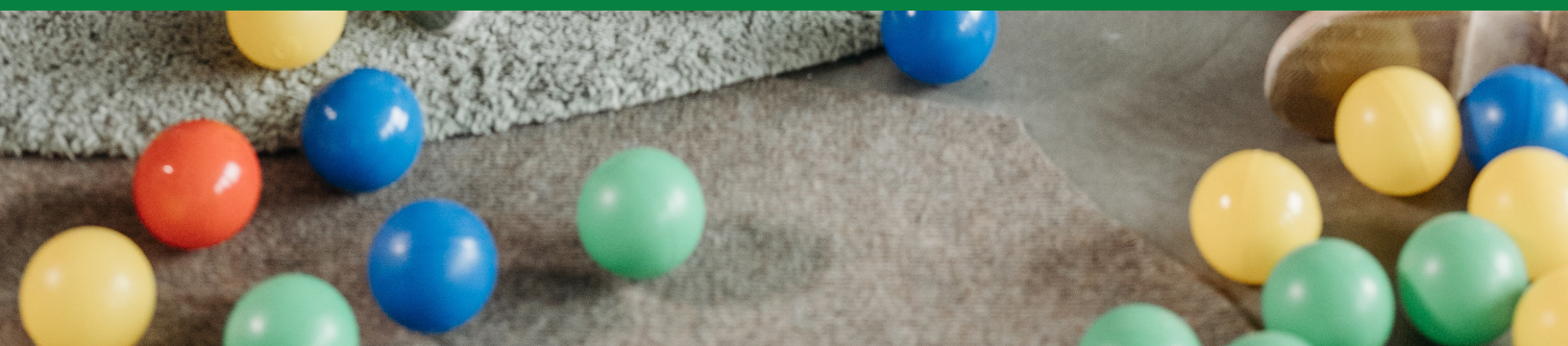


**TRLECE**

The Role of Licensing in  
Early Care and Education



## Enforcement Actions Used in Child Care and Early Education Licensing



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## Overview and Purpose

Child care and early education (CCEE) licensing systems establish regulations that must be met to legally operate a CCEE program<sup>1</sup> serving young children. Licensing staff use inspections and enforcement actions to support programs and ensure they are meeting licensing regulations. The term enforcement typically refers to the actions licensing agencies use to address licensing violations.<sup>2</sup> The purpose of this brief is to summarize basic information to help CCEE leaders within and outside the licensing system better understand CCEE licensing enforcement actions. In this brief, we:

- Describe the process for addressing licensing violations through enforcement actions.
- Present a framework for different levels of enforcement (National Association for Regulatory Administration and the Muskie School of Public Service, University of Southern Maine, 2007).
- Summarize the types of enforcement actions that are allowed in and used by state CCEE licensing agencies (based on data from the 2017 Child Care Licensing Study [CCLS]; Fischer & Orłowski, 2020).
- Report the percentage of state/territory CCEE providers whose program closed as a result of a licensing inspection (based on the most recent pre-pandemic data from the Federal Fiscal Year (FFY) 2019 Quality Progress Report, ACF-218).<sup>3</sup>
- Report the percentage of state/territory providers who had their Child Care and Development Fund (CCDF) subsidy funds revoked<sup>4</sup> as a result of a licensing inspection (based on the most recent pre-pandemic data from the FFY 2019 Quality Progress Report, ACF-218).

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<sup>1</sup> We use the term child care and early education (CCEE) programs to include child care centers, family child care homes, and group child care homes.

<sup>2</sup> A violation refers to an instance where a CCEE program is not in compliance with a licensing regulation.

<sup>3</sup> The Quality Progress Report (QPR) is an annual report in which Child Care and Development Fund (CCDF) lead agencies provide information about how CCDF quality funds were expended, and the measures used by states/territories to evaluate progress in improving the quality of CCEE programs. The FFY 2019 QPR only included questions about two types of inspection consequences: CCDF funding revocation and program closures. For more information about the QPR, see <https://www.acf.hhs.gov/occ/data/quality-progress-report-acf-218-ccdf-program-fiscal-year-2019>.

