

**SB**

**268**

WALTER J. HICKEL  
GOVERNOR



P. O. Box 110001  
Juneau, Alaska 99811-0001  
907-465-3500

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

January 28, 1994

268

*The Honorable Rick Halford  
President of the Senate  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182*

*Dear Mr. President:*

*Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the licensing, by the Department of Health and Social Services (DHSS), of facilities for the care of children, child placement agencies, maternity homes, and residential facilities and foster homes for adults. The bill reorganizes and clarifies existing licensing statutes and provides much-needed detail in the statutes. The bill's reorganization of the statutes separates licensing of child-related facilities from licensing of adult facilities.*

*Sections 5 and 7 - 12 of the bill set out new statutory provisions that provide for the licensing and regulation of child foster homes, child care facilities, residential child care facilities, child placement agencies, and maternity homes. Section 7 of the bill clarifies which of these facilities are required to be licensed and which are exempt from licensure. Licensing procedures and requirements, appeal procedures, and operational requirements that apply to all such facilities are set out in secs. 7 - 11. Those sections provide for provisional licenses and biennial licenses, and specify that DHSS must inspect and investigate a facility before either a provisional license or initial biennial license is issued. Renewal procedures for biennial licenses are also provided. Complaint, investigation, and other enforcement provisions are set out in sec. 12 of the bill.*

*Section 13 of the bill sets out a separate article in AS 47.35 to address licensure and regulation of adult residential care facilities. Many of the provisions in secs. 7 - 12 of the bill are incorporated by reference in the adult residential care facility article. I intend to introduce a bill this session relating to "assisted living homes" for adults; that bill will place licensing and regulation of adult residential facilities in a new chapter in*

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AS 47. If that bill passes the legislature and becomes law, sec. 13 of the attached bill will not take effect. See sec. 21 of the bill.

Sections 14 and 15 of the bill set out general provisions for administrative adjudication procedures, liability immunity, criminal penalty, and definitions for AS 47.35.

Sections 1 - 4 and 6 of the bill make conforming amendments to existing statutes to reflect changes made by secs. 5 and 7 - 15 of the bill. Section 16 of the bill repeals most of the existing statutes in AS 47.35 -- their provisions have been reworded and reorganized in secs. 5 and 7 - 15 of the bill. Section 17 of the bill contains transition provisions that specify how the bill affects existing as well as new facilities.

Section 18 of the bill authorizes DHSS to begin the regulation adoption process so that necessary regulations can take effect on the effective date of the statutory changes made by the bill. Sections 19 - 21 provide an immediate effective date for sec. 18 and a January 1, 1996 effective date for the statutory changes made by the remainder of the bill. Section 21 makes the January 1, 1996 effective date for sec. 13 contingent on another adult residential facility bill not becoming law, as discussed earlier in this letter.

I urge your support of this important legislation.

Sincerely,



Walter J. Hickel  
Governor

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4/6/94

CS FOR SENATE BILL NO. 268(HES)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

Offered:  
Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to facilities for the care of children; to child placement  
2 agencies; to maternity homes; to certain residential facilities for adults; and to  
3 foster homes for adults; and providing for an effective date."

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

5 \* Section 1. AS 11.61.195(a) is amended to read:

6 (a) A person commits the crime of misconduct involving weapons in the  
7 second degree if the person knowingly

8 (1) possesses a firearm during the commission of an offense under  
9 AS 11.71.010 - 11.71.040; or

10 (2) violates AS 11.61.200(a)(1) and is within the grounds of or on a  
11 parking lot immediately adjacent to

12 (A) a public or private preschool, elementary, junior high, or  
13 secondary school without the permission of the chief administrative officer of  
14 the school or district or the designee of the chief administrative officer; or

1 (B) a center, other than a private residence, licensed under  
2 AS 47.35 [AS 47.35.010 - 47.35.075] or recognized by the federal government  
3 for the care of children.

4 \* Sec. 2. AS 11.61.220(a) is amended to read:

5 (a) A person commits the crime of misconduct involving weapons in the fifth  
6 degree if the person

7 (1) knowingly possesses a deadly weapon, other than an ordinary  
8 pocketknife or a defensive weapon, that is concealed on the person;

9 (2) knowingly possesses a loaded firearm on the person in any place  
10 where intoxicating liquor is sold for consumption on the premises;

11 (3) being an unemancipated minor under 16 years of age, possesses a  
12 firearm without the consent of a parent or guardian of the minor;

13 (4) knowingly possesses a firearm

14 (A) or a defensive weapon within the grounds of or on a  
15 parking lot immediately adjacent to a public or private preschool, elementary,  
16 junior high, or secondary school without the permission of the chief  
17 administrative officer of the school or district or the designee of the chief  
18 administrative officer, except that a person 21 years of age or older may  
19 possess

20 (i) an unloaded firearm in the trunk of a motor vehicle  
21 or encased in a closed container in a motor vehicle;

22 (ii) a defensive weapon; or

23 (B) within the grounds of or on a parking lot immediately  
24 adjacent to a center, other than a private residence, licensed under AS 47.35  
25 [AS 47.35.010 - 47.35.075] or recognized by the federal government for the  
26 care of children; or

27 (5) possesses or transports a switchblade or a gravity knife.

28 \* Sec. 3. AS 18.50.950(4) is amended to read:

29 (4) "child adoption agency" means a child adoption agency licensed  
30 under AS 47.35 [AS 47.35.100];

31 \* Sec. 4. AS 25.23.185(c) is amended to read:

1 (c) A child adoption agency licensed under AS 47.35 [AS 47.35.100] shall  
2 maintain records of the information required to be furnished to the court under this  
3 section or under regulations of the commissioner implementing this section. If a child  
4 adoption agency ceases to place persons for adoption, it shall transfer its records to the  
5 commissioner.

6 \* Sec. 5. AS 44.21.240(2) is amended to read:

7 (2) "long term care facility" means a [FOSTER HOME OR OTHER]  
8 residential facility for [DEPENDENT] adults that is required to be licensed under  
9 AS 47.35 and a nursing home as defined in AS 08.70.180;

10 \* Sec. 6. AS 44.47.305(b) is amended to read:

11 (b) To qualify for a grant under (a) or (d) of this section, the child care facility  
12 must

13 (1) be currently licensed under AS 47.35 [AS 47.35.010 - 47.35.075]  
14 and applicable municipal licensing requirements;

15 (2) participate in the day care assistance program under AS 44.47.250  
16 - 44.47.310; and

17 (3) provide care under a payment system as provided in (g) of this  
18 section.

19 \* Sec. 7. AS 44.47.310(2) is amended to read:

20 (2) "child care facility" means an establishment licensed under  
21 AS 47.35 [AS 47.35.010 - 47.35.075], including [BUT NOT LIMITED TO] day care  
22 centers, family day care homes, and schools for preschool age children, which provides  
23 care for children not related by blood, marriage, or legal adoption to the owner,  
24 operator, or manager of the facility;

25 \* Sec. 8. AS 44.47.310(4) is amended to read:

26 (4) "day care facility" means a center or home licensed in accordance  
27 with the provisions of AS 47.35 [AS 47.35.010 - 47.35.075] or recognized by the  
28 federal government for the care of children;

29 \* Sec. 9. AS 44.62.330(a)(24) is amended to read:

30 (24) Department of Health and Social Services, relating to denial,  
31 involuntary conditioning, or revocation of a license issued under AS 47.35, or

1 suspension of operations or admissions or assessment of an administrative fine  
2 under AS 47.35 [RELATING TO BOARDING AND FOSTER HOMES FOR  
3 CHILDREN];

4 \* Sec. 10. AS 47.35 is amended by adding a new section to read:

5 Sec. 47.35.005. PURPOSE; APPLICABILITY. (a) The purpose of this  
6 chapter is to establish and maintain standard levels for services offered to children in  
7 child care facilities, foster homes, and residential child care facilities; services offered  
8 by child placement agencies; and services offered to pregnant individuals in maternity  
9 homes. The legislature recognizes the responsibility of parents to select and monitor  
10 caregivers for their children in order to ensure a reasonably safe and developmentally  
11 appropriate child care environment. The community care licensing procedures in this  
12 chapter are intended to reduce predictable risk of harm to children and to provide  
13 support services to those providing child care or services.

14 (b) This chapter and regulations adopted under this chapter apply to facilities  
15 and agencies

16 (1) for which licensure is required by or under AS 47.35.015; or

17 (2) that are exempt under AS 47.35.015 from licensure but for which  
18 a license is issued under AS 47.35.015(g).

19 \* Sec. 11. AS 47.35.010 is amended to read:

20 Sec. 47.35.010. POWERS OF DEPARTMENT. (a) The department may

21 (1) license and supervise [BOARDING HOMES,] foster homes, child  
22 care facilities, residential child care facilities, child placement agencies, and  
23 maternity [GROUP] homes [, NURSERIES, INSTITUTIONS CARING FOR  
24 CHILDREN AND FOSTER HOMES, GROUP HOMES AND INSTITUTIONS  
25 CARING FOR DEPENDENT ADULTS];

26 (2) investigate applicants, [AND SUPERVISE] licensees, and persons  
27 that the department reasonably believes are operating a facility without a license  
28 in violation of this chapter;

29 (3) adopt regulations to implement the provisions of this chapter,  
30 including regulations establishing licensure and renewal procedures, [ENFORCE  
31 THE] standards, and fees; establishing requirements for operation of facilities or

1 agencies licensed under this chapter; and distinguishing between types of child  
2 care facilities [ESTABLISHED BY IT];

3 (4) enter into agreements [CONTRACT] with private entities,  
4 municipalities, or individuals [OR MUNICIPAL AGENCIES] to investigate and  
5 make recommendations to the department for the licensing and supervision of  
6 [BOARDING HOMES,] foster homes, child care facilities, residential child care  
7 facilities, child placement agencies, and maternity [GROUP] homes [, NURSERIES,  
8 INSTITUTIONS CARING FOR CHILDREN AND FOSTER HOMES, GROUP  
9 HOMES AND INSTITUTIONS CARING FOR DEPENDENT ADULTS] under  
10 procedures and standards of operation established by the department [; CONTRACTS  
11 WITH PRIVATE AGENCIES UNDER THIS PARAGRAPH ARE GOVERNED BY  
12 AS 36.30 (STATE PROCUREMENT CODE)].

13 (b) The department shall, within 90 days after receiving a written request that  
14 it do so, delegate its powers relating to child care facilities [NURSERIES] under this  
15 chapter [SECTION AND UNDER AS 47.35.040 - 47.35.060] to a municipality that  
16 has adopted an ordinance providing for child [DAY] care licensing under home rule  
17 powers under AS 29.10.010 or as authorized under AS 29.35.200 - 29.35.210. A  
18 municipality to which these powers have been delegated may adopt, by ordinance,  
19 additional requirements for child care facilities operating within its boundaries  
20 if the requirements meet or exceed the requirements adopted [WAIVE OR  
21 MODIFY ANY REGULATION OR STANDARD ESTABLISHED] by the department  
22 [UNDER THE AUTHORITY OF AS 47.35.010 - 47.35.075 AS IT APPLIES TO  
23 NURSERIES OR THE APPLICATION OF ANY SUCH REGULATION OR  
24 STANDARD AS IT APPLIES TO A PARTICULAR DAY CARE LICENSEE BUT  
25 MUST NOTIFY THE DEPARTMENT OF ANY WAIVER].

