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650

COMMITTEE REPORT

HOUSE

FURTHER:

(5)

2/26/82

Date: 2/1/82

Mr. Speaker:

The Committee on HEALTH, EDUCATION & SOCIAL SERVICES has had SB 650

"An Act relating to licensing of foster homes, group homes, nurseries, and institutions; and providing for an effective date."

under consideration and ~~(a majority of the committee)~~ ~~(the committee)~~ --- reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation (x) with zero fiscal impact
- referred to the _____ Committee

**MEMBERS SIGNING
DO PASS**

[Signature]
Terry [Signature]

**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

[Signature]

[Signature]
CHAIRMAN

A M E N D M E N T

OFFERED IN THE HOUSE:

By: H.E.S.S.

To: _____ HOUSE BILL No. CS 2d SS HB 11

SENATE BILL No. _____

PAGE: 8

LINE: _____

Add (4) to Sec. 08.69.150;

"~~99~~) ensure each infant is screened in accordance with AS 1'.15.200."

alaska
state
hospital
association

copy packet

319 Seward St., Juneau, Alaska 99801 • (907) 586-1790
REPRESENTING ACUTE, LONG TERM AND OUTPATIENT FACILITIES

Chairman of the Board
Tom Mingen
Fairbanks Memorial
Hospital
Fairbanks

January 26, 1982

Chairman-Elect
Ronald A. Pavellas
Alaska Hospital and
Medical Center
Anchorage

Secretary/Treasurer
Mark Hawkins
Sitka Community Hospital
Sitka

The Honorable Charles H. Parr
State Capitol
Pouch V
Juneau, AK 99811

Immediate Past Chairman
Sister Barbara Haase
Ketchikan General Hospital
Ketchikan

Delegate to the American
Hospital Association
Al M. Camosso
Providence Hospital
Anchorage

Dear Senator Parr:

SUBJECT: Senate Bill 650

Alternate Delegate to the
American Hospital Assoc.
Edward Zeina
Cordova Community
Hospital
Cordova

Hope Cottages has called to our attention several problems they have had with licensure in the areas covered by this bill. They suggest that in the legislation there be included a requirement that the various agencies develop interpretative guidelines in addition to the regulations such as is done in Medicaid certification. This would assist the facility in responding to the regulations and limit the changes in interpretations caused by the constant turn over in staff of the licensing agencies.

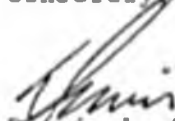
Delegate to the American
Health Care Association
Jack Buch
St. Ann's Nursing Home
Juneau

Alternate Delegate to the
American Health Care
Association
Emma G. Ivy
Wrangell General Hospital
Wrangell

Mike Saville from Hope Cottages or I would be pleased to discuss this issue with you in more detail.

Delegate to the Association
of Western Hospitals
Michael Herron
South Peninsula Hospital
Homer

Sincerely


Dennis L. DeWitt
President

Alternate Delegate to the
Association of Western
Hospitals
Daniel Van Wieringen
Roder Island Hospital
Roder

DLD:jp

Trustee Delegate to the
American Hospital Assoc.
Moe Kadish
Trustee, Providence
Hospital
Anchorage

cc: Mike Saville
Phoebe Lindsey

Alternate Trustee Delegate
to American Hospital
Association
Robert Jensen
Central Peninsula Hospital
Soldotna

President
Dennis L. DeWitt
Juneau

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 11, 1982

The Honorable Jalmar Kerttula
President of the Senate
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. President:

Under the authority of art. III, sec. 18 of the Alaska Constitution, I am transmitting a bill relating to licensing of foster homes, group homes, nurseries, and institutions for children and dependent adults.

The bill has three major features: it amends licensing practices to provide for biennial rather than annual licensing; it authorizes the Department of Health and Social Services to waive compliance with regulatory standards where appropriate; and it establishes the conditions under which the department may issue provisional licenses.

This bill is a response to the substantially increased workload of the department's licensing staff in recent years (currently, 13 licensing specialists in seven locations do most licensing for over 1,100 facilities) and the concomitant drop in the department's ability to monitor the quality of care provided by licensed facilities. A number of factors have contributed to this. In the fall of 1980, the department implemented a statewide complaint investigation procedure, as a result of which numerous grave conditions were brought to the department's attention. Correction of these, including such conditions as physical and sexual abuse of children in care, mishandling of medication, and fire and sanitation hazards, is critical and requires a large amount of staff time.

Another factor is recent legislation which has greatly increased the number of facilities subject to licensing, without providing for additional staff to implement the licensing program. In 1977 the legislature added licensing requirements for facilities for dependent adults. Last session the legislature created a child care grant program for day care centers, family day care homes, and pre-schools, which requires licensing by the department in

order to qualify for a grant (ch. 112 SLA 81). Although many family day care homes and pre-schools are currently exempt from licensing requirements, a substantial number may now decide to apply for a license in order to qualify for a grant.

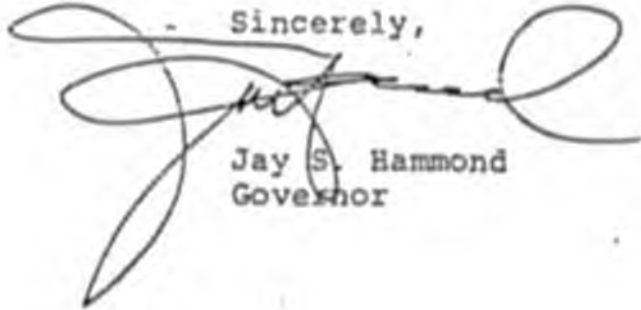
Biennial licensing would be a major step toward meeting the department's increasing volume of cases. Performance of annual reviews currently occupies a high percentage of staff time; biennial licensing would enable staff to concentrate on new and marginal facilities where the need for scrutiny is greatest, while performing full-scale reviews of all facilities every two years.

The department's waiver of requirements for operation in appropriate circumstances (AS 47.35.040(c)) is a recognition of the fact that in some instances urban and rural differences require flexibility to allow for alternatives which satisfy the purpose of the particular standard for which waiver is sought.

Section 2 of the bill establishes provisions for the issuance of provisional licenses and limits the maximum duration of a provisional license to two years. Provisional licenses would be issued to all new facilities and to facilities which are temporarily unable to conform to licensing requirements. New facilities would be issued a biennial license after the department has had time to inspect the facility and determine that standards are being met.

In addition to these features, the bill clarifies the provision prohibiting transfer of a license, and adds a definition of the term "facility".

Passage of this bill is essential in order for the department to promote a sound licensing program that will ensure quality care and protection of children and dependent adults in facilities that are required to be licensed.

Sincerely,

Jay S. Hammond
Governor

§ 47.35.020 WELFARE, SOCIAL SERVICES AND INSTITUTIONS § 47.35.040

and following "department" in paragraph (4), and inserted "and foster homes, group homes and institutions caring for dependent adults" in paragraph (4).

The 1977 amendment inserted "within 30 days after receiving a written request that it do so" and "under home rule powers or" in the first sentence of subsection (b), substituted "a municipality which has" for "municipalities which have" in that sentence, and inserted "under the

authority of §§ 10 — 80 of this chapter as it applies to nurseries," "such" preceding "regulation or standard," and "day care" preceding "licensee" in the second sentence of that subsection.

Legislative history report. — For report on ch. 98, SLA 1977 (HB 193), see 1977 House Journal, p. 290.

Cited in J.M.A. v. State, Sup. Ct. Op. No. 1201 (File No. 23911-542 P.2d 170 (1975).

Sec. 47.35.020. License or permit required. No person may, without a license or permit to do so, (1) maintain or conduct a boarding home, foster home, group home, institution or other place for the regular reception or care of children under 16 years of age, or a foster home, group home or institution for the care of dependent adults, or (2) engage in the business of receiving or caring for children under 14 years of age, with or without compensation, in a nursery in which five or more children not related by blood or marriage, or legal adoption, to the owner, operator or manager of the business are lodged. (§ 3 ch 17 SLA 1951; am § 3 ch 42 SLA 1973; am § 3 ch 253 SLA 1976; am § 2 ch 45 SLA 1977)

Effect of amendments. — The 1976 amendment deleted "nursery" preceding "institution or other place" in clause (1) and in clause (2), substituted "14 years of age" for "16 years of age," "five or more children" for "a child," and "are lodged"

for "is lodged or boarded" and inserted "in a nursery."

The 1977 amendment inserted "or a foster home, group home or institution for the care of dependent adults" in item (1).

Sec. 47.35.030. Authority to issue regulations. The department may adopt regulations and standards consistent with other requirements of law. This authority does not deny a religious group from establishing and operating an institution solely because of the prior installation or operation of another religious group in the same area. The authority to adopt regulations and standards shall be exercised to insure compliance with the intent and purpose of AS 47.35.010 — 47.35.100. The department may inspect and examine an institution, home or place, or the performance of a service. (§ 4 ch 17 SLA 1951; am § 1 ch 77 SLA 1967)

Legislative history report. — For report on ch. 77, SLA 1967 (HB 201), see 1967 House Journal, p. 430.

Sec. 47.35.040. Issuance of license or permit. (a) The department shall issue a license or permit to conduct a boarding home, foster home, group home, nursery or institution if it determines that the boarding home, foster home, group home, nursery or institution meets the standards for operation set by the department.

(b) A license or permit may not be transferred. (§§ 5, 8 ch 17 SLA 1951; am § 4 ch 42 SLA 1978)

Sec. 47.35.050. Duration of license or permit. The license or permit remains in effect for a period of one year from the date of issuance unless revoked for cause. The department shall give written notice of revocation 30 days before the effective date of a revocation, except in a case when the health or well-being of children or dependent adults is in jeopardy. (§ 6 ch 17 SLA 1951; am § 5 ch 42 SLA 1978; am § 8 ch 45 SLA 1977)

Effect of amendment. — The 1977 amendment inserted "or dependent adults" in the second sentence.

Sec. 47.35.060. Records required. Each licensee or permit holder shall keep records regarding each child or adult in its control and care, or placed by it, which the department prescribes, and shall report to the department the facts which the department requires with reference to the children or adults. All records regarding individuals placed for care in an institution or home under this chapter are confidential and shall be safeguarded from improper disclosure by the agency or department. (§ 9 ch 17 SLA 1951; am § 4 ch 45 SLA 1977)

Effect of amendment. — The 1977 amendment inserted "or adult" in the first sentence, added "or adults" to the end of that sentence, and substituted "individuals placed for care in an institution or home under this chapter" for "children and their parents or relatives" in the second sentence.

Sec. 47.35.070. Violations. A person who violates a provision of AS 47.35.010 — 47.35.100 or a rule or regulation adopted under AS 47.35.010 — 47.35.100 is guilty of a misdemeanor, and upon conviction is punishable by a fine of not more than \$200. (§ 11 ch 17 SLA 1951; am § 2 ch 77 SLA 1967)

Legislation history report. — For report on ch. 77, SLA 1967 (HB 201), see 1967 House Journal, p. 429.

Sec. 47.35.075. Licensure of providers of care for dependent adults by municipalities. A first or second class borough or a first or second class city outside a first or second class borough may license and supervise institutions caring for dependent adults. If a borough or city chooses not to license care providers for dependent adults, the department shall be the licensing authority; if a borough or city chooses to license care providers for dependent adults, the borough or city may exercise any power or responsibility granted to the department under this chapter and shall enforce standards and regulations adopted by the department under AS 47.35.030. (§ 5 ch 45 SLA 1977)

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PLEASE NOTE: THE FOLLOWING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

BACKUP INFORMATION FOR SB 650

1. Statement on "The Foundation of Licensing"
2. Michigan Licensing Statute (with biennial license in Sec. 722.118, and provisional licensing in Sec. 722.117).
3. Texas Licensing Statute (biennial licensing in Sec. 42.049, annual inspections in Sec. 42.044, and provisional licensing in Sec. 42.051).
4. Excerpts from the Texas Licensing Manual regarding biennial licensing (first and subsequent) and regulation during the licensing period.
5. Examples of waivers in day care homes, child foster homes and residential child care.
6. Copy of DHEW pamphlet, "Licensing: Interaction Between the Licensing Agent and Service Providers"

THE FOUNDATION OF LICENSING

Citizen Participation

A recognized principle of our democratic system is the government's responsibility to provide equal protection and opportunity to all citizens. For children who must live apart from their families, the state fulfills this responsibility, in part, through the licensing of residential child care and placement agencies. Citizens of the state have a valid interest in all phases of the licensing process. Their elected legislators establish that legal base; appointed citizens serve on ad hoc advisory committees to develop licensing requirements and on standing advisory committees; individual citizens provide character references for license applicants and give testimony in public hearings; in performing the licensing function, the licensing agency staff member ultimately represents the citizens of the state. Effective licensing is strengthened as citizens understand and support the total licensing process.

