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## EXECUTIVE SUMMARY

The State Auditor's Office has conducted a review of the Department of Social and Rehabilitation Services' (SRS) foster care licensing process. Specifically, our review has focused on the Residential Care Licensing Unit of the Social Services Division which is one component of SRS' efforts to ensure the health and safety of children in state custody.

Children are placed in state custody when it is legally determined that families are unable or unwilling to properly care for their children. Once in state custody, a child must usually be temporarily removed from their primary home and placed in foster care. Foster care provides a safe place for children until the problems that led to the placement have been resolved.

The Residential Care Licensing Unit of the Social Services Division has the responsibility for licensing: **(1) foster care homes** (private residences), and **(2) private child placing agencies** (organizations established for the purpose of providing or arranging placement for children in foster homes, residential child care facilities or adoptive homes). As of March 31, 1996, there were 978 children in the custody of SRS who were living in a foster care setting. As of January 1997, there were 901 foster care homes licensed directly by SRS and about 200 foster care homes approved by the 11 licensed child placing agencies.

The major findings of our review are summarized as follows:

- **The Residential Care Licensing Unit has done an admirable job of complying with the relevant statutes and establishing internal controls over the regulatory and administrative requirements for licensing foster care homes and child placing agencies. Staff are efficient, dedicated and competent; the Division has a high commitment to fulfilling its mission.**

Amidst these generally positive findings, our review highlights two areas of concern:

1. *We noted* that when initially screening applicants for foster care, SRS does not conduct out-of-state criminal records checks (although it does check for in-state criminal history).

*We recommend* that SRS seek legislative authority to fingerprint foster care applicants in order to conduct out-of-state criminal records checks.

Our belief that the lack of out-of-state record checks is a serious loophole in an otherwise thorough application evaluation process was underscored by the one license revocation uncovered in our small sample that was necessitated when the Department learned of out-of-state criminal activity not disclosed during the initial review of the applicant.

2. We found that although a high number (55%) of the foster care homes in our sample had been granted licenses with conditions (caused for instance, by non-compliance with various safety requirements), SRS has no published policy regarding follow-up. Instead it relies on self-reporting by applicants to ensure that non-compliant conditions have been corrected.

*We recommend* that SRS develop and implement cost-effective methods of determining whether foster parents have corrected non-compliant conditions placed on their licenses.

## **PURPOSE, SCOPE AND METHODOLOGY**

The purpose of this review is to assist the Department of Social and Rehabilitation Services' (SRS, or "The Department") management to improve compliance with 33 V.S.A. § 3501 and the operation of the State's foster care licensing process. This review was conducted as part of the Vermont State Auditor's annual audit of the General Purpose Financial Statements.

The scope of the review included a review of compliance with and internal controls over statutory, regulatory, and administrative requirements for licensing foster care homes and child placing agencies. These functions are performed by the Residential Care Licensing Unit of the Division of Social Services.

The methodology included a review of relevant statutes, regulations and administrative rules; Department and child placing agency case files; and interviews with staff. The audit sample was comprised of: 1) 42 randomly selected state-licensed foster home files; 2) Department files for all 11 licensed child placing agencies; 3) 20 randomly selected agency-approved foster home files from three child placing agencies; and, 4) 17 randomly selected Department files from the universe of denials and revocations.

## **BACKGROUND**

When it is determined that families are unable or unwilling to properly care for their children, the state becomes the legal custodian of the children. In most cases, children must be placed in state custody because of physical or sexual abuse, neglect, or because they have been judged unruly or delinquent. A child can be placed in the state's legal custody only by a court order. Children who are brought to the court for placement in state custody are typically identified by the child welfare system, juvenile system and sometimes their parents.

Once in state custody, a child must usually be temporarily removed from their primary home and placed in foster care. Foster care provides a safe place for children until the problems that led to the placement have been resolved. These children may be returned to their natural families, or if the problem persists, continue in foster care until a permanent adoption can be made. The length of placements of children in foster care varies widely, ranging from a few days to some situations where placement may be required until the child reaches the age of majority.

As of March 31, 1996, there were 978 children in the custody of SRS who were living in a foster care setting. As of January of 1997, there were 901 foster care homes licensed directly by SRS and about 200 foster care homes approved by the 11 licensed child placing agencies.

In Vermont, SRS is responsible for placement and monitoring of children in state

custody who are placed in foster care settings; SRS is additionally responsible for licensing and monitoring of approved foster care homes in which these children are placed. The Department spent approximately \$11 million on foster care in fiscal year 1997.

The Residential Care Licensing Unit, which was the focus of our review, is only one component of SRS' oversight of children placed in foster care. In the 12 district offices of SRS, individual case workers are assigned to all children currently in state custody. Caseworkers monitor children in foster care through regular home visits, contact with teachers etc. For its part, the Residential Care Licensing Unit is responsible for initial screening of applicants who desire to become foster parents, inspection of foster care homes, licensing and periodic relicensing foster care homes, as well as licensing and oversight of the 11 private child placing agencies.<sup>1</sup> During these processes, the Licensing Unit interacts with other divisions within SRS and is kept apprised of any ongoing concerns that may arise in relation to a particular foster care home. In 1996, the Licensing Unit processed almost 400 inquiries, issued 251 initial licenses, and 299 license renewals. On average, the five Licensing Specialists each handle about 50 initial licenses and 60 renewals per year. The average number of days required to process an application is 119, down from over 171 three years ago.

The Department's licensing authority is derived from 33 V.S.A. § 3501; and, pursuant to 33 V.S.A. § 306, the Department has promulgated Licensing Regulations that describe the procedures for licensing and relicensing. Additional detail is found in the Policies and Procedures Manual and the Caseworkers Manual (attached as Appendix A).

Although SRS rules and regulations are quite detailed, licensing foster homes and placing children involves experience, judgment and a measure of luck. The number of children in need has grown and their behavioral problems have worsened, making it more difficult to recruit enough qualified foster parents. The geographic distribution of licensees does not always match the demand. The application review process is extensive and includes information about applicants from a variety of sources, but still

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<sup>1</sup> The 11 child placing agencies perform the same approval and oversight functions for the 200 foster care homes that they have approved throughout the state as is performed by SRS with respect to the foster care homes it directly licenses and regulates. The child placing agencies themselves are subject to SRS inspection and oversight and SRS maintains records on the homes the agencies approve. The child placing agencies are to follow substantially the same procedures SRS uses for approval and oversight of foster care homes.

involves the exercise of considerable discretion. Even after licensing, it is not always easy to match foster children with available foster parents because the children may have specific needs and the foster parents may have individual limitations. Finally, resource constraints have affected internal decisions about various policies and procedures.

