

*A REPORT BY THE NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER*

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COMPTROLLER**



**OFFICE OF CHILDREN AND FAMILY
SERVICES**

**LIFE SAFETY AND FISCAL ISSUES RELATED
TO LEGALLY EXEMPT CHILD CARE**

2002-S-38

DIVISION OF STATE SERVICES

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Report 2002-S-38

Mr. John A. Johnson
Commissioner
Office of Children and Family Services
52 Washington Street
Rensselaer, NY 12144-2796

Dear Mr. Johnson:

The following is our report addressing the Office of Children and Family Services' oversight of the life safety and fiscal issues related to legally exempt child care.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law. We list major contributors to this report in Appendix A.

Office of the State Comptroller
Division of State Services

July 1, 2004

EXECUTIVE SUMMARY

OFFICE OF CHILDREN AND FAMILY SERVICES LIFE SAFETY AND FISCAL ISSUES RELATED TO LEGALLY EXEMPT CHILD CARE

SCOPE OF AUDIT

The Office of Children and Family Services' (OCFS) is responsible for providing oversight and technical assistance to the State's 58 local social services districts (districts) in their administration of the child care subsidy program (program). The program provides child care subsidies for families who are receiving public assistance, families transitioning off public assistance, and low income families not receiving public assistance. The program's goal is to provide affordable and accessible child care that allows parents to choose where to send their children for care. The program's primary source of funding is the Child Care Development Fund, a federal block grant. The State and localities also contribute to program funding.

In New York State, parents of children who receive program subsidies may choose among three types of child care providers: licensed (child care centers and group family homes), registered (family child care and school-age child care programs) and legally exempt care (most typically care for one or two children at the provider's home). Over 68,000 children or 39 percent of the children in the program receive care from legally exempt providers. Legally exempt providers do not have to comply with State child care licensing and registration requirements and are not subject to State enforcement activities. For legally exempt child care, the State relies on a self-certification process in which providers and parents sign a form certifying to the district that they met OCFS' health and safety regulations.

Our audit addressed the following questions about program and fiscal issues relating to legally exempt child care for the period October 1, 2002 through May 16, 2003:

- Are OCFS and district oversight activities effective in monitoring health and safety?

- Are program funds spent for their intended purpose?

Our audit also addresses the following question for the period April 1, 2000 through March 31, 2003:

- Does OCFS allocate program funds to districts properly?

AUDIT OBSERVATIONS AND CONCLUSIONS

We conclude that OCFS and the districts must significantly improve their oversight of the program to provide reasonable assurance that legally exempt providers deliver child care services in a healthy and safe environment, and that providers actually perform services for which they receive reimbursement. In addition, OCFS needs to improve controls over the allocation of program funds.

The health and safety of children must be of paramount concern to agencies that administer child care programs. We visited the Albany, Monroe and Nassau districts to determine how these districts monitor the health and safety of legally exempt child care locations. We found that the districts generally rely on information submitted by legally exempt providers and parents without independently verifying it. Our observations show that such reliance could endanger the welfare of children. For example, we found instances where uncapped syringes, a knife, a razor, and cleaning supplies were accessible to children. (See pp. 17-20)

We randomly selected 162 legally exempt providers and submitted their names, social security numbers and/or addresses to the New York State Division of Criminal Justice Services (DCJS) and the Statewide Central Register of Child Abuse and Maltreatment (SCR) for criminal and SCR histories. DCJS identified 15 providers who may have been convicted of a crime. The SCR identified 14 providers who may have been the subjects of an indicated report of child abuse or maltreatment. (A report is indicated when the district conducts an investigation and finds some credible evidence of abuse or maltreatment.) Unlike the process for licensed and registered childcare providers, OCFS and the districts are not required to obtain criminal background or SCR histories for legally exempt providers. OCFS, the districts and the parents rely solely on the providers' self-reported certifications on these matters. We gave OCFS and the districts the results of our audit tests so that they could determine whether the providers we identified actually have criminal and/or SCR histories and determine whether these histories would prevent the providers from caring for children. (See pp. 20-23)

Districts generally do not independently verify that subsidized child care services are actually provided. We selected 70 providers to visit from the population of

4,027 legally exempt providers active in Albany, Monroe and Nassau Counties as of the start of our field work. In 31 of the visits (44 percent), we were not able to confirm that care was being provided even though the provider was being reimbursed. We believe that payments to parents/providers in most of the 31 cases may prove to be fraudulent. During the audit, district officials who accompanied us on our visits took immediate action to discontinue or adjust payments in all 31 cases. (See pp. 25-28)

OCFS is responsible for allocating program funds to the districts. We found that some districts did not receive the correct allocation during State fiscal years 2000-01 and 2001-02. (See pp. 29-30)

RESPONSE OF OFFICE OFFICIALS TO AUDIT

OCFS officials generally agreed with the recommendations contained in this report and have taken steps to implement many of them. However, as pointed out in this report and in the OCFS response, OCFS currently lacks the legal authority to conduct SCR database or criminal background checks on legally exempt providers. Based on the results of this audit, we urge OCFS to seek the legislative changes necessary to obtain the legal authority to conduct SCR database and criminal background checks on legally exempt child care providers.

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INTRODUCTION

Background

The Office of Children and Family Services' (OCFS) Bureau of Early Childhood Services (BECS) is responsible for providing oversight and technical assistance to the State's 58 local social services districts (districts) in their administration of the child care subsidy program (program). The program provides child care subsidies for families who are receiving public assistance, families transitioning off public assistance, and low income families not receiving public assistance. The program's goal is to provide affordable and accessible child care that allows parents to choose where to send their children for care.

The program's primary source of funding is the Child Care Development Fund (CCDF), a federal block grant. States may also elect to transfer up to 30 percent of their Temporary Assistance for Needy Families (TANF) funds into the CCDF. New York State and the localities provide additional funding for the program.

Since 1997, New York State has consolidated CCDF funds, TANF funds and additional State and local funds into the New York State Child Care Block Grant (Block Grant). OCFS is responsible for allocating the funds the Legislature appropriates to the Block Grant. In federal fiscal year 2002, OCFS allocated approximately \$701 million to districts under this program. OCFS allocates most of these funds to individual districts in accordance with the Social Services Law. Other money is retained by the State for, among other things, increasing the availability and quality of child care programs. For example, the monies fund new child care enterprises, training, regulation and monitoring of child care programs, and the development of computerized data systems and consumer education.

