

HOUSE STUDY COMMITTEE ON LICENSING AND INSPECTION OF CHILD WELFARE PROVIDERS:

REPORT OF FINDINGS & RECOMMENDATIONS (2014)

INTRODUCTION

The House Study Committee on Licensing and Inspection of Child Welfare Providers respectfully submits this, its report of findings and recommendations, to the Speaker and Honorable Members of the Georgia House of Representatives. Over the course of two months, the Committee held four (4) multi-hour hearings with child care providers and their representatives, State agency and department representatives (including but not limited to, the Office of Residential Child Care (RCC) under the Department of Human Services (DHS), Office of Provider Management (OPM) under the Department of Family and Children Services (DFCS), Department of Juvenile Justice (DJJ), Department of Public Health (DPH), and Department of Behavioral Health and Developmental Disabilities (DBHDD)) and other interested persons. In addition, members of the Committee conducted their own research, including document review, meetings, and a site visit to a child care institution's facility. As a result of these activities, the Committee makes the following findings and recommendations.

EXPRESSION OF GRATITUDE

Before enumeration of those items, the members of the Committee wish to express their deepest gratitude and appreciation to the men and women of this State who give their time, talents, and finances to provide for, nurture, and oversee the growth and development of the most precious asset this State possesses: its children, specifically those children who have been unfortunately, but necessarily, taken into State care.

FINDINGS & RECOMMENDATIONS

1. Consolidation of Certain Annual Inspections

- a. **Findings:** Child care providers feel overburdened by the number of annual inspections performed by multiple agencies (such as RCC, OPM, DJJ, and DBHDD) and the agencies have indicated that such inspections result in agencies' duplicated efforts. RCC performs annual licensing inspections and some follow-up inspections and complaint-driven inspections. OPM, DJJ, and DBHDD contract with providers to perform certain department-specific services. As a result, OPM, DJJ, and DBHDD have staff members conduct annual inspection for contract compliance, as well as follow-up inspections and complaint-driven inspections as needed. These multiple annual licensing and contract compliance inspections (not to mention follow-ups, responses to complaints, and child-specific visits by DFCS or DJJ) consume a large amount of the child care provider's time and resources which would otherwise be spent on daily operations.

Providers have suggested that the State recognize national certifications and allow those certifications to function as a state license, thereby eliminating at minimum the state licensing inspection conducted by RCC. Unanswered questions, however, remain: e.g., to whom do those national boards answer and to what extent do their standards meet the standards and expectations of Georgians?

Providers have also requested that agencies schedule their annual inspections. Agencies, however, believe unannounced inspections provide the most accurate indicator of daily conditions. Providers and certain agencies have suggested coordinating the various agencies' inspection calendars so that a group of inspectors come all at one time. In theory this seems workable; but actual coordination may prove impracticable because of the limited number and location of inspectors as well as

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the practical impacts of numerous inspectors at one location awaiting their respective turn with the provider and its records.

The Committee recognizes that RCC faces significant demands with high employee turnover. RCC during FY 2014 licensed 89 child placing agencies (CPAs), 175 child caring institutions (CCIs), two outdoor child caring programs, and 13 maternity homes with 31 staff positions. Out of those 31 staff positions, 17 are inspectors/field surveyors, one is an applications specialist, and two perform complaint triage. RCC has experienced a 25% turnover rate over the last two years in inspectors/field surveyors. This is not surprising given that for FY 2014, RCC performed 21 initial license application surveys, 289 re-licensure surveys, 714 complaint/incident investigations surveys and 56 follow-up surveys, which amounted to 64 surveys per inspector/field surveyor. This left little time for training, follow-up, or provision of technical assistance to license holders. In addition, RCC attempted 730 visits (only 451 were successful) to foster homes regulated by the “Kenny A.” consent order and addressed 69 refuted citations (out of 2,177 complaints issued) in FY 2014.

