

REGULATORY OVERSIGHT OF HUMAN SERVICES LICENSING AGENCIES:
RISK-BASED APPROACHES FOR CALIFORNIA

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Abstract

of

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Statement of Problem

California's Department of Social Services, Community Care Licensing Division is responsible ensuring the health and safety of up to 1.4 million vulnerable Californians. However, the agency has suffered from resource problems that have jeopardized the wellbeing of the clients receiving services in the settings under its jurisdiction. By examining regulatory agencies in four other states (Pennsylvania, Texas, Virginia, and Wisconsin) with similar oversight responsibilities, this study identifies alternative approaches to the traditional comprehensive routine visit approach. Alternative approaches identified include risk-based differential monitoring, abbreviated inspections, and automated systems to predict compliance with regulations and provide appropriate interventions.

Sources of Data

Using information gained from interviews with state licensing agency staff, information was gathered on how each state approaches licensing inspection visits. Information collected included visit frequency, inspector qualifications and training,

oversight methods, and methods used to achieve increased compliance. Interviewees included agency directors and management staff with direct involvement in forming policies and procedures related to inspection protocols.

Conclusions Reached

Results of the case study research revealed that many states are using innovative approaches to balance the dual responsibilities of ensuring appropriate oversight and ensuring health and safety of those under their jurisdictions. The states in this study have utilized differential monitoring to focus their efforts primarily on poorly performing licensees rather than a “one size fits all” approach. Achieving greater consistency in enforcement actions is the primary motivating factor for implementation of more formalized approaches in many states. Workload reduction was cited as a side benefit that allowed agencies to focus efforts to reduce risk of harm. States that utilize abbreviated or key indicator inspections generally use this approach for licensees with good compliance. Most notably, many of the inspection methods are part of an integrated approach that use risk reduction strategies.

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Chapter 1

INTRODUCTION

The California Department of Social Services, Community Care Licensing Division (CCLD; 2010, p. 7) asserts that its current protocols for inspecting licensed facilities “put client health and safety at risk.” Currently, CCLD only inspects 30% of facilities each year. Twenty percent of facilities are chosen randomly and 10% are inspected due to poor performance or federal mandates that require an annual review. (For a complete list of licensee types that receive inspections by CCLD see Appendix A, Table A1.) With one of the lowest inspection frequencies in the nation, California inspects most facilities only once every five years.

As California continues to grow, vulnerable segments of the population will increasingly rely on the services that community care facilities provide. The aging of the Baby Boomer generation and the increasing necessity of families to earn dual incomes portend a future explosion of senior and childcare facilities. However, several years of fiscal austerity in the state have stripped away many of the programs that protect the health and safety of licensed facility clients.

This study seeks to examine the ways in which the Community Care Licensing Division can carry out its responsibilities to prevent predictable harm, perform enforcement activities and ensure compliance with applicable laws and regulations. Specifically, I seek to better understand how enforcement is affected by changing from a comprehensive inspection regime to key indicator inspection approach. To accomplish

this, I will examine best practices as well as inspection methods and tools used in other states that balance the need for strong oversight with available state resources. I will also examine models that can predict the necessary level of enforcement and oversight.

The remainder of this introductory chapter contains sections on the history and legal principles of licensing, a description of California's Community Care Licensing Division and its difficulty meeting current licensing frequency mandates, the current trends in licensing. The chapter concludes with a justification for this study.

Licensing: A Brief History

In the United States, the evolution of the regulatory state occurred slowly, particularly in human services. Early unregulated facilities (sometimes referred to as almshouses or asylums) were established in New England to care for blind and deaf children as well as adults with disabilities. In the 1850s, day nurseries and reformatories were established in New York. By 1963, Massachusetts established a "Board of Charities," the first state attempt to regulate a human care facility in America (Gazan & Scalera, 2000, p. 10).

The right of state governments to intervene in the cases of battered children was established from anticruelty laws originally established to protect animals. The New York Society for the Prevention of Cruelty to Animals (SCPA) intervened on behalf of Mary Ellen McCormack, a 10-year-old orphan who had been severely mistreated by her adoptive parents in 1874 (Markel, 2009). The New York Supreme Court sentenced

McCormack's mother to prison and her case led to the establishment of the first child protection agency, the New York Society for the Prevention of Cruelty to Children.

As Gazan and Scalera (2000) note, the American Populist Movement in the 1870s was successful at enacting laws that de-concentrated power in the major industries at the time (railroad, insurance, banking, and granaries). The resulting "granger laws" established state authority to regulate business activities as part of its police power. The U.S. Supreme Court affirmed the state's role in *Munn v. Illinois* (1877). Congress' establishment of the Interstate Commerce Commission 10 years later firmly inserted the government into this regulatory role and is considered the first modern regulatory agency.

Subsequent Congressional action in this area included the enactment of the Social Security Act (1935), Community Facilities Act (1941), the U.S. Department of Health, Education and Welfare (HEW) issuance of the Federal Interagency day Care Requirements (1968), Title XX of the Social Security Act (1973), among others (Gazan & Scalera, 2000, pp. 21-22).

Legal Principles of Licensing

Gazan and Scalera (2000) identify eight legal and conceptual characteristics that make licensing a unique form of regulatory administration. Licensing involves the granting of permission to engage in activity that is otherwise prohibited by law. Freund (1935) defines licensing as:

The administrative lifting of a legislative prohibition. The primary legislative thought in licensing is not prohibition but regulation, to be made effective by the

formal general denial of a right which is then made individually available by an administrative act of approval, certification, consent or permit. (p. 9)

Licensing is an administrative act carried out by the executive branch of government and under the purview of administrative law, but exercises authority from all three branches of government. Its authority is derived solely from statutory law (as opposed to common law) and is governed by the Fifth and Fourteenth Amendments of the U.S. Constitution guaranteeing due process. Licensing protects consumers through risk reduction that seeks to even the information asymmetry that exists between consumers and providers. Licensing does not make value judgments or evaluations; rather it is a form of quality control that uses compliance with established rules to determine a minimum baseline level of services (Freund, 1935).

California's Community Care Licensing Division

In 1973, the California Legislature established the Community Care Facilities Act mandating the Department of Health to provide oversight of the state's non-medical out-of-home care facilities. Five years later, the Legislature established the Health and Human Services Agency and transferred these functions to the newly established Community Care Licensing Division (CCLD) within the Department of Social Services. Today, CCLD is responsible for monitoring residential care settings for approximately 1.4 million Californians, which is equivalent to the 40th most populous state – New Hampshire. The agency has primary jurisdiction over providers that care for infants in need of emergency placement, handicapped adults, the developmentally or mentally

disabled, the chronically ill, the elderly as well as troubled youths and neglected or abused children. These include more than 82,000 providers such as childcare facilities, foster family agencies, group homes, adult residential care, and residential care facilities for the elderly.

Under the direction of the Director of the Department of Social Services, CCLD is led by the deputy director, who oversees three program administrators. The division operates 14 district offices throughout the state (located in Monterey Park, Goleta, Woodland Hills, Fresno, Sacramento, Chico, Orange, Riverside, San Diego, Oakland, San Jose, Rohnert Park, San Bruno, and Culver City). According to the California Department of Finance (2011), CCLD has 451 filled positions for Licensing Program Analysts (facility inspectors) working in the field overseeing 82,236 licensed facilities, this puts the facility to inspector caseload ratio at 1:182. A study conducted by Barnes and Sutherland (2001) to revise the calculations to determine the number of field staff needed by CCLD found that Licensing Program Analysts spent on average 42 percent of their time working on field related activities.

CCLD's Mandate Challenge

When it was established in 1978, CCLD was mandated to make annual unannounced visits to every provider. In the early 1990s, CCLD implemented "focused" visits to maintain its ability to visit facilities annually. Later, CCLD adopted a four-year visit cycle, which was increased to once every five years in 2003. This mandate requires that at least 10% of all facilities are inspected each year.

A series of reports from the California Bureau of State Audits (Howle, 2000, 2003, 2006) from 2000 to 2006 focused on CCLD's struggle to carry out its monitoring responsibilities. In all three reports on this subject, the State Auditor found that CCLD did not always meet its statutory requirement to visit each facility once every five years, despite this being one of the lowest inspection frequencies in the nation. The auditor also faulted the Department's database used to generate random visit assignments, calling into question its ability to accurately monitor its progress.

CCLD responded to the 2006 audit stating that it responds to complaints within the 10-day response period 98% of the time. CCLD also indicated that the hiring freeze has left the division with a 10 to 14% vacancy rate. In 2005, 82% of the required visits were made (approximately 74,000 visits).

In February 2010, CCLD submitted a Spring Finance Letter to the Department of Finance requesting to implement significant changes to the way it approached licensing inspections. The proposal included three elements. The first was the elimination of certain licensing visits, specifically pre-licensing visits when there is a change of ownership and post-licensing visits. Second, the division proposed increasing licensing fees by 10% to make the program less dependent on the State's General Fund. Finally, CCLD proposed a new inspection protocol based on "key indicators" rather than a comprehensive inspection. The Key Indicator Tool (KIT) would be comprised of zero tolerance violations, repeat violations, nonpayment of fees, and key indicators to include proper criminal record clearances, water temperature, storage of medications, incidental

medical and dental care and personal rights (Department of Social Services, 2010). However, consumer groups objected, citing that the proposed “key indicator” approach was not yet “developed, tested, nor validated” (Bet Tzedek Legal Services, 2009) The budget subcommittees in both the Assembly and Senate rejected the plan and directed the Department to work with stakeholders to further refine the plan.

In October of 2010, CCLD announced a re-prioritization of the division’s workload, ranking the following licensing activities in order of priority: 1) enforcement actions, 2) enforcement follow-up, 3) complaint inspections, 4) annual required inspections, 5) 5-year inspections, 6) random inspections, 7) applications, 8) orientations, and 9) appeals (Hiratsuka, 2010). The industry characterized the move as a “meltdown” at the division noted that the reprioritization efforts resulted in the suspension of processing applications and appeals, canceling new licensee orientations, limiting internal training, and providing limited phone support.

Macro-Level Trends: More Regulation and Public Disclosure

There has been recent scrutiny from Congress, academics and the media on the adequacy of oversight for many types of community care facilities. In 1999, at the request of U.S. Senator Charles Grassley, the General Accounting Office (GAO; 1999) conducted a study of four states and found that consumers often lack adequate knowledge of assisted living options and limitations. The GAO also found there were enough quality of care issues to “warrant concern.” While the GAO has not called for federal oversight, it has urged states and the federal government to be attentive to these issues.

In the childcare setting, Gormley (1999) identified three arguments frequently cited by critics of the current level of regulation. These include: 1) the observation that current rules do not require well-trained, well-educated staff to be in place in childcare centers, 2) the regulations vary from state to state with no central standards or enforcement, and 3) compliance is often poorly enforced.

