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# Montgomery County Government

MONTGOMERY COUNTY COUNCIL  
Office of Legislative Oversight

Report #87-1

## AN EVALUATION OF THE GROUP DAY CARE REGULATORY PROCESS

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## SUMMARY OF MAJOR CONCLUSIONS AND RECOMMENDATIONS

This report evaluates the County's process of licensing group day care centers and concludes that:

- The regulatory process is not identical for all group day care licensees; the length, cost, and complexity depend upon key factors such as the location of the proposed center, the extent of renovation required, and the type of program;

- No one department is clearly identified as the "Coordinator" for the entire regulatory process, and as a result, prospective licensees end up dealing with numerous offices, which operate according to sometimes inconsistent and even contradictory policies;

- Prospective licensees receive uneven treatment throughout the process; in some departments, a group day care center licensee receives priority attention, but in others, a prospective day care provider is no different from any other applicant seeking a government permit or approval;

- No single document outlines all of the regulatory requirements, and no one office can offer advice or technical assistance on how to achieve compliance;

- Each department has its own policies for exercising different degrees of enforcement flexibility, and different rules governing ongoing enforcement; and

- Even faced with a lengthy and complex regulatory process, the number of licensed group day care centers in the County has increased more than 40% during the past five years.

The report recommends that if opening additional licensed group day care centers is a priority of this County government, then this priority should be articulated by the Council and County Executive, and communicated to all of the departments and agencies involved in the regulatory process. Recommendations to improve upon the specific problems outlined in the evaluation include:

- Implementing a coordinated approach to administering and enforcing the laws, regulations and codes that apply to group day care centers by designating the Health Department as the "lead agency", creating a new position of Group Day Care Licensing Monitor, appointing Day Care Liaisons in all of the relevant departments, and assigning an inter-agency staff group chaired by an Assistant Chief Administrative Officer a number of specific tasks;

- Improving access to information about regulatory requirements by developing a complete resource document of all relevant laws and codes, strengthening the County's intake procedures and initial interactions with prospective licensees, and publicizing a more clearly defined Technical Assistance Office;

- Designating a single entry point for prospective licensees seeking a variance, exception, or modified application of a regulatory requirement; and developing a system so that the onus is on the County, not the prospective licensee, to resolve conflicting rulings; and

- Taking advantage of opportunities for automating various parts of the regulatory process and making inspection records more accessible and meaningful to the public.

## ORGANIZATION OF REPORT

This OLO report is organized as follows:

Chapter I describes **AUTHORITY, SCOPE AND METHODOLOGY** of the report;

Chapter II, **DEFINITIONS**, defines the terms and acronyms used in the report;

Chapter III, **BACKGROUND**, outlines the network of laws, regulations, and codes that apply to group day care centers, summarizes the relevant conclusions of previous day care studies and recent County initiatives, and tracks the number of licensed group day care centers since FY 81;

Chapter IV, **OVERVIEW OF REGULATORY PROCESS**, describes the basic roles of the government departments and agencies involved and presents two charts that depict the different regulatory steps that a prospective licensee must follow;

Chapter V, **EVALUATION OF REGULATORY PROCESS**, is divided into eight sections, each of which discusses different characteristics of the regulatory process that prospective licensees are required under current laws, regulations, and procedures, to maneuver;

Chapter VI, **CONCLUSIONS**, summarizes OLO's conclusions on the group day care regulatory process;

Chapter VII, **RECOMMENDATIONS**, provides OLO's recommendations on ways to improve the regulatory process; and

Chapter VIII, **OTHER ISSUES**, offers a number of OLO's observations on related matters outside of the direct scope of this evaluation.

### **I. AUTHORITY, SCOPE AND METHODOLOGY**

A. Authority. Council Resolution No. 10-1741, Subject: CY 1986 Work Program of the Office Of Legislative Oversight, adopted February 11, 1986.

B. Scope. This report describes and evaluates the local government regulatory process that a child care provider must maneuver to open and continue to operate a group child day care

center, which is licensed by the Montgomery County Health Department and Maryland Department of Health and Mental Hygiene. Consistent with State and County law, this report defines "group day care center" as an establishment that provides group care on a regular schedule to at least seven children who do not have the same parents.

Perhaps equally important to understanding the scope of this report is outlining what it does not include. The report focuses upon the regulatory process for day care centers located in the County, and therefore describes, but does not evaluate, the regulatory process for centers located in municipalities. In addition, the report does not evaluate the County's policies on finding and allocating space for child care centers; the availability of affordable liability insurance for child care providers; the actual substance of the governing laws, regulations, and codes (except insofar as becoming licensed is effected by inconsistent requirements); or the regulatory process for out-of-home child care services other than group day care (see Appendix A for description of the different types of out-of-home child care).

C. Methodology. This project was conducted by Karen Orlansky, OLO Program Evaluator with assistance from Johanna Ettl, Public Administrative Intern, during July-December, 1986. It involved document reviews, interviews, and on-site observations. During this evaluation, OLO received full cooperation from all parties.

Interviews were conducted with staff from the State Department of Health and Mental Hygiene and the County government Departments of Environmental Protection, Family Resources, Fire and Rescue Services, and Health; the Commission for Women, the County Attorney, the County Council, the Office of the Board of Appeals, the Office of Zoning and Administrative Hearings, Montgomery College Child Care Technical Assistance Office, Montgomery County Planning Board, and Montgomery County Public Schools. Interviews were also conducted with the Fire Marshal, the Chairman of the Montgomery County Planning Board, members of the Board of Appeals, the Executive Director of the Child Care Connection, several independent fire corporation Chiefs, and representatives from previous County task forces on day care issues. Representatives from the cities of Rockville, Gaithersburg, Poolesville, Washington Grove, Laytonsville, Barnesville, Brookeville and several town sector zones were also consulted.

Information from the child care providers' point of view was obtained through extensive interviews with current and previous applicants for group day care center licenses, and licensed day care center owners and directors; interviews were conducted with a representative sample of licensees in terms of center location, size, type of facility, experience, and profit vs. non-profit status. OLO also attended two meetings of the Organization of Child Care Directors (OCCD) including the annual meeting between OCCD and County government officials.

In addition to document reviews and interviews, on-site observations were made of inspections conducted by community health nurses, child development specialists, and environmental investigators employed by the Department of Health; and of inspections conducted by the Department of Fire and Rescue Services.

## II. DEFINITIONS

Unless otherwise indicated, this report uses the following terms as defined below:

A. Child: An individual under the age of 16 years.

B. Out-of-Home Child Care: Care outside of the child's home given instead of parental care to a child on a regular schedule for part of a day; it does not include legally-mandated public or non-public school programs, foster care, or institutional care of children<sup>1</sup> (see Appendix A for a description of the different categories of out-of-home child care in Maryland).

C. Group Day Care Center: An agency, institution, or establishment that, for part of a day, on a regular schedule, and at least twice a week, offers or provides group day care to at least seven children who do not have the same parentage<sup>2</sup>.

D. Licensee: The holder of a license issued by the County Health Department and State Department of Health and Mental Hygiene to operate a group day care center.

E. Initials and official titles of County and Bi-County Offices, Departments, Divisions, Sections and Agencies referred to in report (in alphabetical order):

BOA: Board of Appeals

CSPS: Health Department, Division of Licensure,  
Regulatory and Special Health Services, Children's  
Services Program Staff

DCCE: Department of Environmental Protection, Division of  
Construction Codes Enforcement

DEP: Department of Environmental Protection

DFR: Department of Family Resources

DFRS: Department of Fire and Rescue Services

DLRS: Health Department, Division of Licensure,  
Regulatory and Special Health Services

TAO: Montgomery College Child Care Technical Assistance  
Office

WSSC: Washington Suburban Sanitary Commission

<sup>1</sup> This definition was adapted from the 1985 Governor's Interim Task Force Report on Day Care Facilities and Services.

<sup>2</sup> This is the definition of group day care center contained in the County Code (Chapter 10, Group Day Care) and State law (Health-General, Title 14, General Day Care, Section 14-101).

### III. BACKGROUND

A. Legal Framework. Group day care centers in the County are governed by an array of State, County, and municipal laws and regulations, a number of which incorporate (by reference) entire technical codes into local law.

The phrase "regulation of day care" most commonly refers to the licensing of centers by the County Health Department and State DHMH in accordance with State regulations governing group day care centers (COMAR 10.05.01), which were first promulgated in 1971. These regulations outline what is deemed the minimum standards for ensuring:

- Safe and sanitary conditions in group day care centers;
- Proper care, protection and supervision of children in group day care centers; and
- Sound growth and development of children in group day care centers.

In addition to State law and regulations, County Code Chapter 10, Group Day Care Centers, enacted in 1965<sup>1</sup>, requires all day care centers to obtain a County license, authorizes a license fee, authorizes the adoption of method (2) Executive Regulations<sup>2</sup>, and stipulates that no license shall be issued until the Health Department obtains evidence that the licensee is in compliance with:

- Building and electrical laws, regulations, and codes<sup>3</sup>;
- Fire prevention laws, regulations, and code<sup>4</sup>;
- Zoning law<sup>5</sup>; and
- Any other applicable excretion disposal, water and sewer, plumbing, communicable disease and other standards and regulations of the County and State Boards of Health.

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<sup>1</sup> The 1965 law gave DEP the responsibility of administering Chapter 10; in 1978, the Code was amended to transfer this responsibility to the Health Department. In 1983, Chapter 10 was again amended to conform with changes in State law that increased the minimum capacity of group day care centers from five to seven children.

<sup>2</sup> As of this writing, the County has not promulgated any group day care center Executive Regulations.

<sup>3</sup> County Code, Chapter 8, Buildings, and Chapter 17, Electricity; Executive Regulation No. 124-85; and Building Officials and Code Administrators International, Inc. (BOCA Basic Building Code) and National Electrical Code.

<sup>4</sup> County Code, Chapter 22, Fire Safety Code; Executive Regulation No. 125-85; and National Fire Prevention Association (NFPA) Life Safety Code.

<sup>5</sup> County Code, Chapter 59, Zoning.

Because the responsibility for administering and enforcing the various laws, codes, and regulations is delegated to different departments and agencies, a prospective licensee must deal with multiple authorities beyond the Health Department. Details of the possible different regulatory scenarios are outlined in Chapter IV of this report.

B. Previous Studies and Follow-up Action. Task forces and committees convened during the past five years to study and advise the County on day care issues have cited problems with the regulatory structure; specifically:

- The April 1982 Report of the Montgomery County Task Force to Study Child Care concluded that there are gaps, overlaps, and inconsistencies among the regulations governing day care centers, and that licensing procedures and interpretation of regulations generate frustration and confusion among providers;

- In November 1983, the Interagency Staff Committee on Child Care recommended that potential and existing child care providers need technical assistance to understand a regulatory process which is overly complex and lacking uniformity;

- The October 1984 Report from the Commission of Children and Youth on Child Care in Montgomery County concluded that the complex and time consuming regulatory process seems to discourage potential providers from offering urgently needed child care; and

- The December 1985 Interim Report of the Governor's Day Care Task Force identified the lack of regulatory consistency involved with licensing out-of-home care of children in Maryland as a major issue.

One recurring recommendation from the various groups has been for the different regulating agencies to review all regulations concerning day care to improve coordination and consistency, and to streamline the regulatory process. In 1986, State legislation (SB 744) established an Interagency Child Care Council, which has a broad five-year mandate to review all State regulations concerning day care to facilitate coordination and consistency, as well as to examine and resolve problems associated with the regulation of day care.

Here in the County, a number of different staff committees have met to discuss regulatory duplications, gaps, and obstacles. During the fall of 1986, DFR initiated a series of meetings among the different departments involved with regulating day care, and at the request of the Chief Administrative Officer, the Health Department made a number of internal recommendations for improving the regulatory process<sup>1</sup>. In December 1986, DFR's Human Services Coordinator was assigned the specific task of working with the different departments to streamline the regulatory process for both family day care homes and group day care centers.

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<sup>1</sup> To the extent feasible, changes implemented while this report was being written have been incorporated into OLO's findings.

Other specific actions taken in response to recommendations offered by the different study and advisory groups to improve the regulatory process for day care centers include:

- More technical assistance: Both DFR and the Health Department have taken steps to provide additional technical assistance to prospective and existing child care providers.

- Improved information on regulatory requirements: During 1986, a draft of a new handout, "How to Start A Day Care Center" was developed by the Health Department with input from other departments.

- Ongoing advisory groups: The Child Care Policy Group, an inter-agency staff group, now meets quarterly to exchange information on child care issues; the Child Care Council, a forum for representatives from both the public and private sectors, meets monthly to discuss child care matters.

- More studies: During 1986, the Planning Board contracted for three child care studies to address the impact of small day care centers in residential neighborhoods, site plan guidelines for day care centers in commercial zones, and the possible placement of day care centers in park buildings or modulars on park property; completion of the three studies is expected in 1987.

One can only speculate why it has taken so long for the County to get around to solving the nitty-gritty problems of the regulatory process. Perhaps one explanation is that numerous other child care initiatives (i.e., Children's Resource Center, Child Care Connection, Child Day Care Subsidy Program, portable day care buildings) have consumed the finite resources and attention of staff and decision-makers. Another factor is that to a number of the departments and agencies involved with regulating some aspect of day care, the needs of prospective child care providers are only a fraction of the departments' total workload.

Finally, despite the complexity and problems of the regulatory process (which this report will review in detail), the number of licensed group day care centers has increased more than 40% during the past five years. Although an even greater number of centers might be open today if the regulatory process was simpler, the current system cannot be accused of completely stifling the development of new centers.

As Table I shows, in FY 81, the County had 128 licensed centers; by the end of FY 86, the County had 181. The change in the total number of licensed centers shows an upward trend throughout the 1980's, with a net increase of 19 centers in FY 85, 23 in FY 86, and a projected increase of 26 by the end of FY 87. Total capacity in the County's licensed group day care centers has increased almost 40% over the past five years. In 1981, County's centers were licensed to serve 5,711 children; this number had grown to almost 8,000 as of December 1986.



TABLE I

Number of Licensed Group Day Care Centers in County<sup>1</sup>  
FY 81 - FY 87

FY 81	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87 (projected)
128	129	135	139	157	181	207

<sup>1</sup> Source: County Health Department records

#### IV. OVERVIEW OF REGULATORY PROCESS

A. Summary of Roles. The basic roles that the different government entities play with respect to prospective group day care licensees are summarized below (in alphabetical order of departments/boards involved):

**County Board of Appeals:** Holds public hearings and makes decisions concerning petitions for special exceptions (special uses not otherwise permitted within a particular zoning category). The Board of Appeals is also responsible for hearing and ruling on administrative appeals of decisions made by DEP regarding building use and occupancy permits. The Board has jurisdiction Countywide except for the municipal confines of Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg, and Washington Grove.

**Department of Environmental Protection, Division of Construction Codes Enforcement:** Reviews plans, conducts requisite inspections, and issues building permits, electrical permits, and use and occupancy permits; also inspects for compliance with zoning law including conditions imposed by the Board of Appeals when granting a special exception.

**Department of Fire and Rescue Services, Division of Fire Prevention:** Enforces the Fire Safety Code, which includes the NFPA Life Safety Code, County Code Chapter 22, and locally adopted Executive Regulations concerning fire prevention.

**Department of Family Resources:** DFR's current involvement with child care is quite diverse and includes staffing the Commission on Children and Youth, administering the contract for a child care information and referral service, managing the Children's Resource Center, operating the Working Parents Assistance Program, initiating efforts to involve the business sector in supporting child care, and managing the County's program of purchasing and leasing portable buildings to be used as day care centers. DFR's specific role in the regulation of group day care centers, however, is limited to DFR's administration of a contract with Montgomery College to provide "technical assistance" (see description below) to prospective and

existing child care providers, and DFR's efforts to facilitate communication among the different agencies and departments involved with enforcing regulations that affect day care centers.

**Department of Family Resources, Child Care Technical Assistance Office:** Operated on a contractual arrangement with Montgomery College, the Technical Assistance Office offers assistance to prospective and existing child care providers regarding child care needs in the County, procedures of regulating agencies, operating a day care business (budgets, taxes, insurance, business structures), curriculum development, and training.

**Health Department, Division of Licensure, Regulatory and Special Health Services, Children's Services Program Staff:** Provides information and consultation to prospective licensees, conducts licensure and regulatory inspections, and issues and renews group day care licenses in accordance with regulations and policies established by the State Department of Health and Mental Hygiene.

**Health Department, Division of Licensure, Regulatory and Special Health Services, Wells/Septic Section:** Reviews building plans for compliance with State and local codes, and inspects wells and septic systems in order to certify that they are installed and operating correctly.

**Montgomery County Planning Board:** Provides recommendations to the Board of Appeals on every petition for special exception; in most cases, the Board of Appeals receives a technical staff report compiled by the Development Review Division along with the Planning Board's recommendation for approval, denial, and/or conditions for granting the special exception.

