



CONTEMPORARY ISSUES IN LICENSING

Enforcement Strategies With Licensed Child Care Providers

Introduction

Enforcement, that part of the licensing process dedicated to ensuring compliance with the law and the regulations, is critical for the delivery of quality, safe child care services. Strong licensing regulations, without a commitment to taking action when they are not met, do not meet the goal of protecting children from harm. Effectiveness in enforcement includes the following:

- A strong licensing statute that sets forth a range of enforcement options;
- The fair and uniform enforcement of rules;
- Sufficient qualified staff;
- Adequate funding; and
- Strong administrative support.

This report, one in a series of reports on contemporary issues in licensing, focuses on effective practices for ensuring child care licensing regulations¹ are enforced. It provides examples of enforcement practices and philosophies and new initiatives to ensure effective enforcement. Some of the practices cited may be helpful to state licensing agencies considering the challenges involved in ensuring that licensed facilities stay in compliance with state regulations. It also poses several questions for those at local, state, and federal levels focused on protecting children's health and safety in child care settings.

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¹ Because licensing of child care facilities most often occurs at the state level, there are variances in terminology from State to State. For the purposes of this brief, the terms identified are defined as follows and are used interchangeably throughout: *Regulations, Rules, Requirements, Standards, Policies and Administrative Code, Laws, Statutes.*

Methodology

In support of the Office of Child Care’s goal that children be served in safe, healthy child care settings, the National Center on Child Care Quality Improvement (NCCCQI) contracted with a group of consultants with expertise in administering and researching licensing systems to prepare a series of written briefs about critical licensing issues.

The information provided in these briefs was obtained by surveying and interviewing representatives of state licensing agencies in nine States: **CT, FL, GA, NC, OH, OK, TX, UT, and WA**. The States selected are not a representative sample but were selected based on the consultants’ knowledge that they are implementing effective and innovative practices which may be helpful to other state licensing agencies. Additionally, an effort was made to achieve some degree of geographic representation through the States selected.

Licensing personnel from the nine States selected first completed a written survey instrument and then spoke with the consultants in a telephone interview. All individuals interviewed were licensing agency directors or top-level administrators.

Information from *Research Brief #1: Trends in Child Care Center Licensing Regulations and Policies for 2011* (NCCCQI, 2013) and *The 50-State Child Care Licensing Study: 2011-2013 Edition* (NARA, 2013) are also included to provide national data and context to the information gathered from the nine States. Both of these reports include data gleaned from a national survey of licensing agencies conducted by NARA. Responses to the NARA survey were received from licensing agencies in all 50 States and the District of Columbia²

Enforcement of Licensing Regulations

The purpose of government regulation of child care is to protect the health and well-being of children (Phillips et al., 1990) and, if regulations are enforced, it has a better chance of doing so. Having programs inspected to determine if the regulations are being followed is critical in ensuring regulations are enforced (Hofferth & Chaplain, 1998). In most cases, state licensing agencies are responsible for monitoring and enforcing compliance with child care licensing regulations. By monitoring child care providers regularly and frequently, taking enforcement actions when warranted, and providing technical assistance and consultation to child care providers on compliance-related issues, licensing staff help providers achieve and maintain compliance.

In its *Licensing Curriculum* (2000), NARA defines “**enforcement**” as:

That part of the licensing process which attempts to ensure that licensed facilities stay in compliance with established state rules and regulations. Without fair and equitable enforcement of laws and rules, the agencies’ protective function will fall short and the safeguarding of vulnerable individuals will diminish.

Most States use *progressive enforcement* when noncompliance is noted during monitoring visits. In determining what action to take, States consider the following factors:

- Whether actual or potential harm has come to children;
- The number of rule violations observed during the inspection visit;
- Whether or not repeated violations exist and, if so, the length of time over which they have occurred;

² In the NCCCQI and NARA reports, as well as in this report, the District of Columbia is included in state counts and not listed separately.

- The size of the facility;
- The scope and severity of each violation; and
- The service(s) the provider offers.

Effective enforcement can be described as a progressive series of actions to encourage and compel compliance with licensing regulations through the application of positive and progressively more restrictive strategies.

Once the degree of noncompliance has been determined, the licensing agency often works with the facility to understand why the violation occurred, aids the provider in developing a plan for correcting the violation, and helps to ensure that it does not reoccur. States have varied options for corrective actions, ranging from providing technical assistance and resources, to denying or revoking the provider’s license.

Types of Enforcement Actions

The graphic below (NARA and the Muskie School of Public Service, University of Southern Maine, 2007) frames enforcement strategies as a pyramid in structure. The base represents the least intrusive preventative and corrective strategies, which aim to help programs achieve and maintain compliance. These should be the most frequently used enforcement strategies and include (but aren’t limited to) technical assistance, monitoring and training.