Due Process

Every person or organization whose activities are regulated through the licensing requirements has the right to notice of the requirements, any non-compliances, information for correcting areas of non-compliance, and reasonable time limits for coming into compliance. Each person whose activities are regulated also has the right to reviews and fair hearings, as well as access to court decisions.

Equal Treatment

Licensing requirements should be enforced equally on all agencies, assuring a basic level of care and protection, adequate program, and opportunity for development.

From: "Training Course for Licensors of Residential Group Child Care and Child Placement Agencies" developed by Group Child Care Consultants, University of North Carolina, Chapel Hill, N.C.

Act No. 116 of the
Public Acts of 1973

**PERTAINING TO THE REGULATION
OF
CHILD CARE ORGANIZATIONS
DEFINED AS:**

CHILD CARING INSTITUTION
CHILD PLACING AGENCY
CHILDREN'S CAMP
CHILD CARE CENTER
FOSTER FAMILY HOME
FOSTER FAMILY GROUP HOME
FAMILY DAY CARE HOME
GROUP DAY CARE HOME

State of Michigan
Department of Social Services
Lansing, Michigan 48926

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CHILD CARE ORGANIZATIONS

ACT 116 of 1973

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CHILD CARE ORGANIZATIONS

Act 118 of 1973

AN ACT to provide for the protection of children through the licensing and regulation of child care organizations; to provide for the establishment of standards of care for child care organizations; to provide penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

722.111 Definitions.

Sec. 1. As used in this act:

(1) "Child care organization" means a governmental or nongovernmental organization having as its principal function the receiving of minor children under 18 years of age for care, maintenance, training, and supervision, notwithstanding that educational instruction may be given. Child care organization includes organizations commonly described as child caring institutions, child placing agencies, children's camps, child care centers, day care centers, nursery schools, parent cooperative preschools, foster homes, group homes, or day care homes.

(a) "Child caring institution" means a child care facility which is organized for the purpose of receiving children for care, maintenance, and supervision, usually on a 24-hour basis, in buildings maintained by the institution for that purpose, and operates throughout the year. An educational program may be provided, but the educational program shall not be the primary purpose of the facility. Child caring institution includes a maternity home for the care of unmarried mothers under 18 years of age and an agency group home, which is described as a small child caring institution owned, leased, or rented by a licensed agency providing care for more than 4 but less than 12 children. It also includes institutions for mentally retarded or emotionally disturbed children under 18 years of age. Child caring organization does not include a hospital licensed under Act No. 17 of the Public Acts of 1968, as amended, being sections 331.411 to 331.430 of the Michigan Compiled Laws, a boarding school licensed under section 599a of Act No. 269 of the Public Acts of 1955, being section 340.599a of the Michigan Compiled Laws, a convalescent home licensed under Act No. 139 of the Public Acts of 1956, as amended, being sections 331.651 to 331.660 of the Michigan Compiled Laws, or a hospital for the mentally ill licensed under Act No. 151 of the Public Acts of 1923, as amended, being sections 330.11 to 330.71 of the Michigan Compiled Laws.

(b) "Child placing agency" means an agency organized for the purpose of receiving children for their placement in private family homes for care or for adoption.

(c) "Children's camp" means a residential, day, troop, or travel camp conducted in a natural environment for more than 4 school-age children, apart from their parents, relatives, or legal guardians, for 5 or more days in a 14-day period. A children's camp provides care and supervision for the same group of children for usually not more than 12 weeks.

(d) "Child care center" or "day care center" means a facility, other than a private residence, receiving more than 8 preschool or school-age children for group care for

The facility is generally described as a child care center, day care center, day nursery, nursery school, parent cooperative preschool, play group, or drop-in center. "Child care center" or "day care center" does not include a Sunday school conducted by a religious institution or a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services.

(e) "Private home" means a private residence which may be a full-time foster family home, a full-time foster family group home, a group day care home, or a family day care home.

(i) "Foster family home" is a private home in which one but not more than 4 minor children, who are not related to an adult member of the household by blood, marriage, or adoption, are given care and supervision for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks, unattended by a parent or legal guardian.

(ii) "Foster family group home" means a private home in which more than 4 but less than 7 children, who are not related to an adult member of the household by blood, marriage, or adoption, are provided care for 24 hours a day, for 4 or more days a week, for 2 or more consecutive weeks; unattended by a parent or legal guardian.

(iii) "Family day care home" means a private home in which one but less than 7 minor children are received for care and supervision for periods of less than 24 hours a day, unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. It includes a home that gives care to an unrelated child for more than 4 weeks during a calendar year.

(iv) "Group day care home" means a private home in which more than 6 but not more than 12 children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. It includes a home that gives care to an unrelated child for more than 4 weeks during a calendar year.

(2) "Provisional license" means a license issued to a child care organization which is temporarily unable to conform to all of the rules promulgated under the authority of this act.

(3) "Regular license" means a license issued to a child care organization indicating it is in compliance with all rules promulgated under the authority of this act.

(4) "Guardian" means the guardian of the person.

(5) "Minor child" means a person under the age of 18 years.

(6) "Related" means any of the following relationships, by marriage, blood, or adoption: parent, grandparent, brother, sister, stepparent, stepsister, stepbrother, uncle, or aunt.

HISTORY: New 1973, p. — Act 118, Eff. Mar. 28, 1974.

722.112 Rules; ad hoc committees.

Sec. 2. (1) The department of social services, hereinafter referred to as the "department", is responsible for the development of rules for the care and protection of children in organizations covered by this act and for the promulgation of these rules pursuant to Act No. 308 of the Public Acts of 1969, as amended, being

(2) The department shall establish an ad hoc committee for each type of child care organization as defined in this act when it is formulating or amending rules under this act. The committee shall consist of not less than 12 members, and shall include representatives of the following groups and agencies:

- (a) Department of public health.
- (b) Department of state police, fire marshal division and state fire safety board.
- (c) Department of education.
- (d) Department of mental health.
- (e) Representatives of organizations affected by this act.
- (f) Parents of children affected by this act.

The representatives of organizations affected by this act and parents of children affected by this act shall constitute a majority of the committee membership. The committee shall serve during the period of the formulation of rules, shall have responsibility for making recommendations on the content of rules, and shall recommend to the department revisions in proposed rules at any time before their promulgation.

(3) The rules promulgated under this act shall be restricted to:

(a) The operation and conduct of child care organizations and the responsibility the organizations assume for child care.

(b) The character, suitability, training, and qualifications of applicants and other persons directly responsible for the care and welfare of children served.

(c) The general financial ability and competence of applicants to provide necessary care for children and to maintain prescribed standards.

(d) The number of individuals or staff required to insure adequate supervision and care of the children received.

(e) The appropriateness, safety, cleanliness, and general adequacy of the premises, including maintenance of adequate fire prevention and health standards to provide for the physical comfort, care, and well being of the children received.

(f) Provisions for food, clothing, educational opportunities, programs, equipment, and individual supplies to assure the healthy physical, emotional, and mental development of children served.

(g) Provisions to safeguard the legal rights of children served.

(h) Maintenance of records pertaining to admission, progress, health, and discharge of children.

(i) Filing of reports with the department.

(j) Discipline of children.

(k) Transportation safety.

(4) Rules once established are subject to major review by the ad hoc committee established by this act no less than once every 5 years and should be reviewed biennially by the department.

HISTORY: New 1973, p. — Act 118, Eff. Mar. 28, 1974.

722.113 Inspections; reports; evaluation; final determination as to license; report to licensee; nature of license.

Sec. 3. The rules promulgated by the department shall be used by the department of public health, the fire marshal division of the department of state police, and local authorities in the inspection of and reporting on child care organizations covered by this act. The inspection of the health and fire safety of child care organizations shall be completed by department staff or by the department of public health, the fire marshal division of the department of state police, or local authorities upon request of the department. Inspection reports completed by state agencies and local authorities shall be furnished to the department and shall become a part of its evaluation for licensing of organizations covered by this act. After careful consideration of the reports and consultation where necessary, the department shall assume responsibility for the final determination of the issuance, denial, revocation, or provisional nature of licenses issued to nongovernmental organizations. A report of findings shall be furnished to the licensee. A license shall be issued to a specific person or organization at a specific location, shall be nontransferable, and shall remain the property of the department.

HISTORY: New 1973, p. —, Act 110, Eff. Mar. 20, 1974

722.114 Consultation and assistance to organizations.

Sec. 4. The department shall provide consultation to organizations covered by this act to assist them in meeting the requirements of the act and the rules promulgated hereunder. The department shall offer assistance, upon request, in developing methods for the improvement of service.

HISTORY: New 1973, p. —, Act 110, Eff. Mar. 20, 1974

722.115 License required; application; investigation; issuance; certification of private home; placement of 16 or 17 year old child in unlicensed residence.

Sec. 5. (1) A person, partnership, firm, corporation, association, or nongovernmental organization may not establish or maintain a child care organization, unless licensed by the department. Application for a license shall be made on forms provided, and in the manner prescribed, by the department. Before issuing a license, the department shall investigate the activities and proposed standards of care of the applicant and shall make an on-site evaluation of the proposed organization. If satisfied as to the need for a child care organization, its financial stability, the good character and intent of the applicant, and that the services and facilities are conducive to the welfare of the children, the license shall be issued.

(2) The department may authorize a licensed child placing agency or a governmental unit to investigate a private home pursuant to subsection (1) and to certify that the private home meets the licensing standards prescribed in this act. A private home shall be certified for licensing by the department by only 1 child placing agency or governmental unit. Other child placing agencies may place children in a private home only upon the approval of the certifying agency or governmental unit.

(3) The department may authorize a licensed child placing agency or a governmental unit to place a child who is 16 or 17 years old in his own unlicensed residence, or in the unlicensed residence of an adult who has no supervisory responsibility for the child, provided that a child placing agency or governmental unit retains supervisory responsibility for the child.

722.116 Evaluation of local and state government child care organizations; report; state funds.

Sec. 6. Local and state government child care organizations similar to those nongovernmental organizations required to be licensed pursuant to this act shall be evaluated and approved at least once every 2 years, using this act and rules promulgated thereunder for similar nongovernmental organizations licensed under this act. A report of the evaluation shall be furnished to the funding body for each child care organization. Unless child care organizations are approved, or provisionally approved, as meeting the appropriate administrative rules, state funds shall not be appropriated for their continued operation.

HISTORY: New 1973, p. —, Act 110, Eff. Mar. 20, 1974

722.117 Provisional license.

Sec. 7. A provisional license shall be issued to a new organization during the first 6 months of operation. At the end of the 6 months of operation, the department shall either issue a regular license or renew or refuse to renew the provisional license as provided in section 11. A provisional license may be issued to a child care organization which is temporarily unable to conform to the rules. A provisional license shall expire 6 months from the date of issuance and may be issued not more than 4 times. The issuance of a provisional license shall be contingent upon the submission to the department of an acceptable plan to overcome the deficiency present in the child care organization within the time limitations of the provisional licensing period.

HISTORY: New 1973, p. —, Act 110, Eff. Mar. 20, 1974

722.118 Regular license.

Sec. 8. A regular license shall be in force for 2 years from the date of issuance unless revoked as authorized by section 11 or modified to a provisional status based on evidence of noncompliance with this act or the rules promulgated thereunder. The license shall be reinstated biennially on application and approval. A license shall specify in general terms the kind of child care program the licensee is authorized to undertake, and the number, ages, and sex of children that can be received and maintained. This section shall not be construed to limit the right of the department to periodically assess continued compliance with this act and rules promulgated under it. An on-site evaluation shall be made by the department not less than once each year.

