

Informal Child Care Providers and Criminal Background Checks: Administrative Data and the Legislative Process, A Case Study

John V. Spears, PhD., Senior Human Services Consultant,
RESI of Towson University,
Deborah B. Moore, J.D., Senior Policy Analyst,
Maryland Family Network

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Ideally, research and advocacy should be partners. What better way to advocate than to rely on solid research as a window into what could, or should, be? That holy grail of every policy analyst's discourse, evidence-based policy, would naturally follow.

Naturally, human psychology, politics and the rifts of the body politic being what they are, evidence-based policy can be an elusive goal. Every once in a while, though, a combination of circumstances works on a small scale to allow research and law making to go hand in hand, and those victories, though small, are nonetheless satisfying. This is the story of one such victory.

The location: Annapolis, Maryland, a charming former colonial port town on the Chesapeake Bay. The issue: Subsidized Child Care's search for criminal background checks on informal child care providers, a largely unregulated group sometimes referred to as "family, friends and neighbors." The participants: State legislators, Maryland's Child Care Subsidy Program managers, Maryland Family Network advocates, and Towson University researchers working for the Child Care Subsidy Program.

Informal providers have been protected by the federal Child Care and Development Fund (CCDF) regulations principle of parental choice among different types of providers.¹ They are often described as grandmothers caring for grandchildren, which has a sentimental ring to it, and much of that picture seems to be true. Any governmental unit charged with protecting children has to look beyond the stereotypes, of course. It seemed logical to argue that a simple background check of criminal records should be a requirement for anyone being paid with taxpayers' money.

Yet, the issue proved to be a frustrating one, with a number of initiatives failing to gain traction.

The 1998 CCDF regulations do not required states to conduct criminal background checks on anyone receiving subsidy payments. Maryland's law requiring all licensed family child care providers and the adult residents of their homes to have criminal background checks predates the CCDF, but the CCDF parental choice provisions have been consistently interpreted in Maryland to allow informal providers to receive subsidy payments without a criminal background check. The rationale given for the background check exemption was that there was no need to fingerprint a child's grandmother, especially if the cost of fingerprinting might be a barrier to her receiving a subsidy payment to care for her grandchild, thus denying eligible parents the provider of their choice. As an alternative, informal providers were asked to self-certify that neither they nor any adult resident of their home had a criminal record that would pose a danger to children.

¹ 45 CFR 98.30, Parental choice. See page 39986 at <http://www.gpo.gov/fdsys/pkg/FR-1998-07-24/pdf/98-19418.pdf> (page 51 of 63).

After the CCDF regulations had been in place for more than a decade, questions arose in Washington about the safety of children in subsidized child care and the need for mandatory criminal background checks. In August 2011 the General Accountability Office (GAO) released a report on sex offenders with criminal records in child care programs.² The GAO report was followed in September 2011 by an Information Memorandum with a recommendation from the federal Office of Child Care that all child care providers serving children receiving child care subsidies undergo comprehensive criminal background checks, as a part of the minimum health and safety requirements under CCDF.³

Perhaps the cost of fingerprinting was not the only deterrent for informal providers. Could it be possible that some of the criminal record self-certifications of the informal providers were not completely accurate, Maryland's Office of Child Care wondered? In February 2012 House Bill 1330, a departmental bill from the Maryland State Department of Education (MSDE), was introduced to require background checks for informal providers. The bill had a hearing in the House Judiciary Committee, at which Committee members raised concerns about the cost of the background checks for a grandmother and members of her household. No data had been presented to help weigh the costs against the benefits of the bill. A week later the bill received an unfavorable report.

The bill's supporters knew that it would take a strong demonstration of the evidence of the need for the bill and its cost effectiveness to get it passed the following year. Advocates from Maryland Family Network (MFN) would need to partner with the Child Care Subsidy Program managers and the Towson University researchers to persuade the Maryland General Assembly to pass the bill.

