

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**SOME FLORIDA CHILDCARE
CENTERS DID NOT ALWAYS COMPLY
WITH STATE HEALTH AND SAFETY
LICENSING REQUIREMENTS**

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March 2016
A-04-14-08033

Office of Inspector General

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EXECUTIVE SUMMARY

The State lead agency's monitoring did not always ensure that the four childcare centers that we reviewed in Florida complied with State licensing requirements related to the health and safety of children.

WHY WE DID THIS REVIEW

The Administration for Children and Families provides Federal grants through several programs, including Head Start and the Child Care and Development Fund (CCDF). In a previous report summarizing the results of 24 audits of Head Start grantees, we described multiple health and safety issues that put children at risk (report number A-01-11-02503). To determine whether similar health and safety risks exist at childcare providers that received CCDF funding, we reviewed four licensed childcare centers (providers) in Florida that received CCDF funding. We conducted this review of the Florida Office of Early Learning (State lead agency) in conjunction with our review of 20 family childcare homes (report number A-04-14-08034).

The objective of this audit was to determine whether the State lead agency's monitoring ensured that providers that received CCDF funds complied with State licensing requirements related to the health and safety of children.

BACKGROUND

Authorized by the Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. § 9858 et seq.) and section 418 of the Social Security Act (42 U.S.C. § 618), the CCDF assists low-income families, families receiving temporary public assistance, and families transitioning from public assistance to obtain child care so that parents may work or obtain training or education. Combined funding for the CCDF program for fiscal year 2012, including the block grant's discretionary fund and the CCDF mandatory and matching funds, was approximately \$5.2 billion nationwide.

The State lead agency is designated to administer the CCDF program. The Florida Department of Children and Families (State licensing agency) is responsible for licensing and periodic monitoring of the providers. According to the *Child Care and Development Fund Plan for Florida*, the State licensing agency is statutorily responsible for administering childcare licensing and training in 62 of the State's 67 counties. State law provides that any county may maintain local licensing and inspection programs as long as these programs meet or exceed State minimum standards. State regulations mandate that the State licensing agency or county conduct an onsite evaluation of childcare providers at least three times a year.

WHAT WE FOUND

Although the State licensing agency or county conducted the required inspections at the four providers that we reviewed, this onsite monitoring did not ensure that providers that received CCDF funds complied with State licensing requirements related to the health and safety of

children. Although one provider complied with staff and child record requirements, all four of the providers that we visited did not comply with the physical conditions requirements, two providers did not comply with staff record requirements, and two providers did not comply with child record requirements.

The instances of noncompliance at all four providers occurred because the State licensing agency and county did not ensure that the providers took proactive steps to remain compliant with the minimum State licensing requirements related to the health and safety of children. The State licensing agency classifies violations under a progressive enforcement system using three classification levels for violations and classifies as less severe most of the instances of noncompliance cited in our report. The State indicated that some instances of less severe noncompliance may occur between inspections, but it is the responsibility of the childcare provider to ensure ongoing compliance between inspections.

WHAT WE RECOMMEND

We recommend that the State lead agency work with the State licensing agency and counties to ensure that:

- providers meet training requirements and that the required documentation is included in staff records for all employees who provide direct services to children;
- required documentation is complete, current, and included in the children's files; and
- all instances of noncompliance are documented so that providers adhere to all requirements for the health and safety of children.

STATE AGENCY COMMENTS

In written comments on our draft report, the State lead agency forwarded remarks from the State licensing agency that concurred with our recommendations and noted that it would continue to require providers to adhere to health and safety requirements and emphasize the importance of operators being proactive in their efforts to maintain compliance with licensing standards at all times.

Although generally concurring with our draft findings, the State licensing agency did not concur with certain instances of noncompliance cited in our draft report. The State licensing agency did not concur with our finding related to nine instances of missing training records, stating, “[c]hild care personnel were marked out of compliance for meeting their annual in-service training, though the window for compliance was still open during the audit time frame.” The State licensing agency claimed that, in February 2015, it had supplied documentation showing compliance with the majority of training instances that we cited as noncompliant. The State licensing agency also did not concur with our finding related to a magazine rack blocking an evacuation route because the photographic evidence in the report did not clearly show a blockage of the exit route.

In addition, the State licensing agency did not concur with three findings in our draft report that we have removed from this final report. Specifically, the State licensing agency indicated that although we noted a stained ceiling tile, which indicated possible water leakage, the leak was fixed by the center before our inspection and did not constitute a current violation. Also, the State licensing agency indicated that an unlocked fence gate around an air conditioning unit did not rise to the level of a violation. With respect to the finding related to infants sleeping on their stomachs without authorization from a physician, the State licensing agency stated that the infants' ages, their ability to rollover on their own, physician's note for alternate sleeping positions, and the program's policy for putting infants to sleep determines whether or not a violation occurred.

The State licensing agency further noted that, for a few of our other findings, it concurred only if all exceptions that define the violation were met.

OUR RESPONSE

We maintain that the State licensing agency's lack of concurrence with our findings related to instances of missing training documentation was generally unfounded. Eight of the errors cited in our report related to training that was required for the State FY ending June 30, 2013, and was not in the employees' records as of January 2015. Upon further review, we determined that one of the nine errors cited in our draft report was no longer valid because the 40 hour introductory training may be used to meet the first year of annual in-service training requirement. We have revised the report accordingly. The supporting documentation that the State licensing agency provided was not sufficient to remove the remaining instances that we cited as noncompliant.

The State licensing agency also questioned our finding related to the magazine rack that blocked an exit, stating, "The original placement of the rack does not appear to block the exit." The magazine rack was originally against the wall in front of the exit. However, we did not take a photograph of the rack at that time because a child was present and would have been depicted in the photograph. After the child left the area, the provider moved the rack away from the exit. Therefore, the photograph did not depict the exact location of the rack or the exact violation that we witnessed, so we removed the photo from this final report, but we maintained the finding in our report.

