



**CHILD CARE FACILITIES
INSPECTIONS AND LICENSING**

**From The Office Of State Auditor
Claire McCaskill**

Children being cared for in unlicensed or substandard licensed facilities are not assured a healthy and safe environment. State law allows family child care home providers to care for more children than is recommended by national fire safety codes.

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PERFORMANCE AUDIT



Office of
Missouri State Auditor
Claire McCaskill

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State officials do not proactively seek unlicensed child care providers and state law does not limit a facility's overall child capacity number

This audit analyzed the effectiveness of state laws regulating child care providers, how well providers comply with such laws and provider oversight by the state child care bureau. In general, child care providers are required to be licensed in Missouri if they care for more than four unrelated children. Auditors found bureau officials have not always effectively dealt with unlicensed child care facilities and current state penalties do not deter some providers from operating illegally.

State penalties do not deter unlicensed providers from operating

Unlicensed providers can only be charged with an infraction, which carries a maximum \$200 fine for the first violation of state law. The fine has not deterred providers from operating illegally even though some were prosecuted and fined. Statements from providers show how they openly refuse to follow state law: "I do keep more than four non-related children at one time. I plan to continue to do so. I do not want to give the names. I do not want a license." In addition, fines levied against unlicensed providers are much higher in other states. (See pages 5 and 6)

Children related to provider not included in capacity limits

State law allows a licensed family child care home to care for 10 unrelated children and an unlimited number of related children. The National Fire Protection Association recommends a minimum of one adult for every six children. Auditors found 97 percent of state licensed family child care homes could already care for more children than this recommended limit, but by excluding related children from capacity limits it only makes a potentially dangerous situation worse. The eight states surrounding Missouri include related children in capacity limits. (See pages 10, 11 and 13)

Unlicensed providers are not annually inspected

Unlicensed providers are not subject to annual sanitation and fire inspections. Auditors reviewed the bureau's investigations of two unlicensed providers. In both cases, bureau staff found serious fire and sanitation hazards. (See page 7)

YELLOW SHEET

No one knows how many unlicensed providers exist

Bureau officials do not know how many unlicensed providers operate in Missouri and do not have the staff to proactively identify or investigate unlicensed providers, particularly those operating in the anonymity of their homes. Officials said they did not have the authority to enter unlicensed facilities to determine state law violations unless they had a formal complaint filed. Increased public awareness about the potential hazards of unlicensed care could encourage citizens to notify the bureau about offenders. (See page 3)

No standard criteria for penalizing facilities

Bureau officials have not established standard guidelines to determine the severity of rule violations or effectively assess penalties. State law allows bureau staff to issue warning and censure letters or to deny, suspend or revoke a provider's license when facilities do not follow the bureau's 100 safety and sanitation rules. But bureau officials did not document the decision-making process used to assess penalties, which made it difficult for auditors to determine if recommended penalties were too severe or consistently applied statewide. (See page 15)

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Missouri State Auditor

Honorable Bob Holden, Governor
and
Members of the General Assembly
and
Ronald W. Cates, Acting Director
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Many of Missouri's nearly 287,000 children ages 5 and under may need child care while their parents work. This report focuses on child care providers' compliance with state child care statutes and regulations, and the Department of Health and Senior Services - Division of Health Standards and Licensure, Bureau of Child Care oversight of providers who are required to obtain child care licenses. Specifically, our objectives were to determine (1) the effectiveness of penalties assessed to unlicensed family child care homes and the safety of the children in those homes, (2) the safety of the children in licensed child care facilities based on the licensing capacity and (3) the effectiveness of the bureau's enforcement of statutory requirements regarding inspections of licensed child care facilities. Our methodology can be found in Appendix I, page 20.

Bureau officials need to improve oversight of child care providers required to be licensed. We found bureau policies and actions have not effectively dealt with unlicensed or substandard licensed child care facilities. Further, state law does not limit the number of total children allowed in child care facilities. As a result, some children may be provided care in unsafe and unsanitary conditions. We make several recommendations to improve child care licensing and oversight.

The audit was conducted in accordance with applicable standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and included tests of the procedures and records as were considered appropriate under the circumstances.

A handwritten signature in black ink that reads "Claire McCaskill". The signature is written in a cursive style with a large initial "C".

Claire McCaskill
State Auditor

February 7, 2002 (fieldwork completion date)

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RESULTS AND RECOMMENDATIONS

1. Many Child Care Facilities Were Not Subject to State Safety and Sanitation Inspections

The Bureau of Child Care, which regulates child care providers in Missouri, has not proactively identified providers who are not operating in accordance with state statutes nor determined how many children may be in their care. Our review indicates a substantial number of children could potentially be cared for by providers who were operating illegally and who were not subject to the same annual fire, safety and sanitation inspections as state licensed facilities.¹ Identifying these illegal providers can be difficult since most are typically operating in private residences, and the bureau does not have the resources to seek out each one. However, bureau officials have not attempted to develop any alternative methods to identify these providers. We also found when bureau staff referred unlicensed providers for prosecution, a \$200 fine upon a first conviction may not be an adequate deterrent for violating state child care laws and regulations.

Licensing helps ensure children are staying in safe and sanitary facilities

Child care providers are required to be licensed in Missouri if they care for more than four unrelated children. Licensed child care providers operating in their homes receive annual sanitation and fire inspections, and semi-annual bureau compliance inspections. Sanitation inspections help ensure facilities are clean and free of unsanitary conditions. Fire inspections help ensure electrical wiring and equipment are safe, smoke detectors are in place, and children can be safely evacuated in the event of fire. The bureau's semi-annual compliance inspections are detail reviews that determine if providers are complying with over 100 rules related to safety, cleanliness of facilities, and staffing, which include 1) each infant/toddler has his/her own crib or playpen, 2) outdoor play equipment is safe, 3) the children do not have access to hazardous chemicals, and 4) the children are not being cared for by convicted criminals, such as child molesters.

Bureau has not taken a proactive approach to identify unlicensed providers

Bureau officials did not have data on how many unlicensed providers are operating in Missouri, or how many children may be in their care. They estimated the St. Louis metropolitan area alone has several thousand family child care home providers operating in violation of state licensing laws and regulations.² While bureau data showed that 1,350 providers are exempt from state licensure such as religious institutions, the data did not show the number of children cared for by each license-exempt provider operating in the state during 2001. Based on 2000 U.S. Census data for Missouri, we estimate there could be as many as 156,000 children ages 5 and under who may be in unlicensed child care facilities.³

¹ Most religious organizations, nursery schools and schools that provide child care are exempt from obtaining state licenses. Religious organizations have to pass annual fire and sanitation inspections.

² The bureau's estimate is based on Division of Family Services data that show 4,000 providers in the St. Louis area were caring for needy or foster care children, and bureau officials believe many of these providers could be caring for more than four unrelated children which is a violation of state law.

³ Appendix III, page 26, describes how we calculated this estimate.

