2015 CHILD CARE ENFORCEMENT POLICY PROJECT REPORT

BRIGHT *from the* **START**

Georgia Department of Early Care and Learning

Acknowledgement

DECAL and CCS leadership thanks everyone who has worked on this project and served on the Enforcement Policy Task Force. This work would not have been possible without the dedicated providers and stakeholders who willingly gave their time and expertise to make this project a success. We also acknowledge and thank all Georgia child care providers who do their best every day to ensure that Georgia's children receive positive learning experiences in safe and healthy environments.

Child Care Enforcement Policy Project Report

I. Introduction

A primary responsibility of Georgia's Department of Early Care and Learning (DECAL) is licensing and monitoring the state's child care programs to determine if they are meeting basic health and safety rules and regulations. Health and safety requirements anchor Georgia's robust early care and education system and provide a foundation for child care programs to better support families in developing children's skills and fostering their growth.

Child Care Services (CCS) is the licensing division of DECAL and currently monitors over 5,000 child care centers and family child care homes. At least twice a year, CCS consultants conduct a review of every licensed child care center and family child care home.[1] CCS's responsibility entails both **regulating** and **supporting** programs in meeting basic health and safety requirements. "Regulating" involves monitoring, reviewing, and sometimes taking an enforcement action. Enforcement actions range from issuing citations to, in rare cases, revoking licenses. Regulation is part of DECAL's legal authority. "Supporting" means providing child care programs with tools, resources, and on-site assistance to help them meet the rules and regulations. Both regulation and support are components of a strong licensing system and are intended to reduce the likelihood of injuries and fatalities. A strong licensing system also helps families feel assured that their children are safe in child care programs.

This report details a project that CCS conducted throughout 2014 to review and subsequently align its regulatory and support functions. Specifically, the division convened a group of stakeholders to examine current enforcement policy. This group, referred to as the Enforcement Policy Task Force (task force), examined the enforcement actions taken and the way CCS determines which specific actions should be taken. The goal of the project was to create a new enforcement action model that is transparent, easy to understand, and aligned with the process of determining if a program is compliant with state licensing rules and regulations.

This report includes: details about the background and context of the project; the work CCS undertook before the project; an overview of the mechanics of the task force – how the work was organized and the specific charges given to the stakeholders; a summary of the final product, the Enforcement Chart; next steps and conclusions; and how the work fits into the "big picture" of Georgia's licensing and monitoring system. A list of stakeholders is provided in the appendices.

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[1] "Child Care Learning Center" means any place operated by a person, society, agency, corporation, institution or group wherein are received for pay for group care, for fewer than 24 hours per day without transfer of legal custody, seven or more children under 18 years of age and which is required to be licensed. 'Family child care learning home' means a private residence operated by any person who receives therein for pay for supervision and care fewer than 24 hours per day, without transfer of legal custody, at least three but not more than six children under 13 years of age who are not related to such person and whose parents or guardians are not residents in the same private residence.

II. Background of Enforcement Policy Project

Over the past decade, CCS has undertaken several initiatives to improve and strengthen Georgia's licensing system as part of DECAL's *continuous quality improvement (CQI)* approach to services. CCS initiatives under the CQI approach range from an ongoing review of policies and procedures, conducting inter-rater reliability studies to ensure that CCS consultants are consistent in their monitoring, and commissioning outside research to examine the impact of Georgia's licensing system. For example, DECAL has commissioned studies focused on injury and fatality prevention and on comparing Georgia's licensing practices with other states.[2] CCS has also strengthened its data systems in order to better use data to support programs.

The CQI approach has resulted in CCS continually revising the state's monitoring system. These revisions began in 2006 when CCS identified a group of **core rules** considered most critical to maintaining a safe and healthy environment for children. Once the core rules were established, CCS used those rules to develop a method to determine a compliance designation for the state's child care programs. This designation, computed annually, identified if a program had been "compliant" with a substantial number of core rules during the previous year. After establishing this compliance designation system, CCS commissioned a study, conducted by national expert Richard Fiene, to validate the effectiveness of the system.

Despite Dr. Fiene's positive findings about the system (Fiene, 2013), CCS leadership continued to consider changes. Many providers felt that the compliance designation method was both simplistic (reducing over 450 rules to one designation) and complex (the formula was difficult to apply). Also, the compliance designation did not always align with enforcement actions levied by CCS; i.e., sometimes programs with a compliant designation received enforcement actions and programs designated non-compliant did not. Since compliance designations and revocations are publicly posted on the DECAL website, this nonalignment was difficult to understand by providers and the public.

Therefore, DECAL leadership felt that additional reviews of Georgia's licensing system were warranted thereby continuing CQI. Additional reviews would consider the work that had previously been done, including results from the research DECAL had commissioned and would move the system forward. Much of the research concluded that Georgia's licensing system had improved but that more work could be done. DECAL leadership also felt that many components of the state's licensing division could be better aligned.

III. Creation of Task Force and Enforcement Action Report

In 2014, CCS convened an Enforcement Task Force, composed of child care providers and stakeholders, to propose a new enforcement structure that would be more transparent and would better inform enforcement actions. A new enforcement structure would align the regulatory and

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[2] Results from these studies can be found at http://www.decal.ga.gov/BftS/Research.aspx.

supporting responsibilities of a state's licensing system; i.e., it would better reflect the state's philosophy of supporting providers in maintaining safe and healthy environments by allowing an appropriate amount of self-correction before imposing more restrictive enforcement actions.