On the basis of the State licensing agency's comments, we updated our findings regarding the stained ceiling tile and the unlocked gate cited in our draft report. Specifically, with respect to the stained ceiling tile, we accepted the State licensing agency's statement that it had resulted from a leak which had since been fixed and did not present an ongoing hazard to the children. With respect to the unlocked gate, because the gate was closed and had a closed latch, and we did not observe children in danger, we have accepted the State's response that it did not constitute a violation of licensing standards. In addition, while we did note that infants under 6 months old were sleeping on their stomachs without approved physician orders, we did not document that the infants could not roll over, so we removed those instances of noncompliance from our findings. All remaining instances of noncompliance in our final report met all of the exceptions that define the violations.

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INTRODUCTION

WHY WE DID THIS REVIEW

The Administration for Children and Families (ACF) provides Federal grants through several programs, including Head Start and the Child Care and Development Fund (CCDF). In a previous report summarizing the results of 24 audits of Head Start grantees,¹ we described multiple health and safety issues that put children at risk. To determine whether similar health and safety risks exist at childcare providers that received CCDF funding, we reviewed four licensed childcare centers (providers) that received CCDF funding in Florida. We conducted this audit of the Florida Office of Early Learning (State lead agency) in conjunction with our review of 20 family childcare homes (report number A-04-14-08034).

OBJECTIVE

Our objective was to determine whether the State lead agency's monitoring ensured that providers that received CCDF funds complied with State licensing requirements related to the health and safety of children.

BACKGROUND

Authorized by the Child Care and Development Block Grant (CCDBG) Act (42 U.S.C. § 9858 et seq.) and section 418 of the Social Security Act (42 U.S.C. § 618), the CCDF assists low-income families, families receiving temporary public assistance, and families transitioning from public assistance to obtain child care so that parents may work or obtain training or education. Combined funding for the CCDF program for fiscal year 2012, including the block grant's discretionary fund and the CCDF mandatory and matching funds, was approximately \$5.2 billion nationwide.

The CCDBG Act and implementing Federal regulations mandate the State to maintain a plan that ensures that the State has requirements in State or local law to protect the health and safety of children, and the plan must certify that procedures are in effect to ensure that childcare providers comply with these requirements (42 U.S.C. §§ 9858c(c)(2)(F) and (G) and 45 CFR §§ 98.15(b)(5) and (6)).

Federal regulations (45 CFR § 98.10(a)) require States to designate a lead agency to administer the CCDF program. Federal regulations also state that, in retaining overall responsibility for the administration of the program, the lead agency must ensure that the program complies with the approved plan and all Federal requirements and must monitor programs and services (45 CFR §§ 98.11(b)(4) and (6)).

¹ *Review of 24 Head Start Grantees' Compliance With Health and Safety Requirements* (A-01-11-02503, issued December 13, 2011).

Florida Childcare Services

According to the *Child Care and Development Fund Plan for Florida* (CCDF Plan), the State lead agency is designated to administer the CCDF program. The State lead agency certifies that there are in effect, within the State or local law, requirements designed to protect the health and safety of children that are applicable to providers of services for which assistance is provided under the CCDF.

The Florida Department of Children and Families (State licensing agency) is responsible for licensing and periodically monitoring childcare providers.² The CCDF Plan designates the State licensing agency as statutorily responsible for administering childcare licensing and training in 62 of the State's 67 counties. State law provides that any county may maintain local licensing and inspection programs as long as these programs meet or exceed State minimum standards.³ The CCDF Plan also requires at least three onsite evaluations of childcare providers per year.

Related Office of Inspector General Work

The Office of Inspector General, Office of Evaluation and Inspections (OEI), issued an Early Alert Memorandum Report on July 11, 2013, to ACF entitled *License-Exempt Child Care Providers in the Child Care and Development Fund Program* (OEI-07-10-00231). OEI concluded that States exempt many types of childcare providers from licensing but that these providers are still required to adhere to Federal health and safety requirements to be eligible for CCDF payments.

Child Care Aware of America

Child Care Aware of America (CCAA) (formerly the National Association of Child Care Resource & Referral Agencies) published a 2013 update, *We Can Do Better*, which reviewed and ranked State childcare center regulations and oversight.⁴ CCAA stated that effective monitoring policies are important for child safety and center accountability for compliance with State licensing requirements. CCAA added that making inspection reports public is an important form of consumer education because parents cannot make informed selections among childcare settings unless they have access to compliance information. Otherwise, they may assume that a State license is a seal of approval. CCAA also suggested that, with the important role effective monitoring plays in promoting child safety and program compliance with licensing, the number of

² Some types of providers, including certain school-based centers, centers operated by religious organizations, and summer camps, are exempt from licensing. (CCDF Plan, § 3.1.1(d)).

³ One of the four facilities that we visited as part of our audit was subject to county oversight. However, we consistently used the State licensing agency standards for our reviews at all four facilities. The county standards must meet or exceed the State licensing agency's minimum licensing standards.

⁴ CCAA works with more than 600 State and local childcare resource and referral agencies nationwide. CCAA leads projects that increase the quality and availability of childcare, offers comprehensive training to childcare professionals, undertakes research, and advocates childcare policies that positively impact the lives of children and families.

programs that each licensing inspector monitors needs to be reduced, not increased. CCAA recommended that States reduce the caseload for licensing inspectors to a ratio of 1:50 (1 inspector to 50 cases).

Child Care and Development Block Grant Act of 2014

On November 19, 2014, the CCDBG Act of 2014⁵ reauthorized the CCDF program and improved childcare health, safety, and quality requirements. The law includes a requirement that States' lead agencies perform an initial onsite monitoring visit and at least one annual unannounced onsite visit of providers that have received CCDF subsidies. It also requires training and professional development of the childcare workforce to meet the needs of the children and improve the quality and stability of the workforce. Specifically, the law requires lead agencies to establish ongoing provider training. It also requires that a childcare provider submit criminal background checks every 5 years for all childcare staff.

