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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

August 14, 2014

Ms. Sheila J. Poole
Acting Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144

Re: Child Care Licensing and Inspection
Report 2013-S-66

Dear Acting Commissioner Poole:

According to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we audited the Office of Children and Family Services' (Office) child care licensing and inspection activities, which are intended to ensure child care facilities are in compliance with applicable laws and are safe for children, for the period January 1, 2012 through May 9, 2014.

Background

The Office's mission is to promote the well-being and safety of the State's children, families, and communities. The Office's Division of Child Care Services (Division) is responsible for overseeing child care services in the State, with the exception of day care centers in New York City (NYC). The Division regulates and inspects child care providers and, in doing so, helps protect the health and safety of children by verifying that their care providers comply with the minimum standards established by New York State Social Services Law (Law) and Office regulations.

In New York State, persons caring for fewer than three children within home settings are considered "license exempt" and are not subject to licensure by or registration with the Office. Based on Section 390 of the Law, facilities that provide care for three or more children for more than three hours per day per child are subject to licensure or registration with the State. The Division regulates these facilities either through licensing processes for the day care centers and group family day care homes or through registration processes for the small day care centers, family day care homes, and school-age child care centers.

Section 390 of the Law mandates certain inspections for child care facilities operating in the State, including initial licensing/registration and renewal inspections. The Division also conducts: monitoring inspections (follow-up of a previous violation/complaint), fire safety inspections, complaint inspections, and technical assistance inspections.

Inspections of licensed facilities are handled by the Division's regional office staff, while inspections of registered facilities are handled by either the Division's regional office staff (20 counties), regional Child Care Resource and Referral (CCR&R) agency subcontractors (33 counties), or local Department of Social Services staff (2 counties). The Office also contracts directly with two CCR&R agencies to provide registration services in Erie and Monroe counties, respectively, and with the NYC Department of Health and Mental Hygiene to provide services in the five boroughs of NYC. Child care facilities located in NYC are not within the scope of this audit.

Results of Audit

We found that the Office's licensing and inspection activities ensure licensed and registered child care facilities are in compliance with applicable laws and are safe for children. We also found that, while the Office investigates complaints about unlicensed or unregistered child care providers, it does not have proactive measures in place to identify illegal child care providers and otherwise mitigate illegal operations, which could place children in child care at an increased risk of harm.

Child Care Facility Inspections

As mentioned, Section 390 of the Law requires certain inspections of child care facilities. Child care facilities must have a satisfactory inspection prior to initial issuance or renewal of a license or registration. In addition, 50 percent of registered child care facilities must be inspected annually. There is no similarly mandated inspection frequency requirement for licensed facilities; however, the Division has set a goal to inspect each one three to four times per year. When a violation is observed, the Office may levy an enforcement action, which may include a corrective action plan, suspension, limitation, revocation, denial, cease and desist order, or a fine. For the calendar years 2012 and 2013, a total of 71,592 inspections were performed at licensed and registered child care facilities outside of NYC.

Initial License/Registration Inspections. Prior to its opening, a facility must pass initial application and fire safety inspections. The Office will not issue a license or registration without successful inspections. In addition, all violations must be corrected before a facility is issued a license or registration.

We sampled 30 new facilities (12 that began operation in 2012 and 18 in 2013) and determined that all had received initial fire safety and application inspections prior to being issued a license or registration. These facilities also received 45 additional inspections prior to licensure or registration for various other purposes. In total, inspectors reported 201 violations during these inspections, all of which were corrected before licenses or registrations were approved.

Renewal Inspections. We also randomly sampled 30 facilities that were due for a license/registration renewal during our audit period. We found that all 30 facilities received a successful renewal inspection before their license or registration was renewed.

Routine Inspections. As of December 31, 2013, there were 9,824 child care facilities outside of NYC, 4,749 of which were registered and 5,075 were licensed. During 2013, the Division performed a total of 37,164 inspections at these facilities. The Law requires that 50 percent of the registered child care facilities be inspected annually. During 2013, the Office performed routine inspections at 3,063 registered facilities, 129 percent of the requirement. In addition, for licensed child care facilities, the Division's goal was to perform inspections three to four times per year. During 2013, 20,992 inspections were performed at these facilities, resulting in an average of 4.1 inspections per facility, meeting its goal.

Identifying Illegal Child Care Providers

Section 390-(3)(a) of the Law states the Office has the authority to make announced or unannounced inspections of the records and premises of any child day care provider, whether or not such provider has a license from or is registered with the Office. The Division's investigations into unlicensed or unregistered child care facilities are usually triggered by citizen reports called into its toll-free hotline for complaints about child care or by inspectors' observations while in the field. If inspectors observe a potentially unlicensed or unregistered child care facility while working in the field, they have authority to request access to the site in order to perform an investigation. Aside from these measures, we found the Division does not substantially engage in other proactive measures to identify and mitigate illegal child care operations.

Given that child care providers operating illegally often advertise electronically, the Division could more effectively expose such operations by adapting its investigation process to target the technological tools that operators use to lure unsuspecting families and children into unlicensed or unregistered child care. We found, for instance, that the Texas Department of Family and Protective Services hired 40 additional investigative staff to work with tips, and to search social media and other publications, in an effort to proactively seek out illegal operations.

