

# **REPORT ON EFFECTIVE LEGAL PROCEEDINGS TO ENSURE PROVIDER COMPLIANCE**

Prepared for the  
State of Washington  
Department of Social and Health Services

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**Washington Department of Social and Health Services, Division of Child Care and Early Learning (DCCEL) desires to make changes to its licensing system and practices to reduce the likelihood that children in licensed care will be harmed. This research report was funded by DCCEL to address the question “*How do States effectively pursue legal proceedings against providers that are not in compliance with licensing regulations?*”**

## INTRODUCTION

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Child care licensing is consumer protection through prevention, which is the vision statement of the National Association for Regulatory Administration (NARA). The fundamental purpose of licensing is to protect the health, safety and well-being of children receiving care away from their homes and families. The State grants permission through statute to operate to those child care facilities that meet certain minimum requirements or rules intended to reduce the risk of predictable harm to children from injury, unsafe buildings and fire, the spread of disease and developmental impairment. Situations such as these put children at risk of varying degrees of harm and each is potentially devastating to children and must be prevented to assure the basic health, safety and appropriate care of children. Regulation then is the essential means for ensuring that the foundation of quality established by the State as critical to reduce the risk of harm is maintained.

Licensing is comprised of 4 integral, but distinct, phases: 1) the development of the licensing statute, 2) the development of licensing regulations, 3) the application of the law and regulations, and 4) the enforcement of the law and regulations. All 4 components must be done well to have a well-balanced, effective licensing system.

Licensing regulations are in reality the community’s consensus on those acceptable minimum standards of care critical to the protection of children. They are formulated through a democratic process of consensus building, using citizen task forces representing diverse interests. Regulations must be clear and easily understood, measurable, supported by research findings as reducing the risk of harm and economically feasible. Regulations vary across States and can be set as high as the public will tolerate. Over the years, research has found that outcomes for children (defined throughout this report as school readiness skills, cooperative behavior, better language skills) are better in the States with higher licensing rules. There has been a recent trend for more stringent regulations in an attempt to reduce the risk of serious harm.

Enforcement, that part of the licensing process which attempts to ensure that facilities stay in compliance with the law and established regulations, is critical to the delivery of quality, safe child care services. When we define “enforce” we first think of “force”, “compel”, and “power” but it also means “to give strength to” and “to invigorate.”

Enforcement includes both positive and negative strategies that agencies use to help facilities keep the rules in place. In fact the positive strategies such as supervision and monitoring, technical assistance and consultation, applying corrective action and providing incentives for compliance really are the crux of enforcement. The purpose of positive enforcement is to encourage or facilitate compliance with the rules in order to prevent negative actions or to “nip problems in the bud” before they become serious enough to require negative action.

In positive enforcement the focus is on “teaching,” “encouraging,” “upgrading” and “safeguarding,” techniques that can be successful in helping programs to achieve compliance with regulations and even to go beyond the basic level of quality. Stated another way, good licensors are teachers of standards; they take the time to explain the intent of regulations and how to achieve compliance. Skilled licensors consult with providers as they monitor; they take advantage of the “teachable moment” to reinforce regulations, especially as they see the provider struggling with an area of non-compliance.

Frequent monitoring of facilities provides more opportunities to reinforce the regulations, continue the teaching and help providers identify and correct systems problems that may be contributing to non-compliance. Positive enforcement strategies are most effective in achieving compliance with the regulations and higher quality when they are coupled with other regulatory and non-regulatory methods used by the community to promote quality. Collaboration and coordination at the state and local level are very important to make the best use of community resources to protect children and improve the quality of their care.

When positive enforcement does not work, then the agency must use negative strategies such as fines, warnings, probation, denial, revocation or summary suspensions designed to compel the licensee to compliance. The availability of negative action techniques, the willingness to use the techniques and the wisdom to use them judiciously safeguards the public and providers by closing unsafe or unlawful facilities. Strong, equitable enforcement serves as a motivational deterrent to noncompliance and thus helps to preserve and expand the supply of safe child care facilities. States should not be reluctant to use the most restrictive actions of revocation, denial and summary suspension (or immediate closure) when it is necessary and appropriate. While there is no right percentage of these actions for strong enforcement, Larry Bolton, Deputy Director of the Division of Community Care Licensing and Chief Legal Counsel (for many years) in California reported that their agency takes “formal legal action” – revocation, denial and summary suspension – against about 2% of their licensed facilities in a given year.

Without effective enforcement licensing fails to meet its responsibility to protect children from harm. Licensing must not let individuals/organizations which provide harmful care continue to operate. There is considerable variation among States in the effectiveness of their legal enforcement programs. Effective enforcement requires sufficient, competent licensing staffs that are well trained in the principles of regulatory administration, including due process of licensees, and knowledgeable in the field being regulated; strong administrative support; the consistent application of sound

enforcement policies with a wide range of intermediate sanctions and teamwork with readily available legal staff. <sup>1</sup>

In order for licensors and the licensing agency to carry out their immense mandated responsibilities to protect and safeguard children in out-of-home care, the regulatory program must be effective. Well-designed, appropriately staffed regulatory programs protect the public and promote the availability of quality care when they are equipped to use a comprehensive array of strategies and interventions ranging from deterrence of bad care to provider support. Without an effective licensing operation, licensing will not be successful in carrying out its mission as intended. The characteristics of a strong regulatory program include:

- *The fair and uniform implementation and enforcement of rules with a strong licensing law, legally sound enforcement procedures, sufficient, qualified and well trained staffs, adequate funding, and strong administrative and community support*
  - Up to date, comprehensive laws that provide the agency with a wide array of intermediate sanctions, clear authority to suppress illegal operations promptly and clear authority for thorough investigations of applicants and facilities
  - Sufficient staffs to allow a minimum of semi-annual unannounced inspections and intensive monitoring of problematic facilities until closure or satisfactory compliance occurs
  - Licensing staffs need to be expert in early childhood education or relevant program area for area regulated as well as principles of regulatory administration; they need to be able to skillfully document their observations and to establish patterns of evidence; they must be able to interpret and apply licensing regulations with a deep understanding of child development and operating child care programs. <sup>2</sup>
  - Consistent, prompt and effective enforcement interventions
- *The formulation of clearly written, reasonable, and valid rules, research-based, risk-relevant, sensitive to diversity, and developed by a democratic, citizen based process*
  - The rules should be formally reviewed no less than 4 to 5 years to identify needed revisions or sooner if necessary in response to new information of vital interest to children's safety
- *A system of strong provider support programs and services for applicants and licensees designed to achieve and maintain compliance and to encourage continuous improvement of quality*
  - These services, most of which providers are not mandated to use, should include formal training opportunities, development and distribution of technical assistance materials, and periodic opportunities for dialogue between providers and licensors
- *Good consumer education on "what is licensing" and the roles of the licensing agency, providers, parents, and community in that process;*

- public access to non-confidential regulatory information, including that which is Internet based*
- *Full collaboration and coordination with other parts of the regulatory and non-regulatory early care and education system with alignment of policies, services and resources needed by consumers, providers and regulators for high quality care*
    - Working collaboratively, with licensing in the lead or as an integral partner, a system of incentives to recognize or reward high-performers --quality rating systems and tiered subsidy systems

Not all licensing programs are effective; not all States are committed to providing the necessary resources and support for this intensive function. Thus licensing agencies often have to carry out their responsibilities with insufficient staffs, funding, equipment, tools and administrative support for strong enforcement. The problem is exacerbated when the economy is on a downturn or trying hard to recover from one such as now. Over time the pendulum swings; gains are made and then lost.<sup>3</sup> Coordinated advocacy for the licensing function is critical to assure that States carry out this critical function of consumer protection in an effective manner.

