Regulatory Compliance Monitoring Paradigms and the Relationship of Regulatory Compliance/Licensing with Program Quality: A Policy Commentary

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Abstract

This policy commentary deals with two key issues within regulatory science related to the best methods for measuring regulatory compliance: Program monitoring paradigms and the relationship of regulatory compliance/licensing with program quality. Examples from program monitoring paradigms include: 1) Substantial versus Monolithic. 2) Differential Monitoring versus One size fits all monitoring. 3) "Not all standards are created equal" versus "All standards are created equal". 4) "Do things well" versus "Do no harm". 5) Strength based versus Deficit based. 6) Formative versus Summative. 7) Program Quality versus Program Compliance. 8) 100-0 scoring versus 100 or 0 scoring. 9) QRIS versus Licensing. 10) Non-Linear versus Linear. Examples from the relationship of regulatory compliance/licensing with program quality include: 1) "Do no harm" versus "Do good". 2) Closed system versus Open system. 3) Rules versus Indicators. 4) Nominal versus Ordinal measurement. 5) Full versus Partial compliance. 6) Ceiling effect versus No Ceiling effect. 7) Gatekeeper versus Enabler. 8) Risk versus Performance.

Keywords: regulatory compliance, program monitoring, licensing, program quality.

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This commentary on policy will deal with two key issues within regulatory science that need to be dealt with by licensing researchers and regulatory scientists as they think through the best methods for measuring regulatory compliance: 1) Program monitoring paradigms; 2) Relationship of regulatory compliance/licensing and program quality. The examples drawn are from early care and education but the key elements and implications can be applied to any field of study related to regulatory science that involves rules/regulations/standards. For the purposes of this manuscript "rules" will be used to describe or refer to "rules/regulations/standards".

Program Monitoring Paradigms:

This section provides some key elements to two potential regulatory compliance monitoring paradigms (Differential/Relative versus Absolute/Full) for regulatory science based upon the Regulatory Compliance Theory of Diminishing Returns (Fiene, 2019).

As one will see, there is a need within regulatory science to get at the key measurement issues and essence of what is meant by regulatory compliance. There are some general principles that need to be dealt with such as the differences between individual rules and rules in the aggregate. Rules in the aggregate are not equal to the sum of all rules because all rules are not created nor administered equally. And all rules are to be adhered to, but there are certain rules that are more important than others and need to be adhered to all the time. Less important rules can be in substantial compliance most of the time but important rules must be in full compliance all of the time (Fiene, 2019).

Rules are everywhere. They are part of the human services landscape, economics, banking, sports, religion, transportation, housing, etc... Wherever one looks we are governed by rules in

one form or another. The key is determining an effective and efficient modality for negotiating the path of least resistance in complying with a given set of rules. It is never about more or less rules, it is about which rules are really productive and which are not. Too many rules stifle creativity, but too few rules lead to chaos. Determining the balance of rules is the goal and solution of any regulatory science paradigm.

Differential/Relative versus Absolute/Full Regulatory Compliance Paradigms: this is an important key organizational element in how rules are viewed when it comes to compliance. For example, in an absolute/full approach to regulatory compliance either a rule is in full compliance or not in full compliance. There is no middle ground. It is black or white, no shades of gray as are the cases in a differential/relative paradigm. It is 100% or zero. In defining and viewing these two paradigms, this dichotomy is the organizational key element for this paper. In a differential/relative regulatory compliance paradigm full compliance is not required and emphasis on substantial regulatory compliance becomes the norm.

Based upon this distinction between differential/relative and absolute/full regulatory compliance paradigms, what are some of the implications in utilizing these two respective approaches. Listed below are the basic implications of the two approaches on program monitoring systems listing the differential/relative versus the absolute/full regulatory compliance paradigms.

There are ten basic implications that will be addressed: 1) Substantial versus Monolithic. 2) Differential Monitoring versus One size fits all monitoring. 3) “Not all standards are created equal” versus “All standards are created equal”. 4) “Do things well” versus “Do no harm”. 5) Strength based versus Deficit based. 6) Formative versus Summative. 7) Program Quality versus Program Compliance. 8) 100-0 scoring versus 100 or 0 scoring. 9) QRIS versus Licensing. 10) Non-Linear versus Linear.

1) 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 may have fewer and more abbreviated visits/reviews while those with low compliance have more comprehensive visits/reviews.

2) Differential Monitoring versus One Size Fits All Monitoring: in differential monitoring (Differential/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/Full Paradigm), all programs get the same type/level of review/visit regardless of past performance.

3) “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 differential/relative paradigm, all standards are not created nor administered equally; while in an absolute/full paradigm of regulatory compliance, the standards are considered created equally and administered equally.

4) “Do things well” versus “Do no harm” (this element is dealt with in the second component to this paper below as well): “doing things well” (Differential/Relative Paradigm) focuses on quality of services rather than “doing no harm” (Absolute/Full 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".

5) 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.

6) Formative versus Summative: differential/relative regulatory compliance monitoring systems are formative in nature where there is an emphasis on constant quality improvement and getting better. In absolute/full regulatory compliance monitoring systems, the emphasis is on being the gate-keeper (more about the gate-keeper function in the next section on regulatory compliance/licensing and program quality) 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.

7) Program Quality versus Program Compliance: (this element is dealt with in greater detail in the second component of this manuscript) differential/relative regulatory compliance monitoring systems focus is on program quality and quality improvement while in absolute/full regulatory compliance monitoring systems the focus in on program compliance with rules/regulations with the emphasis on full, 100% compliance.

8) “100 – 0 scoring” versus “100 or 0 scoring”: in a differential/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/full 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 (the differences between nominal and ordinal measurement is dealt with in the next section on regulatory compliance/licensing and program quality).