HISTORY: New 1973, p. —, Act 110, Eff. Mar. 20, 1974

722.119 Registration of family day care homes; demonstration project.

Sec. 9. (1) The department may conduct in up to 3 counties a 2-year demonstration project of registration of family day care homes under this act. The department shall report its findings and recommendations to the legislature before March 1, 1978. "Registration" means the process whereby the department maintains a record of all family day care homes, promulgates rules under section 2 of this act, and requires the person operating a family day care home to certify that he has complied with the rules.

(2) The registration shall be in effect for 2 years from the date of issuance or until the expiration of the project period.

(3) All sections of this act shall apply to registrants as well as licensees, except sections 5, 7 and 8.

(4) The provisions of this section shall not be applicable to any county of 1,000,000 population or more.

722.120 Investigations; examinations; visitations; records; reports.

Sec. 10. (1) The department may investigate and examine conditions of a child care organization in which a licensee receives, maintains, or places out children, and may investigate and examine the books and records of the licensee. The licensee shall admit members of the department and furnish all reasonable facilities for thorough examination of its books, records, and reports. The department of public health, the fire marshal division of the department of state police, or local authorities, in carrying out the provisions of this act, may visit a child care organization to advise in matters affecting the health or fire protection of children.

(2) A licensee shall keep such records as the department may prescribe regarding each child in its control and care, and shall report to the department, when requested, the facts as the department may require with reference to the children upon forms furnished by the department. Records regarding children and facts compiled about children and their parents and relatives shall be deemed confidential and disclosure of this information shall be properly safeguarded by the child care organization and the department.

HISTORY: New 1973, p. —, Act 118, Eff. Mar. 29, 1974.

722.121 Revocation, denial, modification, or refusal of license; grounds; notice; hearing; decision; protest.

Sec. 11. The department may revoke, refuse to renew, or modify to a provisional status a license of a child care organization when the licensee falsifies information on the application for license or wilfully and substantially violates this act, the rules promulgated under this act, or the terms of the license. A license shall not be revoked, a renewal thereof shall not be refused, an application for a license shall not be denied, or a regular license shall not be modified to a provisional status unless the licensee, or applicant is given notice in writing of the grounds of the proposed revocation, denial, modification, or refusal. If revocation, denial, modification, or refusal is appealed within 30 days of receipt of the notice by writing addressed to the director of the department, the director or his designated representative shall conduct a hearing at which the licensee, or applicant may present testimony and confront witnesses. Notice of the hearing shall be given to the licensee, or applicant by a personal service or delivery to the proper address by certified mail not less than 2 weeks before the date of the hearing. The decision of the director shall be made not more than 10 days following the hearing, and forwarded to the protesting party by certified mail not more than 10 days thereafter. If the proposed revocation, denial, modification, or refusal is not protested, the license may thereupon be revoked or the application therefor or the renewal thereof refused.

HISTORY: New 1973, p. —, Act 117, Eff. Mar. 29, 1974.

722.122 Appeal.

Sec. 12. A person aggrieved by the decision of the director following the hearing under section 11 of this act may, within 30 days after receipt of the decision, take an appeal to the circuit court of the county in which the person resides by filing with the clerk of the court an affidavit setting forth the substance of the proceedings before the department and the errors of law upon which the person relies, and serving the director of the department with a copy of the affidavit. The circuit court shall thereupon have jurisdiction to hear and determine the questions of law involved in the appeal. If the department prevails, the circuit court shall affirm the decision of the department; if the licensee, or applicant prevails, the circuit court shall set aside the revocation, or order the issuance or renewal of the license, as the case may be.

HISTORY: New 1973, p. —, Act 116, Eff. Mar. 29, 1974.

722.123 Injunction.

Sec. 13. When there is a violation of this act or a rule promulgated thereunder, and the unlawful activity or condition of the child care organization is likely to result in serious harm to the children under care, the department may seek injunctive action against the child care organization in the circuit court through proceedings instituted by the attorney general on behalf of the department.

HISTORY: New 1973, p. —, Act 118, Eff. Mar. 29, 1974.

722.124 Persons authorized to place child.

Sec. 14. Only a parent, guardian of the person of a child, a person related to a child by blood, marriage, or adoption, a licensed child placing agency, or a governmental unit may place a child in the control and care of a person. This section shall not be construed to prevent foster parents from placing foster children in temporary care pursuant to rules promulgated by the department.

HISTORY: New 1973, p. —, Act 118, Eff. Mar. 29, 1974.

722.124a Authorization for medical care.

Sec. 14a. (1) A probate court, a child placing agency, or the department may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment of a minor child placed in out-of-home care pursuant to Act No. 280 of the Public Acts of 1939, as amended, being sections 400.1 to 400.122 of the Michigan Compiled Laws, Act No. 288 of the Public Acts of 1939, as amended, being sections 701.1 to 713.6 of the Michigan Compiled Laws, or this act. If the minor child is placed in a child care organization, then the probate court, the child placing agency, or the department making the placement shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. If the minor child is placed in a child care institution, the probate court, the child placing agency, or the department making the placement shall in addition execute a written instrument investing that institution with authority to consent to the routine, nonsurgical medical care of the child.

(2) A parent or guardian of a minor child who voluntarily places the child in a child care organization shall execute a written instrument investing that organization with authority to consent to emergency medical and surgical treatment of the child. The parent or guardian shall consent to routine, nonsurgical medical care.

(3) Only the minor child's parent or legal guardian shall consent to nonemergency, elective surgery for a child in foster care. If parental rights have been permanently terminated by court action, consent for nonemergency elective surgery shall be given by the probate court or the agency having jurisdiction over the child.

HISTORY: Add. 1974, p. —, Act 191, Imd. Eff. July 2.

722.125 Violation; penalty; conviction as ground for revocation of license.

Sec. 15. (1) A person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization who violates this act is guilty of a misdemeanor, and shall be fined not less than \$25.00 nor more than \$100.00, or imprisoned for not less than 30 days nor more than 90 days, or both.

(2) When a person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization is convicted under this act, the conviction shall be sufficient ground for the revocation of its license, and the person, child care organization, agency, or representative or officer of a firm, corporation, association, or organization so convicted shall not be granted a license, or be permitted to be connected, directly or indirectly, with a licensee for a period of not less than 10 years thereafter.

722.126 Education of public.

Sec. 16. The department shall provide continuous education of the public in regard to the requirements of this act through the ongoing use of mass media and other methods as are deemed appropriate.

HISTORY: New 1973, p. —, Act 116, Eff. Mar. 29, 1974.

722.127 Objection on religious grounds to medical examination, immunization, or treatment of child.

Sec. 17. Nothing in the rules adopted pursuant to this act shall authorize or require medical examination, immunization, or treatment for any child whose parent objects thereto on religious grounds.

HISTORY: New 1973, p. —, Act 116, Eff. Mar. 29, 1974.

722.128 Repeal.

Sec. 18. Act No. 47 of the Public Acts of 1944, being sections 722.101 to 722.108 of the Compiled Laws of 1970, is repealed.

HISTORY: New 1973, p. —, Act 116, Eff. Mar. 29, 1974.

APPENDIX I
HUMAN RESOURCES CODE, CHAPTER 42
REGULATION OF CHILD-CARE FACILITIES
(Child Care Licensing Law)

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 42.001. PURPOSE. The purpose of this chapter is to protect the health, safety, and well-being of the children of the state who reside in child-care facilities by establishing statewide minimum standards for their safety and protection and by regulating the facilities through a licensing program. It is the policy of the state to ensure the protection of all children under care in child-care facilities and to encourage and assist in the improvement of child-care programs. It is also the intent of the legislature that freedom of religion of all citizens is inviolate, and nothing in this chapter gives a governmental agency authority to regulate, control, supervise, or in any way be involved in the form, manner, or content of religious instruction or the curriculum of a school sponsored by a religious organization.

Sec. 42.002. DEFINITIONS. In this chapter:

(1) "Child" means a person under 18 years of age.

(2) "Division" means the division designated by the department to carry out the provisions of this chapter.

(3) "Child-care facility" means a facility that provides care, training, education, custody, treatment, or supervision for a child who is not related by blood, marriage, or adoption to the owner or operator of the facility, for all or part of the 24-hour day, whether or not the facility is operated for profit or charges for the services it offers.

(4) "Child-care institution" means a child-care facility that provides care for more than 12 children for 24 hours a day, including facilities known as children's homes, halfway houses, residential treatment camps, emergency shelters, and training or correctional schools for children.

(5) "Foster group home" means a facility that provides care for 7 to 12 children for 24 hours a day.

(6) "Foster family home" means a facility that provides care for not more than six children for 24 hours a day.

(7) "Day-care center" means a facility that provides care for more than 12 children under 14 years of age for less than 24 hours a day.

(8) "Group day-care home" means a facility that provides care for 7 to 12 children under 14 years of age for less than 24 hours a day.

(9) "Registered family home" means a facility that regularly provides care in the caretaker's own residence for not more than six children under 14 years of age, excluding the caretaker's own children, and that provides care after school hours for not more than six additional elementary school siblings of the other children given care, but the total number of children, including the caretaker's own, does not exceed 12 at any given time.

(10) "Family day home" means a facility that provides care for not more than six children under 14 years of age for less than 24 hours a day not in the caretaker's own residence nor in the residence of one or more of the children.

(11) "Agency home" means a private home that provides care for not more than six children, that is used only by a licensed child-placing agency, and that meets division standards.

(12) "Child-placing agency" means a person other than the natural parents or guardian of a child who plans for the placement of or places a child in an institution, agency home, or adoptive home.

(13) "Facilities" includes child-care facilities and child-placing agencies.

(14) "State of Texas" or "state" does not include political subdivisions of the state.

(Sections 42.003-42.020 reserved for expansion)

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 42.021. DIVISION DESIGNATED. (a) The department shall designate a division within the department to regulate and license child-care facilities and child-placing agencies. The division shall enforce the provisions of this chapter and the rules and standards adopted by the department under this chapter and shall carry out other responsibilities the department may delegate or assign.

(b) The commissioner of the department shall appoint as director of the division a person who:

(1) meets the qualifications required of a child-care administrator by Chapter 43 of this code;

(2) holds a graduate degree in social science or law and has five years' administrative experience in a field related to child care; or

(3) has 10 years' experience in a field related to child care, at least 5 of which must be administrative.

(c) The department shall employ sufficient personnel and provide training for the personnel to carry out the provisions of this chapter.

(d) The director may divide the state into regions for the purpose of administering this chapter.

Sec. 42.022. STATE ADVISORY COMMITTEE. (a) The State Advisory Committee on Child-Care Facilities is composed of 15 citizens of this state appointed by the commissioner.

(b) Members of the committee serve for terms of two years.

(c) The members must represent the following groups:

(1) parents, guardians, or custodians of children who use the facilities;

(2) child advocacy groups;

(3) operators of the facilities; and

(4) experts in various professional fields that are relevant to child care and development.

(d) At least three members of the division staff shall meet with the committee, and the division shall provide staff necessary for the committee.

(e) The committee shall review rules and minimum standards for child-care facilities and child-placing agencies promulgated by state agencies, and shall advise the department, the division, the council, and state agencies on problems of child-care facilities and child-placing agencies.

(f) The committee shall receive and review the annual report of the division.

(g) The committee shall meet twice a year, and the members shall receive their actual travel expenses and the state per diem.

Sec. 42.023. ANNUAL REPORT. (a) The division shall send an annual report of its activities to the governor, lieutenant governor, and members of the legislature.

(b) The annual report shall include:

(1) a report by regions of applications for licensure or certification, of licenses issued, denied, suspended or revoked, or provisional licenses issued, denied, or revoked, of emergency closures and injunctions, and of the compliance of state-operated agencies with certification requirements;

(2) a summary of the amount and kind of in-service training and other professional development opportunities provided for division staff;

(3) a summary of training and other professional development opportunities offered to facilities' staffs; and

(4) a report of new administrative procedures, of the number of staff and staff changes, and of plans for the coming year.

(c) Copies of the annual report shall be available to any state citizen on request.

