

**REPORT ON THE  
FEASIBILITY STUDY CONDUCTED BY  
CONSULTANTS EMPLOYED  
BY THE  
DEPARTMENT OF WELFARE  
TO THE GOVERNOR  
AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**SENATE DOCUMENT 11**

**COMMONWEALTH OF VIRGINIA  
Department of Purchases and Supply  
Richmond  
1976**



COMMONWEALTH of VIRGINIA  
Department of Welfare

Office of the Commissioner

December 15, 1975

State Building  
8007 Discovery Drive  
Box K-176  
Richmond, Virginia 23288

William L. Lukhard  
Commissioner  
Robert E. Hasden  
Deputy Commissioner

TO: The Honorable Mills E. Godwin, Jr.  
Governor of Virginia

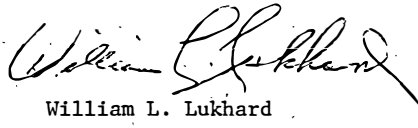
And

The General Assembly of Virginia

The report contained herein is pursuant to Senate Joint Resolutions Nos. 119 and 120 which were passed by the 1975 session of the General Assembly. This report and its recommendations comprise the response of the Department of Welfare to the directive that the Welfare Department conduct a study regarding separation of functions of consultation and licensing of child day care centers and family day care homes; that the Health Department conduct a study regarding separation of functions of consultation and licensing of adult day care centers and homes for adults.

By mutual understanding between the Departments of Health and Welfare, it was agreed that the Welfare Department would conduct both studies since responsibility for licensing of both child day care centers and adult domiciliary care facilities rests with the Welfare Department.

Respectfully submitted,

  
William L. Lukhard

WLL/caa

DEPARTMENT OF WELFARE

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George Robinson, State Supervisor of Day Care  
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Department of Welfare

Report of the  
Department of Welfare  
to  
The General Assembly of Virginia  
Richmond, Virginia

TO: The Honorable Mills E. Godwin, Jr.  
Governor of Virginia

And

The General Assembly of Virginia

INTRODUCTION

Senate Joint Resolution No. 119 directed the State Department of Welfare to conduct a study concerning the separation of the functions of consultation and advice from inspection and licensing of child care centers and family day care homes.

Senate Joint Resolution No. 120 directed the State Department of Health to conduct a study concerning the separation of the functions of consultation and advice from inspection and licensing of adult day care centers and homes for adults.

The Department was to solicit the suggestions of operators of public and private child care centers, family day care homes, adult day care centers, and homes for adults.

SENATE JOINT RESOLUTION NO. 119

Directing the State Department of Welfare to conduct a study concerning the separation of the functions of consultation and advice from inspection and licensing of child care centers and family day care homes.

Patron - Mr. Edmunds

Referred to the Committee on Rules

WHEREAS, under present Virginia law, child care centers and family day care homes are required to be licensed by law; and

WHEREAS, these licenses are to be granted upon compliance with State standards and policies concerning activities, facilities, and personnel; and

WHEREAS, there is a need to encourage voluntary efforts toward upgrading the quality of facilities for the care of children apart from the enforcement mechanism; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the State Department of Welfare is hereby directed to make a study of the administrative procedures which govern the functions of consultation and advice and the inspection and licensing of child day care centers and family day care homes. The Department shall consider the feasibility of separating these functions and, if deemed advisable by the Department, such a separation shall be implemented. The Department shall consider the need to coordinate a counseling division and a licensing division to assure that their policies and practices remain consistent. In its study, the Department shall solicit the suggestions of public and private child care centers and family day care homes.

The Department shall conclude its study and make its report to the Governor and General Assembly not later than October one, nineteen hundred seventy-five.

SENATE JOINT RESOLUTION NO. 120

Directing the State Department of Health to conduct a study concerning the separation of the functions of consultation and advice from inspection and licensing of adult day care centers and homes for adults.

Patron - Mr. Edmunds

Referred to the Committee on Rules

WHEREAS, under present Virginia law, adult day care centers and homes for adults are required to be licensed; and

WHEREAS, these licenses are to be granted upon compliance with State standards and policies concerning activities, services, facilities and personnel; and

WHEREAS, there is a need to encourage voluntary efforts toward upgrading the quality of facilities for adults apart from the enforcement mechanism; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the State Department of Health is hereby directed to make a study of the administrative procedures which govern the functions of consultation and advice and inspection and licensing of adult day care centers and homes for adults. The Department shall consider the feasibility of separating these functions and, if deemed advisable by the Department, such a separation shall be implemented. The Department shall consider the need to coordinate a counseling division and a licensing division to assure that their policies and practices remain consistent. In its study, the Department shall solicit the suggestions of operators of adult day care centers and homes for adults.

The Department shall conclude its study and make its report to the Governor and the General Assembly not later than October one, nineteen hundred seventy-five.

On September 1, 1975, a contract was entered into by the Virginia Department of Welfare and Norris E. Class, Principal Consultant, which called for a study of the nature and effectiveness of the Virginia delivery system of regulatory programs for both child care and adult care facilities to include the studies mandated in Senate Joint Resolutions Nos. 119 and 120.

This report is organized as follows:

Section I - The Feasibility Study Conducted by Consultants  
Employed by the Department of Welfare

Section II - The Response of the Welfare Department to the Study  
Recommendations

Appendix I - The Virginia Delivery System of Regulatory Programs  
for Child Care and Adult Care Facilities - A Survey  
Report for the Virginia Department of Welfare.

The study and findings presented herein as Section I are a verbatim extract from the full study except for the topical headings in the major policy recommendations which were added by the Department. They pertain only to the mandated studies. Though there were two mandated studies, one dealing with child day care licensing the other with adult domiciliary and adult day care licensing, the topic to be studied was the same for both programs. Consultants employed by the Department of Welfare incorporated both mandates into one study.

Section II contains the Department of Welfare's response to the consultants' major policy recommendations and to sub-recommendations which have been extracted from the body of the report.

The complete study less that part included in Section I is attached as Appendix I and not only fulfills the legislative mandates but also assists the Department in general administrative matters related to licensure. The methodology, which included in part seminars with staff, served as a vehicle of staff development. We are now in the process of evaluating the full report with the plan to promulgate those findings and recommendations that will improve service in the Department of Welfare's program of regulatory administration.

The survey team responsible for the study was composed of Norris E. Class, Professor Emeritus of the University of Southern California and presently consultant to state governments on regulatory administration; Mr. Rudolf Michaels, member of the California Bar and presently Administrative Judge for the California Administrative Hearing Services; Mr. Roland Gerhart, Director of the Vermont Office of Child Development; and Mr. George Robinson, State Supervisor of Day Care, North Dakota Social Service Board.

The Survey team conducted the Licensing Study in the State from September 2, 1975, through September 15, 1975.



SECTION I - FEASIBILITY STUDY CONDUCTED BY CONSULTANTS  
EMPLOYED BY THE DEPARTMENT OF WELFARE

*Part A is organized in four sections indicated by Roman Numerals and deals with the investigative/inspectional and consultative aspects of the licensing function in relation to the three phases of the licensing process: preapplication activity, investigation of application for license, and post-issuance inspection and consultation. The methodology, study findings, general proposals and specific policy recommendations are included in the report.*

I. The Basis of Intelligence for This Report

Meaningful information for this study and report was derived essentially from these four sources: 1) The principal consultant of the survey group during the past three years has consulted with twelve states (Pennsylvania, Maryland, Delaware, South Carolina, Ohio, Michigan, Wisconsin, Missouri, Colorado, North Dakota, Nevada and California) on regulatory administration in the field of out-of-home care facilities. 2) During this study two members of the survey team conducted seventeen in-depth typed interviews, individual or in small groups, with twenty-seven licensed (or certified) private or public providers. (See Appendix I interview schedule.)

3) Principal consultant during the period of September 2 - 15, 1975, had individual or small group conferences with nine top-management personnel in the Office of Secretary of Human Affairs, Department of Health, Department of Mental Health and Mental Retardation, Office of the Fire Marshall and the Department of Welfare. (See Appendix A for listing of conferees.)

4) During the week of September 8 - 15, principal consultant and the attorney member of the survey team conducted eight half-day seminar sessions on selected topics of regulatory administration. Over fifty persons attended one or more of these sessions, including over forty central and regional licensing personnel, several regional directors, three members of the Office of Attorney General and Professor Walter Wadlington of the University of Virginia Law School. (See Appendix I for calendar of Seminar Sessions.)

II. The Nature of the Problem

The licensing process is essentially a status movement operation. At a given date, a given person is without status to operate a given type of out-of-home care facility. At a later date, as a result of a series of phased operations, this person has a status that permits operations otherwise prohibited by law. In other words, he/she has a license.

This licensing process is a three-phased operation: 1) preapplication activity, 2) application-taking and investigation to determine conformity to standards, and 3) post issuance inspection and consultation. These three operations are well spelled out in the child care licensing statute. Section 63.1-197 not only deals with application-making but also provides that: "The commissioner or his designated agents shall, upon request, consult with, advise and assist any person interested in securing and maintaining any license prescribed in 63.1-196." The adult care licensing statute, it is important to note, does not contain this "consult with and advise" provision. Even more important to note, from the viewpoint of the joint resolutions, that neither the child care statute nor adult care licensing statute contains any statement, explicitly or implicitly, relating to upgrading services or operations such as is found in many other state facility licensure statutes. The net effect, then, of what has just been stated is this in respect to study proposals and recommendations: To be pragmatically useful, the recommendations must be particularized to respective phases of the licensing process and with full recognition that legislative amendments may be necessary in order to provide a secure legal base for operations. The licensing process might be charted thus:

- |                          |   |  |
|--------------------------|---|--|
| 1. pre-application phase | 2. application-making and investigation phase | 3. post-issuance supervision (inspection-consultation phase) |
|--------------------------|---|--|

### III. Study Findings and General Proposals

In this section investigative/inspectional and consultative operations are considered in relation to the three phases of the licensing process: pre-application service, application-making and investigation, and post-issuance visitations.

1) Pre-application consultation: The Department of Welfare should provide a responsibly defined and widely interpreted consultation service to any person interested in inquiring about or securing a license to operate a child care facility. This consultation service in relation to facility licensure should be administratively located in the Division of Licensing. The licensing staff assigned to this responsibility should receive special training to carry out this responsibility effectively and efficiently. The findings from the in-depth interviews with licensed providers and from other sources indicate an imperative need for this type of service, and when provided on a formal or informal basis is used and greatly appreciated by would-be-licensees. In providing this preapplication consultation, only the adult care licensing statute will need amending as the child care licensing statute already contains a consultation provision.

In connection with the providing of pre-application consultation service to would-be-licensees, this further proposal is made: The Department should give serious consideration to formulating a clearly stated policy in respect to providing a "declaratory statement" service relative to "early" approval of specific standards. Today, high cost facilities, especially those under proprietary auspices, may necessitate a part approval operation before the whole license is approved by the regulatory agency. The enterpriser needs to know that if he/she proceeds in a given

manner certain structure and/or program proposals, often costly, will meet requirements. Empirically, this is happening all the time. Licensing workers' opinions are solicited and workers make field inspections or go over plans and "hand out" decisions. One of the workers interviewed indicated she felt "great pressure" in respect to this activity. Apparently much of this early approving before a license is ever filed is done in a relatively unsupervised manner, and without the workers being fully aware of possible liability involved. To rectify the present approach, the Department should formally proceduralize the operation. The formulation should require that requests for an early approval statement in respect to specific standards must be in writing, the reply by the Department must be in writing, and any advance approval (which is binding on the Department) must be signed by the commissioner, or persons with authority to promulgate full licenses. Administratively it will probably be feasible to concentrate the providing of this type of early standard approval in a limited number of persons with the specialized knowledge and skill to carry out this function. (If legally possible, a limited fee should be charged for the service.) Of course it goes without saying that the formulation of this policy should be done jointly with the attorney general's office, especially in light of the fact that declaratory orders are said to be "unknown to the common law."

2) Technical assistance in any phase of the licensing process: Quite apart from the pre-application consultation service operated by the licensing division for persons specifically interested in securing a license, the Department should establish a "technical assistance" service relative to the operation of child care and adult care facilities. This technical assistance, upon request, to persons interested in or already engaged in either the operation of child care facilities or adult care facilities respectively. One service would be a sort of vocational counselling relative to facility care and its administration as a career or occupational choice. The second service would be in respect to operating a care facility as a business, and/or economic venture. In providing this type of service, the counsellor would not necessarily provide all the information, knowledge or expertise, but would assist the interested person in securing it wherever available. Thirdly, within the limits of staff competence and time, specific counselling would be provided on aspects of design, structure and operation of particularized types of facilities. Technical assistance should be especially available in respect to program planning and "social component" in the out-of-home care both for children and for adults. In the providing of the technical assistance service there would be encouragement to the interested person to provide high quality care and specific suggestions as to how to do it as efficiently and economically as possible.

Of course it goes without saying that any technical assistance furnished would "square" (be in accord) with licensing standards, but it is not proposed that this service necessarily be provided by regular licensing staff, nor that it be best located in the Division of Licensing. Rather, it is proposed that consideration be given to having this technical assistance program be part of the Division of Social Services, or a part of Field Service Operations. Licensing staff engaged in pre-application consultation, declaratory statement service, application-taking and investigation, or in post issuance visitation might refer persons and generally make use of this technical assistance service. This would apply

both to child care and adult care licensing staff. In addition, county personnel responsible for placing persons in care facilities and consumers of out-of-home care facilities would also be "free" to use the technical assistance service. The technical assistance would be given only on request. The operational goal of the service would be to provide intelligence both as to upgrading as well as to safeguarding facility care. The technical assistance service, given voluntarily, and located outside the licensing division, should make for an assurance that it was not a "must"--had to be done! In a sense, the presence of this technical assistance service should be reflective of the Department's leadership role in strengthening the social component in out-of-home care for both children and adults.

One of the operational goals of the technical assistance service might be the development of what is termed "a community resource data bank." Operationally speaking, a community resource data bank provides a quick informational service as to existing personnel, services, or resources which might be of utility to a person interested in operating a facility, in securing and/or maintaining a facility license, or in upgrading standards of operations. At the seminar session, Mr. Gerhart, of the survey team, presented the Vermont model of technical assistance in child day care. The presentation generated considerable interest among the Virginia licensing staff members present. The presence of such a community resource data bank, as a form of technical assistance, should contribute to reducing licensing workers' "need to give" consultation because there is no one else to give it. Also, the persons, services, and organizations registered in the data bank may become a positive support group for sound standards. In this connection it should be mentioned that in the development of a resource bank, a special emphasis should be given to having skilled providers making themselves available for consultation. In concluding this comment on technical assistance generally and a community resource bank specifically, it is suggested that a determination be made, if it has not already been, as to whether or not this type of activity might not be partly paid for out Title XX funds.

