



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued March 27, 2013

Department of Early Education and Care

For the period July 1, 2010 through September 30, 2011



TABLE OF CONTENTS

INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS	1
OVERVIEW OF AUDITED AGENCY	4
AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY	5
AUDIT FINDINGS	7
1. INADEQUATE DOCUMENTATION TO SUBSTANTIATE THAT REQUIRED CORI CHECKS ARE BEING PERFORMED ON STAFF AT EEC’S LICENSED CHILD CARE PROVIDERS	7
2. CHILD CARE PROVIDERS ARE NOT IMPLEMENTING TIMELY CORRECTIVE ACTION FOR ALL INSPECTION VIOLATIONS	11
3. ROUTINE UNANNOUNCED INSPECTIONS ARE NOT BEING PERFORMED FOR LARGE FAMILY CHILD CARE HOMES	14
4. INADEQUATE DOCUMENTATION OF CHILDREN’S RECORD CHECKLISTS	17
5. LICENSING PROCESS ASSOCIATED WITH WELL WATER REGULATIONS NEEDS IMPROVEMENT	19
6. EEC’S INTERNAL CONTROL PLAN, PROGRAM REGULATIONS, AND POLICIES AND PROCEDURES NEED UPDATING	22
a. Internal Control Plan	22
b. Code of Massachusetts Regulations	23
c. Policies and Procedures	24
OTHER MATTERS	27
APPENDIX	32

INTRODUCTION AND SUMMARY OF FINDINGS AND RECOMMENDATIONS

The Department of Early Education and Care (EEC) is the lead agency of the Commonwealth for administering and providing early education and care programs and services to children and is responsible for the licensure or approval of several different kinds of care, including: child care centers, school-aged child care programs, Family Child Care (FCC) homes, family foster care which is not supervised and approved by a placement agency, placement agencies, group care facilities and temporary shelter facilities. In addition to licensing child care providers, EEC is responsible for enforcing applicable state laws, regulations, and its own licensing standards to ensure the health and safety of all children in its licensed early education and child care programs.

According to the Federal Bureau of Investigation's National Incident-Based Reporting System, crimes against children make up a large majority of sexual assaults handled by law enforcement agencies. It is therefore essential that EEC maintain effective controls that not only serve to ensure that individuals who provide child care services within the Commonwealth do so in a safe and clean environment but also employ staff who pose no threat to the health and safety of the children in these programs.

This performance audit evaluates certain administrative activities conducted by EEC, including those related to its oversight of child care providers during the 15-month period July 1, 2010 through September 30, 2011. Our findings and recommendations are detailed below.

Highlight of Audit Findings

- EEC is not ensuring that its licensed child care providers are performing the required Criminal Offender Record Information (CORI) checks on their staff, both at the point of hire and then every three years, as required by EEC regulations. We reviewed a judgmental sample of 39 Group child care provider files from three of EEC's five regional offices and found that the required CORI checks had not been conducted for 15 (10%) of the 152 individuals working at these child care providers.
- We found that, in some instances, EEC child care providers had not documented the corrective measures they had taken to address deficiencies identified by EEC inspections in a timely manner. These inspections are conducted by EEC to verify that child care facilities are in compliance with key health and safety requirements. Furthermore, we noticed that some inspection violations had not been followed up by EEC staff for over two years to ensure that corrective measures were taken. EEC's failure to promptly follow up on inspection violations increases the risk that inspection deficiencies will not

be timely corrected and, more importantly, could endanger the health and safety of children in care.

- EEC, contrary to Chapter 15D, Section 9(b), of the Massachusetts General Laws, did not subject large FCC homes to routine unannounced inspections. Moreover, we noted that new EEC regulations no longer define large FCC homes and ignore mandatory unannounced inspections. Routine unannounced inspections provide an important oversight function, especially in homes where deficiencies have been previously reported and the health and safety of the children may be at risk.
- EEC did not ensure that Children's Record Checklists are properly completed by FCC and Large Group and School Age Child Care providers. We found that only 21 (17%) of the 124 Children's Record Checklists reviewed had been adequately completed. Children's Record Checklists specify such information as emergency contacts, authorized pickup person(s), transportation plans, progress reports, lead screening results, and health care and immunization information that providers must maintain for each child.
- Two FCC providers, known to have well water, did not provide EEC with the required inspection report. Untested water from a private water source could potentially be harmful to children if used for drinking, washing, and cooking.
- EEC's fiscal year 2011 and 2012 annual Internal Control Questionnaires submitted to the Office of the State Comptroller indicated that EEC's Internal Control Plan was updated within the past year. However, our review of this plan noted references to outdated regulations, a repealed law, and agency names that have changed. In fact, we found that some of the policies and procedures referenced within the plan have not been updated in over five years.

Other Matters

- Although Massachusetts regulations require state child care agencies such as EEC to ensure that their contracted providers are requesting background checks for their staff, there is no requirement that state child care agencies perform other analytical procedures such as periodically matching Massachusetts registered sex offender addresses to Massachusetts licensed child care provider addresses. During our audit, we compared the most recently reported home addresses of all Level 2 and Level 3 registered sex offenders to all licensed Commonwealth child care provider addresses during the 15-month period July 1, 2010 through September 30, 2011 and found 119 instances where Level 2 and Level 3 sex offender addresses matched addresses of EEC child care providers. While we recognize that all 119 may not pose a problem because some of the information in the sex offender registry may be outdated, we believe that routinely conducting this match will serve to better ensure the safety of children in EEC's programs.

Recommendations of the State Auditor

- EEC should put in place proper monitoring controls and evaluation procedures to ensure that criminal background record checks are performed prior to and during an individual's employment. EEC should also ensure that CORI checks are completed for any child care provider employee who has or could have potential unsupervised contact with children.
- EEC should ensure that all child care provider corrective actions for cited inspection violations are implemented timely and properly documented on the Statement of Noncompliance as required by EEC policy. Moreover, EEC should conduct timely follow-up reviews to ensure that corrective actions taken by providers are satisfactorily implemented.
- EEC should conduct routine unannounced inspections for large FCC homes in compliance with the inspection requirements of Chapter 15D, Section 9(b), of the General Laws.
- EEC should ensure that provider-prepared Children's Record Checklists are properly completed, include all necessary information, and are maintained on file for review. Any missing or incomplete checklists should be noted as noncompliant and subject to corrective action.
- EEC should revise its child care provider license application and renewal form to clearly identify and document all providers using private well water and ensure that all private well water is properly inspected and approved and evidence of inspection reports is retained on file.
- EEC should review all of its policies and procedures and update references to regulations, laws, and agency names. EEC should ensure that its policies and procedures accurately reflect current practices and should prepare and develop an Internal Control Plan that is fully compliant with Chapter 647 of the Acts of 1989 (An Act Relative to Improving Internal Controls within State Agencies) and Office of the State Comptroller guidelines.
- Regarding the issue addressed in the Other Matters section of this report, EEC should consider establishing a policy requiring that child care site addresses of applicants seeking initial EEC license approval and EEC-licensed child care programs seeking to renew their license be compared with the addresses of registered sex offenders. Any matches identified should be investigated and appropriate measures should be taken to ensure the safety of the children in the program.

OVERVIEW OF AUDITED AGENCY

The Department of Early Education and Care (EEC), established by Chapter 15D of the Massachusetts General Laws, is responsible for the licensing of child care providers and for providing the following: financial assistance for child care services to low-income families, information and referral services, parenting support for families, and professional development opportunities for staff in the early education and care field. EEC administers these services through five regional offices located in Lawrence, Quincy, Springfield, Taunton, and Worcester. During fiscal year 2011, EEC administered approximately \$548 million, of which federal funds totaled approximately \$423.7 million.

