

Letter Report

**Matching Addresses of
Registered Sex Offenders
and Child Care Providers**

September 2009



Legislative Audit Bureau

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STATE OF WISCONSIN

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Janice Mueller
State Auditor

September 23, 2009

Senator Kathleen Vinehout and
Representative Peter Barca, Co-chairpersons
Joint Legislative Audit Committee
State Capitol
Madison, Wisconsin 53702

Dear Senator Vinehout and Representative Barca:

Earlier this year, the Joint Legislative Audit Committee directed this office to conduct a comprehensive audit of the State's child care subsidy program, Wisconsin Shares, which is administered by the Department of Children and Families (DCF). Our June 2009 letter report on the first phase of that audit identified numerous eligibility, wage verification, and record-keeping problems and estimated that, as a result, \$22.5 million in improper subsidy payments had been made in 2008. Our evaluation of the overall effectiveness of child care regulation is ongoing, but we are writing at this time to disclose a serious problem we discovered during the course of our work.

In July 2009, we began to compare the addresses of registered sex offenders to addresses for the sites at which all licensed and certified child care providers care for children. We subsequently found four matches. DCF and the Department of Corrections (DOC), which maintains Wisconsin's Sex Offender Registry, were notified immediately and have confirmed the accuracy of the matches we found in electronic records. They are continuing to follow up and at this point believe that no child was harmed as a result of the situations we identified. However, we could not independently determine whether registered sex offenders had ever been present while care was being provided, and unless procedures are implemented to ensure similar situations do not occur in the future, such a potential will exist.

In response to our findings, DCF issued a memorandum on August 25, 2009, directing state licensing and county certification staff to search an electronic database of registered sex offenders for anyone who applies for licensure or certification as a child care provider.

Our work on sex offender data matches is complete, but we are continuing to compare DCF's information on child care providers, their employees, and other household members with both criminal records maintained by the Wisconsin Department of Justice and records of substantiated cases of child abuse or neglect maintained by DCF. If necessary, we will report our findings separately upon completion of our analyses. We expect that the entire child care regulation evaluation will be completed in December 2009.

We appreciate the courtesy and cooperation of DCF and DOC in completing this analysis.

Sincerely,

Janice Mueller
State Auditor

JM/KW/kc

Enclosure

MATCHING ADDRESSES OF REGISTERED SEX OFFENDERS AND CHILD CARE PROVIDERS

As part of our ongoing evaluation of the effectiveness of child care regulation in Wisconsin, we compared the most recently reported home address of each registered sex offender in Wisconsin with the addresses at which all active licensed and certified child care providers, including those who participate in the State's child care assistance program, provide care. We conducted this analysis to determine whether current safeguards are sufficient to ensure the safety and well-being of children in regulated child care.

The child care assistance program, Wisconsin Shares, is administered by the Department of Children and Families (DCF), which also regulates some child care providers. Other providers are regulated by counties and tribal governments under rules promulgated by DCF. Under contracts with DCF, counties and tribal governments are also responsible for day-to-day management of the Wisconsin Shares program, which includes authorizing the number of children for whom individual providers are eligible to provide care and processing provider payments.

Provider Regulation

Child care providers may be either licensed or certified:

- *Licensed providers* are regulated by DCF.
- *Certified providers* are regulated by county and tribal agencies.

DCF regulates two types of licensed providers:

- *Licensed family providers* may care for up to eight children at a time, either in their own homes or in child care centers located outside of their homes.
- *Licensed group providers* are typically larger entities that may care for nine or more children at a time, typically in a child care center outside the provider's home.

Certified providers may care for up to six children at a time. They typically do so in their own homes.

Requirements for Background Checks

The county and tribal agencies that regulate certified providers are required by s. 48.685, Wis. Stats., to conduct a comprehensive background check for anyone who applies for certification. Likewise, s. 48.685, Wis. Stats., requires DCF to conduct a comprehensive

background check for anyone applying to be a licensed provider. Providers are required to renew their licenses or certifications every two years. Every four years, the state or local government agencies responsible for regulating child care providers are again required to complete background checks.

