



**DEPARTMENT OF
HUMAN SERVICES**

Regulatory Infrastructure of Licensed Child Care

DHS Licensing Division, February 9, 2021

Child care regulatory system

- Licensure ensures the health, safety, and well-being of children in care
- Licensors monitor 4 categories of requirements:
 - Health, safety, ratio, and others
 - Training
 - Physical/Facility Standards
 - Background study
- Many of the requirements for licensed child care providers are listed in:
 - 245A & Rule 2 (chapter 9502) – Family Child Care
 - 245A & Rule 3 (chapter 9503) – Child Care Centers

Who needs a license?

- An individual who intends to care for children from more than one unrelated family must obtain a license
- Both child care centers and family child care programs must be licensed according to Minnesota Statutes, Chapter 245A.
- In general, child care centers are in an out-of-home location, caring for larger numbers of children.
- Family child care is generally provided in the caregiver's home with no more than 14 children cared for at any one time.

Certified License-Exempt Child Care Centers

- A program that is exempt from licensure under section [245A.03, subdivision 2](#), paragraph (a), clause (5), (11) to (13), (15), (18), or (26), and is authorized to receive child care assistance payments under chapter 119B, must be a certified license-exempt child care center.
- Examples include:
 - programs operated by a public school for children 33 months or older;
 - programs operated by a private school; YMCA; YWCA; or JCC, whose primary purpose is to provide child care or services to school-age children;
 - programs for children such as scouting, boys clubs, girls clubs, and sports and art programs, and nonresidential programs for children provided for a cumulative total of less than 30 days in any 12-month period.

Certified License-Exempt Child Care Centers

- These programs are required to meet certain health and safety standards, appropriate to the setting and children being served, and have staff obtain background studies, in order to be eligible to serve families on the Child Care Assistance Program.
- There were 583 programs certified as of 1/1/2021
- These programs receive an annual inspection.
- The standards were developed with input from stakeholders and passed into law in 2017 with other licensing changes related to the Federal Child Care Development Fund Reauthorization Act of 2014.

Licensed child care regulation – A partially delegated system

- **Child Care Centers** are directly licensed by the Department of Human Services

- Licenses are issued directly by DHS
- DHS licensors perform inspections and visits
- There were 1,752 licensed centers as of 1/1/2021

- **Family Child Care** is licensed through a delegated system in partnership with counties (245A.16)

- DHS licenses family child care providers based on the recommendation of counties
- County licensors perform inspections and visits
- Counties recommend sanctions to be issued by DHS
- There were 7,212 licensed FCC providers as of 1/1/2021.