There has been a dearth of research studies on the components of effective licensing programs, including effective enforcement strategies. However research on child care licensing is growing, primarily looking at the effect of licensing on the quality of early care and education. Some research has focused on the effects of licensing regulations, such as child-staff ratios, group size and staff education and training, on child outcomes. Studies have found that in States with more stringent regulations, centers have staff with more education and training, lower child-staff ratios and in general have fewer poor quality centers.<sup>4</sup>

Children are exposed to risks of injury everyday, both in their own homes and in child care settings. Licensing, through regulations and enforcement practices, is concerned with reducing the risk of injury in early care and education settings. Another line of research has studied injuries and deaths in child care. A 1994 study found that children in licensed centers have a 14 percent risk of accidental injury, compared to 35% for those that remain in their communities. Another study found that the accident rate of 1 and 2 year olds in center care and in maternal care, both at 29%, to be slightly lower than in family child care homes and other non-center based care, which was 32%. This study estimated that childhood accident rates can be reduced by 7% to 18% and accidental death by 4% by a 2 year increase in the educational requirements for center directors. However, this study found that injury and mortality rates were not found to be influenced by increased inspections and reduced child-staff ratios.<sup>5</sup>

A study, which collected and analyzed data on injuries and fatalities in both center and home based care from 1985-2003, is the first systematic study of deaths in child care. Wrigley and Dreby found significant differences in fatality rates across both types of care and ages of children. This study collected data from a variety of sources, including State licensing data on injuries and fatalities, which they found lacking in many States. They reported that center care is much safer than care provided in private

homes, either the child's own home or family child care. The fatality rate for infants from accidents is 6.7% higher in home based care than in center care (1.54 to 0.23). They also found much higher rates of fatalities from violence in home based care than in center care, especially for children under 1 year of age. The safety advantages of centers were found to diminish when injuries/fatalities for children are outside of the building, e.g., resulting from children being left in vehicles and from drowning.

The researchers attribute the safety of centers to the "bureaucratic" nature of the care which provides multiple safeguards against loss of control by caregivers. Also home based caregivers are more prone to being distracted due to the many demands on this one individual. Their policy recommendations include: 1) infants are safer in center care but feel that major expansion of quality care would require State and/or federal subsidy; 2) States could improve the safety in family child care by requiring more homes to be licensed; 3) expansion of parental leave policies; and 4) gathering consistent, reliable data on fatalities would be a key factor in reducing such risks. <sup>6</sup>

The State of Michigan is one State that tracked its deaths and injuries from the early 1970s to the late 1990s. From the patterns that emerged from analysis of this data, the licensing agency made many changes in staff investigative training, investigative report formats, provider training, technical assistance publications, greater collaboration with local law enforcement and child death review teams. The process for investigating injuries and deaths was revised extensively to focus on the events prior to the incident, how it was handled immediately and after as well as other regulatory aspects. Provider orientation sessions were modified to include discussion of high-risk behaviors and environments and new technical assistance materials and workshops were developed; proposed regulation changes were also planned. Wood, in reporting on this, concluded that "the time invested in this type of analysis is well worth an agency's investment." <sup>7</sup>

Other researchers, focusing on the administrative aspects, have addressed the importance of and the problems in enforcement practices across States as well as the lack of sufficient resources to carry out licensing mandates. William Gormley in *Everybody's Children* criticized the lax enforcement in many States which he attributes to "inspectors have mixed feelings about punitive sanctions; they possess a limited range of tools to deal with code violations; and they are put off by a cumbersome legal process." Gormley makes a strong case for the use of an array of intermediate sanctions, "regulatory bargaining," and greater regulatory attention to facilities with "bad track records." <sup>8</sup>

In 1999, Gormley reported that insufficient licensing staff is a key factor for weak enforcement of regulations. He stated "they lack time to probe for serious problems, to devise sensible solutions and if necessary, to take vigorous enforcement measures." He went on to say "If licensors are to conduct thorough annual inspections, allow for follow up visits, respond to inquiries and complaints and complete their paperwork, a caseload greater than 75 or 80 centers is probably excessive." <sup>9</sup>

In a study of the use of regulatory tools in 4 States, Colorado, North Carolina, Oklahoma and Pennsylvania, Gormley found that the differences in the legal, political and administrative contexts have an effect on the enforcement sanctions that

inspectors use, especially when they react to more serious licensing situations. Gormley concluded that inspectors need “diverse tools to choose from and the time to make them work.”<sup>10</sup>

Gormley looked at the consequences of differential licensing in another study in which he reviewed violation data on child care centers in Vermont for a 5 year period in the early 1990s. During that time, the agency moved to differential licensing periods, granting centers with excellent or good compliance records 2 or 3 year licenses and those with mediocre or poor compliance records 1 year licenses with differential monitoring based on the license. Gormley found that compliance in centers with good track records got worse by the next renewal while compliance in the bad centers improved. He concluded that the findings suggest that centers perform better if they receive more frequent inspections and that centers perform worse if they receive less frequent inspections; even good child care centers benefit from regular monitoring visits.<sup>11</sup>

In 2001 the Delaware Office of Child Care Licensing conducted a study on the impact of increased licensing inspection visits on compliance levels; the study reviewed violation data before and after an increase in licensing staff. As part of an initiative looking at outcome measures in licensing, the study analyzed violation levels in strategically selected safety and quality licensing rules from 1995-2000. The analysis of this data revealed that increased monitoring visits definitely increased compliance levels in facilities across these strategic licensing rules, with data peaking in 1999, the first full year of the new staffing complement. However, the study found that increased inspections did not impact the number of complaints received over that period of time.<sup>12</sup>

Despite these findings on the importance of regular inspections, the Government Accounting Office Child Care Study of 2004 found that the frequency of compliance inspections ranges from less than once every 2 years to at least twice a year; in California programs are not inspected on a regular basis, including centers. The study also found that the median inspector caseload size decreased from the 1999 study from 118 per inspector to 110 facilities but the number was still above the recommended level of 75 facilities per inspector. However, almost a quarter of States had caseloads at or below 75 and fewer States exceeded caseloads of over 150 facilities; with the highest at 536 facilities per inspector. It is notable that more States decreased their caseloads rather than increased them.

In the GAO study, 45 States reported they are using automation to help them with many aspects of licensing and enforcement activities with the greatest use in maintaining statistics on providers. However, preliminary data from the NARA Licensing Studies Program Survey revealed that there still are States with no automation and little or no use of regular manual statistics.<sup>13</sup>

Witte and Queralt studied the changes in quality of care for children using child care subsidies from a major effort in Broward County, Florida to make inspection and complaint reports on the Internet accessible to parents and also to increase their use by parents, providers and child care advocates. This study found “substantial evidence that placing child care inspection and complaint reports on the Internet in a readily

located and accessible format, when combined with media coverage of availability is associated with changes in the behavior of child care inspectors and in the quality of the child care available in the community.” They found that inspectors made more inspections with more mixed compliance reports and were more likely to use enforcement sanctions as a result of the automated reports. The researchers projected that the changes in inspector behavior were impacted by having the inspectors’ names and contact information on the first page of the automated reports. They also found that the quality of child care received by the children on subsidies, from analysis of observations of center management staffs and child care classroom environment, significantly increased as well. Providers were also more likely to seek accreditation as a result of the automated reports.<sup>14</sup>

The 2004 GAO study also highlighted a number of promising practices in States to assist them with their licensing and enforcement functions. These included:

- Automation to streamline their licensing process (using field based tools) and to provide Internet access to parents on facility inspection data and, in some States, complaint reports
- Pairing of frequent inspections with technical assistance to ensure that providers maintain compliance with licensing regulations
- Quality rating systems that differentiate providers by quality of care, some tied into subsidy reimbursement rates. These are designed to help parents in selecting care and to provide incentives to providers to improve and maintain the quality of their care
- Partnerships with community organizations to provide training and education of parents – the professional development systems.<sup>15</sup>

