

Catch-22s in Detecting Child Care Fraud:

Fragmented and Illogical System Hinders Department of Education

A report prepared for the Senate Rules Committee

OCTOBER 14, 2010



California Senate Office of
Oversight and Outcomes

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Executive Summary

The state Department of Education's strategy for detecting fraud in its part of the \$1.4 billion CalWORKs child care program relies on a fragmented system in which officials and contractors have little incentive to investigate wrongdoing or recover money that was improperly paid out, the Senate Office of Oversight and Outcomes has found.

Child care has long been seen as integral to moving parents from welfare to work. It was central to the federal welfare overhaul of 1996, which provided money to the states to subsidize child care. Without safe, reliable care, welfare recipients are unlikely to stay on the job or pursue the training and education they need to find work. But as in any government program, child care subsidies are vulnerable to fraud. And each dollar lost to fraud means less money for the great number of needy clients who play by the rules or those on lengthy waiting lists to get child care.

A 2004 report by the federal Government Accountability Office on child care improper payments points out another cost – failure to address fraud “can erode public confidence in and support for these programs.”

In California, CalWORKs child care is split into three stages, overseen by two different departments - Social Services and Education. **Last week, Governor Arnold Schwarzenegger line-item vetoed funding for the third stage. Democratic legislators say they will attempt to restore that money after the inauguration of a new governor.** The Department of Education uses 86 local contractors to assess the eligibility of clients and pay child care providers.

Many claims have been made about the extent of fraud in child care subsidies, which consist of federal and state money. In fact, it is difficult or impossible to measure. Proving fraud involves compiling substantial evidence of dishonest intent. This painstaking procedure generally is done only in criminal cases, and this report makes no attempt to quantify the problem.

Instead, our investigation found that the current system amounts to a merry go-round of disincentives in which those who oversee the program would rather not know about fraud or feel powerless to address it. A federal official characterized it as “Don’t ask, don’t tell.”

Among our findings:

- District attorneys and the Department of Education disagree about who should pay to prosecute criminal fraud cases. The result? Cases go nowhere. District attorneys won’t take cases that involve the part of the program overseen by the Department of Education, representing 63 percent of child care spending, because there is no separate funding source, as there is in the rest of the program, for them to be paid. The district attorneys decline to spend money from their own budgets, saying they must focus on other priorities, such as serious and violent felonies. The Department of Education counters that prosecutors are obliged to go after child care fraud just as they would theft. The department tells contractors to present evidence of fraud to prosecutors. But because of the disagreement about funding, cases are not pursued. “If we don’t have anyone to hand it off to, it’s a break in the system,” said Denyne Kowalewski, executive director of the California Alternative Payment Provider Association.
- A closely related problem is that the Department of Education’s contractors generally cannot call on county fraud investigative units to help them put together cases. Like the district attorneys, these units are paid through the federal welfare block grant and in most cases limit their efforts to the part of the child care program overseen by the Department of Social Services. Without the units’ expertise in surveillance, search warrants and data matching, contractors that administer the later stages of CalWORKs child care find it difficult to put together criminal cases.
- District attorneys do accept cases in a different part of the program overseen by the Department of Social Services. But a survey by the oversight office found that some prosecutors go after fraud far more aggressively than others. A few big counties pursue fraud cases worth millions of dollars, while others said they could recall few if any child care cases in recent years. In some parts of the state, those who would commit fraud face little chance of detection.
- To protect program integrity, the Department of Education relies on annual audits of its contractors to detect administrative errors. This is done by reviewing a random sample of client files to

identify decisions about eligibility and need that failed to comply with statute or regulation and resulted in a payment error. Some contractors' error rates approached 100 percent. The department pushed out a few poor performers and worked with others to reduce errors. But the studies fail to directly address the question of fraud. "Our experience is that the people who are committing fraud turn in the perfect paperwork," one contractor told the oversight office.

- The department has not put in place a regulation that would define fraud as it relates to child care payments or tell contractors how to detect or recover that money. Education officials say they fear that identifying improper payments would trigger a federal requirement to return the federal portion of the child care money, even if the state has never recovered it. Yet the federal government has never made such a demand of any state. Meanwhile, the lack of a regulation leaves child care contractors without the authority to recoup improper payments, leaving them susceptible to challenges when they try to recover funds. Department of Education officials do not track fraud prosecutions or the amount of misspent money identified or recovered by contractors.
- In 2007 and 2008, the department passed regulations to tighten controls on the child care program. But it declined to act on others that have been proposed on subjects such as provider site visits, citing the potential cost and liability concerns. In some areas, regulatory gaps leave contractors to decide what practices to put in place. The result has been variability in contractors' fraud controls, with some following "best practices" that others don't. Compared to some other states, California does little to exploit the possibilities of data-matching as a means to detect fraud.

We make several recommendations. Because the most cost-effective strategy is preventing fraud from happening in the first place, we suggest that the Legislature require the Department of Education to reconsider random, unannounced visits of child care providers to assure that children are present at the times claimed. We also suggest that the Legislature consider a pilot program funding fraud investigators for the part of the program administered by Department of Education to help put together cases. If the program proved cost effective, it could be extended statewide. The state should also launch a coordinated effort to change federal policy to allow the child care program to retain the improper payments it recovers.

Rooting out fraud should not take up all the resources of the agencies that oversee the child care program or divert them from their primary mission, said Theresa Corrigan, director of client services at Child Action, a Sacramento non-profit that serves as one of the state's contractors.

At the same time, Corrigan says her agency goes beyond the rules now in place in an effort to detect fraud.

"We think it's the right thing to do," she said. "We have a limited pot of money – it should go to the people who need it, not to the wrong people. We have a fiduciary responsibility to the state that we take very seriously."

Background

A year after Congress overhauled welfare in 1996, California responded with legislation to implement a comprehensive new program to move people from welfare to work. Parents on welfare would need child care so that they could work or attend classes or job training. Among many other provisions, the 1997 CalWORKs legislation defined how the state would use money from a federal child care block grant to provide this care.

At the time, two state departments oversaw an array of subsidized child care. The Department of Social Services operated eight programs for welfare recipients. The Department of Education ran programs for the working poor. Some of these, overseen by contractors known as Alternative Payment Providers, let parents choose care through centers, family day care or providers exempt from state licensing requirements.

The two departments had different outlooks on child care. Social Services tended to focus on the parent, seeing child care as a means to allow its clients to enter the workforce or get vocational training. The Department of Education, by contrast, viewed it as a chance to enhance early childhood development.

Rather than hand over authority for the new, consolidated child care program to one of the two departments, the Legislature and Gov. Pete Wilson compromised. They split the program into three stages. The first, for those in the first six months of receiving aid and who were not yet in a stable work situation, would be overseen by the Department of Social Services. These were clients who needed to line up child care immediately so that they could embark on welfare-to-work activities.

