



Montgomery County Government

MEMORANDUM

April 3, 1989

TO: County Council

VIA: Andrew Mansinne, Director
Office of Legislative Oversight

A handwritten signature in dark ink, reading "Andrew Mansinne, Jr.", written over the typed name and title.

FROM: Karen Orlansky, ^{VO}Program Evaluator
Office of Legislative Oversight

SUBJECT: Office of Legislative Oversight Memorandum Report: A Status Report on the Regulation of Child Care

I. INTRODUCTION

This memorandum report is provided as a follow-up to the Office of Legislative Oversight's (OLO) recent work in the area of child care regulation. As the Council is aware, State legislation enacted during the 1988 session of the General Assembly significantly altered the County's regulatory role with respect to group child care centers and family day care homes. The purpose of this memorandum report is:

- To provide an overview of how County resources that had been dedicated to the regulation of group child care centers and family day care homes are now allocated;
- To explain the County government's continuing involvement with the licensing of group child care centers and registration of family day care homes in the County;
- To describe the Montgomery County Regional Office of the newly created State Office of Child Care Licensing and Regulation (OCCLR); and
- To summarize the conclusions reached by the State's legally-mandated study of the feasibility of delegating licensing authority to local jurisdictions.

OLO's conclusions and recommendations begin on page 17.

Unless otherwise indicated, this memorandum report uses the term "OCCLR Regional Office" to reference the OCCLR regional office located in Montgomery County (Region 5). In addition, the term "child care center" is used as it is defined in State law.

Research for this memorandum report was conducted during February and March 1989. It involved document and file reviews, and interviews with County and State staff. OLO received full cooperation from all parties.

II. BACKGROUND

During the 1988 legislative session, the Maryland General Assembly enacted the Child Care Consolidation Act (HB 767). This new State law, which became effective July 1, 1988, explicitly preempts the County's authority to regulate child care centers, and consolidates child day care licensing and regulatory activities in the State Department of Human Resources, (DHR). Although the County no longer has authority to directly regulate child care centers, under the Child Care Consolidation Act, providers are still required to comply with locally enforced fire, building, housing, zoning, and environmental health laws and regulations.

Before the 1988 child care consolidation legislation was enacted, group child care centers were licensed by the State Department of Health and Mental Hygiene, with the primary local inspection and licensing function performed by the County Health Department. Family day care homes were registered and monitored by the local Department of Social Services in accordance with State regulations promulgated by the State Department of Human Resources. Technical assistance to prospective and existing child care providers was provided by the Department of Family Resources' Child Care Technical Assistance Office, which was operated on a contractual arrangement with Montgomery College.

To ensure compliance with local fire, building, housing, and zoning codes, the Health Department staff and Department of Social Services staff coordinated with staff from the Department of Fire and Rescue Services, Department of Environmental Protection, and Department of Housing and Community Development. In cases where it was required, a prospective child care provider applied separately to the County Board of Appeals for a zoning special exception.

The next chapter of this report will explain how County resources that had been dedicated to the licensing of group day care centers and the registration of family day care homes are now allocated, and will describe the County's continuing involvement with the child care licensing and regulatory process.

III. THE IMPACT OF STATE LEGISLATION ON COUNTY RESOURCES

A. Overview

The enactment of the Child Care Consolidation Act directly affected jobs of County employees in the Department of Health and State/County employees in the Department of Social Services. These changes in turn affected the Department of Family Resources' contract with Montgomery College for operating the Child Care Technical Assistance Office. In addition, the Child Care Consolidation Act affected County employees in the Departments of Fire and Rescue Services, Environmental Protection, and Housing and Community Development to the extent that County staff now report inspection results to a State office instead of to another County office.

This chapter is organized as follows:

- Section B reviews the allocation of County resources to child care licensing and regulatory activities in the FY89 budget, as approved before July 1, 1988;
- Section C describes the 90-day transition period following the effective date of the Child Care Consolidation Act; and
- Section D tracks the allocation of County resources since the end of the transition period.

B. FY89 Budget Allocation of County Resources Before July 1, 1988

Before the Child Care Consolidation Act took effect on July 1, 1988, the FY89 County budgets for the Health Department, Department of Social Services, and Department of Family Resources were approved with continued funding for the County's involvement with child care licensure and regulatory activities.

1. Health Department. The Child Day Care Licensing Unit in the Health Department's Division of Licensure, Regulatory, and Special Health Services (DLRS) was responsible for providing information and consultation to prospective group child care center licensees, conducting licensure and regulatory inspections, and issuing and renewing group day care licenses in accordance with State regulations and policies established by the State Department of Health and Mental Hygiene.

The Child Day Care Licensing Unit was approved in the FY89 operating budget for \$284,800 in personnel costs plus fringes. This appropriation was to fund 8.0 workyears representing the following 10 positions (6 full-time and 4 part-time):

- One Program Manager;
- One part-time Program Assistant to the Program Manager;
- Two full-time and one part-time Community Health Nurses;
- Three full-time and one part-time Child Development Specialists; and
- One part-time Administrative Aide.

In addition to the 8.0 workyears assigned exclusively to work on the licensing of group day care centers, other Health Department staff were assigned to inspect group day care centers as one of their many areas of responsibilities.¹ Specifically, the environmental health specialists (16 full-time) and the wells and septs review unit staff (six investigators, three construction code analysts) were responsible for conducting inspections of child care facilities for compliance with certain State and local regulations governing environmental health and sanitation, e.g., food preparation, on-site well and septic systems. Within DLRS, supervision of the Child Day Care Licensing Unit and other related inspection activities also consumed some time of the Division Director, Chief of the Field Services Division, and Chief of the Program Services Division.

¹ Child care related inspections constitute a relatively small percentage of the over 13,000 inspections conducted annually by the environmental health specialists.