Health & Safety, Including Group Size and Ratios

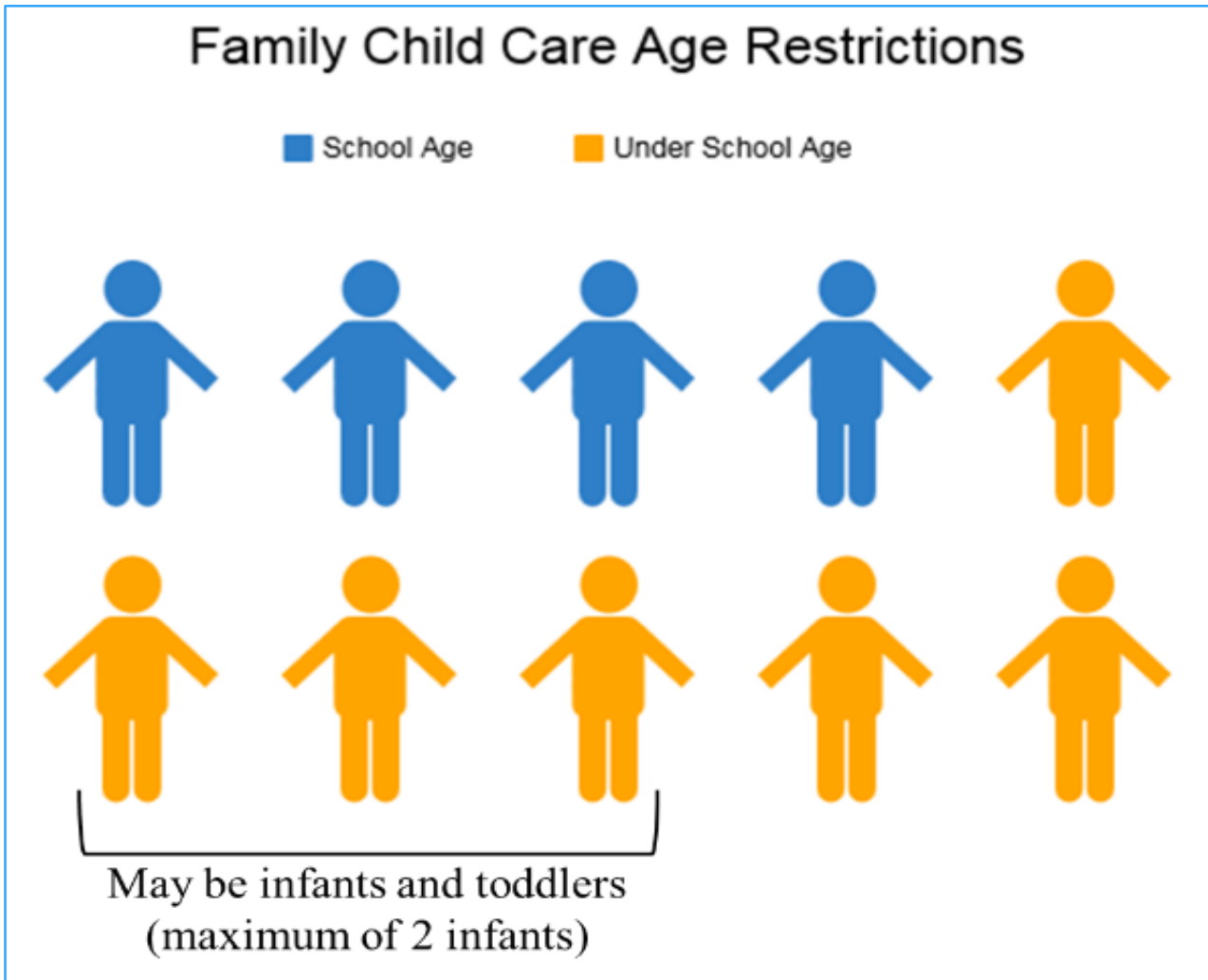
Required health and safety standards

- *Prevention and control of infectious diseases (including immunization)*
- *Prevention of sudden infant death syndrome and use of safe sleep practices*
- *Administration of medication, consistent with standards for parental consent*
- *Prevention and response to emergencies due to food and allergic reactions*
- *Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic*
- *Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment*
- *Emergency preparedness and response planning for emergencies resulting from a natural disaster or a man-caused event (such as violence at a child care facility),*
- *Handling and storage of hazardous materials and the appropriate disposal of biocontaminants*
- *Appropriate precautions in transporting children (if applicable)*
- *Pediatric first-aid and CPR*
- *Recognition and reporting of child abuse and neglect*

Group Size & Ratio Restrictions

- *Staff-to-child ratios, group sizes, and age distributions* for licensed child care settings are critical to ensuring a minimum level of safety, supervision, and quality
- Staff-to-child ratio and group size requirements vary for child care centers and family child care and are based on the age of children in care

Family Child Care – Ratio & Group Size



- Minnesota offers 7 classes of family child care licenses to offer flexibility to providers on the type of care they wish to provide
- The license holder is the primary caregiver (limited exceptions)
- Child to adult ratios, maximum capacity, and age restrictions vary across family child care license classes
- Most common is 1 caregiver and capacity for 10

In family child care, of the non-school-age children, 3 may be infants and toddlers with a maximum of 2 infants.

Child Care Center licensed capacity

Age Category	Minimum Staff:Child Ratio	Maximum Group Size
Infant (6 weeks-16 months)	1:4	8
Toddler (16-33 months)	1:7	14
Preschooler (33 months-before Kindergarten)	1:10	20
School-age child (Kindergarten-12 years old)	1:15	30



Caregiver Training and Qualifications

Caregiver qualifications and training

- Minnesota law and rule requires child care center staff and caregivers in family child care programs to meet certain qualifications, depending on the caregiver's role
- These specifications may include credentialing, education requirements, experience requirements and requisite training.
- A **child care center** must have the appropriate number of staff qualified as teachers, assistant teachers and aides based on the number of children in each age group.
- In **family child care programs**, all caregivers must undergo training each year, and the programs that are licensed to care for more than 10 children require caregivers to have additional experience or education.