EEC is responsible for enforcing licensing standards to ensure the health, safety, and education of all children in early education and child care. High-quality early education and care settings provide safe places for children to grow, offer good nutrition, provide environments for socialization, and encourage physical development and learning. EEC's Field Operations Unit oversees the licensing of all programs that provide residence-based family child care (FCC) and center-based Large Group and School Age Child Care (Group child care). The Field Operations Unit is composed of approximately 110 staff members inclusive of management and has the responsibility for the operations of the five regional offices.

As of September 30, 2011, 7,882 FCC and 2,983 Group child care programs were licensed in the Commonwealth. FCC and Group child care licenses are valid for three years and two years from the date of issuance, respectively. These programs employed approximately 74,500 staff.

This audit was conducted as part of the Office of the State Auditor's continuing efforts to assess the operation of state agencies and determine whether there are opportunities for improving state government.

AUDIT SCOPE, OBJECTIVES, AND METHODOLOGY

In accordance with Chapter 11, Section 12, of the Massachusetts General Laws, the Office of the State Auditor conducted an audit of the Department of Early Education and Care (EEC) for the period July 1, 2010 through September 30, 2011. The objectives of our audit were to review and evaluate certain administrative activities of EEC relative to its licensing and inspection of Large Group and School Age Child Care (Group child care) programs and Family Child Care (FCC) homes to determine whether EEC: (1) was conducting all of its required inspectional activities and had established adequate internal controls over such activities and (2) was ensuring that licensed child care providers were complying with EEC regulations, including requesting required background checks, implementing corrective measures to address in a timely manner any program deficiencies identified by EEC during its site inspections, and maintaining required staff and child records and submitting required reports to EEC. We also reviewed EEC's system for assessing penalties, such as suspending and/or fining child care providers that were noncompliant with applicable laws and regulations.

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

To achieve our audit objectives, we reviewed the following:

- EEC regulations and policies and procedures;
- Licensing inspection files and related documentation;
- EEC's management system for assessing penalties for child care providers that do not comply with applicable laws and regulations.

We conducted interviews with EEC management and other staff, reviewed EEC child care licensing records and supporting source documents, and performed necessary tests of these records. Source documents included but were not limited to the Observation Record Checklist, Children's Records Checklist and Staff Records Checklist.

For purposes of this audit, we relied upon electronic data files extracted from the EEC Licensing Manager (LM) business application. The LM stores data on all types of child care programs, including specific information on licensed child care providers in the Commonwealth. To assess the reliability of this data, we reviewed available documentation, interviewed EEC officials responsible for compiling this data, and performed basic reasonableness checks by tracing LM data records to source documents in case files to determine the accuracy and completeness of stored data. Accordingly, for the purposes of this report, we determined that the data was sufficiently reliable.

In addition, based on our analysis of a list of child care providers obtained from EEC, we selected a nonstatistical, judgmental sample of 50 child care provider files from each of the Lawrence, Quincy, and Worcester regional offices totaling 111 FCC and 39 Group child care programs for our compliance tests. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions.

Based on our audit we have determined that, except as reported in the Audit Findings section of this report, for the period July 1, 2010 through September 30, 2011, EEC had adequate internal controls in place and was in compliance with applicable laws, rules, and regulations for the areas tested.

AUDIT FINDINGS

1. INADEQUATE DOCUMENTATION TO SUBSTANTIATE THAT REQUIRED CORI CHECKS ARE BEING PERFORMED ON STAFF AT EEC'S LICENSED CHILD CARE PROVIDERS

The 606 Code of Massachusetts Regulations (CMR) 14.10 prohibits persons convicted of certain crimes from becoming employees of child care providers. However, we found that the Department of Early Education and Care (EEC) does not have adequate internal controls in place to ensure that all staff members working at its licensed child care providers have undergone a proper background check. Without such controls, EEC cannot effectively ensure that all staff working for its licensed child care providers are eligible to work in these positions.

Large Group and School Age Child Care (Group child care) provides early education and care and typically refers to larger entities that may care for 10 or more children at a time in a center- or school-based setting. Group child care license applicants, employees, and volunteers who have access to children are to undergo criminal background checks during the initial hiring process and after every subsequent three years of employment. EEC regulates these licensed providers and is required by 606 CMR 14.05 to conduct a Criminal Offender Record Information (CORI) check on the following individuals:

Any person seeking employment, or a position as a regular volunteer, or any person currently employed or serving as a regular volunteer, to provide services for or on behalf of EEC or its licensed and/or funded programs and who has the potential for unsupervised contact with children; any applicant for family child care, family child care plus, or large family child care licenses, all their household members who are 15 years of age or older, all persons 15 years of age or older regularly on their premises, and applicants for approval as certified or regular assistants; applicants to provide in-home, non-relative subsidized child care; and applicants for approval as foster parents, all their household members who are 15 years of age or older and all regular visitors who are 15 years of age or older.

This regulation also requires applicants for licensure or employment to be subject to a background check with the Department of Children and Families (DCF) to determine whether they have been identified by DCF as a person responsible for the abuse or neglect of a child. Group child care providers are required to renew their licenses every two years. Although EEC is responsible for performing the CORI checks for licensees, subsequent CORI checks for employees are the responsibility of the Group child care licensee. In addition, 606 CMR 7.04(18) (c) requires Group child care providers to maintain evidence of these completed background checks for each employee.

Group child care providers are required to complete a Staff Records Checklist prior to initial licensure or license renewal and submit a copy of the required checklist to EEC on the day of the licensing inspection. The Staff Records Checklist documents child care staff record requirements, including background record check status, date of hire, date of birth, date of physical, first aid and CPR certification, professional development hours, and immunization status. EEC officials told us that the Staff Records Checklist is a tool provided to providers so they can self-assess compliance with the record requirements. However, EEC provides Group child care providers with instructions for completing the required Staff Records Checklist that state, in part:

*These instructions are to assist you in completing the **required** staff records checklist. A copy of the current checklist must be submitted to the licensor [EEC] on the day of the licensing study. (Please note: a blank space on the checklist will indicate that the information is not on file.)*

During our audit, we conducted a nonstatistical, judgmental sample of 50 child care provider files from each of the Lawrence, Quincy, and Worcester regional offices totaling 111 Family Child Care (FCC) and 39 Group child care programs for our compliance tests. For this specific test we selected the 39 Group child care provider files from three EEC regional offices. Group child care provider files maintained by EEC contain a comprehensive collection of copies or original documents, such as provider business documents, required certificates (e.g., building, fire), child care provider applications and licenses, staff schedules, personnel policies, staff and children's inspection checklists, program plans and policies, and background check information. Based on our review of these provider files, we found that 10 files (20%) did not have evidence that background checks were conducted for 76 of the 152 (50%) identified staff members listed in these files. In addition, there were two additional Group child care provider files that did not contain a Staff Records Checklist. Without a Staff Records Checklist, we were initially unable to determine whether any of the associated staff members had completed CORI checks. However, we provided this information to EEC management, who investigated and subsequently provided us with documentation to support that all employees for these two Group child care providers had a valid CORI check at the time of the licensing inspection.

Further, we provided EEC management with our list of the 76 child care provider staff members missing evidence to support whether a background check had been performed. We removed two of the staff members from our results after EEC identified them as having been

hired subsequent to the date of inspection. For the remaining 74 staff members, EEC reviewed the list against its proprietary criminal background check database and determined that 59 staff members did in fact have a current criminal background check on file. However, 10 staff members had an expired criminal background check, whereas five had no record of ever having a criminal background check performed.

