

THEORY OF REGULATORY COMPLIANCE

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October 2016

*The Theory of Regulatory Compliance (TRC)*¹ deals with the importance and significance of complying with rules or regulations. This theory has implications for all rule, regulatory, and standards development throughout human service and economic domains although the research is being drawn from the human services field. The TRC has developed over the past 40 years. It has particular significance now as the need for either more or less oversight has become politically charged. What is important about the TRC is its emphasis on selecting the right rules rather than having more or less rules and the nature of these rules as being significantly predictive of positive outcomes by being in compliance with said rules.

The Theory of Regulatory Compliance was first proposed in the 1970's when the relationship between compliance with rules was compared to compliance with best practice standards and outcome data. From this comparison, it became clear that as facilities were in 100% compliance with all rules, their overall best practice scores and positive outcomes began to drop off. It was also found that there was a "sweet spot" at a substantial compliance level where best practice scores and positive outcomes were at their highest levels. In statistical terms, the relationship was *curvilinear rather than linear*. This initial result has been confirmed many times over the past 40 years in different forms of human service facilities. This result also led to the conclusion that possibly being in "full" or 100% compliance with all rules was not necessarily a good policy and that *all rules or regulations are not created equal*.

This led to the development of two methodologies dealing with risk assessment and key indicators of regulatory compliance. In both of these methodologies, the focus is on identifying a more targeted group of rules that either statistically predict overall regulatory compliance or reduce risk.

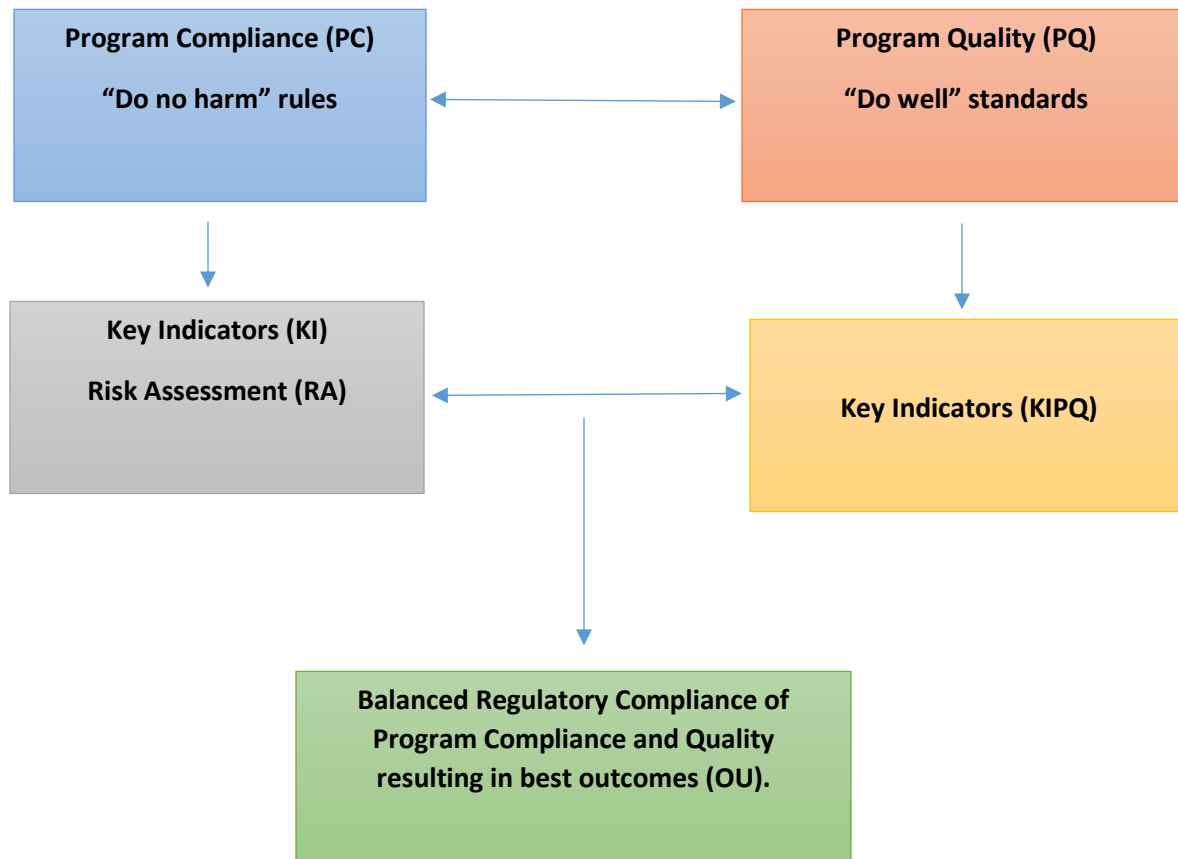
But what is the underlying reason for the TRC. It appears from data collected in various regulatory systems that the nature of the rules themselves may be the real problem. When rules are too minimal to comply with, it is *far more difficult to discriminate between the really good facilities and the mediocre facilities*. This unfortunately is the nature of regulatory data, it is dramatically *skewed data* with the majority of facilities being in compliance with all the rules.

