

inspection requirement for registered day care homes. Before a facility can become licensed, it must pass an inspection to show that it is in compliance with all the State's child care requirements. KDHE contracts with 76 local county health departments to inspect child care facilities in 102 Kansas counties. For the three other counties, KDHE child care staff conduct those inspections. Under certain circumstances, KDHE will issue a temporary license before the inspection is conducted.

All day care licenses are non-expiring. However, providers have to submit renewal applications each year that include the names of people who either live, work, or volunteer at the place where child care will be provided. KDHE runs background checks on all those who are more than 10 years old.

To become registered, child day care providers must send their local health departments a self-assessment form describing the home and the number of children they will be caring for. Once completed, those applications are forwarded to KDHE, which issues the registration certificate. Those certificates must be renewed yearly.

State law doesn't require registered day care homes to be inspected—either initially or annually. As a result, local health department employees will inspect registered facilities only when they receive complaints about the care those facilities are providing.

REGULATION OF RESIDENTIAL CARE FACILITIES

Residential care facilities for youth and children include family foster homes, group boarding homes, several types of secure and non-secure residential facilities, maternity centers, and juvenile detention centers. As of June 30, 2004, there were about 2,650 of these facilities. Almost all of them—about 2,500—were family foster homes. Each facility is required to be licensed and inspected at least once a year.

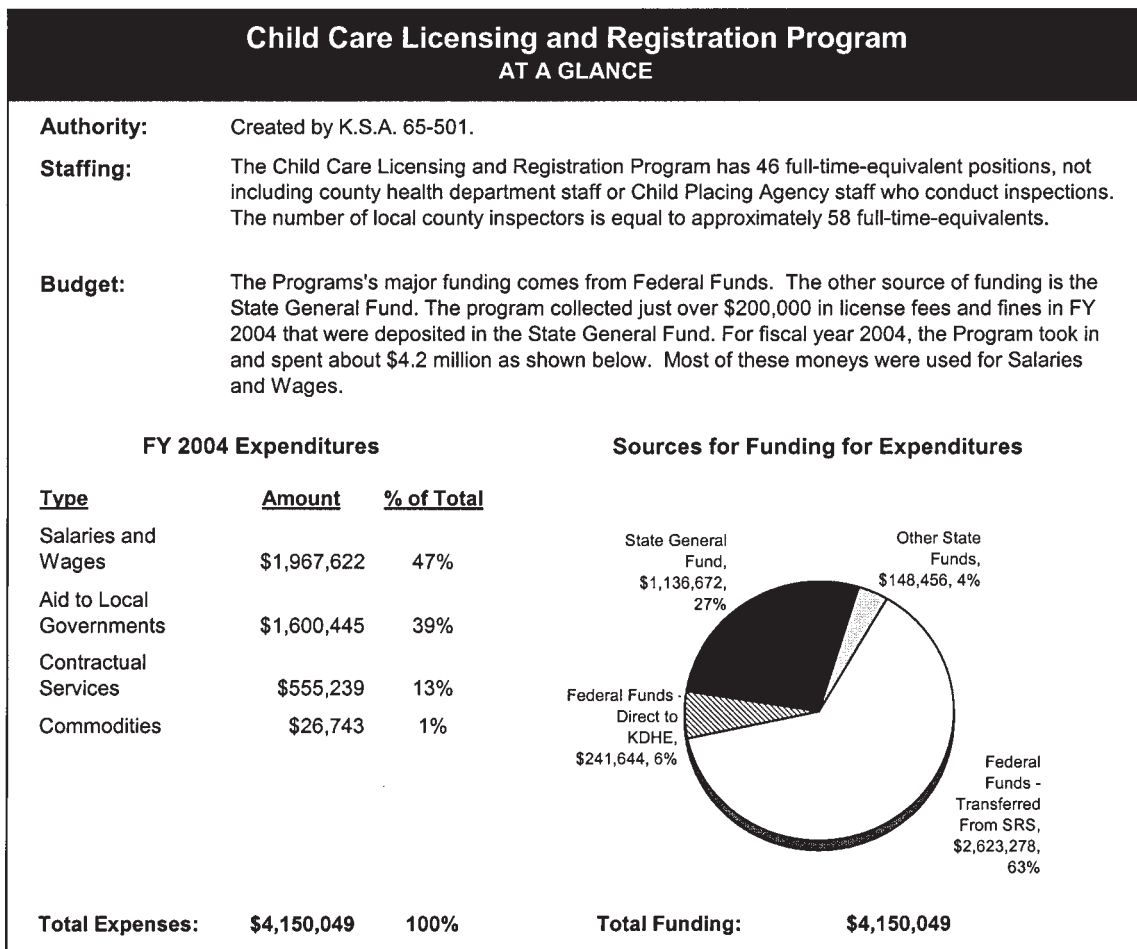
To become a licensed family foster home, applicants first must work with a child placing agency and go through extensive training and inspections. If a family is interested in providing foster care, the prospective parents contact either a child placing agency, KDHE, or SRS. Child placing agencies, which KDHE also regulates, can be individuals or corporations that are licensed to care for and find homes for orphans or deprived children under age 16.

Before they can be licensed, prospective foster parents must complete a 30-hour training program called Model Assessment for Partnerships and Parenting (MAPP). They also receive a home consultation visit by child placing agency staff, which includes a family assessment and a walk-through inspection.

KDHE foster care regulatory staff conduct the initial licensing inspection. After licensure, the foster family home is inspected annually by child placing agency staff.

Other residential care facilities—including group boarding homes and non-secure and secure facilities—apply directly to KDHE for licensure. People interested in running residential facilities, such as those shown in *Table OV-1*, are encouraged to determine whether there is a market in the area for the proposed facility before they apply. They also must contact local planning and zoning officials for approval, provide the State Fire Marshal’s Office with necessary documents, contact the local school district superintendent, and, unless privately owned, provide notice to the Secretary of State.

As with the other child care facilities KDHE regulates, these residential care facilities also must pass an initial inspection before they can be licensed, and are required to be inspected annually after that. Those inspections are done by KDHE and county health department staff.



Source: KDHE Budget Staff's - FY 2004 Funding & Expenditure Reports.

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?

ANSWER IN BRIEF: *Overall, the Department has designed a good system for overseeing child care providers. Since our 1997 audit, KDHE has made some improvements regarding its oversight of child care providers, but many of the same types of problems still persist. In addition, this audit has identified a number of new issues.*

Background checks hadn't been performed for a significant number of people who volunteer or work in child care facilities. KDHE's inspection process doesn't adequately distinguish between major and minor violations. Some inspections and complaint investigations weren't conducted in a timely and thorough manner, and inspectors didn't always take appropriate follow-up actions to assess whether violations had been corrected. While KDHE relies on child placing agencies to conduct inspections of family foster homes, it doesn't adequately oversee that inspection work.

Concerning enforcement actions, KDHE handled most enforcement actions appropriately, but didn't take more stringent action in several cases when it appeared to be warranted. The Department isn't taking stronger enforcement actions partly because of limitations it perceives in the State's child care laws, and its high threshold for evidence of noncompliance. Finally, many of KDHE's child care regulations need to be updated and revised. These and other findings are described in the sections that follow.

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. As part of the current audit, we were asked to follow-up on that earlier audit to determine whether KDHE had improved its processes and was providing more effective oversight of child care facilities. In the current audit, we found that, for the most part, the Department has designed a good system for regulating child care providers.

Table I-1 on the next page lists the main findings of the 1997 audit, and summarizes what we found in these same areas during this audit. Because of the time involved in reviewing cases, our sample sizes weren't large enough to project our findings to the entire population of child care facilities. Nonetheless, based on the files we reviewed it

**Table I-I
Comparing the Main Findings of the 1997 Audit With Current Audit Findings**

Problems Cited in the 1997 Audit	Based on the Findings in the Current Audit, Has This Situation Improved?
<p>Background checks weren't current. A backlog of about 18,000 names of people associated with day care providers hadn't been entered into KDHE's computer for background checks.</p>	<p>Somewhat. Background checks were overdue for about 8,700 people associated with day care or foster care providers. Because of a computer glitch, the last background checks for these people occurred sometime before December 31, 2002.</p>
<p>New and renewal inspections weren't always timely. Half the 56 inspections we reviewed of newly licensed facilities weren't done on time. They were an average of 43 days late.</p> <p>18% of the sample of 100 annual inspections weren't done on time. They were 1 month to 7 months late.</p>	<p>Somewhat. KDHE data for the period July 1, 2003, through March 31, 2004, show that 21% of all scheduled (new and renewal) inspections were performed late.</p> <p>The results for our sample testwork were better. Only 1 of 23 inspections for newly licensed facilities was late, and it was late by only 10 days. 12% of our sample of 49 annual inspections weren't done on time. They ranged from 8 days to about 3.5 months late.</p>
<p>Annual inspections weren't unannounced.</p>	<p>Yes. Annual inspections of day care facilities now are unannounced. However, inspections of family foster homes still can be scheduled ahead of time.</p>
<p>Complaint investigations weren't always started on time. We found that problem in 22% of the 41 complaint investigations we reviewed.</p>	<p>Somewhat. 14% of the 29 complaint investigations we reviewed were started at least 2 weeks late. Those delays ranged up to 12 weeks.</p>
<p>Complaint investigations weren't always thorough. We found that problem in 7% of our sample of 41 complaint investigations.</p>	<p>No. We concluded that 21% of the 29 complaint investigations we reviewed weren't thorough.</p>
<p>KDHE almost always used the least serious enforcement actions necessary to gain compliance. That was true even when more serious actions appeared to be warranted.</p>	<p>Somewhat. KDHE's approach has stayed the same. KDHE data show that the Department is initiating more higher-level enforcement actions, but in 3 of 40 cases, we still determined that KDHE didn't take more stringent enforcement action when it appeared to be warranted.</p>
<p>Notices of violations weren't being sent to providers on a timely basis. On average, KDHE didn't send out these notices until 42 days after the violations had been confirmed.</p>	<p>Yes. On average, KDHE was sending out notices of non-compliance within about 24 days after violations had been confirmed.</p>
<p>KDHE didn't always ensure that violations had been corrected on a timely basis. We found that problem in 22% of the 41 enforcement action cases we reviewed.</p>	<p>Somewhat. KDHE didn't ensure that violations were corrected on a timely basis for 15% of the 39 enforcement action cases we reviewed.</p>
<p>KDHE didn't follow its policy on assessing fines. In 9 cases, fines totaling \$1,250 should have been assessed, but weren't.</p>	<p>Not measurable. KDHE's policy no longer specifies when fines will be assessed. Fines are initiated by Child Care Licensing and Registration Program staff and KDHE requires the concurrence of legal staff, other managers, and the Secretary before issuing an intent to fine.</p>
<p>Source: LPA audit 97 - 52, LPA analysis of a sample of KDHE files and review of agency policies and procedures.</p>	

appeared at least some level of improvements have been made in 7 of the 9 areas of concern. At the same time, problems continue to persist in a number of areas. We also identified a number of new issues that weren't addressed in 1997. The sections that follow discuss all these issues in greater detail.

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 crimes such as sex offenses, drug offenses, or crimes against persons, or who SRS has listed in its child abuse neglect information system, is prohibited from living, working, or volunteering at a child care facility. As a result, all child care providers are required to submit to KDHE the names of all people who live, work, or regularly volunteer at their facilities—both when they initially begin work at the facility, and annually thereafter. Those people's names are then checked against the child abuse registry SRS maintains, and the KBI's criminal history database.

Our initial testwork showed that all background checks hadn't been performed at about 40% of the 70 child care facilities in our sample. KDHE performed a subsequent analysis showing that, as of August 2004, about 8,700 people were at least 6 months or more overdue for a check against the KBI or SRS databases. KDHE officials told us that, in general, fewer than 1% of the people whose backgrounds are checked are found to have committed an offense that would prohibit them from being associated with a child care facility. Still, this small percentage applied to 8,700 people could result in 87 "prohibited" people working with children.

KDHE officials told us this backlog had been caused by a previously unknown problem with its computer system. While the names had been entered into KDHE's computer, officials weren't certain the computer had automatically sent them on to SRS or the KBI to be checked against their databases. No one at KDHE was responsible for checking to ensure that they'd received the results of these 8,700 background checks.

KDHE stopped using this computer system in April 2004. To address the backlog, officials said they would resubmit the names in small batches with the other names currently being processed to avoid delaying current background checks. They also told us that the new computer system has reports that will identify active child care providers with staff, volunteers, or residents whose names have not been submitted to or received back from KBI or SRS. Other reports will identify facilities that have applied for a license or registration and are awaiting completion of their KBI and SRS background checks.

FINDINGS RELATED TO THE INSPECTION PROCESS

Most Inspections of Child Care Facilities Are Performed by Staff from County Health Departments or Child Placing Agencies

KDHE inspectors conduct the initial licensing inspections for all new family foster homes. They also participate in the initial and renewal inspections for other 24-hour facilities, and investigate all complaints against 24-hour care facilities. KDHE staff also conduct inspections of day care providers in three counties. KDHE relies on outside entities to perform all other required inspections and complaint investigations, as follows:

- In fiscal year 2004, KDHE contracted with 76 local county health departments to inspect the day care facilities in 102 counties. County staff also participated in some inspections of 24-hour facilities.
- KDHE allows child placing agencies to conduct annual license renewal inspections for the State's 2,500 family foster homes. Child placing agencies are State-licensed agencies whose primary purpose is to recruit family foster homes and help place foster children. Although KDHE licenses these agencies, SRS has contracts with 5 of them (who have subcontracted with others across the State) to perform these recruitment and placement services.

When inspectors find violations that need some follow-up action to ensure they've been addressed, KDHE procedures call for them to make a follow-up assessment. In some instances, that follow-up may involve a re-inspection, but in other cases it may involve reviewing corrective action plans or other documentation child care providers submit to assess whether those actions appear to be adequate to address the problem.

Inspectors send the results of their inspections and any follow-up assessments they perform to KDHE for review. If the inspector thinks some sort of enforcement action is warranted, he or she checks a box on the front of the inspection form. KDHE central office staff review this information to determine whether an enforcement action is warranted. This process is outlined in *Graph I-1* to the right.

