
**Thomas P. DiNapoli
COMPTROLLER**



Audit Objectives	2
Audit Results - Summary	2
Background	4
Audit Findings and Recommendations	5
Sex Offender Registry Database Check	5
Recommendations	6
Health and Safety	6
Recommendation	8
Potential Fraud	8
Recommendations	9
Audit Scope and Methodology	9
Authority	9
Reporting Requirements	9
Contributors to the Report	9
Appendix A - Auditee Responses	11
Appendix B - State Comptroller's Comments	31

**OFFICE OF THE
NEW YORK STATE COMPTROLLER**

**DIVISION OF STATE
GOVERNMENT ACCOUNTABILITY**

**OFFICE OF CHILDREN AND
FAMILY SERVICES**

**NEW YORK CITY
ADMINISTRATION FOR
CHILDREN'S SERVICES**

**NEW YORK CITY HUMAN
RESOURCES
ADMINISTRATION**

**HEALTH, SAFETY AND
FISCAL ISSUES RELATING
TO LEGALLY-EXEMPT
CHILD CARE IN NEW YORK
CITY**

Report 2007-N-11

AUDIT OBJECTIVES

The objectives of our audit were to determine whether oversight activities by the Office of Children and Family Services, New York City Administration for Children's Services, and New York City Human Resources Administration were effective in monitoring the health and safety of children receiving care from legally-exempt providers in New York City, and if program funds were spent for their intended purposes.

AUDIT RESULTS - SUMMARY

Under the New York State Child Care Block Grant subsidy program (Program) child care providers that are legally-exempt from the licensing and registration requirements of OCFS are paid for child care services. The Program provides payments to child care providers who care for the children of families who are receiving public assistance, who are transitioning from public assistance, or who are not receiving public assistance but have low incomes. In New York City, the Administration of Children's Services (ACS) is responsible for the administration of payments to the legally-exempt providers and the enrollment of providers selected by low-income families. The Human Resources Administration (HRA) enrolls the providers selected by families receiving public assistance. The New York State Office of Children and Family Services (OCFS) is responsible for monitoring compliance with Program requirements.

In our prior audit of legally-exempt family child care providers (legally-exempt providers) outside of New York City (*Life Safety and Fiscal Issues Related to Legally Exempt Child Care*, Report 2002-S-38, released July 2004), we found some children received care in unsafe and unhealthy environments, and some providers received

funds even though no services were provided. We also found providers that had been convicted of crimes.

In response to that audit, OCFS issued regulations that went into effect on July 31, 2006, requiring the use of enrollment agencies to verify information submitted by legally-exempt providers, to check providers' criminal background on the New York State Sex Offender Registry and to inspect annually the premises of 20 percent of legally-exempt family child care providers to determine compliance with health and safety standards.

According to OCFS officials, they have contracted with enrollment agencies outside of New York City. However, they have not yet done so in New York City. Instead, OCFS and ACS agreed that New York City would continue to operate under the previous OCFS legally-exempt provider enrollment requirements until appropriate legally-exempt caregiver enrollment agencies could be identified through an RFP process. Under these requirements the legally-exempt provider and parent sign an enrollment form certifying that the provider meets the required health and safety standards (self certification).

In addition, on the enrollment form, the legally-exempt provider attests whether the provider has been convicted of a crime, and submits a written explanation of the crime, which is shared with the parent. The legally-exempt provider also attests whether the provider has been the subject of an indicated report of child abuse or maltreatment and that he or she has given the parent information in writing concerning any such indication. The parent attests that the provider has given written information concerning such indication and that the parent has considered this information in the selection of the provider.

We obtained a list of the 35,276 legally-exempt providers enrolled in New York City as of December 31, 2006, and compared it to the New York State Sex Offender Registry. We identified two registered sex offenders who were enrolled to provide care to children and to whom payments were being sent as of June 2007. One of the sex offenders was on probation at the time he was caring for children. Our investigation found that one of the sex offenders had not, in fact, provided any day care services to children. ACS confirmed that the other sex offender had been providing day care to three children. [Pages 5-6]

ACS ended payments to both providers and banned them from future enrollment after we informed them of our findings. In addition, ACS informed us that it has contacted its Division of Child Protection as well as the parole officers for both of the sex offenders. We found that the sex offender who provided no services was enrolled without his knowledge as a provider by the mother of the children he was reportedly caring for while she collected the child care payments. Our Investigations Unit referred this case to the Brooklyn District Attorney's Office. The mother pleaded guilty to grand larceny in the third degree and was sentenced on April 16, 2008. In an earlier case which also involved a legally-exempt provider she had pled guilty to possession of a forged instrument on March 20, 2007. [Page 5-6]

OCFS hopes to have an enrollment agency in place for the Bronx by May 2008, but it has not developed a timetable for implementation for the rest of the City. We are concerned that, until the enrollment agencies are put in place in New York City, sex offenders can continue to register as providers. We recommend that ACS verify, as we did, whether potential providers are on the registry. [Page 6]

OCFS Regulations specify 26 health and safety requirements each legally-exempt provider must adhere to when caring for children. Out of the 26 health and safety requirements for legally-exempt providers, we chose 12, in consultation with OCFS and ACS, to determine if they were being met at 50 randomly selected legally-exempt providers that we attempted to visit in June and July 2007. We obtained access to 36 of the homes where services were being provided and we found that 34 (94 percent) had one or more issues of non-compliance with the health and safety requirements. We found no issues at two of the homes we were able to visit. [Pages 6-8]

We could not confirm that child care services were being provided by 14 of the 50 providers at the time of our visits. In two cases, we concluded that the providers did not live at the locations listed on their enrollment forms. We believe that the providers were paid for services that had not been provided for an extended period of time. ACS referred these two providers to its internal investigations unit.

In nine instances, there was no one home at the time of our visits and in three cases the providers refused to allow us to enter, even though we were accompanied by an ACS representative. ACS was subsequently able to determine that four were valid providers and two had ceased providing care prior to our visits. For the other six providers, ACS stopped payment as the providers could not be contacted. Since neither we nor ACS could confirm that care was being provided by these six legally-exempt providers, we believe that some of their payments could have been fraudulent. [Page 8-9]

Our audit report contains five recommendations for actions to be taken by OCFS, ACS, and HRA. OCFS, ACS and

HRA generally agreed with the recommendation in this report and described actions taken or planned to implement them. We have made modifications to this report to reflect technical changes suggested in the agencies' responses.

This report, dated May 29, 2008, is available on our website at: <http://www.osc.state.ny.us>. Add or update your mailing list address by contacting us at: (518) 474-3271 or Office of the State Comptroller
Division of State Government Accountability
110 State Street, 11th Floor
Albany, NY 12236

BACKGROUND

The Office of Children and Family Services (OCFS) provides a range of resources to help parents with their child care needs. It helps low-income families obtain child care through subsidies paid directly to them or, on their behalf, to their child care providers. Under the New York State Child Care Block Grant subsidy program (Program) child care providers that are legally-exempt from the licensing and registration requirements of OCFS are paid for child care services provided to children of eligible families. The Program serves the children of families who are receiving public assistance, who are transitioning off public assistance, or who are not receiving public assistance but have low incomes. Legally-exempt family child care is provided in either the home of the provider, another residence, or in the child's own home, providing additional options for parents.

