

MINUTES
AUDIT SUBCOMMITTEE
OF THE
LEGISLATIVE MANAGEMENT COMMITTEE

The Audit Subcommittee of the Legislative Management Committee met in Room W110, State Capitol Complex, Salt Lake City, Utah, October 13, 2005, from 3:00 p.m. until 4:30 p.m.

Committee Members Present: Speaker Greg J. Curtis, Co-Chairman
 President John L. Valentine, Co-Chairman
 Senator Mike Dmitrich
Excused Representative Ralph Becker

Legislative Audit Staff: John Schaff, Auditor General
 Rick Coleman, Deputy Auditor General
 Tim Osterstock, Audit Manager
 Darin Underwood, Audit Manager
 James Behunin, Audit Supervisor
 Wayne Kidd, Audit Supervisor
 Aaron Eliason, Lead Auditor
 Danny Schoenfeld, Performance Auditor
 Chris Otto, Performance Auditor
 Leah Blevins, Performance Auditor
 Emily Peterson, Legislative Editor
 David Gibson, IT Auditor
 Lynda Maynard, Recording Secretary

Other Interested Parties: Allen Korhonen, Deputy Director, Dept of Health
 (DOH)
 Dr. Marc Babitz, Director, Div of Health Systems
 Improvement (DOH)
 Donna Thomas, DOH
 Connie Payne, DOH
 Shari Watkins, DOH
 Stephen McDonald, DOH
 Steve Saltzgeber, Director, Dept of Admin Services, Fleet
 Operations
 Kim Christensen, Deputy Director (DAS)
 Kimberlee Willette, DAS
 Sal Petilos, Internal Auditor, DAS
 Lynette Rasmussen, Dept of Workforce Services
 Derek Byrne, Legislative Fiscal Analyst
 Mark Andrews, Policy Analyst, OLRGC

Charlene & Jerry Catania, Adventure Center, Inc.
Bill Echols, The Training Junction
Kent Godfrey, State Auditors Office
Dee Larsen, Assoc General Counsel, OLRGC
Angie Welling, *Deseret Morning News*
Kirsten Stewart, *Salt Lake Tribune*
Matt Carham, *Salt Lake Tribune*

1. Call to Order

Speaker Curtis called the meeting to order at 3:00 p.m.

2. Approval of Minutes

Senator Dmitrich made a motion that the minutes from the July 14th meeting be approved. The motion passed.

3a. A Performance Audit of the Bureau of Child Care Licensing

(Report #2005-11)

Presented by James Behunin, Audit Supervisor

Some of the practices of the Bureau of Child Care Licensing (BCCL) do not comply with either the law or administrative rules. Although prohibited by state law, the BCCL is granting child care licenses and residential certificates to individuals who have been convicted of serious crimes. In addition, the BCCL has granted rule variances without meeting the required criteria.

While most of Utah's child care providers believe the state's regulations are fair, we found a few rules that appear to be too harsh and should be reconsidered. In addition, we are concerned about the inconsistent practices we observed among the licensing specialists. While at times inconsistency leads to overly strict enforcement, at other times it leads to overly lenient enforcement. We also found inconsistencies in how the agency handles administrative appeals.

This report offers several recommendations that, if followed, will allow the Department of Health to provide better oversight of the Bureau of Child Care Licensing and bring greater consistency to the process of regulating Utah's child care providers.

Serious Criminal Offenders Providing Child Care. According to state law, serious criminal offenders may not provide child care and may not reside in homes where child care is provided. Contrary to the law, some exemptions from the rules have been granted without the consent of the

Executive Director of the Department of Health. One exemption was granted to a provider whose husband was a criminal offender. He later abused a child in his wife's care.

Rule Variances Have Been Granted Inappropriately. A child care center may be granted a variance from certain licensing requirements only when the rule does not apply to the provider or when the rule's intent is met through different means. However, we found that 57 percent of the variances granted to child care centers and 59 percent of those granted to in-home child care providers do not meet either of these criteria.

1. We recommend that the Bureau of Child Care Licensing comply with **Utah Code 26-39-107** and deny a child care license to any criminal offender who either by rule or law is not allowed to have one.
2. We recommend that the Bureau of Child Care Licensing obtain the approval of the Executive Director of the Department of Health before granting a license to misdemeanor offenders who, according to the law, must receive special approval.
3. We recommend that the Legislature amend **Utah Code 26-39-107** to clearly state that the criminal background requirements apply to all residents of a home where child care is provided.
4. We recommend that the Bureau of Child Care Licensing grant rule variances only for reasons specified in Utah Administrative Rules.

