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UNDERPROTECTED, UNDERSUPPORTED: Low-Income Children at Risk

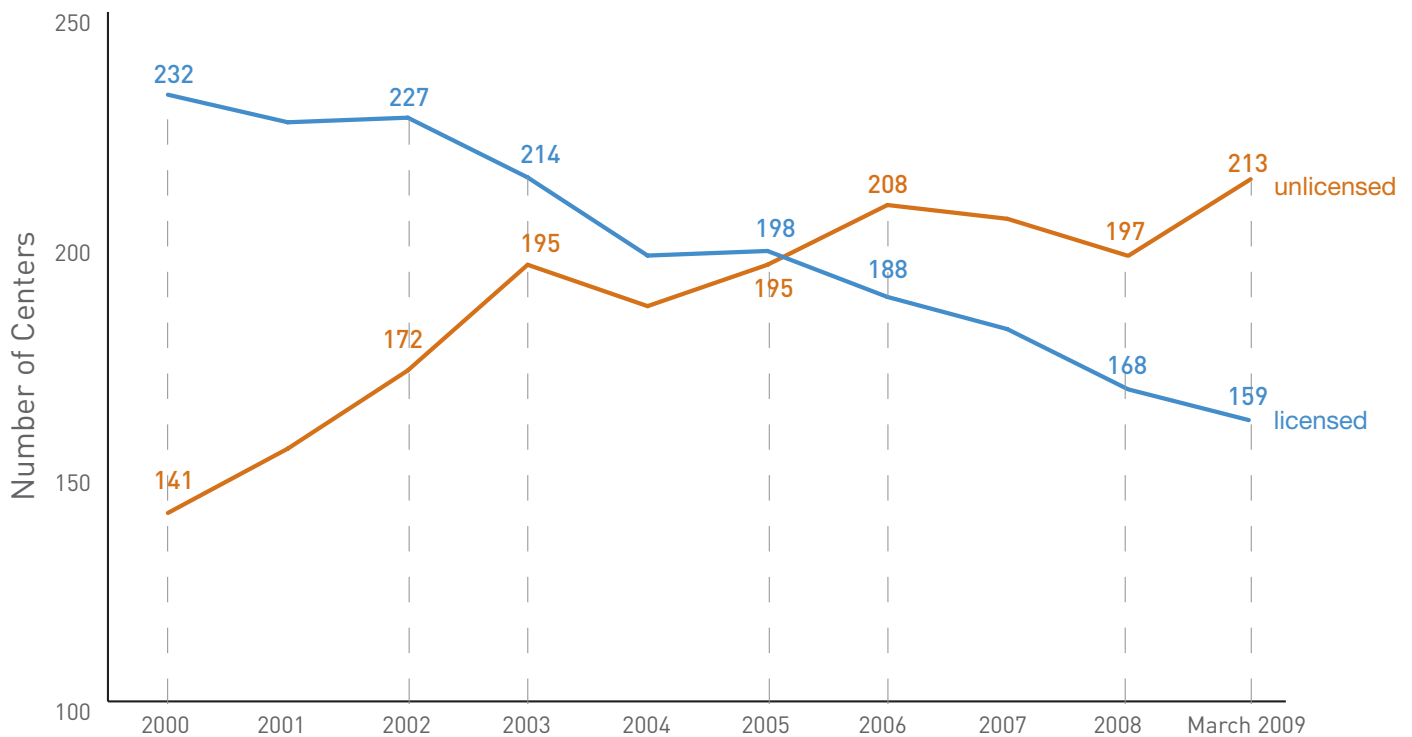


Dominique Apollon, Ph.D.
Victor Corral
Shannah Kurland



THE APPLIED RESEARCH CENTER CHILDCARE REPORT

Expansion of Unlicensed Centers in Alabama's Most Populated County (Jefferson), 2000-2009



Source: Alabama Kids Count, Data Books. VOICES for Alabama's Children, 2000-2008 editions; Alabama DHR

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SECTION I - Introduction

“AS A YOUNG WOMAN, I married and had children, and didn’t think I had any special talents,” recalls Thelma Thomas, founder and owner of the Thomas Day Care & Learning Center in Montgomery, Alabama. “But then I realized that everyone has a talent. And that for me, I was good at raising children.”

She had always wanted to open a daycare center. She had always loved children. In 1974, she “went looking for a building,” becoming only the second Black person in the state capital to open a center. Some thirty-five years later, Thomas runs four state-licensed centers with the help of her daughters Tracey Hill and Deborah Cunningham. The centers serve approximately 500 children, about 80 percent of whom receive support from the state’s child-care subsidy program. Some of these children do not have “nice places to live,” according to the family matriarch and industry pioneer. “This center is for some the best thing they have going for them.”¹

“The children need us,” Thomas argues, but the state’s subsidy program is “not enough to pay teachers what they need,” particularly since the center offers night care until midnight for parents who work late hours to make ends meet.

The rewards of the work? Calls and invitations from parents to the children’s high school and college graduations. And being a part of “that first start” in a child’s life, she says. “That makes me want to continue.”

But it has become increasingly difficult for licensed child-care providers to continue their work and improve the quality of the critical services they supply to their local communities that enable parents to work and, more importantly, provide for the development of the children.

Why?

First, too many states choose not to ensure uniform childcare standards for all centers within their borders. These states provide exemptions to some centers that are nevertheless eligible to receive a portion of the finite pool of government funds to support this industry and the low-income families they serve. Without uniform standards, parents have no guarantee from the state that there is a basic floor of



protection or of coverage for their children.

And second, even states that legislatively mandate uniform childcare standards do not always enforce them. Nor have any states adequately funded their childcare subsidy programs to provide low-income families with access to the highest quality care available in their area.

PURPOSE OF THIS REPORT AND MAJOR FINDINGS

The major purpose of this Applied Research Center (ARC) report is to study the effects of unlicensed care on the quality and safety of childcare available to low-income families. It is a national study, although we focus our investigations and analyses on three states in particular: Alabama, California, and Maryland. We interviewed dozens of advocates, providers and administrators from each of these three states and others, as well as national players. Based on the collected data

from each of these levels of government, we present the following **MAJOR FINDINGS**:

- States such as Alabama that permit exemptions to basic childcare standards for some childcare centers while simultaneously allowing those unlicensed facilities to benefit from state childcare subsidies for low-income families needlessly jeopardize the health and safety of low-income children and create a double standard that places licensed providers at a disadvantage.
- States such as California that do contain uniform childcare standards for all childcare centers, but lack adequate funding and staffing for their oversight, render such standards essentially meaningless and place the children's health and safety at risk.
- In states such as Maryland that maintain and enforce uniform, basic health and safety standards for all centers, but do not have adequate subsidy levels to help low-income families afford high-quality care, thousands of low-income children go underserved.



National Policy Context

Importance of Early Care on Development and Its High Cost

A high-quality early care and education (ECE) program that consists of preparation for school entry and childcare support for low-income families can be an integral component of child development. Research has shown that children (especially those from low-income families) in consistent and developmentally sound childcare, regardless of the setting, are more likely to have greater success in school, lower levels of juvenile crime, and lower teen-pregnancy rates than their peers.²

In addition, early childhood education has been found to “produce persistent effects on achievement and academic success,” that has proven to be economically and socially beneficial in the sense that the economic return from providing early education to children in poverty far exceeds the costs. Investing in high-quality early childcare and education programs has proven to be one of the best options to improve the long-term cognitive development and academic success of children in poverty.³

High-quality childcare is not an accessible or affordable option for many American families, and even when it is, its quality may be deceptive. For example, a 1998 study of early childcare by the National Institute of Child Health and Human Development (NICHD) found that most childcare centers did not meet the American Public Health Association and American Academy of Pediatric standards.⁴

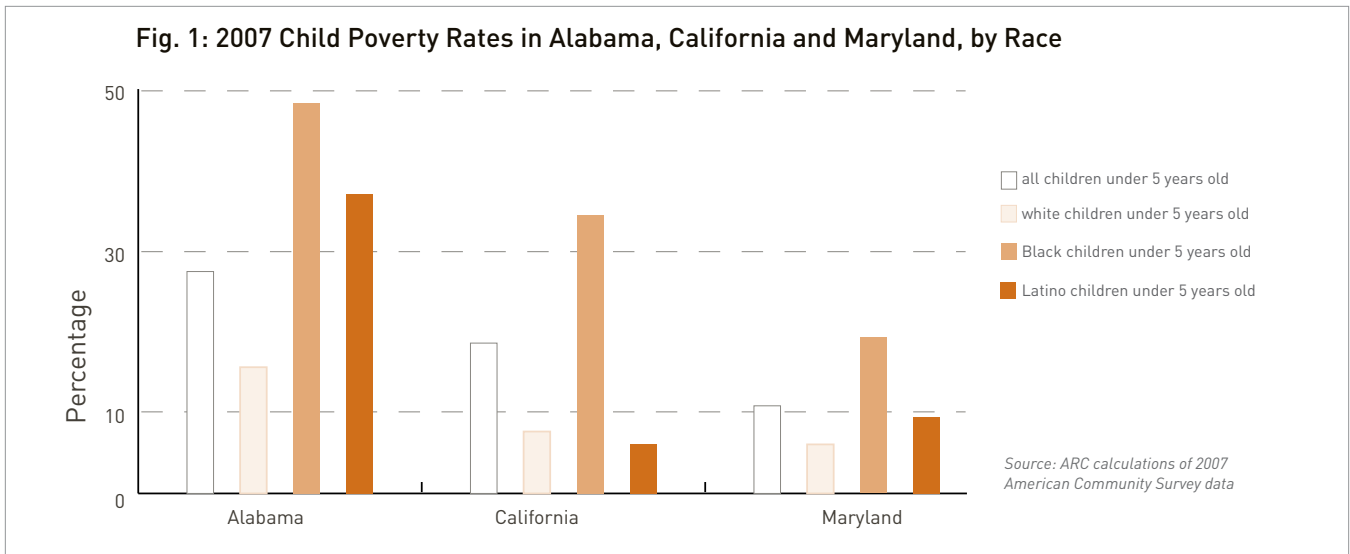
The overall lack of high-quality childcare is further compounded by the fact that many families face significant

financial barriers to obtain basic care, much less high-quality childcare. Childcare is particularly expensive for parents with multiple children or infants, and single parents. In 44 states and the District of Columbia, the average annual price for infant childcare is higher than a year's tuition at a four-year public college.⁵ The average family pays about 9.5 percent of their income on childcare, and families living below the poverty line pay about 25 percent. In some communities, families pay upwards of 70 percent of their income for full-time childcare.⁶ Current research has also shown that the quality of care received varies by household income. One recent study found that parents with household incomes below poverty level reported poorer quality care than parents with household incomes above poverty level.⁷ In addition, children living above poverty level are more likely to receive non-parental care and be placed in center-based care than those living in or near poverty.

Unfortunately, government policy on childcare has not fully appreciated the key role that high-quality ECE programs can play in improving the life chances of low-income children, who are disproportionately children of color. Instead, as Helen Blank, Director of Leadership and Public Policy for the National Women's Law Center argues, government support of childcare has been historically seen “as helping families go to work. So if you lose your job, your children get pulled out of the childcare arrangement.”⁸ This type of instability is clearly detrimental to a child's development.

“Now there's nothing wrong with helping families go to

Fig. 1: 2007 Child Poverty Rates in Alabama, California and Maryland, by Race



work,” Blank continues, “but if we’re honest, [government childcare policy] was not designed as a high-quality early learning program.” For the most part, the American public has not been seen childcare as a public responsibility. Until public and government attitudes change to prioritize enhancing life opportunities for *all* children, children from low-income families, immigrant households, and others who face economic and racial and ethnic barriers will continue to have limited access to high-quality care.

Federal Childcare Prior to 1996

Since the first federal investment in childcare was made during the Great Depression, childcare funding and public support for federal involvement in childcare has fluctuated widely.⁹ For example, as soon as the depression receded, the nation’s first federal childcare program was shut down, and resumed only with the onset of World War II. However, those wartime childcare projects (established by the Lanham Act) were also funded temporarily. By the end of the war, California was the only state to maintain its childcare program, but only after public pressure.

Almost two decades would pass before the government involved itself again with childcare. In 1965, President Lyndon Johnson enacted the federal Head Start program. The primary focus of Head Start, the first national comprehensive child development program, was to enhance the welfare of children from low-income families through early childhood education. During its early years however, Head Start did not emphasize job training for parents, or offer childcare to facilitate parental employment.¹⁰

During the 1970s, federal tax credits and deductions were implemented nationally, and in 1976, California became one of the first states to establish Resource and Referral Agen-

cies (R&Rs) along with Alternative Payment Programs to increase parental choice and assist parents in finding childcare and paying for it.

By the early 1980s, there were several federal programs that allocated funding for childcare. These multiple funding streams were eventually combined in 1981 to form the Social Services Block Grant (SSBG). However, when the SSBG was formed, childcare funding was drastically cut, and it wasn’t until 1988, when the Family Support Act (FSA) was passed, that childcare was *guaranteed* for welfare recipients who participated in education, training or work. Despite the benefits of the FSA to enable families to work and receive childcare, the quality of care was overlooked, and no regulatory standards were tied to its funding.¹¹

Parental Choice

With the enactment of the Child Care Development Block Grant, and the Act for Better Child Care Services (“ABC Bill”) in 1990, a new era in childcare policy began because federal childcare programs had finally gained the support of conservatives. As a result, subsequent childcare policy battles focused on the “the size and nature of the federal government’s investment in childcare, not whether or not it would be involved.”¹²

At the center of this new legislation—whose purpose was to increase federal funding and oversight to improve childcare quality, availability, and affordability—was the controversy over “parental choice.”¹³ The ABC Bill proposed by Senator Christopher J. Dodd (D-CT) and Representative Dale Kildee (D-MI) in 1987, faced opposition from conservatives, governors, and religious groups who did not like the restriction on federal funding of religiously affiliated providers as originally written.¹⁴ The George H.W. Bush administration echoed their opposition and threatened to veto the

bill, insisting that parental choice be “a paramount consideration” and that states should not “interfere in so personal and critical a decision as who will take care of one’s children.”¹⁵

Initially, the proponents of the bill—a coalition of 140 groups and its authors, mainly social scientists, children’s group activists and women labor leaders—pushed for federal health and safety standards. They managed to pass the bill in the House and Senate, but immediately received pushback from the Bush administration, and the Roman Catholic Church.¹⁶ The Bush Administration argued that faith-based providers and providers who could not meet minimal federal health and safety standards should not be excluded from receiving federal money because that would limit parental choice.

The implication of not having federal health and safety standards, according to one Oklahoma state senator at the time, was that “these regulations are going to hurt childcare. They are going to ruin quality.” But Jo Anne Barnhart, assistant secretary of the Department of Health and Human Services at the time, didn’t see it that way. “Our regulations do not eliminate standards. . . . nor do they inhibit the ability of a state to develop and enforce general child-care standards.” She then added that the government supported standards as long as they didn’t impede choice. As part of the compromise to win passage of the bills, childcare advocates relented to the Administration’s wishes and left the creation and enforcement of health and safety standards to each state.¹⁷

In a hearing after the rules were published, President Bush reemphasized what had been his administration’s argument all along, saying that the rules “will allow parents to choose the kind of childcare they believe is best for their children,” which reflected his commitment that “we should trust parents to make the best decisions for their children.”¹⁸ Child advocates in turn argued that “most parents have no way of judging whether a facility’s premises are safe, whether food is prepared hygienically or whether staff members are qualified.”¹⁹ Jane P. Boykin, Director of the Office for Children and Youth in the Mississippi Department of Human Services, said at the time that such regulations “go to extremes in guaranteeing parental choice at the expense of child protection.”²⁰

Ultimately, with “parental choice” the federal government abdicated considerable accountability over the oversight of whether or not federal subsidies are used in unsafe or unhealthy childcare centers. While the George H.W. Bush Administration may have increased the number of eligible providers, or “choice,” it allowed states to undermine the basic foundation of uniform safety and quality standards for all children within their borders.

Childcare Since 1996

The most significant change to the federal childcare program came on the heels of welfare reform in 1996 with the



passage of the Personal and Work Opportunity Reconciliation (PRWORA). With its enactment, the government created the Child Care and Development Fund (CCDF), which streamlined the major childcare funding sources, and increased spending.²¹

The CCDF is a federal support program aimed at improving the affordability, availability and quality of childcare for low-income families and families receiving or transitioning from temporary public assistance, enabling the parents to work or attend training or school. In fiscal year (FY) 2008, the CCDF made \$5 billion available to “States, Territories, and Tribes.” The funds provide subsidized childcare services through vouchers or certificates to low-income working families with children under age 13. To improve access and affordability, parents may select any legally operating childcare provider, including childcare centers, family members, neighbors, family childcare homes, after-school programs and faith-based programs.²²

At the federal level, the CCDF is administered by the Child Care Bureau, Office of Family Assistance (OFA) in the Administration for Children and Families (ACF). States, tribes, and territories are responsible for ensuring that childcare providers receiving CCDF funds meet minimum health and safety requirements, and they have the discretion to determine things like co-payment and eligibility requirements.²³

One of the main differences between the CCDF and previous federal childcare programs is its emphasis on quality enhancement. The Congress required that 4 percent of CCDF funds that the state receives go to quality improvement activities such as staff education and training, health and safety improvements, and child development programs.