Two New York City agencies jointly operate the Program in New York City: the Administration for Children's Services (ACS) and the Human Resources Administration (HRA). As of September 2006, ACS assumed full responsibility for the administration of payments to all legally-

exempt providers on behalf of eligible parents and caregivers. Both ACS and HRA enroll legally-exempt providers, with most providers enrolled by HRA. As the State's oversight agency, OCFS is responsible for monitoring implementation of the Program.

In New York State, parents may choose from three types of subsidized child care providers: licensed (child care centers and group family child care homes), registered (family child care and school-age child care programs), and legally-exempt. Under State Social Services law, child care providers must undergo various checks when they apply to be licensed or registered, including criminal history background checks, database checks through the Statewide Central Register of Child Abuse and Maltreatment, and regular inspections that apply to all aspects of care. However, legally-exempt providers were not subject to these requirements.

OCFS established a self-certification process to enroll legally-exempt providers who are selected by families receiving a child care subsidy to care for their children. The enrollment process requires that the legally-exempt provider sign a form certifying that they meet the required health and safety standards. The enrollment form includes a home safety checklist that the parent and provider complete together, and an attestation that the provider and any assistants are physically, emotionally, and mentally able to provide child care.

The legally-exempt provider also attests to whether the provider and assistants have been convicted of a crime, and in the case of a legally-exempt family child care provider, the legally-exempt provider attests to whether household members age 18 or older have been convicted of a crime. The provider must submit a written explanation of the crime, which is shared with the parent and also

signed by the parent. Further, the legally-exempt provider attests whether the provider and other specified individuals have been the subject of an indicated report of child abuse or maltreatment and that he or she has given the parent information in writing concerning any such indication. The parent certifies that he or she understands it is his or her responsibility to monitor the quality of care furnished by the provider. Once enrolled, providers submit attendance reports to ACS on a monthly basis. ACS then issues child care subsidy benefits on the parents' behalf to the providers.

OCFS issued regulations that went into effect on July 31, 2006, requiring the use of enrollment agencies to verify information submitted by legally-exempt providers in the self-certification process. This included a check to determine that providers are not listed on the New York State Sex Offender Registry and criminal background checks for all individuals who may have contact with the children. In addition, the regulations require that 20 percent of the locations where legally-exempt providers were providing care, be inspected annually to determine that the premises comply with health and safety standards. Where non-compliance is found by the enrollment agency, it is required to assist the provider to achieve compliance. However, as of January 2008, OCFS, in conjunction with ACS, has not contracted with enrollment agencies for New York City.

Our current audit focused on legally-exempt family child care providers in New York City. For the three month period ended March 31, 2007, 25,375 legally-exempt providers received \$40.7 million in State funds to care for approximately 44,658 children in New York City.

AUDIT FINDINGS AND RECOMMENDATIONS

Sex Offender Registry Database Check

As part of the self-certification enrollment process, all legally-exempt providers must certify that they have no criminal history, including sex offenses. New York State Code Rules and Regulations state that when a check of the New York State Sex Offender Registry reveals that when a legally-exempt family child care provider is listed for committing a sex offense, the provider cannot be enrolled to provide care for children receiving a child care subsidy. To determine whether providers were submitting accurate information, we obtained a list of the 35,276 legally-exempt providers enrolled as of December 31, 2006, and compared it to the New York State Sex Offender Registry.

We identified two registered sex offenders who were listed by ACS as providing care to children and to whom payments were being sent as of June 30, 2007. One provider was a Level 3 sex offender convicted of raping a 13-year-old girl in December 2000. This provider was released from jail on July 21, 2004. He reportedly cared for three children from April 2005 through June 2007 for which ACS paid a total of \$29,656. The provider's criminal history was not disclosed on the enrollment form. ACS investigated this matter and confirmed that the sex offender had been providing day care services to children.

The other provider was a Level 2 sex offender who was convicted of forceful touching of a 16-year-old female in November 2004 and was released from jail after 30 days. He was given six years probation. The provider reportedly cared for three children from March 2006 to May 2007 while on probation, and received \$11,156. This provider's

enrollment form did not indicate that he was a convicted sex offender. Our Investigations Unit discovered that this sex offender was enrolled without his knowledge as a provider by the mother of the children he was reportedly caring for. The mother listed her children as the ones receiving care. She also used a relative's address as the place where the care was being provided and the payments were to be sent. However, our Investigations Unit concluded the sex offender was not providing day care services to children. Our Investigations Unit referred this case to the Brooklyn District Attorney's Office, which filed charges against the mother. She has pleaded guilty to grand larceny in the third degree and was sentenced on April 16, 2008. In an earlier case related to legally-exempt child care she had previously pled guilty to possession of a forged instrument on March 20, 2007.

ACS officials ended payments to both providers and banned them from future enrollment as eligible providers after we informed them of our findings in July 2007. In addition, ACS informed us that it has contacted the parole officers for both of the sex offenders. ACS also informed us that its Division of Child Protection found no indication that the children in the care of the registered sex offender had been abused.

Further, since enrollment agencies have not yet been contracted for New York City, no one is reviewing the background of any of the legally-exempt providers in this area except for a portion of newly enrolled providers in Manhattan under a pilot program conducted by ACS. OCFS issued a Request for Proposals (RFP) for the hiring of enrollment agencies for New York City in February 2007. Based on a review of the responses to the RFP by OCFS and ACS, a contractor was chosen in May 2007, but only for the Bronx. A contract is expected to be in place in May

2008 and services are to start in August 2008. A new RFP is being developed for the other boroughs, but OCFS has not established a time line for having these contracts in place, even though the regulations went into effect more than one and a half years ago.

Recommendations

To OCFS, in conjunction with ACS:

1. Expedite contracting with enrollment agencies in New York City.

To ACS:

2. While awaiting implementation of enrollment agencies in New York City, verify the sex offender status of all new legally-exempt family providers prior to approving their enrollment. Develop procedures for periodically checking the registry for all legally-exempt family providers.