26 \* Sec. 12. AS 47.35 is amended by adding new sections to read:

27 Sec. 47.35.015. LICENSE REQUIRED; EXEMPTIONS. (a) A person may  
28 not operate a child care facility without a license issued under this chapter unless that  
29 facility is exempt from licensure. The following facilities are exempt:

30 (1) a facility in which child care is regularly provided and each child's  
31 parent is on the premises within reasonable proximity and accessibility to the child;

1 (2) a facility located on a United States Department of Defense or  
2 United States Coast Guard installation that is located on federal property;

3 (3) a recreational program that children are allowed to attend and in  
4 which the program assumes no responsibility for care of the children;

5 (4) a daytime therapeutic program of supervised, educational, and  
6 rehabilitative services for children with special needs or behavioral problems;

7 (5) a program that asserts exemption as primarily educational and that  
8 either

9 (A) is certified as a pre-elementary school under Department of  
10 Education regulations adopted under AS 14.07.020; or

11 (B) serves children three years of age or older and is exempt  
12 from Department of Education regulation;

13 (6) a temporary facility providing care for less than five continuous  
14 weeks;

15 (7) a facility regularly providing child care to four or fewer children  
16 unrelated to the caregiver;

17 (8) a facility in which the caregiver is a relative of all of the children.

18 (b) A person may not operate a foster home without a license issued under this  
19 chapter unless that facility provides care only

20 (1) for relatives and the department does not require licensure under an  
21 agreement for services;

22 (2) for one or more children nine years of age or older placed by a  
23 parent with either

24 (A) authorization for emergency medical care; or

25 (B) a consent to temporary custody;

26 (3) for one or more exchange students placed by a sponsoring agency  
27 in a home evaluated and approved by that sponsoring agency;

28 (4) for one or more children who are the subject of a petition for  
29 adoption filed by the caregiver pending a final decree of adoption, if a home study has  
30 been completed;

31 (5) for one or more children placed for adoption by a child placement

1 agency licensed under this chapter;

2 (6) for a child for up to 72 hours in a nonsecure attendant care setting  
3 authorized by the department; or

4 (7) for a child on a 24-hour basis for a period of no more than 30 days  
5 in a licensed child care facility meeting requirements for nighttime care adopted by the  
6 department by regulation.

7 (c) A person may not operate a residential child care facility without a license  
8 issued under this chapter unless that facility is

9 (1) a juvenile facility operated by the state under AS 47.10.150;

10 (2) a medical facility licensed by the department under AS 18.20;

11 (3) a recreational camp providing recreational experiences of no more  
12 than one month's duration for a child; or

13 (4) exempt from licensure for a reason set out in (b)(6) or (7) of this  
14 section.

15 (d) A person may not operate a maternity home without a license issued under  
16 this chapter.

17 (e) A person may not arrange foster home, residential child care facility,  
18 adoptive home, or guardianship placements for a child without a child placement  
19 agency license issued under this chapter. The requirement for licensure does not apply  
20 to

21 (1) state, federal, or municipal governments;

22 (2) school districts;

23 (3) an Indian organization, as defined in 25 U.S.C. 1903(7), that is  
24 authorized to make placement decisions under 25 U.S.C. 1918 or 1919; or

25 (4) a person who places children for adoption by relatives.

26 (f) In addition to facilities and agencies that, under this section, are exempt  
27 from licensure, the department, by regulation, may provide for additional exemptions  
28 that the department considers appropriate.

29 (g) A person may apply for a license for a facility or agency that is exempt  
30 from licensure under this section. The department may issue a license to an applicant  
31 under this subsection if the applicant meets the requirements of this chapter and

1 regulations adopted under this chapter.

2 Sec. 47.35.017. APPLICATION FOR LICENSE. (a) Application for a license  
3 to operate a foster home, child care facility, residential child care facility, child  
4 placement agency, or maternity home, shall be made to the department on a form  
5 provided by the department, and shall be accompanied by any applicable fees  
6 established by the department under AS 47.35.010(a)(3).

7 (b) An application submitted under this section must contain at least the  
8 following information:

9 (1) the name and address of the applicant, and if the applicant is an  
10 agency, corporation, partnership, association, or any other form of organization, the  
11 name, address, and title of all individuals who have an ownership or management  
12 interest in the facility;

13 (2) the name, physical location, and mailing address of the facility or  
14 agency for which the license is sought;

15 (3) the name and address of the administrator of the facility or agency,  
16 if any;

17 (4) evidence that the administrator or foster parent is an adult with  
18 sufficient experience, training, or education to fulfill the duties of an administrator or  
19 foster parent;

20 (5) a release for the administrator or foster parent and for each other  
21 person, as specified by the department by regulation, who will have contact with  
22 individuals served by the facility or agency, authorizing the department to review all  
23 federal, state, and municipal law enforcement, medical, licensing, and protective  
24 services records, identified in regulations adopted under this chapter, that are relevant  
25 to the person who is the subject of the release and to the type of license for which the  
26 application has been submitted;

27 (6) for a facility, the number of individuals that will be served in the  
28 facility;

29 (7) the type of facility or agency for which the license is sought;

30 (8) copies of all inspection reports and approvals required by state fire  
31 prevention and environmental health and safety authorities for operation of the facility

1 or agency, including any variances granted by these authorities;

2 (9) a plan of operation, as required by the department by regulation;

3 (10) a staffing plan that describes the number of people who will work  
4 at the facility or agency, staff qualifications, a description of each person's  
5 responsibilities, and, for a facility other than a maternity home, a supervision schedule  
6 for the children in care that meets the requirements established by the department by  
7 regulation;

8 (11) evidence that the applicant has completed orientation or training  
9 required by the department, by regulation, for holders of the type of license for which  
10 the application was submitted; and

11 (12) other information required by the department, by regulation, in  
12 order to monitor compliance with this chapter and regulations adopted under this  
13 chapter.

14 \* Sec. 13. AS 47.35 is amended by adding new sections to read:

15 Sec. 47.35.023. PROVISIONAL LICENSE; BIENNIAL LICENSE. (a) The  
16 department shall issue a provisional license to a new facility or agency that applies  
17 under AS 47.35.017 if, after inspection and investigation, the department determines  
18 that the application and plan of operation for the facility or agency meet the  
19 requirements of this chapter and regulations adopted under this chapter. A provisional  
20 license is valid for a period not to exceed one year. The department may extend a  
21 provisional license for one additional period not to exceed one year.

22 (b) Notwithstanding (a) of this section, if an emergency exists and a child must  
23 be placed immediately, the department or the department's designee may issue a  
24 provisional foster home license for a period of 90 days or less if the department or the  
25 department's designee determines that the applicant meets minimal requirements for  
26 emergency conditions.

27 (c) Before expiration of a provisional license issued under (a) or (b) of this  
28 section, the department shall inspect and investigate the facility or agency in order to  
29 determine whether the facility or agency is operating under the provisional license in  
30 compliance with this chapter and applicable regulations.

31 (d) Before expiration of a provisional license, the department shall issue a

1 biennial license for the facility or agency if (1) after inspection and investigation under  
2 (c) of this section, the department finds that the facility or agency is operating in  
3 compliance with, and meets the licensure requirements of, this chapter and regulations  
4 adopted under this chapter; (2) the ground for revocation set out in AS 47.35.130(a)(2)  
5 does not exist; and (3) all applicable fees have been paid. The department shall  
6 prepare a summary report of its findings and recommendations for issuance of a  
7 biennial license.

8 (e) The issuance of a license by the department does not obligate the  
9 department to place or maintain an individual in the facility or through the agency, or  
10 to support the facility or agency financially.

11 Sec. 47.35.025. DENIAL OF LICENSE; RIGHT TO APPEAL. (a) If the  
12 department denies an application for a license or decides not to issue a biennial  
13 license, the department shall hand deliver to the prospective licensee, or mail to the  
14 prospective licensee by certified mail, return receipt requested, a notice of denial of  
15 licensure. The notice must contain a summary of the department's reasons for denial  
16 of the license and a form for requesting a hearing under (b) of this section.

17 (b) A prospective licensee who was denied licensure may appeal the  
18 department's decision by requesting a hearing, on the form provided by the  
19 department, within 15 days after receipt of the notice of denial of licensure.

20 Sec. 47.35.027. VARIANCES. (a) The department may grant to an applicant  
21 for a license under this chapter, or to a licensee, a variance from a requirement of this  
22 chapter or a regulation adopted under this chapter if that person submits to the  
23 department, on a form provided by the department, a complete variance request as  
24 required by this section. A variance may be granted if

25 (1) the applicant or licensee proposes an alternative means, acceptable  
26 to the department, to satisfy the intent of the requirement for which the variance is  
27 requested; and

28 (2) the health and safety of children is adequately protected.

29 (b) A request for a variance must contain the following information:

30 (1) the statute or regulation from which the variance is sought;

31 (2) the reasons why the variance is needed;

- 1 (3) the period of time for which the variance is requested;
- 2 (4) the proposed alternative means of satisfying the intent of the
- 3 requirement for which the variance is requested;
- 4 (5) a statement as to how the health and safety of children will be
- 5 protected during the period of the variance; and
- 6 (6) assurance that the conditions of the facility or agency do not present
- 7 an imminent danger to the health or safety of individuals served by the facility or
- 8 agency.

9 (c) To evaluate a request for a variance, the department shall take one or more

10 of the following actions:

- 11 (1) investigate the statements in the request;
- 12 (2) inspect the facility or agency;
- 13 (3) schedule a conference with the applicant or licensee regarding the
- 14 variance request.

15 (d) The department's decision approving or denying a variance must be in

16 writing, and the department shall provide a copy of the decision to the person

17 requesting the variance. If the department grants the variance, the decision must state

18 the term of and conditions of the variance.

19 (e) If an applicant or licensee violates a condition of a variance granted under

20 this section, the variance is terminated.

21 Sec. 47.35.029. CONTENT OF LICENSE; POSTING. (a) A license issued

22 under this chapter must state

- 23 (1) the period of time during which the license is in effect;
- 24 (2) the name of the facility or agency;
- 25 (3) the type of facility or agency;
- 26 (4) the name of the licensee;
- 27 (5) the location and mailing address of the facility or agency;
- 28 (6) for a facility other than a maternity home, the number and age
- 29 range of children that the facility may have in care at any time;
- 30 (7) any conditions set by the department;
- 31 (8) variances approved by the department for the duration of the

1 license; and

2 (9) the address and phone number of the nearest department office that  
3 is responsible for administering this chapter or of the department representative  
4 responsible for evaluating that facility or agency under AS 47.35.010(a)(4).

5 (b) A licensee, except a foster home licensee, shall post the license in a  
6 conspicuous place in the facility or agency visible to individuals in care and their  
7 families, and to facility or agency staff. If the department has approved a variance that  
8 is not stated on the license, the licensee, except a foster home licensee, shall post a  
9 copy of the variance near the license. A foster home licensee shall have the facility  
10 license available for inspection upon request.

11 \* Sec. 14. AS 47.35 is amended by adding a new section to read:

12 Sec. 47.35.033. LICENSES NOT TRANSFERABLE. A license may be issued  
13 under this chapter only for the location and person named in the application. A license  
14 issued under this chapter may not be transferred to another person or location.

15 \* Sec. 15. AS 47.35 is amended by adding new sections to read:

16 Sec. 47.35.037. ORIENTATION AND TRAINING. The department, by  
17 regulation, may require that an applicant or licensee complete orientation or training  
18 to assist that person in operating under the license.

19 Sec. 47.35.039. RECORDS REQUIRED. (a) In accordance with regulations  
20 adopted by the department, a licensee shall keep the records regarding each individual  
21 in its care, or that it places, that are necessary to show compliance with this chapter  
22 and regulations adopted under this chapter.

23 (b) The department's licensing records, with the names of all individuals in  
24 care and parents of minors in care deleted to protect the confidentiality of those  
25 individuals, are available for public inspection, except for

26 (1) material made confidential by state or federal statutes or regulations;

27 (2) material that is part of an uncompleted licensing or complaint  
28 investigation;

29 (3) records that would deprive an applicant, licensee, or other person  
30 of a fair and impartial hearing; and

31 (4) records for which the department determines that disclosure would

1 constitute an unwarranted invasion of personal privacy.

2 (c) A government agency that provides funding to a facility or agency licensed  
3 under this chapter may have access to that facility's or agency's records in order to  
4 conduct an audit.