The Enforcement Task Force met from February to October 2014 and successfully created a proposed enforcement structure that is represented graphically in a new Enforcement Chart. Beginning July 1, 2016, this chart, with minor variations based on more current data analyses, will be used to apply consistent enforcement actions when licensing rules have been broken. The Enforcement Chart meets best practice recommendations from the National Association for Regulatory Administration and illustrates DECAL's role as a support for providers in helping families meet their children's early education needs.

The work of this task force will help providers maintain safe and healthy environments and will benefit providers and the early care and learning industry. These benefits include 1) clear and transparent guidelines; 2) predictable and consistent enforcement actions; 3) credit for correcting issues and maintaining those corrections; and 4) revoking licenses of programs that continue to demonstrate an inability to maintain a safe and healthy environment for children. This work solidifies CCS's commitment to supporting and helping providers do the work they do best— supporting the early education needs of Georgia's children.

A. *Task Force Members and Purpose*

The Enforcement Task Force was created in February 2014 with members appointed by former DECAL Commissioner Bobby Cagle. Members represented a variety of perspectives – child care providers, advocates for children, industry association representatives, DECAL staff, and representatives of other state agencies. Commissioner Cagle chaired the task force until he left the department in June 2014. Assistant Commissioner for Child Care Services, Kristie Lewis, chaired the task force beginning in June 2014. A list of task force members and DECAL organizational staff is provided in Appendix A.

The task force met six times between February and October of 2014. A private consultant, Sandy Pearce, helped coordinate and facilitate the task force. Between task force meetings, a DECAL organizational team (including members of CCS and DECAL's legal and research units) gathered information and developed recommendations to present to the task force. Sandy Pearce also participated in these discussions and therefore helped guide the work of the organizational team. As the meetings progressed, the organizational team met weekly to review data and conduct analyses to test the outcomes of what was being proposed.

The initial purpose of the task force, as outlined by CCS leadership, was to: 1) review enforcement policies; 2) develop a clear, consistent, transparent enforcement model for monitoring child care rules, documenting violations, and applying enforcement actions; and 3) ensure that any new enforcement model could be used proactively to prevent rule violations before they occurred. Based on this charge, the task force quickly identified its overall goal to be

the creation of a new enforcement model (later culminated in the Enforcement Chart). The task force also articulated that any new model would need to be **consistent** (easily applied equally across all providers), **transparent** (easy to understand), **fair** (providers not excessively penalized, especially for violations that they immediately correct), and **predictable** (providers know what to expect when rules are violated).

The task force also agreed that this new enforcement model would be based on a progressive structure of self-correction that takes into account providers' ability to correct deficiencies and sustain compliance. **In this progressive model, enforcement actions substantially increase in seriousness and severity when the same rule is violated repeatedly**. This progressive **model** recognizes the complexity of managing child care programs, including adhering to the large number of important regulations, and a need for providers to have an opportunity to immediately correct deficiencies. The task force acknowledged that some violations are serious enough to warrant restrictive penalties on the first violation, and these situations would be reflected in the new model. Due to the sensitive nature of the topics, CCS leadership felt that it was important to establish guiding principles to ground the work of the task force from the beginning. These principles are listed in Appendix B.

As stated previously, the role of Child Care Services is to ensure that the state's licensed early care and learning programs meet requirements that foster and maintain healthy and safe conditions for the state's youngest learners. The creation and organization of the task force demonstrates CCS's commitment to transparency, shared decision making, and continuous quality improvement to support licensed child care programs. It also emphasizes DECAL's priority of a licensing system that both regulates and supports child care programs.

B. *Background Information Used to Inform the Task Force*

During the first task force meetings, the DECAL organizational team reviewed policies related to enforcement from three different sources. The purpose was to provide a frame of reference for crafting recommendations for a new enforcement model. Specifically, the task force was provided with a review of the following:

- Current CCS child care enforcement policies
- Best practices in child care regulatory enforcement as promoted by the Office of Child Care and the National Association for Regulatory Administration
- Enforcement policies from other Georgia regulatory agencies and other states' child care systems.

CCS Enforcement Policies. DECAL provided the task force information about current CCS enforcement policies in three interrelated components. The first part was an overview of DECAL's statutory authority to promulgate rules and regulations governing the enforcement process. Such authority includes issuance of licenses, regulation of operations, development of

policies related to health and safety monitoring, and determination of sanctions for violations of rules and regulations.

The second part was a detailed description of the roles and responsibilities of CCS. While this role is framed in terms of monitoring and regulating, it also includes issuing licenses to operate a child care center or family child care home, investigating and resolving complaints against child care facilities, providing information to parents about child care programs, and supporting programs through technical assistance on meeting health and safety regulations.

The final part was information on DECAL's use of *core rules* and how these rules inform enforcement actions. Core rules are those rules that have been identified as being the most critical in ensuring children's safety in child care environments. Over 100 rules have been categorized as core rules. When a core rule is cited, the citation includes an assigned risk level of low, medium, high, or extreme. To help task force members understand the core rules structure, DECAL provided data on violations, sanctions, and compliance. This created a context for task force members to discuss the most frequently occurring rule violations and sanctions for the violations.

Regulatory Best Practices. The task force also received information from other groups regarding *best practices* in child care enforcement policy. Two distinct sources were used: the federal Office of Child Care (OCC) and the National Association for Regulatory Administration (NARA). OCC, located within the Administration for Children and Families in the U. S. Department of Health and Human Services, works with states to strengthen standards to ensure children's safety, health, and well-being and helps states support child care providers to meet standards. NARA supports human care regulators who safeguard vulnerable populations in day and residential care settings. NARA provides states with best practice recommendations that are research-based and are consistent with what is effective in state licensing programs. The materials that the group reviewed from both sources included publications related to creating a licensing foundation, structuring a monitoring system, and challenges found in different enforcement systems. The full list of materials reviewed can be found on the reference page.

