

Federal law imposes criminal background checks only upon child care providers and excludes those child care providers who are related to all children for whom child care services are provided. 42 USC 658 (i). S.8804-A/ A.11242 expands the scope of the background checks beyond providers to include “**any individual** age 18 or older who resides on the premises where child care services are provided.” [Section 9, amending SSL 390-b(2)(b)(iii)]. This language is not required by federal law and is so broad that it will require background checks of those relatives living in the household, but not providing care for the child. Empire Justice Center is concerned that this overbroad requirement may have a chilling effect on the enrollment of immigrant families as child care providers, if family members who are not providing child care are reluctant to submit to background checks because of their immigration status.

We ask the legislature to adopt the language in A. 11055 which excludes from background checks “enrolled legally exempt [caregivers]related to all children for whom child care services are provided,” and also excludes individuals over 18 residing there who are related to all the children in the provider’s care. (See A.11055, Section 10(2)(a)(iv) and (2)(b)(ix)). Compare A.11242, Section 9 -- (2)(a).

We strongly urge the legislature to assure that the final bill contains both the due process protections that protect legally exempt providers as well as the provision that exempts relatives who are not child care providers from background checks. This will ensure that child care providers who are immigrants or who have household members who are immigrants are not pushed out of the child care profession due to overly broad background check requirements.

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¹ Federal law now disqualifies certain individuals from being child care providers if they are convicted of certain felonies and crimes against children.42 USC 9858(f). The hearing provisions we seek to retain are for those crimes where OCFS has the discretion to revoke or deny enrollment.