A recent study by The Children’s Foundation⁴ (the foundation) showed Missouri had the highest ratio of preschool children (ages 4 and under) to licensed child care facilities compared to its eight bordering states, as shown in Table 1.1. For example, the study showed Kansas oversees 9,002 child care facilities (both licensed and registered) for 188,708 preschool children for a ratio of 21 children per licensed facility. Conversely, the study showed Missouri only had 4,411 licensed child care facilities for 369,898 preschool children for a ratio of 84 children per licensed facility. The study included all children ages 4 and under and did not consider if one or both of a child’s parents worked.

Table 1.1: Ratio of Children to Facility by Population

State	Child Population 0-4 Years Old	Licensed Facilities	Ratio of Children to Facilities
Missouri	369,898	4,411	84
Illinois	876,549	12,995	67
Tennessee	374,880	6,064	62
Arkansas	181,585	4,440	41
Kentucky	265,901	6,904	39
Oklahoma	236,353	6,223	38
Iowa	188,416	6,595	29
Nebraska	117,048	4,195	28
Kansas	188,708	9,002 ¹	21

¹ This number includes 2,964 registered home providers who watch six or less children. These providers are registered, but not inspected.

Sources: The Children’s Foundation 2000/2001 Family Child Care Licensing Study and 2000 U. S. Census data

Bureau officials said they do not have the staff or resources to proactively identify, investigate and prosecute an estimated 1,000 or more unlicensed providers, especially those providers operating in the anonymity of their homes. The officials also stated the bureau does not have the authority to enter unlicensed facilities to determine if they are in violation of state child care statutes. Rather, the bureau relies on parents and others to file formal complaints before initiating investigations of unlicensed facilities.⁵

The bureau has not used its existing public informational brochures or Internet Web site to 1) explain the risks of placing children in unlicensed facilities, 2) urge parents to report unlicensed providers, or 3) urge parents to use licensed providers. Kansas uses a public awareness campaign called “Good Beginnings Last a Lifetime” to disclose the requirements of a licensed facility and help the public detect an unlicensed facility. The program’s brochure highlights the advantages of licensed child care facilities over unlicensed child care facilities. Although the bureau publishes a similar brochure, it does not point out the risks of placing children with

⁴ The Children’s Foundation is a private national educational non-profit organization that strives to improve the lives of children and those who care for them.

⁵ Bureau staff do not compile data showing the number of complaints received related to unlicensed child care providers.

unlicensed providers, such as these providers not being subject to periodic sanitation and fire inspections, or encourage parents to report unlicensed providers to the bureau. The bureau does not provide parents a list of licensed providers through its Web site or when responding to telephone inquiries. Such a list would help parents locate licensed providers or to verify if a potential provider is licensed by the state.

Public awareness campaigns have helped other Missouri state departments identify and deter individuals who violate state laws and regulations. For example, the Department of Conservation's public awareness campaign to curb state hunting regulation violations (called Operation Game Thief) results in 600 to 800 complaints annually and over 100 prosecutions. The department spends about \$25,000 annually on the program, which urges residents to report violators, such as individuals shooting deer out of season.

Penalties have not deterred unlicensed providers from violating the law

Unlicensed child care providers can only be charged with an infraction which provides for a maximum \$200 fine for a first violation. This \$200 fine has not deterred some providers from continuing to operate illegally even though some providers were prosecuted and fined and others knew they could be fined. Bureau officials explained the small fine often matters little to a provider who may gross \$52,000 a year caring for 10 children at \$100 per child per week. In addition, these cases can take up to one year to investigate and prosecute. The three statements below come from unlicensed providers referred to local prosecutors for operating illegally and show their attitudes toward licensure.⁶

- "I babysit [sic] more than 4 non-related children at one time. I do not want to get a license and I do plan to keep more than 4 non-related children at one time in the future. I will not give the children's names and I will not allow you into my facility." (March 16, 1999)
- "I, [provider], acknowledge that contrary to my letter of 9-20-99 I did have, on occasion, more than 4 unrelated children in my care in knowing violation of the state statute 210.211 after 9-20-99. I understand I may be subjected to legal action at the county and/or state level if I take more than four unrelated children into care at any time in the future." (June 15, 2000)
- "I do keep more than four non related children at one time. I plan to continue to do so. I do not want to give the names. I do not want a license." (November 3, 2000)

Overall, in the three district offices we visited, bureau officials identified, substantiated and referred to prosecutors 10 (including the three listed above) home child care providers for taking care of more than four unrelated children. Of these 10 referrals, four providers obtained or are seeking a license, four providers were not prosecuted and two providers, who had past convictions, have additional referrals pending.

⁶ We edited the statements to protect the providers' identities.

Even in prosecuted cases, however, the fines did not always deter the provider from operating illegally. For example, a provider in Kansas City was prosecuted and fined \$200 for caring for more than four unrelated children without a license. This provider was convicted in December 1998 and January 1999. The provider's 1999 conviction included a \$200 fine and a permanent injunction restricting her from providing child care, but at the time of our audit, she continued to do so. The bureau referred the provider again in November 2000, but the case was not prosecuted. An October 2001 referral resulted in a charge for violating state child care laws, which is still pending.

In referring cases, bureau officials faced challenges in communicating the seriousness of a case to prosecutors and did not have a systematic process to ensure these cases received timely attention. In addition, it was not standard practice for bureau staff to follow up with local prosecutors on referred cases or update them on the need for action.

In one Kansas City case, a provider operated illegally for seven years even though the bureau repeatedly found the provider caring for more than four unrelated children. The provider surrendered her license in September 1994 after receiving three complaints and four bureau visits, which confirmed 20 to 30 children in her care on some days. The provider informed bureau staff that she no longer wished to be licensed, but that she may continue to care for more than four unrelated children. A month later (October 1994) the bureau received a fourth complaint, which was substantiated and referred to a county prosecuting attorney office in November 1994, and to the state Attorney General's office in February 1995. After these referrals, bureau staff did not receive another complaint for this provider, but made four visits over the next two years (one in October 1996, one in March 1997 and two in April 1997) and noted several children entering the house. Bureau officials were unable to prove the children were not related to the provider and did not make any additional referrals to prosecutors. In April 2001, a 4-month-old child died from injuries while in the care of this provider, and the provider was charged with second degree murder and 19 counts of felony child endangerment.

In another case, a Springfield provider operated illegally for over 13 years while caring for up to 25 unrelated children at one time. The district office referred this provider to a county prosecuting attorney four times. At the close of our audit, bureau staff did not know if this provider continued to operate without a license.

The bureau has recently implemented new procedures to ensure staff follow up on referred cases. Bureau staff now contact prosecuting attorneys within 30 days of a referral and every 30 days afterward to keep them advised of the case. In addition, bureau officials send a copy of the referral to the Attorney General's office. These new procedures have prompted at least one provider to seek a license despite an initial unwillingness to do so.

Fines levied by other states are substantially higher

Fines levied against individuals violating child care laws and regulations in other states are much more punitive than in Missouri. For example, Nebraska can fine providers \$5 a day

per child over allowed capacity, and Kansas can fine providers up to \$500 per violation per day. Illinois and Tennessee both allow for fines up to \$1,000 per occurrence.