5 \* Sec. 16. AS 47.35 is amended by adding new sections to read:

6 Sec. 47.35.043. MONITORING; INVESTIGATION. (a) By the first  
7 anniversary of the effective date of a biennial license, including a renewed biennial  
8 license, the licensee shall submit an annual self-monitoring report to the department.  
9 The department shall specify, by regulation, the contents of the report.

10 (b) To encourage parents of children in child care facilities to become involved  
11 in day-to-day monitoring of the care provided by the facilities, the department shall  
12 require licensees to give to parents of children in child care in the licensee's facility  
13 a summary of the regulatory requirements that apply to the facility and the  
14 department's or department representative's telephone contact number for reporting a  
15 concern regarding child care. The department also may provide notice of the  
16 telephone contact numbers for reporting child care concerns.

17 (c) The department may conduct an investigation, including announced or  
18 unannounced on-site inspections, for ongoing monitoring or to assist in its review of  
19 an annual self-monitoring report.

20 Sec. 47.35.045. BIENNIAL LICENSE RENEWAL. (a) At least 90 days  
21 before the expiration date of a biennial license, a licensee who wishes to remain  
22 licensed shall submit, on a form provided by the department, an application for  
23 renewal of the license and any associated variances.

24 (b) Before expiration of a biennial license, the department or its representative  
25 shall inspect a facility or agency that is the subject of a renewal application.

26 (c) The department shall renew a biennial license if the department finds that

27 (1) the licensee

28 (A) either is in compliance with this chapter and regulations  
29 adopted under this chapter or is substantially in compliance and has  
30 implemented a plan of correction, approved by the department, that is designed  
31 to bring the facility or agency into full compliance; and

1 (B) has maintained the facility or agency in good repair and is  
2 in compliance with all state fire safety and environmental health and safety  
3 code requirements;

4 (2) the ground for revocation set out in AS 47.35.130(a)(2) does not  
5 exist; and

6 (3) all applicable fees have been paid.

7 (d) If the licensee submits a renewal application within the time period  
8 required by the department by regulation, but the department is unable to complete its  
9 review before the expiration date of the biennial license, the license is automatically  
10 extended for six months, or until the department completes its review and either  
11 approves or denies the application, whichever occurs first.

12 (e) If the department decides to approve an application for renewal, but finds  
13 that the applicant is not in compliance with a provision of this chapter, a regulation  
14 adopted under this chapter, or a condition on the license, the department, as a  
15 condition on the renewed biennial license, shall require the applicant to correct any  
16 violations and provide the department with verification of compliance.

17 (f) If the department denies an application for renewal, it shall provide the  
18 applicant with a notice of denial of application. The notice must contain a written  
19 statement of the reasons for denial and a form for requesting a hearing under (g) of  
20 this section.

21 (g) An applicant whose application is denied may appeal the department's  
22 decision by requesting a hearing, on the form provided by the department, within 15  
23 days after receipt of the notice of denial of application.

24 Sec. 47.35.047. NOTICE OF CHANGES. (a) A licensee shall provide the  
25 department with written notice of a change of mailing address at least 14 days before  
26 the effective date of the change.

27 (b) A licensee shall notify the department within 24 hours after having  
28 knowledge of an indictment or charging by information or complaint of an  
29 administrator, foster parent, member of the licensee's household, regular volunteer, or  
30 staff person for a felony, for a misdemeanor crime of assault, reckless endangerment,  
31 contributing to the delinquency of a minor, or misconduct involving a controlled

1 substance, for the crime of perjury, as defined in AS 11 or the laws of another  
2 jurisdiction, or for a sex crime as defined in AS 12.62.035.

3 (c) A licensee shall notify the department at least 20 days before the effective  
4 date of a decision to relinquish the license.

5 (d) A licensee shall notify the department at least 20 days before the date on  
6 which the licensee wishes to change the number of children in care or hours of  
7 operation.

8 (e) A licensee shall notify the department no later than one day after signing  
9 a contract for sale of the licensed facility or agency.

10 (f) A licensee shall notify the department at least 30 days before the licensee  
11 wishes to change the location of the facility or agency.

12 \* Sec. 17. AS 47.35 is amended by adding new sections to read:

13 Sec. 47.35.105. COMPLAINTS. (a) A person who believes that a provision  
14 of this chapter, a regulation adopted under this chapter, or a condition of a license  
15 issued under this chapter has been violated may file a verbal or written complaint with  
16 the department.

17 (b) The department shall investigate all complaints filed under this section  
18 unless the department reasonably concludes that the complaint is without merit.

19 (c) After an investigation under this section, the department shall prepare a  
20 written report of investigation and shall mail a copy to the licensee or other person  
21 who is the subject of the complaint, and to the complainant if requested. If the  
22 department determines that a violation of this chapter, a regulation adopted under this  
23 chapter, or a condition of a license issued under this chapter has occurred, the  
24 department's report of investigation must contain the following:

25 (1) a description of the violation;

26 (2) a citation to the provision of this chapter or the regulation that has  
27 been violated, if applicable; and

28 (3) either

29 (A) a date by which the violation must be corrected and a  
30 verification of compliance submitted to the department; or

31 (B) a plan of correction.

1 (d) A licensee may submit to the department a written response regarding a  
2 report of investigation relating to that facility or agency. The department shall retain  
3 the written response in the licensing file.

4 (e) A licensee may not take retaliatory action against a person who files a  
5 complaint. A complainant against whom retaliatory action has been taken may recover  
6 treble damages in a civil action upon a showing that the actions were taken in  
7 retaliation for the filing of a complaint.

8 Sec. 47.35.110. INVESTIGATIONS; SEARCH WARRANTS. (a) An  
9 applicant for a license, or a licensee, shall cooperate with the department for purposes  
10 of licensing investigations, investigations relating to ongoing monitoring of the facility  
11 or agency, or investigations under AS 47.35.105 by

12 (1) permitting representatives of the department to inspect the facility  
13 or agency, review records, interview staff, and interview individuals in care; and

14 (2) providing to the department information and documentation  
15 requested by the department to determine compliance with this chapter and regulations  
16 adopted under this chapter.

17 (b) Following an investigation relating to ongoing monitoring of a facility or  
18 agency or relating to a facility that the department believes is operating without a  
19 license in violation of this chapter, the department shall prepare and distribute a written  
20 report of investigation as described in AS 47.35.105(c), and the facility or agency may  
21 submit a response as described in AS 47.35.105(d).

22 (c) The department may seek a search warrant to inspect a facility or agency  
23 if the

24 (1) department has probable cause to believe that the facility or agency  
25 is operating without a license in violation of this chapter and the facility or agency  
26 operator refuses to allow an inspection by the department; or

27 (2) licensee refuses to allow an inspection of the facility or agency by  
28 the department.

29 Sec. 47.35.120. ENFORCEMENT ACTIONS. (a) During an investigation  
30 under this chapter, the department, by written notice, may suspend operations of the  
31 facility or agency if the department has reasonable cause to believe that a violation is

1 occurring that presents an imminent danger to the health or safety of the individuals  
2 in care. A suspension under this subsection continues for the time period set by the  
3 department and may continue until the department issues a report of investigation  
4 under AS 47.35.105(c) or 47.35.110(b).

5 (b) If, after an investigation under this chapter, the department has determined  
6 that a violation of this chapter or a regulation adopted under this chapter has occurred  
7 or a ground for revocation or nonrenewal set out in AS 47.35.130 exists, has issued  
8 a report of investigation under AS 47.35.105(c) or 47.35.110(b), and has determined  
9 that voluntary compliance or a plan of correction is not appropriate, the department  
10 may take one or more of the following enforcement actions, as the department  
11 considers appropriate:

12 (1) delivery of a warning notice to the licensee or other person who is  
13 the subject of the investigation;

14 (2) modification of the term of an existing license or reduction of the  
15 number of children for whom care can be provided;

16 (3) suspension of operations of the facility or agency for a period of  
17 time set by the department;

18 (4) suspension of admissions to the facility for a period of time set by  
19 the department;

20 (5) nonrenewal of the license;

21 (6) revocation of the license;

22 (7) issuance of an order requiring immediate closure of the facility or  
23 agency;

24 (8) assessment of an administrative fine of up to \$500 for each day a  
25 violation continues, not to exceed a total of \$5,000 for a violation.

26 (c) The department shall provide the licensee or other person who is the  
27 subject of an investigation with written notice of the department's decision under (b)  
28 of this section to take enforcement action. The notice must contain a form for  
29 requesting a hearing under (d) of this section and must describe

30 (1) each enforcement action that will be taken;

31 (2) the condition, if any, in the facility or agency that constitutes a

1 violation of this chapter or a regulation adopted under this chapter;

2 (3) the licensee's or other person's right to appeal the department's  
3 decision to take an enforcement action described in (b)(2) - (8) of this section.

4 (d) A licensee or other person to whom a notice has been provided under (a)  
5 or (c) of this section may appeal the department's decision to impose an enforcement  
6 action described in (a) or (b)(2) - (8) of this section by filing a written request for a  
7 hearing, on the form provided by the department, within 15 days after receipt of the  
8 notice of enforcement action.

9 (e) Unless the violation that prompted enforcement action under (b) of this  
10 section presents an imminent danger to the health or safety of the individuals in care,  
11 an enforcement action described in a notice provided under (c) of this section may not  
12 be imposed until the

13 (1) time period for requesting a hearing under (d) of this section has  
14 passed without a hearing being requested; or

15 (2) department makes a final decision following a hearing requested  
16 under (d) of this section.

17 (f) If a hearing is requested under (d) of this section, the department's decision  
18 following the hearing is a final administrative order.

19 (g) If a hearing is not requested under (d) of this section, the department's  
20 notice of enforcement action constitutes a final administrative order, which the  
21 department may seek the court's assistance in enforcing.

22 (h) A licensee whose license was revoked or not renewed under this section  
23 may not reapply for licensure under this chapter until after the time period, if any, set  
24 by the department in its final administrative order. If a time period is not set by the  
25 department, the revocation or nonrenewal is permanent, and the former licensee may  
26 not again apply for licensure under this chapter.

27 (i) Assessment of an administrative fine under this section does not preclude  
28 imposition of a criminal penalty under AS 47.35.820.

29 Sec. 47.35.130. GROUND FOR LICENSE REVOCATION OR  
30 NONRENEWAL. (a) In addition to the ground of violation of this chapter or a  
31 regulation adopted under this chapter, the department may revoke, or decline to renew,

1 a license issued under this chapter on one or more of the following grounds:

2 (1) failure to submit a timely and complete renewal application;

3 (2) the indictment or charging by information or complaint for, or a  
4 criminal conviction within the last 10 years, of the licensee or facility administrator for  
5 a felony; a misdemeanor crime of assault, reckless endangerment, contributing to the  
6 delinquency of a minor, or misconduct involving a controlled substance; the crime of  
7 perjury, as defined in AS 11 or the laws of another jurisdiction; or a sex crime as  
8 defined in AS 12.62.035;

9 (3) obtaining or attempting to obtain or retain a license under this  
10 chapter by fraudulent means, misrepresentation, or by submitting false information;

11 (4) failure to correct a violation noted in a report of investigation  
12 provided under AS 47.35.105(c) or 47.35.110(b);

13 (5) failure to comply with a final administrative order issued by the  
14 department under AS 47.35.120.

15 (b) A licensee may voluntarily relinquish the license or withdraw an  
16 application for renewal.

## 17 ARTICLE 2. ADULT FACILITIES.

18 Sec. 47.35.210. POWERS OF DEPARTMENT REGARDING ADULT  
19 RESIDENTIAL CARE FACILITIES. The department may

20 (1) license and supervise adult residential care facilities;

21 (2) investigate applicants, licensees, and persons that the department  
22 believes are operating an adult residential care facility without a license in violation  
23 of AS 47.35.210 - 47.35.250;

24 (3) adopt regulations to implement the provisions of AS 47.35.210 -  
25 47.35.250, including regulations establishing licensure and operating standards;  
26 application and licensure procedures and fees; license renewal procedures, standards,  
27 and fees; procedures and standards for variances; and procedures regarding  
28 enforcement actions and appeals;

29 (4) enter into agreements with private or municipal agencies, or with  
30 individuals, to investigate and make recommendations to the department for the  
31 licensing and supervision of adult residential care facilities under procedures and

1 standards of operation established by the department.