Below is a summary of the 74 staff members and their associated criminal background record check status as noted within EEC's proprietary criminal background check database:

Providers	Staff with Valid Criminal Background Check	Staff with Expired Criminal Background Check	Staff with No Record of a Criminal Background Check	Total Staff per Provider
Provider A	21	10	2	33
Provider B	3	-	2	5
Provider C	17	-	-	17
Provider D ¹	-	-	-	-
Provider E	3	-	1	4
Provider F	3	-	-	3
Provider G	3	-	-	3
Provider H	4	-	-	4
Provider I	1	-	-	1
Provider J	4	-	-	4
Total Staff	59	10	5	74

It should be noted that seven of the 15 identified staff members who had missing or expired criminal background checks were classified in their job descriptions as assistants. According to EEC officials, assistants do not have unsupervised contact with children and therefore do not require CORI checks.

Based on our discussions with EEC staff, we determined that one of the reasons this may be occurring is that the EEC licensor's review of staff records during inspections is based on

¹ Provider D had not yet been approved by EEC; therefore, background checks had not been completed on staff.

randomly selected personnel files. Therefore, CORI checks that were not conducted can go undetected.

Recommendation

In order to address our concerns relative to this matter we recommend that EEC:

- Establish effective monitoring and evaluation procedures to ensure that the required criminal background record checks are performed prior to and during an individual's employment, including all individuals who either have or could have the potential to experience unsupervised contact with children.
- Ensure that Staff Records Checklists accurately reflect all staff members' criminal background check status. All blank spaces on the checklist for any employee, or marks indicating missing information, should be noted as noncompliant and subject to provider corrective action. Further, the criminal background check space on the Staff Records Checklist should be marked as "N/A," to indicate not applicable, for those staff members who are exempt from undergoing a background check. An explanation as to why a staff member may be exempt should also be provided
- Formalize a policy to perform a 100% review of Group child care staff personnel files to ensure that all required CORI checks have been conducted.

Auditee's Response

In response to this issue, EEC officials stated, in part:

The Department of Early Education and Care licenses over 11,000 large Group and School Age facilities, Family Child care Homes and residential and Placement Agencies. Those licensees are responsible for the care of approximately 250,000 children on any given day. According to national studies the Department is seriously understaffed to carry out this responsibility. Child Care Aware (formerly the National Association of Child Care Resources and Referral Agencies) recommends that child care licensing agencies maintain a ratio of one licensor to fifty licensed group child care programs and one licensor to seventy five family child care homes. The Department maintains ratios of one licensor to one hundred programs for group child care and one licensor to three hundred homes for family child care. This ratio is twice the recommended standard for group childcare and four times the recommended standard for family child care

Of the 15 identified staff members that did not have a current background record check on file, EEC was able to determine post-audit that 7 of the 15 did in fact have a current background record but that the names cross-referenced with EEC's BRC [Background Records Check] database were misspelled, leading to incorrect findings. As a result, there were only 8 of 150 identified staff members that did not have a current background record check on file. Therefore, only 5.3% of the random sample reviewed by OSA did not have a current background record check on file....

OSA's statements, as cited above, would incorrectly lead the public to believe that staff members of group child care programs never had any background record check

performed prior to employment. This is simply not the case. The eight identified staff members were employed by the same child care provider and had prior background record checks performed. This one particular child care provider had difficulty using EEC's electronic database submission and did not renew the background records checks for these eight staff members within the prescribed three year timeframe. A random check performed by EEC's licensor during the renewal visit to this particular child care provider unfortunately did not uncover these eight employees.

As a result of OSA's finding, EEC has changed the Staff Records Checklist Instructions, requiring that the program indicate the date(s) of the most recently conducted CORI and DCF review for each staff member. EEC has also changed its working procedure for its licensors. Previously, the EEC licensor conducted a review of a random sample of personnel records for comparison with EEC's BRC database, when licensing or renewing a child care program. EEC's revised procedure now requires that an EEC licensor review all personnel records against EEC's BRC database to ensure that background record checks have been performed and are up-to-date. In addition, EEC will ensure that the Staff Checklist maintained in the Department's file for each program is updated to reflect compliance with the background record check requirements.

EEC is also reviewing whether all assistants who are employed by a program licensed or funded by EEC should be subject to a background record check. EEC will issue guidance to all its programs regarding its decision.

Auditor's Reply

Our review of EEC's records found that a percentage of staff at EEC providers did not have current criminal background checks on file. This fact is correctly stated in our report and, in the OSA's opinion, is not misleading. Further, in the OSA's opinion, since background checks represent an important control for ensuring the safety of children in EEC programs, any instances of noncompliance are concerning. Also, EEC is responsible for making sure that it maintains accurate and complete information in its database to ensure that it can effectively monitor provider compliance to this and other requirements. However, based on its response, the actions taken by EEC in this area should serve to help it ensure that required background record checks are performed and are up-to-date, and that all staff members working for its licensed child care providers are eligible to work in these positions.

2. CHILD CARE PROVIDERS ARE NOT IMPLEMENTING TIMELY CORRECTIVE ACTION FOR ALL INSPECTION VIOLATIONS

We found that EEC does not effectively monitor child care providers to ensure that any deficiencies it identifies during its site inspections of programs are corrected in a timely manner. Child care providers are required to submit corrective action plans to EEC within two weeks after deficiencies have been identified at their programs. However, we found that EEC has not

established effective monitoring procedures to ensure that providers are submitting this required corrective action plan information. Moreover, we identified a number of child care providers who never submitted corrective action plans to address deficiencies identified by EEC at their programs. In some instances, EEC did not review the status of these deficiencies until their next site inspection visit. Lack of follow-up by EEC licensors on instances of cited child care provider noncompliance can allow a provider to continue operating in violation of regulations intended to ensure the health and safety of the children under care.

The EEC Group and School Age Child Care Licensing Procedure, dated April 10, 2006, states, in part:

At the conclusion of the licensing study visit, the licensor will meet with the program administrator to review the findings from the licensing study process, including a review of submitted documents, if these have not been previously discussed. Following the visit, the licensor will complete a Licensing Study Visit Report, documenting all non-compliances noted on the Observation Record and on the Renewal Documents Verification Statement. Programs will be required to submit a Plan for Correction within two weeks of the report....

The purpose of these inspections is to provide reasonable assurance that children in Commonwealth child care facilities are being cared for in a safe and healthy environment. For this reason, inspections are the primary method for EEC to verify that child care facilities are in compliance with key health and safety requirements.

To determine the effectiveness of EEC's follow-up procedures on identified health and safety inspection violations, we selected a judgmental sample of 150 child care provider files—50 from each of the three EEC regional offices—and determined that the files contained 186 separate inspections. Of the 186 child care provider licensing inspections reviewed, 135 (73%) disclosed provider regulatory noncompliance. These instances of noncompliance were documented on a Statement of Noncompliance Form and issued to child care providers with instructions to document their corrective action(s) and to return the completed and signed form to EEC within 14 days. However, our examination found that in 26 (19%) instances, the Correction Plan Portion of the Statement of Noncompliance was not completed by child care providers.

These reporting deficiencies occurred because EEC has not put in place necessary monitoring controls to ensure that providers are properly filling out the Correction Plan Portion of the Statement of Noncompliance. Furthermore, EEC is not performing timely follow-up visits to

providers to determine whether deficiencies are being corrected. Consequently, the lack of effective monitoring controls and timely follow-up on cited instances of provider noncompliance can allow a provider to operate without being in full compliance with requirements that are intended to ensure the health and safety of children in care.

Subsequent to our file review, EEC was able to provide evidence that 13 of the 26 child care providers had in fact addressed their noncompliance issues, as noted below:

- Four providers either communicated their corrective actions via a telephone call, an email, or during a subsequent licensing inspection in which it was determined that the area of noncompliance had been corrected. Providers responded 40 to 189 days from initial inspection.
- Four providers had returned their Statement of Noncompliance with the Correction Plan Portion completed. However, EEC had either misfiled or had not yet filed the documentation.
- Three providers returned the Statement of Noncompliance without the Correction Plan Portion completed. This was accepted and filed by the EEC licensor.
- Two providers were inactive, and therefore no corrective action was required.