No annual inspections of unlicensed providers

Unlicensed providers are not subject to sanitation, fire, or compliance inspections. These inspections help ensure the safety of the children by educating the provider on sanitation and fire hazards and requiring the home to meet minimum standards. We accompanied bureau staff as they investigated a complaint of an unlicensed provider caring for more than four unrelated children. Bureau staff found the provider was caring for seven children and cited several sanitation violations including 1) a dirty kitchen with no clean counter space for food preparation, 2) a hallway so cluttered with clothes and trash that it was difficult to get into the back bedrooms, 3) a back porch area that reeked of some unidentifiable odor, possibly animal excrement, and 4) many hazardous items such as paint thinner within the children's reach. In addition, there was a young child on the floor who the provider admitted to be ill and running a fever, and could be contagious to the other children in care. This provider will not be licensed until these citations are corrected.

A recent sanitation inspection of another unlicensed family child care home provider, who was caring for seven unrelated children, also showed this provider had serious sanitation problems. This inspection was performed as part of the initial application process by the bureau. During the sanitation inspection, the inspector flushed red dye down a commode to determine if the provider's septic tank leaked. Within a few minutes, red dyed sewage came to the surface in the provider's backyard where children had been playing. The inspector also noted a very strong smell of sewage in the backyard play area. The unlicensed provider only applied for a license after being told to do so by a county prosecutor. As a result of the inspection, the provider had the septic tank repaired to stop the leak.

Conclusion

We and bureau officials estimate several thousand unlicensed child care providers have been operating in Missouri. Unlicensed providers may expose children to unsanitary or unsafe conditions because these providers are not required to pass annual sanitation and safety inspections. To identify unlicensed providers without a significant cost to the state, the bureau could implement public awareness ads to encourage parents or other citizens to notify bureau staff of offenders. When bureau staff did identify and inspect some unlicensed facilities, the inspectors identified serious sanitation and safety problems and the facilities were unfit to care for children. Numerous unlicensed providers have openly refused to abide by state statutes and regulations, which require licenses and annual inspections. State statutes, however, only allow a maximum \$200 fine for a child care law conviction for first offense, which has been an ineffective deterrence.

The bureau can also assist parents in placing children in licensed child care facilities. Bureau staff should provide a list of licensed facilities to parents who request it. To accomplish this

distribution, the staff could list all licensed facilities on the bureau's Internet Web site or send, if necessary, a copy of the list to the requestor.

Recommendations

We recommend the General Assembly:

- 1.1 Increase the monetary penalty that can be assessed against child care providers operating in violation of state statutes and regulations.

We recommend the Director, Department of Health and Senior Services:

- 1.2 Implement a public awareness program to (1) educate parents on the risks involved in placing their children in unlicensed non-exempt child care facilities and (2) encourage parents to report to the bureau unlicensed non-exempt child care providers.
- 1.3 Request data from license-exempt child care providers on the number of children in their care to facilitate estimating the number of unlicensed, non-exempt child care providers operating in each county and major metropolitan area. This information can be used to target the public awareness program.
- 1.4 Provide parents a list of licensed providers by location through the Bureau of Child Care's Internet Web site or send out a copy when requested.

Department of Health and Senior Services Responses

- 1.2 *The Department of Health and Senior Services contracts with the Missouri Child Care Resource and Referral Network to provide a wide array of services. One of the services provided is a public awareness campaign titled, "Good Beginnings Last a Lifetime." On the Missouri Child Care Resource and Referral Network's website and in brochures produced by the Network, they advise parents that unregulated providers are not inspected by any agency. Please see attached for information taken from the Missouri Child Care Resource and Referral Network website and the Kansas Association of Child Care Resource and Referral Agencies website. The information contained in both websites is almost identical. The difference lies in the regulation requirements for each state.*

In addition, the Bureau of Child Care's website provides extensive information for parents on what to look for when selecting a child care facility for their child. A copy of the information is included with these responses.

The public awareness campaign in Missouri educates parents regarding what licensing requires, including that licensed child care facilities receive annual fire and sanitation inspections while unlicensed non-exempt facilities do not. However, the bureau cannot state that placing a child in an unlicensed child care facility involves a risk, as the

bureau has not had the opportunity to inspect these facilities. Again, educating parents on what to look for when selecting child care is key.

- 1.3 *The bureau can obtain this information from data the bureau collects, however, knowing the number of children who may not have access to licensed child care will not be useful in targeting the public awareness campaign. In addition, this number will not reflect the families where the parents work different shifts so they do not need child care, and those children who are cared for by their grandparents or other relatives.*

The bureau will discuss this issue with the Missouri Child Care Resource and Referral Network to develop strategies to better target the public awareness campaign to educate parents about the differences between licensed, regulated, and unlicensed programs.

- 1.4 *The Department of Health and Senior Services contracts with the Missouri Child Care Resource and Referral Network to provide a wide array of services. One of the services they provide is to send a copy of the list of licensed child care providers to parents when it is requested. The list is available by county and is free of charge to parents. In addition, when a parent contacts one of the district child care offices and requests a list of licensed providers, Bureau of Child Care staff refer the parent to their local resource and referral agency to obtain a list, or will mail a list directly to the parent.*

In order to give parents more direct access to the list of licensed child care providers, the Bureau will explore the idea of placing a list of licensed providers on the bureau's internet web site. However, due to security concerns, the list would not include the address of family child care home providers. The list would include the name, telephone number, licensed capacity, age range, and any license limitations of family child care home providers. The list could be arranged by county or city to aid parents in locating providers in their geographic area.

Auditor's Comment

The bureau is correct that the Missouri Child Care Resource and Referral Network advises parents that unregulated providers are not inspected by any agency. However, the network does not point out to parents the potential risks of placing children with unlicensed providers, or advise parents to report unlicensed providers to the bureau of child care. Moreover, the network will refer parents to unlicensed providers. Bureau officials stated they are aware of situations where the network has referred parents to providers who were operating in violation of state laws. On the other hand, the Kansas network's Web site states it provides information only on licensed or registered providers that meet the Kansas Department of Health and Environment's minimum requirements for regulated child care.

2. State Requirements Do Not Include Related Children in Capacity Limits

State statutes and regulations limit the number of unrelated children cared for by one adult in a licensed family child care home,⁷ but do not limit the number of related children in the provider's care. As a result, one adult operating a family child care home can care for up to three times more children than is recommended by a nationally accepted fire safety code. We found 97 percent of the licensed family child care homes in Missouri were licensed to care for more children than recommended by national fire safety codes. State child care statutes and regulations include other provisions that can also expose children to other health and safety risks. Bureau officials acknowledge that existing state regulations place children at unnecessary risk and plan to recommend revisions to limit the number of children allowed in licensed family child care homes. We found the regulations in the eight states bordering Missouri do not exclude related children in family child care homes in the maximum capacity number.

