

**REPORT OF THE
JOINT LEGISLATIVE AUDIT
AND REVIEW COMMISSION**

**FOLLOW-UP REVIEW
OF CHILD DAY CARE
IN VIRGINIA**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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Preface


Item 14 J of the 1997 Appropriation Act directed JLARC to conduct a follow-up review of its 1990 study of child day care. This review examined the State's three principal roles in child day care: (1) regulation of child care to ensure the health and safety of children in care, (2) enforcement of child care regulations, and (3) funding of child care for low-income families. Since 1990 there has been significant growth in the number of day care facilities licensed in Virginia, and substantial change in the regulation of child care.

This review found that the State's regulations for child care are generally appropriate for ensuring the State's interest in protecting the health and safety of children in care. However, the regulatory process for child care needs to be streamlined by consolidating regulatory authority for child care into one regulatory entity instead of the current two. While the regulations for child care could be improved in certain areas, as discussed in the report, there is no compelling reason to make regulations less stringent. Fewer than ten percent of respondents to a JLARC survey of licensed child care providers identified any regulations they thought were too stringent.

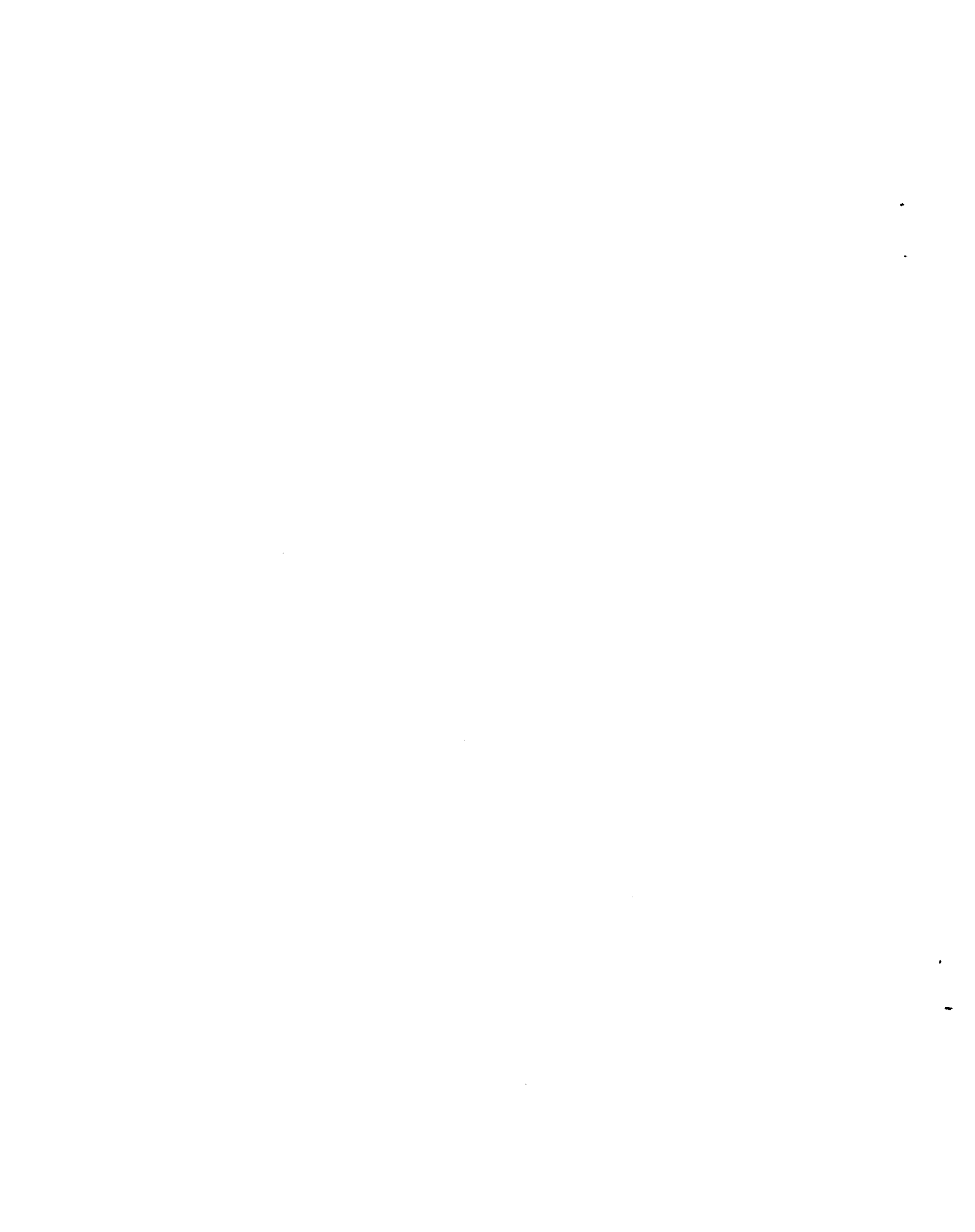
Even the best regulations will be ineffective in protecting children in care without a credible enforcement program to ensure compliance with the regulations. The Department of Social Services (DSS) needs additional staff to carry out the inspection of all licensed child care providers at least twice annually, as required by law. DSS' failure to conduct the required inspections for more than 800 centers potentially places the safety of children at risk.

DSS also needs to comply with provisions of the Appropriation Act regarding child care funding. During the past two biennial budget cycles, DSS has not spent all of the funds set aside by the General Assembly for providing child care assistance to working low-income families. Failure to spend all of these funds is problematic because there is a waiting list of more than 10,000 families for such assistance. Further, contrary to the Appropriation Act's provisions, DSS has transferred funds set aside for providing day care assistance to working low-income families to cover child care expenses for welfare recipients. DSS should also reconsider its methodology for allocating federal funds for child care assistance to ensure that equally needy families across the State are treated equitably.

On behalf of the Commission and its staff, I would like to thank the staff of the Department of Social Services for their cooperation during this study. I would also like to thank the local social services employees and child care center staff who provided assistance during this review.


Philip A. Leone
Director

August 29, 1997



JLARC Report Summary

FOLLOW-UP REVIEW OF CHILD DAY CARE IN VIRGINIA

August 1997

Joint Legislative
Audit and Review
Commission

Item 14 J of the 1997 Appropriation Act directed JLARC to complete a follow-up review of its 1990 study of child day care. Specifically, JLARC was directed to examine:

(1) the administration, management, and funding of child care issues by state government, (2) the revised licensing structure for child day care, including but not limited to proposed regulatory changes for child day care centers, (3) staffing for the child day care licensing program, and (4) regulatory approaches in other states.

State government has been involved in regulating child care since the early 1960s. JLARC's 1990 review of child care examined the question of what types of child care should be regulated and why. During the early 1990s, the General Assembly expressed its intent on both of these issues. Therefore, the focus of this report is on how the State can regulate more efficiently and effectively to promote its interest in protecting the health and safety of children in care.

The State is now also heavily involved in funding child care for low income parents and for parents moving from welfare to work. When JLARC last reviewed child care, the State expended approximately \$10.6 million annually on child care assistance. In the current fiscal year, combined State, federal, and local funding for child care is expected to exceed \$100 million.

This review examines the State's three principal roles in child care: (1) development of minimum standards for licensed facilities to ensure the health and safety of children in care, (2) enforcement of minimum standards, and (3) funding of child care assistance for low income families. Among the key conclusions of this study are:

- The State's regulations for child care are in the mid-range of regulations among the 50 states, but could be improved in some areas.
- The licensing program for child care providers, located within the Department of Social Services (DSS), is not adequately staffed to fulfill its statutory mandate of conducting at least two inspections per year for each licensed facility.

- DSS needs enhanced tools with which to address long-term noncompliance and serious threats to the health and safety of children in care.
- funding for day care assistance has increased significantly, particularly for families on public assistance.
- DSS's administration of child care funding has, at times, been in violation of Appropriation Act provisions.

Virginia's Regulations Are in the Mid-Range of the 50 States

In late 1996, a series of proposed regulatory changes by the Child Day-Care Council caused considerable controversy. Proposed changes that would no longer have required a high school diploma or G.E.D. for child day care center teachers or directors and would have increased the child-staff ratio for four-year olds were particularly controversial. These proposed changes have since been modified. Presently, Virginia's regulations are in the mid-range among the 50 states. With regard to staff qualifications and child-staff ratios, Virginia is neither the least stringent nor the most stringent state.

Virginia's regulations for child care could be improved in several ways. First, Virginia's regulations for child day care centers should require a Child Protective Services Central Registry clearance for day care center staff and operators. Second, Virginia's regulations for Family Day Homes should be modified to require "sight and sound supervision" of young children in care. Third, regulations for both child care centers and family day homes should be revised to require that infants be put to sleep on their back or sides, in order to reduce the risk of Sudden Infant Death Syndrome, as recommended by the American Academy of Pediatrics.

Additionally, the General Assembly may wish to consider revising the statutory defi-

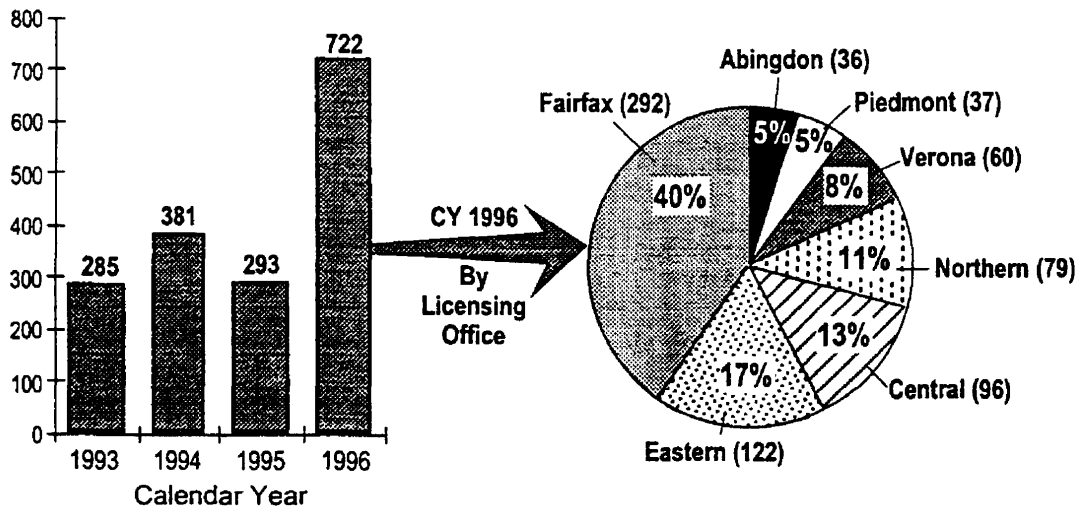
nition of a family day home to require that a licensed family day home provider actually be involved in providing care to children in the home (as opposed to simply hiring staff to provide the care while the licensee is away at work). The General Assembly may also wish to expand the criminal records check for child care providers to exclude convicted felons from being licensed to provide child care.

DSS Licensing Program Needs More Staff, Enhanced Authority

The *Code of Virginia* requires that DSS staff inspect each licensed child care facility twice per year. In FY 1996, there were at least 722 licensed facilities that did not receive the statutorily mandated number of inspections. DSS's failure to comply with this statutory mandate is due to (1) staff reductions as a result of the department's decision to accept all of its applicants for voluntary separation under the Workforce Transition Act, and (2) the department's inability to promptly fill vacant licensing positions due to the administrative hiring freeze. Additionally, the department is currently not conducting inspections of 159 facilities, due to delays in filling vacant positions. DSS's failure to fulfill its statutory mandate to conduct inspections potentially places the health and safety of children at risk. DSS should revise its staffing in the licensing program to ensure that it complies with statute. The General Assembly should consider exempting DSS licensing positions from any administratively imposed hiring freeze.

In enforcing child care regulations, DSS has not used any of the intermediate sanctions, such as freezing enrollment, available to the department in the *Code of Virginia*. DSS does not use intermediate sanctions because of what it deems the delays associated with the Administrative Process Act appeals procedure. At present, DSS does not have the authority to impose monetary penalties for child care facilities. DSS's un-

Licensed Facilities for Which Fewer than Two Visits Were Conducted Calendar Years 1993 - 1996



willingness to impose intermediate sanctions, given the administrative constraints involved, combined with the slow process for revoking or denying a child care license, means that that the State is unable to respond quickly to serious non-compliance. The General Assembly should consider giving the DSS Commissioner authority to impose intermediate sanctions and may wish to consider giving DSS the authority to impose monetary penalties.

Child Day Care Assistance Has Increasingly Been Used for Families on Public Assistance

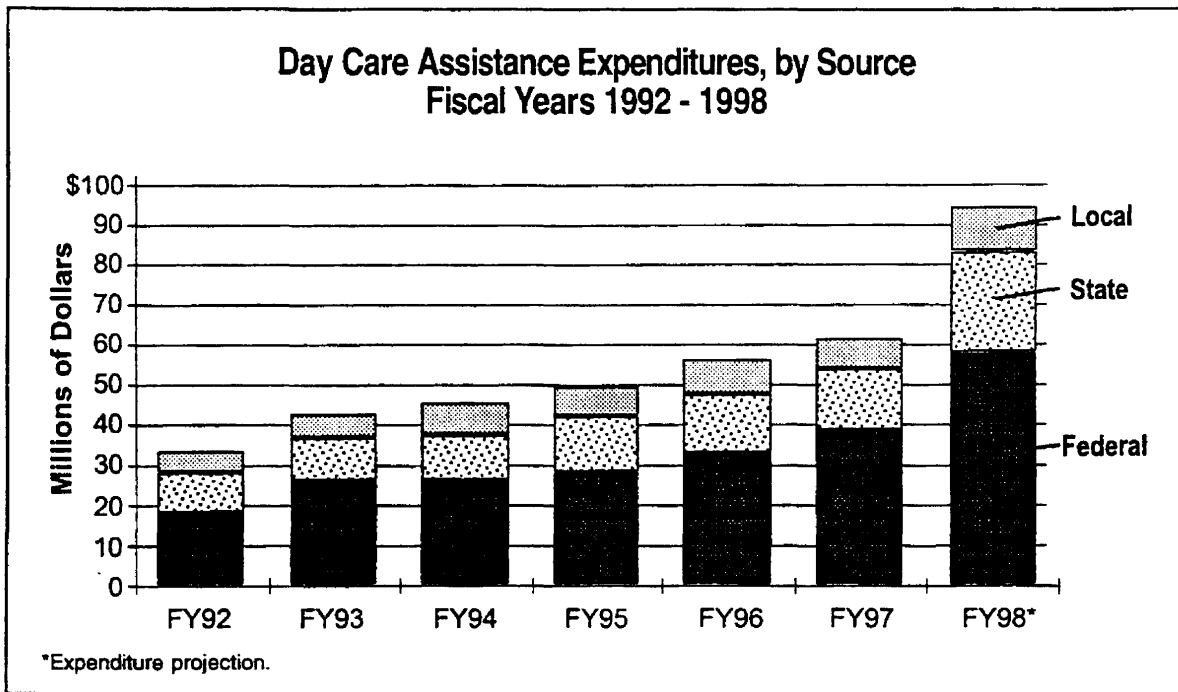
The provision of child day care assistance for families on public assistance and for low-income working families has significantly increased, and it is projected to increase by 55 percent from FY 1997 to FY 1998. Analysis of child day care funding and expenditures for the last six fiscal years shows three distinct trends. First, overall day care expenditures increased significantly. Second, day care expenditures for families on public assistance accounted for

most of the increase. Third, day care expenditures for income-eligible families through the fee system increased at a much slower rate.

DSS Has Not Complied with Certain Provisions of the Appropriation Act

Appropriation Act requirements, which specified the minimum amount of funding that was to be devoted to fee system day care, were not met during the last two biennia. Appropriation Act language specified that during the 1994 and 1996 biennia, a total of \$30 million in federal funding and \$11.7 million in State funding was to be devoted to the fee system program. Expenditures within the fee system program were almost \$3.3 million less than these specified amounts. Preliminary data from DSS indicate that this problem continued into FY 1997, when State funding for the fee system program was almost \$900,000 less than the required \$3.05 million.

DSS staff stated that the funding amounts specified in the Appropriation Act were allocated to the local social service



agencies. Funding that was not used by the end of the fiscal year, however, was not requested for reallocation for fee system use by other localities. Instead, this funding was used to cover day care expenditures for public assistance recipients, since these expenditures had exceeded budgeted amounts. This use of fee system allocations violates Item 467.G of the 1995 Appropriation Act, which states:

Notwithstanding §4-1.03 of this act, general fund and nongeneral fund appropriations for the Child Day Care Fee System ... programs shall not be: (1) transferred to support other day care programs or for any other purpose....

DSS needs to take immediate action to ensure strict compliance with Appropriation Act provisions.

In addition, DSS will need to closely monitor funding that cannot be used by some local social service agencies and redistribute the funding to those agencies that have unmet day care assistance needs.

Failure to support the day care assistance needs of low-income families could threaten the success of welfare reform as families seek to become or remain otherwise self-sufficient.

The State's Current Plan for the Child Care and Development Fund Should Be Reconsidered by the 1998 General Assembly

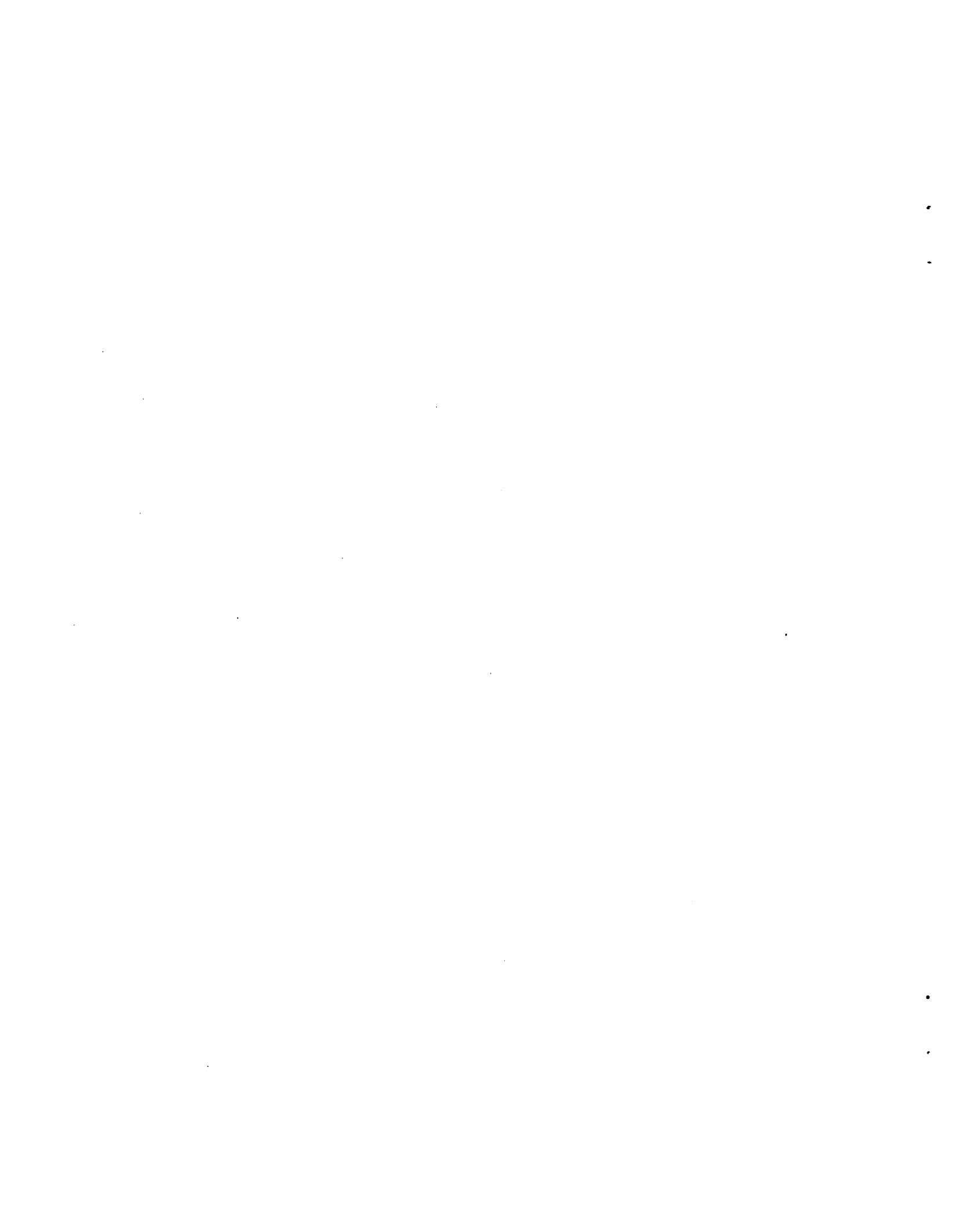
Virginia's Child Care and Development Fund (CCDF) plan, submitted to the U.S. Department of Health and Human Services in July 1997, outlines the State's methodology for determining eligibility for child care assistance. To ensure equitable treatment of families seeking fee system assistance, the eligibility thresholds within the CCDF plan should be revised to reflect cost of living differences around the State. The State's current plan overcompensates for relatively minor differences in cost of living across most of the State, but it does not sufficiently take into account the significantly higher cost of living in Northern Virginia when compared with the rest of the State.

Moreover, DSS's methodology for determining income eligibility for the child care assistance program is methodologically flawed, because it is based on local median income, not cost of living. As a result, residents of high income, low cost of living localities are treated more favorably than residents of low income, high cost of living areas.

