



Susan Montee, CPA  
Missouri State Auditor

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## HEALTH AND SENIOR SERVICES

# Protecting Children at Child Care Providers

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## More Could Be Done to Protect Children at Child Care Providers

The Department of Health and Senior Services (DHSS) has responsibility for the licensing of certain family day care homes, group day care homes, and child day care centers. Because of the importance of ensuring the safety of children cared for by day care providers, we followed up on selected recommendations in our 2002 report titled *Child Care Facilities Inspections and Licensing (Report no. 2002-52)*, and related issues. Specific review objectives included determining whether (1) all children are subject to licensing requirements set forth in state law and/or DHSS regulations, (2) improvements are needed in the department's oversight of illegal daycare providers, and (3) improvements are needed in the department's oversight of complaint monitoring and legal referral process.

Exempting related children may increase risk of some children at licensed day cares

Some children may be at risk while being cared for in licensed day care facilities. Family day care home providers licensed to care for up to 10 children and group day care homes licensed to care for 11 to 20 children may actually be caring for an unlimited number of children. This situation has occurred because DHSS regulations have not included related children in the number of children in care. Children may also be at risk because providers caring for related children have not been subjected to other licensing regulations. As a result, children may have experienced increased exposure to illnesses and public records may not always exist of physically punished children that are related to providers. Department officials are considering changes that would ensure all children are subject to state licensing regulations that apply to day care providers. (See page 7)

Improvements needed to reduce risk at illegal providers

Some children may also be at risk at illegal day care providers because (1) periodic follow-up visits have not occurred to ensure illegally operating providers become compliant, or remain compliant with regulations, and (2) complaint investigation procedures have not always been adequate. In addition, penalties imposed by the General Assembly have not always deterred illegal providers. (See page 12)

System information not always complete or accurate, and management reports lacking

Our review of data obtained from the complaint tracking system for complaints received July 2005 through June 2007, showed some incomplete complaint investigations and complaints with incorrect data entered into certain data fields. We also found officials have not made use of the complaint tracking system to produce periodic management reports that could be used to help manage and evaluate the effectiveness of the complaint program. (See page 19)

Complaints not always completed in timely manner

Our review of complaints disclosed staff did not complete 42 percent of complaint investigations within 30 days. For example, we found 542 (20 percent) of 2,722 complaints took more than 60 days to complete, 277 (10 percent) complaints took over 90 days to complete, and 60 (2 percent) completed during the 2 years reviewed took more than 6 months to complete. Department procedures generally require complaint investigations to be completed within 30 days. (See page 20)

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Improvements needed in  
legal referral process

Our review of 92 cases referred to the department's legal office disclosed that the department took action on the majority of those cases. However, we found some cases had not been resolved in a timely manner. As a result, some providers continued to operate with no disciplinary action, and officials did not take action on two cases because the cases had been outstanding for an inordinate length of time. We also found the department had not established written goals for the timeliness of the administrative penalty process. (See page 21)

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## Abbreviations

CSR	Code of State Regulations
DHSS	Department of Health and Senior Services
RSMo	Missouri Revised Statutes
SAO	State Auditor's Office
SCCR	Section for Child Care Regulation



# SUSAN MONTEE, CPA

## Missouri State Auditor

Honorable Matt Blunt, Governor  
and  
Members of the General Assembly  
and  
Jane Drummond, Director  
Department of Health and Senior Services  
Jefferson City, MO

The Department of Health and Senior Services (DHSS), Division of Regulation and Licensure, Section for Child Care Regulation (SCCR), is responsible for the licensing of certain family day care homes, group day care homes, and child day care centers. Because of the importance of ensuring the safety of children cared for by day care providers, we followed up on selected recommendations in our 2002 report titled *Child Care Facilities Inspections and Licensing (Report No. 2002-52)*, and related issues. Specific review objectives included determining whether (1) all children are subject to licensing requirements set forth in state law and/or DHSS regulations, (2) improvements are needed in the department's oversight of illegal day care providers, and (3) improvements are needed in the department's oversight of complaint monitoring and legal referral process.

We found some children may be at risk in licensed day cares because DHSS has generally exempted children related to providers from department licensing regulations. As a result, family day care homes and group day care homes may be caring for an unlimited number of children, some children may be subjected to increased risk of illness, and the department does not always maintain records of physically punished children that are related to family day care home and group day care home providers. Department officials are considering changes to state regulations that would include all children in state licensing regulations that apply to day care providers. We also found children cared for by illegal providers may also be at risk because (1) the department has not ensured illegally operating providers become compliant, or remain compliant with regulations, and (2) complaint investigation procedures have not always been adequate. In 2007, officials modified complaint investigation procedures; however, the department has not established specific plans or timetable to evaluate the effectiveness of modified procedures.

We also found improvements are needed in the department's monitoring of complaints. This situation has occurred because the department has not (1) ensured complaint system information is complete and accurate, and system management reports are produced on a periodic basis; and (2) ensured complaints have always been completed in a timely manner. In addition, the department's legal referral process could be enhanced by improving the timeliness of complaint resolution.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis. This report was prepared under the direction of John Blattel and key contributors to this report included Robert Spence, Anissa Falconer, Evans Owala, and Ryan Redel.

A handwritten signature in black ink that reads "Susan Montee".

Susan Montee, CPA  
State Auditor

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# Introduction

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The Department of Health and Senior Services (DHSS), Division of Regulation and Licensure, Section for Child Care Regulation (SCCR), is responsible for the licensing of certain family day care homes, group day care homes, and child day care centers. SCCR services include inspections to determine compliance with licensing rules, issuing licenses, receiving and investigating complaints about facilities, and receiving and investigating complaints on persons providing care for more than four children that are not related to the providers (unrelated children) without a license.