3) Application-taking and investigation phase: In filing a signed application, a would-be-licensee acknowledges the jurisdiction of the licensing statute and gives permission for a regulatory investigation to take place. The purpose of this regulatory investigation is to make a determination of standards conformity to the point of deciding that a license may or may not be issued. A regulatory investigation need not, should not, proceed in an authoritarian manner. Rather, the opposite should be the operational goal of the regulatory agency. The licensing worker should proceed in a consultative-like manner. By a consultative-like investigation or inspection is meant that the licensing worker should have the skill to explain clearly why a problem of non-conformity exists, and in a simple and non-threatening manner. Alternative means of correcting the deficiency should be presented. Even more important, the licensing worker needs to have interviewing and relationship skills to help the provider arrive at acceptable innovative or creative alternatives which may find approval by the Department. (The need for flexibility in the application of standards without retreating to a lower level was expressed with frequency in the taped interviews with both licensed providers and licensing staff members.) In proceeding with

This type of investigation, i.e., consultative-like in method, the licensing worker might refer an applicant to the Department's technical assistance service in order to secure help in meeting a licensing standard, or if the applicant requests assistance in doing something beyond licensing requirements. In this second phase of the regulatory process, the investigation to determine whether or not a license is to be issued, it is proposed that the licensing staff should generally not engage in formal consultation in respect to upgrading standards, even if it were permitted by the statutes--which it is not. For one person to separate these two functions during this critical period of possibly heightened tension is really too difficult a task to be undertaken. (It is to be noted that regardless of the general composure of the applicant and the skill of the staff person, all investigations of this nature produce some anxiety; it seems to be built into the culture.)

4) Post issuance inspection and consultation: Findings from sources, experience in other states, and as a result of analysis of the interviews with twenty-seven licensed (or certified) providers, plus feedback from the eight seminar sessions with licensing and legal personnel, prompt this proposal: The Department should put into effect a clearly defined and expanded program of what is hereafter referred to as "licensing supervision". By licensing supervision is meant a regulatory inspectional service (like the investigative service) which is carried out in a consultative-like manner, perhaps even more so.

The operational aims of this licensing supervision service would be three-fold: 1) The interaction between licensee and licensing staff should be of a positive and constructive nature. 2) The presence of an expanded program of supervision should be conducive to preventing or attenuating the need for later formal legal and adjudicative actions, negative sanctions. 3) The effects of a consultative-like approach should be conducive to a voluntary upgrading of quality of care. (When a person is aware and appreciates the value of respective alternatives he/she may endeavor to implement the best, not the least.) This type of a combined inspectional and limited consultation service (here termed supervision) was overwhelmingly endorsed by the licensed providers who were interviewed in-depth. The rationale for preferring to have the same person perform both functions was that they already knew the worker and apparently generally trusted him/her. (Almost all licensed providers who completed a written confidential form (apart from tape) indicated that the present worker was generally "helpful".) As one provider said in effect: I want to know the person before I start asking for consultation. One of the staff persons interviewed in-depth said, "If the quality of care is to be improved through consultation it will have to be given by the licensing worker during supervisory visits. It is not sound to believe that the provider will be willing to stop and telephone a strange person unfamiliar with the situation." Again, this does not mean licensing personnel in supervisory visits would not, when requested, assist a licensee in securing formal consultative or expertise service.

The legislative basis for this licensing supervision is, perhaps, implicitly present in the child care licensing law, but one might wonder if it is present in the adult care statute. If legal opinion supports this questioning, and a decision is made to try to amend the adult care licensing statute, by adding both consultation and upgrading provisions, it might be well to

also add at the same time an upgrading provision to the child care statute. Thus both programs of licensing supervision would be soundly based--legislatively speaking.

IV. Specific Policy Recommendations Relevant to the Mandated Feasibility Study.

In relation to the legislatively mandated feasibility study questions, the following three policy recommendations are made:

1. No separation of the functions of consultation and inspection should be The Department of Welfare should formulate and implement a clear-cut operational policy statement relevant to preapplication consultation service to be given to persons interested in learning about or in the securing of a license. This preapplication consultation should be administratively located in the Division of Licensing. It might well include a "declaratory statement" service.
2. The Department of Welfare should formally establish a technical assistance service to persons interested in the various operations of facility care for children or adults. This technical assistance for facility care should not be restricted to a concern with licensing requirements but to the field as a whole. The technical assistance service should be especially concerned with program planning and the social component in facility care. It preferably should not be administratively located in the Division of Licensing of the Department. This technical assistance service would be available to would-be licensees in any phase of the licensing process. It should be available also to consumers, local social service personnel and community interested persons.
3. In the post issuance phase licensing supervision should combine inspectional activities and consultative like methods. The Department of Welfare should put into effect a clearly defined program of post issuance licensing supervision which combines inspectional activities and consultative-like methods in order to achieve optimal safeguarding, and at the same time contributes to the encouragement of upgrading of standards of operations. This licensing supervision program should be administratively located in the Licensing Division and should be implemented by personnel who have received special staff training. When licensees request or are in need of formal and/or specialized knowledge beyond the province of the licensing staff person making the supervisory visit, there would be referral to the technical assistance service. The technical assistance personnel would provide the knowledge or expertise and/or aid the licensee in securing it wherever available.

SECTION II THE RESPONSE OF THE WELFARE DEPARTMENT  
TO THE STUDY RECOMMENDATIONS

This Section is organized into the major policy recommendations and additional sub-recommendations extracted from the consultants' report together with the responses of the Department of Welfare to these recommendations.

MAJOR POLICY RECOMMENDATIONS

<u>Recommendation</u>	<u>Department's Response</u>
1. There should be no separation of the functions of consultation and inspection in the preapplication phase of licensing. The Department should formulate and implement a clear-cut policy of preapplication consultation.	<p>1. The Department of Welfare concurs with this recommendation. There is a legal base in the children's licensing statute, §63.1-197, for giving such consultation. No similar provision is found in the adult licensing statute, §63.1-172 - §63.1-194. In order for both statutes to be uniform, it would appear that the adult statute should be amended.</p> <p>This recommendation is consistent with existing policy in the children's licensing program, but this policy needs to be formalized in the Licensing Manual. Such formulation is now in process.</p>
2. The Department of Welfare should formally a technical assistance service to persons interested in the various operations of facility care for children or adults.	2. Whereas the Department of Welfare recognizes the validity of this recommendation, especially in consideration of the impact of Title XX on day care, fiscal constraints at this time do not permit implementation since such implementation would require additional funds for staffing.
3. In the post-issuance phase of licensing, the function of the Department should be licensing supervision combining inspectional activities and consultative-like methods.	3. The Department of Welfare concurs with this recommendation. It is consistent with the legal base in the children's licensing statute, §63.1-197. There is no similar section in the adult licensing statute. In order for both statutes to be uniform, it would appear that the adult licensing statute should be amended. The clear distinction which the recommendation makes between supervision with consultative-like methods and consultation will be incorporated in the Licensing Manual.

ADDITIONAL SUB-RECOMMENDATIONS

<u>Recommendation</u>	<u>Department's Response</u>
1. In the preapplication consultation phase of licensing, the Department should consider, if legally possible, to charge a limited fee for providing a "declaratory statement."	1. The Department recognizes some positive elements in setting licensing fees. It would seem that a "declaratory statement" should not be set apart as subject to a fee but that the Legislature might consider the wisdom of requiring a fee for a license as well as for this specific service related to licensing. This would require an amendment in the adult statutes since §63.1-175 prohibits charging a fee for a license.
2. In the consideration of a technical assistance service, the Department should develop a community resource data bank.	2. Although the Department considers it unwise because of fiscal constraints to establish a technical assistance service at this time which would include a community resource data bank, we feel that we can further explore the Vermont model to learn if any of the components can be adapted within our present structure.
3. If the adult licensing statute is amended to include both consultation and upgrading provisions, it might be well to add an upgrading provision to the child care statute.	3. We believe that upgrading and technical assistance are closely related in that technical assistance is one method of upgrading. Other methods include expanded supervision both in terms of the number of supervisory visits to determine continued compliance with standards and in a method of consultative-like supervision. Until we are able fiscally to establish the service of technical assistance, we do not concur that we should amend the statutes for this purpose.

Respectfully Submitted,

William L. Lukhard  
Commissioner



APPENDIX I

A SURVEY REPORT FOR THE VIRGINIA DEPARTMENT OF WELFARE  
OF REGULATORY PROGRAMS FOR CHILD (DAY) CARE AND  
ADULT (RESIDENTIAL) CARE FACILITIES

The attached report of the Survey Team's study of the Virginia Regulatory Delivery System relating to the licensing of child care and adult care facilities represents the total section dealing with administrative problems in licensing. This excludes the feasibility study mandated by Senate Joint Resolutions Nos. 119 and 120 which is included as Section I of this document.

A verbatim transcript of the interviews with licensees has yet to be received from the consultants.

Attachment

THE VIRGINIA DELIVERY SYSTEM

of

REGULATORY PROGRAMS

for

CHILD CARE AND ADULT CARE FACILITIES

A SURVEY REPORT

for

THE VIRGINIA DEPARTMENT OF WELFARE

Prepared by:

Norris E. Class and Associates:

Rolland Gerhart

Rudolf Michaels

George Robinson

October, 1975

PART ONE: A REPORT ON SELECTED TOPICS OF REGULATORY ADMINISTRATION

Letter of Transmittal

11/1/75

Mr. William L. Lukhard  
Commissioner of the Department of Welfare  
Richmond, Virginia

Dear Mr. Lukhard:

Attached is Part One of the Report on the Virginia Delivery System of Regulatory Programs for Child Care and Adult Care Facilities. Part One reports on Selected Topics Relating to the Administrative Regulation of Child Care and Adult Care Facilities. (Part Two is a feedback report of Licensed Child Care and Adult Care Providers' Perceptions and Conceptions of the Nature and Effectiveness of the Regulatory Delivery System. Part Two is presented under separate cover.)

The survey team responsible for the study was composed of Norris E. Class, Professor Emeritus of the University of Southern California and presently consultant to state governments on regulatory administration, Mr. Rudolf Michaels, member of the California Bar and presently Administrative Judge for the California Administrative Hearing Services, Mr. Rolland Gerhart, Director of the Vermont Office of Child Development, and Mr. George Robinson, State Supervisor of Day Care, North Dakota Social Service Board.

The departmental steering committee for the study was composed of Margaret Miller, Jack Neal, Jane Valentine, and Betty Lewis, all of the Division of Licensing.

Attached to this transmittal letter is a listing of the licensed providers who were interviewed in-depth relative to their perceptions and conceptions of the Virginia regulatory delivery service system. Also, there is a listing of persons within the Department and in other state departments of government with whom principal consultant had interviews. Their cooperation is appreciated.

Your support, interest and the granting of full professional independence in the development of this study operation is also deeply appreciated.

Yours respectfully,

Norris E. Class, MS  
3217 Westover Road  
Topeka, KS 66604

Listing attached.

11/1/75

COMMUNITY INVOLVEMENT IN REGULATORY SURVEY

- I. Principal consultant had individual or small group conferences with the following persons outside the Department of Welfare:
  - a. Mr. Otis L. Brown, Office of Human Affairs
  - b. Dr. James B. Kenley, Department of Health
  - c. Dr. Edwin M. Brown, Department of Health
  - d. Mr. Robert D. Ham, Department of Health
  - e. Dr. Paul R. Ahr, Department of Mental Health & Mental Retardation
  - f. Mr. Howard H. Summers, Jr., State Corporation Commission (Fire Marshal's Office)
  - g. Mrs. Karen Kincannon, Office of the Attorney General
  - h. Professor Walter Wadlington, University of Virginia Law School
  
- II. Principal consultant had one or more individual or small group conferences with the following Department of Welfare personnel:
  - a. Mr. William L. Lukhard, Commissioner
  - b. Mr. Robert L. Masden, Deputy Commissioner
  - c. Mrs. Margaret D. Miller, Director, Division of Licensing
  - d. Mr. Jack M. Neal, Chief, Bureau of Standards, Policy & Adult Licensure
  - e. Miss Betty L. Lewis, Chief, Bureau of Licensing Management & Training
  - f. Mrs. Jane G. Valentine, Supervisor, Homes for Adults Section
  - g. Miss Sally H. Penick, Standards Supervisor
  - h. Mrs. Catherine C. de Witt, Training Supervisor
  
- III. Study Team interviewers had individual interviews with the following licensing staff members:
  - a. Mr. Philip Brocking, Licensing Specialist, Central Office
  - b. Mrs. Alice Gibson, Licensing Specialist, Richmond Regional Office
  - c. Mrs. Elizabeth Gray, Licensing Specialist, Valley Regional Office
  - d. Mrs. Miriam G. Heintzman, Licensing Specialist, Richmond Regional Office
  - e. Mrs. Inez Jones, Licensing Specialist, Tidewater Regional Office
  - f. Miss Kathryn Kegley, Licensing Specialist, Central Office
  - g. Mr. Norton Richman, Licensing Specialist, Central Office
  - h. Miss Mary Jo Tudor (Now Mrs. Mary Jo Ozment), Regional Coordinator
  
- IV. Study Team interviewers had individual, in-depth, taped interviews with the following licensed providers (or public care providers):
  - a. Mrs. Jane Angrist, Alexander Day Care Center
  - b. Mrs. Ethel P. Binford, Binford's Home for Adults
  - c. Mrs. Jackie Coleman, The Children's House Day Care Center
  - d. Mr. Gerald Cook, Child Health Care Center
  - e. Mrs. Patricia Fitzgerald, Candy Stripe Day Nursery
  - f. Mrs. Vera Fitzgerald, Family Day Care Home Licensee
  - g. Mr. Chester Fonville & Ms. Rachel Gillian, Cinderella School (child care center)
  - h. Mrs. Louise Gardner, Jack and Jill Child Care Center
  - i. Mrs. H. L. Lilly, Lilly's Home for Adults

11/1/75

- j. Mr. Alexander McNamara, Ellwood Early Learning Center
- k. Mr. Thomas Robb & Rev. Gardner Van Scoyoc, Westminster Centerbury (Adults)
- l. Rev. and Mrs. Harry Wiles, Grace Manor (Adults)
- m. Mrs. Hope Zodum, Adult Day Care Center (Richmond Community Senior Center)

Community Involvement in  
Regulatory Survey

- V. Study Team interviewers conducted four group conferences with: (a) Licensed Family Day Care Home mothers; (b) Child Care Center providers; (c) Adult Care providers; and (d) Advisory Board members. The members of the respective four group conferences were:
- a. Group conference with family day care home mothers.
    - 1. Mrs. C. M. Grimsley, Family Day Care Home Licensee
    - 2. Mrs. Helen Lewis, Family Day Care Home Licensee
    - 3. Mrs. Morris Whitmer, Family Day Care Home Licensee
  - b. Group conference with child care center operators.
    - 1. Mrs. Margaret Winship & Mrs. Beverly Jennette, Kinder Care Learning Center
    - 2. Mrs. M. Newman & Ms. Marilyn Herbert, American Pre-School Centers
    - 3. Sisters Zanchetta & Paladina, Holy Angels Nursery School
  - c. Group conference with adult care facility operators.
    - 1. Mrs. Martha B. Bullock, Bullock's Rest Home, Inc.
    - 2. Mr. Ben Evans, Ginter Hall Rest Home
    - 3. Mrs. Eloise B. Lipscomb, Home for Needy Confederate Women
    - 4. Mrs. Peggy Ross, Park Avenue Home for Senior Citizens
    - 5. Mrs. Ruby W. Suggs, The Glen Arnold
  - d. Group conference with advisory board members.
    - 1. Mrs. Frances Batchelder, Fairfax Village Day School
    - 2. Mrs. Winifred Johnson, Southeastern Tidewater Opportunity Project
    - 3. Miss Ann Jones, Nutrition Consultant, Richmond City Health Dept.