In New York State, parents of children who receive child care subsidies may choose among three types of child care providers: licensed (day care centers and group family day care homes), registered (family day care and school-age child programs) and legally exempt care (for example, providers who care for one or two children at the provider's home). According

to BECS officials, approximately 175,000 children received child care services through the program in federal fiscal year 2002. More than 68,000 children or 39 percent of the children in the program received care from legally exempt providers, 32,000 of these children reside in New York City.

Legally exempt providers do not have to comply with State child care licensing and registration requirements and are not subject to State enforcement activities. OCFS is responsible for supervising local district monitoring of legally exempt providers. Examples of legally exempt providers include relatives; in-home providers like nannies and au pairs; some family child care providers caring for small numbers of children in the provider's home; and center programs that operate less than three hours per day.

Legally exempt family child care means:

- child care for one or two children provided outside the child's own home in a residence by a caregiver who is chosen and whose services are monitored by the child's caretaker; or
- child care for more than two children provided outside the child's own home in a residence by a caregiver who provides such care for less than three hours per day and who is chosen and whose services are monitored by the child's caretaker; or
- child care provided by a relative within the third degree of consanguinity of the parent(s) or step-parent(s) of the child.

Legally exempt in-home child care means:

- child care furnished in the child's own home by a caregiver who is chosen and monitored by the child's caretaker.

Legally exempt group child care means:

- care provided by those caregivers, other than caregivers of informal child care, which are not required to be licensed by or registered with OCFS or licensed by the City of New York but which meet all applicable State or

local requirements for such child care programs. Examples include pre-kindergarten and nursery school programs for children three years of age or older, and programs for school-age children conducted during non-school hours, operated by public school districts and private schools and academies; and programs for pre-school-aged children operated by non-profit agencies or organizations or private proprietary agencies which provide services for three or less hours per day; and day camps operated in compliance with requirements of other state agencies.

According to OCFS, legally exempt In-Home Child Care and Family Child Care providers combined represent the majority of legally exempt providers who participate in the subsidy program. OCFS has complied with Federal and State law by developing and distributing requirements designed to protect the health and safety of all children that receive care under the program. For licensed and registered care, OCFS requires extensive information as part of its license and registration process: background checks, fingerprinting, database checks through the Statewide Central Register of Child Abuse and Maltreatment (SCR), extensive supporting documentation on program design and facilities, and regular inspections that apply to all aspects of care.

However, for legally exempt child care, the State relies on a self-certification process in which legally exempt providers sign a form certifying to the district that they met the health and safety standards. This form includes: a home safety checklist that the parent and provider complete together; a certification that the provider, all household members, and any assistants are healthy and have no criminal history; and a certification by the parent that they take full responsibility for monitoring the health and safety of their children while in the provider's care. As part of the certification, providers certify that they have given the parent a written statement about the providers' child abuse history. Parents certify that they received the information and considered the information in choosing the provider.

Audit Scope, Objectives and Methodology

We audited OCFS' procedures and practices for safeguarding the health and safety of children and for determining whether subsidy money was spent for its intended

purpose for the period October 1, 2002 through May 16, 2003 relating to legally exempt child care. In addition, we audited OCFS' methodology for allocating program funds to determine whether it was equitable and in accordance with the Social Services Law for the period April 1, 2000 through March 31, 2003. The objectives of this performance audit were to determine whether: legally exempt child care providers comply with selected program requirements, OCFS and district controls relating to the health and safety of children enrolled in legally exempt child care are effective, and subsidized child care services are actually provided by legally exempt providers. We also determined whether OCFS allocates monies to districts properly and in accordance with the intent of the Social Services Law. Our audit did not include New York City, which will be included in a subsequent audit.

To accomplish our objectives, we evaluated OCFS' internal controls and other processes for safeguarding the health and safety of children receiving care in legally exempt child care programs, for verifying the necessity and reasonableness of child care payments, and for allocating program funds. Our evaluation was based on meetings with OCFS and district officials and reviews of applicable laws, rules and regulations, and relevant agency records. We also visited three districts – Albany, Monroe, and Nassau. During our visits we reviewed a sample of client (parent) case files. We also performed home visits on both a random and judgmentally selected sample of legally exempt providers to determine whether they were complying with health and safety standards and providing care in accordance with OCFS rules and regulations. We also requested criminal background and SCR database checks for a random sample of providers.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those operations, which are included in our audit scope. Further, these standards require that we understand the OCFS internal control structure and its compliance with those laws, rules and regulations that are relevant to the operations which are included in our audit scope. An audit includes examining, on a test basis, evidence-supporting transactions recorded in the accounting and operating records and applying such other auditing procedures, as we consider necessary in the circumstances. An audit also includes assessing the estimates,

judgments and decisions made by management. We believe that our audit provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach when selecting activities to be audited. This approach focuses our audit efforts on those operations that we have identified through a preliminary survey as having the greatest probability for needing improvement. Consequently, by design, finite audit resources are used to identify where and how improvements can be made. Thus, little audit effort is devoted to reviewing operations that may be relatively efficient or effective. As a result, our audit reports are prepared on an “exception basis.” This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State’s accounting system; preparing the State’s financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under Generally Accepted Government Auditing Standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Response of OCFS Officials to Audit

We provided a draft copy of this report to OCFS officials for their review and comment. Their comments, as appropriate, were considered in preparing this draft report, and are included as Appendix B of this report. In addition, State Comptroller’s Notes, in response to OCFS’ comments, are included as Appendix C.

OCFS officials generally agree with the recommendations contained in this report and have taken steps to implement many of the recommendations. However, as pointed out in this report and in the OCFS response, OCFS currently lacks the legal authority to conduct SCR database or criminal background

checks on legally exempt providers. Based on the results of this audit, we urge OCFS to seek the legislative changes necessary to obtain the legal authority to conduct SCR database and criminal background checks on legally exempt child care providers.

In addition to the matters contained in this report, we have provided OCFS officials with detailed comments concerning other related matters. Although these matters are of lesser significance, our recommendations related to these matters should be implemented to improve operations.

Within 90 days after the final release of this report, as required by Section 170 of the Executive Law, the Commissioner of OCFS shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

OVERVIEW OF PROGRAM AND FISCAL ISSUES RELATING TO LEGALLY EXEMPT CHILD CARE

The agencies responsible for overseeing child care programs must effectively monitor whether children are cared for in healthy and safe environments and whether public funds for child care programs are expended only for care that is actually provided. Unlike licensed and registered providers, who are subject to health and safety inspections as well as independent checks of their criminal and SCR child abuse or maltreatment histories, legally exempt providers are only required to submit certifications regarding their compliance with these related program requirements. Neither these certifications nor the provision of service is subject to independent verification by the State or districts. As a result, children may receive care in environments that are not healthy or safe, and providers may receive reimbursement when they do not actually provide child care.

