



COMPARATIVE STUDY OF LAWS AND STANDARDS PERTAINING  
TO THE LICENSING OF FOSTER HOMES IN  
EIGHT SOUTH AND WESTERN STATES

by

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## CHAPTER I

### INTRODUCTION

This thesis is one of a group of six dealing with the laws of the forty eight states regarding the licensing of foster homes. The writer selected the laws of eight southern and southwestern states on which to focus. These states are Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma and Texas.

The purpose of this study is to examine the state statutes pertaining to the licensing of foster homes; comparing and evaluating these laws. Consideration was given to the following questions; 1. What provisions are made for protecting children who require placement in foster homes? 2. Do the programs work cooperatively with private child-placing agencies? 3. Are there any common considerations running thru these state laws?

This study utilized two methods: First, the investigation of primary sources, the statutes of each state. For this the Chicago Bar Association library was used. Secondly by writing directly to the separate State Departments of Public Welfare to secure information on the ways in which these laws are administered within the framework of the statutes.

For the purposes of this study a foster home was defined

rather broadly as any home in which a child is placed other than the home of a relative. Although some state laws refer to these homes as free boarding homes, free foster homes, wage homes, boarding homes and maternity homes, the term foster home as used in this thesis will be intended to embrace all of these. Some of the state laws do not specify the term foster home but rather use the groupings of placements in which a foster home is but one type of placement requiring licensing. The Kansas Law for example states in part "...conduct or maintain a maternity hospital or home, or boarding home, receiving or detention home for infants under three years of age or for children under sixteen years of age."<sup>1</sup>

Each state in this study had some form of legislation dealing with the licensing of foster homes. The writer in reviewing statutes at the Chicago Bar Association library learned that the 1953 legislative session of Oklahoma passed legislation relating to the licensing of foster homes. In the case of Oklahoma this legal material was the only source of information.

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<sup>1</sup>Kansas General Statutes, Title 65, Article 501, (1949).

## CHAPTER II

### THE LICENSING LAWS

All of the states in this study; Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma and Texas, had statutes relating to the licensing of foster homes. This chapter will focus on the content of these sections and the wording of the phrases in the state laws. The earliest state laws regulating foster homes were found to have been enacted in 1919. In that year both the Alabama and Kansas legislature passed laws relative to the licensing of foster homes. These laws were later revised. All of the state laws studied were enacted or revised within the last fifteen years. The most recent law is that of the state of Oklahoma which was enacted by the 1953 legislature.

There is a wide variation in the content and wording of the laws. The only common factor in all the laws studied is that the maximum age of children for whom the laws offer this particular protection is sixteen years of age. Some states do not specify the term foster home but rather use whole groupings of placements in which a foster home is but one type of placement mentioned as requiring a license.

The welfare laws of the states of Arkansas, Louisiana and

Mississippi-make mention of cooperating with the Federal Government. From the wording of these sections relating to the Federal Government the writer received the impression that the revisions of the welfare laws were at least in part due to the fact that in order to be eligible for Federal funds under the Social Security Act, the terms relating to child welfare and public assistance had to be defined. For example the welfare law of Arkansas mentions an estimate of federal funds available for the welfare budget and that the State Department of Public Welfare will cooperate in matters of mutual concern.<sup>1</sup> The welfare law of Mississippi states "The state treasurer is authorized to receive federal funds and to place them in a special child welfare services fund, which money will be expended in accordance with the rules and regulations of the United States Childrens Bureau."<sup>2</sup>

The welfare laws relating to the licensing of foster homes of the states of Kansas, Missouri and Texas define different types of foster home placements such as maternity homes, free foster homes, foster homes for infants and commerical foster homes.

The states of Alabama, Kansas and Oklahoma have within their welfare laws sections that are found in the administrative rules and regulations of the other states.

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<sup>1</sup>Arkansas Revised Statutes, Volume VII, Title 83, Section 102, (1947).

<sup>2</sup>Code of Mississippi, Volume VA, Title 26, Section 7169, (1942).

The licensing laws relating to foster homes of the states of Arkansas and Mississippi are contained in brief sections similarly worded. The Arkansas law relating to the licensing of foster homes states, "The State Department of Public Welfare shall have responsibility for the administration and supervision of child welfare activities in accordance with the rules and regulations of the State Department of Public Welfare including licensing and supervision of private and public child caring agencies and institutions and boarding homes for children."<sup>3</sup>

This is the only phrase dealing with the licensing of foster homes and it is brief. A letter from the State Department of Public Welfare advised that although licensing within the state is not mandatory in Arkansas the state department does license foster homes on an informal basis.