At present, equally needy families within different localities may not be treated equitably in terms of qualifying for child care assistance. The State should revise its plan to consider cost of living instead of local median income. DSS should present policy options to the 1998 General Assembly for revising the State's CCDF plan.

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I. Introduction

Child care has become an important public policy issue in the last two decades, as increasing numbers of young children have required care while their parents go to work. Virginia law defines two principal roles for State government in child day care. First, the State regulates approximately 4,200 child care providers through its licensing program (the State also has some oversight of the approximately 700 church sponsored child care facilities which are exempt from licensure). Second, the State funds child care for low income citizens as well as those moving from welfare to work as part of the State's welfare reform program. Combined State, federal, and local funding for day care assistance will total more than \$100 million in this fiscal year, compared with \$10.6 million in 1990.

JLARC last reviewed child day care in 1990. As a result of the 1990 JLARC report, the General Assembly adopted a number of legislative changes related to child day care, such as requiring licensure of preschools, summer camps, and family day homes serving more than five children. In addition, there have been a number of other significant changes related to child day care. The 1990 JLARC report as well as changes in child day care in Virginia since this report are discussed in the following sections.

JLARC's follow-up review of child day care in Virginia is mandated by Item 14 J of the 1997 Appropriation Act. Item 14 J directs JLARC to:

...conduct a follow-up of its 1990 report entitled, *The Regulation and Provision of Child Day Care in Virginia*. The Commission's review shall examine: (1) the administration, management, and funding of child day care by state government, (2) the revised licensing structure for child day care, including but not limited to proposed regulatory changes for child day care centers, (3) staffing for the child day care licensing program, and (4) regulatory approaches in other states.

The 1990 JLARC report focused on the question of what to regulate in child care and what the State's interest is in regulating child care. Legislative intent for these two questions was clarified in the early 1990s. The State has chosen to regulate most child care settings, with the exception of religious exempt care and family day home care involving five or fewer children. The State has also determined that its compelling interest in regulating child care is to protect the health and safety of children in care.

Consequently, this study focuses not on what or why to regulate, but how to best ensure that the State's interest in protecting the health and safety of children in care is met. Additionally, this study reviews the State's funding of child care assistance for low-income Virginians. The focus of the review of funding is to assess whether funds are equitably allocated and directed at the families with the greatest need.

DEVELOPMENTS IN CHILD DAY CARE SINCE 1990

The primary focus of the 1990 JLARC study *Regulation and Provision of Child Day Care in Virginia* was to identify the State's interest in the regulation of child care and to define an approach to regulation the State could use to serve that interest. The study found that the State's primary interest in child care was to ensure the health and safety of children in care. In addition, a number of shortcomings were found in the State's approach to ensuring the health and safety of children in care. Problems with the regulatory system included the following:

- Child day care regulation had been narrowly and inconsistently applied because the definitions for child day care had not changed to accommodate changes in the industry, and many types of providers were specifically excluded from regulation.
- The day care regulation that was provided – licensure of centers and homes – was inflexible and therefore unable to accommodate the regulatory needs of all providers.
- Some of the licensing standards were unreasonable or unenforceable.

Partly as a consequence of these problems, the 1990 review found that the overwhelming majority of children (an estimated 80 percent) were being cared for in day care situations that were not regulated and, therefore, were not inspected for health and safety precautions.

The 1990 JLARC study also found that the State had an interest in promoting quality child care that was available and affordable. The study examined a number of options for achieving this objective, including tax policy, direct funding by the State, and consumer education. The study found that, despite some concerns about availability and affordability, the overwhelming majority of parents surveyed (96 percent) were satisfied with their current child care arrangements.

The child care industry in Virginia has grown substantially. The number of both regulated and unregulated providers has increased substantially, as has the number of children in care. The 1990 JLARC study of child day care led to a number of changes in legislation regarding child care. In addition, there have been a number of significant structural changes regarding child care administration by State government. More recently, federal funding for child care issues has increased significantly.

The Number of Child Care Providers Has Increased Substantially

The number of licensed child day care centers and family day homes has increased substantially since fiscal year 1993 (Table 1). At the same time, the number of religious exempt providers has also substantially increased. The increase in the num-

Table 1

**Total Number of Providers by Fiscal Year
(Does Not Include Unregulated Family Day Homes)**

<u>Type of Provider</u>	<u>Fiscal Year</u>				
	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997*</u>
Child Day Center (CDC)	1,336	1,495	1,937	2,085	2,234
CDC Short-Term	0	36	115	123	139
Family Day Home	591	662	763	1,081	1,862
Voluntarily Registered Family Day Home	517	1,024	1,385	1,413	1,116
Church Exempt	<u>268</u>	<u>437</u>	<u>523</u>	<u>611</u>	<u>705</u>
Total	2,712	3,654	4,723	5,313	6,056

*As of June 1, 1997

Source: Department of Social Services, Division of Licensing Programs.

ber of licensed family day homes is partially explained by a change in statute. Effective July 1, 1996 family day homes caring for more than five children were required to become licensed. The number of voluntarily registered family day homes (family day homes which voluntarily agree to follow certain standards, although they are not regularly inspected by the State) decreased at the same time, as many of the homes that had previously been voluntarily registered were required to become licensed. Statutory definitions of the various child care programs are listed in Exhibit 1.

Structural Changes to the Administration of Child Care in Virginia

There have been a number of structural changes to the administration of child day care in Virginia since 1987. These include the creation of the Child Day-Care Council in 1987, the creation and subsequent abolition of the Virginia Council on Child Day Care and Early Childhood Programs, and the creation of the Commission on Early Childhood and Child Day Care Programs.

Creation of the Child Day-Care Council. The Child Day-Care Council was created in 1987 to promulgate regulations for licensure and operation of child day care centers in Virginia, and it continues to provide this service. Previously this responsibility was carried out by the State Board of Social Services, which continues to promulgate licensing and voluntary registration requirements for family day care homes and

Exhibit 1

Definitions of Child Care Programs

<u>Type of Provider</u>	<u>Definition</u>
Child Day Center	A child day program offered to (i) two or more children under the age of thirteen in a facility that is not the residence of the provider or of any of the children in care or (ii) thirteen or more children at any location.
Family Day Home	A child day program offered in the residence of the provider or the home of any of the children in care for one through twelve children under the age of thirteen, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.
Registered Family Day Home	Any family day home serving fewer than six children which has met the standards for voluntary registration for such homes pursuant to regulations promulgated by the State Board of Social Services and which has obtained a certificate of registration from the Commissioner.
Church Exempt	A child day center operated or conducted under the auspices of a religious institution that has chosen to be exempt from licensure, but has complied with certain provisions of the <i>Code of Virginia</i> requiring documentary evidence and an annual statement.

Source: *Code of Virginia*.

systems. Support services required by the Child Day-Care Council are provided by DSS. The *Code of Virginia* requires the Council, the State Board of Social Services, and the State Board of Education to collaboratively establish a formal method to recognize entities accrediting child day centers.

Creation and Subsequent Elimination of the Virginia Council on Child Day Care and Early Childhood Programs. In 1989, at the request of the Secretary of Health and Human Resources, the General Assembly created the Virginia Council on Child Day Care and Early Childhood Programs (Early Childhood Council). The purposes stated for this agency were to "plan, coordinate and evaluate all child day care and early childhood development programs within the Commonwealth, emphasizing early childhood developmental programs for at-risk four-year olds." Its responsibilities included: (1) promulgating regulations, (2) serving as a clearinghouse for child

day care and early childhood programs, (3) providing grants and loans, and (4) developing a Biennial State Plan for Child Day Care and Early Childhood Programs.

The Early Childhood Council engaged in a number of activities. These included funding of a scholarship program for day care providers, a grant program for loans to child care start-up facilities, and grant programs to improve the quality of child care. The Early Childhood Council also managed the State's role in the Head Start Program. The 1996 General Assembly approved House Bill 569, which disbanded the Council effective July 1, 1996. The Council's programs were transferred to the Department of Social Services, but the statute did not address whether the Council's statutory purposes were also to be transferred to DSS.

Commission on Early Childhood and Child Day Care Programs. House Bill 1778 of the 1991 General Assembly Session created the Commission on Early Childhood and Child Day Care Programs. The Commission continues in statute the work of the former Joint Subcommittee Studying Early Childhood and Day Care Programs which had been established during the 1987 General Assembly session (Senate Joint Resolution 167 and House Joint Resolution 299). The purpose of the Commission is to "study and provide recommendations addressing the need for quality developmental early childhood and child day care programs and services." The Commission was granted 15 specific duties, including provisions to:

- develop a mechanism for the phased integration of and funding for quality development early childhood and child day care programs;
- assess the need for additional child day care services, and the types of program options desired by families, including the need for employer-sponsored child day care services for state employees;
- monitor and evaluate the implementation of programs to provide appropriate education and training for early childhood professionals and child day care providers;
- develop incentives to promote the recruitment and retention of qualified early childhood professionals and child day care providers; and
- review the provisions and monitor the implementation of...federal legislation and regulations concerning early childhood and child day care programs as may be enacted, and recommend such amendments to relevant state statutes as may be necessary to ensure consistency between state and federal law and regulations.

Changes as a Result of the JLARC Study

Several legislative changes were enacted in the early 1990s as a result of the JLARC study of child day care. These included the following:

- HJR 123 (1990) requested the Child Day-Care Council to develop regulations that establish a basic level of care, develop uniform standards for provider training, and expand the crimes checked in the criminal records clearance check.
- HB 1035 (1990) (1) required the Child Day-Care Council to develop regulations for before-school and after-school child care programs, nursery schools, and child day care camps, (2) created a new category of family day care homes called group family day care homes, requiring licensure for homes with six to 12 children, (3) removed the licensure exceptions for preschools, nursery schools, government sponsors of child care, and hospital-sponsored child care for employees, (4) required a criminal records clearance for each staff member at religiously-exempt centers, and (5) granted the Commissioner of the Department of Social Services authority to investigate complaints at exempted centers.
- HB 1862 (1991) provided for voluntary registration of family day care home providers caring for fewer than six children.
- SB 777 and HB 2830 (1992) directed the Child Day-Care Council to promulgate regulations for previously excepted facilities now subject to licensure.

Changes in Funding Available for Child Day Care Services

At the time of the 1990 JLARC report there was relatively little direct State or federal funding of child day care for low-income families. The federal government had begun reducing its funding in 1981 so that by 1989 the only significant source of direct federal funding for child day care services was for families receiving Aid to Families with Dependent Children (AFDC). Consequently, the State began to directly fund child day care services in 1986 with the Child Day Care Fee System. By 1989, a second program referred to as the Child Day Care Voucher Pilot study was initiated by the State on a limited basis but was not widely adopted.

The child day care fee system was approved by the General Assembly in 1986. Initially the system was optional for localities to participate in and the funding was a relatively modest \$1.5 million for each year of the biennium. The fee system was established to assist working families who met income eligibility requirements or were "income eligible." Under this system, clients interested in day care assistance apply at local social service offices and payments are generally made directly to the day care provider.

Funding for child day care assistance both for families who receive public assistance or are income eligible has increased significantly in the last 10 years. There have been significant increases in funding from federal, State, and local governments for child care. Much of this increase in funding is due to the federal and State welfare reform initiatives, which provide a "transitional" year of child care and now includes

substantial federal funding. Child day care assistance is expected to exceed \$100 million in federal, State, and local funding in fiscal year 1998.

STUDY APPROACH AND METHODS

As the 1990 JLARC review found, the State has two primary interests in child care. The first is in ensuring the health and safety of children in care. The second is in promoting quality child care that is available and affordable. This review examined the State's three primary activities related to child care that seek to fulfill these two interests. These activities are: development of child day care regulations, enforcement of these regulations through the licensing program of the Department of Social Services, and funding of child day care assistance for families who are unable to afford care.

JLARC staff developed two primary research questions to address these issues:

- How well does the current regulatory system for child day care ensure the State's interest in protecting the health and safety of children in care?
- How adequately does the Department of Social Services promote quality day care that is affordable and widely available?

To examine these research questions, JLARC staff conducted a number of research activities. These included mail surveys, structured interviews, reviews of secondary data, file reviews, and observations of DSS licensing specialists.

Mail Surveys

JLARC staff conducted three mail surveys during this review. Surveys were sent to all DSS licensing specialists, all local social service directors, and a sample of child day care center operators.

Survey of DSS Licensing Staff. JLARC staff surveyed all 46 DSS regional licensing staff with child day care responsibilities (some licensing staff review only child care facilities, some review only adult care residences, and some review both). There were 45 responses, for a response rate of approximately 98 percent. No sampling error was calculated for this survey, as the entire population was surveyed rather than a randomly-sampled subset.

Survey of Local Department of Social Services Directors. JLARC staff surveyed all 123 local social services directors (two agencies have merged since the time that survey responses were received). Responses were received from 113 local departments, for a response rate of approximately 92 percent.

Survey of Child Care Centers. JLARC staff surveyed a sample of facilities currently licensed as child day care centers. This includes: day care centers, Head Start Programs, summer camps, before and after school programs, and preschools. Of the 2,143 facilities licensed as child day care centers, JLARC staff surveyed 233, or approximately 11 percent. Responses were received from 146 centers, for a response rate of approximately 63 percent.

Structured Interviews

JLARC staff conducted a number of structured interviews as part of this review. These include individual interviews with Department of Social Services staff, group interviews with local social services staff, and interviews with other persons involved in child care issues.

Interviews with Department of Social Services Staff. JLARC staff conducted structured interviews with all eight DSS regional licensing administrators, all five DSS regional directors, and all three DSS regional day care specialists. In addition, JLARC staff conducted structured interviews with the following DSS staff:

- deputy commissioner for operations,
- licensing division director,
- licensing regional operations manager,
- director of policy and planning,
- budget staff,
- finance director,
- regulatory coordinator,
- local programs division director, and
- day care unit staff.

Structured Group Interviews with Local Social Services Staff. JLARC staff held two structured group interviews with local social services staff to discuss funding and other issues related to child day care. The first of these interviews was held in Richmond on April 24, 1997 and was attended by seven local staff. The second of these interviews was held in Roanoke on May 13, 1997 and was attended by six local staff.

Other Structured Interviews. JLARC staff also conducted structured interviews with other individuals in Virginia involved in child day care issues. These included:

- the chairperson and three members of the Child Day-Care Council,
- the chairperson of the State Board of Social Services subcommittee on the Child Care Development Block Grant,

- representatives from the Virginia League of Social Services Executives, and
- the Secretary of the Virginia Montessori Association.

Additionally, JLARC staff conducted structured telephone interviews with child care licensing staff from 15 other states, primarily Southeastern states. The purpose of these interviews was to confirm the accuracy of information in secondary data bases concerning child care regulations in other states. Additional follow-up questions related to the regulations were also asked.

Data, Document, and Literature Review

JLARC staff reviewed secondary data related to child care. Data reviewed included academic studies related to child care quality, datasets on child care regulations in the 50 states, and general information related to child day care. In addition, JLARC staff reviewed DSS funding data, data on allowable variances granted by the department, and workload data provided by DSS.

Review of Licensing Files

JLARC staff reviewed a sample of DSS licensing files. The purpose of this file review was to identify case examples of the efficacy of DSS enforcement of child day care regulations. JLARC staff visited each of the eight DSS licensing offices to conduct file reviews. Files to be reviewed were identified by taking a sample of child care facilities that had at least one founded complaint registered during the past year. In addition, licensing files mentioned in other contexts (such as structured interviews or survey responses) were reviewed. JLARC staff reviewed a minimum of six files at each regional licensing office. A total of 75 files were reviewed.

Observation of DSS Licensing Staff

JLARC staff observed 15 DSS licensing specialists (approximately one-third of the total) in the course of their duties. JLARC staff observed at least one licensing specialist from each licensing office. The purposes of these observations were to:

- assess consistency among DSS offices,
- conduct a face-to-face unstructured interview with licensing staff, and
- gain familiarity with DSS licensing procedures and practices.

The DSS licensing specialists were observed in a variety of settings. These included:

- monitoring visits to family day homes;
- monitoring visits to child day care centers, preschools, and before/after school care programs;
- investigation of a complaint at a child day care center;
- licensing renewal of a family day home; and
- licensing renewal study of a child day care center.

REPORT ORGANIZATION

This report is organized into four chapters, including this introduction. Chapter II examines the regulatory structure for child day care. Chapter III examines the DSS licensing program. Finally, Chapter IV reviews the State's funding of child day care assistance.

II. Regulation Development

The State regulates child day care to protect the health and safety of children in care. The development and promulgation of regulations for child care is currently divided between two regulatory entities. The Child Day-Care Council (CDCC) promulgates regulations for day care centers. The State Board of Social Services (DSS Board) promulgates regulations for family day homes. This division of responsibility for regulation development, which was implemented in 1987, has resulted in problematic inconsistencies between regulations for child day centers and regulations for family day homes. In addition, the overlap in responsibilities for promulgating day care regulations is inefficient and potentially creates confusion among citizens. A single regulatory authority for child day care would better meet the State's interest in regulating child day care providers.

While proposed regulatory changes by the Child Day-Care Council have proven to be controversial, Virginia's current regulations for child day care take an approach that is in the mid-range in terms of stringency with regard to the 50 states. These regulations, also referred to as "minimum standards," generally promote the State's interest in protecting the health and safety of children in care. However, some modification of the regulations may assist the Commonwealth in better protecting the health and safety of children. In addition, the General Assembly may wish to consider establishing certain important components of child day care in statute, rather than in regulation.

REGULATORY RESPONSIBILITY FOR CHILD DAY CARE IS SPLIT BETWEEN TWO REGULATORY ENTITIES

The division of responsibility for promulgating child day care regulations began in 1987, when the General Assembly created the Child Day-Care Council. Prior to that time, all regulations for child care had been promulgated by the DSS Board. Since 1987, the Child Day-Care Council has promulgated regulations for child day care centers, while the DSS Board has continued to promulgate regulations for family day homes, voluntary registration, and family day care systems.

As a result of the bifurcated structure for promulgating child day care regulations, some problematic inconsistencies have developed in the regulations for child day care. The most significant of these inconsistencies regards regulations concerning mandatory checks of the statewide child protective services (CPS) central registry and supervision of children in care. Consolidation of regulatory authority for child care in one entity would offer the opportunity for the most protective features of each of the current sets of regulations to be adopted.

In addition to inconsistencies in the regulations, the current structure for child day care is both inefficient and creates potential for confusion among citizens and De-

partment of Social Services licensing staff. The General Assembly may wish to consider consolidating regulatory authority in a single regulatory entity.

Inconsistencies in Child Care Regulations Have Developed as a Result of the Current Regulatory Structure

As a result of the division of responsibilities for child day care, several problematic inconsistencies have developed between the regulations for child day care centers and family day homes. A founded complaint of child abuse or neglect on the statewide child protective services central registry disqualifies an individual from working as a family day home provider, but does not prevent an individual from operating or working in a child day care center. Regulations for child day care centers require sight and sound supervision of children at all times; there is no corresponding requirement for family day home providers.

Family Day Home Providers Are Subject to a CPS Registry Check, but Child Day-Care Center Operators and Staff Are Not. Section 63.1-248.7 of the *Code of Virginia* requires the Department of Social Services “To maintain a central registry of all cases of child abuse and neglect within the Commonwealth.” Section 63.1-248.6 requires that “When investigation of a complaint reveals cause to suspect abuse or neglect,” local departments of social services must “complete a report and transmit it forthwith to the central registry.”

Section 22 VAC 40-700, et seq of the *Virginia Administrative Code*, promulgated by the State Board of Social Services, establishes the regulations for operation of the central registry for child abuse. The central registry includes findings from investigations of complaints of child abuse by local child protective services agencies that are deemed founded complaints. Founded complaints are maintained on the central registry for between three and 18 years, depending on the seriousness of the risk of harm to the child. Unfounded complaints are not listed on the central registry. Exhibit 1 shows the definitions of each potential disposition of a complaint of child abuse and the amount of time that each type of disposition is required to be maintained on the central registry.

It is important to emphasize that being listed on the CPS central registry does not indicate a criminal conviction. Rather, an individual is listed as a result of an administrative determination. However, the standard for a founded complaint of abuse is relatively high: “clear and convincing evidence that abuse or neglect has occurred.” An individual has three levels of administrative appeals if he or she is determined by the local agency to have a founded complaint of abuse. These levels of appeals include:

- a local (informal) conference,
- an administrative hearing, and
- judicial review.

Exhibit 1

Regulatory Definitions Related to the CPS Central Registry

<u>Category of Disposition</u>	<u>Regulatory Definition</u>	<u>Length of Time Listed on the Central Registry</u>
<i>Founded (Level 1)</i>	A review of all the facts shows clear and convincing evidence that child abuse or neglect has occurred. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in serious harm to a child.	18 years past the date of complaint
<i>Founded (Level 2)</i>	A review of all the facts shows clear and convincing evidence that child abuse or neglect has occurred. This level includes those injuries/conditions, real or threatened, that result in or were likely to have resulted in moderate harm to a child.	Seven years past the date of complaint
<i>Founded (Level 3)</i>	A review of all the facts shows clear and convincing evidence that child abuse or neglect has occurred. This level includes those injuries/conditions, real or threatened, that resulted or were likely to have resulted in minimal harm to a child.	Three years past the date of complaint
<i>Unfounded</i>	A review of the facts shows no reason to believe that abuse or neglect occurred.	Not listed on the central registry

Source: JLARC staff review of the *Virginia Administrative Code*.