PART ONE

A REPORT ON SELECTED TOPICS

RELATING TO

THE ADMINISTRATIVE REGULATION

CHILD CARE AND ADULT CARE FACILITIES

The primary legislative thought in licensing is not prohibition but regulation to be made effective by the formal general denial of a right which is then made individually available by an administrative act of approval, certification, consent or permit....

ERNST FREUND

A. INTRODUCTORY STATEMENT

The question of the authorities  
to be vested with licensing  
powers can be answered only by  
a survey of the entire problem  
of administrative organization.

ERNST FREUND

The Virginia Department of Welfare has two major regulatory safeguarding responsibilities. One, the Department is responsible for the licensing of certain categories of child care facilities or agencies. The Department formulates and implements regulatory standards for five categories of licenses, namely: (1) child agency, (2) child caring institution, (3) independent foster home, (4) child care center, and (5) family day care home. Two, the other major regulatory function of the Department relates to the licensure of certain types of adult day care facilities, namely: (1) homes for adults and (2) day care centers for adults.

During the twelve-month period, September 1, 1974 to August 31, 1975, the Department engaged in the following number of regulatory actions:

APPLICATIONS, RENEWAL APPLICATIONS AND INQUIRIES, 9/1/74 - 8/31/75

NEW APPLICATIONS	CHILDREN'S FACILITIES	ADULT HOMES	TOTAL
Pending 8/31/74	79	38	117
Received 9/1/74 - 8/31/75	287	76	363
Complete	182	Not Recorded	182
Incomplete	105	For Adult Homes	105
Licenses Issued 9/1/74 - 8/31/75	188	60	248
Annual	59	7	66
Provisional	129	53	182
New Applications Withdrawn	111	29	140
New Applications Denied	3	0	3
RENEWAL APPLICATIONS			
Pending 8/31/74	141	53	194
Received 9/1/74 - 8/31/75	895	399	1,294
Complete	774	393	1,167
Incomplete	121	6	127
Licenses Issued 9/1/74 - 8/31/75	912	387	1,299
Annual	659	258	917
Provisional	253	129	382
Renewal Applications Withdrawn	52	43	95



NEW APPLICATIONS, RENEWAL APPLICATIONS AND INQUIRIES, 9/1/74 - 8/31/75

(CONTINUED)

RENEWAL APPLICATIONS	CHILDREN'S FACILITIES	ADULT HOMES	TOTAL
Renewals Not Requested	161	*	161
Renewal Applications Denied	4	0	4
Licenses Revoked	1	0	1
<u>INQUIRIES</u>			
Pending 8/31/74	803	188	991
Received 9/1/74 - 8/31/75**	1,291	209	1,500
Filed Applications	222	74	296
No Longer Interested	937	174	1,111
Closed	1,159	248	1,407

\*Renewals not requested are counted with Renewal Applications Withdrawn

\*\*Beginning in May, 1975, for Adult Homes, and in June, 1975, for Children's Facilities, allegations are counted with Inquiries. Previously, some allegations were counted as Inquiries and some were not recorded statistically.

On September 1, 1975, a contract was entered into by the Virginia Department of Welfare and Norris E. Class, principal consultant, which called for a study of the nature and effectiveness of the Virginia delivery system of regulatory programs for both child care and adult care facilities. (See Appendix B for contract and professional vitae.) As stated contractually, the study was to be a two-part operation. One part related to a study and preparation of a report on selected topics relative to the Commonwealth's regulatory administration in the field of out-of-home care of children and adults in facilities required by law to be licensed. The second part of the project was to be a study of randomly selected current licensed operators' (providers of service) perceptions and conceptions of the regulatory delivery system with special reference to licensing inspection, consultation and supervision.

The eight regulatory administration topics as stated in the contract to be studied and reported were as follows:

- 1) Feasibility of separation of the consultation and inspection functions in group and family day care, and in day care and residential care of adults (as mandated by the 1975 session of the Virginia General Assembly). (Consultant will also examine the nature and amount of licensing supervision and consultation

necessary to safeguard and upgrade facilities after licensure. Methodology in this study will include but not be limited to in-depth interviews with licensees and regulatory staff. See Appendix B for interview schedule.)

- 2) Administrative location and coordination/integration of all regulatory programs in the Commonwealth.
- 3) Consideration of standards with regard to their validity, constitutionality and enforceability.
- 4) Nature, locale and amount of enforcement administration necessary to achieve an optimal safeguarding goal.
- 5) Possible improvement in Virginia regulatory laws regarding out-of-home care, with special reference to the definition of a child care center.
- 6) Nature and magnitude of regulatory programs to safeguard non-group care with special reference to family day care.
- 7) Staffing patterns prior to and subsequent to the increase in staff which occurred during the period between April 1, 1975, and September 1, 1975. Consultant will prepare a comparison, specifying the limitations prior to the increase in staff and the subsequent expectations of increased performance with additional staff. (This topic was expanded into a consideration of personnel aspects of the Department's regulatory responsibility.)
- 8) Licensing reports and records. (The report on this topic has been placed in the Appendix.)

The intelligence necessary to deal with the several selected topics for study and report was largely derived from three sources: 1) documentary material, 2) interviews with licensed providers and regulatory personnel, and 3) a series of staff seminar sessions conducted by principal consultant with other members of the study team participating. The documentary material that was examined included (but was not limited to) regulatory statutes, regulatory standards, departmental reports, licensing records and administrative memoranda and forms. The interviews analyzed included thirteen completely taped individual in-depth interviews with regulated providers, \*4 taped group interviews with 14 licensees, and eight taped individual in-depth interviews with staff. In addition, the principal consultant had conferences with the Secretary of Human Affairs of the Governor's Office, a staff member of the Office of Attorney General, and administrative personnel in the Department of Welfare, the Department of Health, the Department of Mental Health and Mental Retardation, and the Office of the Fire Marshall. (See list of participants attached to letter of transmittal.)

The seminar sessions were eight in number, dealing with these topics: 1) regulatory forms and records, 2) administrative hearings, 3) critical regulatory standards, 4) provisional licenses, 5) formulation of enforceable standards, 6) consultation and technical assistance, 7) family day care regulation, and 8) definition of day care (an evening session). The survey team and the departmental steering committee members generally attended all sessions. Other participants at one or more of the seminar sessions included other central

office licensing personnel, several regional office directors and regional licensing personnel, an assistant attorney general and two special assistants in the Attorney General's office. Professor Walter Wadlington of the University of Virginia Law School was present for three half-day seminar sessions and one evening conference. (See Appendix B for calendar of seminar sessions.)

The eight statements relating to the selected topics of regulatory administration are now presented.

B. STATEMENTS ON SELECTED TOPICS RELATING TO ADMINISTRATIVE REGULATION

OF

CHILD CARE AND ADULT CARE FACILITIES

Today we recognize that a primary goal of law, as of medicine, is the prevention of difficulties rather than cure after the event, and that administrative action is potentially capable of achieving this goal.

WALTER GELLHORN

2. The administrative location and coordination of all care regulatory programs in the Commonwealth. (The term care was inserted into the topic.)

A prefatory note.

To deal even superficially with all regulatory programs in respect to administrative location and coordination would be beyond the time and funding limits of this survey; moreover, the size of that task would reduce the possibility of any practical contribution to problem-solving in respect to effectiveness and efficiency in the delivery of regulatory service specifically related to child care and adult care facilities in Virginia. To substantiate this claim of the complexity and magnitude of total regulatory administration in Virginia (which is similar to that of most states), Mr. Michaels, the attorney member of the survey team, was asked to prepare a memorandum on the topic: "The Regulatory Maze." The purpose of this memorandum was to call attention to the regulatory administrative "challenge" that sooner or later must be faced by the Commonwealth legislature if a "revolt" against all regulatory administration--the valid and essential as well as the unsound--is to be avoided. Parenthetically, it would be the principal consultant's guess that a legislatively stipulated inquiry commission must be appointed in the near future to develop a pragmatic, integrative, and operable system of regulatory administration in the Commonwealth of Virginia. Herewith is presented Mr. Michael's memorandum:

"The statutes of Virginia embody a maze of regulatory measures involving dozens of agencies and hundreds of sets of rules and regulations. A comprehensive analysis of this maze would require weeks of research and compilation. The index to the Code of Virginia, under the heading "Licenses" contains thirteen double column pages and some of the items in turn refer to other, more detailed portions in the index.

Many agencies have authority to regulate, through rule-making, licensing and enforcement, a great number of programs. The Department of Health, for example, has authority to license at least five different occupations and seventeen types of facilities ranging from blood banks to trailer camps.

Many professions and occupations are regulated by the thirty-five agencies contained in Title 54 of the Code. Of these, fifteen are within the Department of Professional and Vocational Regulation while the other twenty are not. Other occupations and activities are licensed and regulated by the Departments of Motor Vehicles (Title 46), Insurance (Title 38), Agriculture (Title 3) to name only a few, and in addition to the Department of Health (Title 32) already mentioned, the Departments of Mental Health and Mental Retardation (Title 37) and Welfare and Institutions (Title 63) exercise jurisdiction over a multitude of institutions and activities. The Fire Marshal has extensive across-the-board authority capable of affecting the programs of numerous licensing bodies (Title 27).

It should be emphasized again that this is not an exhaustive list but rather a set of examples and that the entire body of laws governing rulemaking and the enforcement of regulations and statutes through denial, revocation or suspension of licenses was completely revised by the adoption, effective June 1, 1975, of Virginia's Administrative Process Act (Title 9, Sections 9-6.14:1 through 9-6.14:16).

At the time of this survey, no significant practical experience had been gathered under this new law but it is predictable that the absence of provisions assuring uniformity of procedure prior to hearing, establishing rules of evidence and other guides governing the conduct of the hearings, and providing for a corps of permanently appointed adjudicatory officers who may be held to these procedural and evidentiary rules, will further compound the complexity of the process.

The uncertainty prevalent at the time of the survey, particularly with regard to the conduct and the outcome of "case decision" hearings under the Act, had--from the evidence available in early September of 1975--brought to a complete standstill the enforcement of regulatory authority through the vital process of denial, revocation or suspension of the right to engage in an activity for which a license is required. Without these means of enforcement, applied in a timely and effective manner, regulatory power is a paper tiger.

It will, in the long run, be desirable to provide in the Administrative Process Act itself the guidelines now lacking, but in the meantime, if it is necessary to put the mechanism into motion, and to bring the highly beneficial aspects of the law into immediate operation, much could be accomplished by and within the executive branch of government itself by providing forms and outlines of the documents under which proceedings will commence; by promulgating--perhaps by executive order--or at least strongly suggesting a set of rules of evidence adapted to administrative hearings (see section 11513 of the California Government); and by building at least the core of adjudicatory officers available, and well qualified to conduct the hearings under the Act.

The nature of the problem of locating and coordinating care regulatory programs.

Critical determinants in achieving affectiveness, efficiency and economy in regulatory administration, especially in the field of care facilities, are: the specific administrative location of the program; the type of organizational structure to assure interdepartmental coordination and integration; provision for a generic regulatory operation of that which is common to the several different programs; and the level (or degree of centralization) of operations of the program. Comment will be made on each of these four critical determinants in respect to the Virginia scene.

(1) The feasibility of locating the programs of adult care and child care licensing in the Department of Welfare: The validity of locating child care licensing in the Department of Welfare, where it is in close juxtaposition with other child care services, is almost axiomatic. This administrative location should contribute to a close working relationship between social service personnel and regulatory staff without confusing or mixing the respective functions of placement and safeguarding standards. Comparative study of the location of child care licensing in other states shows this to be the universal pattern of organization.

It is the location of the adult care licensing program in the Department of Welfare about which questions have been raised. However, the same rationale that is given for child care licensing being in the Department of Welfare applies to this particular type of adult care licensing. One of the licensed providers felt strongly that the Department of Welfare should not use a health care licensing "model" for these persons! (See Part Two verbatim interviews.)

Moreover, in the opinion of the principal consultant, it would seem basically unsound at this time to consider change of administrative location due to the recency with which the legislature acted in respect to placing this program with the Department of Welfare. There is reason to believe the legislature was interested in achieving a "social component" in the safeguarding and upgrading of this particular type of facility licensure and accordingly assigned the function to the agency traditionally associated with "social" service responsibilities. In keeping with this intent, additional funds for staff have been made available. To relocate the responsibility before the Department has had a fair and reasonable chance to implement a plan and program of safeguarding and upgrading the service would be wasteful of public funds and in effect be contributory to unstable regulatory administration in the Commonwealth. Because the location of adult care licensing is a subject of some controversy not only here but in other states, it would be well if the Department prepared a special report each year on their administrative "stewardship" of the program. It would also be well if some evaluative research for the report could be done by non-departmental staff working in conjunction with a "committee of inquiry" which would include users and local welfare administrators as well as legislators and providers.

(2) The need for administrative coordination and integration when the several care regulatory programs are variously located: When there are several regulatory programs, assigned to different departments or agencies for implementation and enforcement, there is a great likelihood of overlapping and underlapping of jurisdiction. There is also the likelihood of community confusion and frustration due to differential operating policies and practices. There may also be confusion, frustration and grievance in respect to having to have clearances from several supportive regulatory authorities responsible for fire safety, sanitation and sound building construction. To deal with and possibly alleviate the confusion, frustration and grievance, this recommendation is made: There be established, preferably by legislative stipulation, or at least by executive order of the Governor, a state interdepartmental committee (or commission or council) on regulatory affairs. The chief executive officer of the following departments or offices would delegate an official representative: Health, Mental Health and Mental Retardation, Welfare, Corrections, Education, and the Fire Marshall. There should also be a representative from the Attorney General and from Finance and Planning. The Secretary of Human Affairs of the Governor's Office should serve as chairman. There should be one professional staff person to serve as "clerk" of proceedings and to provide "in house" management service. At this point of conception the functional goal of this interdepartmental committee might be simply that of systematic group discussion by bureau chiefs on "timely topics" of facility care regulation in the Commonwealth. In the course of discussions, there might well be voluntary resolutions of problems of widespread grievances generating from what appears to the public as conflicting or uncoordinated operations of the various regulatory agencies. Besides possible voluntary resolution of grievance situations, two other topics worthy of frequent and responsible dialogue would be the improvement and refinement of the standard formulation process, and the achievement of fair, equitable and uniform enforcement of standards.