In the next level of the pyramid are the *intermediate sanctions* —more intrusive actions intended to resolve problems quickly as soon as they surface by giving programs the opportunity to remedy the noncompliance to avoid more restrictive sanctions. Intermediate sanctions allow providers to continue to operate and provide child care with structured provisions for the achievement of full compliance with regulations. Having an array of intermediate sanctions, including but not limited to civil fines, reducing admissions or capacity, and stipulated consent agreements, or increased inspections, gives States options and flexibility to respond to varied circumstances. Several of the States surveyed for this brief reported that consent agreements and similar strategies have been very effective in helping programs to achieve and maintain compliance, thus reducing the need for the most adverse enforcement actions.

NARA and the Muskie School of Public Service, University of Southern Maine (2007)

At the top of the pyramid are the most restrictive or *terminal sanctions* to be used when children are found to be in immediate risk, the facility is unsafe, or when unaddressed or repeated cumulative violations pose an immediate or ongoing threat to children in care. *Terminal sanctions* may include an emergency closure, suspension or revocation of the provider’s license, thus impacting the ability to offer care and, potentially, to remain in business. Although these actions are used less frequently, States must be willing to make the difficult decision to recommend closure of facilities when warranted.

When children’s health and safety is at risk because the provider cannot or will not comply with licensing regulations, a more restrictive enforcement action against the provider may be necessary.

The pyramid structure illustrates the progression of actions available to enforce compliance with regulations, and makes clear that the more positive, preventive strategies can be the most effective means to achieve compliance. However, when these don't work, intermediate, and finally the most restrictive, terminal sanctions must be used to ensure the protection of children in care.

Authority for Enforcement

Enforcement actions are directed by state statutes and materials developed to help staff implement those requirements. Most States have written enforcement policies to guide licensing staff. These written policies help ensure staff follow the same procedures in inspecting child care programs and responding to violations, thereby facilitating consistency of staffs' actions and the fair treatment of providers. When the policies are also available to providers, they support compliance by helping providers know what is expected of them and the consequences for not complying.

All States interviewed for this brief have written enforcement policies. In most cases, the enforcement policies are outlined in administrative code and are available on the licensing agency Web site. In addition, some States such as **Connecticut** and **Utah**, have guides or manuals available to support implementation of the enforcement policies. **Florida** noted that having the prescribed progressive enforcement actions outlined by statute and rule increases the potential for winning administrative appeals as does effective documentation and certification of their staff through CLEAR (Council on Licensure, Enforcement & Regulation³). **Florida** has created very detailed policies and interpretive guides for each category of care.

Changes in written enforcement policies may be the result of changes in state statute. Several of the States studied for this brief have had recent statute changes. When a State changes its licensing statute, the licensing agency may have to change the approach it takes to enforcement. Ideally, the changes will lead to improvements in enforcement. **Florida** credits the effectiveness of their progressive enforcement program to changes in prescribed procedures established by rule and outlining progressive disciplinary sanctions. They saw a continual decline in class 2 and 3 violations from 2010 to 2013.⁴ Enforcement operates on a two-year cycle. If a provider fails to comply with minimum health and safety standards during that two-year period, more serious progressive sanctions will be taken. Initially, Florida saw an increase in the number of suspensions and revocations, but that has tapered off. A program's Gold Seal Quality Care Designation may be impacted by compliance history, resulting in the loss of tax benefits and higher subsidy funding.

Inspection Findings

Licensing agencies conduct inspections of child care programs to determine if child care providers are in compliance with the state's child care regulations. During these visits, the licensing staff may observe instances of noncompliance. Some of the minor instances may be corrected "on the spot" during the inspection while others

³ The Council on Licensure, Enforcement & Regulation (CLEAR) is an international association of individuals, agencies, and organizations that comprise the community of professional and occupational regulation. CLEAR offers National Certified Investigator & Inspector Training programs—three-day, hands-on training and certification programs in investigation and inspection techniques and procedures. Retrieved February 14, 2014 from <http://www.clearhq.org/>.

⁴ In Florida, violations of the minimum health and safety standards are automatically classified as Class I, Class II or Class III based on the severity of the violation. Class I violations are the most serious in nature. The definitions of the three classes are found in "Chapter 65C-22 Child Care Standards" of the *Florida Administrative Code* (8/1/2013) at <http://nrckids.org/index.cfm/resources/state-licensing-and-regulation-information/florida-regulations/>.

may take longer to correct. After the lack of compliance is communicated to the provider, the licensing staff must follow up promptly to ensure the violations are corrected. In order for monitoring to be effective, the negative findings in inspection visits must be followed up to ensure compliance is achieved. The States surveyed for this brief use a variety of approaches to ensure this follow up occurs and is dependent on the nature of the level of noncompliance.

- **Texas** licensing staff are required to conduct a follow-up inspection within 15 days of the established compliance date for serious violations including ratios, capacity, supervision, discipline and guidance, transportation and physical facility hazards. If the violation does not endanger the health or safety of children, the provider may notify Licensing within 15 days of the compliance date by mail, fax, or email about its efforts to correct the deficiency.
- **Washington** noted that emailed photos and receipts are accepted, for example, to substantiate that facility modifications have been made; health and safety deficiencies must be followed up within two weeks of being identified; and
- **Florida** noted all noncompliance findings require “a corrective action due date” and verification of the correction, which may be accomplished by a re-inspection of the program.