Along this same line, Ochshorn et al in *The Effects of Regulation on the Quality of Early Care and Education* noted that despite the problems in licensing agencies with understaffing, high caseloads and limited resources, States are adopting new regulatory strategies to improve the quality of care with a “spirit of inventiveness.” These strategies include the use of hand-held computers, online information systems and providing incentives for licensees to achieve higher levels of quality and/or become accredited. These researchers discussed the need for further research “to examine the complex interactions among regulation, quality, child outcomes and cost, and to answer remaining questions” including a number on the impact of various components of a licensing system on child outcomes and quality of care.<sup>16</sup>

Gazan, in *Regulation: An Imperative for Ensuring Quality Child Care*, states that “academe needs to be more willing to target research on child care regulatory effectiveness and weaknesses, “ and advocates, as does NARA, for the establishment of a “National Center for Excellence in Regulatory Administration in Child Care.”<sup>17</sup>

This review of the literature lends support for the importance of effective licensing systems to provide the foundation of quality necessary to adequately protect children from harm and to encourage improved level of quality. Gormley summed it up well in *Regulating Child Care Quality*, with the following: “Children are better protected when regulatory standards are high and regulatory enforcement is vigorous...The challenge that faces regulators today is to regulate wisely by considering availability, affordability,



and quality simultaneously, by choosing finely calibrated instruments, and by combining regulations with incentives.”<sup>18</sup>

The military has shown the United States how it turned around its child care system in 10 years to an effective licensing system which serves as a model for the country. A well publicized report which outlines the lessons learned from the military notes that basic standards were established which are vigorously and consistently enforced. In one key lesson which States the need to commit resources necessary to get the job done, the authors note that the commitment of resources necessary to accomplish this make over is not evident on the civilian side as yet. The report further states, “Increased public investment is critical if progress is to be achieved in civilian child care. Both the federal government and the States should recognize, as the military has, that increased funding for child care ultimately pays for itself – in the stability of the workforce and the healthy development of children – and increase their investments accordingly.”<sup>19</sup>

NARA is now in the process of engaging in the first comprehensive data collection on the components of licensing programs in the United States as a part of the **2005 Child Care Licensing Studies**. NARA has assumed full responsibility for the publication of the Child Care Center and Family Child Care Home Studies, previously published by the Children’s Foundation. States have completed a new Licensing Program Survey which allows them to describe the administrative aspects of their licensing programs. The preliminary data from this survey will provide the baseline for this research project.<sup>20</sup>

### **Methodology**

To answer the question posed by the Division of Child Care and Early Learning “*How do States effectively pursue legal proceedings against providers that are not in compliance with licensing regulations?*,” the researchers outlined the agreed upon tasks to be completed, as detailed in the Project Proposal (Appendix 1) and DCCEL Statement of Work (Appendix 2). To summarize, the project will:

- Using preliminary data from NARA’s *2005 Child Care Licensing Program Survey*, identify approximately 10 State licensing systems that will be instructive in assisting Washington State to improve its enforcement action. These States could be those with the greatest rates of legal enforcement actions and/or exemplary licensing systems and/or other relevant program components or criteria; provide the rationale used to determine each State’s relevance to the project.
- Interview these States, using a standard set of questions, about components of their licensing systems that contribute to successful enforcement of licensing regulations.
- Provide a written report to answer the following questions:
  - Which State licensing systems contribute most to successful enforcement?
  - What are effective licensing enforcement strategies?
  - What legal procedures are effective to support enforcement
- Develop written recommendations that address:

- How does Washington State licensing program compare to the 10 identified States?
- What enforcement strategies should Washington State emphasize to improve non-compliance?

## PROJECT TASKS AND FINDINGS

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The project began with a review of Washington's licensing system utilizing materials provided by DCCEL. A summary table of basic components of the Washington system, from the Methods and Practices (MAP) 2001, can be found in Appendix 3. Other materials provided by Washington were also reviewed.

### **Tabulation of 2005 NARA Licensing Studies Program Survey Data**

Preliminary data from the *2005 NARA Licensing Studies Program Survey* were then tabulated and reviewed. NARA disseminated the survey by mail and e-mail in February 2005 to all 50 States and the District of Columbia (which is considered a State for this study). At the time of these tabulations in April 2005, NARA had received completed surveys from 43 States. The data used for this project is preliminary. As mentioned above, NARA is still in the process of attaining responses to the survey from all States and is also contacting States to verify and clarify their responses on a number of survey question items. At this time, the data from the survey cannot be distributed or shared with anyone beyond the contractors for this project.

The tabulation of survey data from the 43 States included the following topics, selected for their relevance to licensing enforcement. These data are found in Appendix 4.

- Types and number of enforcement actions used by States
- Outcomes of revocations and denials
- Number of licensing complaints and substantiated complaints
- Types of licensing inspections
- Frequency of inspections
- Technical assistance provided to licensees
- Data automation
- Availability of licensing inspection reports on the Internet

### **Identification of Ten States for Further Study**

Next the preliminary data from the surveys were analyzed to identify 10 States with the greatest number of enforcement actions and other relevant licensing program components. Since the program surveys were being submitted by States as the researchers began the study, there were some limitations on the number of States that could be considered for selection. This was due to the fact that a number of States were unable to provide enforcement and complaint data for a variety of reasons – failure to include the data in the survey, lack of automation or manual collection of enforcement and complaint data, insufficient time for States to gather the requested data, or in one case lack of availability of the data because a new automation system was in process of development and the data was not able to be produced.

To assist with the selection, a number of data pieces from the survey for all 50 States were tabulated and analyzed. To simplify the process, we narrowed the analysis to the following components of the licensing system with most relevance to enforcement:

- Licensing caseload computed by dividing the number of licensed programs by the number of licensing line staffs

- Frequency of licensing inspections and the use of abbreviated compliance checklists and/or differential monitoring
- The number of enforcement sanctions available to licensing staffs to give a sense of the range of tools and use of progressive enforcement
- The ratio of enforcement actions in relation to the number of licensed programs
- The ratio of complaint investigations in relation to the number of licensed programs and the types and range of sanctions most heavily used
- Involvement in a quality rating system to give a sense of the role of the licensing agency in the broader early care and education system

The composite of these factors gave us a good picture of the enforcement tools available to the State, staffing complement, complaint and enforcement activity and the interest of the agency in taking a broad role in the early care and education system. We augmented the analysis with another look at the comprehensive survey instrument. The States selected for further study were: **Arizona, Colorado, Illinois, Maryland, North Carolina, Oklahoma, Pennsylvania, Tennessee, Virginia and Wisconsin.**

These 10 States serve as models of States that, from the preliminary data, appear to have systems in place that contribute to effective licensing. These States are not to be considered as the sole models of effective licensing, but rather those that emerged to the researchers from the preliminary survey data available to us. Thus this is not a definitive list of States with effective enforcement practices; there were others that may have been considered had all the data been provided by the time selections had to be made for this study.

### **Licensing Systems in Washington and Ten States**

Once the States were selected, a number of tasks took place. One task was the preparation of comparison tables of the 10 States and Washington on a large number of licensing system parameters. The comparison tables address the following topics and are included in Appendix 5.