The Mississippi statute states, "...Administer and supervise the licensing and inspection of all private child placing and child caring agencies, institutions and boarding homes, provide for the care of dependent and neglected children in foster homes."<sup>4</sup>

The last section of the law however nullifies some of the effectiveness of the above section by providing exemptions to the law. "None of the provisions of this act shall apply to any

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<sup>3</sup>Arkansas Revised Statutes, Volume VII, Title 83, Section 109, (1947).

<sup>4</sup>Code of Mississippi, Volume VA, Title 26, Section 7170-01, (1942).



orphan homes, child caring agency or childrens home society under the jurisdiction of and maintained by any fraternal organization, religious or fraternal denomination or non-profit association or corporation organized and exclusively controlled by any religious denomination."<sup>5</sup> This section provides a means for circumventing the necessity of obtaining a license for foster homes in cases where private agencies are under the jurisdiction of a fraternal or religious organization.

The statutes of the states of Kansas, Missouri and Oklahoma relating to the licensing of foster homes use strongly worded phrases. It is interesting to note that the wording of one of the phrases of the Kansas<sup>6</sup> and Missouri<sup>7</sup> laws is exact. The states are located geographically side by side. The Kansas law however was the first enacted being passed in 1919. The phrase referred to reads, "It shall be unlawful for any person, firm, corporation or association to conduct or maintain a boarding house for infants, boarding house for children, or to engage in or assist in conducting the occupation or business of placing infants."<sup>8</sup>

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<sup>5</sup>Ibid,. Section 7170-03.

<sup>6</sup>Kansas General Statutes, Title 65, Article 501, (1949).

<sup>7</sup>Vernons Annotated Missouri Revised Statutes, Volume XII, Title 12, Chapter 210, Section 210.230, (1949).

<sup>8</sup>Kansas General Statutes, Title 65, Article 501, (1949).

From the wording of the Kansas law relating to the licensing of foster homes it appears that at the time of inception the main function of the state agency was the maintenance of sanitary conditions as to safe water supply, contagious disease regulation and the regulation of various professions such as pharmacists.

The Kansas statutes also have some sections dealing with items normally found in the administrative rules and regulations of the other states. These sections specify that the records are to be kept, that the State agency has the right of entry into the home, and that health and sanitary conditions in the foster home meet the approval of the State agency.<sup>9</sup>

Missouri is one state that offers a contrast within its law. Although the phrasing of the section dealing with the licensing of foster homes is strongly put, the last section of the law provides an exception that nullifies some of the intent of the law. The section states, "Provided however, that section 210.200 to 210.240 shall not apply to any institution conducted by any well known religious order."<sup>10</sup>

The Missouri law in addition has a section relating to juvenile courts. This section states that any children under the age of seventeen who are dependent, neglected, or ill treated can be placed under the guardianship of the State Department of Public

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<sup>9</sup>Kansas General Statutes, Chapter 65, Section 504, (1947).

<sup>10</sup>Vernons Annotated Missouri Revised Statutes, Volume XII, Title 12, Chapter 210, Section 210.240, (1949).

Health and Welfare who will then find a suitable home in accordance with its standards.

The Oklahoma statutes relating to the licensing of foster homes were the most recent, having been enacted by the 1953 legislative session. The law states, "A licensing act, to protect children placed for care, maintenance, or supervision in any home, agency or institution, and requiring such agencies and persons accepting such children for care to establish minimum standards which are essential to the future health and welfare of the children placed with such agencies or individuals."<sup>11</sup> In another section the law states, "...no child welfare agency may be established unless licensed by the Department of Public Welfare. After investigation such agency may be authorized by the department to recommend its homes for licenses...every foster home shall be under the supervision of the child welfare agency which issues a permit for it."<sup>12</sup>

The Oklahoma statutes provide minimum standards for the licensing of foster homes within the law itself and enumerates these regulations. This was the only state act studied that had such complete regulations within the law itself. They provide for the regulation of the following: periodic health examination of all members of the foster family; adequate indoor and outdoor

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<sup>11</sup>Session Laws of Oklahoma, Title 10, Section 1, (1953).