States have different ways of keeping track of when follow up visits should occur. Several States (**FL, GA, TX, UT**) use their data information systems to help them track follow-up visits. In most cases, supervisors also track to ensure that visits are conducted when scheduled and/or monitor follow up as part of their quality assurance program.

Responding to Complaints

The need for state licensing agencies to take an enforcement action against a provider can also arise when a complaint is filed against the provider. All licensing agencies investigate complaints, and those investigations are most often conducted by the same staff who conduct initial and routine inspections (NARA, 2013). A few States have separate staff that work only on complaint investigations.

NCCCQI (2013) reported that the most common types of licensing complaints are about supervision, staff-child ratios, health/safety/cleanliness/nutrition, and discipline/behavior management.

Goals of a complaint investigation include obtaining accurate information about alleged violations of licensing rules and adhering to due process and fairness (NARA, 2000). If an investigation of a complaint confirms that licensing violations exist, the licensing staff may need to take proper enforcement actions. Once substantiated, violations are addressed like other noncompliance. If very minor problems are observed that can be corrected during the complaint investigation, this may negate the need for further enforcement action. The enforcement strategy is dependent on the severity of the violations, as well as if the problems are repeat violations.

Using Technology to Aid in Enforcement

Automation can improve both the effectiveness and timeliness of enforcement. With limited staff resources in many States, automation has become critical. **Georgia's** new automated system makes enforcement more effective and efficient because it automatically generates enforcement letters. For example, the system has improved the transportation enforcement process by reducing the time for executing the citations from 60 to 16 days. In **Texas**, the automated risk review system raises “red flags.” The system scans inspection findings and then

recommends the level of monitoring or enforcement. Staff have the ability to override the system's recommendations.

Automated systems help make data available, allow for data-driven decision-making, and help illustrate needed policies changes. NARA (2013) surveyed the States in 2012 and found that every State had a computerized database to store information about child care facilities. NARA also found that more than 30 States were using portable, hand-held devices during on-site inspections. These technology tools allow licensing staff to review a provider's enforcement history while in the field and provide more targeted and effective technical assistance. During the monitoring visit, the licensing staff evaluate compliance to determine what type of technical assistance is needed. The automated system monitors the amount and type of technical assistance furnished to each provider. This enables the state agency to work with providers to help them come into compliance as quickly as possible and allows them to use more corrective action plans than adverse actions.

NCCCQI (2013) found that the number of States using handheld devices during licensing inspections had more than doubled between 2005 and 2011.

Texas noted that its new automation system helps to analyze more data. The system allows staff to view the most recent enforcement action and provides a thorough history in the weighted enforcement system. **Florida** relies on their data to identify areas of high noncompliance and, once identified, to clarify rules and provide targeted training and technical assistance.

Preventive and Corrective Enforcement Strategies

The purpose of *preventive and corrective* enforcement is to encourage or facilitate compliance with the rules to prevent more restrictive actions—to resolve problems quickly before they become serious enough to require stronger action.

The States surveyed were asked which strategies were most effective in helping providers achieve and maintain compliance. NARA (2000) maintains that the regulatory strategies most effective in achieving compliance are often coupled with nonregulatory methods that promote quality care, such as accreditation, training and professional development, credentialing, peer support, and consumer education. Respondents, based on their experience, identified a number of strategies that they believed to be effective.

The *preventive* strategies such as monitoring, technical assistance and consultation, applying corrective action, and providing incentives for compliance, are the crux of enforcement.

Training and Technical Assistance

- Technical assistance
- Technical assistance before licensing and while in temporary/early license stage
- Training
- Help desk
- Technical assistance online library
- Individualized training

Communication

- Web site with resources
- Emails or phone calls
- Director or provider meetings
- Mailing of information about licensing changes or from community partners
- Webinars, online podcasts

Partnerships and Collaboration

- Provider input on regulatory changes
- Positive working relationship with other state and local agencies such as fire and sanitation
- Participation in provider organizations and local conferences
- Partnering with child care resource & referral
- Partnering with local early learning organizations

Other

- Regular monitoring
- Participation of providers in Quality Rating and Improvement Systems (QRIS)

The States surveyed use many different strategies to help programs avoid noncompliance and sanctions. Some of the strategies involve getting the programs off to a good start.