The Assisted Living Workgroup (2003) published its final report to the U.S. Special Committee on Aging, which included recommendations for states conducting regulatory oversight. Among its recommendations was to ensure that each state have “adequate survey staff to enforce its assisted living regulations” and should include a monitoring element that includes a “system of no less than annual unannounced inspections, and a responsive compliant investigation system” (p. 36). The report further stated that states should have a system to quickly and effectively induce satisfactory performance or closure” of the facility

The media has also given attention to the regulation of community care facilities. Recent media reports revealed an uneven patchwork in the level of oversight of assisted living facilities across the states (Kreiser, 2006).

Mollica (2006) reports that an emerging trend among licensing agencies is to implement rating systems that provide simple information to consumers on the quality of a facility. In 2005, regulators in Nevada are required to assign and facilities must post a letter grade (A, B, C, or D) to indicate level of compliance with state regulations. In

2004, Alabama developed an approach that assigned a color-coded rating (red, yellow, green), which dictated the intensity and thoroughness of its next inspection.

Industry Best Practices

Two years ago, the National Association for Regulatory Administration (NARA; 2009) produced its recommendations for human care regulatory agencies, which included recommendations to provide routine monitoring inspections that occur with sufficient frequency to protect consumers and maintain compliance. NARA recommends “at least twice-yearly” visits unless the agency has some other method of reliably reducing visit frequency to high-performing licensees.

Relevant Legislation

In 2010, the Department of Social Services submitted draft language to the Department of Finance that would make several changes to the current licensing protocol, including: eliminating the requirement for comprehensive visits of all facilities, eliminate post-licensing visits, revise pre-licensing inspections, increase annual fees paid by licensees, and implement a new survey protocol, now known as the Key Indicator Tool (KIT). In 2011, AB 419 (Mitchell, D-Los Angeles) was introduced that would require annual inspections of most licensed categories.

Need for Study

Despite these long standing challenges, research has not focused on the efficacy of California’s community care inspection system. Other states, such as Pennsylvania, Texas, Virginia and Wisconsin, have adopted inspection methodologies that seek to

balance client wellbeing, workload and compliance with statutory mandates that may be useful to California.

Table A2 (see Appendix A) indicates that 15 states in 2006 used some sort of checklist or instrument-based tool to conduct their licensing visits. Several states offer technical assistance programs to help licensees achieve compliance. Technical compliances usually consist of interpreting regulatory requirements, providing consultation and sharing of “best practice” information among providers.

Organization of this Study

Chapter 2 contains a review of the relevant literature in the area regulatory oversight and enforcement. Topics covered include the theories of regulation, the effects of government oversight on regulated entities, and the varying approaches to obtaining compliance.

Chapter 3 discusses the methods used to collect the data, including a description of the case study approach. The rationale of the design and implementation of the survey instrument is also discussed. Finally, the chapter further delineates the goals for the research. This chapter also includes a discussion on the weaknesses of this approach.

Chapter 4 includes narratives on the results of each case study as well as background information on each agency’s oversight functions. Specifically, the results include how each agency approaches their inspection mandates in addition to other practices that were revealed through the exploratory case study approach.

Chapter 5 includes a conclusion and recommendations for California's licensing agency based on information gleaned from other states. Four recommendations are identified as possible approaches to improve California's current system.

Chapter 2

LITERATURE REVIEW

Introduction

The literature on human services licensing is relatively scant, with few studies of outcomes, quality, or enforcement modalities to inform policy decisions. In particular, studies that focus on California's system suffer from a lack of information in many of its community care settings. Flores and Newcomer (2009) note that among the state's records for residential care facilities for the elderly, most information is not computerized, centralized, or readily accessible for use as guidance for improving resident outcomes or policy discussions. In addition to a lack of uniform data collection, Mollica (2006) found that states have varied requirements for each provider type. State-to-state comparisons are not feasible because states set their specific performance measures and data elements. While few studies emphasize the role of the licensing visit and its effects, much attention has been paid to the methods, theories, and approaches to obtaining regulatory compliance. Below is a summary of the major theories and styles of enforcement as well as a review of literature focusing on the tools, methods, and inspection regimes.

The gamut of regulatory activities serve several functions intended to enhance the welfare of the public, and generally include: the regulation of prices and entry into a field, enhancing consumer protection, ensuring public accountability, and providing for intra-governmental regulation (Gazan & Scalera, 2000). Government regulation of a good

or service is meant to compensate for the information asymmetry that exists between the provider of the service or good and the consumer (Katsuyama, 2010).

In an effort to gain a better understanding of the approaches to regulatory enforcement, I examined the literature for common themes that might indicate proven practices that enhance compliance. Below you will find a general discussion on the effects of regulation as well more in-depth discussions on several themes that emerged. These themes include: how to identify the most appropriate level or intensity of oversight, the various compositions of oversight regimes, the political nature of regulation, the effectiveness of punitive and collaborative enforcement styles, the formulation regulation approaches followed by a discussion of specific inspection methods used for human services licensing agencies. This chapter concludes with the lessons learned and a summation of the research that can contribute to a new oversight approach for California's Community Care Licensing Division.

The Effects of Regulation

The negative impacts of regulating industries have been studied extensively and, according to the literature, have a direct impact on consumers. Morgan, Stevenson, Fiene, and Stephens (1986) note that licensing adds additional costs to the services being licensed. Other negative effects include reducing the supply of providers (Gormley, 1990) and creating inefficiencies by redundant regulatory requirements. Overlapping jurisdictions and multitude of agencies involved in licensing has led to a complicated regulatory oversight structure for many providers. Katsuyama (2010) challenges the legal

principles that underpin licensure (specifically as being potentially in violation of antitrust laws) but acknowledges the support licensing has received from state legislatures. Hogan (1983) notes in the licensing of professions, the potential harm of information asymmetry relative to the cost of regulatory oversight does not unequivocally support licensing efforts. In his analysis, he determines that licensing may be more a liability than an asset for three reasons: 1) little evidence exists that licensing has improved the quality of the services provided, 2) the price may not be worth it, and 3) equally beneficial but less expensive alternatives may exist. Gormley (1999) rejects the claim that regulation is counterproductive, but acknowledges that tradeoffs do exist.

Many theories exist on how regulatory enforcement affects the private sector and how profit-maximizing entities respond to government interventions (Anderson & Lee, 1986). The traditional view of regulation advanced by Stigler (1971) explains why industries seek regulation despite its onerous effects. Many industries reap the benefit of regulation because it can access a power only available to the government: the power to coerce. This equipped industries with new tools to limit the entry of rivals into the market, establish price controls, and receive direct subsidies. An additional benefit to industry is the ability to control the regulated entities' substitutes and compliments. However, Law and Kim (2005) later found that by further examining the timing of the growth of licensing throughout its early history (during the Progressive Era) the emphasis was, indeed, on improving markets as specialization and advances in knowledge made it increasingly difficult for consumers to judge the quality of professional services.

Approaches to Licensing Inspections

A call for a balanced, rational approach to licensing inspections is frequently found in the literature. The need to strike a balance between safeguarding client health and safety and limiting overzealous regulation is an area in which regulators continue to struggle (Fiene 2000; Gormley, 1990; Stigler, 1970). As Stigler (1970) notes, although complete enforcement is unachievable, the goal of regulators should be to implement a rational enforcement system. As society aims to balance the cost of enforcement with the degree of the compliance required, agencies are constrained by a budget ceiling. Stigler identifies the shortcomings of licensure include the lack of consideration for the costs borne by the regulated and the inappropriate methods of determining the extent of enforcement needed. Stigler argues for a more rational approach, which would include the development of a model that would bring marginal costs of enforcement closer to the marginal return of the magnitude of effect an infraction would have on the individual.

The tools used for achieving a rational licensing scheme are described by Fiene and Kroh (2000). These tools include a move toward quantitative measurement and seven general approaches: 1) instrument based-program monitoring (IPM), 2) indicator systems, 3) inferential inspections, 4) checklists, 5) rating scales, 6) weighting systems, and 7) outcome-based systems. Each approach is defined in Table 1.

Table 1

Licensing Approaches Terms and Definitions

Instrument-Based Program Monitoring	A movement within licensing and regulatory administration from a qualitative measurement to a very quantitative form of measurement that includes checklists.
Indicator System	A licensing measurement system utilizing a shortened version of a comprehensive checklist measuring compliance with rules through a statistical methodology. Only key predictor rules are included on an indicator checklist. It is a form of inferential inspection where only a portion of the full set of rules are measured.
Inferential Inspections	An abbreviated inspection utilizing a select set of rules to be reviewed. An indicator system, weighting of rules for determining a shortened inspection tool, a random selection of rules, etc. are examples of inferential inspections. The use of inferential inspections by licensing agencies was developed as a time saving technique and a technique to focus regulatory efforts on facilities that required additional inspections or technical assistance.
Checklist	A simple measurement tool that measures compliance with state rules in a yes/no format. Generally, there is no partial compliance.
Rating Scale	A more complex measuring tool in which a Likert type of rating is employed – going from more to less, or high to low. A rating scale is always used in the development of weighting systems. It is not used in measuring compliance with rules. However, rating scales are used widely in other types of program quality assessment systems – accreditation and research tools.
Weighting System	A Likert type of measurement tool that utilizes a modified Delphi technique to determine the relative risk to individuals if there are violations with specific rules. Weighting systems are developed by sending a survey to a selected sample of persons in order for them to rank the relative risk of violation with specific rules.
Outcome-Based Systems	A measurement system based upon outcomes, not processes. A facility would be assessed by the outcomes it produced with individuals. For example, the number of consumers (children or adults) developing normally, free from abuse, not in placement, involved actively in the community, etc.

(Fiene & Kroh, 2000)

Types of Regulation

Ayres and Braithwaite (1992) studied partial industry regulation using the “monopsony standard” for consumer protection interventions. According to the authors, this standard would recommend government intervention only instances to improve the workings of a market where a monopsonist buyer would rationally intervene on his or her own behalf. By using this standard that represents the “quintessentially empowered consumer,” the authors believe that by studying how these consumers would protect themselves under monopsony conditions, a reliable level of government regulation can be ascertained. This is because empowered consumers can make specific demands on the market that under normal market conditions could not be expected to be fulfilled. Studying OPEC, an airline merger, and FCC decisions they found that this approach was preferable to either industry-wide regulation and laissez-faire policies. This approach relies on dominant and fringe firm involvement with self-regulation. Ayres and Braithwaite (1992) noted the success of such approaches in nursing homes where the government merely encouraged the formation of resident and family councils to improve oversight. The for-profit nursing homes found this to be a business advantage and actively encouraged the formation of councils to retain market share (p. 51). Another variation of this approach is management-based regulation. Management-based regulation directs regulated organizations to engage in a planning process that aims toward the achievement of public goals, offering firms flexibility in how they achieve those goals. Coglianese and Lazer (2003) develop a framework for assessing conditions

for using management-based regulation as opposed to the more traditional technology-based or performance-based regulation. By drawing on case studies in the areas of food safety, industrial safety, and environmental protection, management-based regulation is shown to be an effective strategy when regulated entities are heterogeneous and regulatory outputs are relatively difficult to monitor.