2. Department of Social Services (DSS). The Family Day Care Registration Unit, organizationally located in the Department of Social Services' Division of Family Services, was responsible for registering family day care providers, and for enforcing compliance with State law and regulations governing family day care. This unit also administered the Child Care Food Program, which is a federally funded program that reimburses family day care providers for serving nutritious meals to children in their care.

In the FY89 operating budget, the Family Day Care Registration Unit was approved with a total of 13.5 positions, of which the following 9.5 State/County positions were allocated to work directly with the regulation of family day care:

- One Social Worker IV;
- One Human Service Specialist II;
- Six full-time and one part-time Social Worker II's; and
- One Office Secretary.

For FY89, personnel costs for these 9.5 positions totalled \$306,050 plus fringe, of which the County paid approximately \$82,000 to cover the County's salary and benefit supplement for the State/County positions covered by the so-called "dual merit system agreement".¹ The FY89 budget included an additional \$15,000 contribution from the County to cover some of the Family Day Care Unit's operating expenses.

In the approved FY89 budget, the four other positions in the Family Day Care Registration Unit were County government positions assigned to the Child Care Food Program. The County receives 100 percent federal reimbursement for these four positions (One Social Worker II, one Program Assistant II, one Nutritionist, and one Administrative Aide) through the State Department of Human Resources.

3. Department of Family Resources (DFR). In 1986, the increasing need for child care in the County led the Department of Family Resources to initiate a program to provide technical assistance to the many potential providers who need help and encouragement to get into the child care business. Operated on a contractual arrangement with Montgomery College, the Child Care Technical Assistance Office offered general and individualized assistance to prospective and existing child care providers regarding issues such as: the location of child care needs in the County; the process of becoming a licensed/registered child care provider; the financial aspects of operating a child care business (budgets, taxes, insurance, business structures); and curriculum development and training. The FY89 budget was approved with \$62,650 allocated to DFR's Child Care Resources Division to fund the contract for the Child Care Technical Assistance Office.

4. Department of Fire and Rescue Services (DFRS), Department of Environmental Protection (DEP), and Department of Housing and Community Development (DHCD). The involvement of County staff from DFRS, DEP, and DHCD with child day care facilities revolves around the County's responsibility for local enforcement of fire, building, housing, and zoning codes. Specifically:

¹ Originally executed in 1977, this written agreement between the County and the State clarifies the County's agreement to pay certain supplemental salary and fringe benefits to State/County DSS employees.

- County staff from DFRS enforce the Fire Code, which is the network of laws and regulations governing fire protection;

- County staff from DEP review building plans, conduct requisite inspections, and issue building permits, electrical permits, and use and occupancy permits; DEP staff also inspect for compliance with the County's zoning laws including any conditions imposed by the Board of Appeals when granting a special exception; and

- County staff from DHCD enforce the County's housing codes.

Data on the number of hours spent by DFRS, DEP, and DHCD staff specifically related to child care are not readily available. For staff from these departments, child care centers and/or family day care homes constitute only a relatively small percentage of the literally thousands of inspections conducted annually. (For example, in FY88, the Field Fire Code Staff conducted over 8,000 inspections, the Housing Code enforcement staff conducted over 3,000 inspections of single-family structures, and the Construction Codes Enforcement Division conducted over 200,000 inspections.) Although relatively not a large number, child care facilities are, nonetheless, an important and ongoing part of the inspection workload.

C. Transition Period: July 1, 1988 - September 30, 1988

As of July 1, 1988, pursuant to the newly enacted Child Care Consolidation Act, the County government was explicitly preempted from regulating child care centers. At the request of the State Department of Human Resources, however, County Executive Kramer agreed to provide transitional assistance to the State for a 90-day period beginning July 1, 1988. The County Executive designated the Director of the Department of Family Resources as the County's official liaison with the State on child care licensing consolidation matters.

During the 90-day transition period, County staff from the Health Department worked with State staff from the State's newly established Office of Child Care Licensing and Regulation (OCCLR) Regional Office located in Montgomery County to facilitate the transfer of regulatory responsibilities from the County to the State.¹ In particular, County staff assisted the OCCLR Regional Office to complete the regulatory process for the many group child care center and family day care home providers who had applied to open as licensed or registered facilities by September 1, 1988.

In addition to actual on-the-job assistance, County staff provided 15 hours of classroom training for the new OCCLR Regional Office staff. Representatives from the Department of Fire and Rescue Services and Department of Environmental Protection joined with staff from the Health Department's former Child Day Care Licensing Unit to explain the local regulatory process a prospective group child care center provider goes through to become licensed.

¹ As indicated earlier, this memorandum report uses the term "OCCLR Regional Office" to reference the OCCLR regional office located in Montgomery County (Region 5).

D. Allocation of County Resources Since State Takeover

1. Overview. In June 1988, the Director of the Department of Family Resources briefed the Council's Health and Human Services Committee on the State's takeover of child care licensing and regulation. At that time, the Council was informed of the County Executive's decision that resources becoming available to the County as a result of the Child Care Consolidation Act would be reallocated to support the County's child care programs.

As explained above, County staff were available to assist the State during the 90-day transition period. Officially, however, effective July 1, 1988, County resources from the Health Department and the Department of Social Services that had been allocated directly to child care licensing and registration were either transferred to the State Department of Human Resources or otherwise reallocated. The remainder of this chapter discusses the details of these changes.

2. State/County Employees Transferred from the Department of Social Services to the Department of Human Resources. As enacted, the Child Care Consolidation Act included language addressing the possible transfer of employees from local governments to the Department of Human Resources' newly created State Office of Child Care Licensing and Regulation (OCCLR). Specifically, Section 7 of HB 767 provided that:

"...the Department of Human Resources may enter into an intergovernmental agreement with a local government to ensure that all persons who are classified employees of a local government and who elect to apply, and are selected to transfer, to the DHR under this Act shall be transferred without any change or loss of rights or status, and shall retain their merit system and retirement status unless as otherwise specifically provided in this Act."