<sup>12</sup>Ibid,. Section 5.

facilities; adequate adult care; safeguards as to fire, and other hazards; adequate and wholesome food; adequate housing; records kept and the right of entry by staff members.<sup>13</sup>

In the state of Alabama the law relating to the licensing of foster homes does not refer directly to foster homes but rather to agencies. The word agency however, is defined as "...any individual, partnership, voluntary association or corporation."<sup>14</sup>

The section of the law that deals directly with licensing specifies, "All societies, agencies and institutions receiving or caring for dependent neglected minor children shall be required to obtain annually a license from the State Department of Public Welfare".<sup>15</sup>

The Alabama law was the only law studied that made provisions for the removal of a discontented child placed in a foster home. The law stipulates, "Whenever satisfied that a child has been placed in an unsuitable home or that the child continues to be discontent, the State Department of Public Welfare may order its transfer by the agency which placed it and if said order is not obeyed the department itself shall take charge and provide for such child."<sup>16</sup>

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<sup>13</sup>Ibid., Section 4.

<sup>14</sup>Code of Alabama, Volume VII, Title 49, Section 63, (1940).

<sup>15</sup>Ibid., Section 66.

<sup>16</sup>Ibid., Section 72.

A letter from the Louisiana State Department of Public Welfare advised that licensing of foster homes is not mandatory within the state yet all child placing agencies are licensed. The section of the Louisiana law relating to the licensing of foster homes states, "...License and supervise all parish, municipal and private agencies, institutions and individuals caring for children, including visitoral powers, including the rules and regulations of the State Department and contract with private individuals to hold their homes open for and to care for children in need of temporary or long time foster care."<sup>17</sup>

This was the only law studied that specified that the State Department could contract to provide foster homes. Although the section relating to foster homes is brief it is adequate in that it makes reference to such items as rules and regulations to be made by the State Department and the visitoral powers of the State Department.

The sections in the Texas statutes relating to the licensing of foster homes are not located in one specific area. One phrase is however repeated in the definition of several types of foster home placements. The phrase states, "Every person, association, institution or corporation whether operated for profit or without profit, who shall conduct or manage a child caring institution, or agency or facility coming within the purview of this act shall

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<sup>17</sup>West Louisiana Statutes, Revised, Volume XXIV, Title 46, Section 52, (1950).

obtain a license to operate from the State Department of Public Selfare."<sup>18</sup> This phrase is repeated several times.

Some of the different types of foster homes defined are, an agency boarding home, convalescent childrens boarding home, and commerical boarding home. An agency boarding home is defined as a private home caring for six or less children used only by a licensed child placing agency. A convalescent childrens boarding home is defined as any place, public or private which gives twenty-four hour a day care to six or less children who are away from their own homes and not in a hospital. A commerical boarding home is a private place which is operated for profit where six or less children receive care for the whole or part of the day.

The Texas statutes are lengthy and the law is detailed in regard to these definitions of the different types of foster homes. There are also sections in the law that provide for authority to visit and inspect all facilites mentioned in the law whether licensed or not to ascertain if these are being conducted in conformity with the law.

All the state laws studied provide for appeal and/or hearing in case a license is denied by the State Department. Some state laws mention this in the section relating to the licensing of foster homes while others mention this in the last section of their welfare laws. This is taken to mean that the right of appeal is

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<sup>18</sup>Vernons Texas Civil Statutes, Volume XXVI, Article 695, Section 8, (1949).

applied to the whole of the statutes relating to public welfare including licensing of foster homes.

Revocation of licenses of foster homes for not conforming to regulations of the State Department are mentioned in the laws of Alabama, Kansas, Missouri, Oklahoma and Texas. In the other states, revocation is mentioned in the standards set by the State Department itself.

Some states such as Louisiana and Mississippi have a brief paragraph in which there is a reference to the licensing of foster homes. Other states such as Kansas and Oklahoma have a more detailed law with sections in the statutes relating to foster homes. These sections mention standards for licensing, define terms and elaborate more than is possible in the brief phrasing of the Louisiana and Mississippi laws.

All the state laws studied had a section in which one or more phrases mentions the licensing of foster homes. These phrases in all of the legislation not only refer to foster homes but also to agencies and institutions. A foster home is but one type of placement in the laws and is not treated separately.

## CHAPTER III

### LICENSING AUTHORITY

The law relating to children presumes the child's lack of capacity and responsibility to protect himself. Though the parents have the first right and responsibility in regard to their child's protection and care, the states have recognized their duty to supplement and/or substitute for parental care whenever needed in order to further the best interests and welfare of the child.

This chapter will deal with the sections of the eight state statutes which have to do with authority delegated to the various state agencies or private agencies to regulate the licensing of foster homes, and in doing so attempt to fulfill the state obligation to protect children away from their parents or own home.

Authority implies power. Authority is limited unless there is power to enforce this authority. All of the state laws studied give authority to a State agency to license foster homes. The two factors, authority and the power to enforce this authority will be the focus of this chapter.

The wording of the statutes studied differ from state to state. It is the wording itself that affects the real authority of the separate state laws.