HOW WE CONDUCTED THIS REVIEW

Of the 5,414 providers that received CCDF funding in Florida between July 2013 and January 2014, we selected 4 providers for our review. We selected these providers by considering certain risk factors, including reimbursement amounts and geographic locations. Our fieldwork consisted of unannounced site visits conducted in Brevard, Columbia, Orange, and Pinellas Counties from April 1 through 9, 2014.

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

Appendix A contains details of our audit scope and methodology, Appendix B contains details of the Federal regulations and State licensing health and safety requirements that pertain to providers, and Appendix C contains photographic examples of noncompliance with physical conditions requirements.

FINDINGS

Although the State licensing agency or county conducted the required inspections at the four providers that we reviewed, this onsite monitoring did not ensure that providers that received CCDF funds complied with State licensing requirements related to the health and safety of children. Although one provider complied with staff and child record requirements, all four of the providers that we visited did not comply with the physical conditions requirements, two providers did not comply with staff record requirements, and two providers did not comply with child record requirements.

⁵ P.L. No. 113-186 (Nov. 19, 2014).

The instances of noncompliance at all four providers occurred because the State licensing agency and county did not ensure that the providers took proactive steps to remain compliant with the minimum State licensing requirements related to the health and safety of children. The State licensing agency classifies violations under a progressive enforcement system using three classification levels for violations and classifies as less severe most of the instances of noncompliance cited in our report. The State indicated that some instances of less severe noncompliance may occur between inspections, but it is the responsibility of the childcare provider to ensure ongoing compliance between inspections.

Appendix D contains a table that displays the instances of noncompliance at each provider we reviewed.

PROVIDERS DID NOT ALWAYS COMPLY WITH PHYSICAL CONDITIONS REQUIREMENTS

State Requirements

Prospective childcare providers must generally obtain a license from the State licensing agency to operate a childcare center (Florida Administrative Code (F.A.C.) 65C-22.001). State licensing requirements related to the physical environment of childcare facilities include the following:

- All childcare facilities must be clean, in good repair, free from health and safety hazards, and free from vermin infestation (F.A.C. 65C-22.002(1)(a)).
- All areas and surfaces accessible to children must be free from toxic substances and hazardous materials (F.A.C. 65C-22.008(3)(e)(2)).
- All potentially harmful items including cleaning supplies; flammable products; and poisonous, toxic, and hazardous materials must be labeled. These items, including knives, sharp tools, and other potentially dangerous hazards, must either be stored in a locked area or must be inaccessible and out of a child's reach (F.A.C. 65C-22.002(1)(f)).
- When napping or sleeping, infants who are not capable of rolling over on their own must be positioned on their back and on a firm surface to reduce the risk of Sudden Infant Death Syndrome unless an alternate position is authorized in writing by a physician. The documentation must be maintained in the child's record (F.A.C. 65C-22.002(5)(d)).
- Running water, soap, trash receptacles, toilet paper, and disposable towels or hand drying machines that are properly installed and maintained must be available and within reach of children using the toileting facility (F.A.C. 65C-22.002(6)(f)).
- Each sink and toilet must be maintained in good operating condition, clean, and sanitized or disinfected as needed, at least once per day (F.A.C. 65C-22.002(6)(g)).

- Electrical outlets should be covered when not in use (*Florida Desk Reference*, Appendix B #39, 5).⁶
- At least one first aid kit must be maintained on the premises at all times. Each kit must include a thermometer (F.A.C. 65C-22.004(2)(c)7).

Appendix B contains all State licensing requirements that we relied on during our review.

Providers Did Not Comply With Physical Conditions Requirements

All four of the childcare providers we reviewed had one or more instances of noncompliance with the minimum requirements to protect children from potentially hazardous physical conditions. Additionally, the childcare providers we visited had been cited by the State licensing agency or county both before and after our visits for health and safety violations. Specifically, we found 49 instances of noncompliance with State licensing requirements related to physical conditions at the 4 providers that we reviewed. Examples of noncompliance included:

- Paint was peeling (Appendix C, photograph 1), a magazine rack was blocking the evacuation route, there was a hole in a bathroom wall (Appendix C, photograph 2), and one sleeping area was not clean.
- Cleaning products were left on a changing table and in unlocked bathroom cabinets that were accessible by children (Appendix C, photograph 3). In another instance, products were in unlabeled generic bottles.
- Knives and scissors were within reach of children (Appendix C, photograph 4).
- A children's bathroom did not have toilet paper (Appendix C, photograph 5), paper towels, or soap.
- A toilet seat was not fastened to the toilet (Appendix C, photograph 6), and another toilet was dirty.
- Electrical outlets and power strips were not covered (Appendix C, photograph 7).
- A thermometer was missing from a first aid kit.

⁶ Florida statute (F.S.) requires that the State licensing agency establish standards to address health and safety for all children in child care (F.S. section 402.305). Although the Desk Reference is not legally enforceable, it provides detail on the specific items of inspection for childcare providers to promote health and safety. This detail includes covering electrical outlets.

PROVIDERS DID NOT ALWAYS COMPLY WITH TRAINING AND OTHER DOCUMENTATION REQUIREMENTS

State Requirements

Every provider must meet the minimum State childcare licensing standards pursuant to F.S. section 402.305 and F.A.C. chapter 65C-22, which include the following:

- All staff must be appropriately screened.
- All staff must complete 40 hours of introductory childcare training.
- All staff must complete 10 hours of training each year by June 30 - the State's fiscal year end.
- All facilities must maintain accurate personnel records for each employee, volunteer, and substitute.