2 Sec. 47.35.220. LICENSE REQUIRED. A person may not operate an adult  
3 residential care facility without a license issued under AS 47.35.210 - 47.35.250 unless  
4 the facility is a Pioneers' Home operated by the state under AS 47.55.

5 Sec. 47.35.230. APPLICATION FOR LICENSE; LICENSING. Except as  
6 otherwise provided in regulations adopted by the department, the procedures and  
7 requirements in AS 47.35.017, 47.35.023, 47.35.025, 47.35.027, 47.35.029, 47.35.033,  
8 and 47.35.045 apply to application for license for and licensure of an adult residential  
9 care facility.

10 Sec. 47.35.240. RECORDS; REPORTS. (a) As required by the department  
11 by regulation, the licensee for an adult residential care facility shall

12 (1) keep records regarding adults in care in the facility; and

13 (2) submit reports to the department.

14 (b) The department's licensing records, with the names of adults in care  
15 deleted, are available for public inspection, except for material described in  
16 AS 47.35.039(b)(1) - (4).

17 (c) A government agency that provides funding to a facility licensed under  
18 AS 47.35.210 - 47.35.250 may have access to the facility's records in order to conduct  
19 an audit.

20 (d) The provisions of AS 47.35.047(a), (b), (c), (e), and (f), regarding notice  
21 to the department of certain changes, apply to an adult residential care facility licensed  
22 under AS 47.35.210 - 47.35.250.

23 Sec. 47.35.250. COMPLAINTS; INVESTIGATIONS; ENFORCEMENT  
24 ACTIONS. Except as provided otherwise in regulations adopted by the department,  
25 the provisions of AS 47.35.105, 47.35.110, 47.35.120, and 47.35.130, regarding  
26 complaints, investigations, and enforcement actions, apply to an adult residential care  
27 facility.

### 28 ARTICLE 3. MISCELLANEOUS PROVISIONS.

29 Sec. 47.35.800. ADMINISTRATIVE PROCEDURE. The administrative  
30 adjudication provisions of AS 44.62 (Administrative Procedure Act) apply to an appeal  
31 from a department decision under this chapter relating to denial, involuntary

1 conditioning, or revocation of a license, suspension of operations or admissions, or  
2 assessment of an administrative fine.

3 Sec. 47.35.810. IMMUNITY FROM LIABILITY. (a) A person operating  
4 under agreement with the department under AS 47.35.010(a)(4) is immune from civil  
5 liability that might otherwise be incurred or imposed for acts or omissions that  
6 occurred during the performance of the person's duties on behalf of the department if  
7 the person was operating within the scope of the duties delegated to the person under  
8 the agreement.

9 (b) The department and its employees are not liable for civil damages as a  
10 result of an act or omission in the licensing, monitoring, or supervision of a facility  
11 or agency licensed under this chapter. This subsection does not preclude liability for  
12 civil damages as a result of gross negligence or reckless or intentional misconduct.

13 Sec. 47.35.820. PENALTY. A person who violates a provision of this chapter  
14 or a regulation adopted under this chapter is guilty of a class B misdemeanor.

15 \* Sec. 18. AS 47.35.900 is repealed and reenacted to read:

16 Sec. 47.35.900. DEFINITIONS. In this chapter,

17 (1) "administrator" means an individual who has general administrative  
18 charge and oversight of a facility or agency;

19 (2) "agency" means a child placement agency;

20 (3) "child" means an individual under 18 years of age, and includes an  
21 individual who is a relative of a care provider, administrator, or foster parent;

22 (4) "child care" means, care, supervision, and provision of  
23 developmental opportunities, with or without compensation, to a child who does not  
24 have a parent present;

25 (5) "child care facility" means a place where child care is regularly  
26 provided for children under the age of 12 for periods of time that are less than 24  
27 hours in duration unless nighttime care is authorized by the department;

28 (6) "child placement agency" means a person who arranges for  
29 placement of a child

30 (A) in a foster home, residential child care facility, or adoptive  
31 home; or

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(B) for guardianship purposes;

(7) "department" means the Department of Health and Social Services;

(8) "facility" means the administration, program, and physical plant of a foster home, child care facility, residential child care facility, or maternity home;

(9) "foster home" means a place where the adult head of household provides 24-hour care on a continuing basis to one or more children who are apart from their parents;

(10) "home study" means a written report of an investigation of the prospective adoptive or foster parent or parents' ability to care for a child that has been prepared in accordance with AS 25.23.100(f);

(11) "licensee" means a person to whom a license has been issued under this chapter;

(12) "maternity home" means a place of residence whose primary function, with or without compensation, is to give care to pregnant individuals, regardless of age, before or after the individual gives birth, or that provides care, as needed, to mothers and their newborn infants;

(13) "nonsecure attendant care setting" means an unlocked place that is an alternative to an adult jail or other locked setting, where an employee, adult head of household, or volunteer provides care for one or more children 10 years of age or older who are under arrest and who are apart from their parents;

(14) "parent" means a birth or adoptive parent or a legal guardian;

(15) "recreational camp" means a place that provides recreational opportunities to children who attend with the consent of their parent;

(16) "relative" means an individual who is related to another through any of the following relationships, by blood, adoption, or marriage: parent, grandparent, great grandparent, brother, sister, stepparent, stepsister, stepbrother, cousin, aunt, uncle, great-aunt, great-uncle or step-grandparent;

(17) "residential child care facility" means a place, staffed by employees, where one or more children who are apart from their parents receive 24-hour care on a continuing basis.

\* Sec. 19. AS 47.40.110 is amended to read:

1           Sec. 47.40.110. LICENSING AND SUPERVISION. A person providing  
2 services purchased by the Department of Health and Social Services under  
3 AS 47.40.100 - 47.40.120 shall, if required to be licensed under AS 47.35, be licensed  
4 and supervised in the same manner as foster homes and [, BOARDING HOMES,]  
5 maternity homes [, AND OTHER AGENCIES AND INSTITUTIONS] under  
6 AS 47.35.

7       \* Sec. 20. AS 47.35.020, 47.35.030, 47.35.035, 47.35.040, 47.35.055, 47.35.060, 47.35.070,  
8 47.35.075, 47.35.090, and 47.35.100 are repealed.

9       \* Sec. 21. APPLICABILITY; IMPLEMENTATION. (a) AS 47.35, as amended by this  
10 Act, applies to all foster homes, child care facilities, residential child care facilities, child  
11 placement agencies, and maternity homes, as defined in AS 47.35.900, as amended by sec. 18  
12 of this Act, that are in operation on January 1, 1996, as well as to all such facilities and  
13 agencies that begin operation on or after January 1, 1996.

14           (b) A foster home, child care facility, residential child care facility, child placement  
15 agency, or maternity home, as defined in AS 47.35.900, as amended by sec. 18 of this Act,  
16 that is in operation on January 1, 1996, and that was licensed by the Department of Health and  
17 Social Services before January 1, 1996, may continue to operate under that license until the  
18 expiration date of the license, or until a complaint is filed, whichever occurs first. On the date  
19 that the license expires or a complaint is filed, whichever occurs first, the procedures in  
20 AS 47.35, as amended by this Act, including license renewal procedures, first apply to such  
21 a facility or agency.

22           (c) If AS 47.35.210 - 47.35.250, enacted in sec. 17 of this Act, take effect, AS 47.35,  
23 as amended by this Act, applies to residential facilities for dependent adults and to foster  
24 homes for adults that are in operation on January 1, 1996, as well as to adult residential care  
25 facilities that begin operation on or after January 1, 1996. A residential facility for dependent  
26 adults or a foster home for adults that is in operation on January 1, 1996, and that was  
27 licensed by the Department of Health and Social Services before that date may continue to  
28 operate under that license until the expiration date of the license or until a complaint is filed,  
29 whichever occurs first. On the date that the license expires or a complaint is filed, whichever  
30 occurs first, the adult residential care facility procedures in AS 47.35, as amended by this Act,  
31 including license renewal procedures, first apply to such a facility or foster home.

1 \* Sec. 22. TRANSITION; REGULATIONS. Notwithstanding secs. 25 and 26 of this Act,  
2 the Department of Health and Social Services may proceed to adopt regulations necessary to  
3 implement the provisions of this Act. The regulations take effect under AS 44.62  
4 (Administrative Procedure Act), but not before January 1, 1996.

5 \* Sec. 23. AS 47.35.210 - 47.35.250, enacted in sec. 17 of this Act, take effect only if a  
6 bill that provides for a licensing and regulatory structure for residential facilities for adults  
7 other than this Act is not enacted into law after passing the Second Session of the Eighteenth  
8 Alaska State Legislature.

9 \* Sec. 24. Sections 22 and 23 of this Act take effect immediately under AS 01.10.070(c).

10 \* Sec. 25. Except for AS 47.35.210 - 47.35.250, enacted in sec. 17 of this Act, secs. 1 -  
11 21 of this Act take effect January 1, 1996.

12 \* Sec. 26. Subject to sec. 23 of this Act, AS 47.35.210 - 47.35.250, enacted in sec. 17 of  
13 this Act, take effect January 1, 1996.

FISCAL NOTE

No. 1

STATE OF ALASKA  
1994 LEGISLATIVE SESSION

Bill Version: SB 268

(S) Publish Date: 1-28-94

Revision Date: December 17, 1993 Dept. Affected: Health and Social Services  
 Title: Community Care Licensing Statute BRU: Family & Youth Services  
 Component: Central Office  
 Sponsor: Rules Committee by request of the Governor  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. \_\_\_\_\_

Expenditures/Revenues:		(Thousands of Dollars)				
OPERATING	FY95	FY96	FY97	FY98	FY99	FY00
PERSONAL SERVICES						
TRAVEL	45.0	20.0				
CONTRACTUAL	20.0	15.0				
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>65.0</b>	<b>35.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES

CHANGES IN REVENUES

FUND SOURCE		(Thousands of Dollars)				
1002 Federal Receipts						
1003 GF Match						
1004 GF	65.0	35.0				
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
<b>TOTAL</b>	<b>65.0</b>	<b>35.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

POSITIONS:						
FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \_\_\_\_\_

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill focuses licensing on children and families; removing two types of care -- adult foster homes and adult residential care -- from the licensing statute. It consolidates all the basic licensing procedures into the bill, so that each program regulation will only address the program issues. The existing licensing statute needs to be revised to address significant changes in licensing which have occurred since the statute was first enacted. There is a lot of public interest and support for the licensing of child care facilities.

There will be an 18 month implementation in order to allow the Division time to revise all regulations with appropriate public input. The bill takes full effect on January 1, 1996.

Continued

Prepared by: Deborah R. Wing, Director *Deborah R. Wing* Phone: 465-3191  
 Division: Division of Family & Youth Services Date: 01/24/94

Approved by Commissioner: Margaret R. Lowe *Margaret R. Lowe* Date: 1-25-94  
 Agency: Department of Health & Social Services

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**ANALYSIS (cont.):**

In FY95, the Division will appoint a task force of providers, licensing staff and others to recommend standards for operation. \$65,000 will be needed to begin the implementation of the changes. The \$45,000 in the travel line will fund the task force travel, and travel for staff to conduct public hearings. The \$20,000 contract line will fund a contractor to draft standards for each program area, and to revise the drafts after public comment.

In FY96, the \$35,000 will go toward finalizing the implementation. Contractual money will go for design and publication of forms and guidebooks to implement the standards. \$20,000 will fund regional training for different care types.

It is expected that full implementation of this bill will require more funds than the \$100,000 built into this fiscal note; however, some of the work required for service improvements will be assumed by existing staff and resources. The impact of all the changes required by this bill at one time cannot, however, be assumed by existing staff. The improvements to the licensing program that this bill will accomplish are very important to the citizens of this state.

