

SB

268

Community Care Licensing: Section by Section Analysis and Commentary

CS SB 268 HES
April 11, 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. Ms. Lauterbach proposed technical improvements along with the amendments. All were adopted by the House HES Committee with the support of the department.

Senate HES adopted a CS for SB 268 that matched the House HES version at the request of the department. They then passed additional amendments. The department had no objection to amendments at the time, but on review of the changes to the definition of child foster care, the department requests an alternative that meets the intent of the HES amendment and that would eliminate other problems in the revised definition. (See Department amendment.) Other than minor wording modifications, changes from the Governor's original bill are noted in this analysis.

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- 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.

5 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 31.
- 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 great 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 governmental 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 was deleted in the Governor's bill. 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. Senate HES added (e) (5) which exempts a person who arranges child placement on an incidental basis without compensation.
- 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.

12 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. Senate HES added "conviction" to the changes that must be reported by a licensee.

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.

18 Senate HES eliminated a sentence from (h) that stated, "If a time period is not set by the department, the revocation or nonrenewal is permanent, and the former licensee may not again apply for licensure under this chapter." The sentence is not needed as the department could specify permanent revocation in its final administrative order.

- 19 Senate HES created (a) (3) on line 8, as a subsection apart from subsection (2). This change results in sex crimes being exempt from the 10 year time limit that is in subsection (2).
- 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 E 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 In Senate HES, committee members and the department collaborated to exempt parent-arranged care for up to 45 days by changing the definition of a foster home. Since the change created other problems, the department has proposed an amendment to meet the intent of HES committee members.
- 23 **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.



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 28, 1994

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*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

**GOVERNOR'S
TRANSMITTAL LETTER**

The Honorable Rick Halford
January 28, 1994
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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

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. CSSB 268 (HES)

Revision Date: April 13, 1994 Dept. Affected: Health and Social Services
 Title: Community Care Licensing BRU: Family & Youth Services
 Component: Central Office
 Sponsor: Rules Committee by Request of Governor
 Requestor: Senate Judiciary COMPONENT SERIAL NO. 0259

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						
TOTAL OPERATING	65.0	35.0	0.0	0.0	0.0	0.0

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						
TOTAL	65.0	35.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: 0.0

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 if SB249, Assisted Living Homes also passes this session. 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*
 Division: Division of Family & Youth Services
 Approved by Commissioner: Margaret R. Lowe, M.Ed., Ed.S. *Margaret R. Lowe*
 Agency: Department of Health & Social Services

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 Date: 04/13/94
 Date: 4-12-94

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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 licensing staff and providers of 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 seven 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
Fiscal Note: Working Smart in the 90's

- ◆ Advance efficiency and competency by
 - Consolidating licensing procedures
 - Convening a working task force to form standards
 - Publishing guidebooks and conducting training
- ◆ Eighteen months needed for transition from the current system.
 - The Act takes full effect on January 1, 1996.
 - More than 1,900 facilities and agencies (at least seven types) w capacity of 13,600 individuals will be affected. (See pie chart.)
 - The division is very committed to this project
 - will devote considerable time of existing staff
 - do not have resources to handle a project of this magnitude w/o the funding in this fiscal note.
 - will with its own resources design purchase of service improvements in foster and residential care to correspond to the revisions in licensing.
- ◆ FY 95: \$65,000
 - Travel Line \$45,000 40 TF 5 hearings
 - Contract line 20,000 contractor
- ◆ During FY 95 the department will
 - Obtain standards from selected states and model standards for review to gain from their collective experience.
 - Convene a working task force of citizens and staff (est 24)
 - Two face to face statewide meetings and teleconferences.
 - Total group to determine standards that may apply to all types of care and to address the licensing process.
 - Establish five subcommittees to develop initial draft standards for each type of facility or agency.
 - Contract with an attorney and/or skilled professional
 - use task force drafts to place standards of operation for each type of care and agency in correct legal format and ensure consistency between regulations
 - prepare all legal documents needed
 - begin implementation tools and
 - revise the drafts after the department conducts separate public hearings for each type of care.
- ◆ FY 96 \$35,000
 - Travel line \$20,000 Regional training
 - Contract line 15,000 design/publication of forms and guidebooks
- ◆ During the first six months of FY 96 the department will
 - contract for development of implementation forms, and guidebooks and a licensing manual for field workers.
 - conduct regional licensing training for both providers and licensors to acquaint them with the new procedures. Training is the final key to successful implementation.

Additional Information: Community involvement

- ◆ Community participation in formulating standards may
 - reflect staff knowledge and experience
 - promote a public/private partnership
 - offer a multidisciplinary approach
 - ensure clear, viable standards and build consensus.

- ◆ The mission of the task force and contractor will be to draft rules that are
 - reasonable, concise and easy to understand
 - enforceable
 - promote safe appropriate care
 - are minimum, baseline
 - are economically acceptable
 - incorporate latest thinking
 - and that simplify licensing for both licensing staff and providers of service to the degree possible.

