

## CHILD CARE LICENSING

### THE BASIS FOR AND PURPOSE OF CHILD CARE REGULATION

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#### LEGAL BASIS:

In 1919, Kansas passed the law requiring the licensure of programs providing child care services to children. The law arose from the need to protect children from poor environments in group settings that put children's health and safety at risk. The state, by its actions, acknowledged its responsibility to protect the health, safety and well-being of children in out of home care.

In 1980, the Kansas Supreme Court in *State ex rel. O'Sullivan v. Heart Ministries, Inc.*, under the doctrine of *parents patriae*, stated that the State has power to legislate for the protection of minor children within its jurisdiction. The state may require, as a prerequisite to the operation of a children's home, the inspection of the premises, the payment of a nominal fee, and the securing of a license.

In 1985, the Kansas Supreme Court in *State ex rel. Pringle v. Heritage Baptist Temple, Inc.* stated that the free exercise of religion means freedom to believe and freedom to act. Freedom to believe is absolute, while freedom to act is subject to governmental regulation for the protection of society. The operation of a day care facility by a church is held not to be a religious practice and thus is not exempt from State regulation.

#### BASIC PURPOSE:

The original licensing law which was passed in 1919 placed the licensing authority with the Kansas Department of Health and Environment. The Department administers the licensing law as a preventive program to assure that out-of-home care for children will not be exploitive, unsafe, or unhealthy. The main purpose of the law is to protect the health, safety, and welfare of children receiving care away from their parents and home. It is also a consumer protection law assuring parents that the care they are paying for meets minimum standards of good care.

Licensure (depending on the number of children in care) is required regardless of the motivation for providing care, and whether or not there is advertisement of or payment for services. The essential fact is that a child or children receive care away from their own homes.

To effectively regulate for the benefit of all children and the public, in general, all programs providing services for children when parents are absent should be equally required to meet and maintain compliance with regulations designed to protect children. The state's responsibility for and ability to protect children's health, safety and well-being is weakened when certain programs or operators of programs are exempted from meeting licensure requirements. No individuals, groups of individuals or categories of operators of services for children when parents are absent should be afforded an exempt status from regulation intended to protect society.

The state, in its responsibility, must balance its authority to protect public health, safety and well-being with the rights of programs to operate and offer a diversity of services to the public to meet individual needs and interests. In addition, the state must not enact standards beyond those needed to protect public health, safety and well-being. Nor must the state enact standards that serve as barriers to programs in their efforts to achieve higher levels of quality services for children and families.

Regulations should serve as the base level for program operation. Base level regulation should not be interpreted as meaning "low quality". Programs operating below that base level increase the risk of harm to children which should be unacceptable by the state in its efforts to protect children. Base level regulation should be seen as a stepping stone to meeting more stringent standards designed to increase the quality of services to children (i.e. accreditation standards for child care facilities).

In its efforts to protect children's health, safety and well-being, the state should address base level health and safety standards, group size, adult-child ratios and provider and staff qualifications and requirements based on current research and recommendation. Standards designed to measure the quality of a child care program above and beyond base level should be developed and implemented by professionally recognized authorities as these standards are beyond the scope of purpose and authority of the state in protecting public health, safety and well-being. The state should, however, encourage and support by means of state agency staff participation and by allocation of public funds in the efforts through other programs, in addition to licensing and regulation, to improve the services to Kansas children and families.