Who Uses Childcare Subsidies?

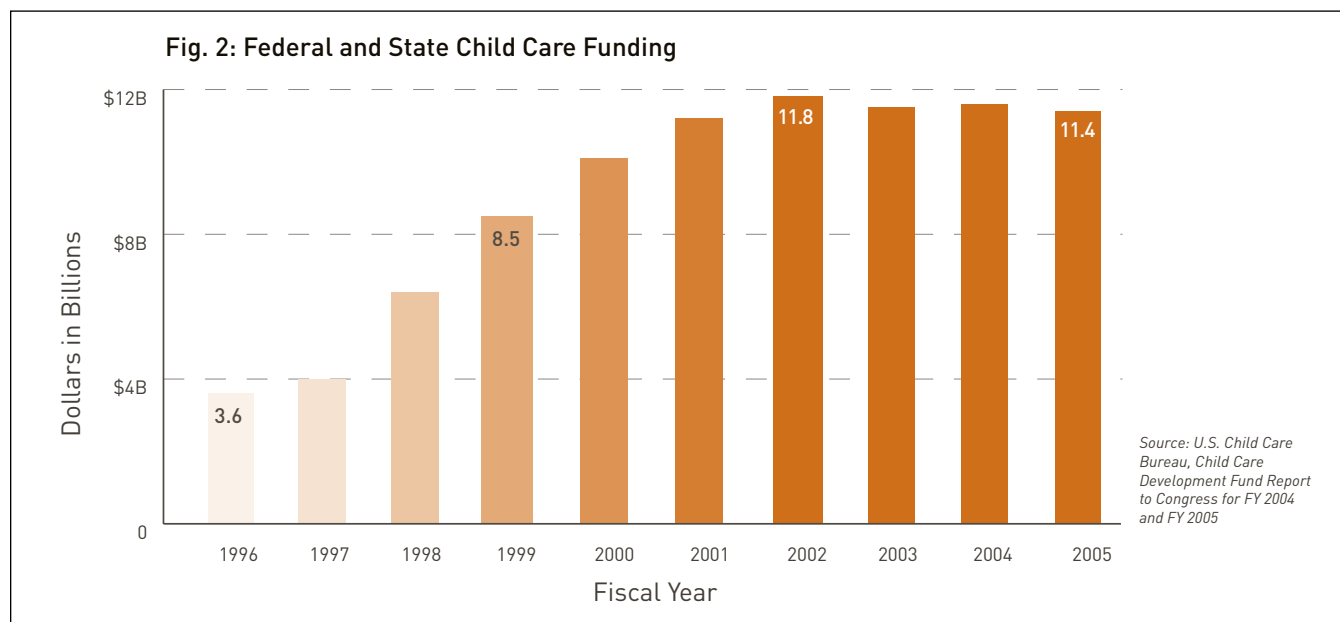
Research has found that childcare subsidy recipients are more common among single mothers, Temporary Assistance for Needy Families (TANF) recipients, families in which the youngest child is a toddler, Black families and mothers

born in the United States. However, multiple studies suggest that among families whose incomes qualify them for state subsidies, only a small percentage of these families actually use them (estimates range from 12 to 39 percent). These low utilization rates are attributed to the following: a lack of awareness of a subsidy system, misconceptions about their eligibility, stigmas associated with receiving subsidies, the often difficult procedures required for accessing subsidies, and limited English proficiency.²⁴ Long waiting lists in some states present yet another significant barrier.

Recent Trends in CCDF Funding and Budgets

Since welfare reform, federal and state childcare funding has increased from \$3.6 billion in 1996 to \$11.4 billion in 2005. Despite this significant increase in funds, spending has stagnated since 2001, ranging between \$11.2 and \$11.8 billion.

- Only nine states raised their income eligibility limits for childcare assistance sufficiently to surpass inflation, twenty-five kept or almost kept pace with inflation, three states decreased them, and 14 states failed to increase them enough to keep pace with inflation.
- There are 17 states with waiting lists for childcare, which is slightly better than the 22 states in 2001. Nine states saw their waiting lists increase since 2007, and five states have seen them increase since 2001.
- In about half of the states, families paid a higher percentage of their income in co-payments in 2008 than in 2001.
- Only 10 states had reimbursement rates for providers who serve families receiving childcare assistance at the federally recommended level in 2008, compared to 22 states in 2001.²⁵



Income Eligibility, Waiting Lists, Co-payment, and Reimbursement Rates: National Trends

Childcare assistance is a critical issue for all American families. Because the cost of childcare is often prohibitive for many families, it is important that federal and state childcare assistance be adequate for families to access and utilize high-quality care. New findings from the National Women's Law Center show that although some states have made improvements in their childcare assistance policies, a large number of states have made little progress, and some have even lost ground or failed to move forward since 2001.

With the recent national economic downturn and the increasing budgetary pressures in many states, childcare assistance policies are likely to stagnate or get worse in the coming years, creating significant childcare challenges for many families.

Oversight

States vary to the degree that they monitor childcare programs for compliance with standards and regulations. The most common examples of childcare oversight are inspections performed by childcare licensing agencies. There is significant variation in the frequency of inspections and the

penalties for not complying from state to state. One of the oversight benchmarks used by the National Association of Child Care Resource & Referral Agencies (NACCRRA) is that state licensing inspectors have 50 or fewer childcare programs to oversee. Only five states meet this standard, and 21 states have a caseload of more than 140 childcare programs per licensing inspector. According to NACCRRA, large caseloads prevent effective oversight. NACCRRA recommends that states perform quarterly site inspection, but only three states meet this standard, and eight states don't even conduct annual inspections.

NACCRRA's 2007 national study found that Alabama ranked 31st, California ranked 47th, and Maryland ranked fourth in the quality of their standards and oversight of childcare centers.

Market Rate

Childcare is expensive, and with every passing year, it gets even less affordable, especially for low-income families and those receiving subsidies. The ability for states to improve their social supports is further limited by the trend towards tighter state budgets. For families receiving subsidies, the federal recommendation that reimbursement rates be set at the 75th percentile of current market rates often fails to support both families and providers in their efforts to provide and receive high-quality care. In 2008, 41 states had state reimbursement rates that were below the 75th percentile of current market rate, compared to 29 states in 2001.²⁶

State Reimbursement Rates Compared to Market Rates²⁷

- Alabama: 10th–45th percentile of 2007 rates (last updated in 2007)
- California: 85th percentile of 2005 rates (last updated in 2006)
- Maryland: 45th percentile of 2005 rates (last updated in 2007)

Parental Co-payment

Many states have co-payment rules that require families to pay a certain portion of their childcare costs based on their income levels. If states fail to make co-payments affordable to families, many will struggle to pay for childcare, and providers may be discouraged from participating in childcare assistance programs. In FY 2005, 71 percent of CCDF recipients paid a co-payment, and of those families, co-payments averaged about 6 percent of a family's income.²⁸

Report Outline

In the sections that follow, we discuss the cases of three states (from different regions of the country)—one that provides extensive licensing exemptions, another that provides limited exemptions, and a third that provides no exemptions at all—to explore the impact of unlicensed care on the health and safety of childcare available to low-income families. Alabama, a southern state that grants comparatively extensive or permissive exemptions of its childcare standards to religiously-identified childcare centers, serves as the major focus of “Childcare (Double-)Standards”. The growth of shockingly unhealthy and unsafe conditions in some unlicensed centers in one Gulf Coast county of the state have prompted the local public health department to courageously fill the policy-making and oversight vacuum caused by the lack of political will at the state level.

“Underprotected” centers on highly populated California, an ethnically diverse Western state that *does* require all childcare centers within its borders to be licensed, but undermines its own uniform childcare regulations by conducting such infrequent inspections. The lack of oversight in Alabama of unlicensed, or so-called “license-exempt” facilities is also further explored.

“Undersupported” argues that even states like Maryland—that outpace states like Alabama and California on national rankings of health, safety, and oversight—can and must do much more to support low-income families and providers by increasing state childcare subsidies. The global economic crisis and state budget shortfalls provide the political cover for cost-cutting legislatures in all three states to potentially slash budgets, but at incalculable loss to a generation of culturally diverse, low-income children and their providers who often sacrifice their own financial well-being when state payments are delayed.

In the final section, we offer recommendations for childcare advocates and policymakers interested in advancing equity in this critical realm for low-income families and particularly for early childhood development in disadvantaged populations. We argue for the urgent needs to

- A) Abolish State Exemptions and Fund Transition Costs**
- B) Strengthen Licensing Requirements and Adequately Fund State Oversight**
- C) Improve Record-keeping and Transparency in State Government**
- D) Empower Parental Voices**

SECTION II - Childcare (Double-)Standards: State Licensing and Exemptions

MOBILE, ALABAMA: HEALTH OFFICER BERNARD EICHOLD

Bernard Eichold, head of the Department of Public Health in Mobile, Alabama, was asked in the summer of 2008 what spurred the department to impose stringent new health and safety regulations and mandatory, unannounced *quarterly* inspections on all childcare centers in his county, even though such rule-making and inspections are traditionally the role of the Alabama Department of Human Resources (DHR). Eichold paused briefly and then answered matter-of-factly:

“Well, it was because of the deaths.”

Eichold was referring to the needless deaths of small children and toddlers like two-year old Amiyah White, who died from heat-related injuries while in childcare in September 2005. She had been left in a center van, where police say temperatures topped 100-degrees Fahrenheit, for more than two hours before her caregivers realized she'd been missing from the dozen or so children under their supervision at a local church.²⁹

The year before Amiyah's death, Alabama's governor had signed the “Baby Douglas” bill that made it a felony to administer medication to a child beyond what is medically prescribed (the bill was named after 10-week-old Douglas Hernandez, who died in 2002 from a toxic mix of prescription and over-the-counter drugs administered to him at a Mobile County daycare center). The county and state DHR offices had come under significant media and legal heat for refusing to shut the family daycare center down, and others in the local childcare industry recount a tragedy of four children perishing in a hotel fire along with their child caregiver, a retired school teacher who was not legally authorized to provide the low-cost care that she did.

Needless deaths and an alarming rise in makeshift, low-quality, mom-and-pop-style childcare centers with unsanitary and unsafe conditions seemed to flaunt not only the state's basic health and safety standards, but also common sense.

“I saw a center with 58 kids spread across three rooms and only one or two adults looking after them,” said Pamela Boyce, an experienced Food & Lodging division inspector who made an unannounced visit to enforce the Health

Department's food-handling standards. Those standards governed over *any* public facility—including restaurants, schools and childcare centers—that had a kitchen in the state's second-largest county. In recent years, she and other Food & Lodging inspectors were feeling shocked and powerless to halt the deteriorating conditions in childcare facilities, whose general health and safety standards fall under the regulatory purview of the state's DHR and its own inspectors.

The state of Alabama mandates anywhere from a 6:1 to 16:1 child:staff ratio for children age 18 months to 5 years old, and a 4:1 infant:staff ratio, but according to Boyce and another colleague, “We saw a center with one adult and nine babies in a building that wasn't [fireproof] sprinkled! Dirty carpets from dirty diapers, and wet spots covered with towels. It was just terrible.”



And who could tell how widespread these problems were in the county's childcare industry? Facilities without kitchens might be escaping any regulatory scrutiny at all. There was no way to know how many facilities were falling through the cracks.

Why would DHR officials claim to be powerless to investigate and enforce its own health and safety standards, potentially putting the state's children—particularly its low-income children—at risk?

MINIMUM STANDARDS DO NOT ENSURE QUALITY CARE

States establish and enforce minimum standards for licensed childcare programs to ensure a basic floor of protection for children being cared for in day- or night-care programs and facilities while their parents are at or are searching for work.

While there are, of course, variations in the level of adequacy across the United States, typical childcare standards cover several major areas, including the following:

- Child:staff ratios
- Criminal background checks
- Education and annual training requirements for teachers and center directors
- First-aid, CPR, fire safety, and other health and/or safety training requirements
- Open parental visit policies
- Ten areas of health and safety, including immunizations, guidance and discipline regulations, diapering and hand-

washing, fire drills, medication administration, incident reporting, infant sleeping regulations, hazardous materials, playground surfaces under outdoor equipment and emergency preparedness.

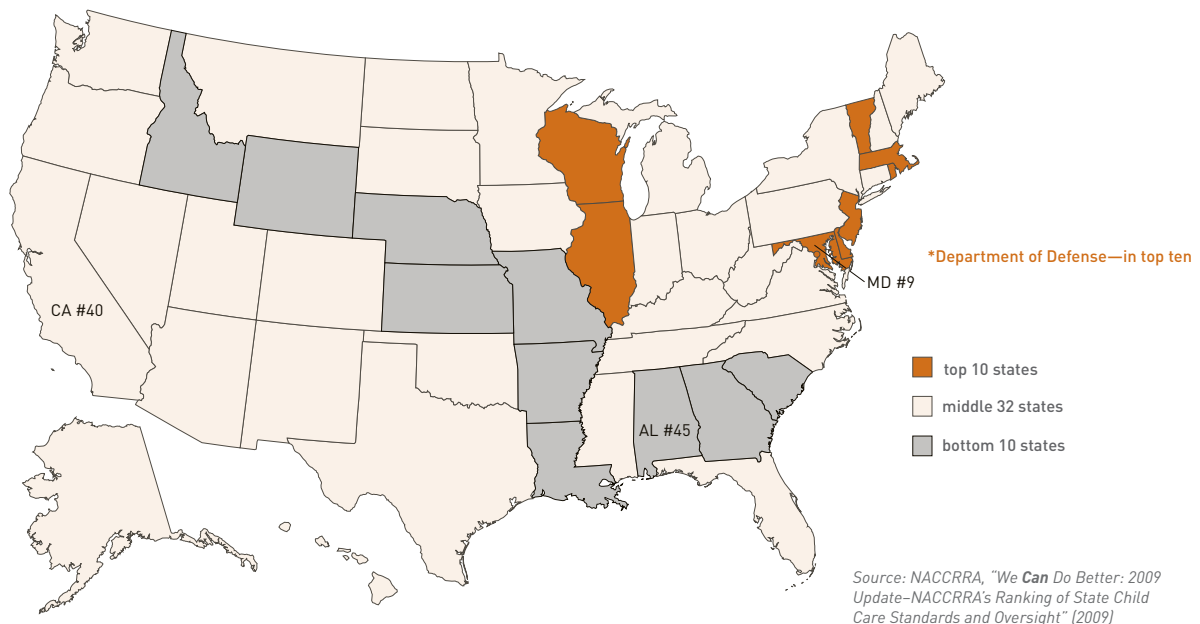
NACCRRA recently produced an excellent comprehensive report titled *We Can Do Better: NACCRRA's Ranking of State Child Care Center Standards and Oversight* (2007), which ranks states on these and other health, safety and oversight standards.³⁰

However, childcare advocates uniformly report that childcare standards are just a *floor*, meaning that they don't in and of themselves promote high quality in early childhood development programs. The typical refrain goes like this: "The minimum [childcare] standards are exactly that—the *minimum*."

"So many people consider childcare babysitting, but it is a profession and there are standards required by the Alabama Department of Human Resources," says Fran Clampitt, a tireless North Alabama childcare advocate who first started providing family child care in 1978. "There has been discussion through the years that providers need to comply with the standards every day that they operate. But providers will get slack throughout the year and then start trying to play catch-up when they begin to feel that the inspection visit is pending."³¹

"The minimum standards are fine. It was nothing for me to meet them," says Lillie Hood, an accredited family home childcare provider in the Montgomery area. "My maximum is six in the day and six at night. I'm not interested in expanding to become a group home. I thought about opening

Fig. 4: 2009 NACCRRA Rankings of States' Scores for Child Care Center Regulations / Standards



a center, but no, I'm just responsible for me, not for all those other people.”

Still, to those providers who don't see the need for inspections and assume they are providing top-notch care, Hood has an answer. “Just because a child's never had an accident at your house doesn't mean it's quality care. What about the record keeping?”³²

“Inconsistencies from county to county by DHR workers are very frustrating for many. There are counties that call ahead to make appointments with their providers, which I think defeats the purpose of ‘unannounced’ visits,” Clampitt remarks incredulously. Indeed, like any government rules or regulations, health and safety standards are only as good as their enforcement.

Or more accurately, the worth of a state's health and safety standards can be judged by their enforcement and *scope*.

SIGNIFICANT EXCEPTIONS TO STATE REGULATIONS

A clear majority of states have instituted *uniform* childcare standards—that is to say, they require *all* childcare facilities to follow minimum requirements on child:staff ratios, criminal background checks, staff training, diapering, handwashing, medication administration, and so on. However, approximately 14 states currently provide exemptions to a subset of center-based providers (as distinct from family care, group home based care, etc.). Like the range of childcare standards themselves, the extent of these exemptions varies across this baker's dozen of states (plus New York City).