Sec. 42.024. ADMINISTRATIVE PROCEDURE. The Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) applies to all procedures under this chapter except where it is contrary to or inconsistent with the provisions of this chapter.

(Sections 42.025-42.040 reserved for expansion)

SUBCHAPTER C. REGULATION OF CHILD-CARE FACILITIES

Sec. 42.041. REQUIRED LICENSE. (a) No person may operate a child-care facility or child-placing agency without a license issued by the division.

(b) This section does not apply to:

(1) a state-operated facility;

(2) an agency home;

(3) a facility that is operated in connection with a shopping center, business, religious organization, or establishment where children are cared for during short periods while parents or persons responsible for the children are attending religious services, shopping, or engaging in other activities on or near the premises, including but not limited to retreats or classes for religious instruction;

(4) a school or class for religious instructions that does not last longer than two weeks and is conducted by a religious organization during the summer months;

(5) a youth camp licensed by the Texas Department of Health;

(6) a hospital licensed by the Texas Department of Mental Health and Mental Retardation or the Texas Department of Health;

(7) an educational facility accredited by the Central Education Agency or the Southern Association of Colleges and Schools that operates primarily for educational purposes in grades kindergarten and above;

(8) an educational facility that operates solely for educational purposes in grades kindergarten through at least grade two, that does not provide custodial care for more than one hour during the hours before or after the customary school day, and that is a member of an organization that promulgates, publishes, and requires compliance with health, safety, fire, and sanitation standards equal to standards required by state, municipal, and county codes;

(9) a kindergarten or preschool educational program that is operated as part of a public school or a private school accredited by the Central Education Agency, that offers educational programs through grades six, and that does not provide custodial care during the hours before or after the customary school day; and

(10) a registered family home.

(c) A single license that lists addresses and the appropriate facilities may be issued to a child-care institution that operates noncontiguous facilities that are nearby and that are demonstrably a single operation as indicated by patterns of staffing, finance, administrative supervision, and programs.

Sec. 42.042. RULES AND STANDARDS (a) The department shall make rules to carry out the provisions of this chapter.

(b) The department shall conduct a comprehensive review of all rules and standards at least every six years.

(c) The department shall provide a standard procedure for receiving and recording complaints and a standard form for recording complaints.

(d) The department shall provide standard forms for applications and inspection reports.

(e) The department shall promulgate minimum standards for child-care facilities covered by this chapter that will:

(1) promote the health, safety, and welfare of children attending a facility;

(2) promote safe, comfortable, and healthy physical facilities for children;

(3) ensure adequate supervision of children by capable, qualified, and healthy personnel;

(4) ensure adequate and healthy food service where food service is offered;

(5) prohibit racial discrimination by child-care facilities; and

(6) require procedures for parental and guardian consultation in the formulation of children's educational and therapeutic programs.

(f) In promulgating minimum standards for child-care facilities, the department shall recognize the various categories of facilities, including facilities offering specialized care, and the various categories of children and their particular needs. Standards for child-care institutions must require an intake study before a child is placed in an institution. The intake study may be conducted at a community mental health and mental retardation center.

(g) In promulgating minimum standards the department may recognize and treat differently the following child-care facilities: child-caring institutions, foster homes, day-care centers, group day-care homes, family day homes, registered family homes, and agency homes.

(h) The department shall promulgate minimum standards for child-placing agencies.

(i) Before adopting minimum standards, the division shall present the proposed standards to the State Advisory Committee on Child-Care Facilities for review and comment, and shall send a copy of the proposed standards to each licensee covered by the proposed standards at least 60 days before the standards take effect to provide the licensee an opportunity to review and to send written suggestions to the council and the department.

(j) The department may waive compliance with a minimum standard in a specific instance if it determines that the economic impact of compliance is sufficiently great to make compliance impractical.

(k) The department may not regulate or attempt to regulate or control the content or method of any instruction or curriculum of a school sponsored by a religious organization.

Sec. 42.043. RULES FOR IMMUNIZATIONS.

(a) The department shall make rules for the immunization of children admitted to facilities.

(b) The department shall require that each child at an appropriate age have a test for tuberculosis and be immunized against diphtheria, tetanus, poliomyelitis, rubella, and rubeola. The immunization must be effective on the date of first entry into the facility. However, a child may be provisionally admitted if the required immunizations have begun and are completed as rapidly as medically feasible.

(c) The Texas Department of Health shall make rules for the provisional admission of children to facilities and may modify or delete any of the immunizations listed in Subsection (b) of this section or require additional immunizations as a requirement for admission to a facility.

(d) No immunization may be required for admission to a facility if a person applying for a child's admission submits one of the following affidavits:

(1) an affidavit signed by a licensed physician stating that the immunization would be injurious to the health and well being of the child or a member of the child's family or household; or

(2) an affidavit signed by the child's parent or guardian stating that the immunization conflicts with the tenets and practices of a recognized religious organization of which the applicant is an adherent or a member.

(e) Each facility shall keep an individual immunization record for each child admitted, and the records shall be open for inspection by the division at all reasonable times.

(f) The Texas Department of Health shall provide the immunizations required by this section to children in areas where there is no local provision of these services.

Sec. 42.044. INSPECTIONS. (a) An authorized representative of the division may visit a facility during operating hours to investigate, inspect, and evaluate.

(b) The division shall inspect all licensed or certified facilities at least once a year and may inspect other facilities as necessary. At least one of the annual visits must be unannounced and all may be unannounced.

(c) The division must investigate a facility when a complaint is received. The division representative must notify the facility's director or authorized representative when a complaint is being investigated and report in writing the results of the investigation to the director or the director's authorized representative.

(d) The division may call on political subdivisions and governmental agencies for assistance within their authorized fields.

Sec. 42.045. RECORDS. (a) A person who operates a licensed or certified facility shall maintain individual child development records, individual health records, statistical records, and complete financial records.

(b) A person who operates a licensed facility shall have an annual audit by a certified public accountant of the facility's books. A copy of the accountant's statement of income and disbursements must accompany an application for a license. This subsection does not apply to a facility that provides care for less than 24 hours a day or to an agency home.

Sec. 42.046. LICENSE APPLICATION. (a) An applicant for a license to operate a child-care facility or child-placing agency shall submit to the division a completed application on a form provided by the division.

(b) The division shall supply the applicant the application form and a copy of the appropriate minimum standards.

(c) After receiving an application, the division shall investigate the applicant and the plan of care for children.

(d) The division shall complete the investigation and decide on an application within two months after the date the division receives an application.

Sec. 42.047. CONSULTATIONS. (a) The department shall offer consultation to potential applicants, applicants, and license and certification holders about meeting and maintaining standards for licensing and certification and achieving programs of excellence in child care.

(b) The department shall offer consultation to prospective and actual users of facilities.

Sec. 42.048. ADVISORY OPINIONS. (a) The director of the division may give an advisory opinion on whether or not a planned facility or a planned change in an existing facility complies with the division's rules and minimum standards.

(b) A written opinion authorized by Subsection (a) of this section is binding on the division as a declaratory order if it is signed by the division director and the division representative administering this chapter in a division region, and if an applicant or license holder has acted in reliance on the opinion.

Sec. 42.049. LICENSING. (a) The division shall issue a license after determining that an applicant has satisfied all requirements.

(b) When issuing a license, the division may impose restrictions on a facility, including but not limited to the number of children to be served and the type of children to be served.

(c) The division may grant a variance of an individual standard set forth in the applicable standards for good and just cause.

(d) A license holder must display a license issued under this chapter in a prominent place at the facility.

(e) A license issued under this chapter is not transferable and applies only to the operator and facility location stated in the license application. A change in location or ownership automatically revokes a license.

(f) A biennial license must be issued if the division determines that a facility meets all requirements. The evaluation shall be based on a specified number of visits to the facility and a review of all required forms and records.

Sec. 42.050. LICENSE RENEWAL. (a) A license holder may apply for a new license in compliance with the requirements of this chapter and the rules promulgated by the division.

(b) The application for a new license must be completed and decided on by the division before the expiration of the license under which a facility is operating.

(c) The division shall evaluate the application for a new license to determine if all licensing requirements are met. The evaluation must include a specified number of visits to the facility and a review of all required forms and records.

Sec. 42.051. PROVISIONAL LICENSE (a) The division shall issue a provisional license when a facility's plans meet the department's licensing requirements and one of the following situations exists:

- (1) the facility is not currently operating;
- (2) the facility is not licensed for the location stated in the application, or
- (3) there is a change in ownership of the facility.

(b) A provisional license is valid for six months from the date it is issued and is not renewable.

Sec. 42.052. CERTIFICATION AND REGISTRATION. (a) A state-operated child-care facility or child-placing agency must receive certification of approval from the division. The certification of approval must be renewed every two years.

(b) To be certified, a facility must comply with the department's rules and standards and any provisions of this chapter that apply to a licensed facility of the same category. The operator of a certified facility must display the certification in a prominent place at the facility.

(c) A registered family home must be registered with the division.

(d) To be registered with the division, a registered family home must comply with the department's rules and standards and any provisions of this chapter that apply to a registered family home.

Sec. 42.053. AGENCY HOMES. (a) An agency home is considered part of the child-placing agency that operates the agency home for purposes of licensing.

(a) The operator of a licensed agency shall display a copy of the license in a prominent place in the agency home used by the agency.

(b) An agency home shall comply with all provisions of this chapter and all department rules and standards that apply to a child-care facility caring for a similar number of children for a similar number of hours each day.

(c) The division shall revoke or suspend the license of a child-placing agency if an agency home operated by the licensed agency fails to comply with Subsection (c) of this section.

(Sections 42.054-42.070 reserved for expansion)

SUBCHAPTER D. REMEDIES

Sec. 42.071. LICENSE SUSPENSION. (a) The division may suspend the license of a facility that has temporarily ceased operation but has definite plans for starting operations again within the time limits of the issued license.

(b) The division may suspend a facility's license for a definite period rather than deny or revoke the license if the division finds repeated non-compliance with standards that do not endanger the health and safety of children. To qualify for license suspension under this subsection, a facility must suspend its operations and show that standards can be met within the suspension period.

(c) The division shall revoke the license of a facility that does not comply with standards after a license suspension.

Sec. 42.072. LICENSE DENIAL OR REVOCATION. (a) The division shall deny or revoke the license or certification of approval of a facility that does not comply with the requirements of this chapter, the standards and rules of the department, or the specific terms of the license or certification.

(b) The division shall notify the person operating or proposing to operate a facility of the reasons for the denial or revocation and of the person's right to appeal the decision within 30 days after receiving the notice.

(c) A person who wishes to appeal a license denial or revocation shall notify the director by certified mail within 30 days after receiving the notice required in Subsection (b) of this section. The person shall send a copy of the notice of appeal to the assigned division representative.

(d) Within 14 days after the date the appeal notification was mailed, the director shall appoint an advisory review board to hear the appeal or notify the person requesting the appeal that the request is denied.

(e) Within 14 days after notifying a person that an advisory review board will hear the case, the director shall appoint five of the person's peers to the board and set a date for the hearing. The date for the hearing must be within 28 days after the date the board members are appointed.

(f) The advisory review board shall hear the appeal and render its opinion to the director within seven days after the last day of the hearing. The board members shall receive actual travel expenses and the state per diem for each day of the hearing.

(g) A committee composed of the director, the division representative responsible for establishing standards, and the division representative administering this chapter in the region where the facility in question is located shall review the opinion. The committee shall make a decision within 14 days after receiving the opinion and shall notify, by certified mail, the person who appealed.

(h) A person whose license has been denied or revoked may challenge the committee's decision by filing a suit in a district court of Travis County or the county in which the person's facility is located within 30 days after receiving the committee's decision. The trial shall be *de novo*.

(i) Records of the department's hearing shall be kept for one year after a committee decision is rendered. On request, and at the person's own expense, the division shall supply a copy of the verbatim transcript of the advisory board hearing to a person appealing a license denial or revocation in district court.

(j) A person may continue to operate a facility during an appeal of a license denial or revocation unless the division has sought injunctive relief under Section 42.074 or civil penalties under Section 42.075 of this code.