Child record requirements include:

- an enrollment form and
- a health record for each child enrolled that includes all of the following information:
 - a student health examination form and
 - a current Florida certificate of immunization or a religious exemption form.

Providers Did Not Comply With Training and Other Documentation Requirements

We identified eight instances in which staff records at two providers lacked documentation of the required hours of training.

In addition, 17 child records at 2 childcare providers lacked student health examination forms, were missing enrollment information, or did not have a current Florida Certificate of Immunization or a religious exemption form.

CAUSES OF NONCOMPLIANCE WITH HEALTH AND SAFETY REQUIREMENTS

We discussed our findings with State officials and determined that the instances of noncompliance at all four providers occurred because the State licensing agency and county did not ensure that the providers took proactive steps to remain compliant with the minimum State licensing requirements related to the health and safety of children. The State licensing agency

classifies violations under a progressive enforcement system using three classification levels for violations⁷ and classifies as less severe most of the instances of noncompliance cited in our report. The State indicated that some instances of less severe noncompliance may occur between inspections, but it is the responsibility of the childcare provider to ensure ongoing compliance between inspections.

RECOMMENDATIONS

We recommend that the State lead agency work with the State licensing agency and counties to ensure that:

- providers meet training requirements and that the required documentation is included in staff records for all employees who provide direct services to children;
- required documentation is complete, current, and included in the child record files; and
- all instances of noncompliance are documented so that providers adhere to all requirements for the health and safety of children.

STATE AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

STATE AGENCY COMMENTS

In written comments on our draft report, the State lead agency forwarded remarks from the State licensing agency that concurred with our recommendations and noted that it would continue to require providers to adhere to health and safety requirements and emphasize the importance of operators being proactive in their efforts to maintain compliance with licensing standards at all times.

Although generally concurring with our draft findings, the State licensing agency did not concur with certain instances of noncompliance cited in our draft report. The State licensing agency did not concur with our finding related to nine instances of missing training records, stating, “[c]hild care personnel were marked out of compliance for meeting their annual in-service training, though the window for compliance was still open during the audit time frame.” The State licensing agency claimed that, in February 2015, it had supplied documentation showing compliance with the majority of training instances that we cited as noncompliant. The State licensing agency also did not concur with our finding related to a magazine rack blocking an evacuation route because the photographic evidence in the report did not clearly show a blockage of the exit route.

⁷ Class I violations are most serious and pose an imminent threat of death or serious harm to the health of a child. Class II violations are less serious and could be anticipated to pose a threat to the health, safety, or well-being of a child, although the threat is not imminent. Class III violations are less serious than either class I or II violations and pose a low potential for harm to children.

In addition, the State licensing agency did not concur with three findings in our draft report that we have removed from this final report. Specifically, the State licensing agency indicated that although we noted a stained ceiling tile, which indicated possible water leakage, the leak was fixed by the center before our inspection and did not constitute a current violation. Also, the State licensing agency indicated that an unlocked fence gate around an air conditioning unit did not rise to the level of a violation. With respect to the finding related to infants sleeping on their stomachs without authorization from a physician, the State licensing agency stated that the infants' ages, their ability to rollover on their own, physician's note for alternate sleeping positions, and the program's policy for putting infants to sleep determines whether or not a violation occurred.

The State licensing agency further noted that, for a few of our other findings, it concurred only if all exceptions that define the violation were met.

The State agency's comments are included in their entirety as Appendix E.

OFFICE OF INSPECTOR GENERAL RESPONSE

We maintain that the State licensing agency's lack of concurrence with our findings related to instances of missing training documentation was generally unfounded. Eight of the errors cited in our report related to training that was required for the State FY ending June 30, 2013, and was not in the employees' records as of January 2015. Upon further review, we determined that one of the nine errors cited in our draft report was no longer valid because the 40 hour introductory training may be used to meet the first year of annual in-service training requirement. We have revised the report accordingly. The supporting documentation that the State licensing agency provided was not sufficient to remove the remaining instances that we cited as noncompliant.

The State licensing agency also questioned our finding related to the magazine rack that blocked an exit by stating, "The original placement of the rack does not appear to block the exit." The magazine rack was originally against the wall in front of the exit. However, we did not take a photograph of the rack at that time because a child was present and would have been depicted in the photograph. After the child left the area, the provider moved the rack away from the exit. Therefore, the photograph did not depict the exact location of the rack or the exact violation that we witnessed, so we removed the photo from this final report, but we maintained the finding in our report.

On the basis of the State licensing agency's comments, we updated our findings regarding the stained ceiling tile and the unlocked gate cited in our draft report. Specifically, with respect to the stained ceiling tile, we accepted the State licensing agency's statement that it had resulted from a leak which had since been fixed and did not present an ongoing hazard to the children. With respect to the unlocked gate, because the gate was closed and had a closed latch, and we did not observe children in danger, we have accepted the State's response that it did not constitute a violation of licensing standards. In addition, while we did note that infants under 6 months old were sleeping on their stomachs without approved physician orders, we did not document that the infants could not roll over, so we removed those instances of noncompliance from our findings. All remaining instances of noncompliance in our final report met all of the exceptions that define the violations.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Of the 5,414 providers that received CCDF funding between July 2013 and January 2014, we selected 4 providers for our review. We selected these providers by considering certain risk factors, including reimbursement amount and geographic location.