The other two stages were the responsibility of the Department of Education, which was presumed to be better equipped to guide parents into quality child care. Stage 2 included families deemed to have reached financial stability, either still on cash aid or within two years of leaving it. Stage 3, part of the larger child care subsidy program for the working poor, was for those who continued to qualify for child care after

leaving Stage 2. Eighty-six “alternative payment providers” administered payments to providers under contract with the Department of Education. Throughout this report, these organizations, many of which are non-profits, are referred to as “contractors.”

Part of the impetus for the three-stage system was to make sure that former welfare recipients with jobs wouldn’t run out of child care subsidies and return to public aid. That problem had vexed officials during the state’s earlier attempts to implement a welfare-to-work program.

The new child care program was funded by three main sources: the state general fund, the federal child care block grant, and the federal welfare block grant, Temporary Aid for Needy Families. By the 2009-10 fiscal year, the combined budget for all three stages had reached \$1.4 billion. That figure included \$547 million for Stage 1, \$476 million for Stage 2 and \$412 million for Stage 3. About 185,000 children were enrolled in CalWORKs child care.

Fraud Not the Original Focus

With its goal of quality child care and a seamless transition between stages for clients, the original legislation did not focus on the potential for fraud.

The Department of Education took on the responsibility for larger and far more complex child care programs than those it had overseen since the mid-1970s, which added up to only \$153 million. The department lacked the regulations and procedures to handle the dramatically increased caseload, including what to do about fraud and unintentional overpayments.

In a 2005 report, the department wrote that the flexibility that had worked well before the 1996 welfare overhaul “was not always compatible with a statewide program serving cash-aid and former cash-aid recipients. In addition, the unprecedented growth in clients, providers and revenue had created internal control issues for many agencies.” In 2007 and 2008, the department put in place regulations to address some of these gaps.

California is one of only two states that made its department of education the lead agency for administering federal child care money, according to 2009 data from the National Child Care Information and Technical Assistance Center. Most used their department of health and social services, with a few giving responsibility to employment departments or separate agencies created just for the purpose of running early childhood services. At the same time, California’s Department of Social Services maintained a significant role. The result was a complex and at times

confusing bureaucracy in which practices varied between stages. The Department of Social Services, for instance, pays for fraud investigations that have long been a part of federal welfare programs. The Department of Education does not.

Some aspects of California's program make it unusually vulnerable to fraud. From the start, the CalWORKs child care program allowed parents to choose license-exempt care – a provider, often caring for children in a home, not subject to state licensing. California was not unusual in this regard. But the state did choose to pay these providers at the highest rates in the U.S. It is not surprising, then, that California has a high proportion of license-exempt providers.

This phenomenon is relevant to any discussion of fraud, because those who administer the program believe that license-exempt care is more prone to improper payments. A 2000 survey by RAND of alternative payment providers – the Department of Education's contractors – found that all were very or somewhat concerned about fraud among license-exempt providers, compared to only 29 percent that felt that way about licensed family care. A 2004 report by the General Accounting Office found that officials in several states were concerned about the difficulties of keeping tabs on license-exempt providers.

It wasn't just insiders who worried about the program's vulnerability to fraud. Starting around 2004, child care fraud became a hot topic, with media reports about big cases in Los Angeles and the release of a highly critical report by the Los Angeles County Grand Jury. The Los Angeles District Attorney's Office was particularly vocal in calling for reforms. Others, including contractors and program advocates, countered that fraud losses were minimal, and that fixating on those rare cases would divert resources and create an aura of suspicion.

Neither side could know the real extent of fraud, a crime that must be proven in individual cases by gathering substantial evidence of intent. Still, in 2004, Gov. Arnold Schwarzenegger and the Legislature discussed ways to curb the potential for fraud, particularly in the stages overseen by the Department of Education, which historically had not regulated social welfare programs. The May revision that year called for \$3.1 million for fraud investigators in Stage 2 and 3, to begin to match the funding that had long been available to the county welfare offices overseeing Stage 1 child care. But the state changed course at the last minute of that year's budget negotiations. Instead of funding investigators, the budget directed the Department of Education to do new reviews of its contractors to try to reduce the number of administrative errors, whether the result of honest mistakes or fraud.

The state has directed the department to continue those studies every year since, focusing on minimizing improper payments rather than funding investigations and prosecutions that district attorneys decline to pursue on their own. At the same time, on the county level, some district attorneys have gone after child care fraud aggressively.

Types of Child Care Fraud

Fraud can take many forms, according to an informal survey by the oversight office of the state's largest district attorney's offices.

One type of case involves fathers falsely reported as being absent when they are living in the home and legally required to care for their children. In Sacramento, a father created a false identity and was being paid as a provider, defrauding the program of almost \$100,000. Fresno County prosecuted a \$50,000 case involving a parent and a provider who failed to disclose that they were married.

A complex case in Santa Clara County involved two women and a man, all living together. One of the women had two children with the man, but reported that the father of the children was absent. The other woman, who was married to the man, was listed as the child care provider even though she was in school full-time. Later, the man himself was listed as the provider, despite being the father. The Department of Education's contractor failed to notice that the person who wrote child support checks had the same name as the provider and shared an address with the mother. The total amount of fraud was \$64,674.

Another type of case is characterized by providers who are not caring for children and parents who fake employment. Although either of these two types of fraud can occur alone, they are more often combined. The parent does not have a job, and so cares for the child herself, but lists a bogus provider, who receives the child care checks and splits the proceeds with the parent.

Some of these cases become large and complex. The Los Angeles District Attorney's Office says it is pursuing cases against one individual responsible for almost \$1.3 million in fraud. About half of that was paid to her as a phony provider, the District Attorney's Office said. She also acted as a fraudulent employer to qualify parents for day care. The case involves 11 different parents and three other bogus providers.

In another Los Angeles case, the district attorney says a man falsely claimed to be employing parents in one of his day care centers while the children were being cared for in another of his facilities, often during off

hours when the rates were highest. In fact, the District Attorney's Office alleges, the parents were not working and the children were not in child care. The man wrote them checks as kickbacks that could be presented as proof of employment. The five cases charging the man and 54 other defendants add up to almost \$2 million in alleged fraud losses.

Other counties reported similar cases in which a provider supposedly hired parents as housekeepers or gardeners and took care of their children. In fact, neither the work nor the day care was occurring. In Fresno County, two parents claimed they were caring for each other's children, when they were just looking after their own. In Santa Clara County, a woman altered her children's birth certificates so that she could enroll them in kindergarten a year early. Even though the children were in school, she listed her brother as a provider and collected child care payments. The brother was working fulltime as a high school teacher and coach.

In the last major category of fraud, a parent makes too much money to qualify for subsidized child care. In Los Angeles, for instance, a woman presented false pay stubs to the Department of Education's contractor showing she made a low, part-time wage. In fact, the woman was working full-time and also being paid by the state as a child care provider to watch her mother's foster children at night.