As detailed in the following section of this report, we found instances where uncapped syringes, a knife, a razor, and cleaning supplies were accessible to children. From a random sample of 162 legally exempt providers, we also determined that 15 providers may have been convicted of a crime and 14 providers may have been the subjects of indicated reports of child abuse or maltreatment. (A report is indicated when the district conducts an investigation and finds some credible evidence of abuse or maltreatment.) In addition, we could not confirm that care was actually provided by 32 percent of the providers in our random sample who were receiving child care subsidies.

We are therefore concerned with the impact that the absence of independent verification has on the health and safety of children in legally exempt care and on the propriety of payments. Moreover, we recommend that OCFS study the existing process of self-certification and revise it where necessary to adequately protect children.

Recommendation

1. Study the existing policies and procedures relating to the enrollment of legally exempt providers, particularly in regards to the self-certification aspects of the enrollment process. Revise such policies and procedures as necessary to provide reasonable assurance that legally exempt providers deliver child care in a healthy and safe environment, and that the criminal and SCR histories of providers would not preclude them from enrolling as exempt providers.

HEALTH AND SAFETY

Based on OCFS rules and regulations, districts determine whether a provider is legally exempt from State child care licensing and registration requirements. Their determination is based on the number of children in care, the relationship of the children to the provider, the number of hours the children are in care and where the care is provided. OCFS requires that all legally exempt providers who care for children who receive a child care subsidy apply for enrollment with the district. The decision to enroll a provider is based on a review of provider information, a completed and signed health and safety checklist, criminal history certification, as well as parent and provider certifications. Subject to OCFS approval, the districts may implement additional health and safety requirements as necessary.

We visited Albany, Monroe and Nassau districts to determine how these districts monitor the health and safety of legally exempt child care locations. We found that districts generally rely on information submitted by providers and parents without independently verifying it. Our observations show that such reliance could endanger the welfare of children, since there is an increased risk that legally exempt providers will not comply with existing health and safety requirements nor submit accurate information on their enrollment forms. Therefore, we conclude that OCFS needs to expand its oversight of district practices related to legally exempt child care providers to verify that children are cared for in a healthy and safe environment.

The need for child care has grown dramatically in recent years due to the work requirements for welfare parents as a result of welfare reform. Our audit found that OCFS needs to study the existing process of self-certification and revise it where necessary to adequately protect children in legally exempt care.

Unsafe Locations

We met with BECS officials to select the most important health and safety standards that parents should monitor closely. Out of the 25 health and safety standards of legally

exempt child care providers, seven were chosen as the most important criteria for our random health and safety inspections within the three counties. BECS officials did not object to the auditors including any other indicators of non-compliance based on the remaining health and safety standards that providers and parents have already certified to these standards.

The agreed upon criteria included:

- Two separate and remote ways to leave the residence in case of an emergency;
- Unsafe areas have sturdy barriers to prevent children access;
- Harmful materials/objects are safely stored away from children;
- All exposed electrical outlets accessible to young children are covered with protective caps;
- One working smoke detector on each floor of the residence;
- A working telephone or one close by in case of an emergency; and
- A portable complete first aid kit that is easily accessible in case of an emergency.

We randomly visited 31 providers to conduct unannounced health and safety inspections. A BECS regional office representative or a district fraud investigator accompanied us during each inspection to provide an official presence and to verify our findings. For 3 of the 31 providers, we could not confirm that child care was actually being provided by the providers, and as a result, those cases are being investigated as potential frauds by the district's fraud investigators. (We discuss this matter more fully in the section on "Potential Fraud.") Our results include only the inspections for those 28 providers where we could confirm that child care was actually being provided.

All providers complied with the requirement to have a working telephone in the residence or one close by in case of an emergency. Overall, only 2 of the 28 providers complied with all of the seven health and safety criteria we tested. The other 26 providers did not comply with one or more of the remaining six criteria. The three criteria with the highest rates of non-compliance were: harmful materials/objects safely stored away from children, electrical outlets covered by protective caps, and

complete first aid kits in the household. Our inspections for the 26 providers identified the following:

- 22 providers had one or more electrical outlets that were not covered by protective caps and these outlets were accessible to young children.
- 21 providers did not have a portable first aid kit available in case of an emergency. We found that 14 providers did not have a first aid kit in the household and seven providers had only limited first aid supplies.
- 20 providers had harmful materials/objects that were not safely stored away from children. Examples included two uncapped syringes, one butcher knife, one pair of scissors, one razor, three open bars where alcohol was readily accessible, several opened packs of cigarettes, several bottles of prescription medication, and many bottles of cleaning supplies.
- 10 providers did not have at least one working smoke detector on each floor. We found that eight providers had smoke detectors that did not contain working batteries, and two households had no smoke detectors.
- 4 providers did not have two separate and remote ways of leaving the residence in case of an emergency. Three residences were located on the second floor where exiting through the window would not be possible, and one residence had a side door that required a key but the provider did not know where the key was.
- 3 providers did not have sturdy barriers around unsafe areas. We found two operating space heaters, one water heater and one lit gas burning stove that were easily accessible to children.
- 10 providers did not comply with various other health and safety requirements, in addition to the seven criteria we specifically tested, as follows:
- We found four elderly providers in ill health: Two providers recently had heart surgery, one provider suffered from severe arthritis that limited her mobility so severely that she was confined to a wheelchair, and one

provider had very poor vision. The BECS officials that accompanied us stated that these providers would be incapable of being licensed or registered based on their health conditions. We are concerned because physician's statements are not required as part of the enrollment form; only provider certifications stating that they are in good health are required.

- Other issues of non-compliance included: The provider leaving a walking toddler in the residence alone while the provider took another child to the school bus, three residences with peeling paint and plaster accessible to children, and several residences with overflowing garbage cans, garbage on the floor throughout the residence, or roaches.

Our observations indicate that the health and safety of children are being compromised in the three districts we visited. In the short term, OCFS and the three districts must act to protect the health and safety of children in legally exempt child care settings. In addition, OCFS and the remaining districts should conduct random site visits in the remaining counties to determine the extent of health and safety problems in legally exempt child care settings. OCFS and the districts should take action, including follow-up visits as necessary, to correct problems identified.