- Number of licensed programs—child care centers, small family child care homes, and large family child care homes
- Licensing line staff caseloads—based on total number of licensed programs and total number of licensing line staff
- Frequency of licensing—length of time a license is valid
- Frequency of inspections
- Types of inspections—prior to issuing a license, license renewal, routine compliance; announced vs. unannounced
- Frequency of full compliance review
- Use of an abbreviated compliance monitoring form
- Use of differential monitoring
- Provision of technical assistance by licensing staff—how often and methods
- Data automation
- Outcomes of revocations and denials
- Number of licensing complaints and substantiated complaints
- Enforcement actions used by States—types and number

The data in the comparison tables were then analyzed to provide a comparison of the licensing systems in the 10 States and Washington. As mentioned in the Methodology section of this report, preliminary data from the *2005 NARA Licensing Program Survey* was used for this analysis. From this first analysis of the surveys, the data have already shown a common problem with data collection, a lack of consistency in how States define some of the terminology in the Program Survey. The lack of consistency was particularly noticeable in definitions of enforcement strategies, e.g., the definition and use of voluntary closure varied considerably across the 10 States in this study. Some of this inconsistency will be cleared up with further clarification of the 2005 survey before it goes to publication.

The following is a description of how Washington's licensing system compares to the 10 States on several dimensions.

#### *Frequency of Licensing*

- A child care center and family child care license in Washington is valid for 3 years, as it is in Arizona and Illinois.
- Five out of the 10 States (AZ, MD, NC, OK, and WI) have instituted non-expiring licenses.
- In Pennsylvania, a child care center and large family child care home license are valid for 1 year; a small family child care license is valid for 2 years.
- In Tennessee, all licenses are valid for 1 year. In Virginia, the maximum duration of a child care center license is 2 years, however, a family child care license may be valid for 1, 2, or 3 years.

#### *Frequency of Inspection*

- Washington inspects child care centers once a year, as do 5 of the 10 States (AZ, IL, NC, PA, and WI – small centers). The remaining States generally inspect centers more often, with the exception of Colorado which averages once every 2 years. Tennessee inspects most often—more than 3 times a year.
- Washington inspects small family child care homes once every 18 months. The inspection frequency in the 10 States ranges from more than 3 times a year (TN) to an average of once every 2 years (CO). Pennsylvania does not inspect family child care homes on a regular basis; Virginia does not license small family child care homes.
- While Washington and 3 of the 10 States (MD, NC, and WI), do not license large family child care homes, the remaining range again from more than 3 times a year (TN) to an average of once every 2 years (CO). Washington does not have a separate category of large family child care homes but permits up to 12 children in family homes which is similar to the limit in states with a large family child care home category.

### Types of Inspections Conducted

- Washington is similar to the 10 States in how it conducts licensing inspections for child care centers and family child care homes.
- Like Washington, most of the States conduct announced inspections prior issuing a license.
- Like Washington, most of the States conduct unannounced inspections for routine compliance.
- There is much variation in inspections for license renewal and 4 States (MD, NC, OK, and WI) do not conduct these inspections because they have non-expiring licenses.

### Frequency of Full Compliance Review

- Washington conducts a full compliance review of child care centers and family child care homes once every 3 years. Arizona and Illinois follow this same frequency level.
- Oklahoma conducts a full compliance review 3 times a year for child care centers and family child care homes, which is how often they conduct inspections (Oklahoma considers a full compliance review as 75% of the requirements and a partial review of children's records).
- Tennessee, which inspects programs more than 3 times a year, does a full compliance review only once a year.

### Use of Abbreviated Compliance Monitoring Form

- Washington and 6 of the 10 States (AZ, CO, MD, OK, PA, and TN) use an abbreviated compliance form during some inspections of child care centers and family child care homes.
- Most of the States use an abbreviated form during monitoring visits

### Differential Monitoring

- Four of the 10 States use a differential monitoring system—the frequency and/or depth of monitoring are based on an assessment of the level of compliance with regulations. Washington did not report using this type of monitoring.

### Provision of Technical Assistance

- All of the States, like Washington, reported that they provide technical assistance to licensees to help them achieve compliance with regulations.
- Like Washington, 5 of the 10 States (IL, MD, NC, OK, and VA) reported that they also provide technical assistance to licensees to help them move to a level of quality beyond minimum regulations.
- All States, including Washington, reported providing technical assistance during inspections. Most States, like Washington, also provide technical assistance on the phone and/or as needed by the licensee.

### Data Automation

- Like Washington, 9 of the 10 States have automated systems for their licensing data, although some of the systems have yet to be updated.
- Pennsylvania does not have an automated system.

### Enforcement Actions

- The *2005 NARA Licensing Program Survey* asked respondents to identify enforcement actions they had used in 2004 from a list of 12 types of actions, which included:
  - Revocation
  - Denial
  - Immediate closure
  - Non-renewal
  - Probation
  - Conditional license
  - Consent agreement
  - Voluntary closure
  - Civil fine
  - Criminal
  - Imprisonment
  - Other (respondents specified actions)
  
- Washington identified 8 different types of enforcement actions used with child care centers and family child care homes.
- The average among the 10 States was 8 actions; with a range of 10 (AZ) to 6 (OK) for child care centers; and 10 (AZ) to 5 (TN) for small family child care homes.
- Revocation, denial, and immediate closure were the most common types of enforcement actions used by the States.
- It appears that Illinois and Washington have used the greatest number of actions and the highest percentage/ratio to the number of licensed programs. But in both of these States, a large number of the actions are surrenders for Illinois that could have resulted from the knowledge that an enforcement action could be taken against the program; and for Washington, non-renewals and voluntary closures.
- Pennsylvania is the State with the next highest numbers and percentages, but again the largest numbers of actions are voluntary closures.
- Voluntary closures, surrenders and non-renewals need further clarification to determine differences in definition and usage in States.
- The number of actions used in Washington, not including the voluntary closures, is higher than the average among the 10 states. Washington used 984 actions; and the average was 492. In terms of the number of enforcement actions per 100 licensed programs, Washington is also higher with 12 actions per 100 programs; the average among the 10 states is 6 actions per 100 programs.

### Complaint Data

- Washington has the second highest number of complaints filed (2,628), but seems to be close to the average with the 10 states in terms of the number of complaints, with 31 complaints per 100 licensed programs.
- Washington, with 821, is also close to the average of substantiated complaints.
- The preliminary complaint data is somewhat difficult to analyze and compare because of different definitions among States as to what constitutes one complaint. Clarification of the data is needed before further analysis.

### Telephone Interviews with States

The next major task involved conducting telephone interviews with the 10 selected States for in-depth discussion of their licensing systems. The purpose of these interviews was to get a better understanding of the components of the licensing systems that the States feel contribute to effective licensing. The researchers developed a set of questions to serve as a guide to the individuals being interviewed.

There is so much that we in the field of human care licensing must study to help us define what components, configurations and mix of licensing program components will produce the most effective licensing systems. As a result, it was difficult at first for the researchers to narrow this set of questions to a reasonable length for a productive 1 to 2 hour interview.

The set of questions was tailored to focus the interview on the topics needed study and evaluate the States against the characteristics which experts have defined as indicators of effective licensing systems (as delineated in the Introduction of the report). These 10 questions asked the interviewee to discuss what they felt contributed to effective licensing in the areas of:

- enforcement practices
- strength of licensing statute
- promulgation process for licensing regulations
- provider support systems/materials
- licensing staff qualifications, training and support
- administrative supports to aid staffs in the licensing process
- legal support for enforcement
- consumer educations system and/or materials
- licensing role in the State's early care and education system, with discussion of the impact of the quality rating system, if existent
- the component/initiative the interviewee felt is the most effective to protect children and reduce harm

Appointments were scheduled with the 10 State representatives designated to be interviewed; a cover letter with the set of questions was emailed to these individuals for review prior to the interview (Appendix 6). The interviews were conducted over a 2 week period with each interview lasting from 1 ½ to 2 ½ hours. Researchers typed responses to the questions on prepared interview worksheets (Sample worksheet is found in Appendix 7).

