

January 27, 1993
ILR 93-B

Representative David M Jones
House of Representatives
318 State Capitol
Salt Lake City UT 84114

Subject: Licensing Of In-Home Day Care Facilities

Dear Representative Jones:

As you requested, our office has conducted a review of in-home day care facilities licensed by the Office of Licensing within the Department of Human Services. Overall, our review concluded: (a) the state's licensing requirements appear to be sufficient; (b) the level of enforcement and method used to enforce license standards is a policy issue to be addressed by the Legislature; (c) the state should provide parents with information about substantiated violations by providers; and (d) coordination between the Office of Licensing and local law enforcement agencies appears to be adequate.

In-home day care, also referred to as family day care, consists of child care given in a residential home by a care-giver who is not a relative. Child advocacy groups estimate that nearly 70 percent of all children receiving full-time child care in the U.S. are cared for by in-home providers with approximately 1.5 million in-home providers caring for more than five million children. However, experts estimate that as many as 80 percent of in-home providers are not licensed. Utah requires in-home providers caring for more than three non-related children to be licensed. There are approximately 2,200 licensed in-home providers within the state caring for approximately 12,000 children. Officials at the Office of Licensing estimate that only about 30 percent of the in-home providers in Utah who should be licensed are licensed. Officials indicated that it is extremely difficult to detect unlicensed providers and that little is done by way of enforcement in this area. Because state licensing requirements do not apply to unlicensed providers, our review was limited to licensed providers.

Controversy has recently surrounded in-home day care within the state because of the deaths of two children at a licensed in-home facility during 1991. The focus of this controversy has centered on the adequacy of the state's licensing program. In order to determine the adequacy of the state's licensing program, we studied and compared Utah's licensing program to the licensing programs of nine surrounding states. Specifically, we have addressed the following questions outlined in the audit request: Are the state's licensing requirements sufficient? Does the Office of Licensing adequately enforce license standards? Are parents provided with sufficient information regarding complaints and substantiated license violations by providers? And, does adequate communication exist between the Office of Licensing and local law enforcement agencies?

Utah's Licensing Requirements Appear To Be Sufficient

Our review concluded that Utah's licensing requirements are similar to those in other states and appear to be sufficient. We contacted nine surrounding states regarding their requirements for licensing in-home day care providers. While there are no uniform standards for licensing of in-home day care, most states, including Utah, have developed standards to address: care-giver to child ratios; supervision and discipline of children; food and nutrition; space and safety specifications for the home and yard; first aid; provider training; administering medication; physical examinations and vaccinations; fire safety; and sanitation.

Most regulated states refuse licensing to providers with a history of child abuse, neglect, or a criminal record. In Utah, all providers are screened through Child Protective Services' child abuse register and the Bureau of Criminal Investigation (BCI). If substantiated cases of child abuse, neglect or criminal convictions are found on any person living in the provider's home, the case is reviewed by a management committee. Cases of abuse, neglect, or criminal conviction normally result in the denial or revocation of a license.

States also inspect regulated in-home providers for safety and building code compliance, such as: adequate play space, fire extinguishes, smoke detectors; sanitary conditions; electrical outlet covers; and hazardous chemical storage. Utah conducts similar inspections during the initial licensing of every provider and again during the provider's annual license renewal.

In addition, most states we surveyed require providers to attend training classes and seminars. Training includes sessions on business practices, first aid and CPR, child abuse identification, hygiene and nutrition, discipline, and child development. Utah requires providers to attend six hours of training per year (this requirement is being increased to 12 hours per year).

Figure I shows the licensing requirements in surrounding states compared to Utah's requirements. Critical requirements such as screening for child abuse, criminal records, provider training, and home inspections are shown for comparison.