Most of the states use the terms, "shall have authority," and "make and promulgate such rules and regulations as are necessary or desirable to carry out the provisions of this act." The effectiveness and scope of the second phrase depends upon the strength of the first phrase.

In referring to the authorization given the State Department of Public Welfare, the Arkansas statutes use the phrase, "The State Department of Public Welfare shall be charged with the administration and/or supervision of all welfare activities."<sup>1</sup> This statement is broad and the wording, administration and/or supervision, indicates that there may be a division of responsibility. These two terms are not defined.

A letter from the Arkansas State Department of Public Welfare advised that licensing of foster homes is not mandatory within the state. The law has this broad statement and contains no section providing for penalties in case of failure to obtain a license for a foster home.

The law in Louisiana relating to the licensing of foster homes stipulates, "The State Department of Public Welfare shall administer and supervise all public welfare activities relating to children...make and promulgate such rules and regulations as are necessary or desirable for carrying out the provisions of this

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<sup>1</sup>Arkansas Revised Statutes, Volume VII, Title 83, Section 109, (1947).

chapter."<sup>2</sup> .

This phrase mentions children and indicates that the State Department of Public Welfare is to administer and supervise but otherwise this section is similar to the one in the Arkansas law. There are no penalties provided for in the Louisiana law which is to be expected as a letter from the Louisiana State Department of Public Welfare advised, "We do not have mandatory licensing in Louisiana so that actually an agency can continue to operate without a license."

The laws relating to licensing of foster homes in the states of Kansas and Missouri are similar in that the phrase, "It shall be unlawful," is used by both states.

Sections in the Kansas statutes relating to foster homes are quite definite. They state, "It shall be unlawful for any person, firm, corporation or association to conduct or maintain a maternity hospital or home, or boarding home."<sup>3</sup>

This phrase leaves no doubt as to the law. It clearly states that it is a misdemeanor not to follow the requirements put forth in the law.

The county attorney of each county is, "...authorized and required upon complaint of any authorized agent of the State Board of Health to file a complaint and prosecute to the final determin-

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<sup>2</sup>West Louisiana Statutes, Revised, Volume XXIV, Title 46, Section 52, Paragraph 8, (1950).

<sup>3</sup>Kansas General Statutes, Chapter 65, Section 501, (1947).

ation all actions or proceedings against any person under the provisions of this act."<sup>4</sup>

The law states that violation is a misdemeanor and, "...upon conviction shall be fined not less than five nor more than fifty dollars and each and every day that he or it shall fail or refuse to comply shall be deemed a separate offense."<sup>5</sup> The fine may range from five to fifty dollars per day for each day the violation continues. This is a severe penalty.

The Missouri statute states, "The Department of Public Welfare shall have the power to administer and supervise all child welfare activities."<sup>6</sup> In a later section the law repeats the exact wording of the Kansas law referred to in this chapter. As in the Kansas law this stresses the fact that it is unlawful to operate a foster home without a license. The only difference is that the Missouri law has no penalty for violation. The Kansas statute states that it is a misdemeanor to operate a foster home without a license. It appears that in Missouri there is no way of enforcing the provisions of their statute. The section relating to boarding of maternity cases does however have a section stipulating that, "Any person who shall operate a maternity hospital or maternity boarding house without having a license so to do, shall

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<sup>4</sup>Ibid., Section 515.

<sup>5</sup>Ibid., Section 514.

<sup>6</sup>Vernons Annotated Missouri Revised Statutes, Volume XII, Title 12, Chapter 207, Paragraph 207.020, (1949).

be guilty of a misdemeanor and shall, upon conviction, be punished by imprisonment in the county jail for not less than thirty days or a fine not less than one hundred dollars."<sup>7</sup> Thus the foster homes caring for maternity cases are governed by a stricter law.

An interesting sidelight is found in another section of the Missouri law having to do with the juvenile courts. This section gives the judges of each county the authority to place children in the care of the State Department of Public Health and Welfare Department for placement in foster homes. A further provision of this statute is that the foster homes meet the standards set by the State Department.<sup>8</sup>

The state statutes relating to the licensing of foster homes of the states of Alabama, Mississippi and Oklahoma use similar phrases except for two words. "The State Department of Public Welfare shall have authority and it shall be its duty to administer or (and) supervise all (public) child welfare services." The state laws of Alabama and Oklahoma do not use the words, (or) and (public). The statutes of Mississippi state "...supervise all public child welfare services..." This makes no mention of private agencies as the law refers only to public child welfare services.

A comparison of the State Departments of Welfare of these three states points out clearly how although the wording of the law

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<sup>7</sup>Ibid., Chapter 203, Paragraph 203.050.