Research on Informal Providers by the State

Towson University has provided research support for the Child Care Subsidy Program for many years, and maintains a store of procedures and program knowledge to aid in extracting and analyzing subsidy data from the State's computer systems. Basic data is extracted monthly, and includes such metrics as enrollments in informal care, both families and children, the number of providers paid, payment amounts, etc. Additional data is extracted as requested. Thus, when Maryland Family Network advocates and policy analysts exceeded their own extensive resources, they could ask the State for assistance and Towson staff could respond with this more detailed administrative data, including:

- geographical distributions of care usage,
- the age distribution of relative care takers,

² CHILD CARE: Overview of Relevant Employment Laws and Cases of Sex Offenders at Child Care Facilities <http://www.gao.gov/assets/330/322722.pdf>

³ Background Checks, Health and Safety Requirements, CCDF Plan Information Memorandum: CCDF-ACF-IM-2011-05, http://www.acf.hhs.gov/sites/default/files/occ/im2011_05.pdf

- proportions of various relatives in the provider population, and
- associations between informal care and other care types, especially public Pre-K.

The more sophisticated data analysis is not always necessary, however. Sometimes, the most basic descriptive data can be the most powerful.

One of the most important pieces of data requested in this case, from the point of view of advocacy, was the proportion of grandmothers in the provider population. A potentially sentimental view of the providers needed some verification and depth.

Table I
Informal Providers by Some Relative/Non-Relative Types

Status	Frequency
Relatives- total	84%
Grandparent	46%
Aunt	18%
Cousin	8%
Non-Relatives- total	16%

Based on 19,106 informal providers paid, Sept 2009 through Sept 2010

Not quite half of all informal providers in Maryland are grandparents. Aunts and cousins are also represented, along with a few great-grandparents. To give some impression of the size of the grandparent population, that 46% represented 8,856 individuals.

And what age are these grandparents?

Table II
Informal Providers by Relative Status and Age

Status	Average Age	Max/Min Age
Grandparent	56	33/82
Aunt	38	18/76
Cousin	31	18/58

Based on 19,106 informal providers paid, Sept 2009 through Sept 2010

Many different ages, from teenagers to octogenarian.

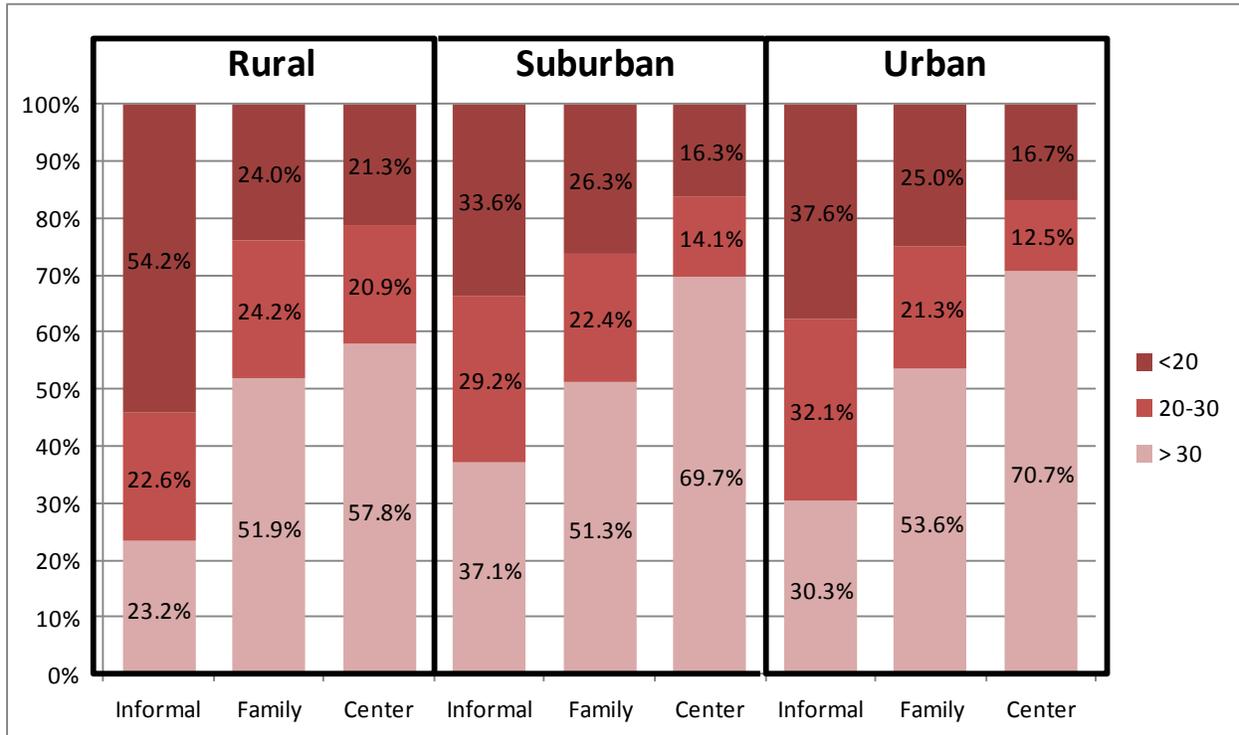
Another question that arose directly from the criminal background check issue was the number of other adults in the household. Fortunately, this is additional information available in the administrative data, and these "associated parties" number, on average, 1.7 per household.