At present, regulations promulgated by the State Board of Social Services (§ 22VAC40-110-170) require that:

All members of the family day household 14 years of age and older including relatives, lodgers, care givers, and employees shall not be listed in the Child Protective Services Central Registry, and shall have a Child Protective Services Central Registry clearance conducted no more than 90 days before the date of initial application.

The effect of this regulatory provision is to prevent anyone who is listed on the central registry (or who has a family member in the same household listed on the central registry) from being licensed as a family day home provider. This regulatory

provision has been effective in preventing some individuals with serious findings of child abuse or neglect from being licensed (or re-licensed). For example:

A family day home provider left several preschool children (the youngest of whom was two years old) unattended for several hours in the parking lot of a hospital. The local social services agency determined that the case was Category 1 neglect. The family day home provider was advised when applying for re-licensure that they were not eligible due to this finding. The application for re-licensure was withdrawn.

A child's leg was broken in care when a family day home provider attempted to force the child to eat. The case was ruled as founded physical abuse by the local agency and is being investigated for criminal abuse charges. The provider will not be eligible for re-licensure as a family day home provider but will be eligible to work in or operate a day care center.

According to regulations promulgated by the State Board of Social Services, a founded complaint is an administrative decision by the local child protective services agency; it is not tantamount to a criminal conviction. Nevertheless, the current standard for a founded complaint ("clear and convincing evidence") is relatively stringent. It is noted that the State Board of Social Services is considering revising this standard.

At present, there are no requirements for checking the CPS registry for operators or employees of child day care centers. According to an interview with one member of the Child Day-Care Council, the Council feels that someone should not be banned from employment in a day care center because of an administrative determination (as opposed to a criminal conviction). Interviews with DSS licensing staff suggest that the issue of the CPS registry is the most significant inconsistency between the regulations promulgated by the Child Day-Care Council and the State Board of Social Services.

Recommendation (1). The General Assembly may wish to consider revising the *Code of Virginia* to require that no person shall be eligible to operate or work in a child day care center who is listed in the Child Protective Services Central Registry, and a Child Protective Services Central Registry clearance shall be conducted prior to licensure for center operators or within 30 days of beginning employment for all center staff and volunteers.

Different Standards for Supervision of Children in Care. Another significant difference between the standards for family day homes and those for child day care centers is the standard for supervision of children in care. The standards for child day care centers require that "children under 10 years of age shall be within actual sight and sound supervision of staff at all times."

There is no corresponding standard for family day homes. The supervision standard for family day homes states:

Children shall be supervised in a manner which ensures that the caregiver is aware of what the children are doing at all times and can promptly assist and redirect activities when necessary. In deciding how closely to supervise children, providers shall consider the following:

- Ages of the children;
- Individual differences and abilities;
- Layout of the house and play area;
- Neighborhood circumstances or hazards; and
- Risk activities children are engaged in.

Supervision of children in care is a critical health and safety issue. Inadequate supervision of children in care can have dire consequences. Four recent deaths in family day home care have both been linked to inadequate supervision of young children:

An infant in a licensed family day care home was left unattended in a high chair. The child was not properly secured, and the child's neck became caught in the high chair tray. The child died.

* * *

An infant in an unregulated family day home care was left unattended to nap in a portable crib. The portable crib's sides collapsed, entangling the child's neck. The child died.

* * *

An ill five year old in a licensed family day home was left unattended in a bath. The child drowned.

* * *

An infant in a licensed family day home was left to sleep unattended in an upstairs bedroom of a family day home and was not monitored by a baby monitor. A plastic dry cleaning bag had inadvertently been left hanging on the crib. The child pulled the bag into the crib with him and suffocated to death.

Inadequate supervision can also be an issue for older children. For example:

A seven year old child was found wandering alone, at night, by a police officer. The child had been missing for several hours from a family day home but had not yet been reported missing.

Some allowances for the unique nature of family day home care may be appropriate in devising a standard for supervision of children in care. However, at a minimum, sight and sound supervision of young children who are awake appears to be appropriate.

Recommendation (2). The State Board of Social Services should revise regulations regarding supervision of children in care. Standards for supervision of children in care should explicitly state the need for sight and sound supervision of infants and toddlers in care while they are awake and for supervision via baby monitor while young children are sleeping.

Current Regulatory Structure Is Unnecessarily Complex

The current regulatory structure for child care is unnecessarily complex and is potentially confusing to citizens. For example, JLARC staff observed during public hearings held by the State Board of Social Services that a number of comments made to the Board related to regulatory changes proposed by the Child Day-Care Council. Additionally, DSS staff have indicated that serving as staff to two different regulatory entities taxes scarce staff resources. DSS regional licensing specialists have also stated that inappropriate inconsistencies in the regulations creates additional workload on them, as well as potentially creating confusion among licensed providers (for example a former day care center worker who becomes a family day home provider).

At a minimum, the State should consider consolidating all regulatory authority for child care in one regulatory entity. This recommendation was initially made by the Governor's Commission on Government Reform and was proposed by the administration during the 1996 session of the General Assembly. The General Assembly could consider three options to accomplish this objective of consolidating regulatory authority for child care. The first would be to consolidate all regulatory authority in the Child Day-Care Council. Doing so would require revising the Council's membership to include family day home providers. The second option would be to eliminate the Child Day-Care Council and place all regulatory authority in the State Board of Social Services. The third option would be to place all regulatory authority for child day care in the State Board of Social Services but retain the current Child Day-Care Council as an advisory body to the State Board of Social Services. The advisory group could include members from family day home providers as well as day care centers.

Recommendation (3). The General Assembly may wish to consider consolidating regulatory authority for child day care in a single regulatory entity.

CURRENT DAY CARE REGULATIONS ARE IN THE MID-RANGE OF THE 50 STATES, BUT COULD BE IMPROVED

During late 1996, proposals for revising the minimum standards for child day care centers by the Child Day-Care Council prompted considerable controversy. At present, Virginia's regulations for child day care centers are neither the least stringent nor the most stringent of the 50 states and the District of Columbia. However, the regulations for both child day care centers and family day homes could be improved in some key areas.

Proposed Changes to the Child Day Care Center Regulations Have Been Modified and Will Not Be Finalized Until 1998

In the fall of 1996, the Child Day-Care Council recommended a number of changes to the regulations in child day care. These included:

- consolidating separate standards for pre-school and school-aged children into one set of standards;
- no longer endorsing specific products or organizations for staff training;
- eliminating minimum education requirement for teachers (currently high school diploma or G.E.D.) and requiring 24 hours of training; related to care in the first six months.
- amending required education and experience for center directors to no longer require either a GED or college level training;
- changing child care staffing ratios to allow balanced age groups for all centers (balanced age groups consist of five three year olds, five four year olds, and five five year olds with a staffing ratio of 1/15, an arrangement currently allowed only during the instructional part of the day for Montessori preschool programs);
- revising child care staffing ratios for four year olds from 1/12 to 1/15;
- eliminating regulatory language deemed unenforceable such as language about being sensitive to children's needs and age appropriate in interacting with children;
- eliminating regulatory language allowing mothers to breast feed in centers;
- eliminating criteria for the required eight hours annually of staff training;

- revising standards on the number of toilets needed for children in care; and
- adding parental involvement requirements to regulations.

As already mentioned, these proposed changes resulted in considerable controversy, particularly changes regarding staff qualifications and staff-child ratios. In response to public comment, the Child Day-Care Council amended its proposed changes to eliminate changes in the staff-child ratio for four year olds. In response to a letter from the Governor, the Council revised its proposed changes for staff qualifications to require a high school diploma, GED or verification of completion of home school programs approved by the State for teachers and program directors. In response to public comment, the Council revised the proposal for the balanced age group to require specific training in classroom management of mixed groups for staff teaching a balanced age group.

It is noted that, while a Notice of Intended Regulatory Action (NOIRA) has been published in the *Virginia Register* for these regulatory changes, DSS does not expect to finalize these regulations until October of 1998 at the earliest.

Exhibit 2 illustrates the schedule for the proposed regulatory changes regarding child day care. One unknown in the time line for promulgation of these regulations is the time that will be required for the DPB economic analysis and what changes, if any, will be required as a result of this analysis. Pursuant to the Administrative Process Act and executive orders 13 and 15, executive branch agencies are now required to submit proposed regulations to DPB prior to publishing the proposed regulation in the *Virginia Register*. It is noted that the regulations were resubmitted to DPB for additional review on July 1, 1997, as a result of changes made at the Child Day-Care Council's May 1997 meeting.

Virginia's Child Care Regulations Are in the Mid-Range Among States

JLARC staff compared Virginia's regulations for child care centers with regulations in the other 49 states and the District of Columbia. This comparison focused on regulations regarding staffing ratios and staff qualifications. In most cases, Virginia's regulations are at or near the mean staffing ratios for the 50 states. In no case is Virginia among the most stringent or the least stringent in terms of staffing ratios for a given age group of children. Table 2 shows the mean staffing level required, by age group (infants through age five), for each of the 50 states and the corresponding Virginia requirement.

Regarding the current proposal for balanced age grouping, currently 21 states permit similar groups (generally mixed age groups as opposed to exact balances of ages) in certain circumstances to have special staffing ratios higher than would be allowed normally for the youngest children in the group. Twenty-eight states do not allow balanced age groups to have more relaxed staffing ratios, requiring these groups to meet the staffing ratio for the youngest children in the group.

Exhibit 2

Schedule for Revision of Child Care Regulations

<u>Regulatory Action</u>	<u>Planned Completion Date</u>
Pre-NOIRA approved by Secretary of Health and Human Resources	April 1996
NOIRA published in <i>Virginia Register</i>	May 1996
Child Day-Care Council approved proposal to amend regulations	October 1996
Child Day-Care Council approved revised proposal to amend regulations	January 1997
Regulation submitted to DPB	February 1997
DPB prepares economic analysis	April 1997
Proposed regulation published in <i>Virginia Register</i>	July 1997
Hold public hearings	September 1997
Council review of public comment	January/February 1998
Proposed final regulation published	April 1998
End of 30 day adoption period	May 1998

Source: DSS time line dated 3/13/97.

Table 2

Mean Staff to Child Ratios* Among the 50 States

<u>Age Group</u>	<u>Mean Ratio</u>	<u>Highest Ratio</u>	<u>Lowest Ratio</u>	<u>Virginia Ratio</u>
Infants	1/4.44	1/6	1/3	1/4
Sixteen Months	1/5.04	1/8	1/3	1/5
Two	1/7.39	1/12	1/4	1/10
Three	1/11.06	1/20	1/5	1/10
Four	1/12.94	1/20	1/8	1/12
Five	1/16.52	1/25	1/10	1/20

*Virginia is one of 22 states permitting a higher staffing ratio during naptime.

Source: JLARC staff analysis.

Regarding staff qualifications, nine states currently have no requirements regarding prior education or experience for child day care staff (teachers). Virginia could be considered to be somewhat more stringent than these nine states simply by having some regulations for child day care staff qualifications. There are 27 states with specific educational requirements for teachers (usually a minimum of a high school diploma or a GED). There are 19 states (including Virginia) that require both specific education and experience.

Conversely, only two states have no requirements for center directors. Thirty states require specific educational qualifications for center directors. There are 24 states, including Virginia, that require a combination of both education and experience for center directors.

Forty-four states require annual training for center staff. Of these, 40 require a specific number of hours, and the mean number of hours required for full-time staff is 12.85. The hours of annual staff training required by other states ranges from three hours to 41 hours for full-time staff. Virginia requires eight hours of annual training for center staff.

Exhibit 3 compares selected child care center regulations in Virginia and surrounding states.

Most Providers Surveyed Feel Current Regulations Are Appropriate

As noted in Chapter I, JLARC staff surveyed 233 facilities currently licensed as child care center providers. There were 146 responses received for a response rate of about 63 percent. The majority of providers responding to the survey indicated that current regulations were neither too stringent nor not stringent enough.

Table 3 shows providers responses to the question "Are there currently any day care regulations that you think are overly burdensome or too stringent?" As can be seen from Table 3, approximately 90 percent of respondents stated that there are not any regulations that are overly burdensome or too stringent. Table 3 also shows providers responses to the question, "Are there currently any regulations that are not stringent enough?" Approximately 78 percent of providers answered "no" to this question, while approximately 22 percent answered "yes."

Providers also indicated general satisfaction with the DSS licensing program. Ninety-two percent of providers responding to the JLARC survey indicated that they were either very satisfied or satisfied with the DSS licensing program. Only 4.8 percent of providers responding to the JLARC survey indicated they were dissatisfied with the DSS licensing program.

Exhibit 3

Selected Day Care Regulations in Surrounding States

	<u>Kentucky</u>	<u>Maryland</u>	<u>North Carolina</u>	<u>Tennessee</u>	<u>Virginia</u>	<u>West Virginia</u>
Infant Ratio	1/5	1/3	1/5	1/5	1/4	1/4
Toddler Ratio	1/6	1/3	1/6	1/7	1/5	1/4
2 Year Old Ratio	1/10	1/6	1/10	1/8	1/10	1/8
3 Year Old Ratio	1/12	1/10	1/15	1/10	1/10	1/10
4 Year Old Ratio	1/14	1/10	1/20	1/15	1/12	1/12
Center Director Requires a GED?	No	Yes	Yes	Yes	Yes	Yes
Center Teacher Requires a GED?	No	Yes	Yes	Yes	Yes	Yes
Annual Hours of Training Required	12	3	Varies	6 for staff/ 12 for directors	8	0
Fines for Licensing Violations?	Yes	Yes	Yes	No	No	No
Child Protective Services Check?	Yes	Yes	No	No	No	No

Source: JLARC staff analysis.

Table 3

Providers' Responses Regarding Child Day Care Regulations

<u>Question</u>	<u>Yes</u>	<u>No</u>
Are there currently any day care regulations that you think are overly burdensome or too stringent?	9.4%	90.6%
Are there currently any regulations not stringent enough?	22.3%	77.7%

Source: JLARC survey of child day care centers, May 1997.

Some Aspects of Virginia's Regulations for Child Day Care Could Be Improved

JLARC staff identified five areas in which current regulations for child day care could be improved. Two of these areas have already been discussed in this chapter. These are recommendations to require child protective services registry checks for day care center operators and staff and to require sight and sound supervision of children in family day homes. Additional aspects of Virginia's regulations that could be improved include: the need for regulations concerning sleeping positions of infants, a tightened definition of family day home provider, and crimes which should disqualify persons from operating or working in child day care centers.

Regulations Should Require that Infants Be Put to Sleep on Their Backs or Sides. Recent research has identified sleeping position as a risk factor for Sudden Infant Death Syndrome (SIDS). According to a 1996 report by the Centers for Disease Control, *Sudden Infant Death Syndrome—United States, 1983-1994*:

...a strong association between the infant prone sleeping position and SIDS had been established by 1990. During 1992, the American Academy of Pediatrics began recommending that parents place infants on their back or side to sleep, and during 1994, the national "Back to Sleep" campaign began promoting the nonprone sleeping position.

While DSS staff have been attempting a public education campaign regarding sleeping position (the "Back to Sleep" program), sleeping position is an important health issue for infants that has been recognized in the medical literature for more than five years and should be addressed in regulations for both family day homes and child day care centers. In at least one case, improper sleeping position appears to have contributed to the death of a child in care:

A four month old baby in a licensed family day home was put to sleep on its stomach while ill. The family day home was out of ratio at the time. The child was not monitored by the provider while the child slept and died. The cause of death was ruled Sudden Infant Death Syndrome.

This issue also highlights one gap in the structure of the State's regulatory framework for child day care. While the statute establishing the Child Day-Care Council specifies representation from a pediatric health professional, neither regulatory entity for child day care is required to have a physician member. Given that the purpose of child care regulations is to protect the health and safety of children in care, the General Assembly may wish to consider requiring that the regulatory entity (or entities) for child care include the State Health Commissioner or the Commissioner's physician designee. This would help to ensure that child care regulations reflected the most recent medical research regarding risk factors for young children.

Definition of a Family Day Home Needs to Be Strengthened. The current statutory and regulatory definitions of family day homes do not explicitly state that family day home providers must regularly participate in care of children in the family day home. Interviews with licensing administrators revealed a trend in which individuals with full-time jobs are applying for licensure as family day home providers with the expectation that they will hire an assistant or assistants to actually provide care to the children in the family day home.

Much of the regulatory structure for family day homes is based on the tacit assumption that the person receiving the license to operate the family day home will be the primary caregiver. A person with a full-time job during the hours that care is provided clearly cannot play the role of primary caregiver. Consequently, the State's current regulatory framework for protecting the health and safety of children in care may not be adequate for these situations. The General Assembly should consider revising the statutory definition of a family day home to require that the person licensed as the family day home provider be directly involved in providing care.

The General Assembly Should Reconsider the Concept of Barrier Crimes for Child Day Care Providers. At present, a felony conviction does not prevent an individual from providing child care as a licensed family day home provider, day care center operator, or day care center staff member. Only certain "barrier" felonies or misdemeanors involving abuse, neglect, or exploitation of children or adults disqualify an individual from providing child care. A person can be convicted of multiple felonies, such as drug distribution, but still be eligible to provide child care. For example:

A family day home provider had been convicted of six felonies related to bad checks. The provider had also been investigated for attempting to sell a baby. DSS staff encountered a number of licensing problems with the provider, several of which were related to apparent dishonesty on the part of the provider. After a child died in care under circumstances the local police deemed suspicious (but not prosecutable), DSS attempted to revoke the provider's license. The revocation letter did not mention the felony convictions or any issues related to character, as the department felt it did not have sufficient regulatory authority to do so. The operator has since terminated the appeal and has moved from the licensed address.

Current day care center regulations and family day home regulations require that a provider be of "good character and reputation." However, DSS staff do not rely on this requirement, as they have been informally advised by the Office of the Attorney General that it is difficult to enforce. Current State law bars convicted felons from a variety of civil privileges, including voting and holding office. Preventing convicted felons from providing child care would represent a reasonable restriction on the activities of these individuals that would promote the health and safety of children in care.

Recommendation (4). The Department of Social Services should draft regulations to present to the Child Day-Care Council and the State Board of

Social Services regarding proper sleeping position for infants as recommended by the American Academy of Pediatrics.

Recommendation (5). The General Assembly may wish to consider amending the *Code of Virginia* to require that the State Health Commissioner or the Commissioner's physician designee be included in the membership of the regulatory entity or entities for child day care regulations.

Recommendation (6). The General Assembly should revise the statutory definition of family day homes to require that the person licensed as a family day home provider actually provide care to children during a majority of the time that the family day home is in operation.

Recommendation (7). The General Assembly may wish to consider revising the *Code of Virginia* to require that family day home providers, day care operators, and day care center staff not have been convicted of any felony within the past ten years.

III. Enforcement of Child Day Care Regulations

The Division of Licensing Programs within the Department of Social Services (DSS) is responsible for the enforcement of State licensing laws and regulations. DSS is also responsible for the evaluation of standards of practice to help child day care providers protect children's health, safety and well-being. However, even the best regulations are ineffective if they are not implemented by a credible enforcement program. Moreover, while regulations to protect the health and safety of children in care can also promote, to some extent, quality child care, compliance with minimum licensing standards is no guarantee of quality child care.

DSS's current management appears to have placed a renewed emphasis on enforcement of child care regulations. Some DSS licensing staff have described the current agency management as the most supportive of the licensing program in the program's recent history. The DSS management commitment to improving enforcement is appropriate, because JLARC staff's review identified significant concerns regarding the current enforcement system for day care regulation in Virginia. DSS has not allocated adequate resources to the licensing program to comply with its statutory mandate to conduct at least two inspections per year of each licensed facility. In calendar year 1996, there were at least 722 facilities that did not receive the statutorily required number of visits. Even more troublesome, there are currently 159 licensed facilities in Northern Virginia and Tidewater that are not receiving any routine inspections due to delays in filling vacancies in those regions. While the department continues to conduct licensing renewal studies and complaint investigations for these facilities, some have not been visited by DSS staff for as long as two years. This has the potential to place the health and safety of children in care at risk.

Additionally, the current State process for addressing serious noncompliance is overly long, and the length of this process is compounded by DSS's limited ability to use its existing regulatory powers due to the length of the appeals process for sanctions in the licensing program. DSS needs additional enforcement powers and additional flexibility to make use of its existing powers. DSS management also needs to communicate to licensing specialists that it will support them in taking corrective regulatory action when necessary. Finally, DSS needs to use intermediate sanctions rather than relying only on revocation and denial of licensure.

STATE LICENSURE FOCUSES ON HEALTH AND SAFETY BUT PARENTS MUST DETERMINE QUALITY

According to the 1997 report *Early Childhood Care and Education, an Investment That Works*, by the National Conference of State Legislatures, characteristics that determine program quality are:

- staff qualifications and training.
- staff/child ratios;
- child development curriculum;
- group size;
- provisions for health, safety and nutrition;
- appropriate evaluation procedures; and
- parental involvement.

Other research particularly stresses the importance of staff-child ratios in both providing quality care and in health and safety. Recent academic research has also emphasized the importance of staff-child interaction, particularly with young children. Appropriate interaction with infants and toddlers can actually stimulate brain development. Appendix B of this report includes a bibliography of relevant publications containing these research findings.