<sup>4</sup> Child Care and Development Fund (CCDF) lead agencies were asked to report on the number of providers who had CCDF funding revoked as a result of an inspection during the past federal fiscal year (October 1 to September 30). Although licensing agencies do not directly revoke CCDF funding, providers may lose CCDF funding as a consequence of licensing inspection violations.

# The Role of Enforcement in Licensing Systems

Licensing agencies conduct inspections to monitor whether CCEE programs are complying with licensing regulations. Licensing violations may be identified during routine inspections or when investigating complaints filed against programs. When a licensing violation occurs, there are several factors CCEE licensing staff may consider when determining what, if any, enforcement actions should be taken. These factors include whether children were in potential or actual harm, the number of violations observed during the inspection, whether the program has repeated violations, the size of the program, and the severity of the violations (NCCCQI, 2014). Once these factors have been considered, there are several types of enforcement actions licensing agencies may employ, ranging from offering technical assistance (TA) and resources to denying or revoking the program's license.

## A Framework for Different Levels of Enforcement Actions

Enforcement actions vary in their degree of severity, depending on the severity of the licensing violations and the CCEE program's compliance history. The National Association for Regulatory Administration and the Muskie School of Public Service, University of Southern Maine (2007) developed a pyramid that illustrates the varying levels of enforcement actions, ranging from least severe at the bottom to most severe at the top (Figure 1). The pyramid shape suggests that licensing staff should start with the least stringent actions at the bottom and progress towards more stringent actions, as needed. The wide shape suggests that the least stringent actions should be used most frequently, whereas the narrow shape at the top indicates that more stringent actions should be used less frequently.

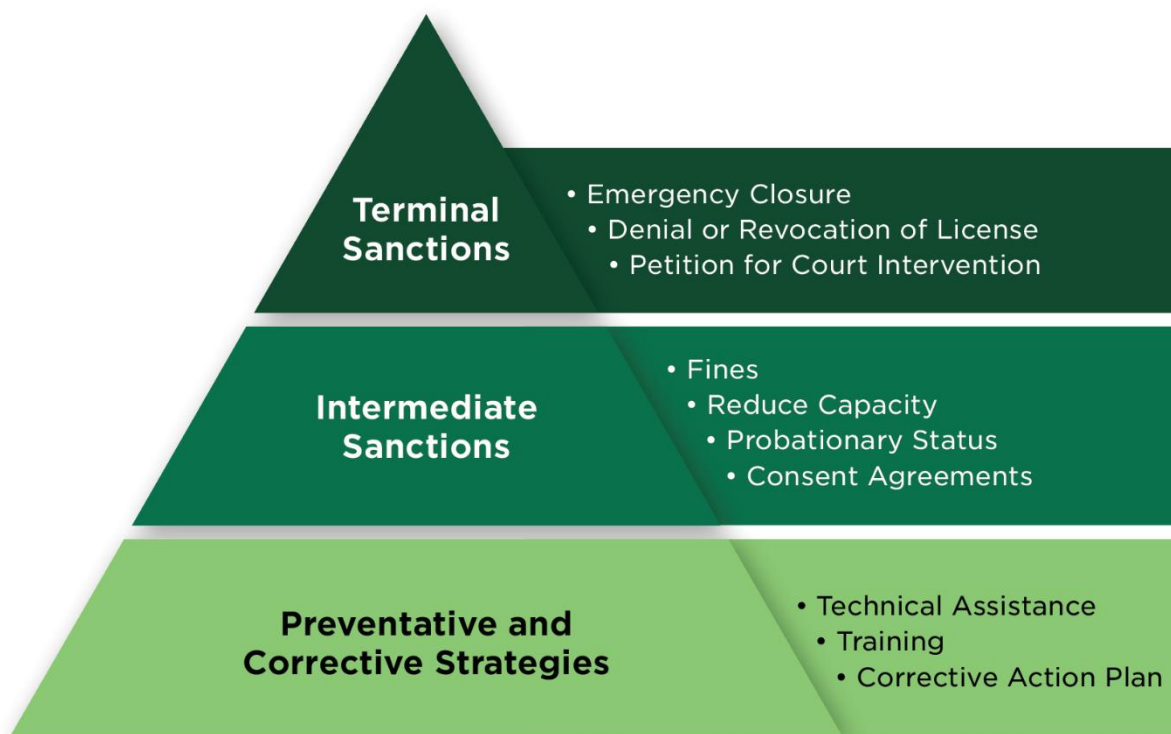
- The least stringent enforcement actions at the bottom of the pyramid are referred to as **preventative and corrective strategies**. These strategies are meant to help programs achieve and maintain compliance and include TA, training, and corrective action plans. These strategies are often coupled with other preventative nonregulatory methods to promote compliance and high-quality care, including professional development, peer support, and ongoing communication with providers (NCCCQI, 2014).
- The next level of enforcement actions are **intermediate sanctions**, which are meant to allow programs to resolve problems and avoid more serious enforcement actions (NCCCQI, 2014). These may include civil fines, limiting the number of children served, probationary status, or consent agreements.<sup>5</sup>
- The most serious enforcement actions are referred to as **terminal sanctions**. Terminal sanctions are used when violations pose an immediate or ongoing threat to children's health and safety. These include emergency closures and suspension or denial of a program's license.