For the remaining 13 child care providers, we determined the following:

- According to EEC management, eight providers had their deficiencies reviewed during subsequent site inspections. However, documentation supporting this assertion was not made available to the audit team for review. We also determined that the time between the initial inspection and subsequent inspection ranged from 22 to 1,196 days, with an average and median of 378 days and 173 days, respectively.
- Three providers provided no corrective action and there was no evidence of follow-up inspection by EEC.
- Two providers submitted supporting documentation for corrective action after EEC requested a response following the OSA provider file review.

Relative to facility monitoring, best practices established by the U.S. Department of Health and Human Services state that the “licensing agency should adopt monitoring strategies that ensure compliance with licensing requirements” and that the “licensing agency should have procedures and staffing in place to increase the level of compliance monitoring for any facility found in significant noncompliance.” Lack of timely follow-up on cited instances of provider noncompliance can allow a provider to continue operating in violation of regulations that are intended to ensure the health and safety of children in care.

Recommendation

EEC should establish and implement the necessary internal controls to ensure that all providers are implementing timely corrective action for all inspection violations and are properly documenting their actions on the Statement of Noncompliance as required by current EEC policy. Also, EEC should perform timely reviews of provider corrective actions to ensure deficiencies are effectively addressed.

Auditee's Response

In response to this issue, EEC officials stated, in part:

In response to OSA's finding, EEC conducted an internal review which revealed that the family child care licensing unit in one regional office was not conforming to EEC's existing policy and that random checks by supervisory licensing staff were not being conducted. Accordingly, the Regional Director instituted a thorough review of each EEC family child care file to assure that every noncompliance issued since July, 2011 had been responded to; this review involved over 2,237 files. New internal controls for this family child care licensing unit were implemented, including developing a database to track each noncompliance that allows the Regional Director and the Family Child Care Supervisor to determine that corrective action plans have been received in the appropriate time frame. Furthermore, EEC's four other regional offices have conducted their own reviews to assure that corrective action plans are received in a timely manner.

Subsequent to OSA's findings, EEC confirmed that all reported noncompliances have been addressed by the licensed providers. Although written responses to the cited noncompliances were not received, many of the corrective actions were confirmed via telephone calls, subsequent visits, or addressed at the time of the visit. EEC also addressed the issue of documenting corrective action to Statements of Noncompliance by licensing staff.

3. ROUTINE UNANNOUNCED INSPECTIONS ARE NOT BEING PERFORMED FOR LARGE FAMILY CHILD CARE HOMES

We found that although EEC conducts unannounced program site visits on a case-by-case basis, during our audit period EEC did not perform routine unannounced visits on FCC homes, contrary to the requirements of Chapter 15D of the General Laws. Regular unannounced inspections are an effective monitoring technique that helps ensure the health and safety of children in child care homes as well as compliance with state requirements.

Chapter 15D, Section 9(b), of the General Laws states:

The department shall make an unannounced monitoring inspection of all large family day care homes within 6 months after the issuance of licenses for those facilities and shall, annually, make at least 1 such unannounced monitoring inspection thereafter.

EEC's Deputy Commissioner for Field Operations provided the following explanation on whether EEC follows the statutory requirement set forth in Chapter 15D, Section 9(b):

It is my understanding that EEC does not routinely perform these periodic unannounced monitoring inspections. The primary reason that EEC does not do so is that EEC is extremely understaffed and does not have the capacity to perform these monitoring inspections when more critical matters, such as inspections for new applicants and renewals as well as complaint investigations, must take priority. Discussions with Regional Licensing staff indicate that periodic unannounced monitoring inspections, when performed, infrequently resulted in the discovery of serious regulatory violations. Therefore, a decision was made that limited resources needed to be committed to areas where they were most needed. In addition, EEC has changed the licensing process for family child care since the time that M.G.L. c. 28A was amended in the early 1990s to include large family child care. Subsequently, when M.G.L. c. 15D was drafted in 2008, this section was transferred in its entirety from M.G.L. c. 28A without discussion or re-evaluation of the value of these unannounced monitoring inspections. At the present time, unlike the 1990s, EEC performs a pre-licensing visit prior to the issuance of a license and a monitoring visit after the issuance of the license for all family child care homes. The pre-licensing visit and the post-licensing visit satisfies the requirements of M.G.L. c. 15D, §9(b) practically if not literally.

While EEC is not following to the letter the requirements of its own statute regarding these monitoring inspections, EEC does possess discretion in how to enforce its statutory mandate to best maximize its ability to carry out its mission of ensuring high quality early education and care programs where children are kept safe and their development needs are being met. This discretion has been confirmed by the Massachusetts Supreme Judicial Court who has stated that its deference to an administrative agency extends beyond appropriate instances of statutory interpretation to also include the agency's construction of its own regulation. See TBI, Inc. v. Board of Health of N. Andover, 431 Mass. 9, 17 (2000). Any failure of EEC not to implement the requirements of M.G.L. c. 15D, §9(b) are de minimus and do not place children at an undue risk.

Given that the pre-licensing and the post-licensing visits noted above were announced visits, we do not agree these visits satisfy the unannounced requirement of Chapter 15D of the General Laws. During our audit we found no evidence to support EEC's assertion that periodic unannounced monitoring inspections, when performed, infrequently result in the discovery of serious regulatory violations. Moreover, our test of provider files found no evidence that post-licensing monitoring or annual unannounced visits routinely occurred for FCC homes.

We understand that staffing issues may necessitate EEC's prioritizing inspections for new applicants, renewals, and complaint investigations over periodic, routine unannounced monitoring visits. Nevertheless, routine unannounced inspections provide an important oversight function and should be performed in compliance with Chapter 15D, Section 9(b), of the General Laws. As noted in the National Association of Child Care Resource & Referral

Agencies' publication, *We Can Do Better: 2011 Update*, "Frequent, unannounced inspections of child care programs help ensure children are safe and that programs comply with state requirements."

Even though EEC can exercise discretion on how it enforces its statutory mandate and interprets its own regulations, it does not have the authority to disregard a statutory requirement, such as that set forth in Chapter 15D, Section 9(b). Furthermore, an agency may not enact a regulation or establish a policy that is contrary to the plain language of a statute.² The plain language of Chapter 15D, Section 9(b) states that EEC shall make an unannounced visit of all large family day care homes within six months of the issuance of a license and at least once annually thereafter. EEC may, by regulation or policy, determine what a monitoring inspection should require, and determine when, within the parameters of the statute, it undertakes such inspections, but it cannot ignore the requirement to conduct these unannounced visits.

Recommendation

In order to address our concerns relative to this matter we recommend that EEC take the measures necessary to ensure that it complies with the requirements of Chapter 15D, Section 9, of the General Laws relative to the conduct of unannounced inspections for large FCC homes.

Auditee's Response

In response to this issue, EEC officials stated, in part:

EEC's predecessor agency, the Office of Child Care Services, did not routinely conduct monitoring visits of newly licensed family child care homes and the provision in question was included in EEC's enabling statute to address this situation. Subsequently, EEC revised and combined its licensing regulations for family child care and large group and school age child care in 2010. The licensing process now mandates a pre-licensing visit prior to the issuance of a license as well as a monitoring visit after a license has issued and there are children present. The monitoring visit may be announced or unannounced.

In response to OSA's finding, EEC has changed its policy to comply with the statute. The monitoring visit made to all family child care homes within six months after the issuance of a license will now be an unannounced visit. In addition, EEC will make annual unannounced inspection visits to all family child care homes that serve over 8 children.

