PERFORMANCE AUDIT REPORT

Regulation of Child Care Facilities and Foster Homes: Determining Whether KDHE Is Providing Effective Oversight and Whether KDHE and SRS Provide Duplicate Regulation of These Facilities

Executive Summary
with Conclusions and Recommendations

A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
October 2004
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October 11, 2004

To: Members of the Kansas Legislature

This executive summary contains the findings and conclusions, together with a summary of our recommendations and the agency responses, from our completed performance audit, Regulation of Child Care Facilities and Foster Homes: Determining Whether KDHE Is Providing Effective Oversight and Whether KDHE and SRS Provide Duplicate Regulation of These Facilities.

This report includes several recommendations to improve the effectiveness and efficiency of KDHE’s oversight of child care facilities. It also contains a recommendation for KDHE and SRS to come up with a plan for addressing the areas of duplication identified in the report. We would be happy to discuss these recommendations or any other items in the report with you at your convenience.

If you would like a copy of the full audit report, please call our office and we will send you one right away. We would be happy to discuss these recommendations or any other items in the report with you at your convenience.

Barbara J. Hinton
Legislative Post Auditor
Overview of Child Care Regulation in Kansas

The Department of Health and Environment estimates that about 200,000 children are served every year in some type of child care facility. Day care facilities provide child care for less than 24 hours a day, while residential care facilities provide 24-hour, round-the-clock care for children. As of June 30, 2004, Kansas had slightly more than 8,400 day care facilities and about 2,650 residential care facilities.

By law, almost every day care and residential care facility must be licensed or registered by KDHE. All licensed facilities must be inspected before they’re licensed and at least once every 12 months thereafter.

Question 1: Has KDHE Exercised Sufficient Regulatory Oversight of Child Care Facilities and Family Day Care Homes To Ensure the Safety and Well-Being of Children Cared for in Those Facilities?

KDHE has made some improvements since our 1997 audit, but many of the same types of problems still persist. In 1997, we issued an audit of the State’s regulation of child care facilities that found serious problems with inspections, lack of appropriate follow-up on complaints, and uncorrected violations that potentially could put many children at risk. In this audit, it appears that some level of improvement has been made in seven of nine areas of concern. However, problems continue to persist and we identified a number of new issues that weren’t addressed in the previous audit.

FINDINGS RELATED TO LICENSING FACILITIES

Backgrounds hadn’t been checked for a significant number of people who volunteer or work in child care facilities. In Kansas, anyone who’s been convicted of certain crimes is prohibited from living, working, or volunteering at a child care facility. KDHE data showed that as of August 2004, about 8,700 people were six months or more overdue for a check against the KBI or SRS databases. KDHE officials told us this backlog had been caused by a previously unknown problem with its computer system. KDHE stopped using this computer system in April 2004.
FINDINGS RELATED TO THE INSPECTION PROCESS

KDHE's inspection process doesn't adequately distinguish between major and minor violations. Good practices suggest that regulatory agencies should develop standard criteria to distinguish between the seriousness of violations. Advantages of such a system include allowing the regulatory agency to determine, based on objective criteria, what enforcement actions it will take against child care providers that have violations. Also, it allows the regulatory agency to create a risk-based inspection system. KDHE's inspection system doesn't differentiate between the severity of the numerous individual items that inspectors check.

Some inspection activities weren't being conducted in a timely or thorough manner. About 12% of the annual inspections we reviewed were late. Several inspections we observed weren't complete and thorough. For example, in one case, the inspector didn't check the kitchen and bathroom cabinets or a gun display to see if they were secure. Also, KDHE's central office staff don't spot check inspection reports to ensure that inspectors are completing them properly and that all violations are being recorded.

Inspectors didn't always take appropriate follow-up actions to assess the status of the violations they identified during inspections. Inspectors accepted incomplete corrective action plans as evidence that violations had been corrected in 26% of the cases we reviewed. Inspectors also didn't reinspect facilities when that appeared to be warranted in 15% of the cases we reviewed.