**State Highway Administration:** Inspects and approves modifications to driveways adjoining State roads.

**Department of Transportation:** Inspects and approves modifications to driveways adjoining County roads.

**Washington Suburban Sanitary Commission:** Inspects and approves plumbing hook-ups from water and sewer connections.

**B. Steps Prospective Licensees Must Follow.** Chart I (page 10A) depicts the possible different regulatory steps that a prospective licensee must maneuver to open and operate a licensed group day care center for seven or more children. Chart II (page 10B) depicts how the process differs for centers located in a municipality, town sector zone, and some homeowners associations. As the charts indicate, the regulatory process is not identical for all group day care license applicants. The length, cost, and complexity of the process depend upon factors such as:

- **Location:** Where a day care center is situated determines which authority (or authorities) is responsible for granting zoning approval, building permits, and use and occupancy permits. Where a center is located also determines the need for a wells/septic inspection, a WSSC plumbing hook-up permit, a zoning special exception, and possible State Highway Administration or County DOT approval.

## CHART II

### Permits and Approvals for Facilities Located in Municipalities, Town Sector Zones and HOAs

If the day care facility is located:

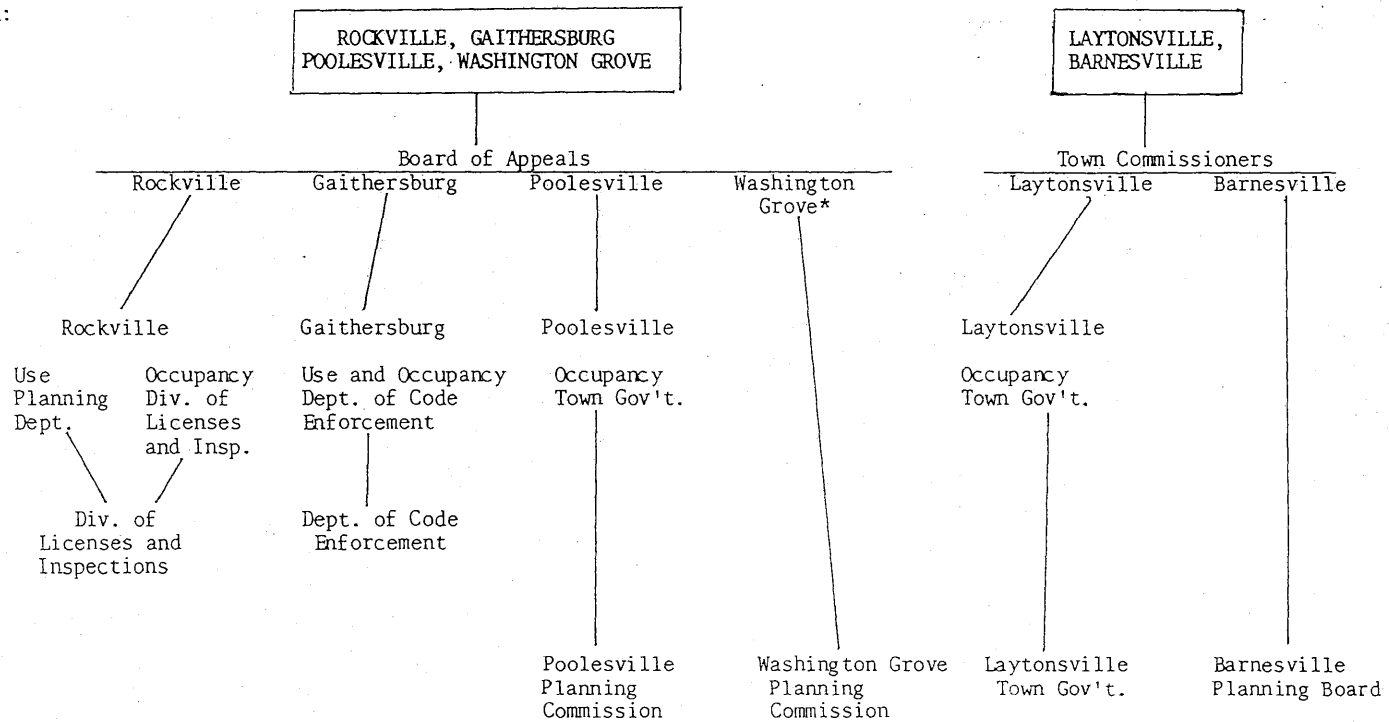
#### Permits/Approvals

Zoning  
Special Exception

Use and/or  
Occupancy

Building/  
Electrical  
Permit

Prior approval for  
County Building/  
Electrical Permit



\*Washington Grove does not grant SE for day care.  
Provider could apply for a "limited home occupation".

CHART II (Continued)  
Permits and Approvals for Facilities Located in Municipalities, Town Sector Zones and HOAs

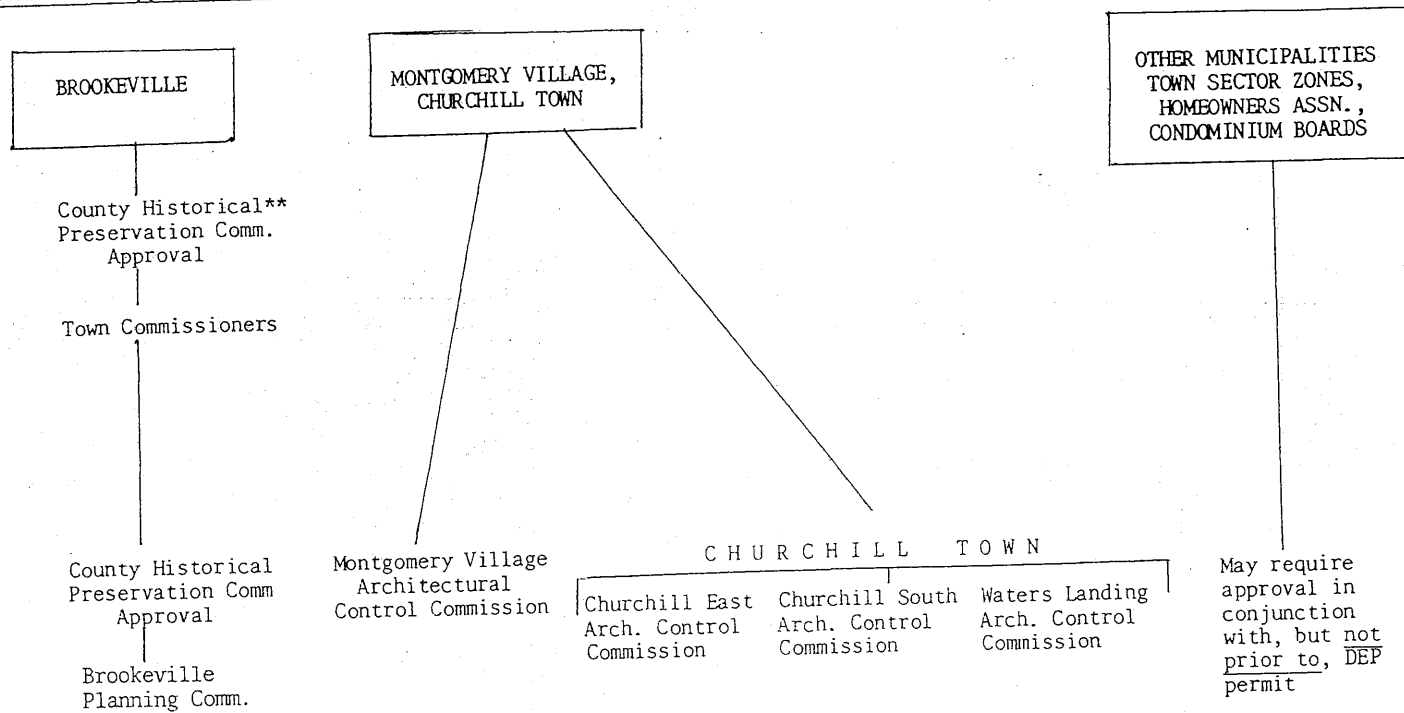
If the day care facility is located:

Permits/Approvals  
 Zoning  
 Special Exception

Use and/or  
 Occupancy

Building/  
 Electrical  
 Permit

Prior approval for  
 County Building/  
 Electrical Permit



\*\*Brookerville is zoned a historic district

- **Structural change:** The magnitude of new construction or building renovation involved in setting up a day care center determines the type and sequence of required permits, inspections, and approvals.

- **Proposed program:** The number and ages of children to be served determines which sections of certain regulations and codes apply. In addition, the expansion of an existing program will be different than starting a completely new day care center.

On Chart I, the steps of the process that every prospective group day care licensee must complete prior to initial licensing are numbered Steps 1 to Step 5; Steps 6 and 7 are required for a center to remain open and operating. Each of these required steps is described below from the point of view of a prospective licensee:

**Step 1: General Information:** Call the Health Department, Division of Licensure and Regulatory Services, Children's Services Program Staff (CSPS) for information. Upon request, CSPS mails an information packet, which includes a brief overview of the process and a copy of the State group day care regulations (COMAR 10.05.01).

**Step 2: Office Interview:** Schedule an office interview with the Licensing Coordinator on the CSPS staff. The average office interview lasts two hours and involves discussions with the Licensing Coordinator, a community health nurse, a child development specialist, and at times, an environmental health inspector.

**Step 3: Zoning Information:** Call the Zoning Office in DEP to find out the zoning status of the proposed facility. (Because a group day care center is a permitted use in certain zones, applying for a special exception is not considered part of the required process for every prospective licensee.)

**Step 4: Use and Occupancy Permit:** Apply to DEP's Division of Construction Codes Enforcement for a use & occupancy permit. At a minimum, approval for a use and occupancy permit requires on-site inspections and approval from a Building Code inspector, Electrical Code inspector and Fire Safety Code inspector. A facility located within the confines of certain municipalities must apply for a use and/or occupancy permit from the appropriate municipal authority. (See Chart II for details.)

**Step 5: Group Day Care Center License:** Apply to CSPS for a group day care center license. At a minimum, approval for a day care center license requires on-site inspections (usually a pre-licensing inspection and at least one other licensing inspection) by a community health nurse, child development specialist and environmental health inspector; the Licensing Coordinator in CSPS must also obtain confirmation of Building, Electrical and Fire Safety Code compliance from DEP and DFRS.

**Step 6: Initial Operating Inspections:** Within two months after a day care center license is issued, a community health nurse, child development specialist, and environmental health inspector return separately for unannounced initial operating inspections.

**Step 7: Annual Renewal:** Day care licenses are issued for a one-year period. The annual renewal process involves on-site inspections by a community health nurse, child development specialist, and environmental health inspector. State regulations also require an annual inspection by the Fire Marshal<sup>1</sup>.

On Chart I, Steps A through E are parts of the process that are not required for all applicants, but are mandatory for those meeting certain conditions:

**Step A: Zoning Special Exception:** If the day care center is on County property, unless it is in a school (open or closed) or church, the County's zoning ordinance requires the applicant to obtain a special exception from the County Board of Appeals. This involves submitting an application and supporting documents, a review by the Planning Board staff, a hearing resulting in a recommendation from the Planning Board itself, and a hearing resulting in a decision by the County Board of Appeals. (See Chart II for how zoning is handled for facilities located in certain municipalities.)

**Step B: State Highway Administration Approval/County Department of Transportation Approval:** If a condition of the special exception requires making changes to a driveway entrance or exit off of a State or County road, then approval must be obtained from the SHA or County DOT. This involves applying for a permit and an inspection of the work by SHA or DOT.

**Step C: Well and Septic Permits:** If the day care center is located in an area of the County that is not equipped with public water and sewers, then a well/septic permit is required. This involves applying to the Health Department, Division of Licensure and Regulatory Services, Wells/Septic Section. In most cases, an on-site inspection and water percolation tests are required.

**Step D: Plumbing Permits:** If the day care center requires the addition of plumbing facilities and is located on a public water and sewer line, then a plumbing hook-up permit issued by WSSC is a prerequisite to the issuance of a building permit by DEP. This involves application to the WSSC with waste and vent diagrams, and an on-site inspection.

**Step E: Building and/or Electrical Permits:** If the day care center is to be newly constructed or located in an existing structure that requires renovation, then the requisite building and electrical permits must be obtained from DEP's Division of Construction Codes Enforcement. Before a permit is issued, the

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<sup>1</sup> Due to competing demands on the Fire Safety Code inspection staff, the Fire Marshal's office no longer routinely conducts annual inspections of group day care centers. In many parts of the County, independent fire corporation personnel conduct annual or semi-annual Fire Safety Code inspections of commercial buildings, including day care centers. The issue of who conducts out-year Fire Safety Code inspections is discussed later in this report.

Engineering Plan Review Section in DFRS must review the plans for compliance with the Fire Safety Code. After the work is completed, a Building Inspector and Electrical Inspector conduct on-site inspections for a final sign-off. (See Chart II for how the approval process varies in certain municipalities, town sector zones, and homeowners' associations.)

On Chart I, two steps are shown as being at the option of the applicant:

- **Preliminary inspection:** For a fee of \$25, a prospective licensee can request the Health Department to do a preliminary inspection. This involves a site visit and consultation from the trio of CSPA inspectors: the community health nurse, child development specialist, and environmental health inspector. The end product is an informal report to the prospective licensee about the appropriateness of the facility for a day care center and the magnitude of changes required to meet State DHMH group day care regulations.

- **Technical Assistance from the Department of Family Resources:** Since January 1986, the Technical Assistance Office has offered a range of services to prospective and existing day care providers. Many of the services of the Technical Assistance Office, which are not yet a mandatory part of the regulatory process, are still in the developmental stage.

## V. EVALUATION OF REGULATORY PROCESS

### A. Format of Evaluation

Section B through Section I of this chapter discuss different characteristics of the regulatory process that prospective licensees are required, under current laws, regulations, and procedures, to maneuver. At the beginning of each Section is a summary of findings. Overall conclusions on the regulatory process are contained in Chapter VI, and recommendations are in Chapter VII.

Section B discusses the length of the regulatory process and how operating policies of the different departments affect the sequence of inspections;

Section C outlines the cost of the different permits, licenses, and approvals, and reviews the average costs of hiring experts to assist with the various regulatory steps;

Section D discusses how well the regulatory process is coordinated among the different departments and agencies involved;

Section E discusses the degree of coordination and consistency within four of the major departments involved with prospective licensees;

Section F reviews the accessibility of information about regulatory requirements, and the availability of technical assistance for the different regulatory steps;

Section G describes the County's ability to exercise varying degrees of local enforcement authority at different steps of the process;

Section H discusses the ongoing enforcement of the various laws, regulations, and codes; and

Section I offers some observations on the paperwork involved with maneuvering through the regulatory process.

## B. Length of Process

### 1. In sum:

- It can take from several months to more than a year for a prospective licensee to maneuver through the regulatory process depending upon which approvals and permits are required, and whether or not unanticipated problems are encountered.

- The actual length of time is also determined by when a prospective licensee applies for the requisite permits and approvals, the government's ability to process requests and schedule timely inspections, and each provider's ability to bring a facility and proposed day care program into compliance with the network of governing laws, regulations, and codes.

- Operating policies of the different departments involved dictate a sequential nature to the regulatory steps a prospective licensee must follow; if a problem or waiting period is encountered at a certain step, then a prospective licensee becomes essentially stuck at that step until the problem is resolved, or the waiting period is over.

- The need to file for a special exception will, on average, lengthen the regulatory process by four to six months. The need for new construction or extensive renovation will also tend to significantly lengthen the process.

- As more day care centers seek to locate in residential and commercial space requiring a special exception and/or major renovation, the average time needed to maneuver through the regulatory process is likely to grow longer.

### 2. Length of Time for Steps All Applicants Must Follow.

Using Chart I (page 10A) for reference, Table II outlines the time required for each of the five steps that all applicants must complete prior to initial licensing. Under the most favorable circumstances, it takes two to three months to obtain the requisite inspections and approvals for opening a new day care center. The process will be on the shorter side if a prospective licensee is in a position to simultaneously pursue both a group day care license and a use and occupancy permit, or if the new center is an expansion of an existing one. In all cases, the length of time is affected by the prospective licensee's ability and resources to make required structural changes, hire appropriate staff, and prepare the facility for final licensing and permit inspections.



TABLE II

LENGTH OF TIME TO COMPLETE REQUIRED REGULATORY STEPS  
PRIOR TO INITIAL LICENSING

<u>Step</u>	<u>Length of Time</u>	<u>Comments</u>
1-General Information	Received within one week from request.	Health Department's CSPS mails out information packet within a week after it is requested.
2-Office Interview	Usually scheduled within four to six weeks after request; interview itself lasts several hours.	CSPS staffing pattern currently allows time for four office interviews each month <sup>1</sup> ; no office interviews are scheduled in July or August due to heavy inspection workload for new centers planning a September opening.
3-Zoning Information	At the time information is requested.	DEP's zoning office will, upon request (in person or by phone), provide information about the zoning status of a particular property.
4-Use & Occupancy Permit	DEP's Building & Electrical Code inspectors conduct each inspection within two days after request; Fire Safety Code inspectors conduct each inspection within 5-10 working days after request.	Length of time largely determined by the magnitude of changes needed to bring property into compliance with Building, Electrical, & Fire Safety Codes. Most situations require both an initial and a follow-up inspection that is scheduled after the applicant has completed any required changes.

<sup>1</sup> Health Department is considering staffing change to allow eight office interviews per month.

5-Group Day Care Center  
License

Average of 60 days  
after application is  
submitted.