² *Commonwealth v. Donabue*, 452 Mass. 256, 271 (2008)

4. INADEQUATE DOCUMENTATION OF CHILDREN'S RECORD CHECKLISTS

The 606 CMR 7.04(7) requires licensees to maintain an individual written record for each child that includes emergency contacts, authorized pickup person(s), transportation plans, progress reports, lead screening results, and health care and immunization information. In order to demonstrate compliance with these children's record requirements, child care providers are instructed to complete a Children's Record Checklist, developed by EEC, prior to a licensing renewal visit. Instructions for completing the checklist are supplied to the providers requesting that the provider complete and submit the checklist to the licensor on the day of the licensing inspection. The instructions specify that a blank space on the checklist will indicate that the information is not on file. We found that Children's Record Checklists, used to document compliance to child care record regulations, are not being completed properly by child care providers. Compliance with child care record regulations is necessary to ensure that child care providers have collected the necessary information to adequately plan for, prevent, and respond to situations that may affect the health and safety of the children under their care.

Our judgmental sample of 150 family- and center-based EEC child care provider files found 124 inspections that included a review of children's record compliance. The other 26 inspections were for new child care providers who do not yet have children enrolled and some other limited scope inspections that did not require an inspection of children's records. However, in 103 of the 124 instances that did require a review of children's record compliance, there was inadequate supporting documentation to verify provider compliance to regulatory requirements for children's records. In 82 instances (66%), checklist information, such as dates that are required to indicate compliance, was incomplete. Moreover, in 21 instances (17%), a Children's Record Checklist was not found in the provider's file.

We also found instances in which Children's Record Checklists sometimes indicated full compliance, whereas EEC inspection records indicated noncompliance. Conversely, Children's Record Checklists sometimes indicated noncompliance (self-identified issue), whereas EEC inspection records indicated compliance.

EEC Management provided the following information regarding the use of Children's Record Checklists:

The children's record checklist is a tool that is provided to programs so they can self-assess compliance with the record requirements. The Program provides the completed checklist to the licensor. The licensor then does a random review of children's records. The non-compliances noted by the licensor are those found during the random review only. We do not cite the program for issues they self-identify on the children's record checklist if the file isn't part of the random review. The program is aware of those issues and is following up....

Although EEC states that the program is following up on self-identified children's record issues, our test results provided no evidence of provider follow-up on corrective actions. As a result, self-identified children's record issues may go unresolved and could cause unnecessary risks to the health and safety of children under the provider's care.

Regarding the 21 provider files that did not contain a Children's Record Checklist, EEC management maintained that these checklists are not required to be filed in the EEC provider file. Despite this assertion, EEC's Renewal Documents Verification Statement For Small Group, Large Group and School Age Care identifies the Children's Record Checklist as a required document that will be placed in the EEC files. Child care provider licensees are provided a Renewal Documents Verification Statement, which is used to prepare for licensing renewal inspection visits. Licensees are instructed to complete and submit this signed statement to the licensor at the time of renewal. Further, the EEC File Standardization Procedure, dated February 25, 2005, also specifies that a Children's Record Checklist be filed in the EEC-maintained provider file.

Recommendation

EEC should ensure that Children's Record Checklists accurately reflect the status of all children's records. All blank spaces or where marks indicate missing information for any child on the Children's Record Checklist should be noted as noncompliant and subject to provider corrective action. This formalizes, enhances, and assists in the corrective action process for issues the provider self-identifies on the Children's Record Checklist, even if the child was not part of EEC's random review.

Auditee's Response

In response to this issue, EEC officials stated, in part:

The Children's Record Checklist is an administrative tool created by EEC to assist a licensee to prepare for a licensing study. The Checklist informs the licensee what records

the EEC licensor will review and assists the licensee to organize and update its records to ensure that the information... is complete and is documented within an individual child's file. A review of the instructions accompanying the Children's Records Checklist clearly indicate that the form is meant to assist the licensee to prepare for a licensing study and that the Checklist is to be given to the EEC licensor on the day of the licensing study.

EEC's licensing staff uses the Checklist to compare the licensee's information to individual children's records to verify the presence of the documentation and information as required under 606 CMR 7.04 (7). If any of those documents or information is missing or incomplete, EEC licensing staff will cite that as a noncompliance issue. EEC licensors do not rely upon the completion of the checklist to ascertain whether regulatory requirements are met; licensors review the source documents in the children's files to assure compliance. Assuring regulatory compliance relying solely upon a checklist filled out by a licensee would be irresponsible.... In addition, the Children's Record Checklist was not intended to be a document maintained by EEC in its child care provider files....

Since OSA's audit, EEC has standardized its administrative procedures. EEC licensors have been instructed to utilize and complete an EEC Children's Record Checklist during each monitoring visit for each child record inspected by the Department. The checklist tracks compliance with the mandatory record requirements for all children, as well as the discretionary records that may not be required depending on the child's age and/or the type of activity/program. Further, the forms provide indicators as to whether each document specified under 606 CMR 7.04(7) was verified, missing or not applicable.

5. LICENSING PROCESS ASSOCIATED WITH WELL WATER REGULATIONS NEEDS IMPROVEMENT

During our audit we determined that, contrary to EEC's physical facility regulations, two FCCs, known to have private well water, did not provide EEC with required inspection reports. Untested water from a private water source could potentially be harmful to children if used for drinking, washing, and cooking. Accordingly, applicants for FCC licenses who have a private well or water source must comply with Department of Environmental Protection (DEP) standards, if applicable, and must provide evidence that the water source has been inspected and approved by the local board of health, health department, or private laboratory within one year of licensure. Specifically, 606 CMR 7.07 states, in part:

(4) Water Source Inspection. The licensee must provide evidence that any private well or water source has been inspected and approved by the local board of health, health department, or private laboratory within one year of licensure and meets Department of Environmental Protection Standards, if applicable.

(a) This evidence must be updated upon renewal of a regular license.

(b) Programs using well-water to serve 25 or more people for at least 60 days each year require DEP approval as small public water suppliers.

To assess provider compliance with water source inspection requirements, we inspected 111 FCC provider files of our 150 judgmental case file sample, 37 each from the Metro-Boston, Northeast, and Central Regional offices. Detailed below are the results of our file inspections:

Office	Identified as Not Having Well Water	Identified as Having Well Water	Failed to Indicate	Total Provider Files
Metro-Boston	29	2*	6	37
Northeast	20	-	17	37
Central Regional	24	4	9	37
Totals	73	6	32	111

* Erroneously reported as having well water

Of the four FCC files that indicated the home had well water, two files did not contain the required water inspection report. Additionally, in preparation for its 2011 license renewal inspection, one of the two providers submitted a letter on January 21, 2011 that states, “We have a well but will use bottled water until we have our well water tested at a later date.” However, OSA staff determined that, as of March 21, 2012, 14 months later, there was still no record of a well water inspection report. Standards for the Licensure of Family Child Care and Large Family Child Care Homes, 102 CMR 8.07(10) (repealed January 22, 2010), provided the following provision:

(10) Water Supply. If the water is not from a municipal supply, the provider must present evidence, upon application and subsequent renewal of his or her license, that the water has been tested within the past year by a Massachusetts Department of Environmental Protection approved laboratory and approved as meeting drinking water standards. If the water fails to meet drinking water standards, the provider must use bottled water for drinking and cooking.

Standards for the Licensure or Approval of Family Child Care; Small Group and School Age and Large Group and School Age Child Care Programs, 606 CMR 7.00, promulgated on January 22, 2010, does not allow for the bottled water provision. The EEC Central Office Regional Director stated that this provider had signed a prior bottled water agreement. However, when the regulations changed in 2010, the licensor thought that the bottled water agreement was still acceptable and therefore did not require the test. As a result of our audit, the licensing

supervisor will follow up with this provider and ensure that EEC acquires the proper documentation for its files.