While KDHE relies on child placing agencies to conduct inspections of family foster homes, it doesn't adequately oversee that inspection work. Child placing agencies perform this work because the Department's administrative regulations require it. KDHE officials told us they don't oversee the inspection work because they don't have a contract with or pay child placing agencies to do this work. It appears to us that State law and administrative regulations give the Department sufficient authority to carry out the necessary oversight.

FINDINGS RELATED TO COMPLAINT INVESTIGATIONS

Some complaint investigations weren't conducted in a timely or thorough manner. Investigations weren't started on a timely basis in 14% of the complaints we reviewed. Investigations didn't appear to be as thorough as they should have been in 28% of the complaints we reviewed. For example, in one case the inspector interviewed only the person accused of violating child care regulations.

KDHE needs to improve its ability to track and manage complaints about child care facilities. KDHE doesn't have a central log
for tracking complaints about day care providers and its managers don’t receive summary information about complaints pertaining to child care providers.

FINDINGS RELATED TO ENFORCEMENT ACTIONS

KDHE has several enforcement tools available when facilities don’t voluntarily come into compliance with child care regulations. KDHE has a system for taking progressively more stringent enforcement actions, beginning with a notice of noncompliance. Other actions that KDHE can take—known as administrative orders—include fines, suspensions, and denial or revocation of a provider’s registration or license. Since our 1997 audit, KDHE has significantly increased the number of administrative orders it initiates. The rate of administrative orders issued, per 1,000 facilities, has grown by 250% since that time.

Local inspectors didn’t always recommend that KDHE take enforcement actions when such actions appeared to be needed. In 3 of 78 inspections we reviewed, inspectors didn’t recommend an enforcement action even though they had identified at least one serious violation during the initial inspection, and at least one serious violation still existed after the first follow-up inspection.

KDHE handled most enforcement actions appropriately, but in several cases it didn’t take more stringent enforcement action when warranted. KDHE handled more than 90% of the cases we reviewed appropriately, but in three cases, we concluded that KDHE officials should have taken stronger enforcement actions. We also noted that KDHE didn’t issue notices of noncompliance timely in 14% of the cases we reviewed, and that KDHE staff are taking too long to decide what enforcement action to take when a provider doesn’t respond to a notice of noncompliance.

KDHE isn’t taking stronger enforcement actions in part because of limitations it perceives in the State’s child care laws and its high threshold for evidence of noncompliance. Many of the local county inspectors we surveyed thought KDHE’s enforcement program was weak. KDHE’s general enforcement approach is to work with child care providers to educate them and to try to bring them into compliance voluntarily. KDHE officials have interpreted State law as restricting its use of fines only to “significant” situations involving children’s health, safety, or sanitation. Also, Department officials have imposed a higher standard than necessary about what events need to occur before stricter enforcement actions can be taken. In general, KDHE staff don’t initiate an administrative order until inspectors have documented the existence of the same violation(s) in three consecutive inspections. Officials from the Office of Administrative Hearings told us it wasn’t necessary to find the same violation(s) over and over again to establish a pattern of noncompliance. Some states have additional enforcement options that KDHE
doesn’t have, and State law would have to be changed to allow KDHE to use these additional tools.

FINDINGS RELATED TO KEEPING POLICIES AND REGULATIONS UP TO DATE

KDHE’s administrative regulations for child care providers need to be updated and revised and KDHE needs to revise its procedure manual related to day care and create one for the foster care section. Officials told us that a lack of staff has prevented them from taking these actions.

Question 1 Conclusion. For the most part, the Department of Health and Environment’s system for regulating child care facilities is well-designed. Problems persist, however, in how the system is being carried out. Late background checks on childcare facility owners and workers, untimely inspections, slow complaint investigations, and failure to follow through to ensure that violations were being corrected, were just a few of the problems reported in our 1997 audit of the program. Although we noted improvements in some areas, efforts are needed still in many areas to help ensure that the approximately 200,000 Kansas children who receive care outside their homes each year are safe and protected.