Similarly, as of FY 2013, OPM had contracted with 179 child caring institutions and 71 child placing agencies. OPM monitors these organizations based on room, board, and watchful oversight (RBWO) services/standards. Over the last two years, OPM has fully terminated five contracts, partially terminated two contracts (specific sites were terminated, not the provider) and issued 26 suspensions for 30 days or more. For FY 2013, OPM performed 214 annual comprehensive contract reviews, 214 performance-based placement score audits, 638 safety reviews and 310 foster home reviews. Of those audits, the annual review and safety reviews involve site inspections. The annual audit takes approximately two to four days to complete. OPM completed these reviews/inspections with seven staff members, but does not have the turnover problem experienced by RCC.

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DJJ currently contracts for room, board, and watchful oversight (RBWO) with 78 residential facilities statewide, encompassing both CPAs and CCIs. Thirteen of these facilities contract exclusively with DJJ, while 65 contract with DJJ and DHS. DJJ conducts three planned site visits per calendar year to all contracted RBWO vendors. One planned announced site visit is conducted in conjunction with the vendor's Bi-Annual Utilization Review, which consists of auditing both the programmatic compliance based on RBWO standards, regulatory child care licensing regulations, and DJJ-specific contract and policy requirements. Two planned un-announced site visits are also conducted to audit programmatic, licensure, and RBWO standards, as well as DJJ-specific contract and policy requirements. Other unannounced site visits will occur due to critical incidents that require DJJ's immediate response within one to five calendar days.

Providers who contract with DJJ must address all deficiencies identified during any site visit, whether announced or un-announced. A deficiency report is provided to the provider facility within 24 to 72 hours after the site visit occurs. The facility must then develop and submit a corrective action plan within the timeframe identified in the deficiency report. DJJ closely monitors the facility over the next 30 to 90 days for compliance with the corrective action plan, and may conduct an un-announced site visit. DJJ also provides technical assistance to the facility as needed to assist the provider in maintaining compliance. All of the above requirements must be satisfied before DJJ will lift a suspension or removal.

DJJ's oversight and compliance team is made up of four Regional Treatment Services Specialists and six Residential Placement Specialists, who provide programmatic and contract compliance oversight to the contracted RBWO facilities. In FY 2013, DJJ conducted 103 site visits. Sixteen providers were placed on New Referral Suspension during FY 2013, and three providers

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were placed on Removal of Current DJJ Youth with New Referral Suspension. DJJ did not terminate any provider contracts in FY 2013.

- b. **Recommendations:** To reduce the time spent by child care providers responding to certain annual inspections presently required by RCC, OPM, DJJ, and DBHDD, and to avoid duplication of regulatory oversight, the Committee recommends consolidating the annual licensing and contracting inspection into an inspection done by a single inspecting agency on behalf of RCC, DFCS, DJJ, and DBHDD, rotating between responsible agencies. This inspection would still be unannounced, but would occur within a specified 30-day time frame. Child care providers would have the opportunity to designate up to three days within the 30-day time frame as a blackout period. Inspections required as a result of complaints, court orders, or plans specific to a child would continue as currently performed. The Committee asks the agencies involved to present an analysis of their cooperative efforts on this matter to the chairmen of the House Committees on Judiciary and Juvenile Justice within 120 days of the adoption of these recommendations.

Alternatively, the General Assembly could consider requiring DHS to consolidate all of its licensing, contracting, and associated inspections into one division within DHS and require that licensing and contract compliance be done by a single inspector. To the extent the provider has contracts with DJJ and DBHDD, those agencies may be required to train DHS inspectors to conduct their agency-specific surveys or schedule their inspections with the DHS inspector.

Finally, the Committee believes consolidation of inspections or consolidation of departments within DHS will provide some workload reduction, although such a move may initially result in some turnover. Given RCC's present workload and turnover rate, there is a need for more inspectors/field surveyors and better pay.

2. Criminal Background Checks

- a. **Findings:** Providers are presently required to obtain background checks for employees. The number of the background checks varies depending on the regulatory agency's scope of authority. This tends to result in requests by providers for multiple background checks and the associated costs and delays of obtaining such information. The information is, nevertheless, essential to protecting the safety of children under the care of providers.
- b. **Recommendation:** The Committee asks that chief counsel for DHS and DJJ, aided by the Director of the Georgia Bureau of Investigation (GBI), draft proposed legislation authorizing a single central agency, such as the GBI or OIG, to collect criminal background information and screen such information against the particular screening requirements of each child care agency so as to comply with federal regulations while eliminating duplicitous provider screening. The Committee requests that a copy of the proposed legislation be provided to Committee members prior to December 1st of this year.