So-called “license-exempt”, or unlicensed facilities in some states are prohibited from caring for infants or toddlers, whereas in other states, no such age restrictions apply. In some states that allow exemptions to the health and safety standards which all *licensed* centers must follow, staff at *unlicensed* centers may be subjected to criminal background checks but may escape the annual training requirements that apply to staff at licensed centers. Some states that provide partial exemptions nevertheless require regular, formal inspections of unlicensed facilities on the particular health and safety standards that *do* apply, whereas other exemption-providing states satisfy themselves with a self-evaluating, mailed statement of compliance or equivalence (See Table 1 for a categorization of limited, moderate and extensive license-exemption states).

Why would a state shield a particular sphere of its childcare industry from government scrutiny on even the *basic* health and safety standards?

More often than not, license exemptions, when they are granted, are provided to church or otherwise faith-based facilities, although programs associated with public and non-public schools occasionally are also exempted.

TABLE 1
Categorizing the 14 States with Exemptions for Centers

Limited Exemptions: Infant and toddlers prohibited; regular, formal health and safety requirements (sometimes including training)

- **Connecticut**—Exemptions limited to facilities that exclusively cater to church members; requires affidavit attesting to minimum standards; staff will meet similar safety and training requirements.
- **Illinois**—No children under the age of 3 allowed; must comply with fire, health and safety codes.
- **Louisiana**—Public and non-public school pre-kindergarten programs only; annual health and safety inspections.
- **Maryland**—No children under age 2; health and safety inspections.
- **South Carolina**—Church-run or other faith-based centers that don't receive public funds are exempt.
- **Utah**—Educational institutions, including parochial schools who aren't looking after infants/toddlers (age 3 and up); health and safety inspections.

Moderate Exemptions: Include either age restrictions or regular, formal health and safety requirements

- **Florida**—Facilities must be accredited by or be a member of an organization requiring minimum health and safety standards subject to state approval.
- **Indiana**—Accepts children of any age for religious ministry programs; compliance with state health and safety codes.
- **Missouri**—No age restrictions; annual health and safety inspections.
- **New York City**—connected to public or private religious elementary schools; health and safety compliance.
- **Tennessee**—Boys & Girls' Clubs' centers receive exemption; health and safety compliance.
- **Virginia**—Educational institutions and religious institutions receive exemption; health and safety requirements.

Extensive Exemptions: Eligible to accept children of any age; informal health and safety requirements

- **Arkansas**—Operated by a church or group of churches exempt from state tax; health and safety training.
- **Alabama**—Faith-based organization; state or local agency; must complete a health and safety certification form.

States that allow limited exemptions include Connecticut, which permits exemptions for facilities that exclusively cater to church members, and Maryland, which permits exemptions for faith-based centers, as long as they do not accept children under the age of 2 and agree to submit to health and safety inspections. Exempt facilities in Maryland are essentially free from the staff training requirements.

States with moderate exemptions typically go one step further and allow children of any age in faith-

TABLE 2: Average Percentage of Subsidized Children Served in Unlicensed Centers, 1998 - 2007*

Indiana 18.75%	VA, NY, LA, MD , UT, TN, AR, SC have less than 1% <i>*of states offering licensing exemption to some center-based childcare facilities</i> Note: Alabama=25% in 2007
Alabama 17.4%	
Florida 6.7%	
Missouri 5.1%	
Illinois 3.0%	
Connecticut 1.6%	

Source: ARC calculations of CCDF Data Tables. U.S. Dept. of Health and Human Services. Tables 1 and 6, FFY 1998-2007.

based centers, but still require formal health and safety requirements. And at least two states (Arkansas and Alabama) allow comparatively extensive exemptions for faith-based centers that serve children of any age without any regular, formal health and safety requirements.

Although the study of the enforcement performance of all exemption-providing states is far beyond the scope of this report, if this initial review of practices in Alabama is illustrative of the class, there is more than considerable cause for concern—particularly in difficult economic times. The few regulations that exist don't seem to be strictly enforced, and the cursory process that is required of center directors to actually register as a "license-exempt" facility significantly undermines the integrity of the state's minimum health and safety standards that are intended to protect Alabamian children.

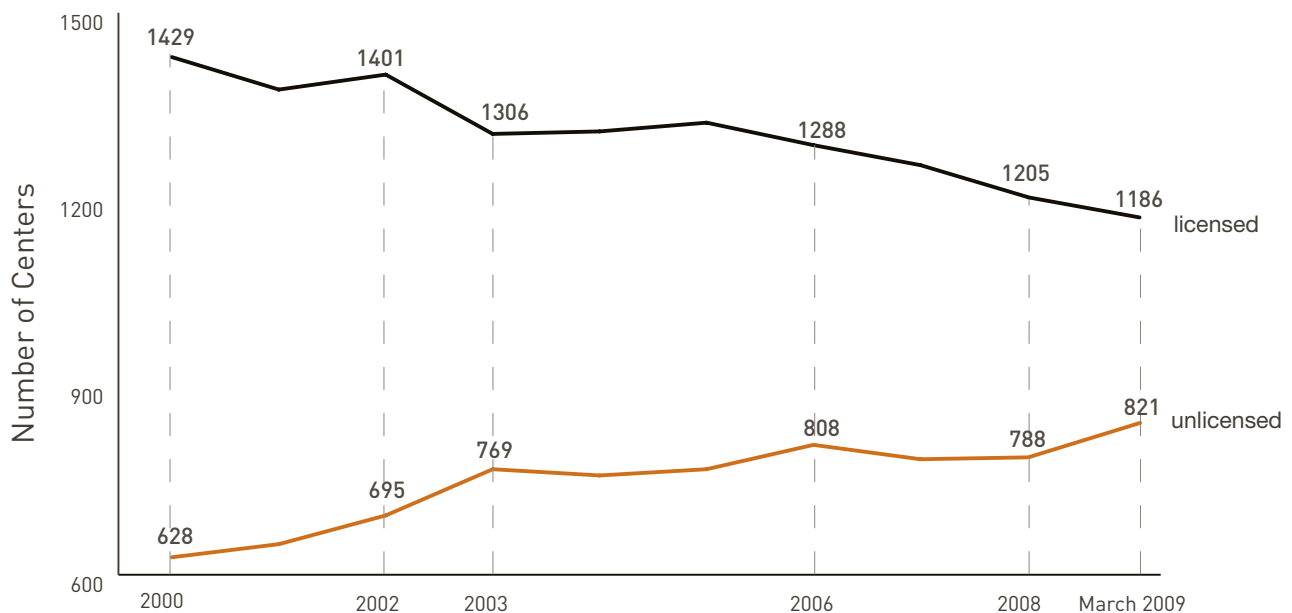
EASE OF EXEMPTIONS IN ALABAMA

The process for faith-based childcare centers to become "exempt from licensure" is not much of a process at all. That is true for both new centers and for centers that have been licensed for a few or many years but for one reason or another no longer wish to be subject to Alabama's minimum standards and oversight authority.

Prospective unlicensed providers can request, by phone or mail, the appropriate forms from the DHR's Birmingham office, which now handles all requests centrally. Currently, the four requirements requested by the DHR are as follows:

1. Notice is filed by the governing board or authority of the church or school that said church or school meets the definition of a local church ministry or a religious nonprofit elementary school under the terms of the relevant statute, and is therefore exempt from regulation by the department.
2. Notice of intent to operate a license-exempt program is given to the appropriate fire and health departments so that said facilities shall be inspected in accordance with the state and local fire and health departments for such programs.
3. Notice is filed with the DHR certifying that the following records are being maintained by the church:
 - Fire and health inspection reports

Fig. 4. Alabama Licensed Centers vs. Unlicensed Centers, 2000-2009



Source: Alabama Kids Count, Data Books. VOICES for Alabama's Children, 2000-2008 editions; Alabama DHR

“We saw a center with one adult and nine babies in a building that wasn’t [fire-proof] sprinkled! Dirty carpets from dirty diapers, and wet spots covered with towels. It was just terrible.”—Pamela Boyce, Mobile Health Dept.

- Immunization verifications for all children
 - Medical history forms for all staff and children
4. Notice is filed with the DHR certifying that the following information shall be available to parents or guardians prior to enrolling their children in said church ministry:
- Staff qualifications
 - Pupil:staff ratio
 - Discipline policies
 - Type of curriculum used in the learning program
 - Religious teachings to be given each child
 - Type of lunch program available

Once those notices are completed and signed before a notary public, the provider simply mails them in to the office charged with reviewing them, and awaits their official notice of license-exempt status. From start to finish, the process can take a matter of weeks, as opposed to the typical six months or more that it takes to complete the structural requirements and paperwork to legally operate a licensed facility.

In previous years, local DHR offices handled the exemption review process, which predictably led to some regional variations. As remarked by Wendy McEarchern and Cheryl Gwin, two women who lead a resource and training center open to all childcare providers in the Mobile County area of southern Alabama, “The DHR is satisfied with *one* fire inspection at the outset, and then it’s ‘off you go’.”³³ No oversight whatsoever after that. In northern Alabama, some licensed providers and advocates are galled by even lower initial barriers. Mary Davis, director of the Child Care Resource Network, commented on this situation: “The kicker is [license-exempt providers] are supposed to say they’ve met fire and health inspections. But they don’t have to send it in. It’s not part of the record.”³⁴

In the 1980s, according to McEarchern and Gwin, the Mobile DHR office required unlicensed facilities to be part of an *established* church. But the State DHR office, which now handles all of the exemptions centrally, essentially says, “Just send us a letter, and you will get your exemption.”

In the past three or four years, licensed providers are witnessing more and more of their colleagues “go exempt,” switching their status to become unlicensed. It is becoming common to hear reports of providers actually being

encouraged to do this by their DHR license inspectors, some of whom are undeniably overburdened with case loads and heavy travel schedules.

Pam Lanford is a shoot-from-the-hip, headstrong, but friendly childcare advocate and provider who runs three childcare centers in the Huntsville area (in northern Alabama). Coordinating several staff members at once and tracking and helping to transport so many kids is no easy task, but Lanford relays instructions and asks questions into her walkie-talkie with the confident, relaxed authority that comes from experience.

Lanford recounts the story of another Huntsville-area provider who operated multiple licensed centers in Madison County. As a result of a disputed claim that one of his drivers had left a child unattended in a van, the provider was ordered to suspend the transportation portion of the associated center. Rather than comply with this, he filed his license exemption papers solely on that facility. Despite the suspension, the paperwork sailed through, “He’s transporting now, and never missed a day,” Lanford states.³⁵

But it wasn’t always this way. Under a 2001 executive order signed by Democratic Governor Don Siegelman, exempt centers were at least required to file affidavits that they were voluntarily complying with minimum health and safety standards. But that executive order was promptly revoked by Siegelman’s successor, Gov. Bob Riley, a Republican, in 2003.

Previously, the licensed centers had to sign an affidavit every month before they could receive their subsidy checks from the state. “Lots of churches stopped accepting checks, because



they didn't want to sign [the affidavits]," argues Lanford. "Within a year of [the executive order] being pulled, we saw an increase in exempt programs in Madison County."

The current administration no longer requires the exempt centers to file the affidavit. But according to Lanford, "It doesn't make it right. It doesn't make it safe." Under Governor Riley's faith-based program, Lanford says, "The faith-based [exempt centers] benefit *greater* than the private ones when it comes to getting access to the federal dollars. [Requiring uniform] licensing would make it *equal*."

But the temptation for licensed providers to make the switch has become that much more enticing for many providers. "I actually had a previously licensed program director tell me that she was now exempt," says Fran Clampitt, another Huntsville-area childcare advocate recalling a recent telephone conversation. "I asked her what church she was operating under. Her reply was, 'I *am* the church.'"³⁶

MAKING THE TRANSITION (AND HELPING OTHERS TO DO THE SAME)

After witnessing a screaming staff member at the childcare center where she had enrolled her own children, concerned parent Sarah Holmes (a pseudonym) started her own part-time daycare center about 30 years ago. She averaged 12–14 kids in that first year, and steadily increased her enrollment up to 35 children in a half-day center.

When she switched to a full-day center, Holmes found it exhausting. "It was *very* tough. I didn't realize how hard it'd be, and back then I didn't realize I *needed* a license [to operate]."

After gaining years of valuable experience, in 1986 she took over an old licensed center that was in trouble with the DHR. Licensed for 56 children, it was actually servicing 82 kids, but Holmes brought it into line with state licensing regulations and named it "Little Stars". At first, her clientele was almost uniformly middle-income whites from the Birmingham neighborhood where the center was located.

"We had to beg for Blacks," says Holmes, who is white and came from a poor background. But gradually, the area demographics changed from retired whites to lower-income Blacks renting the homes in the neighborhood.

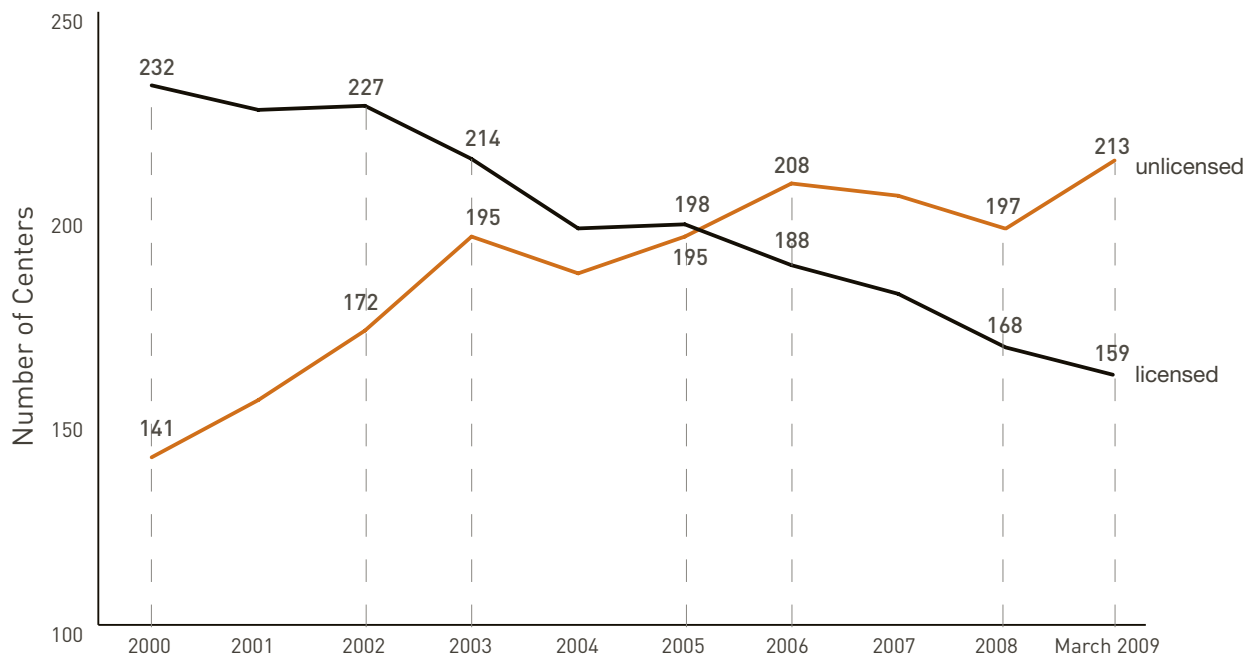
For almost 20 years, Holmes operated her childcare center as a state-licensed facility, but five to six years ago, she learned about the option of going exempt. "I couldn't believe how easy it was."

"I'm not aligned with a specific church. We teach children the basics about Jesus Christ, and how to communicate and have respect for each other. We have children from multiple religions."

According to Holmes, parental interest actually increases when the Christian focus is mentioned. The "parents were so excited to sign the affidavits" for her license-exempt status.

Nevertheless, Holmes says that she still follows the state's minimum standards because she cares. "I don't have to meet

Fig. 5: Jefferson County (Birmingham) Licensed Centers vs. Unlicensed Centers, 2000–2009



Source: Alabama Kids Count, Data Books. VOICES for Alabama's Children, 2000–2008 editions; Alabama DHR

“A lot of the license-exempt centers are excellent quality, but there are a lot of centers who *think* they’re following the minimum standards, but in my view they aren’t. We need some kind of checks and balances of license-exempt centers.”
 —Sarah Holmes, Birmingham, AL unlicensed provider

the [child:staff] ratios, but I do.” She admits that because of the rising costs to run a quality childcare center, “Sometimes it gets tight.” But after 30 years of dealing with DHR, she simply got tired of the bureaucracy and “pettiness” of most of the violations. “Leaves on the playground and that sort of thing.”

“Some of the inspectors’ checklist items aren’t even in the minimum standards,” and they each seemed to have their own individual pet peeves in Holmes’s mind.