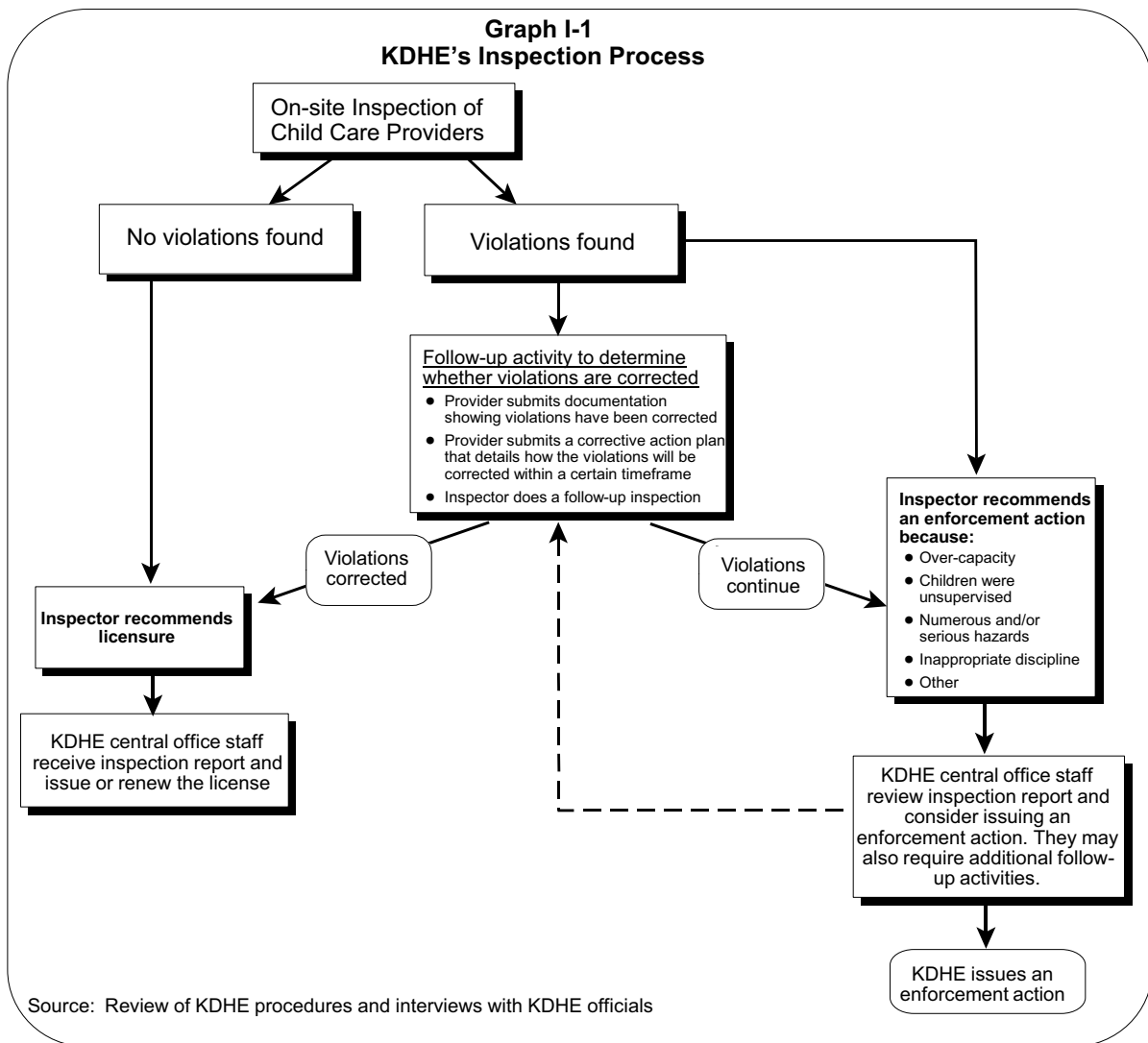
KDHE's Inspection Process Doesn't Adequately Distinguish Between Major and Minor Violations

Good practices suggest that regulatory agencies should develop standard criteria or categories to distinguish between the seriousness of violations. Ways this might be accomplished include developing categories of violations such as level 1 (very serious), level 2, and level 3 (minor), or assigning points to specific violations. This allows the inspecting agency to objectively assess the results of an inspection, based on the number and severity of the violations found, and determine whether a facility has major or minor problems. It also allows the regulatory agency to use the inspection results to objectively and consistently deal with the service provider through the enforcement

process, if necessary. For example, a regulatory agency might have a process that says that any provider cited for five or more major violations will be reinspected within two weeks and fined \$100.

The inspection process KDHE uses is primarily based on subjective criteria. Some checklists inspection staff use contain more than 200 items, and there is no differentiation between the severity of the individual items to be checked, other than inspectors are supposed to recommend an enforcement action if certain violations were cited. The absence of a system for classifying violations can lead to inconsistent interpretation of child care regulations and inconsistent treatment of child care providers. It also causes all decisions about what enforcement actions, if any, KDHE should take to be based on subjective, and not objective, criteria.

At least one regulatory agency in Kansas has a rating system that's fairly specific. The Department on Aging's nursing home inspection program



uses a grid to score each inspection based on the scope and severity of the violations found. That score then helps staff determine what enforcement actions, if any, they will take.

Another advantage of using a system that scores violations is that it allows an agency to create a risk-based inspection system. The regulatory agency can set parameters that specify inspection frequency based on the scores achieved. This issue is discussed further in Question 2.

Some Inspection Activities Weren't Being Conducted in a Timely or Thorough Manner

Two indicators of a good inspection process are conducting all inspections as often as required, and conducting inspections that are thorough and as complete as needed. We noted several problems in this area.

Annual and follow-up inspections at child care facilities sometimes weren't completed on a timely basis. The problems we noted are summarized below:

- **6 of the 49 annual inspections we reviewed (12%) were late.** By law, all licensed child care facilities are supposed to be inspected at least once each year. In these six cases, those inspections ranged from 1-14 weeks late.
- **KDHE's contracts with the counties for fiscal year 2004 essentially allowed KDHE to not meet the statutory annual inspection requirement.** Some contracts only require a county to inspect a higher percentage of facilities than they did the previous year. For example, the contract states that, in counties where less than 60% of the required inspections were performed on time, the new goal would be to complete 70% or more of the inspections on time. KDHE data show that 38 of the 102 counties inspected by local county health departments were out of compliance with the annual inspection requirement as of March 31, 2004. KDHE officials told us that retirements, illnesses, and other personnel issues contributed to this situation, and that they didn't want to press too hard to enforce this requirement because some counties might opt out of contracting with the State to perform these inspections.
- **Follow-up inspection activities weren't completed on time for 13 of 86 cases we reviewed (15%).** When inspectors find violations that need some follow-up action to ensure they've been addressed, KDHE procedures call for the first follow-up assessment to be made within 21 days for day care facilities, and within 44 days for foster care homes. KDHE also may ask inspectors to perform additional follow-up inspection activities as the case progresses. As noted earlier, follow-up may involve a re-inspection or a review of providers' corrective action plans or other documentation.

For the 13 cases we identified, these follow-up inspection activities were an average of 16 days late; the latest was 38 days late. We

also questioned why inspectors should be given 44 days to assess whether family foster homes have come into compliance, compared with 21 days for other day care facilities. The goal of both groups is to protect children from harm, and local county inspectors and child placing agency staff are inspecting for essentially the same types of violations.

Several inspections we observed weren't complete or thorough.

We accompanied child care facility inspectors on a total of 6 inspections to observe how the process is carried out. In two cases, the inspector wasn't as thorough as we would have expected.

In one case, the inspector didn't check the kitchen and bathroom cabinets or a gun display to see if they were secure. The inspector also didn't check the safety of other items, including a swing set, electrical outlets, and a crib. Instead, the inspector merely asked the child care provider if these items were secure. In the other case, the inspector didn't enter the kitchen, bedrooms, or bathrooms. All these items are supposed to be visually checked during the inspection process to ensure that children are adequately protected.

We also noted that some inspectors asked leading questions that would tend to guide the child care providers to the desired answer. For example, instead of asking "How do you store your medicine?" they asked, "You don't leave your medicines out, do you?" By asking leading questions, inspectors may get an answer that complies with requirements, but doesn't necessarily reflect the child care provider's actual practices.

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. KDHE central office staff review inspection reports that indicate an enforcement action is needed. For the vast majority of reports that don't recommend an enforcement action, central office staff never review them. Because no one checks these reports, there's a risk that issues identified in those reports haven't been appropriately addressed.

Inspectors Didn't Always Take Appropriate Follow-Up Actions To Assess the Status of the Violations They Identified During Inspections

As described below, inspectors sometimes accepted incomplete corrective action plans during the follow-up assessment, and didn't re-inspect some facilities when that action appeared to be warranted.

Inspectors accepted incomplete corrective action plans as evidence that violations had been corrected in 9 of 34 cases we reviewed (26%). KDHE's policy manual says that corrective action plans should specifically address each violation, state what the licensee did to achieve compliance, and specify a time frame for completion

when corrections can't be made within five days. In 9 of the cases we reviewed where a corrective action plan was submitted, we concluded the plan was incomplete. In one case, for example:

...A day care home initially was cited for six violations, such as not having tuberculosis test results for child care providers, not having documentation that the provider had completed enough in-service training hours, and not posting a disaster plan. The county inspector accepted the provider's corrective action plan even though it didn't address the missing tuberculosis test results at all, and didn't provide a specific deadline for making the required corrections for 4 of the 5 other violations cited.

Inspectors didn't re-inspect facilities when that appeared to be warranted in 5 of 34 cases we reviewed (15%). Although KDHE procedures don't prescribe when an inspector has to re-inspect a facility as part of a follow-up assessment, they do specify that re-inspections may be warranted if the licensee had many violations—including violations that pose a safety hazard for children, or repeat violations regarding the lack of paperwork.

In these five cases, it appeared to us that inspectors should have re-inspected the facility to ensure that the violations cited had been corrected. In one case, for example:

...A child care center was cited for 16 violations, including having hard areas exposed under anchored playground equipment, potentially having four unqualified teachers, having out-of-date immunization records for one child, and having dirty walls, a dirty rug, dirty toys, dirty washers and dryers, an unsecured computer monitor that could fall on a child, and rusty metal pans in the children's play area. Because the inspector initially had identified so many safety and sanitation violations, we would have expected this facility to be re-inspected. Instead, the inspector accepted the provider's written response.

While KDHE Relies on Child Placing Agencies To Conduct Inspections Of Family Foster Homes, It Doesn't Adequately Oversee That Inspection Work

According to State law, KDHE is responsible for ensuring that all child care facilities are inspected at least once every 12 months. For family foster homes, until the mid 1990s SRS and child placing agency staff did the inspections, and KDHE issued licenses and took enforcement actions when needed. At the time, however, there was concern about the inherent conflict of interest that existed because SRS and child placing agencies were responsible for recruiting foster homes and also were inspecting them to determine whether they complied with State child care regulations. The risk was that the inspectors might ignore some regulatory violations if they needed additional homes to place children in.

To address this risk, KDHE and SRS entered into an agreement in which KDHE assumed all regulatory duties for foster homes, including

inspections. SRS agreed to shift funding and positions to KDHE to allow it to perform these duties. Although funding for about 20 positions moved from SRS to KDHE, child placing agencies continued to perform all the annual re-licensure inspections for family foster homes. As a result, the same conflict of interest exists now as it did in the mid-90s. That conflict could be mitigated if KDHE exercised adequate oversight and monitoring of the inspections child placing agency staff conduct, but it doesn't.

KDHE officials perform insufficient oversight of the inspections conducted by child placing agency staff. KDHE doesn't contract with nor pay any child placing agency for inspecting family foster homes. KDHE officials told us that child placing agencies perform this work because the Department's administrative regulations require it. Child placing agency officials we spoke with said the same thing.

When we asked KDHE officials why they don't routinely review the adequacy of the inspection work child placing agency staff perform, however, they said they couldn't because they don't have a contract with any child placing agency. KDHE officials also told us they periodically offer training for child placing agency staff, but they can't require those inspectors to attend because they don't have a contract.

It's highly unusual for a State agency to not enter into a contract when it delegates its responsibilities to another party. However, because the administrative regulations require child placing agencies to conduct inspections of family foster homes, it appears to us that State law and other regulations give the Department sufficient authority to carry out the oversight activities it deems necessary and appropriate to ensure that any inspection work conducted on behalf of the Department is performed correctly.

FINDINGS RELATED TO COMPLAINT INVESTIGATIONS

Some Complaint Investigations Weren't Conducted in a Timely or Thorough Manner

KDHE receives numerous complaints from individuals about child care facilities—many of which relate to quality-of-care issues. To ensure that these complaints are being handled in a timely and appropriate manner and don't fall through the cracks, KDHE should have an adequate system for receiving, investigating, and tracking each complaint. We identified the following problems with the timing and thoroughness of child care complaint investigations.

In 4 of the 29 complaints we reviewed (14%), investigations weren't started on a timely basis. KDHE's criteria for how quickly complaint investigations should start range from 1-14 days, depending on the nature of the complaint. In four of our sample cases, however, we noted it took an average of 50 days before the inspector made the

first contact with the child care provider. Those time frames ranged from 28 days to 95 days. In one case, for example:

...KDHE received a complaint alleging that a foster mother had a history of seizures, and that both foster parents consumed alcohol in front of the foster child. Investigative staff didn't perform an on-site inspection until 48 days later (based on KDHE's criteria, that inspection should have been conducted within 7 days). The inspector determined the complaint was unsubstantiated, but did cite the foster parents for not having complete records regarding a current dental exam and health assessment for the foster child.

KDHE officials told us it's common for inspectors to start a complaint investigation by gathering and reviewing background information before they attempt to contact the child care provider. However, the only "start" date consistently shown in each file is the date the inspector made first contact with the provider. Although neither we nor KDHE staff could say for sure when some work may have begun on the four late investigations we identified, the delays we saw still appeared to be excessive.

In 8 of the 29 complaints we reviewed (28%), investigations didn't appear to be as thorough as they should have been.

KDHE officials have provided guidance and training to inspectors about how to investigate a complaint. They also told us a complete "walk-through" of the facility—to look for any obvious violations—should be conducted during each complaint investigation. In six of our sample cases, however, we noted that inspectors marked on the inspection form that they hadn't conducted a complete walk-through of the facility.