Though the pyramid offers a helpful framework licensing agencies can use to inform their approach to enforcement, there is insufficient data available to assess the extent to which states/territories are using a pyramid-like approach when enforcing regulations. The following sections, however, offer some data about the extent to which states allow and use various enforcement actions and the frequency of two types of sanctions.

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<sup>5</sup> A consent agreement is a written agreement between the licensing agency and a CCEE program. This document identifies the corrective actions to be taken by the program, reason for the agreement, allotted time to come into compliance, and consequences if the program fails to come into compliance with the provisions outlined in the agreement (NCCCQI, 2014).

**Figure 1.** Progressive enforcement pyramid adapted from NARA and the Muskie School of Public Service, University of Southern Maine (2007), as cited in NCCCQI (2014)



## Types of Enforcement Actions Allowed in and Used by State CCEE Licensing Agencies

This section presents the most recent publicly available data from the Child Care Licensing Study survey. In 2017, licensing agency staff in all 50 states and the District of Columbia reported on the use of preventative and corrective strategies, such as training and TA (Table 1), as well as intermediate and terminal sanctions, such as fines, consent agreements, and revocation of licenses (Tables 2 and 3). These findings are summarized below.

State licensing agencies were asked whether licensors provided training, TA, consultation, or resources to licensees to support compliance or address non-compliance issues. Nearly all states provided individual support to help programs achieve compliance or to address non-compliance, whereas about half of states reported that they provided these types of supports to multiple providers at the same time. These data suggest licensors may be more likely to provide supports that are tailored to the needs of individual programs.

**Table 1.** Provision of training and TA to support compliance in 2017 (n=51)

	Number of states	Percentage of states
Licensors provided TA/consultation to licensees to help them achieve compliance with the regulations	49	96%
Licensors provided resources to individual programs related to specific non-compliance issues	46	90%
Licensors provided individual program TA/consultation related to specific non-compliance issues	45	88%
Licensors provided training to multiple programs at the same time related to topics based on specific non-compliance issues	28	55%
Licensors provided resources to multiple programs at the same time related to topics based on specific non-compliance issues	28	55%

Source: Authors' analysis of the Child Care Licensing Study, 2017 (Fischer & Orłowski, 2020; n=51, including all states, and the District of Columbia).

Not all states allow the use of all types of enforcement actions. State licensing staff were asked whether their licensing system *allowed* various intermediate and terminal sanctions. This typically reflects licensing policies about the types of sanctions that are possible. It does not reflect the use of various sanctions. The enforcement actions that were most commonly *allowed* by states included revocation or denial of a license and emergency or immediate closure of a facility (Table 2). The enforcement actions that were least commonly *allowed* by states included criminal fines and imprisonment.