State law<sup>1</sup> requires any person operating a child care facility to have a license granted by SCCR unless:

- The individual is caring for four or fewer children. The provider's children, grandchildren, great-grandchildren, brothers, sisters, stepchildren, stepbrothers, stepsisters, nieces, or nephews are not counted (related children).
- The provider has been appointed guardian or has legal custody of the children.
- The provider only cares for children free of charge, and for less than 90 consecutive days.
- The provider is a boarding school, summer camp, hospital, nursery school, or residential facility or day program licensed by the Department of Mental Health.
- The child care facility is operated under the exclusive control of a religious organization.

In a family day care home, care may be provided to no more than 10 children not related to the provider. Group day care homes may provide care for 11 to 20 children not related to the provider, in a location other than the provider's permanent residence or separate from the provider's living quarters. Child care centers may provide care for any number of children dependent on the director's qualifications, available staffing, amount of usable indoor floor space, amount of outdoor play space and materials and equipment.

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<sup>1</sup> Section 210.211, RSMo.

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As of September 2007, the number of licensed facilities totaled 3,820 and included 1,966 licensed child care centers, 1,669 licensed family homes, and 185 licensed group homes. In addition, SCCR is responsible for inspecting 598 license-exempt programs.<sup>2</sup>

State law<sup>3</sup> requires SCCR to maintain a record of, and make available to the public on request, substantiated, signed parental complaints against licensed child care facilities. During the 2 years ended June 30, 2007, SCCR initiated 3,009 complaint investigations. SCCR staff substantiated allegations for 1,158 (39 percent) of the complaints, found the charges unsubstantiated in 1,569 (52 percent) of the complaints, and 282 investigations (9 percent) were either not completed or personnel did not record the disposition in the automated tracking system. See page 19 for additional discussion.

State law<sup>4</sup> authorizes various penalties for violations of state law and department regulations (see Appendix I). An unlicensed provider violating state law for the first time is guilty of an infraction and fined \$200, subsequent offenders will be guilty of a Class A misdemeanor. If a licensed provider violates department regulations, SCCR may deny, suspend, place on probation or revoke a license after notifying the provider of its intentions. Alternatively, SCCR may issue letters of censure or warning without formal notice or hearing if a provider violates department regulations. If SCCR officials believe there is a threat of imminent bodily harm to children in care, SCCR can immediately suspend the license. In cases of imminent bodily harm to children, the department may file suit in the circuit court of the county in which the child care facility is located for injunctive relief, which may include removing the children from the facility, overseeing the operation of the facility, or closing the facility.

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## Previous SAO Work

The State Auditor's Office (SAO) published a report in 2002 addressing issues related to child care providers.<sup>5</sup> That report recommended, in part, the General Assembly enact legislation that would limit the number of children, related and unrelated to providers, in day care facilities. The General Assembly did not take action on our recommendation. See page 7 for additional comments.

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<sup>2</sup> Nursery schools and child care programs operated by religious organizations (called license-exempt facilities) are not required to be licensed but must be inspected annually regarding health and safety, fire safety and sanitation.

<sup>3</sup> Section 210.203, RSMo.

<sup>4</sup> Section 210.245, RSMo.

<sup>5</sup> *Child Care Facilities Inspections and Licensing*, SAO, July 19, 2002 (Report No. 2002-52).

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## Scope and Methodology

We also reported DHSS proposed state regulations be changed to include related children in licensing capacity limit of 10 children to one adult. In 1998, officials sent proposed revisions to licensed providers and children advocates. The department received negative responses from the majority of providers. As a result of opposition and concerns expressed by some members of the General Assembly, the department withdrew proposed revisions. See page 10 for additional discussion on department attempts to revise state regulations in regard to related children in day care.

We recommended the General Assembly increase monetary penalties that could be assessed against child care providers operating in violation of state statutes and regulation. The General Assembly did not take action on our recommendation. See page 15 for additional comments.

To accomplish review objectives, we conducted work at the SCCR central office in Jefferson City and district offices located in Columbia, Independence, Springfield, and St. Louis. We interviewed knowledgeable officials and reviewed program documentation and/or data needed to accomplish objectives.

To determine whether all children are included in licensing requirements set forth in state law and/or DHSS regulations, we reviewed current and prior state laws and regulations, proposed changes to regulations, and associated comments. We researched practices in the eight surrounding states, and reviewed the number of related and unrelated children shown on license monitoring reports.

To determine whether improvements are needed in the department's oversight of illegal day care providers, we reviewed the SCCR procedure manual, held discussions with central office and district office staff, and reviewed complaints about individuals providing care to more than four unrelated children. We also analyzed SCCR complaint tracking system data to determine the number of unlicensed provider complaints for fiscal years 2006 and 2007, and complaint investigation outcomes. For those unlicensed providers shown in the complaint tracking system as pursuing licensure, we compared provider names to a listing of new licensees and pending applications. We also reviewed six administrative penalty referrals for illegal providers. We reviewed supervisor complaint tracking logs to determine if procedures were followed, and compared information on the supervisor logs to information included in the complaint tracking system.

To determine whether improvements are needed in the department's oversight of complaints, we analyzed data from the complaint tracking system, compiled for us by SCCR. We determined the number of incomplete complaints, how many had an incorrect "compliance" field, and

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determined timeliness, according to tracking system data. We randomly selected 90 complaint files in 4 district offices and determined whether personnel followed SCCR procedures during investigations. We also reviewed the procedure manual to determine whether staff followed procedures.

To determine whether improvements are needed in the department's legal referral process, we discussed the process with central office and district staff, reviewed related procedures and documentation relating to 14 cases referred for penalty assessment during fiscal years 2006 and 2007.