Political Effects on Regulation

Hedge, Scicchitano, and Metz (1991) describe the Principal-Agent Model and attempt to answer the question of how federal oversight interacts with state level enforcement efforts. Regulatory environments are sensitive to the political climate. In a later study, Hedge and Scicchitano (1994) found that regulatory decisions of federal authorities reflect shifts in the national political climate, individual members of Congress, and states' political climates. Hedge, Menzel and Williams (1988) found that street-level inspectors are responsive to external political pressures at both the local and national levels. Finally, political stability affects a regulated entity's behavior. Damania, Fredriksson, and Mani (2004) found that political instability reinforces corruption and policy distortions by regulated entities and indirectly affects compliance.

Enforcement Styles

Gormley (1998) identifies two particular approaches in human services licensing, including agency and inspector styles. The first approach, a collaborative method termed the "Bargaining Model," seeks to persuade regulated entities to improve their performance. A more punitive approach is the "deterrence model" which punishes

regulated entities that violate the established administrative rules or laws. Further, Scholz (1984) studied cooperation among regulatory enforcement regimes. Based on evolutionary game theory, Scholz developed a model of cooperation and found the level of cooperation depends on an enforcement strategy that includes a mix of elements that are both “vengeful” and “forgiving.” Scholz found that firms that worry about future enforcement encounters forgo short-term gains in favor of compliance.

Negotiated Compliance

Fenn and Veljanovski (1988) formalized and tested a positive model of enforcement finding that bargaining to induce compliance can be a cost-effective alternative under certain circumstances. The pair developed a model that treats enforcement as a constrained maximization problem where regulators have discretion imposing enforcement actions as seeks to reduce harm from offences subject to its budget constraint. The theory of “regulatory capture” has often been cited as the reason for negotiated compliance. However, Fenn and Veljanovski (1988) identify a plausible alternative to the capture theory due to that natural tendency of individuals to find cooperative solutions. The authors note that an agency that chooses to negotiate faces challenges such as choosing an appropriate response, which might affect future compliance and relationships with the regulated entity.

May and Wood (2003) found no direct effect on compliance among differing enforcement styles. The pair surveyed the degree of facilitation and formalism among a stratified sample of 260 building inspectors across western Washington State.

Dimensions of enforcement style included inspector characteristics such as trustworthiness, fairness, helpfulness, knowledgeableness, ease of working relationship, level of threat the inspector posed, pickiness, rigidness and thoroughness. Interestingly, there was a notable effect of a high degree of inspector thoroughness leading to decreased compliance. According to the authors, more thorough inspections lead to identification of more problems. Under the model, this indicated lower voluntary compliance. However, the authors were not able to identify the extent to which more thorough inspections have a deterrent effect in enhancing compliance (May & Wood, 2003, p. 130). May and Wood also found that inconsistency was somewhat to very constraining contractors in their ability to comply with code provisions. This was interpreted as evidence that repeated interactions and consistent signals are necessary for fostering shared expectations about compliance. Capacity was found to have a positive effect on compliance. Knowledge and cooperation had an interactive effect. The research revealed that compliance is highest when both cooperation and knowledge are high and lowest when cooperation is high and knowledge is low. Level of compliance is reduced as the costs of compliance are increased. Inspectors frequently chose the prospect of inducing future compliance through cooperation and knowledge enhancement over cajoling compliance through punitive modes of public action.

Finally, Gormley (1998) suggests that the distinct characteristics between “task-oriented” agencies and “crisis-oriented” agencies determine overall agency style. Task-oriented agencies (such as human services licensing agencies) are able better positioned

to escape interventions by politicians, judges and media investigations and should be more flexible and in a better position to offer negotiated compliance. Gormley (1998) also notes that agencies and inspectors' styles are influenced by tenure, age, job satisfaction, perception of the regulated industry, educational background, and political attitudes.

Enforced Compliance

Enforced compliance is seen as a more punitive method of obtaining compliance. Often referred to "command and control" regulation, this traditional notion of regulation emphasizes compliance and deterrence. Baldwin (2004) has found that the use of criminal sanctions is on the rise as evidenced in government policy, legislation, and some regulators' public stances. However, the reaction to more punitive approaches have resulted in a confused reaction from regulated entities that may not lead to compliance. Grasmick and Bryjak (1980) surveyed 400 individuals on their views of certainty and severity of punishment on illegal activities in their past. Results show that perceived severity of punishment, at relatively high levels of perceived certainty of punishment, has a significant deterrent effect (p.47).

Responsive Regulation

Braithwaite (2002) describes a "Regulatory Pyramid" as a strategy to obtain regulatory compliance. Similar to the "bargaining model," regulators engage in a "tit for tat" exchange of progressive measures the initially seek to persuade compliance and ultimately ends in license revocation if less harsh measures fail. Braithwaite asserts that

formal reward systems encourage game playing and should be used informally to ensure the integrity of the regulatory system. Braithwaite (2002) noted that informal praise of nursing homes led to improved performance on subsequent inspections. Critics of this approach assert that some offenses cannot slowly escalate up the pyramid due to their serious nature and threats of harsher treatment may stand in the way of voluntary compliance. Opponents also argue that the approach may be wasteful of resources and the strategy only works when clear expectations are made of the regulated. Practical criticisms include the failure of the strategy if there is not a sufficient number of repeated future interactions to influence the regulated party's behavior. Baldwin and Black (2008) build on Braithwaite's work to construct what they term, "really responsive regulation," which seeks to add to Braithwaite's model by adding five additional dimensions. Baldwin and Black argue that regulators must also be responsive to the regulated entity's operating and cognitive frameworks, to the broader institutional environment of the regulatory regime, to the different logics of regulatory tools and strategies, to the regime's own performance, and to the changes in each of these elements.

Integrative Regulation

Speaking on environmental regulations, Gunningham and Sinclair (1998, 1999) have introduced the notion of "smart regulation" whereby context-specific regulatory framework is built using a variety of complimentary instruments. The pair found that excessive reliance on a "single-instrument" is misguided because all instruments have strengths and weaknesses. The authors argue that a better strategy is to employ multiple

instruments that compensate for this weakness. Five regulatory design principles were identified: 1) prefer policy mixes incorporating instrument and institutional combinations (such as including third party actors such as banks, insurers, consumers, etc.), 2) prefer less interventionist measures, 3) escalate up an instrument pyramid to the extent necessary to achieve policy goals, 4) empower participants which are in the best position to act as surrogate regulators, and 5) maximize opportunities for win/win opportunities.

Differential and Risk-based Regulation

“Differential Monitoring” is a method frequently used by licensing agencies to determine the frequency and/or depth of monitoring based on an assessment of a facility’s level of compliance with regulations. Facilities with higher levels of compliance receive less attention from regulators and low performing facilities receive more attention from regulators. Also known as “risk assessment monitoring” or “risk-based monitoring” the method can be used to determine the number of inspections needed for a particular facility and the content of inspections based on the perceived risk of harm to the clients of the facility (National Child Care Information and Technical Assistance Center [NCCIC], 2010).

The Effectiveness of Regulation

The early literature on licensing has frequently found that it does not accomplish its stated objectives. However, some studies suggest that regulation has performed well. Gray and Scholz’s (1993) study of 6,842 large manufacturing plants’ compliance with OSHA regulations between 1979 and 1985 found significant deterrent effects.

Inspections imposing penalties induced a 22% decline in injuries in the inspected plant during the following few years. Helburn and Howe's (1996) study of childcare centers and family child care homes found that states with the weakest standards had the lowest structural quality. Among two types of childcare providers, Wrigley and Dreby (2005) found that there are striking differences between fatality rates across types of care. Blau (2003) found that regulations in the child care setting as a group have statistically significant effects on most outcomes although frequently very small impact. The larger, more highly regulated childcare centers performed much better than their smaller, in-home counterparts did. Finally, Flores, Bostrom, and Newcomer (2009) found that a lack of attention from the regulatory agency had a negative impact on quality of residential care facilities for the elderly. Specifically, California's change in visit frequency to community care facilities from annual inspections to once every five years resulted in an increase in quality of care citations arising from complaints or problems.

Inspection Methods

The way in which inspectors go about enforcing rules and regulations varies greatly and many different methods appear in the literature. Burby and Paterson (1993) examined how the centralization of enforcement functions at a state level (as opposed to local jurisdictions) did not necessarily enhance compliance. State law can be vigorously enforced at both the state and local levels. Burby and Paterson examined North Carolina's urban sedimentation and erosion control law to show that monitoring and inspections stimulate compliance. The authors found that building a long-term

commitment and capacity to obey the law has a greater impact if cooperative approaches are used. Adam (1978) discusses the development of a priority assignment model that assigns OSHA inspectors based on accident performance of scores of 34,500 employee injuries. The model prioritizes inspector presence based on level of risk (from highest to lowest: where catastrophes or fatalities have occurred, target industries, and randomly selected sites from across the country). The authors reported that the “worst-first” approach was a success and could replace the random assignment of inspectors.

The notion that compliance with regulation should be maintained out of a greater duty to the general public was the topic of two studies. In a study of homebuilders’ compliance with building codes, May (2004, 2005) researched how affirmative or negative motivations impact compliance with social and environmental regulations. Affirmative motivations emanate from good intentions and a sense of obligation to comply. The study concluded that characterizing compliance as the fulfillment of a social contract provided better incentive for compliance. In a separate study on water quality, May examined how traditional regulatory and voluntary approaches affect motivations to address potential harms to water quality. The traditional approach consists of governmental enforcement of mandatory requirements; the voluntary approach consists of government calling attention to potential harms and facilitating actions to address them. May’s finding supports traditional regulation over the voluntary encouragement to comply. However, similar to the homebuilder study the sense of duty was an important

motivation for action. Other motivating factors for compliance include peer reputation and attitudes toward government.

Gormley (1998) found that inspectors with a background in social work were less supportive of reforms that included the use of indicator checklists. However, in states where the regulators had a better perception of the providers, the key indicator approach was more favored. Among inspectors, technical support roles vary and seem to stem from the licensing agency's culture. Former providers that subsequently serve as agency inspectors were found to demonstrate a pro-activeness approach to inspections.

Instrument-based Program Monitoring

Fiene and McDonald (1987) explain that an Instrument-based Program Monitoring (IPM) approach has several key benefits for licensing agencies, including: cost savings to states financing services, better allocation of resources, improved information for policy decisions and enhanced quality of programs. According to the authors, IPM offers other features that are beneficial to the state such as a more equitable enforcement system and more rich information on which to base policy decision-making. The IPM approach begins with a comprehensive listing of all regulatory items that agency administrators culled down to a manageable checklist of items that are predictive of compliance. This checklist identifies the regulations with the highest degree of predictability when compared to licensed entities that receive high scores on the overall the comprehensive instrument.