- **Georgia** reported that having the programs' QRIS levels posted online is a form of positive enforcement in that families can see a program's level of quality;
- **North Carolina** has found that quarterly center director meetings facilitated by licensing staff work well, especially if a question and answer format is used for the meetings. They also noted the importance of following up as soon as possible with providers who are out of compliance with rules, and that having an Enforcement Unit has helped make this feasible. The Enforcement Unit processes administrative actions as well as reviews for consistency across the State. It also provides consultation to staff in large meetings, maintains a matrix of actions taken which is shared with supervisors, and handles all contested cases. Licensing managers attend all administrative hearings, coordinate with attorneys, and invoice and coordinate license fee activities to ensure they are processed. In addition, they handle all public record requests. Providers are required to attend a two-day prelicensing workshop. However, only about half of the participants achieve a high enough level of compliance after the training to receive a full license. If they don't, the agency issues a 6-month temporary license and visits the new provider every 6–8 weeks during that time. If the agency staff determines that the provider has not achieved a satisfactory level of compliance at the end of that period, he or she is moved to a probationary license, or a license is denied. North Carolina noted the first year a provider is licensed is critical in establishing a pattern of compliance. Follow-up visits help ensure compliance;
- In **Ohio**, facilities that are beginning to struggle are identified early when licensing specialists and supervisors review inspection findings and note programs with potentially serious problems. Newly licensed programs receive a provisional license. Through a point system, if a program has more than 12 points within the provisional licensing period, it may be recommended for revocation rather than for continuous license. During

the continuous license, programs are assessed for potentially serious violations for possible revocation. Ohio indicated that the technical assistance offered by licensing staff during inspections is very effective as an enforcement strategy; and

- **Utah** also reported that having compliance histories online aids in enforcement.

Technical Assistance

Most States offer technical assistance during inspections and when providers are out of compliance with regulations. NCCCQI (2013) reports that nearly all States provide technical assistance and consultation during monitoring activities to help providers achieve compliance with regulations. Some examples include:

- In **Florida**, licensors provide and document technical assistance in every licensing inspection. The system automatically generates a technical support classification related to the Progressive Disciplinary Sanctions matrix, and staff add notes on the support topic. Staff make referrals to the Early Learning Coalition on curriculum issues and to the child care resource and referral (CCR&R) agencies for technical assistance and consultation. The agency partners with the Coalition which also provides quality funding to providers for licensing improvements.
- **Texas** conducts follow-up inspections and helps providers develop a plan of action. In addition, technical assistance is offered through group meetings, sometimes by a CCR&R agency or educational institution, and through rule and compliance briefings. Texas also has an extensive online library of handouts to help providers with noncompliance issues. In some cases, consultants are used to offer technical assistance;
- **Washington** noted that, while most preventive technical assistance is provided by staff, the licensing agency pays for some focused technical assistance from the CCR&R agency and, at times, as a part of intermediate enforcement actions, may require programs to access fee-based services;
- **Florida** licensing agency staff are required to conduct provider meetings whenever a new rule is introduced using a standardized PowerPoint presentation for consistency; providers are also afforded the opportunity through public workshops and public hearings to provide input when drafting new rule requirements;
- **Connecticut** and **Georgia** have a provider help desk available during business hours. In Connecticut, it is staffed by licensing personnel who rotate each day;
- **Ohio** provides a toll-free hotline that is operated by child care policy staff;
- **Utah** has a toll-free hotline that providers and the public can use to ask basic licensing questions of office staff (rather than licensing specialists);
- **Ohio** noted that administrator training has been particularly important as a prevention strategy. This training is required of a newly named administrator within 6 months of being named as such. This day-long Administrator's Rule Training is offered throughout the State on a regular basis by licensing staff;
- **North Carolina** aims for one technical assistance visit per year to all programs in addition to the regular inspection; and
- In addition to the licensing staff in **Oklahoma**, Consultation and Technical Support Staff (CATSS) work with providers who are having issues. The CATSS address QRIS and licensing issues. CCR&R agencies also provide training and consultation.

Several States use technology to keep providers abreast of licensing changes and to help them achieve compliance. For example, **Georgia** provides email blasts, Webinars, and online training modules called OLLI (Online Learning Library Initiative)—a collection of free podcasts and training modules related to child development, best practices, licensing rules, and professional development. **Connecticut** posts information on its Web site to assist providers in maintaining compliance, for example, sample facility policies and procedures to ensure compliance, and fact

sheets about various regulatory topics such as “Use of Consultants.” Most States also provide information in print or on the licensing Web site through bulletins, guidance documents, and interpretative guides.

Effectiveness of Strategies with Different Groups of Providers

Most of the States surveyed and interviewed for this brief are using somewhat different approaches to ensure compliance by each of the three major types of facilities—family child care (FCC) homes, group child care homes, and child care centers.

- **North Carolina** noted that it uses one-on-one meetings with FCC providers;
- **Ohio** uses more individual conferences with FCC providers in their own homes because it can be difficult for the providers to leave their homes. But they do try to offer some group meetings for providers;
- **Texas** and **North Carolina** noted the usefulness of providing the opportunity for interaction between FCC providers and center directors;
- **Utah** reported that having different licensors assigned to FCC homes and centers has been helpful. Having licensors specialized in one area and category of rules has helped staff to be more consistent and facilities to more easily achieve and maintain compliance; and
- **Georgia** noted the effectiveness of tailoring Webinars, orientation, training, email blasts, and rule and guidance manuals to the specific audience by program type.