Figure I					
Licensing Programs in Other States					
State	License Standards	Provider Screening		Training	Home Inspection
		Abuse Register	BCI		
Arizona	Yes	Yes	Yes	9 Hours	Yes
California	Yes	Yes	Yes	0 Hours	Yes
Colorado	Yes	Yes	Yes	6 Hours	Yes
Idaho*	Yes	Yes	Yes	4 Hours	Yes
Montana	Yes	No	No	0 Hours	No
Nevada	Yes	Yes	Yes	3 Hours	Yes
New Mexico	Yes	Yes	Yes	6 Hours	Yes
Texas	Yes	Yes	Yes	20 Hours	Yes
Wyoming	Yes	No	No	8 Hours	Yes
Utah	Yes	Yes	Yes	6 Hours	Yes

* *The state of Idaho does not require licensing. Licensing requirements are established by cities. License standards for this study were obtained from the city of Boise. Some cities do not have any licensing requirements.*

Most files we reviewed contained documentation showing that critical standards were met at the time of licensing. However, some files did not contain adequate documentation. We reviewed 53 provider files maintained by the Office of Licensing to determine whether license standards were met at the time of licensing. We focused on critical standards such as: the inspection of provider homes by state licensing staff, screening of providers and individuals living in the home through the child abuse register and the Bureau of Criminal Investigation, and certification that providers have been informed of and agree to follow state licensing standards. Three files did not have documentation showing that BCI had been checked. We recommend that all files contain documentation verifying that license standards have been met.

The goal of licensing is to encourage a minimum level of health, safety, welfare, and education for children. Licensing provides the foundation upon which all other efforts are built. Licensing, however, does not guarantee the quality of day care. Quality is an individualized and nebulous commodity difficult to measure and varying from provider to provider. For example, licensing cannot guarantee children will receive proper attention, a nurturing environment, or love and affection. The primary benefit of licensing is that it helps assure children's rights to an acceptable minimum level of care. Licensing standards set forth the public definition of acceptability that providers must meet in order to legally operate. Some child advocacy groups favoring licensing suggest that stricter licensing standards and increased regulation could push more in-home providers underground.

Effective January, 1993, the Office of Licensing within the Department of Human Services is responsible for administering the state's licensing program for in-home day care. This program was formerly administered by the Office of Family Support. Licensing staff from the Office of Family Support have been transferred to the Office of Licensing. According to department officials, the transfer of the licensing program to the Office of Licensing should result in better training for licensing staff and a more efficient program overall.

The Office of Child Care within the Department of Community and Economic Development

is responsible for developing public awareness programs on child care within the state. The office receives federal funds to develop child care referral programs, provider training programs, and parent information programs. The office has recently established three child care resource and referral centers: The Child Care Connection in Salt Lake; Your Community Connection in Ogden; and the Department of Child Education and Family Studies at Utah Valley Community College in Orem. In 1993, the office has scheduled numerous training programs for providers, made plans to distribute 17,850 information pamphlets on child care at statewide functions, and has contracted with a local marketing agency to place 180,000 information packets on child care in targeted areas.

Overall, there seems to be adequate coordination between the Office of Licensing and the Office of Child Care. The Office of Licensing is responsible for the state's licensing and enforcement program while the Office of Child Care is responsible for dispensing information to the public and developing training programs for providers. Reports furnished by the Office of Licensing are used by the resource and referral centers established by the Office of Child Care to provide parents with information about in-home day care providers in their area. The Office of Child Care notifies the Office of Licensing about upcoming training courses. Later in this report, we discuss a new policy being implemented by the Office of Licensing authorizing the release of information about substantiated complaints and violations by providers to parents. We encourage both offices to work together to inform parents about this program.

A well-administered regulatory program offers important benefits to providers as well as children. It brings providers into contact with other providers as well as sources of business assistance and training, establishes referral networks, and educates parents about standards.

The benefits to providers, while important, are secondary to the central purpose of protecting children. As public awareness and understanding grow, more providers will be able to improve the quality of care they offer.

In our opinion, the state's licensing requirements for in-home day care establish standards similar to those set by other states. Utah's licensing requirements are extensive and establish a minimum level of reasonable quality care. Child abuse and criminal background investigations are conducted on all providers and individuals living in the home. Homes are inspected on an annual basis for proper space and safety requirements. Providers are required to attend training on essential topics related to child development. Overall, the state's licensing program appears to be appropriately administered and designed to help ensure the health and safety of children.