In the two other cases, we noted that inspectors didn't interview all the people we would have expected them to interview. In one case, for example:

...KDHE received two different complaints about a foster parent. One alleged the foster parent locked a female foster child out of the home, pushed her, and threatened to burn her belongings. Another complaint alleged that the same foster parent had an unsecured gun in the home and allowed a teenage foster child to smoke, drink, and have sex in the home. SRS also had received these complaints as potential cases of child abuse/neglect, but had screened them out. The inspector investigated both complaints at the same time and interviewed the foster mother, but didn't interview the complainant, the foster children, the foster father, or officials from the sponsoring child placing agency. We would have expected the inspector to interview more than just the individual accused of regulatory violations.

KDHE Needs To Improve Its Ability To Track and Manage Complaints About Child Care Facilities

We identified the following problems with KDHE's tracking of complaints against child care homes and facilities.

KDHE doesn't have a central log for tracking complaints about day care homes and facilities. As a result, officials don't know how many complaints are received, and don't have a good way of ensuring that all complaints are investigated and handled properly. KDHE does have a systematic process for recording and tracking complaints about 24-hour care facilities.

KDHE managers don't receive summary information about complaints pertaining to child care providers. This information is important for management to identify such things as the types of complaints being submitted, the timeliness of the complaint investigations, the number and types of complaints being substantiated, and the like. Currently, the only way to gather such information is to look at individual files. KDHE officials told us the agency's new computer system will have the capability to produce reports on such things as the timeliness of complaint investigations, the number and types of substantiated complaints, and the findings from complaint inspections. None of these reports were operational as of September 15, 2004.

FINDINGS RELATED TO ENFORCEMENT ACTIONS

KDHE Has Several Enforcement Tools Available When Facilities Don't Voluntarily Come Into Compliance with Child Care Regulations

If an inspector thinks an enforcement action is warranted—based on the results of any inspection—he or she checks a box on the front of the inspection form and submits the information to KDHE's central office, which determines what enforcement actions will be taken, if any.

Good practices suggest that KDHE should establish and follow a graduated and equitable system of sanctions to ensure that children in child care facilities are adequately protected. The progressively stringent enforcement actions KDHE has available to it are as follows:

- **Notice of Noncompliance.** KDHE's lowest-level sanction is a formal letter notifying a provider that he or she has violated certain child care laws or regulations. The letter gives the provider five days from receipt of the notice to file a written plan for correcting the violations. The letter also states that further action may be taken if the provider doesn't comply. KDHE also may ask local inspectors to conduct an on-site compliance review to determine whether the provider has come into compliance.
- **Administrative Orders.** Except for emergency license suspensions, these orders become effective within 18 days after they are issued unless the provider appeals them.

- ▶ *Fine.* State law allows KDHE to fine a provider for violating the State's child care laws or regulations that significantly and adversely affect the health, safety, or sanitation of children in care. The maximum penalty is \$500 per violation per citation.
- ▶ *Suspension.* KDHE may suspend a providers' temporary permit, license, or registration for violating child care laws or regulations. However, the provider may continue to operate until any appeals are completed.
- ▶ *Denial or Revocation of Registration or License.* State law specifies the conditions under which KDHE may revoke a license or registration, or otherwise deny a provider the ability to provide child care. Again, the provider may continue to operate until any appeals are completed.
- ▶ *Emergency License Suspension.* KDHE may issue an emergency suspension to protect children from substantial threats to their health or safety, such as abuse, neglect, or abandonment. In such cases, the children are removed from the facility immediately, and the suspension remains in effect until it's formally lifted or successfully appealed.

In addition, KDHE may petition district courts to issue injunctions against providers who are operating illegally.

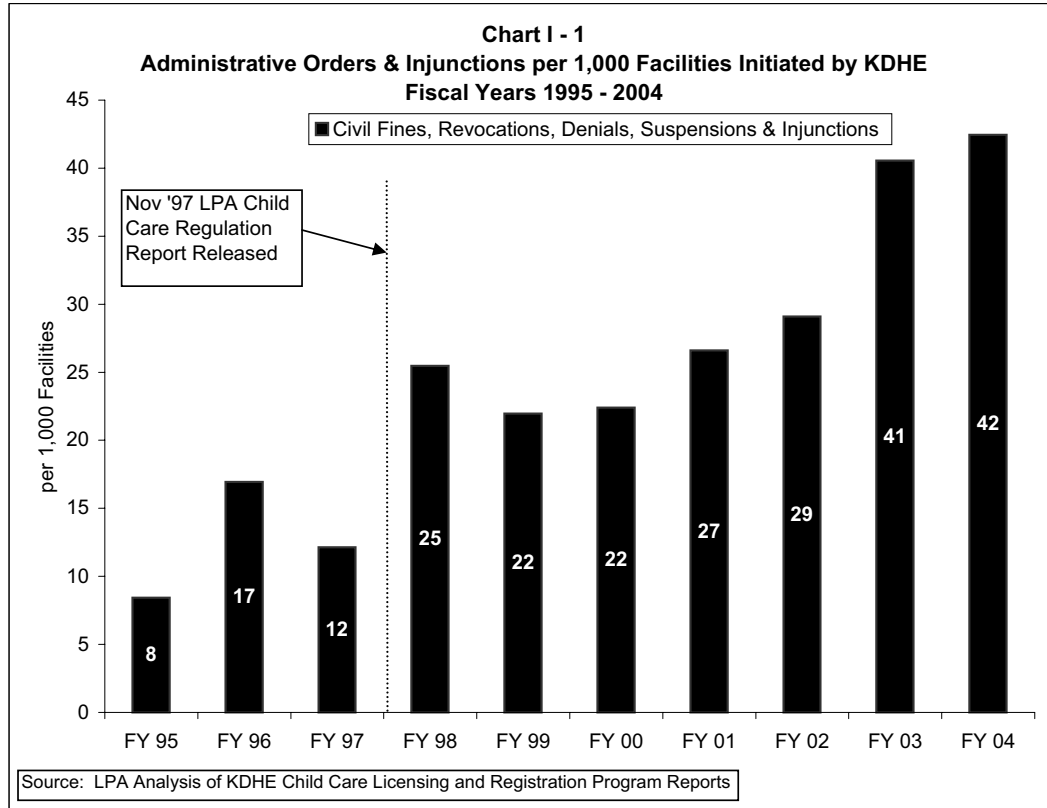
Since our 1997 audit, KDHE has significantly increased the number of administrative orders it initiates. The number of administrative orders KDHE initiated per 1,000 facilities for civil fines, suspensions, revocations, denials, and petitions for injunctions has grown by 250% since 1997, increasing from 12 in fiscal year 1997 to 42 in fiscal year 2004. This is illustrated in *Chart I-1* on the next page. Appendix B provides more detailed information about the number and rate of enforcement actions KDHE has initiated since fiscal year 1995.

Local Inspectors Didn't Always Recommend that KDHE Take Enforcement Actions When Such Actions Appeared To Be Needed

KDHE procedures call for inspectors to recommend enforcement actions when those violations pose a serious threat to children or when facilities haven't corrected violations after a follow-up inspection. In 3 of the 78 child care 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. The types of violations cited represented hazards that placed children at risk of serious harm. In one case, for example:

...the inspector initially cited a day care home for 17 violations—including no hand railing on the stairs to the basement, broken swings, unanchored playground equipment, and an unapproved playground surface. During the follow-up inspection, the inspector found that the hand railing and swings hadn't yet been fixed, and identified seven other violations. Because the facility hadn't corrected these violations by the second inspection, we would have expected the inspector to recommend that enforcement action be taken.

Because KDHE staff don't review inspection reports unless an inspector recommends an enforcement action, KDHE officials wouldn't be aware of situations where enforcement actions may have been warranted but weren't recommended.



KDHE Handled Most Enforcement Actions Appropriately, but in Several Cases KDHE Didn't Take More Stringent Enforcement Action When It Appeared To Be Warranted

In 37 of the 40 sample enforcement action cases we reviewed, KDHE's enforcement actions appeared to be appropriate. In most of those cases, KDHE issued a single notice of non-compliance, providers took the appropriate corrective actions, and no additional enforcement actions were needed.

In three cases, however, we concluded that KDHE officials didn't take progressively more stringent enforcement actions when it appeared they should have. In one case, for example:

...inspectors investigating a complaint cited two violations because the day care home provider was missing health assessment forms and emergency medical records for seven children. KDHE issued the first notice of non-compliance in February 2003. The provider didn't respond. Inspectors made several attempts to re-inspect the home, but no one was home. The facility was re-inspected in July 2003 as part of its annual inspection. During that inspection and a follow-up inspection in August, inspectors again found missing health assessment forms, and a number of additional violations, including not having a tuberculosis test for one

adult, not having immunization records for two dogs, and having a trampoline on the premises. Inspections in November 2003 and January 2004 again found problems with the missing health assessment forms, tuberculosis test, and immunization records.

KDHE issued a second warning letter in January 2004. Again the provider didn't respond. In March, another complaint investigation validated that the provider was caring for more children than allowed, and cited additional violations regarding missing documents. Inspectors also found that the fenced play area contained dog feces and that children weren't appropriately supervised. KDHE issued a 3rd notice of non-compliance in April 2004. As of the end of July, the provider still hadn't responded and KDHE hadn't taken any additional actions against this provider.

We also noted that KDHE wasn't always timely in sending notices of non-compliance to child care facilities, or in deciding what its next enforcement action should be. Those issues are summarized below.

- **In 5 of the 35 cases (14%) where KDHE sent out notices of non-compliance, they weren't issued within the time frames KDHE has set.** The time frames KDHE has established for sending out notices of non-compliance are 45 days for a provider's failure to renew his or her license or registration timely, and 30 days for other violations. In five cases, KDHE sent out those notices 7-132 days past those guidelines.

In one case, however, KDHE took 37 days to send out a notice of non-compliance to a facility regarding a "prohibited" person in that facility, 7 days past its guidelines. In this particular instance, we also questioned whether KDHE's 30-day policy was reasonable. Given that a person with certain convictions or a history of child abuse or neglect is prohibited by State law from coming into contact with children in care, this 30-day standard seemed excessive.

- **Once a notice of non-compliance is sent out, KDHE has up to 60 days to decide what its next action will be.** State law requires child care providers to correct violations within five days of the date they are made aware of the violations. When KDHE issues a notice of noncompliance, it gives providers 5 days to submit a plan of correction. However, KDHE staff don't consider those documents to be past due until 30 days have elapsed. They also allow themselves another 30 days to decide what action to take next if the provider doesn't provide a written response, or if the response provided is inadequate or incomplete. Thus, up to 60 days could pass without any action being taken to see if cited violations have been fixed.

Many of the Inspectors We Surveyed Thought KDHE's Enforcement Program Was Weak

During this audit, we surveyed a total of 101 local county inspectors. In all, 59 responded, for a response rate of 58%. More than a third of the inspectors who responded thought KDHE's enforcement actions weren't frequent enough, consistently applied, or effective at getting providers to

correct violations. As **Table I-2** shows, those survey results generally were similar to the results we received in our 1997 audit.

Table I -2 Comparison of Survey Results Surveys of County Child Care Inspectors		
Enforcement actions are...	1997 % Disagree	2004 % Disagree
...used frequently enough	44.4%	42.4%
...applied consistently	25.8%	33.9%
...effective at getting providers to correct violations	41.9%	39.3%

Source: Post audit report 97-52, and LPA analysis of 2004 survey responses.

Inspectors who were critical of KDHE’s enforcement efforts often cited a lack of strong and consistent enforcement action. For example, one inspector wrote, “For some a notice of noncompliance is sufficient to bring them into compliance, but for many it is not. There are some facilities that have been out of compliance for years and KDHE does nothing about it, although I’ve requested they be fined numerous times. Enforcement is

inconsistent. In my four years as a surveyor only 2 of my facilities have been fined- both of which I requested NOT be fined due to changes in management etc.” Other sample comments are summarized in the box below.

Some Inspectors from Local County Health Departments Expressed Concerns About KDHE’s Enforcement Efforts

As part of this audit, we surveyed county staff KDHE contracts with to inspect child care providers. A number of inspectors commented on the enforcement process. Here are some examples.

- “They try to suspend the license of a good child care for minor violations and then they will let one which continually puts children at risk go.”
- “I cite a provider for the same regulation violations I have for the past three years. She receives a notice of noncompliance. She writes she has corrected it to KDHE and they accept it. Usually it has not been verified. One time I found a provider over her numbers [of authorized children] for four months in a row. Nothing happened to her.”
- “I sometimes have written up the same providers for the same noncompliance issue year after year after year and they usually just have to explain what they are doing to correct it. If we could go back on more compliance checks or if KDHE would impose a fine (however small) I think that would make providers correct their infractions.”
- “Perhaps if penalties were stronger earlier in the process there would be better compliance and less need for repeated penalties.”

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 Non-Compliance

KDHE’s general enforcement approach is to work with child care providers to educate them about the requirements they have to meet, and to try to bring them voluntarily into compliance. This approach is reasonable, but for providers who repeatedly violate child care laws or regulations, or who won’t voluntarily come into compliance within a reasonable time frame, KDHE officials must take stronger action to bring them into compliance in a more timely and effective manner.

KDHE’s interpretation of the law may be causing it to not use fines when they could be an effective tool to help bring providers

into compliance. Monetary fines can be an effective tool for bringing problem day care facilities into compliance with the law. KDHE records show that the agency fined 53 child care facilities in fiscal year 2004.

When we questioned why KDHE hadn't taken progressively harsher actions in the cases mentioned earlier, KDHE staff told us they don't use fines more frequently because State law specifies that fines can be imposed only for violations that "significantly and adversely affect the health, safety or sanitation of children in a child care facility or day care home." Because other provisions in the law give KDHE the power to revoke, deny, or suspend a provider's license for any statutory or regulatory violations, KDHE officials have interpreted the language relating to fines as restricting its use of fines only to significant situations involving children's health, safety, or sanitation.

We don't think this statutory language would have prohibited KDHE from imposing fines in at least two cases where we saw a history of repeat or serious violations, including such things as dog feces in the fenced play area, lack of supervision, and inadequate staff-to-child ratios. Such violations would appear to pose a significant risk to children's health, safety, or sanitation.

In addition, although KDHE hasn't defined what types of violations "affect the health, safety, and sanitation of children," its guidance documents do say that fines can be used:

" for violations of child care statutes or regulations that significantly and adversely affect the health, safety or sanitation of children in care or the first or second offense for smoking in a day care home. Civil penalties are typically issued for documented, repeat noncompliance when corrective action has failed or for isolated events in which there is harm or significant likelihood of harm."