While the focus of State licensure for child care providers is ensuring health and safety, the minimum standards for licensed facilities do address many issues related to quality through its enforcement of minimum standards. However, the principal purpose of licensure is to ensure that a minimum level of health and safety standards are being met by providers of child care. Therefore, many of these standards address physical plant issues such as space needs in the classrooms and play areas, playground equipment, and toileting/diapering facilities. Minimum licensing standards also require day care providers to maintain specific staff-to-child ratios, and meet annual training requirements. Standards "screen" providers by requiring criminal background and child protective services central registry checks (for family day home providers only).

Standards further emphasize activities designed to promote emotional, social, and physical development. For example, standards direct providers to provide opportunities for individual self-expression, provide guidance to children in developing and working out ways of getting along with one another, and encourage children to do things independently, but to be available to comfort and help when needed. It is noted that some of this language is proposed for deletion by the Child Day-Care Council in its current revision of licensing standards for day care centers.

It is important to emphasize that compliance with all regulatory standards is no guarantee of a quality child care program. This is particularly true given the varying meaning of quality to different individuals. As a result, parents are responsible for ensuring that their children's care meets their family's criteria for quality care. On the other hand, the State's core interest in regulating child care remains promoting the health and safety of children in care. Inadequate staffing and limited enforcement authority both limit the effectiveness of DSS in carrying out this responsibility.

DSS IS INADEQUATELY STAFFED TO MEET STATUTORY MANDATE

During 1995 and 1996, DSS lost a number of key licensing staff as a result of the voluntary separation component of the Workforce Transition Act of 1995 and the department's inability to fill positions in a timely manner that became vacant through normal attrition. Three problems have occurred due to staffing limitations in the DSS licensing program. First, the department has not been conducting the statutorily required two visits per year for all facilities. In 1996, the department did not conduct two visits for at least 722 of the approximately 4,000 licensed facilities. Second, the department currently does not have staff to conduct routine monitoring visits. Third, DSS licensing specialists currently have caseloads that significantly exceed the caseload standard recommended by the Department of Personnel and Training (DPT) and the Department of Planning and Budget (DPB).

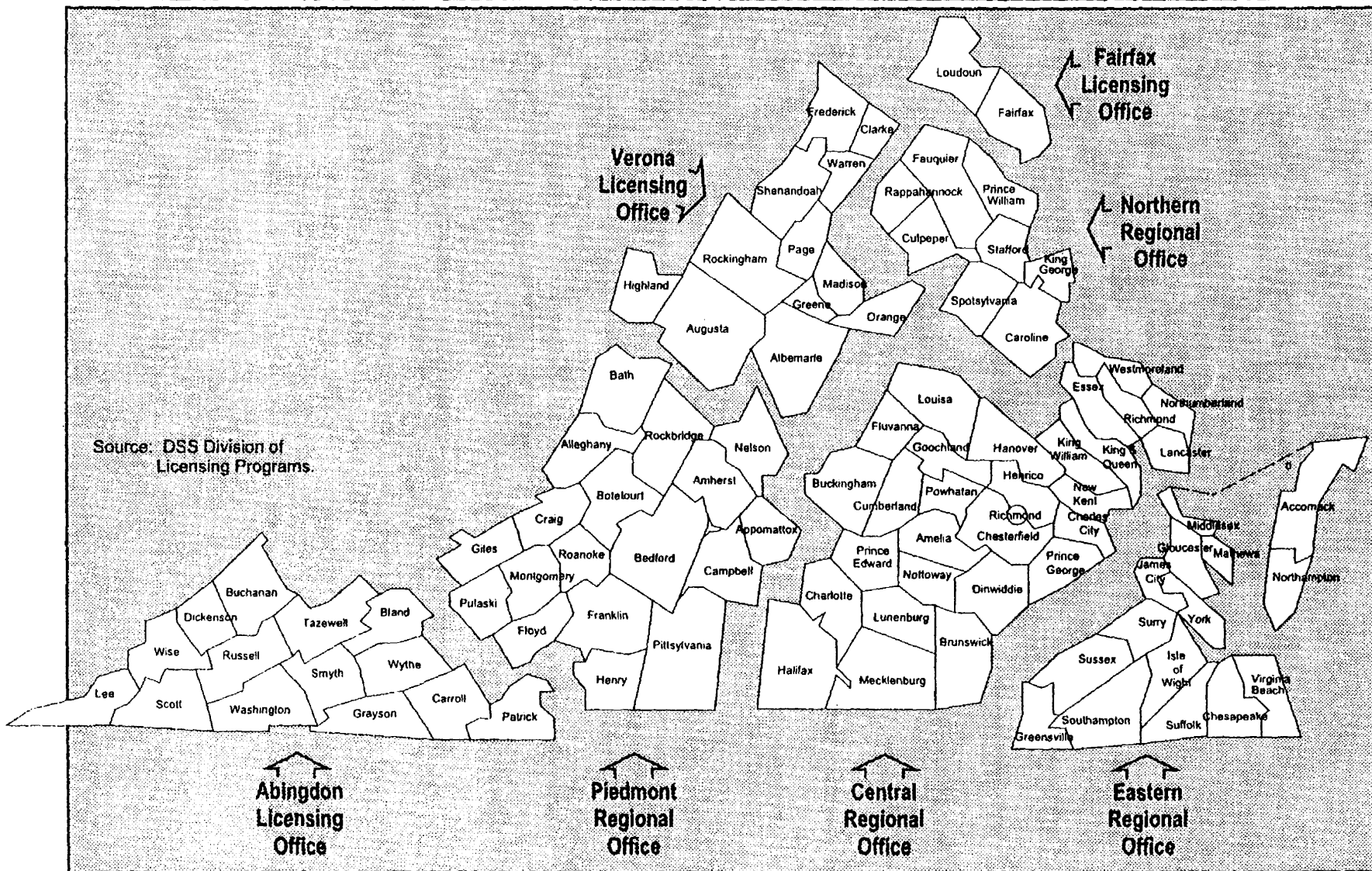
Key Licensing Vacancies Have Not Been Filled

In the area of child day care, DSS is, among other things, responsible for the establishment and interpretation of regulatory policies for child day care licensing, approval and revocation of licenses, review and approval of requests for variances to licensing standards, and administration of the exemption process for religiously-sponsored child care centers. Currently, there are eight local offices in four regions responsible for carrying out the licensing function. Figure 1 shows the locations of DSS licensing offices. The field work involving inspections, complaint investigations and allegations, and renewal studies for child care providers are carried out by 46 licensing specialists who report to licensing administrators in the various regional offices. While DSS administrators stated that turnover is not generally a problem among licensing staff, 18 positions were eliminated as a result of the Workforce Transition Act (WTA) and budget reductions in 1995. Additional vacancies occurring through normal attrition have not been filled in a timely manner due to the administrative hiring freeze in the executive branch.

DSS Licensing Staff Have Been Significantly Reduced. The Workforce Transition Act of 1995 (WTA) (Chapter 811, 1995 Acts of Assembly) was designed to, among other things, help reduce the size of the State employee workforce by providing non-essential State employees financial incentives to voluntarily separate from employment with the Commonwealth. The WTA generally restricts agencies from filling positions vacated by these employees. However, agencies were given the option of denying applicants for the voluntary separation whose positions were deemed critical.

Within the licensing division, a total of 11 positions were lost in the field and central office as a result of the WTA. In addition, an additional seven positions were not filled due to the executive branch hiring freeze. Table 4 details the positions which were abolished over the last two years or which are currently vacant.

Figure 1
DSS Licensing Regions and Regional Office Locations



Source: DSS Division of Licensing Programs.

Table 4

**Positions Eliminated in the Department of Social Services
Division of Licensing Since January 1, 1995**

<u>Position Title</u>	<u>Grade</u>	<u>Office Affected</u>	<u>How Eliminated</u>
Business Manager C	14	Central Office	Workforce Transition Act
Accountant	9	Central Office	Workforce Transition Act
Human Services Program Coordinator	12	Central Office	Workforce Transition Act
Program Support Technician	6	Central Office	Attrition
Licensing/Certification Regional Manager	14	Central Office	Workforce Transition Act
Human Services Program Coordinator (3 positions)	12	Central Office	Attrition
Licensing/Certification Program Manager	15	Central Office	Workforce Transition Act
Program Support Technician	6	Central Regional Office	Workforce Transition Act
Licensing Specialist (3 positions)	10	Eastern Regional Office	Workforce Transition Act
Licensing Specialist	10	Eastern Regional Office	Attrition
Licensing Specialist	10	Northern Regional Office	Attrition
Licensing Specialist	10	Fairfax Licensing Office	Workforce Transition Act
Licensing Administrator	12	Piedmont Regional Office	Workforce Transition Act
Licensing Specialist	10	Piedmont Regional Office	Attrition

Source: Department of Social Services, Division of Licensing, spring 1997.

As indicated, the position of licensing administrator in the Piedmont Region (located in Roanoke) was eliminated two years ago as a result of the WTA. Supervision of this region is currently being performed by the licensing administrator from the Abingdon Licensing Office, who divides his time between the two offices which are more than 100 miles apart. As a result, specialists in these offices are left without supervisory oversight for about half of the time. Further, this administrator is responsible for the supervision of both the children and adult licensing programs in these regions. While the experience of the specialists has made this arrangement somewhat manageable, stressing resources in this way can reduce the efficiency of licensing activities.

As can be seen from Table 4, there were four licensing specialist positions eliminated as part of the WTA, in addition to the licensing administrator already discussed. These positions appear to be necessary to the department's statutory mandate to license and monitor child day care facilities. As discussed below, one consequence of reduced staffing in the licensing program, particularly the licensing specialist positions, has been DSS's inability to conduct the two inspections per year required by law.

Additionally, the work of one regional licensing office has been hampered by lack of clerical support. Originally, there were two program support technicians in the Central Regional Office. One position was eliminated by the WTA. The other position has been vacant since November 1996. At the time this position became vacant, the processing of initial applications for licensure were being delayed between ten days and six weeks, the follow up and processing of statutorily-mandated materials submitted by religiously-sponsored child day centers was backlogged five to six months, and administrative responsibilities such as ordering forms and initiating the processing of renewal application notices were being carried out by the licensing administrator. While central office staff were temporarily transferred to the Central Region to help with the backlog, the regional licensing administrator and licensing specialists continue to rotate daily telephone coverage averaging 40 to 60 calls per day, perform clerical duties, and respond to information requested under the Freedom of Information Act.

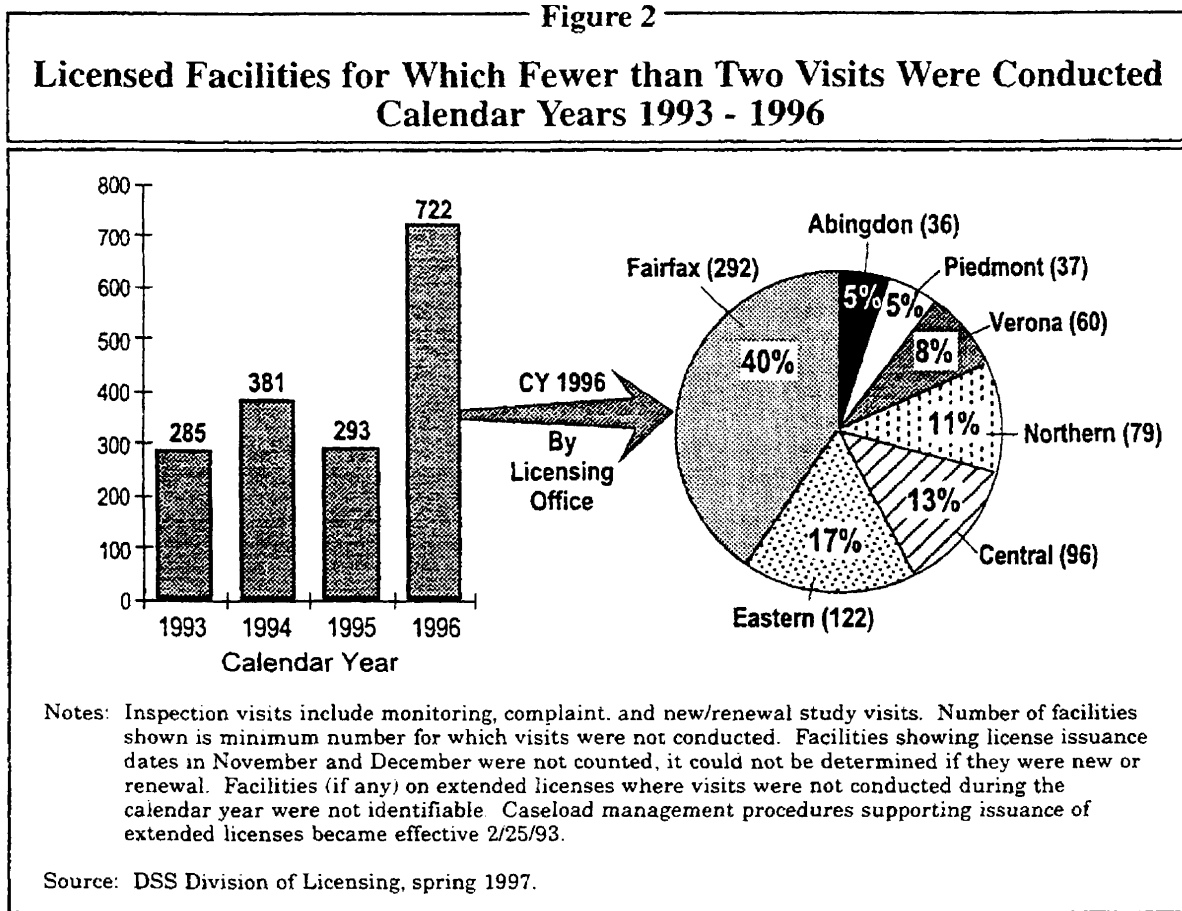
DSS Is Not Meeting Its Statutory Mandate for Inspections of Child Care Facilities

Section 63.1-196.1 of the *Code of Virginia* states:

All licensed [child care] facilities shall be inspected not less than twice annually and one of those inspections shall be unannounced.... The Commissioner may extend or shorten the duration of licensure periods whenever, in his sole discretion, it is administratively necessary to redistribute the workload for greater efficiency in staff utilization.

In calendar year 1996, DSS failed to conduct the statutorily mandated two visits per year for at least 722 of the 4,005 licensed facilities in the State (approximately 18 percent). DSS staff explained that the failure to comply with statutory requirements was due to lack of staff caused by the WTA and by DSS's failure to fill positions that have since become vacant through attrition. With regard to the 722 facilities which did not receive two inspections, the DSS regional licensing operations manager wrote to JLARC that "because of the way in which our automated system maintains and overwrites data, there could be additional programs that did not receive the required visits, but there would be no fewer than these." Figure 2 shows the distribution of the 722 cases by region.

While failure to conduct the required number of annual visits for 722 facilities in 1996 is cause for concern, the lack of staff to handle some caseloads exacerbates the



problem. There are currently 159 cases in the Fairfax and Eastern Offices that have no licensing specialist assigned to them, because the specialists previously handling the cases left the agency. Some of these cases do not appear to have been visited for more than two years, according to data provided by DSS regional staff.

At present, for these 159 facilities, DSS staff are only conducting complaint investigations and renewal studies. Renewal studies are conducted at the time of the expiration of a license. For some facilities, which have two or three year licenses, renewal studies are only conducted every two or three years. Therefore, if no complaints were received about a facility, it could go as long as three years without being visited if it were part of the unassigned caseload. This can potentially put the health and safety of the children in care at risk.

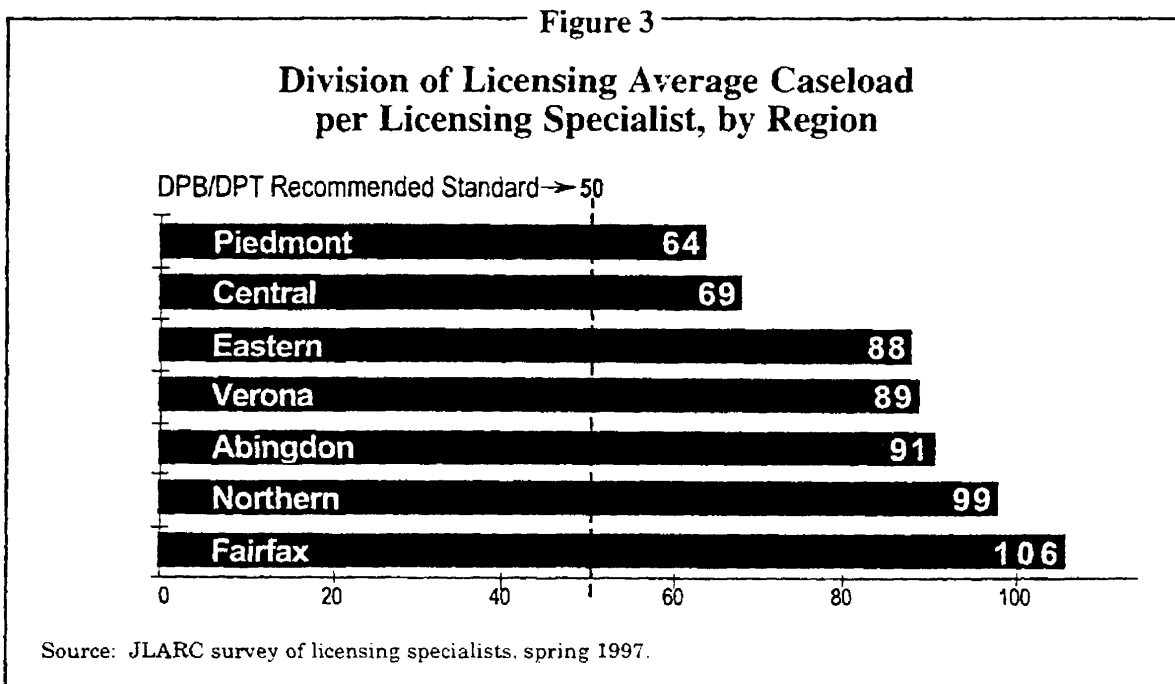
Of the 159 unassigned cases, 59 were part of the 722 cases that did not receive two visits in 1996. Therefore, it appears that DSS may have more than 800 cases that will not receive the mandated two visits in 1997. Recognizing the problem of the unassigned cases, DSS has received permission to hire one licensing specialist each for the Eastern and the Fairfax Office. While filling these positions may address the 159 unassigned cases, the problem of being unable to conduct two visits per year for all licensed

facilities will remain. This is because DSS licensing specialists currently have caseloads far in excess of the levels recommended by DPT and DPB.

Caseloads Significantly Exceed Recommended Standards

Forty-six licensing specialists in four regional DSS offices are currently responsible for licensing and certifying child care centers as well as licensing family day care homes and family day care systems. Although the number of licensed providers has increased by more than 100 percent since the spring of 1990, the number of licensing specialists has only increased by 53 percent. The 1987 report *Staffing the Regulation of Human Care Facilities and Programs* prepared jointly by the Department of Planning and Budget, the Department of Personnel and Training, and the Department for Information Technology (DIT) recommended an average caseload of 50 cases per specialist for child non-residential programs. This caseload was considered reasonable given the responsibilities of DSS inspectors for children's programs at that time, and recommended increases in clerical/administrative support in the regions.

When JLARC surveyed licensing specialists in January 1989, the reported average caseload per specialist was 40. Today, average caseloads substantially exceed both the 1989 level and the recommended level. In Northern Virginia, caseloads are currently as high as 100 cases per specialist. Figure 3 lists the average caseload by region reported by licensing specialists in JLARC's April 1997 survey of licensing specialists. In 1989, 61 percent of the survey respondents felt their current caseload was unreasonable. In 1997, 80 percent of the licensing specialists indicated that their caseloads were unreasonable.



Many licensing specialists expressed concern that high caseloads reduce their time with providers which could impact the protection of children in care:

If the purpose of the children's division of licensing is to provide service enabling the safety, health, and the development of children, caseloads must be reduced from the present day status.

* * *

Each specialist having over 80 cases in their caseload makes it difficult to find the time each month to keep up with quality monitoring visits plus investigating complaints and allegations (which take priority).

* * *

The current caseload does not allow for planning and reorganizing the work on a regular basis – an important management tool. The number of cases does not allow time to (1) process them within required time frames, i.e. establish deadlines; (2) provide the level of monitoring and/or consultation that enables poorly performing licensees to improve their understanding of standards, increase their skills in implementing standards, and thereby better serve children; and (3) promptly carry out negative actions thoroughly.

* * *

To be effective, we have to have a caseload that will allow us time to not only visit the facilities, but to do appropriate follow-up on problem facilities when needed. When caseloads are too large, only the "hottest" issues get addressed, while the minor ones can be left to escalate.

Staff shortages have also required some licensing specialists for children's programs to manage adult care residencies as a part of their caseload. This is particularly a problem in the Piedmont Regional Office, which lost a licensing specialist position for the adult program. Consequently, several specialists in the Piedmont Office are managing child day care and adult care residence caseloads. Some licensing specialists indicated in their survey responses that managing both types of caseloads is difficult:

Having a mix of adult and children facilities requires a much broader knowledge base. [It] means you attend all trainings, review all program literature which is much more time consuming than if responsible for one program. [It] also makes it more difficult to be tuned in to the finer subtleties of each program.

* * *

... (1) complaints and routine visits (renewal studies, monitoring visits) take 2 to 3 times longer in ACR's [adult care residences] than in CDCs [child day centers] and certainly FDH's [family day homes]. ACR complaints are usually much more complex than complaints in CDC's/FDH's. (2) Because of a mixed caseload (adult/children's facilities), I am expected to have or develop a much broader knowledge base. This requires frequent participation in a variety of workshops and review of copious amounts of literature, including policy interpretation, etc. Those of us who carry a mixed caseload need to have performance measured by a different yardstick at the very least.