The interviews were conducted with either the director of the licensing agency or designated policy specialists or licensing managers. Most of the interviews were conducted with one individual; in 2 States there were multiple interviewees; all were most cooperative with the researchers and the purpose of the interview. Both the cover letter and in the introduction to the interview, the researchers provided a summary of the WA study to set the stage. Following the interviews, the completed worksheets were emailed to the States for review to ensure accuracy of the information. The States and individuals interviewed for the study, including contact information, are listed in Appendix 8



The interviews were most valuable in giving the researchers insight into the philosophy and conceptual thinking that provides the framework for the States' licensing systems as well as details of the systems and especially those aspects which the interviewees attribute to effective enforcement. The interviews were very exciting for the researchers and for those interviewed – those interviewed expressed a real enthusiasm and commitment to their systems and enjoyed sharing with the researchers what works and in some, cases, what does not work well or needs revision. They often discussed their plans for future refinement of the systems to make them more efficient and effective. The interview worksheets for the 10 States and Washington are found in Appendix 9.

### **Summaries of State Interviews**

To capture the essence of each program, the researchers' next prepared summaries of each interview, highlighting those aspects of the State's licensing system which the individual interviewed perceived as the most effective components to enforce provider compliance and reduce the risk of harm. The summaries describe how the critical elements of the system work together for effective licensing in each State. The summaries are found in Appendix 10.

### **Analysis of Summaries**

As the summaries and interviews were analyzed, a number of themes became apparent across the States in those practices which they feel contribute most to effective licensing. These themes, which naturally fall under various components of licensing and early care and education systems, show considerable similarities with characteristics that experts attribute to effective licensing systems, as noted in the review of literature. The themes appeared in differing configurations across the 10 States and identified the commonalities of strong licensing programs among these States. The following is a listing of the themes that emerged from analysis of the State summaries of the State interviews:

### **Themes from Interviews**

#### **Structure of licensing system**

- Review and revisions to licensing systems
- Reorganization of agency
  - Locating child care licensing with other child care initiatives
  - Re-locating child care licensing to different agency
  - Elevating child care programs within agency structure
- Continuous refinement and improvement

#### **Statutes and policies**

- Strong statutes provide authority for enforcement actions
- Statutes are updated and improved periodically
- Legislation is used to improve policies and enforcement systems
- Policies and procedures are current, useful, and updated frequently

### Enforcement strategies and actions

- Creative strategies are used for progressive positive enforcement and negative actions
- Number of enforcement strategies is increased (improved statutes)
- The agency creates the expectation of negative action for non-compliance within the provider community
- Enforcement actions are positive and immediate
- Unannounced monitoring
- Frequent monitoring
- Differential monitoring to determine frequency of monitoring
- Specialized enforcement unit in agency
- Team approach to review cases

### Legal support

- Strong attorney support and availability
- Licensing staff “think like lawyers”
- Assure due process to providers

### Support for licensing staff

- Supervision of staff is readily available
- Peer review of cases/actions
- Staff meetings to work on consistency of interpretation of problematic licensing issues
- Quality assurance audits
- Ongoing training/training plans
- Diverse group of consultants with specific expertise available for staff

### Qualifications of licensing staff

- Education and/or experience in early childhood education or child development
- Education in social services

### Automation

- Computers and other tools for licensing staff, a number of them state of the art systems
- Automation of whole system making information easily retrievable
- Web sites – provider and parent access to information

### Provider support

- Technical assistance – before licensure and for maintaining compliance; combine with monitoring
- Communication between licensing and providers – input on system and regulatory changes; meetings; conferences
- Provider buy-in important for success
- Access to information
- Close connection to quality initiatives – Quality Rating Systems, financial incentives, professional development systems, TEACH, etc.

### Consumer education

- Parents are given information about how to understand regulations and how to contact licensing agency
- Information lines to share facility past history and records
- Inspection reports and other information on the Internet or posted in the facility
- Parents seen part of “team” for prevention of harm

### Prevention

- Pre-licensure screening of providers
- Orientation or pre-licensing training
- Unannounced monitoring
- Technical assistance is used throughout the licensing process, even before application

### Quality Rating Systems – tie it all together

- Link monitoring and quality improvement
- Utilize licensing requirements as stepping stone toward best practice
- Consumer education to help drive the system
- Support for providers
- States seeing an increase in compliance in programs with higher quality ratings

It is satisfying to see these characteristics of effective licensing emerging in States and having a significant impact on the capability of these States to protect children in care and improve the quality of that care.

Further analysis of the themes from the interviews revealed a number of broader threads that characterize the more effective licensing systems:

- The State has a focus on prevention with much upfront work in the inquiry and application phase of the initial licensing process and strong use of technical assistance throughout to point out and correct systems weaknesses and “nip problems in the bud” before they become serious. Prevention was a focus of many of the 10 States, with specific initiatives noted by Arizona, Illinois, Oklahoma, Virginia and Wisconsin.
- The State has a strong law authorizing strong, progressive enforcement with a good use of positive enforcement and interim sanctions, with application of strong negative enforcement sanctions as needed. A number of the 10 States are using the statute on a routine basis to refine the enforcement system and correct loopholes in the process to help them achieve more successful and effective enforcement of provider compliance. Most of the 10 States indicated a focus on positive and progressive enforcement. North Carolina and Tennessee seem to be very successful in using the licensing statute to refine the enforcement system. Colorado, Virginia, Illinois, Oklahoma, Arizona, Pennsylvania and Maryland seem to have special focus on positive and progressive enforcement.
- To support the strong system, the State has clear, comprehensive policies and procedures, which are continuously updated and staff usage monitored, to

- guide the licensing process and enforcement system. Maryland, Tennessee, Arizona, Oklahoma and Wisconsin place emphasis on updated policies and procedures manuals used extensively by staff.
- The State has a sound, state of the art, web-based automation system, including inspection and/or complaint reports on the Internet for consumer education or is in the planning stages for such a system. Most of the States have automation and are planning a state of the art system if not in place already as in Virginia, North Carolina and Arizona.
    - Research and anecdotal reports from Virginia have already confirmed the positive impact that consumer education has on licensing staff behavior and provider compliance levels
  - Licensing agencies are taking a broader, more conspicuous role in the early care and education system and moving into the quality arena. These States are collaborating with all parts of the early care and education system to build an integrated quality rating system, making full use of available resources and giving full consideration to licensing as the foundation of this quality.
    - Six of the States in this study, Colorado, Maryland, North Carolina, Oklahoma, Pennsylvania and Tennessee, have statewide quality rating systems in place. However, the Colorado system is administered outside of State government and has little coordination with licensing at this point.
    - Statistics in NC, PA and OK are validating the quality system as a vehicle for improving licensing compliance levels- providers at the higher rating levels have fewer licensing violations and are in greater compliance with health and safety regulations. In NC, these facilities also have been shown to be less likely to have instances of substantiated abuse and neglect.
  - The characteristic that stood out above all others is the excitement that the State interviewees exuded – with clear excitement, they expressed a contagious enthusiasm for the work they are doing as they see the systems approach making a real difference in the quality of care children receive. With licensing as the foundation of quality, these systems are pushing the field along to the point that the field is now beginning to pull the system to greater heights. All parts of the system are working together, as a whole, to create a continuously improving environment to make children safe and nurture them to grow to their fullest potential.

All of the States expressed enthusiasm for their work and those components they feel are contributing to that effectiveness. In the States that are closer to having all parts of the early care and education system working in unison, that enthusiasm was almost uncontainable. They seemed especially excited to share what is working for them with the State of Washington and the country at large

In summary, it has been exciting for the researchers to see States utilizing sound regulatory conceptual thinking, up to date technology and early care and education research to build strong licensing programs integrated with the broader early care and education system. Of course, much in-depth research is needed to further validate the impact of the systems approach on child outcomes and to determine what is the best

mix of licensing and quality components to assure sound protection and quality outcomes for children.