Sec. 42.073. CLOSING A FACILITY. (a) The division may close the facility and place the children attending the facility in another facility if the division finds violations of this chapter or violations of the department's rules and standards that create an immediate danger for children.

(b) A division representative who finds conditions described in Subsection (a) of this section shall immediately notify the director and request an immediate inspection of the facility by the director or the director's designee.

(c) The division shall report to the governor and the commissioner of the department when a state-operated facility is found in violation of this chapter or the department's rules and standards and the violation threatens serious harm to the children in the facility.

(d) Closing a facility under this section is an emergency measure. The division shall seek an injunction against continued operation of the facility after closing a facility under this section.

Sec. 42.074. INJUNCTIVE RELIEF. (a) When it appears that a person has violated, is violating, or is threatening to violate the licensing, certification, or registration requirements of this chapter or the department's licensing, certification, or registration rules and standards, the division may file a suit in a district court in Travis County or in the county where the facility is located for assessment and recovery of civil penalties under Section 42.075 of this code, for injunctive relief, including a temporary restraining order, or for both injunctive relief and civil penalties.

(b) The district court shall grant the injunctive relief the facts may warrant.

(c) At the division's request, the attorney general shall conduct a suit in the name of the State of Texas for injunctive relief, to recover the civil penalty, or for both injunctive relief and civil penalties as authorized by Subsection (a) of this section.

Sec. 42.075. CIVIL PENALTY. (a) A person is subject to a civil penalty of not less than \$50 nor more than \$100 for each day of violation and for each act of violation if the person:

(1) threatens serious harm to a child in a facility by violating a provision of this chapter or a department rule or standards;

(2) violates a provision of this chapter or a department rule or standard three or more times within a 12-month period; or

(3) places a public advertisement for an unlicensed facility.

(b) The civil penalty authorized by this section is cumulative and in addition to the criminal penalties and injunctive relief provided by this chapter.

Sec. 42.076. CRIMINAL PENALTIES. (a) A person who operates a child-care facility or child-placing agency without a license commits a Class B misdemeanor.

(b) A person who places a public advertisement for an unlicensed facility commits a Class C misdemeanor.

If the licensee has made any changes in the operations or policies, information on these changes must accompany the application.

The licensing representative prepares a brief report using the same format as used for the report for the preceding provisional license. This new report can be a summary by sections corresponding to the sections of the appropriate set of standards. If plans for compliance with standards remain the same, indicate that there have been no changes. More detail must be included in any areas in which change has occurred.

If the licensee decides not to apply for another provisional license, the licensing representative confirms this by letter to the licensee and asks that the license be returned. The licensing representative follows procedures stated in Item 3143, Request to Return a License.

If the licensee does not apply for another provisional license and does not confirm that he/she will cease operation, the license is allowed to expire. The licensing representative prepares a letter within 10 days of expiration of the license for the signature of the Director of Agency and Institutional Licensing. The letter must include a statement that operation without a license is in violation of Chapter 42, Human Resources Code. A self-addressed stamped envelope should be enclosed for the return of the license.

3130 First Biennial License

The licensing representative may recommend that the first biennial license be issued if the facility has been operational and has provided services to children providing:

1. The provisional license has been in effect for at least three months,
2. Minimum standards have been met on a continuing basis,
3. At least three inspection visits have been made to the facility by the licensing representative, and
4. Supervisory approval has been secured.

For a facility in Category 3, 6, or 7 of Item 3122, Criteria for Issuance, a decision to issue a biennial license may be made based on fewer than three visits provided compliance with standards has been determined and no significant changes have been made in the day-to-day operation of the facility.

The biennial license, which supercedes the provisional license, does not require another application. If the facility is satisfying licensing requirements, the licensing representative prepares a licensing report and recommends that a biennial license be granted. If standards which were discussed in the provisional licensing report continue to be met in the same manner, the report can indicate there has been no change. The licensing report shall follow the same format as outlined in Item 3113.6, Licensing Report Format except that reference may be made to sections rather than individual standards if there has been no change from the provisional report. For standards which can only be evaluated fully after the facility begins operation, there must be specific description of how the standards are met. Emphasis is placed on those standards which can only be evaluated with the presence of children at the facility.

The recommendation concerning the issuance of the license must include the same information required in Item 3113.6, Licensing Report Format. The report and transmittal memo are sent to the supervisor with a copy of the memo to the Director of Agency and Institutional Licensing. A licensing supervisor will review the report and present it to the licensing committee with his/her written recommendations to the Director of Agency and Institutional Licensing. The licensing supervisor may make an on-site visit prior to presenting the report to the licensing committee. The licensing committee recommends to the Director of Agency and Institutional Licensing the issuance or denial of the license. Upon approval, a license signed by the Director of Agency and Institutional Licensing will be issued. Copies of the report are given to the facility and the governing body after the license is issued. This ensures that the governing body receives copies of the final report.

The Director of Agency and Institutional Licensing sends a letter with the biennial license. This letter includes, as a minimum:

1. Any waivers/variances related to the biennial license, and expiration dates thereof,
2. A statement that the facility will be inspected to determine continued compliance with minimum standards, and that at least one of the visits each year will be unannounced,
3. Any conditions placed on the license,
4. Notice that all complaints will be investigated, and
5. A statement that the license is only valid at the licensed location and is not transferable.

3140 Subsequent Biennial License

At least 120 days before the biennial license expires, the licensing representative notifies the licensee of the approaching expiration of the license. The notification is accompanied by an application, Form 2960, and the appropriate documentation list. This notice must include a statement that materials must be completed and returned to the licensing representative no later than two months prior to the expiration date. It is the licensing representative's responsibility to ensure that the facility has been provided complete information on what must be done in order for a new license to be issued. The information may be confirmed in writing to the facility. Floor plans and policy statements that have not changed do not have to be resubmitted, but the licensing representative must make legible copies from the previous report to be included in the current licensing report.

If a licensing representative is not permitted to visit a facility, he/she notifies his/her supervisor or the Director of Agency and Institutional Licensing and requests consultation on further action.

3152 Regulation during the Biennial Licensing Period

After biennial licensing/certification, the licensing representative is responsible for making inspections to determine whether the facility continues to meet minimum standards. Inspections should be made approximately every four months unless written supervisory approval to make fewer inspections has been secured. Inspections should not be more frequent than once every four months unless the licensing representative can document that more frequent inspections are necessary. The licensing representative may follow up noncompliances that do not directly endanger the health or safety of children in care by telephone call or letter, or at the next inspection. The licensing representative must document all follow-up actions in a letter to the facility. Chapter 42 of the Human Resources Code requires one unannounced inspection for all facilities annually; other inspections may or may not be announced.

Visits are considered to be once every four months when a visit is made during each four month period of the calendar year. For example, one visit during January, February, March, April, and another during May, June, July, or August. This may result in less than or more than four months between visits, but it allows flexibility in scheduling according to priorities. Visits should be at four month intervals when possible.

3153

Inspection visits, whether once every four months or otherwise, and whether announced or unannounced, must be planned and purposeful. When an inspection is announced and its purpose is to evaluate compliance with standards relating to records and other documents, the licensing representative should tell the administrator the kind of records to be evaluated and give some estimate of the length of time to be spent evaluating the records. Unannounced visits generally focus on staff-child ratio and physical aspects of the facility. When the licensing representative arrives at the facility, he/she identifies him/herself to the person in charge and explains the purpose of the visit.

The licensing representative should end each inspection of the facility with an exit interview with the administrator or his/her representative to share the findings of the licensing representative regarding compliance with standards. Each inspection is then followed by a letter to the administrator or his/her representative. If the letter is not directed to the administrator, he/she should receive a copy.

When the stated purpose of an inspection is to evaluate compliance with specific standards, and evaluation cannot be completed in one visit, an inspection of a facility may include more than one visit to the facility. Such visits must not be further apart than two weeks from first to last if they are to be documented to the facility in one letter.

3153 Children in Immediate Danger

Human Resources Code, Section 42.073 states that:

- (a) The division may close the facility and place the children attending the facility in another facility if the division finds violations of this chapter or violations of the department's rules and standards that create an immediate danger for children.

DEPARTMENT OF HEALTH & SOCIAL SERVICES
DIVISION OF FAMILY & YOUTH SERVICES
19 Lathrop Street, Drawer 40
Fairbanks, Alaska 99701

APPLICATION FOR A WAIVER OF A REQUIREMENT
FACILITY TYPE:
Residential Child Care Facility / Child Foster Home
Adult Residential Care Facility / Adult Foster Home
Child Day Care Center / Family Day Care Home
Authority: AS 47.35.030

COMPLETE APPLICABLE SPACES ONLY:
APPLICANT: SHIRLEY COSBY PHONE: 682-3322

FACILITY ADDRESS: 109 W. Turnaround North Pole

APPLICANT'S MAILING ADDRESS: Box 5566, North Pole, AK

Cite the requirement for which waiver is requested, including the Administrative Code Number; explain why provision(s) cannot be satisfied; describe the alternative method proposed for meeting the safeguarding intent of the provision; cite the period of time requested (less than one year).

7 AAC 50.210(b)(2) NUMBER OF STAFF REQUIRED: "In a family day care home, if there are children under age two in care, there may not be more than five children unrelated to the caregiver."

Due to having two children from the same family with several years age span I request to have a waiver.

Applicant's Signature: Shirley Cosby Date: Oct. 8 1981

STAFF COMMENTS/RELEVANT INFORMATION: FACILITY NO. 343465
REGIONAL REVIEWER SIGNATURE James Fox

I concur with this request. Mrs Cosby has a helper and uses the basement area of her home for day care (this has an exit). She took over several children when another home closed unexpectedly.

BY: Dorothy Johnson AGENCY: DFVS DATE: 10-23-81

APPROVED DISAPPROVED COMMENTS OR SPECIAL PROVISIONS:

WAIVER COMMITTEE: [Signature] [Signature] DATE: 12/3/81

Upon Determination: cc: Applicant Regional Office Field Office Supervising Agency
06-3336 CWS 0129 (Rev. 12/80)

DIVISION OF FAMILY AND YOUTH SERVICES
APPLICATION FOR A WAIVER OF A REQUIREMENT

FACILITY TYPE:

Residential Child Care Facility / Child Foster Home
Adult Residential Care Facility / Adult Foster Home
Child Day Care Center / Family Day Care Home
Authority: AS 47.35.030

COMPLETE APPLICABLE SPACES ONLY:

APPLICANT: MICHAEL AND JANE KRAUSS PHONE: 479-6340

FACILITY ADDRESS: 7 Mile Red Fox Drive

APPLICANT'S MAILING ADDRESS: P.O. Box 80123, College, Alaska 99708

Cite the requirement for which waiver is requested, including the Administrative Code Number; explain why provision(s) cannot be satisfied; describe the alternative method proposed for meeting the safeguarding intent of the provision; cite the period of time requested (less than one year).

7 AAC 50.560 Fire Safety (b & d-1)

These sections require that each level of a facility have a 5# ABC fire extinguisher and smoke detector. The waiver is requested for their sunken living room. It is only four steps lower than the main floor and is within a few feet of the smoke detector and fire extinguisher on the main level.

Applicant's Signature:

Jane L. Krauss

Date:

1-11-82

STAFF COMMENTS/RELEVANT INFORMATION:

FACILITY NO.

REGIONAL REVIEWER SIGNATURE

James J. [Signature]

Worker concurs that the intent of the regulation is met and recommends approval of request. This is also a non-smoking household.

BY: *Marty Biggs*

AGENCY: Family & Youth Services

DATE: *1/12/82*

APPROVED

DISAPPROVED

COMMENTS OR SPECIAL PROVISIONS:

WAIVER COMMITTEE:

Dot [Signature] Miss [Signature]

DATE:

1/22/82

Upon Determination: cc: Applicant Regional Office Field Office Supervising Agency

Div. of Family & Youth Services
1919 Lathrop, Drawer 40
Fairbanks, Alaska 99701
ATTN: M. Biggs

DIVISION OF FAMILY AND YOUTH SERVICES
APPLICATION FOR A WAIVER OF A REQUIREMENT

FACILITY TYPE:

Residential Child Care Facility / Child Foster Home
Adult Residential Care Facility / Adult Foster Home
Child Day Care Center / Family Day Care Home
Authority: AS 47.35.030

COMPLETE APPLICABLE SPACES ONLY:

APPLICANT: Gladys & Lester Exhart

PHONE: 336-7131

FACILITY ADDRESS: 2st Log House Front Street

APPLICANT'S MAILING ADDRESS: P.O. Box 213, Tanana, Alaska 99777

Cite the requirement for which waiver is requested, including the Administrative Code Number; explain why provision(s) cannot be satisfied; describe the alternative method proposed for meeting the safeguarding intent of the provision; cite the period of time requested (less than one year).
P AAC 50.430 (b & d) Number of foster children permitted in the home.