With regard to the second case, the EEC Central Office Regional Director explained that the provider had signed a bottled water agreement in June 2007, which at that time was an acceptable practice. However, there was no signed agreement requested for the latest license, and no follow-up was conducted regarding the water source. EEC indicated that the licensing supervisor will follow up with this provider and ensure the proper documentation is on file.

Our review of EEC's current FCC license application, dated October 28, 2008, concluded that the question of whether applicants have private well water is not clearly addressed. Notwithstanding the application flaw, we identified some FCC providers with well water by checking license applications from prior licensing inspections. The Central Office Regional Director noted that the EEC application changed the way EEC handles the question about private well water. This change was made on the application form, since it was commonly misinterpreted by applicants and resulted in many false positive responses, as illustrated by the 32 files in the above table that failed to indicate whether well water was in use.

Based on our results, the Central Office Regional Director has made a suggestion to add a question back to the application that is worded in a less confusing manner. Also, the Central Office Regional Director stated that the FCC Licensing Supervisor has sent an email to all of the FCC staff in the Worcester office instructing them that they must obtain water source information from the provider at the time of each application. In addition, Worcester FCC staff was re-trained during group supervision in April 2012. FCC Supervisors have also asked for a change to the computer-generated top sheet to add a place to note the water source. This change was requested prior to the audit being conducted.

Recommendation

EEC should revise its child care provider license applications and renewal forms to ensure that providers using private well water have received proper approval, have submitted the necessary inspection reports, and that inspection reports are retained on file for review. In addition, EEC should ensure that licensors in all regional offices are properly alerted to and trained on regulation changes on well water inspection requirements.

Auditee's Response

In response to this issue, EEC officials stated, in part:

EEC has accepted this recommendation and revised its small group, large group and school age care application and renewal to address well water. On the day of the renewal study, inspections of well water or public water supply test results, if applicable must be provided to the EEC licensor for review and placed in the EEC file.

6. EEC'S INTERNAL CONTROL PLAN, PROGRAM REGULATIONS, AND POLICIES AND PROCEDURES NEED UPDATING

Our review of EEC's Internal Control Plan (ICP), program regulations, associated policies and procedures, and other pertinent documentation relevant to the child care provider inspection process disclosed inaccuracies, mostly related to outdated references to agency program regulations, a repealed law, and agency names that have changed. Without updated references within the ICP and policies and procedures for field operations, the possibilities for noncompliance and department goals and objectives not being met are heightened.

a. Internal Control Plan

EEC's ICP, which was revised in June 2011, references 102 CMR 7.00, which on January 22, 2010 was repealed and replaced by 606 CMR 7.00. The 102 CMR 7.00 references relate to Group Child Care Center and School Age Child Care Center definitions. The 606 CMR 7.00 combined Group Child Care Center and School Age Child Care Center to create Large Group and School Age Child Care Programs and Small Group and School Age Child Care Programs. Accordingly, the ICP should be updated to reflect current child care provider inspection regulations and child care programs.

Chapter 647 of the Acts of 1989, An Act Relative to Improving the Internal Controls within State Agencies, requires that departments develop internal control plans in accordance with guidelines published by the Office of the State Comptroller (OSC) and evaluate them annually or more often, as conditions warrant. Chapter 647 states, in part:

Notwithstanding any general or special law to the contrary, the following internal control standards shall define the minimum level of quality acceptable for internal control systems in operation throughout the various state agencies and departments and shall constitute the criteria against which such internal control systems will be evaluated. Internal control systems for the various state agencies and departments of the commonwealth shall be developed in accordance with internal control guidelines established by the office of the comptroller.

The OSC Internal Control Guide also discusses an agency's internal control plan, as follows:

An internal control plan is a description of how a department expects to meet its various goals and objectives by using policies and procedures to minimize risk. The Commonwealth has defined the internal control plan to be a high-level summary supported by lower level policy and procedures.... The plan should be reviewed and updated as conditions warrant, but at least annually.

Because the department's policies and procedures provide the detail for the internal control plan, it is important that they be reviewed in conjunction with the plan. It is not uncommon for the detailed policies and procedures to be modified due to changes in personnel, audit or quality assurance recommendations, etc. As these modifications occur, the department's documentation should be updated to reflect them.

Contrary to representations made in EEC's fiscal year 2011 Internal Control Questionnaire submitted to the State Comptroller's Office, EEC did not adequately update its ICP, and therefore, is not in compliance with Chapter 647 of the Acts of 1989 and OSC's Internal Control Guide. Moreover, inaccurate references to child care inspection procedures increase the possibilities for noncompliance and goals and objectives not being met. EEC personnel indicated that, although they were aware of the need to update the ICP after performing a department-wide risk assessment, staffing constraints have hindered updating the plan.

b. Code of Massachusetts Regulations

The Enforcement Standards for Licensure of Child Care Facilities, 102 CMR 1.00, was adopted in accordance with Chapter 28A of the General Laws, the enabling legislation for EEC's predecessor agency, the Office of Child Care Services (OCCS). The 102 CMR 1.00 includes definitions and requirements that apply to all programs that the OCCS licensed or approved and outlines the OCCS's authority to take legal action as a result of a program's or facility's noncompliance with appropriate regulations.

Pursuant to Chapter 15D, Section 2, of the General Laws, effective July 1, 2005, EEC was established. The creation of EEC unified the early education and care funding functions that were formerly administered by EEC's two predecessor agencies, the OCCS and the Early Learning Services Division.

Our audit found that, despite the repeal of Chapter 28A of the General Laws effective July 31, 2005, 102 CMR 1.00 repeatedly referenced the OCCS and Chapter 28A as the regulatory authority. Similarly, the Standards for the Licensure or Approval of Residential Programs

Serving Children and Teen Parents, 102 CMR 3.00; the Standards for the Licensure or Approval of Agencies Offering Child Placement and Adoption Services, 102 CMR 5.00; and Criminal Offender and Other Background Record Checks, 606 CMR 14.00 also reference Chapter 28A as the regulatory authority.

c. Policies and Procedures

We observed that many of EEC's child care inspection-related program policies and procedures included outdated and inaccurate information. For example, EEC policies and procedures regularly referenced repealed regulations, agency names that have changed, and categories of child care that are no longer licensed by EEC. Some of these procedures had not been updated in over five years. Examples of outdated EEC program policies and procedures include the following:

- The EEC Group School Age Child Care Renewal Meeting Procedure and the Licensing File Standardization Procedure reference outdated groups of child care. There are no longer separate licenses for Group Child Care and School Age Child Care.
- EEC's Resolution System Procedure and the Licensing Staff Investigation Procedure reference the Department of Social Services (DSS) rather than the Department of Children and Families (DCF).
- The EEC Integrated Pest Management Procedure references 102 CMR 7.25(13) and 102 CMR 7.35. Both regulations were repealed on January 22, 2010.
- Family Child Care Licensing Policy Statement Number P-FCC-11, last reviewed September 29, 2004, references the former OCCS rather than EEC.
- The following FCC Policies, all available on EEC's website, continue to reference program regulation 102 CMR 8.00, which was repealed on January 22, 2010:
 - P-FCC-02 – Continuing Education and Training, last reviewed March 2, 2003, references 102 CMR 8.00.
 - P-FCC-03 – Exits, last reviewed September 29, 2004, references 102 CMR 8.06(1)(b).
 - P-FCC-05 – Use of Regular Assistants in Family Child Care Homes, last reviewed September 29, 2004, references 102 CMR 8.05(3).
 - P-FCC-06 – Supervision, last reviewed September 29, 2004, references 102 CMR 8.10.