We found that most of the requirements for a child care license in Utah are not overly burdensome to child care providers. As required by statute, the BCCL has tried to balance the benefit of each rule with the burden it places on the child care industry. However, a few rules appear to be too restrictive and should be reevaluated.

Most of Utah's Rules Are Justifiable. Based on our analysis of rules and our survey of providers, we feel Utah's child care rules are justifiable. In general, we did not find significant differences between Utah's child care rules and the rules of other states. In addition, most center providers we surveyed told us that Utah's rules are fair and necessary.

A Few Rules Need to Be Reevaluated. We did find a few of Utah's rules that appear to be more restrictive than those required in other states. Specifically, the rules regarding annual health assessments, playground cushioning, training hours, food handler permits, posting of daily activity plans, and room temperature should be reevaluated. The BCCL needs to review each of these rules to ensure that the benefit of the regulation outweighs the cost it imposes on child care centers. In addition, the child Care Licensing Advisory Committee should be consulted when reevaluating the rules.

1. We recommend that the Bureau of Child Care Licensing seek the advice of the Child Care Licensing Advisory Committee when reexamining the state's child care licensing rules, including those specifically mentioned in this chapter, in order to determine the extent to which each rule represents a minimum health and safety standard while balancing the benefits with the burdens.

While we do not think that overly strict enforcement is a widespread problem at the BCCL, inconsistency of licensing staff is a major concern. This lack of consistency suggests that the Department of Health needs to have greater control over the BCCL's enforcement practices.

Survey of Providers Points to Inconsistent Enforcement. A survey of randomly selected child care providers indicates that enforcement of the rules is not heavy-handed but that it is inconsistent. We asked the directors of 51 child care centers how they would describe the licensing specialists who have visited their facilities. Most said that the staff is fair and helpful, but about a quarter of the providers said that licensing specialists are too strict. When we asked questions regarding the consistency of enforcement, 43 percent of those surveyed said they observed inconsistent practices among child care licensing specialists.

Enforcement Records Reveal Inconsistency. Further investigation into licensing specialists' records revealed large discrepancies in the average number of citations issued by licensing specialists. One licensing specialist issues an average of 10.3 citations during each inspection, while another issues only 3.5 citations per visit. Furthermore, only about half of the "high-harm" violations were being cited in accordance to the new enforcement policy. When asked how they would respond to specific hypothetical rule violations, licensing specialists gave differing responses.

The BCCL Needs to Provide Better Direction. The licensing specialists do not have a clear understanding of their agency's mission. In addition, the staff do not always follow a consistent procedure for inspecting child care facilities. In order to provide staff with the guidance they need to do their work correctly, the Bureau of Child Care Licensing needs to clarify the agency's mission statement and provide staff training on how to enforce the rules.

1. We recommend that the Bureau of Child Care Licensing create and follow a mission statement that conforms to, and does not exceed, the purpose of the bureau as set forth in **Utah Code 26-39-104(1)(a)**.
2. We recommend that the Bureau of Child Care Licensing formally adopt new enforcement procedures before they are implemented.
3. We recommend that the Bureau of Child Care Licensing provide licensing staff more extensive training on what constitutes a rule violation.

Providers who wish to appeal an agency decision are not treated in a consistent manner. The Bureau of Child Care Licensing needs to develop a consistent process for handling both the informal hearings before agency staff and the more formal adjudicative proceedings before administrative law judges.

Guidelines for Informal Review Needed. We have two concerns regarding the informal reviews that are held for providers who wish to appeal agency decisions. First, since there are no policies or procedures, those who conduct the informal reviews are not using a consistent approach in how they handle a provider's appeal. Second, the practice of treating informal reviews as plea bargains and requiring providers to give up their rights to adjudicative proceedings is questionable.

Rules for Adjudicative Proceedings Should be Clarified. As with informal reviews, adjudicative proceedings also need a clearly defined set of procedures in order to provide due process. The

term “due process” implies that a consistent and orderly procedure is followed when making decisions that affect people. It also implies that those who administer the process have enough independence from the investigation to provide a fair review of the agency’s action. We found that adjudicative proceedings are not guided by clear rules when they are converted to informal hearings and that hearing officers may not be as independent as they should be.

1. We recommend that the Bureau of Child Care Licensing develop policies and procedures to guide staff and hearing officers during the process of conducting informal reviews and administrative proceedings.
2. We recommend that the Bureau of Child Care Licensing give information to providers that describes the bureau’s administrative appeal process so they can understand their rights and how their appeals will be handled by the agency.
3. We recommend that the Bureau of Child Care Licensing amend Administrative Rule R430-30 to clarify what procedures apply when a hearing is converted to an informal proceeding.
4. We recommend that the Bureau of Child Care Licensing take steps to assure a separation between its investigative and prosecutorial functions and its adjudicatory function. Specifically, the hearing officer should be appointed by an agency head who is not involved with either the prosecution or the investigation of the case before that hearing office.

