



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

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/s/

FROM: Stuart Wright
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SUBJECT: Early Alert Memorandum Report: *License-Exempt Child Care Providers in the Child Care and Development Fund Program*, OEI-07-10-00231

This early alert memorandum report identifies gaps in States' health and safety requirements and monitoring requirements for license-exempt child care providers in the Child Care and Development Fund (CCDF) program, which is administered by the Administration for Children and Families (ACF). The Office of Inspector General (OIG) is conducting an evaluation entitled *Child Care and Development Fund: Monitoring of Licensed Child Care Providers* (OEI-07-10-00230), with report publication anticipated in fall 2013. During data collection for this evaluation, we found that a number of States (1) exempt CCDF subsidy-receiving providers from licensing requirements, (2) did not report having certain health and safety requirements for license-exempt providers, and (3) did not have requirements in place to monitor license-exempt providers.

SUMMARY

States are required to have health and safety standards in place for all providers—including license-exempt providers—receiving CCDF money. By statute, these standards must cover three areas: prevention and control of infectious disease; building and physical premises safety; and health and safety training.¹

In reviewing information sent to us by the States, we found that a number of States did not report having any requirements for license-exempt providers in at least one of the three areas. Additionally, a few States reported that they did not have requirements in place to monitor license-exempt providers. These States are not fully compliant with Federal regulations. Other States reported allowing providers to self-certify compliance

¹ Section 658E(c)(2)(F)(i)–(iii) of the Child Care and Development Block Grant Act of 1990 (the CCDBG Act).

with health and safety requirements, and reported limited monitoring, limited use of background checks, and provider nonreporting of serious injuries. We believe that these gaps in health and safety requirements and gaps in monitoring represent vulnerabilities that could potentially lead to harm for children in care, including care financed by the Federal government.

On May 20, 2013, ACF issued a Notice of Proposed Rulemaking (NPRM) that included regulations to strengthen health and safety requirements for and oversight of CCDF providers.² Although OIG acknowledges ACF's efforts to make its regulations more comprehensive, some States do not comply with the current Federal regulations for license-exempt providers. Therefore, we are providing this early alert memorandum so that ACF can use this information to bring those States into compliance with existing Federal regulations.

As written, the proposed regulations do not allow providers to self-certify compliance with health and safety requirements, and require States to take specific steps to monitor all CCDF providers. OIG acknowledges the steps that ACF is taking to strengthen oversight of license-exempt providers through the NPRM. ACF may want to use the information in this memorandum report as further justification for finalizing the regulations with these heightened oversight requirements.

BACKGROUND

For a State to be eligible to receive funds through CCDF, ACF must review and approve a 2-year State plan.³ To continue receiving funding, a State must submit a new State plan prior to the expiration of its current plan.⁴

Approximately 600,000 child care providers in 50 States and the District of Columbia (States) provide child care funded through CCDF.^{5,6} Federal regulations allow CCDF expenditures for four types of child care:⁷ center-based, group home, family home, and in-home. The two types of child care providers discussed in this memorandum are center-based providers and family home providers; together, these two types covered, on average, 89 percent of children in CCDF-subsidized care in fiscal year (FY) 2009.⁸ Center-based child care is provided in a nonresidential setting, and family home child

² 78 Fed. Reg. 29441 (May 20, 2013).

³ Each State plan includes information about the State's CCDF program with regard to how it administers the program, child care services offered, parental rights and responsibilities, activities and services to improve the quality and availability of child care, and health and safety requirements.

⁴ 45 CFR § 98.17.

⁵ Table 7, CCDF, *Number of Child Care Providers Receiving CCDF Funds (FFY 2009)*. Accessed at <http://acf.hhs.gov> on January 15, 2013.

⁶ Although there are tribal and territorial programs in CCDF, we are looking only at State programs. Tribal programs are subject to different legal requirements and policies.

⁷ 45 CFR §§ 98.2 (Definitions) and 98.30(e)(1).

⁸ Table 3, CCDF, *Average Monthly Percentages of Children Served by Types of Care (FFY [Federal Fiscal Year] 2009)*. Accessed at <http://acf.hhs.gov> on January 15, 2013. All fiscal years referred to in this report are Federal fiscal years.

care is provided by one individual as the sole caregiver in a private residence other than the child's residence.

