



## CONTEMPORARY ISSUES IN LICENSING: Enforcement and Approaches with Illegally-Operating Providers

### Introduction

State licensing systems provide a baseline of protection for the health and safety of children in out-of-home care. While all States allow for exemptions to licensure, there are a significant number of providers that are not exempt and operate illegally. These are providers who care for children in a manner that would require them to get a license, but they fail to do so. Many States do not collect data on the number of illegal providers that are investigated or the outcome of those investigations, and there are no national statistics. More troubling is the lack of data on the number of children who are seriously injured or who die in illegally-operating programs. According to Family Child Care (FCC) business expert, Tom Copeland, illegal child care is unfair competition to those who follow the rules and undermines the reputation and quality of care for the entire child care field (Copeland, 2013). To address this issue, States are using a combination of education, enforcement, and incentives to better protect children in child care.

In **Texas**, six children, ranging in age from 12 months to 11 years, were left in a hot vehicle approximately 40 minutes while the unregulated caregiver shopped. A passerby alerted police, the caregiver was arrested, and the children were transported to the hospital. A supermarket video confirmed the timeframe the children were alone. Had this provider been regulated, they would have been evaluated for safe transportation practices and notified of Texas Child Care Licensing's public awareness campaign regarding the dangers of children dying or becoming seriously ill if they are left in hot vehicles.

– Reported by Texas licensing staff

This report, one in a series of reports on contemporary issues in licensing, focuses on defining and identifying child care providers operating illegally and the enforcement of the state statute. It provides examples of enforcement practices including the use of law enforcement and monetary penalties. Some of the practices cited may be helpful to state licensing agencies considering the challenges involved in this important aspect of their responsibilities.

<b>Content</b>	<b>Page</b>
Introduction	1
Background	2
Methodology	2
Defining Exemptions and Illegal Care	3
Identifying Illegally-Operating Providers	4
Enforcing the Licensing Statute	6
Summary	9
References	10
Appendix – Examples of Statutory Language	12

## Background

All States are mandated by state law to license individuals and programs that provide care for children in a setting away from their own homes. All States also allow exemptions to this requirement—individuals and programs allowed to operate legally without having a license. All other types of programs are expected to comply with the State’s child care regulations. However, some individuals or organizations choose to operate without becoming regulated by the State, electing to operate illegally.

Suppression of illegal operations refers to actions of the licensing agency to bring the illegally-operating (unlicensed) facility into full compliance with the law. Suppression of illegal operations should be done voluntarily when possible and forcibly when necessary.  
—NARA, 2000

In order to protect children’s health and safety, licensing agencies are mandated to ensure that all providers meet statutory requirements to become licensed, certified, or registered—whatever the State requires for the program type. Some States require that the State licensing agency take action only when a complaint about illegally-operating care is received; in other States the licensing agency may be expected to aggressively identify and take enforcement actions to help providers become licensed, or to ensure the illegal operations are suppressed.

NARA (2000) contends that “the first rule of practice is that the agency must adhere strictly to the provisions of its statutory base of developing its policies and procedures for suppression of illegal operations” (Chapter 10, p. 2). Since the objective is compliance with the licensing statute, the statute or related policy will often give the agency the latitude to facilitate licensing of an illegal operation, when feasible, with timeframes for compliance.

## Methodology

To support OCC’s goal of children served in safe, healthy child care settings, the National Center on Child Care Quality Improvement (NCCCQI) contracted with a group of nationally-recognized 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 nine state licensing agencies in **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 that may be helpful to other States’ licensing agencies. Additionally, an effort was made to achieve some degree of geographic representation through the States selected.

Licensing personnel from the nine States 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.