As of July 1, 1988, pursuant to this provision of the new State law, eight State/County positions that had been budgeted for FY89 to work on family day care registration were officially transferred to the State Department of Human Resources' Office of Child Care Licensing and Regulation Regional Office located in Montgomery County. The eight specific positions transferred were:

- One Social Worker IV;
- One Human Service Specialist II; and
- Six Social Worker II's;

The part-time Social Worker II position that had been allocated to family day care registration was assigned elsewhere within DSS prior to July 1, 1988. The remaining positions budgeted for the Family Day Care Registration Unit were those assigned to the Child Care Food Program, a program that the County continues to receive federal reimbursement for administering. These positions (two Program Specialists, Nutritionist, Principal Administrative Aide, and part-time Social Worker II) were transferred to the DSS' Income Maintenance Division's Child Care Programs, which now has responsibility for administering the Child Care Food Program. This transfer is reflected in DSS' proposed FY90 operating budget.

To carry out the intent of HB 767 to protect the employee rights of individuals affected by the Child Care Consolidation Act, the County agreed, with the consent of the State, to continue to classify the eight positions under the County's merit system in accordance with the terms and conditions of the so-called "dual merit system agreement".¹ According to a December 12, 1988 Addendum to the 1977 agreement, the County agreed that the eight individuals would continue to be members of the Montgomery County Government Merit System, "...to exactly the same extent and degree as they were determined to be members of the Montgomery County Government Merit System under the terms of the 1977 agreement, but only as long as each individually named employee continues to hold and occupy the specific position, which he or she now occupies."

What this agreement means is that each of the transferred employees will continue to receive the salary and benefit supplement from the County as long as he/she remains in the same position. Although the County is no longer involved with the supervision or oversight of the child care regulatory function, the County has agreed to calculate the supplement in exactly the same manner as such supplements have been calculated under the 1977 agreement.

In the recommended FY90 budget, \$105,190 has been placed in a non-departmental account to pay for the continuation of the County's supplement to State salary and fringe benefits for the individuals who transferred to the OCCLR Regional Office. These funds are to be administered by the Department of Social Services.² The actual amount of salary and fringe benefit received by individual employees ranges from approximately \$5,000 to approximately \$28,000.

It is anticipated that, over time, through attrition, the number of employees continuing to receive the County supplement will diminish. Whenever an incumbent vacates (or otherwise ceases to occupy) one of the transferred positions, the County will cease to classify that particular position as a State/County merit system position.³ The Addendum clarifies that the County shall not be obligated to supplement the salary or benefits of any State employee who is appointed to a former State/County position after that position ceases to be classified as a position within the County's merit system.

3. Continuing Role of County Health Department in Child Day Care
Since July 1, 1988. The continuing involvement of the County Health Department in child day care was outlined in a July 25, 1988 memorandum from the State's Deputy Secretary for Public Health Services to all Health Officers

¹ Originally executed in 1977, this agreement clarifies the County's payment of certain supplemental salary and fringe benefits to State/County/DSS employees.

² The non-departmental account, titled "State Positions Supplement" also contains approximately \$20,000 to fund the County supplement to State salaries and fringe benefits paid to two secretaries to Montgomery County judges appointed to the Court of Special Appeals and Court of Appeals.

³ One of the eight positions has already been vacated, so the FY90 budget amount is intended to cover the supplement for the remaining seven positions.

in Maryland. The memorandum acknowledged the transfer of authority to regulate child day care to the State Department of Human Resources, but specified that local health departments will continue to provide a number of minimum public health services to family and center based child day care programs including:

- A point of contact where day care providers and regulators may call to report communicable disease outbreaks; and
- Consultation from a public health nurse in the specific areas of infant centers and special needs children, and on other general health related day care matters such as immunization records, dispensing medications, and daily health observation.

In addition, the memorandum explicitly instructs local health departments to continue a number of environmental health services for both group day care centers and family day care homes. In addition to providing technical assistance and consultative services upon request, local health departments were directed to continue water and sewer related inspections, and for group day care centers to continue reviews of food service areas and food service equipment, evaluations of swimming pools, and evaluations of centers for lead paint content.

Here in Montgomery County, much of the public health related work for child day care is being performed by the Community Health Nurses (CHNs) who had been assigned to the Group Day Care Licensing Unit in the Health Department. The environmental health related work for child day care is being performed by the environmental health specialists in the Health Department's Division of Licensure and Regulatory Services, who continue to inspect child care facilities as one of many types of buildings that must comply with locally enforced laws and regulations concerning environmental health and sanitation.

As of July 1, 1988, after assisting the OCCLR Regional Office during the 90-day transition period, the three Community Health Nurses (2 full-time and one part-time) who had been assigned to the Group Day Care Licensing Unit, were directed to continue work with child care providers, but in a consultative capacity instead of a regulatory one. Also, instead of only dealing with group day care centers, the CHNs were instructed now to expand their consultation to both group centers and family day care homes.

Activities of the CHNS during FY89 included those specifically outlined by the State's Deputy Secretary for Public Health Services, as well as a number of additional local initiatives. Specific projects included:

- Conducting workshops on health related issues for prospective and current child care providers;
- Developing "Health Talk," a newsletter for child care providers that contains health-related information;
- Preparing reference material on various health issues to be distributed to child care providers;
- Attending the State's orientation sessions for prospective child care providers; and

- Responding to individual requests from child care providers and DHR staff for information and advice.

In addition, in recent months, the CHNs have begun attending the OCCLR Regional Office's monthly staff meetings. This provides an opportunity to discuss health related matters with the OCCLR Regional Office staff, and a forum for improving coordination.