Non-recurring activities such as new applications, complaint investigation, allegations, and monitoring voluntarily registered providers add a small but important component of a licensing specialist's workload that is not accounted for by analysis of the specialist's caseload. Complaint investigations and allegations take priority over other activities and must be completed within 21 days. These investigations can require several visits depending on the seriousness or complexity of the case. DSS is required to monitor 20 percent or 200 providers voluntarily registered through contracting entities. Although it appears that specialists rarely monitor more than 12 of these a year, it increases an already stressed workload and requires them to be familiar with yet another set of standards.

Recognizing the need to better distribute the workload with the increasing number of providers, the licensing division developed internal caseload standards. During the late 1980s, staff determined that inspections for family day homes required substantially less time to complete than child care centers. Therefore, internal caseload standards were set at 50 child care centers per specialist, and 100 family day homes per specialist to keep a balance of the workload among specialists and assist in budget requests for additional staff.

The distinction between family day homes and child care centers had not been recommended by the DPT/DPB study. Interviews with licensing specialists, observation of licensing visits, and review of case files by JLARC staff suggest that family day homes should not be counted as less than a day care center for purposes of calculating workload. Family day homes are a potentially higher risk setting than a child care center and may require substantially more time on the part of the licensing specialist for informal consultation and other informal enforcement activities. Moreover, minimum standards for family day homes have been considerably strengthened since DSS decided to count family day homes as half of a day care center for purposes of workload.

The adoption of Senate Bill 777 in 1993, gave DSS the ability to license for up to three years. As a result, internal caseload standards were increased to 60 child care centers or 100 family day homes per specialist, though no in-depth review was conducted by either DPB or DPT to justify this change. It is noted that only two of DSS's regional licensing offices are meeting even the agency's higher internal caseload standard. DSS licensing division management has taken other steps to adjust workload to

reflect higher caseloads. According to the regional operations manager, the department is currently attempting to address caseload management problems by conducting less comprehensive inspections and prioritizing reviews by visiting the most problematic centers more frequently. The *Caseload Management Procedures Guide*, developed by DSS in 1994, is designed to:

- provide a structure for assessing facility performance that is used statewide in order to enhance customer protection and use staff time most effectively;
- define the minimum level of supervision required for each facility; and
- identify facilities that need special attention for risk reduction actions.

The department is currently modifying this document through the development of a *Performance-Based Licensing and Monitoring Guide*. This guide attempts to address some of the problems resulting from the increased caseload with added emphasis on enhanced consumer protection and using staff time most effectively. A final draft of this guide is expected sometime in July 1997. In addition to these efforts, the ability to license for up to three years as delineated in the *Code* is designed to increase the likelihood that cases that need the most attention receive it.

The operations of the licensing function within DSS have evolved since the 1987 DPB/DPT staffing study, which recommended a caseload standard of 50 cases per specialist. In fact, when licensing specialists were asked in 1997 what they would consider a reasonable caseload, the average response was 60 cases per specialist. This, however, is not achievable with current staffing levels and workload.

While DSS's caseload management approach is a sensible way to triage its workload, given inadequate resources, it is not a substitute for having adequate staff to comply with the department's statutory mandate for conducting at least two visits per year for each licensed facility. It is emphasized that the two visits per year is meant to be a minimum number of visits, and the department ideally should conduct significantly more visits per year for problem facilities.

DSS needs to staff its licensing program appropriately to, at a minimum, comply with its statutory mandate. DSS management acknowledge that additional staff may be necessary, but state that they need complete process improvements (such as eliminating unnecessary paperwork) to the program before the proper staffing level can be determined. It appears that one factor limiting DSS's ability to staff the licensing program effectively is the administrative hiring freeze in the executive branch. Since the imposition of this administrative hiring freeze by Executive Order 38 (1994), the General Assembly has exempted a number of functions of State government from the hiring freeze. Section 4.7(e) of the general conditions of the 1997 Appropriation Act exempts positions in public safety, mental health, natural resources, higher education, and public health from any administrative hiring freeze. Given the critical health and safety nature of DSS licensing positions and the problems DSS faces with staffing in

the licensing function, the General Assembly may wish to consider amending the general conditions of the Appropriation Act to exempt DSS licensing positions from any administrative hiring freeze.

Recommendation (8). The Department of Social Services, in conjunction with the Department of Planning and Budget, should expedite the process to fill current vacancies within the division of licensing to relieve the current backlog of inspections and unmanaged caseloads.

Recommendation (9). The Department of Social Services should hire sufficient licensing staff to conduct the number of visits required by the *Code of Virginia* as well as additional visits as warranted by the compliance history of the given facility.

Recommendation (10). The General Assembly may wish to consider amending the general conditions of the Appropriation Act to exempt the Department of Social Services licensing positions from any administrative hiring freeze.

DSS NEEDS ENHANCED AUTHORITY AND GREATER WILLINGNESS TO ADDRESS LONG-TERM NONCOMPLIANCE

The great majority of child care providers generally comply with health and safety regulations and do not threaten the health and safety of children in care. However, one of the licensing program's core responsibilities is addressing serious instances of noncompliance with minimum health and safety regulations, particularly when the noncompliance threatens the health and safety of children in care. Consistent, timely, and certain enforcement of child care regulations is particularly important because these regulations are only minimum standards needed to guarantee health and safety of children in care. Failure to comply with minimum standards, particularly serious noncompliance on a repeated basis, potentially jeopardizes the health and safety of children in care.

At present, enforcement of child care regulations is relatively consistent, in the sense that JLARC staff identified no examples of unfair treatment in the enforcement process. However, enforcement of child care regulations is neither timely nor certain. In particular, the department has experienced difficulty in addressing long-term, serious non-compliance by licensed facilities. The department has also experienced difficulty in obtaining injunctive action against facilities operating illegally.

There are four reasons for the difficulty DSS has in addressing serious, long-term noncompliance. The first is the staffing shortages discussed previously in this chapter. The second is limits on the department's ability to use intermediate sanctions to correct noncompliance before it escalates to a level at which revocation or denial of a license are needed. The third reason for delay in addressing serious, long-term non-

compliance is delay internal to the department in deciding to seek injunctive action (an authority the department already has through the Office of the Attorney General). The fourth reason for difficulty in addressing noncompliance is the ability of some providers to evade enforcement action by claiming one of the exemptions to licensure.

DSS Licensing Staff Expressed Concern About the Effectiveness of the Agency's Enforcement Program

The purpose of the State's child care regulations and the enforcement of these regulations is to protect the health and safety of children in care. JLARC staff surveyed all DSS licensing specialists to obtain their views on, among other issues, the effectiveness of the current regulations and the agency's enforcement program in protecting the health and safety of children in care.

Most Licensing Specialists Agree that Current Regulations Protect Children in Care. A significant majority of DSS licensing staff indicated that they felt the current regulations are adequate to protect the health and safety of children in care (Table 5). Licensing specialists were asked to agree or disagree with the statement "Current regulations for child day care centers are adequate to protect the health and safety of children." Seventy-one percent of licensing specialists responding to the survey agreed or strongly agreed with this statement. Twenty-four percent of licensing specialists responding to the survey disagreed or strongly disagreed with the statement.

Most Licensing Specialists Disagree that the Licensing and Inspection Activities of DSS Are Adequate to Protect Children in Care. In contrast with responses by licensing specialists regarding the efficacy of current regulations for child day care centers, most licensing specialists disagreed with the statement that "Licensing and inspection activities of DSS are adequate to protect the health and safety of

Table 5

Licensing Specialists' Views on the Efficacy of the Current Regulations for Child Day Care Centers

Statement: *Current regulations for child day care centers are adequate to protect the health and safety of children.*

Strongly Agree %	Agree %	Disagree %	Strongly Disagree %	No Opinion %	Number of Respondents
9	62	22	2	4	45

Note: Percentages may not add to 100 due to rounding.

Source: JLARC mail survey of Department of Social Services licensing specialists, April 1997.

children." Thirty-seven percent of licensing specialists agreed with this statement, and sixty-three percent disagreed with this statement. These results are shown in Table 6.

Licensing specialists also were asked to check from a list of options what they thought was necessary to improve child care in Virginia. Less than half of licensing specialists (42 percent) indicated that they thought more stringent regulations were needed. However, 91 percent of licensing specialists indicated that the department needed to increase the number of licensing staff (this was the most frequently checked item of the eight options offered). These data are also consistent with the conclusion that licensing specialists are more concerned about the efficacy of the licensing program than with the efficacy of current regulations.

Table 6

Licensing Specialists' Views on the Efficacy of the DSS Licensing Program for Child Care Facilities

Statement: *Licensing and inspection activities of DSS are adequate to protect the health and safety of children.*

<u>Strongly Agree %</u>	<u>Agree %</u>	<u>Disagree %</u>	<u>Strongly Disagree %</u>	<u>No Opinion %</u>	<u>Number of Respondents</u>
4	33	47	16	0	45

Note: Percentages may not add to 100 due to rounding.

Source: JLARC mail survey of Department of Social Services licensing specialists, April 1997.

One concern regarding the licensing program that was expressed repeatedly in interviews and in survey comments was concern about the department's ability to use intermediate sanctions. This issue is discussed in the next section.

The Current Appeals Process Prevents Use of Intermediate Sanctions

Intermediate sanctions for violations of child care licensing minimum standards are outlined in § 63.1-211.2 of the *Code of Virginia*. Intermediate sanctions the department is currently authorized to use are:

- reducing a provider's licensed capacity,
- prohibiting new admissions,
- posting notices of findings/adverse actions,
- mandating training, and
- placing a facility on probation.

The department has previously placed facilities on probation, and mandated training in certain circumstances. In addition, it recently began posting notices of intent to deny renewal of a license at each public entrance of providers in violation of minimum standards. However, the department has not reduced licensed capacity or prohibited new admissions, and is not currently empowered to petition for monetary fines for violation of minimum standards for licensed child care providers. The department does have this authority for adult care residences.

The only enforcement sanctions that the department currently uses are revocation of a license and denial of a license. In certain instances, the department will enter into a voluntary consent agreement with a provider in lieu of moving forward with revocation or denial of a license. The department has never utilized its statutory authority to freeze enrollment in a child care facility or to administratively reduce the licensed capacity of a facility. The current process requires an appeals process that currently takes a year or more to conclude before the department can impose intermediate sanctions. Therefore, the department has chosen to either revoke or deny a license or levy no sanctions on the provider. This situation is analogous to a criminal justice system in which the only two sanctions are capital punishment and probation. Reliance on these two extremes may mean that the department is unable to intervene and correct noncompliance prior to a situation escalating to the point at which revocation of licensure is appropriate.

The need for better formal enforcement tools is compounded by DSS's limited staffing resources relative to the growing number of licensed facilities. As the department has less opportunity to conduct frequent monitoring visits to the relatively small number of problematic facilities, the department has fewer opportunities to counsel a provider into compliance using informal means. The General Assembly should consider giving the DSS Commissioner unilateral authority to impose certain intermediate sanctions, particularly freezing enrollments and reducing licensed capacity.

One model for this unilateral administrative authority is the unilateral penalty authority granted to the Department of Environmental Quality (DEQ) director by the 1995 General Assembly. The General Assembly granted the DEQ director authority to impose penalties of up to \$10,000 per violation, with an appeal directly to circuit court. The General Assembly further provided that the unilateral penalty authority could not be delegated and must be personally authorized by the agency head. This would be an appropriate safeguard for any unilateral authority granted to DSS.

With respect to child care providers, monetary fines are not currently authorized. The existing intermediate sanctions of freezing new admissions and reducing enrollment have a potential financial impact on providers that may serve as an economic incentive to return to compliance. Another option for an intermediate sanction would be for the General Assembly to grant the department express authority to, at the Commissioner's discretion, require providers to contact parents regarding health and safety violations at their child's facility. At present, licensed facilities are required to make information about violations available upon the request of parents.

The General Assembly may also wish to consider giving the DSS Commissioner authority to impose monetary fines to recoup the economic benefit of noncompliance with regulations by child care providers. This enforcement tool would help create a level playing field and remove the economic incentive for noncompliance with the minimum standards.

Additionally, the potential for the DSS commissioner to unilaterally impose administrative sanctions would provide an incentive for compliance without the administrative sanctions actually having to be used. This would help promote the most desirable outcome, which is having a provider quickly achieve compliance with the regulations.

Recommendation (11). The General Assembly may wish to consider amending the *Code of Virginia* to grant the DSS Commissioner authority to freeze admissions or reduce licensed capacity for licensed child day care providers.

Recommendation (12). The General Assembly may wish to consider amending the *Code of Virginia* to expressly authorize the Department of Social Services to require providers to contact parents regarding violations of health and safety minimum standards by child care providers.

Recommendation (13). The General Assembly may wish to consider authorizing the Department of Social Services to assess monetary fines which are commensurate with the seriousness of the noncompliance with minimum standards for licensed child care providers.

Revocation or Denial of a License Is a Lengthy Process, and DSS Is Also Slow to Seek Injunctive Action

The Department of Social Services very rarely seeks revocation or denial of licensure for child care providers. Of the approximately 4,200 currently licensed child care providers, the department averages less than 10 denials or revocations annually. This represents two-tenths of one percent of the licensed facilities.

Even in cases in which violations are serious enough to warrant revocation or denial of a license, the provider can continue to operate during the appeals process. Effectively, this means that it can be years before a substandard facility ceases to be licensed. For example:

On June 17, 1996 DSS advised a licensed day care center of the department's intention to deny its renewal application for a license. This denial decision was based on a number of violations including: a founded case of abuse in which the operator's daughter had cut a child's hair and forced the child to eat glue (no staff were present supervising the children in the room during this incident); five unannounced

monitoring visits between December 1995 and May 1996 found violations of staffing ratios for preschool children and in each case the center also exceeded its licensed capacity; children were present at the facility who were either younger or older than the ages permitted by the center's license; during four unannounced monitoring visits no staff member met the qualifications for program leader; and during five visits the center failed to properly label and otherwise handle medications.

The center had previously signed a compliance agreement with DSS on October 30, 1996 which had been necessitated by a number of violations during 1994 and 1995. The center's failure to honor the terms of the 1995 compliance agreement was the basis for the department's decision to deny the application for renewal of licensure in June 1996. As of June 15, 1997 the case is still under appeal and the center continues to operate.

* * *

In July 1995, a day care center operator was investigated by child protective services for "bizarre discipline" which consisted of instructing children in care to hit other children who had misbehaved. The case was deemed founded and was entered into the CPS registry in October 1995. The program director for the facility refused to provide DSS with evidence of her qualifications as defined in the regulations for child day care centers. The center operator also canceled the center's accident insurance, violating the regulation requiring centers to maintain such insurance. In August 1996 the provider refused to allow DSS licensing staff to investigate a complaint. On November 14, 1996 the department advised the licensee that the department intended to not renew the facility's license. An informal conference was held on January 17, 1997. On March 11, the department investigated a complaint that a three year old child left the center without being noticed by staff and was found by a stranger at the side of a heavily traveled four lane road. In addition, during the March 11, 1997 visit, DSS licensing staff found severe under-staffing in four of the center's five age groups, including the infant group. The department also found that there was insufficient food in the facility to feed the children in care, four of the center's eight sinks did not work, a first aid kit was not available, and hazardous substances were accessible to children in care. On April 3, 1997, the director of the DSS licensing division requested injunctive action against the center. The DSS Commissioner approved the request on April 4, 1997. As of June 15, 1997 the facility continued to operate while the department's decision to deny re-licensure is appealed. The State was deciding whether to file for injunctive action against the center when the center withdrew its appeal in late June 1997.

During the time that a provider is appealing DSS's decision to revoke a license or deny re-licensure, a provider is considered to be operating legally just as if the provider's facility were fully licensed. At present, Virginia's draft plan for allocating funds under the child care and development fund (CCDF) grant states that any legally operating provider is eligible to receive funds. The State Board of Social Services may wish to amend this provision to give the DSS Commissioner the ability to restrict the eligibility of providers against whom the Department of Social Services has initiated the process to revoke a license or deny re-licensure. This authority to deny State funds to providers may encourage providers to return to compliance without having a license revoked or denied.

The lengthy process for a revocation or denial also underscores the need for intermediate sanctions that can be imposed more quickly to address serious noncompliance. However, the length of the process for revocation or denial of licensure also shows the need for injunctive action in the very rare cases where the health and safety of children is immediately threatened. The department has been slow, however, to seek injunctive relief in such cases. The department has also been slow to seek injunctive relief against illegally operating facilities. For example:

One provider was operating illegally as a family day home provider. There were four violations of State law. First, the provider was a convicted child abuser, having been convicted of abusing her son in 1988 (this was a criminal conviction, as opposed to a civil determination by child protective services). Second, the provider's son had been convicted in 1995 of aggravated sexual battery related to incidents at his school. The son had also been investigated for sexually molesting children in his mother's care. Third, the provider was caring for more than five children (13 children as of a March 1995 visit) and was not licensed, in violation of the provision of the Code of Virginia that requires licensure for any family day home provider caring for more than five children. Fourth, the provider had been entered into the CPS central registry in July 1995 for a founded case of neglect after leaving children in the care of her then 13 year old son (who was subsequently investigated for sexually molesting the girls in his care). The department first became aware that the provider was operating illegally in March 1995, though at that time the department was only aware that the provider had more children in care than was permitted for an unlicensed provider. The department did not take formal action against the provider, because the provider indicated they would voluntarily reduce the number of children in care to below the statutory threshold for licensure. The department did not request an injunction from the Office of the Attorney General until November 6, 1996, after the provider's history of abuse and the allegations of sexual molestation by the provider's son came to light. A local paper began making inquiries about the case on November 21, 1996 and published a series of articles about the case on December 6, 1996. The State filed

for an injunction on December 3, 1996. The injunction was granted on December 6, 1996.

* * *

A provider was found by the Department of Social Services to be caring for as many as 20 children in her family day home on January 27, 1995 (11 children were present during the time of DSS licensing staff's visit and 20 children were shown on the provider's roll). During a visit on February 18, 1997 nine children were present with 15 on the provider's rolls. The licensing division first requested injunctive action on August 23, 1996. The DSS commissioner approved the request on August 26, 1996. However, as of June 15, 1997, more than two years after the provider's violation of § 63.1 of the Code of Virginia was discovered by the department, no injunctive relief had been obtained and the provider continued to operate illegally.

Given limited resources in both the Department of Social Services and the Office of the Attorney General, DSS needs a mechanism for triggering injunctive action in a timely manner in cases that present a high degree of risk to the health and safety of children in care. At present, these decisions are made at DSS on a relatively subjective basis and often after substantial internal discussion and delay. It is noted, however, that review of files by JLARC staff indicates that the current DSS commissioner quickly approves requests for injunctive relief once they reach his desk from the licensing division.

The department should work to develop a risk assessment instrument to determine when to seek formal enforcement action, revocation or denial of licensure, or injunctive relief. Such an instrument would involve identifying and appropriately weighting key health and safety standards as well as other issues (such as founded cases of abuse or neglect in the center, the presence in a child care facility of someone on the sex offender registry, or criminal convictions).

A risk assessment instrument would give the department a means to focus its limited resources on serious threats to children and would help ensure timely, consistent, and certain enforcement. In essence, the risk assessment tool would allow DSS to triage its enforcement caseload, with the bulk of cases being handled through informal means (such as enhanced monitoring or consultation), other cases being addressed through formal enforcement means (such as intermediate sanctions or revocation or denial of licensure), and a very limited number of serious cases being addressed through injunctive action. Another way of thinking of this risk assessment instrument is as a point system, with various thresholds to trigger different types of enforcement action depending on the degree of risk to children.

To facilitate timely injunctive action in the rare cases when it is necessary, DSS should develop a memorandum of agreement with the Office of the Attorney General.

This memorandum of agreement should outline procedures for obtaining immediate injunctive relief in cases in which violations of the *Code of Virginia*, such as the presence of a child abuser or sex offender in a family day home, pose an immediate threat to the health and safety of children in care. In cases where immediate injunctive action is not needed, the department should pursue other means to achieve compliance, such as informal consultation or formal enforcement proceedings.

Recommendation (14). The Department of Social Services may wish to amend its draft plan for the Child Care and Development Fund to give the Commissioner of the Department of Social Services the authority to restrict the eligibility of providers against whom the department has initiated the procedure for denial or revocation of licensure or who meet the criteria of § 63.1-211.3 of the *Code of Virginia*.

Recommendation (15). The Department of Social Services should develop a risk assessment instrument to identify cases that require either formal enforcement or injunctive relief. This instrument should identify and appropriately weight key health and safety standards as well as statutory provisions.

Recommendation (16). The Department of Social Services should work with the Office of the Attorney General to develop a memorandum of agreement to facilitate timely injunctive relief in cases in which a serious threat is posed to the health and safety of children in child care.