Child care providers who participate in the CCDF program must be operating legally within the jurisdictions in which they operate. Providers must be licensed or regulated in their respective jurisdictions or be legally exempt from regulation (license-exempt).⁹ Some States impose regulations on providers that are not licensed—Ohio, for instance, certifies its family home providers. Certification in Ohio is a form of regulation under a process that is very similar to licensing; because these providers are still regulated, we do not consider them to be license-exempt.

According to ACF data, 21 percent of children whose care is funded through CCDF are served by providers who would not be subject to any State or local child care regulations—i.e., providers that we would consider license-exempt—if they were not participating in the CCDF program.

Health and Safety Requirements

In accordance with the CCDBG Act, States must certify that under State or local law, they have in effect requirements designed to protect the health and safety of children receiving CCDF subsidies.¹⁰ Those requirements must include three areas: the prevention and control of infectious disease (including immunizations); building and physical premises safety; and minimum health and safety training appropriate to the provider setting. For licensed providers, States' licensing requirements fulfill these statutory requirements. For license-exempt providers, ACF requires States in their State plans to describe which providers are exempt from licensing under State law and instructs them to describe how these providers will meet health and safety requirements for child care services in each of the three required areas.

Monitoring Requirements

Section 685E(c)(2)(G) of the CCDBG Act requires States to ensure that providers serving children whose care is subsidized through CCDF comply with applicable health and safety standards. Federal regulations require each State to certify that it has procedures to ensure that child care providers comply with applicable health and safety requirements. ACF reported to us that, as part of the State plan, States certify that they have licensing requirements applicable to child care services. States must describe those licensing requirements and how they are effectively enforced. However, there are no specific monitoring requirements for license-exempt providers. If the State conducts health and safety monitoring only in conjunction with licensing requirements, then license-exempt providers may not be effectively monitored.

ACF Oversight Requirements

The CCDBG Act requires Federal monitoring of each State's compliance with its plan.¹¹ Although the CCDBG Act does not require States to (1) conduct routine unannounced inspections of child care providers, (2) perform background screenings on providers (or

⁹ ACF, *Fundamentals of CCDF Administration*. Accessed at <http://www.acf.hhs.gov/> on March 23, 2011.

¹⁰ Section 658E(c)(2)(F) of the CCDBG Act.

¹¹ Section 658I(b)(1) of the CCDBG Act.

their family members), or (3) require providers to report serious injuries that occur while a child is in care, ACF guidance instructs each State to indicate whether it performs these three activities. States are also asked to describe any other methods they use to enforce health and safety requirements (e.g., percentage of providers inspected annually and the length of time between inspections).¹²

METHODOLOGY

As part of our study entitled *Child Care and Development Fund: Monitoring of Licensed Child Care Providers* (OEI-07-10-00230), we surveyed the State staff responsible for licensing; health and safety; and monitoring. We requested that each State describe the health and safety requirements that fulfill requirements in the three areas (prevention and control of infectious disease; building and physical premises safety; and health and safety training), as well as monitoring methods for licensed and license-exempt child care providers.

According to CCDF State plans, 30 States allow license-exempt center-based providers to care for children receiving CCDF subsidies, and 33 States allow license-exempt family home providers to care for these children.¹³

RESULTS

States exempt many CCDF subsidy-receiving providers that provide care for children

State child care licensing regulations and monitoring and enforcement policies help provide a minimum standard of protection for the health and safety of children in out-of-home care. However, States are not required to apply licensing requirements to specific kinds of child care providers in order for them to be eligible to receive CCDF funds.¹⁴ Some States exempt providers because they are subject to different regulations (e.g., those providers who are on Federal property and subject to requirements of the Department of Defense). Providers that are exempt from licensing and not subject to more stringent requirements may not provide the same standard of care as those providers that are licensed. States exempt both center-based and family home providers.

Seven States exempt family home providers that care for children from one family, regardless of the number of children. Often, this is in addition to any number of the provider's own children or relatives who are receiving care in the home. Eighteen States exempt family home providers caring for five or fewer, three or fewer, or two or fewer

¹² ACF, *CCDF State and Territories Plan Preprint Guidance, FFY 2010–2011*. Accessed at <http://www.acf.hhs.gov> on February 1, 2011.