The revision of the licensing statute will have a major program impact on the Division of Family and Youth Services. There will be immediate need to work with those affected to propose and draft at least six sets of licensing regulations, conduct public hearings, revise drafts and promulgate regulations, develop implementation materials including forms and guidebooks for each type of care, revise the licensing procedures manual for staff, train licensees and licensing staff. The Department of Law advises this must be done within 18 months.

Community participation in the revision of standards is important to ensure that the standards developed are clear and viable, and that there is consensus.

## Community Care Licensing Bill

### Goals

- ◆ Licensing is intended to reduce risk to our most vulnerable citizens
- ◆ The legislation will enhance efficiency to accomplish more with the same resources.

### Background

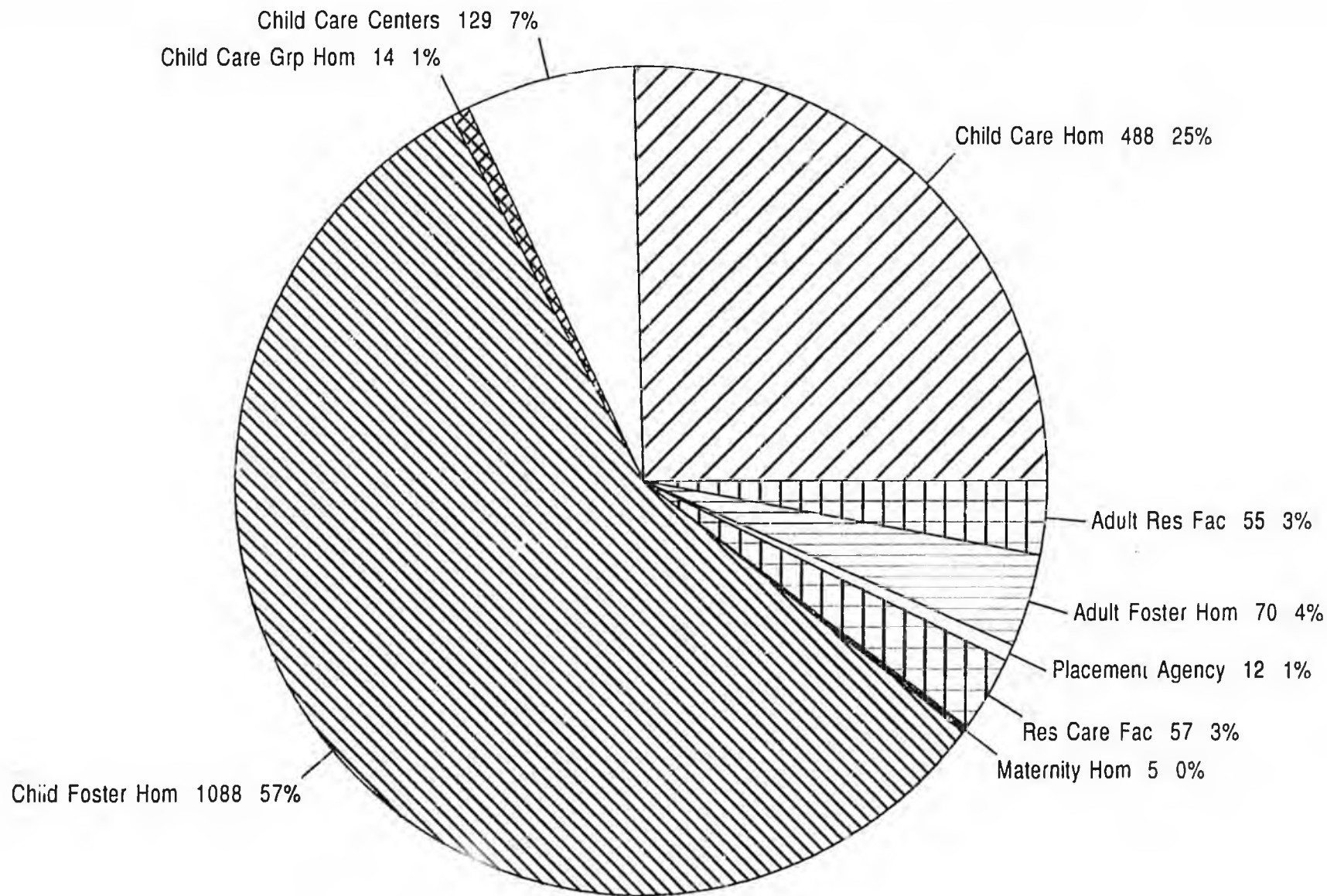
- ◆ DFYS licenses nearly 2,000 facilities and agencies.
- ◆ The public demands more licensed care settings.
  
- ◆ Workers now license up to nine kinds of care.
- ◆ Workload standards: exceeded by 50% in some places.
- ◆ Many workers also have protective services duties.
- ◆ Workers must know 40 pages of licensing procedures.

### Passing Community Care Licensing & Assisted Living will

- ◆ Focus DFYS on children and families.
- ◆ Transfer regulation of care for elders or adults with a disability to divisions in those fields.
  
- ◆ Advance efficiency and competency by
  - Consolidating licensing procedures
  - Convening a task force to form standards
  - Publishing guidebooks and conducting training
  
- ◆ Clarify the shared role with parents to ensure their child's safety and development in licensed care.
  - Yet, the state retains duty for oversight.
  
- ◆ Expand partnerships with private agencies
  - Include liability protection.
  - Encourage partners to increase the number of regulated homes in additional communities.

# COMMUNITY CARE LICENSED FACILITIES

MARCH 1994



Total = 1918

# Community Care Licensing: Section by Section Analysis and Commentary

CS HB 412 HES & CS SB 268 HES Workdraft  
April 7, 1994

This bill in large part reflects current licensing practice and the thinking of experienced supervisors in the Division of Family and Youth Services (DFYS). It moves detail from quasi-legislative regulations developed over nearly two decades into a cohesive licensing law. Proposed modest improvements to Alaska licensing are emphasized in this analysis and commentary.

Following introduction of the Governor's Community Care Licensing bill, DFYS conducted a teleconference with the heads of organizations and key agencies that would be affected by the bill. The department drafted amendments suggested by those attending the teleconference.

House HES sent the bill to Legislative Counsel, Terry Lauterbach, to incorporate department amendments with changes suggested by a HES committee member. House HES also requested that Ms. Lauterbach review the bill for conformance with legislative drafting requirements. She proposed technical improvements along with the amendments. All were adopted by the House HES Committee with the support of the department. Other than minor wording modifications, changes from the Governor's bill are noted in this analysis.

Page

- 1     Sections 1 through 8 (Compatibility with Other Statutes) make conforming numbering or terminology amendments to other laws including Criminal, Adoption, Office of the Long Term Care Ombudsman, Child Care grant and Day Care Assistance laws. There is no change in substance. Sections 1--5 were added by Ms. Lauterbach.
  
- 3     Section 9 (Appeal Hearings) also sets out conforming amendments. It requires that appeal hearings following all serious enforcement by the department be conducted under the provisions of the Administrative Procedures Act. DFYS will conduct appeal hearings under their informal grievance procedure for less onerous actions, such as a denial of a request for a variance.
  
- 4     Section 10 (Purpose; Applicability) adds a purpose statement. DFYS intends to use the purpose in publications to clarify the role of licensing for providers of service and to inform

parents that they play a critical role in selecting and monitoring care for their children. Section 10 establishes that the provisions of this statute apply both for programs required to be licensed and for those that voluntarily choose to be licensed. The original version of the bill included changing the title of the Chapter from "Institutions" to "Community Care Licensing." Ms. Lauterbach indicated that the Revisor of Statutes selects chapter titles. She noted that the Department prefers "Community Care Licensing" as the title.

4 **Section 11 (Powers of the Department)** is amended.

- Section 11 reflects updated terminology for facilities and agencies falling under the provisions of the chapter and authorizes the department to adopt fees by regulation. Refer also to the definitions on page 21.
- Section 11 provides authority for the department to enter into agreements with individuals, in addition to organizations, to perform licensing evaluations. DFYS has agreements with about 12 agencies to perform licensing evaluations, primarily foster care. Only three agreements involve state funds, and those three are exempt from the procurement code. Since the procurement code rarely applies, reference to it is removed.
- The material related to delegating powers to a municipality has been revised in collaboration with the Municipality of Anchorage (MOA). The MOA is the only municipality that has adopted an ordinance to license child care centers. The revision reflects the practice of the MOA to adopt additional standards that meet or exceed state standards.

5 **Section 12 (License Required; Exemptions)** states that a child care license is required unless the facility is exempt. Facilities and agencies excluded from the licensure process are listed. These are the same as those under current statute and regulations with exceptions noted below.

6 The exemption from licensure for child care facilities on military bases was amended in House HES to clearly exempt facilities on Coast Guard installations on the advice of Commander Gary Palmer of Legal Services in the US Coast Guard. The department will continue the exemption on Kodiak Island and the exemptions for the large military bases in Anchorage and Fairbanks, but the department agreed to continue to license family child care homes under voluntary licensure on Coast Guard Installations in communities like Cordova and Sitka. Child care is limited there, and the Coast Guard has no oversight means. Licensure will be on a time available basis.

Licensing statutes are not intended to apply to care from relatives. The original bill had a drafting error that was amended in House HES to clearly exempt relative child care and or grandparents were added to the definition of relatives.

Application of the licensing statute is proposed to be expanded in four areas as sound public policy. They are:

- The exemption for governmentally operated programs is removed except where specified. Only one local government, the MOA, has the expertise to license and it does not operate programs.
  - 6/7 • The clause in current statute that allows a foster home or residential facility to operate for 90 days without a license is removed. The primary purpose to reduce risk before persons receive care is lost, if programs begin without licensure. Consider that a person is not allowed to operate an automobile before obtaining a license.
  - 6/7 • The defined age of a child is changed from "under 16 years of age" to "under 18 years of age" for requiring licensure in foster homes and residential child care. No known programs would be affected by this change.
  - 7 • The exemption for the "occasional" placement of a child for adoption without a license has been deleted. Most, if not all, attorneys now arranging non-relative adoptions, contract with a licensed child placement agency to obtain evaluations and oversight for adoption placements.
  - 7 Voluntary licensure is retained.
  - 8 **(Application for license)**. Items that must be submitted in an application for licensure are consolidated.
  - 9 **Section 13** describes license issuance, denial and right to appeal, and the content of a license by consolidating material from existing statute and regulations.
  - 9 **(Provisional license; Biennial License)**. Retaining on site inspections prior to license issuance has strong community support as indicated in community meetings on the draft.
- One amendment in House HES addresses the practical matter that only minimal licensing requirements can be met in the middle of the night in a village under emergency conditions. Alaska Native Grantees recommended a direct approach to licensing under emergency placement conditions. See paragraph (b).
- 10 **(Denial of License; Right to Appeal)** Current practice is described.

- 10 The term, **(Variances)**, rather than, waivers, more accurately reflects approved alternatives to meeting the intent of a requirement. The procedure for granting variances is set out. Reasonable variances are widely used.
- 11 **(Content of the License)** is consolidated from five sets of regulations resulting in reducing the volume by 4/5.
- 12 House HES amended this section at the request of the department to provide that a variance issued within the period of licensure be posted near the license. This will prevent the need for the extra paperwork of issuing an amended license to display the variance.
- 12 **Section 14 (Non-transferability)** retains the provision that licenses are not transferrable to a different owner or location.
- 13 **Section 15 (Orientation and Training)** requires that applicants or licensees complete orientation and training that the department prescribes in regulation. Currently only child foster home training is mentioned in statute, however orientation and training is required in regulations for all types of care.
- 12 **(Records)** must be kept by the licensee to demonstrate compliance with standards. Since licensing records are open and are frequently reviewed by parents seeking child care and others, specifying which records are not available for public inspection is important. In particular, personal background information provided by foster parents is sensitive and should not be open to inspection by the public.
- 13 **Section 16 (Monitoring; Investigation)** outlines the process for monitoring and biennial license renewal. An annual self monitoring report is added. The department believes a self monitoring report will motivate the licensee to seek to meet standards and reduce the time necessary in the department's review. In addition the section encourages parents who have placed children in child care to monitor by requiring that they receive a summary of standards and a telephone number for reporting concerns. A partnership with informed parents will go a long way toward ensuring care is safe for young children.
- 13 **(Biennial License Renewal)** The process for renewal of a license is specified and procedures that were previously only in the department's licensing manual are included. For example, if there is a vacancy in a one person office and a license expires, it is automatically extended for six months or until a department representative may visit to perform the investigation. If the department finds noncompliance, a plan of correction and verification of compliance is required.