To test the value of such measures, we conducted a search of child care advertisements posted on an Internet site, and then verified corresponding licenses or registrations by checking the Office's child care listings posted on its website. Through our search, we identified 28 advertised child care operations located outside of NYC that were not listed on the Office's website as either licensed or registered. We contacted these 28 providers to determine how many children they currently had in their care and if they were willing to accept any more. Our review found:

- Eight agreed to accept additional children, which would have put them over the legal limit; and
- Another was already over the legal limit and agreed to accept additional children.

We referred these cases to the Office for investigation and appropriate action. More broadly, these tests demonstrate that additional procedures, including using Internet services,

would help the Office to more proactively seek out and identify illegal child care providers.

Recommendation

1. Institute policies and procedures to proactively identify and mitigate illegal child care operations.

Audit Scope, Objective, and Methodology

The objective of our audit was to determine if the Office's child care licensing and inspection activities ensure licensed and registered child care facilities are in compliance with applicable laws and are safe for children, for the period January 1, 2012 through May 9, 2014. To achieve our objective, we interviewed Office officials and reviewed Social Services Law as well as regulations related to child care. We reviewed information posted on the Office's Child Care Facilities System, the database of record for all State-regulated child care providers. We obtained a file of all Division inspections of child care facilities from January 1, 2012 through December 31, 2013 and tested the inspections for compliance with requirements in the Law and regulations. We used interval sampling to determine if new facilities had an initial fire safety inspection and an initial application inspection prior to operation. We also used interval sampling for inspections with violations to determine if the violations were corrected. Using interval sampling allowed us to ensure we included facilities in each region.

We also randomly sampled the Office's list of completed inspections to ensure that the reported inspections were completed and randomly selected facilities that were due for a license/registration renewal to determine whether these inspections were completed. We made a site visit to the Syracuse Regional Office to determine how the regional office ensures that required inspections are performed. We also searched for providers advertising on the Internet to determine if they were legal child care facilities. We compared those facilities to the Office's database of registered and licensed facilities and then contacted those that were not registered or licensed by the Office to determine if they should have been registered or licensed to legally operate.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform our audits to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

We provided a draft copy of this report to Office officials for their review and comment. Although Office officials note the law creates no affirmative duty on the Office to institute policies and procedures to proactively identify and mitigate illegal child care operations, they indicate they will develop a procedure for periodic online reviews of potential illegal child care providers and, if identified, will evaluate and, as warranted, investigate. Their complete response is attached at the end of this report.

Within 90 days of the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Children and Family Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and where a recommendation was not implemented, the reason why.

Major contributors to this report include Donald Geary, Todd Seeberger, Mike Cantwell, Cheryl Glenn, Kevin Talbot, and Marzie McCoy.

We wish to thank the Office's management and staff for the courtesies and cooperation extended to our auditors during this audit.

Very truly yours,

John Buyce, CPA, CIA, CGFM
Audit Director

cc: Mr. Ralph Timber, Audit Liaison

Agency Comments



July 15, 2014

Mr. John Buyce, Audit Director
Office of the State Comptroller
110 State Street
Albany, NY 12236

New York State
Office of
Children &
Family
Services

Dear Mr. Buyce:

<http://ocfs.ny.gov>

Andrew M. Cuomo
Governor

Sheila J. Poole
Acting Commissioner

The Office of Children and Family Services (OCFS) has received the draft audit report on Child Care Licensing and Inspection, Report 2013-S-66. The OCFS response to this report will have two components. The first part of the response will provide technical changes in language designed to more accurately describe the Child Care licensing and inspection processes. The second part of the response will address the one recommendation contained in the report.

Here are the proposed language changes OCFS offers:

Capital View Office Park

52 Washington Street
Rensselaer, NY
12144-2834

1. Page one, 2nd paragraph under "Background": The last sentence says that the regulatory requirements are essentially the same for each modality of day care. It would be more correct to say that the regulations address the same topic areas for each modality and establish appropriate requirements for each. The standards for day care centers, while similar in nature to those of family day care homes, are not, in the view of OCFS, essentially the same.

2. Page two, 1st paragraph under "Initial Licensing/Registration Inspections": The second sentence states that CCFS will not issue a license or registration without successful inspections. It should say that OCFS will not issue a license or registration without successful inspections. There are edits in the Child Care Facilities System (CCFS) that preclude the issuance of a license or registration without a successful inspection, but it is OCFS that issues the license or registration.

The one recommendation in the report calls for OCFS to "Institute policies and procedures to proactively identify and mitigate illegal child care operations." It is important to note that the law creates no affirmative duty on OCFS in this area. OCFS does review and investigate complaints of illegal child care operations as we are made aware of such situations. Regarding the specific situations presented by the Office of the State Comptroller (OSC), OCFS has initiated investigations into the potential illegal programs that were identified.

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See Note
Below



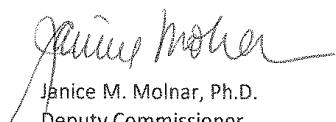
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*Based on the Office's comment, auditors deleted the sentence in question from the final report.

OCFS will develop a procedure for implementing periodic on-line reviews of potential illegal child care providers in the future. Any potential illegal providers that are identified will be evaluated and, as warranted, investigated.

OCFS appreciates the opportunity to respond to this draft report. Please address any questions or concerns you may have to Ralph Timber, OCFS Audit Liaison, at 473-0796.

Sincerely,



Janice M. Molnar, Ph.D.
Deputy Commissioner
Division of Child Care Services

cc: Ralph Timber
James Conway