The group found the best practices articulated by NARA particularly helpful. NARA recommends that state licensing systems encompass: (1) a risk-based system of enforcement to guide selection from an array of sanctions according to the extent of risk inherent in violating a given requirement; (2) a point system for violations that ties to a range of sanctions; and (3) a continuum of enforcement sanctions consisting of three levels – prevention, intermediate sanctions, and forcible closure sanctions (Payne, 2011). These recommendations are reflected in the final proposed enforcement model.

State and National Enforcement Policies. Finally, the task force reviewed other enforcement structures in Georgia (Georgia Office of Residential Child Care), along with child care enforcement strategies in several other states (Arizona, Florida, Ohio, Oklahoma, North

Carolina, Texas, Utah, and Virginia). This yielded several common themes found across different agencies and states. These themes include how different systems incorporate prior history, the seriousness or potential harm of violations, and repeat violations of the same rules. During the period that the task force met, OCC created a document that summarized many of these strategies (National Center on Child Care Quality Improvement, 2014).

In summary, as the task force began developing a new enforcement model, CCS facilitated a review that provided context to the group's work. This included an overview of current child care licensing and enforcement policies, best practices from a national perspective, and lessons learned from other systems. This review allowed the group to identify the most important components of an enforcement model and what to include in the group's final proposals.

C. Development of a New Enforcement Chart

Based on their review of current policies and best practices, the task force worked to develop a new enforcement model embodied in an enforcement chart that specifies the appropriate actions or sanctions to apply when rule violations occur. The development of the chart was an interactive, iterative process between task force members and the organizational team. The task force agreed that providers should be able to use the chart to understand specific enforcement actions, and CCS consultants should be able to use the chart at each visit to explain any rule citations issued and what further action may result. The task force also agreed that the enforcement chart would be based on the core rule methodology.

The task force identified the following three major factors that would be embedded in an enforcement chart.

- Seriousness of current violations – A new enforcement chart should incorporate citations issued at the visit that took place that day.
- Prior violation history of the facility – A new enforcement chart should also take prior history into account. This factor is specifically recommended by NARA to help systems differentiate between "patterns" and "exceptions." Task force members felt strongly that prior history should have a stronger focus on repeat violations (patterns) instead of violations (exceptions) where providers self-corrected.
- Graduated continuum of enforcement actions – A new enforcement chart should encompass enforcement actions that become more restrictive as the seriousness of the current violation and prior history are taken into account. This factor is also recommended by NARA.

Task force members agreed on three key components. First, task force members recommended that DECAL adopt the four risk level categories used when citing core rules. These four categories, defined as severity levels, are **low**, **medium**, **high**, and **extreme** and are applied based on the harm or risk of harm inherent in the citation.

Second, task force members and the organizational team developed a point system to represent the current visit and prior violation history. As mentioned above, task force members agreed to focus on a facility's *pattern of repeat rule violations* (the number and the harm or risk of harm of repeat violations) and the *seriousness of past rule violations* (those that resulted in or could have resulted in extreme or high harm). Violation history was defined as the preceding 12 months and includes the current visit.

Finally, task force members identified a progressive continuum of enforcement options. Each enforcement option was classified as being *prevention* (P), *intermediate* (I), or *closure* (C). Prevention enforcement options were considered the least stringent while closure was classified as the most stringent. Examples of prevention include technical assistance and/or citations. Intermediate enforcement options include fines and restrictions. Finally, closure encompasses both license suspension and revocation. The new enforcement chart would be used to determine a range of enforcement options while the decisions on specific enforcement actions (within the appropriate range) would be based on individual case factors, licensing policies, and, at the agency's discretion, mitigating or aggravating factors.

Each of the above is described in more detail below. As the group was developing the chart, it was important to test the proposals with real data. Task force members wanted to know the potential impact of the proposed enforcement model. DECAL utilized data on 7,980 visits conducted between July 1, 2013, and March 15, 2014. The team ran scenarios based on the proposals embedded in the development of the chart. The results of the analyses are listed in the next section.

IV. Components of the Child Care Services Enforcement Chart

The work of the Enforcement Task Force culminated in the creation of the Child Care Services Enforcement Chart. The purpose of the chart is to help ensure that enforcement actions are applied consistently, transparently, fairly, and predictably. The chart builds on the current CCS system of core rule citations and will allow providers to see how any enforcement actions applied were computed. The chart is used when a violation is found on a current visit. [3]

The full chart, listed below in Figure 1, consists of three components. The first component, **Violation Class**, is color coded yellow and found in the left vertical section of the chart. The second component, **Violation History Level**, is color coded green and found in the horizontal heading of the chart. The third component, **Enforcement Action Categories**, is color coded blue

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[3] Note: Not all visits result in violations being cited. In fiscal year 2014, 22 percent of visits did not have any citations even though some of the visits without citations may have received technical assistance. This occurs when the violation is minor, and technical assistance is a more suitable enforcement action than a citation. For visits without citations or without an assignment of technical assistance, the chart would not apply.

and found in the cells in the main body of the chart. These components will be further defined below.