The solution to the above dilemma is not to de-regulate or to over-regulate but to come up with the "right" balance of rules or regulations. We do not want to make the mistake of the old proverbial "throwing out the baby with the bathwater". We need to have some form of oversight but it needs to be the right balance of oversight based upon risk and predictive targeting of specific rules or regulations. The statistical methodologies exist to identify these specific risk and predictive rules and regulations.

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1. For additional information regarding TRC, please go to the following website: <http://RIKInstitute.com/RIKI>.
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Theory of Regulatory Compliance Algorithm (Fiene, 11/16)



Balance of “do no harm” rules with “best practice” standards selected by risk and ability to predict positive outcomes. The Theory of Regulatory Compliance deals with selecting the “right” rules and standards that have predictive validity and do no harm. It acknowledges that all rules and standards are not created equal and have a differential impact in a monitoring or licensing system. By following a differential monitoring approach of key indicators and risk assessment, the most cost efficient and effective system can be implemented. The Theory of Regulatory Compliance proposes policy based upon substantial but not full compliance (100%) with all rules. The following algorithm summarizes TRC:

$$(PC < 100) + (PQ = 100) \rightarrow KI (10-20\% PC) + RA (10-20\% PC) + KIPQ (5-10\% of PQ) \rightarrow OU$$

Theory of Regulatory Compliance Math Modeling (Fiene, 11/16)

This presentation will provide key definitions, a legend and math modeling concepts related to the Theory of Regulatory Compliance. It builds upon the previous two presentations on an overview and algorithm for the Theory of Regulatory Compliance (TRC).

Legend/Definitions:

R = Rules/Regulations

C = Compliance with rules/regulations

NC = Non-Compliance with rules/regulations

KI = Key Indicators of substantial (99%) compliance with all rules/regulations

CI = Comprehensive Instrument measuring compliance with all rules/regulations

RA = Risk Assessment measuring the relative risk of non-compliance with specific rules/regulations

DM = Differential Monitoring using Key Indicators and/or Risk Assessment

Math Modeling:

$$\Sigma R = C$$

Summation of all rules equals compliance score.

$$KI > 0 = CI$$

If KI greater than zero, use comprehensive instrument for measuring compliance with all rules/regulations.

$$RA (NC\%) = CI$$

If RA has a pre-determined % on non-compliance, use comprehensive instrument for measuring compliance with all rules/regulations.

$$KI + RA = DM$$

Key indicators plus Risk Assessment equals a Differential Monitoring Approach.

$$TRC = 99\% + \phi = 100\%$$

Theory of Regulatory Compliance equals substantial compliance but not full compliance.

$$NC + C = CI$$

Non-Compliance plus Compliance with all rules/regulations equals the score on the comprehensive instrument.

$$(CI < 100) + (CIPQ = 100) \rightarrow KI (10-20\% CI) + RA (10-20\% CI) + KIQP (5-10\% \text{ of } CIPQ) \rightarrow OU$$

Where $CI < 100$ is substantial compliance with all rules or the 99% rule, $CIPQ = 100$ maximizing doing well, $KI (10-20\% CI)$ is key indicators are generally 10-20% of all rules as well as risk assessment ($RA (10-20\% CI)$), $KIQP (5-10\% \text{ of } CIPQ)$ is the percent of standards taken from program quality that become key indicators of quality, and finally OU are positive outcomes or results.