Criminal Background Checks and SCR Data Base Checks

All licensed and registered providers must receive criminal background checks and SCR data base check before they are allowed to provide child care. If a criminal history or an indicated SCR report is received for a person attempting to become a licensed or registered provider, BECS conducts an investigation to determine if the act or acts prevent the provider from becoming licensed or registered.

Unlike the process for licensed and registered providers, OCFS and the districts are not authorized by law to obtain criminal background or SCR histories for legally exempt providers. OCFS, the districts and the parents rely solely on the providers' self-reported certifications rather than criminal background checks or SCR database checks similar to those required for licensed and registered providers. We found that this type of self-reported criminal background and child abuse history might

endanger children cared for by legally exempt providers because the provider's information is not checked.

Like the reported information on health and safety issues, criminal background and child abuse history information is not checked. During our audit, we submitted the names, social security numbers and/or addresses of 162 randomly selected legally exempt providers to the New York State Division of Criminal Justice Services (DCJS) and the SCR for criminal and SCR child abuse or maltreatment histories. DCJS identified 15 providers who may have been convicted of a crime. The SCR identified 14 providers who may have been the subjects of an indicated report of child abuse or maltreatment. We gave OCFS and the districts the results of our audit tests so that they could determine whether the providers we identified actually have criminal and/or SCR histories and determine whether these histories would prevent the providers from caring for children.

Criminal Background Checks

As part of the enrollment process, legally exempt providers must certify whether they have ever been convicted of a misdemeanor or felony in New York State or any other jurisdiction. This information must be provided to the districts so that they can determine the provider's enrollment eligibility.

Districts may not enroll as a legally exempt child care provider any person convicted of a felony or misdemeanor against a child. In addition, a conviction for a violent or other serious crime creates a strong presumption against enrolling the legally exempt provider, and this presumption may be overcome only upon showing of some extraordinary circumstances justifying enrollment. For all other felony and misdemeanor convictions, districts must evaluate whether the criminal background poses an unreasonable risk to the safety or welfare of the child(ren).

For the 15 active, legally exempt providers that DCJS identified who may have been convicted of a crime, there were a total of 27 crimes. Seven of these crimes involving three providers may have resulted in the district denying or presumptively denying the providers from enrolling as legally exempt providers. These crimes included, for example, Sodomy 1st degree and Assault 1st degree. Since we did not have fingerprints to provide to DCJS, the 15 providers identified are only possible matches to DCJS'

records. The only accurate way to check a criminal background is to submit a fingerprint card to DCJS.

If, in fact, the 15 providers are matches, they were able to enroll as legally exempt providers for a number of possible reasons. These include: the State/districts are not authorized by law to conduct criminal background checks; the providers did not honestly certify to their personal criminal histories; or the providers were convicted of a crime after they were enrolled as legally exempt providers and did not notify the districts of their arrest.

We recognize that there is a cost associated with obtaining criminal background information through DCJS. The cost of a DCJS background check may be at a minimum, about \$3 million in the first year based on the 36,000 legally exempt providers in New York State and the \$75 per person rate charged by DCJS for criminal background checks. However, we are concerned with the incidence of possible criminal backgrounds that were present in our sample and urge OCFS and the districts to conduct similar background tests on a sample basis using fingerprints. Based on the results of these tests, OCFS and the districts should develop a cost-effective means of doing more widespread testing of the criminal backgrounds of legally exempt child care providers.

SCR Data Base Check

A legally exempt provider and the parent are required to certify that the parent has asked the provider if he or she has ever been the subject of an indicated report of child abuse or maltreatment. Providers are not required to certify as to whether they have a child abuse history. Therefore, it is not possible for OCFS or the districts to know whether a person providing care has been the subject of an indicated report of child abuse or maltreatment, and has disclosed such information to the parents, based solely on the information contained on the enrollment form. SCR identified 14 providers from our sample as having possibly been the subjects of an indicated report of child abuse or maltreatment.

However, it should be noted that even for regulated providers, an indicated report of child abuse or maltreatment does not necessarily prevent the provider from being licensed or registered. The standard SCR screening process also grants a

provider who is the subject of an indicated report the opportunity for an administrative review of and, if necessary, a fair hearing of the evidence showing that they have abused or maltreated a child, before a final determination of their eligibility is made. Nevertheless, we are concerned with the fact that 14 active providers may be the subject of an indicated report of child abuse or maltreatment. We therefore recommend that OCFS request SCR histories for all legally exempt providers as part of the program enrollment process.

Recommendations

In conjunction with the districts:

2. Take immediate steps to address the health and safety problems we identified at the three districts we visited. Conduct random site visits in the remaining counties to determine the extent of health and safety problems in legally exempt child care settings. Take appropriate action, including follow-up visits as necessary, to correct problems identified.
3. Determine whether the providers we identified actually have criminal and/or SCR histories and determine whether these histories may prevent them from enrolling as exempt providers.
4. Conduct criminal background checks of legally exempt providers on a sample basis using fingerprints. Based on the results of these tests, develop a cost-effective means of doing more widespread testing of the criminal backgrounds of legally exempt child care providers.
5. Obtain SCR histories for legally exempt providers as part of the enrollment process, and investigate any indicated reports of child abuse or maltreatment.

POTENTIAL FRAUD

Only those legally exempt providers who provide services should be paid. However, with the exception of four counties (Livingston, Onondaga, Lewis and Monroe) whose Child and Family Service Plans indicated that they conduct random inspections of providers, districts do not independently verify that subsidized child care services are actually provided. Thirty-nine percent of the children in the program receive care from legally exempt providers. To obtain payment, the parent submits attendance sheets to the district that document the days and hours that care was provided. Both the parent and provider sign the attendance sheets certifying that the provider rendered the claimed services.

We examined whether districts approved payments only for services actually provided. To accomplish this objective, we visited 70 providers. We randomly selected 41 providers to visit from the population of 4,027 legally exempt providers active in Albany, Monroe and Nassau Counties as of the start of our field work. In addition, we judgmentally selected 29 providers based on the presence of fraud risk indicators. (Before we began our testing we obtained agreement with BECS officials regarding the most appropriate indicators to use. More than 20 potential indicators, that had been previously indicated by the districts, were agreed upon, such as the provider using an invalid social security number on enrollment forms and the provider having a criminal history.) Our visits consisted of calling on the provider at the time and place of care indicated on the enrollment form, and determining whether the child was present. If we located the provider, we interviewed the provider to verify the details of care provided on the submitted enrollment form. If we could not locate the provider, we contacted the parent to determine if the provider was still providing care. A BECS regional office representative or a district fraud investigator accompanied us on each visit.