## FINDINGS AND RECOMMENDATIONS

- I. **Family Foster Care Licensing**: “A person shall not receive, board or keep any child in foster care for more than fifteen consecutive days unless he has a license from the department to do so.” [33 V.S.A. § 3501(b)] “The commissioner shall issue regulations governing application for, and issuance ... of licenses and registration. In the regulations he may prescribe standards and conditions to be met, records to be kept and reports to be filed.” [33 V.S.A. § 306(b)(1)]
- A.. **Foster Home Records**: “The department shall keep records on each foster home applicant and licensee. Records shall include: applications, reference letters, compliance checklists, licensing reports and notes regarding communication with or about the applicant(s) or licensee(s).” [Licensing Regulation #044, effective September 1, 1992]
1. **Application**: “The individual or couple applying for licensure shall submit a written application on the form provided by the state licensing authority.” [Lic. Reg. #101]

### FINDING

We found that 100% of the files examined contained the required application.

### RECOMMENDATION

None.

- 2.. **References**: “The state licensing authority may require any person in the household or any person who provides care and supervision to foster children on a regular basis, whether or not that person is an applicant or licensee, to submit references.” [Lic. Reg. #034] “The Residential Care Licensing Unit will obtain references for all applicants for family foster care. Applicants for family foster care will be asked to provide at least five (5) personal references. Response from three (3) references is sufficient to proceed with a licensing decision.” [Policy and Procedures Manual (P&PM), August 27, 1993; No. 2101]

### FINDING

We found that 90% of the files examined (38 of 42) contained at least three references. The other four applications were processed prior to the adoption of the current policy and contained two

references, as was previously required.

## RECOMMENDATION

None.

- 3.. **Criminal and child abuse records checks:** There is no prohibition against issuing a license to someone convicted of a crime. However, “[t]he commissioner may obtain from the Vermont crime information center [VCIC] the record of convictions of any person to the extent the commissioner has determined by rule that such information is necessary to regulate a facility or individual subject to regulation by the department.” [33 V.S.A. § 309(a)] “At the time of initial application the residential care licensing unit requests criminal records checks from the [VCIC] on all family foster home applicants and licensees and on all members of foster family care households who are sixteen years of age or older, except for foster children in the home.” [P&PM No. 2038.1]

Prior to 1992, the Department had no authority to obtain such information when licensing foster parents. Following enactment of 33 V.S.A. § 309, the Department submitted the names of all previously licensed foster parents (and other resident adults) for a criminal records check.<sup>2</sup> At present, the Department does not have statutory authority to obtain information about criminal activity in other states.

Note: The only source for comprehensive information about criminal activity in other states is the National Crime Information Center. Fingerprints are necessary in order to access its data and, at present, SRS has no authority to fingerprint foster parent applicants. SRS sought and was granted such authority for adoption but has not formally requested similar authority for foster care. It is noteworthy that VCIC records checks are based solely on the names submitted. Therefore, although there is no evidence of a problem with the VCIC procedures, it is conceivable that an unscrupulous applicant with a criminal record could obtain a license under false pretenses by using an alias.

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<sup>2</sup> June 18, 1997 telephone conversation with the Department’s Licensing Technician.

Applicants and household members who are found to have a criminal record are not necessarily ineligible for a license. The Department's policy allows for some discretion on the part of the Licensing Unit based on the "nature of the offense(s), recency of offense(s), number and frequency of offense(s), age of perpetrator at the time of the offense(s), attitude of offender and the applicant or licensee toward the offense, [and] evidence of rehabilitation." [P&PM No. 2038.1] The criminal record is evaluated with regard to "the physical safety of foster children, the emotional well-being of foster children, appropriate role modeling, [and] expectations of appropriate adolescent behavior." According to the P&PM, "convictions for crimes against people are considered more serious than crimes against property."

If a criminal record exists, the "Licensing Technician, in consultation with the Unit Chief, determines whether the record implies an immediate danger to children." If so, the Licensing Specialist is notified and informs the District Office. If minor offenses are involved, it is not uncommon for licensing to proceed. More serious convictions lead to follow-up including a discussion with the family about the "circumstances of the offense(s), extenuating factors, and rehabilitation." Ultimately, the Licensing Unit Chief (who must approve all licenses), makes the final determination about licensure.

In addition to a VCIC records check, the Licensing Unit also examines the Social Services Child Abuse Registry to determine if any applicants or household members have substantiated cases of child abuse in Vermont.<sup>3</sup>

## **FINDING**

We found that 100% of the files examined contained documentation

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<sup>3</sup> With few exceptions, minors cannot be charged with crimes and, therefore, do not have criminal records. However, there are instances of minors abusing other children so all substantiated cases for children over 10 years old are recorded in the Registry. In response to concerns about labeling younger children as abusers, the Department keeps internal records of substantiated abuse by children under 10 years old but does not place the names in the Registry. According to staff, these internal files are reviewed during the application process.

of a criminal and child abuse records check.

### **RECOMMENDATION**

We recommend that SRS seek legislative authority to fingerprint foster care applicants in order to conduct out-of-state criminal records checks.

4. **Compliance checklist:** Family foster care homes must provide a safe physical environment for the children. [Lic. Reg. #401 - 433] “Before a license is granted, the department shall visit and inspect the premises for which the license is requested, and make further inquiry and investigation as the commissioner may direct.” [33 V.S.A. § 306(a)(4)] During the home visit, licensing specialists conduct an inspection to determine whether the home and automobile(s) are in compliance with the regulations.<sup>4</sup> A “compliance checklist” is used to document the findings and is required to be kept in the applicant’s file.

### **FINDING**

We found that 100% of the files examined contained the required compliance checklists and were signed and dated by a licensing specialist.

### **RECOMMENDATION**

None.