Health and Safety

OCFS Regulations specify 26 health and safety requirements each legally-exempt provider must adhere to when caring for children. These requirements are listed in the legally-exempt provider enrollment form in a section completed by both the provider and the parent. The section ends with an attestation from both that the health and safety requirements will be met. We attempted to visit 50 randomly selected legally-exempt providers on an unannounced basis during June and July 2007 to assess compliance with these requirements. In consultation with OCFS and ACS officials, we selected some of the health and safety requirements that would be most applicable to New York City. Out of the 26 health and safety requirements for legally-exempt providers, 12 were chosen. An ACS representative accompanied us

during each visit to provide an official presence and to verify our findings. The following are the health and safety requirements we inspected:

- Two separate and remote ways to escape in an emergency,
- Barriers are used to restrict children from unsafe areas,
- Windows on floors above the first floor are protected by barriers or locking devices to prevent children from falling out of the windows,
- Safe hot and cold running water is available and accessible at all times,
- All hazardous materials (cleaning, toxic or poisonous materials, detergents, etc.) are kept in a place inaccessible to children,
- Children are not exposed to individuals using drugs or alcohol while in care,
- No smoking around the children while in the provider's care,
- Caregiver has a working telephone or immediate access to one, and the various emergency numbers are posted conspicuously,
- Protective caps are placed on electrical outlets accessible to young children,
- Paint and wall plaster are in good repair,
- Working smoke detector is on each floor of the home, and
- The home is equipped with a portable first aid kit and accessible for emergency treatment.

We were able to gain access to 36 of the 50 selected sites to perform our assessment (the remaining 14 are discussed later in this report). Of the 36 homes, we found that 34 (94 percent) had one or more issues of non-compliance with the health and safety requirements. (Two providers were in full compliance.) The compliance issues at the 34 homes were as follows:

- 20 had electrical outlets that had no protective covers and were accessible to young children,
- 15 did not have an easily-accessible list of the local fire or police emergency contact telephone numbers,
- 13 had harmful cleaning materials stored within the reach of children,
- 13 did not have portable first aid kits available,
- 7 did not have working smoke detectors,
- 6 homes located above the first floor had unlocked and unprotected window guards,
- 3 did not have two separate means of escape in an emergency, and
- 3 had alcoholic beverages that were accessible to the children.

Subsequent to our visits, ACS made follow-up visits to these homes to determine the status of the health and safety violations we noted. According to ACS, 33 of the 34 homes have been brought into compliance. The remaining provider had not cared for children since September 2006. We note that, during our visits, the ACS representative gave providers first aid kits, batteries for smoke detectors, and additional information

regarding health and safety requirements. While we acknowledge that ACS took swift actions at the locations we visited, no systematic approach has been developed to assure that health and safety violations are identified and ameliorated throughout New York City.

Additionally, since the inspection process that the enrollment agencies were to carry out is not in place, there is a greater risk that the approximately 60,000 children receiving service will not be cared for in a healthy and safe environment. ACS has a small pilot inspection program, which it initiated in November 2005, but it covers only a section of one of the five boroughs in New York City.

Recommendation

To ACS:

3. While awaiting implementation of the enrollment agencies in New York City, develop a systematic approach, including site visits, to ensure that providers are meeting the health and safety regulations.

Potential Fraud

Only legally-exempt providers who provide child care services should be paid. As previously stated, of the 50 legally-exempt providers we selected to visit, we could not verify through site visits that 14 were providing child care services. ACS was subsequently able to determine that four were valid providers and two had ceased providing care prior to our visits. The following is a summary of the status of the remaining eight providers:

- Three providers, who received a total of \$125,472 between January 2005 and August 2007, were not at home on any of the dates we visited (we made at least

two attempted visits to these providers). ACS suspended their payments, and continues to investigate to determine if child care fraud had occurred.

- Three providers, who received a total of \$26,477 between January 2005 and August 2007, did not allow us to enter their homes, even though we were with an ACS representative. ACS suspended their payments until the circumstances surrounding these providers were investigated. Subsequently, ACS officials indicated that two of these providers have now been terminated from the program. To date, no additional actions have been taken related to the third provider.
- Two providers did not live at the locations listed on their enrollment forms as the address where care was to be given, and did not provide the claimed child-care services for which they were paid. For one provider, the building superintendent informed us that the provider had not lived at the listed location for more than two years, although his mail was still being received there. ACS processed attendance reports submitted by this provider as recently as June 4, 2007. Between January 1, 2005, and June 5, 2007, the provider was paid \$37,204. The second provider submitted attendance reports as recently as December 2007 and received a total of \$21,391 from the State since March 2006. ACS terminated both of these providers from the program after our site visits and referred them to their internal investigations unit.

Since ACS could not confirm to us that care was being provided at eight of these legally-exempt providers, we believe that payments of \$210,544 (\$125,472 + \$26,477 + \$37,204

+ \$21,391) could be fraudulent. In the case of two of the providers, the evidence suggests that these payments were for services that were never provided.

Recommendations

ACS and HRA, in consultation with OCFS, should:

4. Investigate the two providers noted in the report who may have received payments under false pretenses, and refer the cases to the appropriate law enforcement agencies, if appropriate.
5. Continue to investigate the remaining six providers who were not home, or did not allow us entry into their home at the time of our visits. Determine whether they were providing the services they were being paid for.

AUDIT SCOPE AND METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. The audit determined whether oversight activities by OCFS, ACS, and HRA were effective in monitoring the health and safety of children in legally-exempt settings in New York City and if program funds were spent for their intended purposes.

To accomplish our objectives, we met with OCFS, ACS, and HRA officials. We obtained and analyzed payment data for legally-exempt family child care providers for December 2006. We obtained a list of all legally-exempt family providers as of January 2007 and matched these names to the New York State Sex Offender Registry. In addition, we attempted to visit 50 randomly selected active legally-exempt providers to determine whether health and safety

requirements were being adhered to and child care services were being provided.

As is our practice, we notify agency officials at the outset of each audit that we will be requesting a representation letter in which agency management provides assurances, to the best of their knowledge, concerning the relevance, accuracy, and competence of the evidence provided to the auditors during the course of the audit. The representation letter is intended to confirm oral representations made to the auditors and to reduce the likelihood of misunderstandings. In the representation letter, agency officials assert that, to the best of their knowledge, all relevant financial and programmatic records and related data have been provided to the auditors. Agency officials further affirm that either the agency has complied with all laws, rules, and regulations applicable to its operations that would have a significant effect on the operating practices being audited, or that any exceptions have been disclosed to the auditors. However, officials at the New York City Mayor's Office of Operations have informed us that, as a matter of policy, mayoral agency officials do not provide representation letters in connection with our audits. As a result, we lack assurance from ACS and HRA officials that all relevant information was provided to us during the audit.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be

considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

AUTHORITY

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1, of the State Constitution; Article II, Section 8, of the State Finance Law; and Article III of the General Municipal Law.

REPORTING REQUIREMENTS

A draft copy of this report was provided to OCFS, ACS, and HRA officials for their review and comment. Their comments were considered in preparing this report and are included as Appendix A. Agency officials generally agreed with our recommendations. Our rejoinders to agency responses are presented in Appendix B, State Comptroller's Comments.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Office of Children and Family Services shall report to the Governor, the State Comptroller, and the leaders of the Legislature and its fiscal committees, advising of the steps that were taken to implement the recommendations it contained, and/or the reasons certain recommendations were not implemented. In addition, we request that the Commissioners of ACS and HRA report to the State Comptroller, advising what steps were taken to implement the recommendations contained in this report, and where recommendations were not implemented, the reasons therefor.