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# Children May Be at Risk in Licensed and Illegal Day Cares

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Some children may be at risk while being cared for in licensed day cares. Family day care home providers licensed to care for up to 10 children and group day care homes licensed to care for 11 to 20 children may actually be caring for an unlimited number of children. This situation has occurred because DHSS regulations have not included related<sup>6</sup> children in the number of children in care. Children may also be at risk because providers caring for related children have not always been subjected to other licensing regulations. As a result, some children may experience increased exposure to illnesses and a public record may not always exist on complaints relating to physical punishment of related children.

Unlicensed, illegal providers may also be placing children at risk. Some providers have continued to operate illegally because (1) the department has not ensured illegally operating providers become compliant, or remain compliant, and (2) complaint investigation procedures have not always been adequate.

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## Exempting Related Children May Increase Risk to Some Children at Licensed Day Cares

Child care is regulated through various aspects, such as staffing requirements based on the number of children under the supervision of an adult, health rules to curb the spread of disease, background screenings, childhood injury prevention, fire safety, environmental health issues, staff training and education, physical plant requirements, space requirements and equipment requirements. However, state regulations<sup>7</sup> exempt related children from licensing rules when cared for by licensed providers. For example, related children do not count towards the number of children allowed in care, do not have to be sent home when they are sick, and a public record would not always exist of complaints concerning the physical punishment of children related to licensed day care providers.

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## Some providers caring for an unlimited number of children

SCCR has not counted related children in the number of children cared for in family day care homes or group day care homes. Therefore, a family day care home provider may care for up to 10 unrelated children, as well as an unlimited number of related children.<sup>8</sup> According to state regulations,<sup>9</sup> licensing capacities for a licensed family day care home are as follows:

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<sup>6</sup> 19 CSR 30-61.010 defines related as any of the following relationships by marriage, blood or adoption between the provider and the children in care: parent, grandparent, great-grandparent, brother, sister, stepparent, stepbrother, stepsister, uncle, aunt, niece, nephew or first cousin. SCCR procedures do not include first cousins in the definition of related.

<sup>7</sup> 19 CSR 30-61.045 (2) (b).

<sup>8</sup> Providers are subject to space requirements. 19 CSR 30-61.085 (2)(B)(1) requires a minimum of 35 square feet per child that come into the home.

<sup>9</sup> 19 CSR 30-61.105 (2).

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- If there is one adult provider, the home may be licensed for up to 6 children including a maximum of 3 children under age 2, or for up to 10 children including a maximum of 2 children under age 2, or both. If only 4 children are present, all the children may be under the age of 2.
  - If the provider has an assistant present, the home may be licensed for up to 10 children including a maximum of 4 children under age 2 or for up to 8 children who may all be under age 2.

Department officials could not tell us why particular limits had been set; although they did tell us they based the number of allowed children under age 2 on fire safety standards.

During site visits to four district offices, we found documentation that some child care providers legally exceeded the number of children approved on licenses. The following illustrate examples found:

- Provider A is licensed to care for 10 children. From July 2005 to July 2006, SCCR staff documented four visits where the provider cared for 15 to 18 children without an assistant. However, the provider did not violate regulations because 8 to 13 children were related to the provider.
- Provider B is licensed to care for 10 children, with an assistant present. In June 2007, SCCR staff documented 16 children in care with an assistant present. However, the provider did not violate regulations because nine children were related to the provider.

Officials have not tracked number of children cared for by providers

Department officials could not provide any statistics or reports on the number of related children cared for by licensed providers. Our review of provider files disclosed each time SCCR staff visit a provider they make manual notes for the file stating how many children they observed at the facility, including the number of related children. However, the department has not tracked the information in an electronic format, so SCCR officials could not tell us how often licensed providers care for more than licensed capacities, or which providers cared for the most children.

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Increased exposure of other children to illness

State regulations<sup>10</sup> require children in licensed care to be sent home if they show any of the following symptoms:

- Diarrhea
- Severe coughing
- Pinkeye
- Unusual spots or rashes
- Fever over 100 hundred degrees Fahrenheit
- Vomiting more than once

However, because children related to caregivers are exempt from licensing rules, they could remain at the day care center, when exhibiting one of the above symptoms. Therefore, having related children at a facility in excess of capacity limits increases the opportunities that other children could become sick. According to state regulations, unrelated sick children would not be allowed to attend the facility.

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Complaints regarding physical punishment of related children not always documented

State regulations<sup>11</sup> also prohibit physical punishment, including spanking, within licensed child care facilities except in cases involving related children. However, physical punishment of related children would not be documented unless the investigation disclosed the actions had proved threatening or frightening to other unrelated children. When that is the case, regulations require the occurrence be recorded in the provider's public file as a rule violation.

During our review of complaints, auditors found one instance where a complaint alleged the provider spanked children. The investigation revealed the provider spanked only related children, and did not threaten or frighten other unrelated children. Therefore, the investigator considered the allegation unsubstantiated and there would be no record of the complaint in the provider's public file.

Conversely, we found another example where day care center staff spanked a related child, with the permission of the child's parents. The staff person physically punished the related child. However, since a corporate day care center provided the care, the child could not be related to the actual provider because, corporations are legal business entities and do not have related children. Therefore, SCCR substantiated the complaint and placed documentation in the provider's public file.

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<sup>10</sup> 19 CSR 30-61.185 (2) (e).

<sup>11</sup> 19 CSR 30-61.175 (1)(c)(7).

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Officials considered  
changing state regulations  
and cited risk factors

State law addresses licensing requirements for providers and exempts related children from determining whether a license is needed. State law also has not addressed whether related children are included in licensing rules when cared for by a licensed provider, and state regulations have exempted related children from licensing rules. However, in 2004 officials proposed new state regulations that would have included related children in licensing rules. Department officials decided not to pursue proposed rule changes in 2005 because they received negative feedback from the Joint Committee on Administrative Rules,<sup>12</sup> child care providers, and the public. For example, the majority of the negative comments, contained in a petition form letter from providers, stated the (1) department did not notify providers about the proposed new rules, (2) proposed rules were "promulgated unlawfully because they did not go through the Small Business Regulatory Fairness Board," and (3) fiscal notes did not accurately reflect providers' costs.