Although it would be difficult or impossible to quantify the amount of child care fraud statewide, it's clear that it does occur, and that it can add up to significant amounts of money.

The Office of Oversight and Outcomes was asked by Senate Republican staff to look at controls on fraud in the stages overseen by the Department of Education.

To do this, our office reviewed reports and videotapes of hearings on the issue of child care fraud. We surveyed district attorney's offices in the largest counties about the kinds of fraud they encounter, as well as their policies for accepting referrals on Stage 2 and 3 cases. Our office reviewed federal statistics on how California's welfare child care program compares with those in other states. We compared recommendations for regulations to improve controls on the child care program with the rules that the Department of Education actually put in place. Lastly, our office interviewed department officials, contractors, investigators, legislative staff, federal administrators and others.

District Attorneys and County Investigators Do Not Pursue Cases That Involve Child Care Funds Overseen by the Department of Education

The Department of Education tells contractors to report suspected fraud to local district attorneys. Yet, many district attorneys will not accept fraud cases that involve only Department of Education child care funds because prosecutors are not reimbursed for their costs with a dedicated funding stream outside their regular budgets.

In addition, Department of Education child care contractors in general cannot seek help in putting together criminal cases from special investigative units. These units of officers who specialize in public assistance fraud are located in either county welfare offices or district attorneys' offices. They're funded by the Temporary Aid for Needy Families block grant that underwrites Stage 1 child care, leading many officials to conclude that the money should be spent only on those types of cases.

The department spelled out its strategy for dealing with fraud in a 2004 meeting of the Assembly Budget Committee.

"If they (contractors) suspect fraud, we advise them to refer the matter to the local law enforcement agency or to the district attorney's office," the department's Michael Jett told the committee.

That is still the department's position, Greg Hudson, an administrator with the department, told the oversight office. The department advises contractors that they are obligated to report fraud as the victim of a crime.

Yet district attorneys told the oversight office that they generally do not accept those sorts of referrals, unless the cases also involve funds in the Stage 1 part of the program.

Cases Turned Away

Ronda Garcia learned of the limitations of this approach when her agency, Contra Costa County Child Care Council, suspected fraud. One of the parents getting child care services claimed that she was working as an aid in the state In-Home Supportive Services program, said Garcia, the deputy director of programs. The council confirmed her employment, but later found out that she had a second IHSS client and was also working for a separate health services agency. The client had not disclosed these other jobs, which appeared to make her ineligible for the child care she'd been getting for about two years.

When the council sought help from the county welfare department fraud unit, officials said their hands were tied because the fraud was not in the Stage 1 part of the program. The district attorney's office, meanwhile, said that with limited resources, it had to give top priority to Stage 1 cases, Garcia recalled.

Julie Hast, supervising attorney of the DA's public assistance fraud unit, said that her office is funded by Contra Costa's Employment and Human Services Department to handle welfare fraud cases. She has only one part-time investigator, and could not justify using limited resources for a case that did not come from the county welfare department.

Likewise, Barbara Greaver, a supervising district attorney in Tulare County, told the oversight office that her office does not take on Stage 2 and 3 cases, unless they begin in Stage 1. Several years ago, when fraud became an issue, the district attorney's investigations unit provided training for Department of Education staff and pursued several cases. But the department could provide no money, and the investigations ground to a halt.

In Stage 1, Prosecutors Get Paid

District attorneys are more likely to pursue Stage 1 child care cases because the federal government and the state require local governments to use welfare-to-work funds to pay for investigative units to help maintain the integrity of the program. Most county welfare offices also choose to use part of this money to contract with district attorneys to prosecute cases. The federal Child Care Development Fund that underwrites Stage 2 and 3 child care doesn't work that way. Money is not required to be spent on investigations. And overpayments, including fraudulent payments, must in most cases be returned to the federal government.

The state could set aside money for Stage 2 and 3 investigations, but so far has chosen not to. In 2006, Senate Bill 1421 would have set up a two-year, \$1.9 million pilot program in Los Angeles County to pay for investigators and a prosecutor dedicated to Stage 2 and 3 cases, as well as fraud positions for the contractors. Opposed by advocates for the poor and some contractors as a diversion of much-needed resources, it died in committee.

The Department of Education, despite its admonition to contractors to refer cases to district attorneys, concedes in a 2009 report that absent more money from the state, such prosecutions aren't likely to happen. Given the perceived limitations on recovering improper payments, the report states, the more sensible course is for the department to continue to work with contractors to make sure they comply with regulations meant to minimize administrative errors. That category includes both fraud and unintentional overpayments.

But couldn't district attorneys pursue Stage 2 and 3 fraud as part of their normal operations?

In theory, yes. But district attorneys are facing their own fiscal pressures, forcing them to prioritize, Scott Thorpe, chief executive officer of the California District Attorneys Association, told the oversight office. Crimes defined in the Penal Code as violent and serious have to come first, he said. Only the most egregious, high-dollar child care frauds would make the cut.

"It's sad," Thorpe said. "Nobody wants that."

The Department of Education's Hudson argues that district attorneys have an obligation to pursue fraud.

"Fraud is theft – it's just another kind of theft," he said. "It's like kiting bad checks, which they would no doubt go after."

The problem, Hudson said, is that the use of welfare-to-work money to underwrite fraud prosecutions for Stage 1 child care has created the expectation that all child care prosecutions should have outside funding.

Hudson and others involved in administering Stage 2 and 3 child care would like to see the federal rules changed to create an incentive to identify and prosecute fraud. There should be a mechanism that allows district attorneys to "share the wealth" of whatever fraudulent payments they recover, said Denyne Kowalewski, executive director of the California Alternative Payment Provider Association.

Contractors Can't Use Investigators

A closely related problem is the inability of most Stage 2 and 3 contractors to call on the expertise of special investigative units. These units have access to many tools that are beyond the reach of the Department of Education contractors that oversee Stage 2 and 3, according to a 2004 report by Child Action, Inc., a non-profit contractor in Sacramento. Special investigative units can check backgrounds, employment records, and records from other counties. They can visit homes, do surveillance, and work with district attorneys to obtain search warrants for information such as bank records and employment records.

But these units are funded by welfare-to-work block grants that pay for Stage 1 care, and so focus their attention on those types of cases. Some investigators examine Stage 2 and 3 cases to see if they can make a connection to Stage 1, which could justify their involvement. The fraud may have started when the recipient was still under that part of the program, for instance. But for many, it can be difficult to justify delving into cases primarily centered on child care that did not occur when the client was still getting cash aid.

Officials have been aware of the problem of lack of support from prosecutors and investigators at least since 2004. In an Assembly Budget Committee hearing that year, the Department of Social Service's Bruce Wagstaff testified that there was no clear-cut way for Department of Education child care contractors to refer cases to special investigative units.