Although she certainly has no regrets from her own center’s perspective, Holmes expresses concern that some of the newly-formed unlicensed facilities, in particular, are not exhibiting the competence that they think they possess.

“A lot of the license-exempt centers are excellent quality, but there are a lot of centers who *think* they’re following the minimum standards, but in my view they aren’t,” says the experienced Holmes, who has conducted trainings of her own, first informally, and more recently on a formal basis. “We need some kind of checks and balances of license-exempt centers. I’d like to see a system that we could *choose* to go on. Some sort of voluntary, reasonable rating system.”

As an example of the lapses of basic health and safety standards exhibited by some of the unlicensed centers, Holmes recounts the story of a local daycare center operated by a

church that was down on its luck.

“One of my employees started coming late to work, so I asked her what was going on.”

“But, the van was late, Ms. Holmes.”

“The van? What van?”

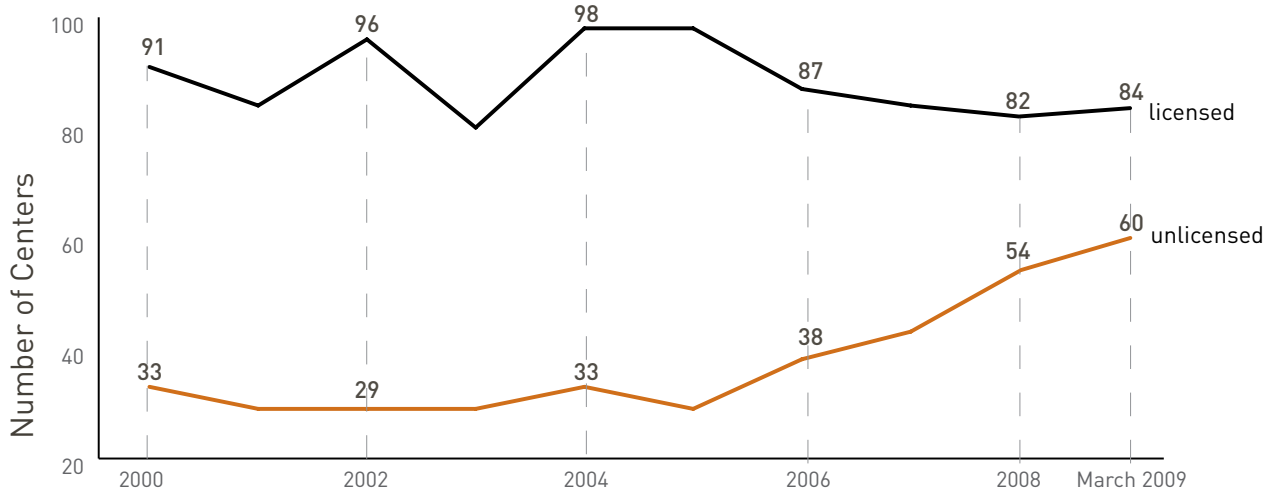
The employee told Holmes that, as a favor, she’d been transporting her neighbor’s children in the mornings to a parking lot where a church daycare van would pick up multiple kids, and “take them to some apartment” or another undisclosed location for the day. The church had lost its lease, and was subsequently shuttling the children to different sites—sometimes the parents did not know where—and dropping them back to the same parking lot at the day’s end.

“Is that okay by your neighbor?” Holmes asked.

“Well,” shrugged the employee, “I guess she just trusts her preacher.”

This is not a response that sits particularly well with Holmes, who unlicensed and frustrated with the state oversight apparatus as she may be, seems to know in her gut that the status quo is not providing an adequate foundation of protection for the state’s children. Still, she counsels interested licensed center owners on how to make the same switch to license-exempt status that Holmes’s center made a few years ago, doing her

Fig. 6: Madison County (Huntsville) Licensed Centers vs. Unlicensed Centers, 2000–2009



Source: Alabama Kids Count, Data Books. VOICES for Alabama’s Children, 2000–2008 editions; Alabama DHR



best to train them to not only maintain basic health and safety standards, but to improve their quality as well.

About 100 miles north of Birmingham in Fort Payne, Alabama (near the Tennessee border), provider and advocate Mary Davis laments the ease with which some licensed providers are making that switch in her area. According to Davis, some daycare centers now approach a church “15 blocks over” to initiate a paper relationship that will allow them to start the exemption process. “They say, ‘It won’t cost you any money. It helps [church] families. It will be a mission’ of your church’ They sometimes offer church members a discount on fees. And the number of centers that are doing this is growing.

“We have some really good church programs who are exempt simply because it’s easier. And it’s not that you don’t care about the quality of care for the children. I will admit there have been times where I thought it would be easier [to go exempt].” But among other things, Davis worries about liability, and wonders whether churches that sponsor a license exemption have any idea about the potential liability they assume.

“I’m always the one that fights. We gotta say what is best for the child. And minimum standards are the *minimum* for what we’re doing,” Davis says. The state “should protect *all* children.”³⁷

On the policy front, North Alabama advocate Mary Davis and others across the state have been fighting to ensure uniform protection for all children in childcare, but this struggle had effectively been lost in the 1980s.

“When I got into childcare in the 1970s, a licensing worker came out, and it was a helpful thing.” The state employee brought with her a fire plan and other useful information, so “it was a resource the state made available for me to make my business better.” Davis says she “took it for granted,” particularly since her licensing representative was “caring and knowledgeable,” which unsurprisingly isn’t always the case.

“But through the years, the discussion centered around who needs to be licensed. We fought a big battle in the ‘80s. Everyone who cared for unrelated kids was supposed

to be licensed. And again, we took it for granted.”³⁸ There weren’t too many churches running day care centers, according to Davis. At least not too many out in the open requesting acceptance into the state’s subsidy program doling out federal dollars.

Then, explains Davis, some churches raised an argument about separation of church and state. “And some of them had some valid points about looking through church records. There was some incident that stirred it up, and...the legislators began to look at it from that perspective.” Davis recalls that they had a minister speak at one meeting, giving his account of what he saw as a negative, meddling-state experience with a childcare license inspector.

“He got up and said, ‘[The inspector] told us we had to buy tricycles rather than bibles for our children!’ And [the minister] was talking about 3- and 4-year-olds,” Davis explains with resignation. “Everyone in the room got to nodding their heads, supporting the minister, and I thought to myself, ‘Well, we’ve lost them now.’

“Childcare advocates weren’t savvy enough to effectively make the health and safety argument. So the state made an exemption for centers that were part of a church or government agency, or the military, as well.” The battle was framed as a “fight” against the Christians. A fight against the churches, which in Davis’s words amounted to “political suicide.”

“And that’s not changed much,” she added in January 2009. “Those of us who have worked on state committees have figured [out] other methods of fighting and improving things.”³⁹

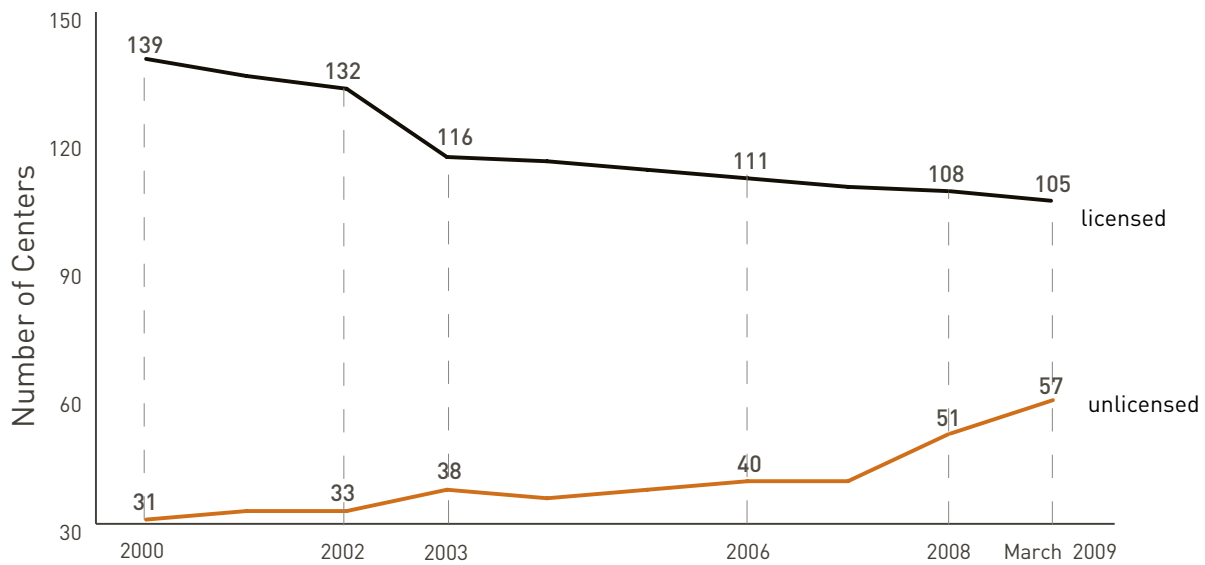
NEGATIVE IMPACT OF THE DOUBLE STANDARD ON LICENSED CARE PROVIDERS

Thelma Thomas and Tracey Hill are a mother-and-daughter team who run four licensed childcare centers in the Montgomery area. “I think no center should be exempt, if they’re going to get the money we get. If you say this is what the child needs to thrive, then why should you allow someone else to be exempt from the minimum standards? That’s contradictory.”

“It’s the only business I know of where you have to have everything ready in place before you see the first [customer],” posits Pam Lanford, the headstrong, but friendly provider and advocate from Huntsville. “Your staff must be hired. You can’t even advertise [until all of your paperwork has been approved].”

Speaking from almost two decades of childcare facility-operating experience, and years of legally butting heads with the state in the form of a lawsuit challenging the double standard created by the exemption process, Lanford adds that licensed centers like the three she owns cannot relocate their facilities without starting the licensing process all over again. “An exempt center doesn’t go through all that. They can get

Fig. 7: Montgomery County Licensed Centers vs. Unlicensed Centers, 2000–2009



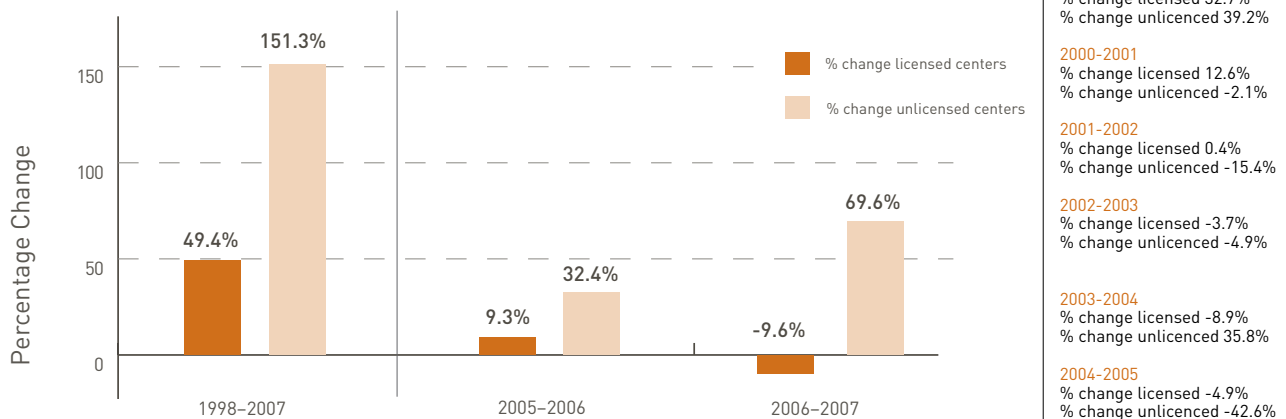
Source: Alabama Kids Count, Data Books. VOICES for Alabama's Children, 2000–2008 editions; Alabama DHR

an exemption in three weeks. It can take six months to get your license.”⁴⁰

As Clampitt explains simply, “When it’s a church, they don’t have so much overhead.”⁴¹ Or in the words of her area colleague Mary Davis in January 2009, “I just spent \$111,000 to meet the fire marshal’s request this year. My facility has always met inspections for 35 years, but he said we couldn’t grandfather in anymore. That meant sprinklers, rewiring [and so on]. I seriously thought about going up to the nearby church and asking for their letterhead.”⁴²

Yet the abuses witnessed by the Mobile County Department of Public Health serve as proof that in some areas of the state, mom-and-pop-style, makeshift daycare centers could receive unlicensed status without following the formal state requirement of being associated with a traditional church. “The original governor’s intent was that *established* church facilities would be exempt,” said Dr. Eichold. But in recent years, “others were just looking to run businesses [with license-exempt status], and they can receive up to \$92 a week from the child subsidy,” added Alice

Fig. 8: Percentage Change in the Average Monthly Number of Subsidized Children Served, by License Status (Alabama)



Source: ARC calculating of CCDF Data Tables. U.S. Dept. of Health and Human Services. Tables 1 and 6, FFY 1998–2007.

1998–1999
% change licensed 20.8%
% change unlicensed 31.0%

1999–2000
% change licensed 32.7%
% change unlicensed 39.2%

2000–2001
% change licensed 12.6%
% change unlicensed -2.1%

2001–2002
% change licensed 0.4%
% change unlicensed -15.4%

2002–2003
% change licensed -3.7%
% change unlicensed -4.9%

2003–2004
% change licensed -8.9%
% change unlicensed 35.8%

2004–2005
% change licensed -4.9%
% change unlicensed -42.6%

“Most parents don’t know the difference. They figure if you are operating, they’ll be protected. If a licensed center is charging them \$125 per week, and an exempt center is charging them \$60...it’s fairly clear which one many parents will choose during rough economic times.”—Pam Lanford, Huntsville, AL childcare provider and advocate

Rollins, Director of the Food & Lodging department of the DPH, where the idea to impose uniform health and safety standards on Mobile County was hatched.

GAP IN PARENTAL UNDERSTANDING

Montgomery-area, licensed and accredited family home care provider Lillie Hood reinforces the concern expressed by North Alabama providers, advocates and others about the double standard regarding center costs versus quality. “We can have three infants [per adult staffer], and [unlicensed facilities] have no limit. The prices [unlicensed providers charge] might be reasonable, but what are you getting [as a parent]? They might be \$65 compared to \$95-\$125 [per week] for licensed care. When a parent doesn’t know [the regulations], she’s just trying to find childcare at the best price.”⁴³

As experienced trainer Rose Winkler remarks, quality varies greatly—some licensed programs deliver extremely high quality, while others do not. “There’s such a huge variety. In any field, you’re going to find excellence and mediocrity. A parent might be comfortable that it’s ‘my church’ but they might not know what to look for.”⁴⁴ And most training centers, from Montgomery to Mobile, lack accurate records tracking the number of licensed vs. unlicensed providers and staff that attend their training sessions.

To others like Pam Lanford, a provider in North Alabama, the question of parental knowledge is more clear: “Most parents don’t know the difference. They figure if you are operating, they’ll be protected.” But Lanford adds that what parents do understand is the basic economics. “If a licensed center is charging them \$125 per week, and an exempt center is charging them \$60...it’s fairly clear which one many parents will choose during rough economic times.”⁴⁵

The prices charged by some of the state’s leaders in quality care are prohibitively expensive for most low-income and parents of color. For example, the Elizabeth Perry Rushton Child Development Center created by First Presbyterian Church of Birmingham in 1997 is a beautiful, modern childcare facility in downtown Birmingham that serves approximately 70 children from 6 weeks through 4 years old. Licensed by the state DHR, the Rushton center clearly surpasses Alabama’s minimum qualifications and is nation-

ally accredited by the National Association for the Education of Young Children (NAEYC), which involves far more stringent requirements. In the summer of 2008, the “Creepers Class” had three staff for eight 9- to 15-month-old infants, and administrators typically take double the state requirement in continuing education credits (CEUs). In addition to the DHR’s annual unannounced inspections, parents are even able to monitor their children throughout the day using private and secure Internet webcams.⁴⁶

“The waiting list is about a mile long,” for the older ages, according to Assistant Director Shauna Yates, and even longer for infant care. The nonprofit center receives some funding help from the church, and also sponsors other fundraising activities. But with prices ranging from \$730 per month for 4-year-olds to \$850 per month for infants, not to mention a \$250 security deposit, a \$20 application fee and a \$150 supply fee every six months, it is no surprise that the very few low-income children are enrolled. “We have none currently,” said Yates in August 2008.⁴⁷

That was the same case about 90 miles to the southeast at St. Charles’ Child Development Center,* a unlicensed, Catholic childcare center in an upper middle-class Montgomery neighborhood. Out of 160 children enrolled in their programs in August 2008, none were paying fees through the subsidy program. This provides “stability for the center” according to Lauren Wilkins (a pseudonym), who has served as the center’s director for almost four years.

Wilkins used to work for a center that was “90-percent subsidy,” but reflects that some parents “wouldn’t pay their co-pay,” and would be kicked out of the program. “The majority [of parents on the subsidy] weren’t vested,” she argues. “It’s not their money.”