Department officials have imposed a higher standard than necessary about what events need to occur before stricter enforcement actions can be taken. Actions harsher than a notice of non-compliance, (fines and license suspensions or revocations) require an administrative order to be issued by the Secretary of KDHE, and are subject to administrative appeal. Although not specified in Department policy, KDHE staff told us they won't initiate an enforcement action beyond a formal notice of non-compliance until inspectors have documented the existence of the same violation(s) in three consecutive inspections. They told us they use this standard to establish a "pattern of non-compliance" so there's less chance their enforcement actions will be appealed and overturned in the administrative hearings process.

However, officials from the Office of Administrative Hearings told us it wasn't necessary to find the same violation, and violations didn't necessarily have to be found over and over again to establish a pattern of non-compliance. In other words, if a facility had violations when it was first inspected, and any violations were found again upon re-inspection or after a notice of non-compliance was issued, that could be enough to establish a pattern of non-compliance. They told us it was critical for the facility to be notified of the non-compliance, and given a reasonable opportunity to correct deficiencies before sanctions were imposed.

For the Department to expand the types of intermediate sanctions available to it, State law would have to be changed.

Our review of the literature showed that other states use a number of additional enforcement tools when initial warning letters don't work to bring providers into compliance, yet harsher enforcement actions like fines or suspensions don't appear to be warranted. Some examples include:

- using probationary licenses to put the provider on notice that he/she may lose the ability to provide child care if problems aren't corrected
- posting or publishing information about the provider's non-compliance, either at the facility or through the media
- temporarily decreasing the number of children a provider is allowed to care for

At least one regulatory agency in Kansas already has the ability to limit a facility's capacity. The Department on Aging has the authority to prohibit nursing homes with compliance problems from accepting new residents. KDHE officials told us they thought a similar provision would be beneficial for the child care program.

FINDINGS RELATED TO KEEPING POLICIES AND REGULATIONS UP TO DATE

In addition to the findings already described, we identified several other areas where improvements are needed. Each is discussed below.

KDHE's administrative regulations for child care providers need to be updated and revised. Officials told us that many of the existing child care regulations need to be updated to reflect current practices. Although new regulations for drop-in programs caring for school-age children took effect in September 2004, they said a lack of staff resources prevented them from updating other regulations. *Table I-3* on the next page shows examples of regulations KDHE staff have identified as needing to be revised.

Table I - 3 KDHE Review of Child Care Regulations		
K.A.R.	Subject	What KDHE Says:
28-4-130	Transportation of Children in Vehicles	<u>Amend</u> because it doesn't address current car safety and seat belt use, nor comply with State laws. Also, the use of cars by teenage foster children or other teenage children of foster parents needs to be addressed.
28-4-176	Adoption Services	<u>Amend</u> to clarify licensing issues related to foster parents adopting a foster child. This regulation also needs to be updated to address record retention issues when an adoption agency closes.
28-4-428	Staffing Requirements	<u>Amend</u> to allow kindergarten-age children to be in school-age groups and to allow the use of age-appropriate developmental units. <u>Revoke</u> the requirement for each staff member to provide work references at the time of application for employment.
Source: LPA review of KDHE documents and interviews with officials.		

KDHE needs to revise its procedure manual related to day care and create one for the foster care section. Officials told us staff haven't had time to draft or revise these manuals because of a lack of staff resources. However, it's important for any program to have a procedures manual that describes how the program works, how staff are expected to handle certain situations, and the like. For the child care program, another facet of the manual would be to set forth guidelines for how long certain activities should take. Many of the criteria we used in this audit weren't clearly set forth in any agency document, and had to be obtained from talking with agency staff.

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 child care 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.

Recommendations

1. To ensure that unauthorized people aren't caring for children in child care facilities, the Department should use the capabilities of its new computer system to identify when background checks are due on workers in child care facilities, and to verify that those checks have been completed. Staff also should periodically test those computer programs to ensure that they are working as designed.

2. To ensure that regulatory violations in child care facilities are dealt with consistently--based on an objective standard--the Department should develop a system that ranks violations based on how serious they are, and that ties enforcement actions to the number and seriousness of violations found.
3. To ensure that annual and follow-up inspections of child care facilities are both timely and thorough, the Department should:
 - a. use the capabilities of its new computer system to generate reports that will allow management to know such things as:
 - when an inspection was due and when it was completed
 - inspections pending
 - the number and type of violations cited. (For example, being able to sort this information by inspector would allow Department managers to determine whether some inspectors frequently cite a violation, while others don't. This could indicate inconsistent interpretations of child care regulations.)
 - b. conduct training for inspectors to ensure they are aware of the Department's policies regarding the thoroughness of inspections. That training should include information on how to ask questions in a way that doesn't lead the respondent to the desired answer.
 - c. have staff in the central office spot check some inspection reports (including those that don't recommend an enforcement action) to ensure that the forms are complete and that all noted violations have been recorded properly.
 - d. eliminate the difference in the number of days it allows inspectors to follow-up on violations found in foster homes and day care facilities.
4. To ensure that child care providers have taken sufficient steps to ensure that regulatory violations are corrected, the Department should provide additional training to inspectors regarding what constitutes an acceptable corrective action plan, and when a follow-up inspection should be made rather than accepting a corrective action plan.

5. To ensure that complaint investigations are timely and thorough, the Department should:
 - a. develop a system for recording and tracking the status of complaints for all types of facilities including a way of recording the date a complaint investigation is actually started.
 - b. have management periodically review that information to ensure that complaints are being investigated on a timely basis.
 - c. conduct additional training for inspectors on who should be interviewed and what needs to be looked at during a complaint investigation.
6. To ensure that enforcement actions taken against child care facilities are timely, appropriate for the types of violations found, and effective at bringing facilities into compliance with the law and regulations, the Department should:
 - a. seek to expand the enforcement options it has available, including such things as using probationary licenses, publishing information about non-compliance with regulations, and freezing or reducing the number of children a facility is allowed to care for.
 - b. more directly tie enforcement actions to the number and seriousness of violations (see recommendation 2).
 - c. consider using fines more frequently for repeat violations, particularly those that involve potential health, sanitation, and safety issues.
 - d. periodically review information about notices of non-compliance and other enforcement actions to ensure that they are being issued within the time frames specified in the Department's procedures.
 - e. reduce the number of days allowed for staff to decide what enforcement action to take when a child care provider doesn't respond properly to a notice of non-compliance.
 - f. work with officials from the Office of Administrative Hearings to clarify the level of evidence needed to establish a pattern of noncompliance.
7. To ensure that it has the regulations needed to effectively safeguard the health and safety of children in child care facilities, the Department should update its procedure manual for the day care section, and create one for the foster care section.

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

ANSWER IN BRIEF *Our comparisons showed that Kansas is focusing its efforts on regulating the same types of facilities as other states, but that it regulates more small day care homes than those states—including homes that care for just 1-2 unrelated children. The comparison states tend to have higher thresholds. Increasing Kansas' threshold would reduce the number of regulated facilities, but probably wouldn't have an appreciable effect on KDHE's workload because small day care homes are usually registered, not licensed, and don't have annual inspection requirements.*

For facilities that are licensed, implementing a risk-based system of inspections could allow KDHE to use its staff more efficiently and help ensure that inspections and investigations are conducted on time and as thoroughly as they should be, but such a system would require a change in law and in the information KDHE gathers and maintains. Finally, extending its annual license renewal cycle, modifying the background check process, and handling new and renewal license applications on line could free up child care licensing staff for other duties. These and related findings are discussed in the sections that follow.

Kansas Generally Regulates the Same Types of Child Care Facilities As the Other Comparison States

We contacted officials in Oklahoma, Colorado, Tennessee, North Carolina, and Delaware about the types of child care programs and numbers of facilities they regulate. These states generally are recognized in literature and by child care experts as having good child care regulatory programs.

Although states tend to use different definitions for child care providers, may have different regulatory classifications (licensed, registered, certified, etc.), and exempt different groups of people from regulation (such as day care facilities providing a significant amount of religious instruction), we tried to make the information available as comparable as possible. Still, the reader should understand that the comparisons we were able to perform were somewhat limited.

As **Table II-1** shows, our comparisons of the types of facilities regulated showed there was little difference among the six states. The only noteworthy exception we saw was that Kansas doesn't regulate before-and-after school programs operated by school districts. Four of the five other states did. Department of Education officials told us these services are provided within school buildings and are considered to be extensions of the educational services school districts provide.

The few other differences we saw probably involve only a handful of providers. A more detailed version of this table can be found in *Appendix C*.

Type of Child Care Service	KS	CO	OK	NC	DE	TN
Family day care homes	Yes	Yes	Yes	Yes	Yes	Yes
Child care centers	Yes	Yes	Yes	Yes	Yes	Yes
Pre-schools	Yes	Yes	Yes	Yes	Yes	Yes
Before and after-school programs operated by school districts	No	Yes	Yes	Yes	No	Yes
Before and after-school programs run by churches or charitable organizations such as YMCA	Yes	Yes	Yes	Yes	Yes	Yes
Programs for children operated by community mental health centers	Yes	Yes	No	Yes	Yes	Yes
Drop-in recreational programs operated by a local municipality	No (2)	Yes	Yes	No	Yes	No
Programs for children operated by boys & girls clubs	Yes	No	Yes	No	Yes	Yes
Day camps, summer camps and other recreational programs for children	Yes	Yes	Yes	Yes	Yes	No
Family foster homes	Yes	Yes	Yes	Yes	Yes	Yes
Group Boarding homes	Yes	Yes	Yes	Yes	Yes	Yes
Residential centers	Yes	Yes	Yes	Yes	Yes	Yes
Detention centers	Yes	No	Yes	Yes	No	Yes
(1) States have various requirements and exemptions for determining whether individual child care providers will be regulated. This table only shows whether these types of providers are regulated in general.						
(2) Regulations took effect in September 2004, but only affect drop-in programs operated for 4 or more hours a day, and for more than 2 consecutive weeks.						
Source: Surveys of state officials and review of states' laws and regulations.						

Kansas Regulates 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, which is a lower threshold than three of the comparison states. By contrast, Colorado only regulates facilities that care for two or more children, North Carolina has set its threshold at three or more, and Tennessee's threshold is five or more. In addition, the National Association for the Education of Young Children generally advocates regulating any program providing care and education to children from two or more unrelated families.

Partly because it has such a low threshold in this area, Kansas has significantly more regulated day care homes on a per-capita basis than the comparison states. As **Table II-2** on the next page shows, Kansas has about 12 day care homes per 1,000 children under the age of 14.

**Table II-2
Comparing the Number of Day Care Facilities Regulated by Kansas and 4 Other States (a)**

Type of Provider	TOTAL Number of Child Care Facilities (b)				
	KS	OK	CO	TN	NC
Day care homes	7,147	4,532	4,296	1,652	n/a
Centers/Facilities	1,256	1,918	2,922	3,530	n/a
Total	8,403	6,450	7,218	5,182	9,105
	Number of Facilities per 1,000 Children < 14 years of age				
	KS	OK	CO	TN	NC
Day care homes	12.1	6.2	4.7	1.4	n/a
Centers/Facilities	2.1	2.6	3.2	3.0	n/a
Total	14.3	8.8	7.9	4.4	5.5
Population < 14 years of age	588,300	732,907	917,430	1,165,848	1,653,429
# of children at which point providers must be regulated	1 or more children	1 or more children	2 or more children from separate households	5 or more children	3 or more children

(a) Delaware was excluded from this comparison because it did not provide numbers of facilities.
(b) These only include data for facilities that provide less than 24-hour day care, and don't include 24-hour care facilities such as foster homes, group homes, or detention centers.

Source: Surveys of state officials, and Census Bureau Reports.

By comparison, Tennessee, which only regulates homes if they have five or more children, had only 1.4 regulated day care homes per 1,000 children under 14.

Because of the classification and definition problems mentioned earlier, we weren't able to specifically identify which types of day care homes Kansas regulates more of. Our discussions with KDHE and other states' officials also suggested that other factors potentially could be contributing to Kansas' high number of regulated day care homes. These include the number of exemptions other states allow, the fact that Kansas is more rural than some of the comparison states, and home-based day care providers' interest in being regulated.

Increasing Kansas' threshold would reduce the number of regulated facilities in Kansas, but probably wouldn't have any appreciable effect on the Department's workload. Summary information about the number of children each day care home cares for isn't available. As a result, we couldn't determine how the number of

Kansas' regulated facilities would change if the regulatory threshold for day care homes was increased from one child to two, three, or even more children. Still, it's clear the number would go down somewhat.

This drop in the number of regulated facilities likely wouldn't have a significant impact on the Department's workload. That's because homes caring for six or fewer children in Kansas can choose to be "registered" rather than being licensed. These facilities send in a self assessment form and pay a fee, but aren't subject to the annual inspection requirements licensed homes are. (Generally in the other comparison states, all regulated facilities are inspected.)

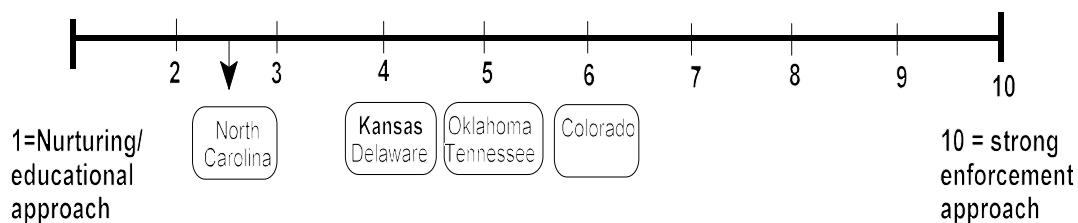
Department records show there were about 2,700 such providers as of June 30, 2004. Most of the providers caring for only 1-2 children likely would be in this category, and KDHE's workload associated with regulating them is fairly minimal.

We weren't able to perform some comparisons between Kansas and other states because of significant variations in the ways states operate their programs. As part of this audit, we had hoped to be able to perform a number of comparisons between Kansas and other states in such areas as staffing and spending levels for child care programs. In trying to collect this information, however, we found that differences in the ways states operate their programs and maintain their data meant that much of the data available either were incomplete or not comparable.

Officials Who Regulate Child Care Programs Say They Try to Assist with Compliance, Rather Than Take Strong Enforcement Actions

We asked officials from Kansas and other states to rank their approach to regulating child care facilities on a 10 point scale—with 1 being a nurturing and educational approach and 10 being a strong, punitive approach. Those rankings are shown below.