That year, the May revision of the governor's budget included \$3.1 million to pay for investigators to work on Stage 2 and 3 child care cases. But a last-minute change included in a budget trailer bill cut this money in favor of funding a Department of Education study of administrative errors by its contractors. That study has been repeated every year since, and has become the primary strategy for dealing with improper payments.

Error Rate Studies, Whatever Their Merits, Do Not Necessarily Identify Fraud

Since 2004, much of the state's strategy for assuring child care program integrity has centered on error rate studies rather than direct interventions against potential fraud. While there sometimes may be connections between administrative errors and fraud, the two are more likely to be unrelated. Well-intentioned providers and recipients make innocent mistakes. Likewise, a recipient can engage in fraud that does not lead to an administrative error. All the paperwork may be filed correctly, but consist of fake documents.

"Our experience is that the people who are committing fraud turn in the perfect paperwork," Karen Marlatt, executive director of Valley Oak Children's Services in Chico, told the oversight office.

The Department of Education acknowledges the limitations of error rate studies in detecting fraud. But the reviews can help discourage it, officials say, by getting child care contractors to do a better job of laying out the rules to recipients and documenting eligibility and need for child care.

"It makes it a little more difficult for people who have bad intentions to get in the door to begin with," said the Department of Education's Hudson.

Still, error rate studies do not amount to a direct intervention against fraud. As mentioned above, policymakers at times have chosen to fund error rate studies rather than other possible strategies, such as paying for investigators to put together fraud cases.

Baseline error rates

The idea behind the error rate studies was to establish a baseline for all of the Department of Education's 86 child care contractors. This took longer

than expected. In 2006, the department reported that during the 2006-07 fiscal year, it hoped to complete “nearly all” the contractor reviews. In fact, the baseline reviews weren’t finished until the 2008-09 fiscal year, according to the error report released in June, 2010. The reports were more complex than anticipated, Hudson said. And the department got sidetracked by a requirement to do a similar study for the federal government in response to the Improper Payments Information Act. That study showed that 16 percent of authorizations for payment in California were done improperly, translating to a total of \$196 million.

The state’s own baseline review of its contractors over several years found a 31 percent error rate. Many of these resulted from what the department calls systemic issues – the contractor made the same mistake repeatedly, driving up the error rate. In each rate study, some contractors have approached or reached a 100 percent error rate. Errors are defined as actions that violated statute or regulation and resulted in a monetary miscalculation. Examples include mistakes in calculating a family’s income when determining its fee, or not obtaining enough documentation to assess eligibility for child care. A Sonoma contractor made mistakes in 100 percent of the samples in 2005-06, with counterparts in Ventura and Monterey close behind at 98 percent. The following two years, two separate San Francisco contractors erred in 87 percent of sampled transactions. In 2008-09, a San Bernardino contractor’s error rate was found to be 94 percent.

State Efforts to Reduce Error Rates

Even before the baseline was completed, the department started working with contractors with high error rates to improve their performance. These intensive follow-ups have paid dividends, the department says. A contractor in Ventura County went from a 98 percent error rate to 1 percent. Another, in Riverside, went from 78 percent to 10 percent.

Some did not improve, however. In Los Angeles, the error rate for the Center for Community and Family Services increased from 45 percent to 47 percent. San Diego Health and Human Services, a county office that acts as a child care contractor, saw a more dramatic rise, from 39 percent to 61 percent. The county department has since relinquished its contract. The Los Angeles contractor is scheduled to be reviewed again.

The department has a system for dealing with wayward contractors. Those that show a pattern of failing to comply with regulations can be put on conditional status. The worst can be terminated. In the past year, Hudson said, three contractors –in addition to the San Diego county

office - left the program. One quit after the department initiated formal proceedings. Another withdrew after Hudson interviewed officials about their procedures. A third chose not to continue as a contractor.

Despite the department's claims that the error rate process is working, contractors question whether the effort is worth it and whether apparent successes have led to spotting or stopping fraud.

They say that the error rate studies could be merged with the regular audits the Department of Education had been doing for years. And they question their fairness. They ask how contractors that routinely passed audits in previous years could be running into trouble with the error rate studies. The difference, contractors say, is that the error rate studies dock contractors for minor, inconsequential mistakes.

"I'm not sure the process is bettering the field," said Kowalewski, executive director of the California Alternative Payment Providers Association.

In one example cited by contractors, the Department of Education compares the handwriting on the check-in and check-out times to the signature of the parent to assure that the child care provider is not filling in the times. But contractors consider requirements like that to be micromanagement that indicates little or nothing about program integrity.

"It's not proving fraud of any kind," said Christina Barna, director of Choices for Children in South Lake Tahoe.

The department and some contractors disagree about the necessity for and fairness of error rate studies. What seems clear is that, while they may bolster program integrity, the studies do not constitute a direct response to fraud, and do not allow for the recovery of money that has gone out the door improperly.

District Attorneys' Response to Fraud in all Stages of CalWORKs Child Care Varies Dramatically Across the State

A survey by the oversight office of district attorneys in the dozen or so largest counties found a startling variability in how aggressively prosecutors go after child care fraud in all three stages of the program. It is theoretically possible that fraud occurs more often in some counties than in others. It seems far more likely that fraud occurs at some level throughout the state, but that perpetrators in some areas stand less of a chance of being investigated or prosecuted.

The Los Angeles County District Attorney has a history of going after child care fraud. Active cases as of May involve more than \$4.4 million of child care funds allegedly stolen. In one case alone, five defendants – three providers and two parents – are alleged to have defrauded the child care program of \$1.2 million. Prosecutors say that the defendants were either providers who did not actually care for children or parents who did not qualify for child care because they were not employed or not getting training or education.

In another case, one of the defendants had been listed as the child care provider during years when he was serving time in federal prison. The main defendant is alleged to have recruited parents to say that they were working at one of his day care facilities. Those jobs qualified them for care for their own children. The care was supposedly being provided late at night or early in the morning – times when the rates paid by the state are higher. The district attorney's office says that the parents got kickbacks from the defendant alleged to have organized the ring.

Part of the explanation for the number and size of cases in Los Angeles is simply the county's population. It's home to more than one in four Californians. But some smaller counties have also been aggressive. Sacramento, with less than one-seventh of the population of Los Angeles, closed 10 child care fraud cases in 2009 involving a total of \$380,939. In

the largest of these cases, the suspect enrolled in school and submitted legitimate paperwork, but then dropped out and forged the signatures of her instructors on forms verifying that she was still taking classes. The suspect sent letters on school letterhead she had obtained, and even used a school logo stamp, which turned out to be outdated. The total loss in that case was \$143,580.

In San Diego County, with less than a third of Los Angeles' population, the District Attorney's Office has identified a total of \$2.6 million of fraud between 2005 and 2009 – an average of \$531,000 a year.