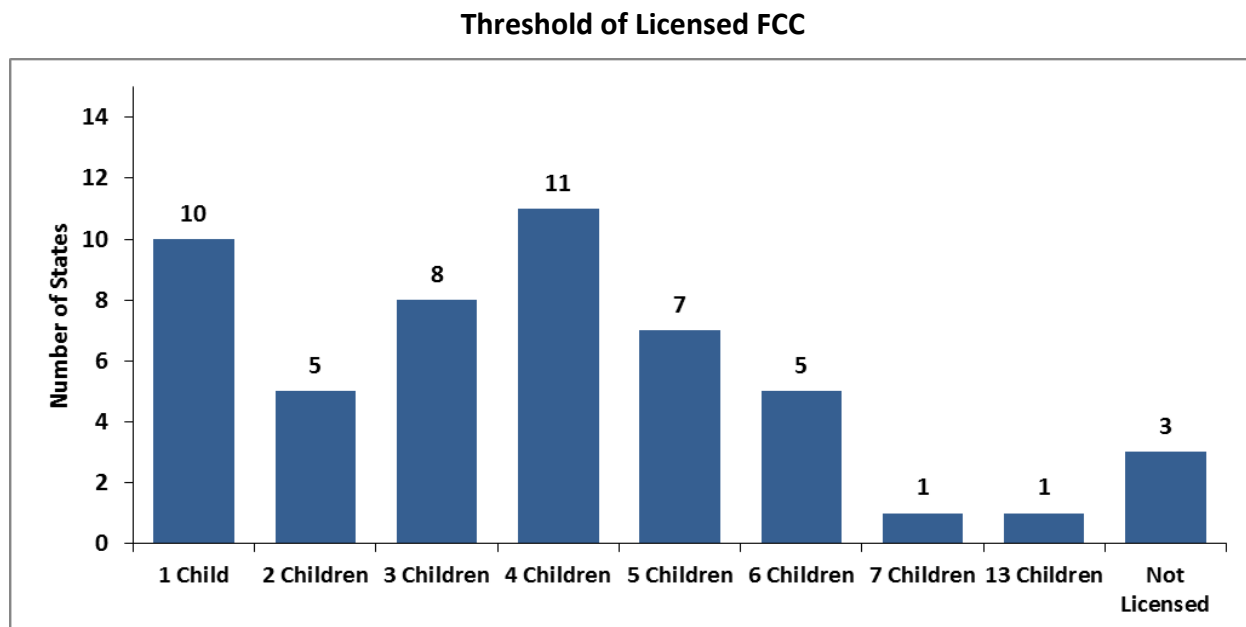
Information from *Research Brief #1: Trends in Child Care Center Licensing Regulations and Policies for 2011* (NCCCQI, 2013a) and *The 50-State Child Care Licensing Study: 2011-2013 Edition* (National Association for Regulatory Administration [NARA], 2013) are also included to provide national data and 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 Columbia.<sup>1</sup>

<sup>1</sup> 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.

## Defining Exemptions and Illegal Care

While illegal child care is usually defined as *child care offered in violation of state law*, laws vary significantly in their specific definition of illegal care and which programs are exempt from licensure. Exemptions for center-based programs may include care sponsored by religious organizations, public schools, or recreation programs, or address the number of hours of the day or week the program operates.

In addition to state exemptions for care provided by relatives (e.g., grandparents, siblings, aunts/uncles), care in the child’s home, and care provided by friends or neighbors, exemptions for FCC homes are also related to the number of children who can be served without a license or the threshold at which licensing is required. Most States set the licensing threshold for FCC homes at three or four children (NCCCQI, 2013b). The following chart shows the number of States and the licensing threshold for FCC homes.



Source: NCCCQI (2013c), National Trends in Regulating FCC. PowerPoint presentation.

### Statutory Authority Related to Illegal Care

For a licensing agency to take enforcement action against illegal operations, state law must provide this authority. The responsibility of the licensing agency should be clearly stated in the law as well as the penalties for violations. The statute should have a provision that makes it a crime (often a misdemeanor, but in some States, a felony) to operate a child care facility without a license. All of the States interviewed for this brief have statutory authority for the policies and processes they follow in responding to illegally-operating providers. See Appendix A for examples of statutory language about illegally operating providers from States.

It is important for States to develop written procedures for responding to illegally-operating providers in order to operationalize what is found in state statute. Procedures will vary dependent on the potential risk to children—potential high-risk or emergency situations require immediate injunctive action as compared with nonemergency

situations. Eight of the nine States interviewed have specific written procedures for responding to illegally-operating providers. For example, **Texas** has specific procedures for searching child care advertisements for unlicensed providers and following up on all reports. Efforts to support providers in becoming licensed should also be described in policy or statute.

## Identifying Illegally-Operating Providers

State licensing agencies are responsible for identifying illegally-operating providers and either helping them to become licensed or initiating legal action to enforce the State’s laws. However, a licensing agency’s ability to respond may be hampered by limited resources or a lack of support from agency leadership, the legislature, or law enforcement agencies.