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<sup>4</sup> The regulations cover general safety and maintenance (e.g., adequate heat & ventilation, firearms locked / incapacitated, medicines & hazards out of reach), fire safety (e.g., adequate smoke detectors, fire extinguisher in kitchen, two accessible exits), bedrooms (e.g., bedroom shall have at least one window and shall be equipped with doors which can be closed and readily opened), and transportation (e.g., vehicles shall be safe, registered, inspected & insured, foster children weighing less than 40 pounds shall be secured in approved child passenger restraints).

5. Licensing report: In addition to the objective criteria regarding the physical environment, the regulations contain numerous subjective criteria to ensure the fitness of the prospective foster parents. [Lic. Reg. #200 - 339] These include personal characteristics such as emotional stability, healthy patterns of social and interpersonal relationships, knowledge of child development, ability to apply discipline in a constructive and educational manner, freedom from substance abuse, sufficient income to support the family (excluding foster children), and freedom from physical conditions, mental limitations, or emotional problems which would have an adverse effect on the well-being of foster children.

Other categorical criteria include the responsibilities of foster parents such as:

- appropriate care and supervision of foster children [Lic. Reg. #301 - 306];
- provision of a healthy home environment [Lic. Reg. #307 - 314];
- confidentiality and privacy [Lic. Reg. #315 - 319];
- support for efforts to establish and maintain relationships with the foster child's family (as specified in the case plan) [Lic. Reg. #320 - 322];
- prohibitions on cruel, degrading or unnecessary discipline techniques [Lic. Reg. #323 - 328];
- health care [Lic. Reg. #329 - 334];
- food and nutrition [Lic. Reg. #335 - 337];
- religion and cultural heritage [Lic. Reg. #338 - 339].

Based on interviews with the applicants and information from other sources (e.g., references and comments from the district office), the licensing specialists complete a licensing report that contains a lengthy checklist and a narrative account of their observations and recommendations. Although the statutory language is somewhat vague, the regulatory requirements are quite detailed. Nevertheless, these are largely subjective criteria and, given the time and resources available, compliance cannot be determined with certainty. Unavoidably, therefore, the report reflects the professional judgment of the licensing specialist as to the suitability of the applicants for foster parenting and is based on the licensing specialist's education, training, and experience.

Note: According to staff, Licensing Specialists make an effort to interview the biological (or adoptive) children of foster parent applicants, if there are any in the home. Obviously, the biological children will interact directly with the foster children and have an effect on their adjustment to the home.

Therefore, it is important to learn something about the biological children in order to help evaluate the likelihood of a successful placement. This is particularly significant in light of the fact that there are occasional instances of abuse involving biological children. At this time, however, Licensing Specialists are not required to interview biological or adoptive children who reside in applicants' homes.

### **FINDING**

We found that 100% of the files examined contained the required compliance checklists signed and dated by a licensing specialist. Furthermore, all of the files included (at a minimum) summary comments and recommendations.

Note: Prior to the adoption of the current compliance checklist, licensing specialists were required to conduct a "home study" which addressed the major categorical criteria. A review of several "home studies" found that the licensing specialist's lengthy narrative comments were thorough and incisive. Although the current method (the checklist) is considerably less personalized, the same issues are covered during interviews and home visits. Furthermore, much less time is spent preparing reports. Finally, to the extent that licensing specialists are experienced and well-trained, it is their evaluations that are most salient rather than the form of their reports.

### **RECOMMENDATION**

We recommend that SRS require Licensing Specialists to interview biological and/or adoptive children who reside in the homes of foster care applicants.

6. Terms of licensure: "The total allowable number of children living in or regularly cared for in a foster home will be determined by evaluation of the family's ability to provide appropriate care and supervision and by the amount of living space in the home." [Lic. Reg. #046]

### **FINDING**

We found that 100% of the files examined contained the required determination of the allowable number of children for each home.

### **RECOMMENDATION**

None.

7. Conditions: "The department may place conditions on a license, including the limitation to provide care only for a specific child." [Lic. Reg. #033]

### **FINDING**

We found that 55% of the files examined (23 of 42) contained licenses with conditions.

The types of conditions placed on the licenses included non-compliance with various safety requirements (e.g., smoke detector, fire extinguisher, ladder to second floor, locked-up gun or ammunition); limitations on the number of foster children allowed (due to space constraints); incomplete pre-service training; or that the foster parents were restricted to caring for a particular child. There is no published policy regarding follow-up to determine whether non-compliant conditions have been corrected. The current practice is to wait for the scheduled license renewal at which time the foster parents submit a signed renewal form indicating compliance with all requirements. At this time, the Department does not require a licensing specialist to visit the home as part of the renewal process, so it must rely upon the good faith of the foster parents to correct any deficiencies.

The Chief of the Licensing Unit explained that the Department views the foster parents as members of a team and, therefore, should be trusted to deal with such issues.<sup>5</sup> This view is supported by the Department's decision to issue a license which is an explicit expression of confidence in the fitness and responsibility of the foster parents. It was further noted that fiscal constraints limit the ability of licensing specialists to visit every home in these circumstances.

As is noted above, the types of license conditions found in the files examined are relatively minor. Nevertheless, they reflect non-compliance with specific regulatory requirements and have the potential, however unlikely, to result in harm to a foster child. We have no evidence that the current practice is inadequate or has failed to protect the children, but the possibility certainly exists.

### **RECOMMENDATION**

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<sup>5</sup> June 19, 1997 telephone conversation with the Chief of Licensing.

We recommend that the Department develop and implement cost-effective methods of determining whether foster parents have corrected the regulatory violations that led to the placement of conditions upon their licenses.

8. Variances: “The state licensing authority may grant a variance from a specific regulation upon its determination that the applicant or licensee will otherwise meet the goal of the regulation.” [Lic. Reg. #035]

### **FINDING**

We found that 38% of the files examined (16 of 42) contained documented variances.

The types of variances granted include permission to care for more than the allowable number of foster children, exemption from pre-service training requirements (for those with demonstrated skills or experience), and permission to provide day care in a foster home. In each case, the files contained a letter from the Chief of Licensing explaining the decision and describing the extent and duration (if applicable) of the variance.

### **RECOMMENDATION**

None.