We reviewed the providers' records and facilities through unannounced visits, as of April 2014, in Brevard, Columbia, Orange, and Pinellas Counties in Florida. To gain an understanding of the State lead agency and State licensing agency's operations as they relate to providers, we limited our review to the State lead agency and State licensing agency's internal controls as they related to our objective.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal laws, State statutes and requirements for licensing providers, and the applicable Florida CCDF State plan approved by ACF;
- interviewed the ACF CCDF program manager to determine how Florida monitored its providers;
- obtained a letter from the State lead agency to give to the providers in our review that explained our audit;
- developed a health and safety checklist as a guide for conducting site visits;
- reviewed previous State health and safety inspection findings for providers we visited;
- conducted unannounced site visits at four providers to determine whether they met State requirements for health and safety;
- interviewed the providers' staff to obtain a listing of staff whose salaries were funded by CCDF (and who had direct access to children) to determine whether all required criminal history and child abuse registry checks were conducted;
- inspected the staff records to determine whether they included documentation of training and met all other administrative requirements;
- reviewed child records to determine whether the providers met all requirements; and
- discussed the results of our review with each of the four providers and with the State lead agency and State licensing agency officials.

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

APPENDIX B: FEDERAL REGULATIONS AND STATE LICENSING REGULATIONS

FEDERAL REGULATIONS

One of the goals of CCDF is to assist States in implementing the health, safety, licensing, and registration standards established in State regulations (45 CFR § 98.1(a)(5)).

Federal regulations (45 CFR § 98.10) require States to designate a lead agency to administer the CCDF program.

The lead agency must retain overall responsibility for the administration of the program. In doing so, the lead agency must ensure that the program complies with the approved plan and all Federal requirements and must monitor programs and services (45 CFR §§ 98.11(a)(1), (b)(4), and (6)).

The lead agency must certify that there are in effect within the State (or other area served by the lead agency), under State or local (or tribal) law, requirements designed to protect the health and safety of children that are applicable to childcare providers that provide services for which assistance is made available under the CCDF (45 CFR § 98.15(b)(5)).

FLORIDA STATUTES

Section 402.302(2) “Child care facility” includes any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit.

Section 402.305 Licensing standards; child care facilities.—

(1) **LICENSING STANDARDS.—**The department shall establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility.

(a) The standards shall be designed to address the following areas:

1. The health, sanitation, safety, and adequate physical surroundings for all children in child care.
2. The health and nutrition of all children in child care.
3. The child development needs of all children in child care.

(2) **PERSONNEL.—**Minimum standards for child care personnel shall include minimum requirements as to:

(a) Good moral character based upon screening. This screening shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.

(b) The department may grant exemptions from disqualification from working with children or the developmentally disabled as provided in s. 435.07.

(c) Minimum age requirements. Such minimum standards shall prohibit a person under the age of 21 from being the operator of a child care facility and a person

under the age of 16 from being employed at such facility unless such person is under direct supervision and is not counted for the purposes of computing the personnel-to-child ratio.

(d) Minimum training requirements for child care personnel.

1. Such minimum standards for training shall ensure that all child care personnel take an approved 40-clock-hour introductory course in child care, which course covers at least the following topic areas:

- a. State and local rules and regulations which govern child care.
- b. Health, safety, and nutrition.
- c. Identifying and reporting child abuse and neglect.

FLORIDA ADMINISTRATIVE CODE

CHAPTER 65C-22

.001 General Information.

(1) Application.

(a) Application for a license or for renewal of a license to operate a child care facility must be made on CF-FSP Form 5017, July 2012, Application for a License to Operate a Child Care Facility, which is incorporated by reference. CF-FSP Form 5017 may be obtained from the department's website at [<http://www.myflfamilies.com/service-programs/child-care>] or from the following link <http://www.flrules.org/Gateway/reference.asp?No=Ref-03028>.

(b) Each completed CF-FSP Form 5017 must be submitted with the licensure fee pursuant to Section 402.315, F.S.

(c) The completed CF-FSP Form 5017 must be signed by the individual owner, prospective owner, or the designated representative of a partnership, association, or corporation, and must include background screening clearance documents for the owner/operator/director, and an approved fire inspections.

.002 Physical Environment.

(1) General Requirements.

(a) All child care facilities must be clean, in good repair, free from health and safety hazards and from vermin infestation

(f) All potentially harmful items including cleaning supplies, flammable products, poisonous, toxic, and hazardous materials must be labeled. These items, including knives, sharp tools, and other potentially dangerous hazards, shall either be stored in a locked area or must be inaccessible and out of a child's reach

(4) Outdoor Play Area

(c) The outdoor play area shall be clean, free from litter, nails, glass, and other hazards.

(5) Napping and Sleeping Space. For the purposes of these standards, sleeping refers to the normal night time sleep cycle while napping refers to a brief period of rest during daylight or early evening hours

(b) A minimum distance of 18 inches must be maintained around individual napping and sleeping spaces, except a maximum of two sides of napping or sleeping space may be against a solid barrier, such as a wall

(d) When napping or sleeping, young infants who are not capable of rolling over on their own shall be positioned on their back and on a firm surface to reduce the risk of Sudden Infant Death Syndrome (SIDS) unless an alternate position is authorized in writing by a physician. The documentation shall be maintained in the child's record.

(6) Restrooms

(f) Running water, soap, trash receptacles, toilet paper, and disposable towels or hand drying machines that are properly installed and maintained shall be available and within reach of children using the toileting facility.

(g) Each sink and toilet must be maintained in good operating condition, clean, and sanitized or disinfected as needed, at least once per day.

.003 Training

(2) Training Requirements.

(a) Child care personnel must successfully complete the department's 40 hour *Introductory Child Care Training*, as evidenced by successful completion of competency based examinations offered by the department or its designated representative with a weighted score of 70 or better. Child care personnel who successfully completed the mandatory 40 hour Introductory Child Care Training prior to January 1, 2004 are not required to fulfill the competency examination requirement

(4) Documentation of Training. Effective October 1, 2010, the department's Training Transcript will be the only acceptable verification of successful completion of the department's training

(d) As of October 1, 2010, any course completion certificate not documented on the Training Transcript will be considered invalid, requiring that the course(s) be retaken. Until the coursework is retaken and completed, child care facilities will be out of compliance with the mandated training standard.