**Table 2.** Intermediate and terminal sanctions allowed by states in 2017 (n=51)

	Number of states that allowed enforcement action	Percentage of states that allowed enforcement action
Revocation of license	51	100%
Emergency/immediate closure of facility	50	98%
Denial of license	50	98%
Nonrenewal of license	38	75%
Conditional license	37	73%
Civil fine	31	61%
Probation	24	47%
Consent agreement	21	41%
Criminal fine	6	12%
Imprisonment	4	8%

Source: Authors' analysis of the Child Care Licensing Study, 2017 (Fischer & Orłowski, 2020; n=51, including all states, and the District of Columbia).

State CCEE licensing agencies were asked whether their licensing staff *used* various intermediate and terminal sanctions in 2017. Reports suggest that states may not use all allowable enforcement actions in a given year (Table 3). For instance, although 61 percent of state CCEE licensing agencies reported allowing civil fines in 2017, only 50 percent reported using them. The 2017 CCLS data do not provide information about why certain enforcement actions are used more or less frequently. It's possible that licensing staff chose to use less stringent enforcement actions before using more stringent actions (as illustrated in the pyramid) or because most program violations did not require the use of more stringent enforcement actions. Additional research could identify the factors that influence enforcement decisions.

**Table 3.** Intermediate and terminal sanctions used at least once by states in 2017 (n varies)

	Number of states that used enforcement action	Total number of state licensing agency respondents <sup>a</sup>	Percentage of states that used enforcement action
Revocation of license	40	46	87%
Emergency/immediate closure of facility	32	44	73%
Denial of license	30	42	71%
Nonrenewal of license	14	30	47%
Conditional license	16	28	57%
Civil fine	17	34	50%
Probation	15	30	50%
Consent agreement	14	30	47%
Criminal fine	1	27	4%
Imprisonment	0	27	0%

**Source:** Authors' analysis of the Child Care Licensing Study, 2017 (Fischer & Orłowski, 2020; n=51, including all states, and the District of Columbia).

<sup>a</sup>**Note:** The sample size for each row varies for two possible reasons: 1) the state did not allow the enforcement method in 2017 or 2) the CCEE licensing agency did not report how many times the enforcement action was used in 2017.