In 13 of the random visits (32 percent) and 18 of the risk based visits (62 percent) we were not able to confirm that care was being provided even though the provider was being reimbursed. We based our determination on multiple visits to the provider at

the time and place of care indicated on the enrollment form. In all 31 cases, the child was not found with the provider.

Because we could not confirm on multiple occasions that care was being provided, we believe that payments to parents/providers in most of the 31 cases may prove to be fraudulent. The following are some of the more egregious examples of what we found:

- One provider was enrolled to provide care for a four-year-old child. However, at the time of our audit, the provider lived in the Dominican Republic and stated that she never received any monies for child care. The parent admitted to us that the child was actually enrolled in a free child care program. We confirmed this information with the program that the child was attending. The parent received \$8,536 in subsidies since 1999. We are going to refer this matter to the Nassau County District Attorney's Office for further investigation.
- A provider, who lived in Plattsburgh at the time of our audit, was enrolled to provide care in Albany for two school age children. However, during our home visit, we found one of the children at home with only his 14-year-old sibling. The parent subsequently admitted that the provider had not been providing care and as a result she agreed to pay back all subsidies, which amounted to \$5,305.
- One provider for a Nassau county employee stated that she had never provided child care and had not filled out the child care enrollment form nor signed any of the attendance sheets that had been submitted by the parent. The provider subsequently went to the Nassau County District Attorney's Office and pressed charges against the parent. At the time of our audit, the Nassau County District Attorney's Office was investigating this matter.
- The social security number on one provider's enrollment form was that of a deceased individual. During our visit we found that the address given by the provider on her enrollment form was that of a barbershop. Neither employees nor patrons of the shop knew the provider who was supposed to be caring for two 11-year-old

children. We could not contact either the parent or provider because their phones were disconnected. The district closed this case without further follow-up and therefore we do not know the dollar amount of subsidies paid for this case. We suggest OCFS pursue the disposition of this case with the district.

- One provider was in a maximum-security prison for several months when submitted attendance sheets stated he was providing care for 2 school age children. Subsidies totaling \$1,099 were paid for this case, which the parent subsequently agreed to repay.

During the audit, district officials who accompanied us on our visits took timely and immediate action to discontinue or adjust payments in all 31 cases. Cases where reimbursable care could not be confirmed were either closed by the district (27) or were being investigated by their Special Investigative Unit (4). By taking such action, districts have saved approximately \$95,300 or an average of over \$3,000 per case through recoupment or cost avoidance based on the number of periods remaining that the client was authorized to receive subsidized child care.

For an additional four of the risk based providers and two of the random providers, we found that care was being provided. However, in these cases the provider was providing care illegally (in two cases the provider was providing care in the same household as another provider) or the provider was being paid in excess of what they were entitled to based on the care provided (in three cases providers were paid for hours when care was not being provided and in one case the provider was paid for additional children who were not receiving care).

We are concerned with the high incidence (31 of 70 providers) of apparent fraudulent payments. We recommend that officials in the districts we visited complete their determination about the propriety of the payments we questioned. Further, OCFS and the districts not included as part of this audit need to assess a sample of legally exempt providers to determine whether payments were made only for care that was actually provided. Due to the current fiscal crisis, available resources should be spent in a cost-effective manner by focusing on providers who have a higher risk of not providing the subsidized child care.

Recommendations

In conjunction with the districts:

6. Determine the propriety of legally exempt child care payments we questioned during our visits in Nassau, Albany and Monroe Counties.
7. Assess payments to a sample of legally exempt providers in the remaining counties to determine whether they were made only for care that was actually provided. Based on the results of these tests, develop a cost-effective means of doing more widespread testing of the propriety of payments to legally exempt providers.

FUNDING ALLOCATIONS

OCFS allocates the New York State Child Care Block Grant to individual districts based on requirements outlined in the Social Services Law. The allocation plan, developed by OCFS and approved by the New York State Division of the Budget (DOB), is intended to provide for an equitable distribution of funds to individual districts. OCFS' Budget Division is responsible for verifying that allocations are correct, and BECS is responsible for reviewing allocations to make sure they are reasonable and accurately reflect program changes.

OCFS provides base allocations to local social services districts annually. Additional subsidy funding was provided by the Child Care Reserve Fund for a three-year period in Federal fiscal years (FFY) 1999-00, 2000-01 and 2001-02. We tested the base allocations made for the State fiscal years (SFY) 2000-01, 2001-02 and 2002-03 and reserve fund allocations for FFY 2000-01 and 2001-02 to determine the accuracy of the allocations. We found that OCFS staff made clerical errors in applying the allocation methodology.

We recalculated OCFS' Block Grant allocations for each of the years we tested. For the SFY 2001-02 base allocation (totaling \$596 million) OCFS misallocated a total of \$4.4 million. For the SFY 2002-03 base allocation (totaling \$656 million) OCFS misallocated a total of \$2.1 million. The misallocation in SFY 2001-02 materially affected the allocations for nine counties: allocations were too low for five counties and too high for four counties. In SFY 2002-03, the misallocation affected 18 counties and New York City: 15 counties and New York City received less Block Grant money than they were entitled to, while 3 counties received more than their equitable share of funds. However, since most districts' actual claims did not exceed their combined base and reserve fund allocations, most districts were not negatively impacted by the misallocations. In SFY 2001-02 Westchester County was financially impacted by over \$3 million and in SFY 2002-03 Monroe, Schenectady, and New York City were negatively affected by \$107,000, \$31,000 and \$1,290,000 respectively.

Errors can occur in applying the allocation methodology because the electronic spreadsheets used to calculate each district's Block Grant allocation are complex. Each year, OCFS makes numerous revisions to the steps in the allocation methodology to reflect fiscal and programmatic changes. However, we found the spreadsheets were not constructed properly to reflect the changes and this caused errors in the allocation. In addition, the OCFS' Budget Division performed only limited reviews to determine whether the allocations were correct.

OCFS officials told us they would compensate districts that were negatively impacted by the errors the additional Block Grant funds they should have received in SFY 2001-02 and 2002-03. To avoid a recurrence of these errors, OCFS officials have stated that among other actions taken, their Data Management staff will perform more comprehensive reviews of the allocation methodology.