The department disagreed with the negative comments and stated (1) the department mailed notification letters about the rule revision process to all regulated child care facilities on November 2, 2004, and (2) filed the proposed rules with the Small Business Regulatory Fairness Board on October 15, 2004, in accordance with section 536.300.2, RSMo. In addition, the department stated it believed provider methodology used for determining average provider costs was flawed.

In addition, department officials prepared the following comments during the proposed rule change process:

- These regulations allow "for an excessive number of children in care thus placing all children in jeopardy by exceeding the providers' capacity for care."
- "All children, whether related or unrelated, require a provider's time and attention. Licensing rules are designed to protect children's health and safety. One of the most important factors impacting children's health and safety is the number of adults to provide care and supervision to a set number of children."
- "To continue to allow one provider to provide child care for ten unrelated children and an unlimited number of related children are not in the best interests of any children, including the related children."

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<sup>12</sup> The function of this committee is to review all rules promulgated by state agencies, except rules promulgated by the Labor and Industrial Relations Commission.

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Therefore, the department is attempting to address this potentially dangerous situation through this requirement."

- "The department strongly believes that the children's safety outweighs the potential financial impact to the child care providers."
- "There are also health and safety concerns when one adult provides care to 18 to 20 young children, as has been documented by the department. The most obvious concern would be how one adult could safely evacuate all the children in the event of an emergency, such as a fire. The department feels that one provider is unable to adequately meet the needs of an unlimited number of infants, toddlers, preschool and school age children."

SCCR officials told us they did not continue to pursue prior rule revisions in 2005 because of the overwhelming volume of responses—over 3,500 comments. They believe the large volume of responses occurred, in part, because they attempted to change all three chapters of rules at one time. Officials also believe rule changes may not have been pursued because of the sheer manpower that would be needed to respond to all the comments.

Officials considering including related children in license requirements when rule changes are resubmitted

As of November 2007, SCCR officials are planning to again propose rule revisions. Officials are considering including related children in all licensing requirements. However, they plan to conduct additional research on this issue in order to determine the feasibility of changing regulations.

According to officials, rule revisions were not resubmitted prior to November 2007 for the following reasons:

- It would have been inappropriate to resubmit immediately.
- Some of the issues raised in comments need to be addressed in the new proposed rules.
- Changes occurred in SCCR administration in October 2006 and again in February 2007. The new administrator needed time to learn more about the section before proposing the new rules.

SCCR plans to submit the revisions one chapter at a time. The first chapter revised will address group day care homes and child care centers, followed by family day care homes, and finally licensed exempt centers. SCCR plans to have the group day care homes and child care centers chapter complete within a year.

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SCCR officials are also preparing a request for proposal to hire a third party to conduct focus groups with providers to address provider concerns before the new rules are proposed. Officials plan to work with the basic framework of the 2004 revisions, but by communicating with providers ahead of time, they hope to fix some of the problems and educate providers about the reasons for some needed changes, according to SCCR officials. Additionally, SCCR wants to find experts to publicly support reasons for the rule changes.

Surrounding states include related children

None of the eight states surrounding Missouri allow an unlimited number of children to be cared for in licensed facilities. Instead, regulations in each of these states specify related children are counted in licensing capacities.

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## Improvements Needed to Eliminate Illegal Providers

Some children may be at risk at illegal day care providers because (1) periodic follow-up visits have not occurred to ensure illegally operating providers become compliant, or remain compliant with regulations, and (2) complaint investigation procedures have not always been adequate. In addition, penalties imposed by the General Assembly have not always deterred illegal providers.

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No assurance most illegally operating providers became compliant or remained compliant

During the 2 years ended June 30, 2007, SCCR identified 138<sup>13</sup> unlicensed providers illegally providing care to more than four unrelated children. However, SCCR only had assurance that 34 (25 percent)<sup>14</sup> of the illegal providers became compliant or received disciplinary action.

Eighty-six (62 percent) of the 138 providers informed SCCR staff they would begin caring for fewer than 4 children and therefore, district staff took no disciplinary action. Our reviews of complaints and penalty assessment files disclosed district office staff usually made a follow-up visit to verify the number of children cared for had been reduced. However, we identified seven instances<sup>15</sup> where these providers never stopped conducting illegal care, or returned to illegal care. For example:

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<sup>13</sup> Of the 138 illegal providers identified, 86 stated care would be reduced to fewer than 4 unrelated children, 26 either became licensed or licenses are still pending, 10 applied to become licensed but did not, 8 were referred to central office for disciplinary action, and 8 had unknown dispositions.

<sup>14</sup> Twenty-six providers became, or are in the process of becoming, licensed and eight providers have been referred to prosecutors, or are in the process of being referred. Therefore, in total, 34 (25 percent) of the 138 illegally operating providers either became compliant or received disciplinary action.

<sup>15</sup> We reviewed complaint investigations, penalty assessment files, or discussed with officials 21 unlicensed providers. Of these 21 providers, 7 did not come into compliance with regulations.