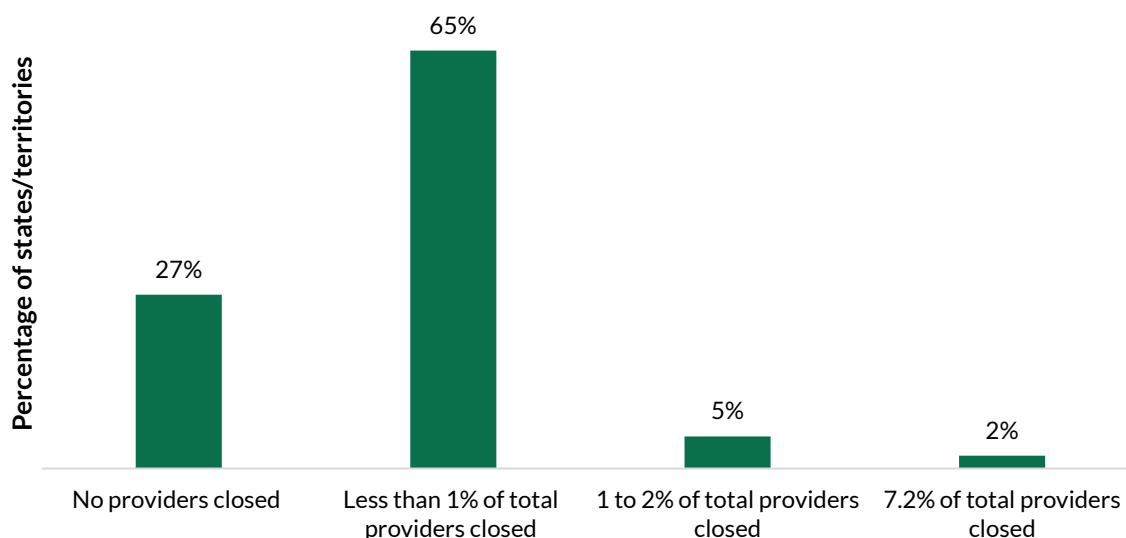
## CCEE Provider Closures

The Progressive Enforcement Pyramid (Figure 1) suggests that licensing staff address licensing violations using the least stringent action needed to resolve the problem and progress towards more stringent actions depending on the severity of the violation, whether the violation is a repeat violation, and the program's compliance history. However, there is little publicly available data to understand how frequently licensing agencies use each type of enforcement action, the factors that influence their decisions about enforcement actions, and the extent to which licensing staff generally follow the progressive sequence of enforcement actions suggested in the pyramid. The most recent pre-pandemic data<sup>6</sup> from the Quality Progress Report (QPR; ACF-218) offers some information about the frequency of CCEE program closures as an enforcement action.

<sup>6</sup> During the COVID-19 pandemic, many states pivoted to virtual inspections which may have affected inspection results and enforcement practices. We used the most recent pre-pandemic QPR data available to examine the consequences of licensing inspection before licensing inspections were affected by pandemic-related changes.

In some states/territories, licensing agencies may close providers' CCEE programs due to licensing violations. CCEE provider closures directly affect the supply of CCEE programs. Forty state and territory CCDF lead agencies (73%) reported that at least one provider closed due to a licensing inspection in FFY 2019 (Figure 2).<sup>7</sup> Across states/territories, the percentage of licensed providers within each state/territory that closed because of an inspection ranged from 0 percent up to 7.2 percent. Among states/territories where at least one provider closed, the average percentage of providers that closed was 0.6 percent. Although many states/territories reported closing at least one provider as a result of a licensing inspection, these findings suggest that states/territories used this enforcement action infrequently.

**Figure 2.** Percentage of states/territories with licensed providers who closed due to an inspection in FFY 2019 (n=53)



**Source:** Authors' analysis of FFY 2019 State/Territory Quality Progress Report, Sections 7.3.6 for provider closures and 1.1 for providers operating in FFY 2019 (n=55 states and territories, including all states, the District of Columbia, Guam, Northern Mariana Island, Puerto Rico, and Virgin Islands; American Samoa was excluded from this analysis due to missing data).

**Note:** Percentages were calculated by dividing the number of providers who closed as a result of an inspection in FFY 2019, by the total number of licensed and legally exempt providers reported in FFY 2019, including licensed centers and family child care providers and legally exempt centers and family child care providers.

## CCDF Funding Revocations

In some states/territories, licensing violations may affect CCEE provider receipt of CCDF<sup>8</sup> subsidy funding. Providers may lose their CCDF funding as a result of licensing violations, particularly in cases where a provider's license has been revoked or is placed on a probationary or conditional status. In other words, some licensing agency enforcement actions may inform whether a provider loses CCDF funding. State and territory CCDF lead agencies reported the number of providers who had their CCDF funding revoked due to a licensing inspection in FFY 2019 on the QPR.<sup>9</sup> Thirty-three state/territory CCDF lead agencies (62%)