In Rare Cases a Provider May Evade Enforcement by Claiming an Exemption from Licensure

In some cases, a provider who is facing enforcement action from the department will evade licensure by either claiming a religious exemption or by becoming an unregulated family day home. For example:

One child care provider was granted a one-year license to operate a child care center in January 1996 after having previously operated a family day home. This license was subsequently reduced to a provisional license in January 1996. On October 28, 1996, the DSS director of the licensing division wrote to the provider stating the department's intention to deny re-issuance of the license for the day care center. The department also stated its intention to deny a license for a new facility the provider was planning to open. DSS based its decision to deny the new application and the reapplication on the following violations: the provider operated an illegal family day home in an apartment near the center. the center provided care for infants despite not being licensed to care for infants, children not on the center's roll book for May-July 1996 were billed to the local social services

agency as having attended full-time, the center advertised itself as providing infant care despite not being licensed to provide such care, inadequate supervision of children in care, failing to meet the required child-staff ratio, inadequate physical plant including uncapped electrical outlets, lack of resilient surface on play grounds, inappropriate temperature (55 to 58 degrees), dirty and unsanitary cots, physical hazards on the playground and elsewhere in the center, lack of a cooling system in the summertime (temperature inside the center was 85 degrees during one visit), citation by the Department of Health for failing to abate lead found at the center, inadequate staff record-keeping including failure to conduct a criminal background check on a staff member and to document TB screening, and failure to maintain medication logs.

The provider appealed both DSS's denial of its application for a new center and its application for re-licensure at the existing center. On November 1, 1996 the provider appealed both DSS denials and requested an informal conference, which was scheduled for December 19, 1996. This conference was rescheduled at the provider's request to January 8, 1997. DSS and the provider's attorney attempted to agree on a consent agreement subsequent to the January informal conference but were unable to reach agreement. The enforcement case against the existing facility is not yet resolved. The provider has claimed a religious exemption for the proposed new center. The religious exemption was granted by the department in April 1997. The provider also agreed to not have more than five children at the family day home location, thereby no longer being subject to licensure. As for the existing, licensed center, almost a year after the facility's provisional license expired the center could continue to operate legally, though the provider indicates they have voluntarily closed the facility to concentrate on running the religious exempt center.

It is also important to note that statutory provisions prohibiting convicted sex offenders or child abusers from being licensed as child care providers do not prohibit such individuals from providing unregulated family day home care (to five or fewer children or four or fewer children under the age of two). For example, the individual cited in a previous case example who was a convicted child abuser and who had children sexually molested by her son while in her care is currently providing family day home care to children. The General Assembly may wish to consider prohibiting convicted child abusers or sex offenders from providing family day home care.

Recommendation (17). The General Assembly may wish to consider prohibiting convicted child abusers from providing family day home care, including unregulated family day home care.

IV. Funding of Child Day Care for Low-Income Families

The affordability of child day care has become a greater problem in the last seven years, particularly for low-income families. According to research on a national level by S. L. Hofferth:

... the amount paid by parents per hour of child care remained fairly steady between 1975 and 1990, but rose markedly between 1990 and 1993.... On average, families with a child under age five spent about 8% of their incomes on child care for all their children. In contrast, families in poverty who paid for care spent about 18% of their incomes on child care.

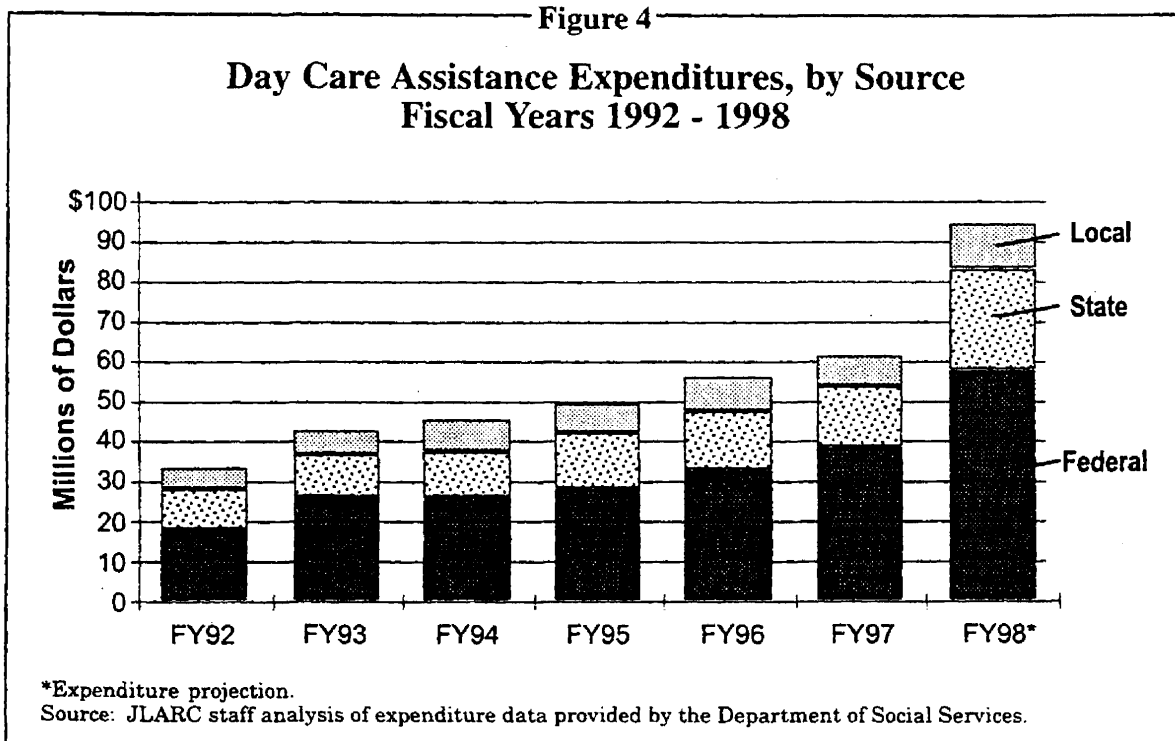
This chapter will focus on the funding and the policies for funding child day care for low-income families.

The funding available to assist low income families with their child day care expenses has steadily increased in the past 10 years. At the time of the last JLARC review of child day care in 1990, federal funding was limited to assistance for families who received Aid to Families with Dependent Children (AFDC). The child day care fee system, a State-designed-program had been established to assist low-income working families in 1986. Funding for that program was increased from \$1.5 million for each year of the 1988 biennium to \$6.5 million for each year of the 1990 biennium in recognition of the demand for day care assistance.

The State's fee system program complemented the federal program introduced in FY 1990. The federal program sought to serve the same low-income working families as the State's fee system had been designed to serve. Combined local, State, and federal expenditures for day care both for families receiving public assistance and low-income working families has continued to increase and is expected to exceed \$95 million in FY 1998 (Figure 4).

Funding and administrative problems at the State and local levels have prevented the fee system program from effectively addressing the needs of the lowest income families. Prior to the substantial funding increases introduced during the 1998 biennium, day care funding for the fee system program did not match the demand for program assistance. In January 1997, nearly 8,600 families received day care assistance through the fee system program, but over 9,800 families were on waiting lists statewide awaiting such assistance. The absence of a priority system based on level of need and relatively high income eligibility limits for assistance, have meant that day care assistance may not always have been directed to the lowest-income families.

The State has an opportunity now to focus day care assistance to serve low-income families. Available funding has increased substantially, as has the flexibility to use that funding for low-income working families who most need it. The challenge will



be to ensure that DSS's policies and procedures are equitable and flexible in meeting the day care assistance needs of low-income families.

DESPITE FUNDING INCREASES, DEMAND FOR CHILD DAY CARE ASSISTANCE HAS EXCEEDED AVAILABLE FUNDING

Assistance with day care expenses has been a benefit guaranteed recipients of AFDC for a number of years. AFDC recipients who were involved in approved education, training, or work activities were eligible to have their authorized day care expenses paid. In Virginia, day care assistance for income-eligible working families has also been provided for more than 10 years. These income-eligible families are families who despite the fact that they work, their income is below an amount which makes them eligible for day care assistance. This assistance is provided as funds are available, however, and demand for this assistance, on a statewide basis, has exceeded available funding.

The year 1997 was a benchmark year in the evolution of government support of child care for public assistance and low-income families because of the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Because of the associated changes made in how child day care would be funded beginning in FY 1997, this analysis separately examines funding prior to and beginning in FY 1997.

Exhibit 4 summarizes the provisions of the federal programs which have funded child day care assistance since FY 1990.

Funding for Child Day Care Assistance Prior to 1997

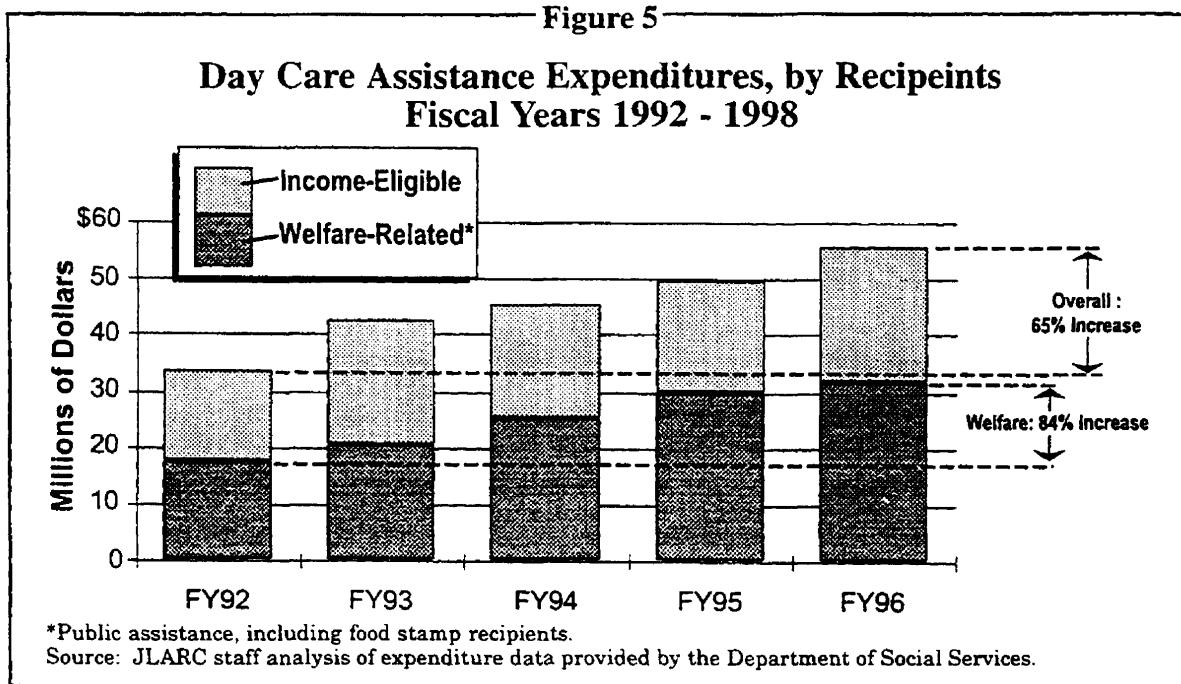
Prior to FY 1997, the federal government required states to provide funding as needed for day care assistance for AFDC recipients. Virginia decided to begin assisting low-income working families with their day care costs beginning in 1986, and the federal government did the same in 1990. Day care assistance was considered an important means of keeping low-income families in the workforce and off welfare. These low-income families have never been guaranteed assistance with their day care costs either through federal or State legislation, however.

Federal funding of child day care took two basic forms before FY 1997. First, was funding through Title IV-A which required a State or local match of 50 percent. Day care funding was provided for families on AFDC or transitioning from AFDC to work. Beginning in 1990, Title IV-A funding was made available for low-income families also. The federal government did not restrict the amount of assistance that would be provided for the families on AFDC, but it did restrict the amount that would be provided for income-eligible families (based on the number of children under age 13 living in the state).

The second form of federal funding was block grant funds which did not require a state or local match but were restricted in the amount available for each state. (Block grant funding, designated for low-income families, was also introduced in FY 1990 and was referred to as the Child Care and Development Block Grant (CCDBG). These allocations were based on a federal formula that considered the number of young children, the number of indigent children, and per capita income within each state.) In Virginia, day care assistance provided for income-eligible families was referred to as the fee system program regardless of whether the funding source was Title IV-A or CCDBG.

An Increasing Proportion of Day Care Funding Was Used to Assist Families on AFDC Rather than the Fee System. Analysis of day care funding and expenditures from fiscal year 1992 through 1996 shows three distinct trends. First, overall day care expenditures increased significantly by 65 percent from \$33.6 million to \$55.6 million (Figure 5). Second, day care expenditures for families on public assistance accounted for most of the increase – accounting for an 84 percent increase from \$17.3 million to \$31.8 million. Third, day care expenditures for income-eligible families through the fee system showed a slower rate of growth, increasing by only 46 percent from \$16.3 million to \$23.8 million. The fact that overall day care expenditures and day care expenditures for families on AFDC increased significantly is not surprising. Welfare reform initiatives which encouraged families to seek education, training, and employment opportunities resulted in an increased demand for day care assistance within families who received AFDC.

Exhibit 4 Changes in Federal Funding Sources* for Child Day Care Assistance Fiscal Years 1990 to 1998		
FY 1990 - FY 1996	FY 1997	FY 1998
WELFARE-RELATED FAMILIES	ALL FAMILIES	ALL FAMILIES
<p>Title IV-A:</p> <ul style="list-style-type: none"> -- Uncapped entitlement -- State or local match required 	<p>Child Care and Development Fund:</p> <ul style="list-style-type: none"> • Mandatory Fund <ul style="list-style-type: none"> -- Capped allocation -- No match required • Matching Fund <ul style="list-style-type: none"> -- Must be preceded by maintenance of effort expenditures of State/local funds and obligation of mandatory fund dollars -- Capped Allocation -- State or local match required <p>Child Care and Development Block Grant:</p> <ul style="list-style-type: none"> -- Capped allocation -- No match required 	<p>Child Care and Development Fund:</p> <ul style="list-style-type: none"> • Mandatory Fund <ul style="list-style-type: none"> -- Capped allocation -- No match required • Matching Fund <ul style="list-style-type: none"> -- Must be preceded by maintenance of effort expenditures of State/local funds and obligation of mandatory fund dollars -- Capped Allocation -- State or local match required • Discretionary Fund <ul style="list-style-type: none"> -- Capped allocation -- No match required
INCOME-ELIGIBLE FAMILIES		
<p>Title IV-A:</p> <ul style="list-style-type: none"> -- Capped entitlement -- State or local match required <p>Child Care and Development Block Grant:</p> <ul style="list-style-type: none"> -- Capped allocation -- No match required 		
<p>*Does not include funding for child day care for food stamp recipients, which involves a different funding source. Source: JLARC staff analysis of funding data provided by the Department of Social Services.</p>		



The 113 local social services agencies responding to a JLARC staff survey reported that they had served 5,807 families on the fee system program as of March 1997, but had 8,584 families on their waiting lists. This is consistent with information DSS received when all local agencies reported their waiting list figures and the number exceeded 9,800 families. This level of unmet demand for assistance and the overall increases in day care funding evokes two key questions:

- Was the federal day care funding available for the fee system program completely drawn down? and
- Has DSS complied with Appropriations Act requirements for the expenditure of funds for the fee system?

Most of the Available Federal Funding Has Been Utilized. It appears that the State has done a relatively good job of drawing down and expending available federal funding for the fee system. From FY 1992 through FY 1996, Virginia was able to draw down and expend \$35 million of the \$38.5 million (91 percent) available in Title IV-A funding for the fee system. In addition, DSS will be able to expend all federal CCDBG funds that were dedicated to the fee system (approximately \$38 million for FY 1992 through FY 1996).

DSS Does Not Appear to Have Complied With Item 467.G of the 1995 Appropriation Act. DSS's compliance with Appropriation Act provisions for the use of fee system allocations has not been as satisfactory, however. The General Assembly in past Appropriation Acts has provided specific requirements and restrictions on how fee system funding is to be used. Analysis of DSS expenditures shows that DSS did not

comply with Appropriation Act provisions during the 1994 and 1996 biennia. Table 7 shows a discrepancy of almost \$3.3 million in federal and State funding that should have been expended on the fee system program but was not.

Table 7

**Required and Actual Expenditures by DSS for the
Child Day Care Fee System, 1994-1996 Biennium**

<u>Required Expenditures</u>	<u>Actual Expenditures</u>	<u>Difference</u>
	1994 Biennium	
\$14,750,000 (federal)	\$13,650,732	(\$1,099,268)
\$5,600,000 (State GF)	\$5,539,974	(\$60,026)
	1996 Biennium	
\$15,250,000 (federal)	\$13,602,826	(\$1,647,174)
\$6,100,000 (State GF)	\$5,624,046	(\$475,954)
Total Amount of Noncompliance		(\$3,282,422)

Source: JLARC staff analysis of funding data provided by the Department of Social Services and Appropriation Act provisions.

DSS staff stated that the funding amounts specified in the Appropriation Act were allocated to the local social service agencies. Funding that was not used by the end of the fiscal year, however, was not requested for reallocation for fee system use by other localities. Instead this funding was used to cover day care expenditures for AFDC recipients since these expenditures had exceeded budgeted amounts. This use of fee system allocations violates Item 467.G of the 1995 Appropriation Act, which states:

Notwithstanding §4-1.03 of this act, general fund and nongeneral fund appropriations for the Child Day Care Fee System ... programs shall not be: (1) transferred to support other day care programs or for any other purpose....

DSS needs to ensure compliance with Appropriation Act provisions. DSS staff state that they are limited in the leverage they have to require local social service agencies to release funding that they will not be able to use. When allocations have been made to the local agency, DSS lacks the authority to change those allocations even if it is clear that the funding will not be expended. The Board of Social Services, however, in Section 63.1-96 of the *Code of Virginia* is given the authority to "during any fiscal year make such changes in such allocations as it shall deem proper, on the basis of need within respective localities." DSS should consider making such a request to the Board of Social Services for localities which will not be able expend funding but will not release that funding. Any funding, allocated for the fee system program that still re-

mains unused within the fiscal year, should be requested for redistribution to localities which have requested additional fee system funding because of excessive program demand. In this manner, DSS should be able to ensure that expenditure stipulations are met on a biennial basis.

Funding for Child Day Care Assistance for FY 1997 and FY 1998

With the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, significant policy and funding changes were introduced at the federal level. First, the 50-year old AFDC program was replaced by the Temporary Assistance to Needy Families (TANF) program. Second, most of the federal funding for child day care was placed into the Child Care and Development Fund (CCDF) block grant for the states' use. The CCDF block grant is capped in terms of the federal funding available for each state.

Funding within CCDF was placed into two broad categories – mandatory and matching funds – which could be used either for TANF recipients or low-income working families. Mandatory funds are available to states with no requirements for the expenditure of state or local funds. To access federal matching funds, however, requires the state to (1) obligate all mandatory funds by the end of the federal fiscal year, and (2) expend state funds equal to a “maintenance of effort” amount on authorized child day care activities. For Virginia this maintenance of effort amount equals the amount spent by the State in federal fiscal year 1994, which is also the basis for Virginia’s mandatory day care allotment. (Thus for every federal mandatory dollar received a State or local dollar must be expended in maintenance of effort.) Matching funds also require the expending of a “match” amount, which for Virginia is 50 percent (or a State or local dollar “match” for every federal matching dollar received).

CCDBG funding was continued for FY 1997. In FY 1998, however, CCDBG funding will be replaced by a “discretionary” funding category within CCDF. The discretionary category will require no State or local funding maintenance of effort or matching amount and will be available to provide day care assistance for TANF recipients or low-income working families.

Federal Funding Should Be Maximized. Under CCDF, the objective will be to ensure that Virginia draws down all available federal day care assistance dollars. As noted previously, this will require that a specific amount of State and local funding be expended in maintenance of effort and matching funds. Virginia’s initial appropriations for FY 1997 did not address these maintenance of effort and matching needs because the federal funding change came after the State budget had been determined. Table 8 shows the available federal funding and projections for the State and local funds that will be expended for FY 1997 and FY 1998. DSS estimates that approximately \$8.2 million of the federal funding available in FY 1997 will not be drawn down because matching State and local funds are not available. Approximately \$2 million will be carried forward for FY 1998 and is shown as part of the matching funds that will be expended in FY 1998.

Table 8

**Anticipated Block Grant Funding for Child Day Care Assistance
Fiscal Years 1997-1998
(In Millions of Dollars)**

	Available Federal Funds	Budgeted State Funds	Anticipated Local Funds	Unmatched Federal Funds
<u>FY 1997</u>				
Mandatory Funds	\$21.3	\$17.0	\$4.3	\$0
Matching Funds	\$17.1	\$2.2	\$4.7	\$10.2
CCDBG Funds	<u>\$17.5</u>	<u>\$0</u>	<u>\$0</u>	\$0
TOTAL AVAILABLE \$73.9 =	\$55.9	+ \$19.2	+ \$9.0	- \$10.2
<u>FY 1998</u>				
Mandatory Funds	\$21.3	\$16.0	\$5.3	\$0
Matching Funds	\$20.5	\$12.3	\$8.2	\$0
Discretionary Funds	<u>\$26.3</u>	<u>\$0</u>	<u>\$0</u>	\$0
TOTAL AVAILABLE \$109.9 =	\$68.1	+ \$28.3	+ \$13.5	

Source: JLARC staff analysis of funding data provided by the Department of Social Services.

The challenge for DSS will be to provide the flexibility to ensure that all budgeted day care funds for the 1998 biennium are expended. First, day care funding for FY 1997 was not completely expended and a portion of that funding will carry forward to FY 1998. Second, budgeted funding for FY 1998 was already substantially higher than the previous year's unmet expenditure level.