Recommendations

8. Correct the misallocations identified in our report.
9. Revise the existing allocation review process to improve the accuracy of allocations.

MAJOR CONTRIBUTORS TO THIS REPORT

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New York State
Office of
Children & Family
Services

September 26, 2003

George E. Pataki
Governor

John A. Johnson
Commissioner

Mr. William P. Challice, Audit Director
Office of the State Comptroller
Division of Management Audit
And State Financial Services
123 William Street – 21st Floor
New York, New York 10038

Subject: Draft Audit 2002-S-38

Capital View Office Park

52 Washington Street
Rensselaer, NY 12144-2796

Dear Mr. Challice:

The Office of Children and Family Services has reviewed the Draft Audit, Life and Safety Issues Related to Legally-Exempt Child Care, issued July 25, 2003. Enclosed is our response for your consideration.

Sincerely,

Susan A. Costello
Deputy Commissioner
for Administration

Enclosure

cc: D. Dorpfeld



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**NYS Office of Children and Family Services
Response to Office of the State Comptroller (OSC)
Life Safety and Fiscal Issues Related to Legally-Exempt Child Care
Draft Report—2002-S-38**

The New York State Office of Children and Family Services (OCFS) has reviewed Draft Report 2002-S-38 on the Life and Safety Issues Related to Legally-Exempt Child Care and offers the following in response:

Overview:

The report states that the local social service districts (districts) are making determinations of the health and safety of the child care setting exclusively on the attestation of the provider. This is not accurate. The attestation is a joint attestation made by the parents and the provider. Since the subsidy payment is a benefit to the family, made by the district on the parents' behalf, it is the parents who have the strongest interest in seeking and monitoring the appropriateness of the child care setting. OCFS' policies and procedures, implemented and performed by the applicable local district, concerning legally-exempt child care are established to honor the parents' decision to seek child care in a legally-exempt setting and to honor the parent's capacity to make sound decisions on the child's behalf. The local social services district's role in this process is to provide additional information and supports to assist families in making child care selections. At the present time, OCFS is crafting a new parent education campaign. OCFS is conducting focus group discussions with families statewide to develop materials that will reach and assist parents in making child care decisions.

* Note 1

In addition, OCFS has developed a targeted funding source through the statewide network of Child Care Resource and Referral Services agencies to work with local social services districts in reaching out to and providing support to legally-exempt child care providers receiving subsidy reimbursement. OCFS is currently examining the degree to which the local districts included in this audit are actively working with their local Child Care Resource and Referral services to maximize the impact of these resources.

Response to Recommendations:

Recommendation 1: Study the existing policies and procedures relating to the enrollment of legally-exempt providers, particularly in regards to the self-certification aspects of the enrollment process. Revise such policies and procedures as necessary to provide adequate assurance that legally-exempt providers deliver child care in a healthy and safe environment, and that the criminal and State Central Register (SCR) histories of providers would not preclude them from enrolling as exempt providers.

* See State Comptroller's Notes, page 43

OCFS Response:

This recommendation calls on OCFS to review policies and procedures relating to legally-exempt child care providers. As a matter of public policy, OCFS, in partnership with local social services districts, routinely reviews the appropriateness and effectiveness of its' policies and procedures. OCFS' Bureau of Early Childhood Services (BECS) is also participating in a broader discussion of "kith and kin" care models, issues and findings through the National State Child Care Administrators Association, an affiliate of the American Public Human Services Association. The affiliate has invited researchers to join with State Child Care Administrators to review state-specific policies, practices and child outcomes for children cared for in such settings. New York State will consider such information in its ongoing review of State policy and procedure.

*
Note
2

The recommendation further advises that the criminal and SCR histories of providers be reviewed before they are allowed to enroll in the subsidy program. This recommendation would require a change in the law. OCFS and the local districts are currently not authorized to conduct SCR database or criminal history checks on legally-exempt providers. Without a change in the law, OCFS and the local districts would be unable to implement this recommendation.

*
Note
3

OCFS also feels that this report focused on many isolated findings. For example, uncapped syringes are detailed in three prominent places in the report. However, the report failed to mention that the syringes were for approved medical purposes. While OCFS is not minimizing the importance of a hazard free environment for the children, the report should present all the facts so the reader is not forced to make any inaccurate presumptions.

*
Note
4

Recommendation 2: Take immediate steps to address the health and safety problems we identified at the three districts we visited. Conduct random site visits in the remaining counties to determine the extent of health and safety problems in the legally-exempt child care setting. Take appropriate action, including follow-up visits as necessary, to correct problems identified.

Recommendation 3: Determine whether the providers we identified actually have criminal and/or SCR histories and determine whether these histories may prevent them from enrolling as exempt providers.

Recommendation 4: Conduct criminal background checks of legally-exempt providers on a sample basis using fingerprints. Based on the results of these tests, develop a cost-effective means of doing more widespread testing of the criminal backgrounds of legally-exempt child care providers.

Recommendation 5: Obtain SCR histories for legally-exempt providers as part of the enrollment process, and investigate any indicated reports of child abuse or maltreatment.

* See State Comptroller's Notes, page 43

OCFS Response: OCFS will follow-up on the specific cases highlighted in the report, to the extent possible under current law. Furthermore, OCFS will continue its' ongoing review and examination of its' policies relating to the health and safety of children receiving subsidized child care services. However, OCFS does not currently have the statutory authority to move forward on either recommendation 4 or 5. Social Services Law § 390 does not allow OCFS, even for the purpose of requesting a sample, to seek criminal history background checks on legally-exempt providers. OCFS simply does not have the statutory authority to compel legally-exempt providers to submit to a criminal background check. Nor does OCFS have the legal authority under its current Memorandum Of Understanding with the NYS Division of Criminal Justice Services (DCJS) to seek criminal histories for such individuals. Similarly, legally-exempt providers are not included in New York State Social Services Law § 424-a as a class of individuals for which OCFS can conduct data base checks against the State Central Register. Since, neither OCFS nor the local districts have the statutory authority to complete criminal history background checks or SCR data base checks on legally-exempt providers, any recommendation suggesting such a check would first require a statutory change.

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Note
3

OCFS would also like to highlight the fact that the audit did not include submission of fingerprints to DCJS. As the report points out, unless fingerprints are included in the testing process, it is not an accurate or effective method of determining the presence of a criminal history. Without submitting fingerprints to DCJS, the report's conclusions regarding criminal histories are speculative at best.