Physical Standards for Licensed Child Care

Physical standards

- Child Care Centers and Family Child Care homes must meet certain physical plant standards to ensure that children are safe while in care. Requirements include:
 - ✓ Fire marshal inspection (if necessary) and compliance with building codes
 - ✓ Cleanliness and maintenance
 - ✓ Crib inspections
 - ✓ Equipment specifications
 - ✓ Water temperature and safety
 - ✓ Electrical appliance safety
 - ✓ Restricting access to toxic or dangerous items



Background Study Requirements

Licensed child care background study requirements: Who needs a background study?

Most background studies are fingerprint-based and require state and national criminal record check.

Minnesota Statutes, Chapter 245C requires background studies for the following people:

- 1) The person or persons applying for a license; owners and “controlling individuals”
- 2) An individual age 13 and over living in the household where the licensed program will be provided (minors ages 13-17 are name and date-of-birth studies)
- 3) Current or prospective employees or contractors of the applicant who will have direct contact with persons served by the facility, agency, or program;
- 4) Volunteers or student volunteers who will have direct contact with persons served by the program to provide program services if the contact is not under the continuous, direct supervision by an individual listed in clause 1) or 3);
- 5) An individual who, without providing direct contact services at a licensed program, may have unsupervised access to children or vulnerable adults receiving services from a program, when the commissioner has reasonable cause.



Licensing inspections &
enforcement mechanisms

Licensing inspections

- Licensors conduct annual, unannounced inspections of licensed child care programs
- Until 2018, these reviews occurred every two years for licensed family child care providers and approximately every 2-3 years for licensed centers. State law now requires annual inspections to comply with recent federal changes to the Child Care and Development Fund Block Grant.
- Licensors review the licensed space, and providers' policies, procedures, and records for compliance

Child care centers: NEW “Early and Often” Unit

- Funded by the 2019 Legislature - response to the OLA reports on CCAP fraud
- Provides earlier technical assistance to new programs and ensures earlier program integrity oversight than in the past
- New centers will receive multiple visits from their licensor during their first year of operation, approximately quarterly
- First licensing visit will be an announced technical assistance visit and will occur approximately 3 months from time of licensure
 - DHS started the first round of these visits last February (2020)
- Subsequent licensing visits will be unannounced
 - If there are violations, a correction order can be issued or another action can be taken

Non-compliance with licensing requirements

- If a provider is out of compliance with licensing standards, DHS and/or county licensors have several options depending upon the nature, severity and chronicity of the violation
- These options range from simply being ordered to come into compliance, via a fix-it ticket or correction order, to licensing actions that have financial penalties or put the provider's license in jeopardy.

Licensing enforcement mechanisms

Fix-it tickets

- Issued for a **set list** of violations that do not imminently endanger the health, safety, or rights of children
- Can be corrected in short order (within 48 hours)
- List is set by the Commissioner
- Fix-it tickets are not posted on DHS' website

Correction orders

- Issued for violations that do not imminently endanger the health, safety, or rights of children
- Issued if a program is out of compliance with one or more standards on the date of a review
- **In most cases, correction orders are not paired with fines or more serious licensing actions**

Licensing enforcement mechanisms

Fines	<ul style="list-style-type: none">• The department may assess fines to providers for licensing violations, including child maltreatment.• Fines for each finding of maltreatment range from \$1,000 to \$5,000, depending on severity. Fines for other licensing violations range from \$100 to \$200.
Conditional licenses	<ul style="list-style-type: none">• The department may make a provider's license conditional when providers need to take additional and ongoing steps to remedy more serious or chronic violations, and comply with all other licensing requirements to keep their license.• Licensors monitor and provide technical assistance to help providers with conditional licenses.
Temporary immediate suspensions	<ul style="list-style-type: none">• The department requires providers to stop operating immediately if it determines that there is an imminent risk of harm to children's health, safety, or rights.
Suspensions	<ul style="list-style-type: none">• On occasion, usually following the issuance of a temporary immediate suspension when an investigation is ongoing, the department may suspend a provider's license for a longer period than the 90 days allowed for a temporary immediate suspension.• Suspensions prevent providers from caring for children until after the department staff determine that it is safe for a provider to do so.
Revocations	<ul style="list-style-type: none">• The department may take away a license in response to serious or chronic licensing violations.• Providers with a revoked license may not provide services for five years.