Fiene and McDonald (1987) describe their study of the Pennsylvania childcare licensing agency where it was reported to take approximately two years to establish a functioning key indicator system. They identified two factors of successful implementation, which was the involvement of all agencies affects (local and regional) and the state's commitment to see the system implemented. While supportive of the IPM method, Fiene and McDonald (1987) encourage states to evaluate its appropriateness based on six criteria: 1) an evaluation of the state's social services environment (such as decreased funding, increased case load, and increased regulatory accountability), 2) a review of the IPM methodology to ensure an appropriate understanding, 3) an evaluation of the costs and benefits of the IPM approach, 4) the ability to make a statewide commitment to implement IPM, 5) a thorough assessment of the appropriate regulations and legal requirements, and 6) the formulation of an implementation program.

Fiene and McDonald (1987) stress that the shortened instrument should not be the basis of all future inspections. The comprehensive instrument should be the standard to which all licensees are held in order to maintain overall compliance. Rather, it should be used as an "interim review instrument" or a screening device to determine whether or not the longer, comprehensive survey tool should be used. Licensees with a history of non-compliance should receive the comprehensive instrument every three years (p. 27).

The potential drawbacks identified by Fiene and McDonald (1987) may include requiring states to change law to allow for the key indicator approach (particularly statutes that mandate frequency and scope of licensing visits). State department staff may

also resist the change and perceive it as a reduction of the importance of their professional role or a method of reducing staff.

For states that elect to implement an indicator checklist, Fiene and McDonald (1987) recommend the following steps: 1) develop and evaluate a comprehensive instrument and weight items according to their importance, 2) obtain at least one year's data in order to categorize licensees as either the "High Group" (in high compliance) or "Low Group" (in low compliance), 3) use phi correlational coefficients to identify predictor items, 4) add essential items such as "zero tolerance" regulations, and 5) construct the final indicator checklist.

Determining weight of items should include all forms of risk (physical harm, psychological harm, developmental harm, etc.). Fiene and McDonald (1987) report that Pennsylvania used a survey of 100 individuals (including providers, state enforcement staff, researchers, etc.) to complete a survey on risk to derive indicator weights. These individuals rated each item on a Likert scale (from 0 indicating "no risk" to 5 indicating "high risk") and the results were averaged and the highest scored items were weighted with the most importance. Due to the high level of agreement, it was determined that this approach had adequate face validity and further statistical testing was not necessary.

Conclusion

Although the literature specific to human services regulatory administration is limited, several themes emerge from the body of work on regulatory theory. Generally, a more cooperative approach has been called for as a more effective approach when

adequately reinforced with progressive penalties. Several authors have argued for an integrative approach where regulators use a mix of complementary enforcement measures to ensure compliance. Despite the political influences exerted on licensing agencies, the goal of any enforcement unit should be to implement a rational approach that includes adequate health and safety protections and wise stewardship of public resources. Finally, a model known as Instrument-Based Program Monitoring (IPM) has been developed specifically for human services licensing agencies. Perhaps Malcolm Sparrow (2000) best summarized the normative ideal of modern regulatory agencies:

Acknowledge the constant need to make choices. Make them rationally, analytically, democratically. Take responsibility for the choices you make. Correct, by using your judgment, deficiencies of law. Organize ourselves to deliver important results. Choose specific goals of public value and focus on them. Devise methods that are economical with respect to the use of state authority, the resources of the regulated community, and the resources of the agency. And as you carefully pick and choose what to do and how to do it, reconcile your pursuit of effectiveness with the values of justice and equity. (p. 28)

One of the several lessons learned from the review of the academic and industry literature is that a variety of tactics have been used in the field of regulatory administration with varying degrees of success. Many of these studies provide context and a foundation for evaluating California's regulatory structure and the way it carries

out its oversight mandate. Specifically, a more detailed examination of differential monitoring approaches based on risk assessment and risk reduction strategies should be explored for application to human services licensing. Risk-based approaches that prioritize enforcement resources based on level of compliance (similar to OSHA's "worst-first" model) should be evaluated. Further, a better understanding of partial-regulation approaches (such as management-based regulation) where in which the industry enforces the rules on itself would be informative to any improvement efforts. The application of oversight philosophies, such as collaborative enforcement approaches that focus on education and improvement rather than punitive measures should also be studied to better understand their use in human services licensing settings. The use and availability of technical support programs should also be a focus as research indicates a direct correlation to level of knowledge and compliance. A better understanding of how states integrate all of their regulatory tools so that the benefits of each are enhanced and weaknesses are minimized would shed light on integrative oversight techniques. Finally, one such tool worthy of deeper analysis is the implementation of instrument-based program monitoring among the states. This tool has been adapted for specific use in human services licensing agencies.

Chapter 3

METHODOLOGY

To better understand and define the options available to California's Department of Social Services, a thorough review of the oversight activities by key states' will help inform policymakers and stakeholders seeking to improve California's current system. This chapter will outline the guiding questions used to frame the case studies and will define how states were selected to be included in this case study research. This chapter concludes with the methodological approaches used to construct and administer the case study interview questions.

Due to limited research in this area, I conducted exploratory case studies with four state licensing agencies representing a mix of adult, senior, and childcare regulatory agencies. This approach allows for the collection of in-depth qualitative data on the methods states use to conduct licensing inspections and perform other relevant oversight functions. To focus the case studies, I used the following research questions to frame the interviews:

What are the inspection methods or tools that tend to balance adequate oversight with state resources?

What models exist that can predict the needed level of oversight?

How much oversight is too much oversight?

How is enforcement affected by changing from comprehensive inspections to key indicator inspections?

What have other states done in this area and what lessons might California learn?

These questions explore the broad fundamentals of licensing inspections and oversight activities and lend themselves to exploratory case study interviews. The literature suggests that licensing agencies should pursue oversight regimes that are fundamentally collaborative (with appropriate enforcement sanctions to remove habitual underperformers) and focus enforcement efforts on those who are most likely to fail. The literature also suggests that agencies should use a mix of regulatory strategies and should not rely on a single instrument to base compliance. Because states have limited resources, narrowing the focus to understanding how states find balance between the use of finite resources and protecting health and safety while continuing to improve oversight is a central question and fundamental to understanding how effective oversight agencies function. As evidenced in the introductory chapter, California's continuing budget morass indicates that an expectation of additional resources to return to the goal of annual comprehensive visits is unrealistic. Exploring other states' use of oversight techniques that enhance efficiency, assess risk, and improve quality of oversight must be explored. The literature clearly admonishes decision makers to adopt rational enforcement approaches that do not impose unwarranted demands on licensed entities. Researching how other states have selectively applied rules to streamline oversight programs and improving reliability is valuable for potential use in California.

The Case Study Approach

The case study is an enduring methodological approach that seeks “to illuminate a decision or set of decisions: why they were taken, how they were implemented, and with what result” (Yin, 2009, p. 17). Opposed to true experiments where the investigator can manipulate variables, the case study is effective at capturing non-laboratory environments where the problem being examined is nascent or continually evolving. To supplement case study data, additional information was drawn from other public sources, such as state licensing agency websites, newspaper articles, and other governmental sources. It should be noted, however, that the case study approach is prone to several weaknesses. Among them is the inability to generalize results into a broader sphere. Therefore, the results of this case study analysis should be construed with caution with this vulnerability taken into account.

Sample of State Licensing Agencies

The states chosen for case study analysis were Pennsylvania, Texas, Virginia, and Wisconsin. These states were selected because their approach was substantially different from California’s and were identified as implementing systems that could serve as an alternative to California’s unsustainable comprehensive inspection approach. Additionally, the selected state licensing agencies serve similar populations represent populous states, and exhibit similar regulatory functions (e.g., conduct licensing visits, administer sanctions, provide technical support, etc.). According to U.S. Census data, each state’s percentage of population aged 65 and older is between 10 and 15%. Each

state's percentage of the population age five and younger ranges between 6 and 8%. Finally, the percentage of the disabled population in each state ranges between 14 and 17% (see Table A3 in Appendix A for details.)

There is limited comprehensive data on how each state conducts licensing visits and oversight responsibilities. However, a report published in 2006 by the Agency for Healthcare Research and Quality (AHRQ) identified the general oversight of residential care facilities for the elderly. Subsequent the publishing of the report, several of the states were identified as having implemented recent changes in inspection methods (Wisconsin and Pennsylvania). These two states offered the ability to observe the "before and after" effects of the change in inspection protocols. The additional two states (Texas and Virginia) were identified as a result of discussions with national experts, including representatives at the National Association for Regulatory Administration (NARA), a national organization for human services regulatory agencies, as being good candidates for review and inclusion in this study due to their approaches on regulatory administration.

Interview Procedures

For each of the four state licensing agencies, telephone interviews were conducted with one or two senior management or executive-level representatives. This included one director, one associate director, a manager, and two program specialists with direct oversight responsibilities to fulfill the agency's inspection and enforcement mandate. The telephone interviews were scheduled at the convenience of the interviewees on the

following dates: April 1, 2011 (Virginia), March 21, 2011 (Wisconsin), March 14, 2011 (Virginia), and March 8, 2011 (Texas). Each interview was approximately 45 minutes to one hour in duration.

The case study interviews were conducted by phone and consisted of 20 questions that focused on the following themes: 1) how the agency conducts licensing visits, 2) the frequency of visits, 3) the agency's resources and workload, 4) inspector training and workload, 5) opinions on how effective the approach has been toward achieving compliance, and 6) a free form discussion on how each state's approach was developed, implemented and how the initial need for the change was identified (see Appendix B). Questions included a mix of open-ended discussion items as well as multiple-choice options for more objective data elements. Participants signed a consent form prior to being interviewed (see Appendix C).

Chapter 4

RESULTS

This chapter focuses on the outcomes of the four case study interviews conducted with licensing agency officials in Pennsylvania, Texas, Virginia and Wisconsin. The case studies reveal that many state licensing agencies are using various approaches to improve oversight and to focus resources according to estimated risk. The licensing agencies included in this study reported that many of the recent changes in inspection and oversight protocols improved consistency, refocused the emphasis on problem-solving, streamlined workload and improved quality. This chapter begins with a brief discussion of overall findings and then provides detail on each case study's unique results. Each state's result is presented with a brief background on each licensing agency, the problem or issue each state was attempting to address, and the results of each state's efforts.