- 14 **(Notice of Changes)** Required notices are updated and standardized.
- 15 **Section 17 (Complaints, investigation, enforcement and grounds for license revocation or nonrenewal)** are specified. The majority of this material is a consolidation and refinement of existing regulations. Changes:
- 15 • A requirement to mail a copy of the report of an investigation to the complainant, if requested.
  - 16 • Prohibition of licensee retaliatory action against a complainant. This is especially important to protect employees who are fearful of reporting unsafe practices.
  - 16 • Probable cause is added as the standard for seeking a search warrant when considered necessary.
  - 17 • Suspension of operations in cases of imminent danger is authorized until the department investigation is complete. Suspension is more appropriate than immediate revocation authorized under current statute.
  - 17 • The array of enforcement actions authorized are listed along with the grounds for revocation or nonrenewal. Most appear now only in the department's licensing manual.
- 19 **(Licensing Adult Facilities)** outlines procedures for licensing adult residential care facilities, including adult foster homes, in brief. Pioneer Homes, as now, are exempt from licensure. Many provisions in bill sections 11 -17 are incorporated by reference. This article would go into effect only if the companion Assisted Living bill did not pass. It will ensure that currently licensed adult care facilities remain regulated by DFYS in the event that the Assisted Living bill does not pass.
- 20 **(Administrative Procedure)** complements section 9 in specifying appeals fall under the Administrative Procedures Act for serious enforcement actions under this chapter.
- 21 **(Immunity from Liability)** is provided for individuals and agencies acting under agreement with the department to perform licensing evaluations. Liability concern is often cited as a deterrent to private agencies interested in performing licensing evaluations. Alaska Native and other nonprofit agencies strongly support this section.
- 21 **(Penalty)** provisions for violations under the chapter as a class B misdemeanor have not been changed.

- 21 Section 18 (Definitions) are updated. For example, "nursery" is a term now in statute. It becomes a "child care facility. The outdated term, "institution," becomes "residential child care facility".
- 22 Section 19 This is an amendment added by Ms. Lauterbach similar to those at the beginning of the bill. It amends terminology in the department's purchase of service chapter to conform to the bill.
- 23 Section 20 repeals several existing sections in Chapter 35.
- 23 Sections 21 -- 26 Remaining sections contain provisions for implementation and the timetable that the department will use for an orderly transition from the current system of licensure to the new one. More than 1,900 facilities and agencies with a capacity for 13,600 individuals now fall under the provisions of this licensing statute. The time line for implementation is a year and a half to allow for the transition. During this period the department will review regulations for seven or more types of facilities and agencies, work with care providers, consumers and others to draft revised standards of operation for each type of care and agency falling under the statute, conduct public review of drafts, promulgate regulations, develop implementation materials and conduct licensing training for both providers and licensors.

Senate Bill 268

For An Act Entitled: "An Act relating to facilities for the care of children; to child placement agencies; to maternity homes; to certain residential facilities for adults; and to foster homes for adults; and providing for an effective date."

There are other methods for pursuing quality in programs, but licensing alone reaches almost all programs. Its benefit is that a disinterested third party (the licensing agent) evaluates an applicant and program against the public's definition of an acceptable level of quality. In this way licensing reduces risk and protects our most vulnerable citizens, who are in care away from their own homes. Regulation should not be thought of as an unwarranted intrusion, but as vigorous and necessary protection for parents and their children or adults in need. This bill is intended to facilitate efficiency in licensing so that this valuable protection may continue as resources are reduced.

The Division of Family and Youth Services (DFYS) licenses 1,900 care facilities and agencies. There is public demand for more licensed care and support for licensing, but there are hurdles to productivity. DFYS workers now must know how to evaluate up to nine kinds of care; workload standards are exceeded by 50% in some locations; many workers also have protective services duties; and they must be familiar with more than 40 pages of procedures in statute and varying regulations.

Passage of Community Care Licensing legislation for children's care coupled with passage of the Assisted Living bill for adult care will focus DFYS staff on children and families. Regulation of care facilities for elders or adults with a disability would be transferred to divisions knowledgeable in those care fields.

The efficiency of DFYS licensing resources will further be enhanced by consolidating procedures now scattered in statute and various regulations. Forty single spaced pages are consolidated to eighteen pages, double spaced, in this bill. To further promote efficiency, DFYS will convene a task force of those affected to assist in forming standards, will publish guidebooks to reduce questions for those getting started and will provide regional licensing training to ensure competency.

Clarity is needed and given on the shared role with parents to ensure their child's safety and development in licensed care. Yet, the state retains primary duty for oversight.

Expanded partnerships with private agencies could increase the number of regulated homes in additional communities, without increasing state costs. Clear liability protection for licensing agents will go a long way toward meeting that goal.

The department has a considerable investment in the development of this bill and has sought the expertise of key state and national experts. The basics were taken from a national collaborative effort in the form of a model bill published by the American Bar Association. The Assisted Living bill mentioned earlier is based on the model. The department then reduced the volume of model material, tailored provisions to match current Alaska licensing practice and added modest improvements based on recommendations of licensing supervisors, selected providers, the Department of Law and a review by the nation's licensing expert in Washington DC. A Section by Section analysis is available from the Division of Family and Youth Services.

DEPARTMENT'S POSITION

The department strongly supports this bill and urges its passage.

Recommended:

Deborah R. Wing

Date:

2/2/94

Deborah R. Wing, Director  
Division of Family and Youth Services

Approved:

Margaret R. Lowe

Date:

2/8/94

Margaret R. Lowe, M.Ed., Ed.S.  
Commissioner  
Department of Health and Social Services

# NAEYC Position Statement on Licensing and Other Forms of Regulation of Early Childhood Programs in Centers and Family Day Care



Subjects & Predicates

**The importance of regulating early childhood programs** Increasing numbers of young children are spending significant portions of their day in settings outside their home. The latest census figures indicate the majority of mothers of young children are employed outside the home. Moreover, a growing percentage of preschool children attend early childhood programs regardless of their mother's employment status. Quality early childhood programs provide important educational and nurturing experiences to young children. Early childhood programs also enable parents to work or attend educational or training programs. Thus, the provision of early childhood programs that will nurture, protect, and educate young children benefits not only the children themselves but also their families, their communities, and the larger society.

When parents seek child care outside their homes, they can choose among a variety of options reflecting the diverse needs of today's families. These options can be grouped in two major settings: *family day care* or care in the home of a caregiver who is not a relative or close family friend and *center care*, generally in a non-residential setting. Close to half the states define an additional care setting: the *group home*. Group homes usually care for 7 to 12 children in a caregiver's home, employing additional staff as necessary to meet the adult-child ratios necessary for the age of the children served. States not recognizing the group-home category regulate this arrangement as a center. Regardless of the setting, services may be provided to infants; toddlers; preschool, school-age, and special needs children. Each type of care may provide full- or part-day care on a regular or flexible basis.

## POSITION

The National Association for the Education of Young Children believes all forms of out-of-home care settings must be subject to public regulation. Public regulation of early childhood programs is administered by the states and takes the form of licensing center programs and licensing or registering family day care homes. When these regulatory systems are well-designed and effectively administered, they can help to assure the provision of early childhood programs that will nurture, protect, and educate young children. As such, regulation should not be perceived as unwarranted intrusion, but as vigorous and necessary consumer protection for parents and their young children.

**The benefits of public regulation of early childhood programs** The primary benefit of regulation is that it helps assure children's rights to an acceptable level of care. Licensing standards set forth the public definition of acceptability; programs must meet at least this level of quality in order to legally operate. States vary considerably at where they set the baseline of acceptable quality. Such variation reflects differences in the degree of public understanding of children's needs.

In addition to assuring the well-being of young children, a well-administered regulatory system offers important benefits to providers of care. It gives official recognition of the importance of their work in caring for the community's children, brings them into contact with other providers and sources of business assistance and training, helps them recruit children, facilitates getting insurance

coverage, educates parents about standards and provides rationale for the cost of a program, and prevents unscrupulous competition from offering grossly substandard services. The benefits to providers, while important, are secondary to the central purpose of protecting consumers.

An effective regulatory system not only assures an acceptable level of care, but can help to raise the level over time. Regulatory requirements educate the community as to the necessary components of acceptable care. As public understanding and support grow, and as more providers are able to improve the quality of care they offer, standards can be raised and higher levels of quality are provided to all children in care.



Michael Siluk

*Regulation should not be perceived as unwarranted intrusion, but as vigorous and necessary consumer protection for parents and their young children.*

## Assuring an effective

**regulatory system** States regulate center programs by *licensing*; some states also use this system for family day care homes. The goal of licensing is to assure a minimum level of good quality care while taking into account the different types of settings and the number of children served. Licensing includes an on-site visit to assure that basic requirements are met prior to licensure and periodic inspections to monitor continued compliance.

*Registration* is a variation of licensing used by some states for family day care homes. Registration relies more heavily on parents as monitors than does traditional licensing. Generally, inspections are not required prior to registration, and states vary in degree to which registered homes are monitored. Parents are informed of the standards, are encouraged to inspect for themselves, and are told to report serious violations. Registration of family day care homes offers a viable alternative to licensing when it includes an effective monitoring process. At a minimum, the monitoring process should assure that at least 20% of registered homes receive random inspection visits on a regular, rotating basis.

NAEYC affirms the importance of a well-designed and effectively administered system of state regulation to secure the provision of safe, nurturing, and educational early childhood programs for young children. The criteria for assuring regulatory systems are well-designed and effectively administered include

### 1. Mandatory compliance is enforced.

Basic levels of quality care must be assured through regulation for all children participating in any form of out-of-home care. Thus, regulatory systems designed to provide basic protection of children must apply to all programs, without limiting definitions, exemptions, or exceptions. Whenever programs are exempted, not covered, or given special treatment, the entire regulatory structure is weakened.

Sanctions should be included in the regulatory system to give binding force to its requirements. Enforcement provisions should give the state the ability to impose fines, to revoke or suspend licenses or registration, and to take emergency action to close a program in those rare cases that are dangerous to children. The vulnerability of children mandates the highest level of official scrutiny of their child care environments.

## 2. Programs are regulated

### —regardless of sponsorship

NAEYC opposes the exemption of programs on the basis of sponsorship, such as the exemption of church-run programs. When public schools operate programs for young children, it is usual for the state Department of Education, rather than the licensing agency, to assume responsibility for approval. In such cases, the responsible agency should adopt standards equal to or better than those of the licensing agency, implemented through a system that includes monitoring visits.

### —regardless of the length of the program day

Both full- and part-day programs should be regulated, including programs that provide drop-in care.

### —regardless of the age or number of children served

The system should provide developmentally appropriate standards that cover the care of all children in infant/toddler care, preschool care, school-age care, and special needs programs.

## 3. Standards are appropriate to the type of setting and the number of children served, and reflect current research findings concerning the determinants of quality child care, including factors such as

- group size
- adult-child ratios
- staff knowledge and training in early childhood education and child development
- parent involvement and access
- positive discipline
- developmental appropriateness of the program

## 4. The regulatory system is highly visible and accessible to parents and providers.

The general public, and in particular parent-consumers, should have access to information about the requirements for legal and safe operation of an early childhood program. Public service announcements, the development and dissemination of brochures and flyers that describe state/local standards, open workshops, and communication with organized parent groups are all excellent ways for the regulatory agency to raise the child-caring consciousness of a community. A highly visible regulatory system also helps to inform potential and current providers of the existence of standards and the need to comply with the law.