Other D.A.s Not as Active

By contrast to those three counties, the San Francisco District Attorney's Office could not cite a recent child care fraud case.

“That kind of stuff we haven't seen in a long time,” said Raymond Fong of the office's fraud unit. Instead, Fong said, the office has focused on another state program, In-Home Supportive Services. Child care fraud “is kind of old-fashioned for us.”

Part of the reason, he said, is that child care cases don't involve enough money to warrant the cost of investigation and prosecution.

“It's the death by a thousand cuts,” he said of the small fraud cases. “It's below the threshold.”

Alameda County was able to cite only two recent cases, although an assistant district attorney said an investigator there is looking into more.

Santa Clara County has prosecuted 16 child care fraud cases in the past several years, covering a total of \$475,000 in losses. The largest - \$140,425 – involved a woman who claimed others were taking care of her children when the father was home and able to care for them. The defendant first qualified for child care by getting a job with the state's child care contractor. When she lost that job, she falsified employment as a home care provider. When the defendant had another child, the state's contractor failed to notice that she handed in paperwork that showed she worked at the same time she was giving birth.

Deputy District Attorney Sylvia Seidel said that for unknown reasons, the number of referrals to the fraud prosecution office dropped off recently.

Seidel, who has since transferred, assumes that the same amount of fraud

was still occurring, but for various reasons wasn't being referred to the DA's office as often.

The number of prosecutions is not necessarily a good indicator of the amount of actual fraud. The high number of child care cases in Los Angeles and Sacramento does not mean that more fraud is occurring there.

In fact, the opposite may be true, a Department of Finance official said in a 2004 hearing of the Assembly Budget Committee.

"If you are prosecuting, word's going to get around that you might get caught..." Lynn Podesto said. "Where there's not as strong an enforcement presence, there might be a lot more (fraud)."

Officials must balance the possible deterrent effect of spending money on fraud detection against using it to provide services to those the program was intended to help. As it is, there is not enough money to go around. There are 194,000 children on waiting lists for subsidized child care, waiting an average of three years for a slot.

The Department of Education has Not Put in Place a Regulation Authorizing Contractors to Recover Improper Payments

The Department of Education has failed to give clear guidance to its contractors on how to identify and collect improper payments, including those that result from fraud.

Under current regulations, contractors are not required to calculate how much a client may have received improperly or to do anything about it. There is no regulation laying out the consequences for those who repeatedly violate program rules.

Despite repeated calls for such regulations, the department is not actively pursuing them.

“We have not moved toward defining fraud or what to do about it,” said Nancy Remley, a department administrator.

The department’s primary reservation is that an overt effort to identify and recover improper payments would trigger a federal requirement to return the money to Washington, D.C. – even if the state never actually got its hands on it. But contractors say they need the regulation to give them authority to recover improper payments.

An official for the federal Administration for Children and Families confirmed that if the state had definite procedures for identifying and tracking down overpayments, it might subject itself to the requirement to return the money. But as long as overpayments never come to the attention of the state, the federal government is unlikely to demand its share.

“It’s kind of like ‘Don’t ask, don’t tell,’” the official, Bob Garcia, told the oversight office.

Local contractors who recover overpayments say that they keep the money and use it to pay for more child care. These transactions never come to the attention of state or federal overseers. If the contractors recover the money after the state has closed out its books with the federal government, Garcia said, “We are perfectly fine with” them keeping the money.

The problem is that contractors have a hard time collecting improper payments because there is no state regulation giving them clear procedures and authority to do so. That’s the catch – the contractors want the very step the state is afraid to take because it might trigger the federal requirement to return the money.

“We have no legal teeth to do anything,” said Karen Marlatt, executive director of Valley Oak Children’s Services in Chico. “All we can do is terminate them (clients) from the program and bill them for what they owe.”

Problem Long Recognized

The illogical situation has been perplexing officials for a decade.

In 1998, the federal government approved a Child Care Development Fund regulation that requires “lead agencies” – in California, the Department of Education – to recover payments that result from fraud. For overpayments that resulted from unintentional errors, the lead agency may choose to pursue the money, but is not required to.

Over the past six years, there have been repeated calls for the Department of Education to write a regulation giving contractors explicit authority and methods for collecting improper payments, including those that resulted from fraud.

In a 2004 hearing of the Assembly Budget Committee on child care fraud, Department of Education official Michael Jett conceded that despite his department’s issuance of a 1994 advisory about how to collect overpayments, “we could have a more structured approach.

“We could provide more guidance to all the local agencies about the kinds of state-of-the-art practices you’re hearing here. More guidance could be provided through specific statutory authority and through the regulatory process to the agencies about what they have to do to spot and respond to overpayments and fraud.”

In a March 2005 “best practices” report done by the Department of Education, the most frequent recommendation from contractors was “the need for statewide consistency in the definition of fraud and the consequences for fraudulent behavior.” Several called for the state to come up with a system for tracking and collecting overpayments.

They expressed frustration at the lack of consequences for those who were caught committing fraud. Even if the Stage 2 and 3 contractor expelled a parent who broke program rules, the parent might simply apply and get accepted as a Stage 1 child care recipient.

In its own best practices report in 2004, Child Action, the Sacramento County contractor, emphasized the need for state guidance.

“We would like to see uniform methods of wage attachment and collections available to programs to increase the possibility of recovery of funds...from both parents and providers,” the report stated.

In its 2005 error rate study, the Department of Education noted that it had no system for punishing those who intentionally violated program rules. In this, child care differs from other public assistance programs such as CalWORKs cash aid. But creating such a system for child care would require a new bureaucracy to give accused parents due process, including administrative law judges and formal hearings. It would require “substantial augmentations” to the department’s budget, the report stated.

Such a step would not necessarily mean reinventing the wheel, however. Both the Department of Social Services and the Office of Administrative Law contract with other departments to run their due process hearings.

Will Feds Demand Money?

In addition to cost, Department of Education officials say they have never acted on the long-recognized problem out of fear that the federal government will demand its share of improper payments, even if the state never recovers the money.

According to the federal regulation, if the state were to recover improper payments in the same federal fiscal year the revenues went out the door, it could keep the money and use it in the child care program. As a practical matter, that’s almost impossible, the department’s Hudson said. The federal government generally doesn’t pay out the money until June. The end of the federal fiscal year is September 30. That would mean, Hudson said, that the state would have to get the money, spend it for child care, discover a fraudulent payment and recover it within the span of three or

four months. Otherwise, the federal portion of the improper payment would have to be returned to the federal government. This process contrasts with Temporary Aid for Needy Families, which allows federal money paid in error to be retained regardless of when it's recovered.