The Exharts are requesting a waiver in the number of children allowed in the home in order to accommodate one more boy. The couple are used to a large family as they have nine children of their own seven of which are still in the home. They have a large two story log home. The upper level is "dorm style" with each of the boys having their own bed, chest of drawers and some private area.

The Exharts philosophy of child rearing is what makes them especially able to foster parent extra children. They believe parenting this many children is a full time job for both parents. Therefore, neither parent works outside the home. They have a variety of subsistence and other home industries which earn them an ample income while leaving them both available to nurture and guide the children. This is a very organized, efficient and caring home.

Applicant's Signature:

[Signature] for Sandy Horne SW III

Date: 7-8-81

STAFF COMMENTS/RELEVANT INFORMATION:

FACILITY NO. 223361

REGIONAL REVIEWER SIGNATURE *[Signature]*

Exhart children in home are:

Charles 07/21/63
Pam 01/15/65
Robert 01/28/66
Ronnie 02/19/69
John 03/07/74
Judy 10/09/75
Carl 03/04/77

Waiver is requesting a capacity for (2) two foster children.

License dates: 11/19/80 to 11/18/81

By allowing this increase, this will also help the worker to comply with Indian Child Welfare Act and allow a native relative placement.

Based on information provided by the social worker, concurs and recommends approval of this waiver. Placement is being held pending the committee's approval. Notify via computer. Thanks

BY: *[Signature]*

AGENCY: Div. Family & Youth Services DATE: 7-8-81

APPROVED DISAPPROVED COMMENTS OR SPECIAL PROVISIONS:

Request well done. Thanks.

WAIVER COMMITTEE:

[Signature]
[Signature]

DATE: 7/10/81

Upon Determination: cc: Applicant Regional Office Field Office Supervising Agency
06-3336 CWS #129 (Rev. 12/80) Galena

DEPARTMENT OF HEALTH & SOCIAL SERVICES
DIVISION OF FAMILY & YOUTH SERVICES
Drawer 40, 1919 Lathrop Street
Fairbanks, Alaska 99701

7AAC 50.310-620
7AAC 50.120-275
7AAC 50.002-114
Authority: AS 47.35.030

COMPLETE APPLICABLE SPACES ONLY

Applicant NORTH STAR HOME Phone: 883-2682

Facility address Mile 1361 Alaska Highway, Dot Lake, AK 99737

Applicant's Mailing Address SAME

Facility type: Institution /XX/ Group Home /___/ Foster Home /___/
Family Day Care Home /___/ Day Care Center /___/

Cite item requested for modification or waiver; explain why provision(s) cannot be met; cite proposed alternative method for meeting the safeguarding intent of the provision; cite period of time requested (less than one year).

7AAC 50.008 LICENSES "--shall designate the maximum number of children--".

We are requesting that we admit 1 teen-age girl in addition to the number on our license (12). She is the sibling of a boy already at the home. Two other residents are leaving soon, we are requesting this waiver for only 30 days. The girl will sleep downstairs, in a bedroom newly enlarged which can accommodate an extra bed.

Geraldine Schlicker
Applicant's Signature

April 1, 1981
Date

Staff Comments: *We concur with this request. Verbal approval given by fire marshal and sanitarian.*

By: *[Signature]* Agency: DFYS Date 4-1-81

Modification /___/ Waiver /X/ Approved /X/ Disapproved /___/
Comments or Special Provisions:

[Signature]
Director, Division of Social Services or Designee

April 6, 1981
Date

Upon Determination: cc: Applicant /X/ Regional Office /X/ Field Office /___/
Supervising Agency /___/

Return to the
Address Below

Application for / / Modification / / Waiver

DEPARTMENT OF HEALTH & SOCIAL SERVICES
DIVISION OF FAMILY & YOUTH SERVICES
Drawer 40, 1919 Lathrop Street
Fairbanks, Alaska 99701

7AAC 50.310-620
7AAC 50.120-275
7AAC 50.002-114
Authority: AS 47.35.030

COMPLETE APPLICABLE SPACES ONLY

Applicant North Slope Borough Children's Receiving Home Phone: 852-7007

Facility address Browerville

Applicant's Mailing Address P.O. Box 371 BARROW, AK. 99723

Facility type: Institution / Group Home / Poster Home /
Family Day Care Home / Day Care Center

Cite item requested for modification or waiver; explain why provision(s) cannot be met; cite proposed alternative method for meeting the safeguarding intent of the provision; cite period of time requested (less than one year).

Requesting waiver of this requirement for the period of the annual license:

7AAC 50.036 ARTICLES OF INCORPORATION - The North Slope Borough is a non-profit organization, but it is a municipality rather than a corporation. The Children's Receiving Home is supervised by the NSB Health Department. Budgets and financial records for the HOME will be included in the licensing study.

Margene Strand acting

Applicant's Signature

Coordinator

Date

5/1/81

Staff Comments:

We concur with the request.

By:

James J. Fox 6/4/81

Agency: DFYS

Date 6-4-81

Modification / Waiver / Approved / Disapproved

Comments or Special Provisions:

Declined by Commission

Pat M...

Director, Division of Social Services or Designee

Date

6/9/81

Upon Determination: cc: Applicant / Regional Office / Field Office / Supervising Agency

Box 3060
Wasilla, AK 99687

FACILITY TYPE:
Residential Child Care Facility Child Foster Home
Adult Residential Care Facility Adult Foster Home
Child Day Care Center Family Day Care Home
Authority: AS 47.35.030

COMPLETE APPLICABLE SPACES ONLY: Keri Huntsman
APPLICANT: Douglas H. Huntsman Keri Kiddick King PHONE: 745-4363

FACILITY ADDRESS: ~~Box 452~~ 633 N. 1st Palmer, AK 99645

APPLICANT'S MAILING ADDRESS: P.O. Box 1573, Palmer, AK 99645

Cite the requirement for which waiver is requested, including the Administrative Code Number; explain why provision(s) cannot be satisfied; describe the alternative method proposed for meeting the safeguarding intent of the provision; cite the period of time requested (less than one year).

The requirement for which a waiver is requested is regarding firearms. The Code Number is 7.AAC 50.247. I am employed by the State as a State Trooper. Part of my job requirement is that I keep my gun loaded at all times. I keep the gun(s) in my bedroom which will be locked at all times. I would request that this waiver be good for 9 months.

Applicant's Signature: Douglas H. Huntsman Date: 12/15/81

STAFF COMMENTS/RELEVANT INFORMATION: FACILITY NO. REGIONAL REVIEWER SIGNATURE C. Zupnik 3/11/82

The Huntsman are requesting a waiver for the regulation which requires separation of gun and ammunition. Mrs. Huntsman was first licensee in 1981 by Anchorage Licensing worker, Barbara Sharp-Carreton. MS Sharp-Carreton recommended relicensing when Mr. Huntsman relocated to the Mat-Su Valley. Ways in which the Huntsman will meet the safety intent include: 1) The gun is located in the bedroom, it is hanging securely on the door, in a holster, the door is kept locked. The key for the door is located above the door, on a hook, well above a child's reach. 2) Mr. Huntsman's schedule varies and he will either be taking his gun to work or he will be in the house and available if his wife should need additional help with children. The Huntsman have young children of their own and are aware of the

BY: Elvira Jaws - Cate AGENCY: Mat-Su DFYS DATE: 3/5/82

APPROVED DISAPPROVED COMMENTS OR SPECIAL PROVISIONS:

WAIVER COMMITTEE: [Signature] DATE: 3/16/82

Upon Determination: cc: Applicant Regional Office Field Office Supervising Agency
06-3336 CWS #129 (Rev. 12/80)

necessity for gun safety. If waiver can not be granted the
unitments will consider alternate suggestions. Pe located
case.

I recommend that the waiver be approved.

DEC 11 1930
U.S. MARSHALS SERVICE
U.S. DEPARTMENT OF JUSTICE



Interaction between the licensing agent and service providers



POSTAGE AND FEES PAID
U.S. DEPARTMENT OF H.E.W.
HEW-201

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
WASHINGTON, D.C. 20201
OFFICIAL BUSINESS

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Human Development Services
Administration for Children, Youth and Families
Children's Bureau 1877
DHEW Publication 100 (OHDS) 78-20119

INTRODUCTION

Many elements are necessary for an effective licensing program that protects children, and assures a reasonable quality of care. These include sound licensing laws, rules, policies and procedures, legal counsel, administrative support, and reasonable workloads. But of all the factors that make up a licensing service, one stands out as being more significant than any other: the person who does the licensing.

If you are a licensing consultant or representative (titles vary from state to state) you are one of the essential elements in the service delivery system that assures a measure of safety and quality in the placement and care of children. Your own background and on-going training greatly affect your ability to license effectively; the more you know about the service regulated, and your own licensing operation the more effective you can be. How you interact as a person with the licensee, or provider, also is a crucial element in determining whether the entire operation will be effective. This brochure is directed toward that aspect of your role.

Jake Terpetra
Licensing and Regulation Specialist
National Center for Child Advocacy
Children's Bureau
July 1977

I. The licensing representative: Be yourself; you can afford to, and will do a better job. The major factor in the licensing operation is you, and the relationships you form. A friendly business-like relationship is preferable. Assumptions tend to be self-fulfilling, so try to resume trust and goodwill while also being thorough. Don't assume that licensing can be done without a relationship. Thus try to develop a positive relationship—one that will work for you.

Work at being comfortable with the use of authority. Enjoying it for its own sake, and avoiding it are equally inappropriate. Try to use authority without being authoritative. Behavior is contagious; the way you treat the provider may be passed on to the children in care.

Variations in personal style are okay. However, where you take your stand on licensing matters must be consistent with other licensing staff. Be familiar with law and rules, and always carry them with you.

Supervision and peer communication are essential for consistent application of laws and rules. (A central administrative structure is conducive to carrying this out effectively.)

The licensing representative must always keep his or her "cool," regardless of the provider's actions. Licensing is never a personal contest. Angry feelings about applicants must be contained. Use supervisors and peers to talk through your feelings about applicants and providers to keep a perspective. Remember that if you can be "bailed" into displaying inappropriate behavior, that tends to become an issue, rather than the applicants' conformity with licensing requirements.

II. License inquiries: (all types) Arrange an interview, preferably in your office first. Inquire about the applicant's interest and plans. Let his (her) interests, concerns, and questions guide the interview. Most applicants will have more questions about other child care issues than about licensing. Answer these questions freely, but don't try to be "all things to all men"; refer the applicant to others where appropriate. Other providers can be an excellent information source for them, and you often can select those you know will give a positive orientation.

At what point do you give out an application?

There is no clear-cut answer. In general, give it when the applicant's questions have been answered, and he feels ready to proceed. Try to avoid long periods (over three months) between application and a licensing decision. Exception: always give an application to the applicant who directly requests it. What do you do with licensing information obtained prior to the receipt of the application? Confirm it afterward.

Give a copy of the law and rules to the applicant early, and refer to them as needed. You will have to discuss every rule and be able to determine the applicant's conformity (or lack of it) on each one. Direct questions on any matter that you need to know about, in order to determine conformity are appropriate.

Where references are required, talk to them personally, if possible, and preferably face-to-face. Reference letters often protect the licensing authority more than the children in care. You need to clarify how the information will be used. Information given in confidence cannot be used officially, but may suggest that you need to investigate certain areas more thoroughly.

III. Licensing re-evaluations. Arrange by appointment, and ask in advance for whatever information must be submitted to you. The interview will go more smoothly if you are familiar with the material and have your questions formulated in general prior to the on-site visit. Arrange for more time than you think you will need; it will discourage attempts to sidetrack you with unrelated conversation.