Comparison of Enforcement Philosophy of Child Care Regulations Between Kansas and 5 Other States



The responding states ranked themselves toward the middle or toward the nurturing end of the scale. We attempted to gather information about enforcement actions to help us assess how consistently the states ranked themselves, but most states weren't able to provide that information on a comparable basis.

For example, some states have divided child care oversight among several different state agencies or divisions—or have delegated various aspects of that oversight to outside entities. That made it nearly impossible to gather comparable staffing and financial data, or comparable data about the number of regulated foster homes, group homes, and detention centers that provide 24-hour care.

Implementing a Risk-Based System of Inspections Could Allow KDHE To Use Its Staff More Efficiently, But Significant Changes Would Have To Be Made

By law, KDHE inspectors (or their designees) are required to inspect each licensed child care provider at least once each year. They also investigate complaints about any licensed or registered child care provider to determine whether the provider has violated the State's child care regulations.

As pointed out in question one, inspectors don't always conduct those inspections and investigations on time, or as thoroughly as they should. Implementing a risk-based system potentially could help the agency address these issues and ensure that its staff resources are used more efficiently.

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. This system allows regulatory staff to spend less time inspecting facilities that generally comply with laws and regulations, and more time with facilities that are chronically out of compliance.

Ultimately, such a system also should increase overall compliance with the law, because facilities that have problems will get the increased attention that will either cause them to come into compliance or stop providing child care.

Of the five other states we contacted, three have implemented risk-based inspection systems. Colorado varies its inspection frequencies based on a risk factor assigned to each facility. Those risk factors range from 1 (requiring monthly inspections for facilities on probation) to 7 (requiring inspections once every 3 years for homes or centers that have been licensed for a long time and have no complaints and rare violations). Oklahoma and Tennessee both inspect facilities that are chronically out of compliance more frequently than facilities with few or no violations.

Going to a risk-based inspection system would require both a change in law and in the types of management information KDHE collects. The statutory requirement for annual inspections would have to be amended to give KDHE the flexibility to extend or shorten this timeframe, based on the facilities' history of compliance with laws and regulations.

KDHE also would need to maintain computerized information about each facility's compliance history—both in terms of the number and type of regulatory violations, as well as the results of any complaint investigations. KDHE currently doesn't maintain such detailed information. The Department's new computer system will allow inspection reports to be completed electronically, and the Department also plans to capture and analyze data about violations cited to allow inspection staff to focus inspections on those providers that are noncompliant.

KDHE Could Streamline Its Child Care Licensing Process

Although child care licenses don't officially expire, each licensee must follow an annual renewal process. As part of that process, KDHE does the following:

- sends renewal notices to about 11,000 providers annually
- receives, processes, and files providers' renewal paperwork and renewal fees
- follows-up with providers who haven't renewed their registration or license on time

Extending the annual license renewal cycle and modifying the background check process could free up child care licensing staff for other duties. By moving to a licensing cycle that requires “full paperwork” only once every 2-3 years—and increasing the licensing fees accordingly to remain revenue neutral—KDHE could save staff time that currently is spent processing paperwork.

Department officials estimate it takes less than 30 minutes per child care provider to process renewal paperwork and payments and enter names for background checks. Based on this, we estimated that going to a biennial renewal cycle could free up about 2,500 staff hours each year, or the equivalent of about 1.2 full-time-equivalent staff positions.

Of the 5 states we contacted, Oklahoma doesn't require providers to submit renewal applications at all. Once a provider is licensed, Oklahoma's regulatory agency keeps track of all providers through periodic inspections. In Colorado, child care centers only have to submit an abbreviated annual “continuation form” if no change in their status has occurred.

Concerning background checks, KDHE's policy is to require an initial screening on or shortly after any person starts to work, live or volunteer at any regulated child care facility. After that, KDHE requires facilities to provide information about the names of all people associated with a home or facility at least once a year. All those individuals are required to have an annual background check.

**Table II-3
Comparing States' Practice for Performing Background Checks**

State	Are background checks required for new providers / child care employees?	How frequently are subsequent background checks performed?
Kansas	Yes	Annually after the initial background check.
Oklahoma	Yes	No scheduled follow-up background checks.
Colorado	Yes	The Colorado Bureau of Investigation "flags" all new employee names and notifies the state when there's a new offense associated with those names. This process eliminates child care staff from having to periodically resubmit names.
Delaware	Yes	When staff move to a different child care facility and the background check has been done over 5 years ago. In addition, the state Bureau of Investigation notifies staff within the licensing section of any subsequent arrests of individuals identified to work in child care facilities.
North Carolina	Yes	When staff move to a different child care facility.
Tennessee	Yes	When employees take extended leaves or move to a different child care facility.

Source: LPA telephone interviews with officials from other states.

As shown in *Table II-3*, however, other states we contacted don't perform those checks as often as Kansas does.

Reducing the frequency of background checks would save staff time, but also would result in KDHE's records about who is providing child care services not being as "up-to-date."

Theoretically that could increase the risk a prohibited offender wouldn't be identified on as timely a basis. However, given that most names have been checked at least once, and that most offenders are identified during their initial screening, that risk may be fairly minimal.

KDHE also plans to convert to an electronic license-renewal process. KDHE officials told us their new computer system will allow child care providers to submit new and renewal applications electronically. That part of the system currently is scheduled to be implemented in fiscal year 2006. Once it's in place, providers will be able to submit and

review the status of their applications or renewals on-line. In addition, larger facilities will be able to submit names for background checks electronically.

Converting to an electronic licensing system can save staff time and postage costs, and can significantly reduce paper storage needs. It's also more convenient for the licensee. The accompanying profile box describes some of the benefits other Kansas regulatory agencies told us they had achieved with their on-line licensing systems.

Handling License Applications and Renewals On-Line Offers Many Benefits for State Agencies

We talked to officials at several State agencies that recently implemented on-line licensing systems for the entities they regulate. Here's what we learned:

- Officials from the Behavioral Sciences Regulatory Board, which licenses about 8,300 mental health professionals biennially, told us that about 15% of their licensees have renewed on line, which has freed up 20% of one data entry person's time for other tasks.
- Officials from the State Board of Pharmacy told us that, of the 3,800 renewal applications processed each year, 16% have been transmitted on-line. The benefits they cited included not having to hire a second temporary person, not having to file paperwork, and spending less time balancing and accounting for license fee receipts.
- Officials from the Board of Nursing told us that on-line registrations for its 24,000 licensees increased from 14% in 2001 to 38% in 2004. The agency has converted a licensing staff position to a computer technology position, and has reduced the amount of time dedicated to "walk-ins and call-ins," which also has freed up staff. The workflow also has been evened out.

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 inspected annually.

- Recommendations**
1. To allow it to better use its limited resources, KDHE should seek the statutory changes needed to do the following:
 - a. reduce the frequency of its license renewal process, and adjust its fees accordingly to ensure that it has the needed cash flow to fund its child care regulatory operations.
 - b. reduce the frequency of background checks for those child care facility volunteers and employees who already have been checked once and who haven't moved from the facility in which they were initially employed.
 - c. implement a risk-based system of inspections. Before such a system could be implemented, the Department would need to implement recommendations presented in Question 1 that call for it to develop a system of ranking the severity of violations.

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?

ANSWER IN BRIEF *We found duplicate regulatory responsibilities or activities in three areas. First, KDHE and child placing agencies both conduct initial inspections at new family foster homes, using the same regulations and checklists. This duplication could be minimized if KDHE relied on the results of child placing agencies' initial licensing inspections.*

Second, there's regulatory duplication when both SRS and KDHE staff investigate child abuse and neglect complaints at child care facilities. SRS is trying to determine whether a child was abused or neglected, and KDHE is trying to determine whether the child care provider failed to comply with child care regulations. Eliminating or minimizing this duplication would involve cross-training SRS staff and better sharing of information.

Finally, we found overlap in SRS' and KDHE's regulatory responsibilities when both regulate community mental health centers that also provide child care services. The agencies have created an interagency workgroup to help identify the duplicate and conflicting regulations.

Responsibility for Inspecting Certain Homes Was Transferred from SRS to KDHE in the Mid-1990s To Avoid a Conflict of Interest

Until the mid-1990s, SRS staff (or child placing agencies on SRS' behalf) were conducting all licensing inspections at family foster homes, and KDHE primarily issued paper licenses and took enforcement actions when needed, based on those inspections. But because SRS was responsible for both recruiting foster homes and inspecting them to determine whether they were in compliance with State regulations, this situation created a conflict of interest.

To address this issue, KDHE and SRS entered into an agreement that called for KDHE to establish and enforce regulations for all child care homes, including family foster homes. KDHE was to receive and process applications, conduct licensing and compliance inspections, and issue licenses and enforcement actions.

During the 2003 legislative session, the House Social Services Budget Committee expressed an interest in transferring the regulatory and inspection function for day care and foster care homes from KDHE to SRS to avoid potential duplication of effort. Transferring foster home inspections to SRS would reverse the earlier change and again bring up the issue of conflict of interest. We still looked at this issue in this question to see what potential impact it could have on eliminating duplication.

***KDHE and Child
Placing Agencies Both
Conduct Initial Licensing
Inspections Of New
Family Foster Homes***

As described below, family foster homes that are going to be licensed for the first time essentially are subject to two pre-licensure inspections—the first by a child placing agency, and the second by KDHE:

Child placing agencies conduct “walk-through” inspections of each new foster family home before they are licensed. SRS has contracts with five child placing agencies who in turn subcontract with other child placing agencies across the State to recruit family foster homes and help place foster children. To help prepare new foster families to be licensed child care facilities, to familiarize them with the State’s regulatory requirements, and to identify areas where the homes are not yet in compliance, child placing agency staff conduct an initial “walk-through” inspection with each new foster family.

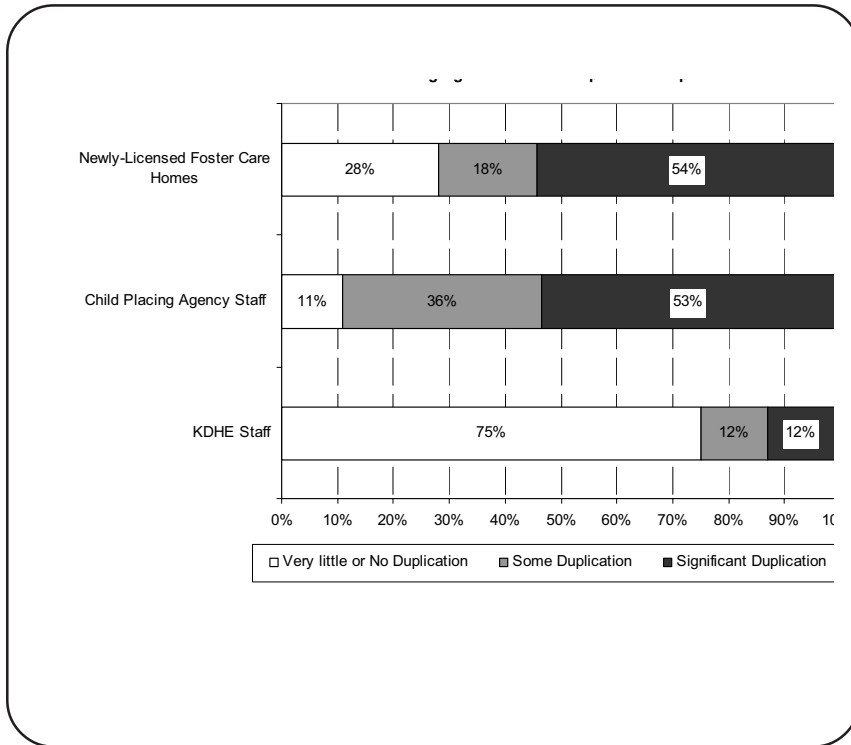
Child placing agency staff have received some training from KDHE staff about how to conduct these inspections, and use the same checklists KDHE staff use for the official licensing inspection—which usually is conducted several weeks later. So, for example, staff from both agencies will check to ensure that outdoor play areas are free from hazards and that play equipment is safely constructed and in good repair.

If the child placing agency’s walk-through inspection finds anything that doesn’t meet regulatory requirements, its staff usually work with the family to get those deficiencies corrected before the family submits its license application to KDHE. Copies of the completed walk-through inspection checklist are submitted with the application.

Once KDHE receives a complete licensing application, it has 90 days to either issue or deny the license. KDHE may issue a temporary permit to allow the child placing agency to immediately place children with the family, but generally will do so only if the walk-through inspection found no substantial violations, or if the violations found were corrected. During calendar year 2003, KDHE issued a temporary permit to about two-thirds of the 610 new family foster homes.

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. KDHE foster care staff inspect each home regardless of what the child placing agencies’ walk-through inspections showed. Once KDHE determines a home is in compliance with all regulatory requirements, it issues a license to the family to operate a foster home. This license must be renewed every year, and each home must be re-inspected annually as part of the license-renewal process. All work related to renewal inspections are conducted by child placing agency staff.

Child placing agency staff and foster parents we surveyed questioned the need for these duplicate initial licensing inspections. During this audit we surveyed 119 child placing agency staff, all 19 KDHE foster care regulatory staff, and 164 recently-licensed foster families.



As shown in *Graph III-1*, slightly more than half the child placing agency staff and foster families responding with an opinion said they thought there was significant duplication between these two initial inspections.

Some examples of their comments:

Child Placing Agency Staff Comments:
 “All the information is exactly the same and the foster parents have to go through the same process twice.”

“We do the exact same walk-through that KDHE does. This is a duplication of services. If we note no deficiencies why does KDHE have to go out to confirm that?”

Foster Family Comments:

“They [the child placing agency and KDHE staff] check the same things, as far as whether you have escape windows, outlet covers, gates, door locks, etc...”

“The initial walk through by the placing agency seems like a formality that is not needed. If there is a charge associated with these then they can be eliminated and free up moneys to be used where really needed.”

In contrast, very few of KDHE staff (12%) responding to our survey thought there was significant duplication between these initial inspections.

KDHE could minimize the duplication that exists in this area by relying on the results of child placing agencies’ initial licensing inspections. As noted earlier, one concern about having child placing agencies be solely responsible for initial licensing inspections is the potential for conflict of interest: because these agencies need foster homes to place children in, they might overlook some regulatory requirements. About one-fourth of the child placing agency staff we surveyed acknowledged this conflict.