The best “win-win” outcome occurs when the agency is able to combine its authority to suppress with its technical assistance skills in order to bring the operation quickly into licensed status where that becomes the operator’s goal. —NARA, 2000

The majority of parents assume that child care programs are licensed and inspected and that providers are required to have background checks and training (National Association of Child Care Resource & Referral Agencies, 2011). Some parents may either knowingly or unknowingly protect their provider from being identified as operating illegally. Additionally, parents with limited child care options may not support actions against home-based child care providers. For these reasons, licensing agencies usually act only when the providers are brought to their attention, typically as complaints received from private citizens, another agency, or licensed providers.

**There are a number of reasons why providers may operate illegally.** Providers and the parents who use their services may:

- Not be aware that they must be regulated. The differences between illegal, exempt, and regulated care can be confusing and vary by State and sometimes by city or county;
- Lack resources needed to meet the requirements (for example, making modifications to the home to meet fire codes);
- Not wish to be limited by licensing rules that prescribe the number of children allowed in care;
- Find barriers due to language and literacy barriers. While some States provide licensing regulations and guidance in languages other than English, lack of language proficiency may still pose a barrier to becoming licensed if a provider’s first language is not English;
- Fear getting involved with a state agency because of concerns about immigration status; and
- Not believe care provided in a private home should be subject to government regulation.

States may place more emphasis on ensuring that centers are regulated than on illegally-operating home-based providers. This emphasis may be misplaced when considering research that shows young children are more likely to be injured or die in FCC homes than in centers. —Wrigley & Dreby, 2005

## Strategies to Identify Illegal Providers

Many States do not have the resources to routinely attempt to identify illegally-operating providers unless they receive a complaint or observe actions that may suggest a provider is operating illegally. The task is also made more difficult because many state laws allow providers to care for some number of children, or for limited hours, without being licensed. Investigators generally need to observe children in the home to know how many children are present, if they are the provider’s own children, and the hours of care.

- **North Carolina** noted that it takes staff resources to follow up on care listed on craigslist and similar sites. As a result, the agency must have specific information in order to investigate. For example, they need to know whether there are more than two children in care and whether the provider is caring for children for more than four hours a day. The NC Department of Health and Human Services' Web site details who needs to be licensed and the process to become licensed. They also rely on the child care resource and referral's training and Web site to help educate parents, but continue to get feedback from parents who aren't aware of the need for their provider to be licensed;
- **GA, OK, and WA** all reported that the provider community watches and reports unlicensed care on a regular basis, and that reports also frequently come from neighbors. In **Georgia**, anyone from the public who has first-hand knowledge can file a complaint about a child care program to the Department's intake phone line; States may enlist the help of the public and other providers in identifying providers who may need to be licensed. The **Tennessee** Department of Human Services has information about how parents and the public can report suspected illegal care on its Web site. Individuals can call a toll-free number or email the Human Services' Webmaster. Information about the process is on the Tennessee Web site at <http://www.tn.gov/humanserv/adfam/ccrvc.html>.
- **Texas**, in response to the death of eight children in unregulated care in 2004, and 10 children in 2005, launched a major campaign to discourage parents from placing children in unlicensed child care, "Don't Be in the Dark about Child Care." In 2013, the Texas legislature approved 40 additional licensing positions to proactively identify illegal operations and move them toward licensure or closure. Previously, the licensing agency had only been able to follow up on reports of illegal care. The new program focuses on identifying illegal providers through Internet advertisements, signs, and publications. Staff use an internet application to match phone numbers or email address to a physical address and are trained in surveillance to determine the number of children who are in care. An injunction is sought if staff deem children are at risk and the provider does not cease the operation. Reports of illegal care are already increasing in response to the recent media releases.
- **Utah** has found that giving the public the opportunity to file complaints online has helped create awareness of the need for illegally-operating providers to become licensed or stop providing care.

Tom Copeland, an authority on the business side of FCC, proposes a plan for addressing illegal child care. His two-step approach encourages both **education** and **enforcement**.

Copeland recommends that FCC associations talk with their local resource and referral agency and child care regulatory agency about the issue of illegal child care. Since many parents and illegal child care providers do not understand the licensing law, he recommends these organizations initiate a community education campaign. This campaign should educate parents and child care providers about the benefits of regulated child care. It should also define the differences between illegal, exempt, and regulated care in the local area.

He recommends that all classified ads in local newspapers and online referral services such as craigslist be asked to post a definition of legal child care and to not allow illegal caregivers to advertise. The Web site is at <http://www.tomcopelandblog.com/2011/02/a-plan-to-eliminate-illegal-child-care.html>.