Intermediate Sanctions

Several States use *intermediate sanctions* as part of the enforcement process. Intermediate sanctions help move providers toward compliance while in some cases allowing them to continue to provide care. Intermediate actions may help the licensing agency avoid taking more restrictive action when compliance can be achieved in other ways. Intermediate sanctions include actions such as:

- Giving the provider a Notice of Intent to issue sanctions;
- Changing the terms or conditions of the license, such as reducing the capacity, ages accepted into care, hours of operation or services provided;
- Changing the provider’s license status;
- Issuing a fine or requiring a forfeiture;
- Limiting or stopping the provider from enrolling children;
- Mandating the provider participate in training;
- Prohibiting the employment of a director who had managed a program that had its license revoked or denied within the past 12 months ; and
- Enacting stipulated consent agreements.

With the increase in the number of States with a QRIS, the interaction between licensing enforcement and QRIS has become important. **Oklahoma** has had a statewide QRIS system (Reaching for the Stars) since 1998. It defined three levels of noncompliance: numerous, repeated, and serious. These levels are used as guidance in determining the case management response, for example, additional monitoring visits or technical assistance). The levels of noncompliance also impact participation in Reaching for the Stars. Star levels may be denied or reduced if a facility has numerous, repeated, or serious noncompliance with applicable licensing requirements within a 24-month time frame, or a serious incident occurs resulting in injury or imminent risk of harm to children. An alternative

settlement process (enforcement actions related to QRIS) was developed as an intermediate sanction in which programs must document how they will meet and exceed minimum licensing requirements and ensure a higher standard or quality of care.

Consent Agreements and Appeals

A *consent agreement* specifically states the corrective action to be taken, the regulatory reason for the agreement, the specific amount of time allotted to come into compliance, and the consequences of failure to comply with the provisions of the agreement. Consent agreements are signed by licensee and agency and at times are negotiated with respective attorneys. Experts agree that consent agreements are one of the most useful intermediate enforcement strategies to assist licensees to achieve and maintain compliance with licensing rules. (*NARA Curriculum*, Chapter 6. 2000)

The States surveyed were asked about the number of consent agreements and administrative appeals they experienced in 2012 and the results of any appeals. Some States did not track these numbers or did not use consent agreements (Washington). For those using consent agreements, the number of administrative appeals during the year ranged from 0 to Georgia's high of 90.

If a State tracked administrative appeals and their outcome, the appeals were ruled in the agency's favor in more than 95 percent of the cases. Of the States surveyed, few have experienced being sued during the last five years as a result of legal actions taken against providers."

Most Restrictive or Terminal Enforcement Strategies

When preventive strategies or intermediate sanctions are not successful in helping providers achieve compliance, the most restrictive negative enforcement actions must be taken to protect children's health and safety. The availability of restrictive or *terminal sanctions*, along with the willingness and wisdom to use them judiciously, safeguards children by closing unsafe or unlawful facilities and removing their right to operate. These actions are required when the findings of substantial noncompliance clearly indicate that the facility WILL not comply with the terms of the license after all other less restrictive strategies have failed to result in compliance, or after one egregious violation requiring immediate closure. Forcible closures are time consuming, difficult, and expensive. These strategies are, or should always be, made in close coordination with agency's legal staff. Some actions go smoothly and others may be embroiled in appeal processes for years. The sanctions most easily identified with this level are emergency closure,⁵ denial, and revocation.

NCCCQI (2013) reported that States are using a variety of negative enforcement actions in response to facility noncompliance, with licensing revocation being the most common approach. The table below, from the NCCCQI licensing trends report, outlines the actions used by the largest number of States.

⁵ Emergency closures (sometimes referred to as emergency orders) close a facility immediately for an undetermined time, when there is immediate and serious risk to children. In some States suspension is exactly the same, while other States require a facility to close for a specific period of time so violations can be corrected.

States’ Use of Enforcement Actions in Child Care Facilities

Enforcement Actions	Number of States Using Enforcement Action in 2011	Number of Actions Taken Against Facilities by All States
Revocation of license	45	1,041
Denial of license	41	739
Emergency or immediate closure of facility	39	551
Conditional license	30	1,341
Civil fine	27	2,298
Nonrenewal of license	27	92
Consent agreement	21	185
Probation	20	571

N = 50 states, including DC, excluding ID

Note: Not all States were able to provide data about the number of enforcement actions used with child care facilities. In addition, it is assumed that the number of actions does not show the number of facilities that were in violation of the licensing regulations. Facilities could have been subject to multiple actions during one year. (NCCCQI, 2013, p. 20)

The nine States surveyed and interviewed for this brief listed a variety of frequently used enforcement actions. Some of those not included above are:

- Publishing information about the violation online or in the newspaper;
- Written warnings;
- Voluntary surrender of license;
- Reduction in QRIS level;
- Compliance agreements;
- Cited or technical assistance findings;
- Increased inspection fees;
- Prohibition against the participation of managers involved in noncompliance;
- Limiting or restricting services offered;
- Increased monitoring; and
- Emergency placement of a monitor in the facility.

