WHO CARES ABOUT DAY CARE?

Louisiana is the only state in the nation that does not require the regulation of day care centers. The state gained this distinction without any fanfare and without the knowledge of most Louisiana parents. Now, child advocates are raising alarms. The issue is intense and political, and it is not dead.

A special New Orleans Magazine report

BY BETHANY EWALD BULTMAN
Child advocate Judy Watts disputes the claim that Louisiana's lack of mandatory licensing benefits the consumer. "How does a fourteen-month-old child tell the consumer, his parent, that he has been locked in a closet all day at his day care center?" she asks.

As things stood in 1980, the Office of Licensing—a department of the state Department of Health and Human Resources (DHHR)—could inspect a facility and find violations of health, safety and other code provisions, but it was powerless to prevent the guilty center from continuing to operate. All DHHR inspectors could do was file a complaint with the district attorney.

Since the district attorney lacks police power, day care personnel, even those abusing children in their care, couldn't be arrested on the spot. The district attorney had to bring charges against the offending center personnel in criminal court. To stop the abuse, the district attorney had to prove beyond the shadow of a doubt that the abuse had occurred and that it was done with "criminal intent," a difficult standard of proof to meet.

State officials at the time felt children would be better protected if the Office of Licensing could show a civil court judge that abuses were taking place and have the judge issue an injunction closing the offending center until other legal action could go forward.

From 1978 to 1980 officials of DHHR worked with concerned legislators to draft a bill addressing the enforcement issue. Their efforts resulted in House Bill 1462, introduced in the 1980 regular session of the Legislature. The sponsors of the bill included Reps. Ben Bagert (D-New Orleans), Charles Grisbaum (R-Metairie), Frank Simoneaux (D-Baton Rouge) and Sens. Tom Casey (D-New Orleans) and Fritz Windhorst (D-Gretna).

The bill set out to strengthen by amendment and to re-enact the laws relative to the regulation and licensing of day care centers. The bill mandated the Department of Health and Human Resources to "promote safe, comfortable and proper physical facilities; insure adequate supervision of those attending or residing in these facilities by capable, healthy and qualified personnel. . . ."

Most importantly, the bill gave DHHR the authority it wanted to use the civil courts to close down centers violating the law, thus bypassing the old and ineffective process of filing complaints with the district attorney.

The bill came before the House Committee on Health and Welfare on June 13, 1980. Fourteen of the committee's 16 members were present. Rep. Bagert, a co-sponsor of the bill aimed at strengthening the licensing provisions for day care, authorized Rep. Lewis "Woody" Jenkins to present the bill for him. Jen-
kins, a conservative Baton Rouge Democrat, chairs the powerful Subcommit-tee on Oversight for Health, Education and Welfare and is intensely interested in social welfare issues.

Jenkins told the committee members he had been talking to a wide range of people with an interest in day care. He went on to say, according to the hearing's official transcript, that he objected to many features of the bill sponsored by Bagert and the others. He particu-larly objected, he said, to the granting of injunctive power to close down child care facilities said to be in violation of the law. This objection struck at the very reason the lawmakers were examining the regulation of day care centers in the first place.

Jenkins told the committee he had discussed the issue with DHHR head George Fisher and they had reached a compromise: “Facilities meeting fire and sanitation code requirements will not be required to be licensed by DHHR, but they may still request licensing if they desire.” Jenkins said. Jenkins proposed that he could amend the Bagert bill in such a way that it would “allow facilities now operating without licenses that meet the codes to continue to operate, while providing the methodism for investigating allegations of child abuse, leaving the ultimate power with the district attorneys.” He offered to write up the amendments.

The mention of child abuse led several committee members, including Diana Baj-oie (D-New Orleans), to say that such a compromise didn’t adequately protect children from physical harm. The executive director of the Children’s Council of New Orleans W.S. McGarrah suggested that all child care facilities, licensed and unlicensed, ought to be required at least to register with the state for statistical purposes and as some measure of accountability. The commit-tee included McGarrah’s suggestion for registration in another amendment and then passed the whole package.

Thus, the committee approved a bill amended to do the exact opposite of what its sponsors had intended. Instead of strengthening the enforcement capa-bilities of the Office of Licensing, it had removed mandatory licensing altogether.

The House passed the bill overwhelm-ingly, 85 to 7, on June 23. House records indicate that the bill’s original sponsors, Bagert, Grisbaum and Simoneaux, all voted in favor of this 180-degree turn bill.

The Senate made some minor tech-nical changes and then passed the bill 32 to 1. This version went back to the House where an even greater number of ayes propelled the proposed law to the desk of Gov. Dave Treen. The newly elected Treen signed the sweeping deregulation of day care into law on July 18, 1980.