Overall Findings

Table A2 summarizes the results of the case study interviews. Most notably, all states reported conducting comprehensive inspections either upon initial licensure or at a specified frequency in addition to the modified inspections used (such as key-indicator, abbreviated, or focused visits). Most states' routine inspections are unannounced and conducted at least annually, except Virginia which inspections occur at least every two years. All states have mechanisms that increase visit frequency based on licensee compliance. The inspector to licensed facility ratios were quite high, ranging from one inspector for every 27 (childcare) to 100 (assisted living) facilities. The minimum

qualification for inspectors is a four year degree for most states. All states report providing some level of technical support to licensees ranging from the designation of special coordinators to a monitored email account that receives licensees' questions.

Case Study: Pennsylvania's Licensing Indicator System

The Commonwealth of Pennsylvania, Department of Public Welfare's Adult Residential Licensing program is responsible for protecting the health, safety, and well-being of more than 48,000 vulnerable adults who reside in personal care homes, through the formulation, application and enforcement of state licensing regulations. Each home is inspected by the state licensing agency at least once a year and many homes are inspected several times a year.

Building Efficiency

On August 1, 2010, the Director of the Department of Public Welfare implemented a new licensing inspection system called the Licensing Indicator System, a shortened version of the Department's comprehensive Licensing Measurement Instrument (LMI). The Licensing Indicator System is predictive of compliance with all regulations and is intended to help focus the licensing process by spending less time inspecting homes with a history of high regulatory compliance. "Indicator regulations" are specific regulations that are statistically predictive of compliance with the overall body of regulations as compared to all facilities in the sample. For example, regulations require that at least one staff person trained in first aid, CPR and choke rescue for every 50 residents be present at all times. This regulation is correlated to good compliance and

included on the agency's indicators list. The indicator regulations were selected based on statistical correlations (using Phi coefficients) that predict compliance with all regulations. It is important to note that the regulations selected were not the most frequently cited, rather those found most often in low performing homes. The methodology was developed by the National Association for Regulatory Administration (NARA) in conjunction with the U.S. Department of Health and Human Services and Pennsylvania State University. The indicators were developed by sampling 20% of the top and lowest performing home inspections on a multi-year basis (n=1500). The agency evaluated criteria such as the geographic location, size of the home, types of licenses issues, and the needs of the residents served and the profit/non-profit status. Forty indicator regulations were identified. The agency added nine additional regulations, four high-risk regulations were added to assure that basic life-safety regulations were always measured as well as five regulations selected at random.

If a violation is found during a Licensing Indicator System visit, a comprehensive review of related regulations is triggered for that specific group of regulations (found under the same regulatory Center heading). If two or more violations are found, a full inspection will be conducted the same day or the next business day.

The resulting time savings allow the inspector more time providing technical assistance and in-depth inspections to low compliance homes. Homes must meet specific criteria to qualify for the shortened inspection, among the requirements are: continuous licensure within the last three years, no complaints currently on file, no complaints or

incidents currently under review, and the home's maximum capacity has not increased more than 10% within the past two years.

A full comprehensive visit must be conducted at least every three years. The indicator system visit will not be announced to the operator in advance. The indicators will be re-calculated every three years.

Case Study: Texas' Weighted Risk Review System

The Texas Department of Family and Protective Services, Child Care Licensing Division regulates all childcare operations and child-placing agencies to protect the health, safety, and well-being of children in care, largely by reducing the risk of injury, abuse, and communicable disease. The agency monitors and investigates operations and agencies for compliance with licensing standards, rules, and law. It also informs parents and the public about childcare and about the histories of specific child-care operations and child-placing agencies in complying with minimum standards of care as well as providing technical assistance to providers on meeting licensing standards, rules, and law.

Identifying Risk and Differential Monitoring

The Texas CCL conducts comprehensive licensing visits upon initial licensure. Subsequent inspections utilize a guide (or checklist) based on subchapters of the minimum standards developed on various topical areas (such as record keeping, etc.). The use of these subchapters are alternated for each facility visit, depending upon the child-care provider's compliance record and the type of permit held. For example, during the first visit of the inspector may the checklist on record keeping and the second visit the

inspector would use the checklist on physical plant requirements. Subsequent visits also include a key-indicator approach that is facility-specific and based on patterns of violations for that provider.

In 2008, CCL implemented an automated risk review system that utilizes both qualitative and quantitative measures. Quantitative elements were identified in each facility's compliance history, such as number and repetition of violations within the preceding two years. Additionally, CCL assigned weights to all minimum standards based on the risk that a deficiency of each individual standard poses to children in regulated operations and agencies. The weights were developed through a collaborative process including advocates, providers, licensing staff and community members. The group identified a weight for each minimum standard based on a 5-point Likert scale (high, medium high, medium, medium low, and low). CCL tested the weights in one region of the agency's territory, which served as a pilot group. From this group, outliers were thrown out and a more normalized distribution curve was created.

The weighted risk review system was then integrated into CCL's enforcement system to provide recommendations to licensing staff regarding visit frequency and any enforcement strategies. The system produces an objective measure of how often all operations with a similar compliance history would be inspected based on the quantitative factors in their two-year compliance history. The system displays recommended enforcement action options as well an alternatives matrix of more or less severe options that an inspector can choose. CCL is currently refining the model and weights because

data trends indicate that recommended enforcement actions are not always an accurate representation of risk as assessed by licensing staff. In a recent revisiting of the weighting of minimum standards, agency staff found that providers and agency staff largely agree on the ranking of the measures. Via a survey conducted separate from other regulatory involvement, providers ranked most measures either as high as or higher than existing levels.

The Impetus for Change

Agency officials do not identify a specific failure within the previous system, rather the reason for the change was to continue to make both technological and systemic advances in order to take a more proactive approach to identifying and preventing risk within regulated child care settings. While the implementation of the weighting system was not a necessity, agency officials state that it was done in an effort to achieve greater consistency (both internally and externally) of the “inherent subjectivity of assessing risk.” According to Diane Salisbury, a program specialist at CCL, “the weights of the minimum standards help us address that challenge by facilitating a clear and common understanding among providers and licensing staff of the risk that any given standard deficiency poses to children.” The agency views the weighted system and associated enforcement recommendations as an objective tool that results in more consistent and equitable enforcement practices.

Results

CCL officials report that the process has been effective in most cases. The current process allows licensing staff to make adjustments according to the population in care and by operation type. The system also allows staff to focus resources effectively by targeting follow-up inspections to those providers that are deemed to be most at risk of causing harm to children in their care. Officials also report a high degree of satisfaction from licensed facilities, with the overwhelming majority finding inspectors courteous and professional and the visit being helpful at improving care.

Agency staff report that providers have acclimated to the new procedures. No trends have emerged that would indicate inspecting better performing less frequently has had an adverse impact on compliance. However, it is important to note that Texas inspects all operations and agencies every one to two years, depending upon the type of permit a particular childcare provider holds.

Case Study: Wisconsin's Abbreviated Survey

The Wisconsin Department of Health Services, Division of Quality Assurance (DQA), Bureau of Assisted Living is responsible for assuring the safety, welfare and health of persons using health and community care provider services in Wisconsin. DQA regulates and licenses over 40 different programs and facilities that provide health, long-term care, mental health/substance abuse services and caregiver background checks and investigations. Within DQA, the Bureau of Assisted Living (BAL) is responsible for

licensing and inspecting community based residential facilities, adult family homes, adult day care programs, and residential care apartment complexes.

The Impetus for Change

In 2004, DQA implemented a new system largely in response to a state audit focusing on skilled nursing facilities and assisted living facilities. The audit was conducted by the Bureau of State Audits and the Joint Legislative Audit Committee in 2002 and compared the oversight practices for both SNFs and ALFs. The report found shortcomings in the oversight of ALFs, which included three major items: 1) the agency frequently did not meet its two-year inspection goal, 2) the agency experienced significant variation in the number of citations issued in each region, and 3) there was a much higher number of complaints among ALFs (meanwhile complaints decreased in SNFs by 3% over the same period). The report made recommendations for improving ALFs, which included: 1) establishing standards for visit frequency, 2) establishing minimum qualifications for ALF inspectors, and 3) increasing the number of staff assigned to ALFs.

New Survey Process and New Strategy

In 2004, DQA implemented a new enforcement system that focused on both sides of the bell curve (the top and bottom 16% of providers). The agency established criteria that would dictate how frequently providers are inspected based on its history of compliance. The agency established an abbreviated survey process to recognize facilities with a good compliance history. To qualify for an abbreviated survey, providers must

have: 1) three years of no enforcement activity, 2) no substantiated complaints resulting in deficiencies within the last three years, and 3) been licensed or certified for at least three years. In 2003, 37% of facilities qualified for abbreviated survey and in 2009 approximately 46% qualified. Agency staff notes that this change has brought more facilities into compliance and has “shifted the bell curve to the right.”

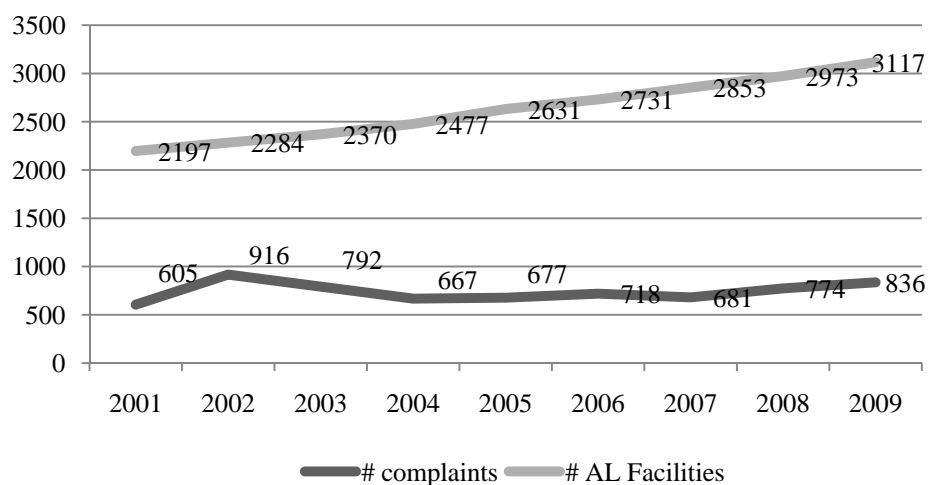
Key Codes are three sets of 19 to 86 code sections (depending on license type) from the Wisconsin Administrative Code covering six categories (Rights, Services, Food Service, Safety, Training, and Medications). The key codes are deemed to have the highest potential to affect outcome related to the quality of life and quality of care and were derived by the licensing agency. The agency may expand on a key code in more detail if a concern is identified.

The agency also adopted a new enforcement philosophy that included the use of sanctions on poor performing providers with an emphasis on correcting problems and improving the providers. The new strategy includes progressive sanctions for providers that are unwilling or unable to improve. The agency noted that it would take “aggressive action against the communities with persistent or serious non-compliance.”