Method Used To Enforce Standards Is A Matter Of Policy

The method used to enforce license standards is a policy issue that should be addressed by the Legislature. Our review of the enforcement programs in other states found that some states do more than Utah to enforce license standards, while other states do about the same. States with more stringent enforcement programs conduct regularly scheduled unannounced inspections to ensure that providers are in compliance with license standards. The practice of conducting regularly scheduled unannounced inspections is referred to as "monitoring." Currently, Utah does not monitor in-home providers through unannounced inspections. Unannounced inspections are only used to follow-up on complaints filed against providers. Figure II shows that six of the nine states we surveyed conduct unannounced monitoring inspections while three other states do not conduct unannounced monitoring inspections.

According to officials at the Office of Licensing, it would be ideal if the state could conduct monitoring inspections of licensed providers; however, funds are not currently available to hire monitoring staff. Licensors we spoke to agreed that monitoring would be beneficial but under their current caseload it is impossible. Licensors in the Salt Lake region currently handle 150 to 200 providers with 50 to 80 new applications pending. In order for the state to conduct regular unannounced monitoring inspections, additional funds would have to be appropriated to hire monitoring staff.

Figure II		
Unannounced Monitoring		
State	Frequency of Inspections Per Year	
Colorado	1	per provider every other year
Arizona	2	per provider per year
Nevada	2	per provider per year
California	10%	random sample per year
Montana	20%	random sample per year
Texas	30%	random sample per year
Idaho	0	per year
New Mexico	0	per year
Wyoming	0	per year
Utah	0	per year

In addition to conducting announced inspections for license renewal purposes, Figure II shows that the following states conduct unannounced monitoring inspections: Colorado, Arizona, Nevada, California, Montana, and Texas. Colorado conducts one unannounced monitoring inspection every other year. Nevada and Arizona conduct two unannounced monitoring inspections per year. California, Montana, and Texas select a random sample of licensed providers for unannounced monitoring inspections each year. California selects a 10 percent sample, Montana selects a 20 percent sample, and Texas selects a 30 percent sample. It should be noted that Montana licenses providers through a self-certification program. Self-certified providers are then monitored through a 20 percent random sample. Idaho, New Mexico, Wyoming, and Utah do not conduct unannounced monitoring inspections.

In Utah, most licensed in-home day care providers are not in full compliance with license standards. In order to determine whether in-home providers were in compliance with state license standards, we conducted 23 unannounced inspections of licensed homes. Using state Form 764, *Family Day Care Monitoring Check List*, we documented whether providers were in compliance with licensing standards. Overall, we found that licensed in-home day care providers are not in full compliance with state licensing standards. Ninety-one percent of the providers we inspected had at least one area of noncompliance. Areas of noncompliance included: smoke detectors not working, a pile of boards in an area accessible to children, missing vaccination certificates and other state required records, a teenager watching a day care child, and so on. We did not find any evidence of child neglect or abuse; however, witnessing such an event on any kind of visit is considered unlikely.

In January 1992, the Texas Department of Human Services issued the findings of a federally funded research project assessing the impact of licensed in-home (family) day care operations. The report found that 95 percent of the licensed family day care homes inspected had at least one area of noncompliance. The report concluded that monitoring inspections decrease the average level of noncompliance across the state. Following this report, Texas began conducting unannounced monitoring inspections on 30 percent of its licensed providers per year.

In Utah, the job of regular monitoring is left largely to parents. Utah's enforcement program consists primarily of responding to complaints. Parents are expected to be the primary monitors and to file complaints. The former director of the Department of Human Services stated that parents can do a better and more economical job than government inspectors. He believes state

inspectors cannot watch over what happens day after day in thousands of private homes. Representatives from licensing divisions in states not performing monitoring inspections cited funding problems and a belief that parents do a better monitoring job as the primary reasons for not performing monitoring inspections. They indicated that follow-up inspections in response to complaints from parents is the primary mechanism used for enforcement.