In the child care program, the requirement to pay back the federal share kicks in when the "lead agency" – in California, the Department of Education – identifies improper payments. As a result, Hudson said, it's not in the state's interest to actively look for improper payments, including those that result from fraud. As the department wrote in its improper payments report to the federal government, "Current federal policies provide scant incentive for states to identify improper payments when the immediate result of such efforts is the loss of funding."

Instead, the department stated in a report on overpayments in December 2009, it focuses its attention on curbing administrative errors.

"These efforts are likely to return the greatest value for the funds expended," the department wrote.

It does nothing to monitor fraud prosecutions in the counties. If a court orders a defendant in a fraud case to pay restitution, the money goes to the department, which forwards the federal government its share.

But the state does not track restitution orders. It does not know the amount owed by defendants but never paid. Likewise, the state knows nothing about the improper payments recovered by the local contractors or the number of recipients kicked out for violating program rules. In short, the department believes that, under the current federal regulation, it makes more sense not to know too much about fraud.

This contrasts with the Department of Social Services, which gets regular reports from county welfare offices detailing the number of complaints about fraud, and how many of these were referred to the district attorney's office or handled administratively.

Despite its concerns, the Department of Education has never been forced to return money that it didn't itself recover. Under the Improper Payment Information Act of 2002, the states are required to do periodic estimates of child care funds that have been paid improperly. When the regulations went into effect, California and officials in other states worried that the federal government would demand payment based on these samplings. But the federal government assured the states informally that because the samplings detected erroneous payments and not fraud, the federal regulation requiring the return of money would not apply.

“Are we going to recover those funds?” Garcia told the oversight office. “The answer is no.”

The federal government does not perform its own audits of child care payments. Absent that kind of data, Garcia said, it’s unclear how his office would even get the information that could form the basis of a federal claim. And the federal government is not concerned that contractors are merely reusing the money they recover instead of returning it to Washington. “We’re good with that,” he said.

The Department of Education has long considered a regulation that would tell local contractors how to recover improper payments and, in the case of fraud, spell out consequences. But the state fears – and Garcia acknowledges – that such a move could trigger more scrutiny. Garcia says his office lacks the authority to waive the federal requirements.

“We tell them, ‘That’s the law. We would try to get it changed if we were you,’” Garcia said.

Contractors Efforts Undermined

Until that happens, however, local contractors find themselves without clear legal authority to go after improper payments.

In this muddled state of affairs, some contractors use whatever means they can to recover the money and then use it for more child care, regardless of the complicated calculations about when the funds were disbursed, recovered and so on. Others put the money into a separate account in case state or federal officials should ever ask for it.

But the prospects for recovering money are discouraging, as the Department of Education concedes. “The mechanism for recouping money is fairly limited,” Hudson said.

Contractors can take parents or providers to small claims court, but often the amounts involved exceed the limits for filing, said Theresa Corrigan, director of client services at Child Action, the Sacramento contractor.

The contractor can use a collection agency or send overpayment letters. In the absence of clear authority from the state, these methods have been challenged by legal services non-profits who advise child care clients.

“What we do, in lieu of getting the money, is tell them, ‘You have a debt to Child Action and you can’t come back until you pay the bill,’” Corrigan said. But without a system that gives parents and providers due

process appeal rights, even these modest measures may be built on shaky legal grounds.

And they cost money. Although contractors believe in protecting program integrity, they have little incentive to spend part of their 19 percent in administrative fees to go after fraud – especially considering they have already been paid on money that went out the door.

Contractors say one tool in recovering misspent money is simple persuasion. But it's not easy recovering funds from people whose eligibility for the program is that they don't have much money.

“We have to be realistic about this population,” said Kowalewski, executive director of the contractor's association. “These clients are very low income. Say there's an overpayment. How are we going to get that money back? Fat chance.”

One of the participants in the 2004 Assembly Budget hearing suggested that the state take over the role of recovering overpayments. Javier LaFianza, then the chief operating officer at Crystal Stairs, a contractor in Los Angeles, said recipients who ignore a letter from a contractor might take notice of one from the state.

“There's a different weight people would attribute to that,” he said.

The Department of Education’s New Regulations Did Not Include Some Measures Suggested by the Department Itself and Others

In 2007 and 2008, the Department of Education put in place a number of regulations to tighten up procedures for determining eligibility and need for receiving child care. As mentioned above, the department did not write a regulation defining fraud and detailing how to recoup fraudulent and improper payments, despite repeated calls for such a step. Likewise, the department chose not to pursue some of the regulations it proposed itself in one of the initial error rate studies in 2005. Nor did the department incorporate suggestions that have been made over the years by others familiar with the program.

Without clear direction from the state in some areas, contractors are left to their own internal controls to ensure program integrity. That has led to variability across the state, with some contractors following what they consider to be “best practices” that others do not.

The department embarked on the project of adding new regulations in 2005.

“Our old regs didn’t begin to reflect the reality” of how big and complex the program had become, said Nancy Remley, a department administrator. The prior regulations were vague on subjects such as what counted as income or how to document the number of people in a family.

“They’re very clear now,” Remley said.

But the department did not pursue all the regulations recommended in its 2005 study. One would have required contractors to visit providers at the sites where they had stated they would be caring for children. It also chose not to implement various other regulations proposed in studies and public hearings over the years.

State Criteria for Regulations

The department must exercise discretion before embarking on the time-consuming rule-making process. It has to decide between regulations that can be easily understood and uniformly applied by contractors and those that may be overly constrictive or burdensome.

However, given constraints on the state budget and the desire to curb improper payments, including fraud, some of these measures may merit reconsideration.

In writing regulations, the department tries to be flexible, Hudson said. It would be impossible to make a rule to cover every possible scenario. And a regulation meant to crack down on an abusive practice might also prevent legitimate clients from getting the services they need.

The new regulations are quite clear about specifying what contractors must do to determine clients' eligibility and need for services, Hudson said. Beyond that, the department tells contractors to take reasonable steps to maintain program integrity. If a contractor asks for more information from a client, it must articulate why it needs it. Contractors are told that their actions should not be arbitrary or capricious.

To a large extent, the state must rely on the common sense of the contractors, said Chris Reeve, legislative representative for the department. Ideally, that common sense would be informed by training offered by the department. But keeping up a training program is a challenge during tough budget times, Reeve said. The contractors' association has tried to step in to provide training of its own.

Variable Practices Among Contractors

Many of the contractors are non-profits. As such, they are required to have policies showing how they will comply with auditing standards, including how to prevent administrative errors and fraud. These policies must be approved by the non-profits' boards and can be reviewed by the Department of Education.

Despite the requirement, contractors have leeway in deciding what procedures to adopt to prevent improper payments. In 2005, a Department of Education "best practices" study found variability in local operations.

"There are differences in definitions of fraud, in indicators used by local agencies to identify potentially fraudulent cases, and in operational

standards and practices,” the report stated. “Therefore, procedures viewed by some agencies as ‘best practices’ essential to program integrity went unmentioned by other agencies.”