### ***Number of Reports of Illegally-Operating Care***

Though state licensing agencies investigate alleged cases of illegal care, they may not have a database or other system for recording and maintaining the information about these cases; information about illegally-operating care

is not collected at the national level. The States studied for this brief exemplify the challenges involved in knowing how much illegal care is occurring in a State or nationally.

- In **Florida**, the number of complaints of unlicensed care is not recorded separately from other types of complaints. An investigation is usually required to determine if the provider needs to be regulated or is offering legally-exempt care;
- Four states were able to provide some information on the number of reports of unlicensed care they had received during 2012, and estimates of how many of the reports were substantiated as illegal care. The numbers of investigations ranged from 92 in **Ohio** (for centers only) to 258 in **North Carolina** for both FCC homes and centers. Several States reported that many of the complaints are unsubstantiated. For example, 237 complaints of unlicensed care were investigated in **Washington** in 2012, and 108 of these were found to be valid complaints of illegal care; and
- Most of the States could not provide information about how many of the investigations of unlicensed care resulted in legal action or providers becoming licensed. **Utah** reported that 5 of the 68 providers reported they became licensed, and **North Carolina** reported that 6 of the 258 reports led to legal action.

## Enforcing the Licensing Statute

### *Ability to Enter Illegal Operations*

The ability to enter a facility helps licensing staff determine whether the provider should be licensed, as well as evaluate if there are any immediate risks to children in care. Having statutory authority to enter the facility is helpful, but entry by licensing staff should never be forced. Licensing staff in **UT** and **GA** have statutory authority to investigate complaints and enter illegally-operating homes. In **Utah**, licensing staff are authorized to enter a home to investigate potential illegal operations if it appears that there are more than four children in care.

Licensors must follow written policy and procedures which often include securing the assistance of law enforcement to enter facilities suspected of providing care illegally, particularly if there is evidence of risk to children. States report that most providers allow licensing staff to enter the home or center, however, involving law enforcement can help to protect the safety of the licensing staff or provide evidence for prosecution. One State reported that law enforcement is very helpful if there is clear evidence of risk to children.

- In **Connecticut**, the agency may do a three-hour surveillance to verify that children are in care. If it is confirmed that children are in care and no one answers the door, law enforcement is called. The police are generally responsive since children could be in danger if they are with an incapacitated provider;
- In **Georgia**, if an unlicensed program continues to deny access after at least two attempts, an inspection warrant is obtained through the local Superior Court, and law enforcement accompanies licensing to carry out the warrant; in **Florida**, law enforcement is contacted after one attempt;
- **Washington** licensing staff may not enter illegally-operating programs unless law enforcement is involved;
- Licensing staff in **Texas** must obtain written permission from a person legally authorized to grant it, for example through a court order, to enter an illegally-operating facility; and
- **Ohio** law prohibits staff from entering if the provider refuses entry, and law enforcement is required by statute to obtain a search warrant.

### *State Responses to Illegal Care*

The States studied for this brief report a variety of available actions for use with illegally-operating providers as illustrated in the following table.

**States’ Actions for Illegally-Operating Providers**

Action	States Reporting
Injunction to close or cease and desist order	CT, FL, GA, OH, OK, TX, UT, WA
Civil penalties or monetary fines	CT, GA, NC, OH, OK, TX, UT, WA
Misdemeanor charge	GA, OK, TX, UT, WA
Felony charge	NC

If a provider refuses to become licensed or is unable or unwilling to meet the requirements after receiving support from the state licensing agency, then enforcement actions are warranted and should be taken. Some examples of the enforcement process are:

- When aware of an illegal provider, **Washington** staff first send a letter with information about the licensing law and the process of becoming licensed. If information contained in a complaint indicates that children are at risk, staff make an onsite inspection. The provider must cease operation until licensed. To ensure illegal providers have ceased operation, staff make follow-up visits, often when children are being dropped off or picked up. If the provider fails to apply for licensing or to cease operation, the agency has the option to apply civil penalties and seek injunctive relief. The agency can forgive civil penalties if the provider makes application for a license, but he or she may not provide care until licensed. Providing illegal care in Washington is also a misdemeanor criminal offense. If the provider fails to cease operation after the agency directs them to stop providing care, a referral may be sent to law enforcement for prosecution. The agency has seen some successes in partnering with law enforcement in this area. The licensing process takes about 4 to 6 weeks (statute requires licensure within 90 days of application).
- **Georgia** licensing staff make an unannounced visit within 10 days of receiving a report of an unlicensed program. If it is determined that the program should be licensed, a health and safety check is conducted to evaluate critical factors including securing fire marshal, zoning, and building approvals along with compliance with core rules related to risk. If a program “passes” this checklist, they are given strict deadlines for becoming licensed with follow up to ensure that the deadlines are met. If they are not met, adverse action begins. If the provider does not pass the initial checklist, they are directed to cease operation immediately. If two cease and desist notices have been issued and the program continues to operate, an injunction is sought by the Attorney General’s office. A person convicted of operating illegally is guilty of a misdemeanor and can be fined. Each day of operation without a license is considered a separate offense. The agency suggested it would be helpful to have the data system alert them when they have had previous contact with a potentially illegally-operating provider.
- In **North Carolina**, complaints are assigned to either a licensing or investigations consultant based upon the situation and seriousness of the case. Licensing consultants investigate general complaints of illegal operations where the provider may need to be informed of the law. Investigations consultants investigate illegal operations when child abuse/neglect has occurred or the provider has already been made aware of the law; these typically involve law enforcement and require more in-depth investigation. When illegal providers are located, they must submit an application to the licensing consultant or reduce enrollment to no more than two children (the legal threshold for licensing) with agency notification to the parents. A follow-up visit is conducted to ensure the provider complied with the mandate. If the provider is caring for more than two children, the information is reported to law enforcement and the county District Attorney who determines whether to prosecute the case criminally.

- **Utah** uses a variety of approaches when a complaint is registered, including conducting an unannounced visit, collecting documentation of the illegal activity (including records and brochures), observing program operations, conducting surveillance when access is denied, and conducting interviews. If providers reduce the number of children in care to four or fewer, or reduce the number of hours care is offered to four or fewer per day, licensing is not required. The agency conducts at least one follow-up inspection to ensure compliance and may return more often, if needed. Providers can sometimes remain open if they appeal the decision. Providers have 30 days to submit an application and then correct any deficiencies identified in the onsite inspection before the agency issues a cease and desist order.
- **Ohio** conducts an unannounced “warning visit” with a follow-up visit conducted within 30 days. The licensing agency does not have the authority to close an operation. If the provider refuses to cease or reduce the level of care, he or she is referred to the State Attorney General’s Office for legal action; the Attorney General’s Office can send a cease and desist notice.
- In **Connecticut**, FCC homes must cease providing care immediately until they get a license or otherwise come into compliance. If they do not, the agency seeks an injunction and can impose fines. All household members must get a background check, including a full fingerprint check which can take up to three months. Staff make follow-up visits if they have a concern that an alleged provider has not ceased operation and is continuing to provide care. The provider is advised that failing to comply with the order to cease operations may jeopardize his or her ability to become licensed in the future.

**Penalties or Fines for Operating Illegally**

When a provider or program has been found to be operating illegally, a penalty or fine may be imposed if the facility has failed to become licensed or to reduce the number of children to below the threshold for licensure. States with monetary penalties for operating illegally are described in the following table.

**States’ Monetary Penalties**

State	Penalty
Connecticut	The licensing agency may impose a civil penalty of not more than \$100 a day for each day of illegal operation.
Georgia	A person convicted of operating illegally is guilty of a misdemeanor and can be fined not less than \$50 and not more than \$200 for each offense. Each day without a license is considered a separate offense.
North Carolina	If the case is prosecuted and the provider is found guilty, fines are administered by the Office of the Courts. A 12 month deferred prosecution usually includes a civil penalty and a prohibition from caring for children during that time.
Oklahoma	Licensing requests a fine be imposed, and law enforcement decides on the amount. It can be as much as \$500 per day.
Ohio	The fine is determined by the Attorney General’s Office.
Texas	A person is subject to a civil penalty of not less than \$50 nor more than \$100 for each day of violation and for each act of violation if the person advertises an illegally operating facility or knowingly fails to meet or maintain any criterion of an authorized exemption and engages in activities that require a license or registration.



State	Penalty
Utah	There is an initial \$500 civil penalty for operating illegally and an additional \$100 penalty for each additional finding. If significant problems exist that are likely to lead to harm of a child, the Department may impose a civil penalty of \$50 to \$1000 per day. If significant problems exist that could result in actual harm to a child, the department may impose a civil penalty of \$1,050 to \$5,000 per day.
Washington	The fine can be up to \$150 per day for FCC and \$250 per day for child care centers.