Length of time  
determined by CSPA  
workload, extent of  
changes required  
for code  
compliance, number  
of follow-up  
inspections  
required by  
community health  
nurse, child  
development  
specialist, and  
environmental  
health inspector,  
and whether  
additional  
inspections must be  
conducted by DEP  
and/or DFRS.

3. Factors that Lengthen the Time. The length of time it takes to become licensed can easily double or triple if the prospective licensee is required to complete parts of the process labeled as Steps A through E on Chart I, which are steps mandated for applicants meeting certain conditions.

Under provisions of the County's zoning law, the length of time to allow for a special exception (Step A) is a minimum of 120 days:

- The sign notifying the public of the pending special exception must be posted on the applicant's property for 60 days prior to the Board of Appeal's hearing date;

- The Board of Appeals renders a decision within 30 days after the hearing; and,

- After the Board's decision is made, there is an additional 30-day waiting period during which the Board's decision can be appealed to the Circuit Court.

This 120-day time span can be shortened if the Board renders its decision before its 30-day deadline, or if the Board declares that an emergency exists and thereby reduces the required sign posting period to 30 days. The time required may grow longer if the Board of Appeals' caseload is heavy, if the responsibility for holding a hearing and writing a report with recommendations is delegated to the Office of Zoning and Administrative Hearings<sup>1</sup>, if a

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<sup>1</sup> Pursuant to County Code Section 59-A-4.125, the Board of Appeals can refer any application, petition or order of appeal to the Office of the Hearing Examiner, who then schedules and conducts a public hearing, and submits a written report to the Board of Appeals for final decision.

petitioner faces significant neighborhood opposition that results in more than one hearing session, or if the petitioner is making structural changes to a driveway that must be approved by the State Highway Administration or County Department of Transportation (Step B).

A review of Board of Appeals' files for the past eight years indicates that the majority of special exceptions for day care centers were rendered decisions within four months after application; the shortest case was two months and the longest nine months. At the time of this writing, due to a heavy caseload, special exception decisions are being rendered four to six months after an application is submitted.

In general, it usually takes longer to pursue a special exception from the County Board of Appeals than it does for a special exception within a municipality. Rockville's Board of Appeals reports an average special exception case takes 30-60 days from time of application to decision; Gaithersburg advises applicants to count on two months.

If the proposed day care center is to be located in an area served by a private water or septic waste disposal system, then the need for inspections by the Wells and Septic Section of the Health Department (Step C) will likely lengthen the process. A prospective licensee may also need to obtain a water appropriation permit or a well permit from the Maryland Water Resources Administration, which can take up to 30 days. It can take up to six weeks to have the water samples taken and analyzed. If current information about a facility's septic system is not in the Health Department's files, then water table and/or percolation tests are required. Water table tests can only be conducted between January 1st and April 15th.

Another series of steps that can lengthen the process by weeks or months is the need for extensive building, remodeling, or plumbing work (Steps D and E). Building and electrical permits must be obtained from DEP, and plumbing permits must be obtained from WSSC. Although not unique to day care, the factor that often determines the length of this part of the process is how long it takes to select and hire a builder, electrician, plumber, or other contractor(s) to perform the work. Obtaining the requisite permits and inspections is a responsibility frequently assumed by the contractor retained.

4. Sequence of Inspections. The length of the regulatory process is also affected by operating policies of the different departments that dictate a certain order in which permits and approvals must be obtained. For example:

- Building and Electrical Permits (Step E): DEP will not accept an application for a commercial building or electrical permit unless the property has obtained appropriate zoning approval from the County Board of Appeals (or appropriate municipal authority), and if necessary, a plumbing permit from WSSC.

- Use and Occupancy Permit (Step 4): DEP will not accept an application for a use and occupancy permit until the property has obtained appropriate zoning approval, and/or all final inspections on building and electrical permits are done, or will be completed within 30 days. A use and occupancy permit will not be issued until DEP receives confirmation from the Fire Marshal's office that the property is in compliance with the Fire Safety Code.

- Fire Safety Code Inspections (Steps 4, 5, and E): As a general rule, the Fire Marshal will not conduct inspections for compliance with the Fire Safety Code until the application for a use and occupancy permit is filed<sup>1</sup>.

- Group Day Care Center License (Step 5): Although the Health Department will accept an application for a center license at any time, in practice, the trio of Health Department inspectors (child development specialist, community health nurse, environmental health inspector) are unlikely to conduct their pre-licensing and licensing inspections until after the property is appropriately zoned and the applicant has at least applied for a use and occupancy permit.

Most of the above policies have been imposed as cost containment efforts to use limited staff efficiently and minimize the number of "unnecessary" inspections. From a prospective licensee's point of view, however, the sequential nature of the process means that an applicant can become essentially stuck at a particular step in the regulatory process and remain there until any problems are resolved and that step is completed.

For example, if a proposed day care center location needs a special exception, then little else can happen until the zoning decision is rendered. While the Health Department inspectors will conduct preliminary inspections during this time, except in unusual cases, the prospective licensee is unable to obtain even preliminary inspection reports from the County's Building, Electrical, and Fire Safety Code inspectors.<sup>2</sup>

Licensees voiced frustration with having to wait the average four to six month period for a special exception decision before finding out that their prospective center facility may need substantial modification to comply with the Building, Electrical, and Fire Safety Codes. In certain situations, the magnitude of renovations or additions can determine the financial feasibility of a particular site for a day care center. As a key component of the regulatory scheme, the timing of these various inspections can be

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<sup>1</sup> While this report was being written, a new policy was negotiated between the Fire Marshal, the Health Department, and the Technical Assistance Office; under the new policy, the Fire Marshal has tentatively agreed to conduct inspections earlier on in the process if certain conditions are met and a special request is made by the Licensing Coordinator in the Health Department or staff from the Technical Assistance Office.

<sup>2</sup> As indicated above, the Fire Marshal has tentatively agreed to conduct inspections earlier on in certain cases.

very important. Because the codes address factors such as the number and ages of children, exits (number, size, and location), lighting, heating equipment, and the type of interior finish (carpets, panelling, etc.), prospective licensees desire to know as early as possible what must be done to bring a facility into compliance.

Problems posed by the timing and financial impact of the different permits and approvals have become more significant in recent years. This is because space in schools or churches (that often does not require a special exception or major renovations to meet code requirements), has become less available and new group day care centers are seeking to locate in residential space. In addition to needing a special exception, most residential space was not constructed to be occupied by groups of young children, and the changes needed to comply with Building, Electrical, and Fire Safety Codes can be very costly.

### C. Cost of Process

#### 1. In sum:

- A prospective licensee can pay anywhere from \$100 to more than \$1,000 in local government fees depending upon the size and location of the proposed facility, the number of children to be served, and which specific permits and approvals are required. Except for the group day care license fee, which is annual, all fees are one-time charges.

- Although not a fee directly imposed by the government, the cost of maneuvering through the regulatory process can greatly increase if a prospective licensee hires one or more professionals to help. Lawyers, Fire Safety Code engineers, architects, builders, and child care consultants can be hired to offer advice on how to comply with local regulatory requirements, and/or to actually handle the prospective licensee's case from beginning to end.

#### 2. Fees for Licenses, Permits, and Approvals. Appendices B through H include information about the cost of the different licenses, permits, and approvals. All of the fees, except for the group day care license fee, which is annual, are one time charges, usually incurred before the prospective licensee is issued his/her first license.

The total cost in fees depends upon the number of children to be served, the size and location of the proposed facility, and which specific permits and approvals are required. For example, a prospective licensee planning to serve 40 children in a church building located on County property will pay \$100 to apply for a group day care license and \$50 for a use and occupancy permit. Because a day care center in a church is not a permitted use according to Rockville's Zoning Ordinance, the same day care center located in a Rockville church would have to pay an additional \$200 - \$600<sup>1</sup> to apply for a special exception from the Rockville Board of Appeals.

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<sup>1</sup> Rockville's special exception filing fee ranges from \$200 - \$600 depending upon the intended use and zone of the facility in question.

Overall, the fees charged by the County Health Department are relatively low, and do not begin to recover the County government staff costs of inspection. The day care license application fee (\$50 - \$100) and well/septic inspection fees (\$40 - \$55) have been set at the same levels for five years. Another subsidized service is the preliminary inspection, where for \$25, a prospective licensee can get a one to two hour on-site review and written assessment by at least three Health Department inspectors: a community health nurse, a child development specialist, and an environmental health inspector.

The fees charged for a use and occupancy permit by the County and the cities of Rockville, Gaithersburg, Laytonsville, and Poolesville, are the same for day care centers as they are for any other enterprise. Except for Gaithersburg which charges a flat \$25 and Laytonsville which charges nothing, the application fee is based upon the size of the facility. Most day care centers end up paying between \$50 and \$100 for their use and occupancy permit.

In the County, the cost of building and electrical permits themselves depend upon the estimated cost of the work to be performed, and range from a minimum of \$25 to a maximum of \$500. In Rockville and Gaithersburg, the cost depends upon the size of the facility. For the other municipalities, town sector zones, towns, villages, homeowners associations, and condominium developments that require an individual to obtain prior approval for a building permit from the requisite council, commission, board, or committee, there can be an additional local filing fee that ranges from \$10 - \$25.

It can cost up to \$700 to apply for a special exception. The County Board of Appeals' fees, established in 1981, range from \$50 for a center serving up to 10 children, to \$700 for one serving more than 40. In Rockville, the fee ranges from \$200 - \$600; Laytonsville, Gaithersburg, and Poolesville charge flat fees of \$150, \$200, and \$300 respectively.

For special exceptions, in addition to the application fee, there is a minimal cost for the zoning vicinity and master plan maps that must be submitted as part of the application. There is also a \$50 deposit (\$40 in Rockville) required for the sign that must be posted on the property; a percentage of this deposit is refunded when the sign is returned.

3. Hiring Experts. Although not a direct fee imposed by the County, it has become more common for a prospective licensee to hire one or more professionals to assist with different aspects of the regulatory process. In addition to hiring contractors to perform building, electrical and plumbing work, individuals or firms can be hired to offer advice, or to actually walk a prospective licensee's paperwork through the bureaucracy.

Lawyers are most frequently hired to handle the zoning aspects of a prospective day care center. Almost half of the petitions for a day care center special exception filed between January 1978 and December 1986 were filed with the assistance of an attorney. According to several representatives from law firms specializing in land use, the cost of hiring an attorney to coordinate a special exception petition can cost from \$1,000 to

\$5,000. The cost will be higher if the proposed center involves new construction or a variance, if the petitioner faces neighborhood opposition, and/or if technical experts (i.e. architect, traffic engineer, land use planner) are hired to testify before the Planning Board and Board of Appeals.

Fire protection engineers are available to provide consultation about compliance with the Fire Safety Code. Conversations with several area firms indicate that fire protection engineers cost between \$50 and \$100 per hour. An informal preliminary inspection can probably be obtained for \$100-\$200. A more comprehensive review and written report will likely cost from \$500 to \$1000 depending upon the structure in question.

Basic advice on construction and renovation possibilities is available from architects and other building professionals. Most companies involved with construction employ individuals conversant in the requirements imposed by local regulations and Building and Electrical Codes. Architectural or engineering consultation and design work tends to cost at least \$50 per hour.

A number of child care consultants are available to provide assistance to a prospective licensee throughout the regulatory process. Primarily serving corporate clients, a child care consultant can be hired to conduct a feasibility study and provide professional advice at every stage of setting up a day care center. One consultant described a situation where she was hired to implement a company's plan for a day care center, and manage the operations for the first five years. Hiring a consultant to undertake the licensing of a day care center from start to finish is likely to cost upwards of \$10,000.

#### D. Coordination Among Agencies/Departments

##### 1. In sum:

- No one office is clearly identified as the "Coordinator" for all of the steps that a prospective licensee may have to maneuver.

- The Health Department's Children's Services Program Staff comes closest to serving the role of overall coordinator, but the office lacks the recognition, resources, and authority to track or control anything beyond the purview of the Health Department.

- Interviews with licensees confirmed that the regulatory process for day care centers is perceived as one lacking a clearly designated office in charge. Two frequently mentioned problems, difficulties in resolving inconsistent regulatory rulings and limited communication among regulatory agents, appear to result from inadequate coordination.

2. Why Coordination is an Issue. Even in the simplest cases, the regulatory requirements for group day care centers are administered and enforced by more than one government department. Before a group day care license is issued, inspections and approval must be obtained from a minimum of three different County departments (Steps 1 - 5). Under certain conditions, a prospective provider may also deal with five or more other government entities (Steps A - E).

A review of how the different government departments and agencies work together revealed that no one office is clearly identified as the "Coordinator" for the entire day care center regulatory process. No single place can provide detailed information about all aspects of the regulatory process that a prospective licensee may have to deal with; no single office tracks the daily progress of the various permit and license applications pending for prospective licensees; and no one office has the authority or resources to control the timing and sequence of all the phases of the regulatory process.

Comparatively, the Children's Services Program Staff (CSPS) in the Health Department's Division of Licensure, Regulatory and Special Health Services comes closest to serving the role of overall coordinator. In addition to being the only department that remains in contact with a prospective licensee throughout the process, the County Code (Section 10-19) states that no day care center license shall be issued or renewed until the Health Department obtains evidence of compliance, and authorizes the Health Officer to "request assistance" from other agencies or officials if necessary, to enforce the Chapter.

CSPS appears to be the recognized starting place for prospective licensees. It is listed in the County's 1987 Directory of Community Resources as the place to contact under "Day Care", and is generally the office where other government departments send prospective licensees. In fact, CSPS even has a full-time employee designated as the "Group Day Care Licensing Coordinator". The Licensing Coordinator provides general information, consultation, and some technical assistance to prospective and existing group day care licensees, coordinates meetings and inspections between prospective licensees and CSPS inspectors (community health nurse, child development specialist and environmental health inspector), and refers group day care center applicants to the different authorities to obtain required clearances.

The Licensing Coordinator also is the one who communicates with the other agencies and departments who must sign-off before a license is issued. After a day care center application is submitted to the Health Department, the Licensing Coordinator sends a request for inspection, known as a "half-slip", to the Fire Marshal and DEP. The license will not be issued until the Licensing Coordinator receives the half-slip back that confirms compliance from the different agencies.

If a problem with one of the other departments or agencies is brought to the Licensing Coordinator's attention, she will attempt to eliminate the source of the problem. At this point in time, however, the Licensing Coordinator's ability to troubleshoot is restricted because her authority to resolve problems is limited to the regulations and procedures administered by the Health Department.



3. Coordination in Practice. Many of the licensees interviewed discussed problems with the regulatory structure that can be attributed to the lack of overall coordination for the licensing of day care centers. The observations and experiences of prospective and existing licensees confirmed that no one department is perceived as being in charge of the entire regulatory process.

While the Children's Services Program Staff, particularly the Licensing Coordinator, was frequently described as helpful and knowledgeable, members of the day care community appear to recognize that the Licensing Coordinator's expertise, focus, and authority is limited to the regulatory responsibilities of the Health Department. From the licensees' point of view, DFR's Technical Assistance Office is seen as a source of information and not as an entity that can coordinate the different steps of the regulatory process, or resolve specific difficulties encountered during the various inspections and approvals.

Two specific problems related to coordination among departments were highlighted repeatedly by the licensees interviewed: difficulties in resolving inconsistent regulatory requirements; and limited communication among the different regulatory agents. These problems are discussed below.

Inconsistent Requirements. At a minimum, a prospective licensee must comply with the State regulations governing group day care centers (COMAR 10.05.01), the Building Code, the Electrical Code, the Fire Safety Code, and all relevant sections of the County Code, including Chapter 59, Zoning. Coordination among the various departments responsible for enforcement is especially needed because the laws, regulations and codes have standards concerning similar variables. In some instances, the standards are identical, but in others, they are different. A selected review of the codes revealed the following examples of standards that can lead, at best, to ambiguous situations:

- **Number of Children:** The zoning ordinance, DHMH group day care regulations, Life Safety Code and Building Code all contain space requirements that lead to a limit on the number of occupants permitted. Based upon the different calculations, it is possible for a prospective licensee to receive different estimates of the number of children allowed in the center from the various departments responsible for enforcing the different codes.

- **Heating Units:** DHMH regulations specifically prohibit "portable space heaters"; the Fire Safety Code prohibits unvented fuel-fired "room heaters", but states that oil and gas-fired "room heaters" are allowed if installed with the proper guard to protect children from hot surfaces and open flames.

- **Plug Caps:** DHMH regulations require all open electrical sockets to be capped or plugged; the Fire Safety Code only requires special protective covers for electrical sockets in areas occupied by children under six years old.

• **Staff:Child Ratios:** As shown in Table III below, the Fire Safety Code and DHMH regulations establish different minimum staff-to-children ratios. Because the codes use inconsistent age groupings, it is very confusing to figure out what is required.

TABLE III

**Comparison of Staff to Child Ratios in Life Safety Code  
and DHMH Group Day Care Regulations**

	<u>Staff:Child Ratio</u>	<u>Children's Ages</u>
Life Safety Code	1:3	0-2
	1:5	2-3
	1:10	3-5
	1:12	5-7
	1:15	7 and above
DHMH Regulations	1:6	2
	1:10	3-4
	1:13	5 and above

What appears to be most frustrating for a prospective licensee is being told by one department that something meets standards, and later on by another department that it does not. Most licensees interviewed indicated that inconsistency about what was required was more troublesome than being told exactly what to do or what not to do. Moreover, because no single office assumes responsibility for overall coordination among the different regulatory departments and agencies, a licensee has no obvious place to turn to resolve inconsistent regulatory rulings.