Two years ago, Child Action surveyed contractors about their internal procedures and found the same thing. For example, forty-one said they required license-exempt providers to come into the office for orientations, face-to-face enrollments or other intake processes. Eight said they did not.

In the same survey, contractors were divided on whether they allowed the person who manages a case to also calculate the child care payment. Some argue that separating these duties can prevent internal fraud. Twenty-five contractors responded that they did not allow the same person to perform both functions. Twenty-nine said they did.

Part of the difference in this and other questions may be explained by the size of the contractor. In some rural areas, contractors simply may not have enough people to split duties, for instance. It’s clear, however, that absent state regulations in some areas, contractors take different approaches to their internal procedures.

The Potential Value of Provider Visits

One of the most controversial proposals over the years has been to require contractors to make random, unannounced visits to the sites where child care is being provided. This step is thought by some to be particularly important in preventing fraud among license-exempt providers. Fake providers have conspired with some parents to improperly claim child care subsidies and split the proceeds. Another proposal was to mandate random, unannounced visits to the recipient’s employer or home during work hours, to make sure the parent is on the job during the hours claimed.

These measures have been endorsed by a number of reports and individuals over the past six years. Among the regulations recommended by the 2005 error rate study was to “require provider visits, contingent on an appropriation for this purpose.”

Evidence suggests that such a measure would reveal questionable cases. In 2005, the Department of Education visited provider sites as part of its error rate study. In 34 percent of the cases, department surveyors were able to verify that the child was there during the hours parents claimed they were. In 17 percent, the child was not present and there was no evidence, such as a cubby bearing a name, that the child had ever been cared for there. In the remainder – 49 percent – a visit could not be

arranged. This may have occurred for various reasons other than fraud. The provider may have declined a visit, for instance, or no one was home at the site, it was in a locked complex, or the surveyors believed the neighborhood was unsafe. But the high percentage of cases in which providers could not be reached raised serious questions about program integrity.

The Department of Education has never repeated the site survey and has not proposed a regulation requiring provider visits. Remley said the department met with interested parties about regulations after issuing the 2005 report. Contractors were adamantly opposed to mandated site visits, she said. They argued it would cost too much, add to workload and possibly jeopardize the safety of workers, creating liability potential. They were wary of creating an atmosphere of suspicion.

Child Action's Corrigan said the site visit proposal doesn't pass a cost-benefit analysis. Among the costs: untrained workers might find themselves in dangerous situations. Their new job descriptions might put them into a different classification for the purposes of worker's compensation insurance rates.

Even if the workers do find that no one is at the site, Corrigan said, it's far from certain that they've detected fraud. Maybe the provider took the children to the park, or the children were sick that day. The contractor would have to wait several weeks to see whether attendance sheets claimed that the child was present on the day in question. And to prove fraud occurred on more than just that day, someone would have to set up longer-term surveillance.

"It's a very costly red flag that doesn't amount to anything," Corrigan said.

Others disagree. Jim Baker, a retired Los Angeles prosecutor, said that failure to find a provider should trigger a reexamination of the client's eligibility, not a full-blown fraud investigation with costly surveillance. Experience has shown that some providers will drop out when they get a letter announcing a visit. Baker speculated that the voluntary departure of possibly fraudulent providers, and recovery of money from any fraud that's discovered, would be enough to pay the added costs of the visits.

Other Regulations Never Pursued

Another issue that has come up repeatedly in studies on fraud is the potential connection between child care and another state program, In-Home Supportive Services. Those in the field say it's not uncommon for parents to become eligible for child care by working as an IHSS provider

for another member of the household. In some cases, a third person under the same roof may be getting paid to provide child care for the parent. The potential for fraud exists if the parent is really caring for her own child.

Reports have suggested that the state develop explicit policies for this situation. Specifically, they say a regulation could put restrictions on or require further scrutiny of parents whose qualifying job is working as an IHSS provider for someone in the same household, and IHSS recipients who are working as child care providers.

In the Department of Education's own 2005 error rate study, it also proposed a regulation to "specify standards and procedures for those recipients who are employed as in home care givers."

The department has never pursued that regulation. Hudson said that if IHSS recipients are being hired as child care providers, contractors should investigate further even in the absence of a regulation. As for parents qualifying for child care by working as IHSS providers in the same household, he said the department is wary of making blanket prohibitions, in part because "the minute you did, you'd find a case that's legitimate."

Other suggested regulations nixed by the department include requiring direct deposit for providers, which would avoid payments going improperly to parents, and requiring self-employed child care recipients to provide certified tax returns.

Hudson said it would be difficult for the department to mandate direct deposit because some providers do not have bank accounts. As an alternative, the department has suggested that contractors consider the use of debit cards for providers.

For self-employed recipients and those paid in cash, the Department of Education's 2007-2008 regulations require a series of steps to document work. One of several possible documents that parents can submit is a tax return, but it is not required. That contrasts with some other states. In five of 17 states surveyed by the National Child Care Information and Technical Assistance Center, for instance, self-employed parents are required to submit certified tax returns. The states are Illinois, Massachusetts, Connecticut, Arkansas and West Virginia. Officials in Illinois and Massachusetts told the oversight office that the same requirement applies to parents paid in cash.

Remley said that California decided to serve those who work in the cash-only economy. Even if those workers are not paying taxes, the state wants their children to get quality child care, she said.

More Could be Done to Link Databases and Use Other Technology to Detect Fraud

One of the most frequent recommendations for curbing fraud has been a greater use of database technology. A database that showed that a supposed provider was serving time in state prison, for instance, would be an obvious red flag.

In this area, too, there are few guidelines from the state and considerable variability among contractors. Partly, this is because the federal government prohibits contractors from requiring child care recipients to disclose their Social Security numbers. The Social Security number is the surest way to identify an individual and is crucial to much data matching.

Yet some contractors say that they almost always get the Social Security number simply by asking. This would allow data-matching in the overwhelming majority of cases. And data-matching can also be performed with other kinds of identifiers less definitive than the Social Security number.

Use of database technology has come up repeatedly in reports about the child care program. In its 2005 “best practices” report, for instance, the Department of Education found that many counties were having a hard time figuring out a way to link data to see if a license-exempt provider was also receiving cash aid. This information might alert counties to situations in which a person’s income from providing child care rendered them ineligible for cash aid.

“A few counties reported conducting database matches for this purpose,” the report stated. “Many counties, including small counties, saw this as a problem.”

As would be expected, big counties did more with databases, the report

stated. In Los Angeles, computer programs matched recipients and providers, helping to identify people who might be working as a provider for one contractor while getting child care from another. This situation could be an indicator of fraud if the applicant for CalWORKs child care was not reporting his or her income as a provider.