3. Specialized Child Care Provider License

- a. **Findings:** The Committee heard from and considered information from certain providers which provide unique, specialized, permanent child-care services, e.g., WinShape Homes. These entities are impressive in the services they provide and accordingly receive the Committee's approbations. Their services, however, are generally private, i.e., they do not contract with the State to provide care to children under the State's care. This is in part due to the manner and type of care provided and also due to the regulatory barriers and financial costs associated with accepting children in State care. Nevertheless, licensing of such providers is either not required statutorily because such a facility houses less than six children under 19 years old or occurs under the existing regulatory framework.

b. **Recommendation:** Establishing a separate classification and thus differing regulations presumes that such classification and associated regulations would in some way be less burdensome than the existing framework. The purpose of the existing regulations is to protect and ensure adequate care for displaced children. To the extent these regulations are overly burdensome, the Committee believes the regulations should be adjusted, but at this time, does not see a need for creating a new and distinct classification and corresponding regulations.

4. **Balancing Child Safety and Risk Associated with Normalcy**

a. **Findings:** The Committee entertained a full discussion regarding the need to provide as normal of an environment as possible for children in the care of the State. While fostering a normal childhood is very desirable, the needs of each child are different and, correspondingly, the degree of normalcy differs. Moreover, providers' tolerances for risk associated with caring for children vary. Providing a normal childhood is therefore specific to the child and the provider. The Committee recognizes, although it did not have time to review, that DFCS allows for providers and children to develop a graduated independence plan (GIP). A GIP is a plan by which a provider may deviate from the RBWO and help a child foster achieve greater independence, self-sufficiency and normalcy. Unfortunately, it is not frequently used.

b. **Recommendation:** The Committee recommends enhanced efforts by agencies/departments to encourage providers to create as normal a childhood experience as can be practically afforded while keeping watchful oversight to minimize risk and harm to the child. The Committee acknowledges that this is a difficult balance, but one that is important to the development of independent, socially acclimated, and self-sufficient young adults.

5. **Data Sharing & Predictive Analytics**

- a. **Findings:** The Committee finds that each department and agency has its own data collection software. For example, DFCS uses “Georgia SHINES”, OPM within DFCS uses “Georgia SCORE”, DJJ uses “JTS”, and RCC is in the process of creating “Georgia TRAILS”. While certain agencies have “read-only” rights, input access is limited to the host department/agency. Limited data sharing and input creates a degree of needed separation and security, but it also creates a limitation on rapid interagency communication and may pose a hindrance to developing predictive analytics software to identify certain risk factors which are indicative of child endangerment. (For illustrative purposes only, risk factors may include frequent hospital/doctor visits, missed doctor’s appointments, reports from school, absenteeism, or a negative change in academic scores.)
- b. **Recommendations:** The Committee recommends that the agencies consider a centralized data warehouse for provider inspection reports and compliance data accessible to all agencies with oversight. Furthermore, the Committee recommends creation of software and associated policies and procedures which will use predictive analytics for child-based oversight to identify certain risk factors which are indicative of child endangerment. This information would then be used to provide preventative intervention. This recommendation of data warehousing/sharing and the development of predictive analytics should be more thoroughly considered, with respect to both design and costs, by a task force consisting of representatives from affected agencies as well as providers. The Committee urges that the work of such a task force be completed and requests for proposals including costs to implement received by Nov. 1st of 2015 for the purpose of allowing the General Assembly time to consider for appropriations.