(3) The development of a generic (segmental) operation by one regulatory agency to service other agencies: Most care facility regulation bifurcates into two general responsibilities. One responsibility relates to "survival" aspects and the other to "program" aspects. The survival regulatory operation, which includes determination of conformity to fire safety, sanitation, and sound building construction, tends to be a generic type of operation. It tends to be similar in operation regardless of program. There is, however, need for some flexibility as to standards conformity depending on the specific nature of the program to be regulated. On the other hand, the regulation of the program is usually much more specific and operationally unique. There is need of specialized knowledge and expertise which usually is present in the overall department to which the regulatory program is attached. Therefore the following recommendation is made in respect to facility regulation now carried by the Department of Health, Department of Mental Health and Mental Retardation, and Department of Welfare: There be a single regulatory operating unit which would be responsible for giving safeguarding clearance relative to sanitation, fire safety, and sound building construction to each of the three departments in respect to facility licensing responsibilities. The unit would be designated by some title such as "environmental health and safety regulatory office." It is proposed that this bureau or operating unit would be located in the Department of Health. The director of this unit would report to the chief of regulatory operations for the Department of Health. The proposal envisages the sanitarian of the Health Department as taking general responsibility, sooner or later, for fire safety and sound building construction. It is assumed that the central office of the Department of Health would have on the staff, or available to the staff by contract, fire safety and building construction specialists or consultants. These specialists would have a three-fold function: (1) to provide staff training, (2) to be liaison person with other state and local regulatory agencies, and (3) to be available for inspecting where the generic unit staff person is too uncertain to make a decision of clearance or non-clearance. In passing, it is proposed that a fair and equitable fee be charged in order to defray part of the cost of operating this service. Equally important, there needs to be a high level cost accounting approach to this service so that better financial and budgetary planning may take place. If it is not feasible to implement at this time this recommendation as formulated, the following is proposed: There be created a legislative commission to inquire into the coordination and integration of the various regulatory authorities involved in the safeguarding of out-of-home care facilities. (4) The matter of internal organization (centralized vs. decentralized administration) of licensing operations: The Virginia Department of Welfare has the curious pattern of centralized operations of adult care licensing and decentralized operations of child care licensing through regional offices of the Department. Although this position may be challenged by regional staff, in the opinion of the principal consultant, the decentralization of the child care licensing program is basically unsound for three fundamental reasons: 1) While it is granted that decentralization of social treatment programs may benefit clients by accommodating to local needs and resources, by no stretch of the imagination is licensing a social treatment program, and licensees are not clients! Licensing is a preventive program in which there is state intervention to assure minimal safeguarding and possible upgrading of a given care service. Therefore the cardinal virtue of any licensing program is equal treatment and uniform operations. 2) If equal treatment and uniform practices are essential, then a decentralized administration generates serious problems of communication and responsible valid



staff training. The problems can be solved only at great administrative costs. Also, the presence of these problems of communication and staff development may contribute to lowered licensing staff morale. (It may account for the operational "loneliness" which seemed to be present in some of the in-depth interviews with staff.) 3) There would seem to be no question about the imperative need for a more vigorous program of enforcement of licensing standards than is now present. It would seem, judging from comparative study of other regulatory authorities, that this can be achieved only through a centralized administration. No sound regulatory enforcement program is possible without movement toward what is termed an institutional decision-making basis of operations. Otherwise, a licensing requirement in Richmond may not necessarily be the same requirement somewhere else.

In addition to these three factors arguing against decentralized licensing administration is this matter of possible increased numbers of liability suits against regulatory agencies and even regulatory staff. Certainly if these suits come, it would seem that one of the best defenses will likely be that the State did everything possible to train and supervise the licensing inspectional personnel relative to uniform operations and equal treatment. For the reason stated above, the following recommendation is made: The child care licensing function should be administered similarly to adult care licensing function, i.e., out of the State Central Office of the Department. (This recommendation relates to direct administrative supervision--level of command. It does not preclude the stationing out of licensing staff, such as the special assistants in the attorney general's office now are.)

3. A consideration of standards with regard to their validity, constitutionality and enforceability.

The nature of the problem.

The formulation and implementation of standards--community expectations of performance--is what licensing is all about. Failure to formulate enforceable standards defeats the goal of licensure which is consumer protection. With unenforceable standards, licensing becomes ritualistic--an inequitable operation. The failure to formulate enforceable standards may stem from several factors but especially from these three: 1) the nature of the statute, 2) staff experience in licensing administration, and 3) method of formulating standards. Each of these will be briefly considered from the view point of the Virginia situation.

The nature of the statute.

In both of the licensing statutes, child care and adult care, there would seem to be a good clear delegation of rule-making power to the licensing authority. For example, Section 63.1-202 reads:

State Board to prescribe standards. The State Board shall prescribe general standards and policies for the activities, services, and facilities to be employed by persons and agencies required to be licensed under this chapter, which standards shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under custody or control of such persons or agencies.

Section 63.1-174 for adult care is similar.

There is not, however, in the child care statute what might be termed legislative guidelines. When these guidelines are present (and are well stated) they make for increased operation security both in respect to interpretation and enforcement. It is not recommended, however, that the present child care statute, for example, be tinkered with legislatively for this purpose alone. But if major statutory reformulation is undertaken or a new statute, say for child day care, is proposed, it would be well to include better legislative guidelines than are now present. A good example of legislative direction for a child care licensing law is to be found in the federal Office of Child Development model for a child day care licensing act. The legislative guideline section of the model act reads:

Section 6 (b): The rules and regulations for operating and maintaining day care facilities and day care systems shall be designated to promote the health, safety and welfare of the

children who are to be served by assuring safe and adequate physical surroundings and healthful food; by assuring supervision and care of the children by capable, qualified personnel of sufficient number; by assuring an adequate program of activities and services to enhance the development of each child; and by encouraging parental participation.

The rules and regulations with respect to granting, suspending, revoking and making probationary licenses and approvals, and licensing and approval administration shall be designed to promote the proper and efficient processing of matters within the cognizance of the Department and to assure applicants, licensees and approved operators fair and expeditious treatment under the law.

c) The Department shall conduct a comprehensive review of its licensing and approval rules and regulations, at least once each three years.

d) The rules and regulations shall be published in such a way as to make them readily available to the public.

e) The Department shall publish a proposed final draft of the rules and regulations, and amendments, as required by the provisions of [The State Code of Administrative Procedure]; provided, however, that in any event, they shall be published in media of general circulation in order to reach the public statewide at least 60 days and not more than 90 days before they are proposed to go into effect. The publication also shall invite comments by interested parties. A public hearing will be held at least 30 days prior to adoption of the rules and regulations by the Department.

#### Staff experience.

Skill and know-how in the formulation of enforceable standards derive, at least in part, from operational experience! The top management staff of the Virginia licensing division tends to be experienced and to have a sense of what is operable. Moreover, one staff person, able and interested, is assigned full time to standards formulation or reformulation. (Comparatively, this is not true of many states). The keeping of individual licensing complaint reports should make for increased awareness of areas of need which should be considered from the viewpoint of standards revision. All of this should facilitate the formulation process.

#### The method of formulating standards, with special reference to community participation.

The Licensing Division's achievement in formulating enforceable standards is generally good but not always, such as educational requirements

for certain center staff. A number of factors may account for questionable formulations. The most important one, perhaps, relates to the nature and magnitude of community participation in the formulation process! Contrary to some states where there is too little community involvement, in Virginia there is perhaps too much and for too long a time. Certainly, an examination of the minutes and records of formulating recent standards makes one wonder if the advisory group was not involved too early and seemingly accorded too great a final decision-making role. The examination also indicates a need--regardless of time and energy--to arrive at an (almost) "unanimous agreement." This is operationally unreal in regulatory administration if the group is truly representative of all interest, to begin with. All of this is understandable in light of previous emphasis upon "constant" community involvement in the development of local children's services. However, community planning and organization for local services is quite a different operation from standards formulation. In standard formulation in licensing, an advisory group should not be made into a policy-making body unless there is a statutory basis for this being done.

One other point which might be noted is that the community participation was a bit heavy in the way of professionals and community interested persons in contrast to users or consumers. When this is the case, there is a danger that the licensing agency will be "trapped" into formulating ideal goals rather than realistic requirements. Sooner or later, community leaders will have to realize that certain goals will have to be "bought" through fiscal regulatory measures rather than achieved by means of (legal) licensing.

A note on the formulation of non-objective standards.

Most regulatory agencies operating in the field of child care or care of the elderly will not be content with formulating only objective "safe and sterile" standards. Moreover, it is probably not the intent of the legislature that the standard formulation be so restricted. However, once the standard formulation moves into such areas as "personality characteristics" and other terms that are subjective and intangible, the question of enforceability immediately arises.

There is no easy answer to the question of how to insure the enforceability of non-objective (difficult to measure) standards. However, these operational propositions may enhance the possibility that they will be upheld if challenged: 1) The purpose of the standard should be clearly and fully recorded in the standard formulation proceedings ("journal"). 2) The formulation proceedings should show, if possible, that such standards are present elsewhere, accompanied by statements of experts as to their feasibility. (There is an implication in the last suggestion that implementation and enforcement of such non-objective standards may require occasional use of consultants or experts when the judgment of the licensing worker is challenged.) 3) The department, by its personnel selection and staff training of line workers, should be able to achieve reliability in decision-making as to conformity or not.

A comment on staff-child ratios.

Standards fixing the numerical ratio of adult staff to children would seem to be the opposite of what has been discussed above, non-objective standards. At first glance, this type of standard would seem to be highly measurable. Yet, this type of standard also presents problems of enforcement because of "due process" aspects. Facility staff have to be paid specific wages. To decrease the number of children that a given number of staff may care for increases operating costs. Therefore, when a given staff-child ratio is challenged, the regulatory agency will need to justify the ratio on grounds other than "it seemed like a good idea". To provide a factual basis for requiring one ratio rather than another is generally not easy. (It may be impossible to do.) Thus it is important that in the formulation process two things happen: 1) The amount of the increased (or decreased) cost is known so that the regulatory agency may not be charged with reckless, unknowledgeable decision-making. 2) The formulation proceedings and/or journal should contain the opinions of experts that the requirement is justified. Statements indicating wide-spread acceptance of the standard elsewhere may also be useful in a test situation. In the long run, the general formulation process of staff-child ratio standard may need to be operationally different from the formulation of other types of standards. It may need to be modelled after regulatory rate-fixing operations which contain rather strict procedures of notice, hearing, and review.

Some general tests of enforceable standards.

Standards are "little laws": they prescribe behavior and carry positive and negative sanctions. Therefore, if they are to be enforceable, they need to meet certain tests which apply to all law-making in a political society such as ours: 1) A standard needs to be clearly stated so that an applicant may be able to determine what is expected of him/her. (Parenthetically, it should be noted that this is not an easy thing to do and most regulatory staff, including Virginia's, could benefit from a formally organized technical assistance service in standard writing. This service should be similar to and possibly a part of a bill-drafting service.) 2) The standard must be practicable in respect to being realistically implementable. Licenses cannot be expected to do the impracticable, regardless how desirable it may be. 3) Standards, to be enforceable, need to meet the pragmatic test of "greater goodness" (or less harm). For example, in a community situation in which child care centers are deemed to be imperative, a too high staff-child ratio standard which would economically prohibit (shut down) operations would no doubt face marked resistance and be successfully challenged in the courts.

4. The nature, locale and amount of enforcement administration required to achieve an optimal safeguarding goal.

A major source of intelligence for the following statement was derived from the three half-day seminar sessions which focused on enforcement aspects of care licensing. The seminar group included the four members of the survey team, the survey steering committee of the licensing division, three members of the Office of the Attorney general, and Professor Walter Wadlington of the University of Virginia Law School, special consultant for these three sessions. The principal consultant, however, assumes responsibility for the statement as formulated:

The nature of the problem.

The word "enforce" may be defined as keeping in force or in effect through the use of law or regulation. Such a definition seems appropriate relative to regulatory programs enforcement. In fact there is a legal doctrine to the effect that before proceeding in the law courts one must exhaust administrative remedies. This statement, then, deals with both the administrative as well as the judicial process in regulatory program enforcement. For the purpose of this statement, certain administrative operations will be referred to as positive enforcement actions. Perhaps the term preventive enforcement might be preferable because such actions may reduce the need for more litigious (adjudicative) activity. The use of administrative and judicial actions will be classified as negative enforcement. The discussion of both positive and negative enforcement will be related to the Virginia situation. However, before this is done, a quick analysis will be made of possible plus and minus factors relative to licensing enforcement administration by the Department of Welfare.

Possible plus factors in enforcement administration.

In examining the situation at hand, these items would augur well for the Department of Welfare's undertaking at this time a vigorous program of licensing standards enforcement; 1) As already indicated, there is in both licensing statutes (adult care and child care) a clear grant of the rule-making power and seemingly satisfactorily stated provisions for denying, non-renewing, revoking, enjoining, and prosecuting violations. 2) The increased accessibility to legal counsel in the regional offices, and the especially close working together of one deputy attorney general and the director of the licensing division. (Parenthetically, this might be noted: Principal consultant has worked during the past three years with twelve states on matters of regulatory administration. In no other state has there been manifest as close a working relationship between the regulatory agency and the attorney general's office as in Virginia.)

Some minus factors in respect to enforcement.

Before embarking on a vigorous program of enforcement, the Department needs to recognize these two intrinsic limitations: 1) The provisional license sections in both the adult care program (Sec. 63-1-178) and the

child care program (Sec. 63-10201) would appear to be poorly drawn. Denial of a new application, even when there is considerable standard deficiency, is very difficult. Most applicants, except those manifesting extreme non-conformity, are permitted to start operations--unless they can be persuaded or "caseworked" to withdraw. Moreover, they can continue to operate deficiently for a period of two years. Thus a sort of legitimated second class type of operators may exist. This is bound to have negative effects in any vigorous enforcement program aimed at achieving a universality of standards conformity. Operational problems may also arise from this type of provisional licensing in respect to whether or not the applicant has a "vested interest". In addition, there are serious public relations problems in "shutting down" the facility with a clientele after having permitted it to operate "this way" for possibly two years. Thus this recommendation is made: The faulty provisional license sections in both statutes should be dealt with legislatively and/or adjudicatively, i.e., tested as to constitutionality.

2) As indicated above, the decentralization of administration of child care licensing to the regional offices compounds the difficulties of achieving the equal treatment and uniform practices which need to be present in vigorous and valid enforcement operations. (One of the licensing staff, in referring to the inequities stemming from decentralized administration, added: "If licensing is not uniform it is not licensing!")

Essential steps in a program of positive enforcement.

If more litigious activity in the form of revoking, enjoining, and prosecuting is to be avoided or prevented, then it would seem essential for the Department of Welfare to do these two things. First, departmental consideration should be given to the implementation of well planned programs of pre-application-making consultation and technical assistance. If such services are available to persons before they make either an economic or ego investment in facility operations, it might be a critical determinant in persuading marginal or "poor risks" applicants not to enter the field. (Providing of consultation and technical assistance is further dealt with in Part Two of the Report.) A second essential of positive enforcement is for the Department to increase its post issuance inspection or supervision program. Licensing supervision is defined as "official observation to determine continued conformity to standards after receipt of the license." A good program of supervision provides a sort of "nip-in-the-bud" approach to faulty or non-conforming operations, often unwittingly performed. In a sense, the initial investigation of an application (called "study" in Virginia) may constitute an initial teaching of the standards or requirements. A good program of supervision makes possible the continuance of this teaching approach. In fact, this teaching may come at a very opportune time for learning. At the time of the initial investigation, the client, cared-for children or adults, are "theoretically" not present in the care-facility. Thus discussion of certain care items tended to be abstract or academic. Interactions of staff members and users could not be observed. In the post-issuance situation, users are now present, discussion may be much more real; actual staff performance can be observed and correction of deficiency can be specifically proposed. Unfortunately, one gains the impression that the department's post-issuance (supervisory) visitation program at the present time is extremely limited. This is unfortunate from the viewpoint of positive enforcement.