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- Staff observed Provider A caring for nine unrelated children in November 2005, and the provider agreed to reduce the number of children. Staff made two visits to the provider in December 2005, but no one responded, and staff assumed the provider became compliant. District staff received a second complaint in August 2006, and staff observed the provider caring for five unrelated children. Again, the provider agreed to reduce care. Staff contacted the provider by phone in late August 2006, and the provider stated the number of children in care had been reduced. Staff received a third complaint, and staff observed the provider caring for 10 unrelated children in April 2007. The provider again stated the number of children in care would be reduced. Staff followed up later in April 2007 and observed the provider caring for eight unrelated children. At this time, staff began the process for referring Provider A to the prosecuting attorney.
  - Staff learned Provider B cared for six unrelated children in August 2005, although not as the result of a complaint. The provider stated the number of children in care had been reduced. District staff then received a complaint, and in early January 2007, staff observed 10 unrelated children in care. Again, the provider stated the number of children would be reduced. Staff received a second complaint, and in January 2007, staff observed eight unrelated children in care. District staff conducted a follow-up visit in late January 2007, and found the provider complied with the law. Staff received a third complaint, and in April 2007, staff observed nine unrelated children in care. At this time, staff began the process for referring Provider B to the prosecuting attorney.
  - In March 2005, staff observed Provider C caring for more than four unrelated children. Staff followed up in April 2005 and found the provider caring for three unrelated children, in compliance with the law. Staff became aware of this provider again when a child died in the provider's care in August 2007. Staff investigated, and found the provider had been caring for more than four unrelated children. This case has been referred to the prosecuting attorney.

During the 2 years ended June 2007, 36 unlicensed, illegal providers told SCCR staff they would become licensed. Twenty-six (72 percent) of these providers did become licensed, or are in the process of becoming licensed. However, 10 others either withdrew applications for licensure or applications had expired.<sup>16</sup> An SCCR official told us under current

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<sup>16</sup> An applicant may withdraw an application at any time within 6 months of the filing date. An application automatically expires after 6 months after the filing date if not approved.

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procedures, no further action would be taken on the 10 providers unless the department received another complaint. The SCCR procedures manual has not addressed follow-up action to be taken when illegal providers withdraw applications or when applications expire.

The department also has not established procedures to conduct periodic, follow-up visits to providers who have been operating illegally in order to determine whether providers became compliant, or have remained compliant with regulations.

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### Complaint investigation procedures needed improvement

Prior to May 2007, when SCCR received a complaint alleging an unlicensed provider cared for more than four unrelated children, department procedures required district staff to send a letter to the provider, informing the provider of the law and asking the provider for the names and relationships of all children in care. However, SCCR staff did not go on-site to determine how many children the provider cared for unless the provider did not respond to the letter, or SCCR received a subsequent complaint on the same provider. Therefore, if the provider responded and stated four or fewer unrelated children were being cared for, DHSS would take no further action. Department procedures also stated district office staff should notify central office of the need for a prosecuting attorney referral after the third substantiated complaint.

### Complaint procedures modified in May 2007

SCCR officials wanted to take a tougher stance on illegal providers, according to officials. Therefore, in May 2007, officials modified complaint investigation procedures. The modified procedures require (1) on-site visits within 10 days to investigate all illegal provider complaints; (2) staff to notify parents of children in the day care that the provider is operating illegally, if staff substantiate the complaint; and (3) staff to notify law enforcement on the first observance of illegal care<sup>17</sup> and, after a second substantiated complaint of illegal care, district staff are required to refer the case to central office for referral to the prosecuting attorney. However, if special circumstances exist—unsanitary conditions, a death, or too many children in care—central office staff can refer the situation to a prosecuting attorney after the first substantiated incident. The modified procedures have resulted in more referrals to prosecutors in the 6 months between May and October 2007 than in the prior 22 months, from July 2005 to April 2007.<sup>18</sup>

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<sup>17</sup> According to an official, law enforcement agencies are notified so they will have a record the provider violated the law.

<sup>18</sup> Between May and October 2007 three providers have been referred to prosecutors; only two providers were referred to prosecutors between July 2005 and April 2007.

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Officials have no specific plans to evaluate procedures

Department officials stated they intend to evaluate the effectiveness of complaint follow-up procedures modified in May 2007. However, officials did not have a specific plan or timetable for doing so, and have not established criteria for determining whether or not the new procedures are more effective than previous procedures.

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Increased penalties could deter illegal providers

As we reported in 2002, prosecutors can only charge illegally operating unlicensed child care providers with an infraction that provides for a maximum \$200 fine for a first violation. Subsequent violations are treated as Class A misdemeanors. We also reported some providers continued to operate illegally even though some had been prosecuted and fined and other providers knew they could be fined. Previous officials explained small fines often mattered little to a provider that may gross \$52,000 a year caring for 10 children at \$100 per child per week.

We also reported that fines levied against individuals violating child care laws and regulations in other states have been more punitive than in Missouri. For example, we reported Nebraska could fine providers \$5 a day, per child over allowed capacity, and Kansas could fine providers up to \$500 per violation per day. We recommended the General Assembly increase the monetary penalty. However, no changes to state law have been made.

Officials considering increased penalties and referrals to prosecuting attorneys on first observance of illegal activity

SCCR officials stated it takes significant staff time to investigate an illegal provider complaint, contact law enforcement, prepare a prosecuting attorney referral, and follow up on the referral. Therefore, they are considering requesting the General Assembly to increase penalties and/or request more authority to assess administrative penalties. Officials told us more research is needed before they can determine what action may be needed.

Officials told us they are considering referring illegal unlicensed providers—those caring for more than four unrelated children—to prosecutors on the first offense. SCCR officials stated since May 2007, central office has been tracking illegal providers identified by district offices through complaints and have substantiated 88. If they find there are few substantiated illegal providers identified, they may decide to prepare prosecuting attorney referrals on the first offense. However, they are not sure they have the manpower needed to prepare prosecuting attorney referrals on the first offense if there are many substantiated cases.

Officials want to increase prosecutions

Officials also told us that once a case is referred to a prosecuting attorney, the prosecutor may choose not to prosecute. Of the five cases referred to local prosecutors between July 2005 and October 2007, only one has been prosecuted. One prosecutor refused to prosecute, and three cases are still pending, and SCCR officials do not know whether prosecutors will press charges or not.