Interviews with OCCLR Regional Office staff indicate that the CHNs are perceived as providing a valuable service, both to child care providers and to the State regulatory staff. Especially because OCCLR does not currently employ staff with a public health expertise (nor is it anticipated that OCCLR will in the foreseeable future), it is seen as important for both the licensing staff and the provider community to continue to be able to turn to the County as an information resource on health related matters.

For FY90, environmental health related inspections (e.g., wells and septic, food preparation) of child care facilities will continue to be performed by the inspection staff in the Health Department's Division of Licensure and Regulatory Services. However, because they are no longer performing a regulatory function, the County Executive is recommending in the FY90 budget that, as of July 1, 1989, the three Community Health Nurse II positions (still 2.5 workyears) be reallocated within the Health Department from the Division of Licensure and Regulatory Services to the Child/Adolescent Section in the Division of Family Health Services. As of this writing, it is planned that the CHNs will be able to continue to concentrate their time on providing consultative services to the OCCLR Regional Office staff and to prospective and existing group child care center and family day care home providers. The cost of the three CHN positions (2.5 workyears) in the FY90 budget is \$131,560.

4. Health Department Child Care Licensing Staff Transferred to the Department of Family Resources (DFR). Of the 8 workyears (10 positions) formerly in the Child Day Care Licensing Unit of the Health Department, five full-time professional and one part-time clerical workyears were transferred to the Child Care Division of DFR as of July 1, 1988. As indicated above, by mutual agreement, the County licensing staff provided assistance to the OCCLR Regional Office for a 90-day period following the official transfer of licensing authority.

The appropriation resolution (Council Resolution No. 11-1097, adopted November 15, 1988) that formally amended the FY89 operating budget to transfer \$268,640 from the Health Department to the Department of Family Resources stated that:¹

"Available resources are being transferred from the Department of Health to the Department of Family Resources to provide technical assistance to individuals or groups interested in establishing child day care programs, and to provide assistance to businesses and employers which choose to participate in child day care for

¹ Article 3, Section 309 of the Charter provides that appropriation transfers between departments shall be made only by the Council upon recommendation of the County Executive.

their employees. In addition to these tasks, staff will serve as liaison with the new State licensing authority to assist in coordinating its activities with the Departments of Fire and Rescue Services, Environmental Protection, and Housing and Community Development."

The 5.5 Health Department workyears were transferred to DFR's Child Care Resources Division. Established in 1988, DFR's Child Care Resources Division is responsible for a broad range of activities related to developing, implementing, and monitoring policies, programs, and services which stimulate the expansion of quality child care in Montgomery County.

Interviews with the Child Care Division staff indicate that the specific job assignments of the transferred employees have shifted several times during the past six months as the Division itself has been in the process of developing the best organization to accomplish its many and varied functions, including administering a number of new initiatives. Based upon a reorganization of the Division in February 1989, as of this writing, the transferred staff is assigned as follows:

- Two Child Development Specialists have primary assignments in the Community Services Activity, which includes staff work to support C.O.N.T.A.C.T. Child Care (described below), the Commission on Child Care, involvement with the County's Kindergarten/Day Care Pilot Project, and work on special legislative and policy issues related to child care;

- The Program Manager, one Child Development Specialist, and the Administrative Aide position have primary assignments in the Technical Assistance activity, which includes coordinating with the OCCLR Regional Office, coordinating child care facilities in public buildings (including the modular day care project), developing procedures for administering the Child Care Revolving Loan Fund, and working on zoning and land use issues related to child care; and

- One of the Child Development Specialist is assigned to the Child Care and the Workplace activity, which includes providing information to local employers about child care benefit options.

As explained in a briefing to the Council in June 1988, the transfer of staff from the Health Department enabled DFR to terminate its contract with Montgomery College to operate the Child Care Technical Assistance Office. In its place, DFR established a similar service staffed by County employees. Officially launched in November 1988, C.O.N.T.A.C.T. Child Care (Consultation, Orientation, Networking, Technical Assistance, Advocacy, Coordination, and Training) was set-up to provide an enhanced array of services to prospective and current child care providers including start-up seminars, individual consultations, information on good business practices, and other workshops and conferences. A one-page brochure describing the services of C.O.N.T.A.C.T. is attached as Exhibit A.

DFR's contract with Montgomery College for the Technical Assistance Office was terminated in September 1988, generating a savings of \$46,000 in DFR's FY89 budget. This \$46,000 was transferred from the Child Care Division to the Division on Children and Youth to fund an increase in the number of children assisted through the Respite Care Program, which is a program that provides care in a home-like setting to handicapped children and young adults.

5. Departments of Fire and Rescue Services, Housing and Community Development and Environmental Protection Continue to Perform Required Inspections. As reviewed earlier, although the Child Care Consolidation Act explicitly preempted the County's authority to regulate child care centers, the County is still responsible for enforcing compliance with locally enforced fire, building, housing, and zoning codes. The role of the County's Departments of Fire and Rescue Services, Environmental Protection, and Housing and Community Development changed July 1, 1988 only insofar as the various inspectors now communicate the results of their respective inspections and reviews to the OCCLR Regional Office instead of to the County Health Department and Department of Social Services.

Interviews with staff from both the County and State offices indicate that the shift in regulatory authority from the County to the State has, to date, created no serious problems for County staff responsible for enforcing compliance with locally enforced fire, building, housing, and zoning codes. Despite some new forms and several new procedures, the inspection and review of child care facilities by DFRS, DEP, and DHCD staff continue much as they did before July 1, 1988.

There is no single point of entry from the OCCLR Regional Office to the County government. Instead, staff from the OCCLR Regional Office have established separate but direct lines of communication with the various County offices responsible for conducting the relevant inspections and reviews, e.g., requests for inspections of group centers for compliance with the Fire Code are sent directly from the OCCLR Regional Office to the Office of the Fire Marshal; and requests for inspection of family day care homes for compliance with the Housing Code are sent directly from the OCCLR Regional Office to the Department of Housing and Community Development's Code Enforcement Office. Prospective licensees are instructed to apply separately to the Department of Environmental Protection for use and occupancy permits, and if required, separately to the County Board of Appeals for a zoning special exception.