In putting forth its recommendations, OSC suggests the monetary cost of implementing criminal history background checks on legally-exempt providers would not be a substantial cost to the agency. It should be noted, however, that OCFS estimates the potential cost in the first year to be far higher than the \$3 million OSC cites in the report. OCFS estimates the cost of testing the backgrounds of the current 36,000 legally-exempt providers, along with anywhere from two to five household members over age 16 as well as any volunteers, to range from \$5.4 million to \$13.5 million. This estimate is based on the DCJS fee of \$75 per person for submitting fingerprint cards for processing. Additionally, it is estimated that current Home Office costs for staff who process criminal history information would at least double. Thus, adding approximately \$1 million to the cost of this initiative. The budget for this initiative would also have to include costs for information technology and additional regional office safety assessment staff, neither of which is included in the estimate. Finally, making the fingerprint process easily accessible to legally-exempt providers also has a cost. To accommodate the regulated child care community, OCFS has made a significant investment in increasing opportunities for collecting fingerprints. This investment would need to be further increased if legally-exempt providers were added to the fingerprint requirements.

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Note
5

Another factor OCFS is considering is the effect that the implementation of the criminal history background review process will have on the subsidy program. Families in the

* See State Comptroller's Notes, page 43

subsidy program need child care and child care subsidies immediately. Local districts must make decisions on child care subsidies within 30 days of receiving the complete application. The criminal history background review process may take more than 30 days to complete. The problem local districts often face is that the parents make the provider they have chosen known at the same time they apply for a subsidy. Thus, the criminal history background review process may not be completed by the time the subsidy eligibility determination is made. OCFS is concerned that delaying the start of subsidy payments may also greatly endanger the children of New York State. OCFS fears that parents who have no alternatives while waiting for their child care provider to complete the criminal history background review process might be forced to make a perilous decision, such as leaving the child home alone. A further review of this issue is necessary before OCFS implements a criminal history background check on legally-exempt providers.

*
Note
6

The report also indicated that BECS officials, who accompanied the auditors on the site visits, stated that the individuals providing care would not have been approved as regulated providers because of health conditions. However, the decision to deny a day care license or registration contains a hearing right. Furthermore, no single staff person can make any such determination. The requirement for a physician's statement was at one time a requirement for enrollment as a legally-exempt provider. This requirement was removed after extensive feedback from local social services districts and child care councils that a "single point in time" sign off by a health care professional gave little or no assurance of the continued health of the person.

*
Note
7

Recommendation 6: Determine the propriety of legally-exempt child care payments we questioned during our visits in Nassau, Albany and Monroe counties.

Recommendation 7: Assess payments to a sample of legally-exempt providers in the remaining counties to determine whether they were made only for care that was actually provided. Based on the results of these tests, develop a cost-effective means of doing more widespread testing of the propriety of payments to legally-exempt providers.

OCFS Response: OCFS fully shares OSC's concerns about the lack of adequate action on the part of the districts in terms of auditing claims submitted to the counties. From OCFS's perspective, a payment to a legally-exempt provider is not different from a payment to any other child care provider, or for any other vendor. The counties are required to have adequate procedures in place to monitor the appropriateness of claims.

OCFS has developed a statewide training program for local social services districts that encompasses all aspects of an eligibility determination, including claiming and on-going case monitoring. Over the past year, OCFS expanded that curriculum to include a more intensive unit on fraud detection and monitoring. OCFS specifically reached out to fraud detection staff from across the State for input on this matter and will continue to work with local social services districts to assess and make recommendations for improving districts efforts in this regard.

* See State Comptroller's Notes, page 43

In addition, OCFS is presently releasing a Local Commissioners Memorandum to local social services commissioners informing them of the availability of incentive funds to improve the administration of their local child care subsidy program. This program places a strong emphasis on developing automated and other supports to better enable the tracking of cases, and the prompt and accurate payment for care provided by legally-exempt providers. OCFS believes this will have a direct impact on the districts' ability to safeguard these public funds while also achieving the goal of increasing child care access and affordability to low-income families.

Recommendation 8: Correct the misallocations identified in our report.

Recommendation 9: Revise the existing allocation review process to improve the accuracy of allocations.

OCFS Response: OCFS has both corrected the miscalculations identified in the report and revised the existing allocation review process to improve the accuracy of allocations. As noted in the report, with the exception of four districts negatively impacted by clerical errors, districts' claims for State Fiscal Year (SFY) 2001-2002 and SFY 2002-2003 did not exceed the combined base and reserve fund allocations. Of the four districts negatively affected, one county received the additional funds in March 2003 and the other three counties received the funds in August 2003. The counties whose allocations were too high will receive a lower allocation in the future under the allocation methodology, which inherently contains the flexibility to address local district needs and is self-correcting.

OCFS has instituted the following controls over the allocation review process in hopes of preventing future errors:

- One step of the SFY 2002-2003 base allocation methodology that contained a manual over-ride has been eliminated in favor of electronic links.
- OCFS' Bureau of Budget Management supervisory staff now performs the comprehensive review of the allocation process.
- The allocation process now includes an electronic review of the allocation methodology formulas by OCFS Data Management staff.

In addition, the assertion that the allocation spreadsheets were not constructed properly to reflect fiscal and programmatic changes is misleading. The allocation methodology has been constructed to be consistent with the requirements of section 410-v of the Social Services Law which are that "...the allocation plan shall be based, at least in part, on historical costs and the availability and cost of, and the need for, child care assistance in each social services district." The spreadsheet methodology includes a review of both historical allocations and actual claiming, which provides the flexibility to adjust allocations to fairly reflect district needs. This flexibility also provides OCFS with

the ability to address the identified misallocations. OCFS has now replaced several manual links between allocation methodology spreadsheets with electronic links. Manually updating the links each year led to the misallocations, and OCFS intends to prevent such errors in the future.