Rep. Ben Bagert (D-New Orleans) introduced a bill aimed at strengthening day care regulation. The bill that passed actually did away with mandatory licensing for day care centers. He now says: “What came out of committee had no relation to the bill I proposed. I can only speculate that my name was left on the bill by some oversight.”

What happened? Rep. Bagert told New Orleans Magazine: “Jenkins told me I’d filed a terrible bill and he took it over and amended it. What came out the committee had no relation to the bill I proposed. I can only speculate that my name was left on the bill by some oversight.”

Rep. Grisbaum, another nominal ally of the DHHR-backed reforms, claims he doesn’t even remember the bill. “I was Gov. Treen’s floor leader and was asked to put my name on hundreds of bills,” he says. “I can’t even remember that piece of legislation.”

The third named sponsor of the bill doesn’t claim it either. “I put my name on a bill which would give more strength to DHHR,” says Simoneaux. “I believe that my name was used in error on the amended bill.”

And what about the governor? A spokesperson for Gov. Treen referred questions about the day care bill to the man in charge of the agency that con-tains the Office of Licensing, DHHR Assistant Secretary Lane Carson, a Treen appointee. Carson offered his view of the governor’s consideration of this radical change for day care in the state: “I cannot really speak for the governor but I would assume that he found this bill on his desk with about eight hundred others. He saw his people’s names on it and how wide it passed the House and the Senate, so he signed it. After all he was a new governor, and he would have to have had a strong reason to use his veto power on a bill that was not considered major legislation.”

To child care officials and workers who went to the Legislature looking to strengthen their hand in policing day care center licenses, the law eliminating mandatory licensing does constitute ma-jor legislation. As things now stand an unlicensed center may have any number of children per caretaker, have little or no play equipment, provide no food, hire indiscriminately and subject the children to any of a variety of emotional abuses. Even abuses alleged in centers operating under licenses must still be challenged through the cumbersome criminal process.

What about the law eliminating mandatory licensing? The registration clause in the new bill is not a strong provision. Although day care centers are at least supposed to register with the Office of Licensing and meet fire and health codes, there is inadequate staff to find those centers failing to register. And fire and health code compliance reports are filed only on an annual basis.

Licensing officials estimate there are as many as 2,000 centers in the state that are neither licensed nor registered. Currently there are approximately 450 centers registered statewide.

While licensing regulations are more lax than many child advocates would
some child care centers will continue to seek licensing in order to qualify to serve children whose care is government-subsidized. Licensing is still mandatory for any center receiving state or federal money. Only about 9,000 children in the state have their care subsidized, however.

Rep. Jenkins hails the new law for getting government out of parent-child relations and the free market. He also points out that consumers benefit when private businesses aren't burdened by mountains of regulations and the paperwork that comes with them.

But, what are the glories of deregulation to some are, to others, the horrors of a system neglecting the needs of the state's young children. Rep. Jenkins and child care advocate Judy Watts, vice president of the Louisiana Chapter of the National Association for the Education of Young Children, stand in opposite corners of the ring on this issue.

"Before the bill (1462) became law, the child care facilities faced a mountain of highly arbitrary regulations," says Jenkins. "They included a wide range of mandates down to the number of crayons per child and the color that had to be provided."

Jenkins' remarks about requirements for a specific number of crayons would be amusing if it were not for the fact that such comments have the effect of attracting attention away from the main issue, which is the safety and well-being of young children in out-of-home care," counters Watts.

Watts is also the assistant director of St. Mark's Community Center, which operates as a training and referral agency in New Orleans for day care personnel. She says she's amazed at Jenkins' vehemence opposition to day care licensing. "He seems to know so little about sound developmental practices and the environmental needs of children," she charges.

As to the crayon controversy, licensing regulations do not actually address the subject of equipment and supplies in quite such specific terms. Section IIIB of the Minimum Standards for Licensure of Child Care Centers states that "play equipment of sufficient quantity and variety ... shall be provided" and goes on to specify that such basic equipment as "shelves, lockers or coat hooks, chairs, tables and mats or cots must be available."

The reference that upsets Jenkins and the opponents of regulation reads, "The equipment shall be maintained in good repair and shall include equipment which encourages active play (for example, climbing apparatus, swings, wheel toys) and equipment which encourages quiet play or activity (for example, sand, clay, crayons, paints, story and picture books, dolls, puzzles, music)." The selection of equipment and supplies is left to the discretion of each center's administrator.

The licensing regulation Jenkins singles out as particularly offensive is the one that prohibits corporal punishment of children under six. "It is important to protect the parents' right to delegate the proper punishment of their kids," he says. "Do you realize that a licensed center will lose its license if you, as a parent, asked the center operator to spank your child and they carried out your wishes?"

On this point Jenkins is correct. Licensing regulations do prohibit physical punishment of children. Verbal abuse, threats and any "cruel, severe, unusual and unnecessary punishment" are also forbidden.