- P-FCC-07 – Supervision While Accompanying a Child To and From a Vehicle, last reviewed September 29, 2004, references 102 CMR 8.10.
- P-FCC-08 – Child Care Records Required of Substitute Providers, last reviewed September 29, 2004, references 102 CMR 8.13.
- P-FCC-09 – Visits to the Family Child Care Home, last reviewed January 10, 2008, references 102 CMR 8.21.
- P-FCC-12 – The EEC Family Child Care Provider and Certified Assistant Policy, last reviewed July 11, 2006, references upgrades to Family Child Care Plus and Large Family Child Care. Although upgrades for child care provider service capacity are still available, they are no longer identified as upgrades to FCC Plus and Large FCC programs.

Standards for the Licensure of Family Child Care and Large Family Child Care Homes, 102 CMR 8.00 (repealed January 22, 2010), provided definitions for three categories of FCC:

1. *Family Child Care (family child care home must not exceed six children)*
2. *Family Child Care Plus (family child care plus home must not exceed eight children at least two of whom must be school aged)*
3. *Large Family Child Care (a large family child care home must not exceed ten children)*

On January 22, 2010, the Standards for the Licensure or Approval of Family Child Care; Small Group and School Age and Large Group and School Age Child Care Programs, 606 CMR 7.00, were promulgated and replaced 102 CMR 8.00.

The 606 CMR 7.00 consolidated the three categories of FCC (listed above) into one category (Family Child Care), thereby eliminating, in the EEC regulations, the definition of Large Family Child Care.

While many of the outdated or inaccurate references we observed may not singularly have a significant impact on EEC's ability to provide its child-care-related services, collectively these inaccuracies may hinder the general public's and child care providers' ability to acquire accurate and timely child care-related information.

Recommendation

EEC should prepare and develop an ICP that is fully compliant with Chapter 647 and OSC guidelines. Toward that end, EEC should review and update its ICP, forms, and policies and

procedures as conditions warrant, but at least annually. Additionally, EEC should ensure that its ICP is accurately represented in the department's annual Internal Control Questionnaire submitted to the OSC. Further, EEC should update its regulations as conditions warrant.

Auditee's Response

In response to this issue, EEC officials stated, in part:

In response to OSA's recommendations, EEC has undertaken a review of its Internal Control Plans for FY2011 and FY2012. The FY2012 plan, which was not available to OSA at the time of its review addressed some of the FY2011 irregularities and made some improvements. EEC will soon begin development and preparation of its FY2013 Internal Control Plan which will be completed in accordance with OSA's recommendations. As for EEC's regulations, the Department has completed a two plus year review and drafting process to revise 102 CMR 5.00, the adoption and placement licensing standards and references to G.L. c. 28A and changes to state agencies' names have been duly corrected. It is expected that these regulations will be released for public comment in Spring, 2013. EEC is required to update and revise its background record check regulations found at 606 CMR 14.00 to address the recently signed "An Act Relative to Background Checks" which requires state and national fingerprint database checks for EEC licensees, employees of licensed or funded EEC programs that have the potential for unsupervised contact with children, family child care providers, their household members and persons regularly on the premises of family child care programs. EEC intends to eliminate references to outdated regulations and statutes, as well as ensuring that state agencies are properly named. EEC is aware that its enforcement standards at 102 CMR 1.00 and residential program licensing standards at 102 CMR 3.00 need to be completely revised and updated; EEC hopes to begin the revision process for each set of regulations in the new future. In addition, EEC's licensing policies have been updated in accordance with OSA's recommendations.

OTHER MATTERS

TO FURTHER ENSURE THE SAFETY OF THE CHILDREN IN ITS PROGRAMS, EEC SHOULD CONSIDER MONITORING THE REPORTED ADDRESSES OF REGISTERED SEX OFFENDERS

As previously noted, the Department of Early Education and Care (EEC) oversees the licensing of all programs that provide residence-based Family Child Care (FCC) and center-based Large Group and School Age Child Care (Group child care) services. Child care programs, centers, nursery schools, and school-aged programs must be licensed, are inspected before licensing, and are to be visited throughout the licensing period. FCC providers, individuals caring for children unrelated to them (hereafter referred to as providers), must be approved by EEC. Each provider's home is inspected and approved by EEC while the FCC program license is issued to the individual in the home who applied for licensure. Providers must give parents a summary of the license requirements so that they can ensure continuing compliance. Before licensing, providers must attend a three-hour training session, and also complete 15 hours of approved training every three years. Children in an FCC home may range in age from infant through 14 years old (16 years old for children with special needs), and programs may serve up to 10 children. Group child care providers are typically larger entities that may care for 10 or more children at a time, typically in a child care center outside the provider's home. Group child care providers are required to renew their EEC license every two years, whereas FCC providers are required to renew their EEC license every three years.

In terms of protecting the safety of the children in its programs from sexual and other potential abuses, EEC has promulgated regulations, 606 Code of Massachusetts Regulations (CMR) 14.00, that require it to conduct a comprehensive background check for anyone who applies for a license to operate a child care program. This includes a Criminal Offender Record Information (CORI) check. This regulation also requires applicants for licensure or employment by one of EEC's licensed childcare providers to be subject to a check by the Department of Children and Families (DCF) to determine whether the individual is someone who was responsible for the abuse or neglect of a child. Regarding both FCC providers and Group child care providers, EEC is responsible for performing the criminal background checks for the licensee, including (for FCCs) a spouse, other family members, and persons older than 15 who reside at the site where child care is provided. However, subsequent criminal background checks for employees are the responsibility of the licensee and are only subject to EEC review during certification.

According to 606 CMR 14.16, an applicant who has been convicted of any of the criminal offenses noted in the Appendix is generally prohibited from becoming a child care provider, and providers are usually prohibited from employing persons convicted of any of these crimes. However, 606 CMR 14.11 and 14.13 permit child care providers to allow such an individual to provide care, to be employed by a provider, or to reside in the home if the individual submits documentation from a criminal justice official or mental health professional stating that they do not pose an unacceptable risk of harm to children. Regarding these instances, EEC has issued a policy to licensees with guidance concerning an applicant's employment or disqualification. Also, Group child care providers must report to EEC whether the applicant was approved for hire.

Sex offenses against adults and children are listed in the Sex Offender Registry Board (SORB): Registration, Classification and Dissemination, 803 CMR 1.00, which requires the Executive Office of Public Safety and Security's SORB to maintain a registry of sex offenders pursuant to Chapter 6, Sections 178C-178Q, of the Massachusetts General Laws. The Massachusetts Sex Offender Registry includes individuals who remain under supervision for years following their conviction or termination of probation or parole, as well as those under supervision for the remainder of their lives³. The period for which an individual remains a registered sex offender depends on the nature of the offense. There are currently three levels of sex offenders in Massachusetts:

- Level 1 – Where the SORB determines that the risk of recidivism by an offender is low and the degree of dangerousness posed to the public by that offender is not such that a public safety interest is served by public availability of registration information.
- Level 2 – Where the SORB determines that the risk of recidivism is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public availability of registration information.
- Level 3 – Where the SORB determines that the risk of recidivism is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination of registration information.

Registered sex offenders are required by Chapter 6, Section 178F, of the General Laws to annually notify the SORB of their current address and place of employment, and the SORB contacts registered sex offenders to verify this information. Although the names and addresses

³ Note: The Massachusetts Sex Offender Registry includes information on both in-state and out-of-state convictions of offenders, whereas a CORI check captures only Massachusetts offenses.

of Level 2 and Level 3 sex offenders are available to any individual 18 or older by request from the SORB, 803 CMR 1.28 prohibits the SORB from publishing any information concerning Level 1 sex offenders.