As stated in the resolution formally transferring funds from the Health Department to the Department of Family Resources (Resolution No. 11-1097), Department of Family Resources' staff is available to assist in coordinating activities with the Departments of Fire and Rescue Services, Environmental Protection and Housing and Community Development if providers encounter problems in obtaining the required inspections and reviews from local County departments. While DFR staff reports having to spend only a minimal amount of time "troubleshooting", it must be noted that fewer than a dozen new centers have applied to be licensed since September 1988. How well State and County inspections are able to be coordinated will be tested during the coming six months as traditionally a larger number of prospective child care providers apply during the spring and summer months to become licensed/registered facilities with a September opening.

IV. THE MONTGOMERY COUNTY REGIONAL OFFICE OF THE STATE OFFICE OF CHILD CARE LICENSING AND REGULATION

A. Overview

In order to implement Child Care Consolidation Act, the State Department of Human Resources (DHR) established the State Office of Child Care Licensing and Regulation (OCCLR). The Director of the State OCCLR located in Baltimore was appointed in September 1988. The Montgomery County Regional

Office is now one of ten OCCLR regional offices and four field offices located throughout the State. (As noted earlier, unless otherwise indicated, this report uses the term "OCCLR Regional Office" to reference the OCCLR regional office located in Montgomery County.)

Because the OCCLR is still in the first year of operation, it is too soon to draw conclusions about the eventual effectiveness and efficiency of the State-run child care licensing and registration functions. Instead, the intent of this chapter is to describe the status of the OCCLR Regional Office's staffing, workload, office facilities, office organization, and interaction with County government agencies.

It should be noted that the OCCLR is in the process of promulgating new regulations governing child care centers and family day care homes; the new regulations are expected to be finalized during 1989. OCCLR is also in the process of establishing locally based advisory committees to help advise and review each of the OCCLR regional offices. According to the Director of OCCLR, this network of advisory committees is expected to be in place by the end of the summer of 1989.

B. OCCLR Regional Office Staffing

The OCCLR Regional Office in Montgomery County is budgeted for a total of 17 staff:

- One Regional Manager;
- One Licensing Specialist Supervisor;
- 13 Licensing Specialists; and
- Two Clerical staff.

As of March 1989, the OCCLR Regional Office was still operating under the direction of an Acting Regional Manager. With the exception of one Licensing Specialist position, all of the other professional level positions in the OCCLR Regional Office had been filled by early 1989; the final Licensing Specialist job has been offered and the new employee is expected to start work early next month. The two clerical positions, which have been staffed by temporary employees since July 1988, are also expected to be filled with permanent staff by early April 1989.

At present, seven of the 17 staff positions are still filled with individuals who were transferred on July 1, 1988 to the OCCLR Regional Office from the County's Family Day Care Registration Unit.¹ These seven individuals now hold the following positions: the Acting Regional Manager position; the Licensing Specialist Supervisor position; and five of the Licensing Specialist positions.

Other Licensing Specialist positions were filled during the past six months. Among those hired were a former child care licensing inspector from Prince George's County, several former child care center directors, a former child development course instructor, a former social worker, and a former protective services investigator.

¹ As noted in Chapter III, although 8 employees transferred from DSS to DHR on July 1, 1988, one of the transferred employees has since left.

The State OCCLR in Baltimore is in the process of reclassifying all Licensing Specialists to the permanent job class of Child Care Licensing Specialist. The position will be a Grade 14 (according to the State grade classification system), with a salary range of \$23,974-\$31,503.

C. OCCLR Regional Office Workload

As of March 1989, the OCCLR Regional Office reported approximately 240 licensed group day care centers and 1200 registered family day care homes in Montgomery County. Although almost all of these facilities were initially licensed or registered before the Child Care Consolidation Act took effect, as of July 1, 1988, the State assumed the responsibility for renewing all 240 center licenses and for monitoring all 1200 family day care homes.

This workload is on top of processing applications and conducting inspections for new child care centers and family day care homes, and conducting investigations of all complaints received on licensed/registered and unlicensed/unregistered group centers and family day care homes. In addition, the new State law amended the definition of child care center, such that non-public nursery schools for children ages 2-4 are now included as facilities that must be licensed by DHR.

According to the OCCLR Regional Office staff, while applications to become registered family day care providers have remained high, fewer than a dozen prospective center licensees have applied to be licensed since September 30, 1988, the end of the 90-day transition period following the July 1, 1988 effective date of the new State law. The number of center license applicants is expected to increase during the coming months as traditionally providers apply during the spring and summer months to become licensed in order to meet a September opening date.

Conversations with several directors of licensed child care centers in the County suggested that the OCCLR Regional Office has not been able to keep current with all center license renewals. This observation was confirmed through interviews with the OCCLR Regional Office staff. Recognizing that renewals were not consistently being conducted in a timely fashion, OCCLR has been sending administrative letters of extension to centers operating with licenses that are more than one-year old. Although data were not readily available on the exact number of outstanding renewals, the Acting Regional Director indicated that the OCCLR Regional Office expects to be fully caught up within the next several months.

D. OCCLR Regional Office Facilities

On July 1, 1988, because the State had not yet leased more permanent office facilities, the OCCLR Regional Office in Montgomery County was temporarily located in the DSS's space at 4630 Fishers Lane that had been used by the Family Day Care Registration Unit. As of March 1989, the OCCLR Regional Office staff continues to operate from the same limited office space.¹

¹ At present, OCCLR does not reimburse DSS for the use of the space at Fishers Lane.