Discussion following presentation:

Allen Korhonen, Deputy Director, Utah Department of Health (DOH), thanked the audit team, adding that because these issues are contentious, the department appreciates the insight and also appreciated the reference to the administrative Rules hearings made by Senator Dmitrich, and the agreements that came from them.

Mr. Korhonen emphasized the need to stabilize the Child Care Licensing process and to enforce the program, which is high on their priority list. UDHO has already implemented many changes that are consistent with what needs to be done to improve the administrative program and appreciated that the audit identified not only the strengths but the weaknesses that need to be addressed.

Dr. Marc Babitz, Director, Division of Health Systems Improvement, Department of Health, acknowledged that the report recognizes weaknesses in the Child Care Licensing program, thereby presenting an opportunity for the Department to strengthen efforts to improve the program. Dr. Babitz also felt that the opportunity to meet with the audit staff to discuss the changes that he has made in the Child Care Licensing program since his recent appointment to this position was productive. Dr. Babitz concluded by telling the Audit Subcommittee that UDOH is committed to fully implement the recommendations made in the audit.

Motion: Senator Dmitrich made a motion that the **Performance Audit of the Bureau of Child Care Licensing** (Report #2005-11) be accepted and referred to the Health & Human Services Interim Committee and the Administrative Rules Review Committee for further action. The motion passed unanimously.

3b. A Performance Audit of the Division of Fleet Operations

(Report #2005-10)

Presented by Aaron Eliason, Lead Auditor

The Department of Administrative Services oversees the administration of the state's motor vehicle fleet through its Division of Fleet Operations (DFO). DFO's administrative duties include purchase of state vehicles, fleet safety and loss prevention, vehicle reassignment and reallocation, and management of the state's daily motor pool (vehicles leased on a daily basis to state agencies). In addition, DFO oversees vehicle maintenance operations, fuel management and dispensing services, and state surplus operations.

As the state's fleet manager, DFO is charged with managing fleet costs. DFO has primarily controlled fleet costs through implementing cost reduction techniques and decreasing the total number of state-maintained vehicles over the last five years. While overall costs have decreased, improvements are still possible in some areas.

Vehicle Information Should Be Monitored More Consistently. Two key elements that are essential for cost-effective fleet management are accurate and timely fleet information, and regular monitoring. While DFO's vehicle information system provides adequate vehicle monitoring data, DFO's assignment of responsibility for entering and maintaining accurate data to agencies has not worked well. It appears that about half of the state agencies and institutions do not consistently use or monitor vehicle information. DFO needs to use its oversight authority more assertively when working with agencies to better monitor state fleet information.

Use of Exception Reports Can Improve. Exception reports are a key control that help identify areas within the state fleet that need to be improved. Exception report monitoring alerts DFO and state agencies of data errors, poor vehicle management, and the inappropriate use of state vehicles. However, it appears that exception reports can be reviewed more closely by state agencies, as surveyed agencies were not aware of over 50 percent of their vehicles that were listed as problematic in exception reports. DFO can better assist agencies in monitoring fleet information by providing consistent exception report notifications, requiring state agencies to review critical vehicle data regularly and report data errors and other vehicle information problems to DFO, and periodically reviewing all exception reports for accuracy.

Take-Home Vehicles Need to Be Tracked and Monitored More Effectively. DFO needs to accurately track take-home vehicle information and monitor the take-home program to ensure that state agencies are complying with state and federal requirements. Some current take-home vehicle assignments appear to be unnecessary for performing job duties as outlined by state policy. The take-home vehicle program is designed to assist state employees in performing their job functions in a manner benefitting the state.

1. We recommend that DFO provide exception reports to state agencies on a monthly basis.
2. We recommend that DFO request state agencies to review exception reports and inform DFO of incorrect vehicle information.
3. We recommend that DFO periodically monitor a sample of vehicle information data to determine if vehicle information is accurate and vehicles are being used appropriately.
4. We recommend that DFO annually monitor take-home vehicles and encourage state agencies to:
 - comply with state and federal requirements, and
 - determine if take-home vehicle assignments are appropriate.