Although the fees charged at St. Charles’, which is working toward NAEYC accreditation status, are not as high as the Rushton Center in the less-affordable city of Birmingham, about \$126 per week give-or-take a few dollars depending upon the child’s age, still translates to about \$500 per month. The Montgomery-area subsidy in the summer of 2008 paid only \$95 per week. St. Charles’ offers a 10-percent discount for siblings, but no financial aid.

“I have the authority to offer assistance, but I did it once and it didn’t work out at all,” reflects Wilkins. “The parent

Although other Public Health departments in the state have expressed an interest in emulating the Mobile model for uniform health and safety inspections of all facilities regardless of DHR-license status, none has yet taken that step.



complained about everything, so I'm reluctant to try it again."⁴⁸

Founded about 18 years ago as a part-time parish mother's cooperative of sorts that only served parishioners, St. Charles' grew from its base of about 50 parish children and attracted more non-Catholics. In 2003, with the help of parent donations, they built a large, modern facility, and soon thereafter hired Wilkins to transform the program from "a daycare center" to a "child development center." Asked to explain the difference, Wilkins replies, "A daycare has the perception that it's a 'babysitting service.' Child development is nurturing. [It's] getting a child ready for school."

While the center does not track the incomes of enrolled families, the racial breakdown of enrollees at St. Charles' has grown from three Black children out of 120 when Wilkins (who is a Black woman) began her tenure, to "40 to 50" out of 160. When asked further to estimate the general enrollee population's income breakdown, Wilkins responded that she had "no idea."

Does she think it is above or below the median income for Montgomery?

"I estimate it's around the median income."

And her thoughts on the "exempt from licensure" status enjoyed by St. Charles'?

"We use the minimum standards, and try to go above them," she says, citing their work toward NAEYC accreditation. "As part of strategic planning, we look at other centers to compare. [And] we still have health department and fire department regulations."

Could there be problems or abuse of the exemption system?

"It could be a problem, but most centers with problems are licensed," claims Wilkins. "Many just meet the standards barely. You have to use your standards as a parent. I haven't seen where a center being exempt was a problem. I see us going above and beyond because we don't want that reputation. We have a lot of people watching over us." These "people" include the board finance committee and the archdiocese, according to Wilkins.

But only 175 miles to the south of Montgomery is Mobile, which suffers from some of the highest rates of poverty in the state (and nationwide), and where even fewer parents can afford such accredited, church-based programs. Still, in childcare provider trainer Cheryl Gwin's view, there are clearly two classes of license exempt facilities: those located at "established" churches, and the "fringe" or "mom-and-pop" centers that open in seemingly random storefronts with generic names such as "Children of God Day Care".

The first group of generally higher-quality, established church daycare centers "would be shocked by what the other tier is doing to their name," argues Gwin with a hint of distaste. The second group suffers mostly from benign negligence with some undeniable "atrocities" in their midst.⁴⁹ Since the Mobile Department of Public Health imposed and began enforcing its own health and safety standards over childcare facilities in January 2008, the Early Childhood Directions (ECD) center where Gwin and her colleagues provide training have seen a definite increase in the number of state DHR license-exempt providers and staff attending sessions.

Training attendees are asked to sign attendance sheets, but the ECD center doesn't systematically track how many licensed vs. unlicensed participants show up. Rose Winkler says the same thing about her Montgomery-area training program. According to Winkler, there's "no real way to track it right now" other than individually combing through attendance lists to determine the number of training attendees from exempt centers.⁵⁰ But with little to no state or local government oversight of unlicensed centers located outside of Mobile, there's not much individual concern or initiative to compel these providers and their staff to seek out such assistance.

"The Mobile health department [has] a back door approach," says Montgomery-based provider Elizabeth Sankey. "But they're limited. It's not their responsibility—it's DHR's responsibility."⁵¹

MOBILE REVISITED

Chief Investigator Tony Goubil of the Mobile County District Attorney's Office tells one story about an unsanitary, unlicensed childcare center that they received complaints about because it "smelled of urine."

"While I usually just show up at the centers [unannounced], I actually did announce ahead of time on that one," says Goubil. On the occasion in question, "I knew as soon as I got there, there would be the smell of bleach from them rushing to cover it up."

And sure enough, as Goubil walked in the door, he was hit with a thick wall of bleach fumes so strong that in and of themselves constituted a health risk to the children present.

As the lead investigator in the district attorney's office, which like all county DA offices in Alabama are charged with the authority to investigate complaints against the unlicensed facilities that the DHR does not oversee, Goubil has the power to interview staff in such scenarios.

"And there's always someone on staff that says, 'Now, I don't want to get in trouble...,'" so they decide to blow the whistle. "I have pretty extensive power to enforce the law," remarks Goubil.⁵²

Interviews with Goubil and other investigators, advocates, and both licensed and unlicensed providers reveal that the most common violation of the state's health and safety standards is the child:staff ratios—that is, if the license-exempt facilities were actually subject to the state's standards. "I've closed a couple of them down just from common sense," says

Goubil. "My experience gives me the judgment [to know] there's just too many kids in here."

Other violations beyond the previously discussed transportation violations (leaving an unattended child in a van and transporting children to varied, undetermined facilities), and urine-soaked carpeting, include the following:

- Unhygienic diaper changing policies and practices.

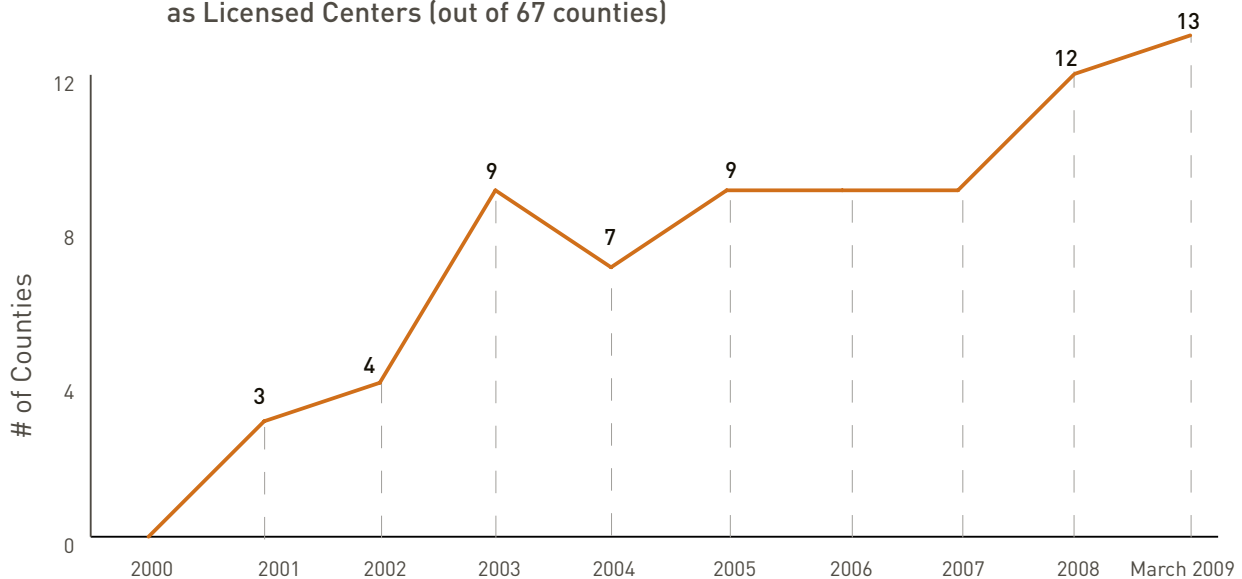
Mobile Public Health inspector Pam Boyce reported children languishing in dirty diapers for hours given a unlicensed center's arbitrary and rigid 10 a.m./2 p.m./4 p.m. changing-time schedule.⁵³

- Outdoor Porta-Johns instead of functioning toilets.⁵⁴

But, no one in the state of Alabama can know for certain just how widespread or atypical such violations of basic health and safety are in this land of license-exemptions. The DHR simply does not monitor these facilities, which have served between 13 and 25 percent of the children who received subsidies in the state according to Alabama's CCDF State Plans since 1999.

Although other Public Health departments in the state have expressed an interest in emulating the Mobile model for uniform health and safety inspections of all facilities regardless of DHR-license status, none has yet taken that step. Indeed, only one other county—Jefferson County, the home of the city of Birmingham—has the independent legal authority to do so. With the exception of Jefferson and Mobile counties, all of the other county public health departments take their orders from the central state office in the state's capital, Montgomery.

Fig. 9: Growth in Number of Alabama Counties With as Many or More Unlicensed as Licensed Centers (out of 67 counties)



Source: ARC tabulations of Alabama Kids Count Data Books. *Voices for Alabama's Children, 2000-2008*; Alabama DHR

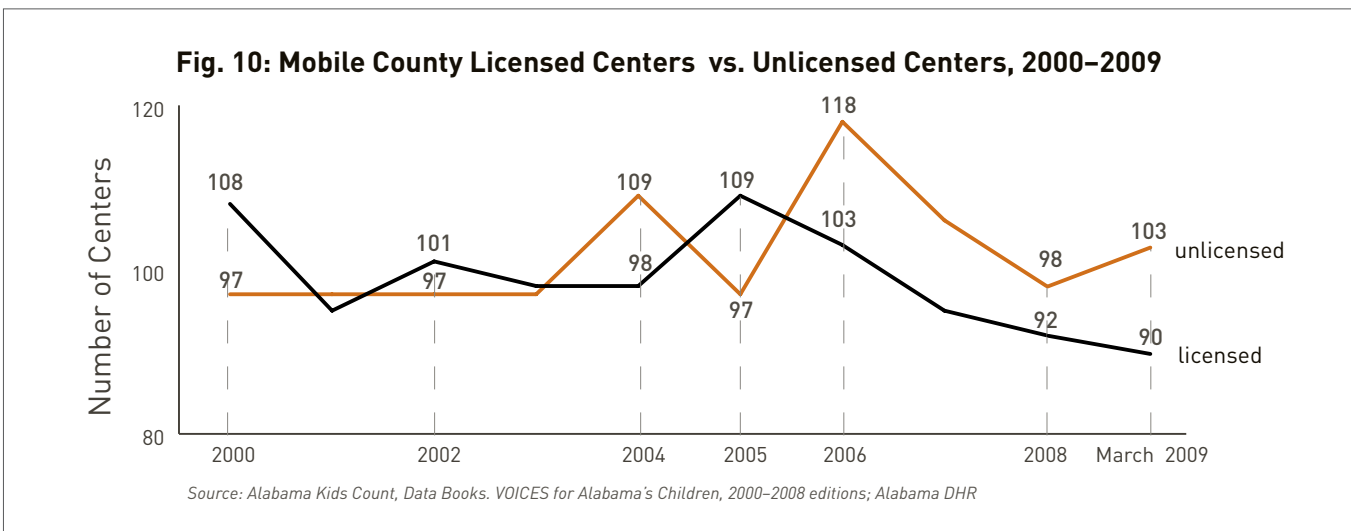
In fact, Mobile's unique origin on the mosquito-infested Gulf Coast meant that its Department of Public Health was the first governmental body formed in the state. Indeed, the DPH that Dr. Eichold has headed for approximately 16 years *predates* the state government of Alabama itself. In part due to its history of particular health challenges, the DPH has retained its own sphere of authority, which Dr. Eichold clearly has no qualms about exercising.

"This could've *only* happened here in Mobile," according to Early Childhood Directions' Wendy McEarchern and Cheryl Gwin. Dr. Eichold is "a force of his own. He has gone about this the right way. Health officers across the state are watching what Dr. Eichold has done."⁵⁵

Once again, so far no takers at local levels even though the procedural "checklist" for license exemptions should theoretically provide them cover to do so. After all, according to the

"Until someone gets hurt, nothing will change," predicts Sarah Holmes, the Birmingham provider introduced earlier in this report. Although she switched from licensed to unlicensed status, she nonetheless worries about the disregard or ignorance of basic health and safety standards exhibited by some of the new faith-based, license-exempt centers that she encounters and about whom she hears.⁵⁶

Mary Davis, one of the northern-Alabama advocates who has been struggling to improve the state's childcare for at least two decades, seems to have largely given up hope that DHR will change its approach to unlicensed centers or the license-exemption process, generally, anytime soon. "The people in this state that really can impact the health and safety quality are our fire marshals and public health departments. That Dr. Eichold is moving waves! He is doing it. If it's possible, it'll happen that way."⁵⁷



statute, even unlicensed childcare facilities "shall be inspected in accordance with the state and local fire and health requirements for such programs". There's no reason why local fire and health departments should feel legally prohibited from imposing comparable health and safety regulations over *all* childcare facilities like those introduced by the Mobile Department of Public Health.

And for his efforts at the state level, Dr. Eichold has received a "Thatta boy," in the words of one state Public Health official with knowledge of childcare policy. But when asked about the possible state expansion of the Mobile model of uniform regulations and inspections of childcare facilities, this same official responded, "I haven't heard anything." As far as the official knows, there is little to no communication between the three spheres of public health (the State department, Jefferson County, and Mobile County) on matters of childcare.

Yet while the Mobile County Health Department is clearly a leader in a state where most public officials and agencies lack the political will to close the gap in protection, its sphere of authority extends only so far, both geographically and in scope. The Mobile Health Department rules, for example, only go so far as to *recommend* "best practices" guidelines on child:staff ratios. Paradoxically, the DHR expressed territoriality in the sphere of ratios, even though it claims to lack the authority to enforce the state requirements on unlicensed facilities.

Humbly proud of the leadership role that he and his staff are taking to enforce uniform minimum health and safety standards in his corner of the state, Dr. Eichold appears open to input and support. He readily acknowledges, "It's a work in progress."⁵⁸

SECTION III - Underprotected: Government Oversight

Deputy Executive Director Kelly O’Connell has worked 25 years for a private, nonprofit resource and referral (R&R) organization that serves a mainly low-income clientele in the San Gabriel Valley of Los Angeles County. She has a particularly succinct manner to sum up the lack of effective state oversight of childcare facilities in her state: “Dog kennels get inspected more than childcare centers in California.”

And while it would be comforting to suggest that O’Connell’s characterization is an exaggeration, unfortunately, California’s poor record in the “frequency of inspections” category of the annual licensing and oversight rankings conducted by NACCRRRA reveals that it is not. Whereas NACCRRRA sets a key oversight benchmark of at least four inspections *per* year, California astonishingly requires only one inspection every *five* years. As NACCRRRA Executive Director Linda Smith has remarked, “This means a child could be born and in elementary school before his or her childcare program is ever inspected.”

If a state legislature writes a set of health and safety standards, and no one enforces them, will anyone in power notice?

In the United States, the regulation, licensing and oversight of childcare is the responsibility of each state, and with the exception of Idaho, all states regulate childcare to some extent.⁵⁹ However, as discussed previously in this report, not all types of childcare are regulated. While most states tend to regulate childcare centers and family childcare providers (FCCPs), many states permit exemptions from licensing and childcare standards for faith-based childcare; friend, family, and neighbor care (FFN); as well as various other in-home settings.

The most common standards that states impose on providers include child:staff ratios, staff education and training qualifications, health and safety requirements, and criminal background checks. Many of these standards are based upon industry benchmarks developed by childcare experts, advocates and organizations, and are based on years of research, practice and analysis.⁶⁰

But just as minimum standards for childcare centers and providers vary from state to state, so too does the degree of oversight for childcare. For example, some states perform licensing inspections once or more per year,⁶¹ while California’s requirement of one inspection every five years is the longest time of any

state. Such long spans of time that some states allow between one inspection and the next call into serious question the commitment some state oversight agencies have to ensure the health, safety and quality of service that children receive.

In addition to the frequency of licensing inspections, states vary on the type of enforcement and penalties that they adopt regarding compliance to established standards—from warnings and fees, to criminal prosecution. When all of these factors are combined and analyzed, significant deficiencies in a state’s level of oversight can be revealed. Unfortunately, without the desire, political will and dedication to ensuring the health, safety and development of children and the financial resources to back it up, more than 12 million children under the age of 5, and millions more under the age of 13, are exposed to daily risks that can have seriously negative lifelong effects.

NACCRA STATE LICENSING BENCHMARKS

License all programs

Benchmark: All childcare centers and family childcare homes caring for even one unrelated child on a regular basis for a fee are required to be licensed.

Frequency of inspections

Benchmark: Childcare centers are inspected at least four times a year.

Licensing staff caseload

Benchmark: Licensing staff are responsible for monitoring no more than 50 childcare programs per person (1:50)

Qualifications of inspectors

Benchmark: Licensing staff must have a Bachelor’s degree or higher in early childhood education, child development or a related field.

Inspection and complaint reports available to parents

Benchmark: Both licensing reports and complaint reports are available online for parents and the public.

Source: NACCRRRA, “We Can Do Better: NACCRRRA’s Ranking of State Child Care Center Standards and Oversight” (2007).