Limited communication among agencies. The various regulatory steps that a prospective licensee must follow are structured such that each department performs its particular responsibility without necessarily knowing the results of another department's review. Except for special situations, there is no on-going mechanism for inter-departmental communication on the substance of specific applications.

As mentioned earlier, the staff that conducts inspections for code compliance generally communicate with each other on half-slips, which are paper requests for an inspection. The Licensing Coordinator sends half-slips to DEP and DFRS after a day care center application is submitted. DEP sends DFRS half-slips after a use and occupancy permit application is submitted. After the requisite inspection is completed, the half-slip is filled out and returned to the department that sent it. The half-slip communicates that a specific facility is in compliance (or not) with a specific code, but does not include any information about the substance of the inspection.

In practice, this limited communication means inspectors are out in the field without complete information; this can result in confusion and mixed messages communicated to prospective licensees. Several providers specifically noted situations where they found themselves in the position of having to explain or justify to one inspector what another inspector had concluded or suggested. For example, the Fire Safety Code inspector is not necessarily aware of the special exception conditions imposed by the Board of Appeals; the Environmental Health Inspector does not necessarily even know that the Building or Electrical Code inspector has been there.

## E. Coordination and Consistency within Departments

### 1. In sum:

This section reviews the staffing patterns and the consistency of administration and enforcement within four of the County government departments involved with regulating group day care centers and finds that:

- Many licensees voiced complaints about inconsistent enforcement by Health Department and DFRS inspectors presumably charged with enforcing identical regulations; the specific problem most often cited was that the same room set-up or equipment seemed to pass inspection one year, but not the next.

- Health Department and DFRS staff acknowledge the consistency problem and have made a conscious effort over the past few years to improve their performance.

- While licensees appear to understand how the regulatory functions of the Health Department and DFRS operate, few licensees seem aware of the entire scope of DEP's, the Board of Appeals', or the Planning Board's roles in the regulatory structure.

- The primary complaints voiced by licensees about DEP concerned inspection scheduling problems and the perception of seemingly duplicative inspections. A comprehensive study of DEP's inspection operations was commissioned by OMB and is expected in early 1987.

- A number of licensees also voiced concerns about what they perceived as inconsistent rulings by the Board of Appeals. Three consultants' studies examining various land use and zoning issues related to child care facilities are being conducted by the Planning Board and are expected to be completed in early 1987.

2. Health Department. Within the Health Department, a number of staff are assigned exclusively to work on the licensing of group day care centers, and others are assigned to work on group day care centers as one of many areas of responsibilities. Within the Children's Services Program Staff (CSPS), organizationally located in the Division of Licensure, Regulatory and Special Health Services, five full-time and two half-time staff work exclusively with group day care centers:

- As discussed earlier, the Licensing Coordinator provides general information, consultation, and technical assistance to prospective and existing licensees. The Licensing Coordinator also arranges for meetings and inspections between prospective licensees and CSPS inspectors, and obtains evidence that all necessary clearances from the different authorities have been obtained. A part-time Program Assistant to the Licensing Coordinator has just been hired and will start in early 1987.

- One full-time and one part-time community health nurse inspect for compliance with regulations concerning nutrition and food service, immunization, handwashing and diapering procedures, first aid training and supplies, injurious treatment, and other practices related to the health status of staff and children.

- Three child development specialists inspect for compliance with regulations concerning staff qualifications, staffing patterns, group size, child/staff ratios, equipment, and other factors concerning every proposed and operating day care program.

Outside of the CSPS, another 21 full-time and three part-time Health Department staff are assigned group day care centers as only one of many areas of responsibility:

- Eleven full-time and three part-time environmental health inspectors inspect food service facilities, alcoholic beverage licensees, group homes, camps and swimming pools as well as day care centers. In day care centers, the environmental health inspector checks for compliance with regulations concerning environmental factors such as building and playground safety, drinking water, toilets and hand sinks, garbage and sewage disposal, general cleanliness, lighting, insect and rodent control, food preparation areas and refrigerators.

- The Wells and Septic Section (three code enforcement inspectors, two construction code analysts, one engineer, and one investigator) reviews all subdivision and building plans for well and septic system code compliance, and conducts inspections to determine whether private water and septic waste disposal systems meet current State and County regulations.

- The Division Director, Chief of the Field Services Division and Chief of the Program Services Division all devote a certain percentage of time to the licensing of day care centers.

With three child development specialists, two community health nurses, 14 environmental health inspectors, and a wells/septics code enforcement staff of seven possibly involved with inspecting day care center sites, the need for coordination within the Health Department is great. The staffing pattern for the Division looks awkward on paper in that the field staff involved with day care all report to the Chief of the Field Services Section, while the Licensing Coordinator for day care works for the Chief of Licensure and Regulatory Services Section. The field staff receive their day care inspection assignments from the Licensing Coordinator, even though the Chief of Field Services is their supervisor and is responsible for reviewing their performance.

When a day care center license application is received, the Licensing Coordinator assigns it to a child development specialist, community health nurse, and an environmental health inspector. Because each environmental health inspector is responsible for many kinds of inspections (restaurants, group homes, day care centers, etc.) located in an assigned geographic area, which environmental health inspector gets which day care center depends upon the location of the facility. The Licensing Coordinator assigns centers to the child development specialist and community health nurse such that each inspector's workload remains relatively equal. The assignment of centers is rotated every two to three years.

Table IV shows the number of licensed centers assigned to each child development specialist and community health nurse since FY 82. Although formal Statewide performance standards are just now in the process of being developed, both State and County staff agree that a "reasonable" inspection workload is 60 centers for a child development specialist, and 85 centers for a community health nurse. Such a workload allows each inspector time to conduct the necessary number of on-site inspections, file the requisite reports, and have "some" time left over for consultation and training.

As Table IV indicates, the child development specialists have tended to carry workloads somewhat above the recommended level of 60 centers; the addition of a third child development specialist in FY 86 reduced the ratio for one year, but with the expected growth in the number of new centers, the ratio will rise again this year. The caseload for the single community health nurse assigned to CSPA was more than 50% above the recommended level in FY 82 and FY 83; the addition of another half-time nurse in FY 84 reduced the caseload to only 15% above the recommended level in FY 84. Since then, however, the number of centers handled by each nurse has continued to increase, so that with the same 1.5 nurse workyears, the current caseload is the heaviest it has ever been.

TABLE IV

Center Caseload Assigned to Each Child Development Specialist (CDS)  
and Community Health Nurse (CHN)<sup>1</sup>  
FY 82 - FY 87

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87 (projected)
CDS #1	65	68	70	79	61	69
CDS #2	64	67	69	78	60	69
CDS #3					60	69
CHN #1	129	135	93	104	121	138
CHN #2 (half-time)			46	53	60	69

<sup>1</sup> Source: County Government Approved Personnel Complements, FY 82 - FY 87, and Health Department records.

Interviews with the Health Department staff indicated that except for feeling workload pressures, there is a general internal acceptance of the existing structure. There appears to be a close working relationship between the Licensing Coordinator and the Chief of the Field Services Division, frequent staff meetings, and a genuine commitment among the staff towards working as a team. The staff seems satisfied with the level of cooperation and communication within the division. There appears to be respect for each other's expertise, and, for the most part, mutual understandings of where one inspector's job ends and the next one begins.

Interviews with prospective and existing licensees revealed a broad range of feelings about coordination and consistency within the Health Department. Although several licensees interviewed believe that the trio of inspectors assigned to each center frequently duplicate and/or contradict each other's efforts, most feel that over time, the roles of the three have become more clearly defined and do not overlap. About half of the licensees interviewed feel that there is good communication among all of the Health Department inspectors; the rest feel that there is decent communication between the child development specialist and the community health nurse, but that the environmental health inspector seems to do his/her job in isolation and not as a part of a team.

The specific problem most often cited by licensees was a perceived lack of consistency between annual inspections. For example, licensees cited specific examples where the identical play equipment, snack menu, or refrigerator passed inspection one year, but not the next. Examples of seemingly inconsistent inspections were cited as occurring most often between two different inspectors with the same title, but sometimes even from the same inspectors on different occasions.

Health Department staff are well aware that licensees feel that their inspections are not 100 percent consistent. For the past three years, the Organization of Child Care Directors has highlighted inconsistent inspections as one of their major complaints with the Health Department. In response to charges of inconsistency, the Health Department's Field Services Chief maintains that a certain amount of inconsistency is endemic to any function where people are conducting inspections based upon regulations that require any degree of judgment. Nonetheless, the Children's Services Program Staff has made a conscious effort over the past few years to improve the consistency of their inspections. The staff now meets regularly to discuss the interpretation of regulations and agree upon how specific situations should be resolved.

In addition to local attention on the consistency problem, the State sponsors workshops and forums for all child development specialists and community health nurses who inspect group day care centers in Maryland. One of the primary goals of the Statewide meetings is to improve the consistency of inspections. DHMH is also developing performance standards for all licensing coordinators, child development specialists, community health nurses, and environmental health inspectors working throughout Maryland.

3. Department of Fire and Rescue Services. The County's Fire Marshal, who serves as the Director of the Division of Fire Protection, is responsible for enforcing the Fire Safety Code, the term used to describe the network of all relevant State and County fire safety laws, codes, and regulations.

An Assistant Fire Marshal supervises the Engineering Plans Review and Field Fire Safety Sections. The Engineering Section (6.0 workyears), reviews applications for use and occupancy permits and building permits to ensure code compliance, and conducts field tests of fire protection and alarm systems. The Field Fire Safety Section (5.0 workyears), conducts inspections for code enforcement in all County buildings and structures.

Table V shows the number of field Fire Safety Code inspectors and inspections since FY 83. Although the number of Fire Safety Code inspections conducted in day care centers are not recorded separately, the inspection workload increases over the past five years are attributed to many factors beyond the growth in licensed day care centers. The data do indicate, however, that while the number of annual inspections has increased more than 30% since FY 83, the number of inspectors was reduced from nine in FY 83 to five in FY 84, and has remained stable since.

TABLE V

Field Fire Safety Code  
Staffing and Inspections  
FY 83 - FY 87<sup>1</sup>

<u>Fire Safety Code:</u>	<u>FY 83</u>	<u>FY 84</u>	<u>FY 85</u>	<u>FY 86</u>	<u>FY 87</u>
Inspectors	9	5	5	5	5
Inspections	5,524	5,896	6,735	7,072	7,422
Average # of Inspections Per Inspector	614	1,179	1,347	1,414	1,484

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<sup>1</sup> Source: Recommended Budget, Fire and Rescue Services, Output Indicators, FY 84, FY 85, FY 87

When DEP receives an application for a building, electrical, or use and occupancy permit, the proposed plans are sent up to the Engineering Section in DFRS. A fire protection engineer conducts a paper review of the plans and indicates the specific modifications needed for compliance with the Fire Safety Code. The proposed plans are then returned to DEP. Depending upon the workload of DFRS, the fire protection engineer's review takes anywhere from several days to two months. The current turnaround is approximately two weeks.

Interviews with licensees indicate a great deal of dissatisfaction with the consistency of Fire Safety Code inspections. There is a perception among licensees that different fire inspectors have different priorities, which leads to inconsistent inspections of the same facility. Specific examples were cited where licensees felt the same room and equipment set-up, heating elements, or type of exits passed inspection one time and not another. In the majority of examples, licensees perceived an inconsistency between what was cited as a violation in one year vs. what was cited the next. Another type of frustration occurs when an officer finds one set of violations at an initial inspection and additional violations during a follow-up or subsequent inspection.

A closer examination of the process indicates several factors that likely contribute to perceptions of inconsistent enforcement. First, although the same field fire inspector generally performs the initial and any follow-up inspections for a particular site, the field inspector is sometimes inspecting a facility for compliance with the written directives issued by a fire protection engineer during the building and use and occupancy permit processes. The field inspector's review on-site may in fact differ from the fire engineer's review of proposed plans. For a variety of reasons, what eventually gets built may be different from what was initially proposed, and the applicability of the Fire Safety Code can change. To a prospective licensee, this may appear to be inconsistent enforcement.

Another factor contributing to perceptions of inconsistent enforcement of the Fire Safety Code is the practice governing annual inspections. DFRS staff conduct initial inspections and any follow-up inspections required prior to the first issuance of a day care center's license. Annual inspections, thereafter, are only performed by DFRS staff upon special request. Annual inspections are, however, performed throughout the County by local fire corporation personnel as part of each independent corporation's fire prevention program. The Chief of each independent corporation determines the regularity of its own inspections, which means that a group day care center can be inspected once, twice, or not at all by its local fire department in any given year. Because of the varied levels of proficiency in interpreting the Fire Safety Code, the judgment of the local fire department is not always the same as that of the DFRS staff.

Consistent and objective enforcement is a priority of the Fire Marshal. When asked about the many complaints of inconsistency, the Fire Marshal acknowledged that inconsistent enforcement has been and continues to be a problem. In some cases, the problem is inadequate training of personnel authorized to enforce the Fire Safety Code. In other cases, the Fire Marshal believes the problem is that situations that appear identical to a licensee are in fact not identical; for example, a licensee may not understand that adding several more children can change which sections of the Fire Safety Code apply.



The Fire Marshal's office has undertaken several initiatives to address the problem of inconsistent enforcement. In addition to a budget request for another field Fire Safety Code inspector, included in recommended revisions to County Code Chapter 22, Fire Safety Code<sup>1</sup>, is a proposal for standardizing Fire Safety Code inspections in all structures throughout the County, utilizing a combination of DFRS and independent corporation personnel. In an effort to educate the public about what Fire Safety Code enforcement involves, the Fire Marshal has met with numerous community groups (including the Organization of Child Care Directors) to discuss the specific problems encountered by licensees attempting to comply with the Fire Safety Code.

4. **Department of Environmental Protection.** DEP becomes involved with prospective licensees in issuing building, electrical, and use and occupancy permits, and enforcing the zoning ordinance.

Organizationally, these functions are in three sections of the Division of Construction Codes Enforcement:

- The Permit Processing Section provides information, application processing, permit issuing, and licensing;

- The Plans Review Section provides detailed review of new construction projects and major renovations for compliance with State and County regulations and codes; and

- The Field Services Section conducts field inspections through on-site review of permitted construction, and conducts inspections for zoning code compliance.

Table VI shows the number of staff positions and total number of plans reviewed, permits processed, and inspections conducted by DCCE from FY 84 - FY 86. Even though data on work performed specifically for group day care centers is not readily available, it is clear that only a fraction of DCCE's workload increase can be explained by the 42 new group day care centers licensed during this same time period.

TABLE VI

DCCE Workload and Staff Trends<sup>2</sup>  
FY 84 - FY 86

<u>Measures</u>	<u>FY 84</u>	<u>FY 85</u>	<u>FY 86</u>
Permits Processed	28,761	30,947	33,641
Inspections Conducted	117,586	135,906	152,650
Plans Reviewed	6,421	7,828	10,025
Staff Positions	68	76	94

<sup>1</sup> According to the Fire Marshal, legislation proposing changes to Chapter 22 should be transmitted to the Council from the Executive branch before the end of 1987.

<sup>2</sup> Source: Division of Construction Codes Enforcement; Exhibit V-5 from January 1987 Management Study of DCCE prepared for OMB by Peat, Marwick, Mitchell and Co.

An application for a building, electrical, or use and occupancy permit received from a prospective day care center licensee is treated the same as an application for any other commercial use. If the facility in question does not have the appropriate land use designation or special exception, then DEP automatically rejects the application. DEP will also refuse to process an application for a building permit if the plans indicate a need for plumbing work and a plumbing permit from WSSC has not already been obtained.

Once an application is accepted by the Permit Processing Section, it is logged onto the Division's computer, and routed to the next appropriate step. Building and electrical permit applications are sent to DFRS to be reviewed by the Engineering Section for compliance with the Fire Safety Code; they are then sent to the Plans Review Section to be reviewed for compliance with the Building and Electrical Codes. Once the Plans Review Section signs off that the proposed plans are technically correct, then the building or electrical permit is issued.

If the building permit is for new construction or major renovation, then the Field Services staff (Building and Electrical Code inspectors) inspect throughout the construction process. If the permit is for a relatively small renovation, then the Building and Electrical Code inspectors conduct their inspections when the applicant contacts DEP to say the work is completed. A use and occupancy permit application is sent to DFRS for an on-site inspection for Fire Safety Code compliance, and to the Field Services Section for on-site inspections by the Building and Electrical Code inspectors.

Only a handful of licensees interviewed seemed to understand the entire scope of DEP's role in the regulatory structure for day care centers. This is probably because not every prospective licensee needs to go through the building and/or electrical permit process, and many of those that do decide to delegate the responsibility for obtaining the requisite permit(s) to the contractor performing the work. Moreover, even though all day care centers are technically required to have a use and occupancy permit, some day care licensees, especially those located in schools (open or closed), never obtained use and occupancy permits. Finally, only the subset of licensees who had to obtain a special exception would have reason to interact with DEP's zoning inspection staff.