## Summary

Suppressing illegal child care operations, a critical part of child care licensing administration, remains a challenge due to the large number of illegal FCC providers and the limited resources licensing agencies have to devote to this responsibility. This brief has described the variability across the country in statutory authority, written policies and procedures, and their implementation.

States should clearly communicate to the public as well as to policymakers, the benefits of licensure and why licensing agencies must assign a high priority to the oversight of child care programs. All children in out-of-home care deserve equal protection under the law, and state child care regulations are designed to protect children from harm. Educating parents about the benefits of choosing regulated care is critical as well as providing an effective way to report unlicensed care.

There is evidence that providers who are licensed are more likely to follow practices that promote children’s development (Galinsky, 1994). Working in a FCC home can be isolating. Regulated providers have opportunities for training and receive information about recommended changes such as safe sleep practices. States can further incentivize regulation by requiring it for receipt of parent referrals and child care subsidies, as well as paying higher reimbursement rates to licensed care.

It is encouraging to see the renewed attention to the enforcement of licensing statutes, both as a fairness and equity issue across FCC, and to reduce the number of incidents of serious injury and child deaths in illegal settings. The States surveyed in this study demonstrate a serious and intentional approach to suppressing illegal operations—assisting providers with achieving compliance with the law and, when that fails, taking strong enforcement and legal actions to force them to cease operation. There are promising initiatives in some States that can serve as models for other States to consider—the **Texas** initiative, “Don’t Be in the Dark about Child Care,” with funding for 40 new licensing staff to implement the project, is one that should be closely watched.

There is much more to be done to assure that all States are able to provide the time and effort necessary to address the large population of illegal FCC providers. In some states, funding of the licensing program does not allow for adequate oversight of licensed programs, and investigations of illegal providers becomes a low priority. In other states, a lack of support of the law results in uneven or delayed enforcement. Actions that states may wish to consider are as follows:

- States may reduce the number of children that can be cared for in homes that are not licensed—reducing the threshold for licensing ensures that more children in out-of-home care are equally protected;
- Policies and procedures can be strengthened to identify and investigate illegally-operating providers with a focus on helping providers become licensed;

- Newspapers throughout the State and online advertising services can be asked on a voluntary basis to distinguish between licensed and illegal providers or refuse to run advertisements if the providers don't have a license number;
- Legal support from within the licensing agency and from external law enforcement agencies can be increased to assure that providers unwilling to comply are shut down and remain so. This may require educating policymakers on the risks of inaction;
- Training for agency attorneys who are assigned to work on licensing issues may result in more effective actions against illegal providers. Pursuing civil and criminal sanctions against illegal providers operating outside of the authority of licensing may require specific legal expertise; and
- Administrative support and funding can be increased to support a more aggressive approach to seriously reduce the number of illegal providers.

Finally, the findings in this brief point out the dearth of statistics to help the field get a better understanding of illegal providers—how many are identified, investigated, are found to be exempt, become licensed, result in civil and criminal actions, and how many are the subject of repeated complaints. Additionally, data are lacking on the number of children who are seriously injured and die in illegal care. Mechanisms by which to collect data and provide statistics, both within States and on a national level, could prove of great value in identifying and minimizing illegal care.

## References

- Copeland, T. (2013). "A Plan to Eliminate Illegal Child Care," a blog by Tom Copeland in *Tom Copeland's Taking Care of Business*. Retrieved from <http://www.tomcopelandblog.com/2011/02/a-plan-to-eliminate-illegal-child-care.html>.
- Galinsky, E., Howes, C., Kontos, S., & Shinn, M.B. (1994). The study of children in FCC and relative care. Key findings and policy recommendations. *Young Children*, 50(1), 58-61. EJ 493 657.
- National Association of Child Care Resource & Referral Agencies. (2011). *National parent polling results. The economy's impact on parents' choices and perceptions about child care*. Washington, DC: Author. Retrieved from [http://www.naccrra.org/sites/default/files/default\\_site\\_pages/2011/parent\\_polling\\_one\\_pager\\_healthsaf\\_sept\\_2011\\_0.pdf](http://www.naccrra.org/sites/default/files/default_site_pages/2011/parent_polling_one_pager_healthsaf_sept_2011_0.pdf).
- National Association for Regulatory Administration. (2013). *The 50-State child care licensing study: 2011-2013 Edition*. Lexington, KY: Author. Retrieved from [http://www.naralicensing.org/Resources/Documents/2011-2013\\_CCLS.pdf](http://www.naralicensing.org/Resources/Documents/2011-2013_CCLS.pdf).
- National Association for Regulatory Administration. (2000). *The 2000 edition of the NARA licensing curriculum, Chapter 10 Suppressing illegal operations*. Lexington, KY: Author.
- National Center on Child Care Quality Improvement. (2013a). *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](https://childcareta.acf.hhs.gov/sites/default/files/065_1304_center_licensing_trends_brief_final.pdf).
- National Center on Child Care Quality Improvement. (2013b). *Trends in FCC home licensing regulations and policies for 2011*. Washington, DC: Office of Child Care. Retrieved from [https://childcareta.acf.hhs.gov/sites/default/files/042\\_1304\\_fcch\\_licensing\\_trends\\_final\\_0.pdf](https://childcareta.acf.hhs.gov/sites/default/files/042_1304_fcch_licensing_trends_final_0.pdf).