Of course, the researchers were not fully occupied with such straight forward demographics. Somewhat more complex analysis produced findings that could figure into management

consideration of the value of informal care in the Child Care Subsidy system, such as the graph shown below. Graphs like this didn't figure into the advocacy effort, but did underline the importance of informal providers in supporting families' child care equation.

Table III

Part-Time Care Patterns by Development Type, Sept 2009 through Sept 2010



Note how, in all cases, the dark red of part-time care stretches farther down in the leftmost bar of each type of area, showing the extensive use of part-time informal care. The leftmost group, however, shows the special importance that informal providers play in rural areas, where a complex combination of arrangements is necessary to support work, and where commutes are long and formal providers widely scattered.

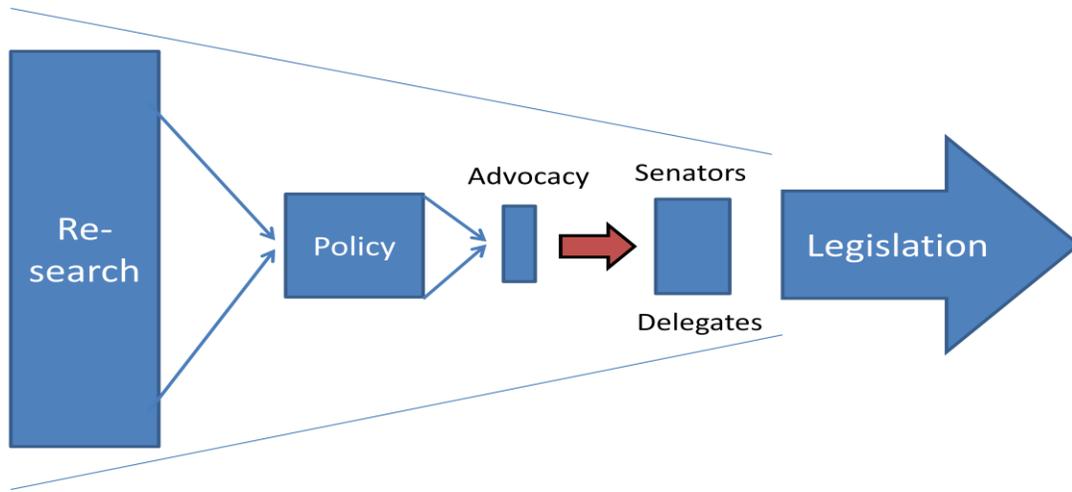
Support for this conclusion can be found in numbers of studies from other areas of the U.S. A clear statement of the underlying social reality comes from Arthur Emlen's studies in Washington State back in 1999. He theorized that

a certain degree of flexibility is necessary in order to balance the competing demands of daily life and, for working parents, this flexibility must come from work, family, or child care providers; the less flexibility offered by one, the more required of the others. A study of parents in the Pacific Northwest found that each choice of child care was associated with a unique pattern of flexibility. Child care centers offered the lowest level of caregiver flexibility and were predominantly used by families with a fair amount of flexibility at work

and in their family situation; families with the lowest level of flexibility at work or in the home were most likely to choose care by relatives or in-home care providers.⁴

Research Applied

Legislators, needless to say, have little time for digesting graphics of the complexity of Table III. In fact, time is one of their most valuable commodities, and quick answers to the most pressing issues are always at a premium. This fact of legislative life leads to an inevitable relationship between research and advocacy, which can be pictured as a funnel.



Raw research needs to be compressed to move through the tight window of communication with legislators. Those doing the compression must be those who understand the legislative process and the folkways of the legislative institutions. A large amount of data must be intelligently compressed into a fine understanding of just what's necessary to move an initiative forward. In all but the rare circumstance, the teamwork of researchers and advocates is necessary to make this happen.