<sup>8</sup>Ibid., Chapter 210, Paragraph 210.120-210.180.

is similar the actual use of authority is different.

The state of Alabama has a law relating to the licensing of foster homes that dates back to 1919. The most recent revision occurred in 1940. A letter from the State Department of Public Welfare advised that licensing in the state is mandatory. The authoritative phrase has been construed to mean this and the law provides penalties for violation; "Any person who shall interfere with the custody or control of any child caring institution or agency, or who shall entice such child away from such custody or control, or who shall harbor or detain any such child from custody or control, shall be guilty of a misdemeanor and on conviction shall be punished by a fine of not more than one thousand dollars, or by imprisonment at hard labor for not more than twelve months, one or both."<sup>9</sup>

The Mississippi law does not provide penalties in case of non-conformance to the law. The statute itself is rather brief and does not clearly define terms and meanings necessary to carry out authoritative procedure.<sup>10</sup>

The state laws of Oklahoma relating to the licensing of foster homes use the same authoritarian phrase. Terms are defined however, and there is a provision which stipulates that any violations of the law is considered a misdemeanor. The phrase reads

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<sup>9</sup>Code of Alabama, Volume VII, Title 49, Section 84, (1940).

<sup>10</sup>Code of Mississippi, Volume VA, Title 26, Sections 7170-01, (1942).

"...shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than five dollars nor more than fifty dollars or thirty days in jail or both."<sup>11</sup>

Oklahoma and Texas laws are unique in that both state statutes relating to the licensing of foster homes provide for injunctions. Oklahoma statutes have a section that states that any person or agency may be enjoined from conducting or managing a child placing agency if they do not conform to the State departments of Welfare licensing standards.<sup>12</sup>

The Texas law relating to the licensing of foster homes is unique in that there is no one section dealing with authority. There are phrases throughout the various sections rather than one specifically located phrase. The authority is also derived from the definitions of various kinds of foster home placements which are given in separate paragraphs.

There are two phrases that have direct reference to authority. One specifies, "It is the expressed intent of this act that the State Department of Public Welfare shall be given the right and authority to promulgate reasonable rules and regulations governing the granting of licenses."<sup>13</sup> The other phrase, "The State Department of Public Welfare shall have authority to visit and inspect

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<sup>11</sup>Session Laws of Oklahoma, Title 10, Section 10, (1953).

<sup>12</sup>Ibid., Section 9.

<sup>13</sup>Vernons Texas Civil Statutes, Volume XXVI, Article 695, Section 8, Paragraph 4, (1949).

all such facilities embraced within this act, whether licensed or unlicensed, to ascertain if same are being conducted in conformity with the law."<sup>14</sup>

One section of the Texas law anticipates legal questions as to the State Department of Public Welfare authority to license foster homes. It states, "Nothing in this act shall be construed to prohibit a religious or fraternal order, institution, agency, or facility coming within the purview of this act...or interfering with the activities of civic, business or professional clubs unless said club or organization actually engages in the operation of child caring and child placing facilities."<sup>15</sup> This phrase is used to clarify the legal position of religious or civic groups engaged in child welfare activities. The section makes clear that these groups are not prohibited from functioning but must do so within the framework of the law.

The section dealing with enforcement provides for injunction in case of non-conformance with the law. It specifies that, "Any person, association or corporation, for cause may be enjoined from soliciting for, or conducting or managing any institution, agency or facility coming within the provisions of this act."<sup>16</sup>

This statute does not say that a violation of the law is a

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<sup>14</sup>Ibid., Section 8, Paragraph 4.

<sup>15</sup>Ibid., Section 8, Paragraph 11.

<sup>16</sup>Ibid., Section 8, Paragraph 11.

misdemeanor but does offer a speedy remedy in the form of an injunction which can be granted readily. In a later section the law mentions that only fraudulent representation is considered a misdemeanor.

Only two of the state laws studied have an effective authoritative phrase in their statutes. The two states having such sections in their law are Kansas and Missouri. They use a clear and definite phrase, "It is unlawful." The laws of Oklahoma and Texas provide for an effective method of enforcing authority through the use of an injunction. Aside from these two sections, having the phrase, "It is unlawful,"; and the use of the injunction, all the laws studied have some similarity in the content of the authorization phrasing.

Though a strongly worded phrase such as, "It is unlawful", is needed within the law in order to have effective authority the provisions should be mandatory rather than permissive. The mandatory legislation with its penalties for violations clarifies responsibilities and authority for those concerned with licensing as a protective service to children.