CALIFORNIA'S DISMAL LICENSING AND OVERSIGHT SYSTEM

Despite having 1.16 million children in its childcare system in 2008, California received a score of 54 out of a possible 150 in the NACCRRRA ranking of state childcare center standards and oversight, which placed it 47th from the top overall.⁶² This lack of standards and oversight for its childcare system raises serious concerns not only about the health and safety hazards that children are exposed to, but also the effect that their extreme vulnerability to the external environment has on their cognitive, social and emotional development.

The California Department of Social Services (CDSS) Community Care Licensing Division (CCLD) is the licensing and oversight agency for the states' childcare system. As of November 2008, the division was in charge of monitoring 56,120 licensed childcare facilities serving 1,166,694 children. In this capacity, they are responsible for regulating and protecting the health and safety of children in out-of-home care by licensing and monitoring childcare facilities, investigating complaints and ensuring corrective action. While technically all center-based care must be licensed in California, the fact that the state failed to fully meet any of the recommended benchmarks set by NACCRRRA's standards and oversight rankings is great cause for concern.⁶³

According to the division's own statements, it's three roles and responsibilities are: 1) the prevention of harm of people through background checks, facility inspections, providing information about regulations, etc.; 2) ensuring compliance with applicable laws and regulations through inspections, complaint investigations, etc.; and 3) enforcement of corrective actions through fines, civil penalties, and administrative actions.⁶⁴

Its mission is to "promote the health, safety, and quality of

life of each person in community care through the administration of an effective collaborative regulatory enforcement system."⁶⁵ As comforting as that mission statement may sound, in practice the CCLD currently falls hopelessly short of achieving its mission. For example, California has very low annual training requirements for childcare providers, childcare programs are not required to address child-developmental domains, and childcare facilities are only required to be inspected once every five years. By allowing so much time to pass between inspections, the importance of these inspections is severely undermined.

The Licensing and Inspections Process

In order to obtain a license, a childcare provider must begin the licensing process with an application for a license, which is followed by an orientation where the licensee's roles and responsibilities are explained. Then, licensees must undergo a mandatory criminal background check and a physical inspection of the facility. After a license has been issued, the division then conducts several visits to ensure compliance with licensing laws and regulations.⁶⁶

Guadalupe Mendoza (a pseudonym), a family childcare provider in Baldwin Park, CA, provides an example of the licensing and the absence of an oversight process. In 1999, after being laid off from her job as a certified nurse's aide (CNA) at a convalescent home, she met someone who took care of children out of her home, and decided to do the same. She decided to become licensed because it allowed her to get paid more for her work, and also allowed her to take care of more children. To obtain her license, she first went to an orientation at Options, a childcare and human services organization in Los Angeles, where she received all the information she needed to become licensed. She filled out and sent in her application to the state, and had her initial inspection. Since she became licensed in 1999, nine years ago, she has only had *two* inspections in addition to the initial one.⁶⁷ Several of the providers interviewed in the Los Angeles area mentioned that since becoming providers, their interaction with state oversight agencies has been minimal.

State law requires that the department conduct random visits of at least 10 percent of licensed facilities each year, and that each facility be inspected at least once every five years, meaning that only about 20 percent of the operating facilities are inspected each year.⁶⁸ But, this hasn't always been the case.

Prior to budget cuts in 2003, when the licensing division lost about 15 percent of its budget, the state performed

In 2006, the California State Auditor conducted a review of the division's progress in meeting facility inspection requirements, and found that in the first year after the requirements were enacted (2004–2005), the department had only performed 68 percent of the required visits, representing 8.5 percent of the licensed child-care facilities in the state.

facility inspections once a year.⁶⁹ And even though the state now allows the most lenient standard in the nation for frequency of inspections, Governor Arnold Schwarzenegger proposed that inspections be conducted once every seven years as part of his 2008 budget proposal. As Linda Smith, the Executive Director of NACCRRRA wrote at the time, “The quality of childcare cannot be assured with an inspection only once every seven years, as proposed. California’s child-care laws are meaningless without decent enforcement.”⁷⁰

Yet incredibly, even with such lax inspection requirements, the division has not yet been able to meet them. In 2006, the California State Auditor conducted a review of the division's progress in meeting facility inspection requirements, and found that in the first year after the requirements were enacted (2004–2005), the department had only performed 68 percent of the required visits, representing 8.5 percent of the licensed childcare facilities in the state.⁷¹ These dismal numbers mean that California has entered dangerous territory in the oversight of its childcare industry.

According to Julie Loder, a family and children program specialist at the Children's Council of San Francisco said, “Frequent, unannounced visits by an oversight agency are fundamental to quality childcare, and increasing these visits is the first step to making childcare safer in California.”⁷²

One provider who knows firsthand about the infrequency of licensing inspections is Elizabeth Acosta-Crocker, who serves mainly children of color participating in the federal Head Start program. She mentioned that of her five licensed childcare centers, “two of them have gone more than five years without an inspection.” What is even more frustrating to her is the fact that if the licensing office receives a complaint and they go to investigate, the inspectors “don't even bother giving the facility a brief, informal inspection,” since they are already there. She also noted that in the past, when inspections were conducted every year or every couple of years, her staff was very up-to-date with the new rules and regulations. But now, according to her, the licensing office doesn't notify providers of any new changes or additions to the rules, which makes it more difficult to stay up-to-date and be ready for inspections.⁷³

The main obstacles to oversight and enforcement are a lack of staff and a lack of funding for licensing programs.

As of November 2008, there were approximately 56,120 licensed childcare facilities in California, and in December 2008, the total number of full-time inspectors, or Licensing Program Analysts (LPAs), at the CCLD totaled 219.⁷⁴ This means that each inspector is in charge of the oversight and licensing of 256 facilities throughout the entire state (a 1:256 staff-to-facility ratio). California's staff-to-facility ratio is five times higher than the benchmark of one inspector for every 50 facilities established by NACCRRRA. Without a sufficient amount of licensing inspectors, the ability of the state to effectively regulate and enforce childcare standards and regulations is compromised. The state currently requires that 20 percent of facilities be inspected every year, so each analyst must physically perform roughly twenty inspections per month to meet the requirement. Not only that, but they must constantly track each facility to ensure their compliance and enforcement. It seems unrealistic to assume that each analyst is capable of handling such a tremendous workload, but the state has done little to ensure that its own inspectors can meet their own requirements.

Alabama faces similar challenges according to some advocates like Mary Davis, who has fought to improve the quality of childcare in the northern part of the state where she lives as well as in the state capital. “I've shared Dr. Eichold's [*Public Health Child Care Requirements*] manual with two to three health department officials...[but] the thing that's holding it up is that they don't have enough personnel to even check the restaurants. They don't want to take on daycares.”

“My impression is DHR [the Department of Human Resources, which formally oversees licensed childcare in the state, but does not strictly enforce what little regulations cover license-exempt, mainly faith-based centers] doesn't have enough licensed workers to do the work they must do *now*.”⁷⁵

Like many other licensed-provider advocates in the state, Davis has heard reports of DHR licensing staff actually *encouraging* licensed providers to change their status to legally exempt by filing the paperwork to become a faith-based facility. “Based on the workload that they have, that's probably pretty smart. In our area, they are on the road checking complaints all the time... You have [the stress of] upset parents to deal with. Our workers are being conscientious. They aren't wasting their time.” According to Davis, if the laws were

Each inspector is in charge of the oversight and licensing of 256 facilities throughout the entire state (a 1:256 staff-to-facility ratio). California's staff-to-facility ratio is five times higher than the benchmark of one inspector for every 50 facilities established by NACCRRRA.

changed to require uniform health and safety standards and oversight regulations, "They'd double their load."

Not only are licensing staff generally underfunded and overworked in California and Alabama, they are not even required to have education, training or experience in child-care, child development or early education. For regulatory agencies to be effective, it is highly recommended that their staff be well equipped for their role. NACCRRRA currently recommends that licensing staff have education and training in early childhood education, child development or a related field to ensure that its oversight and regulation is effective and carried out by capable and knowledgeable people.⁷⁶ According to California's licensing division, one reason for their understaffing is their insufficient funding as a result of budget shortfalls for several years, which it said has hindered its ability to narrow its staff-to-facility ratio and increase its frequency of inspections, and has even forced it to eliminate important aspects of the program.⁷⁷ Fran Kipnis, a child-care policy analyst at the University of California Berkeley's Center for the Study of Child Care Employment and who previously served for 13 years as Research Director for the California Child Care Resource and Referral Network, stated that oversight hadn't always been this weak. In fact, she said that years ago, there was a program that used licensing staff as "capacity builders" to facilitate childcare centers and programs seeking to get licensed up to par. However, the program was eliminated, which she said proved to be a detrimental decision.⁷⁸

Back in Mobile, Alabama, the county Health Department independently instituted new *uniform* health and safety standards on childcare facilities, including those considered exempt from the *state* childcare health and safety standards. Inspectors there view the newly-imposed quarterly inspections, in part, as "teachable moments." Encountering unlicensed facilities that had "no activities, no education" was initially quite alarming to the public health inspectors. "At least now that we're going in, we can talk them into separating age groups so the 6-year-olds aren't with the babies".⁷⁹

California State Auditor's Findings: Inspections and Enforcement

When childcare facilities are inspected and deficiencies are

identified, the CCLD is charged with ensuring that those deficiencies are corrected. If they are not, the CCLD is tasked with applying enforcement actions like revoking a facility's license, closing the facility, imposing a fine, or in some cases, charging staff members with crimes for which they could be imprisoned. In California, the CCLD's enforcement actions need significant improvement.

Since 2000, when the California State Auditor assessed the CDSS's policies and practices for licensing and monitoring childcare facilities (which the CCLD operates under), the state and the division have known that its licensing and oversight needed vast improvements. For example, the 2000 report found that the California DSS needed to significantly improve complaint follow-ups, conduct facility inspections within the required timelines, review and monitor the licensing operations that it contracted out, and enforce legal decisions against facilities, among other things. A more elaborate report was issued in 2003 with similar findings.⁸⁰

In 2005, the CDSS began to rebuild its oversight activities for its childcare licensing programs by hiring new staff, with a focus to rebuild and increase its monitoring activities. According to the division, its highest priority with this program remodel was to conduct and complete complaint investigations in a timely manner.⁸¹ While ensuring that complaint investigations are completed in a timely manner, the Department must also put a significant amount of time and effort to ensure that the first of its stated roles and responsibilities—the prevention of deficiencies—is carried out. Unless the Department tightens its oversight and ensures compliance through frequent inspections, many complaints and facility deficiencies that could have been prevented may go on to cause serious harm.

The California Joint Legislative Audit Committee requested that the California State Auditor review the CDSS's oversight of licensed childcare facilities, specifically to determine the department's progress in meeting facility inspection requirements and enforce its standards. The report concluded that "in rebuilding its childcare program oversight, the department [CDSS] needs to improve its monitoring efforts and enforcement actions." Some of the key findings were that the department:

- Has **struggled to make required visits to the facilities and carry out its other monitoring responsibilities**

- Usually conducted complaint visits within established deadlines but **did not always complete the investigations within deadlines**
- **Did not always determine** whether childcare facilities corrected the deficiencies it identified during its visits to facilities
- **Could increase its use of civil penalties as a response** to health and safety violations
- Appropriately prioritized and generally ensured that legal cases were processed within expected time frames. However, its **regional offices did not always adequately enforce** legal actions against licensed childcare facilities.⁸²

Three years later, in February 2008, the Auditor published a shorter report that presented the CDSS’s responses to the 2005 findings, and detailed their progress in meeting those recommendations. According to the CDSS, they have only managed to implement “partial corrective action” in their efforts to address most of the above-mentioned findings and issues.⁸³

So what can happen when the state’s already lax inspection requirements are combined with its weak enforcement practices?

Fifty people were charged with fraud in 2008 for being involved in an extensive childcare fraud ring that was being operated by a federal prison inmate and his wife, who was employed by the CCLD. Their operation defrauded taxpayers of more than \$400,000. According to the authorities, “Defendants hired people to find welfare recipients and offer them monetary kickbacks to apply for subsidized childcare,” and some children listed as being cared for did not even live in California.⁸⁴

Astonishingly, this fraud ring was in operation for seven

years. Had the state performed inspections more frequently, certainly the ring could have been exposed far sooner.

Provider Reflections on Oversight

During the course of our research, we interviewed childcare providers to understand what California’s licensing and oversight system looks like in practice. Their stories reveal a system that is deeply flawed and is not only inadequate at meeting its own licensing and oversight requirements, but some argue, is completely wrong in its mission, approach and goals for the children it is tasked with serving.

Nadya Diouf (a pseudonym), a San Francisco–based childcare provider, is in charge of a childcare center that serves about 140 children, who between them speak 12 languages. Of these children, 70 percent receive childcare subsidies, meaning that they are primarily low-income children of color. When asked her thoughts on California’s CCLD, she put it bluntly by saying that “the whole [licensing] system is a bankrupt system—they don’t have enough staff, and their mission is convoluted.” She then recounted a conversation she had with a manager of a Northern California district licensing office, which she referred to as a “negative reporting entity.” She explained that the division’s focus is not on ensuring quality programs, but rather on making sure that bleach bottles are stored in the upper cabinets that children cannot reach. An experienced provider who prides herself on being up-to-date with the latest research in the childcare industry, Diouf emphasized that current childcare standards and the level of oversight was “outdated, inadequate, and not geared towards ensuring the development of the child.”⁸⁵

Ironically, while inspection of unlicensed centers in Alabama is nonexistent, licensed centers have found issue





with the intensity of interactions with licensing staff. In the 30 years she has been operating childcare centers, Thelma Thomas has challenged a licensing staff person she found abusive and even taken the agency to court. Her daughter and director of one of the centers in their network, Tracey Hill, describes the experience in the following way: “It’s like they’re a prison guard and you’ve done something wrong.”

Thomas adds: “They don’t look for the positive, only the negative. They don’t believe anything you say. They jump to conclusions.”

Thomas and her daughter support the role of licensing, but question the power dynamics involved, especially taking into account the racial landscape in which government agencies function. “We’ve seen some that should have been closed.” One building they bought and took over had been a licensed center, but had roaches, missing ceiling, mold in the bathrooms, looked like the building wasn’t structurally sound. “In some centers, the physical appearance needs a lot of work, but it seems that license inspectors are biased if it appears that you’re doing *too* well. Everybody can improve, but that’s different from being attacked.”

To Pam Lanford in Madison County, rude or disrespectful inspectors haven’t been an issue. Nor has she taken issue with the paperwork of DHR’s minimum standards requirements. Rather, one problem in her eyes has been the lack of consistency between DHR staff.⁸⁶ In neighboring counties, the DHR inspections officials sometimes call and tell the providers that they are coming, says Fran Clampitt, a provider and advocate in the area since the late 1970s. The same is true of the food sponsors in surrounding counties who “sometimes call instead of dropping in for an on-site inspection of the food service.”

“How can one county interpret [the regulations] in one way,” and another county interpret or enforce the law

completely differently? “We should always have some unannounced inspections,” argues Fran Clampitt, but to her knowledge and from her experience, the licensing inspectors in her state don’t always follow through on that obligation.

Although California requires childcare facility inspections only once every five years, there is some reason to believe that some facilities get inspected more frequently based on the racial, ethnic and/or socioeconomic demographics of the children in a facility. For example, when one provider with 26 years of experience in childcare was asked if she felt that there was sufficient oversight of childcare centers, she said it depends on where that facility is located. Elaborating on her observation, she said that in some communities, childcare centers and homes get inspected more often if parents in that community are more likely to voice their concerns and be knowledgeable about childcare and the licensing and inspection system. In fact, she was certain that “private centers,” which are usually located in higher-income communities with few to no children of color, were “under more scrutiny” from the licensing agency, compared to others.⁸⁷ Her observation, if true, illustrates a certain bias in enforcement on behalf of the licensing division. Logically speaking, if parents in higher-income communities are more knowledgeable about the childcare oversight system, and have the time and resources to ensure that their child’s facility is under tighter scrutiny, the division could likely come under pressure from groups of parents, the press, and even the local elected officials to increase oversight.

Slack Alabama Enforcement

The final aspect of childcare oversight is the degree to which a state enforces its childcare standards, rules and regulations, as *written*. The fact that the state of Alabama allows for exemptions to its minimum health and safety standards is bad enough for many childcare advocates in the state, but what galls Huntsville’s Pam Lanford the most is that DHR “allows people to operate on the fringes of the law.”⁸⁸

Lanford and several other advocates point out that as written, the exemptions statute (see sidebar, Alabama’s License Exemption Statute) specifies that a childcare facility seeking exemption should be an “integral part of a local church ministry.”

“I don’t have a problem with a true religious daycare. But, they’re allowing [exempt] centers [to operate] in shopping malls,” Lanford says. The statute also uses the term “pre-school,” but contains no specific language about infants and toddlers, yet the state DHR’s expansive interpretation allows faith-based centers to care for newborns largely without scrutiny.