CONTRIBUTORS TO THE REPORT

Major contributors to this report include William Challice, Michael Solomon, Santo Rendon, Adrian Wiseman, Legendre Ambrose, John Ames, Aurora Caamano, Carole LeMieux, Joseph Fiore, Raymond Russell, and Sue Gold.

APPENDIX A - AUDITEES RESPONSES



New York State
Office of
Children & Family
Services

www.ocfs.state.ny.us

David A. Paterson
Governor

Gladys Carrión, Esq.
Commissioner

Capital View Office Park
52 Washington Street
Rensselaer, NY 12144

May 2, 2008

Mr. Michael Solomon, Audit Manager
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, New York 10038

Re: OSC Audit-Oversight of Health, Safety and Fiscal Issues Relating to
Legally Exempt Child Care in New York City – 2007-N-11

Dear Mr. Solomon:

Enclosed you will find the Office of Children and Family Services' (OCFS) response to the draft audit regarding the Office of the State Comptroller's Audit of the OCFS' Oversight of Health, Safety and Fiscal Issues Relating to Legally Exempt Child Care in New York City. The response from the New York City Administration for Children Services on this audit was dated April 29, 2008.

OCFS and the City of New York worked collaboratively to develop this response. The OCFS reply includes responses to the five recommendations and many general comments regarding the narrative for the Office of the State Comptroller. Please note that the "General Comments to the Narrative" section of this report is different from the New York City submission. These comments are respectfully provided to clarify the technical language for the final report. OCFS is also attaching the Corrective Action Plan as it is referenced in the audit response.

Sincerely,

/s/

Kevin W. Mahar, Director
Office of Audit and Quality Control

Enclosure

cc: Janice Molnar
Renee Rider



An Equal Opportunity Employer

**Office of State Comptroller's Audit of the Office of Children & Family Services
Oversight of Health, Safety and Fiscal Issues Relating to
Legally Exempt Child Care in New York City
Audit Number: 2007-N-11**

The Office of Children and Family Services (OCFS) has consulted with the New York City Administration for Children's Services (ACS) and Human Resources Administration (HRA) on the key components and recommendations of the OSC draft audit report on legally-exempt family child care in New York City. OCFS will continue to oversee the status and outcomes of the findings contained in this report.

Both OCFS and the City of New York recognize the importance of maintaining the health and safety of children receiving subsidized child care in legally-exempt care settings. In response to OSC recommendations, ACS will establish procedures to match legally exempt family and in-home providers against the New York State Sex Offender Registry and to visit a sample of legally-exempt family child care providers while legally-exempt caregiver enrollment agencies are implemented in New York City.

OCFS and ACS have collaborated in responding to the audit recommendations and providing changes to the narrative sections of the audit report. These changes to the narrative are necessary for the audit report to accurately reflect the regulatory and programmatic requirements of the legally-exempt enrollment process and the outcomes of the audit and investigatory process. In addition, OCFS is submitting the corrective action plan developed by ACS in response to the recommendations for which it is responsible and the general responses to the audit report developed by ACS.

Response to the Recommendations

OSC Recommendation #1: *Expedite contracting with enrollment agencies in New York City.*

OCFS Response: OCFS has been working with the New York City Administration for Children's Services (ACS) and Human Resources Administration (HRA) since the award announcement on May 21, 2007 to implement the legally-exempt enrollment services for the agency that was awarded the contract for the three catchment areas in the Bronx. This contract is in the external stage of the review process, with contract approval and execution expected in May 2008. Services are expected to be provided by this organization to all of the catchment areas in the Bronx within three months of contract execution. In addition, OCFS plans on releasing a re-bid of the New York City Legally-Exempt Caregiver Enrollment Agencies Request for Proposals (RFP) in June 2008 for the funding of the legally-exempt enrollment services for the other four boroughs in New York City. Discussions had taken place among OCFS, ACS, and HRA on ways to implement this program effectively and to attract a larger pool of bidders during this re-bid of the RFP. Agreement was reached in April 2008 which allowed the opportunity to move forward with the development of the RFP, including the following timeline:

anticipated release in June 2008; proposals due in August 2008; and the start date for awarded contracts in December 2008. OCFS is, in conjunction with ACS, responsible for completing the Correction Action Plan regarding Recommendation 1.

OSC Recommendation #2: *ACS should, while awaiting implementation of enrollment agencies in New York City, verify the sex offender status of all new legally-exempt providers prior to approving their enrollment. Develop procedures for periodically checking the registry for all legally-exempt providers.*

OCFS Response: While awaiting implementation of enrollment agencies, ACS will check the sex offender registry for all legally-exempt family and in-home providers by matching a file of legally-exempt providers with the registry. If there are matches, the parent(s) of the child in care and the provider will be notified that child care cannot continue with that provider; the ACS Division of Child Protection and the sex offender's parole officer will be notified; and child care payment will be stopped.

OSC Recommendation #3: *ACS should, while awaiting implementation of the enrollment agencies in New York City, develop a systematic approach, including site visits, to ensure that providers are meeting the health and safety regulations.*

OCFS Response: ACS will conduct site visits to a sample of legally-exempt family providers in each borough. ACS will periodically distribute a fact sheet on key health and safety regulations to all legally-exempt family providers, with a reminder that all providers are subject to unannounced home visits by ACS personnel.

OSC Recommendation #4: *ACS and HRA, in consultation with OCFS, should investigate the two providers noted in the report who may have received payments under false pretenses, and refer the cases to the appropriate law enforcement agencies, if appropriate.*

OCFS Response: ACS has completed its investigation of the two providers and the outcome of each is noted in the corrective action plan submitted by ACS to OSC.

OSC Recommendation #5: *ACS and HRA, in consultation with OCFS, should continue to investigate the remaining six providers who were not home, or did not allow us entry into their home at the time of our visits. Determine whether they were providing the services they were being paid for.*

OCFS Response: ACS has completed its investigation for two of the six providers. The outcome for these two providers and the status of the investigation of the other four providers is noted in the corrective action plan submitted by ACS to OSC.

The following general comments are respectfully provided to help clarify the technical language of the draft report.