Negative enforcement aspects:

At present, negative enforcement operations such as formal denials and revocations, and court actions (either injunctions and/or prosecutions) would seem to be quite limited. Enforcement action for the period July 1, 1974 to July 1, 1975, as charted by the director of the division of licensing were:

	DENIAL NEW	DENIAL REAPPLICATION	REVOCATION	HEARING COURT	ILLEGAL OPERATION -CRIMINAL-
1. CHILD CARE CENTERS					
2. FAMILY DAY CARE HOMES	3	1		1	
3. 24-HOUR INSTITUTIONS		1	1	1	
4. FOSTER HOMES		1			
5. CHILD PLACING					
6. ADULT HOMES	1				2
7. ADULT DAY CARE					
8. OTHER GROUP HOMES FOR CHILDREN					1 (Injunction)

In the past, failure to engage in (negative) enforcement actions seems to have stemmed from two factors: 1) The social work "mentality" which tended to be oriented away from the use of legal authority. This, however, has changed, especially in Virginia where at least the director, top management staff, and many line workers are more knowledgeable as to theory and practice of regulatory administration. 2) The externally limited or general absence of legal service available to regulatory personnel, no doubt, discouraged or prevented the taking of enforcement actions. This too has changed. As already indicated, there would seem to be increased accessibility to legal counsel, both in the central office and in the regional offices. This increase in legal consultation from the attorney general's office should have this corollary effect: It should facilitate better relations between licensing staff and the county attorney. In the past, the lack of liaison between the two seems to have been a contributing factor in enforcement difficulties.



Delineation of a plan of enforcement.

These two changes, 1) licensing staff having increased orientation as to regulatory administration and 2) greater accessibility to legal counsel should set the stage for a vigorous program of enforcement. However, such a program should be undertaken only on a planned basis, projected over a substantial number of months or years. The plan should be jointly designed by the licensing division staff and the attorney general's office. The commissioner and/or deputy commissioner should participate as much as possible. (Certainly any major enforcement action should never come as a "surprise" to the department's top management personnel.) There should be an assignment of specific personnel. There should be full awareness of the cost. In the early phase of any broad enforcement program, the personnel costs are likely to be very great. (Often, this is not appreciated at the start of enforcement operations.) Good strategy and tactics in planning should include both consideration of most vulnerable targets for prosecution and handling of the publicity which enforcement activity usually generates. (It is most essential that the Department does not "run scared" and "silent" as to its side of the case. In fact, a well publicized court case may be the best opportunity the Department will ever have to interpret "why", or the value of, a given standard or requirement.) Possible appeal to the courts, or higher court, should be considered in advance, especially if it seems important that the issue be fully decided so that further enforcement action may be well planned and implemented. Finally, it is most important that attention be given to planning for the training of licensing personnel in relation to enforcement. Training needs to be given in respect to substandard conformity, the investigation of complaints and reports of unlicensed operations. Perhaps most important of all, licensing line staff personnel need training for participation at hearings as expert witness. (At one of the seminar sessions, Mr. Michaels spoke at length on this topic and urged the development of staff training programs.) In light of the above, this recommendation is made: The Department in conjunction with the Attorney General and assisted by an ad hoc advisory committee including both users and licensees formulate a two-year plan of regulatory standards enforcement.

A final note on the "dramatic" value of (negative) enforcement.

While the ideal might be to engage in only positive--preventive--enforcement, this ideal will probably never be realized. Thus the dramatic value of adjudication situations ("scenes") should be recognized as having great potential community education value in establishing what is prohibited--verboten--behavior. Sociologically, a fair hearing or a court action, with its ritualistic overtones, can be a most powerful means of helping to acculturate given standards (requirements) into a system of legitimated community expectations. This dramatic value of enforcement should not be overlooked in planning any program of enforcement. 5. Possible improvement in Virginia regulatory laws regarding out-of-home care with special reference to the definition of a child care center.

The intelligence for this statement was derived in part from an examination of standards pertaining to child care and the child care licensing statute, and also from an evening conference with: Margaret Miller, director of the licensing division, Karen Kincannon, deputy attorney-general, Professor Walter Wadlington of the University of Virginia Law School, and Mr. Rudolph Michaels (member of the survey team) who is a member of the California Bar. Subsequent to this September 10th conference, Mr. Michaels and principal consultant conferred; Mr. Michaels was requested to prepare a memorandum on

the topic: "Inspection of Unlicensed and Potentially Exempt Facilities". His memorandum is incorporated in the statement that follows:

The nature of the problem.

Empirically, regulatory agencies have demonstrated uncertainty and insecurity in standards implementation and enforcement activity relative to child day care centers. Among other possible causative factors, these three would seem to be important ones: 1) There are significant differences between child day care and twenty-four hour foster care, yet both (day care and foster care) are generally included, as they are in Virginia, in the same licensing statute. 2) Other regulatory agencies may also have a responsibility for certain types of day care (usually of a specialized nature), yet the regulatory statutes fail to establish realistic operable limits among or between the respective programs. 3) Culturally, there is much confusion over what are the operational limits of early childhood education (and "Headstart"), childhood development service, and group day care as a community or social service. This last-mentioned confusion over operational limits may make it "easy" for de facto child care operations to successfully resist licensure by claiming to be "something else" such as an educational institution. To make a beginning approach in reducing this uncertainty and confusion these four operational propositions are set forth.

One: A separate child day care regulatory statute should be eventually enacted. The basic difference of child day care from twenty-four hour foster care (i.e., the difference between supplementary parent care and substitute parental care) is so great that there should be clear legislative policy as to the nature and limits of state intervention for the purpose of safeguarding and/or upgrading the operation. It is suggested that in approaching the enactment of a separate child day care regulatory law, careful consideration be given to the model act for day care, designed under the auspices of the federal Office of Child Development. Study and consideration of this model act should greatly reduce time and cost of drafting a statute for Virginia.

Two: The state interdepartmental regulatory committee described above should make recommendations as to jurisdictional limits and administrative intergration of day care regulatory responsibilities of the several state agencies. A permanent structure, established either by the legislative or executive order of the governor, seems to be imperative if sound administrative coordination and integration of regulatory day care programs is to take place.

Three. The director (and top management staff) of the licensing division in conjunction with the attorney general's office must come to grips with the problem: What constitutes de facto day care? Until the licensing division realistically addresses itself to this question, any investigation of alleged exempt facilities is not likely to be very productive as a safeguarding measure. Sooner or later there will probably be need for a court test of de facto day care. The suggestion is made that a request be made of the licensing specialist in the federal Office of Child Development for service in this matter. Also, if a fund (it could

be modest in amount) were available, the Department might contract with the University of Virginia Law School to research the topic. The Department is fortunate in having one of the leading authorities on child and family law as the dean of that institution. His expertise should be exploited to the advantage of safeguarding children of the Commonwealth.

Four. The Department must clearly resolve its operational ambivalence as to whether it does or does not have under the present child care licensing statute the authority to make inquiry or investigation into certain care situations in which the operators claim to be exempt or outside the jurisdiction of this statute. Of course, resolution of this ambivalence or conflict should be done in conjunction with the attorney general's office. As a preliminary step, however, the attorney member of the survey team, Mr. Michaels, was asked to prepare a memorandum setting forth his opinion as to whether or not the commissioner presently has the right to conduct such investigations. Mr. Michaels' memorandum is as follows:

#### INSPECTION OF UNLICENSED AND POTENTIALLY EXEMPT FACILITIES

Section 63.1-210, giving the Commissioner, the State Board, and their agents the right, at all reasonable times, to inspect all of the facilities, books and records of every child welfare agency and to interview the personnel of that agency and all persons under its custody and control applies to unlicensed facilities and includes the power to determine whether or not a given agency is exempt under the provisions of Section 63.1-195 excluding from the definition of a "child care center" certain specified facilities.

Under the express terms of Section 63.1-195, child care centers are "child welfare" agencies. Whether or not a facility requires a license in the Section. Exception (2) exempts public and private schools "unless the Commissioner determines that such a private school is operating a child care center outside the scope of regular classes." The other five exceptions, while not expressly requiring the Commissioner to make a determination, are exempt only if they operate strictly within the terms of the particular exception. For example, a child care center operated by a hospital for the children of employees while the employees are engaged in performing work for the hospital loses its exempt status if it provides care to the children of persons who are not employees of the hospital and probably even if it renders care to the child of an employee when the parent is not actually on duty at or on behalf of the hospital.

Under Section 63.1-127, the Commissioner has the duty to "administer" Chapter 10, and under Section 63.1-214, he may bring suit to enjoin the operation of any child welfare agency operated without a license required by Chapter 10. The right to bring suit clearly implies the right, and, in combination with Section 63.1-127, imposes a duty to determine whether a particular facility is "operated without a license required by Chapter 10," and this determination can often only be made through the exercise of the investigative powers spelled out in Section 63.1-210.

To limit the authority of Section 63.1-210 to facilities which are already licensed or which have filed applications would completely frustrate the purpose of the law.

Prosecution through the Commonwealth Attorney under Section 63.1-216 provides no solution because, before a case arising under exception (2)--the "school exception"--could be successfully prosecuted, the Commissioner would have to make the determination already mentioned. Thus a facility would be immune from investigation by Commissioner and State Board and not subject to the standards as long as it did not file an application.

It is inconceivable that the legislature intended such an absurd result.

6. Nature and magnitude of regulatory programs to safeguard non-group care with special reference to family day care.

The intelligence used in the formulation of this statement was derived from the following sources: 1) documentary examination of statutes, standards, selected licensing records; 2) group interview with family day care parents; and 3) the afternoon seminar session (September 12, 1975) which included survey staff, steering committee and other central office personnel, several regional directors, regional licensing supervisors and licensing line workers (specialists). At this session, Mr. George Robinson, supervisor of day care licensing for the state of North Dakota, led a discussion of their recently established program of family day registration.

The nature of the problem.

Comment will be made first as to family day care regulation and then foster home care licensing. The regulation of non-group or family day care has not received the attention accorded group day care. In fact, throughout the nation, there has been a reluctance to think through the problem of what constitutes appropriate safeguarding of family day care. This reluctance to do so seems to have contributed to an insecurity in enforcement operations. Everywhere there seems to be an impression that much or most of family day care operates without benefit of licensure. Virginia would seem to be no exception. At the seminar session, one very responsible regional licensing staff person "guessed" that perhaps only ten percent of the total family day care in the state was presently licensed.

The regulation of twenty-four hour foster home care in Virginia, in contrast to family day care, would seem to be much more in hand. In fact, there are practically no independent (i.e., non-agency connected) foster home placements in Virginia as compared with many other states. Perhaps the most important operational suggestion at this time in respect to the safeguarding of foster homes connected with child-placing agencies is the making of "conformity audit" of foster home standards. This audit (which should use sound sampling techniques) should be made in respect to all agencies. Both the seemingly very good agencies as well as the "questionable" ones should be audited. A summary statement of such an audit should be "open"--in the public domain--in the same way as summaries of fiscal audits may be open to the public. If all the licensed child placing agencies are not audited, the regulatory agency may find itself charged with unfair and unequal inspectional operations.

The need for research in relation to family day care.

In light of the widespread impression that much of family day care operates without regulation, at least a modest research investigation as to the magnitude and nature of actual family day care should be undertaken

by the licensing division. It is most important that the research samples be selected on a random basis in order to reduce charges of bias--or even harassment--in respect to certain geographic sections. The overall benefit of this research would be two-fold. One, it would provide guidelines in planning programs of interpretation and enforcement of family day care regulations. Two, if the research were properly designed, findings as to community reactions to having family day care licensed could be secured at the same time. The research findings would be helpful in determining whether alternative regulatory programs to traditional licensing should be considered. Certainly, the findings should be of help in appraising the "guesses" in respect to the magnitude of unlicensed family day care. Therefore, A) the following recommendation is made: A modest research project be undertaken by the Department to determine the nature and magnitude of family day care in the Commonwealth. If the study, research and systematic observation support the impression that a great amount of family day care is unlicensed and should be regulated in some form, the Commonwealth is presented with this regulatory challenge: should it continue to try to make licensing work (the traditional regulatory method) or should it consider alternative approaches?

The principal consultant suggests that no decision-making either way take place until more reliable data is available. B) If the research findings reveal that considerable or most family care operations are not regulated, then this further recommendation is made: Very serious consideration should be given to moving to a "registration-inspection" or some other form of self-certification approach to the regulation of family day care. This consideration of moving to an alternative approach should be made by a departmentally appointed committee. This committee should include not only licensing staff but also child placement staff, representatives from the Department of Health, the Department of Mental Health and Mental Retardation, and personnel from regulatory agencies covering fire safety and sound building construction. Also there should be at least two currently licensed family day care parents. It is quite possible that the federal Office of Child Development and/or the National Day Care and Child Development Council might be able to supply a limited amount of technical assistance to this committee. The committee should review existing programs and/or proposals of state registration including those of the states of North Dakota, Michigan, Texas, North Carolina, and Massachusetts. Following this review of programs, proposals, and the professional literature on the subject (which is rather full) the chairman of the committee should be charged with the preparation of a report setting forth recommendations for the Commissioner of Welfare. Basically, the registration-inspection approach is a program of self-certification.

The family day care provider attests that she/he/they meet and will continue to meet regulatory standards for family day care. Operations may start without formal investigation but the fact of operation must be "registered" (viz with the licensing authority). The registered provider is subject to inspection generally and specifically in respect to complaints. Theoretically, at least, the registration approach would endeavor to put greater emphasis on the parent (the user) to be responsible for complaint-making and enforcement. In certain programs/proposals, the provider at time of registering must agree to supply each adult user with a copy of the regulatory standards which will contain information as to the place and method for reporting complaints or possible standard violations.