The primary complaints about DEP voiced by licensees concerned the coordination and scheduling of inspections. The coordination problem was the perception of seemingly duplicative inspections. Discussions with DEP staff indicate that if a licensee obtains a building permit and subsequently applies for a use and occupancy permit, then the building and electrical inspectors may, in fact, have to make two visits to the same location within a relatively short time span. An effort is made to allow the final inspection for the building permit to serve as the inspection for the use and occupancy permit; however, this does not automatically happen and there are occasions where inspectors will be assigned to inspect a site again. Even if the site remains unchanged, this often occurs if there has been a time lapse (more than 2-3 weeks) between the building permit inspection and use and occupancy application.

The scheduling problem identified by licensees concerns DEP's practice of not making specific appointments for on-site inspections. Several licensees relayed stories of waiting many hours for an inspector and then having the inspector not show up on the appointed day; or rearranging schedules to meet an inspector at a particular time, only to have the inspector leave the site before the prospective licensee showed up. Because DEP's Building and Electrical Code field inspectors are unable to predict how long each inspection will take, permit applicants are usually informed only of the day, and not a particular time, to expect an inspector. If applicants call DEP on the assigned day of inspection, then they can usually find out an approximate time (i.e., early morning vs. late afternoon) that the inspector should arrive at their property.

OLO did not undertake a more thorough evaluation of DCCE because during the time this report was being researched the County's Office of Management and Budget contracted for a comprehensive management study of the entire Division of Construction Codes Enforcement. The final study, which was issued as OLO's report was in its final stages, assesses the Division in terms of its mission and mandated responsibilities, management practices, organizational structure, staffing levels, operations, and contracting-out arrangements. Chapter VII includes OLO's recommendation that Council review and consider taking action on the results of OMB's study.

**5. Board of Appeals and the Montgomery County Planning Board.** The County's Board of Appeals (BOA) and Planning Board will generally interact only with prospective day care licensees who file a petition for special exception<sup>1</sup>. The Planning Board makes a recommendation to the BOA on every special exception petition, and the BOA holds a formal public hearing and renders the decision to grant or deny the request. The BOA's decision usually includes conditions that the petitioner must meet before the special exception takes effect.

The staff directly supporting the BOA consists of the Clerk to the BOA, one full-time administrative aide, and one part-time office assistant. By providing a technical staff report and recommendation for approval or denial, the Planning Board and Planning Board staff also supplement the work of the BOA.

The Clerk to the Board of Appeals coordinates the various steps of a special exception at the BOA, and the Zoning Coordinator in the Development Review Division coordinates the technical staff work at the Montgomery County Planning Board. When a completed special exception petition is submitted, the Clerk sends a copy to the Development Review Division and sets the hearing date.

Once at the Planning Board, the Zoning Coordinator distributes the file for review to other staff divisions such as Transportation, Urban Design, Environmental Planning, and Community Planning. The comments of technical staff are coordinated by the

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<sup>1</sup> The BOA has jurisdiction Countywide except for the municipal confines of Brookeville, Poolesville, Laytonsville, Rockville, Barnesville, Gaithersburg and Washington Grove.

Zoning Coordinator and presented both orally and in writing in public session to the Planning Board. The Planning Board's recommendation, along with the technical staff report, are then sent back to the BOA and incorporated into the official record of the application.

Interviews with prospective licensees indicated a range of involvement between the time a petition for special exception was submitted and a decision was rendered by the BOA. Prospective licensees were not consistently informed about the Planning Board's role in the special exception review process, and several of those interviewed were not even aware that the Planning Board publicly discussed and made a recommendation to approve (or deny) their special exception.

The Planning Board's technical staff review almost always includes a site visit. In many instances, however, because the staff review does not require interior access, an applicant may not even know that a Planning Board staff member has visited the property. In most cases, Planning Board staff informs the petitioner when his/her special exception is scheduled for discussion by the Planning Board, but perhaps because petitioners are not required to be present, the date and time of Planning Board review is not always communicated in a timely way to the petitioner.

A review of BOA's files indicate that staff and/or the Planning Board's recommendations are not consistently received by the BOA five days before the BOA's hearing date, as required by Section 59-A-4.128 of the County Code. BOA records show that recommendations on day care special exceptions are received anywhere from three months to one day before the hearing, with most arriving only two or three days before.

A number of licensees voiced concerns about what they perceived as inconsistent rulings by the BOA; that is, cases that appeared similar did not always receive the same decision. Although, a detailed examination of the substance of BOA day care facility petitions and decisions was beyond the scope of this evaluation, a review of Board files indicate that:

- From January 1978 through December 1986, the BOA heard and rendered decisions on 40 special exceptions for child day care facilities. As indicated on Table VII, the number of day care special exception petitions filed in one year has ranged from 0 (1979, 1983) to 12 in 1986. An additional eight cases are currently awaiting a hearing before the Board or a final decision.

TABLE VII

Board of Appeals Process - Special Exceptions  
for Day Care Centers  
Number of Cases and Decisions

	1978	1979	1980	1981	1982	1983	1984	1985	1986	Total
Cases:										
Total	1	0	3	2	7	0	6	9	12	40
Granted	0	0	3	2	4	0	5	7	8	29
Denied	0	0	0	0	2	0	1	1	3	7
Dismissed	1	0	0	0	1	0	0	1	1	4

- Of the 40 total requests, 29 (72.5%) were granted, 7 (17.5%) were denied, and 4 (10%) were dismissed. In the past two years there have been four denials, three of those occurring during the past six months.

- BOA's decision to grant a special exception more often than not reflects the recommendation offered by the Planning Board staff and the Planning Board; six of the seven denials, however, were made despite a recommendation for approval received from the Planning Board's Technical Staff and the Planning Board itself.

- The majority of reasons used in opposition against a day care center in a residential neighborhood were that it would disturb the peace, increase traffic, adversely affect property values, and interfere with the neighbors' privacy.

By not limiting the nature of the conditions the BOA can impose when granting a special exception, the zoning law provides the BOA with a great deal of latitude for responding to the concerns raised in opposition to locating a day care center in a residential zone. Special exceptions for day care facilities are typically granted with conditions such as a limit on the number of children enrolled; hours of operation, and/or days of operation; limit on number of children and staff and ages of children outside at certain times; Planning Board staff approval of a revised parking, landscape, or lighting plan; and a limit on the number of cars that can pick-up children at certain times.

In 1986, the Planning Board commissioned three studies to examine various land use site planning, and zoning issues related to child day care facilities within residential zones, commercial areas, and parks. The final reports, which are expected in early 1987, may provide the needed background for a detailed review of the County's zoning law and procedures relating to child care centers<sup>1</sup>. Because pursuing a special exception is becoming a mandatory step for a greater number of prospective licensees, the role of the BOA in deciding where future day care centers can locate is likely to grow even more critical in the years ahead.

#### F. Access to Information about Regulatory Requirements and Availability of Technical Assistance

##### 1. In sum:

- Information about the network of regulatory requirements is not available in one comprehensive document; even within some departments, the specific requirements for compliance are not easy to obtain.

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<sup>1</sup> In addition, OLO's 1987 workplan includes an evaluation of the workload and operating procedures of the BOA.

- Wider distribution of the codes and regulations would not address the fact that codes and regulations, by themselves, are not always readily understood.

- The need for and availability of technical assistance varies throughout the regulatory process. Health Department inspectors perceive their role as encompassing both inspection and consultation; Fire Safety Code inspectors are reluctant to conduct any kind of preliminary inspections; DEP inspectors see themselves in the approval business, not the consulting business; and the Board of Appeals office is not designed to help petitioners put together a winning case.

- Although the recently established Technical Assistance Office is still in the process of developing how its services fit in with the rest of the regulatory process, data collected by the Technical Assistance Office indicate a large demand for personalized assistance from prospective licensees.

## 2. Access to Information about Regulatory Requirements.

Information about the various laws, regulations, and codes governing group day care centers is not uniformly available. There is no one comprehensive document that outlines all of the requirements, and even within each department, finding out what is required for compliance is not always easy. The following four subsections review the accessibility of State group day care regulations, special exception procedures, Building and Electrical Codes, and the Fire Safety Code.

a. State Group Day Care Regulations. The State DHMH provides copies of the State group day care center law (Health-General, Title 14) and State regulations (COMAR 10.05.01) to all local Health Departments in Maryland for distribution to prospective and existing licensees. Every year the County's Health Department distributes several hundred copies of the State law and regulations, which are reproduced in a convenient 34-page, 6" x 9" booklet.

Although all licensees interviewed had a copy of the State law and regulations, not all had copies of the accompanying Manual for Regulations and Licensing Procedures for Group Day Care Centers in Maryland. This Manual, also published by DHMH, is a several hundred page document that expands upon the intent of each State regulation. The Manual is written as a guide to be used by prospective and existing licensees, and Health Department staff. Children's Services Program Staff explained that not every licensee has the manual because the State has not provided the County with sufficient quantity in recent years.

Last year, the Children's Services Program Staff initiated an update of a document titled, "How to Start a Day Care Center in Montgomery County", which was first prepared in June 1973 for the Community Coordinated Child Care Council of Montgomery County. This update, still in draft form, is an effort to consolidate information about the regulatory process. It will not, however, be a compilation of actual code requirements across all departments.

b. Zoning Information. The zoning status of a particular piece of property can be obtained by phone from DEP's zoning office. For County property, if a prospective licensee intends to pursue a special exception, petition forms and excerpts from the relevant section of the County's zoning law are available from the Board of Appeals' office. On the reverse side of the application form are instructions for filing a petition for special exception. The instructions, which are the same for any type of special exception petition, are taken verbatim from Chapter 59 of the County Code. For property located in a municipality that exercises its own zoning powers, prospective licensees must contact the appropriate municipal authority to find out what is required to pursue a special exception.

c. Fire Safety Code. It is not the Fire Marshal's practice to provide prospective licensees with copies of the Fire Safety Code<sup>1</sup>. The latest edition (1984) of the Life Safety Code, which establishes standards for all aspects of fire prevention in both existing and newly constructed buildings, is available for public review at the DFRS offices in the Executive Office Building, at the Public Services Training Academy Library (only open weekday afternoons), and the Rockville library. Two other County libraries have older editions, and individual copies can be purchased by mail for \$15.00 from the National Fire Protection Association in Quincy, Massachusetts.

Last year, in response to a demand from the child care community for more specific information, the Fire Marshal's office developed a five page handout that outlines the specific sections of the Life Safety Code applicable to child day care facilities; it also summarizes the Life Safety System package, which is a system of fast response sprinklers and smoke detectors installed in accordance with National Fire Protection Association standards. The handout is not fully self-explanatory, however, and still requires access to a Life Safety Code.

The handout, which as yet has not been widely distributed, also emphasizes the availability of the Fire Prevention staff to answer questions. It states that, "In view of the comprehensiveness of the Fire Safety Code, it is strongly recommended that the Division of Fire Protection be contacted whenever there is a question as to the meaning or applicability of a particular section of the Life Safety Code or the equivalency components."

d. Building and Electrical Codes. DEP does not provide copies of the lengthy BOCA Basic Building Code (430 pages) or National Electrical Code (750 pages) to the public. DEP staff are, however, available to answer specific questions about the codes and copies are available in selected County libraries.

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<sup>1</sup> The term Fire Safety Code refers to the network of State and County laws and regulations governing fire protection; the Life Safety Code, an integral part of the Fire Safety Code, is incorporated by reference into the County Code.

In practice, a prospective licensee's knowledge of these codes, which are updated every several years, will be limited to learning about what changes are required to bring a facility into compliance. This is learned either during a review of written plans at the time of applying for a building or electrical permit, or at the time initial inspections are conducted for a use and occupancy permit.

## **2. Need for and Availability of Technical Assistance.**

Wider distribution of the technical requirements would not address the fact that codes and regulations, by themselves, are not always readily understood. The need for and availability of technical assistance also varies throughout the process. The following subsections review what the Health Department, the County Board of Appeals, DFRS, and DEP provide in the way of technical assistance to prospective day care center licensees. Finally, the services of the Technical Assistance Office are discussed.

a. **Health Department.** The majority of licensees interviewed indicated that they fully understand what the State group day care regulations require, even though they may disagree with the substance of certain regulations. This understanding seems to come from owning written copies of the regulations, the manual which expands upon the interpretations of each regulation, and inspection sheets that parallel the regulations themselves. Understanding what is expected also seems to grow out of extensive interactions with the Health Department staff, and the willingness of the different Health Department inspectors to act as consultants, as well as code enforcement agents.

Interviews with the Health Department's CSPS staff indicate a shared philosophy that day care center licensing includes two separate but related activities, "supervision" and "consultation". Guidelines developed by the State define these two functions as follows:

**Supervision:** official observation of the day care center carried out by means of annual inspections which are performed by members of local Health Department staffs.

**Consultation:** an activity directed towards helping day care center licensees move beyond conformity to minimum regulations towards higher goals and standards of child care. Consultation is counsel in the solution of a problem, and should be available to day care center operators before a formal application to operate a center has been made, during the application investigation, and after the issuance of the license.<sup>1</sup>

Although consultation can occur during any interaction between an inspector and licensee, two particular steps of the Health Department's process, the office interview and the preliminary inspection, are designed entirely to offer consultation.

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<sup>1</sup> Source: DHMH Manual Appendix D-12, 1980.



An office interview<sup>1</sup> is required for every prospective licensee's first time through the regulatory process. It is typically a two hour meeting with the Licensing Coordinator and two CSPA inspectors, the child development specialist and community health nurse. According to the staff involved, the office interview is seen as an opportunity to offer whatever level and depth of technical assistance the prospective licensee needs to prepare a facility and program that meets State group day care regulations. Depending upon an informal reading of the background of the prospective licensee (i.e., Is he/she already familiar with the regulations? Has he/she ever opened a center before?), and status of the proposed center (i.e., Has a specific site been selected? Has a director been hired?), the office interview can be a sketchy overview of minimum health and safety regulations, or a specific consultation about senior staff requirements and snack menus. The office interview is also seen as a chance to review the overall regulatory process, and inform a prospective licensee about the different permits and approval that must be obtained from offices beyond the Health Department.

Although not a mandatory part of the Health Department's procedures, the preliminary inspection is also designed to offer consultation<sup>2</sup>. For a fee of \$25, a prospective licensee can get the trio of Health Department inspectors to perform an on-site preliminary inspection of the proposed day care facility. A preliminary inspection typically lasts between one and two hours, and results in an informal advisory report to the prospective licensee about what needs to be done to bring the proposed facility into compliance with DHMH regulations.

Feedback from licensees on the steps specifically designed to offer consultation was also mixed. Apparently, the office interview is extremely useful to certain prospective licensees, but perceived as an overload of information to others. Although the Health Department staff believe they tailor every interview to the needs of the individual applicant, from the licensee's point of view, the office interview is not always designed appropriately. In contrast, every licensee who had requested a preliminary inspection voiced satisfaction with the advice received from the CSPA inspectors. The only complaint with the preliminary is that it only reviews what must be done to obtain compliance with DHMH regulations, and does not include advice about complying with the Fire Safety, Building, or Electrical Codes.

The individual Health Department inspectors have each developed their own blend of supervision and consultation. There are no formal performance standards that direct each inspector when to act more like an enforcement officer and when to act more like a consultant. In addition to the State's definition of consultation, the only written guideline within the Health Department is an internal memo from the Field Supervisor that authorizes the

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<sup>1</sup> The office interview is shown as Step 2 on Chart I.

<sup>2</sup> The preliminary inspection step is outlined as an optional step on Chart I.

inspectors to spend a certain percentage of their time on consultation. In practice, as each inspector's workload increases, however, the amount of time devoted to consultation declines because it is seen as a lower priority than inspecting for compliance with minimum health and safety standards.

Based upon observation of the inspectors in the field and interviews with licensees, this evaluator concludes that it is very challenging to effectively perform both supervision and consultation functions, and that some inspectors are more successful than others at communicating to licensees when they are enforcing the licensee's compliance with standards and when they are providing advice. Nonetheless, there appear to be a number of advantages to combining supervision and consultation in the day care licensee's role. During preliminary and pre-licensing inspections, the inspectors may be able to assist a facility to achieve compliance with regulations; in addition, an experienced inspector can provide assistance to licensees interested in offering services beyond minimum regulatory requirements. For the Health Department staff, the consulting role also appears to provide a form of job enrichment.

Licensees differ on how they view the Health Department inspectors' consultant role. While some licensees clearly rely upon the child development specialist, community health nurse, and/or the environmental health inspector for advice on how to comply with regulations and even how to enhance their services beyond required standards, other licensees, especially those operating as part of a group of centers, do not feel the need for technical assistance from the inspectors. In fact, a number of licensees view consultation from inspectors as an undesirable extension of the supervisory role.

The major problem with combining supervision and consultation seems to be that the inspector always retains the legal authority to enforce standards, and licensees can be reluctant to share problem areas for fear of receiving violations. Some licensees feel that inspectors do not always clarify what is mandatory and what is being recommended, which leaves providers unsure about what they must do and what is purely voluntary. Finally, other providers voiced a lack of confidence in the expertise of certain inspectors.

b. Board of Appeals. As discussed earlier, the instructions for filing a special exception petition are outlined on the reverse side of the petition form and are taken verbatim from Section 59-A-4.22 of the County Code. The requirements for a child day care facility are no more or less difficult than those for any special exception. Basically, a petitioner must compile a file that describes the existing and proposed land use, and list those individuals who have a legal right to know of the proposed change.