One contractor, Child Action in Sacramento, suggested that the Department of Education set up a statewide database to allow these kinds of matches to be made across jurisdictions. In a 2004 report, Child Action pointed out that such a database would also prevent parents from collecting child care payments from more than one program or in different counties.

The database was never built. The department says the inability to require Social Security numbers is an impediment, as well as a time-consuming process of getting the Department of Finance to approve new technology projects.

Variable IT Practices

Some contractors act on their own to exploit the potential of database matching. At Child Action, workers match the addresses of mail box services with those of providers. Fraudulent providers have been known to use the services so that they can give an address for a non-existent day care center. Child Action has an agreement with Sacramento's county welfare office for the two entities to share some computerized client information. This allows both entities to find instances where a client gave inconsistent information. The contractor constructed its own database to keep track of investigations and associations between providers and clients. That permitted workers to identify potential networks of fraud. Child Action uses public websites to check things like incarceration dates and assessment records.

The contractor took these steps on its own. There are few if any guidelines from the state on how to use technology to minimize fraud, and a great amount of variability among contractors in how much they choose to do.

According to the federal government, other states do employ such strategies. A report by the Child Care Bureau, part of the federal Administration for Children and Families, asked states whether they used automated data systems. Eighteen states reported that they matched their information with data from other government programs. The same number said they ran systems reports to flag errors. Nine said they conduct data mining to detect patterns and correlations in large masses of information. Six reported paying providers with electronic benefits transfers or direct deposit.

California does none of these, according to the report.

The Problem of Social Security Numbers

The Department of Education outlined what it believes to be the limitations on data checks in a 2009 report to the federal government.

“The CDE does not have the capacity to perform data checks...,” the report states. “In order to provide this level of data-matching, the CDE would require federal authorization to collect social security numbers. All data matches available to the CDE are based on client social security numbers.”

Remley, the department administrator, said the federal government has been adamant in sticking to its policy that the states not require clients to disclose Social Security numbers. An association of state child care administrators pushed to get the policy reversed when the federal child care law was being reauthorized, she said, but Congress would not consider it. This is another contrast to the welfare-to-work program, which does require recipients to disclose Social Security numbers and uses them for extensive data matching. In a 2004 report, the General Accounting Office found that in six of 11 states it surveyed, officials said that the limited ability to use Social Security numbers acted as an impediment to cutting down on improper payments.

Still, some contractors manage to get Social Security numbers from almost all their clients just by asking for them.

“We collect Social Security numbers on virtually everyone who has one,” Child Action’s Corrigan said. “We use it to data match internally to see, for instance, if the recipient and the provider are the same person. We have had at least two instances where we found somebody who was their own provider.”

The 2004 GAO report found that one state that requested Social Security numbers from child care recipients – while making it clear that it was voluntary - got the information from all but 2 percent of clients.

Given those kinds of numbers, it appears that contractors in almost all cases could do extensive data-matching. But there’s another complicating factor: many contractors are non-profits and as such don’t have immediate access to government databases such as those kept by the Department of Motor Vehicles, the Employment Development Department or the Franchise Tax Board. The Department of Education has made no effort

to clear the way for that kind of access.

Even without Social Security numbers, contractors can match other kinds of data – for instance, the addresses of mail box services and child care providers. But in this case, too, the Department of Education has provided little guidance to contractors. Hudson said it made little sense to promote new ways to detect fraud when the systems for pursuing cases, including special investigators and prosecutors, are unavailable to the department and its contractors.

Recommendations

- Our report found many barriers to recovering improper payments. It is more effective to prevent such payments from occurring in the first place. With that in mind, we recommend that the Legislature require the Department of Education to do a cost-benefit analysis of requiring random, unannounced visits of child care providers. Such visits would discourage those who intend to defraud the system and tip off contractors to cases that merit closer scrutiny.
- To help the Department of Education put together criminal fraud cases, we recommend that the Legislature consider funding investigators to focus solely on Stage 2 and 3 child care cases. Considering the state's fiscal situation, this could be done at first as a pilot program, with a thorough analysis of costs versus savings in the form of recovered money. If the program showed evidence of paying for itself, it could be expanded.
- The Department of Education fears that more aggressive attempts to recover improper payments will trigger a federal regulation that requires the money to be returned, even if the state has not succeeded in collecting it. The state, including congressional representatives, should make a coordinated effort to ask the federal government to reverse this regulation. Specifically, California should ask that states be allowed to put recovered money back into the child care program, regardless of when it's collected. At the same time, California could push for a change in the law that prevents child care contractors from requiring parents to give their Social Security numbers. The Social Security number is essential to much of the data-matching used to detect fraud.
- Regardless of the success of that effort, the Legislature should consider requiring the Department of Education to promulgate a regulation defining intentional program violations and mandating that contractors take certain steps to recover improper payments. Such a regulation would be carefully worded to avoid triggering the federal regulation mentioned above. If such a regulation required the creation of a system for administrative appeals, similar to the one

operated by the Department of Social Services, the Legislature should consider funding the costs.

- The Department of Education's 86 contractors vary considerably in their use of electronic databases and other information technology tools in identifying improper payments. The Legislature should ask the Department of Education to review best practices for data matching and share recommendations with child care contractors. The department should also be asked to analyze the feasibility of a statewide database of child care clients and providers that could be accessed by contractors.

Sources of Information

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- Christina Barna, director, Choices for Children, South Lake Tahoe
- Thomas Barni, assistant district attorney, Alameda County District Attorney's Office, head of public assistance fraud division
- Dave Brown, supervising criminal investigator, Sacramento County District Attorney's Office
- Theresa Corrigan, director of client services, Child Action, Inc., Sacramento
- Rachel Ehlers, Principal Fiscal & Policy Analyst, Legislative Analyst's Office
- Raymond Fong, San Francisco District Attorney fraud unit
- Robert Garcia, Region IX Program Manager, U.S. Department of Health and Human Services, Administration for Children and Families
- Ronda Garcia, deputy director of programs, Contra Costa Child Care Center
- Julie Hast, supervising attorney, Contra Costa County District Attorney Public Assistance Fraud Unit
- Tamia Hope, deputy district attorney, Los Angeles County
- Greg Hudson, administrator, California Department of Education
- Denyne Kowalewski, executive director, California Alternative Payment Provider Association
- Karen Marlatt, executive director, Valley Oak Children's Services, Chico
- Lynn Patten, executive director, Child Action, Inc., Sacramento
- Karl Phillips, welfare fraud investigator, Solano County Special Investigations Bureau
- Chris Reefe, legislative liaison, California Department of Education
- Nancy Remley, administrator, California Department of Education
- Jennifer Richardson, CAPP
- Richard Rushton, director of business services, Family Resource and Referral Center, Stockton
- Sylvia Seidel, deputy district attorney, Santa Clara County District Attorney

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- Scott Thorpe, chief executive officer, California District Attorneys Association
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