## CHAPTER IV

### ADMINISTRATION AND ADMINISTRATIVE

In this chapter the administration of the laws relating to the licensing of foster homes and the administrative rules and regulations formulated by each state agency will be studied. The minimum standards governing the licensing of foster homes are termed the administrative rules and regulations.

The majority of the eight state laws relating to the licensing of foster homes make mention of the State Departments of Public Welfare; their responsibility to administer the licensing laws and the necessary standards that would be expected to be met in order to qualify for a license. Kansas places the administrative responsibility with their State Board of Health and the designated Missouri state agency is the Department of Public Health and Welfare.

Kansas vests licensing responsibility for adult institutions in its State Board of Social Welfare and licensing responsibility for foster homes in the State Board of Health, Division of Maternal and Child Health. Section 1 of Title V. of the Social Security Act stipulates that in order to qualify for federal funds under

the Maternal and Child Health program the state plan must be administered or supervised by the state health agency. This might explain this unusual procedure.

The phrases used in the state statutes vary. They include, "establish standards," "establish reasonable standards," "make any rules and regulations necessary" and "carry out the duties imposed by this law." These phrases have been used as the authority by which the minimum standards have been established.

The administrative procedure followed by the states is similar in that the state agency delegates the responsibility to county Departments of Public Welfare and qualified private agencies or as in Kansas to the local Boards of Health. The legal basis for this administrative procedure which makes possible the more effective application of rules and regulations is found in the phrase common to the statutes studied; "administer and/or supervise."

The private agencies that meet minimum standards set by the state can be approved as agents for the official licensing department. In the majority of states studied though the Department of Public Welfare has the legal responsibility for licensing foster homes, it accepts the recommendations of the qualified public and private agencies who do the necessary investigation.

A letter from the Alabama State Department of Public Welfare advised that they license a limited number of foster homes directly but only as a pre-adoption service. The letter went on to say that their main emphasis is on the licensing of public and private

agencies who in turn submit a summary of their investigations to the State Department of Public Welfare. They issue the foster home license upon the recommendations of these agencies. The State Department of Public Welfare however can remove any child from a foster home it has licensed if it determines that the child has been placed in an unsuitable home or is discontented.

The state of Arkansas has a section in its welfare law specifying that the State Department of Public Welfare shall establish a department in each county. These county welfare departments are to administer the state laws relating to public welfare, including licensing under the supervision of the State Department of Public Welfare. This appears to have been done however in order to facilitate the administration of the categorical assistance programs.

Louisiana and Missouri have similar provisions in their statutes though there is the following differences; Louisiana which has the parish as its official local unit of government indicates in its statute that the State Department of Public Welfare may unite two or more parishes and form a district department of Public Welfare for the better administration of the law.<sup>1</sup> The seven local public welfare agencies serving cities of over 30,000 population have responsibility for child welfare services in addition to the assistance programs. This responsibility for child

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<sup>1</sup>West's Louisiana Statutes, Revised, Volume XXIV, Title 46, Section 57, (1950).

welfare services is not shared with the parish departments.

The State Department of Public Health and Welfare in Missouri places responsibility for child welfare services in its welfare agencies serving cities of over 30,000 population and in its county welfare offices.

The State Department of Public Welfare of Texas and the State Board of Health of Kansas exercise the greatest amount of supervision in administration according to the state statutes studied. This is done both by well formulated standards and by liaison staff.

The minimum standards adopted by the state agencies as their administrative regulations have many common considerations in that they mention the regulation of factors that provide for the physical and emotional well being of children placed in foster homes. The writer will list these and then indicate the regulations peculiar to individual states.

The common considerations in the minimum standards provide for; the maximum number of children to be cared for in a home; maternity cases to be handled differently than older children; adequate medical care; adequate housing conditions; foster parents of sound moral character and in good health; sufficient income by the foster parents without income received from the boarding of foster children; adequate well balanced diet and good sanitation conditions including a safe water supply.

In the regulations studied the maximum number of children permitted in a licensed foster home varied from four to six. In the states of Kansas<sup>2</sup> and Mississippi<sup>3</sup> however special permission can be granted in order to keep a family together.

Only the standards of the state of Arkansas mentioned preparation of the child for placement. The regulation states, "Every child will have explained to it as much as it can understand the reasons for placement."<sup>4</sup>

The state standards of Alabama, Arkansas and Louisiana specify that in order to receive a license, agencies must have minimum standards for their own staff. The Arkansas standards require, "Before placing a child in a foster home, the placing agency shall arrange for a study of the foster home by a person who meets the qualifications listed for Child Welfare Worker."<sup>5</sup>

The Louisiana regulations state, "Only a qualified child placing worker shall arrange for or make placement of a child."<sup>6</sup>

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<sup>2</sup>Kansas State Board of Health, Regulation Applying to Foster Care Facilities for Children, (Topeka, Kansas, April 1, 1954) p. 4.