- B. **License Renewal**: “The commissioner shall issue regulations governing ... [the] term and renewal of licenses and registration [and] may prescribe standards and conditions to be met, records to be kept and reports to be filed.” [33 V.S.A. § 306(b)(1)]

1. Term: “Licenses ... shall be for a term of one year from issuance unless otherwise prescribed by regulation.” [33 V.S.A. § 306(b)(1)] “An original license shall be valid for one year unless otherwise prescribed by the Commissioner.” [Lic. Reg. #030] “Renewal of a license shall be on a yearly basis unless otherwise prescribed by the commissioner.” [Lic. Reg. #031]

### **FINDING**

The Department’s licensing guidelines have been changed recently. “In recognition of the fact that the assessment of a family’s ability to provide foster care can change rapidly during the first months of licensure, as the family is faced with the challenges of foster care, the term for which original licenses are valid is changed from one

year to six months. Original foster home licenses expire ... six months following the date of issuance of the license” [P&PM No. 2030, Nov. 1, 1995] and “license renewals are for three years.” [P&PM No. 2031, Nov. 1, 1995]

According to the Interim Foster Home Licensing Procedures, “[l]icensing is primarily a preventive function. Relicensing, in contrast, is a means of assuring continued compliance in homes which have already been through a more or less extensive approval process. Because foster homes are under continuous scrutiny [by Social Workers], it is comparatively rare for major problems to be identified though relicensing that have not already been identified by licensing or by social services. We believe that the resources of licensing can better be used to protect children through early and thorough licensing procedures than by routine relicensing.”

Although the term of an initial license was reduced from one year to six months, subsequent renewals occur every three years instead of annually. According to staff,<sup>6</sup> there are two primary reasons for the change: 1) growth of the caseload without any additional staff;<sup>7</sup> and 2) a belief (based on experience) that if the foster parents make it through the first (most difficult) year, they are likely to succeed in the long-term.

As is noted above, the enabling statute establishes the term of licensure as one year with annual renewals “unless otherwise prescribed by regulation.” Current regulations state that licensure “shall be for a term of one year from issuance” [Lic. Reg. #030] and that “renewal of a license shall be on a yearly basis unless otherwise prescribed by the commissioner.” [Lic. Reg. #031]

Thus, the statute empowers the Commissioner to alter the terms of licensure only through regulation, not by administrative order.<sup>8</sup> Indeed, the Administrative Procedures Act (APA) states that “where due process or a statute directs or permits an agency to adopt rules,

<sup>6</sup> October 3, 1997 telephone conversation with the Division Director and the Licensing Unit Chief.

<sup>7</sup> The annual number of applications and renewals has grown from 329 to 693 since 1988 (not including licensing and renewals of child placing agencies) . Thus, the average caseload for the five Licensing Specialists has almost tripled from 66 to 186 per year since 1988. Furthermore, when the Licensing Unit was brought into the Social Services Division, a management position was eliminated which required the two remaining supervisors to take on additional responsibilities.

<sup>8</sup> As the name implies, an administrative order (such as the Interim Licensing Procedures) is a directive from the chief administrative officer. Employees are required to follow administrative orders which, in some cases, may be the product of extensive discussion and debate. Typically, however, adoption of such orders does not include opportunities for the general public to be informed about and comment on the proposed rule, as is required for regulations by the Administrative Procedures Act.

regulations or both, unless the statute expressly provides to the contrary, it shall be construed as requiring that all rules adopted by the agency be adopted in the manner provided in this section.” [3 V.S.A. § 831(a)] Therefore, while the Commissioner may “prescribe” rules, it must be in accordance with established rulemaking procedures.

The new policies were adopted after considerable internal discussion but were never made available for public comment as is required by the APA. Therefore, for the reasons noted above, it appears that implementation of the new policies without formal rulemaking is not in conformity with the statute.<sup>9</sup>

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<sup>9</sup> Adoption of new policies without adhering to required APA procedures could potentially subject licenses, renewals, and denials to legal challenge as not being legally binding.

Note: According to staff,<sup>10</sup> the Division is considering further changes to the Interim Foster Home Licensing Procedures. Apparently, staff now believe that six months may not be long enough for foster parents to adjust to their new roles and, as a result, Licensing Specialists will not have sufficient information on which to base a license renewal decision.

## **RECOMMENDATION**

The Commissioner should promulgate formal regulations as required by statute, including public hearings.

2. Compliance and evaluation of quality of care: "When the home is evaluated for relicensure, the state licensing authority will review compliance with these regulations and will evaluate how well the needs of children in the care of the foster parent(s) have been met." [Lic. Reg. #031]

## **FINDING**

Of the 42 files examined, 37 licenses had been renewed at least once or the licensee had applied for renewal. We found that 95% of those files (35 of 37) contained the required compliance review and evaluation. The Department had not yet completed its review of the two files without documentation.

In addition to changing the terms of initial licensure and renewal (see above), the Department adopted new procedures for reviewing renewal applications. [P&PM No. 2031] Due to the size of our sample and because the new procedures were only adopted in November 1995, only two cases in our sample had been reviewed under the new procedures.

The old renewal application review process was based largely on information reported by the licensees on forms provided by the Department. Licensing specialists were not required to conduct home visits and current criminal records checks were not conducted unless a new adult was residing in the home or providing care. The new procedures continue this reliance on self-reported information for second (and all subsequent) renewals.

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<sup>10</sup> October 3, 1997 telephone conversation with the Division Director and Licensing Unit Chief.

Department staff offered three reasons for reliance on licensee self-reporting for much of the information required:<sup>11</sup> 1) case workers have regular contact with foster parents and children, closely monitor conditions in the home, and can be expected to report license-related issues; 2) following initial licensing and placement of foster children in the home, the Department considers the foster parents part of a “team;” issuance of a license is an explicit act of trust and it is understood that foster parents are expected to meet important responsibilities as members of the team; thus, self-reporting is considered empowering and an affirmation of the trust conferred; and, 3) resource limitations.

The Department’s continued reliance on licensee self-reported information for second (and all subsequent) renewals may reflect resource constraints and be convenient administratively. However, the assumption that all licensees will report honestly and accurately has not been tested. Furthermore, while most homes are visited regularly by caseworkers (who have a continuing responsibility for the foster children and parents), some interviews take place in the district offices and the schools. Therefore, there may be some instances where caseworkers may not have first hand knowledge of conditions in the home.