Question 1 Recommendations. We recommended that KDHE use its new computer system to better ensure that required background checks are performed timely. We recommended that KDHE develop a system that ranks violations based on how serious they are, and more directly tie enforcement actions to the number and seriousness of the violations cited. Also, we recommended that KDHE take several actions, such as providing additional training, to ensure that annual and follow-up inspections and complaint investigations are timely and thorough. Finally, we recommended that KDHE take several actions to strengthen its processes for issuing enforcement actions.

Question 2: Are There Ways Kansas Could Refocus Its Efforts and Available Resources To Increase the Efficiency of Its Regulation of Child Care Facilities?

Kansas generally regulates the same types of child care facilities as our comparison states. The only noteworthy exception we saw was that Kansas doesn’t regulate before-and-after school care programs operated by school districts—four of the five other states did. In Kansas, these programs are considered extensions of the educational services school districts provide.

Kansas regulated more small day care homes than other states, but these small facilities don’t appreciably increase the Department’s workload. Kansas regulates day care homes that care for just one child, while three of the five comparison states have set this limit.
higher. Tennessee’s threshold of five is the highest. Kansas has about 12
day care homes per 1,000 children, while Tennessee has only 1.4 regulated
day care homes per 1,000 children. Many Kansas day care providers who
care for less than 6 children choose to be “registered” rather than being
licensed. Because registered homes aren’t inspected annually, and
inspections are one of the most labor-intensive parts of regulation, reducing
Kansas’ threshold probably wouldn’t have any appreciable effect on the
Department’s workload.

Implementing a risk-based system of inspections could allow
KDHE to use its staff more efficiently, but significant changes would
have to be made. Under a risk-based system of inspections, a regulatory
agency decides how frequently to inspect a facility based on each
licensee’s history of compliance with laws and regulations. Ultimately, such
a system should increase overall compliance because facilities that have
problems will get the increased attention that will either cause them to come
into compliance or stop providing child care. Going to a risk-based
inspection system would require a change in State law to give KDHE the
flexibility to extend or shorten the timeframe between inspections. Also,
KDHE would need to develop a system for ranking violations.

KDHE could streamline its child care licensing process to free
up staff for other duties. Extending the annual license renewal cycle to
once every 2-3 years would save time that currently is spent processing
paperwork. We estimated that going to a biennial renewal cycle could free up
about 2,500 staff hours each year. Two of the comparison states don’t
require full licensing paperwork to be submitted each year. Another way to
save some time would be to reduce the frequency that background checks
are run. KDHE procedures require child care workers and volunteers to be
checked at least once a year. None of the other comparison states conduct
background checks that often. In addition, KDHE is in the process of
implementing an on-line license renewal system which will offer several
benefits, including saving staff time.

Question 2 Conclusion. Kansas’ efforts at regulating child care are
focused on the same types of facilities other states regulate. Further,
although Kansas’ threshold for the number of children that bring a facility
under regulation is lower, raising that threshold wouldn’t greatly reduce the
Department of Health and Environment’s workload because most small
facilities in Kansas are registered rather than licensed. That means they
don’t have to be inspected – one of the most labor-intensive parts of the
regulation of child care facilities.

Any significant savings in child care regulation likely would come from
efficiencies in the oversight process, such as going to a risk-based system
of inspections, reducing the frequency of licensing renewals, and requiring
less frequent background checks, as some other states have done.
Although the Department could act to implement some of these efficiencies,
developing a risk-based system of inspections would require the Legislature
to do away with statutory requirements for all child care facilities to be in-
spected annually.
**Question 2 Recommendations.** We recommended that KDHE reduce the frequency of its license renewal process, reduce the frequency of running background checks, and implement a risk-based inspection system.