Clarify at the beginning that you are there for the licensing study, and what you expect to cover in the study. With organizations, this includes who and what you want to see, and whether you want the director to be present.

Remember that providers tend to be anxious about evaluations. You can help put them at ease by maintaining a calm relaxed attitude yourself. Use "small talk" to establish a human-to-human communication base. Try to be consciously aware however, that your primary purpose is to determine the provider's conformity with licensing requirements. Free open discussion about the provider program relative to each rule is much more revealing and productive than an interrogation, or

question and answer process. Questions are necessary to keep discussion on target, but need not take the form of an interrogation.

A. Family Homes:

In addition to the above, remember that family members are not clients and the licensing interview deals with information sharing. It is not a treatment process. Go over each rule; clarify to the provider whether you find him in conformity, on each rule. Where he is not, clarify if you can, what is needed to establish conformity. Explain what your licensing action recommendation will be.

The provider may wish to discuss non-licensing issues. Allow this to happen comfortably, but be aware of the role and responsibility of the person who placed children in the home; issues relating to handling of individual children, generally should be deferred to the person who placed the child.

B. Organizations: (Child Care Centers - Child Care Institutions, Child Placing Agencies)

1. *Child Care Centers:* After clarifying what you plan to do, observe program relative to licensing rules, plus other issues, such as over-regimentation, and whether individual needs are given attention. Talk with staff, explain who you are, your role, ask about the specifics of their activities, how they handle discipline, etc. Be alert to the possibility that they may wish to share information with you in confidence. Talk with some of the children. Be casual and natural, but if they ask, explain your purpose. Interview the director for the information you need, recap all your findings, and clarify what your licensing action recommendation will be, before leaving.

2. *Agencies and institutions:* In addition to the above, arrange to review case records early in the evaluation visit. This will give you a picture of agency performance, prior to an extensive interview with the director, and you can include your findings in the interview. Talk with staff at all levels (not all staff) ask them to explain their duties, and program specifics. Institution staff can give you a picture of what occurs during use

evening and night. Interview children in institutions, preferably in groups. Explain the purpose of your visit, and have some specific questions prepared, but allow the discussion to take a "rap session" form if the children, or youth, lead it there.

IV. Boards: Send a copy of the licensing report to the board of directors (of organizations) and offer to meet with them. Go whenever invited. You may wish to request a meeting with the board, through the director. When a director is uncooperative, and there are serious program issues, approach the board directly. Discussions with boards generally are not interviews per se. Open discussion about your findings, and the relationship to rules generally is the primary focus. It is helpful to know the chairman—to keep communication lines open. Try to meet with the board at least every other year.

V. Consultation and information sharing: There are many ways you can be helpful to providers, some examples are:

1. Maintain a supply of informational literature on various subjects to hand out when relevant.
2. If you know a provider who can be helpful to another, mention it and suggest that direct contact be made.
3. Because of your own background experience and your knowledge of providers you regulate, you quite naturally become a reservoir of useful information; share that information when appropriate—but always as *information*, not directives.
4. Keep communication lines open with provider organizations.

VI. General principles in communicating regarding licensing:

1. If you are new, or the provider is, it is better to say too little than too much. Don't feel compelled to comment about everything in sight.
2. Be careful in your use of humor until you know the other person well. Your "authority" tends to carry into all your statements.

3. *NEVER* jest about negative licensing actions. (any more than you would jest about the performance rating of a subordinate).

4. Be a good listener; sometimes you learn more by allowing a person to tell his story in his own way, than by interrogation.

5. Use only as much authority as you need for the situation. Over-playing your authority weakens your role, and damages working relationships.

6. Your investigations and interviews must not be disruptive to the program. Arrange your activities to be as unobtrusive as possible, e.g., interview children between activities, or during their free time rather than during their scheduled activities.

7. Enforcement powers are directly related to the law and rules; surveillance powers are much broader because you may need to explore an area to determine whether or not it is rule related.

8. Allow your sixth sense to operate; if something doesn't add up, or "feel" right, check it out.

9. Be careful how you use information given in confidence, especially by not putting the person who gave it to you in jeopardy. Generally, strategies for how to handle it should be developed with your supervisor.

10. Do not share negative information about one provider with another.

11. For a variety of reasons it is virtually impossible to do an effective licensing job without also giving consultation. *ALWAYS* be sure the distinction is clear.

12. Nearly all business is done verbally, but nothing is official until it is put in writing.

13. In all but the most extreme cases, include some positive comments in your licensing report. They probably are deserved and will lend credibility to the report, as well as make it more functionally useful.

14. Be yourself: remember that you are a human being, as well as the person you are interviewing.

PLEASE NOTE: THE PRECEDING PAGES WERE TREATED
AS A UNIT IN THE ORIGINAL DOCUMENT.

April 1, 1982

House H.E.S.S. Committee

SECTIONAL ANALYSIS OF SB 650

PURPOSE: This is an amendment of the statutes dealing with licensure of facilities, including administration, programs, and physical plants, which care for children or dependent adults. Two additional features are added - 1) waivers, which are currently covered by regulation and 2) provisions for a temporary license during a period in which a potential licensee is upgrading for licensure. The most important aspect of this bill is the change of licensing period from one year to two. The department plans to adopt regulations requiring "critical checks" to ensure adequate protection for dependents during the interim periods.

- Sec. 1: Replaces "boarding home, foster home, group home, or institution" with "facility". Standards for operation shift from a departmental responsibility to statutory mandate.

Replaces section .050 with (b). Changes the license period from one year to two. The concept of a conditional waiver is introduced in (c). Non-transferrability is transferred from the former section (b) of .040 to (d) of the re-write.

Revocation or modification procedures formerly found in .050 are now found in (e) of .040. Notice time requirements remain unchanged.

- Sec. 2: A new section is added allowing a provisional license to be issued to a new facility or a facility which is temporarily in non-compliance with regulations if the facility submits a plan for conformity to the department. The provisional license is for a specified time period, which may not exceed one year from the issuance date.
- Sec. 3: Adds another definition to that section of the chapter which describes "facility" broadly.
- Sec. 4: The former AS 47.35.050 has been incorporated within the re-write of .040 as noted earlier. Therefore, this section repeals the former paragraph.
- Sec. 5: Immediate effective date.

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DOCUMENT NO. 57-82

February 22, 1982

The Honorable Charles H. Parr
Senator
Alaska State Legislature
Pouch, V
Juneau, Alaska 9911

Dear Senator Parr:

This is in follow-up to our discussion on Senate Bill No. 650 relating to biennial licensing of foster homes and residential facilities for children and dependent adults and for child day care facilities. I was pleased that you expressed an interest in our licensing program and am writing at the request of John R. Pugh, Director of the Division. The purpose of this letter is to provide you with additional information on the nature of the licensing process and the loads that our community care licensing specialists carry.

The intent of the licensing program is to provide equal protection and opportunity to children and dependent adults who must spend part of the day away from their families or who must live apart from their families. Licensing establishes a floor of quality which must be enforced equally ensuring a basic level of care and protection, adequate programs, and opportunity for development. The rights of those regulated include the right to notice of the requirements, notice of non-compliance and reasonable time limits for corrections, receiving information on how to achieve correction, and access to administrative hearings and court decisions. The Division also offers substantial technical assistance to new programs and to programs that have experienced difficulties following licensure.

The licensing process is relatively lengthy. In some communities there are monthly or semi-monthly meetings to familiarize potential applicants with licensing requirements and procedures. An applicant then submits an application form and supporting documents which may include a report of a tuberculosis test, references, occasionally a report of a physical examination, and authorization to conduct a criminal history check. In home-sized facilities the applicant is then visited by a licensing specialist who inspects the home and discusses the applicant's plans to meet the nutrition, health, and developmental needs of persons in care, handling emergencies, methods of dealing with parents in family day care and agency expectations in foster homes. For the larger facilities the specialist also requests inspections by appropriate safety and environmental health authorities.

John R. Pugh

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The on-site program assessment is more complex. It necessitates interviews with the operator, staff, residents, and children, when appropriate. File reviews are also conducted to assess whether staff meet personnel qualifications and if children's records are in order. Generally, within 60 days of receipt of an application and after the study and inspection to verify compliance with standards, a license is issued. There are no fees for a State license. To better facilitate understanding of what is entailed in the process, enclosed are three sample licensing studies. We had no samples of day care studies available in the office, so the blank standard-by-standard evaluation forms are enclosed for reference. The Alaska Children's Services emergency shelter study is considered an exemplary study. Day care studies generally contain very little narrative in comparison to the studies for residential facilities and child foster homes.

Licensing studies are performed largely by community care specialists located in the Division's six regional offices. A few are performed by Division field office staff and approved public and private agency staff for child foster homes. As I mentioned to you in our conversation following the hearing last week, the number of facilities does not properly reflect the community care licensing specialists' load. In January, 1982, there were 1,156 licensed facilities with a capacity of 8,943. The hand tables that I mentioned to you from our Southcentral Regional office have arrived and I think the percentages reflected can appropriately be applied statewide. The turnover rate of new facilities coming on and facilities closing is 50% of the total facilities over a one year period. The number of licenses that will require an age or capacity amendment during one year is 25%. Two-thirds (2/3) of the facilities are provisionally licensed first and then converted to annual licensure. In addition, 64 waiver requests were processed during 1981 and 134 complaint/allegations were investigated. A load of 50 facilities per specialist is as high as is considered appropriate, given the turnover rate, the necessity to provide technical assistance, process amendments and waivers, and investigate complaints. In the Northern Region, the Southern Region, and the Southeast Region, specialists are carrying a facility load which is double what is considered acceptable to be able to ensure adequate protection to persons in care.

Specialists also provide professional consultation to facilities and agencies to upgrade the quality of services. Because of their unique position of knowledge about community facilities, they also serve as referral resources to families, social service staff, and others in selecting an appropriate facility for an individual child or adult and in stimulating related community support services for facilities and agencies.

We are pleased to have this opportunity to share additional information with you. You are correct that our review of facilities was similar to the review conducted by an environmental health inspector, we would

be able to carry a much larger facility load for each specialist. We have simplified the process by providing a checklist system. If we simply handed out regulations and applications, and went through the checklist, we would be seeing far fewer applicants achieve licensure. Instead we have assisted applicants, particularly where no service or limited services exists, to help them through the process. It has seemed to be the most appropriate approach where services are not well established.

Senator Fischer asked a question regarding terminology. In the definition of a "facility" on Line 26, Page 2, of Senate Bill No. 650, we did intentionally omit "boarding homes" from the list of facility types. A boarding home is another term for a child foster home and is referenced in the foster home definition section of the statute. Listing it again under the definition of a "facility" was considered duplicative and unnecessary.

I hope this information is useful to you in your final deliberations and decision regarding Senate Bill No. 650. I plan to attend the Monday afternoon, 3:00 p.m. session and will be available to answer any additional questions you may have at that time.

Sincerely,



Patricia J. Monroe
Community Care Licensing
Coordinator

Enclosures

PM:kk

COMMUNITY CARE FACILITY LICENSING

The Intent of the licensing program is to provide equal protection and opportunity to children and dependent adults who must spend part of the day away from their families or who must live apart from their families. Licensing establishes a floor of quality which must be enforced equally ensuring a basic level of care and protection, adequate programs, and opportunity for development. The rights of these regulated include the right to notice of the requirements, notice of non-compliances and reasonable time limits for corrections, receiving information on how to achieve correction, and access to administrative hearings and court decisions. The Division also offers substantial technical assistance to new programs and to programs that have experienced difficulties following licensure.

The licensing process is relatively lengthy. In some communities there are monthly or semi-monthly meetings to familiarize potential applicants with licensing requirements and procedures. An applicant then submits an application form and supporting documents which may include a report of a tuberculosis test, references, occasionally a report of a physical examination, and authorization to conduct a criminal history check. In home-sized facilities the applicant is then visited by a licensing specialist who inspects the home and discusses the applicants plans to meet the nutrition, health, and developmental needs of persons in care, handling emergencies, methods of dealing with parents in family day care and agency expectations in foster homes. For the larger facilities the specialist also requests inspections by appropriate fire safety and environmental health authorities.