We have no evidence that reliance on licensee self-reporting is not adequate, but it may not satisfy the requirement that the licensing authority review compliance with the regulations and evaluate the quality of care. In any case, the Department has elected to strengthen its procedures for first renewals and require site visits and phone interviews with resource coordinators and case-workers. [P&PM No. 2031] All subsequent license renewals will be reviewed with somewhat less rigor, much as initial renewals have been handled in the past.

Of the 35 cases with completed license renewals, we found that one included evidence of non-compliance with regulations. The non-compliant condition related to the size of a bedroom. [Lic. Reg. #421] Special circumstances were found to exist and a variance was granted by the Chief of Licensing as is permitted under Lic. Reg. #035.

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<sup>11</sup> Conversations with Licensing Unit staff on June 4, 5 & 10, 1997.

## RECOMMENDATION

It is too soon to evaluate either compliance with or the effectiveness of the new procedures. We encourage the Department to monitor and document its experience with the new procedures and determine whether they are more effective in achieving the goals and objectives of the statute and regulations.

3. Comments from the district office: At the time of the first and all subsequent renewals, the Licensing Technician is required to make an “inquiry to the licensee’s home district office soliciting comments about the license.” [P&PM No. 2031] As was discussed above, this is an important element of the Licensing Unit’s feedback loop with other service providers within the Department. Since district office staff have the most direct and continuing contact with each licensee, their comments about conditions in the foster home can be invaluable.

## FINDING

Of the 35 files examined with completed license renewals, we found that 37% (13 of 35) had no written comments from the district office. The regulations require only that an inquiry be made and are not binding on the district offices.

In some cases, licenses had been renewed several times and, presumably, the foster parents were well known to the Department. Furthermore, in at least two instances, the licensees had not yet had any foster children assigned to their homes and, moreover, a non-response may be interpreted to mean that all is well. According to staff,<sup>12</sup> however, licensing specialists seek input from the district offices in virtually all instances although telephone conversations may not be reduced to writing. Nevertheless, such informal communications (although useful to licensing specialists at the time) are not recorded in the files and, therefore, are not available for review at a later date.

## RECOMMENDATION

We recommend that the Commissioner require the district offices to reply in writing each time the Licensing Unit requests comments about a licensee.

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<sup>12</sup> October 3, 1997 telephone conversation with the Division Director and the Licensing Unit Chief.

4. Complaint review and interviews with resource coordinator:

The new renewal procedures include a requirement that Licensing Unit staff conduct phone interviews with at least 50% of the caseworkers who have visited the home, as well as a review of all complaints about the home. [P&PM No. 2031] As was noted above, there were only two cases in our sample that had been processed under the new procedures so we do not have enough information to make meaningful observations about compliance with this new requirement.

Note: The complaint process is described in SRS Administrative Manual No. 430 (adopted January 3, 1989). Complaints may come from anyone and are usually directed to the district office. Following intake, the district office Director immediately informs the Central Office Intake Coordinator who notifies the Chief of the Special Investigations Unit (SIU). The Chief makes an initial determination about whether an investigation is warranted and, if so, it must begin as soon as possible but no more than 24 hours after intake. Based on the facts of the case, SIU may: 1) gather more information and proceed with an investigation or, if the complaint is unfounded,<sup>13</sup> close the case; 2) if an investigation is undertaken, notify the district office whose Resource Coordinator acts as a resource for the foster parents; 3) if the allegation is of serious physical or sexual abuse, notify the police and/or the State's Attorney. In all cases, SIU informs the Licensing Unit which may launch its own investigation to determine if there have been license violations.

- C. **Denial**: "A license may be denied or revoked if the applicant or licensee fails to meet any licensing regulations" [Lic. Reg. #037] [or] "has been charged with or convicted of a criminal offense [038.1] or has current or unresolved problems with alcohol or other chemicals [038.2] or has abused or neglected a child." [038.3]

## FINDING

Since 1986, the Department has processed an average of 273 applications annually and granted licenses to 176 families per year (64%). During the same period, however, there was an average of only 9 denials each year

<sup>13</sup> An allegation is considered founded if an "investigation produces accurate and reliable information to cause a reasonable person to believe that a child is abused or neglected." [Admin. Manual No. 430]

(3.3%). The disposition of the remaining applications (approximately 167/year) included: 1) failure to complete the application after an initial inquiry; 2) voluntary withdrawal for personal reasons; and, 3) withdrawal at the suggestion of Department staff.

According to staff,<sup>14</sup> the practice of encouraging some applicants to withdraw has developed over time in response to several considerations including: 1) some families are not ready for foster parenting (e.g., home environment, health, finances, etc.) but may be good candidates in the future; and 2) some families cannot be approved due to failure to meet one or more criteria (e.g., criminal convictions, bad references, inadequate facilities, etc.). Withdrawal allows the applicant to avoid the pain (and possible stigma) of a formal denial, and saves the Department considerable time and resources by averting the need to build a defensible case subject to review by the Commissioner and the Human Resources Board. When applicants withdraw at the suggestion of staff, their file is kept and flagged for review if they ever reapply.

We reviewed a sample of seventeen (17) files from the combined group of denials and revocations. The sample included seven (7) withdrawals, seven (7) revocations, and three (3) denials. The files contain evidence of the effectiveness of the application review procedures to uncover information critical to a determination of fitness. Although not a perfect science, the combination of the checklist, references, inquiries about criminal activities, and the judgment of experienced staff allow the Department to identify those families not considered fit to become foster parents.

The withdrawals found in our sample were the result of: 1) weak references and concerns about supervision; 2) unhealthy home environment (cleanliness); 3) prospective foster parent had a drug problem; 4) biological child abused another child; 5) reports of abuse by the prospective foster parent and one of the biological children; 6) concerns about the ability of the applicants to care for a foster child because the biological children had special needs that were very demanding; and, 7) Department denied request by the applicants who wanted to have the foster child sleep in the parents' bedroom.

The denials found in the sample were the result of: 1) discovery of relevant (and damaging) information withheld by applicants; 2) general unfitness (no telephone, poor supervision, father in poor health, inadequate financial resources, etc.); 3) provisional license restricted to existing foster children

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<sup>14</sup> op cit., Conversations with staff.