The principal consultant presented a paper at the Pacific Oaks College Conference on family day care (Pasadena, California 1971) entitled "The Public Regulation of Family Day Care: An innovative approach." Below is an excerpt from the paper:

"The possible advantages from a registration inspection approach to family day care might be five-fold:

1. This approach would contribute to self-definition of role-taking. The act of registration would amount to the making of a public announcement of assuming the role of family day care procedure. From time immemorial human societies have used the public announcement as a means of setting up patterns of expected behavior--witness for example the posting of marriage bans in the church.
2. This approach moves the regulatory investigation or inspection from the abstract to the concrete. A fundamental regulatory criticism of licensing family day care is that the investigation must be done in advance of the placement of the child and therefore remains at an abstract level of discussion. For a child care licensing person to say that this home is generally O.K. does not provide for much comfort to the child for whom the care is specifically inappropriate.
3. A third possible gain is that this approach, if properly implemented, could facilitate parent or user participation in the safeguarding operation. Traditionally and empirically licensing tends to be a relationship between the state and the provider of the service; it is a dyad rather than a triad of the state, the provider and the user. In licensing, the state theoretically takes on, as it were, almost full responsibility for the protection of the child--relieving the parent almost completely of this task. Of course, in no way is it possible for the licensing agency to provide this full protection. Perhaps this myth of full protection by the state results from an "over-sell" of the value of the licensing investigation. In the proposal at hand, the parent or the user must approach the situation with caution, a caveat emptor frame of mind. Moreover, the provider of the service must supply the user with the standards of care statement and the procedure for lodging possible complaint. Anyone familiar with the licensing of foster family care will probably attest to the fact that many parents or users are, in a sense, intimidated in respect to criticizing the foster parent's care by the latter's frequently expressed statement, "You know I am licensed by the state", which translates into "anything I do is okay."
4. A possible fourth gain, and somewhat reverse from the last one, is that many persons provide good family day care operation without a license and other potentially good family day care providers do not apply, both for the same reason: they are unnecessarily fearful about their qualifications. Possibly, a simple theorem of licensure application might be: the greater the sensitivity of the persons, the greater the feeling that they would not "qualify" for the license. Yet, the person reluctant to seek a license might be much more confident in respect to

having her home examined in relation to children who have been placed there by their own parents who have a common law, constitutional and statutory right to do this.

5. A fifth and final gain is that registration-inspection would bring the family day care problem into some sort of regulatory order which is not now present. This should definitely facilitate community planning. The presence of systematic registration of children under care would make possible epidemiological research which should benefit sound day care planning development and coordination. It would also facilitate the development of a network of community education for child development and foster parent programs in providing the names and addresses of possible learners.



7. Staffing patterns prior to and subsequent to the increase in staff which occurred during the period April 1, 1975 to September 1, 1975. (This topic has been modified and expanded into a section on personnel administration aspects of the licensing responsibility.)

Due to lack of "hard data" on personnel administration prior to 1975, staff increase resulting from special budget consideration, and the shortness of the period since the new staff has been employed, only a limited statement is possible on this topic. In light of this there will be a presentation of feedback from the in-depth interviews of eight licensing staff, plus findings from principal consultant's individual interviews with four top management staff of the licensing division: Jane Valentine, Betty Lewis, Sally Penick and Catherine DeWitt. (Jack Neal was not interviewed due to illness.) At the end of the statement there will be a listing of personnel administration priorities.

Results of increased budget for licensing staff.

The principal consultant requested the Director of the Licensing Division to prepare a memorandum relative to the 1975 budgetary increases for licensing personnel. The memorandum reads:

Following separation of the Virginia Department of Welfare and Institutions in July, 1974, there was an opportunity to request additional positions throughout the newly created Department of Welfare.

Out of the request for additional licensing positions in September, 1974, only 5 licensing supervisors for 7 regional offices were approved. In April, 1975, the following positions were approved by Secretary Brown:

Regional Offices - 4 Welfare Licensing Specialists.

Central Office - 4 Welfare Licensing Specialists (Adult)  
- 2 State Welfare Supervisors B  
(Regional Coordinators)  
- 1 State Welfare Supervisor C (Adult)  
- 3 Clerical Support positions  
- 1 State Welfare Supervisor B (Adult Training)

Some were authorized in April, 1975, some in July, and the 2 Coordinators, 1 adult Licensing Specialist, and 1 clerical position were caught in the freeze on State employment effective August 8, 1975.

As of September 1, 1975, when the study was initiated, there were employed on that date 26 regional office and 15 central office licensing staff. (This is exclusive of clerical support personnel and the Civil Rights program.)

The two regional Coordinators were not approved at the level of Supervisor C which was requested. The decision was appealed by our Department to State Personnel but the positions still came through at the lower level. Through State Personnel's delay in action on the appeal, the positions

were caught in the freeze. This has been a great source of frustration to administrative personnel in the Division. Since the children's licensing program operationally is in the regions with technical assistance evaluation and staff development the responsibility of the regional coordinators located in Central Office, to have two out of three of these coordinator positions frozen is severely detrimental to the program and creates a morale problem.

We are now in the position of having a large increase in the operational staff (regional licensing supervisors and licensing specialists) without the necessary supervisory staff in Central Office.

Disappointing as the job freeze has been the increased personnel for the division would seem to have made these two positive operational contributions as determined from the in-depth interviews with the licensing staff: 1) Some workloads have been reduced resulting in a feeling that the job is more manageable generally and the giving of supervision is now possible. 2) Even where there was no direct immediate effect such as reduced workload some felt that the increase reflected a better image of licensing, departmentally speaking. This passing note is made by principal consultant in respect to future personnel expansion of the licensing staff. There must be a "lot of hard thinking" in staff sessions as to how best to draw the line between adding more generalized line workers in contrast to specialized personnel that may be badly needed.

Feedback from interviews with staff.

Eight licensing staff workers were interviewed in-depth. These taped interviews were confidential, transcribed by non-departmental personnel and have been analyzed by principal consultant only. The purpose of the interviews was: 1) to get an idea of worker "congruence" with licensee and 2) to secure an impression of workers' operational concerns. Findings and reactions will be presented without reference to specific workers.

Staff awareness of licensees' position and thinking (congruence).

By staff congruence is meant a determination of the degree of agreement between staff's perception of licensees' positions in respect to certain topics and the actual statement of these positions by the licensees. A simple test of staff congruence was incorporated into the interviews with licensees. Besides securing the recorded perceptions and conceptions of licensed providers, several were asked to reply in writing to five rather specific questions around the licensing worker's inspectional or investigative activity. These questions related to such items as announced or unannounced visits, and as to whether they perceived the worker as helpful and competent. (Interviewed staff persons were selected on a basis of having license in their work load.) Staff were asked the same questions that licensees had been asked except for this change: What do you think Mr. X would say in respect to questions about standards, consultation, enforcement, etc.? There was no assumption that the licensing worker would be in agreement with the expressed position of the licensee.

It was assumed, however, that a positive, constructive working relationship can be effected only if a licensing staff person really knows a licensee's position and has some understanding of why or how he/she has arrived at that position. An inspectional analysis of the licensees' responses was then compared with the licensing workers' "guesses" as to what the licensee said, i.e., whether the two statements were congruent. Two of the eight manifested unusual awareness and understanding; five of the other six were classified as "good," and one classified as fair. (In this last, it was not necessarily being "wrong" in speculations but an unwillingness to speculate--a repetition of "I don't know" statements. Interestingly, the most frequent wrongness in respect to licensees' position pertained to licensees' thinking or position regarding enforcement. (This finding may well reflect licensing staff's frustrations and anxieties in this area.) The presence of this general finding of good awareness of licensees' position augurs well if an expanded program of supervision, as discussed previously, is to be developed. Without licensing staff awareness and understanding of licensees' position in respect to basic aspects of licensure, it is really useless to talk about effective supervision and/or consultation which must always begin where the person "is at."

Licensing staff concerns.

In the in-depth interviews in which the questions are non-leading ("what is your thinking about ") a great range of responses is likely to be present. This range of responses does not lend itself to a neat classification for reporting purposes. However, close reading and re-reading of each interview did yield four major staff concerns. These concerns related to 1) standards, 2) supervision-consultation, 3) enforcement, and 4) image of licensing. Each of the four will be discussed in an endeavor to reflect (anonymously) the sense or feeling of interviewed workers' statements. Also, effort will be made to reflect in the following statements findings from principal consultant's interviews with top management staff and observations made at seminar sessions.

1) Standards.

Staff concerns regarding standards go in all directions. Regardless of amount of experience, some staff are essentially not conceptually clear as to what a licensing standard is. Others, perhaps conceptually clearer, are not sure if implementation of existing standards is their only responsibility and if there are additional responsibilities, they are not certain as to what they are. Moreover, if standards is perceived as their "only" responsibility, there is then expressed some conflict as to whether or not this is really their "game." Additional concern was expressed as to how best to handle interpretation and enforcement of standards which they themselves might question or not understand the reasons for the standards being formulated. At least once directly, but implied by others, the question was raised as to whether or not staff really had a responsibility to "justify" standards in light of so limited input into the formulation process. Another's concern was that insufficient training was present when

new standards were developed, with the result they did not handle well criticism of the new standards. Several felt they lacked training as to what was a uniform way of measuring degree of conformity. With no exception were these concerns expressed in a negative tone. However, the number of concerns in this area of standards formulation and implementation, and often expressed in a manner of great urgency, would seem to give this topic a number one priority in any plan of staff development and training. Perhaps the alpha and omega of all staff training in a regulatory agency must be teaching and learning in conceptual thinking relative to licensing "standards."

2) Licensing supervision and consultation.

If the legislature and the providers are concerned over this topic, so are the workers. Like those pertaining to standards, the concerns about supervision and consultation are quite diverse and are often interrelated with concerns over both standards and enforcement. As already indicated, what especially stands out is that as a vocational group the workers' interest or identity would seem to be definitely with consultation rather than supervision.

Closely related to this concern is uncertainty or confusion as to what constitutes upgrading in contrast to safeguarding and what responsibility co they have realistically in relation to it. The staff concerns regarding supervision and consultation do not end here. In addition there were many thoughtful concerns expressed in respect to such items as pre-application consultation, providing consultation and technical assistance during the investigation, and the determination of amount of expertise to justify assuming a role of consultant. (One staff person was quite concerned that some workers gave consultation without sufficient competence to do it.) As a group, the interviewees tended to be in agreement with the licensed providers that practically the same staff person in post-issuance visitation would have to do both, at least in a limited fashion. For some of the staff, a major concern was the problem of keeping the two roles separate if they are defined as being functionally different. On the other hand, one very thoughtful worker expressed deep concern if the two are somewhat rigidly separated. She insisted that licensees will tend not to ask for outside help and technical assistance even to the detriment of the care. In light of all the expressed concerns in this area, it would seem most important that the Department not only implement a staff training program, especially to refine competence in the supervision role, but also enunciate a clearly defined policy statement in respect to supervision which would be widely interpreted both to staff and providers.

3) Enforcement.

Again, licensing staff concern regarding enforcement stems from seemingly many different factors. Some express concern out of a sense of frustration: "Nothing happens after the report or letter 'goes up the line'", or they get a "message" that the county attorney is not too

interested in this type of situation. Some of the concern may come out of a "feeling of guilt" that nothing is done and there is loss of credibility that licensing is really a safeguarding operation. Conversely, in one or more instances, the guilt seems to derive from the belief that negative sanctions have to be utilized and in the long run it doesn't help either the provider or clientele of the facility. Certainly, some of the concerns derive from staff's lack of familiarity or awareness as to their role in the enforcement. (In one of the seminar sessions, Mr. Michaels discussed the preparation of staff to participate as an expert witness at an administrative hearing. Included in his remarks was a brief description as to how it was done in California. The staff's response was one of marked interest and enthusiasm. Because of workers' frustration, possible "guilt" (psychological not moral) and anxiety as to role participation, there would seem to be some evidence of a tendency to "turn the subject off, intellectually". In the interviews, each was asked his/her opinion as to the possible utility of "fines" as something "in between" revocation ("sudden death") and no negative sanctions. Workers were willing to take a position that varied pro and con. The interesting thing, however, about the responses was this: For most of the group, this question about fines seemed to come as sort of a "surprise", as something they had not given much or any thought to previously. (Yet, fines are most frequent and the universal form of negative sanction.) Again, the upshot of all these concerns would seem to be that a staff development program must make enforcement a timely subject of intellectual speculation as well as informing of procedures.

#### 4) The image of licensing.

Most of the licensing workers interviewed in-depth, or those with whom principal consultant conferred, seemed to have considerable concern--"hand-up"--regarding the present image of licensing. The concern generated from different sources. Some staff wondered if the legislature, departmental leadership and community leaders understand the real problems of facility care and the functional nature and limitations of licensing. At times, while it seems that there is a genuine desire to safeguard facility care, there is still a basic shying away from a willingness to do that which must be done, such as implementing an effectively vigorous program of enforcement. In the same vein of ambivalence, some workers are far from clear as to community expectation in respect to upgrading of standards in contrast to safeguarding activity, i.e., implementing minimal requirements. The lack of at least a beginning definition of the educational base for the performance of regulatory tasks also seems to contribute to a lowered self-image. This lowered self-image increases due to a lack of a well formulated in-service training program which would endeavor to make a determination of competence of persons receiving the training. (A test of competence involves more than "completing" a study course.) One worker with considerable eloquence expressed the belief that this lack of systematic training and agreed-to educational base could not help but result in differential and possibly unfair treatment and practices, often quite unwittingly on the part of the worker. In connection with this last--differential and uneven operations--principal consultant, in examining the interviews, was

struck by almost a total absence of reference to what might be termed "professional collegiality." In fact, in reading the interviews one gets a sense of rather great vocational isolation, or loneliness. To deal with this type of personnel situation, it would seem most imperative that a systematic plan of total staff meetings be instituted. Both problems and cases should be staffed. This should lead to an "institutional" decision-making approach which is most essential in regulatory administration. Then it is not a personal but a shared agency decision.

A note on personnel administration planning.

Based upon the above findings from interviewed personnel and the findings from the in-depth interviews with licensed providers, this statement is made relative to personnel planning: At least a three-year personnel plan for the discharge of departmental regulatory administrative responsibilities should be formulated at once. This plan should include, of course, the forecasting of the number of staff needed to cover possible increased line operations in investigations of applications for license and inspectional (supervisory) activity after the license has been issued. Caseloads lower than they were prior to the recent increased appropriations will hopefully be in effect, and should be limited also to accommodate realistically to any new policy of post-issue supervisory visits. Apart from forecasting general personnel needs, the plan should concretize with considerable specificity the special personnel needs of the Department. In the detailing of the special personnel needed, there should be statements as to education, training, and experience of these persons. Equally important is the affixing of a compensation schedule for such personnel.

Four priorities are proposed in respect to special personnel.

These priorities relate to 1) staff development, 2) enforcement, 3) pre-application consultation and technical assistance, and 4) a new position of "registrar."

1) Staff development.

Probably enough has been stated in respect to this need for staff training. What is important to say now is that in any personnel planning, the aims of the staff development program be particularized and that there be then realistic operational planning as to type, amount and cost of the new personnel to achieve these aims of training. Certainly, additional full-time training personnel, beyond that which is now present will probably be necessary. However, it is not advisable to get "top heavy" with full-time permanent training staff. Specialists for short-term teaching may have a greater pay off.

2) Enforcement.

Very likely there will be a need for a specialist to train staff to participate in enforcement operations including, as already indicated, their participation as expert witness in administrative hearings. The

investigation of reports of unlicensed facilities should also be a matter of special teaching. What is stressed here is that if a vigorous program of enforcement is undertaken, the staff training needs be fully recognized at the beginning and be included in the "price tag" for that operation.

3) Consultation and technical assistance.

Certainly if the Department is to provide truly pragmatically valid programs of pre-application, plus a declaratory statement service and a program of technical assistance, at least two professional staff members, full-time, will be necessary to develop and direct these operations (one in the licensing division and one in the division of social services or field operations.) The amount of staff necessary to provide consultation at the regional and/or local level will have to be determined after the service is operationally defined. In passing, it should be noted that in providing an operationally defined pre-application consultation service, some of this personnel cost will not necessarily be "new" cost. Staff personnel is presently engaged in this activity without its being well defined by any policy statement.