KDHE already trains child placing agency staff in how to conduct walk-through inspections for new homes, and often uses the results to issue 90-day temporary permits to foster homes. In addition, KDHE officials

have child placing agencies conduct all license renewal inspections for about 1,800 foster homes each year. In addition, at least two other states we're aware of—Colorado and Delaware—rely on child placing agencies to do these inspections.

Relying on child placing agencies' initial inspections would free up KDHE staff to conduct periodic spot checks of all licensing inspections for foster homes—both initial and renewal. That could provide greater overall assurance that child placing agencies are conducting appropriate and thorough inspections of family foster homes.

Both SRS and KDHE Investigate Complaints of Child Abuse and Neglect At Child Care Facilities

When someone reports a case of suspected child abuse or neglect, SRS is responsible by law for screening and investigating each report. When an abuse/neglect report involves a licensed child care facility—including a family day care home, child care center, or family foster home—SRS and KDHE have adopted a memorandum of understanding that outlines both SRS and KDHE's responsibilities.

Among other things, the memorandum requires SRS to give KDHE a copy of any report of suspected abuse or neglect within five working days, and says that "whenever indicated and practical, SRS and KDHE shall conduct joint child abuse/neglect investigations in facilities subject to regulation by KDHE." For KDHE, those investigations are conducted either by county-level child care staff under contract with KDHE, or by KDHE's foster care staff.

During fiscal year 2004, SRS staff estimated they investigated about 16,700 allegations of child abuse and neglect. Of those, 511 complaints (3%) involved licensed child care facilities where both SRS and KDHE inspectors would have responded to and investigated the complaint.

Each agency has a different role in these investigations. In investigating reports of child abuse/neglect, SRS and KDHE staff are trying to make different determinations about the facts of the case:

- *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.*

For example, SRS could receive a report of abuse/neglect because a child fell down the stairs and broke his or her arm while at a licensed child care center. SRS investigators likely would interview the child, parents, people working at the center, and others to determine whether there was any indication of abuse or neglect—such as someone intentionally tried to harm the child by pushing him or her down the stairs—and whether there was adult supervision at the time of the injury.

KDHE staff would be interested in some of the same facts, such as whether there was adult supervision at the time of the injury. That’s because KDHE regulations require a certain ratio of child care staff to children to ensure adequate supervision. But KDHE staff also would be interested in a number of things SRS investigators wouldn’t consider—such as whether there was a gate blocking the stairway, and any other controls that should have been in place to prevent the injury.

These differences help explain why, in some cases, SRS may conclude there was no abuse, but KDHE may cite the child care facility for regulatory violations that contributed to the child’s injury.

SRS and KDHE staff aren’t always able to conduct joint investigations, and may end up talking to the same people and looking at the same basic set of facts. Typically in a child abuse and neglect investigation, both SRS and KDHE investigators will talk to the people involved in or familiar with the incident. That includes the parents or guardian of the child, and those who were working at the child care facility at the time of the incident. SRS staff also might interview the child, but KDHE staff rarely do. Examples of records both agencies might examine include the child’s health assessment, as well as staffing levels and personnel on duty.

Conducting these investigations jointly can, at a minimum, reduce the amount of duplicate work that each agency performs on-site. In some circumstances, however, SRS investigators are required to begin investigating a child abuse/neglect complaint the same day it’s received. In those cases, they may have little flexibility in working with KDHE inspectors to schedule a joint investigation.

KDHE officials told us that when investigations aren’t conducted jointly, in some cases their inspectors try to avoid replicating SRS’ work by using SRS investigators’ interview notes and other materials when possible.

Table III-1 Summary of Survey Responses Regarding Duplication and Coordination On Child Abuse and Neglect Investigations		
Staff Surveyed	% Who Said There’s “Significant” Regulatory Duplication	% Who Described SRS and KDHE as “Not Well Coordinated”
County-level child care staff under contract with KDHE	2%	24%
KDHE foster care staff	6%	24%
SRS child protection staff	8%	6%
Source: LPA survey of agency staff. Number of staff surveyed and response rates: 101 child care staff were surveyed, 59 responded (58%); 19 KDHE staff were surveyed, 17 responded (90%); 236 SRS staff were surveyed, 135 responded (57%).		

Most SRS and KDHE staff we surveyed don’t perceive what they do as being duplicative.

However, about one in four of the county inspectors and KDHE staff responding to our survey thought investigations could be better coordinated.

Table III-1 summarizes the survey responses we received.

The comments we received about poor coordination generally cited three issues.

- **Failure to share information.** County inspectors and KDHE staff complained that SRS investigators were sometimes reluctant to share information from their investigations.
- **Lack of guidance on what needs to be done to coordinate investigations.** About 20 of the SRS staff responding to our survey indicated they were unsure what they were supposed to do to coordinate these investigations because there aren't clear guidelines on how to coordinate, including who should be contacted and when. Our review showed that SRS policies say inspectors should coordinate with KDHE, but are relatively non-specific about what steps should be taken. In addition, KDHE foster care policies don't address the issue of coordination at all.
- **Difficulty in coordinating investigators schedules.** As noted earlier, joint investigations can't always be coordinated because of timing problems. This problem often may be unavoidable.

One way to eliminate or minimize the duplicate investigations conducted in response to child abuse/neglect complaints would be to require cross-training of SRS staff and better sharing of information. As noted earlier, child care facilities accounted for only about 3% of the abuse/neglect investigations SRS staff conducted in fiscal year 2004. But that still meant both SRS and KDHE/county-level staff conducted an investigation of the same facility—albeit looking at different things—at slightly more than 500 facilities.

Because SRS is required by law to investigate reports of suspected child abuse or neglect, minimizing duplication in this area essentially would mean minimizing KDHE's need to conduct separate investigations to determine whether the child care provider failed to comply with child care regulations. Doing that would involve at least the following:

- cross-training SRS inspectors in how to inspect child care facilities so they could assess whether harm occurred because the home didn't comply with the State's child care regulations. KDHE officials estimate the training it provides to new county-level child care inspectors usually takes about two weeks. SRS inspectors could use the existing checklist to determine whether the child care provider failed to comply with the child care regulations applicable to the particular complaint. SRS and KDHE could amend their memorandum of understanding to give SRS inspectors the option of requesting KDHE investigators to assess a home's compliance in specific situations, depending on the nature of the complaint.

Although this step could help minimize duplication, it potentially could also reduce the amount of time SRS inspectors have to conduct abuse/neglect investigations. We didn't attempt to analyze that potential impact.

- ensuring that SRS' findings from such inspections are shared with KDHE on a timely basis, so that KDHE can take appropriate actions, when warranted.

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. Regulations allow SRS to conduct licensing inspections at any time, but SRS officials told us they generally conduct them once every two years. Those on-site reviews include interviews with staff, clients, family members and others, and reviewing documentation of such things as staffing credentials, mental health centers' policies and procedures, and client care.

In 2001, using money the Legislature appropriated to develop programs to address the mental health needs of preschool-aged children, four mental health centers started their own preschools. In addition, six centers are licensed by KDHE to provide attendant care services to children, and two centers place foster children through their own child placing agencies.

Because these services also meet the definition of child care, these facilities also are subject to regulation by KDHE. By law, KDHE is required to inspect them once a year for the purpose of determining whether the facilities are in compliance with the State's child care regulations.

Although both SRS and KDHE inspectors conduct on-site inspections at these facilities, the amount of duplication caused by actual inspections appears to be minimal. For example, only 11 Community Mental Health Centers are affected and some house their child care facilities in different buildings from the mental health centers themselves.

The one problem we did note, however, was that sometimes SRS and KDHE regulations duplicate each other. For example, SRS regulations require certain mental health center staff to clear criminal history background checks as well as child abuse and neglect registry checks each year. By law, KDHE requires these same checks for child care providers. SRS and KDHE officials acknowledged that some mental health center staff—when working in preschools or other child care facilities—will have their names submitted twice to the KBI and SRS for such checks. To eliminate duplication, these checks should be performed only once per year, and the results should be made available to both agencies.

The two agencies have formed a working group to reduce the number of conflicting and duplicate regulations affecting mental health centers' child care facilities. In some cases, the regulations related to mental health centers and child care facilities conflict with each other. For example:

- *Use of physical restraints.* SRS regulations allow mental health centers to use physical restraints in certain circumstances, but KDHE child care regulations don't permit the use of such devices.
- *Credentials of facility directors.* SRS regulations require mental health center program directors to have mental health-related credentials. In comparison, KDHE regulations require directors of child care centers and pre-schools to have child care and early-education credentials.

Late in 2003, SRS and KDHE put together a working group of SRS mental health services staff and KDHE child care licensing staff. The working group was charged with developing a plan to reduce the duplicate regulatory requirements for mental health centers operating child care programs.

To date, the workgroup has identified the duplicate or conflicting regulations that apply to pre-schools and child care centers, school-age programs, and attendant care facilities. The agencies are currently negotiating a memorandum of agreement that will specify how they will handle the conflicting and duplicate regulations.

We noted these same issues may apply to community developmental disability organizations (CDDOs). SRS regulates these organizations and their affiliated community services providers, who provide support services to children and adults with developmental disabilities. KDHE data show that two developmental disability organizations also hold KDHE licenses to operate child care facilities.

Although KDHE and SRS officials told us they haven't heard concerns from these entities about duplicate regulations, inspections, or conflicting regulations, it seems likely the issues affecting community mental health centers operating child care programs would similarly impact any CDDOs providing child care services. KDHE and SRS will need to evaluate whether this is the case.

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 because 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.

Recommendation To ensure that duplication in the regulation of child care facilities is minimized, KDHE and SRS should come up with a plan for addressing each of the areas of duplication identified in this report. They should present their recommendations in each area to the Senate Public Health and Welfare Committee, the House Health and Human Services Committee, the House Social Services Budget Committee, and the Senate Ways and Means Subcommittees on Health and Environment and SRS at the beginning of the 2005 legislative session.

APPENDIX A Scope Statement

This appendix contains the scope statement approved by the Legislative Post Audit Committee on October 23, 2003. This audit was requested by the House Social Services Budget Committee and the Senate Ways and Means Subcommittee on Health and Environment.

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

Generally, child care facilities are those facilities that have control and custody of, and provide food and lodging to, one or more children under age 16 who aren't related to the provider. Included in that definition are commercial child care facilities, home day care for more than six children, detention homes, orphanages, and the like. Family day care homes (normally the provider's home) provide up to six children with food or lodging away from the children's homes for less than 24 hours a day. Foster homes are private homes that provide care for children who have been temporarily removed from their own homes because of abuse or neglect.

In addition, a number of facilities or organizations in Kansas operate programs for children such as:

- before- or after-school programs operated in school facilities
- programs operated by community mental health centers for the treatment of children and adolescents.
- drop-in recreation programs operated by a municipality, or an organization such as the boys and girls clubs.
- day camps or other recreational programs for children.

The Departments of Health and Environment and Social and Rehabilitation Services are the agencies with oversight responsibilities for these programs.

During the 2003 legislative session, the Senate subcommittee dealing with the Department of Health and Environment's budget, recommended that Legislative Post Audit be directed to conduct a follow-up on a 1997 audit of the regulatory oversight of child care facilities and family day care homes. That audit found serious problems with inspections and follow-up on complaints and violations that could potentially put many children at risk. The audit attributed the problems in part to inadequate staffing resources and training. The Subcommittee expressed the intent that "a closer examination will result in increased resources for the program or at least a consideration of the risks involved in not increasing those resources."

Also, the House Social Services Budget Committee requested an audit to help them know whether having both the Department of Health and Environment and the Department of Social and Rehabilitation Services involved in the regulation of these types of facilities or programs results in duplication.

A performance audit combining these two requests would address the following questions:

1. **Has the Department of Health and Environment 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?** In answering this question, we would determine what requirements the law and Department regulations currently place on these facilities and their operators before they can be licensed to operate. By looking at a sample of facilities, we would verify that those requirements have been met. We also would review ongoing monitoring activities such as inspections to determine that they are being done as often as required, that they are thorough, and that any regulatory deficiencies noted are being adequately documented and followed up on. Also, we would look at the Department's follow-up on complaints and the effectiveness of its enforcement actions to bring facilities into compliance with the laws and regulations.
2. **Are there ways KDHE could refocus its efforts and available resources to increase the effectiveness of its regulation of child care facilities?** To answer this question, we would review literature and contact national organizations to try to identify states that generally are recognized as having model child care regulation programs. We would contact those states and a sample of other states as necessary to identify such things as the numbers and types of facilities they regulate, the general approach they take to regulation, and the numbers of staff that they have dedicated to each aspect of regulation (licensing, enforcement, etc.) and to each category of facilities. We also would gather information about how many children are cared for in the various types of facilities they regulate. We would compare the other states' information to similar information for Kansas, and point out any significant differences. We also would look at any national staffing standards that have been developed for the regulation of child care facilities to determine how Kansas compares to those standards. Based on the information gathered from the other states, we would determine whether it appears that Kansas is placing too much or too little emphasis on certain types of facilities or certain aspects of regulation, and assess whether efficiencies or greater effectiveness could possibly be achieved by changing aspects of the program.
3. **Is there duplication in the regulatory responsibilities and activities of the Departments of Social and Rehabilitation Services and Health and Environment related to facilities, homes, and programs that provide care for children?** In answering this question, we would determine what authority State law assigns to each agency regarding child care facilities, foster homes, and other programs such as drop-in recreation programs, day camps, and the like. Also, we would review the regulations each agency has adopted related to these facilities and programs to look for any duplicate requirements. We would look for duplication in any licensing, inspection, and enforcement activities carried out by the two agencies as well as any reporting requirements they impose on facilities or programs. We would contact a sample of the facilities through surveys or other means to find out any problems they may have encountered in dealing with the two agencies. Finally, we would discuss any problems or duplication issues with staff at the two agencies to determine the reasons they occurred, and to help identify possibilities for limiting or eliminating such problems or duplication in the future.

Estimated time to Complete: 14-16 weeks

APPENDIX B

Enforcement Actions Initiated by KDHE - Fiscal Years 1995 to 2004

This appendix shows the number of notices of noncompliance, administrative orders and injunctions sought by KDHE from fiscal year 1995 to 2004. It also shows the rate per 1,000 facilities regulated for each type of enforcement action.