## RECOMMENDATIONS FOR WASHINGTON STATE DIVISION OF CHILD CARE AND EARLY LEARNING

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### ***How Does the Washington State Licensing Program Compare with the Identified States?***

From the comparison tables, the Washington licensing program has a number of similarities to the 10 identified States. The tables indicate that licensors inspect facilities once a year, as do 5 of the identified States; they also use abbreviated compliance forms along with 6 of the States and join all the States in providing technical assistance freely to licensees. The program reported using 5 of the 8 available enforcement strategies during the past year, similar to a number of the other States which also did not use all available sanctions. When we look at the number of complaints against the number of programs, WA was in the middle of the 10 States with 31%. The program had many more enforcement actions (1897) or 7.24% of actions to program, both on the high end when compared with the other States; this number is skewed by the large numbers of voluntary closures in the State.

The licensing program has other strengths as noted in the interview with the State. Licensors must have a BS degree and in addition either a degree in early childhood education or child care experience operating a child care program. The program has a formal training program for staff with a focus on WA licensing policies and good supervisory support for licensing staff. Joel Roalkvam, Policy Administrator, felt that the most effective technique for preventing harm to children is having licensors in facilities more frequently to provide technical assistance. The move of the licensing office to the Division of Child Care and Early Learning has brought a shift in focus to improving the early care and education system with no major new quality initiatives in process as this time.

The licensing process has several specific practices which should help to reduce the risk of harm to children:

- Health specialists are employed to inspect for a full range of health and safety regulations and to provide technical assistance in health and safety matters.
- Public Health nurses visit centers with infants and toddlers on a monthly basis.
- WA has a broad licensing statute with clear authority for enforcement actions.
- Legal support for licensing enforcement is strong, prompt and timely; the agency wins most of its appeals.

While the program is sound in a number of areas, the interviews revealed some areas of weakness in the Washington licensing program which could be improved:

- The policies and procedures manual, referred to as MAP (Methods and Practices) is fairly old with some obsolete portions; revision has been in process for sometime.
- As a result, there has been a lack of consistency in the use of enforcement sanctions and interpretation of regulations. There are no specific policies and procedures for the licensing and enforcement processes to assist licensors with consistent enforcement, e.g., voluntary closure is used differently across regions.

- The program is automated but the system is owned by the Children’s Department, not the licensing agency. Thus it is difficult to have changes made to the system and management reports are not as readily accessible. Staffs are working with consultants to design an updated, integrated system.
- Despite the importance of consumer education, the agency does little consumer education. There is a pamphlet on licensing for parents but no direct link to parents or vehicle for its distribution.
- While staffs have an average caseload of 88 facilities, licensors make one visit per year. Several of the 10 States have caseloads in the same range with more inspections per year. This is an area that should be strengthened to increase the frequency of licensor presence in facilities for increased teaching and technical assistance. The agency, supported by the literature, feels this is the most important factor to protect children from harm.

***What Enforcement and Licensing Strategies Should Washington State Emphasize to Improve Non-compliance?***

The research findings point to a number of exciting recommendations for Washington State to strengthen its licensing system with a goal to better protect children and reduce the risk of harm. These recommendations follow.

1. Up-to-Date Policy and Procedures Manual
  - a. It is essential to have an up-to-date manual to provide policies and detailed procedures to guide staffs through the licensing process, enforcement process and complaint investigation, thereby strengthening consistency in application of the law and regulations.
  - b. There must be a plan and resources to update the manual periodically, regular staff training on the manual for consistent application and specific activities to help staff maintain consistency. Examples: Virginia’s monthly case presentations with peer review and Oklahoma’s Pick Six monthly meetings to discuss interpretation issues and policy problems.
2. Upgraded Automation System
  - a. The current automation system used by licensing, housed in and administered by their former department, was not designed exclusively for the licensing function and thus is not as useful or readily accessible to the office. Their quality assurance/data unit has been pulling data to create the workload and management reports for licensors and managers. Some data that the office would like is not currently collected, such as complaint data by licensing category and injury data.
  - b. Like many other States in the country, the agency is working with consultants to design a state of the art automation system, integrated with the subsidy system.
  - c. The agency should give high priority to the development of a state of the art, web-based system with inspection and complaint reports available to parents and integrated with relevant parts of the Washington early care and education system, coupled with portable devices for staff use in the field.
  - d. In today’s world, it is imperative that State government have the same technological capabilities and tools as the private sector and those they

regulate – state of the art automation systems are a must for conducting good business. Further the research is clear about the value of a sophisticated, well-designed system both as a tool for staffs to manage and expedite their workloads and for management for accountability and planning.

- e. As reported in the Introduction, Witte and Queralt demonstrated that having facility inspection and complaint information Internet accessible to parents increased the number and quality of licensing inspections and also increased providers' compliance levels.
- f. One of the 10 States, Virginia, with a new automation system including inspection reports on the Internet, has found that child care centers are more compliant and are reviewing other provider reports and less likely to balk at findings of non-compliance in their programs.
- g. We refer you to any of the 10 States with upgraded automations systems. North Carolina, Arizona and Virginia have systems in place, Maryland is in the process of development and Oklahoma, is currently upgrading.

### 3. Licensing Workload Analysis

- a. The researchers strongly recommend that the agency examine the current workload of licensors with the goal of increasing the frequency of monitoring inspections. The current caseloads, while not the lowest in the country, when compared to caseloads in the identified States, are much lower than many other States. Several of the identified States, with caseloads either slightly lower or higher, are conducting more inspection visits. The agency should carefully review the tasks performed by licensors, method of assignment, travel and other variables that impact workload to determine if and how frequency can be increased.
- b. There are tools to assist you in this effort. Four of the identified States use differential monitoring to determine the number of inspections and the content of the inspections – Illinois, Oklahoma, Tennessee and Virginia. Virginia has been using differential monitoring for many years and may be a good contact for the policy and procedures, especially criteria used for making these determinations and can undoubtedly offer technical assistance. Tennessee has set up an interesting set of procedures, using the rating system, some of which may be applicable and worth exploring; the other States will also share their knowledge. Six of the States join you in using abbreviated compliance monitoring forms. In combination, these tools should be of help in this analysis.
- c. There is good rationale for undertaking this workload analysis. Licensing research, as noted in the review of literature, is very clear about the impact of facility monitoring on compliance levels. Licensing is teaching and reinforcing good behavior in order to help providers achieve and maintain compliance. The positive enforcement strategies of monitoring, supervision and technical assistance are the crux of enforcement.
- d. Remember that Gormley demonstrated that compliance levels for providers in high compliance were reduced in Vermont when centers were visited less frequently. The study in Delaware, as reported in the review of



- literature, demonstrated that over a 5 year period, violation levels went down when inspection frequency was increased in child care centers.
- e. Lastly, Washington managers have stated that having licensors in facilities frequently to provide technical assistance is the most effective strategy for preventing harm to children.