The on-site program assessment is more complex. It necessitates interviews with the operator, staff, residents, and children, when appropriate. File reviews are also conducted to assess whether staff meet personnel qualifications and if children's records are in order. Generally, within 60 days of receipt of an application and after the study and inspection to verify compliance with standards, a license is issued. There are no fees for a State license.

Licensing studies are performed largely by community care specialists located in the Division's six regional offices. A few are performed by Division field office staff and approved public and private agency staff for child foster homes. The number of facilities per specialist does not properly reflect the community care licensing specialists' load. In January, 1982, there were 1,156 licensed facilities with a capacity of 3,943. The turnover rate of new facilities coming on (opening ??) and facilities closing is 50% of the total facilities over a one year period. The number of licenses that will require an age or capacity amendment during one year is 25%. Two-thirds (2/3) of the facilities are provisionally licensed first and then converted to annual licensure. In addition, 64 waiver requests were processed during 1981 and 134 complaint/allegations were investigated. A load of 50 facilities per specialist is as high as is considered appropriate, given the turnover rate, the necessity to provide technical assistance, process amendments and waivers, and investigate complaints. In the Northern Region, the Southern Region, and the Southeast Region, specialists are carrying a facility load which is double what is considered acceptable to be able to ensure adequate protection to persons in care.

Specialists also provide professional consultation to facilities and agencies to upgrade the quality of services. Because of their unique position of knowledge about community facilities, they also serve as referral resources to families, social service staff, and others in selecting an appropriate facility for an individual child or adult and in stimulating related community support services for facilities and agencies.

POSITION PAPER

SENATE BILL NO. 650

"An Act relating to licensing of foster homes, group homes, nurseries, and institutions; and providing for an effective date."

AMENDING LICENSING PRACTICES

This Bill would amend Chapter 35 in Title 47 of the Alaska Statutes governing the licensing of non-medical facilities in Alaska, including day care centers and family day care homes for children, and foster homes and residential facilities for children or dependent adults. The three proposed changes are: 1) amending licensing practices to provide for biennial rather than annual licensing; 2) authorizing waiver of Department regulatory standards when appropriate; and 3) establishing the parameters for provisional licensing.

INCREASED RESPONSIBILITY

The need for this amendment stems from a substantial increase in workload under this statute resulting both from efforts by the Department to fully implement the statute and from added responsibilities established by legislation without the authorization of additional staff. Thirteen (13) Community Care Licensing Specialists in seven (7) locations provide licensing for over 1,100 Alaskan facilities.

IMPLEMENTATION OF THE STATUTE

Though the Licensing Statute dates back to 1951, full implementation is still in process. The licensing of child placement agencies authorized in 1967 has not been implemented. In 1982 up to thirty (30) child placement agencies will be added to specialist's licensing assignments. The statutory requirement that the Department supervise licensed facilities also had not been adequately implemented. A statewide complaint investigation procedure was implemented in the Fall of 1980 to correct this deficiency, with the result that the Department has been able to correct very serious situations, including:

- physical and sexual abuse to children in care
- fire and sanitation hazards
- food of limited nutritional value or no food being served
- mishandling of medication
- negligent supervision
- humiliating treatment of minority groups
- operation without a license

While the new complaint investigation procedure has required much staff time, it is considered the most important consumer protection provided under the statute aside of licensing new programs.

NEW LEGISLATION

Two (2) bills have been signed into law in recent years which have added to the number of facilities falling under the authority of the licensing statute without accompanying authorization for additional staff needed to review these programs against standards. Licensing of facilities for dependent adults was added by the Legislature in 1977. In 1981 thirty-nine (39) adult residential care facilities were licensed using existing staff and the recruitment, and licensure for twenty (20)

adult foster homes will begin in February, 1982. The First Session of the Twelfth Legislature passed Senate CS for CS for House Bill No. 508 creating a child care grant program for day care centers, family day care homes, and pre-schools to be administered by the Department of Community and Regional Affairs. Programs applying for a grant must comply with licensing standards as a condition of funding. Of the two thousand five hundred (2,500) family day care homes and one hundred fifty (150) pre-schools exempt from the licensing statute, a substantial number may be attracted to apply in order to obtain a grant. The positions requested for the licensing reviews under this new legislation were not authorized by the Legislature. To prevent an excessive number of applications for licensing, the Department of Community and Regional Affairs has agreed not to publicize the new grant program until corrective licensing legislation could be achieved.

BIENNIAL LICENSING

The proposed change to biennial rather than annual licensing in Section 040(a) and (b) of the Bill offers a reasonable solution to the unmet need for additional staff. Performing annual reviews is currently absorbing a significant percentage of staff time. Changing to a mandatory review every two years would reduce that pressure, allowing staff to concentrate on new and marginal programs. Monitoring visits may still occur more frequently than every two years, but the full mandatory licensing reviews would only occur on a biennial basis. Biennial licensing is sound practice. Michigan and Texas, considered to have two of the finest licensing programs in the nation, have biennial licensing.

WAIVERS, PROVISIONAL LICENSES, AND OTHER CHANGES

Other minor but important changes are proposed.

Section 040 has been retitled, "LICENSING."

The former provisions of paragraph 040(a) have been retained in paragraph 040(a) of the amendment.

The Department is authorized to grant waivers in paragraph (c). A waiver provision is in the Department regulations for each facility type. Granting of waivers is treated as a serious matter conducted by a waiver committee within the Department. Authority for this process should be contained in the statute.

The provisions of paragraph 040(d) were formerly in paragraph 040(b) and have been clarified to prohibit transfer of a license to a different owner or to a different facility.

Revocation has been moved to paragraph 040(e), formerly in Section 050, with no change except that the Department will be required to give written notice when a license has been modified to provisional status.

Section 47.35.055 contains new statutory language. Provisional licensing has always been a practical and necessary practice in Alaska, but policy has varied. The language contained in this section establishes criteria for the issuance of provisional licenses and limits the maximum duration of a provisional license to two

POSITION PAPER

SENATE BILL NO. 650

PAGE 3

years. Provisional licenses would be issued to all new facilities and to facilities which are temporarily unable to conform to licensing requirements. New facilities would be issued a biennial license after the Department has inspected the facility and determined that standards are being met.

The term "facility" has been used and defined to prevent the need for repeated listings of each type of facility involved.

RECOMMENDATION

Licensing is intended to reduce predictable risk to children and dependent adults, and also to provide support services to those giving the care. A sound licensing program ensures a standard level of service below which programs are not allowed to operate. In recent years license expirations due to licensing staff overloads have increased to an unacceptable level. Passage of this Bill is essential to prevent further erosion of Alaska's licensing program and, thereby, preventing increased risk to children and dependent adults, liability to the State, and a widespread decrease in the quality of care.

RECOMMENDED BY: John R. Pugh
John R. Pugh, Director
Division of Family and
Youth Services

DATE: 11/25/82

APPROVED BY: Helen D. Beirne
Helen D. Beirne
Commissioner

DATE: 1/26/82

II. FISCAL DETAIL

Agency Affected Department of Health and Social Services
 Program Category Affected _____
 BRU, Program, Or Subprogram(s) Affected _____
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS	-0-	-0-	-0-	-0-	-0-	-0-
OTHER (Specify Source)	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS

FULL TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART TIME	-0-	-0-	-0-	-0-	-0-	-0-
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-
	-0-	-0-	-0-	-0-	-0-	-0-

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Senate Bill No. 650 has no fiscal impact on the Department of Health and Social Services.

IV. DATE 1/25/82 PREPARED BY John R. Pugh John R. Pugh, Director
 AGENCY Division of Family and Youth Services
 Original: Legislative Finance PHONE 465-3170
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/81)

COMMUNITY CARE LICENSING SPECIALIST FACILITY LOADS

STATEWIDE

<u>Month</u>	<u>Year</u>	<u>Facilities</u>	<u>Capacity</u>
January	1977	895	5,646
	1978	Unknown	Unknown
	1979	Unknown	Unknown
January	1980	1,039	7,042
January	1981	1,055	7,557
January	1982	1,150	8,943

Turnover rate of facilities closing and opening in one year - 50%
 License amendments age capacity in one year - 25%
 Facilities in provision status prior to conversion to annual license - 66 2/3%
 Waivers in one year - 5%

Specialist loads listed below do not include the turnover rate, license amendments, and provisional licensing.

SOUTHCENTRAL REGION

<u>Month</u>	<u>Year</u>	<u>Facilities</u>	<u>Capacity</u>
January	1980	471	
January	1981	523	
January	1982	586	5,206

Specialist loads - Seven (7) Specialists

161 Family Day Care Homes Anchorage (152), Wasilla (9); Region Total 178
 60 Day Care Centers
 21 Residential Child Care Facilities
 25 Adult Residential Care Facilities
 126 Child Foster Homes Anchorage (83), Wasilla (43); Region Total 302
393 56.14 Facilities/Specialist

NOTE: 58% of the State's licensed capacity is in Anchorage. 51% of the facilities.

Complaint Investigations - Anchorage, 1981

22 FDC Licensed
 18 FDC Not Licensed
 29 DCC
 5 RCCF
 13 CFH
 5 ARCF
92

NWRO

One (1) Specialist

1980	92 Facilities
1981	50 Facilities
1982	41 Facilities

1	FDC
2	DCC
2	RCCF
1	ARCF
35	CFH (15) Outside of Nome
<u>41/Specialist</u>	

No complaint investigation reports received for 1981.

SERO

One (1) Specialist (NOTE: Using 1/2 time Social Worker II for family day care licensing. Worker also has a full case load.)

1980	108
1981	103
1982	135

16	DCC
60	FDC
4	RCCF
47	CFH (7) Outside of Juneau
1	ARCF
<u>128/Specialist</u>	

No complaint investigation reports received for 1981.

WRO

One (1) Specialist

1980	125 Facilities
1981	106 Facilities
1982	71 Facilities

0	FDC
0	DCC (2 City Licensed)
58	CFH (6) Outside of Bethel
3	RCCF
2	ARCF
<u>63/Specialist</u>	

No complaint investigation reports received for 1981.

NRO

Two (2) Specialists

1980	132 Facilities
1981	194 Facilities
1982	228 Facilities

79	FDC
22	DCC (1) City Licensed
76	CFH (121) Region Total
4	RCCF
2	ARCF
<u>183</u>	<u>91.51/Specialist</u>

Complaint Investigations for Fairbanks, 1981

9	FDC
7	CFH
13	DCC
<u>29</u>	Total

SRO

One (1) Specialist

1980	66 Facilities
1981	83 Facilities
1982	95 Facilities

7	DCC
30	FDC
3	RCCF
1	ARCF
54	FH
<u>95</u>	<u>Specialist</u>



ALASKA FOSTER PARENTS ASSOCIATION

Box 8651

Anchorage, Alaska 99508

Dec. 11, 1981



Our association is calling on you for assistance. You have been willing in the past and we hope you will try now.

Three times in the past two years the Division of Family and Youth Services, for whom many of us care for children, has attempted to move our foster care licensing workers from the social services District office. There have been logical, if minor reasons for this change. There are major reasons for this not happening.

With those workers in the same office children are placed in better homes the first time around, thus avoiding multiple placements. This "foster home bounce" is extremely damaging to children as I'm sure you can imagine. The licensing workers also provide support and trouble shooting for foster parents as they go about the "business" of foster care. The social workers have neither the time or the sensitivity to do this. Without it foster parents quit. The state loses experienced homes and must recruit continuously. And the children must be moved and moved..

On the two prior occasions we have conveyed our feelings and reasons to D.F.Y.S., ourselves and with the help of childrens advocates such as yourself. And always they have found a way to return the licensing workers to the social service office-- to better serve foster children. We seem to continue to battle this issue however.

We feel very strongly about this issue. Foster Parents are volunteers who work 24 hours a day to provide care for those children in the custody of the State of Alaska. We have nothing personally to gain here, except to see children better served.

We will appreciate your looking into this matter and hope that we can work together to make sure that our state system is always looking out for the "best interests" of our children.

Respectfully,

Ann M. Spohnholz
President, A.F.P.A.

345-2248