.004 Health Related Requirements

(c) At least one first aid kit must be maintained on the premises of the child care facility at all times. A first aid kit must also accompany child care staff when children are participating on field trips. Each kit shall be in a closed container and labeled "First Aid." The kits shall be accessible to the child care staff at all times and kept out of the reach of children. Each kit must, at a minimum, include: ...

7. Thermometer

.005 Food and Nutrition

(2) Breastmilk, Infant Formula and Food.

(a) Breastmilk and formula must be handled in a sanitary manner at all times and according to manufacturer's instructions and instructions by parent. The provider

must ensure all formulas and food brought from home are labeled with the child's first and last name.

.006 Record Keeping

(2) Children's Health Requirements.

(a) The child care facility is responsible for obtaining for each child in care a current, complete and properly executed Student Health Examination form DH 3040 (June 2002), which is incorporated herein by reference and may be obtained from the local county health department, from the parent or legal guardian or a signed statement by authorized professionals that indicates the results of the components of the Student Health Examination form are included in the health examination. The Student Health Examination shall be completed by a person given statutory authority to perform health examinations

(c) The child care facility is responsible for obtaining for each child in care a current, complete and properly executed Florida Certification of Immunization form Part A-1, B, or C, DH 680 (July 2010) or the Religious Exemption from Immunization form, DH 681 (July 2008), which are incorporated herein by reference, from the custodial parent or legal guardian.

(3) Enrollment Information. The facility operator shall obtain enrollment information from the child's custodial parent or legal guardian prior to accepting a child in care

.010 Enforcement

(1) Definitions

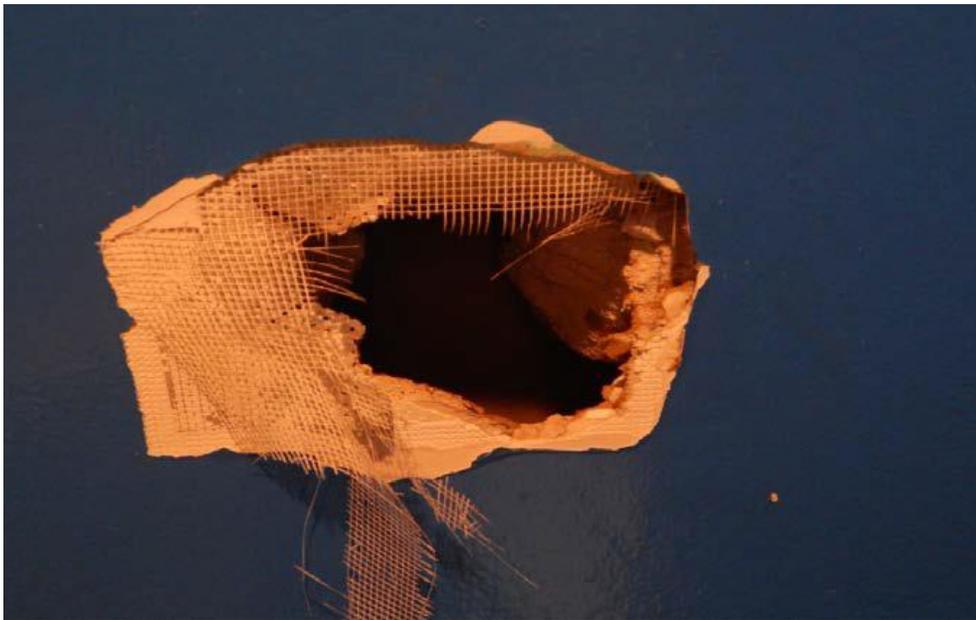
(d) "Violation" means a finding of noncompliance by the department or local licensing authority of a licensing standard.⁸

⁸ The Child Care Facility Standards Classification Summary (CF-FSP Form 5316) contains a listing of different types of possible violations by the childcare centers.

**APPENDIX C: PHOTOGRAPHIC EXAMPLES OF NONCOMPLIANCE
WITH PHYSICAL CONDITIONS REQUIREMENTS**



Photograph 1: Peeling paint was a hazard to the children.



Photograph 2: A hole in a bathroom wall was a hazard.



Photograph 3: Cleaning supplies were stored in an unlocked bathroom cabinet accessible to children.



Photograph 4: A knife was in an unlocked drawer and was accessible to children.



Photograph 5: There was no toilet paper in a bathroom.



Photograph 6: This toilet seat was not fastened to the toilet and could be a hazard.



Photograph 7: A power strip had uncovered outlets.

**APPENDIX D: INSTANCES OF NONCOMPLIANCE AT EACH
CHILDCARE CENTER**

Provider	Date of Last State Inspection	Physical Conditions	Staff Records	Children's Records	Total
1	01/16/2014	8	0	13	21
2	02/19/2014	5	0	0	5
3	01/15/2014	18	1	4	23
4	01/14/2014	18	7	0	25
Total		49	8	17	74

Notice: We provided to the State licensing agency under a separate cover the specific names of the providers audited.

APPENDIX E: STATE AGENCY COMMENTS



Pam Stewart
Commissioner of Education

September 18, 2015

Ms. Lori S Pilcher
Office of Audit Services, Region IV
61 Forsyth Street, SW, Suite 3T41
Atlanta, GA 30303

Dear Ms. Pitcher:

Enclosed is our response to the U.S. Department of Health and Human Services, Office of Inspector General draft report entitled *Some Florida Childcare Centers Did Not Always Comply With State Health and Safety Licensing Requirements*.

In addition to the paper copy enclosed we have also, per your request, sent an electronic copy to Truman.mayfield@oig.hhs.gov.

Please feel free to contact me if you should have any additional questions. I may be reached at 850-717-8551 or rodney.j.mackinnon@oel.myflorida.com.