National Center on Child Care Quality Improvement. (2013c), *National trends in regulating FCC*. PowerPoint presentation. Washington, DC: Office of Child Care.

Wrigley, J. & Dreby, J. (2005). Fatalities and the organization of child care in the United States, 1985-2003. *American Sociological Review*, vol. 70: 729-757. Retrieved from <http://www.asanet.org/images/members/docs/pdf/featured/Oct05ASRWrigleyDreby.pdf>.

*This document was originally developed with funds from Contract # HHSP23320110019YC and reprinted with funds from Grant # 90TA0002-01-00 for the U.S Department of Health and Human Services, Administration for Children and Families, Office of Head Start, Office of Child Care, and Health Resources and Services Administration, by the National Center on Early Childhood Quality Assurance. This resource may be duplicated for noncommercial uses without permission.*

## Appendix - Examples of Statutory Language

### Georgia

Bright From the Start

Georgia Department of Early Care and Learning

<http://dec.al.gov/ChildCareServices/ChildCareServicesMain.aspx>

- “Article 1 - General Provisions,” in “Chapter 1A - Early Care And Learning,” in “Title 20 – Education,” in *2010 Georgia Code* (2010)  
<http://law.justia.com/codes/georgia/2010/title-20/chapter-1a/article-1/20-1a-10/>

**§ 20-1A-10 - Consultation by department on early care and education programs; commissioned centers in lieu of licensed centers; annual licensing or commissioning; further requirements; assistance to persons or entities holding licenses; temporary licensing or commissioning; inspections; "licensed day-care center" defined**

(t) Any person who shall operate an early care and education program without a license, registration, or commission issued by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$200.00 for each such offense. Each day of operation without a license, registration, or commission shall constitute a separate offense.

(u) The department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of an early care and education program without a license, registration, or commission or the continued operation of an early care and education program in willful violation of this chapter or of any regulation of the department or of any order of the department.

### Ohio

Department of Job and Family Services

<http://jfs.ohio.gov/cdc/childcare.stm>

- “Chapter 12: Licensed Child Care Centers,” in *Child Care Manual* (11/22/2010)  
<http://nrckids.org/index.cfm/resources/state-licensing-and-regulation-information/ohio-regulations/>

**5101:2-12-07 Inspection and Investigation of Licensed and Unlicensed Child Care Centers**

(I) Upon receiving a complaint or otherwise being advised that the center is providing child care without a license, the department shall investigate and inspect all areas of the center.

(J) Upon determining that a center is operating without a license, the department shall notify the attorney general, the prosecuting attorney of the county in which the center is located, or the city attorney, village solicitor, or other chief legal officer of the municipal corporation in which the center is located, that the center is operating without a license. Upon receipt of this notification, the attorney general, prosecuting attorney, city attorney, village solicitor, or other chief legal officer of a municipal corporation shall file a complaint in the court of common pleas of the county in which the center is located, requesting that the court grant an order enjoining the owner from operating such center in violation of section 5104.02 of the Revised Code.

(K) The department may petition for injunctive relief against a center in the following instances:

- (1) When a center is operating and has not applied for a license.
- (2) When a center has applied for a license, but is operating without a license issued by the department.
- (3) When a center is operating after the expiration of a license and the center has failed to complete a timely renewal application as required by rule 5101:2-12-06 of the Administrative Code.
- (4) When a center is operating after an adjudication order revoking a license or denying a license renewal application that is final according to Chapter 119. of the Revised Code.