APPENDIX B

Enforcement Actions Initiated by KDHE - Fiscal Years 1995 to 2004

Year	Notices of Noncompliance		Administrative Orders						Injunctions Sought by KDHE		Total of All Administrative Orders and Injunctions		Total of All Enforcement Actions			
	Number	per 1,000 Facilities	Civil Fines		Emergency Suspensions		Intent to Suspend		Intent to Deny/Revoke		Number	per 1,000 Facilities	Number	per 1,000 Facilities	Number	per 1,000 Facilities
			Number	per 1,000 Facilities	Number	per 1,000 Facilities	Number	per 1,000 Facilities	Number	per 1,000 Facilities						
FY 95	800	61	18	1.4	10	0.8	1	0.1	78	5.9	4	0.3	111	8.4	911	69
FY 96	1121	89	43	3.4	14	1.1	5	0.4	145	11.5	6	0.5	213	16.9	1334	106
FY 97	1474	118	32	2.6	12	1.0	6	0.5	99	7.9	3	0.2	152	12.1	1626	130
FY 98	1319	106	54	4.3	13	1.0	12	1.0	233	18.7	6	0.5	318	25.5	1637	131
FY 99	1584	133	30	2.5	13	1.1	9	0.8	207	17.4	2	0.2	261	22.0	1845	155
FY 00	1281	106	33	2.7	24	2.0	12	1.0	198	16.4	3	0.2	270	22.4	1551	129
FY 01	2115	186	35	3.1	20	1.8	56	4.9	188	16.5	4	0.4	303	26.6	2418	212
FY 02	2385	211	48	4.2	19	1.7	96	8.5	157	13.9	9	0.8	329	29.1	2714	240
FY 03	2193	195	48	4.3	32	2.8	157	14.0	216	19.2	3	0.3	456	40.6	2649	236
FY 04	2328	204	53	4.6	22	1.9	173	15.1	230	20.1	7	0.6	485	42.5	2813	246

Source: LPA Analysis of KDHE Enforcement Action Data

APPENDIX C

Comparing Kansas and Five Other States' Regulation of Child Care Programs

This appendix shows the types of child care programs Kansas and five other states regulate. The table shows regulatory exemptions we are aware of, but there may be others. In this audit, we weren't able to identify every exemption each state has. In addition, in most other states we contacted, these programs were regulated by multiple divisions or agencies, whereas in Kansas, the KDHE's Division of Childcare Licensing and Registration provides the regulatory oversight of all child care programs.

Appendix C Comparison of the Types of Child Care Programs Regulated by Kansas and Five Other States							
Type of Child Care Service	KANSAS	COLORADO	OKLAHOMA	NORTH CAROLINA	DELAWARE	TENNESSEE	Is Kansas similar to other States?
Family day care homes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Child care centers	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Pre-schools	Yes	Yes	Yes, if operated for more than 15hrs/week	Yes	Yes	Yes	Yes
Before and after-school programs operated by school districts	No	Yes	Yes, if operated for more than 15hrs/week	Yes, for providers caring for children whose care is subsidized by the State	No	Yes, if the program serves any child for 3 or more hours per day	No
Before and after-school programs run by churches or charitable organizations such as YMCA	Yes, if program meets regulation as drop-in programs or school-age, preschool or child care center program	Yes	Yes (if operated for more than 15hrs/week)	Yes, for providers caring for children whose care is subsidized by the State	Yes	Yes, if the program serves any child for 3 or more hours per day	Yes
Programs for children operated by community mental health centers	Yes, as school age program if children are in care for 12 hours or more for more than 2 consecutive weeks and program isn't a single subject, or if MHC operates a pre-school/child care/24 hour care facility.	Yes, it's regulated as a day treatment program	No	Yes	Yes, it's regulated as a day treatment program	Yes (by Dept. of Mental Health)	Yes
Drop-in recreational programs operated by a local municipality	No (drop-in regulations took effect Sept. 2004, but an exemption exists for programs operating less than 4 hours a day and not more than 2 consecutive weeks)	Yes	Yes	No	Yes	No	Mixed

**Appendix C
Comparison of the Types of Child Care Programs Regulated by Kansas and Five Other States**

Type of Child Care Service	KANSAS	COLORADO	OKLAHOMA	NORTH CAROLINA	DELAWARE	TENNESSEE	Is Kansas similar to other States?
Programs for children operated by boys & girls clubs	Yes, if program meets regulation as drop-in programs or school-age, preschool or child care center program	No	Yes	No	Yes (except for recreation portions)	Yes (Tennessee law exempts those programs that meet the certification criteria)	Mixed
Day camps, summer camps and other recreational programs for children	Yes, as school age program if children are in care for 12 hours or more for more than 2 consecutive weeks and program isn't a single subject.	Yes	Yes, if it's day camps for school-aged children and at remote location No for summer camps.	Yes, for providers caring for children whose care is subsidized by the State	Yes (permitted through Public Health Dept.)	No (programs operating for less than 90 days are exempted)	Yes
Family foster homes	Yes	Yes- Child Placing Agencies certify them	Yes, through Child Placing Agencies or through Child Welfare Division	Yes, through local county departments of social services or child placing agencies	Yes - child placing agencies approve foster homes	Yes, through Dept. of Children's Services	Yes
Group Boarding homes	Yes	Yes	Yes	Yes, through local county departments of social services or child placing agencies	Yes	Yes, through Dept. of Children's Services	Yes
Residential centers	Yes	Yes	Yes	Yes, through local county departments of social services or child placing agencies	Yes	Yes, through Dept. of Children's Services	Yes
Detention centers	Yes	No	Yes	Yes, through juvenile justice & delinquency prevention	No (all detention centers in Delaware are state operated and therefore exempt)	Yes (by state agency other than Dept. of Human Services)	Mixed

Source: Surveys of officials from Kansas and other states.

APPENDIX D

Agencies' Responses

On September 21st we provided copies of the draft audit report to the Department of Health and Environment and the Department of Social and Rehabilitation Services. Their responses are included as this Appendix. Based on their review of the draft audit report, we made some minor corrections and clarifications that didn't affect any of our findings or conclusions.



K A N S A S

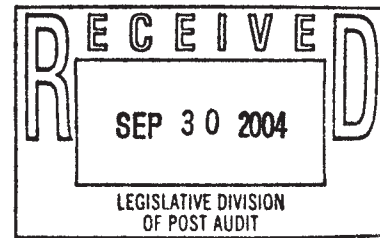
RODERICK L. BREMBY, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF HEALTH AND ENVIRONMENT

September 29, 2004

Barbara Hinton
Legislative Post Auditor
Legislative Division of Post Audit
800 SW Jackson Street Suite 1200
Topeka, Kansas 66612-2212



Dear Ms. Hinton:

Thank you for the opportunity to provide a written response to the legislative post audit report regarding the childcare licensing and registration program. The Department is committed to providing the citizens of Kansas with a regulatory program that provides sufficient safeguards for the protection of children in out of home care and which uses resources wisely in carrying out the regulatory functions. To this end, I am pleased to note that the overall finding in Question One is that the Department has designed a good system for overseeing childcare providers and that progress has been made in the majority of the areas that were identified as problematic in the 1997 audit. Especially noteworthy are the 250% increase in enforcement actions since the last audit, the finding that most enforcement actions were handled appropriately and the finding that the Department's enforcement philosophy is generally consistent with other states.

In FY 04 the Department regulated over 11,000 childcare facilities and family day care homes and issued 478 Administrative Orders, 7 requests for injunctive relief and 2,328 Notices of Non-compliance to childcare providers for non-compliance with childcare regulations.

I am also pleased to note that the audit finds that Kansas is focusing its efforts on regulating the same types of facilities as other states and that Kansas has a good supply of regulated day care homes. For many years now Kansas has recognized the importance of day care homes in supporting working families. Because these homes are regulated, Kansas has been able to achieve 26 slots per 100 children which is in line with the national standard of 25 slots per 100 children for adequate availability. In addition, the Midwest Research Study conducted by the Midwest Child Care Research Consortium found that among the Kansas regulated providers it studied, the overall care of children in licensed (inspected) day care facilities and homes is adequate to meet the basic care and safety needs of children, in part, due to the current Kansas regulatory program and the frequency of inspections.

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The Audit also identifies issues where improvement is needed. The Department has already started working on many of the issues identified in the Audit, including the processing of the overdue background checks on persons living, working or volunteering in childcare facilities. The majority of persons who did not have a current background check had been checked at least once, if not more often, before the background check was found to be overdue. Enhancements to the background check process in the new CLARIS (Child Care Licensing and Registration Information System) has eliminated the problem that existed in the prior database. In addition, the Department will continue to work with our partner agencies to increase coordination and to address the efficient and appropriate use of staff resources to increase the effectiveness of the program for the best interest of children and families.

I would be remiss if I did not point out that, in addition to the funding identified on page 6 of the audit, the local health departments contribute approximately \$1,000,000 to childcare licensing activity.

My responses to the specific recommendations are as follows:

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?

LPA Recommendations:

1. To ensure that unauthorized people aren't caring for children in childcare facilities, the Department should use the capabilities of its new computer system to identify when background checks are due on workers in childcare facilities, and to verify that those checks have been completed. Staff should also periodically test those computer programs to ensure that they are working as designed.

Response: The Department agrees with this recommendation. The new CLARIS data base has a system for identifying when background checks are due and a means for verifying checks have been completed. In addition, reports and periodic reviews are in place to identify when checks have not been conducted as expected. Background checks, which were overdue from the prior database, have been processed and are now current.

2. To ensure regulatory violations are dealt with consistently - based on an objective standard - the Department should develop a system that ranks violations based on how serious they are, and that ties enforcement actions to the number and seriousness of violations found.

Response: The Department will consider alternatives to a more structured approach for determining risk and for tying the degree of risk to the enforcement action. Currently, in supporting any action taken, the Department follows the Department's enforcement protocols and, using professional judgment, takes into consideration a combination of

objective criteria, the strength of the evidence, and precedence to support any enforcement action initiated.

3. To ensure the annual and follow up inspections of childcare facilities are both timely and thorough, the Department should:

a. use the new system to generate management reports.

Response: The Department agrees to this recommendation. The CLARIS system is designed with the capability to generate management reports as recommended by LPA. Once sufficient data is entered into CLARIS, the Department will use the reports in managing the program.

b. conduct training for inspectors to ensure they are aware of the Department's policies regarding the thoroughness of inspections.

Response: Currently the Department provides 4 formal training sessions a year for county health departments and 2 formal training sessions a year for foster care district staff. In addition, training is provided to child placing agencies that inspect family foster homes. The Department will continue to look for ways to improve the training provided on this topic and will specifically address how to assess compliance with regulations. Requiring additional training for county health department surveyors will be challenging, however, especially in the rural areas of the state. Almost half of the health department surveyors work in the childcare program less than 20 hours a week; many less than 10 hours a week. It is difficult for these staff to devote a full day for training when they also have other job duties and program responsibilities. The Department does have some limited capacity to offer one-on-one training to health department surveyors and has used this option when other options were not available.

c. have staff in the central office spot check some inspection reports (including those that don't recommend an enforcement action) to ensure that the forms are complete and that all noted violations have been brought forward to the Notice of Survey Findings

Response: The Department agrees to review internal management procedures to provide enhanced oversight of inspection quality. It is important to review inspections to assure non-compliance is correctly documented. Currently, administrative staff in the central office review all complaints on residential facilities and family foster homes, whether or not there are findings of non-compliance. All day care complaints with findings of non-compliance are reviewed by administrative staff and a portion of the complaints with no findings are reviewed. Initial inspections for the residential facilities and day care facilities are reviewed by administrative staff. Annual inspections for all facilities and initial inspections for home day care and family foster homes are given to administrative staff for review if the surveyor recommends an enforcement action or if the program assistant identifies areas needing attention.

- d. eliminate the difference in the number of days it allows inspectors to follow-up on violations found in foster homes and day care facilities.**

Response: While the Department does not disagree with this recommendation, the current procedures for re-inspections are reflective of differing resources available to meet the standard. For the most part, day care inspections are county based and the foster care inspections are regionally based. The Department will look into this issue further to determine if the difference in the two programs can be eliminated.

- 4. To ensure childcare providers have taken sufficient steps to ensure that regulatory violations are corrected, the Department should provide additional training to inspectors regarding what constitutes an acceptable corrective action plan, and when a follow-up inspection should be made rather than accepting a corrective action plan.**

Response: The Department agrees to provide additional training in this area. In addition, the Department is moving in the direction of reducing reliance on corrective action plans and placing more emphasis on the outcomes of re-inspections to document compliance. In many cases the Department requested both a corrective action plan and a re-inspection. Placing more emphasis on the re-inspection should make the process more timely and efficient.

- 5. To ensure complaints are timely and thorough, the Department should:**

- a. develop a system for recording and tracking the status of complaints for all types of facilities including a way of recording the date a complaint investigation is actually started.**

Response: The Department agrees a system of this type is beneficial. The Department has had a system in place to capture complaint information in a format that allows us to investigate and track specific complaints. The CLARIS system contains enhancements over the prior database to enable the Department to use and track the information more in line with the Audit recommendations. A field will be added in CLARIS to track when the complaint is actually started and additional reports will be added once a sufficient amount of complaint data is entered into the system.

- b. have management periodically review that information to ensure that complaints are being investigated on a timely basis.**

Response: The Department agrees with the recommendation and will continue to work to improve oversight of the complaint process.

- c. conduct additional training for inspectors on who should be interviewed and what needs to be looked at during a complaint investigation.**

Response: The Department agrees with the recommendation and will work to improve training in this area as stated previously in response to 3 (b).

6. To ensure that enforcement actions taken against childcare facilities are timely/appropriate for the types of violations found, and effective at bringing facilities into compliance with the laws and regulations the Department should:

a. seek to expand enforcement options it has available, including such things as using probationary licenses, publishing information about non-compliance with regulations and freezing or reducing the number of children a facility is allowed to care for.

Response: This recommendation raises significant policy issues that require statutory amendment. The Department agrees to evaluate alternative enforcement options with legislative participation to provide more flexibility in enforcing childcare regulations.

b. more directly tie enforcement actions to the number and seriousness of violations.

Response: As responded to in question 2, the Department will review and explore options to providing a more structured approach.

c. consider using fines more frequently for repeat violations, particularly those that involve potential health, sanitation, and safety issues.

Response: The Department agrees with this recommendation. With the availability of expanded enforcement options, the Department would be able to increase the use of fines as a tool for achieving compliance. In addition, the Department will review the current policy for fines to determine if steps can be taken to increase fines within the current statutory provisions and in light of administrative hearings in which precedents have been set.

d. periodically review information about notices of non-compliance and other enforcement action to ensure that they are being issued within the time frames specified in the Department's procedures.