Some licensers, however, express doubt that working parents have either the time or the willingness to properly monitor providers and are uncertain whether parents understand licensing standards well enough to know when a provider is out of compliance. Literature from child advocacy groups seems to support both state and parental involvement. They feel state involvement should come from clear, well defined, and vigorously enforced standards while parental involvement should come from day-to-day observation and interaction with providers. They noted that parents are probably best qualified to detect changes in their child's behavior signaling something may be amiss at a provider's home.

As stated earlier in this report, controversy has surrounded in-home day care within the state because of the deaths of two infants at an in-home facility. Because criminal court proceedings are currently in progress, we were unable to fully investigate circumstances and events associated with this case. However, we were able to review the Office of Licensing's file on this provider and interview the licensing staff involved with the case. In addition, we talked to parents with children in the provider's home at the time the deaths occurred. From our review, we were able to document that several complaints of noncompliance had been filed against the provider. All complaints appear to have been investigated by licensing staff. The staff member mainly involved with the case stated that she can document that she inspected the provider's home 21 times in about a three-year period. She also stated that several of the inspections were unannounced. However, she was not able to substantiate any of the complaints filed against the provider. The file also shows that there were complaints of child abuse and neglect filed against the provider. These complaints were investigated by Child Protective Services and a local law enforcement agency. Neither Child Protective Services nor the law enforcement agency were able to substantiate charges of child abuse or neglect. After news of this case was aired by the media, parents who formerly had children with this provider came forward with charges of suspicious behavior by the provider and unexplained injuries to their children. These charges have not yet been investigated.

In reference to the above case, neither license standards, unannounced monitoring inspections, complaint follow-ups, police investigations, or parental involvement prevented the tragedies that occurred. The events surrounding this case seem to make clear that no amount of government regulation can guarantee the health and safety of children at in-home facilities. However, the goal of licensing is not to guarantee health and safety. The goal of licensing is to promote a minimum level of care from providers in compliance with state standards.

Enforcement programs are designed to ensure that the minimum level of care established by license standards is maintained. Our tests found that most of the state's in-home providers are not in full compliance with license standards. In our opinion, unannounced monitoring inspections would probably increase the level of compliance with state license standards. The study conducted by Texas affirmed that unannounced monitoring increases the level of compliance with license standards. The National Association for the Education of Young Children (NAEYC) estimates that one full-time inspector could conduct annual unannounced monitoring inspections and follow-up visits on 500 providers per year. If this estimate is accurate, one full-time inspector could conduct monitoring inspections and follow-up visits on approximately 20 percent of Utah's licensed in-home providers per year. The degree to which the

state enforces licensing standards is a matter of policy. If it is deemed important that in-home providers maintain full compliance with license standards, a more stringent enforcement program needs to be implemented. Whether or not the state conducts unannounced monitoring inspections is also a policy issue that should be established by Legislative directive.

Information On Substantiated Violations Should Be Released To The Public

Our review of other states found that all of the states we surveyed release information on substantiated complaints and violations to parents. Some states even release information on unsubstantiated complaints. Currently, Utah does not release information about substantiated complaints and violations against providers. In our opinion, this information should be made available to parents. According to the director of the Office of Licensing, a new policy is being implemented that will authorize the release of this information to parents. The director stated that, in accordance with the Government Records Access and Management Act (GRAMA), anyone wanting to review a provider's file is welcome to come to the Office of Licensing, sign a release form and review the file. Files contain documentation on substantiated complaints and violations. Information on unsubstantiated complaints will not be released. The director also indicated that licensing staff will receive training on proper procedures for reporting this information to the public. We discussed this policy with a representative from the Attorney General's Office who stated that the policy appears to be legally sound and in conformity with state and federal law.

During the course of our audit, Representative Jones requested that we also determine whether there is adequate reporting of substantiated complaints and violations filed against licensed commercial child care centers. Commercial centers care for large groups of children and operate in a business like setting. Commercial centers are also licensed through the Office of Licensing. According to the director of the Office of Licensing, the same policy described above for releasing information on in-home facilities applies to commercial centers.