(who were determined to be doing well) because the father (recovering alcoholic) got drunk and presented a potential risk.

Note: District offices sometimes issue provisional approvals in order to meet emergency needs for foster homes. In many cases, the children are placed with kin, family friends, school guidance counselors, or ministers. If the provisionally-approved home does not apply for a license, the approval is for no more than seven days.

In the past, the process for provisional approvals has not been uniform or as comprehensive as that of the Licensing Unit's. Some provisional foster homes subsequently apply for regular licenses and, upon closer examination, the Licensing Unit denies their applications. This presents occasional problems because foster children placed in the provisionally-approved homes may have made good adjustments and the Department is reluctant to move the children (stability being an important goal of the program). In some instances, the Licensing Unit decided to restrict the license to the care of the children already in the home and allow the license to expire once they leave. These problems have been minimized somewhat since the district offices have adopted more uniform procedures including many of the same review criteria used by the Licensing Unit.

According to staff, the system has an additional informal safeguard. Licensure does not entitle the foster parents to a placement. Thus, if the Licensing Unit has approved an application but is later concerned about some potential risk, they can communicate with the district offices and suggest that no foster children be assigned to a particular home.

## **RECOMMENDATION**

None.

- D. **Revocation**: See item I.C. (on page 14) for statutory authority for revoking a license.

## **FINDING**

Since 1986, there have been 87 revocations, an average of eight per year. Recently, however, the number of revocations annually has been well below the long-term average, with only four in 1995 and 1996. With over 900 currently licensed foster homes, less than one half of one percent were revoked last year. Of the seven revocations in our sample, five resulted from some form of abuse, one due to the illness and/or instability of a foster

parent, and another because the Department learned of out-of-state criminal activity not disclosed during the initial review.

Reviewing license revocations provides valuable feedback regarding the application process. One key objective of licensing is to screen out those who present an unacceptable risk to foster children. Although the application review process is not an exact science, it appears to be effective based on the low number of revocations.

### **RECOMMENDATION**

None.

- E. **Suspension**: The Department may suspend a license “if a situation exists ... which immediately imperils the health, safety or well-being” of the foster child. [Lic. Reg. #039]

### **FINDING**

According to Department staff, there have been no license suspensions in the last 10 years. In the rare instances where children are “immediately imperiled,” the Department prefers to remove the child from the home and pursue revocation later.

Note: Efforts to determine the number of times the State has removed at-risk children from foster homes were unsuccessful. According to the Chief of the Special Investigations Unit (SIU),<sup>15</sup> the various data bases with relevant information are not programmed to provide such data. In his experience, however, such incidents are very uncommon.

### **RECOMMENDATION**

Notwithstanding the infrequency of such incidents, it might be helpful if the Department periodically collected and reviewed information about emergency removals. Such an analysis could provide valuable feedback about licensing, case work, and investigative procedures that might help prevent the need for these radical interventions.

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<sup>15</sup> Telephone conversation with SIU Chief George Carson on September 22, 1997.

II. **Child Placing Agencies:** “A person, other than an employee of a department within the agency of human services shall not place any child in foster care for more than fifteen consecutive days unless the person has a license from the department to do so or is an employee of a child placing agency licensed by such department.” [33 V.S.A. § 3501(a)] “A person shall not receive, board or keep any child in foster care for more than fifteen consecutive days unless he has a license from the department to do so. This subsection shall not apply to foster homes approved ... by a licensed child placing agency.” [33 § 3501(b)] “A child placing agency is an organization established for the purpose of providing or arranging placement for children in foster homes, residential child care facilities or adoptive homes.” [Licensing Regulations for Child Placing Agencies (CPA), November 15, 1992]

A. **Licensing CPAs:** We reviewed Department files of all 11 licensed Child Placing Agencies and visited three of the largest to review a sample of their case files.

1. **Administration and Organization:** The Licensing Regulations for Child Placing Agencies require the applicant agency to submit information about the purpose, organization, structure, staff qualifications and fiscal management of the agency; a description of their programs; and procedures for ensuring the confidentiality of records. [CPA Lic. Reg. #100 - 110] The necessary materials are made available to Licensing Specialists during site visits to the agencies and (with a few exceptions) are not kept on file at the Department.

We conducted site visits to Family Life Services (Vergennes), Northeastern Family Institute (Williston), and Spectrum Youth and Family Services (Burlington) in order to examine agency files. Together, these three agencies have approved 111 foster care homes (see CPA Foster Home Approval below) which is 55% of all foster care homes not licensed directly by the Department.

## **FINDING**

The three agencies whose files were examined met the requirements of CPA Licensing Regulations #100 - 110.

Note: Although not required to be kept at the Department, the files contained documentation for two agencies. Although both agencies were found to be in compliance and licensed by the Department, the bylaws of one (the Lund Family Center) did not include conflict of interest provisions [CPA Lic. Reg. #103.4] or required disclosure of transactions involving

family or board members. [CPA Lic. Reg. #105.2]

### **RECOMMENDATION**

The Department should review the most current version of the Lund Family Center's bylaws to ensure compliance with all regulations.

2. Licensing Report: In November of 1996, the Division of Social Services adopted interim procedures for licensing child placing agencies. [Casework Manual No. 8400, 11/5/96] At application and renewal, the Licensing Unit conducts a licensing study of each agency including an assessment of compliance with regulations, a review of complaints received, and the handling of criminal and registry records. During site visits, the licensing team reviews changes in personnel, policies and practices, reviews sample records and visits one or more foster homes for review of compliance with regulations. We reviewed the most recent relicensing studies for the three agencies we visited.

### **FINDING**

We found that the three relicensing studies reviewed met most of the requirements of Casework Manual No. 8400. The only procedural requirements not addressed specifically or in detail were complaints and criminal and child abuse registry records checks. [Casework Manual No. 8400, B] The reports made no mention of a complaint review and, with regard to records checks, noted only that the agencies records were in compliance with regulations.

Note: The Licensing Unit receives some complaints about agency-approved foster homes directly and is informed about those made to the agency. The Licensing Supervisor investigates such complaints and works with the agency to resolve them. In our review of the licensing reports, however, we found no evidence that staff reviewed the agencies' complaint resolution process or performance.