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According to SCCR officials, one prosecutor informed the officials he chose not to file charges because the illegal provider had closed and no longer provided care at the time of the prosecutor's investigation. Officials stated that in January 2007, SCCR staff initiated enhanced efforts to determine why prosecutors decline to prosecute referred cases.

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## Conclusions

Department regulations have not required children related to providers to be counted towards the number of children being cared for in family day care homes or group day cares, or other licensing regulations. Not including related children in the same regulations covering non-related children puts related children at risk.

Some child care providers are continuing to illegally provide care to more than four unrelated children. This situation has occurred, in part, because the department has not (1) ensured illegally operating providers become compliant, or remain compliant with regulations; and (2) always had adequate investigation procedures. In May 2007, officials modified complaint investigation procedures and the department plans to evaluate the modified procedures. However, officials have not developed a specific plan or timetable, and have not developed criteria for determining the effectiveness of the new procedures.

Penalties imposed on providers have not been adequate to deter providers from operating illegally. Officials may support increased penalties if research discloses it is warranted. Our prior work found surrounding states have established more severe penalties and increasing penalties could encourage illegal providers to comply with state law and regulations. Providing the department the authority to assess administrative penalties on illegal providers could also deter illegal providers from operating. Officials are also considering referring illegal unlicensed providers to prosecutors on the first offense, doing so would enhance efforts to stop illegal providers.

Prosecutors sometimes choose not to prosecute illegal providers. Working with prosecutors to determine ways to facilitate future prosecutions may result in increased prosecutions of illegal providers.

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## Recommendations

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

- 2.1 Change state regulations to include related children when counting the number of children receiving care by a licensed provider, and include related children in all provider licensing rules.

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- 2.2 Conduct periodic reviews of illegally operating, unlicensed providers who claim to have reduced the number of children in care, or who state they will become licensed, to ensure these providers become compliant, and/or remain compliant with regulations. Noncompliant providers should be referred to the prosecuting attorney.
  - 2.3 Establish specific procedures, criteria, and timing for evaluating the effectiveness of modified unlicensed caregiver investigation procedures.
  - 2.4 Work with the General Assembly to develop law that increases penalties for illegally operating day cares and/or provides the department with the authority to assess administrative penalties on illegal providers.
  - 2.5 Work with prosecutors to determine improved methods to facilitate prosecutors' pursuing legal action against unlicensed providers.

We recommend the General Assembly establish state law that:

- 2.6 Increases criminal penalties and/or creates provisions for the department to assess and enforce penalties for illegally operating day cares.

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## Agency Comments

- 2.1 *DHSS concurs with this recommendation. DHSS proposed a comprehensive set of revisions to childcare licensing rules in 2004, including those addressing the issue of related children. Due to the volume of comments regarding the proposed rules, it was determined by DHSS that a smaller, more focused effort was the preferred course of action. For that reason, the proposed rules were withdrawn in 2005. DHSS plans to file revised childcare licensing rules in 2008 that will address the issue of including related children.*
- 2.2 *DHSS concurs with this recommendation. In May 2007, the Section for Child Care Regulation (SCCR) enhanced its investigation and referral procedures to address unlicensed care providers. Currently, SCCR investigates a complaint for unlicensed care within ten days of receipt of the complaint. If the complaint is substantiated, then parents of the children in care are notified that their provider is unlicensed. In addition, the local prosecuting attorney is notified about the violation. If providers claim they will reduce capacity to four or fewer unrelated children, then SCCR makes a follow-up inspection within 14 days of the initial investigation. If illegal care is being provided at the time of the follow-up inspection, then SCCR makes a referral to the local prosecuting attorney for violation of Section 210.211, RSMo. If a provider begins the steps to become licensed, then SCCR offers*

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*technical assistance to bring the program and facility into compliance. If the applicant ultimately withdraws the application or the application expires, then SCCR can make a return, unannounced inspection. SCCR will review procedures to determine what additional actions, if any, are necessary.*

*2.3 DHSS concurs with this recommendation. SCCR will develop procedures and criteria to evaluate the effectiveness of the modified unlicensed caregiver investigation procedures.*

*2.4 Insufficient data is available to estimate the number of unlicensed providers operating in the State of Missouri. SCCR has only recently begun collecting data on this issue. After sufficient data has been collected and analyzed, SCCR will consider recommending increased penalties for childcare providers operating illegally. SCCR will cooperate with the General Assembly, should a statutory change be proposed.*

*2.5 DHSS concurs with this recommendation. DHSS Office of General Counsel will work with prosecutors to encourage them to pursue legal action against unlicensed day care providers.*

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# Improvements Needed in Complaint Monitoring and Legal Referral Process

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Improvements are needed in the department's monitoring of complaints because (1) the department has not always ensured complete and accurate information has been maintained in its complaint tracking system, and periodic reports have not been prepared using complaint system data; and (2) complaints have not always been completed in a timely manner. As a result, the department cannot be assured tracking system information is complete, accurate, and entered in a timely manner. Improvements are also needed in the department's legal referral process because complaints have not been resolved in a timely manner.

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## System Information Not Always Complete or Accurate, and Management Reports Lacking

Our review of data obtained from the complaint tracking system for complaints received July 2005 through June 2007, showed some incomplete complaint investigations and complaints with incorrect data entered into certain data fields. For example, the tracking system showed 9 percent of complaints entered for the 2-year time period to be incomplete, as of August 2007. The rate of incomplete complaints varied by district. For example, 2 of 6 districts had incomplete rates of 15 and 13 percent, while 4 districts had incomplete rates of 3 to 7 percent. SCCR officials initially told us they were not aware of this condition and they also did not know whether staff had not completed complaint investigations, or the districts had failed to enter data showing resolution of the complaint in a timely manner.