General Comments to the Narrative

- Page 2, first column, first paragraph, first sentence: There is no “Legally –Exempt Program.” Revise the beginning of the sentence as follows: “The New York State Child Care Block Grant subsidy program provides payments for child care services on behalf of eligible families who are... .”
- Page 2, first column, first paragraph, second and third sentences should reflect the responsibilities of OCFS, ACS, and HRA as follows: “In New York City, the Administration for Children’s Services (ACS) enrolls legally-exempt providers that have been selected by families receiving a low-income child care subsidy from ACS; the Human Resources Administration (HRA) enrolls providers selected by families receiving public assistance. ACS is responsible for the administration of child care subsidy payments to legally-exempt providers on behalf of all eligible families. The New York State Office of Children and Family Services (OCFS) is responsible for monitoring social services district compliance with the requirements of the child care subsidy program.”
- Page 2, second column, first full paragraph, third and fourth sentence should be replaced to reflect the requirements as follows: “OCFS and ACS agreed that New York City would continue to operate under the previous OCFS legally-exempt provider enrollment requirements, in which the legally-exempt provider and parent sign an enrollment form certifying that the provider meets the required health and safety standards, until appropriate legally-exempt caregiver enrollment agencies could be identified through an RFP process. On the enrollment form, the legally-exempt provider attests whether the provider and other specified individuals have been convicted of a crime. Additionally, the provider submits a written explanation of the crime, which is shared with the parent and also signed by the parent. Further, the legally-exempt provider attests whether the provider and other specified individuals have been the subject of an indicated report of child abuse or maltreatment and that he or she has given the parent information in writing concerning any such indication. The parent attests that the provider has given written information concerning such indication and that the parent has considered this information in the selection of the provider.”
- Page 2, second column, second paragraph, add a fourth sentence stating: “The other registered sex offender was not providing child care and had been fraudulently enrolled by the mother of the children.”
- Page 2, second column, last paragraph: replace the word “registered” with “enrolled”.
- Page 3, first column, fifth line: replace the words “related to the” with “which also involved a”. Also in this same sentence, replace “child care program” with “provider”.
- Page 3, Background section, third sentence: There is no “Legally-Exempt Program.” Revise sentence as follows: “Under the New York State Child Care Block Grant Subsidy Program, child care providers that are legally-exempt from the licensing and registration requirements of the Office of Children and Family Services (and, in New York City, from the licensing requirements of the City of New York) are paid for child care services for children of eligible families....”

- Page 3, Background section, fourth sentence: Legally-exempt care also includes group care that is exempt from licensing and registration requirements.
- Page 4, first column, first paragraph, replace the second sentence with the following two sentences: “As of September 2006, ACS assumed full responsibility for the administration of payments to all legally-exempt providers on behalf of eligible parents and caretakers. Both ACS and HRA enroll legally-exempt providers, with most providers being enrolled by HRA.”
- Page 4, first column, second paragraph, first sentence should be revised to read: “In New York State, parents funded under the New York State Child Care Block Grant subsidy program may choose from three types of eligible child care providers...”
- Page 4, first column, second paragraph, second sentence insert as follows: “Under social services law, child care providers must...”
- Page 4, first column, second paragraph, second sentence should be revised to delete the word “fingerprinting.” Fingerprinting is not a check; it is a process used to conduct the criminal background check.
- Page 4, first column, third paragraph, does not accurately reflect the enrollment process. Replace the third paragraph with the following paragraph. “Since legally-exempt providers are not included in the provisions of Social Services Law related to a statewide criminal history check and a database check of the State Central Register of Child Abuse and Maltreatment, OCFS established a self-certification process to enroll legally-exempt providers who are selected by families receiving a child care subsidy to care for their children. Social Services Law §410-x.3 allows districts to impose additional health and safety requirements on providers, with the approval of OCFS. OCFS has approved such local district standards for legally-exempt providers as: local criminal history checks, local child protective database checks (for local district reference only), and home visits. The enrollment process requires that the legally-exempt provider sign a form certifying that they meet the required health and safety standards. The enrollment form includes a home safety checklist that the parent and provider complete together, and an attestation that the provider and any assistants are physically, emotionally, and mentally able to provide child care. The legally-exempt provider also attests to whether the provider and assistants have been convicted of a crime, and in the case of a legally-exempt family child care provider, the legally-exempt provider attests to whether household members age 18 or older have been convicted of a crime. The provider must submit a written explanation of the crime, which is shared with the parent and also signed by the parent. Further, the legally-exempt provider attests whether the provider and other specified individuals have been the subject of an indicated report of child abuse or maltreatment and that he or she has given the parent information in writing concerning any such indication. The parent certifies that he or she understands it is his or her responsibility to monitor the quality of care furnished by the provider. Once enrolled, providers submit attendance reports to ACS on a monthly basis. ACS then issues child care subsidy benefits on parents’ behalf to the providers.”

- Page 4, second column, first full paragraph, the end of the first sentence should be revised to reflect the requirements as follows: “...and to check the legally-exempt family and in-home provider, employees, and any volunteer with regular and substantial contact with children in care, and, in the case of a legally-exempt family child care provider, household members age 18 or older, against the New York State Sex Offender Registry.”
- Page 4, second column, first paragraph, second sentence should be revised to reflect the requirements as follows: “...20 percent of currently enrolled legally-exempt family providers who do not participate in the Child and Adult Care Food Program be... .”
- Page 4, second column, second paragraph, first sentence insert the word “family” as follows: “Our current audit focused on legally-exempt family child care providers... .”
- Page 4, second column, second paragraph, second sentence: “...legally-exempt providers received \$40.6 million on behalf of eligible parents or caretakers in New York State Child Care Block Grant” funds for approximately... .”
- Page 4, second column, last paragraph, the end of the first sentence should be revised to reflect the requirements as follows: “...certify whether the provider employees, and any volunteer with regular and substantial contact with children in care, and, in the case of a legally-exempt family child care provider, household members age 18 or older, have been convicted of a crime, which would include sex crimes.”
- Page 4, second column, last paragraph, end of the second sentence should be revised to reflect the requirements as follows: “ Regulations state that when a check of the New York State Sex Offender Registry reveals that a caregiver, employees, and any volunteer with regular and substantial contact with children in care, and, in the case of a legally-exempt family child care provider, household members age 18 or older, is listed for committing a sex offense, the caregiver cannot be enrolled to provide care for children receiving a child care subsidy.”
- Page 5, first column, first full paragraph, should be replaced with the following: “We identified two registered sex offenders who were reportedly providing care to children and reportedly being paid as of June 30, 2007. One reported provider was not caring for children but had been enrolled as a provider, without his knowledge, by the mother of the children he was supposedly caring for.” We consider it incorrect and inappropriate to report the details of the sex offender convictions, payments and enrollment form in this way, since it was actually the mother who fraudulently completed the enrollment form and received the payments.
- Page 5, first column, third paragraph, insert as a new third sentence the following: “The ACS Division of Child Protection found no indication that the children in child care with the registered sex offender had been abused.”
- Page 5, first column, third full paragraph, third sentence, change the word “registered” to “enrolled”.
- Page 5, second column, first paragraph, first sentence should be replaced with the following: “Since enrollment agencies have not yet been contracted with for New York City, ACS has conducted a pilot enrollment process with a portion of newly

*
Comment
1

enrolled providers in Manhattan and has been reviewing the background history of all providers in this pilot."