Ohio indicated that a consent agreement executed after an intent to revoke has been sent is the most effective enforcement action and that this strategy works well in ensuring compliance. Ohio licensing staff also noted that using a compliance matrix (a matrix linking compliance violations to specific enforcement actions) has helped to provide a better picture of the compliance level of providers and streamline their enforcement process. **Georgia** reported that civil fines are the most frequently used enforcement actions. Fines are common because they are issued for noncompliance with transportation rules. With each additional violation relating to transportation, the

“The enforcement matrix serves as a clear guide for staff in enforcement of the rules.”

—Florida Licensing Staff

amount of the fine increases. Severity of the violation is also considered in increasing the fine. In May 2008, **Florida** adopted and implemented a uniform system for progressive enforcement for violations of minimum health and safety standards for all categories of care. The uniform system of progressive enforcement is based on the standard classification level of the violation and the number of occurrences of the

violation, within a 2-year period. Florida noted that regional staff are allowed to directly manage administrative complaints in making enforcement decisions on noncompliance based on thresholds in the progressive disciplinary

sanctions matrix (which outlines corrective action for specific violations), in consultation with the legal support staff.

Changes in Use of Enforcement Actions

Changes in use of enforcement actions can result from many factors such as an increased emphasis on enforcement, the number of licensing staff available to monitor and follow-up on compliance violations, or changes in the number of licensed providers. Four of the States surveyed (**OH, OK, UT, WA**) noted that the number of negative enforcement actions per year has *decreased*.

- **Oklahoma** indicated that its use of more severe enforcement actions has decreased because consent agreements are being used more often; consent agreements lead to facilities correcting violations so they can remain open;
- **Washington** noted that denials of initial licenses and revocation of full licenses has decreased, perhaps because of an improved provider orientation process, as well as the technical assistance being offered;
- **Utah** also reported that the number of negative enforcement actions has decreased as a result of better education of providers, but also credited better educated staff and a more consistent, accurate, and effective enforcement process; and
- **Ohio** said the decrease in the number of revocations is because of the increased use of court settlements⁶ and programs voluntarily surrendering their licenses.

Two States (**FL, GA**) reported that they are taking *more* enforcement actions than in the past.

- In **Florida**, implementation of a consistent progressive enforcement model statewide that outlines specific enforcement actions that must be taken when a provider meets the defined threshold for administrative action is the reason for this change; and
- In **Georgia**, the increase is credited to a renewed focus on keeping children healthy and safe, for example, a heightened awareness and sensitivity around safe transportation and preventing children from being left in vehicles). Also credited is the State's increased emphasis on achieving a better balance between monitoring and providing technical assistance to gain greater compliance from programs.

Support for Enforcement Actions

Most of the state licensing staff surveyed report receiving high levels of support for enforcement actions from supervisors and higher-level administrators. Support from supervisors and administrators makes the licensing staff member's job easier because they can take actions without worrying that their decisions will be overridden by a higher authority. It takes less time to administer enforcement actions when conferring with one's supervisor before acting is not required. **Georgia** noted the strong agency support is because they use a very measured approach in issuing enforcement actions, both positive and negative.

Effective enforcement includes strong support from legal staff to help licensing staff make decisions on enforcement strategies, especially the most restrictive sanctions, and to represent the agency in administrative

⁶ Ohio defines "court settlements" as agreements arrived at following an intent to revoke. Ohio lacks immediate sanctions, however, they are being considered in the current reform.

appeals of licensing decisions. Attorneys also review administrative policy and proposed licensing rules and handle court actions. Availability of legal support varies across States, but is important to effective, strong enforcement.

Most state comments about support for enforcement center on the guidance and backing the licensing staff receive from the legal staff:

- **Florida** reported that probation, suspension, denial, and revocation actions by their office require support and action by the general counsel offices throughout the State;
- **North Carolina** has two attorneys who support its efforts in settlements, informal meetings, and contested cases in the Office of Administrative Hearings;
- In **Texas**, the agency's legal division helps the licensing office by reviewing policy and rules, interpreting statutes, answering questions, reviewing letters, sharing in decision making, representing the State in court proceedings, and collaborating with the Texas Attorney General's Office; and
- **Ohio** noted that a compliance matrix was developed and is used to build adjudication orders; the matrix outlines the processes used by the licensing unit in taking legal action.

"Legal support is invaluable. Legal tells us whether we have a defensible position."

—Georgia Licensing Staff

Agency Support and Organization

Effective enforcement requires having an adequate number of qualified staff to conduct inspections and perform related tasks. It also requires having an organizational structure that supports effective and consistent practice. In 2002, **North Carolina** established an Enforcement Unit of six staff. The unit processes administrative actions as well as reviewing them for consistency across the State. It also provides consultation to staff during large meetings, maintains a matrix of actions taken and shares it with supervisors, handles all contested cases, manages all administrative hearings, coordinates with attorneys, and invoices and coordinates licensing fee activities to ensure they are processed.

In 2010, **Georgia** created a Complaint Unit that investigates most serious complaints. This has helped make enforcement more consistent. This unit manually drafts the enforcement letters which have facilitated providers' better understanding of what is required for compliance. Georgia also has a new Enforcement Unit which staff believe has helped improve the consistency of enforcement and provider follow-up. The unit processes automated enforcement actions for transportation violations. The State has also established a new intensive Technical Assistance Unit which they hope will help programs achieve higher levels of compliance.