While interviews with staff indicate that everyone is making the best of a difficult situation, the current space is apparently inadequate to meet the needs of the OCCLR Regional Office. A site visit to the OCCLR Regional Office Fishers Lane facilities confirms that staff are operating under adverse working conditions; for example, there are not enough phones or desks, the facilities for interacting with prospective providers and other members of the public are inadequate, and the current space has not allowed for a permanent filing system to be established.

According to the Acting Regional Manager of the OCCLR Region, there have been several unsuccessful attempts to negotiate more permanent space during the past nine months. The State is hoping to finalize negotiations on larger and more permanent space for the OCCLR Regional Office in the near future, and the OCCLR Regional Office is expected to be relocated by June 1989.

E. OCCLR Regional Office Organization

From July 1988 until March 1989, the OCCLR Regional Office staff in Montgomery County was organized into two teams. Within each team, Licensing Specialists were assigned geographically to handle both group child care centers (including nursery schools) and family day care homes in particular zip code areas:

- The "Intake Team" was responsible for providing information to prospective providers and for conducting all inspections associated with initially licensing group child care centers and registering family day care homes. The Intake Team also conducted investigations on complaints of unregistered centers and homes.

- The "Field Team" was responsible for conducting all inspections associated with the annual renewals of group child care center licenses and ongoing monitoring of registered family day care homes. The Field Team also conducted investigations of complaints on licensed centers and registered homes.

As of mid-March 1989, in response to a directive received from the State Office of Child Care Licensing and Regulation, the OCCLR Regional Office in Montgomery County was reorganized. Instead of being divided into two teams with different responsibilities, each Licensing Specialist is now responsible for all licensing and regulatory activities for prospective and existing centers and homes located within an assigned geographic area. Under the new system, in addition to working with prospective providers during the initial licensing/registration process and investigating all complaints, each Licensing Specialist will handle the ongoing license renewal and monitoring work for approximately 18 group child care centers and 95 family day care homes.

F. Interaction with County Government

As discussed earlier, there is no single point of entry from the OCCLR Regional Office to the County government. Instead, the OCCLR Regional Office staff has established separate lines of communication with the various County departments responsible for conducting the required inspections to ensure compliance with locally enforced fire, building, housing, zoning, and environmental health laws and regulations (County Departments of Fire and Rescue Services, Environmental Protection, Housing and Community Development,

and Health). In addition, staff in DFR's Child Care Division is available to "troubleshoot" if prospective providers encounter any problems with obtaining timely inspections from the various County departments.

Also, as reviewed earlier, interviews with County and State staff suggest that since September 1988, the State and County staff have developed reasonable procedures for working together, and there have not been any serious problems of coordination. While the Child Care Division staff reports having to spend only a minimal amount of time "troubleshooting", it must be noted that fewer than a dozen new centers have applied to be licensed since September 1988. Any problems of coordination are likely to surface during the coming six months, as traditionally a larger number of child care providers apply during the spring and summer months to become licensed/registered facilities with a September 1989 opening date.

The OCCLR Regional Office staff's ongoing relationship with County staff in DFR's Child Care Division and the County's Health Department is still in the process of being developed. Exactly how the County is able to supplement/support the State's licensing and regulatory function is something that will inevitably have to be worked out over time. For now, it can be described as follows:

- Interaction with Health Department. Consistent with the memorandum sent to all local Health Departments in July 1988, the Licensing Specialists in the Office of Child Care have called upon the Community Health Nurses (CHNs) in the County's Health Department for advice on health-related matters such as communicable diseases and immunizations. In addition, the OCCLR Regional Office staff generally refers prospective providers who are interested in offering infant care to the CHNs for plan review and consultation; in some cases, the Licensing Specialists are requiring providers to consult with the CHN a certain number of times as a prerequisite to becoming and remaining licensed.

- Interaction with C.O.N.T.A.C.T. Child Care. Because the County's technical assistance service for prospective and existing child care providers was not officially launched until November 1988 (see Exhibit A), it is too soon to describe how C.O.N.T.A.C.T. will relate to the OCCLR Regional Office in the long run. In recent weeks, a representative from C.O.N.T.A.C.T. has started attending the orientation meetings for prospective providers held by the State; and the State office has begun to refer prospective providers to C.O.N.T.A.C.T. to receive technical assistance before formally beginning the State's licensure/registration process.

- Interaction with Child Care Connection. The Child Care Connection, an information and referral service under contract to DFR, needs to know which child care providers in the County are licensed/registered in order to pass accurate information along to members of the public. Because there is no alternative source for the information, DFR is dependent upon the OCCLR Regional Office for an up-to-date listing of licensed centers and registered family day care homes. DFR apparently has had some problems in receiving timely and accurate lists from the OCCLR Regional Office, and the staff from DFR and the OCCLR Regional Office are working together to figure out a more mutually satisfactory arrangement. According to the State OCCLR Director, this year the OCCLR intends to automate their recordkeeping, which would allow for an electronic transfer of timely information from the OCCLR Regional Office to DFR.

V. DEPARTMENT OF HUMAN RESOURCES' STUDY OF THE FEASIBILITY OF DELEGATING LICENSING AUTHORITY TO LOCAL AGENCIES

The Child Care Consolidation Act (Section 8 of HB 767), mandated that the State Department of Human Resources (DHR) study the feasibility of delegating the authority for the administration of child care services to local jurisdictions. The law directed DHR to report back to the House Environmental Matters Committee and the Senate Economic and Environmental Affairs Committee by December 1, 1988. DHR contracted with Ms. Gwen Morgan of Wheelock College to conduct the required study, which was forwarded to the Chairmen of the designated Senate and House Committees on January 18, 1989.

Much of Ms. Morgan's study was based on a recent survey of all state child care licensing offices. The survey found that seven states formally delegate at least some child care licensing authority to the local level, either by administrative discretion or through a statutory provision for alternative local licensing. In addition, it is apparently "common" for State legislatures to assign the responsibility for regulating family day care to the county level. (Ms. Morgan's study uses the term "common" without quantifying an exact number of states.)