Family child care home capacity limits significantly exceed national fire safety standards

Department of Public Safety - Division of Fire Safety and bureau officials acknowledged that exempting related children from the licensing capacity limit poses a significant danger to all children. Missouri does not have a statewide fire code specifying the maximum number of children that can be cared for by one adult. Lacking a statewide fire code, Division of Fire Safety officials said the state's licensing capacities for child care homes should be based on the National Fire Protection Association's (the association) limit of six children to one adult. Bureau officials stated that related children should be included in the family child care homes' licensing capacity limit and the existing licensing capacity limit of 10 children to one adult is too high.

The association is a nationally recognized organization that promulgates life safety standards for fire safety, which include life safety requirements for child care homes. The association's standards for child care homes are based on children's ability to evacuate themselves and the staff members' ability to evacuate children in the event of fire. To help ensure children can be safely evacuated, the association's standards recommend a minimum of one adult caregiver to every six children. The association's standard includes the caregiver's children under the age of 6 and only allows for up to two children incapable of self-preservation, regardless of whether they are related.

State statutes and regulations allow an adult (a person age 18 or older) operating a licensed family child care home to care for 10 unrelated children, including two children under age 2, and an unlimited number of related children. State law⁸ requires people caring for more than four children to have a written license granted by the Department of Health and Senior Services. The law states, however, "children who are related by blood, marriage, or adoption to such person within the third degree shall not be considered in the total number of children being cared for." State regulations⁹ define related as "any of the following relationships by blood, marriage, or adoption between the provider and the children in care: parent, grandparent, great-grandparent,

⁷ See Appendix II, page 24, for a definition of family child care home

⁸ Section 210.211, RSMo 2000

⁹ 19 CSR 30-61

brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, niece, nephew or first cousin.”¹⁰ For example, the statute and regulation allow one adult to care for an unlimited number of nieces, nephews and first cousins, or a grandparent to care for an unlimited number of grandchildren in addition to 10 unrelated children. The only factor that limits the number of related children one adult can care for is the amount of square footage available to each child. State regulation¹¹ states at least 35 square feet of useable floor space shall be provided for each child in a family child care home. This space can include living rooms, family rooms, bedrooms, basements and garages. According to district officials, most homes have enough square footage (700 square feet) to accommodate at least 20 children (three times more than recommended by the National Fire Protection Association).

Majority of licensed family child care homes could care for more than six children

Our analysis showed 97 percent (2,035) of the state’s 2,091 licensed family child care homes were licensed to care for more than six unrelated children. Bureau staff do not obtain data on the number of related children under a provider’s care. Therefore, data was not available showing the total number of children in each facility. Table 2.1 shows the number of family child care homes that were licensed for seven, eight, nine, and 10 unrelated children, and the total capacity for all homes.

Table 2.1: Child Care Homes and Unrelated Child Capacity

Unrelated Child Capacity ¹	Total Homes	Total Unrelated Child Capacity
7	12	84
8	59	472
9	40	360
10 ²	<u>1,924</u>	<u>19,240</u>
Total	<u>2,035</u>	<u>20,156</u>

¹Additional related children may be included.

²Providers are limited to 10 unrelated children.

Source: SAO analysis of Bureau of Child Care data

Bureau officials stated it is difficult to verify a child’s relationship to a provider by reviewing birth certificates, especially when stepchildren are involved. Family child care home providers are required to have a Related Child in Care form on file for all related children. Unless bureau staff have reason to suspect a relationship is not valid, they will rely on this form. A child’s parents may be contacted to confirm a family relationship. Bureau officials stated such inquiries may not be conclusive because parents are not always truthful about the relationship.

¹⁰ St. Louis County limits family child care homes to no more than 10 children, including related children from outside the home and the caregiver’s own children under the age of 13.

¹¹ 19 CSR 30-61.085(2)(B)

Related children are not subjected to the same standards

Children may be exposed to unhealthy or unsafe conditions because a provider's related children are not subjected to the same standards as unrelated children. For example, providers are not required to keep current medical and immunization records on file at the facility for related children. Accordingly, if a related child does not have current immunizations, the child could expose the unrelated children to contagious diseases. Also, the bureau does not include the related children living in the home in determining the facility's square footage requirement. One bureau official stated the current practice of excluding related children has always occurred, even though statutes and regulations do not require it. However, excluding related children in the square footage calculation reduces the available space for all children in the facility and can pose potential safety and health problems.

The bureau's legal counsel stated the bureau does not have the legal authority to require licensed providers to keep current medical and immunization records on file at the facility for related children, or include all related children in the square footage requirement. However, state statutes and regulations indicate the bureau can require licensed providers to keep current medical and immunization records on file for related children and apply the square footage requirement to all related children. State statutes give the bureau the authority to determine what records providers shall keep. Further, state regulations prescribe that providers shall require a medical examination report for each child admitted. The regulation does not differentiate between related and unrelated children. In addition, state regulations also state "at least thirty-five (35) square feet of usable floor space shall be provided for each child coming into the home for day care", and does not differentiate between related and unrelated children.¹²

Bureau plans to submit a new proposal to limit the number of related children in child care facilities

In 1998, bureau officials proposed state regulations be changed to count related children as part of the licensing capacity limit of 10 children to one adult. Bureau officials said copies of the proposed revisions were sent to licensed providers and children advocates. The bureau received 900 responses from providers and parents opposed to the changes and only 11 responses in favor. In addition, these officials stated some members of the legislature voiced opposition to the proposed change, because it could adversely affect low-income families from being able to find affordable child care. As a result of public opposition and concerns expressed by some members of the legislature, the proposed revisions were withdrawn.

Bureau officials stated that because existing child care regulations can expose children to significant risk, they plan to submit a new proposal in the summer of 2002 that related children living outside the family child care home be counted as part of the licensing capacity limit of 10 children to one adult. Bureau officials acknowledged that under this proposal, related children living in the home would not be counted as part the licensing capacity limit of 10 children to one adult. They said not allowing licensed family child care home providers to exclude their own children would most likely result in substantial public opposition to the proposed regulation

¹² Section 210.221.(4) RSMo 2000, 19 CSR 30-61.125, and 19 CSR 30-61.085 respectively.

change. Bureau officials said it may be necessary to grandfather in providers currently watching related children and have the providers reduce the number of related children as the spaces become vacant. To require an immediate decrease in numbers may cause a financial hardship on too many families.

Other states do not exclude related children from regulations

Regulations in each of the eight states surrounding Missouri do not exclude related children from the determination of the total number of children allowed at a licensed family child care home. Table 2.2 shows the maximum number of children one adult can care for in a family child care home in Missouri and these states, and whether related children are excluded.

Table 2.2: Licensing Limits for Family Child Care Homes

State	Maximum Children	Related Children Excluded
Missouri	10 ¹	Yes
Kentucky	12	No
Arkansas	10	No
Kansas	10	No
Nebraska	10	No
Illinois	8	No
Oklahoma	8	No
Tennessee	7	No
Iowa	6	No

¹ This number represents unrelated children only. Additional related children are allowed.