Theory of Regulatory Compliance Monitoring Paradigms

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December 2016

This paper provides some key elements to the two dominating paradigms (Relative versus Absolute) for regulatory compliance monitoring based upon the Theory of Regulatory Compliance. See the table below for the key elements summarized for the Monitoring Paradigms followed by a more detailed description of each key element. These key elements are all inter-related and at times are not mutually exclusive.

Regulatory Compliance Monitoring Paradigms

Relative <-----> **Absolute**

Substantial <-----> *Monolithic*
Differential Monitoring <-----> *One size fits all monitoring*
Not all standards are created equal <-----> *All standards are created equal*
Do things well <-----> *Do no harm*
Strength based <-----> *Deficit based*
Formative <-----> *Summative*
Program Quality <-----> *Program Compliance*
100-0 scoring <-----> *100 or 0 scoring*
QRIS <-----> *Licensing*
Non Linear <-----> *Linear*

Relative versus Absolute Regulatory Compliance Paradigm: this is an important key element in how standards/rules/regulations are viewed when it comes to compliance. For example, in an absolute approach to regulatory compliance either a standard/rule/regulation is in full compliance or not in full compliance. There is no middle ground. It is black or white, no shades of gray. It is 100% or zero. In defining and viewing these two paradigms, this dichotomy is the organizational key element for this paper.

Substantial versus Monolithic: in monolithic regulatory compliance monitoring systems, it is one size fits all, everyone gets the same type of review (this is addressed in the next key element below) and is more typical of an absolute paradigm orientation. In a substantial regulatory compliance monitoring system, programs are monitored on the basis of their past compliance history and this is more typical of a relative paradigm orientation. Those with high compliance have fewer and more abbreviated visits/reviews while those with low compliance have more comprehensive visits/reviews.

Differential Monitoring versus One Size Fits All Monitoring: in differential monitoring (Relative Paradigm), more targeted or focused visits are utilized spending more time and resources with those problem programs and less time and resources with those programs that are exceptional. In the One Size Fits All Monitoring (Absolute Paradigm), all programs get the same type/level of review/visit regardless of past performance.

Not all standards are created equal versus All standards are created equal: when looking at standards/rules/regulations it is clear that certain ones have more of an impact on outcomes than others. For example, not having a form signed versus having proper supervision of clients demonstrates this difference. It could be argued that supervision is much more important to the health and safety of clients than if a form isn't signed by a loved one. In a relative paradigm, all standards are not created nor administered equally; while in an absolute paradigm of regulatory compliance, the standards are considered created equally and administered equally.

“Do things well” versus “Do no harm”: “doing things well” (Relative Paradigm) focuses on quality of services rather than “doing no harm” (Absolute Paradigm) which focuses on health and safety. Both are important in any regulatory compliance monitoring system but a balance between the two needs to be found. Erring on one side of the equation or the other is not in the best interest of client outcomes. “Doing no harm” focus is on the “least common denominator” – the design and implementation of a monitoring system from the perspective of focusing on only 5% of the non-optimal programs (“doing no harm”) rather than the 95% of the programs that are “doing things well”.

Strength based versus Deficit based: in a strength based monitoring system, one looks at the glass as “half full” rather than as “half empty” (deficit based monitoring system). Emphasis is on what the programs are doing correctly rather than their non-compliance with standards. A strength based system is non-punitive and is not interested in catching programs not doing well. It is about exemplars, about excellent models where everyone is brought up to a new higher level of quality care.