Connecticut has a special enforcement unit called the Quality Enhancement Unit. Cases are referred to this unit when the more positive, preventive strategies have been unsuccessful or are not appropriate and intermediate or terminal strategies are being considered. The unit performs work such as drafting Notices of Violations, conducting in-house compliance meetings, negotiating Consent Orders, and preparing negotiated corrective action plans. The latter are considered by the agency to be very effective and they can be processed very quickly.

Support from the Public, Parents, and Providers

The States surveyed were asked if the level of support they receive from parents, providers, and the public for enforcement actions has changed in the past five years.

- **Texas** noted that expectations of the licensing agency are always higher when a tragedy occurs in a child care setting, regardless of whether or not it was subject to regulations;

- **Utah** reported that working with parents, providers, and the public to make the rules and processes clearer and more accessible has helped the licensing staff to enforce more effectively. Also noted was that implementation of QRIS may play a role in making all parts of the system a better and more trusted process;
- **Florida** emphasized the importance of effective interaction between the licensing staff and the provider community. This can be accomplished by making numerous presentations to providers and early childhood organizations. The agency also provides frequent communications and helpful educational materials to licensees through electronic distribution of information as well as through US mail;
- **Georgia** noted the importance of working with the child care trade industries in gaining and maintaining support for enforcement issues. The agency has hired a Family Engagement Coordinator and established several parent stakeholder groups that meet annually with the department commissioner. Staff believe collaboration with the parent groups, trade organizations, major early childhood advocacy groups, and media exposure played a part in the successful enactment of fingerprint checks for all child care providers in 2012. They also noted that the relationship between the licensing staff and providers is critical in not only maintaining support for enforcement but helping to achieve compliance; and
- **Georgia** also noted that although it still uses positive enforcement, a cultural change is occurring in the agency. For many years, the State has relied on technical assistance to help providers achieve compliance, and there was very little enforcement. The priority has changed to a greater emphasis on protecting the health and safety of children. The licensing unit has begun to use more negative enforcement actions as a result of increased emphasis on decreasing risk to children. However, the Georgia staff also noted the need for a continuum of enforcement strategies to ensure compliance with health and safety regulations..

Summary

In conclusion, we offer three areas for further discussion and consideration—the **approach used for enforcement**, the **role of technology**, and the **impact of QRIS** on licensing systems.

Approach to Enforcement

Strong, fair enforcement is 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, or immediate closure when necessary. Effective enforcement seeks to achieve a balance between helping providers with the more positive strategies and using stronger enforcement measures to assure the adequate care and protection of children.

The U.S. Government Accountability Office (GAO) report, *CHILD CARE: State Efforts to Enforce Safety and Health Requirements*, stated the following as one of the key activities to help States ensure that providers comply with state child care requirements:

Having an array of sanctions available, including the authority to revoke a license, so that providers who consistently or flagrantly violate requirements for protecting the safety and health of children can be prohibited from providing care to children. (GAO, 2004, p.3)

Without effective enforcement, licensing fails to meet its responsibility to protect children from harm. Licensing must not let providers of harmful care continue to operate. As expressed by Rolland Gerhart, Jr., former Director of the Vermont Division of Licensing and Regulation, “Revocation is a witness to the effective application of the highest political power in government, the law. It is a demonstration of the profound advocacy of the law to prevent or reduce harm to a vulnerable class of people. It is a reminder that licensing is not ad hoc, but rather a creature of law.” (Gerhart, 1985, p. 64)

The States surveyed take their responsibility to enforce the law very seriously, using varying enforcement strategies, and an emphasis on positive strategies. Most of the States report effective use of technical assistance, corrective action plans, increased monitoring, training, and consultation from other agencies. In addition, the States make effective use of technology and provide an array of free educational resources on their Web sites, for example bulletins, guidance documents, podcasts, training modules, interpretive guides, etc., to help providers achieve compliance.

Some States indicate a decrease in issuing negative sanctions due to the success of their *preventive* and *positive strategies* in helping providers to achieve and maintain compliance.

Some States characterize their philosophy as one of progressive enforcement. Enforcement can be viewed as a progressive set of steps. When low-level actions do not get the desired response, the regulator escalates the response as needed. When individuals or organizations do respond as desired, de-escalation can also occur. The findings of this study in general seem to indicate an emphasis on preventive and positive enforcement strategies with the States using a short list of the most restrictive negative sanctions. While preventive enforcement is the crux of enforcement, progressively more restrictive intermediate and terminal sanctions are important for effective enforcement.