Responds Watts: "I am disheartened by Jenkins' advocacy of physical punishment and can only attribute it to the fact that he has not been made acquainted with other more conservative approaches to discipline. We are talking about very young children after all, under the age of six."

"If a child care worker cannot manage a group of young children without resorting to hitting them, then she or he should find another line of work. Hitting damages a child's self-esteem, makes him or her fearful of the care giver, encourages anger and hostility, and teaches that hitting is acceptable behavior. If we sanction corporal punishment, studies show that we cannot realistically limit the extent of it. The spanking that the parents ask the care giver to give their child becomes hitting, and when that no longer works, hitting becomes beating, and we end up with a child who is seriously scarred, both mentally and physically, and even made to feel guilty for his or her own scars."

"There is a fine line separating corporal punishment from child abuse, and one of the most critical responsibilities of the licensing department is to prevent situations in which a care giver can even approach that line," says Watts. "I would submit that this responsibility is an argument for licensing, rather than against it."

Jenkins and other advocates of deregulation contend that bureaucracy has no right to interfere with consumers' decisions as to where, how and by whom they want to have their children cared for. After all, they argue, the consumer freely enters into the contract with the facility. This freedom of choice in the marketplace, Jenkins argues further, means the cost of day care can be held down. "It is the consumer who directly benefits from the removal of all the nipping regulations because it costs the unlicensed centers a lot less to provide care."
A spokesman for DHHR told New Orleans Magazine that agency has no record of a day care center's lowering its prices as a result of dropping its license. "Licensing has very little to do with the cost of care," claims Watts, "unless Jenkins is referring to the fact that it is cheaper to operate a child care center of poor quality than it is to operate a good one. It is reprehensible to encourage such an activity."

"Licensing does interfere with parental rights and responsibilities only to the extent that its purpose is to ensure that the range of choices available to parents will all be acceptable in terms of the child's safety and well-being," says Watts. "How does a fourteen-month-old child tell the consumer, his parent, that he has been locked in a closet all day at his day care center? To speak of day care as simply a 'consumer' matter is to belittle the personhood of young children."

Opponents of deregulation say Jenkins and his supporters have confused price deregulation with deregulation of performance standards that affect the public welfare. They point out that the Federal Aviation Administration, for example, has deregulated air fares while maintaining stringent and detailed airline safety standards.

Another problem with this free marketplace attitude, child care advocates con- tend, is that the child is as much the consumer as the parent. How can an 18-month-old child make a critical consumer evaluation of his or her day care center, they ask. Will a two year old suggest he will spend his money elsewhere if the center doesn't register with the state?

This question of a child's ability to assess and communicate the center's conditions becomes highly charged when physical abuse is feared.

The abuse issue is further clouded by another piece of legislation passed during the 1980 Legislature. House Bill 1404, sponsored by Reps. Ted Haik (D-New Orleans) and Sam Theriot (D-Ar- beville), shifted jurisdiction over day care personnel from the child abuse investigators in one office of DHHR to the Office of Licensing. The very office the new licensing law had left with limited power to prevent abuse.

The office that lost jurisdiction was the Office of Human Development, specifically the Division of Evaluation and Services. Suzanne Danilson specializes in child protection and foster care services for the Orleans Parish division.

"We do not want to be Big Brother, but we do want to protect all small children against any form of psychological and physical abuse," she says. "As a matter of policy we do not approve of corporal punishment for children.

When our agency oversaw the workers in the day care centers we investigated every reported case of abuse in conjunction with the Office of Licensing and followed it up with appropriate services for the parent and child.

"We had a physical examination of the child done by our staff pediatrician who is an expert on child abuse. We provided psychological, medical, social and legal follow-up services to help the families. In addition we helped them find better care arrangements for their children. The police department can investigate only actual violations of the crim-

"The fact is that Louisiana has higher standards for animal care than it does for child care," says Sue Ellen Lewis, public relations director for the state Health Department.

The Hepatitis Hazard

I n a 1977 article in the Journal of the American Medical Association entitled "Viral Hepatitis Associated With Day Care Centers" it is stated, "Hepatitis A is well known to spread readily among groups of young children; it is therefore not surprising to find outbreaks of hepatitis occurring in day care centers."

A 1980 report on hepatitis in day care centers for the Child Welfare League explains, "The problem comes because the existing federal standards rely on state and local safety and sanitation codes to protect children and their parents from these environmental risks." Unfortunately, no such enforceable standards exist in Louisiana.