4) A new position of "regulatory certification registrar."

The number of regulatory actions are increasing and may reach Proportions of considerable magnitude. This will be especially true when there is added to licensing the possible inspection and approval (but not licensure) of public facilities, the certification of facilities and/or persons as being eligible for service payments out of public funds, the possible credentialing of para-professional personnel (such as child care associate), the possible "registrations" of family day care (which hopefully would constitute a number greater than those licensed) and the issuance of declaratory statements (which are in effect partial regulatory promulgations). In every regulatory action there are two important, significant components: 1) a due process aspect and 2) a grant of special authority, i.e., a right to engage in an activity which is otherwise "closed" or prohibited by law. From the viewpoint of the person charged with official promulgations of these regulatory actions in the name of the Commonwealth, this is a task of considerable importance. Also, from the viewpoint both of planning and public information as to who is presently regulated, it is important that there be a high level immediate accounting of regulatory actions.

In light of the above, it is therefore recommended that there be created within the Commissioner's office a "registrar of regulatory actions." This officer, while working closely with the licensing division staff, would be autonomous of that division and would report directly to the Commissioner or Deputy Commissioner. This officer would make a final validity check of each regulatory certificate to warrant promulgation and would report statistical data to the computer. A copy of licenses and/or regulatory certificates currently in effect would be kept in the central office under the direction of the registrar. The registrar would be responsible for the preparation of a statistical report to the Governor and the legislature in respect to regulatory actions of the Department of Welfare. The registrar would be in

charge of computer print-out directories of licensees. This last is a most important means of providing consultation to persons in need of facility care, specifically in respect to adult care facilities. In addition, all promulgations of regulatory standards would clear through this office.



C. A RESTATEMENT OF TEN POLICY RECOMMENDATIONS

Fundamental to the very  
creation of administrative  
authority is the fact that  
its source is legislative....

JAMES M. LANDIS

APPENDIX A: Statement Relative to Regulatory Forms and Records

POLICY RECOMMENDATIONS IN REPORT

The overall impression that is received from this survey is that the problems of the Virginia Regulatory Delivery System relative to child care and adult care facilities are essentially operational and budgetary in nature rather than structural and ideological. (Really, no one seems to be questioning the need for and value of the State endeavoring to safeguard child care and adult care facilities.) All the policy recommendations presented throughout Part One of the report are brought together below.

1. The Department of Welfare should formulate and implement a clear cut operational policy statement relevant to pre-application consultation service to be given to persons interested in learning about or in the securing of a license. This pre-application consultation should be administratively located in the division of licensing. It might well include a "declaratory statement" service.
2. The Department of Welfare should formally establish a technical assistance service to persons interested in the various operations of facility care for children or adults. This technical assistance for facility care should not be restricted to a concern with licensing requirements but to the field as a whole, especially program planning. It preferably should be administratively located in the division of social services of the Department. This technical assistance service would be available to would-be licensee or licensees in any phase of the licensing process.
3. The Department of Welfare should put into effect a clearly defined program of post issuance licensing supervision which combines inspectional activities and consultative like methods in order to achieve optimal safeguarding and at the same time contributes to the encouragement of upgrading of standards of operations. This licensing supervision program should be administratively located in the licensing division and should be implemented by personnel who have received special staff training.
4. There should be established, preferably by legislative stipulation, or at least by executive order of the Governor, a State inter-departmental committee (or commission or council) on regulatory affairs.
5. There should be a single regulatory operating unit which would be responsible for giving safeguarding clearance relative to sanitation, fire safety, and sound building construction to each of the three departments in respect

Policy Recommendations In Report

to facility licensure responsibilities. The unit would be designed by some title such as "environmental health and safety regulatory office." It is proposed that this bureau or operating unit would be located in the Department of Health.

6. The child care licensing function should be administered similarly to adult care licensing function i.e. out of the State Central Office of the Department.
7. The faulty provisional license sections in both statutes should be dealt with legislatively and/or adjudicatively, i.e., tested as to constitutionality.
8. The Department in conjunction with the Attorney General and assisted by an ad hoc advisory committee including both users and licensees should formulate a two-year plan of regulatory standards enforcement.
9. A. The Department should undertake a modest research project to determine the nature and magnitude of family day care in the Commonwealth. B. If the research findings reveal that considerable or most family care operations are not regulated, then serious consideration should be given to moving to a "registration-inspection" approach to the regulations of family day care or other type of self-certification.
10. There should be created within the Commissioner's office a "registrar of regulatory actions."

8. Licensing reports, records, and forms. (This statement has been placed in the appendix because the content is more concerned with practice than policy.)

Two half-day seminar sessions were devoted to a consideration of forms, reports and records used in effecting the regulatory process. In addition to the seminar sessions examination was made by the principal consultant of the present regulatory forms and reports currently in use by the department. Also, a number of licensing records were studied as to the forms, reports and narrative statements making up the records. Comments will be made as to A) application form, B) compliance form, C) composition of the licensing record, and D) reference statement letter.

A) Application form

The application form can help or hinder in defining or establishing the functional nature of the application-making phase and the functional nature of the investigation phase. There should be only three basic aims of application-making: 1) to establish that the applicant submits to the jurisdiction of the licensing statute, 2) that he/she is informed of certain aspects of the investigation, and 3) that he/she is informed of certain expectations or requirements subsequent to issuance of the license. To be sure, some social information may be required when the application is initiated as, seemingly, the Virginia statute requires. Before any social, economic, operational or planning information is requested, however, there should be a "first page" form to clearly establish the applicant's willingness to be investigated, and that he understands what the investigation involves. To this end it is proposed that the present application be modified accordingly: after indication of the type of license sought, there should be a list of compliance statements relative to the application-making. Below is a copy of North Dakota's registration application and affidavit of standards compliance. While it is not proposed that Virginia "take over" the entire list of eleven stipulations or conditions relative to application-making, there are several of these conditions (numbers 1, 3, 4, 7, 8, 9, and 10) that possibly could be adopted to and incorporated in Virginia's application form.

FAMILY DAY CARE HOME

REGISTRATION APPLICATION & AFFIDAVIT OF STANDARD COMPLIANCE

In accordance with Chapter 50-11.1 of the North Dakota Century Code, application is made to the Social Service Board of North Dakota for issuance of a family day care home Registration Certificate.

(A)

In making this application, I state that:

1. I have read and am in receipt of a copy of the prescribed standards and promulgated rules and regulations of the Social Service Board of North Dakota governing the provision of family day care home services.
2. I certify that I am in compliance with the aforementioned family day care home standards and rules and regulations of the Social Service Board of North Dakota, and I will remain in compliance with the standards and rules and regulations so long as I am registered with the Board.
3. I grant permission to the Social Service Board of North Dakota and/or its authorized agent(s) to make any necessary and reasonable investigation of the circumstances surrounding this application and any statement made herein.
4. I acknowledge that the Social Service Board of North Dakota and/or its authorized agent(s) may make reasonable inspection of the facility where I operate or plan to establish my day care operation. For the purposes of such reasonable inspection(s) of my facility, I acknowledge that the Social Service Board of North Dakota and/or its authorized agent(s) shall have free and full access to every part of the facility.
5. I am aware that if issued a family day care home Registration Certificate, I am subject to reasonable investigation and/or inspection to determine my continued conformity to the standards under which said Registration Certificate was issued; and further, I am aware that any Registration Certificate granted me is time limited, having a statutory duration of one year from the date of issuance; and therefore, if I desire to continue in the provision of supplemental parental child care, that I must make application for a family day care home Registration Certificate yearly, as provided in the prescribed standards and promulgated rules and regulations of the Social Service Board of North Dakota.
6. I understand that any information gathered by the Social Service Board of North Dakota and/or its authorized agent(s) in any such investigation or inspection shall be confidential, subject to my review only upon appeal from a Board denial or revocation of a family day care home Registration Certificate for which I have applied or been issued.

7. To the best of my knowledge and belief, all information I have given to the Social Service Board of North Dakota and/or its authorized agent(s) in the application process is true and correct. Further, if I am granted a Registration Certificate by the Social Service Board of North Dakota, I will supply true and correct information requested during any subsequent investigation or inspection to which I am a party.

8. I have been given a copy of Chapter 50-11.1 of the North Dakota Century Code by the registering agency.

9. I am aware that pursuant to Section 50-11.1-13 of the North Dakota Century Code "any person, partnership, firm, corporation, association or organization who violates any of the provisions of this chapter (50-11.1) is guilty of a Class B misdemeanor."

10. I understand that this is only an application for a family day care home Registration Certificate, and that such application, under the provisions of Section 50-11.1 of the North Dakota Century Code, is subject to denial. In the event of such denial, I understand that I have the right to an administrative hearing as provided in Section 50-11.10 of the North Dakota Century Code.

11. I am aware that any family day care home Registration Certificate granted to me by the Social Service Board of North Dakota for the purposes of providing day care, is subject to revocation as provided in Section 50-11.1-09 of the North Dakota Century Code. Further, in the event of any revocation, I am aware that I have the right to an administrative hearing as provided in Section 50-11.1-10 of the North Dakota Century Code.

(B)

I declare that I have read and understand this application, including those documents referred to herein, and to the best of my knowledge and belief, it is true, correct, and complete. Further, I am aware that under Section 12.1-11-02 of the North Dakota Century Code, a person is guilty of a Class A misdemeanor, if in a governmental matter such as this, he makes false written statements, when the statement is material and he does not believe it to be true.

(C)

\_\_\_\_\_  
Signature of Affiant

Subscribed and sworn to before me this (D) day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
County, North Dakota

My commission expires \_\_\_\_\_, 19\_\_\_\_

Distribution: Original to Child Welfare Services, State Capitol, Bismarck, North Dakota 58505  
Canary copy to area social service center  
Pink copy to county social service board  
Goldenrod copy to affiant

(E)

B) Compliance form (or compliance record).

The ultimate goal of any investigation for licensure is the gathering of facts in order to determine whether conformity to regulatory standards is present. The purpose of the compliance record is to provide for a systematic recording of findings that accrue from the regulatory investigation. The Virginia Department has paid attention to the importance of this report form. What appears to be a generally excellent compliance record has been devised for use in the investigation (study) of new applications. It is numerically correlated to the numbering system of the specific standards. By way of refinement, however, these suggestions are made: Firstly, a column might be added in order to report a finding of "marginality." This column could be used for reporting on standards that are not deemed "absolutely" required. Such a column of marginality would have utility in relation to establishing "substantial compliance" rather than full and complete compliance. Check-marks in the marginality column, as in the "no" column, would always be followed by comment. A second suggestion would be to accommodate the design of the compliance record for use in post-issuance supervisorial visits, including complaint visits.

C) Licensing record. In some localities there is confusion about the function of the licensing record, which in turn is reflected in the kind of entries and documents the record contains. The confusion seems to stem from two factors: 1) lack of clear differentiation of the licensing record from treatment records, such as placement and "home-finding" and 2) failure to be aware that social histories and personality evaluations or other subjective data, unless related to conformity to specific standards, have little or no place in licensing records. An examination of Virginia's licensing record and also discussion in the seminar sessions indicate that the licensing division does not have this confusion to the extent that some other jurisdictions do. The content of the licensing records is consistent with the following functional definition of a licensing record: to provide for a systematic keeping of documents, reports, clearances, correspondence and narrative statements to justify, substantiate or explain regulatory actions of the department. The record should also contain copies of issued licenses. In the seminar discussion of the several parts of the licensing record, one might gain the impression that there was need for the staff to further define the functional nature of the "narrative." (Incidentally, time did not permit discussion of "subjective" or "impressionistic" notes which staff members sometimes make. Attention needs to be given to this matter but in passing, principal consultant would suggest that keeping of a "second record" is not the way to deal with it.)

D) Reference statement form (letter).

Although the reference statement need not necessarily be restricted to the investigation of "good character," this would seem to be its primary function in Virginia as it is in most states. The present reference statement form letter indicates responsible departmental concern above that present in some other states. Still, the current reference form is not



entirely satisfactory. Part of the unsatisfactoriness would seem to derive from the fact that there is no "agreed to" operational definition of "good character" for licensing purposes. The attorney member of the survey team, Mr. Michaels, was requested to prepare a manual statement. The following was provided for staff consideration:

1. Good character is established by the absence of adverse information.
2. For the purpose of establishing good character under sections 63.1-173 (aged etc.) or 198 and 199 (children) good character may be found to exist despite the presence of adverse information when a) there has been rehabilitation from criminal or other deviate behavior; or the nature of the offense or conduct does not have a substantial relationship to the qualifications, functions or duties of the licensed activities; or c) a combination of both of these factors.

Summary.

The licensing staff's thinking about the functional nature and the design of regulatory forms, reports, and records represents a good achievement, and compared with many other states is above the average. There is, however, unfinished business. Although there was insufficient time in the seminar sessions for a discussion of the financial stability statement, principal consultant's individual examination of it brought questions as to its appropriateness and utility. Also, while the form for complaint-taking in relation to non-conformity or illegality, i.e., without license, would seem to be generally satisfactory, it came out in the discussion that a complementary one in the way of a complaint investigation report form has not as yet been devised. Such a report form should be designed. Both forms, the form for intake of complaints and the investigation form should contain a "statistical box" to indicate type of reporter, nature of offense, kind of action taken and promptness of action. Such statistical data would greatly facilitate enforcement planning, also standards formulation. The most important unfinished business, however, pertains to the formulation of an operational statement on the nature of confidentiality (or "unconfidentiality") of licensing records, both adult care and child care. In the formulations of these statements of confidentiality attention must be paid to the seemingly ever-increasing pressure for "open-ness of public records." Certainly if the licensing authority is to have a positive credibility, its approval and issuance operations must not be closed and border on the mystique. At the same time, the confidentiality statement for child care probably has to be differentiated from adult care due to differing statutory provisions. Seemingly the crucial administrative problems in the confidentiality of adult care licensing records turn on operationally defining "bona fide interest". It is most imperative that the staff move immediately in the direction of formulating criteria of bona fide interest especially in relation to consumers and third party persons. Of course it goes without saying that no statement

should be formulated without clearance with the Attorney General's participation. Also it would seem important that before such a statement on licensing record confidentiality be issued, there be dialogue with representatives of the other facility licensing authorities, namely the Department of Health and the Department of Mental Health and Mental Retardation. If there were an interdepartmental committee on regulatory affairs, this division might well take place within that structure.

APPENDIX B: Memoranda

1. Excerpt of Contract
2. Professional Vitae for Principal Consultant
3. Interview Schedule for Licensed Providers
4. Calendar of Seminar Sessions in Regulatory Administration.