Additional information: Implementation

During the 1993 Indian Child Welfare conference recommendations were made to the division to develop carefully planned foster home applications and to publish guidebooks to encourage and assist persons to become licensed foster parents. The division agrees with this recommendation. We believe sound implementation tools remove barriers to persons entering the caregiving community. In FY 96 \$15,000 will go toward design and publication of forms and guidebooks to implement the standards.

Finally \$20,000 will fund regional training in two rounds, one for child care facilities and one for facilities providing 24 hour care and child placement agencies.

Conclusion

A sound licensing program is a critical piece of the care system for Alaska's vulnerable citizens and their families. Funding this fiscal note will help the division work smart and efficiently. Without the funds, we will not achieve many of the objectives we set out to achieve--that is to make licensing easier for those who do licensing and those applying for a license.

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

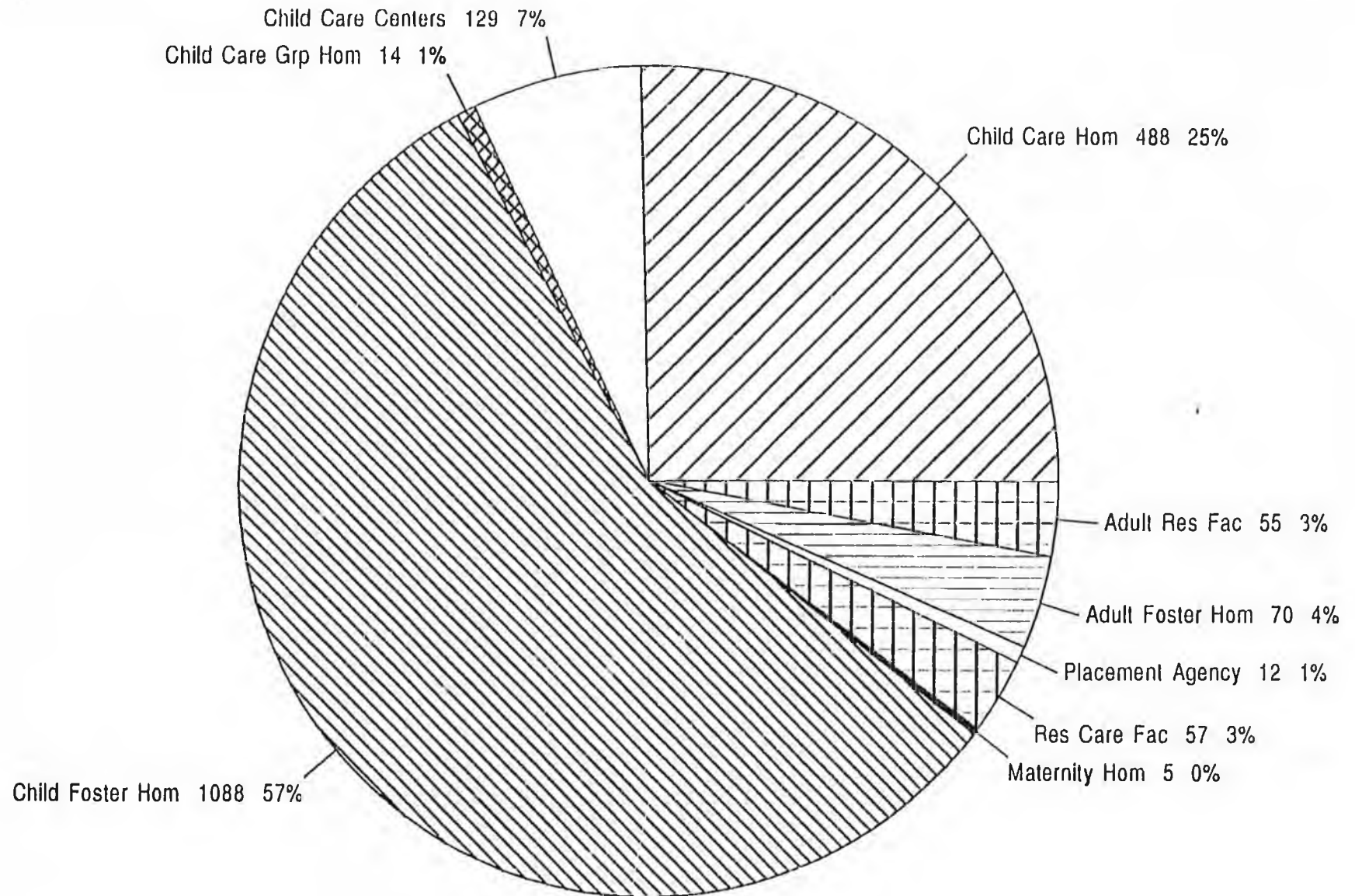
- ◆ DFYS licenses nearly 2,000 facilities and agencies.
- ◆ The public demands more licensed care settings.
- ◆ Workers now license up to nine kinds of care.
- ◆ Workload standards: exceeded by 50% in some places.
- ◆ Many workers also have protective services duties.
- ◆ Workers must know 40 pages of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