¹³ In its CCDF State plan, Wisconsin reported allowing CCDF funding for license-exempt center-based and family home providers. However, on its survey, it reported that no CCDF funding is allowed for those providers. In its CCDF State plan, Kansas reported all family home child care providers paid with CCDF funds were subject to licensing under State law. However, during the period of our review, these providers were actually “registered,” rather than licensed. Because the Kansas registration process relied mostly on self-attestation of compliance, we included these providers in our analysis of license-exempt providers.

¹⁴ Section 658E(c)(2)(E) of the CCDBG Act.

children (six States total for each). See Appendix A for additional analysis of the types of license-exempt providers.

Some States require providers that receive CCDF funds to register with the State. Utah, which exempts family home providers caring for five or fewer children, maintains a database of providers that are not licensed and that are paid through CCDF. These providers self-certify that they meet minimum health and safety standards. Parents of children in the care of license-exempt providers are notified that provider training is available and are instructed to share this information with the provider. In FY 2010, on average, 34 percent of children served by CCDF in Utah were cared for by license-exempt providers.

Not all States required license-exempt child care providers to meet Federal health and safety requirements

States are required to have in effect, under State or local law, requirements—designed to protect the health and safety of children—that apply to child care providers paid through CCDF. These requirements must include the prevention and control of infectious diseases; building and physical premises safety; and minimum health and safety training appropriate to the provider setting.¹⁵

Several States lacked one or more of these health and safety requirements for certain license-exempt providers. In the extreme, Mississippi officials reported that they did not have jurisdiction over license-exempt providers at all; they had no requirements for either center-based or family home providers in any of the three areas required by the statute. Two States did not report any requirements for license-exempt family home providers. Nine States did not report any health and safety training requirements for license-exempt center-based providers; four additional States lacked these requirements for family home providers. See Appendix B for additional analysis of health and safety requirements.

States with health and safety requirements for license-exempt providers commonly allowed providers to self-report compliance

The CCDBG Act requires States to have procedures in effect to ensure that child care providers paid through CCDF comply with all applicable State or local health and safety requirements.¹⁶ Of the States that did report health and safety requirements in the 3 areas, 9 States allowed center-based providers to self-report compliance with requirements, while 23 States allowed family home providers to self-report compliance with at least one requirement. In most States, this means providers simply return a checklist verifying healthy and safe conditions of the home or center (e.g., the facility has working telephones, child-accessible areas are free of hazards, alcohol and drugs are prohibited, and/or home or center is pest-free).

¹⁵ Section 658E(c)(2)(F) of the CCDBG Act.

¹⁶ Section 658E(c)(2)(G) of the CCDBG Act.

States did not always monitor license-exempt providers for compliance with health and safety requirements

Although the CCDBG Act does not require States to (1) conduct routine unannounced inspections of child care providers, (2) perform background screenings on providers (or their family members), or (3) require providers to report serious injuries that occur while a child is in care, ACF guidance instructs each State to indicate whether it performs these three activities. In eight States, license-exempt family home providers are not required to have a background check conducted. In most States, license-exempt providers are not subject to routine monitoring visits. Monitoring requirements were particularly lacking for family home providers. Additionally, only four States require license-exempt family home providers to report serious injuries. See Appendix C for additional analysis of monitoring requirements.

CONCLUSION

States may and do exempt many kinds of providers from licensing. These providers, however, are still required to adhere to Federal health and safety requirements in order to be eligible for CCDF payments. We found that not all States required license-exempt child care providers to meet Federal health and safety requirements. Further, we found insufficient procedures in effect to ensure that license-exempt child care providers comply with applicable State or local health and safety requirements. ACF needs to be reasonably assured that States have Federal health and safety requirements in place for license-exempt providers and that States ensure compliance with these requirements before they authorize CCDF vouchers.

As noted earlier, on May 20, 2013, ACF issued an NPRM that included regulations to strengthen health and safety requirements for and oversight of CCDF providers.¹⁷ These regulations, as written, propose more comprehensive health and safety requirements for center-based, group home, and family home CCDF providers, including license-exempt providers. States have the option to exempt in-home providers—i.e., individuals who provide child care services in the child’s own residence—and providers caring for relatives from these requirements. Comments on this proposed rule must be received on or before August 5, 2013.

This report is being issued directly in final form because it contains no recommendations. If you have comments or questions about this report, please provide them within 60 days. Please refer to report number OEI-07-10-0231 in all correspondence.

¹⁷ 78 Fed. Reg. 29441 (May 20, 2013).