Results

In 2004, the agency identified subgroup of 82 (3%) persistent and repeat offenders. To address the subgroup’s compliance problems a plan was created that focused surveyors’ workloads on the group in a focused enforcement effort. The result was that 68% of the 82 closed (45% due to revocation of license, 25% closed voluntarily,

and 30% changed ownership), 23% are now in good compliance and 9% have remaining issues. Kevin Coughlin, the director of the Bureau of Assisted Living notes that Wisconsin has experienced 31 consecutive years of growth in assisted living. He notes that while the number of beds have increased by 50% in the last eight years, the number of complaints have decreased by 40% (see Figure 1). He notes that the decrease in complaints occurred at a time the agency made it easier for the public to lodge complaints via a 1-800 number complaint line.



(Coughlin, 2010)

Figure 1. Wisconsin Assisted Living Facility Complaint Trends

The agency also found that the new system has helped to streamline workflow, create efficiencies, and significantly reduce a backlog of complaints. The agency has also been much faster responding to serious complaints and is exceeding initial license processing deadlines. Some of the other benefits the agency notes are improved

collaboration, an increased sense of ownership by surveyors for industry improvement, and an increase in respectful relationships.

Overall, agency staff felt the new system is "very effective" at encouraging compliance due to the comprehensiveness of the review, provision of technical assistance and the progressive enforcement sanctions.

In a 2010 post-licensing visit survey of 71 providers, almost 94% were satisfied with the survey tasks. Additionally, respondents rated inspectors on a five-point Likert scale from 1 (strongly disagree) to 5 (strongly agree) found inspectors to be: 1) knowledgeable (4.52), 2) professional (4.63), and 3) respectful (4.65) (Coughlin, 2010).

Looking Forward

Agency staff report that a new program has been initiated with the Wisconsin Coalition for Collaborative Excellence in Assisted Living (WCCEAL) that would allow the state's best performing facilities to implement an association-approved self-improvement program aimed at improving quality. The agency plans to study the effectiveness of the approach with the assistance of the University of Madison, which is developing the infrastructure (i.e., Quality Indicators).

Case Study: Virginia's Risk Matrix

The Commonwealth of Virginia, Department of Social Services, Division of Licensing Programs protects children and vulnerable adults in day and residential care settings. It operates eight licensing offices statewide and has jurisdiction over children's

programs and adult care programs. The division is also responsible for conducting background investigations.

A Call for Consistency

In 1998, The Virginia Joint Legislative Audit and Review Commission issued a report entitled, “Follow-Up Review of Child Day Care in Virginia.” Among the many recommendations the commission made to improve the oversight of childcare providers, was a recommendation to implement a tool to identify risk. The Commission’s Recommendation 15 read: “The Department of Social Services should develop a risk assessment instrument to identify cases that require either formal enforcement or injunctive relief. This instrument should identify and appropriately weight key health and safety standards as well as statutory provisions.” According to licensing agency officials, Virginia’s licensed providers complained that the criteria used for the renewal of licenses was inconsistent across the state. As a result, the agency implemented a risk-based system based on objective data.

Risk Assessment Matrix

Virginia’s “risk assessment matrix” is a tool designed to assign appropriate enforcement interventions in a consistent manner based on two criteria: the potential or actual occurrence of harm and the potential or actual severity of harm resulting from the violation. The matrix includes nine different combinations of letters (A-C) and numbers (1-3) that correspond to progressive levels of risk. A C-3 level violation is when harm is imminent or has occurred causing extreme harm. A -1 level violation is when harm is not

likely to occur, but possibly exists and could or did cause minor harm. Depending on the letter and number combination assigned, the following enforcement options must be considered: Consultation (A-1, A-2, and A-3), Intermediate Sections (A-3, B-1, C-1, B-2), and Revocation/Denial (B-2, B-3, C-2, C-3). Additionally, the risk assessment matrix is used to create statewide benchmarks that determine whether the licensee receives a renewal of its license for a little as six months up to three years.

All facilities receive a comprehensive visit, however some license types receive inspections where the inspectors evaluate a specified percentage of the regulations (i.e., 50%) during the first licensing visit and the remaining portion of regulations are reviewed during subsequent visits.

Results

The inspection protocol was first implemented in the childcare setting and was expanded into the adult programs two years ago. According to Steven Lambert, the Associate Director of Adult Services and Enforcement at the Division of Licensing Programs, the process encourages compliance and the single protocol has reduced frustration among providers and encouraged cooperation. The agency also reported that there have been some transition issues, but the approach has marginally helped with managing inspectors' workloads.

Conclusion

This chapter highlighted the specific practices state licensing agencies have implemented to narrow the focus of regulatory enforcement and build efficiency and

consistency. None of the states included in this study cited budgetary constraints as a primary motivating factor for implementation of any of the reforms. However, most cited the reason for change was to ensure equity and efficiency. In some states the change was imitated internally in an effort to be innovative in other states external forces prompted the change. The next chapter will provide the final conclusions and recommendations for California.

Chapter 5

SUMMARY AND RECOMMENDATIONS

This study seeks to develop a better understanding of the fundamentals of regulatory inspection practices, including the effects of changing from comprehensive inspections to key-indicator inspections, methods or tools states used to carry out inspections, tools available to help assess risk, and possible lessons for California. While this study does not answer all these questions definitively, it provides details on states' use of risk-based approaches and differential monitoring of licensed facilities. This chapter will discuss these concepts in greater detail and will conclude with four recommendations for California and suggestions for future research.

California's Current System

California's current inspection protocol requires a comprehensive inspection of licensed facilities at least once every five years. Facilities may receive more frequent visits under the following circumstances: 1) if the licensee is on probation, 2) if the licensee is under a plan of correction, 3) if there is an accusation pending against the licensee, 4) if annual visits are a condition of federal funds, and 5) in order to verify that a person who is ordered out of the facility is no longer present. There is no specific tool or checklist used to focus visits and high performing facilities receive the same level of review as the low performing facilities. While California's licensing agency offers consultative enforcement and progressive discipline through its plans of correction, it does not offer specific incentives for good compliance, such as less frequent inspections

or informal recognition of excellence. California's inspection methodology is reactive due to its heavy reliance on complaint driven enforcement and low frequency of contact with licensees. California could also benefit from a more standardized enforcement system, such as Virginia's, that enhances predictability. Currently, California does not have a matrix of enforcement choices to levy on licensees that violate regulations. Rather, it relies on training of its inspectors to approach enforcement sanctions in a consistent manner.

Summary

Comprehensive inspections are a common approach to evaluate the compliance of human service agencies. This method requires inspectors to evaluate the facility on all applicable rules, regulations, and laws. In California, these regulations are quite lengthy and some contain over 100 sections each containing multiple requirements. Several states have adopted a key-indicator approach, which extracts key code sections from the entire body of regulations to use as an abbreviated evaluation tool. States that have implemented the key-indicator approach as part of a comprehensive risk-assessment system have documented efficiencies and program improvement. According to the relevant literature and industry best practices, this risk-based approach should be adopted for human services licensing agencies.

Architects of this approach require that key indicator regulations correlate to risk-based measures such as the level of compliance or outcomes. Key indicators are not simply the top most frequently cited regulations or a subjective list of regulations that

agency staff feel are the most important. Rather, the approach uses statistical methods to develop a menu of regulations that represent the highest risk to clients if violated. Two states that have used this approach (Wisconsin and Pennsylvania) and report that it has helped to lighten staff workloads, enabling staff to focus on factors that more directly threaten client health and safety. However, neither state applied the key-indicator inspection to all facilities. Instead, this approach is reserved for interim inspections or for facilities with good compliance history. Most importantly, the key-indicator inspection is part of a broader system that included risk mitigation strategies, imposing progressive sanctions, and providing ample technical assistance. The states that have implemented this approach have not found any significant trends that would indicate decreased quality in the facilities that receive the key-indicator visits.

The case studies revealed approaches in two states, Texas and Virginia, which help to assess risk and maintain consistency in enforcement actions. Consistency and predictability promote compliance. The Texas Weighted Risk Review System uses an algorithm to determine risk at inspected facilities, which allows agency staff to focus resources effectively and target follow-up inspections. The system also provides consistency by calculating enforcement recommendations according to preset criteria. The Risk Matrix used in Virginia also provides consistency and predictability on the levying of citations. Virginia's also uses their risk-based system to renew licenses. Licenses expire annually, biennially, or triennially and are renewed for shorter or longer intervals based on compliance history. Those facilities with poor compliance receive a

provisional license and are under much greater scrutiny. Better performing facilities are issued a three-year license.

Recommendations for California

The four states in this study have universally adopted a risk-based monitoring approach using formalized methods. However, California's approach has not been formalized to the degree seen in the case study states. Additionally, California does not practice differential monitoring techniques that would allow the agency to divert its focus from high performing facilities to poorer performers. The state should exercise caution not to implement any single component of risk-based or differential monitoring in isolation expecting similar results. Key indicator visit tools should be crafted based on compliance data and implemented as part of a holistic risk-based oversight approach using multiple measures.

The case studies included in the research shed light on how four states have recently introduced changes in licensing inspection systems. While this research is not exhaustive and some of the specific measures adopted in other states may not be appropriate for California, the following broad recommendations can be thought of as guidelines to base policy discussions. The ingredients for a successful enforcement system are based on the appropriate application of best practices, academic research, and knowledge from the field. The following proposals represent a mix of all these elements and should be considered by those seeking to modernize and streamline California's licensing inspection system:

Recommendation 1. Inspect facilities with a frequency and intensity tied to level of compliance and anticipated risk to clientele.

The academic literature and recent trends in government oversight support a move toward directing fewer resources on inspecting high performing licensees to place more focused emphasis on improving or removing poorly performing licensees. The concept of focusing on “the worst first” has provided large organizations such as OSHA as well as states in this case study analysis with new found efficiencies by allowing licensing staff to direct their efforts at low performing facilities. The efforts can be directed at rehabilitation or removal of chronic low performers from the industry as necessary. Initial findings from states that have devoted less time to high performing facilities have not experienced any significant trends in those facilities falling out of compliance. High performing facilities can view less frequent inspections as a reward, which ought to encourage continued compliance. After the implementation of this approach in Wisconsin, trends suggest an improvement in quality. For the last eight years, Wisconsin has experienced growth in its assisted living facilities, at the same time the number of complaints have decreased by 40%. Industry best practices recommend at least two visits per year for all facilities (NARA, 2009). However, given the budgetary realities facing California this would be the gold standard and something to which California could aspire to reach.

Recommendation 2. Consider implementation of a system that employs multiple enforcement strategies that includes incentives for compliance and meaningful sanctions against those found in habitual non-compliance.