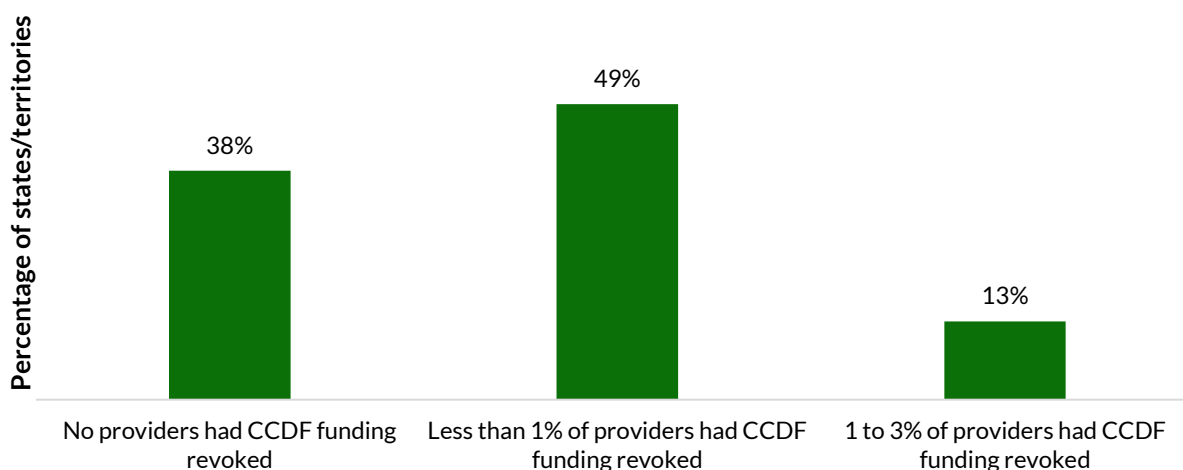
<sup>7</sup> CCEE provider closures are likely due to violations identified during a *licensing* inspection, however the QPR language does not specify licensing and instead generally refers to the number of child care providers who closed their programs "as a result of an inspection."

<sup>8</sup> "The CCDF is a federal and state partnership program authorized under the Child Care and Development Block ... to provide financial assistance to low-income families to access child care so they can work or attend a job training or educational program" (OCC, 2016).

<sup>9</sup> CCDF funding revocations are likely due to violations identified during a *licensing* inspection, however the QPR language does not specify licensing and instead generally refers to the number of child care providers who had their CCDF funding revoked "as a result of an inspection."

reported that at least one provider had their CCDF subsidy funding revoked due to a licensing inspection in FFY 2019 (Figure 3). Across states, the percentage of providers who had their CCDF funding revoked due to an inspection ranged from 0 percent up to 2.8 percent. Among states/territories that revoked providers' CCDF funding, the average percentage of providers who had their CCDF funding revoked was 0.5 percent. These data suggest that very few providers lose their CCDF funding due to licensing inspections.

**Figure 3.** Percentage of states/territories with licensed providers who had their CCDF funding revoked due to an inspection in FFY 2019 (n=53)



**Source:** Authors' analysis of FFY 2019 State/Territory Quality Progress Report, Sections 7.3.5 for revocation of funding and FFY 2019 Office of Child Care Final Data Table 7 for the number of child care providers receiving CCDF funds (n=53 states and territories, including 49 states, the District of Columbia, Guam, Northern Mariana Island, and Puerto Rico; American Samoa, California, and Virgin Islands were excluded from this analysis due to missing data).

**Note:** Percentages were calculated by dividing the number of providers who had CCDF funding revoked in FFY 2019, by the total number of licensed or regulated centers, family homes, and group homes that received CCDF funds in FFY 2019.

## Conclusion

There are several possible enforcement actions CCEE licensing agencies can take to address licensing violations. These can range from more supportive and less punitive actions, like training or TA, to more serious actions, like criminal fines and imprisonment. These enforcement actions are meant to be used in a progressive manner, starting with the least intrusive action needed to achieve and maintain compliance (NARA and the Muskie School of Public Service, University of Southern Maine, 2007). Indeed, 2017 CCLS data suggest that very few states used criminal fines or imprisonment to enforce licensing violations. While the CCLS data report the frequency of using an enforcement action at least once, it would also be helpful to know how often specific enforcement actions are used within a state or territory. Which programs, for example, receive stricter enforcement actions? Are licensing staff generally using enforcement actions in a progressive manner? More data are also needed to understand who decides which enforcement action to use and what factors influence that decision (e.g., program's overall compliance history, severity of a violation).



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# Enforcement Actions Used in Child Care and Early Education Licensing

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