The following questions emerge about using preventive and more restrictive strategies:

- What is the point at which preventive strategies are replaced by intermediate negative sanctions to encourage and compel compliance? Is it possible to have too much technical assistance versus too few restrictive actions or strategies?
- What is an adequate number and the best array of successful intermediate sanctions, with progressive degrees of restriction to prevent the overuse of revocation?
- Can research using administrative data and performance indicators help the licensing field determine the best mix of enforcement components and study new strategies to ensure effective and efficient monitoring for compliance with the rules?
- How can the effectiveness of enforcement be measured? Can licensing data be used to track the impact of policy changes over time to determine such outcomes as:
 - ◆ an improvement in the overall level of compliance across programs;
 - ◆ the effect of preventive strategies and intermediate sanctions on compliance;
 - ◆ a reduction in the time providers take to correct violations; and
 - ◆ a reduction in the number of serious violations or injuries to children.
- Can States continue to explore innovative ways to ensure enforcement of regulations and share these new approaches with other States for their benefit?

Automation

As automated systems use in licensing increases, human intervention is still required to review automated enforcement decisions. This involvement is critical—human expertise in reviewing decisions is vital to successful use of automation-directed enforcement. As States explore using technology in their enforcement systems, these are some issues to consider:

- Can further study of automated decision-making be done to ensure its successful and sound implementation in directing licensing decisions, including the importance of human review and intervention procedures to assure effective enforcement decisions?
- How does the greater use of technology in effective enforcement of licensing regulations impact the interaction between licensing staff and providers?
- What form of licensing staff training is needed to ensure these important relationships are not diminished but continue to be strengthened to assure voluntary compliance and strong enforcement when children's health and safety are at risk?
- Is it possible to overuse automation? Can research help determine how current and future automation initiatives are impacting the effectiveness of enforcement?
- How can States be encouraged to ensure the databases of the different agencies are linked so that information about fire safety, environmental health, building or zoning, and child care licensing monitoring results can be consolidated?

QRIS

QRIS is emerging as an important tool for improving not only the quality of care but also regulatory compliance. The relationship between licensing and QRIS is important and needs to be well coordinated and maintained for effective monitoring of early care and education programs. We know that QRIS systems are raising the "floor" of quality. As more providers meet higher quality standards, licensing rules can become more stringent.

Seven of the nine states surveyed for this study have a statewide QRIS in place, and the interaction between QRIS and licensing was mentioned numerous times in the interviews. In several states, reduction of QRIS level was referred to as an intermediate sanction for noncompliance with licensing regulations. Each of the states with a QRIS indicated that it appeared to improve provider compliance with regulations. When providers participate in QRIS they may have the opportunity for additional training, may have their QRIS rating published online, and may experience direct economic impact. Further research is needed to explore the interaction and impact of QRIS on licensing. States must consider the impact of QRIS on licensing staff responsibilities, especially in those States where licensing staff monitor compliance with licensing and QRIS criteria.

References

- Gerhart, R. C. (1985). *"Revocation" licensing of services for children and adults- A compendium of papers*. Richmond, VA: Virginia Commonwealth University School of Social Work.
- Hofferth, S. I., & Chaplin, D. (1998). State regulations and child care choice. *Population Research and Policy Review*, 17(2), 111-140. Retrieved from <http://www.jstor.org/stable/40230180>.
- Koch, P. (1998, July 27). "Enforcement of Licensing Rules." Presentation at the State Child Care Administrators Meeting, Washington, DC, July 27, 1998.
- Koch Consulting. (2005). *Report on effective legal proceedings to ensure provider compliance*, prepared for the State of Washington, Department of Social and Health Services. Retrieved from http://www.naralicensing.drivehq.com/publications/archives/nara/Effective_Legal_Proceedings.pdf.

National Association for Regulatory Administration [NARA]. (2013). *The 50-State child care licensing survey, 2011-2013 edition*. Lexington, KY: Author. Retrieved from http://www.naralicensing.org/Resources/Documents/2011-2013_CCLS.pdf.

NARA and Muskie School of Public Service, University of Southern Maine (2007). *Introduction to Regulatory Enforcement*. Lexington, KY: Author.

National Center on Child Care Quality Improvement [NCCCQI]. (2013). *Research brief #1: Trends in child care center licensing regulations and policies for 2011*. Washington, DC: Office of Child Care. Retrieved from https://childcareta.acf.hhs.gov/sites/default/files/065_1304_center_licensing_trends_brief_final.pdf.

Phillips, D., Lande, J. & Goldberg, M. (1990). The state of child care regulation: A comparative analysis. *Early Childhood Research Quarterly*, 5, 151-179.

U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care. (2010). *Pathways and partnerships for child care excellence*. Washington, DC: Author. Retrieved from http://www.acf.hhs.gov/sites/default/files/occ/pathways_partnerships_v1_0.pdf.

U.S. Department of Health and Human Services, Administration for Children and Families, Office of Child Care. (2013). *The child care and development fund proposed rule: Overview*. Washington, DC: Author. Retrieved from http://www.acf.hhs.gov/sites/default/files/occ/ccdf_nprm_overview_final.pdf.

U.S. Government Accountability Office. (2000). *CHILD CARE: State efforts to enforce safety and health requirements* (GAO-04-786). Washington, DC: Author. Retrieved from <http://gao.gov/assets/250/244025.pdf>.

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