<sup>3</sup>State Department of Public Welfare, Rules and Regulations for Maintaining Minimum Standards of Foster Homes, (Jackson, Mississippi, 1952), p. 5.

<sup>4</sup>State Department of Public Welfare, Child Welfare Manual, (Little Rock, Arkansas), p. 61.

<sup>5</sup>Ibid., p. 50.

<sup>6</sup>Louisiana Department of Public Welfare, Minimum Requirements for License of Child Placing Agencies, (Baton Rouge, Louisiana, 1948), p. 11.

The next paragraph however goes on to say that when a child placing agency does not employ a qualified child placing worker it may meet the minimum requirements for a license by entering into an agreement with another child caring agency which does employ qualified staff. This strengthens the intent of the law to protect the child. In addition the Louisiana regulations state that the natural parents of the child be contacted at least once a year.<sup>7</sup> It was not clearly stated what purpose this was to serve.

Kansas has the only state law studied that stipulates the administrative agency as the State Board of Health. Within the Board of Health is the Division of Maternal and Child Health which has the responsibility for licensing of foster homes. They in turn delegate the responsibility for making investigations. A paragraph of the Kansas regulations states, "...responsibility for processing applications, making evaluation studies, and co-ordinating reports from health and welfare agencies. Responsibility may be delegated to the director of a full time local health department able to provide such service."<sup>8</sup>

The administrative regulations of the state of Kansas have many items not found in other state regulations. They specify that provisional licenses can be issued for thirty days pending

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<sup>7</sup>Ibid., p. 21.

<sup>8</sup>Kansas State Board of Health, Regulations Applying to Foster Care Facilities for Children, (Topeka, Kansas April 1, 1954) p. 1.

the completion of the regular social investigation. As to diet it was specified that every child was to have in its daily diet each of the seven basic foods. This is an important item. Other state regulations mention only a wholesome or adequate diet. There is an interesting regulation giving special attention to handicapped children. It is necessary to report to the State Board of Health all children, "...whose I.Q. is below 75, children who are blind, deaf, suffer from cerebral palsy, severe orthopedic handicaps, heart disease or other severe chronic disease or any other condition which makes it impossible for the child to lead a normal life."<sup>9</sup>

In addition the home of a widowed or single woman can be considered on the basis of its specific qualifications in relation to an individual situation. The minimum and maximum ages for foster parents is 21 and 60. The Kansas regulations also mention that corporal punishment is not to be administered and that no child is to be confined in any dark place. Another section states that the detention homes and other child care facilities operated by or receiving support from county or municipal governments shall meet the same requirements for licensing as a privately operated facility.<sup>10</sup> It must be born in mind that this is an administrative

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<sup>9</sup>Ibid., p. 4.

<sup>10</sup>Ibid., p. 4.

regulation, and not a statutory provision. Different types of placements in the various states are described both in the laws and in the standards of the states.

The rules and regulations of the Mississippi State Department of Public Welfare cover the least number of specific rules in their statement on standards. These are brief yet cover the basic areas necessary for the physical and emotional well being of children placed in foster homes.

Four different types of foster home placements are listed, some of which are in all the state regulations studied but not necessarily in each of the statutes studied. These four types are however representative; 1. A Foster Home. (A home in which payment is made from any source for the care of a child.); 2. A Free Home. (A home in which exactly the same care is given as in a Foster Home but without compensation.); 3. An Adoptive Home. (A home where a child is placed with the understanding that if the placement prove satisfactory to both child and foster family the child will be legally adopted.); 4. A Work or Wage Home. (A home in which an older child is placed under a definite arrangement that room and board and/or wages are provided in exchange for the child's services).<sup>11</sup>

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<sup>10</sup>Ibid., p. 4.

<sup>11</sup>State Department of Public Welfare, Rules and Regulations for Maintaining Minimum Standards of Foster Homes, (Jackson, Mississippi, 1952), p. 3.



Information requested in regard to the rules and regulations of the State Department of Public Welfare of Oklahoma was not received. The licensing law of the state however has nine points within it that relate to the regulations and rules governing foster homes. These cover the basic areas needed to provide for the physical and emotional well being of the children placed in foster homes.

The state of Texas has regional workers who are available in the area where the foster home facilities are. These regional workers supervise the licensing procedure of the private agencies. They examine each application for foster home license submitted and then forward this together with their own recommendations to the state department. If the foster family applies directly to the state, the family is referred to a designated public or private agency; however in some cases the state worker can process the application directly. Kansas administrative practice is similar to this.