#### 4. Enforcement Philosophy and Progressive Enforcement Posture

- a. The researchers recommend that Washington take a close look at their enforcement posture as well as the policies and procedures. In the *Licensing Program Survey*, the agency reported the second highest number of enforcement actions, many of them non-renewals and voluntary closures, although there were also a higher than average number of revocations, denials and probations. Enforcement is clearly important and strong in the agency. However, it may be time for the agency to think through what their goals of enforcement are to guide the refinement of policies and procedures to assist the agency to achieve those goals.
- b. It may be valuable to analyze the reasons behind the high number of non-renewals and voluntary closures, especially the latter. Then explore another sequence of enforcement actions, both positive (and less restrictive) and progressively more restrictive which would be as or more effective in assisting licensees to correct non-compliance and maintain that compliance on a long term basis. When and if that fails then more restrictive strategies are appropriate, leading ultimately to revocation to weed out licensees who should not remain in the system by demonstration of willful non-compliance or inability to comply.
- c. As described in the Introduction section, positive enforcement is teaching, reinforcing, providing technical assistance and consultation, looking at systems problems, supervisory conferences, etc, that assist providers to understand, achieve and maintain compliance in order to “nip problems in the bud.” All 10 states reported a strong use of positive enforcement in a variety of ways; the state summaries and interview worksheets are filled with their ideas and approaches to positive enforcement.
  - i. Some states with lower caseloads focus on frequent monitoring with the teaching opportunities it offers (OK, TN , VA)
  - ii. Others use increased monitoring when problems are identified (CO, WI)
  - iii. Some states focus on skilled use of technical assistance supplemented often by provider supports offered by licensing and other parts of the early care and education system (AZ, IL, MD, NC, PA)
  - iv. Most of the states use a combination of these and other techniques in their use of positive enforcement.
- d. As noted in the introduction, there is not sufficient research on the best mix of enforcement strategies to assist the largest number of licensees to correct systemic problems and to remain in compliance with licensing rules in order to provide appropriate care for children. Regardless, regulatory experts agree that the use of progressive enforcement, with an emphasis on positive enforcement strategies and a good mix of intermediate

strategies work well, when combined with strong legal support, updated policies and procedures, staff training on enforcement and the procedures and administrative support for strong enforcement.

- e. We refer you to any of the identified States and in particular to the following.
  - I. Wisconsin and North Carolina reported the use of a good mix of enforcement strategies in the *Licensing Studies Program Survey*, as reported in the Comparison Tables, Number of Enforcement Actions in 2004.
  - II. North Carolina has a licensing enforcement unit, which staffs all enforcement actions and works closely with the attorney on hearing preparation and settlement agreements.
  - III. Maryland has taken strong enforcement action and appears to make good use of consent agreements for effective enforcement.
  - IV. Tennessee has been very successful in getting legislation passed to refine the enforcement system and has developed Safety Plans, plans requiring specific conditions on facilities to protect children in response to specific violations or circumstances are a successful intermediate sanction and appear to be a variation of consent agreements.
  - V. Arizona has an “enforcement team” which is made up of directors from the various categories of licensing in the Department of Health and their attorney. The team meets every Tuesday to review every enforcement action being considered. This procedure encourages consistency and also helps to perfect and ensure a high probability of success with the actions.

##### 5. Place Increased Emphasis on Consumer Education

- a. We understand that in Washington, the resource and referral system is responsible for consumer education by statutory authority. We do recommend that your agency and the early care and education system give more attention to developing and implementing good consumer education materials and tools on licensing and the role of all parties in safeguarding children. As one of the themes from the interviews as well as a characteristic of effective licensing, consumer education has always been important to help parents and the public at large understand the value of licensing as the foundation of quality and the essential role that parents play in monitoring their child’s care for compliance and encouraging their providers to improve the quality.
- b. I refer you again to the research and the anecdotal information provided by Virginia referenced in the review of literature and in the recommendation for upgraded automation that validates the impact of licensing inspection and complaint reports on the Internet in changing not only provider behavior but also that of licensing inspectors.
- c. Like Washington, many of the 10 States have some consumer education material on their websites; a number of them develop parent brochures which providers are required to give parents and in some States must obtain signatures to confirm receipt by the parents. Others reported on valuable consumer education initiatives, systems and materials. We refer

you to Arizona, Pennsylvania, Maryland, Wisconsin, Oklahoma, Illinois and North Carolina for substantial information on initiatives, such as a child care information line in Illinois, extensive hits on the online Child Care Locator in Oklahoma and North Carolina's bi-monthly safety and health bulletin, annual Child Care Health and Safety Calendar and Smart Start parent workshops. There is a wealth of information to guide you in this important area.

#### 6. Provider Support and Staff Support Services

- a. Important characteristics of effective licensing include strong provider support services and well-trained and supported licensing staff. We recommend that Washington review the material and information provided by the identified States for new initiatives in both of these areas.
- b. Although Washington has a number of excellent initiatives in the area of provider support services, the identified States shared much excellent materials, initiatives and tools in either or both of these important areas. There are extensive examples of provider support within this group:
  - i. All of the States, including Washington, have professional development systems for providers.
  - ii. Maryland and Virginia use a second orientation session to provide in-depth review of the regulations as a tool for all licensees and for those in trouble.
  - iii. Oklahoma has a Warm Line for providers as free telephone consultation on numerous topics of concern and also provides mental health consultants for facilities.
  - iv. Wisconsin has numerous quality initiatives as do North Carolina, Pennsylvania and Oklahoma, the latter three as a part of the quality rating system.
  - v. Virginia has two self-study training series which providers borrow and then submit a test for grading, two provider meetings a year in each office to provide special technical assistance presentations and a monopoly –like game, *Centeropoly*, developed by one of the staff, which teaches the standards.
  - vi. In Tennessee, provider support is the responsibility of the quality system technical assistance staff, both in their offices and on-site and some of it in direct response to corrective action imposed by licensing staffs.
- c. Staff support, essential for licensing staffs to feel nurtured and well cared for, is available in all of the States, as it is in Washington. Many of the States have formalized training programs for new staff and annual planned training. Some of the interesting State initiatives follow.
  - i. In Colorado, which has a larger number of contracted licensors than State staff, has tri-annual meetings for all staff, a quality assurance program for contractors and a daily supervisor in charge to take calls from field staffs. Each staff has \$200 to spend yearly on training, used to bring in special training presentations by well known authorities.
  - ii. In Wisconsin, the Compliance Specialist, who writes policy, also analyzes data and prepares the data reports for consistency.

- iii. Virginia has the case presentations, referred to in the enforcement recommendation, to assist with consistent regulation interpretation. Virginia is also trying video conferencing for training and is using the NARA Trainer-in-a-Box training packages with staffs and with providers.
- iv. Oklahoma provides 40 hours of training annually for licensing staffs along with an annual conference and holds the Pick Six monthly meetings referred to in the enforcement recommendation to discuss problem licensing issues.
- v. Virginia has built a corps of highly trained consultants in the central office in areas of nursing, psychology, research, information management and specialists in each program area who are always available to licensors to provide invaluable support and technical assistance.
- vi. Lastly, one of the themes across States is the importance of close supervision of licensing staff to train, guide and nurture them and help build their commitment to the field. Most licensing offices have low turnover in comparison to other human service professions, largely because of the ability of licensing offices of insulate themselves and provide nurturing, caring and positive work environments for their staffs.

## 7. Building a System

- a. The final recommendation to Washington is to continue to expand its role in the early care and education community building a quality system of early care and education, working with all parts of the regulatory and non-regulatory system. This is the final and necessary component of effective licensing.
- b. Licensing, as the foundation of quality, must be an integral and active player in the system building. When all parts of the system work together to create a comprehensive, cohesive whole, States are demonstrating that they can make a significant difference in the quality of care available to their young children and make the best use of the States' available resources, in all areas from manpower to the financing of the system.
- c. The system goes well beyond the early care and education community to include the business, legislative, parent, philanthropic, higher education communities and all others interested in assuring that young children in a State are provided the environment and support necessary to develop to their fullest potential.
- d. This study highlighted 10 States which served as models of States which demonstrate characteristics of effective licensing. As noted previously, 6 of the States are involved, in varying degrees, in quality rating systems in their States. Without question, those States with fully developed quality rating systems, North Carolina, Oklahoma and Tennessee as well as Pennsylvania (where the system is rapidly growing) have provided evidence that all parts of the system are profiting from the partnerships.
- e. Not only is the quality of care improving but these States are validating the systems - programs at higher quality rating levels are also in higher compliance with licensing regulations. The States are finding that their credibility in all areas

of the community has increased and they not only are getting the funding to continue to maintain and expand the quality programs but they are also finding their credibility extending to legislative support for statutory improvements to the licensing system.