In a related area, we have concern that another policy used by the Office of Licensing could result in parents not receiving full information about some providers. Under current policy, when a provider's license is denied or revoked, the provider's file is closed. After one year, however, the provider can apply for a new license. If the management committee determines that the reason for the denial or revocation has been corrected, a new license can be granted and a new file is opened on the provider. A potential problem exists, however, because parents are not allowed access to information contained in the closed file. A case involving child abuse will help to illustrate the problem. A few years ago, a licensed provider had a relative living in the home. One day the relative burned a day care infant with a cigarette lighter because the infant would not stop crying. Parents of the infant noticed burn marks on the baby's body and reported the case to the police. During the police investigation, the relative admitted to burning the infant. Accordingly the provider's license was revoked. However, about a year later, the provider was granted a new license because the relative was no longer living in the home. Today, parents calling for information about this provider would not be informed that the above incident occurred under the provider's supervision.

In our opinion, parents should have the right to information contained in closed files. Therefore, we recommend that the Office of Licensing review its policy of closing denied or revoked files and that information contained in denied or revoked files be included in new files

when a provider is granted a new license.

In our opinion, parents should have access to information on all substantiated complaints and violations against providers. We recommend that the Office of Licensing follow through with its plans to implement a policy authorizing the release of this information in accordance with GRAMA regulations.

Parents we interviewed expressed concern that they did not know where to go or who to talk to for information about substantiated complaints and violations against providers. As a result, we recommend that the Office of Licensing coordinate with the Office of Child Care in developing a program designed to make parents aware that information about substantiated complaints and violations can be obtained from the Office of Licensing.

Communication With Local Law Enforcement Agencies Appears Adequate

Overall, we have concluded that there appears to be adequate communication and coordination between the Office of Licensing and local law enforcement agencies. During the course of our audit, we reviewed case files involving local law enforcement agencies. We reviewed police reports contained in the files and interviewed licensing staff involved with the cases. Cases we reviewed contained police reports and other documentation showing communication between the law enforcement agency involved and the Office of Licensing. Most of the licensing staff members we interviewed stated there is a high degree of cooperation and interaction with local law enforcement agencies. In Salt Lake, for example, one specific officer is assigned to handle most of the child abuse cases. Whenever a case of abuse is reported against a licensed in-home day care provider, the officer notifies the Office of Licensing of the investigation. Licensors stated that there have only been a few instances where police have failed to notify them of an investigation. Overall, most licensors reported that communication with local law enforcement agencies is good.

When a case of child abuse is reported to licensing staff members, under current policy, licensors are required to immediately notify police. Once a police investigation begins, the licensor notifies the provider of the police investigation and asks the provider for a complete list of all parents with children in the home. The licensor then calls parents to notify them that there is an ongoing police investigation. At this point, licensing staff are not allowed to give parents information or details about the nature of the investigation. Licensors are only allowed to tell parents that an investigation is in progress and nothing more because the allegation has not been substantiated. Licensing staff cooperate with police by providing requested information to the investigating officer but are not directly involved in the police investigation. Police follow-up through verbal communication with licensors and official investigation reports.

Recommendations:

1. We recommend that the Legislature review the degree to which license standards are enforced. If it is deemed important that in-home providers maintain full compliance with license standards, we recommend that the Legislature consider funding for a more stringent enforcement program that may include unannounced monitoring inspections.
2. We recommend that the Office of Licensing review its policy of closing denied or

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revoked files and that information contained in denied or revoked files be included in new files when a provider is granted a new license.

3. We recommend that the Office of Licensing follow through with its plans to implement a policy authorizing the release of information on substantiated complaints and violations in accordance with GRAMA regulations.
4. We recommend that the Office of Licensing coordinate with the Office of Child Care in developing a program designed to make parents aware that information about substantiated complaints and violations can be obtained from the Office of Licensing.

This concludes our review of the licensing of in-home day care facilities by the Office of Licensing within the Department of Human Services. We hope this letter has provided the information you need on this issue. If you have any questions or need additional information, please contact us.

Sincerely,

Wayne L. Welsh
Auditor General

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