Sincerely,

Rodney J. MacKinnon

RJM/jj

RODNEY J. MACKINNON
EXECUTIVE DIRECTOR, OFFICE OF EARLY LEARNING

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**State of Florida
Department of Children and Families**

Rick Scott
Governor

Mike Carroll
Secretary

DATE: September 15, 2015

TO: Rodney Mackinnon, Executive Director
Office of Early Learning

FROM: Samantha Wass de Czege, Director
Office of Child Care Regulation

SUBJECT: Responses to Federal Audit Report Number: A-04-14-08033

Audit Findings:

The instances of noncompliance at all four providers occurred because the State licensing agency and county did not ensure that the providers took proactive steps to remain compliant with the minimum State licensing requirements related to the health and safety of children. The State licensing agency also does not require inspectors to report health and safety violations if the provider can explain or fix the violation immediately, and this lack of historical information undermines the ability to train or inform inspectors of patterns of health and safety violations by providers. This lack of reporting hinders the State lead agency's ability to adequately monitor the program and services.

Department's Response:

In accordance with s. 402.314, Florida Statutes (F.S.), the Department offers consultation and technical assistance to providers through a variety of different avenues.

The Department, by policy, conducts at minimum three licensing inspections per year for facilities and two licensing inspections per year for homes. The licensing inspection template for facilities has a 63 item checklist which corresponds with the minimum standards established in s. 402.302-402.319, Florida Statutes and Chapter 65C-22, Florida Administrative Code (F.A.C.) and for homes there is a 38 – 51 item checklist which corresponds with the minimum standards established in s. 402.302-402.319, Florida Statutes and Chapter 65C-20, F.A.C. During each inspection visit, licensing staff have one-on-one time with the provider and can answer questions, offer technical assistance, provide updates regarding rule or policy changes, identify violations and make suggestions on how to come back into compliance. Licensing staff are required to document all violations observed at the time of inspection on the report even those items that are corrected at the time of the inspection visit. Each noncompliance item cited requires a "due date" to be entered and a follow-up re-inspection must be completed at another date when the violation has been corrected. If a provider corrects

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a violation at the time of the inspection, this is notated on the inspection report "corrected at time of inspection" in place of the "due date" and does not require a re-inspection. These violations of licensing standards are still documented in the inspection report as being noncompliant. The Department's data base system captures violations from inspection reports and generates a matrix for each provider. The matrix can be viewed in two different ways: the first shows the last 2 years of violations while the second shows all the violations as far back as May 2008 when this feature was added to the system. In May 2008, the Department promulgated rules establishing a progressive enforcement system that dictates administrative action procedures for three classification levels of violation occurrences. This system is a gradual approach to disciplinary action beginning with Technical Support and Warning Notices leading up to Administrative Fines and/or Suspension/Revocation of the provider's license. The system is ideal for ensuring consistent consequences are administered by licensing staff throughout the state for providers that do not comply with minimum standard requirements.

The Department hosts provider meetings periodically throughout the state, which are generally coordinated by the individual Regions. Agendas for such meetings may include new rule updates, new policy updates, identify common violations trending in a particular area and clarify rule requirements and ways to obtain/maintain compliance.

The Department provides a mail out 2-3 times per year to all providers that highlight regulatory issues and promote awareness.

The Department issues email blasts periodically regarding pertinent issues that arise, upcoming conferences and course opportunities, as well as general changes occurring in the program.

The Department's website is a valuable resource for new providers, existing providers, and parents. Several highlights from our website are: "What's New", Online training, and the Provider Search function. Providers can access forms/applications and download rules/statutes, as well as complete training. Parents can search providers in their area, view inspection reports, and report complaints to their local licensing office.

402.314 Supportive services.—The department shall provide consultation services, technical assistance, and in-service training, when requested and as available, to operators, licensees, registrants, and applicants to help improve programs, homes, and facilities for child care, and shall work cooperatively with other organizations and agencies concerned with child care.

Audit Findings:

Providers Did Not Always Comply With Requirements for Physical Conditions

All four of the child care providers we reviewed had one or more instances of noncompliance with the minimum requirements to protect children from potentially hazardous physical conditions. Additionally, the childcare providers we visited had been cited by the State licensing agency or county both before and after our visits for

health and safety violations. Specifically, we found 57 instances of noncompliance with State licensing requirements related to physical conditions at the 4 providers that we reviewed.

Department's Response:

The Department visited the three childcare providers located in counties under state jurisdiction as the remaining program is located in a county governed by a Local Licensing Authority allowable under s. 402.306, F.S. The purpose of each visit was to follow-up with the noncompliance items identified by the audit team for compliance, survey the providers understanding of the health, safety, and sanitation standards and provide technical assistance regarding each standard cited noncompliant in the audit. Licensing inspections are a snap shot in time and capture only what is observed at the time of inspection. In many instances licensing staff will offer providers a heads up on items such as background screening re-screens (due every 5 years) or completion of in-service training (due at the end of each fiscal year) that may be required before the next round of inspections. If such items are not taken care of prior to the next visit, the provider is essentially being put on notice that the issue will be cited during the next inspection visit. The inspection frequency for facilities is three times per year which means that roughly every four months our licensing staff are onsite. The inspection frequency for homes is two times per year which means that roughly every six months our licensing staff are onsite. During the interim noncompliant issues may occur such as missing toilet paper, chipped paint, etc., that are generally corrected timely by the provider prior to the next onsite inspection. Ongoing compliance with minimum standards in the absence of a licensing presence is the responsibility of the child care provider.

Magazine rack blocking an evacuation route – The original placement of the rack does not appear to block the exit. The photograph shows the magazine rack slightly turned out on one corner like it had been leaned on or bumped into and shifted from its original placement. According to 65C-22.002(5) (b)2, F.A.C. exit areas must remain clear in accordance with fire safety regulations. Based on the evidence provided by the photograph, the Department would not be able to substantiate a licensing violation before an Administrative Law Judge. During our follow-up visit to the childcare program the provider was advised to relocate the rack to reduce the potential for it to pivot over and cause an issue. Do not concur with audit finding.