### **RECOMMENDATION**

We recommend that future relicensing studies include a review of complaints and criminal records checks as required by Department procedures.

- B. **Agency-approved Foster Homes**: A licensed “[a]gency shall assure that all foster homes ... approved by the Agency meet current Vermont licensing regulations” [CPA Lic. Reg. #400.01]. In order to place children in agency-approved foster homes, a licensed agency must adhere to an internal application and approval process that is substantively and procedurally similar to the Department’s.<sup>16</sup> The process includes personal interviews [CPA Lic. Reg. #403.01.3], an assessment of compliance with regulations relating to the physical facility [#403.01.4], and references [#403.01.5]. The agency is also required to “prepare and maintain a written home study on all approved foster homes” including consideration of all the issues covered by the Department’s home study (checklist). [#403.02.1 - 403.02.16]

We visited three agencies and examined a randomly selected sample of approved foster home files including seven each from Family Life Services (FLS) and the Northeastern Family Institute (NFI), and six from Spectrum Youth and Family Services (Spectrum).

1. **Applications**:

**FINDING**

We found that 100% of the files reviewed (20 out of 20) contained applications.

**RECOMMENDATION**

None.

2. **References**: “The process [of approval] shall include ... obtaining written references or written telephone notes on such references before approving an applicant.” [CPA Lic. Reg. #403.01.5]

**FINDING**

We found that 95% of the files reviewed (19 of 20) contained at least three references. One of the seven files from NFI contained only one reference. Interestingly, the agencies are not required to obtain a minimum of three references as the Department itself must do when processing applications.

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<sup>16</sup> Agencies are permitted to recruit prospective foster parents based on additional criteria as long as they “respect the confidentiality of the children and families served by the Agency.” [CPA Lic. Reg. #402.01].

## RECOMMENDATION

We recommend that the Commissioner consider revising CPA Lic. Reg. #403.01.5 to require agencies to obtain at least three references in all cases.

3. **Criminal and child abuse records check:** All child placing agencies must “meet current Vermont licensing regulations” [CPA Lic. Reg. #400.01] including the requirement for a criminal and child abuse registry records check (see item I.A.3. on page 5).

## FINDING

We found that 45% of the files reviewed (9 out of 20) did not contain evidence of the required criminal and child abuse records check from the Vermont Crime Information Center (VCIC).

- **FLS:** 39% of the files reviewed (2 out of 7) had no VCIC record. In both cases, however, the Department’s log contained the necessary documentation.
- **NFI:** 43% of the files reviewed (3 out of 7) had no VCIC record. In two of the three cases, however, the Department’s log contained the necessary documentation. In the other case (which pre-dated the Department’s authority to obtain such information), the file contained evidence of a criminal records check from the Burlington Police Department. Following the Legislature’s authorization for VCIC checks in 1992, the Department required all child placing agencies to submit the names of all adults in agency-approved homes for VCIC checks. The Department’s log contained no evidence that the one remaining case had ever been submitted.
- **Spectrum:** 67% of the files reviewed (4 out of 6) had no VCIC record. According to Spectrum staff, however, a fire at the office last year destroyed some of the records. In all four instances, the Department’s log contained the necessary documentation.

Therefore, of the nine agency files without the required documentation, eight were found to have been submitted for a criminal records check. There is no evidence, however, that the remaining (NFI) case was ever submitted.

## RECOMMENDATION

The Department should require NFI to submit the outstanding case for a VCIC check and encourage all child placing agencies to review their files to determine if any other cases may not have had the necessary criminal records check. Furthermore, all agencies should be reminded that they are required to have a record of the VCIC check in their files.

Note: The VCIC has informed the Department that it is not required to keep copies of the records checks in its files for more than three years.<sup>17</sup> When duplicates of older records are required, therefore, the agencies may need to obtain them directly from the VCIC.

4. **Compliance Checklist**: All child placing agencies must “meet current Vermont licensing regulations” [CPA Lic. Reg. #400.01] including the requirement that foster care homes provide a safe physical environment for the children.

## FINDING

We found that 100% of the files reviewed contained the required compliance checklist to ensure a safe physical environment for the children.

## RECOMMENDATION

None.

5. **Licensing Report**: All child placing agencies must “meet current Vermont licensing regulations” [CPA Lic. Reg. #400.01] including the requirement that the agency report on various subjective criteria to ensure the fitness of the prospective foster parents. [Lic. Reg. #200 - 339; see item I.A.5. on page 7]

## FINDING

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<sup>17</sup> July 31, 1997 telephone conversation with the Licensing Technician.

We found that 95% of the files reviewed (19 out of 20) contained a report by agency staff regarding the fitness of the prospective foster parents. The only file without such a report was from NFI.

Note: NFI licensing reports contain mostly self-reported information which may not be objective or reliable. Although each applicant is the subject of a home study (see below), the licensing report addresses complementary issues and is intended to provide valuable information.

## RECOMMENDATION

The Department should consider whether NFI's practice of using self-reported information satisfies the intent of Lic. Reg. #'s 200 - 339 and is the best available method of evaluating the fitness of prospective foster parents.

6. **Home Study**: "An agency shall prepare and maintain a written home study on all approved foster homes." [CPA Lic. Reg. # 403.02, et. seq.] The home study shall include, among other things, information about the history and composition of the family, reasons for applying for a foster child, education, employment, hobbies, and religious observances.

## FINDING

We found that 95% of the files reviewed (19 out of 20) contained the required home study. The one file without one was from NFI and is an older case.

Note: Most of the NFI home study reports reviewed contained somewhat limited information. Since the Licensing Unit reviews sample agency files during the relicensing process, we must assume that the Department has found NFI's home studies comply with the intent of the regulation.

## RECOMMENDATION

None.

- III. **Internal Controls**: This review has applied internal control standards contained in the Statement on Auditing Standards No. 78: "Internal control is a process - effected by an entity's board of directors, management, and other

personnel - designed to provide reasonable assurance of achievement of objectives in ... financial reporting, effectiveness and efficiency of operations, and compliance with applicable laws and regulations [emphasis added].”<sup>18</sup> Internal control consists of five interrelated components including control environment, risk assessment, control activities, information and communication, and monitoring.