The Texas regulations list separately the minimum standards for each type of placement they define. These standards however are basically the same and vary only slightly from one type of placement to another.

The administration of the laws studied is similar and the states licensing agencies have some common program factors. There are however significant differences in the degree of supervision the state agencies exert in relation to the licensing of foster

homes. Some states such as Alabama leave the licensing duties to other public or private agencies while other states such as Kansas and Texas supervise these public and private agencies more closely.

The administrative rules and regulations of the states studied contain many common standards. Some states, Kansas as example, expand these basic regulations by going into more detail and add items not found in other states standards. The basic regulations (mentioned on page 27) provide a workable set of rules necessary to administer the licensing laws of the states studied. One factor to be kept in mind is that the effectiveness of administrative rules is dependent upon the wording and the intent of the licensing laws from which they are formulated.

## CONCLUSION

The laws studied that relate to the licensing of foster homes in the states of Alabama, Arkansas, Kansas, Louisiana, Mississippi, Oklahoma and Texas have many similarities and special differences. The similarities are apparent in some of the common wording of the laws, in the administration of the law, the standards set by the state agencies and the rights of the foster parent to an appeal and/or hearing.

All the state statutes mention the licensing of foster homes or refer to the licensing with a phrase similar to, "The State Department of Public Welfare shall have authority to administer and supervise the licensing and supervision of public and private child caring agencies, institutions and boarding homes." The differences in the authority exercised by the state agencies in licensing foster homes however is in relation to the actual enforcement of the law.

The State Department of Public Welfare of Alabama, Arkansas and Louisiana wrote saying that licensing of foster homes is not mandatory. This is based upon an interpretation of their laws.

In order for the law to be effective it must be mandatory and indicate penalties. The Kansas statute uses the phrase, "It shall

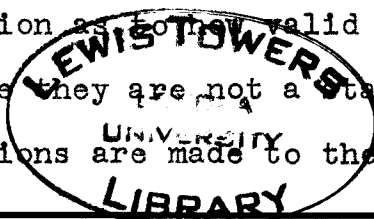
be unlawful." This leaves no doubt as to the intent of the law.

The minimum standards or administrative rules and regulations determined by the state agencies are only as effective as the law itself. These standards are derived from the licensing law by means of such phrases as, "The State Department shall make and promulgate any rules and regulations necessary", "carry out the duties delegated in this act" and "establish such rules and regulations as are necessary."

These administrative rules and regulations are not however law. It is questionable how binding these standards are and how they would be accepted in court were some person to challenge them. Standards are not a substitute for a good strongly worded law.

There are common considerations throughout the standards of the states and the regulations studied. These regulations provide protection for the physical and emotional well being of the foster children. Although all the states have regulations that require basic items that are expected to insure the well being of the foster child, some state regulations expand, define and elaborate more in areas of care within the framework of the child's basic needs.

A question may arise as to the value of overly detailed regulations. There is also some question as to how valid and enforceable these regulations are because they are not a stated part of the statutes. How many exceptions are made to the regula-



tions was a factor not able to be determined.

If a child were badly treated in a foster home it appears that the remedy in correcting the situation would be a remedy at law and not necessarily a remedy under the standards set by the state agencies. If a child were ill treated the juvenile court act of most states could be utilised. The child could be declared neglected and the foster parents charged with contributing to the child's neglect.

There is however a twilight zone of not actual neglect but where physical care and emotional security are poor. If the situation is not severe enough to warrant court action yet not satisfactory enough to provide a good foster home the administrative rules and regulations of the state agencies may offer a remedy thru aid in the meeting of its standards.

In the administration of the laws relating to the licensing of foster homes the emphasis is on the licensing of public and qualified private agencies who in turn make the investigations and submit recommendations for foster home license to the state agencies. The state agencies delegate authority to make these investigations but not the responsibility for licensing the foster home. The public agency referred to are either public child caring agencies or county welfare departments within the states. The state agencies delegate a high degree of responsibility to these individual county welfare departments.

A model law relating to the licensing of foster homes seems

to be needed. In addition, this model law should give to the state agencies the right to establish such standards as would most effectively carry out the intent of the law. These minimum standards need not be detailed yet must engender the basic items needed to insure the foster child's physical and emotional well being.

Because of the important role the state assumes in the protection of children who need care outside their own home, it seems to the writer that the provisions of a foster home licensing law should be mandatory. A final recommendation would be that the licensing unit work closely and cooperate with public and voluntary child welfare agencies.

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