In her summary report, Ms. Morgan observes that, in general, "...decentralization works well for services, and centralization works well for quality controls and statewide policy. That is probably the reason that most states do not delegate licensing to local government." Her study does, however, identify a number of advantages that can come with selective delegation, i.e., delegating only if a locality agrees to certain conditions. While Ms. Morgan's report does not cite any examples in Maryland, these advantages appear to be quite applicable to Montgomery County. Specifically, the advantages to selective delegation cited in the report are:

- A strong locality with a commitment to effective regulation might commit more staff resources to its operation than the state could assign; and
- Such a locality might be able to combine state delegated licensing powers with other local powers to coordinate inspection processes for licensing, health approvals, building and fire safety approvals.

Although a number of possible advantages to selective delegation are cited in the report, Ms. Morgan's bottom-line recommendation in her final report is that, "Maryland's goals would best be met in a State-level system without delegation. It is recommended that no delegation be made for center licensing and that a strong statewide system be developed under full state control. Statewide delegation is therefore not recommended".

In the cover memo transmitting Ms. Morgan's study, the Secretary of DHR indicated DHR's concurrence with the recommendation not to delegate any licensing authority at this time. Specifically, the Secretary wrote the following:

"Based on these analyses and the fact that Maryland is just going through a wrenching change in its licensing system from three Departments to one, we see no superior advantages to delegation at this time. Indeed, through the new Office of Child Care Licensing and Regulation, we hope to achieve administrative simplicity by having one licensing authority while concomitantly ensuring that all of Maryland's children are afforded the same minimum level of protection."

VI. CONCLUSIONS

- A. Although the Child Care Consolidation Act that went into effect July 1, 1988, explicitly preempted the County's authority to regulate child care centers, County resources continue to be used for activities related to the regulation of child care in Montgomery County. The County Executive has kept his commitment that resources becoming available to the County as a result of the Child Care Consolidation Act be reallocated to support the County's child care programs. For FY90, it is estimated that the County will spend at least \$500,000 to continue activities that either directly or indirectly support the State's mission to license child care centers and register family day care homes.

1. County staff remain involved in a number of activities that either directly support or complement the State's authority to license child care centers and register family day care homes. These activities, along with estimated fiscal impacts, are summarized below.

a. Community Health Nurses (CHNs) in the County's Health Department continue to be involved in the licensing/registration process in a consultative capacity. Three County CHNs (2.5 workyears) serve as a resource to the Office of Child Care Licensing and Regulation's Regional Office in Montgomery County, and provide consultation to prospective and existing child care providers on issues such as infant care, communicable disease, immunizations, and injury control. The cost of these 2.5 workyears in the FY90 budget is approximately \$132,000.

b. County staff in the Department of Fire and Rescue Services, the Department of Environmental Protection, and the Department of Housing and Community Development continue to be directly involved in the child care regulatory process because the County government is still responsible for conducting inspections and reviews to ensure that child care providers comply with locally enforced fire, building, housing, and zoning codes. In addition, inspection staff from the County's Health Department continue to inspect child care facilities for compliance with State and local regulations governing environmental health and sanitation matters including well and septic systems, food preparation, and lead paint content.

While it is recognized that inspections of child care facilities constitute a relatively small percentage of the total number of inspections conducted by these County departments, child care related work is nonetheless an important and ongoing workload demand. While data were not available to calculate an exact price tag on the County's cost, conservatively, it is estimated that at least \$50,000 in staff time is spent annually on conducting these required inspections and reviews.

c. County staff in the Department of Family Resources' Child Care Resources Division continue to be involved in a variety of activities that complement the State's child care regulatory functions. These activities include:

- Staffing Consultation, Orientation, Networking, Technical Assistance, Advocacy, Coordination, and Training (C.O.N.T.A.C.T.) Child Care, a program that offers technical assistance to prospective and existing child care providers on issues such as how to start a group center or family day care home, the financial aspects of operating a child care business, and staff training;

- o Conducting special programs to stimulate interest in becoming a licensed child care center or registered family day care home provider;
- o Providing assistance to prospective child care providers who encounter problems with obtaining the required approvals from County departments for compliance with local fire, building, housing, and zoning codes; and
- o Managing the contract to operate Child Care Connection, the County's child care information and referral service.

While it is difficult to calculate the exact amount of DFR staff time devoted to these and other related activities, the Director of the Child Care Resources Division confirmed that the \$268,000 supplemental appropriation (approved in November 1988) that transferred 5.5 workyears from the Health Department to DFR is a reasonable approximation.

2. In addition to funding the above activities of County staff, the County continues to provide salary and benefit supplements to former State/County Department of Social Services' (DSS) employees transferred, on July 1, 1988, to the Department of Human Resources' Office of Child Care Licensing and Regulation (OCCLR) as a result of the Child Care Consolidation Act.

The FY90 budget includes \$105,000 in a non-departmental account to fund the County's supplement to salaries and benefits of employees transferred from DSS to OCCLR. This funding fulfills the County's commitment that employees who were transferred to DHR as a result of the Child Care Consolidation Act, "... shall be transferred without any change or loss of rights or status, and shall retain their merit system and retirement status." Although it is anticipated that, over time, through attrition, the County's payment of salary and benefit supplements will eventually decline, because the supplement amounts increase annually with the cost-of-living adjustment, the County's contribution may well increase before it eventually decreases.

- B. Because the State Office of Child Care Licensing and Regulation (OCCLR) and its network of regional offices are still in the first year of operation, it is too soon to draw conclusions about the eventual effectiveness and efficiency of the State-run child care licensing and registration functions. For now, it is observed that the OCCLR Regional Office in Montgomery County is, in certain respects, still in the process of getting organized.

The OCCLR Regional Office has successfully developed reasonable working relationships with a number of County departments, and is in the process of working out cooperative arrangements with others. At the State-level, this year, OCCLR expects to finalize new child care regulations and to establish a network of regional advisory committees.