Figure 1. Georgia DECAL Child Care Services Enforcement Chart (effective July 1, 2016)					
V I O L A T I O N C L A S S	**Incident results in or could result in:**	**VIOLATION HISTORY LEVEL**			
		I **0 Points**	**II** **1-3 Points**	**III** **4-9 Points**	**IV** **10 + Points**
	D • **Extreme Harm** • **Imminent Danger**	I3-C			
	C • **High Harm**	I1-I2	I1-I3	I2-C	I3-C
	B • **Medium Harm**	N/A**	P2-P3	I1-I2	I2-C
	A • **Low Harm**	P1-P2	P1-P3	P2-P3	I1-I2

There are several points to remember when studying the chart:

1. The chart uses a point structure. At the conclusion of each visit, the licensing data system applies a certain number of points based on the Violation History Level (prior history).
2. The enforcement action applied will be a result of the Violation Class (assessment of risk) and Violation History points. Depending on both the Violation Class and Violation History, the CCS consultant, utilizing the licensing data system, will be able to determine a range of appropriate enforcement actions.
3. Based on previous data, most visits will fall in the least restrictive enforcement actions (the lower left hand cells).

Each component will be discussed independently including a discussion of how mitigating and aggravating circumstances apply to the chart and the results of the data analyses conducted as the chart was in the final stages of development.

Applying the New Enforcement Chart: Step 1 – Determining Violation Classes

The overall goal of the new Enforcement Chart is to provide a systematic format for determining an enforcement action related to child care rule violations. The chart is designed to determine an appropriate cell and from that cell indicate a range of appropriate enforcement actions.

The first step in applying the chart is to determine the Violation Class. Violation Class refers to the level of risk of harm or actual harm experienced by children as a result of a rule violation.

The four Violation Classes range from the lowest harm (Class A) to the highest harm (Class D). *Low harm* (Class A) is minimal harm or risk of harm, with no injury requiring professional medical attention. *Medium harm* (Class B) is moderate harm or risk of harm, with no injury requiring professional medical attention. *High harm* (Class C) includes injury requiring professional medical attention or a serious incident that could have resulted in a serious injury or harm. *Extreme harm* (Class D) includes permanent or extreme injury, death, or imminent danger.

A Violation Class is assigned if a violation is found on a current visit. The Violation Class will be determined by the most severe repeat rule violation on the current visit. Repeat rule violations are uncorrected violations of the same rule during the past 12 months. For example, if, on a current visit, a licensing consultant found two repeat violations, the Violation Class would be the most severe level of risk. If one of the violations was determined to be a low risk and one was determined to be a medium risk, the Violation Class would be (B) medium risk.

There are two exceptions to the above criteria. One exception is when a licensing consultant determines a violation of high or extreme risk on the current visit. In this case, the Violation Class assigned would be Class C for high harm citations or Class D for extreme harm citations, regardless of if a repeat violation had been cited. For example, if, on a current visit, the licensing consultant found a repeat violation of medium harm and a non-repeat violation of high harm, the Violation Class assigned would be (C) high harm.

The second exception is when there is a repeat rule violation that is at low or medium harm on the current visit, but was at high or extreme harm at a visit within the past 12 months. For example, if on the current visit, the licensing consultant found a repeat violation at medium harm, but the same rule was cited on a previous visit within the past 12 months at high harm, the Violation Class assigned would be (C) high harm.

If there are no repeat violations on the current visit *and* no high or extreme harm violations, the Violation Class assigned will be Class A (low harm). Similarly, if there are only non-core rule violations during the current visit *and* no Class C or Class D violations, the Violation Class assigned will also be Class A (low harm). The following further defines how Violation Class is assigned after a visit when violations are found:

- Class A is assigned when on the current visit:
    - there is at least one rule violation; and
    - there are no repeat rule violations; or only non-core and/or low repeat rule violations; and
    - none of the rules cited this time have been cited at high or extreme in the past 12 months; and
    - there are no high or extreme severity violations on the current visit.
- Class B is assigned when on the current visit:

- o there is at least one medium severity rule violation that has also been cited on another visit within the past 12 months.
- o none of the rules cited this time have been cited at high or extreme in the past 12 months; and
- o no high or extreme severity rule violations on the current visit.
- Class C is assigned when on the current visit:
  - o there is a rule violation rated at high severity; or
  - o there is a high severity violation within any repeat rules in the past 12 months; and
  - o none of the rules cited this time have been cited at extreme in the past 12 months; and
  - o there are no extreme severity rule violations on the current visit.
- Class D is assigned when on the current visit:
  - o there is a rule violation rated at extreme severity; or
  - o there is an extreme severity violation within any repeat rules in the past 12 months,

Applying the New Enforcement Chart: Step 2 – Determining Violation History Level and Assigning Points

The second step used in applying the new Enforcement Chart is determining violation history level and assigning points. Violation History Level refers to prior history. There are four levels of violation history with each level containing a range of violation points. Violation History Level I contains 0 points; Level II contains 1 to 3 points; Level III contains 4 to 9 points, and Level IV contains 10 or more points.

Points are assigned for repeat violations of the same rule (including core rules and non-core rules) during the past 12 months. Points are computed based on two factors: 1) the number of times the rule was violated; and 2) the highest severity level assigned for that repeat rule during the 12-month period. Additional points are also assigned when a program receives a high or extreme (C or D) citation on the current visit and had also received a high or extreme citation in the past 12 months even if they were for different rules. The rationale for these additional points is that it had been deemed that children were at risk or experienced a serious injury and therefore the program has been demonstrating a pattern of high or extreme violations.