Funding for FY 1997 Was Not Completely Expended. DSS reports that 16 percent of the day care funding budgeted for FY 1997 was not expended during that fiscal year (Table 9). Day care funding, dedicated to the Virginia Initiative for Employment Not Welfare (VIEW) program, left \$5.6 million or 15 percent of the total unexpended. The VIEW program was established in Virginia in 1994 as a work experience program that would assist welfare recipients in becoming self-supporting. DSS is careful to adequately fund VIEW-related day care, because that assistance is guaranteed for VIEW participants.

Block grant funding for income-eligible families (which is 100 percent federally funded) left nine percent of its funds unexpended. Amounts from the VIEW-related day care and the CCDBG program (totaling \$6.8 million) could have provided assistance in localities which have unmet needs for fee system day care. The fact that these unencumbered funds were not identified and redistributed illustrates problems in the administration of day care funding that DSS must address.

Table 9

Total Child Day Care Expenditures for FY 1997*
(In Millions of Dollars)

<u>Funding Designation</u>	<u>Budgeted</u>	<u>Expended</u>	<u>Balance</u>	<u>Percent Unexpended</u>
VIEW-Related Day Care	\$36.7	\$31.1	\$5.6	15%
CCDBG	\$13.3	\$12.1	\$1.2	9%
Fee System	\$6.4	\$5.6	\$0.8	13%
Education and Training	\$3.6	\$3.0	\$0.6	17%
Head Start Wrap-Around	\$3.1	\$2.5	\$0.6	19%
Local Pass-Through	<u>\$10.8</u>	<u>\$7.6</u>	<u>\$3.2</u>	<u>30%</u>
TOTAL	\$73.9	\$61.9	\$12.0	16%

*Funding which was carried forward from previous fiscal years is not shown in these figures.

Source: JLARC staff analysis of funding data provided by the Department of Social Services.

DSS has not been able to effectively redistribute funding from localities that cannot use all of their funding to localities that have unmet needs. To partially address past problems in this area, DSS has retained 20 percent of the non-VIEW day care funding that some localities would have received for FY 1998. This funding will only be available for those localities if they demonstrate a need for it. With the new flexibility provided by CCDF, DSS will also be able to redesignate any funding that is not needed for VIEW participants for use in the fee system program. DSS staff have indicated that utilizing the funding that is planned for day care assistance and drawing down all available federal funds are priorities of the department.

Compliance with Appropriation Act Provisions Still Problematic. A preliminary review of child day care expenditures for the fee system program indicates that DSS did not expend the funding amounts specified for use in the 1997 Appropriation Act. The Act requires that \$3.05 million in general funds "will support" the fee system program. DSS's preliminary figures indicated that only \$2.17 million in general funds had been expended for the fee system program. This may indicate that expending fee system funding in compliance with Appropriation Act stipulations continues to be a problem. As noted earlier, DSS needs to better monitor fee system expenditures and emphasize to local social service agencies the importance of releasing funds that cannot be used. The retention and potential redistribution of 20 percent of the non-VIEW day care funding should help to increase fee system expenditures. This action alone may not be enough to guarantee that the required expenditures are made, however.

Recommendation (18). The Department of Social Services should ensure compliance with Appropriation Act provisions for the expenditure of day care funds. Funds that have been properly allocated but not expended should be reallocated or carried forward and expended in compliance with Appropriation Act provisions.

Recommendation (19). The Department of Social Services should carefully monitor the expenditure of day care assistance funds to ensure that the funding is used as planned or reallocated to other localities. Given the demonstrated need for day care assistance, particularly by income-eligible families, DSS should make the use of all available federal funding for day care assistance an agency priority.

CHILD DAY CARE ASSISTANCE NEEDS TO BE BETTER DIRECTED TO THE LOWEST INCOME FAMILIES

Level funding of the fee system program, coupled with policies which restricted local autonomy in determining eligibility, has contributed to extensive waiting lists for assistance. Since these lists are not prioritized by income, there is no assurance that the lowest-income families receive assistance. Historically, DSS has not been proactive in addressing problems related to fee system waiting lists. This is in spite of the fact that problems related to inadequate funding were identified by DSS's own studies. A December 1990 DSS review of the voucher program noted:

Dollars needed for day care subsidies on a state-wide level far exceed the current annual \$6.5 million appropriation for each year of the biennium. Based on voucher day care service and payment mix, it would cost \$327 million to serve all potentially eligible children in the state.... After allowing for client co-payment...and after adjusting for the 10 percent local match, the state share would be about \$240 million. Some hypothetical adjustments for a more narrowly defined eligible population, such as clients under 50 percent of the state median income and only children under 9, could conceivably bring the estimate down to about \$62 million annually.

The report went on to recommend that DSS conduct a cost-benefit analysis which would "identify the fee system client population that is best served either because they have the greatest need or the greatest potential for self-sufficiency." When asked if this analysis had been completed, DSS staff indicated that they were not aware of one.

The Board of Social Services, in developing and submitting the "Child Care and Development Fund Plan for the Commonwealth of Virginia for the Period 10/1/97-9/30/99" (subsequently referred to as the CCDF plan), is recommending significant changes to the fee system program in Virginia. The CCDF plan, which is the first comprehensive day care plan required by the federal government, is a blueprint for the

expenditure of all day care funds in Virginia. The plan includes significant changes in the fee system program in an attempt to reduce the number of families on local waiting lists. This is an appropriate goal given the number of families currently on waiting lists, the absence of any priority system to ensure that the lowest-income families are served first, and the potential risk that lengthy waiting lists pose to the success of welfare reform. The eligibility criteria contained in the plan, however, do not control for the diversity in cost of living expenses around the State and, therefore, disproportionately affect some localities.

Waiting Lists for the Child Day Care Fee System Are Not Prioritized

None of the local agency staff, responding to the JLARC staff survey, reported prioritizing their waiting list on the basis of income. Local representatives uniformly stated in meetings with JLARC staff that it would not be practical to do so given the size of their waiting lists – 21 agencies reported having waiting lists of 100 or more families on March 1, 1997. Thirty-one percent of local agencies did prioritize their waiting lists based on such local priorities as providing day care for parents involved with child protective services and for teen-aged parents who needed to finish high school.

Extensive waiting lists for the fee system program potentially threatens the success of welfare reform efforts. This is because the fee system is the only day care assistance available to families who have received three years of assistance as they transition off welfare. In a number of localities, families leaving the welfare system are not able to retain day care assistance but instead have their names placed at the end of a long waiting list to receive fee system assistance. Some of these families have such low incomes, it is unlikely that they will be able to continue working without assistance with their day care costs. To address this need, 13 local agencies reported that they gave families who were transitioning from public assistance priority over other low-income families on the waiting list. This is in apparent violation of the Appropriation Act provision first enacted in 1995. The 1995 Appropriation Act in Item 467.G and the 1997 Appropriation Act in Item 388.E state that fee system funding “shall not be...administratively restricted to provide preferential eligibility for these programs” to former welfare recipients.

DSS should ensure that local social service agencies are aware of and comply with this provision of the Appropriation Act. It was not clear that DSS intended to require such compliance considering a recent response to questions submitted by members of the Commission on Early Childhood and Child Day Care Programs. Page 27 of DSS's written response states:

After the “transitional” third year, will former TANF recipients go to the end of the waiting list or will they be guaranteed a slot in subsidized child care (assuming they are still income-eligible)?

Current policy provides that local departments have discretion in providing priority for special populations. Certain local departments have indicated an intention to provide priority status to former TANF recipients, along with other priority populations.

Changes Made in the Child Day Care Fee System

When the child day care fee system was initially established, eligibility for assistance was based on having a limited family income as measured as a percentage of the State median income (SMI). Many localities chose 50 percent of SMI as the ceiling for assistance eligibility. Other localities, which had relatively low median incomes and cost of living expenses, chose to have as low as 30 percent of SMI as their ceiling. In 1990, the DSS child day care manager decided that 50 percent of SMI would be the lowest ceiling for assistance that any locality would be allowed to use. While specific figures are not available from DSS, staff report that a substantial number of localities were using less than 50 percent of SMI when that decision was made and that the waiting list was relatively short at that time. Informational handouts distributed as part of the development of the CCDF plan indicate that the decision to raise the minimum ceiling for assistance probably contributed to an increasing number of families being eligible for, but unable to receive, day care assistance.

The "fee" that the recipient family has been required to make as a co-payment has also changed several times during the course of the child day care fee system. The original scale involved comparing the cost of the day care with the family's gross monthly income for the family to determine the percentage of the day care cost to cover. This scale was changed in 1990 because it was difficult to administer and resulted in a number of errors being made in calculating co-payment fees. It also failed to address the guidance provided by the General Assembly in 1986 to subsidize day care costs that exceeded 10 percent of the family's gross income. A sliding fee scale which was based on the family's gross income as compared with the State median income was established. Under the new fee scale, a family paid between one and 15 percent of its gross income with most families paying between one and 2.5 percent.

In 1994, the DSS child day care unit responded to appeals from local social service agencies to increase available funding and to simplify administration of the program. At the advice of a number of local social service representatives and after extensive public hearings were held, DSS simplified the fee structure. This fee structure involved requiring families whose income was at or below 60 percent of SMI to pay 10 percent of their gross income, while families at 61 to 75 percent of SMI were required to pay 15 percent of their gross income. This change (1) provided additional funding, (2) was supported by local social services agencies, and (3) was easier to administer.

However, it is considered by some to be unreasonable in that families at or below the federal poverty level (which is \$16,050 for a family of four) are required to pay a fee of 10 percent of their income for day care. Families whose children attend

Head Start and associated day care programs who are at or below the federal poverty level were subsequently exempted from making a co-payment by language in the Appropriation Act.

The changes that the State Board of Social Services included in Virginia's CCDF plan, represent the first extensive revision of the fee system program since its inception. According to the chairperson of the subcommittee, the objective was to revise eligibility criteria in such a way as to ensure that assistance was targeted to lower-income families while reducing the size of extensive waiting lists. The new eligibility criteria, however, fail to control for the differences in the cost of living around the State. Other CCDF plan provisions may have the unintended consequence of failing to provide the support families need to remain otherwise self-sufficient.

Exhibit 5 compares some of the principal provisions of the fee system as it is currently configured with the CCDF plan provisions that will be implemented beginning October 1, 1997. As shown, a number of significant changes have been made.

Methodology for Eligibility Should Be Linked to Cost of Living Measures

The CCDF plan's objectives in changing income eligibility were to limit the families which would be eligible for assistance to the most needy, as measured by low income, and to assist families living in similar circumstances in different parts of the State with different costs of living in the same manner. The four groupings are based on the following:

- Group A – local median incomes of less than \$40,000,
- Group B – local median incomes of \$40,000 to \$45,000,
- Group C – local median incomes of \$45,001 to \$59,000, and
- Group D – local median incomes of more than \$59,500.

Thus the local median income of each locality in the State would determine which group it was in and the associated maximum income levels for eligibility for fee system assistance. For example, localities within Group A would be able to serve families up to 140 percent of the federal poverty level which is \$22,470 for a family of four.

There are four principal problems in the State's proposed methodology for determining eligibility for day care assistance. First, the proposed methodology does not sufficiently take into account the substantial variation in cost of living levels between Northern Virginia and the remainder of the State. Second, the proposed methodology treats localities in the same area with similar cost of living levels in very different ways. Third, the methodology attempts to use income as a proxy for cost of living, resulting in inequitable treatment among localities and potentially favoring localities with relatively high incomes and relatively low cost of living. Fourth, the current proposal does not take into account 1997 market rate information, and instead uses 1993 market rate information, as DSS has not yet analyzed its 1997 data.

Exhibit 5

Comparison of Fee System Program Provisions

	<u>Current Provision</u>	<u>New CCDF Guidelines</u>	
Income Eligibility	50 to 75% of State median income (SMI). (Localities can choose to provide assistance to families at up to 85% of SMI by using local funds.)	Localities are divided into groupings based on local median income to determine income limits. Limits for eligibility are: Group A -- 140% federal poverty level Group B -- 150% federal poverty level Group C -- 160% federal poverty level Group D -- 170% federal poverty level	
Co-payment Fees	10% of family's gross income if at 50-60% of SMI; 15% of family's gross income if at 61-75% of SMI.	10% of family's gross income for 1 child; 12% of family's gross income for 2 or more children.	
Reimbursement Rate Calculation	Cost of care* (minus) 10% gross family income assistance provided	75% of market rate for localities (minus) 10% (or 12%) of gross family income assistance provided	
Time Limits	Five year time limit for assistance is a local option.	Five year time limit with subsidy decreasing to 30% of market rate in year 4 and 20% of market rate in year 5. (Localities can choose to provide a 20% subsidy for a 6 th year and beyond.)	
Additional Children	Day care costs are paid with no restrictions for additional children born to families already receiving assistance.	At local option, children born or more after adoption of the date of first day care subsidy (if later) may be placed on the list.	
Service Prioritization	Local option to set service priorities.	Priority is given to special needs, homeless children, teen parents, and working families as opposed to other recipients. Activities except completion of high school by recipients.	
*Cost of up to 75% of market rate for type of care and locality allowed.			
Source: JLARC staff analysis of the "Commonwealth of Virginia Plan for the Child Development Block Grant for the Period October 1, 1996 Through September 30, 1998" and the "Child Development Fund Plan for the Commonwealth of Virginia for the Period 1997-9/30/98"			

Proposed Methodology Does Not Sufficiently Account for the Substantial Variation in Cost of Living Between Northern Virginia and the Remainder of the State. One challenge that the State faces when determining income eligibility for public assistance programs is the wide range of cost of living in the State. The State has historically recognized the higher salary costs in Northern Virginia relative to the remainder of the State by providing a salary supplement for State employees in Northern Virginia. Cost of living in the State varies by metropolitan statistical area (MSA) from a low of 93 percent of the nationwide average in the Lynchburg metropolitan statistical area to a high of 132 percent of the nationwide average in the Washington D.C. metropolitan statistical area (Table 10).

Table 10

**Cost of Living Index for Virginia's
Six Largest Metropolitan Statistical Areas**

<u>Metropolitan Statistical Area</u>	<u>Cost of Living Index</u>
Lynchburg	93.4
Roanoke	93.5
Bristol	94.4
Nationwide Average	100.0
Hampton Roads	103.9
Richmond	108.9
Metropolitan District of Columbia	134.2

Note: The Metropolitan District of Columbia MSA includes Northern Virginia.

Source: *Virginia Statistical Abstract, 1996-97 Edition.*

By contrast, other southeastern states have less variation in their cost of living among their MSA's. Table 11 shows the variation in cost of living for selected southeastern states.

The State's proposed methodology for determining income eligibility thresholds for child day care assistance does not sufficiently take into account the variations in cost of living among Virginia localities. In particular, the proposed methodology makes too much allowance for the relatively minor differences in cost of living for most of the State and does not make enough allowance for the much higher cost of living in Northern Virginia when compared with the remainder of the State.

For example, the difference in cost of living between the Lynchburg MSA and Roanoke MSA is one-tenth of one percent. However, the proposed difference in eligibility thresholds for localities in these two areas (for example the difference between the eligibility threshold in the City of Lynchburg and Roanoke County) is 14.28 percent.

Table 11

Cost of Living Range for Southeastern States

State	Cost of Living Index for the Lowest Cost Area	Cost of Living Index for the Highest Cost Area	Difference
Florida	96.1	115.6	19.5
Georgia	92.4	100.7	8.3
Kentucky	91.5	100.1	8.6
Maryland	98.1	134.2	36.1
North Carolina	89.2	104.6	15.4
South Carolina	94.5	102.9	8.4
Tennessee	90.4	98.4	8.0
Virginia	93.4	134.2	40.8

Source: *Statistical Abstract of the United States*, 1996-97 Edition.

Conversely, the difference in cost of living between the Richmond MSA and the Metropolitan D.C. MSA is 25.3 percent, but the proposed difference in eligibility thresholds between localities in these two areas is only 6.25 percent.

Table 12 illustrates the variations in cost of living among selected large localities within each MSA when compared to the differences in eligibility thresholds for day care assistance under the State's proposed CCDF plan.

The Proposed Methodology Treats Differently Neighboring Localities with Similar Costs of Living. In many of Virginia's larger cities, incomes are relatively low but cost of living is relatively high. Examples of these localities would be the cities of Richmond and Norfolk. The effect of the proposed methodology for determining eligibility for day care assistance is to treat similarly situated localities (in terms of cost of living) in very different ways. For example:

The localities in the Richmond MSA are included in different groups in DSS's proposed methodology. The City of Richmond is included in Group A of the proposed methodology, meaning that Richmond residents qualify for day care assistance at 140 percent of the poverty level for a family of four (\$22,470). Residents of Henrico County are included in Group B of the proposed methodology, meaning that Henrico residents qualify for day care assistance at 150 percent of the poverty level for a family of four (\$24,075). Residents of Chesterfield County, Colonial Heights, Goochland County, Powhatan County, Norfolk County, and Hanover County are included in Group C of the proposed methodology, meaning that residents of these counties qualify for day care assistance at 160 percent of the poverty level for a family of four (\$25,500).

Table 12

**Variation in Cost of Living Compared to
Day Care Assistance Eligibility Thresholds
for Selected Large Localities with Each Virginia MSA**

	<u>Lynchburg</u>	<u>Roanoke County</u>	<u>Bristol</u>	<u>Virginia Beach</u>	<u>Chesterfield</u>	<u>Fairfax</u>
% Variation from Lowest Cost of Living MSA	0	0.1	1.0	10.5	15.5	40.8
% Variation from Base (Group A) Income Threshold as Proposed by the State	0	14.28	0	14.28	14.28	21.4

Source: JLARC staff analysis of Virginia's proposed CCDF plan and the *Virginia Statistical Abstract*, 1996-97 edition.

* * *

In the Roanoke MSA, Roanoke City residents are included in Group A of the proposed methodology, meaning Roanoke City residents qualify for day care assistance at 140 percent of the poverty level for a family of four (\$22,470). Residents of Roanoke County and Botetourt County are included in Group C of the proposed methodology, meaning that Botetourt County and Roanoke County residents qualify for day care assistance at 160 percent of the poverty level for a family of four (\$25,680).

* * *

In the Hampton Roads MSA, residents of the cities of Norfolk and Newport News are placed in Group A of the proposed methodology, meaning residents of these two cities qualify for day care assistance at 140 percent of the poverty level for a family of four (\$22,470). Residents of the cities of Virginia Beach and Chesapeake are included in Group C of the proposed methodology, meaning that residents of these cities qualify for day care assistance at 160 percent of the poverty level for a family of four (\$25,680).

As can be seen from the above examples, the effect of the proposed methodology is to create a potential equity problem between the way residents of low-income, high cost areas are treated when compared with the way residents of high-income,

relatively low cost areas are treated. The fundamental flaw in the proposed methodology is that it attempts to use income as a proxy for cost of living.

Income Is an Imperfect Proxy for Cost of Living. Income is an imperfect proxy for cost of living for three reasons. As already mentioned, the proposed methodology penalizes larger cities with relatively high costs and relatively low incomes, when compared with wealthier neighbors. Second, the variation in income statewide actually exceeds the variation in cost of living, causing the proposed methodology to overcorrect for relatively minor regional differences in income in most of the State. Third, using income as a proxy for cost of living may have the unintended consequences of providing more generous aid to localities with relatively high incomes but relatively low cost of living.

Instead of using income as a proxy for cost of living, the State Board of Social Services should consider using the cost of living index for the State's MSA's. The six largest MSA's in Virginia account for only one-third of the land area in Virginia, but they account for 73 percent of the population and approximately 79 percent of the waiting list. The remaining localities in Virginia could be included, for purposes of eligibility determination, in a group that includes the Lynchburg, Roanoke, and Bristol MSA's, all of which are closely grouped together in terms of the cost of living index.

One concern raised by DSS staff regarding use of cost of living measures for determining eligibility is that cost of living measures are not scaled for differences in family size, whereas the poverty level indicator is scaled for family size. DSS could address this concern by adjusting income eligibility levels for different family sizes by the same percentages proposed in the existing plan.

DSS's Current Groupings Are Based on Outdated Market Rate Information. Aside from local income, the State Board of Social Services also considered the market rate for day care as measured by its market rate survey in assigning localities to one of four groups. However, the State Board used DSS's 1993 market rate data, because the department will not have completed its analysis of its 1997 market rate survey until August. DSS should have made its 1997 market rate data available to the Board to assist in grouping localities. DSS should place a high priority on completing its analysis of 1997 market rate data, so that these data may be incorporated in any revisions of the plan that may be directed by the 1998 General Assembly.

Legislative Guidance Is Appropriate for the Major Policy Choice of How to Allocate Day Care Funds. As noted earlier, the entire program for child day care assistance now involves more than \$100 million annually. Given the number of difficult policy choices involved in allocating this funding and the need to ensure equitable treatment of all localities, the General Assembly may wish to provide legislative guidance into eligibility criteria for the child day care assistance program. DSS should present options to the 1998 General Assembly regarding eligibility criteria and other allocation issues as may seem appropriate for the CCDF.

Monitoring of CCDF Plan Operation. The provisions of the CCDF plan will be implemented beginning October 1, 1997. The CCDF plan may be amended at any time as it did not have to be approved by the U.S. Department of Health and Human Services. DSS staff should be vigilant in assessing how the plan's provisions are working to ensure that any serious, negative consequences do not go uncorrected. Additional information about the fee system program will also be available just prior to the October 1 deadline with the reporting of the legislatively-mandated study of the fee system by DSS. The study will include new data about families currently receiving assistance which may aid in refining components of the fee system program.