Lanford also points out that the DHR does not enforce

SECTION 38-7-3 (ALABAMA'S LICENSE-EXEMPTION STATUTE)

License to operate or conduct child-care facility - Required; exemption for church preschool programs; filing of notices, maintaining records, etc.; form for affidavits by parents or guardians; investigation of complaints by district attorney.

No person, group of persons or corporation may operate or conduct any facility for child care, as defined in this chapter, without being licensed or approved as provided in this chapter; provided, however, that nothing in this section or in this chapter prohibits an employee of the department from carrying out the duties of the department as provided in this title. Provided, further, **the provisions of this chapter shall not apply to preschool programs which are an integral part of a local church ministry or a religious nonprofit elementary school, and are so recognized in the church or school's documents**, whether operated separately or as a part of a religious nonprofit elementary school unit, secondary school unit or institution of higher learning under the governing board or authority of said local church or its convention, association, or regional body to which it may be subject; provided that notice is filed by the governing board or authority of the church or school with the department that said church or school meets the definition of a local church ministry or a religious nonprofit elementary school under terms of this section and are exempt from regulation by the department and a notice of intent to operate said programs is given to the appropriate fire and health departments so that said facilities shall be inspected in accordance with the state and local fire and health requirements for such programs. **In addition, all exempt churches hereunder shall publish annually, on church letterhead, a notice to the department certifying that the following records are being maintained by the church: fire and health inspection reports; immunization verifications for all children; medical history forms for all staff and children and that the following information shall be available to parents or guardian prior to enrolling their children in said church ministry; staff qualifications; pupil-staff ratio; discipline policies; type of curriculum used in the learning program; the religious teachings to be given each child; and the type of lunch program available; provided further that prior to enrolling and annually thereafter parents or guardian and a responsible individual representing the governing board as authority of the church or school be required to sign and file with the department the affidavits provided by this section that the parents or guardian have been notified by said responsible individual that the church or school has filed notice and is exempt from regulation by the department.** The district attorney of the county in which the preschool program is located shall, upon proper presentment of charges, investigate at his discretion any allegations against any such church under the laws of the State of Alabama (emphasis added).

Source:
www.legislature.state.al.us/CodeofAlabama/1975/38-7-3.htm

the criminal background check requirements for employees of unlicensed facilities. Although church affiliated programs may choose not to comply with the background check law themselves, as the statute reads, “all current employees and employment applicants with such programs are required to complete a Criminal History Release form for a criminal history check, with two sets of fingerprints...” While licensed facilities must keep copies of these criminal background checks of employees in their files and be prepared to show them during unannounced visits from licensing inspectors, the same cannot be said of unlicensed facilities that are permitted to escape DHR oversight altogether.⁸⁹

To Lanford and many other licensed providers and advocates this lack of enforcement of the employee criminal background check provision for unlicensed facilities is nothing short of scandal. “But, we don’t know how to hold an agency to task” to enforce the existing laws in Alabama, Lanford laments. Even licensed programs under DHR investigation in her area for health and safety violations—for example, locking children in a bathroom and engaging in corporal punishment—have escaped sanctions by simply filing for and astonishingly receiving license-exempt status, she reports.

Conclusion

As the preceding narrative about California’s childcare system shows, the state has minimal standards that its childcare facilities are required to follow. However, the childcare providers we spoke with as well as the California State Auditor have highlighted that California’s licensing and oversight system needs significant improvement. Despite having some of the weakest licensing and oversight standards in the country, the state has trouble ensuring that even those minimal standards are met because its bureaucratic structure is inefficient, understaffed and underfunded. It is with this lack of oversight that childcare providers in California operate. Many try their best, and many succeed, but this is often at great personal and financial costs because the state fails to adequately support them in their efforts to provide the best quality childcare possible. Unfortunately, providers are human, and thus imperfect—some even criminally so, as we have seen with extensive fraud rings that have operated under the nose of the state’s own agencies. Therefore, it is important that the state make sufficient resources accessible to providers to enable them meet and exceed their quality service goals, while at the same time, ensuring that minimal standards are met. Unless the state takes significant steps to improve its current licensing and oversight system, children in California will continue to be underserved, and possibly be at risk while receiving care.

SECTION IV - Undersupported: State Subsidies and Budgets

“In the past six months, the economy has really had an impact on enrollment,” said Michelle Marbury, director of the Northwood Presbyterian Child Care Center in Silver Spring, MD. Like many other childcare facilities in the Washington, D.C. area and indeed around the nation, the licensed center that Marbury runs suffered from lower enrollments in September 2008, as families lost income or one or both parents were laid off during the ongoing recession.

But even before the current recession, many low-income parents have been struggling in recent years to access high-quality care because of the prohibitively high costs. According to Marbury, at least one-quarter to one-third of the 65 students at Northwood Presbyterian were receiving the state subsidy about eight years ago. In September, only *one* of the 47 children in the center was on the subsidy because it has been so difficult for parents to get assistance.

“At least half *could* benefit, probably,” said Marbury. “But the standards are too difficult now. It used to cover the entire cost [of care], but now a [parental] co-pay is needed.”⁹⁰

In February 2004, parental co-payments were significantly increased as the state pursued certain “cost containment” measures, according to Clinton McSherry, who has served for almost nine years as public policy director for the influential, nonprofit advocacy group Maryland Committee for Children (MCC). At the time, MCC was in the midst of what would prove to be an ostensibly successful battle to eliminate the 20,000+ waiting list for childcare subsidies imposed by the state in January 2003. The waiting list was eliminated in November 2005 after almost three years, but MCC’s 2008–09 legislative priorities include reducing co-payment rates and expanding eligibility for the subsidy program.

While Maryland could be applauded for expanding its income eligibility requirements for the childcare subsidy program by 5 percent in January 2002 to 50 percent of the state’s median income, the eligibility level has in *real terms* been lowered because it is not indexed to inflation.⁹¹ Increasing the eligibility level to 75 percent of the state median income, as recommended by the federal Child Care Bureau, would undoubtedly provide some relief to low-income parents at Northwood Presbyterian Child Care, and elsewhere around this comparatively wealthy mid-Atlantic state.

Although Maryland imposes many basic health and safety standards on *all* childcare centers (including its unlicensed, so-called “letter of compliance” centers,) and has a far superior record to California in the oversight of those state standards (as explored earlier in this report), it and other states that rank comparatively high in the leading national rankings on childcare could do much more to support low-income families and promote high-quality care for all children.

Unfortunately, for many states, particularly those like California that are facing budget shortfalls and balanced budget requirement, the temptation will be great during these harsh economic times to further delay appropriate investments in the early childhood development of our next generation. Even the maintenance of current levels of support is in jeopardy. As a result of the current economic crisis, many of the 12 million children who are under the age of 5 and in some form of childcare are facing significant threats to the quality of care they receive, especially low-income children and children of color. As parents are laid off or become underemployed, they tighten their budgets, and many take their children out of their childcare facilities and make alternative arrangements—often at the expense of health, safety, and quality of care.

Social Services in Jeopardy

As of December 2008, 43 states were facing shortfalls in their budgets. California is facing a \$30.6 billion FY2009 budget gap, or 30.3 percent of its General Fund. At least 16 states are cutting or proposing to cut K-12 and early education and/or reducing access to childcare. As the economic recession forces more people into receiving social insurance (Medicaid and Medicare) in the form of unemployment

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benefits, while at the same time reducing state tax revenues, states will see their budgets tightened even more. Many states cannot run a deficit or borrow to cover their operating costs. Instead, they must cut back on services, raise taxes, or tap their funding reserves. Regardless of what action they take, it is likely that individuals who depend on social services such as childcare will see the services offered at childcare facilities decrease and their costs rise.⁹²

But it wasn't always like this. About a decade ago, California expenditures and revenues matched pretty evenly, but as of 2002, the state started spending more than it collected, and now the state spends 61 percent more than it did during FY1994.⁹³

California currently spends about \$3 billion to provide a variety of childcare and development programs, 83 percent of which is used specifically for childcare programs. The state funds these programs in two main ways: vouchers to families, usually received through an Alternative Payment (AP) organization or the county welfare department, and direct contracts with providers. Families that receive these childcare vouchers are families in the CalWORKs program, which is California's welfare-to-work program. In exchange for participating in work or work-preparation activities, families receive childcare assistance. Parents choose a provider, which may be a licensed center, a licensed family childcare home, or "license-exempt" care, and then the provider is reimbursed for their services up to a maximum of 85 percent of the average rate charged by private market providers in that community or region. For those children who are not subsidized through CalWORKs, the California Department of Education contracts directly with over 750 agencies who are reimbursed a Standard Reimbursement Rate (SRR) that is not adjusted for regional market differences.⁹⁴

No Budget, No Payment

Without a signed budget, the California Department of Education has no authority to pay for early care and education programs. Starting in July 2008, agencies and programs throughout the state (including drug rehabilitation, elderly care, education, healthcare, and childcare programs) operated without state funding until early October.

In California, budget delays have now become a yearly tradition to the point that those who depend on state funds to provide crucial services often go months without payment.

One sector that frequently feels the brunt of this is childcare. Speaking on the impact of the state budget impasse on childcare agencies, California State Superintendent of Public Instruction Jack O'Connell said, "There are 792 childcare agencies across California, and these centers provide a range of services to about 500,000 children, but without a budget in place, we do not have the authority to pay these agencies for services rendered. So for the month of July and every month after without a budget, these agencies will be without the financial resources they need to carry out their operations."⁹⁵

The childcare industry now takes a blow like this every year. For example, the Child Care Resources Center, a Los Angeles County nonprofit that helps area parents obtain childcare subsidies, borrowed more than \$4 million and absorbed more than \$40,000 in interest charges to maintain its payments. But after a few months, it could no longer stay afloat. "Its financial resources are tapped out," said spokeswoman Stacy Miller in September 2008, adding that "the funds simply don't exist until a budget is passed."⁹⁶

Childcare providers throughout the state frequently go several months without payment every year as a result of these budget delays—many of them at great personal and financial costs that will take years to recover from.

Barbara Terrell, a provider in Oakland who has been caring for children for over 20 years, went three months without payment in 2008. Her center currently has 14 children, all of whom are children of color and 10 of which receive childcare subsidies. To stay open and continue caring for the children this past summer, she had to max-out her lines of credit and her financial reserves. As a result, her credit scores decreased,



and her home is now in foreclosure. “Same thing happens every year, but 2008 was the worst yet.”⁹⁷ Unfortunately, her situation was not unique. She mentioned that at local childcare provider meetings she attended, she heard that many providers were forced to close their doors and that many had lost their homes.

Some providers are better at avoiding the consequences of depending on the state for payments in order to provide services than others. For example, Acosta-Crocker whose organization primarily serves children in the federal Head Start

To stay open and continue caring for the children this past summer, she had to max-out her lines of credit and her financial reserves. As a result, her credit scores decreased, and her home is now in foreclosure. “Same thing happens every year, but 2008 was the worst yet.”

and Early Head Start programs, and thus depends primarily on federal funds to operate. Given the fickle financial climate in California, her reliance on federal funds has been advantageous. “If all I [depended on] was state money, I would be out of business.” With a steady stream of federal funding, she has been able to cover her costs during the budget delays. “If my center depended more on state money, I would have to take out significant lines of credit.” When asked what could be done to ensure that providers were better capable of delivering consistent, quality care without breaks in funding, she answered that state funding for childcare should not be done on a “contract” basis, but should be an “essential service” so that when there is a budget crisis, service doesn’t suffer.⁹⁸

Another provider was able to continue providing services “because of some extra outside funding in the form of grants and donations, as well as some savings,” which she was able to use to get by during the time she didn’t receive payment.⁹⁹

Guadalupe Mendoza, a family childcare provider who primarily serves low-income children in her Los Angeles home, had not received payment from the state in two months and had to lay off of one of her employees. She said that not only were the payment delays a problem, but the amount she received was no longer enough to cover the costs associated with having extra help. Another family provider, Melissa Murillo also in Los Angeles, said that the delay in payments had forced her to cancel several summer field trips she had planned for the children, cancel her Internet service which she said the children used for homework, and not buy any new toys to replace broken or lost ones. “This year was worse than I expected, and unfortunately, it is the children who suffer.”¹⁰⁰

Mendoza and Murillo’s stories help illustrate how delays

in payment and inadequate funding prevent providers from employing much-needed staff, which diminishes the quality of service that a child receives, affects the local economy, and adds to the number of residents in the state who are likely to apply for social support.

While the budget situation in California may be particularly dire, it isn’t the only state that has delayed payments. For experienced Huntsville, Alabama provider Pam Lanford, “even a few days” delay in payment is a problem, and only about 10–15 percent of her center’s capacity is filled with

subsidy children. “But if I were 50/50 like some of these other providers, it’d be rough.”¹⁰¹

For some parents, “The child either eats at night or they pay childcare” according to another Huntsville-area family care advocate. “It’s gonna get a lot worse before it gets better.” Some providers are doing the best they can to make sacrifices and payment-schedule compromises to accommodate struggling parents.¹⁰²

Many providers interviewed for this study had gone out of their way and used their own money to pay for extra services that many deemed essential, but that their state did not cover. The gap is filled in a number of other ways, including through creative use of donated services, and by dedicated providers who subsidize the programs with their own long hours or foregone pay. Sometimes the gap remains unfilled, and either children go with no care at all or spend their days in programs that are understaffed or poorly equipped.

Mendoza installed a basketball hoop outside her home daycare, and bought a \$5,000 swing and playset out of her own pocket. In addition, because so many of the parents whose children she cares for work nontraditional hours, her husband picks up many of the children from their homes, takes them to school, and picks them up after school. “I do this because I can, and because I want to help the parents as much as possible, but to be honest, I don’t know how much longer I’ll be able to do so.”

“I don’t know how some people make it,” wonders Elizabeth Sankey, a childcare center provider in Montgomery, Alabama, and who has 22 years of experience. “You need to be in a position not to depend on this for your livelihood.”¹⁰³

Current Reimbursements Rates and Access to Quality Care

Not only is the frequent delay in payment a problem for providers, but so are the current Regional Market Rates and the Standard Reimbursement Rates that providers receive from their state in exchange for their services. It is common knowledge in the childcare industry that the true cost of childcare is often subsidized by the low wages of childcare workers. Low reimbursement rates not only keep employee wages down, but they often make it extremely difficult to provide high-quality care for children.

For example, when one family-care provider in the Los Angeles, California area was asked if she felt her current reimbursement rate was enough to enable her to provide high-quality care, she said, “No, if I could get more money, I would be able to hire extra help and maybe purchase computers for the children.”¹⁰⁴ And a San Francisco-center provider explained the financial situation created by the reimbursement rates even further. According to her, reimbursement rates make providing high-quality care incredibly difficult, and only cover about 60 percent of her center’s costs. She then added, “If parents and the

state want high-quality childcare that meets NAEYC standards, they will not get it with the current rates.”¹⁰⁵

That seemed to be a shared sentiment among several providers. For example, one provider in Oakland, California, argued, “Reimbursement rates do not allow parents to have access to the best childcare possible, nor does it allow me to cover my operating costs on a continuous basis.”¹⁰⁶ Another provider mentioned that she currently serves 25 children but is licensed for 37, saying that she cannot meet her capacity because she has several children with disabilities who require more staff attention, and unfortunately, California does not provide different reimbursement rates depending on the needs of a child.¹⁰⁷

In the past few years, on the heels of budgetary constraints, Governor Schwarzenegger has proposed but failed to pass a “freeze” on the state median income that is used to calculate eligibility for social programs like childcare. Fortunately, the California state legislature has resisted what would be an extremely detrimental change, particularly when parents need to maintain stability given swirling economic turmoil.¹⁰⁸

“Sometimes parents lose eligibility because of a slight salary increase, like 25 cents an hour,” says Nina Gilchrist,



In California's 2008-09 Budget, the cost of living adjustment (COLA) for CalWORKs recipients was suspended for the fourth year in a row. In addition, Governor Schwarzenegger cut \$70.0 million in funding that counties use to provide child-care and help CalWORKs parents find and maintain employment...

Director of the Learning World Child Development Center in Bladensburg, Maryland—not two miles from the north-east border with Washington, D.C. “And some even have to refuse the increase, because they wouldn’t be able to afford losing the voucher.” The rates at Gilchrist’s center are low for the market—only \$5 more than the voucher for infants/toddlers, and about \$10 more for preschool. With 80 percent of her 140 children at two centers (198 maximum) enrolled in the state voucher program, Gilchrist tries to work with parents based on their situation, and offers a discount for multiple children.

Employment *layoffs*, however, were spreading throughout the country in early 2009 much faster than slight pay increases, including to Fort Payne, Alabama, the self-styled “[athletic] sock capital of the world”. Most of the mills are moving abroad, said nearby provider and advocate Mary Davis in January 2009. “We lost 1,700 jobs in this area in the last 4 months. The two largest mills have said they will close by May.”