While recognizing that the OCCLR Regional Office staff is working hard to perform their statutory functions, in certain respects, the OCCLR Regional Office appears to remain in a start-up mode, even though it has been almost nine months since the Child Care Consolidation Act took effect. For example, while the OCCLR Regional Office expects to be fully staffed by April 1989, it is still operating with an Acting Regional Director, and because DHR has not yet leased more permanent space, the OCCLR Regional Office continues

to operate from inadequate "temporary" office space that had been used by DSS's Family Day Care Registration Unit. During the coming months, the OCCLR Regional Office expects to catch up with center license renewals, which had fallen behind schedule.

- C. The consultant hired by the State Department of Human Resources to conduct the legally mandated study on the feasibility of delegating licensing authority to local jurisdictions concluded that, "Maryland's goals would best be met in a State-level system without delegation." The study does, however, cite a number of possible advantages to selective delegation that appear relevant to Montgomery County.

The Department of Human Resources, as required by HB 767, conducted a study on the feasibility of delegating licensing authority to the local level. The study, which was conducted by a consultant, recommends that a strong statewide system be developed under full State control. The Secretary of DHR, in a letter transmitting the study to the House Environmental Matters Committee and the Senate Economic and Environmental Affairs Committee, indicated that the Department agrees that there would be no superior advantages to delegation at this time.

Despite a bottom-line recommendation to develop a system under State control, the consultant's study does cite a number of possible advantages to selective delegation that appear quite relevant to Montgomery County. Specifically, the study notes that advantages to selective delegation are:

- A strong locality with a commitment to effective regulation might commit more staff resources to its operation than the State could assign; and
- Such a locality might be able to combine State delegated licensing powers with other local powers to coordinate inspection processes for licensing, health approvals, building and fire safety approvals.

VII. RECOMMENDATIONS

- A. County resources allocated to child care licensing and related regulatory activities should continue to be tracked by the Executive branch, and reported annually to the Council.

The Council should request an annual briefing from the Executive branch on the allocation of County resources to activities related to the licensing and regulation of child care. In addition to including the resources in the various County departments that are directly involved in the licensing/registration process (e.g., inspections conducted by County staff for compliance with local fire, building, housing, and zoning codes), the tracking of resources should include staff allocated to activities that complement or assist the State's formal licensing and registration functions (e.g., C.O.N.T.A.C.T. Child Care, Child Care Connection, consultation services from the Health Department).

- B. County staff should continue to work cooperatively with the State Office of Child Care Licensing and Regulation and work with the State to develop Memorandums of Understanding to formalize selected interactions.

County staff should continue to work cooperatively with staff from the State Office of Child Care Licensing and Regulation (OCCLR) and the OCCLR Regional Office in Montgomery County. The Council should recommend that the County Executive consider developing a Memorandum of Understanding with the State Office on Child Care Licensing and Regulation that clarifies the working relationships among the Regional Office and the various County activities that support the State's licensing/registration functions. A Memorandum of Understanding could, for example, clarify what services C.O.N.T.A.C.T. Child Care will provide to prospective child care providers, how often the OCCLR Regional Office will provide updated lists of licensed and registered providers to Child Care Connection, and the types of consultation services the Health Department Community Health Nurses will provide to prospective and existing child care providers.

- C. In FY91, the County and State should jointly evaluate the implementation of the Child Care Consolidation Act.

A comprehensive evaluation of the changes implemented as a result of the Child Care Consolidation Act of 1988 should be conducted during FY91 (July 1, 1990-June 30, 1991). Scheduling an evaluation in FY91 will allow observations and conclusions to be based on approximately two years of operations under the new State law.

Because the Child Care Consolidation Act had an impact on both State and County level activities, this is a unique opportunity for a cooperative State/County evaluation effort. Specifically, the Council could request that the evaluation of the impact of the Child Care Consolidation Act in Montgomery County be undertaken as a joint study effort of the General Assembly's Department of Fiscal Services' Management Studies Unit and the Office of Legislative Oversight (OLO). The Department of Fiscal Services could focus on evaluating the performance of the OCCLR and its regional offices, while in Montgomery County, OLO could focus on evaluating the various County-funded activities that complement the formal licensing/registration function.

C.O.N.T.A.C.T. Child Care

A work unit established by the Child Care Division of the Department of Family Resources, C.O.N.T.A.C.T. Child Care is an information and consultation resource for persons or groups interested in providing child care. Staff requirements, insurance, child care business management and regulatory guidelines are examples of information available to existing and potential child care providers.

C.O.N.T.A.C.T. stands for:

Consultation - assisting existing and potential child care providers with their child care issues. Consultation may take place by telephone, in a prearranged meeting with a child care resource specialist or onsite in a child care facility or day care home.

Orientation - a starting place for individuals interested in becoming child care providers. The C.O.N.T.A.C.T. Child Care office offers telephone assistance, start up sessions and a variety of written materials on all phases of child care.

Networking - making connections in the child care community by working with established organizations such as the Council on Child Care.

Technical Assistance - providing accurate and current answers to specific questions about child care. For example, the C.O.N.T.A.C.T. office can direct providers and potential providers of child care to sample budgets, needs assessment tools, personnel policies and parent contracts. Preliminary site visits may be arranged to determine if a facility is suitable for child care.

Advocacy - supporting quality child care and insuring that issues affecting the quality, availability and affordability of child care are brought to the attention of the child care community.

Coordination - bringing together the various resources in the County and surrounding metro area and making them more accessible to the child care community.

Training - delivering and promoting workshops, conferences and seminars on topics of interest to the child care community. The C.O.N.T.A.C.T. office distributes information about available child care training and assesses the need for additional training in the County.

**If you are thinking about becoming a child care provider,
or are a provider in need of consultation...
contact C.O.N.T.A.C.T.!**



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