There should be physical evidence that a given program setting has been duly inspected and found to meet the standards imposed by the state and/or local authorities. Mechanisms for registering complaints about the care of children should be widely publicized and accessible to both parents and the general public. All these materials and

services should be presented in languages consistent with the needs of local communities.

Publicizing the requirements of the regulatory system is particularly important when states use registration systems with random inspections of family day care providers. Parents must be warned that under such a system not all registered providers have been inspected, and the state cannot verify that the registration requirements have been met. When such systems are used, parents must play an especially active role in inspecting and monitoring the quality of a program.

## 5. Standards are clear, reasonable, and vigorously enforced.

The authority invested with the responsibility of licensing programs should develop written materials and presentations that clearly communicate what is necessary to obtain and maintain official approval. Confusing or intimidating legal language should be kept to a minimum.

Applications and inspection procedures should be simple and handled in a timely fashion. A timeline for the accomplishment of registration or licensure should be presented and discussed with each applicant. Application materials should describe, in writing, what will happen and when. Where possible, one individual should be assigned to oversee the licensing process to completion for each applicant.

## 6. Funding for the implementation and monitoring of the regulations is adequate.

Regulations are compromised if funds are inadequate to assure effective implementation and monitoring by the administering agency. A regulatory system can accomplish its objectives only with sufficiently trained staff and adequate resources. Staff must be able to meet their inspection goals, to follow up on all parent complaints, and to investigate unregulated care. Staff should be sufficient to avoid long waiting lists of pending licenses or registration.

NAEYC believes that centers and group homes should be regulated by a licensing system that includes an on-site visit prior to licensure and periodic visits thereafter. It is important to visit center programs at least once a year, and preferably twice a year, to assure continuing maintenance of the required level of quality. At least one visit a year should be unannounced. NAEYC suggests that in order to make the needed visits and follow up on complaints, one full-time licensor (or full-time equivalent) should have 50 centers assigned, and never more than 75 centers.

Licensors who regulate family day care through an inspection visit prior to licensing and conduct at least annual visits should have 100 homes assigned, and never more than 150 (exclusive of

other responsibilities). If a registration process is used to regulate family day care, visits should be made to at least 20% of the homes on a random, rotating basis, not counting visits to follow up complaints. A full-time inspector could handle 500 homes and never more than 750 with backup assistance.

or other certificates should include up-to-date information about available training and technical assistance, including referral to local organizations sponsoring the Child Care Food Program, and local/state professional associations.

**7. The regulatory system is responsive to the needs of both providers and parents.**

The regulatory authority should play a central role in the child care delivery system at both the local and state levels. Interface with referral programs, resource networks, and training/technical assistance programs should also be an important function of the regulatory staff. Regulatory materials, such as application forms, brochures, licenses,

**Special considerations for various care settings**

NAEYC believes all forms of out-of-home care should be publicly regulated. However, the diverse characteristics of types of care make it important that the regulatory system has the flexibility to deal with variation without compromising the safety and developmental appropriateness of the program. For example, it is especially important that standards for family day care be clear and few in number.



Albert J. Miller, M.D.

*Whenever programs are exempted, not covered, or given special treatment, the entire regulatory structure is weakened.*



Marietta Lynch

*A highly visible regulatory system helps to inform potential and current providers of the existence of standards and the need to comply with the law.*

Special considerations also need to be made for group homes, which combine characteristics of both family day care and center programs. About half the states recognize the group home category, although other names may be used (e.g., "large home" or "mini-center"). This form of care is not widely prevalent, and is not expected to proliferate because large homes are required for operation. Group homes are, however, a viable way of providing good quality care to young children, and offer the opportunity for two or more caregivers to work together rather than in isolation. NAEYC supports the recognition and regulation of group homes as a care setting, if

- adult-child ratios are the same as center ratios;
- training of caregivers is required;
- group homes are licensed like center programs with pre-licensing inspections; and
- group homes are approved by building inspectors as meeting appropriate group home building and fire codes, and are approved by health officials as meeting sanitation requirements appropriate for these small programs.

## The role of early childhood professionals to assure effective regulation

It is a professional responsibility to report serious violations of regulatory requirements, and to support members of the profession who make such reports. All states should consider establishing "whistle blowing" laws, such as those in California and Ohio that make it illegal to discharge an employee for reporting a licensing violation. Moreover, the early childhood professional should be well versed concerning the regulatory system in her or his state and community, should take part in the rule-making process, and should help to build increased public awareness and support for appropriate standards and their effective implementation.

## Other forms of regulation

### Health, building, and fire safety codes

In addition to state licensing requirements, early childhood programs are subject to other publicly administered requirements. Local building and fire safety requirements and sanitation codes are locally applied, each enforced by a different agency. While the trend is for such codes to be uniform, statewide standards, additional local requirements may also be applied. NAEYC believes that inspection, monitoring, and enforcement of all applicable codes should be coordinated to ensure that public personnel and fiscal resources are wisely used, and to avoid undue delays, barriers to services, and unnecessary red tape. Local regulation should be added only in coordination with licensing or registration requirements.

### Zoning

Zoning is the regulation of land use by local planning officials under the state enabling law. Zoning affects the provision of child care by determining where programs may be offered. NAEYC's position on zoning is based on the recommendation of the American Planning Association. NAEYC believes that center programs, group homes, and family day care should be regarded as a needed community service rather than as a commercial use, and should be permitted in any residential zone. Center programs should be regarded as a class of use similar to a school, although it is rare to find a center as large as the smallest of schools. Group homes should be regarded in the same way, except that they are even smaller. The effect on neighborhoods by these types of early childhood programs is less than the effect of a school. As an educational service, they should be permitted in any zone where schools would be permitted. Planning should take into account the need

for these services as communities develop new housing and commercial uses.

Family day care homes should be regarded as a residential use for zoning purposes. Family day care is indistinguishable from family occupancy in terms of traffic, noise, effects on neighbors, and other factors. It should be permitted without further restriction in any zone in which families are permitted to live or in which working families might need child care services.

Zoning stipulations should not make additional requirements for the protection of children because that is the responsibility of the state licensing system. Cities and towns should use uniform definitions for center programs, group homes, and family day care, referring to the definitions in the state licensing law.

### Early childhood regulation

**in context** An effective system of public regulation is the cornerstone of any effort to assure the quality of early childhood programs because it alone reaches all programs. There are additional methods, both regulatory and non-regulatory, of pursuing quality in early childhood policy. Additional levels of quality may be established above that required for licensing through administrative standards, funding standards, and accreditation standards. However, licensing provides the necessary foundation of acceptable quality upon which all other efforts are built.

Administrative standards are applied by public agencies who administer programs, such as the schools or a health or mental health department. Programs administered by public agencies may not be licensed, but their standards for quality and methods for assuring the maintenance of quality

should be at least equal to those used for licensing. When the government (whether state or federal) pays for a program, it often sets standards for its grant or purchase. For example, Head Start has performance standards, and some states require higher standards of their Title XX programs in addition to being licensed. Many of the states that have funded prekindergarten programs in recent years have set forth comprehensive standards beyond licensure to be met by funded programs.

Accreditation offers a way of distinguishing early childhood programs of high quality. While it is possible that accreditation could be required of a program (for example by its funding source), it is usually voluntary. A few states offer voluntary accreditation above the licensing level. The National Academy of Early Childhood Programs, a division of NAEYC, offers the only national, voluntary, professionally recognized system for accreditation. For more information, contact the Academy at 1834 Connecticut Avenue, N.W., Washington, DC 20009.

Regulation can also take the form of credentialing qualified individuals. The Child Development Associate Credential is a nationally recognized, competency-based credential for early childhood personnel. Credentials are available for those who work in centers as well as family day care homes. For more information about the CDA Credential, contact the Council for Early Childhood Professional Recognition, 1718 Connecticut Avenue, N.W., Washington, DC 20009.

The quality of early childhood programs can also be improved through non-regulatory approaches. Professional training and preparation, public education, resource and referral services, and other means of provider and consumer education all play an important role in increasing the quality of services available to young children and their families.

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**For more information** For further information about the licensing requirements in your state, contact your state licensing agency or the NAEYC Information Service, 1834 Connecticut Avenue, N.W., Washington, DC 20009. NAEYC distributes information on the regulation of early childhood programs through a collaborative effort with Work/Family Directions.

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National Association for the Education  
of Young Children

1834 Connecticut Avenue, N.W.

Washington, DC 20009

202-232-8777 800-424-2460 FAX 202-328-1846

# LICENSES

## PROVISIONAL LICENSE

A provisional license is the kind of license granted to new applicants if standard requirements are met.

Provisional licenses also are issued when a facility has allowed its biennial license to expire without obtaining a new one, and when a facility moves, changes ownership, or changes the type of care offered.

A biennial license may be reduced to provisional status when substantial noncompliance is found. An acceptable plan to bring the facility into conformity within the time specified on the provisional license is required.

A provisional license is valid for up to one year and may be renewed for an additional period not to exceed one year.

## GRANTING THE FIRST BIENNIAL LICENSE

Within the one year, the facility must show that it can meet standards on a continuing basis in order to qualify for a biennial (two-year) license.

While the applicant has a provisional license, the licensing representative makes at least one visit to evaluate the facility's compliance with standards, including those

which require the presence of children or dependent adults. The representative provides needed help, as time permits. The applicant is informed of the findings.

After inspecting the facility, the licensing representative recommends that a biennial license be granted or denied. The application already submitted suffices for the provisional and the first biennial license — the applicant need not submit another application for the first biennial license.

If the facility is meeting standards, the first biennial license will be granted at the end of the one-year provisional licensing period. The biennial license replaces the provisional license and is valid for two years from the date issued unless revoked for cause.

If the facility does not meet standards during the provisional period, the biennial license is denied. The provisional license may be revoked before it expires, and the facility must stop caring for children or dependent adults.

## RENEWING THE BIENNIAL LICENSE

About three months before the biennial license is due to expire, the licensee will receive a reminder letter about the expiration date, an application form for another biennial license, and other required forms.

# MONITORING

## MONITORING OF BIENNIAL LICENSES

After licensing has been approved, the licensing representative makes visits to the facility to substantiate that the facility continues to meet standards. No fewer than six months should elapse between visits to the home. Inspection visits, whether announced or unannounced, are planned and purposeful. The representative is especially alert to any conditions that may be hazardous to persons in care.

An abbreviated standard-by-standard evaluation is completed on the off year during a two year biennial licensure period. This monitoring evaluation is completed during an announced visit. Evaluations of the facility from parents and placement agency staff are also used.

## HELP IN MEETING STANDARDS

Licensing is a form of protection for children, dependent adults and other consumers. It seeks to minimize risks in out-of-home care and promote healthy growth. It also seeks to protect the rights of providers.

Licensing staff seek to work with care providers when problems occur in meeting standards.

An applicant or licensee may at any time request help if there are questions about standards or how a program can comply with standards. There may be several ways a facility can comply; the licensing representative will discuss the options.

If an applicant or licensee disagrees with a decision or action of the licensing staff, he or she may contact the supervisor or regional manager or administrator. Frequently the disagreement can be resolved quickly.

## WAIVERS AND VARIANCES

The licensing law allows the Division to grant waivers. A waiver is permission to meet the intent of a standard in a way other than that specified by the standard.

A waiver may be requested when making application for license or any time during the duration of a provisional or biennial license.

To request a waiver, the applicant completes the top part of the form and sends it to the licensing representative. The licensing representative fills out the second half. The form then is reviewed and signed by regional office staff. The health, safety and well-being of those in care are the main criteria.

# FAILURE TO COMPLY WITH STANDARDS

## NOTIFICATION OF NONCOMPLIANCE

The licensing representative notifies the provider in writing of any non-compliance found. Noncompliance may be with the law, regulations, and any conditions of the license, or waivers.