As part of both the application process and the renewal process, all providers are required by administrative rule to collect background disclosure forms from their employees and any other household members, including a spouse, other family members, and persons older than ten who reside at the site where child care is provided. DCF and the county and tribal agencies with regulatory responsibility for child care are required to conduct background checks for household members, while providers are required to conduct background checks for their employees.

Section 48.685(2)(am), Wis. Stats., requires that DCF, county and tribal agencies, and child care providers review the following sources of information when conducting background checks:

- criminal histories from the records maintained by the Wisconsin Department of Justice (DOJ);
- findings against individuals in the nurse registry, as described in s. 146.40, Wis. Stats., and maintained by the Department of Health Services (DHS);
- information regarding individuals' professional credentials, which is maintained by the Department of Regulation and Licensing;
- substantiated reports of child abuse or neglect maintained by DCF; and
- information concerning the denial of an applicant's or provider's license or certification, or denial of an individual's employment or residency at a provider location.

Prohibitions Related to Criminal Background

An applicant who has been convicted of any of the serious crimes listed in s. 48.685(1)(c), Wis. Stats., and shown in the appendix, is generally prohibited from becoming a child care provider, and providers are generally prohibited from employing persons convicted of any of these crimes. However, statutes permit DCF and county or tribal regulatory agencies to allow such an individual to provide care, to be employed by a provider, or to reside in the home if he or she has been rehabilitated. DHS makes rehabilitation decisions related to licensed providers; county and tribal regulatory agencies make rehabilitation decisions related to certified providers.

Among the felonies listed in s. 48.685(1)(c), Wis. Stats., are sexual offenses against both adults and children. These offenses are also listed in s. 301.45, Wis. Stats., which requires the Department of Corrections (DOC) to maintain a registry of sex offenders. Wisconsin's Sex

Offender Registry includes individuals who remain under supervision for a period of 15 years following either conviction or the termination of probation or parole, as well as those under supervision for the remainder of their lives. The period for which an individual remains a registered sex offender depends on the nature of the offense.

Analysis of the Sex Offender Registry and Provider Addresses

Registered sex offenders are required by Wisconsin Statutes to notify DOC periodically of their current address and place of employment, and DOC contacts them to verify this information. Statutes prohibit DOC from publishing any information concerning a juvenile who is required to register or from otherwise making that information generally available. However, statutes grant the Legislative Audit Bureau access to all records maintained by state agencies, and DOC provided us with electronic data reflecting juvenile registrants as of August 2009.

We compared the most recently reported home addresses of all registered sex offenders, including adult offenders as of July 17, 2009, and those who were adjudicated as juveniles as of August 19, 2009, to child care site addresses provided to DCF by all active licensed and certified providers, including those participating in Wisconsin Shares. Upon completion of our analyses, we immediately notified DCF and DOC. DCF immediately contacted its own licensing staff and county staff with regulatory responsibility.

We took several steps to be reasonably assured that our analyses did not incorrectly include or exclude either child care providers or registered sex offenders. However, it is possible for an offender to be excluded if his or her offense was committed in another state and the offender failed to register in Wisconsin, or if the address information of DCF or DOC is not current.

Our efforts identified four matches:

- The child care site address of a licensed family provider in Milwaukee County, which is her home address, matched the address of an adult convicted of third-degree sexual assault. DOC indicated to us that the provider and the offender had resided in the same building but in different units, and the offender's whereabouts are now unknown. Milwaukee County currently authorizes the provider to care for 22 children in the Wisconsin Shares program, and she received \$165,600 in program subsidy payments in 2008.
- The child care site address of another licensed family provider in Milwaukee County, which is not her home address, matched the address of an offender adjudicated as a juvenile for second-degree sexual assault of a child. DOC has reported that the whereabouts of this offender are unknown. Milwaukee County currently authorizes the provider to care for 20 children in the Wisconsin Shares program, and she received \$163,500 in program subsidy payments in 2008.