The following provides the formula for assigning points:
- Assign repeat violation points for any core and non-core rule(s) cited on the current visit AND cited on visit(s) during prior 12 months*:
  - o 1st Violation of a Rule within 12 Months = 0

*Example if the current visit occurred on 9/22/2018, the time-period for assigning points would be 9/22/2017-9/22/2018.

- o 2nd Violation of Same Rule within 12 Months = 1
        - o 3rd Violation of Same Rule within 12 Months = 2
        - o 4th Violation of Same Rule within 12 Months = 3
        - o For each subsequent Violation of Same Rule within 12 Months, one additional point is accrued
- For each Repeat Violation, assign points based on the highest severity level assigned for that rule during prior 12 months:
    - o Non-Core Rule Violation = 0
    - o Level A Low Core Rule Violation = 1
    - o Level B Medium Core Rule Violation = 2
    - o Level C High Core Rule Violation = 3
    - o Level D Extreme Core Rule Violation = 4
- Assign points for each PRIOR visit when there are any Class C (High) or Class D (Extreme) violations on the current visit AND any Class C (High) or Class D (Extreme) violations cited on visit(s) during prior 12 months regardless of whether or not there are any repeat violations during the current visit:
    - o Each Prior visit with Class C/Class D Rule Violation = 2

The sum of points for repeat violations and serious incident or injury determines the Violation History Level. Level I is the least serious, and Level IV is the most serious. In the example in the previous subsection where a provider had received two repeat violations, one low risk and one medium risk: Assuming that the low risk was the third violation and the medium violation was the second violation, the points would be computed as follows:

- One low severity violation repeated three times in the last 12 months = two points for the third violation and one point for being a low severity violation. (3 total points)
- One medium severity violation repeated two times in the last 12 months = one point for the second violation and two points for being a medium severity violation. (3 total points)
- The provider would receive six total points for this visit.
- In this example, if the low severity repeat violation had previously been cited as a medium severity, the severity points assigned to that violation would have been based on the prior medium severity designation because these points are based on the highest severity for the repeat violation in the last 12 months. This would have increased the total of points for that violation to four (two points for the third violation and two points for a medium severity violation) and the total points for the visit to seven.

Component 3: Enforcement Action Categories

Embedded in the chart are Enforcement Action Categories. The appropriate Enforcement Action Category is determined by plotting the cell where the Violation Class and the Violation History Level intersect.

Enforcement Action Categories are divided into prevention (P), intermediate (I), and closure (C). Each category includes a range of possible enforcement actions. Definitions of specific enforcement actions are provided in Appendix D.

- Prevention enforcement actions (P) are the least restrictive actions and include technical assistance, citation, formal notice letter, and office conference. Prevention actions are divided into three levels (P1-P3). The levels are listed in Figure 2 below.
- Intermediate enforcement actions (I) are more restrictive and include fines, per rule fines, per day fines, restrictions, emergency monitoring, and suspensions. Like prevention enforcement actions, intermediate enforcement actions are divided into three levels (I1-I3).
- Closure enforcement actions (C) are the most restrictive and include emergency closure, long-term suspensions, and revocations. Closure enforcement actions are all in one level.

Figure 2: Enforcement Categories, Levels, And Actions		
Prevention Category (P)	**Intermediate Category (I)**	**Closure Category (C)**
Prevention Level 1 (P1): Technical Assistance	**Intermediate Level 1 (I1):** Fine	Suspension of License (more than one week) Revocation of License Emergency Closure (imminent harm)
Prevention Level 2 (P2): Citation	**Intermediate Level 2 (I2):** Per Rule Fine Per Day Fine	
Prevention Level 3 (P3): Formal Notice Letter Office Conference	**Intermediate Level 3 (I3):** Fine and Restriction Restricted License Restricted License & Per Rule/Per Day Fine Emergency Monitor & Per Rule/Per Day Fine Short-term Suspension (less than one week)	

Each cell contains a range of enforcement actions based on the Violation Class and the Violation History Level. The enforcement action within the prescribed range will be selected based on several factors. One factor could be the number of points for that cell – a lower number of points could indicate less severity and a higher number of points could indicate higher severity. Also,

individual case circumstances, specifically mitigating and aggravating factors, further discussed below, will be considered in the determination of the enforcement action. The task force felt that, even within a cell, there should be options for enforcement actions and that CCS staff should be provided guidance on how to determine an enforcement action within a cell.

Using the Enforcement Chart

Child Care Services staff, using the current licensing data system, will use the chart to determine the Enforcement Action Category. Once the enforcement categories have been determined, staff will select an enforcement action from the range provided. All enforcement actions except technical assistance include a citation and can include less serious actions in addition to the selected action. Individual factors may be used to help choose between less or more restrictive options in the box. Basic instructions for using the Enforcement Chart are also provided in Appendix E.

Mitigating and Aggravating Factors

Mitigating and aggravating factors are circumstances present when a violation occurs that can influence the recommended enforcement action within the given range of options. Mitigating factors, such as self-reporting, could result in a less restrictive enforcement action, while aggravating factors, such as not seeking medical attention, could result in a more restrictive enforcement action. If either mitigating or aggravating factors are found when an enforcement action is recommended, they will be evaluated during the internal enforcement action review process.

Because no exhaustive list of mitigating or aggravating factors exists, they will be determined on a case-by-case basis. Examples of mitigating factors include a facility self-reporting a circumstance that is required to be self-reported, taking corrective action immediately, or providing remedial training to staff using facility resources. Examples of aggravating factors include failure to seek medical attention, having received prior technical assistance for similar violations, or failing to submit a plan of improvement when one was required.