In addition, DSS has decided to procure the services of an independent evaluator in reviewing the operation of the CCDF plan on an on-going basis. These services should be useful in providing a comprehensive, objective review of how the plan's proposed use of child day care funds appears to be meeting the needs of low-income families. Accordingly, DSS should submit copies of the final reports of the independent evaluator to the chairmen of the House Appropriations Committee and the Senate Finance Committee.

Recommendation (20). The Department of Social Services should consider revising its income eligibility thresholds for child day care assistance to reflect cost of living in metropolitan statistical areas, not local median income.

Recommendation (21). The Department of Social Services should present options to the 1998 General Assembly regarding eligibility criteria for child day care assistance and other allocation issues as may seem appropriate. The 1998 General Assembly may wish to consider directing the Department of Social Services to resubmit its Child Care and Development Fund plan to the federal government reflecting such changes as the 1998 General Assembly chooses to direct.

Recommendation (22). The Department of Social Services should submit copies of the final reports prepared by the independent evaluator on the operation of the Child Care and Development Fund plan to the chairmen of the House Appropriations Committee and the Senate Finance Committee.

DSS NEEDS TO BETTER ASSIST LOCAL SOCIAL SERVICE AGENCIES IN PROVIDING DAY CARE ASSISTANCE

While the Board and Department of Social Services control the funding allocations and many of the policy and procedural guidelines that local social services agencies must observe, it is still the local agency that actually provides the services. Consequently, the State needs to be responsive and flexible to ensure that local agencies are equipped to provide the necessary day care assistance services.

Local Social Service Agencies Report Staffing and Automation Needs

DSS should consider the staffing limitations and automation needs of the local social services agencies in any modification to State policies and procedures for child day care assistance. Of the 113 respondents to the JLARC survey of local social service directors, 43 (38 percent) reported that staffing to handle child day care assistance is a moderate or serious problem for their agencies. Specific federal funding for local administration of child day care assistance programs will be available for the first time in federal FY 1998. While local agency representatives reported being pleased about receiving administrative funding, they also stated that staffing problems would not completely disappear.

In addition, the need for automation at the local agency level is critical to ensure:

- that a program of more than \$100 million can be efficiently administered,
- that fraud and abuse within the system can be reasonably identified and controlled, and
- that enhanced federal reporting requirements can be met.

Funding to assist with automation needs is available and DSS staff report plans to fund and assist with automating child day care assistance. Some local agencies currently have no automation capability while others have sophisticated albeit different systems.

DSS staff have indicated that a portion of the agency's \$12.2 million for the Service Automation Child Welfare System (SACWIS) will be used to assist local agencies with their automation needs. The intention is to modify the SACWIS program to support day care case management. SACWIS will be interconnected throughout the State on the new DSS Network 2000. Further, DSS plans to work with the local agencies to define standard interfaces that will permit them to link with their local community financial system. Child welfare workers within the local social service agencies will also be provided with new computers and printers from the Network 2000 funding.

DSS Needs to Better Support and Monitor Local Social Service Agencies

A number of local agency staff specifically noted in their survey responses a need for clear policies from the central office and for their regional specialist position to be filled. DSS is currently completing a reorganization that affects both its central and regional structure. Considering that day care assistance will be one of DSS's largest and more important support programs in coming years, the need for support by the local agencies should be reflected in staffing decisions made during the reorganization.

The manager of the child day care unit within the DSS central office was appointed last fall. Prior to that time, the position was filled on an acting basis for a number of years. This seems to have restricted the ability of the unit to make some necessary policy decisions and to act decisively in dealing with problems at the local level. Currently, in addition to the unit manager's position, there are two full-time and two half-time programmatic positions, and one restricted position which was recently added to handle Head Start program concerns. The unit manager has requested two additional positions to assist in performing some responsibilities of the former Virginia Council on Child Day Care and Early Childhood Programs. Some of those responsibilities include providing enhanced consumer education, working with employers in developing or sponsoring day care, and providing training opportunities for unregulated providers.

In strengthening and consolidating the regional structure, DSS should fill the vacant day care specialist positions in the western and Piedmont regions. For the last few years, two of the five regional day care specialist positions have been vacant. These specialist positions are very important to local social services agencies, serving as conduits between local concerns regarding day care assistance and the policies and procedures developed by the DSS central day care unit.

The specialists also serve a monitoring role, assisting local agencies to ensure that federal and State financial and policy requirements are met. To address the current vacancies, the specialist responsible for the northern region has also monitored and assisted the local agencies in the western region for several years. However, no monitoring has been undertaken in the Piedmont region for at least two years, although local agencies are assisted with their informational and training needs. There is no federal requirement that Virginia monitor the day care assistance programs, however, the potential for serious problems to develop increases as funding of day care assistance expands significantly in FY 1998. The practice by some local agencies of giving families who are transitioning from public assistance priority for fee system assistance is a clear violation of Appropriations Act language to the contrary. DSS staff admitted that they are not able to monitor for these types of violations because of the current workload of the three day care specialists.

Recommendation (23). The Department of Social Services should promptly act on its plan to assist local agencies with automating their day care assistance programs. Automation is essential given the amount of funding that will be expended beginning in FY 1998 and the associated potential for fraud and abuse in the program.

Recommendation (24). The Department of Social Services, as part of its current reorganization, should fill the two vacant day care specialist positions and ensure that the central office day care unit is adequately staffed to support the enhanced day care assistance program. DSS regional specialists should ensure that local social service agencies comply with the Appropriation Act prohibition against granting former welfare recipients priority for fee system assistance.

Appendix A Study Mandate

Item 14 J - 1997 Appropriation Act Follow-Up Review of Child Day Care

The Joint Legislative Audit and Review Commission shall conduct a follow-up study of its 1990 report entitled, "The Regulation and Provision of Child Day Care in Virginia." The Commission's review shall examine: (1) the administration, management and funding of child day care by state government; (2) the revised licensing structure for child day care, including but not limited to proposed regulatory changes for child day care centers; (3) staffing for the child day care licensing program; and (4) regulatory approaches in other states. The Commission shall report its findings and recommendations prior to September 1, 1997. All agencies of the Commonwealth shall cooperate with the Commission and its staff in the completion of this review.

Appendix B

Bibliography of Resources Related to the Quality of Child Care

“Cost, Quality and Child Outcomes in Child Care Centers,” April, 1995, Economics Department, University of Colorado at Denver.

“The Florida Child Care Quality Improvement Study,” Families and Work Institute.

“Child Care Licensing: Georgia Impact Study,” Families and Work Institute.

“Building and Maintaining an Effective Child Care/Education System in your State: A Resource Guide,” Families and Work Institute.

“Quality in Family Child Care and Relative Care,” Families and Work Institute.

“Illinois Director’s Study, A Report to the Illinois Department of Children and Family Services,” Paula Jorde-Bloom, Early Childhood Professional Development Project at National College of Education, Evanston, Ill.

“The Role of Program Quality in Producing Early Childhood Program Benefits,” Ellen C. Freed, *The Future of Children: Long Term Outcomes of Early Childhood Programs*, Volume 5, #3, Winter, 1995, Trenton State College.

“Child Care Quality: States’ Difficulties Enforcing Standards Confront Welfare Reform Plans,” General Accounting Office, (GAO/HEHS-94-99, February 11, 1994).

“Family Child Care: Innovative Programs Promote Quality,” General Accounting Office, (GAO/HEHS-95-43, December 9, 1994).

“Child Care: Promoting Quality in Family Child Care,” General Accounting Office, (GAO/HEHS-95-36, December 7, 1994).

Frede, Ellen C., “The Role of Program Quality in Producing Early Childhood Program Benefits,” *The Future of Children, Long-Term Outcomes of Early Childhood Programs*, Vol. 5, No.3 - Winter 1995.

Helburn, Suzanne W. and Howes, Carollee, “Child Care Cost and Quality,” *The Future of Children, Financing Child Care*, Vol. 6, No. 2 - Summer/Fall 1996.

“Mother-Child Interaction and Cognitive Outcomes Associated with Early Child Care: Results of the NICHD Study,” National Institute of Child Health and Human Development, Spring 1997.

Appendix C

Agency Responses

As part of an extensive data validation process, State agencies involved in a JLARC evaluation are given the opportunity to comment on an exposure draft of the report. Appropriate technical corrections resulting from written comments have been made in this final report. Page references in the agency responses relate to the earlier exposure draft and may not correspond to the page numbers in this version.

This appendix contains the response from the Department of Social Services.



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COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES

Clarence H. Carter
Commissioner

July 10, 1997

Mr. Philip A. Leone, Director
Joint Legislative Audit and Review Commission
Suite 1100, General Assembly Building
Richmond, Virginia 23219

Dear Mr. Leone:

Thank you for the opportunity to review and comment on the exposure draft of your *Follow-up Review of Child Care in Virginia*. We appreciated the opportunity to meet members of your staff to discuss both technical changes and other ways in which the recommendations might be improved.

The Department agrees that the State's primary interests in the area of child care are to ensure the health and safety of children in care and to ensure that safe care is available and affordable. While there is always room for improvement in any organization, the Department has done a competent and professional job of addressing its responsibility to promote safe, available and affordable day care. Since the 1990 JLARC report, the number of licensed child care facilities in the Commonwealth has grown substantially. The Department has provided immediate and appropriate response to complaints in licensed facilities. Additionally, the Department presided over a smooth transition as the Council on Child Care and Early Childhood Programs sunsetted and resolved long-standing accounting issues related to the CCDBG funds.

We would like to emphasize that the child care program for low income Virginians is at a major crossroad, with a dramatic influx of funding and sweeping changes in federal requirements over the last few years. The Department facilitated an extensive public input process before it submitted the Commonwealth's first Child Care & Development Fund (CCDF) Plan to the federal government on July 1, 1997. We anticipate that the policies set out in the CCDF Plan will direct day care assistance to the lowest income families and will provide a more equitable distribution of the available day care dollars. The Department will monitor the effects of the Plan closely to ensure that these important goals are being met.

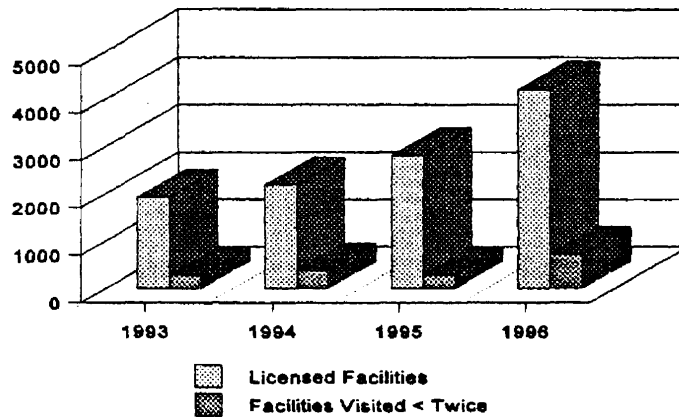
It is also important to note that the Department has maintained a consistent level of oversight of licensed facilities despite significant growth in the number of such

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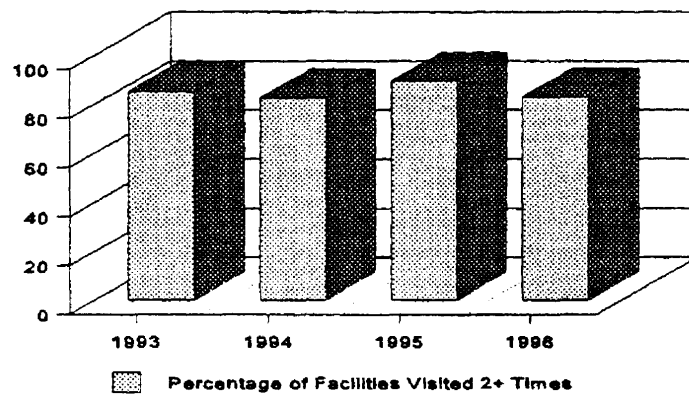
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facilities. The following chart illustrates the growth in licensed facilities and the level of basic monitoring maintained by the Department during the last four years:



Despite this increase in the number of facilities and a decrease in the number of licensing staff, the Department has completed two monitoring visits per year in roughly the same percentage of facilities:



Finally, please note that licensed short-term child care centers (CCS), which were first regulated by the 1993 General Assembly (and first appear in the 1994 caseload figures), were omitted from Table 1 on page 4 of the exposure draft, changing the total of licensed child day centers (CDC) and the total of licensed and otherwise

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regulated providers. The corrections should also be applied to Figure 2 on page 48 of the exposure draft. The corrected numbers are as follows:

	1993	1994	1995	1996	1997 (as of 5/1/97)
CCS	—	36	115	123	139
Total CDC	—	1531	2052	2208	2363
Total facilities	—	3654	4723	5313	6036

Following are the Department's responses to individual recommendations in the report which would, if implemented, have an impact on this department's current regulations, operational policies or budget:

Recommendation (5). The General Assembly may wish to consider amending the Code of Virginia to require that the State Health Commissioner or the Commissioner's physician designee be included in the membership of the regulatory entity or entities for child day care regulations.

The Department suggests that, should the General Assembly propose legislation to include a physician as a member of the child day care regulatory entity, such membership be ex-officio. Based on past experience, the Department believes that physicians may have significant demands on their time that interfere with regular attendance, resulting in difficulty for the regulatory entity in obtaining a quorum.

Recommendation (8). The Department of Social Services, in conjunction with the Department of Planning and Budget, should expedite the process to fill current vacancies within the Division of Licensing to relieve the current backlog of inspections and unmanaged caseloads.

The Department has been working with the Department of Planning and Budget to expedite the process to fill current licensing specialist vacancies. Between December 2, 1994, and February 2, 1997, eleven field positions were vacated (8 specialists, 2 support technicians and 1 administrator). Of these, four specialist positions have been filled as well as the technician and administrator positions. The remaining four specialist positions have been cleared and are in varying stages of the fill process.

The Eastern Region accounted for 84 of the 159 facilities in the non-assigned workload due to a vacancy that has existed since February 7, 1997; interviews for this position are scheduled during the week of July 21, 1997. The Fairfax office accounted

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for 75 of the 159 facilities in the non-assigned workload due to a vacancy that has existed since August 31, 1996; interviews for this position are scheduled for the week of July 28, 1997. Fairfax experienced a total of three vacancies; two on July 1, 1995, and August 1, 1995 (both filled October 1, 1996) in addition to the vacancy beginning August 31, 1996. Further, an Abingdon position vacated on June 6, 1996, was transferred to Fairfax and has recently been cleared to fill; preparation for advertisement is underway.

An Abingdon vacancy occurred January 1, 1997; the Department received recent approval to fill and will begin the hiring process when the paperwork is received. A vacancy in the Central Region that occurred on December 2, 1994, was filled on December 1, 1996. The Warrenton vacancy that occurred on July 1, 1995, was filled on July 1, 1996.

Recommendation (10). The General Assembly may wish to consider amending the general conditions of the Appropriation Act to exempt the Department of Social Services licensing positions from any administrative hiring freeze.

As noted above in our response to Recommendation (8), the Department has been able to secure the necessary exemptions from the hiring freeze in order to fill critical licensing positions. Also, the Department notes that as a result of operating under the hiring freeze, the Department has improved its processes and is able to conduct an increased number of inspections in a more efficient and economical manner. Accordingly, the Department would not support such an exemption.

Recommendation (14). The Department of Social Services may wish to amend its draft plan for the Child Care and Development Fund to give the Commissioner of the Department of Social Services the authority to restrict the eligibility of providers against whom the Department has initiated the procedure for denial or revocation of licensure or who meet the criteria of §63.1-211.3 of the Code of Virginia.

The Department does not support this recommendation to the extent that it addresses punitive action prior to resolution of the underlying denial or revocation. Also, given the broad array of possible sanctions described in §63.1-211.3, denying funding to an otherwise legally operating facility sanctioned under §63.1-211.3 would have the effect of denying choice to a parent who wished to send their child to that facility.

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Recommendation (15). The Department of Social Services should develop a risk assessment instrument to identify cases that require either formal enforcement or injunctive relief. This instrument should identify and appropriately weigh key health and safety standards as well as statutory provisions.

Currently, the Department automatically seeks denial or revocation whenever an operator commits or condones abuse or neglect. Previous efforts to develop a list of denial or revocation triggers proved unwieldy and, during pilots, raised issues of fairness and reasonableness from providers that could not be refuted in the context of individual case situations. Accordingly, the Department would prefer to consider this question after the licensing program has implemented its automated system which will provide better information about the nature and extent of violations and responses to agency intervention.

The Department does currently use a screening tool to make decisions about the type and duration of license that should be issued and about the appropriate levels of monitoring and supervisory attention. This tool, which evolved over a number of years, does assess risk exposure; it also considers patterns of violations (e.g., widespread, occasional, systemic) and profiles the planning and management behaviors of operators. The instrument helps staff to weigh whether the violations appear to pose immediate or cumulative risks and whether those risks are judged to be slight, moderate or severe.

Recommendation (16). The Department of Social Services should work with the Office of the Attorney General to develop a memorandum of agreement to facilitate timely injunctive relief in cases in which a serious threat is posed to the health and safety of children in child care.

The discussion of long delays in seeking injunction appears to reflect an over-emphasis on two unusual cases. During 1995, 1996 and to date in 1997, a total of nine cases were advanced for court action. One was advanced during an appeal because the Department believed children were in imminent jeopardy. The remainder were petitions to enjoin illegal operations, including one show-cause petition for a repeat offender. Of the nine petitions, the Department acted within an average of 5.9 calendar days of the field worker's recommendation. The range for reaction was 1-19 days, the latter being one of the two problematic cases in which part of the delay was to secure legal evaluation of the evidence prior to deciding to request a petition. The Commissioner acted within an average of two calendar days, and in no instance longer

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than 5 days. Given the complexity and significance of petitioning for court action, these reaction times do not seem unreasonable, especially when some may have included weekends or holidays.

Recommendation (18). The Department of Social Services should ensure compliance with Appropriation Act provisions for the expenditure of day care funds. Funds that have been properly allocated but not expended should be reallocated or carried forward and expended in compliance with Appropriation Act provisions.

Recommendation (19). The Department of Social Services should carefully monitor the expenditure of day care assistance funds to ensure that the funding is used as planned or reallocated to other localities. Given the demonstrated need for day care assistance, particularly by income-eligible families, DSS should make the use of all available federal funding for day care assistance an agency priority.

The Department will request that any unexpended funds appropriated for the Child Day Care Fee System be carried forward. The Department has also implemented new policies to ensure that fee system funds are distributed to local agencies who are able to use the funds.

In particular, the Department has reserved 20% of the total fee system allocation at the state level. At the mid-year review, if a locality is unable to demonstrate the need for additional funding, that funding will be available for release to other localities. In this manner, the Department will ensure that fee system funds are not left unspent while families wait for assistance.

It is important to note that during the 1994 and 1996 bienniums, the state did not have sufficient information to determine which localities did not spend their entire fee system allocation until localities provided that information after the close of the year. In no instance did the Department of Social Services take action to transfer day care funds from the fee system program to the AFDC program.

Recommendation (20). The Department of Social Services should consider revising its income eligibility thresholds for child day care assistance to reflect cost of living in metropolitan statistical areas, not local median income.

There are any number of indices or other sets of factors which the Department could have chosen in order to set income thresholds reflecting the costs of living in different localities across the state. The Department considered and rejected using the

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metropolitan statistical areas (MSA's) as a "proxy" for cost of living for two reasons: (1) using the MSA's would have resulted in a substantially higher income threshold in those areas where the waiting list problem is most acute, and (2) using MSA's was unacceptably complicated and burdensome as MSA data is not available statewide and requires a secondary index for those areas not covered and, as discussed to date, would yield many additional threshold variations. Further, the Report criticizes the groupings because they do not reflect the most current market rates. The Department has consistently indicated that the new market rate data will be available well in advance of the October 1, 1997, effective date of the plan and that the new data will be incorporated into the groupings before the effective date. The Department expects to complete the market rate and make any necessary revisions to the groupings within the next 6 weeks.

The approach chosen by the Department corrects for cost of living to a greater degree than is the case for other programs operated by the Department. Further, surrounding states surveyed by the Department do not make any adjustment for cost of living across the state. While the Department is committed to closely evaluating this and all other aspects of the CCDF Plan, the current approach has the virtue of being reasonably accurate and reasonably simple.


Recommendation (21). The Department of Social Services should present options to the 1998 General Assembly regarding eligibility criteria for day care assistance and other allocation issues as may seem appropriate. The 1998 General Assembly may wish to consider directing the Department of Social Services to resubmit its Child Care and Development Fund plan to the federal government reflecting such changes as the 1998 General Assembly chooses to direct.

The Department has committed to ongoing evaluation and quick response should new program design need modification. The Department notes that codifying options under the CCDF will decrease flexibility at a time when all involved--the Department, the General Assembly, the local departments, the child care community and our customers--recognize the need to find and try new solutions to child care questions.

Mr. Philip A. Leone
July 10, 1997
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In closing, I would like to note that we found the members of your staff, in particular, Glen Tittermary, William Murray and Kim Snead, to be thorough, open and highly professional during this process. Thank you for the opportunity to comment on the exposure draft of this report. We are, of course, happy to provide any additional information that the Commission may require for their deliberations. Likewise, we will move timely to implement those recommendations that are enacted into law by the General Assembly.

Sincerely,

A handwritten signature in cursive script, appearing to read "Clarence H. Carter".

Clarence H. Carter
Commissioner

CHC/sdm

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