Family child care:
Clarification when requirements are disputed

Family child care: Clarification when requirements are disputed

- New requirement from the 2019 Legislature
- A county licensor cannot issue a correction order if a family child care provider disputes or disagrees with the licensor's interpretation of a requirement and submits a request for clarification to DHS
 - Provider must express the dispute during their annual visit or the exit interview following their annual visit
- A family child care provider (who has raised a dispute) has 5 days following the exit interview to submit a written request to DHS requesting clarification on the disputed requirement
- County licensors cannot include the disputed item in a correction order, unless DHS clarifies that it is a violation
 - DHS' Family Child Care Licensing Unit makes a determination for a dispute
 - DHS and county licensors include family child care providers in all correspondence related to the dispute
- Since Fall 2019, there have been more than 7,000 inspections and only 11 requests from providers for clarification (less than .05% of monitoring visits).



Reconsiderations/Appeals

Request for reconsideration: Correction orders and conditional licenses

- If a provider receives a correction order or conditional license, instructions for submitting a reconsideration request are included
- Providers may request reconsideration by sending a written request and supporting information to the OIG Legal Unit
 - Must be submitted within 20 calendar days after receiving the correction order or conditional license
- OIG attorneys conduct a non-judicial, independent review of information from the provider and the licensor

New process in 2019 for FCC request for reconsideration of correction orders: Increases transparency for providers

- After a provider requests reconsideration of a correction order, OIG attorneys reach out to county licensors for clarifying information
 - Licensors consider whether the violation was issued in error and should be rescinded
- Licensor must send DHS information to support their determination that a rule or standard was violated, and must send a copy of that information to the license holder at the same time.
- The license holder has 15 days to submit any final information to DHS to show licensor erred when determining a violation occurred.

Request for reconsideration: Determinations

- OIG attorney determines whether the licenser correctly cited a violation of rule or statute
- OIG attorney makes a determination on behalf of the commissioner, which is final and cannot be appealed

Appeal of licensing actions: Overview

- Providers have a right to appeal:
 - Fines,
 - Revocations,
 - Suspensions, and
 - Temporary immediate suspensions
- An appeal results in a contested case hearing with an administrative law judge at the Office of Administrative Hearings
- If a provider receives a licensing action, plain language instructions for submitting an appeal are included in the notification letter
- Appeals are generally resolved within 90 days

Appeals: Determination

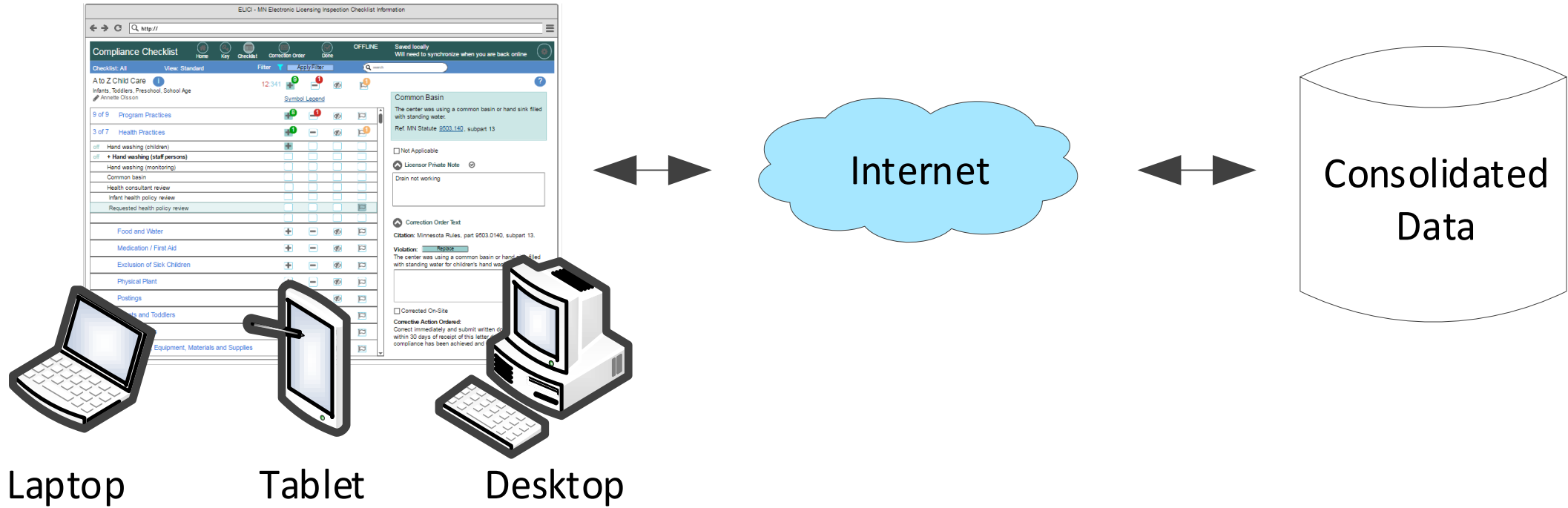
- Based on the information presented during a hearing, the administrative law judge makes a recommendation to the commissioner
- Commissioner considers the recommendation and orders the final action
- Providers can:
 - Accept the commissioner's decision,
 - Enter into a settlement agreement with DHS to resolve the appeal, or
 - Appeal the commissioner's decision in court