- Page 5, second column, first full paragraph, second sentence include OCFS as reviewing responses to the RFP.
- Page 5, second column, first full paragraph, after the fourth sentence add the following: "A new RFP is being developed for the other boroughs. OCFS has established a timeline for the re-bid of this RFP, including a start date for these contracts. The 2008 New York City Legally-Exempt Caregiver Enrollment Agencies RFP release date is anticipated to be in June 2008, with proposals due in August 2008, and the start date for awarded contracts in December 2008."
- Page 5, second column, last sentence in Recommendations #2, insert the word "family" to read: "...legally-exempt family providers."
- Page 6, first column, sixth bullet should be revised to reflect the requirements as follows: "Children are not exposed to individuals using drugs or alcohol while in care."
- Page 6, second column, second bullet should be revised to reflect the requirements as follows: "... working telephone or immediate access to one...."
- Page 7, first column, first full paragraph, fourth sentence, change the word "assure" to "see."
- Page 7, first column, second paragraph, last sentence: Replace "section of" with "portion of the new legally-exempt providers in one of the ."
- Page 7, first column, Recommendation 3, change the word "ensure" to "see."
- Page 7 second column, first bullet, add a last sentence to read: "These three providers continue to be under investigation by the HRA Bureau of Fraud Investigation, which collaborates with ACS in regard to possible child care fraud."
- Page 7, second column, second bullet, revise second sentence and add sentences to read: "ACS officials determined that one of the providers had stopped providing child care prior to the audit. ACS and the HRA Bureau of Fraud Investigation confirmed that the two other providers had been providing legal child care services. Payments were released to one of these providers, and she subsequently stopped providing child care services. The third provider's payments remain suspended pending her allowing a home visit by ACS."
- Page 7, second column, third bullet, insert as a new second sentence: "ACS suspended payments."
- Page 8, first column, second full sentence, replace with the following: "However, the investigation revealed that the parent had been collecting and cashing checks that were issued to the provider, in the amount of \$37,204 between January 1, 2005 and June 5, 2007. ACS terminated the supposed provider from its system and the parent has pled guilty to grand larceny."
- Page 8, first column, third sentence, replace with the following: "The second provider was investigated by the HRA Bureau of Fraud Investigation and found to have been providing legal child care services at a different address. Her current site has been inspected and approved by ACS and her payments have been restored."

*
Comment
2

-
- Page 8, second column, first full paragraph, third sentence insert the word “family” as follows: “...visit 50 randomly selected active legally-exempt family providers...”

ADMINISTRATION FOR CHILDREN'S SERVICES
AUDIT IMPLEMENTATION PLAN ON OFFICE OF STATE COMPTROLLER'S AUDIT REPORT
HEALTH, SAFETY AND FISCAL ISSUES RELATING TO LEGALLY-EXEMPT CHILD CARE IN NEW YORK CITY
AUDIT NUMBER: 2007-N-11

RECOMMENDATION # 1: OCFS, in conjunction with ACS, should expedite contracting with enrollment agencies in New York City.

RESPONSIBLE MANAGER(S)' NAMES:

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	DATES		DOCUMENTATION	COMMENTS
		START	END		
ACS will cooperate with OCFS as OCFS moves to expedite contracting.					

ADMINISTRATION FOR CHILDREN'S SERVICES
AUDIT IMPLEMENTATION PLAN ON OFFICE OF STATE COMPTROLLER'S AUDIT REPORT
HEALTH, SAFETY AND FISCAL ISSUES RELATING TO LEGALLY-EXEMPT CHILD CARE IN NEW YORK CITY
AUDIT NUMBER: 2007-N-11

RECOMMENDATION # 2: ACS should, while awaiting implementation of enrollment agencies in New York City, verify the sex offender status of all new legally-exempt providers prior to approving their enrollment. Develop procedures for periodically checking the registry for all legally-exempt providers.

RESPONSIBLE MANAGER(S) NAME(S): KAY HENDON

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	DATES		DOCUMENTATION	COMMENTS
		START	END		
While awaiting implementation of enrollment agencies, ACS will check the sex offender register for all legally-exempt providers by matching a file of legally-exempt providers with the registry. If there are matches, the parent(s) of the child in care and the provider will be notified that child care cannot continue with that provider, the ACS Division of Child Protection and the sex offender's parole officer will be notified, and child care payment will be stopped.	Kay Hendon and Devon Gayle	June 2008	When enrollment agencies assume this check.		

ADMINISTRATION FOR CHILDREN'S SERVICES
AUDIT IMPLEMENTATION PLAN ON OFFICE OF STATE COMPTROLLER'S AUDIT REPORT
HEALTH, SAFETY AND FISCAL ISSUES RELATING TO LEGALLY-EXEMPT CHILD CARE IN NEW YORK CITY
AUDIT NUMBER: 2007-N-11

RECOMMENDATION # 3: ACS should, while awaiting implementation of the enrollment agencies in New York City, develop a systematic approach, including site visits, to ensure that providers are meeting the health and safety regulations.

RESPONSIBLE MANAGER(S)' NAME(S): KAY HENDON

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	DATES		DOCUMENTATION	COMMENTS
		START	END		
<p>ACS will conduct site visits to a sample of legally exempt providers in each borough.</p> <p>ACS will periodically distribute a fact sheet on key health and safety regulations to all legally exempt providers, with a reminder that all providers are subject to unannounced home visits by ACS personnel.</p>	Kay Hendon and Devon Gayle	June 2008	When enrollment agencies assume site visit responsibilities	Fact sheet on key health and safety regulations.	<p>ACS currently conducts home inspections for approximately 400 providers four times a year. These providers are participants in the ACS Child and Adult Care Food Program.</p> <p>The New York City Child Care Resource and Referral agencies distribute Health and Safety Kits, which contain electrical outlet covers, fire extinguishers, and portable first aid kits, to the legally exempt providers annually.</p>

ADMINISTRATION FOR CHILDREN'S SERVICES
 AUDIT IMPLEMENTATION PLAN ON OFFICE OF STATE COMPTROLLER'S AUDIT REPORT
 HEALTH, SAFETY AND FISCAL ISSUES RELATING TO LEGALLY-EXEMPT CHILD CARE IN NEW YORK CITY
 AUDIT NUMBER: 2007-N-11

RECOMMENDATION # 4: ACS and HRA, in consultation with OCFS, should investigate the two providers noted in the report who may have received payments under false pretenses, and refer the cases to the appropriate law enforcement agencies, if appropriate.