It is common for noncompliances to be found; fortunately, most are resolved. The licensing representative explains how to make necessary corrections and works out a time limit. An applicant or licensee may feel that licensing staff should overlook a minor noncompliance; however, staff **must** notify the applicant or licensee of all noncompliances, in writing.

A standard-by-standard evaluation form or the annual monitoring form is filled out during a visit to the facility. A plan of correction form may also be completed. The licensing represen-

## DENYING AN APPLICATION

After the time limit set in the noncompliance notification letter, the licensing representative conducts a follow-up inspection. If a facility still doesn't comply with standards or the licensing law, the application may be denied and the decision communicated to the applicant. Denials and revocations fall under the Administrative Procedures Act. When a denial is contemplated, Regional Office consultation is secured. The State Office and an attorney from the Department of Law must approve denials prior to notification of the applicant. State Office and Department of Law consultation is available to ensure conformity with the requirements of the Administrative Procedures Act.

## REVOKING A LICENSE

If it is discovered that a licensed facility is not substantially complying with the law or regulations, the Division notifies the facility of what must be done to comply and issues a deadline. Sometimes, if corrections are not made, the Division conducts a standard-by-standard evaluation of the facility before deciding whether to revoke the license. The facility is given ample notice and opportunity to correct the situation.

There are exceptions to the above procedure. If a person dies or is seriously injured as a result of a violation of standards or the law, or if non-

## PROCESSING YOUR

# APPLICATION

## GROUP INTAKE MEETINGS

To conserve state staff time, many Division offices hand out applications only at intake meetings scheduled once or twice a month. The licensing process is explained. Often licensed providers participate to share their experiences. Planning with the local foster parent association, early childhood organization, or Day Care Assistance agent is helpful. Some Division offices are requiring pre-licensing training for Division foster homes.

## SUBMITTING THE APPLICATION

When an application is submitted, licensing staff have ten days to make sure it's complete. A complete application consists of the required application form with all supporting documents. Materials must be correctly and completely filled out and signed.

An incomplete application is returned with an explanation of what to do to complete it.

From the date that the complete application is accepted, licensing staff have, by policy, two months to grant or deny a license, unless staff cannot determine compliance in that time (usually as a result of lack of reference response, marginal references, or a complaint needing investigation).

## APPLICATION INVESTIGATION

Before issuing a provisional license, licensing staff investigate to see if the applicant and his or her home comply with the required standards.

If a facility is already operating, it must meet all standards except those on which waivers have been previously granted. If a facility is not yet operating, it must meet those standards which do not require the actual presence of children or dependent adults for evaluation.

The licensing representative requests and evaluates information from references and evaluates all other required written materials.

## WITHDRAWING AN APPLICATION

An applicant may withdraw his or her application unless children or dependent adults are already in care. An applicant for a family child care home may reduce his/her population to four unrelated children and withdraw the application. A request for withdrawal is confirmed in writing and the application returned.

## DECISION ON THE APPLICATION

A license will be issued if the facility complies with the statute and the regulations. A license will be denied if the facility does not comply with the statute and regulations, unless a waiver has been granted.

# LICENSING MATERIALS:

## WHAT YOU RECEIVE



### REGULATIONS and the LICENSING LAW

Each applicant is given a copy of the regulations for the kind of facility he or she plans to operate and a copy of the licensing statute. A home is regulated according to the regulations and the law.

Regulations are developed by the Division of Family and Youth Services with the help of providers, parents, lawyers, doctors and other professionals. Public hearings give interested persons the opportunity to testify on issues regarding standards.

Regulatory standards are basic requirements, the lowest level acceptable for Alaskan community care programs. They reduce predictable risk. They do not guarantee high quality.

### APPLICATION FORM

The application form must be filled out, signed and returned with other required supporting documents for the application to be accepted.

### COMPLIANCE EVALUATION FORM

The Division uses a standard-by-standard evaluation form to evaluate a home. It is in checklist format with narrative at the end.

### OTHER MATERIALS

The Division gives the applicant information on funding sources and provides some sample forms for use. Other Division publications and available resources are provided as applicable.

tative sends a letter to the applicant or licensee, including a copy of the evaluation form and plan of correction, if applicable. The form(s) and the letter cite:

- standards with which the facility did not comply;
- noncompliances with the licensing law, or the conditions of a license or waiver; and
- corrections needed and the date by which corrections must be made.

compliance presents a clear danger to the health and safety of the persons in care, the Division takes immediate steps to revoke the license (or deny the application). Again, State Office and the Department of Law must approve the action.

In all instances, the facility is notified of the right to appeal.

### REFERRAL FOR LEGAL ACTION

If a license is revoked or denied and no appeal is requested, or if there is an appeal and the decision to revoke or deny the license is upheld, the applicant or licensee must stop caring for children or dependent adults or reduce to four or fewer unrelated children for a family child care home. A facility which provides care without a license is violating the law and the Division may request injunctive relief through the district attorney or the attorney general.

## COMPLAINT

### INVESTIGATIONS

Division policy requires a licensing representative to investigate when he or she receives a complaint that a facility is not meeting standards or is violating the licensing law. The licensing representative informs the licensee and investigates.

After the investigation, the licensing representative informs the facility of the findings and any necessary follow-up.

For more information, contact:

*The format for this brochure is based in part on "Applicant's Guide to Day-Care Licensing," Texas Department of Human Resources*

# FAILURE TO COMPLY WITH STANDARDS

## NOTIFICATION OF NONCOMPLIANCE

The licensing representative notifies the provider in writing of any non-compliance found. Noncompliance may be with the law, regulations, and any conditions of the license, or waivers.

It is common for noncompliances to be found; fortunately, most are resolved. The licensing representative explains how to make necessary corrections and works out a time limit. An applicant or licensee may feel that licensing staff should overlook a minor noncompliance; however, staff **must** notify the applicant or licensee of all noncompliances, in writing.

A standard-by-standard evaluation form or the annual monitoring form is filled out during a visit to the facility. A plan of correction form may also be completed. The licensing represen-

## DENYING AN APPLICATION

After the time limit set in the noncompliance notification letter, the licensing representative conducts a follow-up inspection. If a facility still doesn't comply with standards or the licensing law, the application may be denied and the decision communicated to the applicant. Denials and revocations fall under the Administrative Procedures Act. When a denial is contemplated, Regional Office consultation is secured. The State Office and an attorney from the Department of Law must approve denials prior to notification of the applicant. State Office and Department of Law consultation is available to ensure conformity with the requirements of the Administrative Procedures Act.

## REVOKING A LICENSE

If it is discovered that a licensed facility is not substantially complying with the law or regulations, the Division notifies the facility of what must be done to comply and issues a deadline. Sometimes, if corrections are not made, the Division conducts a standard-by-standard evaluation of the facility before deciding whether to revoke the license. The facility is given ample notice and opportunity to correct the situation.

There are exceptions to the above procedure. If a person dies or is seriously injured as a result of a violation of standards or the law, or if non-

## PROCESSING YOUR APPLICATION

### GROUP INTAKE MEETINGS

To conserve state staff time, many Division offices hand out applications only at intake meetings scheduled once or twice a month. The licensing process is explained. Often licensed providers participate to share their experiences. Planning with the local foster parent association, early childhood organization, or Day Care Assistance agent is helpful. Some Division offices are requiring pre-licensing training for Division foster homes.

### SUBMITTING THE APPLICATION

When an application is submitted, licensing staff have ten days to make sure it's complete. A complete application consists of the required application form with all supporting documents. Materials must be correctly and completely filled out and signed.

An incomplete application is returned with an explanation of what to do to complete it.

From the date that the complete application is accepted, licensing staff have, by policy, **two months to grant or deny a license**, unless staff cannot determine compliance in that time (usually as a result of lack of reference response, marginal references, or a complaint needing investigation).

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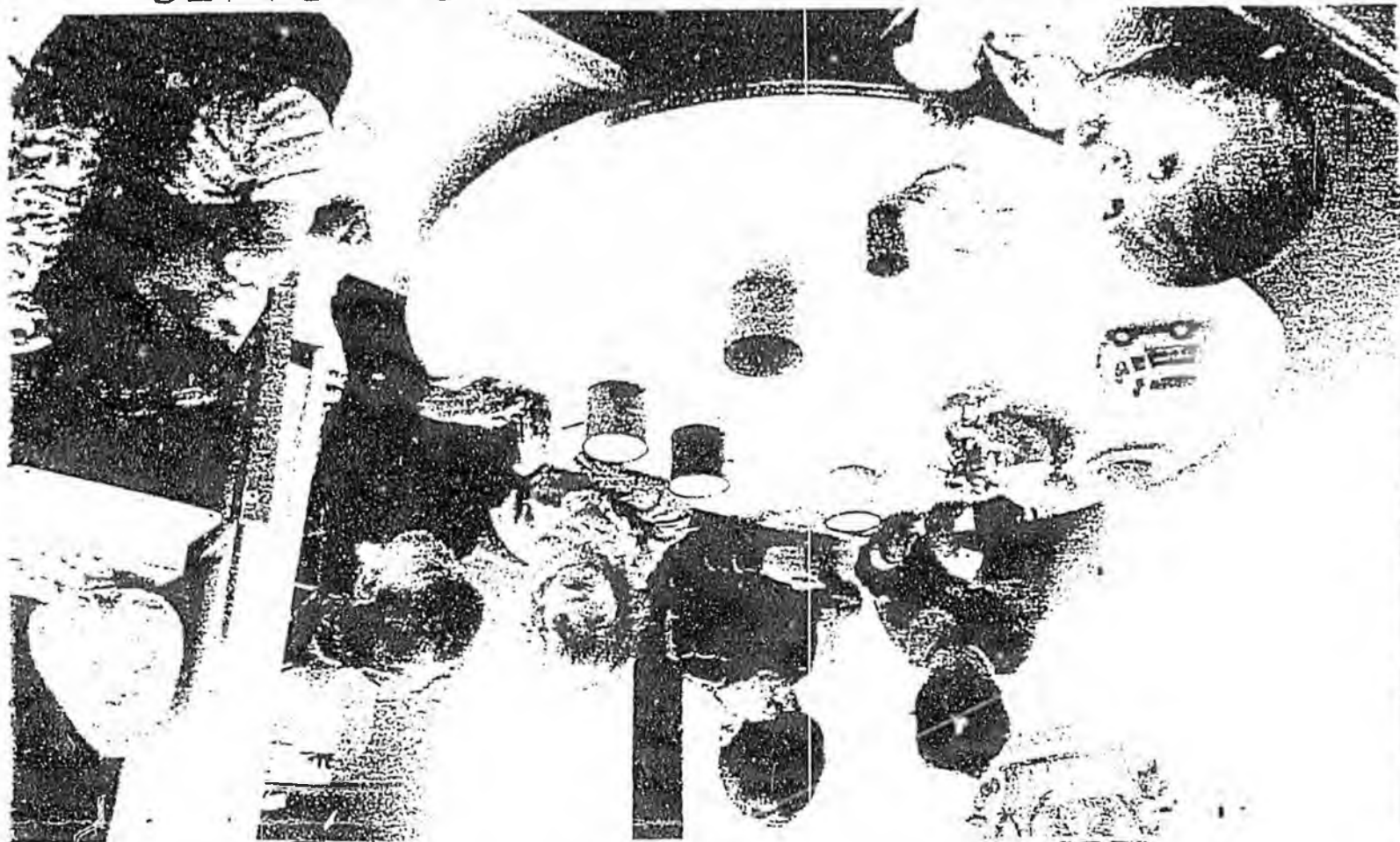
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FAMILY CHILD CARE HOMES • CHILD FOSTER HOMES • ADULT FOSTER HOMES

# A GUIDE FOR LICENSING HOMES



State of Alaska  
Department of Health and Social Services  
Division of Family and Youth Services  
P.O. Box 110630  
Juneau, Alaska 99811-0630

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