NO. 1. CONCEPT OF CONTRACT FOR SERVICES

THIS CONTRACT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1975, by and between the Virginia Department of Welfare ("Department") and Norris E. Class ("Consultant"), for study of the nature and effectiveness of the Virginia delivery system of regulatory programs for both child care and adult care facilities. The Department and Consultant hereby agree as follows:

A. DUTIES OF CONSULTANT

Consultant will study and subsequently prepare a report on the following topics relative to the Commonwealth's regulatory administration in the field of out-of-home care of children and adults in facilities required by law to be licensed:

1. Administrative location and coordination/integration of all regulatory programs in the Commonwealth;
2. Nature and magnitude of regulatory programs to safeguard non-group care with special reference to family day care;
3. Nature, locale and amount of enforcement administration necessary to achieve an optimal safeguarding goal;
4. Feasibility of separation of the consultation and inspection functions in group and family day care, and in day care and residential care of adults (as mandated by the 1975 session of the Virginia General Assembly). Consultant will also examine the nature and amount of licensing supervision and consultation necessary to safeguard and upgrade facilities after licensure. Methodology in this study will include but not be limited to in-depth interviews with licensees and regulatory staff, which are described further in #9 below;
5. Staffing patterns prior to and subsequent to the increase in staff which occurred during the period between April 1, 1975 and September 1, 1975. Consultant will prepare a comparison, specifying the limitations prior to the increase in staff and the subsequent expectations of increased performance with additional staff.
6. Possible improvement in Virginia regulatory laws regarding out-of-home care, with special reference to the definition of a child care center. Some evaluation of the general

regulatory laws rather than the specific area of child care center laws may be prepared as an in-house document, due to the overlapping of licensing authority among the Department of Welfare and the Department of Health and the Department of Mental Health and Mental Retardation.

7. Consideration of standards with regard to their validity, constitutionality and enforceability;
8. Licensing reports and records; and
9. Perception-conception of current licensed operators. Consultant will make an in-depth interview inquiry of selected licensees (by random sampling) totaling 12 in number; 6 children's day care operators selected from 3 regions, one of which will be Richmond; and 6 adult home operators representative of the same geographic areas. There will also be an in-depth interview inquiry of regulatory staff within the State Welfare Department, the State Health Department, and the State Department of Mental Health and Mental Retardation as to perception-conception of the current administration of regulated operations. Consultant will hold approximately 12 to 15 interviews with regulatory staff. These interviews will be structured to include the items enumerated in 1, 2 and 4 above. Some parts of the interviews will be structured exclusively for regulatory staff. These interviews will be conducted and analyzed by experienced regulatory administrators.

B. STAFF.

1. Staff

The survey staff will consist of the following persons:

- a. Norris E. Class, contractor and principal consultant;
- b. Rudolph Michaels, Hearing Officer, California Administrative Procedure Agency;
- c. Roland Gerhart, Administrator, Vermont Office of Child Development;
- d. George Robinson, Day Care Licensing Supervisor, North Dakota Public Welfare Department;
- e. Walter Wadlington, Professor, University of Virginia School of Law (if available).

NO. 2 PROFESSIONAL VITAE

for

Norris E. Class, M. S.  
Child Care Licensing Consultant

- I. General: Born 2/20/06, Chagrin Falls, Ohio. Married 1949,  
Spouse: Loretta Nasseem Class, no. children.  
Present address (3/1/75) 3217 Westover Road,  
Topeka, Kansas 66604.  
Telephone: (913) 234-2764

II. Education:

- A. MS in Social Administration, School of Applied Social  
Sciences, Western Reserve University, Cleveland, Ohio.  
(Degree: 1931)
- B. Sabbatical study at the School of Social Service  
Administration, University of Chicago (1949-1950)
- C. Sabbatical study at the London School of Economics  
(London, England) 1957.

III. Employment

- A. Social caseworker and supervisor, Cuyahoga County  
(Cleveland, Ohio) Child Welfare Board, 1930-1935.
- B. State Child Welfare Services director, Oregon  
Public Welfare Commission, Portland, Oregon, 1936-  
1940.
- C. Professor, School of Social Work, University of  
Southern California, 1941-1972. (Professor Emeritus  
since 1972.)
- D. Self-employed as child care licensing consultant,  
1972 to present (12/1/74). Assignments to date  
include the state departments of welfare and/or  
health for Texas, North Dakota, Kansas, Missouri,  
South Carolina, Delaware and Maryland.
- E. Special teaching (summer sessions or workshops) in  
child care licensing or regulatory administration,  
includes the following universities (1960-1974):  
(1) Tulane School of Social Work (13 summers);  
(2) Virginia Commonwealth University (2 workshops);  
(3) Tufts University; (4) University of California  
at Berkeley; (5) Drake University; and (6) University  
of Nebraska.

Professional Vitae (Class)

- F. Several federal government assignments, including a part-time appointment, 1966-68, as special consultant to the United States Children's Bureau on child care licensing during which time I authored the federal Children's Bureau Bulletin, #462-68, The Licensing of Child Care Facilities by State Departments of Welfare. (3 printings)

IV. Special Awards

- A. 1966 Alumni Certificate of Honor, School of Applied Social Sciences, Western Reserve University.
- B. 1970 Distinguished Educator Award, Council of Social Work Education.

V. Professional Writings and Publications

- A. The Licensing of Child Care Facilities by State Departments of Welfare. United States Children's Bureau publication number, 462-68. Superintendent of Documents, Washington, D. C.
- B. "Licensing for Child Care: A preventive welfare service." Based on a paper presented at the Centennial Conference on the Regulation of Child-Care Facilities. The Jane Addams Graduate School of Social Work, University of Illinois, 1967. Published in Children. September-October 1968, pp 188-192.
- C. (With Gertrude Binder): "The Nature of Welfare Licensing Laws": Social Casework. May 1958. Vol. 39, pp 267-273.
- D. "Regulatory Standards for Welfare Services." Social Casework. November 1957, Vol. 37, pp 468-473.
- E. "Maintenance of Regulatory Standards for Welfare Services." Social Casework. June 1958. Vol. 37, pp 342-349.
- F. "Foster Care Licensing in Public Welfare." Children. January-February 1961. Vol. 8, pp 28-31.

- G. "Foster Child Care as a Public Welfare Responsibility." Public Welfare. October 1962. Vol. 20, pp 217-220 and 236-237.
- H. "Safeguarding Day Care Through Regulatory Programs: The Need for a Multiple Approach." A paper given at the 1973 Seattle Conference of the National Association for the Education of Young Children.
- I. "The Public Regulation of Family Day Care: An Innovative Approach." A paper given at a conference on family day care under the auspices of Pacific Oaks College (Pasadena, California), 1972.
- J. "Basic Issue in Day Care Licensing." A paper given at the 1971 Minneapolis Conference of the National Association for the Education of Young Children.



NO. 3. INTERVIEW SCHEDULE FOR LICENSED PROVIDERS

"O": BEGINNING:

1. I am \_\_\_\_\_ On behalf of the licensing survey group, I want to thank you for your willingness to participate in this study of the Virginia regulatory delivery system as it relates to out-of-home care of children and adults.
  2. You are fully aware that this interview is being taped?
  3. You are also aware that a transcript of the tape will be made and it will be made a part of the final report of this survey?
  4. As we proceed through this interview, you may ask to have any part or all of the tape played back and, as you hear it, you may ask if you wish to have any part or all of it erased.
  5. We'll begin by asking you to repeat your name, the name of the facility you're connected with and the nature of your relationship to it.
    1. Name: \_\_\_\_\_
    2. Facility: \_\_\_\_\_
    3. Nature of Connection: \_\_\_\_\_
  6. I am going to read the statement on your license: (Read out loud)
  7. I am going to ask you a variety of questions about the licensing program in Virginia including your thinking about standards, supervision and consultation, enforcement, and end with any additional suggestions you might have.
1. OVERALL REACTIONS REGARDING LICENSING:
- a. How would you express your overall reactions to the idea of State licensing of <sup>(adult homes?)</sup> ~~(child care?)~~
  - b. Who really benefits from licensing?
  - c. Practically speaking, would you say the benefits do or do not outweigh the time, energy and costs of licensing?

2. LICENSING STANDARDS (OR RULES AND REGULATIONS OR REQUIREMENTS)

- a. Within the limitation of your knowledge of the old licensing standards (under which you were last licensed, or above) what would you say your overall reactions to them are?
- b. Would you indicate which ones seem to be "OK" and which ones you question or would eliminate?
- c. What standards would you add?
- d. What do you think about the way the licensing standards are "made" (or formulated)?
- e. What changes would you make in the formulation of standards?

"x" By the way, did you participate in any way in the last revision of the standards for \_\_\_\_\_ care? (If participated; What was your feeling about the experience?)

3. LAW(LICENSING STATUTE)

"O" As you probably know, licensing standards are based upon a specific law or statute. Have you ever read this law? How did you get a hold of this law?

- (child care
- a. Within the limitations of your knowledge of the Virginia (adult home licensing law (not standards) what would you say are the good features?
  - b. What features of the law would you negatively criticize or seriously question?
  - c. Are there any special item(s) or aspect(s) of the {child care  
adult home  
licensing law you would comment on?

4. INVESTIGATION, INSPECTION AND SUPERVISION:

Now we want to consider the matter of study or investigation of applications for a license and/or supervisory visits after licensing. "0" Let's agree that investigation of the applicant at the time of original application for a license and inspection or "supervision" visits after licensure for the purpose of determining conformity to standards is what licensing is all about. Can we agree to that?

- a. Would you indicate your experience on being investigated or studied for a new license and also the inspection for standard conformity? (Secure, if possible, full listing, especially recent past.) Then ask this question: What reactions did you have or do you have to that investigation and inspection process?
- b. If you have experienced a renewal investigation, would you describe it? (Secure similarity and/or differences from other kinds of supervisory visits.)
- c. Do you have any comment on the renewal feature of the licensing process?
- d. What is your reaction to having to have fire and health clearances and inspections in addition to the Welfare Department's licensing investigation and inspection?
- e. We would like for you to write brief, somewhat "yes or no" answers to the following questions. Note that these responses will be analyzed but they will not be included in the typed interview. They will be treated confidentially by the survey staff.

WRITTEN QUESTIONS FOR #4 INVESTIGATION, INSPECTION, AND SUPERVISION:

These questions are confidential. Respondents will not be identified.

1. Were you generally notified in advance of a supervisory-investigation visit? YES \_\_\_\_\_ NO \_\_\_\_\_. Comment: \_\_\_\_\_

2. In either investigations, or in later inspection visits, did you tend to know what standards were being examined at the time, or was it a more general type of evaluation? Comment: \_\_\_\_\_

3. During the actual investigation or inspection were you notified immediately if something did not meet standards? Yes \_\_\_\_\_ No \_\_\_\_\_  
Comment: \_\_\_\_\_

4. At the end of an inspection or supervisory visit, did you tend to get a report? Orally \_\_\_\_\_ In writing \_\_\_\_\_ (such as a check list \_\_\_\_\_)  
Or both \_\_\_\_\_? Or did you get a report by mail \_\_\_\_\_  
Comment: \_\_\_\_\_

5. Briefly, what is your opinion of the competence of the workers who make the investigations or inspections? Comment: \_\_\_\_\_

6. Briefly, what would you say as to the workers being helpful, and/or authoritarian? Comment.

5. CONSULTATION

"C" Now, in Contrast to investigations and supervisory visits, we want to consider consultation and "technical assistance" which is not required but suggestive.

1. In what instances, if any, have you asked a licensing worker for suggestions, consultation or technical assistance?
2. What were the responses of the worker or workers?
3. What would you say as to the helpfulness of the response?
4. How do you feel about the same worker who is making supervision visits also providing the consultation service?
5. If someone else other than the person doing the investigations and inspection is to provide consultation, who should it be, and where should this service be administratively located?

6. ENFORCEMENT ASPECTS

- a. What would you say about the way the Virginia licensing law is enforced?
- b. Insofar as you can observe, what would your thinking be in respect to the State's attempt to suppress illegal operations, i.e., operating without a license.
- c. What's your thinking about having it possible to fine a person for certain violations rather than leaving it to "revocation or nothing?"
- d. What would be your proposal, if any, as to an association of operators playing a greater role in maintaining standards?

7. ENDING: SUGGESTIONS AND RECOMMENDATIONS

- a. If the legislature were having hearings on possible revision of the {child care  
{adult home licensing law, and you were asked to testify, what points would you make?
- b. If the licensing agency (i.e., the Virginia Welfare Department) asked you to suggest one or two things in respect to the regulation of {child care  
{adult home licensing programs, what would you suggest?
- c. Apart from licensing, what suggestions do you have for safeguarding the care of {children  
{adults outside of their homes?
- d. Do you have any suggestions as to how to better coordinate or integrate all the agencies that impose some regulations upon you in licensing?
- e. Is there any other point or comment you would like to make regarding the {child care  
{adult home licensing program in Virginia?
- f. Would you in the next two weeks like to submit a written statement for the survey committee to consider? (It would be most welcome.)
- g. Is there any part of the tape you want played back? (This can be easily arranged.)
- h. Now, to be sure we don't get content of the tapes mixed up, would you repeat your name and organization?
- i. Thanks very much.



NO. 4. CALENDAR OF SEMINAR SESSIONS IN REGULATORY ADMINISTRATION

Monday, September 8, 1975

2:30 - 4:30 p.m. - Regulatory Forms Reports and Records:

1. Application Form;
2. Investigational and Inspectional Worksheets;
3. Narrative Reports; and
4. Licensing Record.

Attendees - Steering Committee and State Licensing Staff

Tuesday, September 9, 1975

9:00 - 11:30 a.m. - Trends in Regulatory Administration:

1. The California Administrative Procedure Office;
2. The California Consumers' Affairs; and
3. The Virginia Administrative Process Statute.

Attendees - Steering Committee (State Office Licensing Personnel may "audit.")

1:30 - 4:30 p.m. - An Examination of the Adult Care Law with Special Reference to the Provisions for Character and Financial Stability.

Attendees - (Same as Tuesday A.M.)

Wednesday, September 10, 1975

10:45 - 12:15 p.m. - An Analysis of the California Community Facility Licensing Statute with Special Reference to:

1. Program Consolidation;
2. Special Credentialing; and
3. Evaluation.

Attendees - Steering Committee (State Office Licensing Personnel may "audit.")

1:30 - 4:45 p.m. - An Examination of the Child Care Law with Special Reference to the Staff-Child Ratio Provision. (Special topic: Formulating Enforceable Standards.)

Attendees - (Same as Wednesday A.M. plus Legal Staff)

Calendar of Seminar Sessions in Regulatory Administration--cont'd.

Thursday, September 11, 1975

9:00 - 10:30 a.m. 1. Investigations and Denial of License and  
2. Supervision and Revocation.

Attendees - Steering Committee and Legal Staff (if possible, Mr. Masden and/or Mr. Lukhard).

2:00 - 4:45 p.m. - Court Appeals and Suppression of Illegal Operators.

Attendees (Same as Thursday A.M.)

Friday, September 12, 1975

9:30 - 11:45 a.m. Special Topics in Licensing Consultation:

1. Differentiation from Supervision;
2. A demonstration of a Community Resource Bank (Mr. Gerhart);
3. Pre-Application, Technical Assistance; and
4. Declaratory Orders (Mr. Michaels).

Attendees - Steering Committee, State Licensing Staff, Regional Licensing Staff, and if possible Regional Directors.

1:30 - 3:15 p.m. - The Regulation of Family Day Care by a Registration Program:

1. George Robinson - presentation of the North Dakota Program; and
2. Discussion: Might it work in Virginia?

Attendees - (Same as Friday A.M.; also open to Placement Personnel.)