9) QRIS versus Licensing: examples of a differential/relative regulatory compliance monitoring system would be QRIS – Quality Rating and Improvement Systems. Absolute/full 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".

10) Non-Linear versus Linear: the assumption in both differential/relative and absolute/full regulatory compliance monitoring systems is that the data are linear in nature which means that as compliance with rules 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 rules that

predict client outcomes more effectively than 100% or full compliance with all rules – this is the essence of the Theory of Regulatory Compliance (Fiene, 2019) – 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 science and administrative fields in general continue to think about the appropriate monitoring systems to be designed and implemented, the above structure should help in thinking through what these measurement 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.

Regulatory Compliance/Licensing and Quality

This part of the policy commentary will delineate the differences between regulatory compliance and quality. It will provide the essential principles and elements that clearly demonstrate the differences and their potential impact on program monitoring. Obviously, there is some overlap between this section and the above section dealing with regulatory compliance monitoring paradigms. When we think about regulatory compliance measurement, we are discussing licensing systems. When we think about quality, we are discussing Quality Rating and Improvement Systems (QRIS), accreditation, professional development, or one of the myriad quality assessment tools, such as the Classroom Assessment Scoring System (CLASS) or Environment Rating Scales (ERS's). All these systems have been designed to help improve the health and safety of programs (licensing) to building more environmental quality (ERS), positive

interactions amongst teachers and children (CLASS), enhancing quality standards (QRIS, accreditation), or enhancing teacher skills (professional development).

There are eight basic principles or elements to be presented (they are presented in a binary fashion demonstrating differences): 1) “Do no harm” versus “Do good”. 2) Closed system versus Open system. 3) Rules versus Indicators. 4) Nominal versus Ordinal measurement. 5) Full versus Partial compliance. 6) Ceiling effect versus No Ceiling effect. 7) Gatekeeper versus Enabler. 8) Risk versus Performance.

1) Let’s start with the first principal element building off what was discussed in the above section, “Do No Harm” versus “Do Good”. In licensing, the philosophy is to do no harm, its emphasis is on prevention, to reduce risk to children in a particular setting. There is a good deal of emphasis on health and safety and not so much on developmentally appropriate programming. In the quality systems, such as QRIS, accreditation, professional development, Environmental Rating Scales, CLASS, the philosophy is to do good, its emphasis is looking at all the positive aspects of a setting. There is a good deal of emphasis on improving the programming that the children are exposed to or increasing the skill set of teachers, or improving the overall environment or interaction that children are exposed to.

2) Closed system versus Open system. Licensing is basically a closed system. It has an upper limit with full compliance (100%) with all rules. The goal is to have all programs fully comply with all rules. However, the value of this assumption has been challenged over the years with the introduction of the Regulatory Compliance Theory of Diminishing Returns (Fiene, 2019). With quality systems, they have a tendency to be more open and far reaching where attaining a perfect score is very difficult to come by. The majority of programs are more normally distributed where with licensing rules the majority of programs are skewed positively in either substantial or full

compliance. It is far more difficult to distinguish between the really best programs and the mediocre programs within licensing but more successful in quality systems.

3) Rules versus Indicators/Best Practices. Licensing systems are based around specific standards/rules/regulations that either are in compliance or out of compliance. It is either a program is in compliance or out of compliance with the specific rule. With quality systems, there is more emphasis on indicators or best practices that are measured a bit more broadly and deal more with process than structure which is the case with licensing. It is the difference between hard and soft data as many legal counsels term it. There is greater flexibility in quality systems.

4) Nominal versus Ordinal measurement. Licensing systems are nominally based measurement systems. Either you are in compliance or out of compliance. Nothing in-between. It is either a yes or no response for each rule. No maybe or partial compliance. With quality systems, they are generally measured on an ordinal level or a Likert scale. They may run from 1 to 3, or 1 to 5, or 1 to 7. There is more chances for variability in the data than in licensing which has 1 or 0 response. This increases the robustness of the data distribution with ordinal measurement.

5) Full or None versus Gradients or Gray Area. Building off of the fourth element, licensing scoring is either full or not. As suggested in the above elements, there is no in-between category, no gradient or gray area. This is definitely not the case with quality systems in which there are gradients and substantial gray areas. Each best practice can be measured on a Likert scale with subtle gradients in improving the overall practice.

6) Ceiling effect versus No Ceiling. With licensing there is definitely a ceiling effect because of the emphasis on full 100% compliance with all rules. That is the goal of a licensing program, to

have full compliance. With quality systems, it is more open ended in which a ceiling effect is not present. Programs have many ways to attain excellence.

7) Gatekeeper versus Enabler: Licensing has always been called a gatekeeper system. It is the entry way to providing care, to providing services. It is a mandatory system in which all programs need to be licensed to operate. In Quality systems, these are voluntary systems. A program chooses to participate, there is no mandate to participate. It is more enabling for programs building upon successes. There are enhancements in many cases.

8) Risk versus Performance: Licensing systems are based upon mitigating or reducing risks to children when in out of home care. Quality systems are based upon performance and excellence where this is rewarded in their particular scoring by the addition of a new Star level or a Digital Badge or an Accreditation Certificate.

There has been a great deal of discussion in the early care and education field about the relationship between licensing, accreditation, QRIS, professional development, and technical assistance. It is important as we continue this discussion to pay attention to the key elements and principles in how licensing and these quality systems are the same and different in their emphases and goals, and about the implications of particular program monitoring paradigms and measurement strategies. For other regulatory systems outside the human services field, the same type of model can be applied positioning compliance and quality as a continuum one building off of the other because I feel that with the introduction of more quality into a regulatory context will help to ameliorate the ceiling and plateau effect of diminishing returns on performance and outcomes.

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