On further review, officials found that in the district with 15 percent of complaints showing as incomplete, a clerical staff person had not entered complaint resolutions in the system, and that the individual inaccurately entered non-complaint visits to providers in the system as complaints. After auditors brought this issue to their attention, officials stated they would be entering the missing data and deleting complaints entered in error.

We reviewed individual complaint tracking logs for the district with 13 percent of complaints shown as incomplete, and found that 2 field staff had high rates of incomplete complaint investigations in the system. The supervisor for these field staff stated that these staff had unusually high numbers of complaint investigations to complete. The supervisor also stated that although staff was completing investigations, some of the paper work and data entry was not being done in a timely manner.

In November 2007, a central office official told us most incomplete complaints were actually completed, but staff had not entered resolutions into the complaint tracking system in a timely manner. Our review of 90 complaint investigations did disclose 11 instances in which staff took from 33 days to 194 days, for an average of 85 days, to enter investigation data in the system.

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## Incorrect data entered on complaint tracking system

Our review of complaint tracking system data also indicated areas where staff had incorrectly entered information, due to the lack of standard procedures for entering the data. For example:

- Staff incorrectly completed one field in the tracking system for 618 of 2,727 completed complaints, or 23 percent of the complaints for the 2-year review period. Our review of system data also disclosed the error rate varied by district. For example, one district incorrectly completed the field 76 percent of the time, and in a second district 48 percent of the time. Three districts incorrectly completed the field less than 5 percent of the time. Therefore, officials cannot always tell whether providers are compliant. In discussing this issue, an official stated the department plans to make policy and procedure changes to ensure staff understand the use of data for the field.
- Complaint data entered by staff showed disciplinary action had been taken against unlicensed providers in 32 cases. However, on further review, officials found no disciplinary action had been taken on 24 of the 32 cases (75 percent). An official stated that some staff thought that entering disciplinary action in a particular field meant the complaint had been substantiated. The official also explained that data entry choices in the complaint tracking system do not work in all situations. In discussing this issue, the official told us the department plans to identify a more effective way to enter information that not only applies to the case, but is also easily tracked and understood.

Auditors identified the above situations by using reports that officials generated for our use.

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## Management reports lacking

Officials have limited periodic management reports using data from the complaint tracking system to one report titled Monthly Report of Regulatory Activity. This report shows the number of complaint investigative inspections conducted each month. Sound business practices dictate the department take advantage of information contained in its complaint data system to improve its oversight of complaints in order to identify trends and address other management issues related to complaint processing.

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## Complaints Not Always Completed in Timely Manner

Our review of complaints disclosed staff did not complete 42 percent of complaint investigations within 30 days. For example, we found 542 (20 percent) of 2,722 complaints took more than 60 days to complete, 277 (10 percent) complaints took over 90 days to complete, and 60 (2 percent) completed took more than 6 months to complete for the 2 years reviewed. Department procedures generally require complaint investigations to be completed within 30 days.

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## Monitoring procedures not always followed

This situation has occurred, in part, because supervisors have not always directly monitored the status of complaint investigations. Instead, some district supervisors had staff track their own complaints, and then supervisors reviewed the staff's monitoring on a periodic basis. In addition, central office personnel have not required field staff to notify them that complaints are more than 6 months old.

SCCR's Licensing Procedural Manual requires district supervisors to monitor the status of all complaint investigations assigned to staff, and to notify central office about any complaint investigations that are not completed within 6 months.

Central office officials told us they had not required field staff to notify them when complaints are more than 6 months old because central office staff could review open complaints on the system. However, officials have not determined the status of open complaints on the system on a periodic basis. Therefore, officials have not always monitored the status of open complaints and were not aware of untimely complaints in the system.

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## Improvements Needed in Legal Referral Process

Our review of 92 cases referred to the department's legal office disclosed that the department took action on the majority of those cases. However, we found some cases had not been resolved in a timely manner. This situation occurred, in part, because officials did not include written goals in the SCCR procedures manual for the timeliness of each step of the administrative penalty process. As a result, some providers continued to operate with no disciplinary action, and officials were unable to take action on two cases they felt warranted action.

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## Administrative penalties assessed on majority of cases

Our review of 92 cases, referred to the legal coordinator in the 2-year period reviewed, disclosed 55 of the cases (60 percent) received some type of penalty. Examples of administrative penalties included:

- 24 cases where providers lost licenses, either through immediate suspension, revocation, or denial of renewal applications
- 14 cases, where SCCR issued either a letter of warning or a letter of censure
- 8 cases where providers were placed on probation
- 4 cases where personnel referred the cases to prosecuting attorneys
- 5 cases where the department and provider reached a settlement agreement

In 5 of the 92 cases (6 percent), legal counsel decided no administrative penalties could be assessed, due primarily to lapse of time or insufficient evidence. In 11 cases (12 percent), the provider voluntarily closed or

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became compliant. Of the 92 cases, 21 (23 percent) were still pending as of September 17, 2007.

Many cases took more than 6 months to complete

Our review of cases referred to legal staff disclosed 29 percent of the completed or pending cases took more than 6 months to complete, (19 of 65 cases). As a result, some providers have continued to care for children during that timeframe. For example:

- Since 1987, SCCR has received 16 complaints alleging one provider has provided illegal care to more than 4 unrelated children. Five of the complaints were filed between April 2006 and July 2007. Since June 2003, SCCR staff have submitted referral information to central office four times, requesting the local prosecuting attorney be notified. However, there is no record that central office staff referred the provider to the local prosecutor. Central office staff did not know why action had not been taken in 2003 and 2004. In November 2006, district staff referred the case once again. However, prior to August 2007, central office staff did not have any record of the November 2006 referral. District office staff referred the case for the fourth time in August 2007. In discussing this case, central office staff told us they plan to refer this case to the prosecuting attorney.
- District office staff referred a case to central office in October 2006, requesting that a provider's license be revoked for providing care to more children than allowed by license. Without revocation, the license would be in effect until the end of 2007. In November 2006, central office and district office staff discussed some of the details of the referral. In June 2007, central office staff rewrote the legal referral because they decided the original referral was incoherent, insufficiently constructed, and did not contain all needed documentation. Legal counsel reviewed the file in late June 2007, and requested staff visit the facility again, and provide additional documentation to support the revocation. In August 2007, SCCR became aware of a possible child abuse scenario involving the provider, and referred the case to the Department of Social Services for investigation. As of September 2007, legal counsel was still waiting on additional information, including the outcome of the abuse investigation. This provider continued to hold a license.
- District office staff referred a third provider to central office in May 2006, requesting revocation because the provider (1) operated for a period of time with no electricity, phone, or water; (2) failed to cooperate with SCCR; and (3) had a prior history of fraud. No action was taken against the provider at that time. District office staff

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completed a second referral in January 2007, because of continuing violations at this facility. District office personnel prepared and mailed a letter of revocation in April 2007. The provider did not appeal the revocation, which became final in May 2007, more than a year after the initial referral.

In two additional cases, lack of timeliness resulted in SCCR officials being unable to assess a penalty. Officials planned to either place these two providers on probation or issue letters of censure. However, because it had been 8 months since the infractions took place, officials decided that it would not be appropriate to administer penalties. Therefore, staff closed the cases with no action taken.

Our review of SCCR procedures and discussions with officials disclosed that no written goals have been established for the timeliness of each step of the administrative penalty process.

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## Conclusions

Improvements are needed in DHSS's monitoring of complaints. Officials could make the system more effective and useful to department officials by ensuring personnel enter required complaint data in the data system in a complete and accurate manner. Officials should also determine what type of management reports would be useful as management tools to help officials oversee and improve complaint processing and results and ensure the reports are produced on a periodic basis. Officials should also require personnel follow procedures in monitoring complaints to better ensure complaints are completed in a timely manner.

Officials should also take action to improve the legal referral process by establishing timeliness goals for staff to follow.

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## Recommendations

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

- 3.1 Establish procedures to monitor completeness and accuracy of complaint data entered on the department's complaint system.
- 3.2 Monitor complaint investigations and other complaint data by developing and preparing periodic management reports.
- 3.3 Ensure enhanced timeliness of complaint resolutions by ensuring complaint monitoring procedures are followed.
- 3.4 Establish guidance for timeliness of penalty assessment cases and ensure that these cases are completed in a timely manner.

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## Agency Comments

- 3.1 *DHSS concurs with this recommendation. SCCR began monitoring complaint data on a routine basis in September 2007. SCCR will develop procedures to improve its ability to monitor the accuracy and completeness of complaint data.*
- 3.2 *DHSS concurs with this recommendation. SCCR began monitoring complaint data on a routine basis in September 2007. SCCR will develop management reports to better monitor complaint investigations and other complaint data.*
- 3.3 *DHSS concurs with this recommendation. SCCR will review timeframes for completing complaint investigations and procedural changes will be made as needed. SCCR management staff will review expectations for complaint monitoring with all supervisory staff.*
- 3.4 *DHSS concurs with this recommendation. DHSS is committed to administering discipline in a fair, expeditious and consistent manner, and agrees that guidance for timeliness of penalty assessment cases should be in place. To that end, SCCR will evaluate the variety of factors that influence how quickly a legal referral can be processed and make any necessary operational changes to increase timeliness of penalty assessments. In addition, DHSS Office of General Counsel is collaborating with SCCR to enhance the legal referral process.*

# Administrative Penalties

State law authorizes SCCR to assess the following administrative penalties, as shown in Table I.1:

**Table I.1: Administrative Penalties Authorized by State Law**

Type of Penalty	Description
Letter of Warning	Notifies licensee that violations have occurred and must not re-occur. Filed in the licensee's public record, and removed after one year if there are no reoccurrences of the violation(s) that caused the letter of warning.
Letter of Censure	Notifies licensee that violations have occurred and must not re-occur. Filed permanently in the licensee's public record.
Probationary License	Places conditions or terms on a license that are for a specific period of time, and may exceed licensing rule requirements. May lead to further discipline of the license if the licensee fails to comply with the terms of the probationary license.
Immediate Suspension of License	The only action taken by SCCR that immediately terminates the licensed status. Occurs only in situations of imminent bodily harm to children, and always occurs simultaneously with a secondary action to suspend or revoke the license. Continues in effect even during the licensee's appeal process to DHSS.
Suspension	Action taken by SCCR to cease licensed status for serious statute/rule violations. Does not require subsequent revocation or non-renewal of a license, but can precede these actions or occur simultaneously with immediate suspension. Involves serious, unresolved rule violations that do not rise to the level of imminent bodily harm to children, for example, fraudulent financial reports to government agencies.
Denial of License	Action taken when an applicant for initial license, or a licensee, does not comply with statute and licensing rules requirements.
Revocation of License	Action taken when a licensee (1) has seriously failed to protect children in care, (2) does not make required corrections for recurring and/or serious rule violations, and (3) demonstrates disregard for state law or rules.
Settlement Agreement	Requires violations to be of a serious enough nature that the license could be revoked or denied. May be proposed by SCCR, licensee, or licensee's attorney, and may be used to encourage settlements of disputes in lieu of an Administrative Hearing Committee hearing.
Referral to Prosecuting Attorney	Action taken when there is documented evidence of statute violation for care of more than four children not related to the caregiver without a license after the caregiver has been notified at least once that a license is required.
Injunctive Relief	Based on imminent bodily harm to children. A court order that causes a person to cease operating a child care facility or imposes conditions to protect children from imminent danger who are in care at the facility.

Source: Section 210.245 and 621.045, RSMo and SCCR's Licensing Procedural Manual.