Source: SAO survey of state licensing agencies

Conclusion

State statutes and regulations that allow one adult to care for an unlimited number of related children, in addition to 10 unrelated children, can place children at risk in the event they have to quickly escape from a provider’s home. To help ensure that child care providers can safely evacuate children in the event of fire, the National Fire Protection Association recommends one adult child care provider care for no more than six children, regardless of the relationship to the provider. Division of Fire Safety and bureau officials said state statutes should follow the association's recommendation instead of permitting one adult to care for more than 10 children. Missouri’s eight surrounding states have established similar limits on the number of unrelated children under one adult’s care, but these states also require providers to include related children in the limits.

Bureau polices and procedures distinguish between whether children being cared for are related or unrelated to the provider and whether the related children live in the home. As a result, all children in the home may be exposed to potential health and safety risks.

Recommendations

We recommend the General Assembly:

- 2.1 Revise Section 210.211, RSMo 2000, to limit the number of related and unrelated children in child care facilities to more closely align with the National Fire Protection Association suggested limit of six children to one adult caregiver.

We recommend the Director, Department of Health and Senior Services:

- 2.2 Require child care providers to keep on file at their facilities current medical and immunization records for all related children.
- 2.3 Require 35 square feet of space be available for all related and unrelated children.

Department of Health and Senior Services Responses

- 2.2 *Current policy is to require child care providers to keep medical and immunization records for all related children coming into the facility for care. The bureau agrees with this finding and will revise the policy to reflect this change.*
- 2.3 *Current policy is to require 35 square feet of space be available for all children coming into the facility for care. The bureau agrees with this finding and will revise the policy to reflect this change.*

3. Bureau Lacks Standard Criteria and Procedures for Assuring Licensed Child Care Providers Comply with Safety and Sanitation Rules

Bureau officials have not established standard guidelines for determining the severity of rule violations and effectively assessing penalties or revoking child care licenses. District office staff are responsible for monitoring licensed providers with repeated violations, and referring these providers to the bureau's central office for assessment of administrative penalties. However, there are no guidelines or standards to differentiate the seriousness of the various safety and sanitation rules. Although each case and rule violation may be different, the lack of standard guidelines limits the bureau's ability to consistently assess penalties or effectively pursue repeat violators of more serious rules. As a result, some providers continued to operate substandard facilities which do not comply with the bureau's safety and sanitation rules and endanger children's safety and health.

Bureau enforces over 100 safety and sanitation rules

State law¹³ empowers bureau staff to issue warning and censure letters and to deny, suspend, place on probation or revoke¹⁴ the license of child care providers who do not comply with the bureau's child care safety and sanitation regulations and rules. The bureau has established over 100 safety and sanitation rules for child care facilities. These rules cover 27 categories such as physical plant, bathroom facilities, indoor and outdoor space and animals as shown in Appendix II, page 25. The bureau's district office staff inspect providers for compliance with these rules, and can recommend an administrative penalty to the bureau's central office.

Standard guidelines do not exist for assessing penalties

The bureau's central office officials have not developed guidelines prioritizing the various safety and sanitation rule violations or associating the violations to specific penalties. Not prioritizing violations adversely affects the office staff's productivity since they cannot focus resources on substantiating the most serious violations. In addition, district-level penalty recommendations are often reduced by central office staff. Further, there is no assurance that rule violations are penalized equitably.

A bureau manual states that revocation of a license must be based on an extensive history of repeated rule violations and/or very serious rule violations. However, the manual does not 1) define if an extensive history involves more than one licensing period or more than 2 years of rule violations, or 2) differentiate the seriousness of each rule violation or rule category. For example, a provider may be violating three or more minor rules in one category but still be considered in compliance with the category. However, providers may fail that category if they violate one serious rule. The manual also does not establish what administrative penalties should be assessed for significant rule violations, or noncompliance with a combination of rules within a category. The manual does not require staff to consider repeat violations when assessing penalties. The manual states revocations must be based on an extensive history of rule

¹³ Section 210.245, RSMo 2000

¹⁴ See Appendix II, page 22, for definition of administrative penalties

violations, but it states that referrals for revocations must primarily be based on violations from the current (2-year) licensing period. Repeated violations from past licensing periods, according to the manual, should either be placed in the background section or, if the violations are the same as current violations, they can be used to support current violations. Although district office staff keep the current and the previous 2-year licensing periods in a provider’s public file, bureau central office officials stated that when a license is renewed, past violations have in essence been forgiven by the bureau, and therefore, penalties should not be based on these past violations.

District office staff said the central office has frequently decreased or eliminated the penalty recommended by district offices. Our review showed many providers recommended for license revocation or non-renewal had repeatedly violated the safety and sanitation rules. For example, the repeated violations included 1) caring for too many children on numerous occasions, 2) children left unattended in vehicles, and 3) children exposed to excessive cold.

Substandard facilities continue to operate

The three district offices we visited recommended 45 providers be assessed penalties ranging from a warning letter to license revocation during calendar year 2001. As of the completion of our audit, penalties had been assessed against 37 of these providers, but the penalty assessed was less than recommended for 27 (73 percent) of the providers. Table 3.1 shows penalties recommended by the district office staff and penalties assessed by central office officials.

Table 3.1: Types of Penalties Recommendations Compared to Penalties Assessed

District Office Recommended	Cases Referred	Penalties Assessed by Central Office			
		Same	Lesser Penalty	No Penalty	Still Pending
Warning Letter	4	0	0	2	2
Censure Letter	12	3	2	5	2
Probation	5	0	3	1	1
Suspension	4	2	2	0	0
Revocation	<u>20</u>	<u>5</u>	<u>8</u>	<u>4</u>	<u>3</u>
Total	<u>45</u>	<u>10</u>	<u>15</u>	<u>12</u>	<u>8</u>

Source: SAO analysis based on Bureau of Child Care data

Central office officials stated the district offices frequently recommended more severe penalties than is warranted by the types and number of rule violations a provider has committed. The officials said the primary reason for decreasing assessed penalties is to ensure consistent penalty assessment statewide. For example, they have to ensure a provider operating in Springfield does not have her license suspended for having five sanitation violations, while a provider operating in Kansas City only receives a warning letter for the same violations. Central office officials, however, did not have or use any standard guidelines to determine what types of penalties should have been assessed, and did not document the decision-making process used to assess penalties. Accordingly, we could not determine, and the officials could not show, the recommended penalties were too severe, or the penalties ultimately assessed were, in fact, consistently applied statewide.

District officials support standard guidelines to assess penalties

District officials stated standard guidelines are needed to assure penalties are consistently assessed not only statewide, but also within each district office. Table 3.2 shows where staff in one district office recommended different penalties for two providers with essentially identical rule violations, and central office staff assessed two different penalties.