The Board of Appeals' (BOA) staff is available to answer general questions about the special exception process, but not to provide substantive technical assistance to prospective licensees. As currently structured, it would not even be appropriate for the BOA's staff to offer advice on how an applicant could best present a winning case.

Requests for special exceptions from day care providers are a relatively small part of the BOA's overall workload. For example, in FY 86, only 14 out of 126 petitioners for special exceptions were for child day care facilities. In addition to special exception cases, in FY 86 the BOA issued decisions on 126 variance cases, 55 administrative appeals, 25 miscellaneous hearings and 100 requests for minor modifications of previous cases.

Feedback from licensees on the ease of pursuing a special exception was mixed. For those familiar with the County's zoning process, the ten data requirements appeared time consuming, but understandable. However, for prospective day care providers unfamiliar with zoning, the requirements for filing special exception petitions appeared overwhelming. In addition to finding the application requirements onerous, a number of licensees stated that they never fully understood the special exception process, and were unaware it included a review by the technical staff of the Planning Board and a formal recommendation to the BOA from the Planning Board itself.

Almost half of the special exception petitions for a day care center facility submitted from January, 1978 through 1986 were filed with the assistance of an attorney<sup>1</sup>. When asked whether they would advise a prospective licensee to hire an attorney to help them through the special exception process, members of the Board of Appeals and the Chairman of the Planning Board agreed that an attorney is particularly advisable when a petitioner faces vocal neighborhood opposition. Several licensees who had pursued a special exception themselves indicated that, had they known what was involved, they would have hired an attorney. One provider noted she really needed professional legal assistance, but could not afford it.

c. Department of Fire and Rescue Services. Relative to the State Health Department's group day care regulations, the requirements of the Fire Safety Code are not readily interpreted by many day care center licensees. A majority of licensees interviewed indicated they had experienced great difficulties in understanding the code requirements enforced by the Fire Marshal.

Wider distribution of the Fire Safety Code would not address the fact that much of the Code is written for interpretation by fire safety professionals. The Life Safety Code, as stated earlier, is 331 pages long and sets standards for all aspects of fire prevention in both existing and newly constructed buildings. Out of 32 chapters in the Code, one chapter deals specifically with requirements for group day care facilities; numerous other sections also apply to a day care center depending upon the specific structure being inspected.

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<sup>1</sup> The cost of hiring an attorney to coordinate a special exception request ranges from \$1,000 to \$5,000.

Neither State nor County law mandates the Fire Marshal to provide consultation on the Fire Safety Code. Consistent with the law, the County Fire Marshal does not perceive his role to include what he refers to as "shopping" with prospective licensees, that is, conducting, upon request, preliminary inspection of any and all potential day care center sites. Instead, the Fire Marshal believes this function is more appropriately performed by professional fire protection engineers, who can be hired to offer advice and options on the types of modifications that may be necessary to bring a specific facility into compliance with the Fire Safety Code<sup>1</sup>.

To place the needs of the child care community in perspective, however, it is useful to review the magnitude of DFRS' inspection responsibility. The Fire Marshal is charged with enforcing the Fire Safety Code in over 20,000 commercial structures in the County, making the County's approximately 200 group day care centers less than 1% of this responsibility. In FY 86, the Division of Fire Prevention performed over 7,000 inspections of new, renovated, and existing buildings/structures requiring Fire Safety Code compliance.

The problems day care providers have had interpreting the Fire Safety Code have been recognized by the Fire Marshal. For the past three years, the Fire Marshal has met with the Organization of Child Care Directors to answer questions. More recently, in addition to developing a handout that attempts to guide a prospective licensee through the requirements of the Life Safety Code, the Fire Marshal also agreed to teach the Licensing Coordinator in the Health Department and the full-time Coordinator in the Technical Assistance Office the basic Fire Safety Code requirements for day care centers.

d. Department of Environmental Protection. The Building and Electrical Codes are similar to the Fire Safety Code in that wide distribution of the technical codes themselves would not help prospective licensees understand what must be done to bring a specific facility into compliance. Also, just as the laws governing enforcement of the Fire Safety Code do not call upon the administering department to offer technical assistance, the laws governing enforcement of the Building and Electrical Codes do not mandate DEP to offer advice and consultation.

Conversations with DEP staff confirm that individuals working in the Division of Construction Code Enforcement feel responsible for code enforcement, not technical assistance. One manager explained it by stating that, "We are in the approval business, not the consulting business." One of the rationales behind the government not being building consultants is that advice about meeting Building and Electrical Code requirements is a service readily available from the private sector. Most companies that are

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<sup>1</sup> Fire protection engineers have hourly rates that range between \$60 and \$100.

in the building business have professionals versed in the detailed requirements of the technical codes. In fact, for major construction or renovation projects, DEP will not review proposed building plans, unless there is evidence of prior approval by a certified architect<sup>1</sup>.

DEP handles the review of plans, inspections, and issuance of permits (building, electrical, use and occupancy) for day care centers the same way it handles these functions for any other commercial activity. To place the needs of day care centers in perspective, in FY 86, the Construction Codes Division reviewed over 10,000 plans, issued over 33,000 permits, and conducted over 152,000 inspections. Since 1980, the largest number of day care centers to open in any one year was 24; even if each of those 24 centers required plan reviews, permits, and three inspections by DEP personnel, group day care centers still only comprise a very small percentage of DEP's total workload.

e. Department of Family Resources, Child Care Technical Assistance Office. The increasing need for child care in the County, coupled with an awareness that many potential providers needed help and encouragement to start day care centers, led DFR in 1986 to initiate a program dedicated to providing general and individualized assistance to prospective and existing providers.

The Technical Assistance Office (TAO) is operated on a contractual arrangement with Montgomery College. The purpose of the TAO, as stated in the initial contract signed with DFR in January 1986 for \$30,000, was "to provide information to child care providers and prospective providers with regard to child care program development and management". For FY 87, the contract was increased to \$57,000 and the scope of the contract expanded. During the time OLO's evaluation was being conducted, TAO was just becoming operational. Although it is too soon to fully evaluate the performance of TAO, the following observations are offered based upon a review of the TAO contract, and interviews with DFR and TAO staff, and prospective and current licensees.

The original scope of services outlined in the contract between Montgomery College and DFR was very ambitious; in fact, it seems to have set an unrealistic agenda for the first year of a \$30,000 contract. It called for delivery of comprehensive services for family and group day care center providers and nursery schools; specifically, it included:

- Developing a system for disseminating information to include a recorded telephone information service, a clearinghouse publication, an audiovisual introduction to day care regulations, written guides delineating regulations and requirements, and a technical assistance lab at the Children's Resource Center;

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<sup>1</sup> Professional services from an architect or engineer typically cost between \$50 - \$150 per hour.

- Providing information on the size and nature of child care needs by geographic areas in the County, on how to start and operate all different kinds of child care business, how to handle facilities codes and zoning procedures and how to find and apply for capital funding and insurance;

- Providing crises assistance to day care programs in danger of closing down because of regulatory, facilities, or transportation problems; and

- Reporting to the County on the status of every known child care provider in the County.

Exactly how TAO would relate to the different departments responsible for administering and enforcing regulations and codes applicable to day care centers was something not fully explored prior to signing the contract with Montgomery College. The contract between Montgomery College and DFR outlined the relationship between the new Technical Assistance Office and the rest of County government in a very general way by stating only that TAO will "appropriately refer questions and problems to other sources of information, technical assistance and consultation". TAO staff has spent much of this first year of their contract learning about the different regulatory requirements and developing working arrangements with the various regulators.

During most of 1986, when and if a prospective or existing provider is initially referred to TAO appeared to vary from case to case. Some prospective licensees were referred by the Health Department during their first contact with the Health Department; others never were referred at all. In November 1986, the Health Department and TAO agreed that prospective licensees who approached the County with an interest in offering child care, but without a specific facility, will always be referred to TAO and will be asked to first meet with TAO staff; prospective licensees who already have a specific facility will be told about TAO but not specifically asked to meet with them. Over time, the TAO may become another mandated step in the regulatory process.

Although, as stated above, it is too soon to evaluate the performance of the Technical Assistance Office, the four reports on TAO activities submitted to DFR's contract monitor indicate that from July 1, 1986 - November 30, 1986, the TAO staff had contact with over 325 potential and existing child care providers. Initial phone contact with provider clients has ranged from ten minutes to one hour. Follow-up work has been accomplished in the form of letters, more phone conversations, office consultations, and site visits. The reports mention that more detailed information about TAO activities will be available when their automated tracking system is up and running.

## G. Flexibility in Enforcement of Laws and Regulations

### 1. In sum:

- The County's authority to exercise flexibility in the interpretation and enforcement of laws, regulations, and codes governing group day care centers is not the same across all agencies

and departments involved; and the County's authority to exercise flexibility is not widely publicized in the child care community.

- The Health Department, DFRS, and DEP each has its own procedures and guidelines for exercising regulatory flexibility, and a prospective licensee must apply separately to the appropriate department or departments for a variance, exception, or modification. The length of time between when a request is made and a decision rendered ranges from one to six weeks.

- Departmental records of variances, exceptions, and modifications granted are not readily available for public review.

- To date, no County government decision regarding a group day care license or permit issued to a day care licensee has been appealed to a higher authority (i.e., Board of Appeals, Circuit Court).

2. Variances, Exceptions, and Modifications. Local authority to interpret and enforce laws and regulations governing group day care centers is not the same across all agencies and departments involved in the regulatory scheme. The County's authority to exercise flexibility also varies because the various laws were enacted by different levels of government, the various regulations are promulgated by different State and County agencies, and the several different codes incorporated by reference into law are adopted as nationally recognized standards. For example, a prospective or existing licensee can request:

- A "variance", but not a waiver, to the State's group day care regulations;

- An "exception" to the Fire Safety Code; and/or

- A "modification" to a Building or Electrical Code provision.

Decisions on whether or not to grant these requests are rendered respectively by the Secretary of DHMH, the Fire Marshal acting upon advice of the Fire Safety Code Exception Committee, or the Director of DEP.

The different systems of variances, waivers, exceptions, and appeals can get especially confusing if a variance is requested on a factor that is regulated by more than one department. For example, because a 7'6" ceiling height requirement is contained in both the State DHMH group day care regulations and the Fire Safety Code, if a prospective licensee wants to obtain permission to use a basement with a ceiling height of 7'4", a variance request must be filed with the Health Department and an exception request submitted to DFRS. Although, both departments might eventually approve the request, conceivably, one department could grant the variance or exception, and the other could deny it. The following three sections discuss the procedures for requesting variances, exceptions, and modifications from the Health Department, DFRS, and DEP.

3. Health Department. A licensee can request a variance but not a waiver to the group day care regulations promulgated by DHMH. A State form for filing a variance request can be obtained from the County Health Department. COMAR 10.05.01.08 specifies that, upon written request of an applicant or licensee, the Secretary of DHMH, or the Secretary's designee in consultation with the Secretary, may grant a variance if "there is clear and convincing evidence that a regulation is met by an alternative which complies with the intent of the regulation". COMAR goes on to state that the Secretary or his designee may never waive any regulation adopted under this subtitle.

In practice, variance requests to DHMH regulations are submitted to the local Children's Services Program Staff in the Health Department, who funnel the request to the State Day Care Unit staff, who serve as the DHMH Secretary's designee. Although the authority to grant or deny a variance resides at the State level, most requests are decided by a process described as the local Health Department staff "consulting" with the State. In fact, the State allows the local Health Department staff to grant variances in cases where a clear precedent exists.

Most licensees interviewed knew about the Health Department's variance procedure, and several had actually gone through the process. The most commonly voiced complaint was the length of time it takes to receive a decision; in one case, the situation requiring a variance was no longer in effect by the time the decision was made. Several licensees suggested that it would be useful for DHMH to publish an annual report on the number and substance of variances requested, and approved or denied. Although the Health Department's variance files are open to the public, the files are not kept in a way that is readily reviewed and their availability is not publicized.

From July 1984 to December 1986, the Health Department received 86 variance requests, of which 66 or 77% were granted. A review of variance files indicate that the time from written request to decision has ranged from one week to four months, with most cases taking from four to six weeks.

More than half of the variance requests concerned senior staff qualifications, and because of documented precedents, the majority of these were resolved at the County level by Health Department staff. The rest were resolved after "consultation" with DHMH staff, most often with the Director of the State Day Care Unit. Other variance requests dealt with issues ranging from group size to staff:child ratios, to the storage of medication. Almost all of these appear to have been resolved jointly between County Health Department and State DHMH staff.

The process for appealing a decision by the County Health Department to issue, revoke, or suspend a group day care license is outlined in State law (Article 43, Group Day Care Law, Article 41, Administrative Procedure Act, Board of Review). It involves different levels of hearing, review, decision, and appeal by a DHMH hearing officer, the Secretary of DHMH, the Board of Review, and finally the Circuit Court. To date, no decision regarding a Montgomery County day care license has ever been appealed.



4. Department of Fire Rescue Services. Any deviation from the Fire Safety Code requires obtaining what is termed an "exception", which the County's Fire Marshal is authorized to grant. A County form for requesting a Fire Safety Code exception is available from DFRS.

All decisions on Fire Safety Code exceptions are made within one week after receipt. The Fire Marshal renders a decision after consulting with the Fire Safety Code Exception Committee, which meets weekly to review all exception requests received since the last meeting. Members of the Committee, chaired by the Fire Marshal or Assistant Fire Marshal, include two fire protection engineers, a representative from DEP's Division of Construction Codes Enforcement, and if the property is located within the confines of a municipality, a representative from that municipality.

In contrast to the Health Department's variance procedure, an individual requesting an exception to the Fire Safety Code is offered the opportunity to present his/her case in person to the Code Exception Committee. The Committee's final decision is, however, reached in closed session.

Interviews with licensees indicated that the Fire Safety Code exception process is not widely publicized in the child care community. The few licensees interviewed who had pursued an exception, however, were generally satisfied with the DFRS procedures. Decisions were clear and rendered within a reasonable time period.

Section 22-21 of the County Code states that any person aggrieved by a decision of DFRS made pursuant to Chapter 22 may appeal (within 10 days) to the County Board of Appeals. The Board of Appeals is authorized, after hearing, to affirm, modify or reverse the order or decision made. As of this writing, no DFRS decision regarding a day care center has ever been appealed to the Board of Appeals.

5. Department of Environmental Protection. The County Code directly authorizes the Director of DEP to exercise flexibility in enforcement, and outlines procedures to be followed. Code Section 8-15, titled "Modifications", states that:

When there are practical difficulties and undue hardship involved in carrying out structural or mechanical provisions of this chapter, the director may vary or modify such provision upon application of the owner or his representative; provided, that the spirit and intent of the law shall be observed and public welfare and safety be assured.

Forms for requesting a modification can be obtained from Division of Construction Codes Enforcement. An internal staff committee meets regularly to render decisions on the 10-15 modification requests received each week. Although data on the number of prospective day care center licensees who had pursued a DEP modification was not readily available, no staff interviewed recalled any specific day care cases.

Interviews with licensees indicated comparatively less knowledge among day care providers about DEP's modification process than about the variance and exception processes of the Health Department and DFRS. Lack of knowledge in the child care community about the modification process may be explained by the fact that it is only within the past several years that group centers have more often located in facilities requiring new construction or major renovations. As mentioned earlier, many centers located in school buildings more likely than not became licensed without ever having to deal with Building and Electrical Code inspectors. Even if a prospective licensee dealt with DEP for a routine building or use and occupancy permit, the modification process is not something widely publicized or particularly encouraged.

Any decision made by DEP can also be appealed to the County Board of Appeals. Section 8-23 of the County Code grants the Board of Appeals "full and exclusive authority to hear and decide all appeals taken from decisions of the department in the administration of this Chapter". Just as the appeal processes for Health Department variance decisions and Fire Marshal exception decisions have never been tested by day care licensees, neither has the appeal process for any DEP decision concerning a day care center.

#### H. Ongoing Enforcement

##### 1. In sum:

- Ongoing enforcement of the regulations and codes applicable to group day care centers varies according to the policies of the different departments and agencies involved.
- Ongoing enforcement of State group day care regulations is linked to the formal annual process of renewing a day care center's license. In contrast, regular inspections for continued compliance with the Fire Safety Code are conducted according to the different policies of the independent fire corporations, and regular inspections for continued compliance with the Building and Electrical Codes are not conducted at all.
- The fact that the Fire Marshal's office does not routinely conduct annual Fire Safety Code inspections of day care centers violates a State policy which calls for an annual written report from the Fire Marshal before a license is renewed.

2. Ongoing Enforcement Policies. Ongoing enforcement of State group day care regulations is primarily linked to the annual renewal process of a day care center's license<sup>1</sup>. Licenses are issued for a one year period and expiration dates are staggered throughout the year. Three months prior to the expiration date, each licensee receives a written notice, and update forms that must be filled out and returned to the Children's Services Program Staff. The community health nurse and child development specialist contact the licensee and schedule on-site inspections of the facilities and program. At some point during the three month period, the environmental health inspector will also make an unannounced inspection.

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<sup>1</sup> The annual license renewal is shown as Step 7 on Chart I.