Much of the academic literature is devoted to the discussion of regulatory agencies striking an appropriate balance of “carrots” to entice compliance and “sticks” to punish violations. A collaborative approach that allows the licensing agency to bargain for compliance is a rational approach and may be more cost effective in promoting compliance. Additionally, the literature suggests an integrative approach, where state agencies can use mixed methods to gain compliance. The tools that regulators use include: 1) expire licenses with renewals based on compliance, 2) progressive enforcement sanctions, 3) technical assistance for providers, and 4) abbreviated inspections for facilities with good compliance history. Wisconsin reported that it will be implementing a system that will offer incentives to providers that implement a Quality Improvement (QI) program that has been developed by provider associations and approved by the bureau. Other options may include incorporating accreditation agencies to share the regulatory burden. It was also frequently noted that the key indicator approach should not be implemented in isolation. Key indicator visits should be a component of a larger set of tools to manage staff time and ensure compliance. Human services agencies are good candidates on which the state might seek to place a moral obligation on compliance. As the previous studies have shown performing out of a sense of duty or reputation have a positive impact on compliance, Finally, California may also want to revise its penalty system so that its deterrent effects are enhanced.

Recommendation 3. Develop a more modern enforcement system that ensures consistency at all levels throughout the enforcement process.

All states noted that one of the major motivating factors or benefits of the change in licensing protocols was to achieve greater consistency in issuing enforcement actions. Consistency in enforcement appears to be the main motivation and benefit for states adopting key indicator approaches and formalized risk assessment systems. Due to California's large geography with over 300 inspectors, the state could benefit from an approach that provides uniform penalty assessment and enforcement recommendations. A predictable penalty assessment system may reduce appeals and provide for greater efficiency.

Recommendation 4. Adopt a risk-based enforcement philosophy that identified potential problems and assigns resources appropriately.

Although California's data capabilities are somewhat limited compared to the states in the case studies, most states in the case studies were making use of quantitative approaches to achieve greater efficiencies and consistency. This included development of risk indicator systems and focusing resources on poor performing facilities.

Barriers for California

Implementation of risk-based program monitoring or differential enforcement techniques in California faces hurdles on several fronts, which include budgetary, legal, and political. For a budgetary standpoint, the Department of Social Services would need to invest significant funds to improve its data collection capability. The level of detail needed to produce an initial set of key indicator regulations that correlate to high and low

compliance licensees may be beyond current capabilities. Additionally, it is recommended that at least one year of data is gathered which adds additional costs in both administration and data interpretation. The adoption of a new inspection approach may also face legal constraints. Currently, all facilities must be inspected at least once every five years (see Health & Safety Code §1569.11(c)(1)). However, current legislation (AB 419, Mitchell) seeks to change this to an annual inspection frequency with the ability to use “research based, field tested” protocols such as those described under instrument-based program monitoring. Finally, on the political front several consumer organizations have expressed their opposition to initial efforts to move toward a key-indicator approach in California. However, consumer objections are based on the way in which the key indicator inspection protocols would be developed and implemented, not a dispute of the efficacy of such an approach.

Suggestions for Future Research

This study has only initially explored the numerous innovations occurring in state regulatory agencies. As the field moves more toward quantitative and quality indicator approaches, the opportunities for further modification of oversight practices will be achievable. Another aspect worthy of further research is a comparative analysis of the relative regulatory burden on licensed entities across states. It is clear, however, that the states included in this study had varying levels of requirements for licensees. This study did not focus on the number of requirements enforced by each regulatory agency. This

would allow for a better understanding of the regulatory burden across the states and the level of regulations that can best protect health and safety.

Finally, more research is needed on the long-term outcomes of these risk-based monitoring approaches. While some states have been using this approach for many years, the effects on client outcome have not been quantified due to the limited amount of data available. Compliance with the regulatory agency's regulations is an indirect measure of quality. To increase understanding of quality in licensed facilities, actual client outcome data must be collected. This could include the number of hospitalizations (adjusted for risk) in senior facilities, the number of children meeting educational benchmarks in daycare facilities, etc. This study would have benefited from a richer source of data that is currently unavailable in many states (such as electronic sources on client outcomes, enforcement history, etc.).

APPENDICES

APPENDIX A

Data Tables

Table A1

Community Care Licensing Terms and Definitions

Adult Residential Care Facilities (ARFs)	Facilities of any capacity that provide 24-hour, non-medical care for adults ages 18 through 59 who may be physically handicapped, developmentally disabled and/or mentally disabled
Child Care Centers	Also known as Day Care Centers, are usually located in a commercial building and provide non-medical care and supervision to infants and school age children in a group setting for periods of less than 24 hours.
Continuing Care Retirement Communities (CCRCs)	Facilities that provide a continuum of care as appropriate for the individuals from independent living through skilled nursing care through an agreement between the resident (age 60 years or older) and the provider. The contract provides a ranch of services on year or longer in exchange for a payment, which usually includes an entrance and monthly fee.
Crisis Nursery	Facilities that provide short-term, 24-hour non-medical residential care and supervision for children under six years of age, who are either: (A) Voluntarily placed by a parent or legal guardian due to a family crisis or a stressful situation, for no more than 30 days, or (B) Temporarily placed by the county child welfare services agency for no more than 14 days, unless the Department issues an exception.
Family Child Care Homes	Licenseses that offer care in their own homes and reflect a home-like environment where non-medical care and supervision is provided for periods of less than 24 hours. Categorized as Small Family Child Care Homes (no more than 8 children) and Large Family Child Care Homes (no more than 14 children).
Foster Family Home (FFH)	Provide 24-hour care and supervision in the licensee's family residence for no more than six children. Care is provided to children who are mentally disabled, developmentally disabled, or physically handicapped, children who have been removed from their home because of neglect or abuse, and children who require special health care needs and supervision as a result of such disabilities.

Table A1 continued

Group Homes	Facilities of any capacity and provide 24-hour non-medical care and supervision to children in a structured environment. Group Homes provide social, psychological, and behavioral programs for troubled youths.
Residential Care Facilities for the Chronically Ill (RCFCIs)	Facilities with a maximum licensed capacity of 25 adults who have HIV/AIDS
Residential Care Facilities for the Elderly (RCFEs)	Facilities that provide care, supervision, and assistance with activities of daily living, such as bathing and grooming, in facilities from six beds or fewer to over 100 beds to persons 60 years of age and over and persons under 60 with compatible needs. RCFEs are also known as assisted living facilities, retirement homes, and board and care homes.
Social Rehabilitation Facilitations	Facilities that provide 24-hour, non-medical guidance or counseling and supervision in a group setting to adults recovering from mental illness.
Small Family Homes (SFH)	Provide 24-hour-a-day care in the licensee's family residence for six or fewer children who are mentally disabled, developmentally disabled, or physically handicapped, and who require special care and supervision as a result of such disabilities.
Transitional Housing Placement Program	Provides care and supervision for children at least 16 years of age participating in an independent living arrangement.

California Department of Social Services, n.d.; Darwin, 2007)

Table A2

State Survey Frequency & Methodology for Residential Care Facilities for the Elderly

State	Regular Inspection Interval	Method of Inspection
Alabama	Every 18 Months	Scored system that assigns a green, yellow, or red designation. Protocol used that focuses on admission and retention related criteria
Alaska	Annually (Two-Year Licenses)	Checklist based on regulatory requirements
Arizona	Annually	Checklist based on the regulations
Arkansas	Twice a year (Licenses renewed annually)	Protocol based on regulatory requirements
California	Every Five Years	Comprehensive survey with use of a manual (Evaluator's Manual) based on all applicable regulations
Colorado	Annually for First Two Years of Licensure (Alternate Years in Future if no Serious Problems)	Checklist survey process; Surveyors found that using a checklist meant they focused more on process and paper documentation with less observation and follow-up.
Connecticut	Biennially	Interview-based inspection by RNs with geriatrics experience
District of Columbia	Not available.	Not available.
Delaware	Annually	Facilities must develop and implement internal monitoring and performance systems
Florida	Twice a year for basic assisted living; twice a year for extended or limited nursing care (Two-Year Licenses)	Survey guidelines used at four levels
Georgia	Annually	Interview-based inspection
Hawaii	Two Years (Two-Year Licenses)	Protocol based on regulatory requirements
Idaho	At least annually; Every 3 years if no complaint or deficiency history	Abbreviated survey if qualified (about 25% of facilities)

Table A2 continued

State	Regular Inspection Interval	Method of Inspection
Illinois	Annually	Not enforcement-driven; collaborative sharing of best practices; each facility must have a quality improvement (QI) program
Indiana	Annually	Use a protocol; surveys conducted by RN surveyors
Iowa	Every two years	Protocol used; survey conducted by RN or masters' level sociologist
Kansas	Annually	Comprehensive survey
Kentucky	Annually (Upon initial licensure and annual renewal of license)	Only monitors as a result of complaints
Louisiana	Annually (Upon initial licensure and annual renewal of license)	Protocol used
Maine	Upon license renewal (1 to 2 years based on compliance history)	Interview based on set of questions
Maryland	Not available.	Not available.
Massachusetts	Every two years	Protocol
Michigan	Annually (Two Year Licenses)	Licensing manual and "review tools"
Minnesota	Annually	Comprehensive; licensees with good 2-year compliance history visited less than annually
Mississippi	Annually (One-year licenses)	Handbook
Missouri	Twice a Year	Comprehensive; second inspection may be waived with good compliance history
Montana	Annually, Biannually, or Triennially based on duration of license	Comprehensive
Nebraska	25 percent random sample	Survey protocols
Nevada	Annually	Survey protocols used; full survey if found necessary in the focused survey

Table A2 continued

State	Regular Inspection Interval	Method of Inspection
New Hampshire	Annually	Comprehensive
New Jersey	Annually	Resident profile survey conducted
New Mexico	Not available.	Not available.
New York	Annually (Four year licenses.)	Comprehensive, also summary inspections and partial inspections as necessary
North Carolina	Annually	Comprehensive
North Dakota	Every two years	Comprehensive
Ohio	Every 15 months	Comprehensive
Oklahoma	Every 15 months	Comprehensive
Oregon	Every two years	Comprehensive
Pennsylvania	Annually	Comprehensive
Rhode Island	Annually	Comprehensive; administered by RNs or pharmacy consultants
South Carolina	Annually (Facilities with good compliance history every 3 years)	Checklist used
South Dakota	Annually	Protocol based on regulation
Tennessee	Annually	Guidelines used based on regulations
Texas	Annually	Comprehensive
Utah	Annually (Two-Year License)	Comprehensive
Vermont	Annually	Comprehensive based on internal quality improvement processes
Virginia	One, Two, or Three Years	Computer based standards
Washington	Every 12-15 months	Focused visit
West Virginia	Annually	Comprehensive

Table A2 continued

State	Regular Inspection Interval	Method of Inspection
Wisconsin	Not required	Required to be registered with the state
Wyoming	Annually	One contract employee to conduct comprehensive visits

(Mollica 2006)

Table A3

Results of Interviews with Case Study States

	California	Pennsylvania	Texas	Virginia	Wisconsin
Visit Method	Full (Based on all regulations)	Mixed – Full (using checklist initial or renewal inspections or if one or more violation is found); Partial (Indicator inspection for facilities with good compliance history)	Mixed – Full (upon initial licensing), Partial (focusing on specific portions of regulations), Key Indicator (based on patterns derived from weighted algorithm); Checklists (as needed for specific topics)	Full (Based on all regulations)	Mixed – Full, Partial, Initial,
Notice	Unannounced (Except for new licensees)	Unannounced (Except for new licensees)	Unannounced (Except for initial application and foster homes)	Unannounced (Except for consultations Technical Assistance)	Unannounced
Frequency	At least once every five years (More frequent to respond to complaints and compliance plan follow up)	At least annually (if poor performance, semi-annually)	At least annually (if poor performance, more frequently)	Varies: At least Annually (Assisted Living), Adult Day (3 times per year), Childcare (twice annually)	Varies: Based on compliance history; at least every two years
Allocation of Workload	50% Fieldwork 18% Orientations 12% Admin & Caseload Mgmt. 10% Administrative Actions 5% Training 5% Other	21% Regular Visits 7% Complaints 50% Investigations 13% Tech Support 6% Travel 3% Other	Childcare 75% Regular Visits 22% Complaints 3% Abuse/Neglect Residential Care 69% Regular Visits 19% Complaints 12% Abuse/Neglect	70% Regular Visits 25% Complaints 5% Tech Support	Unknown.