Davis told ARC in late January 2009 about her four facilities that serve 200–250 children: “Everything right now is in limbo. We’ve been losing two to three kids a week since

Thanksgiving. And when money gets really tight, you can get your mom to take care of kids.”¹⁰⁹

“We’re in a time—a season—right now where we are losing ground, and we’re losing it fast,” agrees Elizabeth Sankey, founder and owner of the Southlawn Child Care Center in Montgomery, Alabama. The state DHR quietly announced increases in the parental co-payment fees in late summer 2008, and to Sankey, the current fees were already unfair. “Parents had to pay the difference between the subsidy and my rate in addition to the co-pay. We’ve been set back to where we were 15 years ago,” adds the 22-year industry veteran.¹¹⁰

North Alabama provider Pam Lanford has dealt with the same challenges of low reimbursement rates with her three centers. “We didn’t have a market rate survey for at least five years. And of course, we had to raise fees in that time [due to rising business costs]. Now, we can charge the difference, but it defeats the purpose if the parents meet the [low-income] criteria! If they do, then they’re going to have trouble paying the extra 20 dollars.”¹¹¹ And Lanford’s memory is being generous to the state, which hasn’t increased payments in any



significant fashion since 2001. In the Mobile area, one R&R agency's summer 2008 waiting list was seven months long.¹¹²

When combined with the fact that Childcare Management Agencies (CMAs) are cutting staff by up to 50 percent after the loss of state contracts to administer the subsidy program and provide training, Montgomery's Sankey concludes, "We're caught between a rock and a hard place... You want happy staff taking care of children. [But] if you can't give an annual raise, you don't have happy campers. This summer, I cut one hour across the board. Two [staffers] who left, I didn't replace."

"Children need an atmosphere where they can progress," she emphasizes. "You can only give so much quality with the dollars we're dealing with. I'd like to see money for an even lower staff ratio. To me, the minimum standard is just that—a minimum. Childcare is labor intensive. Quality requires additional staff."

Sharon Smith, who opened the Future Scholars Child Care Center in October 2004 in a middle-class neighborhood southeast of Washington, D.C., unsurprisingly agrees that charging more than the state subsidy allows her to do some things that wouldn't be possible if she were solely dependent on the voucher program. In February 2009, the center had 40 children, about 25 percent of whom were in Maryland's subsidy program. "The program doesn't pay enough, and some parents can't even pay that difference," according to Smith.

Still, among other quality-enhancing aspects of her program, having a higher income for her program allows Smith to purchase a structured curriculum that she uses in pre-school classes, contract with visiting resource groups to offer theater and other sessions, and offer hot meals that she would not be able to afford without subsidizing what the USDA food program offers with higher program fees.

But back in Alabama, the childcare industry "is in a tough, tough spot" in Sankey's view, and she's concerned that parents who can't afford to pay for care will soon feel forced to leave children at home alone. Rural communities in Alabama, according to state Public Health officials, are finding conditions particularly tough with barebones staff to promote the agency's programs.

California Projections and Consequences

In California's 2008-09 Budget, the cost of living adjustment (COLA) for CalWORKs recipients was suspended for the fourth year in a row. In addition, Governor Schwarzenegger cut \$70.0 million in funding that counties use to provide childcare and help CalWORKs parents find and maintain

employment, as well as a \$16.4 million cut to CalWORKs Stage 2 childcare funding, which the Legislature added to ensure that the state would be able to meet the childcare needs of current and former CalWORKs families.¹¹³

And this year, it's not looking any better. In his 2009-10 budget proposals, the Governor proposed several cuts to childcare. He requested a \$55 million permanent reduction to childcare funding, increased the amount of money that families receiving subsidized care have to co-pay by \$14.4 million, and reduced the reimbursement rate for childcare providers from the 85th percentile of the Regional Market Rate to the 75th percentile. However, the Governor did propose to increase funding to the Licensing Division by \$3.5 million, and to increase the investigations of registered sex offenders and of serious crimes, but not to increase the frequency of inspections.¹¹⁴

As of February 1, 2009, California froze state payments to most social services. In addition, state employees were forced to work two less days a month, and many state offices are operating only four days a week. In total, the state is withholding \$3.5 billion in payments for at least 30 days, much of it from welfare agencies, universities and childcare providers. According to the *Los Angeles Times*, officials are said to be "trying to avoid interruption of tuition grants for students, child care for poor families, services for the disabled and treatment for Californians with mental health and drug abuse problems."

California's and the nation's financial situation is dangerously uncertain. Cuts are being made to almost every social program, instead of increasing investment in them to ensure the care and education of the state's and the country's children. There are currently over 200,000 children in California who qualify for childcare subsidies but who are not receiving them and instead are on massive waiting lists.

As we have shown, not only do California's fiscal constraints affect the ability of childcare providers to provide care, they also affect the state's ability to ensure adequate oversight. Unless the governor and the state Legislature commit to ensuring the health and safety of children, and fund the CCLD adequately, California will continue to lag behind the rest of the nation in its childcare standards and oversight, and its most vulnerable children will pay the price for our government's decisions. While California does not formally sanction unlicensed care as Alabama does with its license exemptions, the western state's half-hearted commitment to funding the enforcement of its uniform health and safety standards severely cripples the worth of that necessary government protection.

SECTION V - Policy and Action Recommendations

Our exploration of the impact that unlicensed care has on the safety and quality of childcare for low-income families has taken us to **Alabama**, a state that provides extensive exemptions from its minimum childcare standards to an expanding proportion of unlicensed centers that by-pass state regulation and oversight by meeting minimal paperwork requirements. We examined **California**, a state that fundamentally undermines its own uniform childcare standards by allowing such infrequent inspections of centers (once every five years), and further undermines quality by delaying subsidy payments to providers due to perennial budget shortfalls. And finally, we explored **Maryland**, which, although it provides only limited exemptions to a small number of unlicensed centers and is considered a national leader on oversight and regulations, nevertheless could do much more to make quality childcare more affordable to low-income families.



The critical need for federal and state government subsidies for childcare for low-income families persists. In fact, the nation's profound economic crisis only strengthens the argument for increased support both to help low-income parents find and retain work and to expand access to stable, safe and nurturing environments necessary for children's growth. As Linda Smith, Executive Director of NACCRRRA argues, "What we need to resolve in this country is this question of 'Is childcare for work support or child development?' The truth is, it's really both, and we need to get over this debate about whether or not it's okay for kids to be in places that are unclean, or unsafe."

Pulling the plug on federal funding during the upcoming CCDBG reauthorization debate in Congress – as some advocates fear our legislators could do given legislative concerns about the quality of care subsidized by taxpayer dollars – will vastly increase the number of children forced to into such unclean and unsafe childcare environments. Low-income parents and children, who already are suffering tremendous economic turmoil in this recession, can ill afford such hasty decision making. Rather, this study strongly suggests that the federal and state governments should expand the public funds available for childcare subsidies, while simultaneously re-conceptualizing their "parental choice" approach to

childcare policy. Most importantly, reconceptualizing the framework must involve closing the loophole that allows and sometimes forces predominantly low-income parents to “choose” low-cost, *unlicensed* childcare centers that can flaunt with impunity the minimum childcare standards states impose upon *licensed* facilities to protect children from harm.

Accordingly, this exploration has brought us to the following policy and community action recommendations:

Abolish State Exemptions and Fund Transition Costs

Before we can credibly advocate for access to *high* quality care for all children regardless of class or race, we must ensure that states such as Alabama, Arkansas, Florida, and others are not undermining *basic* health and safety by carving out exemptions to even the minimal regulations and oversight requirements that licensed centers must follow. At a minimum, *all* children should have the protection of the law provided by minimum health and safety standards. Given the recent and continuing spread of economic hardship and the relative ease of obtaining exemptions from licensing requirements in states such as Alabama, it will not be surprising to see more and more licensed providers succumb to the temptation of switching to unlicensed, just to stay in business. Since 2000, the number of licensed centers in the state (1429) has decreased 15.7 percent (1205), while the number of unlicensed centers has increased 25.4 percent (from 628 to 728). In the most populated Alabama counties, the increase in unlicensed providers in the past eight years has ranged between 27.5 percent and 64.5 percent.

Congress can provide a powerful incentive to the fourteen states that provide exemptions and to the thousands of unlicensed providers by including funds and resources to help licensed and formerly unlicensed bear the costs of higher, uniform health and safety standards such as child:staff ratios, staff training, background checks, etc. There may even be a unique opportunity to tie funding and incentives to existing or future federal stimulus funds during this economic crisis.

Strengthen Licensing Requirements and Adequately Fund State Oversight

It is critical that when we abolish state exemptions to ensure all children receive at least a basic floor of protection, the minimum childcare regulations themselves should be simultaneously strengthened. These minimum regulations should include rigorous licensing requirements and oversight processes that meet the national standards set by leading advocacy organizations and experts such as NACCRRRA and

the Southern Institute on Children and Families¹¹⁵ on such matters as:

- Child:staff ratios and maximum group sizes
- Staff training and background checks
- Health, fire and safety requirements
- Frequency of unannounced inspections
- Strict enforcement of licensing requirements
- Manageable caseload sizes for licensing officials trained in early childhood development

As the unfortunate example of California has demonstrated in this study, minimum standards are essentially meaningless if the state does not provide adequate resources to *inspect* facilities and enforce the law. A child in the state easily can be enrolled in a program from birth to age five with only one inspection from a licensing official, if that. But the extreme example of California should not serve as an excuse to other states to avoid providing additional resources to their own inspecting agencies.

Improve Record-Keeping and Transparency in State Government

Advocates should take advantage of the Obama administration’s call for transparency and civic participation to empower parents and providers, and to promote better, accurate record-keeping by state agencies. Maryland has recently joined a handful of other leading states in making their childcare licensing and inspection data available to the public online, but Alabama, California, and the majority of other states have not already done so. Leading national advocacy organizations such as NACCRRRA already urge such transparency with state inspection data, but without even more aggressive persuasion or federal incentives, license exemption-issuing states like Alabama are likely to resist changing their record-keeping methods. And what is perhaps most damaging is that current record-keeping in Alabama masks the total potential impact of unlicensed care on the quality and safety of childcare within their borders.

For example, Alabama’s Office of Child Care Subsidy in Montgomery either currently does not track, or refuses to provide a breakdown of the amount of government childcare subsidies that flow into unlicensed vs. licensed centers. Instead, the office combines the two figures as if the two types of centers were the same, subsequently masking the amount of state support flowing to these unlicensed providers who are not subjected to state oversight. Even the state’s

preferred term for these unlicensed and uninspected centers – “registered” providers who are among those facilities that are “exempt from licensure” according to Alabama’s bi-annual CCDF state plans – clouds, rather than illuminates the stark distinctions in state’s oversight protection over the industry. Such sleight of hand renders unlicensed centers as largely invisible to analysis, save to those who have the time, interest and concern to look themselves.¹¹⁶

It is essentially impossible for exemption-issuing states like Alabama to understand the health/safety and quality implications and vulnerabilities in its childcare industry if the state does not systematically track the differences between licensed and unlicensed centers in staff qualifications, child:staff ratios, the type of curriculum used in the learning program and the type of lunch program available. These are all characteristics that unlicensed centers in the state are required to have available to parents according state law. If the state is confident that unlicensed childcare centers do not jeopardize the safety and quality of childcare available to children in the state, then it should collect past and present data from unlicensed centers, conduct its own analysis of the differences and make that report and raw data available to the public. The state of Alabama should also quantify the number of licensed centers that have switched their status to unlicensed (or the state’s preferred, but ambiguous term “exempt from licensure”) and demonstrate the recent potential impact on quality measures.

Empower Parental Voices

“The whole key to unlocking the budget issue is the parents. And you can’t get parents to the legislative sessions. Most are low-income and don’t feel qualified to speak out,” says Fran Clampitt, an experienced former family care provider and advocate from northern Alabama. “I’ve been in that position, and been embarrassed to speak. And sometimes you just have to take the first step.”¹¹⁷ Public officials should initiate and expand efforts to gather information from the families that use childcare subsidy programs because most cannot travel to their state capitals due to working restraints and the high cost. Local advocates can help develop methods of addressing parents on a comfortable level.

NACCRRRA Executive Director Linda Smith agrees that helping to organize parents is indeed an important piece of this struggle. Her organization brought more than three dozen parents to Washington, D.C. for their symposium in March of 2009, and NACCRRRA is also building a childcare awareness parent network. Smith says, “Many parents assume, like members of Congress do, that all these things [around health and safety inspections] happen and are shocked to find out that’s not true”—a finding backed up by

a national poll conducted by her organization. “We really need to educate parents on the current status of things.”¹¹⁸

Smith further reports on NACCRRRA’s lobbying activities. “We’ve met with members of Congress on both sides of the aisle, and they are truly surprised when they find out about the lack of standards and oversight” permissible under federal childcare subsidy programs. “It defies logic that we cannot get background checks of childcare workers. That we don’t check the sex offender registries” uniformly around the nation. Even members of Congress from conservative states “are stunned to find what is not happening. We need to create the public will around this.”

“We’ve learned,” says, Sophia Bracy Harris, Executive Director of Montgomery-based Federation of Child Care Centers of Alabama (FOCAL), a leading advocacy group in the state. “We’ve had lots of trainings [for providers], but now we need to have a forum for parental concerns. We didn’t realize how thirsty people were to be heard.”¹¹⁹

Clampitt, Harris and other advocates have been chided by state legislators, who say “I never do *see* any of those people who need all that help you are claiming they do.” But what the state legislators don’t understand, according to Clampitt, is that “a daycare provider can’t just close her business and head to the capital.”

Conscientious policymakers and advocates must develop new, dynamic ways of involving parent voices in the decision-making process throughout the nation, including leading childcare states like Maryland that make eligibility requirements that discourage or make it impossible for low-income parents to access the programs. Federal and state officials can provide funding and other resources to more systematically talk to parents and otherwise collect data through surveys of parents at childcare facilities.

By taking these steps, policymakers and childcare advocates can go a long way to closing the gaps created by state licensing exemptions and by inadequate government oversight and subsidy funding. We must ensure that all low-income children are protected and given a true opportunity to develop their full potential during their critical, early years of life.

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101. Interview with Pam Lanford in Huntsville, AL (1/16/09).
102. Telephone interview with Fran Clampitt (12/18/08).
103. Interview with Elizabeth Sankey in Montgomery, AL (8/6/08).
104. In-person interview with Guadalupe Mendoza, family childcare provider in Baldwin Park, CA (9/22/08).
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116. Even national leaders such as NACCRRA that advocate for licensing of *all* childcare facilities can be forgiven for being occasionally confused about the existence of Alabama's unlicensed centers given the state's choice of framing. For example, in its 2009 *We Can Do Better* state rankings report, NACCRRA correctly argues that "Children are routinely being cared for in child care settings that are not required to meet minimum licensing regulations" (p. 24), which accurately describes childcare in Alabama, but incorrectly identifies the state as one that "fully meets" NACCRRA's benchmark that "All centers and family care homes are licensed" (p.46). NARA and NCCIC also unfortunately do not include data on the total number of unlicensed facilities – data that in states like Alabama is not readily accessible – with their figures on licensed facilities for each state (see their joint *2007 Child Care Licensing Study*, February 2009 - www.naralicensing.org/associations/4734/files/2007%20Licensing%20Study_full_report.pdf).
117. Telephone interview with Fran Clampitt (12/18/08).
118. Telephone interview with Linda Smith, NACCRRA (2/11/09).
119. Interview with Sophia Bracy Harris in Montgomery, AL (1/15/09).

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PRINCIPAL AUTHORS AND RESEARCHERS

Dominique Apollon, Ph.D.
Research Director
Applied Research Center

Victor Corral
Research Assistant
Applied Research Center

Shannah Kurland
Strategy and Development Coordinator
Olneyville Neighborhood Association

ADDITIONAL RESEARCH

Yvonne Liu
Senior Research Associate
Applied Research Center

Josina Morita
Senior Research Associate
Applied Research Center

Rinku Sen
Executive Director
Applied Research Center

Seth Wessler
Research Associate
Applied Research Center

ART DIRECTION AND DESIGN

Hatty Lee
Art Director
Applied Research Center

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Lynson Beaulieu
Director, Programs and Strategic Leadership
Schott Foundation for Public Education

Carol Burnett
Executive Director
Mississippi Low Income Childcare Initiative

Jean Hardisty
Founder and President Emerita
Political Research Associates

Sophia Bracy Harris
Executive Director
Federation of Child Care Centers of Alabama

Patty Siegel
Executive Director
California Child Care Resource & Referral Network

Tania Lang Burger
Organization Developer
Federation of Child Care Centers of Alabama

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APPLIED RESEARCH CENTER

Advancing Racial Justice Through Research, Advocacy and Journalism

California

900 Alice Street, Suite 400
Oakland, CA 94607
P: (510) 653-3415
F: (510) 986-1062

www.arc.org

New York

32 Broadway, Suite 1801
New York, NY 10004
P: (212) 513-7925
F: (212) 513-1367

Midwest

28 E. Jackson Bldg. #10-A924
Chicago, IL 60604
P: (312) 376-8234
F: (312) 922-6964