Other ongoing enforcement activities of the Health Department revolve around investigating complaints received about particular centers, and conducting follow-up inspections (both announced and unannounced) of licensed centers that were directed to correct violations cited during a regular inspection.

At one time, the group day care license annual renewal process included an on-site inspection by a Fire Safety Code inspector from DFRS. In the early 1980's, a memorandum from the Fire Marshal outlined a policy under which DFRS agreed to perform inspections of day care centers prior to issuance of a center's initial license, but not for renewals, unless a specific problem has been observed. This practice violates a policy established by DHMH for all group day care centers in Maryland, which specifies that a written Fire Marshal's report is always required before a license is renewed.

Health Department staff interviewed indicated they were uneasy about violating the State's policy and not including a formal Fire Safety Code inspection as part of the licensing renewal process, but recognized the Fire Marshal's decision not to conduct annual inspections of day care centers was one based upon the need to allocate limited resources. Another factor influencing the Fire Marshal's decision is that problem situations will more than likely be brought to his attention either by a Health Department inspector or a local fire corporation personnel conducting a routine fire safety inspection.

As mentioned earlier in this report, each of the 18 independent fire corporations has its own policy concerning annual inspections of day care centers. Interviews with several Chiefs indicate that a day care center located in a church or school will likely be inspected by local fire corporation personnel at least once a year. If gross fire safety violations are observed, then the Fire Marshal's office is contacted to conduct a formal inspection.

Although, by law, Building and Electrical Code inspectors are not required to conduct any kind of regular inspection of day care centers, the Division of Construction Codes Enforcement in DEP is responsible for ongoing enforcement of the zoning ordinance. This includes annual inspections for compliance with any conditions imposed by the Board of Appeals when granting a special exception. DEP's policy is to inspect most special exceptions once a year, and will conduct additional inspections if a complaint is received. As of this writing, DEP had not received any repeated complaints about alleged violations of special exception conditions by child day care centers.

Additional inspections for compliance with Building, Electrical and Fire Safety Codes are only conducted if the specific use of a facility changes. For day care centers, this includes increasing the number of children, expanding the facility, or performing certain types of renovations to an existing facility. Licensees submit their requested changes to the Children's Services Program Staff in the Health Department. The Licensing Coordinator then submits requests for the appropriate inspections to Health Department staff, DEP, and the Fire Marshal.

## I. Paperwork

### 1. In sum:

- Each step of the regulatory process has its own set of required paperwork; almost all of the applications also require supplemental supporting documents.

- Reports back to a prospective licensee on the results of different inspections vary in terms of format, degree of detail, and legibility.

- With a few exceptions, the records and inspection reports of the different departments involved with regulating group day care centers are maintained manually; the opportunities for automation have not been fully explored or implemented.

2. Observations on Paperwork. Although this evaluation did not inventory all of the paperwork involved within the various regulatory departments, this section offers a number of observations on the keeping of records and filing of reports.

Each step of the regulatory process for day care centers has its own set of paperwork. Except for Fire Safety Code inspections, which are requested internally by DEP or the Health Department, a prospective licensee must file separate applications with each of the different departments and agencies involved. For example, a prospective licensee who wants to open a center for 25 preschoolers in a single-family dwelling in Silver Spring will, at the very least, have to submit:

- A petition for a special exception to the County Board of Appeals;
- An application for a group day care center to the Health Department;
- An application for a building permit to DEP (for any required renovation); and
- An application for a use and occupancy permit to DEP.

Except for the use and occupancy permit application, each of these submissions requires supplemental supporting documents. For example, the Health Department requirements include a personnel list, staffing patterns, health records, and evidence of a workman's compensation insurance policy; Board of Appeals requirements include a survey plat, building plans, zoning maps, and a detailed description of the proposed day care center.

Reports back to a prospective licensee on the results of different inspections come in a number of different colors and sizes. An informal sample of Health Department inspection reports indicate that some are legible, others are not. Some go into great detail about what must be corrected to achieve compliance; others appear cursory having most likely been supplemented through an oral interaction between a prospective licensee and inspector.

DEP's Construction Code Division utilizes an automated system to track the various inspections, required and conducted. In contrast, with the exception of some assistance from a word processing device, the operations of the Health Department's entire Division of Licensure, Regulatory and Special Health Services are manual. A document study performed in 1983 identified over 250 separate forms used in the Division.

A 1984 consultant's study of the computer systems requirements of the Health Department's Division of Licensure, Regulatory and Special Health Services offered some conclusions and recommendations that are likely applicable to most departments involved with the regulation of day care<sup>1</sup>. The report concluded that many aspects of the DLRS operation lend themselves to automation. Specific recommendations were made regarding standardizing documents and processes, and improving the efficiency of operations through eliminating typing, maintaining logs, and providing easier access to information concerning the progress of an application form. It does not appear that many of the consultant's recommendations have been implemented.

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<sup>1</sup> "Computer System Requirement Study for Montgomery County, Maryland, Office of the County Health Officer, Division of Licensure and Regulatory Services", by Automation Counselors, Incorporated, June 15, 1984.

## VI. CONCLUSIONS

A. General: In general, the regulatory process for group day care centers is characterized by multiple applications to disparate departments and agencies, which operate according to sometimes inconsistent policies.

1. Group day care centers are governed by a complex network of State and County laws and regulations, and nationally recognized codes that are incorporated by reference into law.

2. The County government does not appear to have a consistent philosophy underlying the treatment of prospective group day care licensees. In a few County departments, a prospective licensee receives priority treatment, while in most departments, a prospective day care provider is treated the same as any other applicant seeking a government permit or approval.

3. Problems with the regulatory structure governing group day care centers have been cited by various task forces and committees convened during the past five years to study and advise the County on day care issues. Although a number of changes have been made, other County initiatives concerning child care have attracted more resources and attention than improving the regulatory maze.

4. Despite problems with the regulatory process, the number of licensed group day care centers in the County has increased more than 40% during the past five years. In FY 81, 128 centers were licensed to serve approximately 5,700 children; today, this has increased to 181 centers serving almost 8,000 children.

5. Many of the frustrations with the County voiced by prospective and existing licensees are not unique to day care; the problems identified are probably similar to those confronted by any small business needing to obtain approvals and permits from more than one government entity.

B. Length, Cost, and Complexity: Although not identical for all prospective licensees, the regulatory process is time consuming and complicated, and in some cases, quite costly.

1. It can take anywhere from several months to more than a year, and cost from \$100 to more than \$1,000 in permit and license fees to become a licensed group day care provider. If one or more professionals are hired to assist with maneuvering through the regulatory process, the cost can increase by hundreds, even thousands, of dollars.

2. The length, cost, and complexity of the process for any one prospective licensee depends upon key factors such as where the proposed facility is located, whether or not new construction or building renovation is involved, the number and ages of children to be served, and whether the center is completely new or an expansion of an existing one.

3. The operating policies of the different departments and agencies dictate a sequential order to obtaining certain approvals and inspections. Because the process is more or less linear, a prospective licensee can become essentially stuck at a particular step and can go no further until that step is resolved.

4. In terms of complying with the codes governing the physical layout of a center (Building, Electrical, Fire Safety Codes), becoming licensed is a relatively simpler proposition for a group day care center located in a church or school building that does not require a zoning special exception, or major structural renovation. As the limited spaces in churches and schools have become utilized, the regulatory process for new centers has grown longer, more costly, and more complex.

**C. Coordination and Consistency:** The regulatory process is characterized by problems of coordination and consistency both among and within departments.

1. No one department or agency is clearly identified as the "Coordinator" for the entire group day care center regulatory process. No single office can provide detailed information about all of the regulatory steps that a prospective licensee may have to follow; no single office tracks the daily progress of the various permit and license applications pending for a prospective licensee; and no single office has the authority or resources to control the timing and sequence of all phases of the regulatory process.

2. Each step of the regulatory process has its own set of paperwork. Because there is no single point of entry, a prospective licensee must submit separate applications and supporting materials to each of the departments and agencies charged with enforcing a regulation or code that applies to group day care centers.

3. The various regulatory steps are structured such that each department performs its particular responsibility without necessarily knowing the results of another department's review. There is no mechanism for inter-departmental or inter-agency communications on the substance of specific group day care cases.

4. The lack of communication and coordination among the various departments causes special problems in situations where more than one code addresses the same issue. In some instances, the code standards are identical, but in others, they are inconsistent. Currently, the onus is on each prospective licensee to sort out what to do when one department's directive conflicts with another's.

5. Complaints about inconsistent enforcement within and among departments were voiced by a majority of existing and prospective licensees interviewed. Licensees cited specific examples of inconsistency between different inspectors, and also between the same inspectors at different times. Although some degree of inconsistent enforcement is probably always going to be present where inspection functions are performed by people exercising a certain level of judgment and interpretation, even the County staff involved with inspecting group day care centers acknowledge improvements can and should be made.

**D. Information and Technical Assistance:** Access to information about regulatory requirements and the availability of technical assistance is provided unevenly throughout the process.

1. Access to information on regulatory requirements varies from one department to the next. There is no comprehensive document or resource that outlines the substance of all the different laws, regulations, and codes governing group day care centers. Even the documents that are available are not all widely distributed or readily accessible.

2. The skills needed to operate a high quality day care center are not necessarily identical to the skills needed to maneuver successfully through the regulatory process. The demand for what kind (if any) of technical assistance varies from one licensee to another.

3. Although the recently established Technical Assistance Office is still in the process of developing its services, and figuring out how its services fit in with the rest of the regulatory process, data collected during 1986 indicate a definite demand for personalized help with understanding and maneuvering through the regulatory maze.

4. The availability of technical assistance is not uniform throughout the regulatory process. Health Department inspectors perceive their role as encompassing both inspection and consultation; Fire Safety Code inspectors are reluctant to even conduct preliminary inspections because they do not perceive their legal mandate includes "shopping"; DEP inspectors see themselves in the approval business, not the consulting business; and the Board of Appeals office is not designed to provide any technical assistance. Because it is still in the first year of operation, the services of the Technical Assistance Office are not yet consistently publicized and available.

**E. Flexibility and Enforcement:** There is no uniform policy governing the flexible application of regulations and ongoing enforcement efforts.

1. Local authority to interpret and enforce laws and regulations governing group day care centers is not the same across all agencies/departments involved; the County's legal authority to grant variances, waivers or modifications also varies. Each department has its own procedures and guidelines for exercising different degrees of flexibility.

2. Ongoing enforcement of regulations and codes varies according to the policies of the different departments and agencies involved. Ongoing enforcement of State group day care regulations is linked to the formal annual process of renewing a day care center's license. In contrast, regular inspections for continued compliance with the Fire Safety Code are conducted according to the different policies of the independent fire corporations (in violation of a State DHMH policy), and regular inspections for continued compliance with Building and Electrical Codes are not conducted at all.



F. Staffing: County government resources devoted exclusively to licensing group day care centers have not increased at the same rate as the number of centers.

1. Except for the operating expenses of paperwork record keeping and transportation, the County's primary cost of licensing group day care centers is for personnel to organize and perform the requisite inspections and reviews. Throughout the many hours spent in interviews and observation, OLO was impressed with the diligence of County employees who interact with prospective and current group day care licensees. If anything, OLO's overall impression was of staff stretched to the limit with no time to think about new ways to more efficiently work to accomplish an increasing workload.

2. In the Health Department, the staff workyears hired to work exclusively with group day care licensees has grown from four in FY 81 to six in FY 87. The pattern of key inspector staff increases has been to lag behind the growth in centers, which means that the child development specialists and community health nurse have been carrying workloads above the generally accepted Statewide standards.

3. The scope of services outlined in the Technical Assistance Office contract was more than could be accomplished by one full-time coordinator, a part-time director, and a part-time administrative aide. A proposal to expand the TAO's staff is expected to be in the FY 88 budget request.

4. Over the past five years, the workloads of DEP, DFRS, and the Board of Appeals have increased. Because the growing number of licensed group day care centers explains only a small percentage of the increased workloads for these departments, however, the data gathered for this evaluation was not enough on which to base conclusions about the adequacy of staffing levels in DEP, DFRS, and the Office of the Board of Appeals.

## VII. RECOMMENDATIONS

### A. General

If opening additional licensed group day care centers is a priority of this County government, then this priority should be articulated by the Council and County Executive and communicated to all of the departments, agencies, and offices charged with administering and enforcing the laws, regulations, and codes that apply to group day care centers.

The following recommendations, organized according to problem areas, are for specific actions at the State and County level. They are all aimed at simplifying and improving the regulatory process for prospective group day care licensees.

### B. Coordination and Consistency

1. At the State level, the County must aggressively work to make the governing network of laws, regulations and codes that apply to group day care centers simpler and consistent. A forum for achieving this was established last year when the Maryland General Assembly legislatively established (SB 744) the Interagency Child Care Council. Among other things, the Council is responsible for assuring the establishment of common definitions for interagency use, reviewing regulations for the purpose of insuring coordination and consistency, and reviewing the adequacy of available licensing resources. The County should take all necessary action to participate fully on the Interagency Council.

2. Because the County should not wait for changes at the State level, however, the County needs to adopt a new local approach to the administration and enforcement of the existing laws, regulations, and codes that regulate group day care centers, including the County's application and inspection processes for the various licenses, permits, and approvals.

3. The County must develop an effective system of coordination among the various regulatory departments/agencies so that the process of becoming a licensed group day care center is not one characterized by multiple application to and interactions with disparate departments and agencies, which operate according to sometimes inconsistent and even contradictory policies. The following series of specific recommendations suggest one direction for the County to move towards implementing a coordinated systems approach to the regulatory process for group day care center licensees:

a. Designate the Health Department either by law or regulation as the "lead agency" for the group day care regulatory process, with the regulatory process being defined as whatever combination of licenses, permits, and approvals a prospective licensee needs to obtain before opening<sup>1</sup>. The Health Department is recommended to be lead agency because the County Code (Chapter 10) already directs the Health Department, as the department that actually issues group day care licenses, to obtain evidence of Code compliance from other authorities; and because, compared to the other departments involved, the Health Department, under current procedures, comes closest to assuming the role of overall coordinator.

b. Create a new position of "Group Day Care Licensing Monitor<sup>2</sup>", in the Health Department. The Office of the licensing Monitor should be able to provide detailed and reliable information about all aspects of the regulatory process a prospective licensee may have to deal with, to track the progress of the various permits and requests for approval prospective licensees have pending, and to troubleshoot on behalf of prospective licensees when problems are encountered along the way. The Licensing Monitor should be organizationally positioned at an appropriate grade within the Health Department such that he/she:

- Has direct line responsibility for and authority over the functions currently performed by the Children Services Program Staff; this includes the activities of the Licensing Coordinator, Assistant to the Licensing Coordinator, Child Development Specialists, and Community Health Nurses;

- Has authority over the Environmental Health Inspectors and Wells/Septic Inspectors once they are assigned to inspect a group day care center; and

- Is the contract monitor for the Technical Assistance Office (see Recommendation C-5 on page 59).

c. To allow the Licensing Monitor to coordinate effectively the regulatory process both within and beyond the purview of the Health Department, the County Executive should request all of the relevant departments and agency-heads (DEP, DFRS, Board of Appeals, Planning Board) to designate one individual as the Group Day Care Liaison for that department or agency. Each Liaison would act

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<sup>1</sup> The designation of the Health Department as the lead agency could be accomplished either by amending the language defining the Health Department's role in County Code Chapter 10, Group Day Care Centers, or by promulgating Executive Regulations for administering Chapter 10; Section 10-3 already authorizes Executive Regulations, but they have never been issued.

<sup>2</sup> The title "Monitor" is used instead of "Coordinator" because the job class of "Coordinator" already exists in the County, and the intent here is to create a different type of job with unique responsibilities.

as the official contact for the Licensing Monitor within the Liaison's department or agency on all group day care regulatory matters. Each Liaison should be situated within their own department with enough authority to answer questions, and if necessary, to take steps to expedite the department's regulatory response with respect to group day care.

d. The County Executive should also appoint a Group Day Care Task Force, Chaired by an Assistant Chief Administrative Officer, Co-Chaired by the Licensing Monitor, and composed of all Group Day Care Liaisons. The Task Force should be assigned the job of shifting the onus of resolving conflicting rulings from the prospective licensees to the government. The Task Force should also be charged with:

- Resolving specific scheduling and timing problems encountered by prospective licensees;
- Designing a mechanism for communicating among departments on the substance of pending applications; and
- Exploring ways to modify the sequential nature of the process, or at least developing ways to avoid becoming unnecessarily stuck at a particular step, and ways to avoid informing prospective licensees about required expenditures too late in the process.

#### C. Access to Information and Technical Assistance

1. The group day care licensing function within the Health Department needs its own phone number with enough incoming lines and sufficient staff to answer incoming calls. The phone number should be listed separately in the blue pages of the phonebook.

2. The document, "How to Start a Day Care Center in Montgomery County", should be finalized and distributed. Plain language handouts describing the regulatory process and requirements for group day care centers should also be developed. Ideally, the handouts should include supplemental information about how the regulations and codes are interpreted in practice. When put together, these handouts should be a complete resource document of all relevant laws and codes that a group day care center needs to comply with. The handouts should include current names and phone numbers of places to contact for further information.