Response: The audit found that 86% of the files reviewed were timely according to the Department's policies. Even so, the Department agrees to continue to review the timeliness of actions to determine timeliness of actions.

e. reduce the number of days allowed for staff to decide what enforcement action to take when a childcare provider doesn't respond properly to a notice of non-compliance.

Response: The Department will review the process for when a provider does not respond properly to an enforcement action to reduce the time frame for taking follow-up

action. One step the Department has already taken is to reduce the number of notices that require a corrective action plan and to request a compliance inspection instead.

f. work with officials from the Office of Administrative Hearings to clarify the level of evidence needed to establish a pattern of non-compliance.

Response: The Department is using precedent set by prior administrative hearings regarding the level of evidence needed to bring a case before a Hearing Officer in an Administrative Hearing. In light of the recent changes in the Administrative Hearing process, the Department will consult with our Legal Office and review the level of evidence required. For clarification, the Department initiates enforcement actions based on various factors, isolated findings, and the level of evidence in addition to a pattern of non-compliance. It is only when the action is based on a pattern of non-compliance that three citations are used to demonstrate a pattern.

7. To ensure that it has the regulations needed to effectively safeguard the health and safety of children in childcare facilities, the Department should update its procedure manual for the day care section, and create one for the foster care section.

Response: The Department agrees with the recommendation and the need to update the procedural manual for the day care program and to create a more formal procedural manual for the foster care program. Many of the foster care section procedures are in writing in the form of instructional memos. Currently, a procedural manual for the CLARIS system is being written and updated. As policies are formulated and implemented based on the Audit recommendations they will be incorporated into a procedural manual.

Question 2 Are There Ways Kansas Could Re-focus its Efforts and Available Resources To Increase Efficiency of its Regulation of Child Care Facilities?

LPA Recommendations

1. To allow it to better use its limited resources, KDHE should seek the statutory changes needed to do the following:

a. reduce the frequency of its license renewal process, and adjust its fees accordingly to ensure that it has the needed cash flow to fund its childcare regulatory operations.

Response: The Department agrees with the recommendation and will work with the legislature to explore the possibility of statutory changes to extend the renewal cycle and to adjust fees to make the change revenue neutral. Currently, the renewal cycle is on an annual schedule. Licensing fees generated in the program are deposited into the state

general fund and the revenue generated does not return to the Department to fund the regulatory program.

b. reduce the frequency of background checks for those childcare facility volunteers and employees who already have been checked once and who haven't moved from the facility in which they were initially employed.

Response: Background checks are only one tool available to screen childcare providers for suitability to care for children. Reducing the frequency of conducting repeat background checks would reduce the workload on the Department and free up staff time to perform other functions identified in the audit as needing improvement. The Department will explore this recommendation more fully and determine if this is a viable option. In addition, the Department will explore possible adjustments to the computer system to process background checks in a more automated fashion so that staff efficiencies would still be realized.

c. implement a risk-based system of inspections.

Response: There is merit to the concept of conducting inspections based on a system of risk. It would build in flexibility for the frequency of inspections and increase the Department's capacity to inspect facilities with poor compliance history more frequently. In a sense, Kansas has already implemented a risk based system with registered family day care homes. The Department already assesses risk to determine if an increase in the frequency of monitoring inspections is indicated for some facilities. The National Association for Regulatory Administration conducted a comparative study on the frequency of required inspections in childcare centers and children's residential facilities in 2001. Forty-three states, Provinces and Tribes were surveyed. Out of the 43, 18 reported a minimum requirement of yearly inspections; 15 reported more frequent inspection schedules; and 10 reported less frequent schedules. Similarly, the study found that the most frequent minimum inspection schedule for children's residential facilities was one year.

Other research indicates that the more frequent the inspections the higher rate of compliance. While additional flexibility could be incorporated into the Kansas system, a purely risk based system in which highly compliant facilities were inspected every three years, mostly compliant facilities were inspected every two years and lowly compliant facilities were inspected every year or more often would likely result in a percentage of those highly compliant and mostly compliant facilities decreasing their level of compliance. The Kansas regulatory program, as it is currently operated with yearly inspections, has contributed to the overall level of basic health, safety and care for Kansas's children, establishing a solid foundation upon which a quality early care and education system can be built. While the audit found that some inspections in their file review were not performed timely, the Department's records indicate 90 % of day care inspections are conducted timely and 72% of the inspections conducted by KDHE staff on foster homes and residential facilities are conducted timely.

There are emerging promising practices that, if coupled with a risk based inspection schedule, could mitigate the possible decrease in compliance. Research shows that the training and educational level of the program director, lead teacher or home childcare provider are also indicators of quality childcare. Pairing a competency based credentialing system for program directors, lead teachers and childcare providers with a risk based assessment system would address some of the compliance and overall quality issues if inspections are decreased.

Significant study of this issue is needed, as well as legislative changes, before implementing this recommendation in a meaningful and responsible fashion.

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.

LPA Recommendation: To ensure that duplication in the regulation of childcare facilities is minimized, KDHE and SRS should come up with a plan for addressing each of the areas of duplication identified in this report. They should present their recommendations in each area to the Senate Public Health and Welfare Committee, the House Health and Human Services Committee, the House Social Service Budget Committee, and the Senate Ways and Means Subcommittee on Health and Environment at the beginning of the 2005 legislative session.

Response The solutions to address question 3 are multi-faceted with no apparent clear-cut solution. The Department agrees to look into the issues raised in added depth to address the issue of unnecessary duplication and the need for better coordination. The whole issue of duplication is very complicated. There are cases in which what appears to be duplication is both necessary and an efficient use of expert resources. By way of comparison, I would like to present a scenario in which duplication occurs but it is necessary and a good use of expert resources. When an accident occurs involving an injury, both the EMT and the police arrive at the scene. The EMT's role is to treat the person and to get them stabilized as quickly as possible. The role of the police is to secure the area so that the EMT can carry out their functions efficiently. They work together to provide a high level of safety and security for that individual by bringing to the scene the expertise of both. The same level of expertise could not be maintained through cross training and eliminating one of the responder agencies.

In a similar context, when the Department and SRS receive a complaint that a child is abused in a childcare facility, one could argue this is no less an emergency and that experts are needed in their respective fields to both attend to the victim's need for safety and stability and to conduct a thorough investigation concerning that child's well-being. No less important is the well being and safety of the other children in the provider's care, who are not the subject of the current abuse allegation, but who are at risk for harm in the future if the regulatory issues are not addresses. SRS workers are not experts in regulatory investigations and the childcare facility surveyors are not experts in child abuse investigations. In keeping with the multi-disciplinary team concept, SRS and

KDHE work as a team to bring expertise in their respective fields to investigate complaints of this nature.

Approximately 3% of SRS child abuse investigations are childcare facility investigations. It would be a significant challenge to cross train child protective service workers in regulatory investigations when they may have only one or two child abuse investigations in a childcare facility a year. The recommendation to cross train these workers in regulatory investigations would likely not result in fiscal or resource savings that the taxpayers would recognize. In light of the resource issues involved and the Audit findings concerning coordination, it might be more efficient to continue the current system but to increase coordination and sharing of information between agencies. In addition, strengthening each agency's policies and procedures in this area as well as strengthening the working relationships at the local level would go a long way to increase the use of resources.

In regard to the recommendations concerning initial inspections of family foster homes, the regulatory program is now structured to address conflict of interest issues between the child placing agency and the foster home by having KDHE staff conduct the initial and complaint surveys. The current system provides a safeguard for children by making sure a foster home does not become licensed in the first place and does not accept children into care until requirements are met. The operating premise is that if KDHE staff, which have expertise in regulatory inspections and assessing health and safety, conduct the initial inspection, there is an acceptable level of assurance that the foster home is in compliance with basic health and safety requirements and that foster parents begin fostering children with a solid understanding of what is expected. Once the home has been determined to be in compliance, the subsequent inspection conducted by the child placing agency confirms safety and health conditions remain in compliance. If significant health or safety conditions exist under the current system, they are identified and corrected prior to children being placed in the home. If KDHE only conducts spot checks on foster homes, then health and safety concerns could go undetected for a year or two before a spot check was conducted. Children would have been placed in these homes, formed attachments and would have been subject to these unsafe conditions for longer periods of time.

To the extent details can be worked out to assure an acceptable level of safety for children in the foster care system, and to address the issues presented in the Audit, the current system could be restructured for conducting inspections. Currently, the child placing agencies are trained and funded to recruit and support foster parents. As part of the preparatory work, they prepare foster parents for their role in parenting children in the foster care system. A piece of this preparatory work is to help prepare the foster parents for the licensing inspection so there are no surprises. Child placing agency staffs are not currently trained to be experts in regulatory inspections, and resources would be needed to be devoted to increase training in this area. The resource question concerning the efficient and effective use of staff is similar to the issue described in the section on child abuse investigations. Is it more efficient and effective to cross train a large number of persons to conduct regulatory inspections when the regulatory work is a part of their job or is it more efficient and effective to train a smaller number of experts to conduct the work when it is their full time job? Requiring child placing agency staff to obtain a

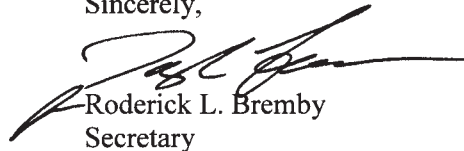
competency based credential based on education and experience for conducting regulatory inspections might be one way of assuring quality of the regulatory inspections if the child placing agencies had sole responsibility for conducting inspections.

The Department will study further the recommendations made concerning duplication of inspections and will work with SRS and the child placing agencies to further identify and address resource, training, and duplication issues with a goal of finding solutions that will benefit Kansas children and families.

The Department and SRS have worked together to formalize an agreement to eliminate duplication in the regulation of childcare facilities operated by Community Mental Health Centers. The number of childcare facilities operated by Community Mental Health Facilities is very small and the agreement now in place resolves the issues raised in the Audit.

In closing, the Department wishes to acknowledge the hard work of your staff in researching and developing the Audit report and resultant recommendations. The Department will continue to work hard to provide the citizens of Kansas with a regulatory program that supports the needs of Kansas's children and families for safe, available, out of home care.

Sincerely,



Roderick L. Bremby
Secretary

RLB:JFK

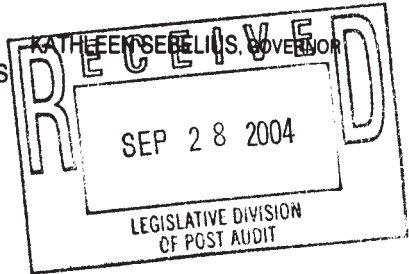


KANSAS

JANET SCHALANSKY, SECRETARY

SOCIAL AND REHABILITATION SERVICES

September 28, 2004



Ms. Barbara J. Hinton, Legislative Post Auditor
Legislative Division of Post Audit
800 S.W. Jackson Street, Suite 1200
Topeka, KS 66612-2212

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

Dear Ms. Hinton:

We appreciate being given the opportunity to review and respond to the above-referenced draft performance audit.

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?*

LPA's Answer In Brief

We found duplicate regulatory responsibilities or activities in three areas. **First**, KDHE and child placing agencies both conduct initial inspections at new family foster homes, using the same regulations and checklists. This duplication could be minimized if KDHE relied on the results of child placing agencies initial licensing inspections.

Second, there's regulatory duplication when both SRS and KDHE staff investigate child abuse and neglect complaints at child care facilities. SRS is trying to determine whether a child was abused or neglected, and KDHE is trying to determine whether the child care provider failed to comply with child care regulations. Eliminating or minimizing this duplication would involve cross-training SRS staff and better sharing of information.

Finally, we found overlap in SRS' and KDHE's regulatory responsibilities when both regulate community mental health centers that also provide child care services. The agencies have created an interagency workgroup to help identify the duplicate and conflicting regulations.

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SRS Response to "Answers in Brief":

- (1) Child Placing Agencies conduct a walk-through of homes interested in becoming foster parents to aid them in the recruitment and preparation of foster homes. Child Placing Agencies utilize the KDHE regulatory checklist as a reference when conducting the walk-through. This preliminary walk-through is a benefit to families by helping them know if they would likely meet the KDHE licensing standards without major changes being made to their home. The walk-through also helps expedite the KDHE inspection process, although not intended to be an initial licensing inspection.

The audit has helped to identify confusion over the use of the KDHE regulatory checklist as a tool the Child Placing Agencies use in recruiting families. The perception that the same level of inspection is occurring during a walk-through as during a KDHE licensing inspection is incorrect. The walk-through is completed by Child Placing Agency staff who do not have extensive knowledge and have not received extensive training on the regulations. SRS would be concerned for youth in foster care homes, where the staff completing the licensing inspections were not appropriately trained in how to identify safety concerns in the home.

- (2) SRS and KDHE do have similar tasks when an allegation of abuse or neglect is being investigated in a child care facility. However, as the audit points out, the agencies are assessing two different things. To require SRS to conduct both the investigation of abuse and neglect, and whether the facility was in compliance with licensing standards, would require SRS to receive extensive training in KDHE licensing regulations. Approximately 500 SRS staff who have responsibility to investigate child abuse and neglect would need training in order to avoid the potential of two individuals having to conduct an investigation in a child care facility. A smaller cadre of SRS staff in each Region could be trained as specialists in licensing regulations. However, it is unlikely that a dually trained SRS staff person would always be available to conduct facility investigations of alleged child abuse within the time frame required by law, thus negating the benefit of only one state staff person doing the investigation. Either method may not be cost effective, and would only resort in shifting responsibilities from KDHE to SRS.

SRS will continue to work with KDHE to coordinate joint investigations and to reduce the number of tasks that are duplicative. This will be done through joint meetings to clarify policies and address concerns, and a joint letter from SRS and KDHE will be sent to SRS and KDHE staff conducting investigations. In response to the concern that SRS staff do not know who to work with in KDHE when investigating abuse or neglect in a child care facility, SRS has recommended to KDHE that KDHE post a listing on their website of the KDHE contacts in each county.

- (3) SRS and KDHE have modified their MOU to address this.

If you have any questions regarding the agency's response, please contact Sandra Hazlett, Director of Children and Family Services, at either 785-368-6448 or sch@srskansas.org.

Sincerely,



Janet K. Schalansky
Secretary