Table 3.2: Comparison of Facts

Facility A	Facility B
Case Facts	
<ul style="list-style-type: none"> • 8-year-old child involved • In van approximately 1½ hours • Child woke up and came into the facility • Facility terminated the van driver 	<ul style="list-style-type: none"> • 4-year-old child involved • In van approximately 2½ hours • Child woke up and came into the facility • Facility suspended van driver for 2 months then monitored daily records for 60 days
Penalty	
<ul style="list-style-type: none"> • District office recommended censure letter • Central office issued censure letter 	<ul style="list-style-type: none"> • District office recommended license revocation • Central office issued warning letter

Source: SAO review of case files

In both of the above incidents, a child was left unattended in a child care facility van after a driver did not check the van upon returning to the facility. Both incidents would seem to warrant the same penalty. However, both the district and central office staffs inconsistently assessed penalties for these similar violations. According to central office officials, the reason different penalties were assessed was because of extenuating circumstances in facility A’s file including 1) a substantiated child abuse and neglect finding by the Department of Social Services - Division of Family Services on this incident, 2) the facility exceeded the staff/child ratio while children were in the van, 3) one of the staff was not familiar with the facility’s transportation policy, and 4) children were being supervised by individuals who did not have a completed background screening. Standard guidelines and clear documentation of decisions would help alleviate any apparent inconsistency in the violations assessed on these cases.

Conclusion

There are over 100 safety and sanitation rules to help ensure children are staying in safe and sanitary facilities. However, bureau officials have not established standard guidelines to ensure these rules are consistently enforced or differentiated the levels of seriousness among the rules. This weakness adversely affects both the district office staffs' ability to effectively gauge the severity of noncompliance and properly develop reported violations. Further, without guidelines bureau staff cannot equitably assess penalties against chronic serious rule violators and one-time or occasional violators. As a result, numerous licensed child care providers have been allowed to operate facilities with continued rule noncompliance, which does not provide children a safe and sanitary environment.

Recommendations

We recommend the Director, Department of Health and Senior Services:

- 3.1 Establish written guidelines to ensure licensed child care providers receive administrative penalties that correspond with the severity of the rule violation.
- 3.2 Implement a training program to ensure bureau district office staff consistently apply bureau guidelines for assessing penalties.

Department of Health and Senior Services Responses

- 3.1 *This is a very complex issue. The bureau believes the goal of ensuring statewide consistency in assessing administrative penalties can best be achieved by the current system where district staff refer cases for legal action and central office staff review the information and make the final decision on the action to be taken. This system is necessary to ensure that similar actions for similar non-compliance issues are addressed similarly throughout the state.*

However, the bureau agrees that changes could be made to aid district office staff in their work. To address the concerns of this finding, the bureau will revise the procedure manual to reflect that the bulk of the rule violations must have occurred within the current licensing period. Clear examples will be added to give staff instruction on what constitutes a serious violation and what constitutes a minor violation. Central Office will also begin to send copies of each disciplinary letter to each staff member so all field staff will know what actions are being taken statewide.

Recently, the National Resource Center developed 13 Indicators in Quality Child Care. This is a resource that lists thirteen indicators, including child abuse/neglect, staff training, child/staff ratios, etc. A copy of this document has been included for your review. The bureau will review these indicators to see if they could be incorporated in a document to aid field staff in their work.

In addition, the bureau will explore what other states are doing in this area and will make further changes as needed.

- 3.2 *Bureau of Child Care district office staff are responsible for inspecting and regulating child care facilities under the bureau's purview. They are also responsible for investigating allegations of statute and/or rule violations in these facilities. The bureau does not believe it is the role of these staff to assess penalties. Their role is to investigate the reports and make referrals to central office staff for the appropriate action.*

The bureau does recognize the importance of having well trained field staff. The bureau will continue to have regular training for staff to address the concerns of this finding.

OBJECTIVES, SCOPE, AND METHODOLOGY

Objectives

Our objectives were to determine (1) the effectiveness of penalties assessed to unlicensed family child care homes and the safety of the children in those homes, (2) the safety of the children in licensed child care facilities based on the licensing capacity and (3) the effectiveness of the bureau's enforcement of statutory requirements regarding inspections of licensed child care facilities.

Scope and Methodology

To develop information on the effectiveness of penalties assessed, we reviewed state laws and regulations that govern child care licensing in Missouri and available penalties that can be assessed to licensed and unlicensed child care facilities that do not comply with these laws and regulations. To determine how many children are cared for in unlicensed facilities, we used the following methods since bureau officials did not have this data:

- Obtained child population information from the 2000 U.S. Census and compared this data to Bureau of Child Care licensed facility records to determine the number of children in the state who may be in unlicensed child care facilities.
- Reviewed a study performed by The Children's Foundation to determine the child population and number of licensed child care facilities in Missouri and its eight surrounding states.

To determine the safety of children in licensed child care facilities, we reviewed the National Fire Protection Association's life safety codes that relate to child care facilities and the organization's recommended staff/child ratios. We interviewed officials with the National Fire Protection Association. We also interviewed Department of Public Safety - Division of Fire Safety officials regarding acceptable staff/child ratios for ensuring the safety of children in cases of emergencies. In addition, we interviewed state officials from Iowa, Illinois, Kentucky, Tennessee, Arkansas, Oklahoma, Kansas and Nebraska regarding their child care statutes and regulations and reviewed each state's statutes and regulations.

To evaluate the Bureau of Child Care's enforcement of statutory requirements regarding inspections of licensed child care facilities, we reviewed the bureau's procedure manual and all inspection forms used. We also visited the Eastern (St. Louis); Northwestern (Kansas City); and Southwestern (Springfield) district offices for the following purposes:

- Interviewed officials to determine their procedures for licensing and inspection, criteria for referral of cases for administrative penalties, and views on penalties assessed by the central office.

APPENDIX I

- Reviewed all cases referred by the district offices to central office for administrative penalties for calendar year 2001 to determine the appropriateness and timeliness of the actions taken.
- Reviewed all unlicensed child care providers referred for prosecution for calendar year 2001 to determine the effectiveness of the penalties assessed in getting the providers licensed, or the number of children they cared for reduced to the legal limit of four unrelated children.
- Reviewed a random selection of 142 licensed child care provider files in three district offices to determine if inspections were performed in a timely manner and policy procedures were followed.
- Observed inspections by the bureau child care facility specialists, sanitation inspector and state fire safety inspectors.
- Observed district office investigations of public complaints against child care facilities.

We obtained comments on a draft of this report during a meeting with department officials on May 13, 2002, and incorporated their comments where appropriate. We conducted our fieldwork between August 2001 and February 2002.

BACKGROUND

The Bureau of Child Care (the bureau) is in the Department of Health and Senior Services - Division of Health Standards and Licensure and is responsible for the regulation and licensing of child care facilities. The bureau's mission is to assure the health, safety, growth and development of children through a regulatory process to prevent injury, risk or harm to dependent children in out-of-home child care settings.

The goal of the bureau is to have a positive impact on the overall health, safety and well being of children in child care programs. The bureau works to meet this goal through health promotion and education; facilitating immunizations; improved meals and nutrition education; communicable disease prevention; improved cleanliness and sanitation; injury reduction; prevention of child abuse and neglect; and serving children with special needs. The bureau also coordinates resources for parents seeking child care.