Utah's Fleet Utilization Program Can Be Enhanced. The state's low-mileage vehicles we reviewed, while not achieving optimum utilization, appear to still be necessary because they are either used frequently or are special purpose vehicles that are necessary for specific tasks. Though elimination, in most cases, does not appear to be possible, vehicle rotation would allow more efficient use of the fleet. Rotating vehicles would help DFO sell more vehicles at the optimal time in miles and years.

Management of Utilization Has Improved. DFO has significantly improved state vehicle utilization management and corrected some deficiencies by developing a plan to monitor utilization more effectively. Previously, DFO left much of this monitoring to individual agencies. The division has also created clear minimum utilization standards and has outlined a course of action when vehicles don't meet those standards.

1. We recommend that DFO continue to take ultimate responsibility for vehicle utilization by continuing to monitor the fleet's utilization.
2. We recommend that DFO study the issue of vehicle rotation and, where it is shown to be both feasible and cost-effective, implement a rotation program.
3. We recommend that DFO develop a procedure to find out why vehicles have low miles and require feedback from the agencies to ensure that, if needed, an appropriate change in vehicle use takes place.

Size of Daily Pool Can Be Reduced In Both Vehicles and Locations. DFO's daily pool dispatch locations have at least 40 vehicles that are used principally (90 percent of reservations) by one user agency. These vehicles, if poorly utilized, should be eliminated, while those with high utilization could be transferred from the daily pool to the host agency as monthly rentals. In addition, DFO should consider further consolidation of pool sites to reduce costs and increase utilization.

Further Changes Needed for Daily Pool to Recover Costs. In order to reduce the daily pool deficit, DFO needs to cut costs by reducing vehicles, thus increasing utilization of the remaining vehicles. Data from the first two months of fiscal year 2006 show that costs are still not being recovered even after the new rental rate increases. Although these changes should eliminate \$300,000 of the existing \$490,000 deficit, a \$190,000 deficit will remain if nothing more is done. The daily pool's fiscal year 2006 goals of cost recovery and increased fleet utilization do not appear to be possible without reducing vehicles. Each of these goals affects the other, and the key for DFO is to find the proper balance of utilization and cost recovery.

1. We recommend that DFO, in the case of well-utilized daily pool vehicles used principally by one agency, assign the vehicles to that agency on a monthly lease basis.
2. We recommend that DFO continue to restructure its daily pool by considering the elimination or consolidation of sites that principally serve the host agency. Utilization, proximity to other sites, and operating cost should be part of this consideration.
3. We recommend that DFO annually assess its lease rate/cost recovery program to determine changes necessary to fully recover costs.

Discussion following presentation:

Kim Christensen, Deputy Director, Department of Administrative Services thanked the auditors for their professional handling of the audit and for the positive items identified. Mr. Christensen agreed that there is room for improvement but was thankful there were no egregious problems identified.

Steven Saltzgeber, Director, Division of Fleet Operations (DFO), told the Audit Subcommittee that DFO is still a young division and a work-in-progress. In general, DFO agrees with and concurs with the recommendations and realize they will assist in improving fleet management. DFO also appreciates the recognition of their cost saving initiatives, the value of data from their Fleet Information System and their improvements in vehicle utilization management and fleet monitoring.

Mr. Saltzgeber concluded by saying that,

- DFO will continue its efforts to ensure that only mission critical vehicles remain in the state fleet.
- DFO will work to ensure greater agency accountability by,
 - a. Seeking the cooperation of its customers
 - b. Continue to actively manage the state fleet by creating strategic plans, set policy requirements, include agency documentation for justification of take-home vehicles, monitor utilization, and provide information, assistance and solutions to agencies.
- DFO will, when the circumstance warrant, reduce the number of vehicles by either eliminating vehicles outright or by negotiating transfer of vehicles to agencies showing a need for a monthly lease vehicle.
- DFO will continue to monitor the need for multiple daily pool locations and consolidate when studies indicate that consolidation is warranted.

Motion: President Valentine made a motion that the audit, **A Performance Audit of the Division of Fleet Operations** (Report #2005-10), be accepted and referred to the Government Operations Interim Committee and the Capital Facilities & Administrative

Services Appropriations Subcommittee for further action. The motion passed unanimously.

4. Other Business

John Schaff, Auditor General reported that there were no new audit requests to be presented at this time.

President Valentine made the following motion—

Motion: President Valentine made a motion that the Administrative Office of the Courts be in attendance at the next Audit Subcommittee Meeting to present the findings of their internal audit of Court Recordings System Purchases, Installation, and Maintenance for FY1992-FY2005. Also, that copies of this internal audit be made available to the Audit Subcommittee for their review as soon as possible. The motion passed unanimously.

7. Adjournment

Speaker Curtis adjourned the meeting at 4:30 p.m.