RESPONSIBLE MANAGER(S) NAME(S): KAY HENDON

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	DATES START END	DOCUMENTATION	COMMENTS
<p>ACS' investigation of: <u>Two Providers Who Received Payments For Child Care Services Under False Pretenses As Per OSC</u></p> <p>Provider #1: ACCIS # 437606</p> <p>Payment and child care services terminated June 6, 2007.</p> <p>Investigation completed.</p> <p>ACS terminated the provider's subsidized child care services in the ACS Automated Child Care Information System (ACCIS), children were removed from the provider's care, and all payments were stopped on June 6, 2007.</p> <p>ACS referred the case to the HRA Bureau of Fraud Investigation (BFI) on September 17, 2007.</p>	<p>Kay Hendon and Devon Gayle (ACS)</p>	<p>6-6-07 2-8-08</p>		<p>BFI issued findings on February 8, 2008. The parent was found to be collecting and cashing checks that were issued to the provider. The parent has pled guilty to grand larceny.</p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> * Comment 2 </div>

*See State Comptroller's Comments, page 31

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	DATES		DOCUMENTATION	COMMENTS
		START	END		
<p>ACS' investigation of: <u>Two Providers Who Received Payments For Child Care Services Under False Pretenses As Per OSC</u></p> <p>Provider #2: ACCIS # 557854</p> <p>Payment suspended December, 2007. Investigation complete. Payments now released.</p> <p>ACS suspended child care payments to the provider in December, 2007, after repeated attempts to contact her through home visits, letters, and phone calls to the provider and the parent.</p> <p>After joint investigations by BFI and ACS, it was confirmed that child care services were provided for the time in question and are currently being provided in an approved home. All payments have been released.</p>	Kay Hendon and Devon Gayle (ACS)	8-20-07	2-14-08	<p>ACS made several telephone calls to the provider after the auditors visited her home and didn't see her.</p> <p>ACS mailed letter to provider on 8-27-07 informing her of the need for ACS to verify child care services at her day care home. Provider didn't respond to letter in the required time frame.</p> <p>ACS referred provider to BFI 2-5-08.</p> <p>Parent called into job center 2-13-08 to verify child care services for her children. Parent supplied new contact information for the provider to the job center.</p> <p>ACS representatives visited provider day care home on 4-10-08. Provider was approved for both past and future child care services.</p>	<p>ACS' investigation reveals that provider did provide legal child care services in the past. ACS representatives have inspected her new home and approved future child care services.</p> <p>BFI was notified by ACS on 4-10-08 that provider was located and approved.</p> <p>Provider child care payments were released on 4-14-08.</p> <p>Provider was scheduled to participate in the ACS Child And Adult Care Food Program (CACFP).</p>

ADMINISTRATION FOR CHILDREN'S SERVICES
AUDIT IMPLEMENTATION PLAN ON OFFICE OF STATE COMPTROLLER'S AUDIT REPORT
HEALTH, SAFETY AND FISCAL ISSUES RELATING TO LEGALLY-EXEMPT CHILD CARE IN NEW YORK CITY
AUDIT NUMBER: 2007-N-11

RECOMMENDATION # 5: ACS and HRA, in consultation with OCFS, should continue to investigate the remaining six providers who were not home, or did not allow us entry into their home at the time of our visits. Determine whether they were providing the services they were being paid for.

RESPONSIBLE MANAGER(S)' NAME(S): KAY HENDON

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	START	END	DOCUMENTATION	COMMENTS
<p>ACS' investigation of: <u>Three Providers Who Didn't Allow Entry Into Their Homes</u></p> <p>Provider #1: Provider # 553123</p> <p>Payment suspended as of August 27, 2007. Investigation completed.</p> <p>After repeated attempts to reach the provider and parent by phone and by mail, ACS suspended payment to the provider on August 27, 2007.</p> <p>Subsequently the provider informed ACS that she was no longer providing child care services as of October 9, 2007.</p>	Kay Hendon and Devon Gayle (ACS)	8-27-07	1-10-08	<p>ACS made several telephone calls to the provider after the auditors visited her home, with no response.</p> <p>ACS mailed letter to provider on 8-27-07 informing her of the need for ACS to verify child care services at her day care home.</p> <p>Provider didn't respond in the required time frame. services.</p> <p>Provider later informed ACS representative via telephone that as of 10-9-07 she was no longer providing child care services.</p>	The provider was present when the auditors made the home visit, but was afraid to allow them to enter.

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	DATES START END	DOCUMENTATION	COMMENTS
<p>ACS' investigation of: <u>Three Providers Who Didn't Allow Entry Into Their Homes</u></p> <p>Provider #2 : Provider # 578089</p> <p>Payment suspended as of August 27, 2007. Investigation continues.</p> <p>After repeated attempts to reach the provider and parent by phone and by mail, ACS suspended payment to the provider on August 27, 2007, and referred the provider to the HRA Bureau of Fraud Investigation (BFI).</p> <p>BFI's investigation indicates that the provider was providing legal child care services in the past and presumably continues to do so.</p> <p>Through contact with the parent, ACS is continuing to attempt to visit the provider's home. Payment remains suspended.</p>	Kay Hendon and Devon Gayle (ACS)	8-27-07 In process	<p>ACS made several telephone calls to the provider after the auditors visited her home, with no response. ACS mailed letter to provider on 8-27-07 informing her of the need for ACS to verify child care services at her day care home. Provider didn't respond to letter in the required time frame.</p> <p>ACS referred provider to BFI 2-5-08.</p> <p>BFI informed ACS that provider provided legal child care in the past. ACS contacted parent of the child. Parent informed ACS that she would have the provider call the ACS representative to arrange a visit to her day care home.</p>	<p>At the initial visit, family members answered the door, but the provider refused to come to the door. The provider was reached by phone and an appointment was made for a visit, but at that time family members again answered the door and the provider refused to come to the door.</p> <p>ACS continues to attempt to visit provider's home day care home, with cooperation of the parent.</p>

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	DATES		DOCUMENTATION	COMMENTS
		START	END		
<p>ACS' investigation of: <u>Three Providers Who Didn't Allow Entry Into Their Homes</u></p> <p>Provider #3: Provider #562464</p> <p>No payment or investigation. Provider stopped providing care prior to the audit and home visit.</p>	Kay Hendon and Devon Gayle (ACS)	8-27-07	8-27-07	<p>Provider screen in ACCIS indicates a home visit is required prior to enrollment of a child.</p>	<p>Provider child care services terminated on 5-31-07.</p>

CORRECTIVE ACTIONS TO BE TAKEN	RESPONSIBLE PERSONS	DATES		DOCUMENTATION	COMMENTS
		START	END		
<p>ACS' investigation of: <u>Three Providers Who Were Not At Home</u> Providers # 4,5, & 6: Providers # 429681, 525645, & 562928</p> <p>Payment suspended as of August 27, 2007 and remains suspended. Investigation is ongoing.</p> <p>After repeated attempts to reach the providers and parents by phone and by mail, ACS suspended payment to the providers on August 27, 2007, and subsequently referred the providers to the HRA Bureau of Fraud Investigation (BFI).</p> <p>As of now, one provider (#562928) has been located at a new address and is providing legal services. Investigation continues.</p>	Kay Hendon and Devon Gayle (ACS)	8-27-07	In process	<p>ACS made several telephone calls to the providers and parents after the auditors visited their homes.</p> <p>ACS mailed letters to providers on 8-27-07 informing them of the need for ACS to verify child care services at their day care homes. Providers didn't respond to letters in the required time frame.</p>	<p>ACS referred providers to BFI 2-5-08.</p> <p>To date, two providers cannot be located. One provider has been located and is providing legal services.</p>