- A. **Control Environment**: “The control environment sets the tone of an organization, influencing the control consciousness of its people. It is the foundation for all other components of internal control, providing discipline and structure. The control environment encompasses the following factors: 1) integrity and ethical values; 2) commitment to competence; 3) Board of Directors participation; 4) management’s philosophy and operating style; 5) organizational structure; 6) assignment of authority and responsibility; and 7) human resource policies and practices.”<sup>19</sup>

## FINDINGS

1. we observed a high degree of integrity and ethical values among staff;
2. we observed a strong commitment to competence by staff which carries over to their relations with child placing agency staff; although required to act as regulators, Licensing Unit staff also work as partners with agency staff to ensure the highest possible degree of compliance and professionalism;
3. although there is no board of directors *per se*, the evidence reviewed suggests that there is a continuing dialogue between functionally-related units within the Division and with the Commissioner and with the on-going Legislative oversight process;
4. we found evidence that management’s philosophy and operating style is open, participatory, and committed to empowering staff as a means to achieving Department goals and objectives;
5. the Department has recently undertaken an organizational restructuring so it is not possible to fairly evaluate its effectiveness at this time;
6. as a relatively small office within the Division, some duties and responsibilities are shared; furthermore, the Licensing Unit’s responsibilities require close cooperation with District Offices, Special Investigations, and other entities within the Division;
7. the Licensing Unit must adhere to state personnel policies and we did

<sup>18</sup> American Institute of Certified Public Accountants, Statement on Auditing Standards (SAS) No. 78, Journal of Accountancy, February 1996, pp. 85-90.

<sup>19</sup> *ibid.*

not perform a separate review of its compliance.

## **RECOMMENDATIONS**

None.

- B. Risk Assessment: Risk assessment includes “identification, analysis, and management of risks relevant to” the organization.<sup>20</sup>

## **FINDING**

Risks relevant to the Licensing Unit include primarily issues beyond his control including: 1) limited staff resources; 2) increasingly difficult behavior of many foster children; and 3) the difficulty of recruiting foster parents able to handle such troublesome behavior.

## **RECOMMENDATION**

None. We note, however, that although there’s no evidence of a pressing problem, the inability of the Licensing Unit to obtain criminal records information from other states could lead to the inadvertent licensing of an unfit foster parent. Existing licensing procedures include opportunities for trained personnel to identify potentially risky applicants but it’s possible a mistake could be made due to insufficient background information. To date, the Department has not sought the necessary authority from the Legislature.

- C. Control Activities: “Control activities are the policies and procedures that help ensure that necessary actions are taken to address risks to achievement of the entity’s objectives.”<sup>21</sup> Control activities usually include performance reviews, information processing, physical controls, and segregation of duties. In the case of small entities such as the Licensing Unit, however, some control activities may be less formal and “not relevant because of controls applied by management.”<sup>22</sup>

## **FINDING**

As noted above in Risk Assessment, staff resources and difficult behavior by foster children are beyond the control of the Licensing Unit. However, the Division has responded to the related problem of attracting and retaining qualified foster parents by focusing more resources on training

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<sup>20</sup> op. cit., SAS No. 78.

<sup>21</sup> op. cit., SAS No. 78.

<sup>22</sup> op. cit., SAS No. 78.

and support for foster parents.

Based upon the State Auditor's 1996 review of performance measurement reporting, the Department was rated "Good."<sup>23</sup>

### **RECOMMENDATION**

None.

D. Information and communication: At base, this element of internal controls is about whether existing information systems can generate information sufficient for the entity to manage itself effectively.

### **FINDING**

Information related to the Licensing Unit's financial transactions is part of the State's Financial Management Information System (FMIS). FMIS is audited annually by this office and for the period in question, internal controls for FMIS have been determined to be appropriate and adequate.

The Licensing Technician responded to all of our information requests promptly and, based upon the data provided, the Licensing Unit has an effective system of information storage and retrieval. There was only one instance when we were not provided with the information requested and, technically, the data was not in the possession of the Licensing Unit (see item I.E. on page 16 - License Suspensions).

### **RECOMMENDATION**

None.

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<sup>23</sup> State Auditor's Review of FY 97 Performance Measurement Reporting, Appendix A.

- E. **Monitoring:** “Monitoring is a process that assesses the quality of internal control performance over time. It involves assessing the design and operation of controls on a timely basis and taking the necessary corrective actions. This process is accomplished through ongoing monitoring activities, evaluations, or a combination of the two.”<sup>24</sup>

## **FINDING**

We found evidence that the Division conducts ongoing assessments of all aspects of its foster care responsibilities and acts promptly to adopt corrective measures when warranted. Recent examples include revisions to the Licensing Regulations, Policies and Procedures Manual, and the Caseworker Manual. Furthermore, various internal and inter-agency groups (sometimes including foster parents) have produced reports on several important topics including Foster Parent Training and

Education, Residential Group Treatment, Foster Care Reimbursement, and Supporting Foster Families.

The Licensing Unit is fortunate to have several key employees with considerable experience. It became evident during interviews and data collection that these employees are thoroughly committed to their work. They have demonstrated their willingness to consider old procedures in the face of changes in the field and make the necessary adjustments when needed. This type of self-examination and flexibility reflects a healthy control environment.

## **RECOMMENDATION**

None.

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<sup>24</sup> op. cit., SAS No. 78.



## APPENDIX A

### Foster Care Statutes, Regulations, and Administrative Rules

<u>Statutes</u>	<u>Page</u>
33 V.S.A. § 3501 Foster Care and Placement Licensing A.1.1	
33 V.S.A. § 306: Administrative Provisions	A.1.2
33 V.S.A. § 309: Access to Records	A.1.3
3 V.S.A. § 831: Administrative Procedures Act A.1.4	
 <u>Regulations</u>	
Licensing Regulations for Family Foster Care (9/1/92)	A.2.1
Licensing Regulations for Child Placing Agencies (11/15/92)	A.2.17
 <u>Administrative Rules and Procedures</u>	
Licensing and Regulation's Policy and Procedures Manual (8/27/93) A.3.1	
Administrative Manual - Policy #430 (1/3/89)	A.3.25
Casework Manual - No. 8400 (11/5/96)	A.3.35

**APPENDIX B**

**Comments by the Commissioner of Social & Rehabilitation Services**