- f. These systems are demonstrating the true value of licensing as the foundation of health and safety which must be met for further quality to build and be sustained. In the process, the States are refining their licensing systems and their capability to adequately enforce the law and licensing regulations while paving the way for programs to achieve higher levels of quality. Thus they improve their ability to protect children being served in out-of-home care settings and reduce the likelihood of harm.
- g. We are learning much from these systems about components that work but also about their unwillingness to remain static. These States are continually working to refine all parts of the system by correcting problems that emerge and moving on to improve the system in part and as a whole. Nevertheless, there is still much to be done and much research needed to validate what is working, why it works and what needs further refinement.
- h. Thus we encourage Washington to focus energy on being an integral part or leader in building a quality early care and education system in the State.

As a prologue of sorts, we want to report here on a recent and relevant study in Illinois, which came to the researchers attention after the data for this study were analyzed and recommendations for Washington finalized. A report published in April 2005 outlines the findings of a study by Chicago Metropolis 2020 entitled "*A Fresh Look at the Process for Ensuring the Health and Safety of Children in Child Care.*" The authors examined the approaches of six other States in certain licensing areas to provide recommendations in the form of action steps to the Illinois licensing system for improving the efficiency and effectiveness of their licensing and enforcement process. The report included the following possible action steps for Goal Three focused on developing tools for licensing staff to "facilitate compliance and handle licensing violations more effectively:"

- Continue work on the implications of tiered reimbursement on licensing and explore establishing a quality rating system
- Develop methods for communicating clearly on providers' compliance histories to parents
- Examine progressive enforcement information from other States provided in the report
- Evaluate whether there are checks and balances in place to support the licensing system in moving to progressive enforcement and related procedures<sup>21</sup>

This report clearly supports the recommendations of the current research for the Washington licensing system and provides another form of evidence of those components needed for effective licensing and protection of children from harm.

In summary, the Washington Division of Child Care and Early Learning funded this research to address the question, "*How do States effectively pursue legal proceedings against providers that are not in compliance with licensing regulations?*" The researchers have worked from the premise that an effective licensing system, with the

characteristics that experts have outlined, is critical for the State to successfully meet its statutory mandate to protect children in out of home care and to effectively enforce the law and licensing regulations. Using the *2005 Licensing Studies Program Survey*, 10 States were identified as models of effective licensing components. These 10 States were compared against various parameters in the program survey and then were interviewed to obtain in-depth information on what they perceive as components of effective licensing in their States. The findings clearly indicate that those States that seem to be engaging in effective enforcement to ensure compliance demonstrate characteristics of effective licensing. Common themes and threads of these characteristics emerged from analysis of the State interviews. After comparison of the Washington licensing system with the 10 States, recommendations were offered to the licensing agency to improve its enforcement capability to protect children from harm.

In closing, our research team recognizes the Washington licensing program for the effective work it is currently doing to protect the children in the State. As we made comparisons with other states, the Washington system received good marks. Most important and highly commendable is the fact that Washington's leadership has taken the initiative to have their program examined openly to seek and learn of ways to improve their licensing program and ultimately enhancing protections for children and families.

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## ENDNOTES:

<sup>1</sup> A compilation from a number of authors:

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G. Morgan, *New Approaches to Regulation, Selected Writings on Regulations*, (Boston, Wheelock College Center for Career Development in Early Care and Education, 1995).

N. Class, *Licensing of Child Care Facilities by State Welfare Departments: A Conceptual Statement*. (Topeka, KS 1968).

<sup>2</sup> H.S. Gazan, *Regulation: An Imperative for Ensuring Quality Child Care*, Working Paper, (New York, Foundation for Child Development, 1998).

<sup>3</sup> C. Stevens, Unpublished draft document, 2003.

P.D. Koch, *LICENSING! WHO NEEDS IT? Perceptions of the role of licensing in the field of early care and education*, National Association for the Education of Young Children Pre-Conference Seminar, Early Childhood Education/Licensing Dialogue Interest Forum, NAEYC National Conference, November 2003.

J. Collins, *Licensing Trends and Promising Practices in Child Care*, Presentation for the Louisiana Bureau of Licensing, April 2005.

H.S.Gazan, *Organizational Issues Related to Regulatory Administration*, NARA Licensing Seminar, October 1998.

<sup>4</sup> S. Ochshorn, S.L. Kagan, J. Carroll, A. Lowenstein, B. Fuller, *The Effects of Regulation on the Quality of Early Care and Education*, Child Care and Early Education, Research and Policy Series, Report No. 3, National Conference of State Legislatures, (2004).

<sup>5</sup> P.A. Briss et al., "A Nationwide Study of the Risk of Injury Associated with Day Care Center Attendance," *Pediatrics* 93, No. 3 (1994): 364-368, as reported in Oshshorn, et al, (2004).

<sup>6</sup> J. Wrigley and J. Dreby, *The Virtue of Dispassion Fatalities in U.S. Child Care, 1985-2003* draft paper in process of publication, (2004).

<sup>7</sup> J. Wood, *Child Deaths and Injuries in Regulated Care: What We Can Learn and Put Into Action*, Presentation, 2003 NARA Licensing Seminar, September 2003.

<sup>8</sup> W.T. Gormley, *Everybody's Children, Child Care as a Public Problem*, (Washington, D.C.: The Brookings Institute, 1995).

<sup>9</sup> W.T. Gormley, *Regulating Child Care Quality*, The Annals of the American Academy of Political Science (forthcoming, 1999), 11.

<sup>10</sup> W.T. Gormley, *Regulatory Enforcement: Accommodation and Conflict in Four States*, *Public Administration Review*, Vol. 57, No. 4, (July/August 1997).

<sup>11</sup> W.T. Gormley, *Differential Licensing and Its Consequences: Results from Vermont*, *Everybody's Children: Child Care as a Public Problem*.

<sup>12</sup> J. Carter, *Outcome Measures, A Preliminary View*, 2001 NARA Licensing Seminar, October 2001.

<sup>13</sup> U. S. Accounting Office, *Child Care: State Efforts to Enforce Safety and Health Requirements*, (Washington, D.C., U.S. General Accounting Office, 2004).

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<sup>14</sup> A.D. Witte and M. Queralt, *What Happens when Child Care Inspections and Complaints are made Available on the Internet?* (Wellesley College Department of Economics and National Bureau of Economic Research, Wellesley Child Care Research Partnership, November 2003).

<sup>15</sup> U.S. Accounting Office, 2004.

<sup>16</sup> Oshshorn, et al, *The Effects of Regulations*, 12 – 13.

<sup>17</sup> H.S. Gazan, *Regulations*, 9.

<sup>18</sup> W.T. Gormley, *Regulating Child Care Quality*, 17.

<sup>19</sup> National Women's Law Center, *Key Lessons from the Military for Improving Our Nation's Child Care System, Executive Summary*, (Washington, D.C., September 2002), 5.

<sup>20</sup> 2005 NARA Child Care Licensing Studies Program Survey, Publication in process, 2005.

<sup>21</sup> *The Illinois Department of Children and Family Services' Day Care Licensing System: A Fresh Look at the Process for Ensuring the Health and Safety of Children in Child Care*, a Report by Chicago Metropolis 2020, (April 2005).