General Comments:

1. In the second paragraph under Scope of Audit, in the Executive Summary, and in the fourth paragraph under the title Background , the reference to “after school” programs should be changed to “school-age child care” programs.
2. In the second paragraph under Scope of Audit, the reference to legally-exempt providers certifying that they met the “program’s” health and safety standards is not accurate. Legally-exempt providers must meet the health and safety standards set forth in the OCFS regulations.
3. In the first paragraph under Audit Observations and Conclusions in the Executive Summary, there is a statement that OCFS and the districts must “ensure” that legally-exempt providers deliver services in a healthy and safe environment. It is impossible for OCFS and the districts to “ensure” that this occurs. It would be legitimate to say that OCFS and the districts should conduct appropriate oversight of legally-exempt providers to determine whether the providers deliver services in a safe and healthy environment.
4. In the second paragraph under Audit Observations and Conclusions in the Executive Summary, and in the third paragraph on page six of the draft report, there are references to reports of child abuse and maltreatment being indicated when there is “credible evidence” of abuse or maltreatment. This is not entirely correct. The word “some” should be added before “credible evidence” to properly reflect the legal standard.
5. In the second paragraph under Audit Observations and Conclusions, the report states that OCFS and the districts are not required to obtain criminal background or State Central Register (SCR) histories for legally-exempt providers. In fact, there is no specific legal authority for OCFS or the districts to obtain or use such information in regard to legally-exempt providers.
6. In the draft report, on page two, the report should clarify that the local districts are responsible for monitoring legally-exempt providers and that OCFS is responsible for supervising the local districts monitoring of legally-exempt providers.
7. On page three, there is a reference to programs “operated by public school districts nursery schools”. The phrase as written does not make sense and presumably reflects some error in wording.

<p>* Note 8</p>

* See State Comptroller's Notes, page 43 & 44

8. On page three, the phrase “data base check through” the SCR should replace the term “clearance from” the SCR because it is a more accurate representation of the process.
9. On page 6, the first paragraph states that the agencies responsible for overseeing child care programs must effectively monitor whether children are cared for in healthy and safe environments. The statement is overbroad. OCFS is responsible for monitoring licensed and registered day care providers, and the local districts impliedly have some responsibility for overseeing enrolled legally-exempt providers. However, child care programs that do not fall into either category are outside the purview of OCFS and the local districts and neither OCFS nor the local districts have any responsibility for overseeing such programs.
10. Page 6 indicates that neither the certifications (concerning SCR and criminal histories) nor the “provision of service” is subject to independent verification by the State or the districts. In regard to the certifications, as noted above, there is no legal requirement for OCFS or the districts to obtain or use such information in regard to legally-exempt providers. However, whether legally-exempt providers actually provide services is certainly subject to verification.
11. Recommendation 1 also advises that OCFS revise policies and procedures to “provide adequate assurance that legally-exempt providers deliver child care in a healthy and safe environment”. This is not a realistic expectation; no policies or procedures can assure that care is provided in a safe and healthy environment.
12. On page eight, in the first full paragraph, last sentence, insert the words “with the approval of OCFS” at the end of the sentence. Any additional local standard must be approved by OCFS before a local district can implement it.
13. On page 11 of the draft report, in the last paragraph, in the Unsafe Locations section the report states that OCFS and the districts must take action to protect the health and safety of children in the care of the legally-exempt providers discussed in that section. Pursuant to the relevant regulations in 18 NYCRR Section 415.4, the responsibility for direct oversight of legally-exempt providers in regard to the health and safety standards lies with the local districts. Thus, it is not the responsibility of OCFS to take action, conduct site visits and follow through with corrective action. That direct responsibility lies with the districts.
14. In the draft report, on page eleven, in the last paragraph, and page thirteen, in the first full paragraph, replace the words “not required” with the words “not authorized by law”. The revised wording would be a more accurate representation of the current state of the law.

<p>* Note 8 Cont'd</p>

* See State Comptroller's Notes, page 43 & 44

15. In the draft report, on page eleven, in the last paragraph, the phrase "data base check" should replace the term "clearance" because it is a more accurate representation of the process.
16. In that same paragraph, one of the reasons given for legally-exempt providers with criminal histories being able to enroll is that they were arrested after they enrolled. Since the certification involves convictions and not arrests, the references to arrests should be to convictions.
17. In that same paragraph, delete the word "State" from the term "State/local districts" because local districts are responsible for monitoring legally-exempt providers and OCFS is responsible for supervising the local district's monitoring of legally-exempt providers. Legally-exempt providers do not report anything to OCFS.
18. In the draft report, on page fourteen, in the first paragraph, replace "a fair hearing on the evidence" with "an administrative review of the evidence and a fair hearing on the evidence, if necessary". This modification provides a more accurate representation of the SCR process.
19. In regard to the recommendations on page 14 of the draft report, the report states that OCFS should undertake the recommended actions in conjunction with the districts. In fact, direct monitoring and oversight of legally-exempt providers is the responsibility of the districts in the first instance. Therefore, none of the four recommendations should apply directly to OCFS.

* Note 8 Cont'd

* See State Comptroller's Notes, page 43 & 44

State Comptroller's Notes

1. Our report clearly describes the role of the parents and child care providers related to determinations of the health and safety of legally exempt child care settings.
2. We do not disagree that OCFS meets with local districts and participates in the national debate about various aspects of legally exempt child care. However, we believe that OCFS needs to act in a timely manner to protect children cared for in legally exempt settings.
3. Our report recognizes that neither OCFS nor the local districts can currently conduct SCR data base or criminal background checks of legally exempt child care providers. However, we believe that the health and safety of children cared for by legally exempt child care providers depends on OCFS and/or the districts obtaining this legal authority. As such, OCFS should seek the necessary legislation to affect this change.
4. The criticality of this issue is that uncapped syringes were accessible to the children under care.
5. As stated in our report, we recognize that there is a cost associated with obtaining criminal background information through DCJS. However, the incidences of possible criminal backgrounds identified in our sample is justification for OCFS and the districts to advocate for funding and necessary legislative changes that would allow them to conduct background checks. In the interim, on a sample basis, OCFS and the districts should develop a cost effective means of testing criminal backgrounds of legally exempt child care providers.
6. OCFS regulations allow licensed and registered child care providers to temporarily allow persons to work in child care facilities pending the results of a criminal background check. However, these persons are not allowed to have contact with children during such time. OCFS may be able to apply this practice to legally exempt child care providers.
7. As part of this audit and with OCFS concurrence, we drew on the expertise of OCFS staff to arrive at meaningful conclusions about the health and safety of children cared for in the legally exempt child care settings included in our audit. In these instances, OCFS professional staff told us that the four individuals were physically incapable of caring for children in their care.
8. We have clarified our report to recognize most of OCFS' general comments. However, we are concerned with OCFS' comments 9, 13, and 19, which appear to want to distance OCFS from any responsibility related to legally exempt child care. While we recognize that direct oversight of the program

rests with the districts, OFCS, nevertheless, has the statutory responsibility to monitor and supervise the districts' administration of public welfare activities for which the State is responsible, including legally exempt child care.