In rare cases extraordinary mitigating factors and/or egregious aggravating factors may be present when a violation occurs and can be used to determine the appropriate enforcement action. Findings of extraordinary mitigation or egregious aggravation would result in changing the cell in the chart used to choose the enforcement action (shift to the right or to the left of the original cell).

DECAL will have sole discretion in determining mitigating or aggravating factors, and if those factors should be considered when determining an enforcement action.

Data Results

During the development of the Enforcement Chart, the organizational team conducted numerous analyses with historical licensing data. The analyses projected how enforcement would have looked, at the aggregate level, if the new Enforcement Chart had been in effect from July 2013 to March 2014. The results were used to determine if the outcomes from using the new chart would be appropriate. The results from the analyses are listed below:

- Considering only visits with violations, over half (55%) did not have any repeated violations and would have resulted in the lowest Violation History Level (Violation History Level I).
- Considering only visits with violations and using the new Enforcement chart:
    - The vast majority (86%) would have resulted in the low harm section of the Enforcement Chart (Violation Class A). In fact, nearly all (98%) would have resulted in the two lowest Violation Classes (A and B).
    - The vast majority (82%) would have resulted in the two lowest Violation History Levels (I and II).
    - Over three fourths (77%) would have resulted in the lowest Violation Class and Violation History Level cells in the chart (AI and AII).
- By comparison, actual enforcement actions of the 6,213 visits with violations were as follows:
    - 94% (5,816) resulted in prevention enforcement actions (mostly citations).
    - 6% (374) resulted in intermediate enforcement actions (mostly fines). [4]
    - Less than 1% resulted in closure enforcement actions.

Based on the review of this aggregate data and a subsequent review of more than 100 individual case scenarios, the task force and the DECAL organizational team are confident in the structure of the new Enforcement Chart.

A few final thoughts about the new Enforcement Chart:

1. The chart will not go into effect until July 1, 2016. From April 2015 through June 2016, CCS directors, managers, and consultants will engage in an aggressive communication campaign that will provide additional information about the chart and how it will be used.
2. Providers were well represented on the task force, and this chart reflects their experience of the complexity of managing an early childhood program. The providers on the task force felt that the chart is fair and that it reflects not only their concerns as business owners but also their concerns that all children have the right to a safe and healthy early education environment.

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[4] A slight increase in intermediate actions is projected in the new system.

3. Some administrative rules have been deemed to be outside the purview of this chart. They are listed in Appendix C.

In summary, this section details the new Enforcement Chart that is scheduled to go into effect July 1, 2016. The enforcement categories in the new chart encompass the dual roles of a strong licensing system: regulation and support. It also fulfills the task force's intended goals: fairness, consistency, transparency, and predictability.

V. Next Steps

The Enforcement Chart was completed in October 2014. Since that time, CCS leadership and the organizational team have designed and implemented field tests to help gauge and forecast the impact of implementing the chart. Leadership has also continued to engage staff, providers, and other stakeholders about the development process of the chart and what the next steps entail. As part of this process (and as a response to a task force recommendation), CCS leadership has begun looking at possible rewards for programs with few or no citations. Finally, and importantly, the organizational team has continued to meet and align the Enforcement Chart with the compliance determination process. Following are more specific details about the next steps.

A. Field Tests

In January 2015 DECAL implemented field tests using administrative data to study how the new Enforcement Chart will impact enforcement outcomes. The information from the field tests is being studied to ensure that the policies embodied in the Enforcement Chart will produce the desired results and not result in unintended consequences. The field tests will conclude by July 2016. The three field tests are listed below:

1. Randomly Selected Visits – At the beginning of each month, a list of all visits will be generated (approximately 1,000). DECAL's research unit will randomly select 10% of these. The visit history from the last twelve months for each program with a sampled visit will be reviewed and the parameters of the Enforcement Chart applied. This will provide aggregate data to determine if the results will mirror in real time what was found during the development of the chart.
2. Reviewing Current Adverse Actions – Any adverse action issued from January to June 2015 is being reviewed with the Enforcement Chart to see how well the actions taken would be aligned if the Enforcement Chart had been used.
3. Following 120 Programs – CCS and DECAL's research unit randomly selected 100 programs. They are reviewing the visits to these programs as they occur and then applying the Enforcement Chart (which includes a 12-month historical look). This allows a look back and look forward to see over time how programs would be impacted if the chart were in use today.

All three field tests are ongoing. At the time of this writing, there have been no substantive concerns to arise. Findings from the pilots have been more process-oriented than impact based. Results from these pilots will be made available at a later date.

B. Communication with Stakeholders

DECAL is implementing an aggressive communication plan leading to July 1, 2016, to introduce providers to the Enforcement Chart and to ensure that they understand how the chart and the process it represents may impact them. The communication plan officially started in April 2015 with a presentation to DECAL leadership and CCS consultants. Next, presentations for the child care community will be held, including webinars and local community meetings from summer 2015 to spring 2016 for providers and other stakeholders. Additionally, several training sessions will be conducted for consultants to ensure a consistent roll-out.

As part of the communication plan, task force members encouraged CCS to consider rewards for providers that consistently meet rules and do not have any violations, in addition to developing the continuum of sanctions. They recommended that DECAL identify rewards for licensed child care providers who do not violate rules during a 12-month period. Members generated the following ideas for rewards:

- Feature programs with no violations on the agency website
- Award certificates of recognition for programs with few or no violations
- Subsidize staff training
- Identify a provider of the year and communicate this on the website
- Provide monetary incentives such as reducing the license fee (would require statutory change)
- Award safety seals to violation-free facilities
- Subsidize banquets for facility staff

DECAL and CCS leadership are in the process of reviewing the list of recommended rewards and determining the feasibility of each.