Hole in the bathroom wall – This was a valid noncompliance item in violation of 65C-22.002(1), F.A.C. During our follow-up visit to the childcare program the wall had been patched and painted and was no longer a hazard. Concur with audit finding.

Stained ceiling tile with “possible” water leakage – The ceiling tiles were observed during our follow-up visit to be discolored but were not wet or sagging. The provider was questioned about the area and reported that the leak had been fixed previously but they were unable to replace the tiles at that time. Before citing a violation, licensing staff are instructed to ask questions and gather information to assess the threat to health and safety of the children in care. In this instance, the stained ceiling tile does

not rise to the level of a violation unless there was an active leak or mold posing a health or safety threat. The discolored tiles are a cosmetic issue. Do not concur with audit finding.

Cleaning products on changing table/unlocked cabinet – During the Department's follow-up visit there were no unlocked cabinets with cleaning solutions accessible to the children. During a typical inspection, licensing staff pull on door handles, open drawers, and look into cabinets that are accessible to children. Concur with the audit finding.

Chipping Paint – This was a valid noncompliance item in violation of 65C-22.002(1), F.A.C. During our follow-up visit to the childcare program there was chipping paint observed and the provider was given a corrective action. Concur with the audit finding.

Knives and scissors within reach of children – During the Department's follow-up visit there were no knives or any other sharp objects within reach of the children. Concur with the audit finding.

Unlocked fence gate around AC unit – Licensing standards do not require that fence gates be locked in this instance. Adequate supervision would serve as the additional layer of protection for the children while using the playground area. Also, the location of the outdoor play area utilized by the children to the fenced gate would be a factor in a determination of compliance or noncompliance. Based on the evidence provided by the photograph, the Department would not be able to substantiate a licensing violation before an Administrative Law Judge. Do not concur with audit finding.

Infant sleeping position – This type of observation would require licensing staff to ask some questions of the child care personnel working with the infant child. How old is the child? Is the child capable of rolling over on their own? Does the child have a Doctor's note for alternate sleeping positions on file? What is the childcare program's policy for putting infants to sleep? If the child care personnel stated that the infant child cannot roll over, is 2 months old, and does not have Dr.'s note, this would be cited by licensing staff in violation of 65C-22.002(5)(d), F.A.C. However, if the childcare personnel stated that the infant child can roll over and is 5 months old, there would be no violation cited. Concur with audit finding only if the above exceptions were not applicable in this instance.

Missing toilet paper – This type of observation would require licensing staff to ask some questions of the child care personnel working in the classroom, particularly in bathrooms used for toddler aged children that are potty training. In some cases, child care personnel manage the toilet paper when they accompany the children to the bathroom to avoid over use and/or clogged toilets. This would not necessarily rise to the level of a violation if the above description applied. Concur with audit finding only if the above exception is not applicable in this instance.

Exposed outlets – During the Department’s follow-up visit to the child care program there were no open outlets observed. If this violation occurred at the time of inspection it would be cited. Concur with audit finding.

Missing thermometer – The Department acknowledges this issue as it is a rather common citation as multiple individuals may use first aid items and not return them to the first aid kit; however, the item is onsite at the program. This is a valid noncompliance item in violation of 65C-22.004(2), F.A.C. Concur with audit finding.

During all onsite inspections, licensing staff work tirelessly providing technical assistance to providers encouraging them to be proactive in their efforts to maintain continued compliance with licensing standards.

Audit Findings:
Providers Did Not Always Comply With Training and Other Documentation Requirements

We identified nine instances in which staff records at two providers lacked documentation of the required hours of training.

In addition, 17 child records at 2 childcare providers lacked student health examination forms, were missing enrollment information, or didn’t have a current Florida Certificate of Immunization or a religious exemption form.

Department’s Response:

According to 65C-22.003(2)(a)1, F.A.C. child care personnel have 90 days from their date of employment in the industry to begin training and once started they have a year to complete the required training. With the frequency of 3 inspections per year, licensing staff may visit a couple of times before a new staff person completes training. The inspection reports would not reflect a noncompliance until which time the 15 month time frame had passed and staff still had not completed all required training.

Pursuant to 65C-22.003(6), F.A.C. child care personnel must complete a minimum of 10-clock-hours or one CEU of in-service training annually during the state’s fiscal year beginning July 1 and ending June 30.

In February 2015, the Department provided audit staff a large amount of documentation that supported compliance with the majority of training instances cited as noncompliant in this audit report. Child care personnel were marked out of compliance for meeting their annual in-service training requirements, though the window for compliance was still open during the audit time frame. Please refer to the original support documentation addressing this issue. Do not concur with audit findings.

According to 65C-22.006(2)(d), F.A.C. enrollment and health record documentation must be provided by the child’s parent within 30 days of enrollment. During licensing inspections licensing staff monitor for such documentation accounting for the 30 day

time frame. If the inspection visit occurs within the 30 day window, the facility would be compliant. If the inspection visit occurs after the 30 day window, the facility would be cited noncompliance. Concur with audit finding only if the above exception is not applicable in this instance.

Audit Recommendations:

We recommend that the State lead agency work with the State licensing agency and counties to ensure that:

- providers meet training requirements and that the required documentation is included in staff records for all employees who provide direct services to children;
- required documentation is complete, current, and included in the child record files; and
- all instances of noncompliance are documented so that providers adhere to all requirements for the health and safety of children.

Department's Response:

The Department concurs with these recommendations and will continue to require providers to adhere to each of the above requirements as well as emphasize the importance of operators being proactive in their efforts to maintain licensing standard compliance at all times.

If you have any questions concerning our responses to the audit findings you may contact me at (850) 717-4374.