APPENDIX A

Types of Center-Based License-Exempt Providers

Reason Provider Is Exempt From Licensing	States That Exempt Providers	Total Number of States
Religious institution	AL, CT, FL, IL, IN, MA, MN, MO, NH, VA	10
Public school	AL, CA, CT, FL, HI, IL, IN, LA, MA, ME, MN, MS, MO, NH, NY, ND, OR, UT, VA, WV, WI, WY	22
Federal property	AL, IL, KS, MI, NY, OR, TX, UT, WY	9
Temporary/"short duration"	AL, CA, HI, IN, MA, MN, MS, NY, OR, UT, WA, WV	12
Parent located on the premises	CA, IL, MI, MN, NH, OR, UT, WI	8

Source: OIG analysis of State survey data, 2013.

Types of Family Home License-Exempt Providers

Reason Provider Is Exempt From Licensing	States That Exempt Providers	Total Number of States
Serves children from one family	CA, CO, MN, MT, NE, OR, WY	7
Serves two or fewer children	HI, ME, MT, NY, SC, WY	6
Serves three or fewer children	IL, NE, NH, OR, PA, WI	6
Serves four or fewer children	MO, TN	2
Serves five or fewer children	IN, IA, MS, ND, UT, VA	6
Serves six or fewer children	ID, KS	2
All family home providers are exempt	LA	1

Source: OIG analysis of State survey data, 2013.

APPENDIX B**Methods Through Which States Allow Center-Based License-Exempt Providers To Meet Federal Health and Safety Requirements**

Methods Through Which States Allow Center-Based License-Exempt Providers To Meet Health and Safety Requirements	Number of States With Requirement for Prevention and Control of Infectious Disease	Number of States With Requirement for Building and Physical Premises Safety	Number of States With Requirement for Health and Safety Training
Has same requirements as for licensed providers, or verifies requirements through an inspection	5	7	6
Allows center-based license-exempt providers to meet requirements through public school requirements or other accreditation	14	13	10
Allows center-based license-exempt providers to meet requirements through self-reported compliance with health and safety requirements	9	8	4
Did not allow CCDF funding to providers*	1	1	1
No requirement	1	1	9
Total	30	30	30

*Note: In its CCDF State plan, Wisconsin reported allowing CCDF funding for license-exempt center-based and family home providers. However, on its survey it reported that no CCDF funding is allowed for those providers.

Source: OIG analysis of State survey data, 2013.

Health and Safety Requirement Fulfillment for Family Home License-Exempt Providers

Methods Through Which States Allow Family Home License-Exempt Providers To Meet Health and Safety Requirements	Number of States With Requirement for Prevention and Control of Infectious Disease	Number of States With Requirement for Building and Physical Premises Safety	Number of States With Requirement for Health and Safety Training
Has same requirements as for licensed providers, or verifies requirements through an inspection	8	6	3
Allows family home providers to meet requirements through training	1	1	11
Allows family home providers to meet requirements through self-reported compliance with health and safety requirements	21	23	10
Did not allow CCDF funding to providers*	1	1	1
No requirement	3	3	9
Total	34**	34**	34**

*Note: In its CCDF State plan, Wisconsin reported allowing CCDF funding for license-exempt center-based and family home providers. However, on its survey it reported that no CCDF funding is allowed for those providers.

**Note: In its CCDF State plan, Kansas reported that all family home child care providers paid with CCDF funds were subject to licensing under State law. However, these providers were actually "registered," not licensed, so we included them in our analysis of license-exempt providers.

Source: OIG analysis of State survey data, 2013.

APPENDIX C

Measures States Have in Place To Monitor Center-Based License-Exempt and Family Home License-Exempt Providers

Measure	Number of States With Measure in Place Regarding Center-Based License-Exempt Providers	Number of States With Measure in Place Regarding Family Home License-Exempt Providers
State conducts routine announced visits	6	8
State conducts routine unannounced visits	7	9
<i>State does not conduct routine visits</i>	19*	23*
State performs background checks	15	26
<i>State does not perform background checks</i>	15	8
State requires providers to report serious injuries	6	4
<i>State does not require providers to report serious injuries</i>	24	29

*Note: Two States reported that they conduct both routine announced and routine unannounced visits for center-based license-exempt providers. Six States reported that they conduct both types of visits for family home license-exempt providers.

Source: OIG analysis of State survey data, 2013.