Administration for Children's Services

150 William Street -10th Floor
New York, NY 10038

JOHN B. MATTINGLY, Ph.D., M.S.W.
Commissioner

SUSAN NUCCIO
*Deputy Commissioner
Financial Services*

April 29, 2008

Mr. William Challice
Audit Director
Office of the State Comptroller
Division of State Government Accountability
123 William Street – 21st Floor
New York, New York 10038

Re: Office of State Comptroller's Audit of the Office of Children & Family Services
Oversight of Health, Safety and Fiscal Issues Relating to
Legally Exempt Child Care in New York City
Audit Number: 2007-N-11

Dear Mr. Challice:

ACS appreciates the effort and cooperation of the auditors and we trust that our comments presented in this response will be reflected in the final report.

Attached is our response to your recommendations and appropriate Corrective Action Plans (CAPs). ACS looks forward to working with your office to improve the delivery of services to the children of the City of New York.

If you have any questions, please contact me at (212) 676-8855.

Sincerely,

Tom Welsh
Assistant Commissioner
Audit Services

Attachments

Office of State Comptroller's Audit of the Office of Children & Family Services Oversight of
Health, Safety and Fiscal Issues Relating to
Legally Exempt Child Care in New York City
Audit Number: 2007-N-11

**Administration for Children's Services (ACS)
Response to Recommendations**

April 29, 2008

ACS is supporting and will continue to work closely with Office of Children and Family Services (OCFS) to provide a safe and healthy environment for the provision of Child Care in New York City including Legally Exempt Family Child Care.

In order to provide a comprehensive response to the audit findings and recommendations, the following should be considered in the final report:

- As noted in your report, OCFS is responsible for contracting with enrollment agencies to conduct background checks and visit homes. OCFS and ACS had agreed to continue to operate under the prior regulations, which required an attestation from the parent and provider, until enrollment agencies could be selected for New York City. (See page #2 of the Draft Report, Paragraph #5).
- ACS voluntarily conducted a pilot of the new regulations in the Borough of Manhattan. Further, ACS provides other supports for legally exempt providers, in order to promote health, safety, and enhanced child care services. ACS sponsors the Child and Adult Care Food Program for legally exempt providers, and currently has over 400 providers enrolled in that program. CACFP providers' homes are visited and monitored four times a year, and each CACFP provider is required to attend at least one training session a year. ACS sponsors and funds an Informal Family Child Care Training Project at CUNY, which provides a wide range of information, training, and support to legally exempt providers. That project had a total of 10,469 contacts with legally exempt providers in the first half of Fiscal Year 2008. (See page #6 of the Draft Report, Section Subtitle; *Health and Safety*).
- Out of 35,276 legally exempt child care providers, only one (or .0028%) was identified as a registered sex offender, and no abuse had occurred with the children in care. (See page #4 of the Draft Report, Section Subtitle; *Sex Offender Registry Database Check*).
- Eleven of the fourteen providers the auditors could not find at home when they made their visit were, in fact, providing legal child care services or had previously stopped providing care prior to the home visits. Only one was receiving payments under false pretenses and two have not yet been located. (See page #7 of the Draft Report, Section Subtitle: *Potential Fraud*).

ACS General Comments to the Narrative

- Page 2, first column, second paragraph, second sentence: Replace "Administration of Children's Services" with "Administration for Children's Services."
- Page 2, second column, first paragraph, third sentence: Revise to read "Instead, OCFS and ACS agreed that New York City would continue the previous OCFS-approved self-certification process, in which the legally-exempt provider and parent sign a form

certifying that the provider meets the required health and safety standards, until appropriate enrollment agencies could be identified through an RFP process."

- Page 2, second column, second paragraph: Add a third sentence stating "One of the registered sex offenders was not providing child care and had been fraudulently enrolled by the mother of the children."
- Page 4, first paragraph, second sentence: Replace with "As of September 2006, ACS assumed full responsibility for the administration of payments to all legally-exempt providers. Both ACS and HRA enroll legally exempt providers, with most providers being enrolled by HRA."
- Page 5, first column, first paragraph: Revise to read "...two registered sex offenders who were reportedly providing care to children and reportedly being paid as of June 30, 2007. One reported provider was not caring for children but had been enrolled as a provider, without his knowledge, by the mother of the children he was supposedly caring for." We consider it incorrect and inappropriate to report the details of the sex offender convictions, payments and enrollment form in this way, since it was actually the mother who fraudulently completed the enrollment form and received the payments.
- Page 5, first column, third paragraph: Add a third sentence stating "The ACS Division of Child Protection found no indication that the children in child care with the registered sex offender had been abused."
- Page 5, second column, first paragraph, first sentence: Replace with "Since enrollment agencies have not yet been contracted with for New York City, ACS has conducted a pilot enrollment process with a portion of newly enrolled providers in Manhattan and has been reviewing the background of all providers in this pilot."
- Page 7, first column, second paragraph, last sentence: Replace "section of" with "portion of the new legally-exempt providers in one of the ..."
- Page 7 second column, first bullet: Add a last sentence to read "These three providers continue to be under investigation by the HRA Bureau of Fraud Investigation, which collaborates with ACS in regard to possible child care fraud."
- Page 7, second column, second bullet: Revise second sentence and add sentences to read: "ACS officials determined that one of the providers had stopped providing child care prior to the audit. ACS and the HRA Bureau of Fraud Investigation confirmed that the two other providers had been providing legal child care services. Payments were released to one of these providers, and she subsequently stopped providing child care services. The third provider's payments remain suspended pending her allowing a home visit by ACS."
- Page 7, second column, third bullet: Add a second sentence "ACS suspended payments."
- Page 8, first column, second full sentence: Replace with "However, investigation revealed that the parent had been collecting and cashing checks that were issued to the provider, in the amount of \$37,204 between January 1, 2005 and June 5, 2007. ACS terminated the supposed provider from its system and the parent has pled guilty to grand larceny."
- Page 8, first column, third sentence: "The second provider was investigated by the HRA Bureau of Fraud Investigation and found to have been providing legal child care services at a different address. Her current site has been inspected and approved by ACS and her payments have been restored."

*
Comment
1

*
Comment
2

*See State Comptroller's Comments, page 31

APPENDIX B - STATE COMPTROLLER COMMENTS

- | | |
|--|--|
| <p>1. The information highlights the significance of the matters being reported.</p> | <p>2. The parent has not pled guilty to any crimes in connection with our audit findings, and in fact, has not been charged to date.</p> |
|--|--|