C. Compliance

Beginning in 2015, DECAL began reviewing ways to align the "compliance determination" process with the Enforcement Chart. As a result, beginning on July 1, 2016, DECAL will use the cells in the Enforcement Chart to assign one of three possible compliance designations: 1) good standing; 2) support; and 3) deficient. Figure 3 illustrates where each cell from the Enforcement Chart will fall under each designation.

Figure 3. New Compliance Designation Levels (effective July 1, 2016)					
VIOLATION CLASS	**Incident results in or could result in:**	**VIOLATION HISTORY LEVEL**			
		I **0 Points**	**II** **1-3 Points**	**III** **4-9 Points**	**IV** **10 + Points**
	D • **Extreme Harm** • **Imminent Danger**	**Deficient**			
	C • **High Harm**	**Good Standing**	**Support**		
	B • **Medium Harm**			**Support**	
	A • **Low Harm**				**Support**

Unlike the current system, in which one determination is assigned annually and is essentially a projection forward, this would be a "rolling compliance" system where a program's status may change with each visit. This would reflect current circumstances in a child care facility more accurately and has been an ongoing request from providers.

This compliance alignment would strengthen Georgia's licensing system by better connecting the regulation and support functions. It would also continue to demonstrate the CCS commitment to continuous quality improvement.

VI. Conclusion

In 2014, DECAL convened a group of stakeholders to create a new enforcement model that was consistent, transparent, fair, and predictable. The group met for approximately nine months, and their work culminated in the creation of the new Enforcement Chart. A description of the chart, how it was created, and how it will be used beginning July 1, 2016, has been the focus of this report.

The chart represents an opportunity for providers and DECAL to continue working closely together to best ensure the safety of hundreds of thousands of children in over 5,000 child care centers and family child care homes in Georgia. It provides a new level of information and transparency in DECAL's regulation efforts.

The new Enforcement Chart illustrates a system that is fair and transparent, supports a licensing system focused on both regulation and support, and articulates the complexity of 21st century early education. In Georgia, the importance of quality early care and education is no longer debated; early care and education is acknowledged as one of the most critical components of the

state's educational pipeline. Inherent in this acknowledgement is the need for safe and healthy environments to ensure children have the opportunity to thrive in their early years.

In closing, children and families in Georgia are fortunate that CCS is located in the same education department as many of the state's other early learning programs and initiatives. These initiatives include Georgia's nationally renowned Pre-K program (serving over 84,000 four year olds); Quality Rated (the state's quality rating and improvement system that rates child care environments on meeting standards that exceed licensing requirements); the federally funded Childcare and Parent Services (CAPS) subsidy program; the Head Start State Collaboration Office, and Georgia's federally funded nutrition programs (the Child and Adult Care Food Program and the Summer Food Service Program). Having these programs within a single state agency facilitates a better alignment of early education programs and creates a strong monitoring system that supports child care programs as they strive to meet health and safety requirements and higher quality standards.

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Appendices

Appendix A: List of Enforcement Task Force Members

<u>Members:</u>

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Appendix B: Guiding Principles of the Enforcement Task Force

1. Licensed child care facilities in Georgia strive to protect the health, safety, and well-being of children.
2. Licensed child care facilities strive to meet all required rules.
3. When CCS issues a citation for a rule violation, the child care facility strives to correct the violation as soon as possible.
4. A new enforcement structure should focus on the frequency and seriousness of repeated (uncorrected) violations over a 12-month period and serious incidents that result in injury or could result in serious injury to children.
5. Rule violations should be addressed through a graduated continuum of enforcement actions beginning with a citation or technical assistance and ending with license revocation.

Appendix C: Administrative Rules That Will Not Be Incorporated

Certain administrative rules will not be included in the Violation Enforcement Chart. The Georgia Statutory Code grants the department authority to revoke a license, commission, or registration, regardless of the facility's prior history or other factors, for violation of these specific rules. The following will not be incorporated into the Violation Enforcement Chart:

1. Non-payment of the annual license fee
2. Non-payment of an enforcement fine
3. A child care program knowingly and/or intentionally allowing an employee or director with no criminal record check determination, or an unsatisfactory criminal record check determination, to reside at the facility, or be present while any child is present for care
4. Upon repeated failure to allow the department's representative access to the premises, program staff, program records, and children receiving care
5. An intentional act in violation of Georgia law against a departmental program

For more detailed information, refer to O.C.G.A. Section 20-1A-1 *et seq*. and Rules and Regulations for Child Care facilities.

Appendix D: Enforcement Action Definitions*

Citation – A written notation of how a rule was violated, issued when it has been determined that a provider was out of compliance with a rule.

Emergency Closure – An order to close a facility for 21 days to allow for investigation as a result of children being in imminent danger or a child death that was not medically anticipated.

Emergency Monitor – A person designated by DECAL to monitor at a facility to observe conditions and regulatory compliance.

Fine – A monetary penalty up to $500 per rule or per day of continued violation of a rule, but not exceeding $25,000 in total, assessed for serious or repeated rule violations.

Formal Notice Letter – A letter given to a facility regarding serious or repeated rule violations advising that corrective action is required, and adverse action may result.

Office Conference – A meeting with a facility and DECAL staff to discuss rule violations and required corrective action.