**Question 3: Is There Duplication in the Regulatory Responsibilities And Activities of SRS and KDHE Related to Facilities, Homes, and Programs That Provide Care for Children?**

KDHE and child placing agencies both conduct initial licensing inspections of new family foster homes. Child placing agencies conduct “walk-through” inspections of each new foster family home before they are licensed. This inspection helps familiarize new families with the State’s licensing requirements, and identify areas where the homes aren’t yet in compliance. KDHE licensing staff conduct the “official” licensing inspection for each new family foster home, usually within several weeks after the child placing agency’s inspection. Child placing agency staff and foster parents we surveyed questioned the need for these duplicate licensing inspections, while KDHE staff thought there was little duplication between the two inspections. KDHE could minimize the duplication that exists by relying on the results of the child placing agencies’ inspections. KDHE could use the time saved from not having to perform these inspections to oversee the inspection work that child placing agencies perform. However, because child placing agencies also recruit families to be foster parents, this situation presents a conflict of interest.

Both SRS and KDHE investigate complaints of child abuse and neglect at child care facilities. State law makes SRS responsible for investigating reports of child abuse or neglect. When these reports involve a child care provider, both agencies investigate the complaint. In fiscal year 2004, slightly more than 500 complaints were investigated by both agencies. However, each agency has a different role in the investigation. SRS officials are trying to determine whether a child was abused or neglected. KDHE staff are trying to determine whether harm occurred because the child care provider failed to comply with child care regulations. Most SRS and KDHE staff we surveyed don’t perceive what they do as being duplicative. In many cases, SRS and KDHE staff aren’t always able to conduct joint investigations, and they may end up talking to the same people and looking at the same basic set of facts. One way to eliminate or minimize the duplicate investigations would be to require cross-training of SRS staff and better sharing of information.

Both SRS and KDHE conduct inspections at community mental health centers that also provide child care, but the number of duplicate inspections is likely minimal. SRS is responsible for ensuring that Kansas’ 27 community mental health centers meet the State’s regulatory requirements for services provided by a mental health center. In 2001 four centers started their own preschools and others started to

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provide other child care services regulated by KDHE. As a result, both agencies have oversight responsibilities. KDHE and SRS have formed a working group to reduce the number of conflicting regulations affecting mental health centers’ child care facilities, and the agencies are negotiating a memorandum of agreement that will specify how they will handle conflicting and duplicate regulations. We also noted that these same issues may apply to community developmental disability organizations (CDDOs).

**Question 3 Conclusion.** The regulation of child care facilities in Kansas results in duplicate inspections of newly licensed foster homes, duplicate investigations of complaints against child care facilities when those complaints involve an allegation of abuse or neglect of a child in a child care facility, and duplicate regulation of child care programs operated by mental health centers. Although such duplication can be inefficient, resolving it is not without problems. For example, the most logical solution to the duplicate inspections of foster homes would be to allow the child placing agencies to do them, but that raises issues of conflict of interest since those agencies also recruit the homes. Designating SRS as the official agency to investigate all child abuse complaints would eliminate duplication in that area, but would require SRS staff to be cross trained in KDHE regulations, and would impose added workload on that agency. Because of the issues that arise, it will be important for the agencies and the Legislature to give careful thought to where these functions should be placed.

**Question 3 Recommendation.** We recommended that KDHE and SRS prepare a plan for addressing each of the areas of duplication identified in this report and submit their plan to five specific legislative committees at the beginning of the 2005 legislative session.

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**APPENDIX B:** Enforcement Actions Initiated by KDHE Fiscal Years 1995 to 2004 .................. page 46

**APPENDIX C:** Comparing Kansas and 5 Other States’ Regulation of Child Care Programs .................. page 48

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Both KDHE and SRS agree with the findings of the report and have agreed to implement nearly all of the report’s recommendations.