Appeals: Commissioner final orders

- Most of the time, Commissioner reviews the record and the ALJ's recommendations and adopts the ALJ recommendation as the final order. However, the Commissioner can deviate from the recommendation based upon the final review.
- The Commissioner's final decision often matches the ALJ recommendation.
 - In CY 2019-2020 there were 41 requests for contested cases for FCC that were completed to final agency decision.
 - The Commissioner's final order differed from the ALJ recommendation in only 3 cases, and 1 of these was more favorable to the provider than the ALJ recommendation.

County Licensors

MN DHS



ELICI, Data Analysis and Licensing Oversight

Family child care: Using data to inform licensing oversight and policy

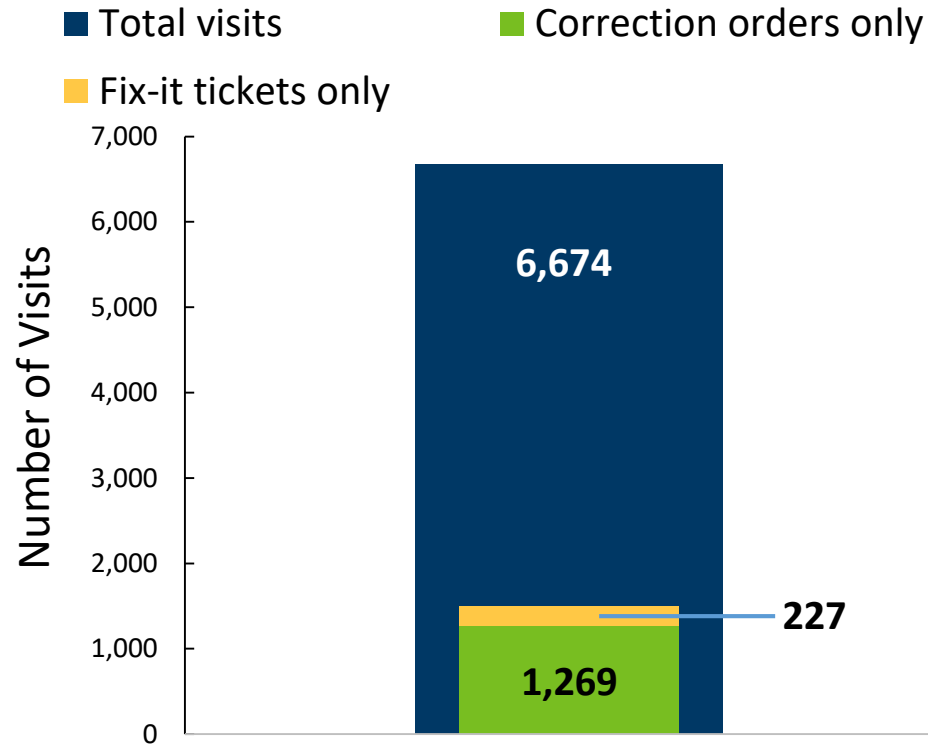
- DHS designed and implemented an Electronic Licensing Inspection Checklist Information (ELICI) tool for county licensors to use
- Ensures a statewide uniform checklist is used and gives DHS information about the results of EVERY family child care licensing visit
- For the first time, DHS can now analyze family child care compliance data to better understand how often providers are being cited, and for which violations
- ***This data will help DHS and counties respond to concerns about “over-regulation” and “inconsistencies among counties” and identify training needs***