When the advocates at Maryland Family Network (MFN) learned that the criminal background check bill would not be departmental legislation backed by MSDE in 2013, they began planning their strategy to take the lead on the bill months before the opening of the General Assembly session. They drafted a briefing paper for potential sponsors of the legislation, describing the importance of the issue, the current law and the supporting arguments for the new legislation. For the sponsor of the Senate bill, they chose Senator Nancy King, co-chair of the Joint

⁴ Brown-Lyons, M., Layzer, J., & Robertson, A. (2001). *Kith and kin- informal child care: highlights from recent research*. (p. 11). New York: National Center for Children in Poverty. Retrieved from <http://www.researchconnections.org/childcare/resources/2085/pdf>

Committee on Children, Youth and Families, who was a known champion for health and safety in child care. Because the House Judiciary Committee had rejected the 2012 version of the bill, the advocates asked Delegate Kathleen Dumais, the Committee Vice Chair, to sponsor the House bill and shepherd it through her committee.

After numerous drafts and revisions, Senate Bill 413 and House Bill 443, both entitled “Criminal History Records Checks - Informal Child Care Providers,” were introduced and scheduled for hearings. MFN’s Director of Public Policy Clinton Macsherry and Senior Policy Analyst Debbie Moore (the current co-author) immediately began visiting the members of the Senate Judicial Proceedings Committee and the House Judiciary Committee to pitch the bill to them before the hearings. During these early meetings and in the hearings MFN learned what kinds of questions the legislators had, and what data was needed to answer their questions.

Legislators wanted to know more about the informal providers. How many people were providing informal care? How many were grandmothers or other relatives of the children in their care, and how many were friends or neighbors? Where in the state did they live? (It’s always important to legislators to know when they are dealing with their own constituents.) How many children did an informal provider care for, how old were the children, and over what period of time was the care provided? Many of these questions had never been asked before, but the Towson University researchers were able to dig into their data and provide the answers to all of them.

Early in the discussions with the committee members, the question of the potentially prohibitive cost of criminal background checks for the informal provider and all adult household members was raised by the Judiciary Committee Chairman. It was very clear that if the advocates did not provide a satisfactory answer to that one question, the bill would meet the same fate it had the previous year. But once again, data came to the rescue. Using CCSP data, the MFN advocates were able to provide the following comparisons for the legislators:

What is the cost of a criminal background check?

The background check entails a one-time cost of \$54.50. The cost will apply to the informal provider. In cases where care takes place in the informal provider’s home (approx. 60% of the total), an additional \$54.50 will apply to any other adult residing there.

What is an average monthly subsidy payment to an informal provider in Maryland?

- Lowest: Caroline, Dorchester, Kent, Somerset, Wicomico Counties: **\$290.32**
- Mid-range: Anne Arundel, Calvert, Carroll, Charles, Prince George’s Counties: **\$397.25**
- Highest: Howard and Montgomery Counties: **\$530.84**

Calculations are based on the average number of children in an informal provider’s care (2.5) multiplied by the reimbursement rate in those counties for the average period of care per month.

Towson University's research revealed that the average number of additional adults in an informal provider's home was 1.7. The data was able to demonstrate very clearly that the cost of the criminal background checks would be easily covered by the first month's subsidy payment. The advocates argued further that criminal background checks for informal providers would protect children, by alerting us to significant risks of harm, and would give children in informal care the same safeguards as children in licensed care, as a matter of equity.

The most relevant of the data was incorporated into a one-page fact sheet called a "walk sheet" for distribution to legislators before the vote. The use of the research and data, along with a considerable amount of shoe leather supplied by MFN and the support of a dozen other advocacy organizations, paid off in the end. House Bill 443 and Senate Bill 413 (identical bills) were passed and signed into law on April 10, 2013.

Conclusion and a Post Script

Only when writing this paper after the dust had settled did the authors discover at least one misstep, a miscommunication caused at the time by the flurry of activity that is the legislative session. In the case of one key measure—the number of associated parties in informal provider households—a revision was issued but never made its way from research to advocacy. The failed communication was fortunately not serious enough to have changed the message, but nevertheless, it suggested the need for better communication and a change in protocols for next year's session. Thus, this article has already borne fruit, and in a manner which might well be the proper conclusion to this story: research and advocacy need each other, can be very powerful when united, and better communication is the best way to improve the effectiveness of both.