Digest of a Performance Audit of the Office of Licensing

This performance audit of Department of Human Services Office of Licensing was conducted at the request of the Legislative Process Committee. The audit team was asked to determine how effective the Office of Licensing has been in accomplishing its goals and objectives. The audit findings include: 1) there has been a duplication of effort between the Office of Licensing and other regulatory agencies, and 2) the Office of Licensing has been ineffective at obtaining compliance from those who persist in violating licensing standards. These findings are the result of our own observations of licensing inspections; interviews with licensing staff, licensed providers and other state employees; and through a review of provider case files. This report suggests a number of improvements that are based on the practices of other states' licensing programs and on the information obtained from the professional literature.

Although the Department of Human Services has made a number of changes to the Office of Licensing in recent years, additional improvements to this program are needed. In Chapter II we describe the problem with duplication of effort between the Office of Licensing, the other divisions in the Department of Human Services, and with agencies of local county governments. In our view, the primary cause for this duplication is that the state has not clearly defined the scope and authority of the Office of Licensing.

Chapter III describes a second problem---enforcement. The audit team determined that the Office of Licensing has not been effective in dealing with providers who persist in ignoring the licensing standards. As a result, many providers of human services, and particularly those of child care services, have been issued licenses even though they have not complied with the requirements for a license.

Some solutions to these problems are described in Chapter IV. We suggest that the state limit the scope of licensing to those issues specifically aimed at public protection. While the quality of services provided by human services providers is still a concern, other forms of regulation are more appropriate for addressing service quality. Once the Office of Licensing has a clearly defined purpose, the office will be in a better position to do an effective job of enforcing its licensing standards. Enforcement can become more effective by giving licensors more specific policy direction and offering both positive and negative sanctions to providers.

The specific findings of this report include:

Office of Licensing Duplicates Efforts of Other Regulatory Agencies. Significant overlap between the inspections made by the Office of Licensing and those of other regulatory agencies exist. There is also a significant amount of duplication in the day-to-day efforts of licensing staff. For example, on site inspections of provider facilities are made by both the licensing staff and contract monitors of the individual divisions in the Department of Human Services. The licensing staff also inspect buildings for fire and health hazards as do local fire and health officials. Forcing providers to endure virtually identical inspections of the same items is inefficient and places an unnecessary burden on providers. Consequently, we question the necessity of having the Office of Licensing review matters that other agencies have already examined.

Licensing Standards are not Adequately Enforced. The Office of Licensing has been ineffective at requiring some human services providers to comply with its licensing standards. The provider case files that are maintained by the Office of Licensing show that many providers have repeatedly violated the licensing requirements. Contrary to the Office of Licensing rules, these providers are issued standard annual licenses even though licensing staff know that the provider has not fully complied with the state's licensing standards. Typically, a provider will be issued a new license with a letter that first describes the requirements that the provider has not complied with and then requests that corrective action be taken. In the bulk of these cases, no written plans of action were made, and no follow-up visits were made to verify that corrective action had been taken. We found two reasons why enforcement has not been as effective as it should be: 1) licensing staff lack a clear set of procedures to guide their enforcement efforts, and 2) the licensing staff have adopted an attitude of encouraging persistent violators to do a better job of complying with the rules rather than sanctioning them.

Clarify the Purpose of Licensing, Then Strengthen Enforcement. Two things need to be done to avoid duplication with other agencies and improve compliance with licensing standards: First, in order to avoid confusion about the role of licensing and the scope of its authority, the purpose of the licensing program needs to be clearly defined. Clarifying the statute and distinguishing the responsibilities of the divisions from the responsibilities of the Office of Licensing can help resolve the problem. Second, the Office of Licensing needs to strengthen the enforcement of the licensing standards. Enforcement can be improved by:

1. Drafting a set of written procedures so that staff know what their responsibilities are,
2. Using the probationary license for providers who temporarily are out of compliance,
3. Focusing monitoring visits on providers with poor compliance histories,
4. Increasing the use of unannounced visits to providers,
5. Using both positive and negative incentives, and
6. Eliminating or minimizing the process required to renew a license.