Table A3 continued

	California	Pennsylvania	Texas	Virginia	Wisconsin
Inspector Education Requirements	Graduation from college with any major (or some work experience) or prior state employment	Bachelor's Degree or equivalent experience and 12 credits of social sciences	Bachelor's Degree	Bachelor's Degree or Master's Degree (RNs for medically fragile)	Registered Nurse required for "Nurse Consultant" category; "Health Services Specials" all have four-year degrees, but no formal requirement
Number of Inspectors	451 FTEs	50 FTEs	260 FTEs Childcare 119 FTEs Residential	71 FTEs Childcare 37 Adult	31 FTEs
Facility to Inspector Ratio	1:182 (2010)	1:27 (2010)	1:76 (2011)	1:72 Childcare 1:17 Adult	1:100 Assisted Living
Inspector Training	Academy program for all new inspectors	New hires must undergo a series of training requirements to satisfy a checklist of areas	Basic Skills Development Program (Investigative Staff Receive Additional Training)	Required training components on medication administration, risk assessment, etc.	Inspector training curriculum provided
Technical Assistance	District office staff available; no formal program; Technical briefs on agency website	Free trainings offered; special coordinators offer technical assistance	Field staff provide onsite assistance, monitored email account for licensees	Provider meetings geared toward technical assistance and program consultants available	Incorporated into survey process, Assisted Living Forums provided, Annual Conference and website
License Renewal	Does not expire (revocable)	Annually for good compliance; six month provisional based on violations	Does not expire (revocable)	Issues 1, 2, or 3 year licenses based on risk assessment tool and type of license	Every two years
Agency Funding	General Fund, Licensing Fees	General Fund and Special Fund	Federal Funding; Some State General Fund	2/3 Federal Funds 1/3 General Funds	General Fund, Licensing Fees, Medicaid Waiver

Table A3 continued

	California	Pennsylvania	Texas	Virginia	Wisconsin
Licensee Trends (Number of Licensed Entities)	Not Reported.	Adult and Senior Care – Slight Decrease in Personal Care Homes	Childcare - Increasing	Childcare – Stable; Adult Residential – Decreasing; Senior Care – Stable; Mental Health - Increasing	Senior Care - Increasing
Number of Facilities	13,991 (Adult & Elderly); 46,329 (Childcare); 5,086 (Children’s Residential); 12,004 (Special); 4,552 (Other); 81,962 Total	1,424 (Personal Care Homes)	25,250 (Childcare Centers)	2,527 (Childcare); 1,800 (Licensed Family Day); 77 (Short-Term Child Day Care); 1 (Family Day); 549 (Assisted Living); 67 (Adult Day Care); Total 5,021	3,281 (Assisted Living)
State Population	36,961,664	12,604,767	25,145,561	7,882,590	5,654,774
% of Population 65+	11.2%	15.4%	10.2%	12.2%	13.5%
% of Population Under 5	7.5%	5.9%	8.4%	6.8%	6.4%
# of age 5+ with a disability (% of population)	5,923,361 (16.0%)	2,111,771 (16.8%)	3,605,542 (14.3%)	1,155,083 (14.7%)	790,917 (14.0%)

APPENDIX B

Case Study Interview Questions for State Licensing Agencies

(Sample)
Conducted by Eric Dowdy
MPPA Candidate
March 2011

Introduction

The purpose of this interview is to better understand the methods states use to conduct licensing inspections of community care facilities, including the prevalence of the key-indicator approach among licensing agencies across the country. Among other things, I will be asking you about how your agency conducts licensing visits, the frequency of visits, your agency's workload, inspector training and workload, and your opinion on how effective the approach has been toward achieving the state's goals of compliance.

The results of this interview will be used as primary source material for my master's thesis in Public Policy and Administration at the California State University, Sacramento. There is no organized interest funding this interview and the thesis will be published and made available in the University Library.

1. How is the licensing visit conducted?

- A comprehensive visit using the full body of regulations (no guide or key indicator used)
- A interview-oriented visit (with or without a formalized structure)
- A guide (or checklist) is used based on a larger set of regulations
- A key-indicator tool is used based on pre-determined criteria (select all the apply):
 - Predictive measures of compliance
 - Top most frequently cited violations
 - Based on a weighted formula

2. Are licensing visits:

- Announced
- Unannounced

3. How frequently are inspections conducted?

- Semi-Annually
- Annually
- Biannually

- Every Three Years
- Every Four Years or More
- Only in response to complaints
- Upon Initial licensure or renewal

4. How is the agency's workload in the field allocated?

- ___% Regularly Scheduled Visits
 ___% Responding to Complaints
 ___% Completing Investigations
 ___% Technical Support
 ___% Other: _____

5. What are the education requirements for inspectors?

- None
- High School Diploma
- Associate's Degree
- Bachelor's Degree (BA, BSW, BSN, etc.)
- Master's Degree (MA, MSW, MSN, etc.)
- Other: _____

6. How many full time equivalents (FTEs) currently conduct licensing inspections?

7. What is each inspector's estimated caseload? ___ (expressed as a ratio)

8. Is there a required training course that newly hired inspectors must complete? (Please describe. What subjects does the course cover?)

9. Does your state have a formal technical assistance program? Please describe its functions.

10. How does the agency involve stakeholders in the licensing visit?

11. How well would you describe the current licensing visit process at encouraging compliance?

12. Many states are having conversations about mechanisms to improve the licensing process. What suggestions are being offered in your state?

13. Does your state allow deferential model approaches such as exemptions from required visits based on provider performance? (For example, does your state exempt

facilities from inspections if no violations are found during a set number of prior inspections?)

14. License renewal: Please describe the process.

- How frequently are licenses renewed?
- What are the criteria for renewal?

15. How are licensing functions funded?

- State General Fund Only
- Licensee supported (Revenue Neutral)
- Special Fund
- Federal Funds
- Private Funds
- Other: _____

16. What are the trends in the number of licensees regulated by your agency?

Child Care: ___Increasing, ___Stable, ___Decreasing
 Adult Residential: ___Increasing, ___Stable, ___Decreasing
 Senior Care: ___Increasing, ___Stable, ___Decreasing
 Other: _____ ___Increasing, ___Stable, ___Decreasing

17. Are there any new initiatives planned that will impact in the way the agency conducts its licensing inspections?

18. What types of technology are used to assist in licensing inspections? (e.g. Laptops, PDAs, iPads, GPS)

19. If you have had experience with other forms of licensing inspections, how would you compare the current approach with others? Have you seen any differences in compliance?

20. Do you have any final thoughts?

-END-

APPENDIX C

Consent to Participate in Research

Introduction: You are being asked to participate in research conducted by Eric Dowdy as a thesis requirement for the Master of Public Policy and Administration program at California State University, Sacramento.

Purpose of the research: I am conducting research on how state agencies conduct licensing inspection visits of community care facilities in order to evaluate the appropriate approach for California.

Funding for the research: This research will be funded in its entirety by the researcher.

Research Procedures: The research involves a review of state law, regulations, survey from providers, and personal interviews with state agency staff. During the interview, you will be asked about your experiences, opinions and suggestions as they relate to the inspection process and its outcomes. The interview will require up to 30 minutes of your time.

Compensation: You will not receive compensation for participating in this study.

Benefits: It is the hope of the researcher that the results of this study will help the stakeholders better understand the methods used by state agencies to conduct licensing inspections. Careful analysis and sharing of information of all state activity could reduce the overall expenditures and or increase the quality of regulation of these types of licensed settings. The results may help policymakers, regulators, and stakeholders make informed public policy decisions.

Risks Involved: The research will be published as a thesis and may be publicly accessible in digital or print formats. You may decline to answer any question if you wish. Your participation in the interview is entirely voluntary. Please refer to the section "Confidentiality" for information about risks associated with making public statements.

Confidentiality: Everything you say in the interview will remain confidential unless you grant explicit permission to be identified by name and/or organization in the final report. Please make your request known at the start of the interview and check the appropriate box below. You may change your request at any time during or after the interview.

"I wish to be identified by name in the written research report."

"I request that my name not be disclosed, but consent to being identified as a representative of the organization I represent. I consent to particular quotes from the interview to be attributed to my organization. I acknowledge that given the small number of people being interviewed, it may be possible for readers of the thesis to infer my identity even if I am not identified by name."

"I request that nothing I say be publicly attributed to me, my employer, or clients I represent. However, I acknowledge that given the small number of people being interviewed, it may be possible for readers of the thesis to infer my identity even if I am not identified by name."

Privacy and Conflicts of Interest: I am currently employed as Associate Director of Public Policy for Aging Services of California and the Managing Director of AgeTech California. Aging Services of California is a 501(3) that represents nonprofit providers of senior living services across the spectrum of care, including: affordable senior housing, assisted living, skilled nursing and continuing care. However, I am conducting this research mainly in my capacity as a master's degree candidate. All notes and/or transcripts of the interview will not be shared with anyone, including my current employers. Additionally, I will not share interview notes or transcripts with my academic advisors, listed below.

Contact Information: If you have any questions about this research, you may contact me at (530) 400-1978 or cedowdy@alumni.ucdavis.edu or you may contact my primary academic advisors in the Department of Public Policy and Administration at California State University, Sacramento.

William Leach, Assistant Professor, (310) 270-8202, wdleach@csus.edu
Robert Wassmer, Professor & Chair, (916) 278-6304, rwassme@csus.edu

Your participation in this research is entirely voluntary and you may withdraw from participation at any time. Your signature below indicates that you have read this consent form and agree to participate in the research.

Signature of Participant

Date

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