3. Until such a comprehensive resource document is prepared, the County should, at the very least, ensure that all prospective and existing licensees have ready access to what information is available. This should include providing ample copies of the State's Manual for Regulations and Licensing Procedures for Group Day Care Centers (according to County Health Department staff, this is the document that not all licensees own because the State didn't print "enough" copies).

4. The County's intake procedures and initial interaction with prospective licensees need to be strengthened. Specifically:

- The information packet mailed out by the Health Department needs to be updated and expanded to provide more accurate and complete information about the regulatory process, including steps beyond the Health Department.

- Office interviews between Health Department staff and prospective licensees need to be tailored more to each individual applicant's background and needs. The possibility of combining a self-paced video with face-to-face contact should be explored. Also, if the purpose of the office interview is to educate the prospective licensee about the regulatory process, who is involved on the staff side should, when appropriate, be expanded to personnel beyond the Health Department.

- The use of a multi-purpose application form should be explored so that a prospective licensee can apply simultaneously for the appropriate combination of licenses, permits, and approvals.

- Ways to expand the preliminary inspection should be explored so that, for a graduated fee, a prospective licensee can obtain preliminary information about compliance with all relevant codes and regulations, and not just the DHMH regulations. If, due to competing demands, government inspectors are unable to participate in preliminary inspections, then the County should explore hiring private consultants (fire safety engineers, architects, etc.) on retainer to perform the preliminary inspection function.

5. The role of the Technical Assistance Office needs to be better defined and publicized. The activities of the TAO must be carefully outlined to work in concert with and enhance the activities of the regulatory departments and agencies. If TAO staff cannot directly offer advice on all aspects of the regulatory process, then TAO should be able to refer prospective licensees to competitively priced experts in the private sector.

Although the Technical Assistance Office appears to be an appropriate function to remain contracted-out, a number of arguments exist for having the contract report to the Licensing Monitor within the Health Department. Because the Licensing Monitor would also have line responsibility for the intake and consultation functions currently performed by the Health Department's CSPS inspection staff, duplication could be minimized. In addition, the referral of licensees between the Health Department inspectors and Technical Assistance Office would be maximized, and it might even be possible to share records and make joint decisions on referrals. Finally, while the statutory responsibilities of the Department of Family Resources include managing new programs during their developmental stages (County Code Section 2-58B), they do not extend to operating programs on a continuing basis.<sup>1</sup>

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<sup>1</sup> OLO recognizes the major drawback of this recommendation is that the Technical Assistance Office's current mission is to perform technical assistance to prospective and existing providers of both family and group child care providers; however, the advantage of having Technical Assistance Office report to the Licensing Monitor seems to outweigh the potential problems, and the Health Department should be able to coordinate the management of the Technical Assistance Office with the Department of Social Services.

#### **D. Enforcement: Flexibility of and Ongoing**

1. There needs to be one entry point for prospective licensees seeking a variance, exception, or modified application of a regulatory requirement<sup>1</sup>. If the specific factor that the licensee is requesting flexibility on is contained in more than one code, the responsibility should be on the County to conduct an inter-departmental review and present the licensee with a single answer. An annual report of variances, exceptions, and modifications granted to group day care centers should be compiled.

2. In order to obtain more local flexibility in enforcement, the County should seek a change in the State group day care regulations to permit the Director of the Health Department (the County's Health Officer) to grant variances to the group day care regulations. If this authority is transferred to the County, then the entire process of applying for and granting or denying a request for a variance could be handled more efficiently without prior approval and consultation with the State<sup>2</sup>.

3. A consistent practice of inspecting all group day care centers for Fire Safety Code compliance needs to be implemented. Either the Fire Marshal needs to be given sufficient staff to perform these inspections, or independent fire corporation personnel need to be trained and instructed to perform these Fire Safety Code inspections on an annual basis.

4. The Health Department should explore the use of "generic" regulatory technique being promoted by the Children's Services Monitoring Transfer Consortium (a group established in 1980 to demonstrate the feasibility of transferring exemplary components of children's services monitoring systems from state to state). The concept of generic checklists is based upon research that identifies a relatively short list of inspection items that are most effective in predicting whether a child care provider would have scored well or poorly on a more comprehensive inspection. A well-designed checklist of predictor items can be used alternately with a more comprehensive inspection to increase the productivity of inspections, without compromising the quality of ongoing enforcement<sup>3</sup>.

#### **E. County Government Resources**

1. Automation. The opportunities for automating various parts of the regulatory process should be fully explored and exploited. In addition to improving communication and efficiency of operations, one of the goals of automating records should be to make the inspection records of day care centers more accessible and meaningful to the public.

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- 1 If the above recommendation for the Licensing Monitor in the Health Department is adopted, then the Monitor's office would be the most logical single entry point.
  - 2 This recommendation was already made by the Health Department in an October 1986 memorandum to the State DHMH.
  - 3 Research on generic checklists and contacts in other states is available in Generic Checklist for Day Care Monitoring published by the Children's Services Monitoring Transfer Consortium, January 1985.

2. Staffing Levels. With the growing number of group day care centers, the Council should carefully review the FY 88 staffing levels requested by all of the departments involved in the regulatory process. Specific staff recommendations are offered below only for the Health Department and Technical Assistance Office, the two places where personnel are hired exclusively to work with group day care licensees; in the other departments, group day care licensees comprise only a relatively small subset of the departments' workload, and the increase in day care centers could not alone justify an increase in staff.

- Health Department. In addition to the new position of Group Day Care Licensing Monitor recommended earlier, funds for additional inspectors should be considered to maintain the ratio recommended by the State DHMH of one child development specialist for every 60 centers, and one community health nurse for every 80 centers.

- Technical Assistance Office. As the role of the TAO becomes more defined and coordinated with the ongoing work of the regulatory departments, funds for one additional full-time professional position should be considered.

#### F. Upcoming Reports

The Council should review and consider taking legislative and/or budget actions recommended by four reports expected to be available in 1987:

- OMB's evaluation of the Division of Construction Code Enforcement;

- The Planning Board's three studies on day care and land use; and

- A Health Department sponsored staffing study of the entire Division on Licensure, Regulatory and Special Health Services.

In addition to the three reports listed above, the Council has requested OLO to evaluate the operations of the Board of Appeals. This evaluation, scheduled for completion this year, will involve an examination of all laws relating to the operations of the Board of Appeals, and all policies, rules, and regulations under which the Board currently operates.

## VIII. OTHER ISSUES

Although outside of the immediate scope of this evaluation, the following issues that came to OLO's attention while collecting data for this report deserve mention:

A. Substance of Regulations. The number of complaints voiced by licensees about the substance of the State group day care regulations was overwhelming. The consensus seems to be that the regulations, at least as they are interpreted by County inspectors, are too specific and inflexible. Strict enforcement of what is perceived as "nit-picking" requirements (i.e., number of blocks, size/color of paper, access to musical instruments) appears at times to detract from the County's enforcement of basic health and safety factors.

B. Other Obstacles. The problems of locating affordable and appropriate space, hiring qualified staff, and obtaining liability insurance were mentioned repeatedly by prospective and existing licensees as significant obstacles to opening or expanding day care centers. In terms of increasing the number of day care slots available in the County, action to alleviate the perceived crises in these areas may be equally (if not more) important to improving the regulatory process.

C. County's Child Care Initiatives. The County is currently involved with numerous child care initiatives that range from renovating closed schools into day care centers to sponsoring workshops for employers on child care to funding pilot after-school programs for school-age children. Various child care related projects are being conducted by at least nine different departments/agencies: Department of Family Resources, Department of Facilities and Services, Department of Social Services, Community Use of Educational Facilities and Services, Office of Economic Development, Health Department, Maryland-National Capital Park and Planning Commission, Montgomery County Public Schools, and Montgomery College. Without judging the value of any or all of the current child care related activities, OLO observed a lack of overall coordination. While an inter-agency committee, the Child Care Policy Group, meets quarterly to exchange information, there is no overall coordination and management of the County's policy on day care.



# APPENDIX A

## Out-of-Home Child Care Services in Maryland: Which Ones Are Governed by Specific Regulations<sup>1</sup>

<u>Type and Description</u>	<u>Governed by Specific Regulations</u>	<u>Regulations Promulgated By:</u>	<u>Regulations Enforced By:</u>
A. <u>Child Day Care Services:</u> Established specifically for purpose of child care:			
• <u>Family Day Care:</u> day care provided in caregiver's home for fewer than seven children.	Yes	State Department of Human Resources	County Department of Social Services
• <u>GROUP DAY CARE<sup>2</sup>:</u> DAY CARE PROVIDED IN A HOME OR INSTITUTION FOR AT LEAST SEVEN CHILDREN; A "SMALL GROUP DAY CARE CENTER" SERVES SEVEN TO TWELVE CHILDREN.	YES	STATE DEPARTMENT OF HEALTH AND MENTAL HYGIENE	COUNTY HEALTH DEPARTMENT
B. <u>Preschools:</u> Established specifically for purpose of formal education of children under the age of first grade; includes kindergartens, nursery schools, and preschools designed for special populations (i.e. Headstart).	Yes, except for church run programs	State Department of Education	State Department of Education
C. <u>Camps:</u> Established as seasonal programs emphasizing recreation.	Yes	State Department of Health and Mental Hygiene	County Health Department
D. <u>Other:</u> Various other miscellaneous programs that serve children that are operated by public school systems, County or City Departments of Recreation, or other County departments such as the Community Use of Educational Facilities and Services.	No		

<sup>1</sup> Out-of-home child care means care outside of the child's home given instead of parental care to a child on a regular schedule for part of a day; it does not include legally-mandated public or non-public elementary, middle, or secondary school programs, foster care, or institutional care of children. (This definition was adapted from the 1985 Governor's Interim Task Force Report on Day Care Facilities and Services.)

<sup>2</sup> This OLO evaluation focuses upon the regulatory process for this category of child day care services.

# APPENDIX B

## GROUP DAY CARE CENTER LICENSE

WHO NEEDS	ISSUED/GRANTED BY	COST TO APPLICANT	COMMENTS
All group day care centers	Division of Licensure, Regulations and Special Health Services, County Department of Health and State Department of Health and Mental Hygiene	Number of children: Up to 10 -- \$ 50.00 11-20 -- \$ 75.00 21 or more \$100.00	Chapter 10 also requires evidence of compliance with: <ul style="list-style-type: none"> <li>• Building and Electrical Codes (Chapter 8, 17, Montgomery County Code)</li> <li>• Fire Prevention Code (Chapter 22, Montgomery County Code)</li> <li>• Zoning Law (Chapter 59, MCC)</li> <li>• Any other applicable excretion disposal, water &amp; sewer, plumbing, communicable diseases and other standards and regulations of the County and State Board of Health</li> <li>• License must be renewed annually</li> </ul>

APPENDIX C

ZONING SPECIAL EXCEPTION

LOCATION	WHO NEEDS	ISSUED/GRANTED BY	COST TO APPLICANT	COMMENTS
County	Centers located in all County residential and rural zones, some commercial and industrial zones	County Board of Appeals	Number of children: Up to 10 -- \$ 50.00 11 - 20 -- \$100.00 21 - 40 -- \$300.00 Over 40 -- \$700.00	Chapter 59 (Sec. 59A-4.48, Montgomery County Code requires the Planning Board or its staff to submit a report on each special exception petition to the Board of Appeals
City of Rockville	Centers located in all City of Rockville residential zones. Prohibited use in all commercial zones	Rockville City Board of Appeals	\$200.00 - \$600.00	Rockville Planning Commission recommendations to the Board of Appeals required
City of Gaithersburg	Centers located in City of Gaithersburg in all residential zones where not prohibited and certain commercial zones	Gaithersburg Board of Appeals	\$200.00	Gaithersburg Planning Commission recommendations to Board of Appeals required
Laytonsville	Centers located in town of Laytonsville	Laytonsville Mayor & Town Council (act as Board of Appeals)	\$150.00	
Poolesville	Centers located in town of Poolesville	Poolesville Board of Appeals	\$300.00	Poolesville Planning Commission makes recommendation
Washington Grove	Centers located in Washington Grove (day care - not a permitted use or eligible for special exception)	Washington Grove Board of Appeals		Possible to obtain a special exception as a "limited home occupation" up to 500 sq. ft. Washington Grove Planning Commission may, but is not obligated, to review
Barnesville	Centers located in town of Barnesville	Barnesville Commissioners act as Board of Appeals	no fee	Barnesville Planning Board makes a recommendation
Brookeville	Centers located in town of Brookeville	Brookeville Commissioners act as Board of Appeals	no fee	Brookeville Planning Commission review & recommendation County Historic Preservation Commission approval Brookeville zoned as a historic district

# APPENDIX D

## USE AND OCCUPANCY PERMITS

LOCATION	ISSUED/GRANTED BY:	COST TO APPLICANT	COMMENTS
County	County Dept. of Environmental Protection, Construction Codes Division	\$50 for first 5,000 Sq. Ft and \$.002 per Sq. Ft. in excess of 5,000 Sq. Ft.	<ul style="list-style-type: none"> <li>• Can only be applied for after zoning compliance is obtained;</li> <li>• DEP obtains evidence of compliance with Chapter 22 from the Fire Marshal;</li> <li>• Use and occupancy permit is good indefinitely as long as use remains the same.</li> </ul>
City of Rockville, • Use Permit	Rockville Planning Commission	Non-residential: \$300 + \$5 per 1,000/Sq. Ft. gross floor area  Residential: \$300 + \$5 for each dwelling unit	
• Occupancy Permit	Rockville Division of Licensing	\$25 for each 5,000 gross Sq. Ft.	• All municipalities obtain evidence of compliance with Chapter 22 from the Fire Marshal
City of Gaithersburg	Gaithersburg Department of Code Enforcement	\$25.00	
Laytonsville	Laytonsville Town Government	No fee	
Poolesville	Commissioners of Poolesville	Residential: \$30 +\$5/DU Commer./Indust: \$25/5,000 Sq. Ft.	

# APPENDIX E

## BUILDING AND/OR ELECTRICAL PERMITS

LOCATION	ISSUED/GRANTED BY	COST TO APPLICANT	COMMENTS
New construction or renovation work located in:			
County	Construction Codes Division, DEP	1/10 of 1% of estimated cost, minimum \$25, maximum \$500	
City of Rockville	Rockville Division of Licenses & Inspections	Approximately \$.04 - .06 per sq. ft.	
City of Gaithersburg	Gaithersburg Department of Code Enforcement	Approximately \$.05 per sq. ft.	

# APPENDIX F

## BUILDING PERMIT APPROVAL<sup>1</sup>

LOCATION	ISSUED/GRANTED BY:	COST TO APPLICANT	COMMENTS
Laytonsville	Laytonsville Town Council	\$10 + County fee	
Poolesville	Poolesville Planning Commission	Fee contingent on type of work + County fee	
Washington Grove	Washington Grove Planning Commission	\$10 + County fee	
Barnesville	Barnesville Planning Board	Up to 500 Sq. Ft. -- \$2 ] Up to 5,000 Sq. Ft. -- \$5 ] + County Fee Over 5,000 Sq. Ft. -- \$10]	
Brookeville	Brookeville Planning Commission & County Historical Preservation Commission	\$25 + County fee	
Montgomery Village	Architectural Control Committee	County fee	
Churchill Town	Homeowners association in which the facility is located	County fee	
<ul style="list-style-type: none"> <li>• Churchill East</li> <li>• Churchill Village South</li> <li>• Waters Landing</li> </ul>			
Some, not all: towns, villages, & homeowners associations in County	Appropriate town councils, building inspectors, planning boards, and/or architectural control committees	Usually minimal or no fee + County fee	Required, but not prior to, issuance of a DEP permit
Some, not all, condominium developments	condominium boards	Usually minimal or no fee + County fee	May be required prior to local approval and issuance of a DEP permit

<sup>1</sup> Approval by the local jurisdiction is required prior to obtaining a building permit from DEP unless otherwise noted.

APPENDIX G

WELL AND SEPTIC SYSTEM PERMITS

PERMIT	REQUIRED FOR	ISSUED/GRANTED BY	COST TO APPLICANT	COMMENTS
County Well and/or Excreta Disposal Permit	Locations served by private well and/or a septic system	Well and Septic Sections, Division of Licensure, Regulatory and Special Health Services, County Department of Health	Well permit fee -- \$40 Septic System permit fee -- \$55 Percolation test fee -- \$45	Approval of an existing septic system involves a water table and/or percolation tests, water table can only be con- ducted between January 1 and April 15.
State Water Appropriation and Use Permit	Locations served by private wells and expected to use 5,000 gallons or more of water per day	Department of Natural Resources, Water Resources Administration, Maryland	No fee	
Plumbing Hook-up Permit	Locations served by public water and sewer connections	Permit Processing Office, Washington Suburban Sanitary Commission	\$35 for a fixture and \$5 for each additional fixture	

APPENDIX H

HIGHWAY/ROAD PERMITS

PERMIT	REQUIRED FOR	ISSUED/GRANTED BY	COST TO APPLICANT	COMMENTS
State Road Permit	A center which the Board of Appeals requires alterations to a state road as a condition for special exception	State Highway Administration	Minimum of a \$1,000 bond, refundable if no damages	Required for new access or change to an existing access
County Road Permit	A center which the Board of Appeals requires alterations to a county road as a condition for a special exception	County DOT	Application fee = \$25. Minimum of a \$1,000 bond refundable if no damages	Required for new access or change to an existing access