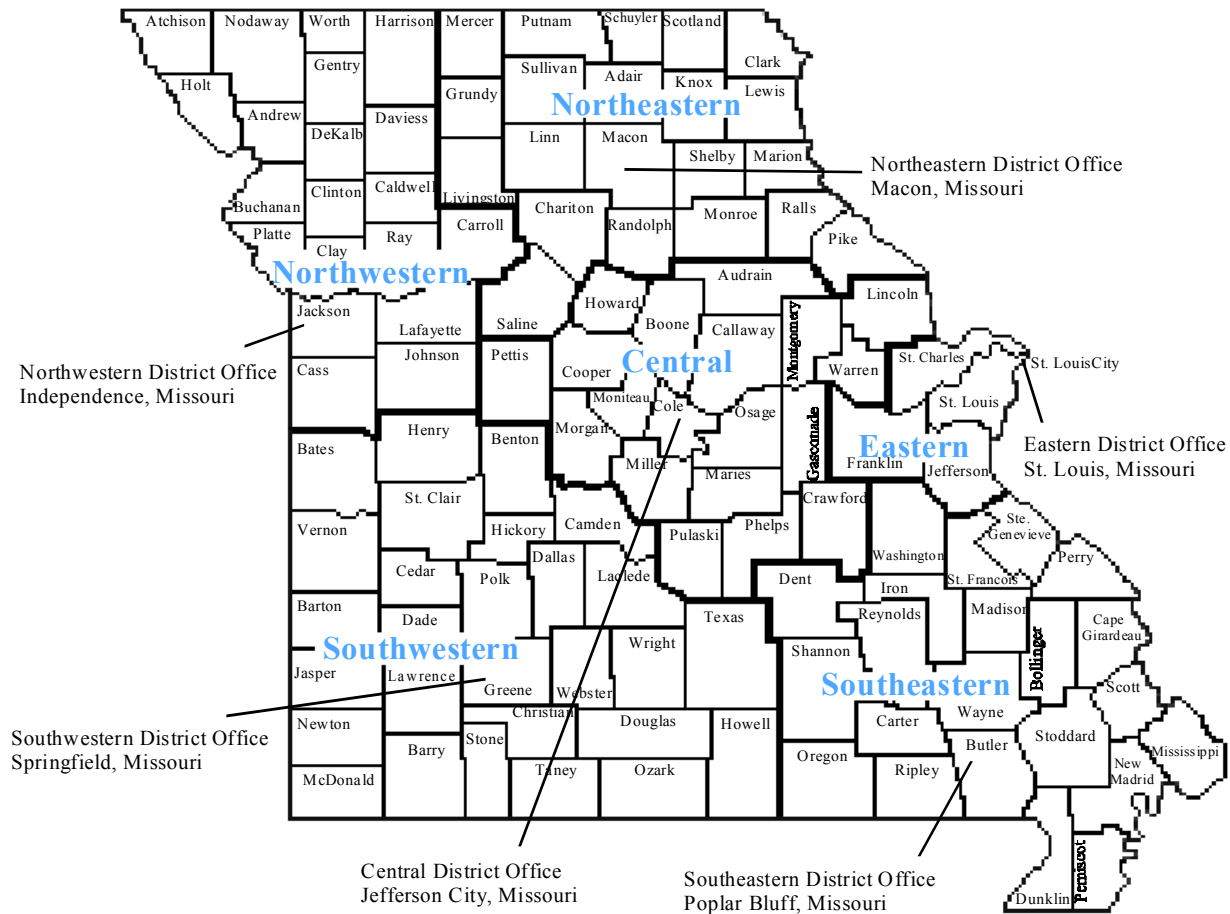
Section 210.245, RSMo 2000, provides for the following administrative penalties:

- **Warning Letter:** To notify a provider that rule violations have occurred and must not recur. Warning letters are generally removed from the public record after a period of time (normally one year) if no further violations occur. The letters are maintained in the administrative record after removal from the public record.
- **Censure Letter:** To notify a provider that rule violations have occurred and must not recur. Censure letters are a permanent part of the public record.
- **Probation:** To place conditions on a facility license for a specific period of time.
- **Immediate Suspension:** When threat of imminent bodily harm to the children in a provider's care is documented. Department staff must simultaneously give the provider notice of further disciplinary action that will be taken, such as revocation, suspension, probation or denial of license renewal.
- **Suspension:** To notify a facility that prompt correction of a specific serious rule violation must be made in order to be able to continue operating the child care facility. The proposed action can be withdrawn or the suspension can be lifted as soon as the violations are corrected.
- **Denial of Initial/Renewal License:** When bureau staff have completed a licensing investigation and determined the applicant/licensee does not possess good character and intent and/or is not qualified and equipped to render care or service conducive to the welfare of children.
- **Revocation of License:** When bureau staff are not satisfied the licensee possesses good character and intent and/or is not qualified and equipped to render care or service conducive

to the welfare of children. License revocation can take place anytime during a licensing period as opposed to denial of license renewal, which takes place only at the end of the licensing period.

The bureau has six district offices (Northwestern, Southwestern, Northeastern, Central, Eastern and Southeastern) from which bureau staff conduct on-site inspection and regulation services to the child care facilities as well as giving technical and consultative assistance. Figure II.1 shows the six district offices and the counties in each district.

Figure II.1: Bureau of Child Care Districts



Source: Bureau of Child Care

APPENDIX II

Facilities subject to licensure can be licensed for up to two years. Bureau staff are responsible for inspecting and regulating the following licensed child care facilities:

- Family child care homes - Facilities where care can be given by one adult provider in his/her own permanent residence and for more than four children, but no more than 10 children not related to the provider.
- Group child care homes - Facilities where care is given by a provider in a location other than the provider's permanent residence or separate from the provider's living quarters for 11 to 20 children not related to the child care provider for any part of a 24-hour day.
- Child day care centers - Facilities where care is provided in a location other than the provider's permanent residence, or separate from the provider's living quarters, where care is provided for more than 20 children not related to the child care provider for any part of a 24-hour day.

To help ensure child care facilities are sanitary and safe, bureau staff conduct annual sanitation and fire inspections. Sanitation inspections are performed either by county health department officials or by the bureau sanitation inspector. All fire inspections are performed by the Department of Public Safety - Division of Fire Safety. Bureau staff also conduct semi-annual inspections to determine if child care facilities are in compliance with the bureau's rules related to safety, adult care giver-to-children ratios and cleanliness.

APPENDIX II

The Bureau of Child Care Form DC-43 sets out the regulations for 19 CSR 30-61.085. This form is used by the child care facility specialist for initial and renewal inspections. Table II.1 is an excerpt of this form.