Formative versus Summative: relative regulatory compliance monitoring systems are formative in nature where there is an emphasis on constant quality improvement and getting better. In absolute regulatory compliance monitoring systems, the emphasis is on being the gate-keeper and making sure that decisions can be made to either grant or deny a license to operate. It is about keeping non-optimal programs from operating.

Program Quality versus Program Compliance: relative regulatory compliance monitoring systems focus is on program quality and quality improvement while in absolute regulatory compliance monitoring systems the focus is on program compliance with rules/regulations with the emphasis on full, 100% compliance.

100 – 0 scoring versus 100 or 0 scoring: in a relative regulatory compliance monitoring system, a 100 through zero (0) scoring can be used where there are gradients in the scoring, such as partial compliance scores. In an absolute regulatory compliance monitoring system, a 100% or zero (0) scoring is used demonstrating that either the standard/rule/regulation is fully complied with or not complied with at all.

QRIS versus Licensing: examples of a relative regulatory compliance monitoring system would be QRIS – Quality Rating and Improvement Systems. Absolute regulatory compliance systems would be state licensing systems. Many programs talk about the punitive aspects of the

present human services licensing and monitoring system and its lack of focus on the program quality aspects in local programs. One should not be surprised by this because in any regulatory compliance system the focus is on "doing no harm" rather than "doing things well". It has been and continues to be the focus of licensing and regulations in the USA. The reason QRIS - Quality Rating and Improvement Systems developed in early care and education was to focus more on "doing things well" rather than "doing no harm".

Non-Linear versus Linear: the assumption in both relative and absolute regulatory compliance monitoring systems is that the data are linear in nature which means that as compliance with standards/rules/regulations increases, positive outcomes for clients increases as well. The problem is the empirical data does not support this conclusion. It appears from the data that the relationship is more non-linear where there is a plateau effect with regulatory compliance in which client outcomes increase until substantial compliance is reached but doesn't continue to increase beyond this level. There appears to be a "sweet spot" or balancing of key standards/rules/regulations that predict client outcomes more effectively than 100% or full compliance with all standards/rules/regulations – this is the essence of the Theory of Regulatory Compliance – substantial compliance with all standards or full compliance with a select group of standards that predict overall substantial compliance and/or positive client outcomes.

As the regulatory administration field continues to think about the appropriate monitoring systems to be designed and implemented, the above structure should help in thinking through what these systems' key elements should be. Both paradigms are important, in particular contexts, but a proper balance between the two is probably the best approach in designing regulatory compliance monitoring systems.

For additional information:

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DOI: 10.13140/RG.2.2.23767.06564

EARLY CHILDHOOD PROGRAM QUALITY IMPROVEMENT/INDICATOR MODEL (ECPQI2M4©) & DIFFERENTIAL MONITORING LOGIC MODEL AND ALGORITHM (DMLMA©) Update (Fiene, 12/12/15)

Legend:

NRC = National Resource Center for Health and Safety in Child Care

AAP = American Academy of Pediatrics

APHA = American Public Health Association

OHS = Office of Head Start

ACF = Administration for Children and Families

OCC = Office of Child Care

ASPE = Assistant Secretary's Office for Planning and Evaluation

13I = *Thirteen Indicators of Quality Child Care*, ASPE

HSKI-C = *Head Start Key Indicators*

Stepping Stones = *Stepping Stones to Caring for Our Children*, NRC, AAP, APHA

PD = Professional Development, Training, Technical Assistance, Mentoring

PQ = Quality Rating and Improvement Systems (QRIS), Quality Improvements

TCO/TRC = Theory of Regulatory Compliance/Outcomes

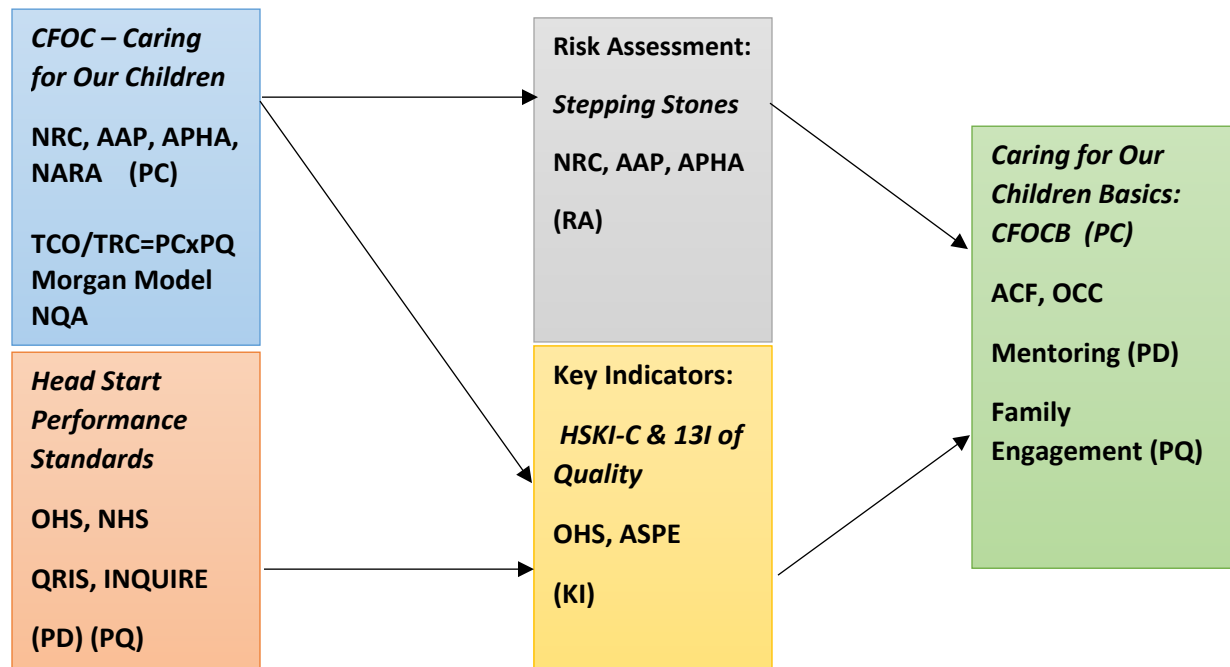
Comprehensive Reviews

Abbreviated Reviews

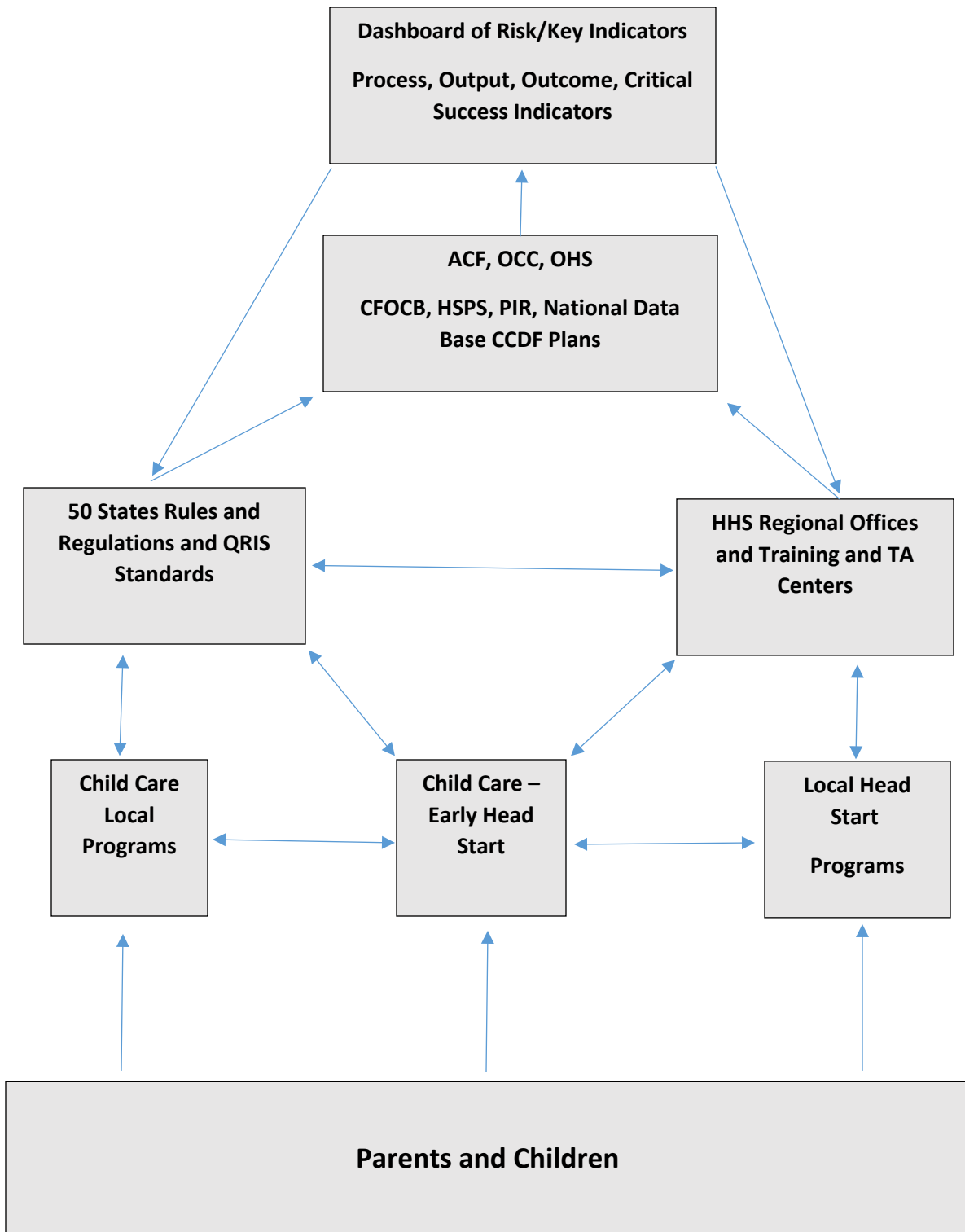
Differential Monitoring

Absolute Paradigm

Relative Paradigm



National Differential Monitoring Conceptual Framework (Fiene, 2016)



National Differential Monitoring Conceptual Framework Brief Explanation:

The key elements for this conceptual framework is the emphasis on data utilization via key indicators and risk assessment which results in targeted/differential monitoring of programs via a state, regional, and national data base. Data would be collected at the local level in programs (child care (centers, homes, group homes); Head Start programs; child care/early Head Start programs, etc...) and would be monitored at the state and regional levels. The data via monitoring reports, CCDF plans, etc.. would move from the state and regional levels to the national level at ACF to form a national data base. From the national data base, a series of key indicator, risk assessment, process, output, outcome and critical success indicators would be culled (dashboard) from the full comprehensive data base to determine the levels of future reviews and monitoring of states and programs.

These indicators would be fed back to the regional offices and states with states being able to do the same with their respective licensing systems in reviews of local programs. The data from the comprehensive data base would also be fed back to the states, regional offices and the training & technical assistance offices to focus specific training and technical assistance based upon the results of the monitoring reviews. Within this conceptual framework, it is proposed to use a professional development passport within state professional development systems/registries which has badges attached for ongoing training & technical assistance for individual ECE staff. This professional development passport could provide the basis of a document (it would contain all the training received by the individual via a stamp/badge articulation documentation process) that would be transferable from state to state similar to how a regular passport is used as identification in moving from country to country. This could potentially become a national credentialing/licensing system for ECE staff.

This conceptual framework would take into account the collecting and analyzing of data and its subsequent utilization for training & technical assistance. All the components/key elements for such a system have been set up by ACF, now what we need to do is put all the pieces together into a unified monitoring system.