Per Day Fine – A monetary penalty up to $500 per day of continued violation of a rule, but not exceeding $25,000 in total, assessed for each day serious or repeated rule violations occur.

Per Rule Fine – A monetary penalty up to $500 per rule, but not exceeding $25,000 in total, assessed for each serious or repeated rule violation.

Restricted License – A limitation on a license restricting certain kinds of services offered when the facility has not complied with the rules related to these services.

Revocation of License – The termination of a facility's license to operate.

Suspension of License – A temporary stoppage of a license when public health and safety are found to be in danger.

Technical Assistance – Guidance, information, and resources provided by a consultant to help a facility meet rule requirements.

*Descriptions of enforcement actions are not legal definitions, but are intended for informational purposes. For legal definitions, reference O.C.G.A. Sections 20-1A-1 et seq. and the Rules and Regulations for Child Care facilities.

Appendix E: How to Use the Chart and Determine Enforcement Action

VIOLATION CLASS	Incident results in or could result in:	VIOLATION HISTORY LEVEL			
		I 0 Points	II 1-3 Points	III 4-9 Points	IV 10 + Points
	D • **Extreme Harm** • **Imminent Danger** _D	**I3-C**			
	C • **High Harm**	**I1-I2** _{CI}	**I1-I3** _{CII}	**I2-C** _{CIII}	**I3-C** _{CIV}
	B • **Medium Harm**	**N/A**** _{BI}	**P2-P3** _{BII}	**I1-I2** _{BIII}	**I2-C** _{BIV}
	A • **Low Harm**	**P1-P2** _{AI}	**P1-P3** _{AII}	**P2-P3** _{AIII}	**I1-I2** _{AIV}

If there are no rule violations cited on the current visit, and no technical assistance provided, no Violation Class or Violation History Level is applicable, and no enforcement action will result.

DETERMINING VIOLATION CLASS, VIOLATION HISTORY LEVEL POINTS, AND ENFORCEMENT ACTION

(1) VIOLATION CLASS

How to select violation class:

- Select Class A (Low) if there is at least one rule violation on the current visit, but there are **NO** Repeat Rule violations, **OR** there are only NON-CORE Repeat Rule violations, **AND** there are **NO** Class C (High) or Class D (Extreme) violations on the current visit

- Select Class A (Low) or Class B (Medium) based on the highest severity on the current visit within any REPEAT rule violation(s) if there are **NO** Class C (High) or Class D (Extreme) violations on the current visit, **OR** within the REPEAT rule violation(s) during prior 12 months

- Select Class C (High) or Class D (Extreme) if there is a Class C (High) or Class D (Extreme) violation on the current visit, **AND/OR** within any REPEAT rule violation(s) during the prior 12 months

* Repeat Rule Violation(s) = rule(s) cited on the current visit AND cited on visit(s) during prior 12 months

**Based on Rules for assigning Violation Class, it is not possible to have zero points and be at Violation Class B

(2) REPEAT VIOLATION POINTS

How to assign repeat violation points:

Assign Repeat Violation Points for <u>any</u> core and non-core rule(s) cited on the current visit AND cited on visit(s) during prior 12 months:
1st Violation of a Rule within 12 Months = 0
2nd Violation of Same Rule within 12 Months = 1
3rd Violation of Same Rule within 12 Months = 2
4th Violation of Same Rule within 12 Months = 3
For <u>each</u> subsequent Violation of Same Rule within 12 Months, one additional point is accrued

For each Repeat Violation, assign points based on the <u>highest severity level</u> assigned for that rule during prior 12 months:
Non-Core Rule Violation = 0
Level A Low Core Rule Violation = 1
Level B Medium Core Rule Violation = 2
Level C High Core Rule Violation = 3
Level D Extreme Core Rule Violation = 4

ADDITIONAL POINTS FOR SERIOUS INCIDENT/INJURY VIOLATION

Assign points for each <u>PRIOR</u> visit when there are any Class C (High) or Class D (Extreme) violations on the current visit <u>AND</u> any Class C (High) or Class D (Extreme) violations cited on visit(s) during prior 12 months regardless of whether or not there are any repeat violations during the current visit:
Each Prior Visit with Class C/Class D Rule Violation = 2

(3) ENFORCEMENT ACTION

How to select enforcement action:

- Select the appropriate enforcement action cell (AI through D), based on the intersection of Violation Class and Violation History Level

- Considering any individual case circumstances (aggravating or mitigating factors), and using DECAL policy and professional judgement to ensure fairness and consistency, select the appropriate enforcement action within the range of enforcement categories and levels given within the selected cell

ENFORCEMENT CATEGORIES, LEVELS, AND ACTIONS		
PREVENTION CATEGORY (P)	**INTERMEDIATE CATEGORY (I)** (Includes Prevention Actions)	**CLOSURE CATEGORY (C)** (Includes Prevention Actions)
Prevention Level 1 (P1)	**Intermediate Level 1 (I1)**	Suspension of License (More than 1 week)
Technical Assistance	Fine	Revocation of License
Prevention Level 2 (P2)	**Intermediate Level 2 (I2)**	Emergency Closure (Imminent Harm)
Citation	Per Rule Fine	
Prevention Level 3 (P3)	Per Day Fine	
Formal Notice Letter	**Intermediate Level 3 (I3)**	
Office Conference	Fine and Restriction	
	Restricted License	
	Restricted License & Per Rule/Per Day Fine	
	Emergency Monitor & Per Rule/Per Day Fine	
	Short-term Suspension (Less than 1 week)	