Table II.1: Excerpt of Initial and Renewal Inspection Form

PHYSICAL PLANT:	YES	NO	INDOOR SPACE:	YES	NO
Safe and suitable			Open windows and doors securely screened		
Restricted to approved space and floors			Temperature between 68°F and 85°F, two feet from floor		
Stairways well-lighted; free of obstructions; handrails, if necessary			Pads or mats under indoor equipment if more than 24" high		
Approved barrier for porches, decks, stairwells			35 square feet per child		
Safety gates at stairways, as needed			License posted near entrance where easily seen		
Heating equipment protected			OUTDOOR SPACE:		
Hazardous items inaccessible			On or adjoining property		
Weapons and ammunition inaccessible in locked cabinet/closet			42" fencing requirements met		
Smoking-limited as required			75 square feet per child		
BATHROOM FACILITIES:			Adult supervision as required		
Toilet and hand washing facility available			Safe; well-maintained; good drainage		
Individual towels or paper towels, soap, toilet paper accessible to children			Fall zone covered with approved material		
Convenient, working			Resilient material maintained		
Children monitored			No concrete, asphalt, carpet or bare soil under equipment from which children might fall		
Clean and odor free			ANIMALS:		
One potty-chair, junior commode or toilet with an adaptor			Penned if threat to health or safety		
Potty-chair in bathroom emptied, cleaned and disinfected after each use			Clean pens		
			No animal excrement in child care area		
			No litter box in child care or food preparation areas		
			Food and water dishes inaccessible to children		

Source: Prepared by SAO based on Bureau of Child Care Form DC-43

ESTIMATED NUMBER OF CHILDREN IN UNLICENSED CHILD CARE FACILITIES

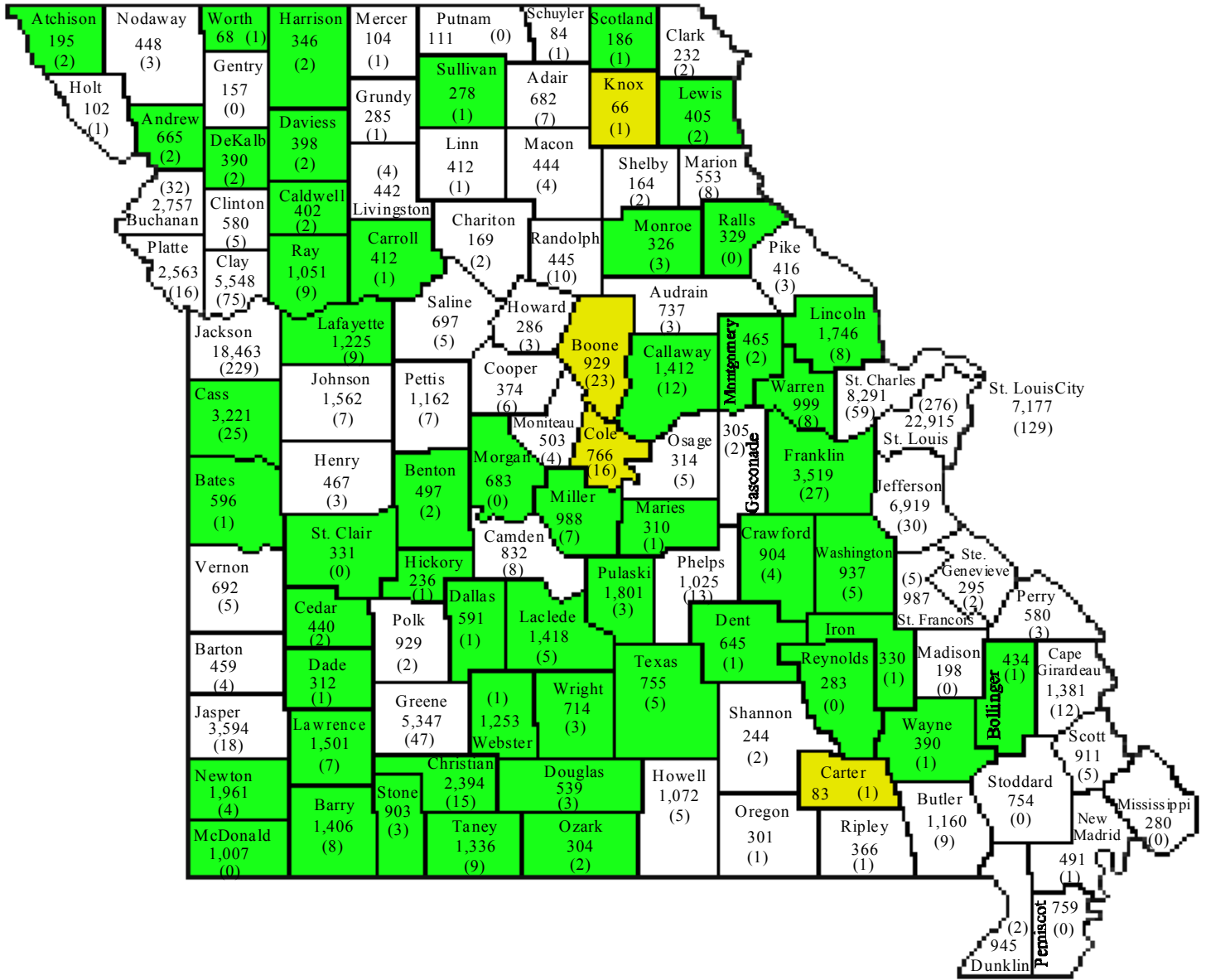
This appendix shows approximately how many children may be in unlicensed facilities. Absent actual bureau data, we used 2000 U.S. Census data to determine this estimate. According to Census data, nearly 287,000 Missouri children ages 5 and under lived in homes where both parents worked and may have required some sort of child care.¹⁵ However, the license capacity of all of Missouri's licensed child care facilities in 2001 was only about 131,000 children. Thus, we estimate up to 156,000 children ages 5 and under may not have access to a licensed child care facility in the state. Bureau officials agreed thousands of Missouri children are most likely being cared for by unlicensed providers.

Our analysis of intrastate data show licensing capacity of licensed child care facilities and the number of license-exempt facilities left potentially hundreds of children ages 5 and under without access to either licensed or license-exempt care in many of the state's counties. Figure III.1 shows by county and the city of St. Louis 1) the number children, ages 5 and under, in excess of the licensed care facility capacity, and 2) the number of available license-exempt facilities in 2001 (shown in parentheses). For example, St. Louis County has an estimated 22,915 children ages 5 and under who may not have access to licensed child care facilities, and 276 license-exempt facilities.

As Figure III.1 shows, two-thirds of the children ages 5 and under were potentially cared for by unlicensed child care facilities in 52 of the state's 115 counties. Further, in 35 of the 52 counties, there were three or fewer license-exempt facilities to provide child care.

¹⁵ Children living with a grandparent or other guardian are not included in this census data.

Figure III.1: Missouri Children that May Not Have Access to Licensed Child Care



- Counties (52) with greater than 66% of children potentially in unlicensed facilities
- Counties (59) with between 33% and 66% of children potentially in unlicensed facilities
- Counties (4) with less than 33% of children potentially in unlicensed facilities

Source: Prepared by SAO based on 2000 U.S. Census and Bureau of Child Care data