Ohio has the same regulations for group child care homes (Type A) at “Chapter 13: Child Care Type A Homes,” in Child Care Manual (9/23/2013) <http://nrckids.org/index.cfm/resources/state-licensing-and-regulation-information/ohio-regulations/>.

## **Oklahoma**

Oklahoma Child Care Services

Oklahoma Department of Human Services

<http://www.okdhs.org/programsandservices/cc/prvdrs/lic/>

- Oklahoma Child Care Facilities Licensing Act - Sections 401 through 418 of Title 10 of the Oklahoma Statutes (May 16, 2013)  
<http://www.oscn.net/applications/OCISWeb/DeliverDocument.asp?CiteID=63950>

### **Section 405 - License and Permit Requirements for Child Care Facilities - Application - Issuance**

A. No child care facility may be operated or maintained in this state, unless licensed or temporarily authorized by the Department of Human Services, except for the shelters certified by the Office of Juvenile Affairs pursuant to Section 2-7-202 of Title 10A of the Oklahoma Statutes; No new child care facility may be established without the prior approval of the Department, which shall be granted only after the Department is satisfied that the facility will meet minimum standards for a license to operate.

### **Section 406 - Investigations and Visitation**

C. 1. Upon receipt of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act, or any licensing standard promulgated by the Department, the Department shall conduct a full investigation. If upon investigation, it is determined that there are reasonable grounds to believe that a facility is in violation of the Oklahoma Child Care Facilities Licensing Act or of any standard or rule promulgated pursuant thereto, the Department shall:

- a. document the complaint,
- b. provide the complaint allegations in writing to the facility involved and, upon written request by the child care facility, provide a summary of the facts used to evaluate the completed complaint, and
- c. document the facility's plan for correcting any substantiated violations.

2. If the Department determines there has been a violation and the violation has a direct impact on the health, safety or well-being of one or more of the children cared for by the facility, the Department shall notify the facility and require correction of the violation.
3. The Department shall notify the facility that failure to correct the confirmed violation can result in the revocation of the license, the denial of an application for a license, the issuance of an emergency order or the filing of an injunction pursuant to the provisions of Section 409 of this title.
4. If the facility refuses to correct a violation or fails to complete the plan of correction, the Department may issue an emergency order, revoke the license, or deny the application for a license. Nothing in this section or Section 407 of this title shall be construed as preventing the Department from denying an application, revoking a license, or issuing an emergency order for a single violation of this act, or the rules of the Department as provided in Section 404 of this title.

#### **Section 410 - Violations - Punishment**

Any person or agent, representative, or officer of any child care facility who violates any of the provisions of the Oklahoma Child Care Facilities Licensing Act shall, upon conviction, be deemed guilty of a misdemeanor and punished in accordance with the provisions of Section 10 of Title 21 of the Oklahoma Statutes. Whenever any agent, representative, or officer of any child care facility shall be convicted under authority of this act, such conviction shall be sufficient ground for the revocation of the entity's license.

Oklahoma's policies and procedures about providers operating illegally are available in "340:110-1-13. Unlicensed Facilities," in "Subchapter 1. General Provisions," in "Chapter 110. Licensing Services," in *Oklahoma Administrative Code 340* (July 1, 2012) at <http://www.okdhs.org/library/policy/oac340/110/01/0013000.htm>.

## **Utah**

Bureau of Child Development  
Child Care Licensing Program  
<http://health.utah.gov/licensing/index.htm>

- "R430-1. General Licensing, Certificate, and Enforcement Provisions, Child Care Facilities," in *R430. Health, Health Systems Improvement, Child Care Licensing*. (5/1/2012)  
<http://nrckids.org/index.cfm/resources/state-licensing-and-regulation-information/utah-regulations/>

#### **R430-1-13. Operating without a License.**

(1) If a person is providing care for more than four unrelated children without the appropriate license or certificate, the Department may:

- (a) issue a cease and desist order; or
- (b) allow the person to continue operation if:
  - (i) the person was unaware of the need for a license or certificate;
  - (ii) conditions do not create a clear and present danger to the children in care; and
  - (iii) the person agrees to apply for the appropriate license or certificate within 30 calendar days of notification by the Department.

(2) If a person providing care without the appropriate license or certificate agrees to apply for a license or certificate as specified above in Subsection (1)(b)(iii) but does not submit the required application within 30 days, the Department shall issue a cease and desist order.