6. **Public Scorecards**

- a. **Findings:** Presently departments publicly post citations and inspection surveys which provide a snapshot of the care a provider delivers. Without greater context, these snapshots create a record of wrongs that often does not reflect the exceptional performance of providers. The incomplete picture undermines public confidence and discourages entry for potential providers.
- b. **Recommendations:** The Committee recommends the creation of a scorecard for providers published in a single location for public review which will include “grades” from each of the various agencies/departments who regulate that particular provider. The “grades” should be based on an established published formula with weight appropriately given to compliance/noncompliance of applicable rules, policies, court orders, etc. based on empirical evidence to the greatest extent possible. We recommend that there be a process for providers to review and contest a particular score before publication, and that regulatory incentives and disincentives should be based upon scorecard results. The development of this grading system should be more thoroughly considered, with respect to both design and costs, by a task force consisting of representatives from affected agencies as well as providers. The Committee urges that the work of such a taskforce be completed and requests for proposals including costs to implement received by Nov. 1st of 2015 for the purpose of allowing the General Assembly time to consider for appropriations.

7. **Appeals Process**

- a. **Findings:** Providers expressed exasperation with what some would consider a daunting administrative appeals process. DHS breaks down licensing appeals into an informal refutation process for citations and a formal administrative hearing before an administrative law judge for sanctions and penalties. There is no appeal procedure from the refutation process; thus there is no

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outside arbiter which could clear the provider if the refutation outcome is undesirable.

Under the formal administrative hearing process, which occurs when DHS issues sanctions or penalties, the DHS Commissioner may overturn the decision of the ALJ, and the Commissioner's review is required before the provider may appeal to superior court. This creates the perception that the Commissioner will simply nullify the ALJ's decision and thereby render the hearing process meaningless, in addition to being costly and burdensome for a provider considering an appeal.

- b. **Recommendations:** With respect to the refutation process, the Committee believes this is a useful process to diffuse and address rule violations. The Committee believes that once a grading system is in place, the perception of citations will be put in proper context of the overall grade. If a grading system is not created, then the General Assembly may need to consider an appeal process for refutations.

With respect to administrative appeals of sanctions or penalties of child care providers (CCIs and CPAs), the Committee requests that within 120 days of the adoption of these recommendations, DHS take Board action to change its regulations, eliminating the procedural step whereby the DHS Commissioner is required to affirm or overturn the decision of an ALJ of the Office of State Administrative Hearings (OSAH) prior to an appeal to Superior Court. The Committee asks that DHS provide, within 30 days from the adoption of these recommendations, additional information to Committee members regarding the separate and distinct number of child support recovery petitions and child care provider (CCI and CPA) petitions filed and heard by ALJs and the corresponding number of the ALJ decisions stemming from child support recovery petitions and child care provider (CCI and CPA) petitions that the Commissioner has affirmed or overturned. The Committee also recommends that the General Assembly consider amending the Administrative Procedures Act to require that departments file

petitions for a hearing with OSAH within 15 calendar days of receipt and file a response to such petitions within 30 days of filing with OSAH).

8. Tax Incentive for Sponsorship of Foster Children

- a. **Findings:** Child care providers secure a portion of their resources from private donors, and some child care providers elect not to accommodate children of the State due in part to the regulatory burden as well as the associated costs of providing services to children who are in need of greater services than the typical placed child.
- b. **Recommendation:** The Committee recommends the creation of a tax credit, capped at \$2.5 million, to encourage private donors to “sponsor” children in need of higher levels of agency oversight (e.g., AWO and MWO).

9. Improve Data Collection on Incidents of Abuse in Child Care Facilities

- a. **Findings:** In FY 2013, there were more than 500 investigations involving abuse or neglect of children in the custody of DFCS or DJJ. Thirty-eight percent of those investigations yielded substantiated cases of abuse and neglect.
- b. **Recommendation:** The Committee requests that the chairmen of the House Committees on Judiciary and Juvenile Justice receive copies of the data and resulting report of the next formal annual review of the substantiated abuse rate of children in state care.

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MEMBER APPROVAL

By my signature below, I indicate my approval of the findings and recommendations contained within this report.

Representative Andy Welch, Chairman

Date

Representative Joyce Chandler

Date

Representative Penny Houston

Date

Representative Mary Margaret Oliver

Date

Representative Kevin Tanner

Date

Representative Tom Weldon

Date

Representative Wendell Willard

Date