Family child care: County-delegated licensing structure

- As a reminder, Minnesota has a county-delegated licensing system for in-home family child care (and foster care) providers
- Until mid-2018, results of visits that did not involve a serious licensing action were not required to be sent to DHS
- Copies of correction orders were kept in paper files or county file management systems
- DHS did not have access to county licensing compliance data and could never determine statewide compliance rates or analyze correction order data

SFY2019 ELICI data: Number of family child care: visits, corrections orders, and fix-it tickets issued

Family child care: Number of visits, correction orders, and fix-it tickets issued, fiscal year 2019

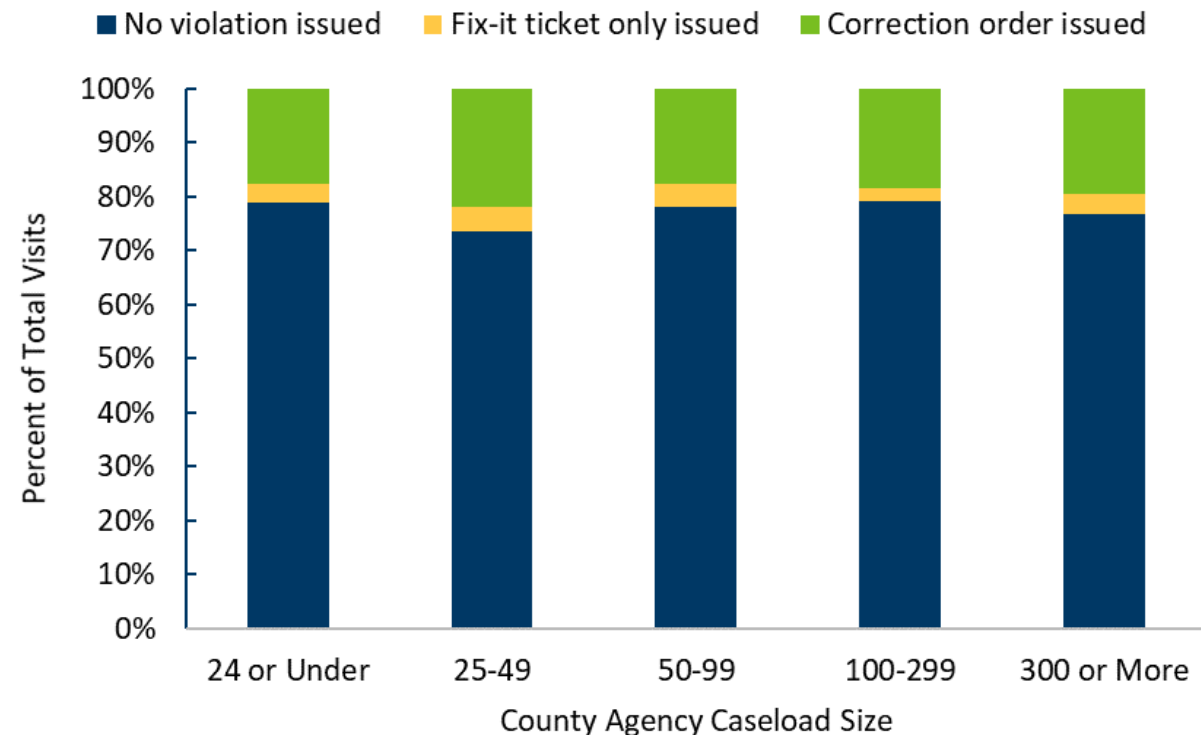


- 80% of family child care annual licensing visits completed during fiscal year 2019 had no violations cited.
- When providers receive a correction order, 65% of the correction orders had only one or two violations.
- Data does not support that most providers are being cited at every visit or for numerous violations

SFY2019 ELICI data: Evaluating consistency among county agencies statewide

- Across counties of all sizes, the percentage of visits with no violations determined closely mirrored the statewide number of 80%.
- This means that, across small, medium and large counties, providers were no more likely to receive a correction order than the statewide average.

Figure 12. Licensed family child care: Annual visit outcomes by county agency caseload size, fiscal year 2019



Increased communication and Implementation Plans

- DHS Licensing Division has increased its communication with child care centers, county licensors and family child care providers.
- Since 2017, the department has emailed and posted on our website detailed implementation plans to providers and county licensors describing how to comply with and monitor the new changes, respectively.
- For most of the new requirements, licensors provided technical assistance to help providers to come into compliance.
- In addition, the department has hosted training sessions, webinars, and other in-person meetings to promote further communication between the department, licensors and providers.



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Questions or comments?