Our original audit objectives included determining whether EEC was requesting evidence of required background checks. However, in reviewing the internal controls in place to ensure the health and safety of children in the state's child care programs, including those overseen by EEC, it came to our attention that, unlike 17 other states⁴, Massachusetts currently has no statutory or regulatory requirements for state child care agencies such as EEC to match Massachusetts registered sex offender addresses to Massachusetts licensed child care provider addresses. Based on this internal control concern, during our audit of EEC we asked the SORB to provide us with electronic data for all registered Level 2 and Level 3 sex offenders and compared the most recently reported home addresses of all Level 2 and Level 3 registered sex offenders to all licensed Commonwealth child care provider addresses during the 15-month period July 1, 2010 through September 30, 2011. Our analysis identified 119 instances in which the addresses of Level 2 and Level 3 sex offenders matched addresses of Commonwealth child care providers. It is important to note that the addresses included in the Massachusetts SORB database are self-reported by offenders, and it is possible that some addresses listed in the SORB database may be inaccurate or out of date. Accordingly, although all necessary steps were taken to reasonably ensure the accuracy of our analysis, it is possible that some sex offenders may have been excluded from our match list.

During our audit, we informed EEC officials of our results, and the agency began an immediate investigation of this information. As of the end of our audit field work, EEC provided us with preliminary information involving four of our matches, as follows:

- The child care site address of a licensed FCC provider in Worcester, which is her home address, matched the address of an adult Level 3 sex offender who was convicted of aggravated rape and indecent assault and battery on a person aged 14 or older. SORB address information indicated that the provider and the offender were residing in different units of the same three-family building up until March 2012. EEC currently authorizes the provider to care for six children.

⁴ Sex offender address checks for child care providers are required by the states of Alaska, Colorado, Florida, Hawaii, Illinois, Kentucky, Missouri, North Carolina, North Dakota, Oklahoma, Oregon, South Carolina, Tennessee, Washington, West Virginia, Wisconsin, and Wyoming. Source: *We Can Do Better, 2011 Update*, National Association of Child Care Resource and Referral Agencies, p. 177-178.

- The child care site address of a licensed FCC provider in Taunton, which is her home address, matched the address of an adult Level 3 sex offender who was convicted of rape, aggravated rape, and assault with attempt to commit rape. SORB address information indicated that the provider and the offender were residing in the same building up until March 2012. EEC currently authorizes the provider to care for nine children.
- The child care site address of a Group child care provider in Brockton matched the address of a Level 3 sex offender who was convicted of rape and assault with attempt to commit rape. SORB address information indicated that, at the time our information was provided to EEC, the provider and the offender were residing in the same Veterans Administration hospital facility, which included the child care program. EEC currently authorizes the provider to care for 24 children.
- The child care site address of the same Group child care provider in Brockton matched the address of another Level 3 sex offender who was convicted of rape and indecent assault and battery on a person aged 14 or older. SORB address information indicated that, at the time our information was provided to EEC, the provider and the offender were residing in the same Veterans Administration hospital facility, which included the child care program. EEC currently authorizes the provider to care for 24 children.

EEC officials indicated that, in these four cases, they believe no children were harmed.

Although not specifically required, based on our results, we believe that comparing the addresses of registered sex offenders with its service providers and caregivers and investigating any matches will allow EEC to better ensure the safety of the children in its funded programs. According to EEC senior management, the Boston Police Department regularly compares child care provider address information obtained from the EEC database to the addresses of registered Level 2 and Level 3 sex offenders in their jurisdiction and will contact EEC to alert them to any matches. In this regard, we believe that EEC should consider establishing system-wide formal policies and procedures that require its staff to periodically match registered sex offender addresses, provided by SORB, to those who it licenses to provide child care. If any address matches are found, EEC should investigate to take the measures it deems appropriate to ensure the safety of the children in the program.

Auditee's Response

As correctly noted by OSA, Massachusetts does not currently have any statutory or regulatory requirements for state child care agencies such as EEC to perform analytical procedures on available information such as matching Massachusetts registered sex offender addresses to Massachusetts licensed child care provider addresses. The Department understands that the OSA recommendation in its audit report that EEC

should consider establishing system-wide formal policies and procedures that require its staff to periodically match registered sex offender addresses, provided by the Massachusetts Sex Offender Registry Board (SORB), to those who it licenses to provide child care as an attempt to provide a value-add by creating additional safeguards for the children of the Commonwealth.

EEC is in agreement that the safety of children in EEC licensed or funded programs is of utmost concern to the Department and must be prioritized. And, it is EEC's intent to develop a joint plan with the Executive Office of Public Safety and Security, the state agency that oversees SORB, to accomplish this goal.

In response to OSA's results, EEC began an immediate investigation into these matches to compare the sex offender addresses to more than 11,000 licensee addresses in the EEC database. Once the EEC licensee was identified for each of the 119 addresses, EEC staff then investigated each provider's address to determine if there was an alleged sex offender on the premises. Of the 119 addresses provided to the Department, sixteen were for programs that were closed, 39 were addresses of programs located on community college campuses or places of employment where the identified sex offender allegedly was either attending school or working, and 10 had no match for licensed programs at any of the up to three addresses provided. With respect to the remaining 54 addresses, EEC was able to determine that in several instances, the child care provider and the registered sex offender resided in the same building but in different units and at different times. In these instances EEC directed the licensee to complete a safety plan for the children in care. EEC identified four addresses of licensed family child care providers that matched the home addresses of registered sex offenders. Although EEC determined that the registered sex offenders at these four addresses did not have access to children, EEC revoked the licenses of these four child care programs as the licensees had knowledge of the registered sex offender status but failed to report/disclose this information to EEC.

APPENDIX

Criminal Offenses Prohibiting Individuals from Becoming or Being Employed by Child Care Providers

Criminal Offense	M.G.L.
Assault & Battery, Dangerous Weapon, Victim over 60	c.265 § 15A(a)
Assault & Battery, Bodily Injury of a Child	c.265 § 13J
Assault & Battery, Intellectually Disabled Person	c.265 § 13F
Administering Drugs to Overpower for Sex	c.272 § 3
Armed Assault with Intent to Rob or Murder	c.265 § 18(b)
Armed Assault with Intent to Rob or Murder, Victim over 60	c.265 § 18(a)
Armed Assault in a Dwelling with Felony Intent	c.265 § 18A
Armed Carjacking	c.265 § 21A
Armed Robbery	c.265 § 17
Assault with Intent to Maim or Murder	c.265 § 15
Assault with Intent to Rape	c.265 § 24
Assault with Intent to Rape	c.265 § 24B
Attempted Escape or Escape by a Prisoner	c.268 § 16
Attempt to Murder	c.265 § 16
Burning Dwelling House	c.266 § 1
Distribution of a Controlled Substance to a Minor	c.94C § 32F
Exhibit Posing Child	c.272 § 29A
Extortion	c.265 § 25
Home Invasion	c.265 § 18C
Incest	c.272 § 17
Indecent Assault & Battery, Child 14 or over	c.265 § 13H
Indecent Assault & Battery, Child under 14	c.265 § 13B
Indecent Assault & Battery, Intellectually Disabled Person	c.265 § 13F
Induce Minor to Prostitution	c.272 § 4A
Intimidation of Witness	c.268 § 13B
Kidnapping	c.265 § 26
Malicious Explosion	c.266 § 102B
Manslaughter, Negligence (Minor/Child)	c.265 § 13
Manslaughter	c.265 § 13
Mayhem	c.265 § 14
Murder	c.265 § 1
Perjury	c.268 § 1
Rape	c.265 § 22(b)
Rape, Aggravated	c.265 § 22(a)
Rape, Statutory	c.265 § 23
Trafficking in Cocaine	c.94C§ 32E(b)(4)
Trafficking in Heroin	c.94C§ 32E(c)(4)
Trafficking in Marijuana	c.94C§ 32E(a)(4)
Unnatural Acts with Child under 16	c.272 § 35A