In Louisiana there are between 1,000 and 1,200 reported cases of hepatitis A per year. For every reported case there are at least 10 unreported cases. Between 100 and 200 cases a year can be directly linked to a day care center. Of the 64 parishes in the state, 18 have had multiple outbreaks of hepatitis that can be traced to day care centers. The Child Welfare League's report on hepatitis strongly points to the correlation between the incidence of outbreaks and the total number of children in the center. It also notes that there is a connection between the quality of standards in day care facilities and the number of cases of hepatitis experienced.

A local health department spokesman tells of a particular Jefferson Parish day care center his department has been concerned with since 1976. There have been four separate outbreaks of hepatitis, with a combined total of 152 cases traced directly to this center. On investigation in 1976 a health official found between 96 and 100 children present at different times of the day, although the facility was licensed to handle only 77 children.
Health Department.

As to what will happen, no one can predict. In 1981 Sen. Nat Kiefer (D-New Orleans) introduced another bill to reinstate licensing, close some of the loopholes and strengthen DHHR's authority. It died in committee.

Elaine Land, chairman of the Child Care Licensing Committee of the Louisiana Conference of Social Welfare (an organization that is made up of 1,200 judges, educators, attorneys, doctors and social workers statewide) has announced that her group has chosen the cause of having day care licensing reinstated as a priority this year.

New Orleans City Council's passing of an ordinance to regulate local day care centers. The opposition has run out of steam, he claims. It is his belief, from his many contacts with the owners of centers, that the licensed centers are particularly pleased with the way in which the law works now. "They have clout now because if they begin to feel that the licensing regulations are overbearing, they can simply drop their licenses and continue to do business," he says.

The Office of Licensing confirms that in several cases a year it has found deficiencies in centers and that owners have then taken their licenses off of the wall, torn them up and asked the licensing officials off the premises.

Says child advocate Watts: "When Jenkins says that the opposition has run out of steam, does he think that we are opponents in a race? I speak for most responsible child care advocates, parents and social service professionals when I say that we do not choose to play games or run races over the issue of regulations for day care centers."

One DHHR official says: "Mr. Jen-

Janet Kemp, president of the Louisiana Chapter of the National Association for the Education of Young Children, is blunt about what she sees as the need for day care licensing. "Without these controls, our children's lives can actually be in danger," she warns.

At press time New Orleans Magazine learned that there is a bill currently in circulation, apparently prepared by a consortium of child advocates, that would reinstate licensing and strengthen enforcement powers. The bill had not yet found a sponsor and, again at press time, it was unclear whether this bill will be introduced this session.

For political reasons, this bill exempts church-run day care centers from mandatory licensing.

If all else fails, Councilman Bryan Wagner is looking into the possibility of the New Orleans City Council's passing an ordinance to regulate local day care centers.

Another city councilman voiced this opinion: "Working parents, especially working mothers, are already overburdened with responsibilities. They get up early, drop their kids at the day care center, go to work, fight the traffic to get back and pick up their children before the day care center closes. Once they get home they have a few hours to be with their children before bedtime. During this time they must fix dinner and do housework. Because they are not a very politically involved group, does that mean that they agree with all of the legislation that concerns them? I maintain that the only reason that these parents are silent is that they don't even know that their children's rights are threatened. Just wait and see what happens when they find out."

Health Department officials are also attempting to strengthen the health code so that they can scrutinize the day care facilities more closely.

The National Association for the Education of Young Children is trying to mandate, on the federal level, that all caretakers of young children must meet certain certification requirements. A suit is underway in Arkansas, a state that exempts church-run centers from licensing requirements.

Meanwhile, Jenkins maintains that there is little or no support of licensing anymore. "The opposition has run out of steam," he claims. It is his belief, from his many contacts with the owners of centers, that the licensed centers are particularly pleased with the way in which the law works now. "They have clout now because if they begin to feel that the licensing regulations are overbearing, they can simply drop their licenses and continue to do business," he says.

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One DHHR official says: "Mr. Jen-
kins is a sincere advocate of individuals' rights. We hear him speak of the parent's rights, the consumer's rights, the church's rights and the day care center owner's rights. What about the rights of the small children that go to these centers? Aren't we, as a state agency, supposed to be given the legal authority to protect them?"

"I think the ideal would be a balance that would not overburden our small day care centers with massive and unnecessary regulations, while at the same time protecting the best interests of the children," says Secretary of State Jim Brown. "The Legislature will, no doubt, want to take a closer look at the licensing of day care centers at the next session (the current session ends in July), and I would suggest that parents and other concerned individuals make their feelings on the subject clearly known to their legislators before that time."

"I believe it is absolutely essential to have state licensing of child care facilities for the safety and healthy development of our greatest resource—our children," concludes Janet Kemp, the president of the Louisiana Chapter of the National Ass-

Office of Human Development child protection and foster care specialist Suzanne Danilson champions the cause of day care licensing. "We do not want to be Big Brother, but we do want to protect all small children against any form of psychological and physical abuse," she says.