- The child care site address of a certified provider in Racine County, which is her home address, matched the address of her adult son who was convicted of second-degree sexual assault of a child. The county suspended the provider's certification until it determined that the offender did not reside in the home, and DOC verified that the offender currently resides elsewhere. The provider is currently authorized to care for three children in the Wisconsin Shares program, and she received \$23,600 in program subsidy payments in 2008.
- The child care site address of another certified provider in Racine County matched the address of the provider's adult brother who was convicted of third-degree sexual assault. The county suspended the provider's certification until it determined that the offender did not reside in the home, and DOC verified that the offender currently resides elsewhere. The provider remains certified but currently is not providing care for children in the Wisconsin Shares program. In 2008, she received \$7,400 in program subsidy payments.

We did not identify any child care providers who were registered sex offenders. However, it does appear that the two licensed family providers are exceeding their license capacity, which may signal fraud.

Both DCF and DOC have indicated they believe no children were harmed because of the situations we identified. However, we could not independently determine whether the offenders had ever been present while care was being provided. Addresses in the Sex Offender Registry have been corrected for two of the four offenders. DOC continues to seek the whereabouts of the two Milwaukee County offenders.

Current Status of Our Findings

The four sex offenders whose addresses matched those of licensed or certified child care providers were not detected before the time of our review. Although a check of the Sex Offender Registry is not explicitly required by s. 48.685, Wis. Stats., any crime committed in Wisconsin requiring sex offender registration should also appear in criminal history records maintained by DOJ. It is possible that the providers did not collect complete and accurate background information disclosure forms from the offenders, that DCF or the county agency with regulatory responsibility did not complete the required background checks, or that the offenders falsely listed the child care site addresses as their places of residence.

On August 25, 2009, in response to our work, DCF issued a policy requiring that the child care site addresses of applicants for licensure or certification be compared with the addresses of registered sex offenders. However, as noted, Wisconsin Statutes prohibit DOC from publishing information concerning juvenile offenders. We will continue to monitor implementation of DCF's August 2009 policy requirement as we complete fieldwork for our comprehensive evaluation of child care regulation.

Currently, we are comparing information on licensed and certified child care providers, their employees, and members of their households with criminal records maintained by DOJ and with records of substantiated cases of child abuse and neglect maintained by DCF. If necessary, we will report on these analyses when they are complete.

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Appendix

Serious Crimes Resulting in Denial of a Child Care License or Certification¹

Wis. Stats.	Description
940.01	First-Degree Intentional Homicide
940.02	First-Degree Reckless Homicide
940.03	Felony Murder ²
940.05	Second-Degree Intentional Homicide
940.12	Assisting Suicide
940.19(2),(4),(5),(6)	Battery, Substantial Battery, Aggravated Battery
940.19(3), 1999 stats.	Substantial Battery
940.22(2),(3)	Sexual Exploitation by a Therapist
940.225(1),(2),(3)	1st, 2nd, or 3rd Degree Sexual Assault
940.285(2)	Abuse of an Individual at Risk
940.29	Abuse of Residents of Penal Facilities
940.295	Abuse/Neglect of Patients and Residents
940.302(2)	Human Trafficking
948.02(1),(2)	1st or 2nd Degree Sexual Assault of a Child
948.025	Repeated Sexual Assault of the Same Child
948.03(2)	Physical Abuse of a Child
948.05	Sexual Exploitation of a Child
948.051	Trafficking of a Child
948.055	Causing a Child to View or Listen to Sexual Activity
948.06	Incest with a Child
948.07	Child Enticement
948.08	Soliciting a Child for Prostitution
948.085	Sexual Assault of a Child in Substitute Care
948.11(2)(a),(2)(am)	Exposing a Child to Harmful Material or Harmful Descriptions or Narrations
948.12	Possession of Child Pornography
948.13	Child Sex Offender Working with Children
948.21(1)	Child Neglect
948.30	Child Abduction
948.53	Child Unattended in Child Care Vehicle

¹ The definition of serious crimes also includes violations of the laws of any other state that would be a violation of one of the Wisconsin statutes listed if committed in Wisconsin.

² Defined as murder committed while committing or attempting to commit other specified crimes.