

Briefing Document: Navigating the Child Care Trilemma Through Regulatory Science

Date: October 26, 2023 (based on the latest source year of 2024) **Subject:** Review of "Fiene Exchange.pdf" on Balancing Child Care Regulation, Access, Affordability, and Quality

Source: Excerpts from "Fiene Exchange.pdf" by Richard Fiene

Executive Summary:

This document reviews the main themes and important ideas presented in the provided excerpts from Richard Fiene's "Fiene Exchange.pdf." The central argument revolves around the ongoing debate in early care and education regarding the "right mix" of rules and regulations, particularly the recent push for deregulation to increase child care access. Fiene argues against politically driven deregulation and advocates for a solution grounded in "regulatory science" and empirical evidence. He introduces the "theory of regulatory compliance," which suggests that substantial compliance with key regulations can be equivalent to full compliance. He proposes utilizing existing empirically-based standards like *Caring for Our Children Basics* (CFOCB) as a minimum benchmark and advocates for a data-driven, targeted approach to regulation and monitoring, focusing on risk assessment and key indicators. Fiene also touches upon innovative solutions, such as linking staff-child ratios with staff qualifications and compensation.

Main Themes and Important Ideas:

The Enduring Debate on Child Care Regulation:

The tension between ensuring child safety and quality through regulation and increasing access and affordability has been a long-standing issue in early care and education. Fiene notes, "How often have you heard this statement? I have heard it a great deal in an early care and education career that has seen six decades of discussion about what is the right mix of rules and regulations, the basic protections for children while in out of home child care."

He recalls similar discussions surrounding the Federal Interagency Day Care Requirements (FIDCR) in the 1970s, highlighting the cyclical nature of this debate.

The current context involves a significant discussion about "deregulation of early care and education standards/ rules/regulations in order to have increased access to child care" (referencing NAEYC, 2024).

The Promise of Regulatory Science:

Fiene proposes shifting the discussion from the political arena to "regulatory science and the empirical evidence that has emerged over the past 50 years."

He positions regulatory science as a potential guide for finding the "right rules" and navigating the child care trilemma (quality, access, affordability).

He highlights two parallel tracks within regulatory science: one focused on pharmaceuticals and the other on human services, with the latter emphasizing "protections from harm related to caregiving."

The Theory of Substantial Regulatory Compliance:

A key idea presented is the "theory of regulatory compliance (Fiene, 2019)," which has been empirically supported.

This theory posits that "substantial regulatory compliance with child care rules and regulations may be equivalent to full (100 percent) regulatory compliance with all child care rules and regulations."

This concept allows for a shift in monitoring from a "uniform one-size-fits-all approach to a more targeted and focused differential monitoring approach that looks at risk assessment and prediction of overall compliance."

Leveraging Existing Empirically-Based Standards:

Fiene suggests that a practical starting point for practitioners is *Caring for Our Children* (CFOC), which is considered "the default set of health and safety standards in the early care and education field."

While acknowledging its comprehensiveness (over 700 standards), he notes that it is based on "the latest science in developmental psychology, pediatrics, and public health fields" and has been a reference for state licensing agencies for over 30 years.

Advocates view CFOC as providing "a solid floor to quality," while others, particularly in the political arena, see it as "an example of over-regulation."

Risk Assessment and Key Indicator Rules:

Regulatory science offers methodologies like "risk assessment and key indicator rules/regulations to make monitoring more effective and efficient by focusing on risk to children and prediction of overall regulatory compliance."

This led to the development of *Stepping Stones to Caring for Our Children* (NRCHSCC, 2019), which distilled the CFOCB standards down to approximately 120.

Further application of the "key indicator rule methodology" resulted in *Caring for Our Children Basics* (CFOCB) (ACF, 2015), comprising approximately 65 standards, initially proposed as a voluntary set of standards. Fiene believes this remains a "good idea" as these standards "form the basis for the quality and safety arm when it comes to the child care trilemma."

CFOCB as a Minimum Benchmark Against Deregulation:

Fiene urges against "arbitrarily removing rules with this deregulation mind set because it is politically expedient."

Instead, he proposes using *Caring for Our Children Basics* (ACYF, 2015) as a point of discussion and a minimum standard to ensure essential protections are in place.

He encourages states to compare their existing rules with CFOCB, emphasizing that these standards were developed by a "cross-representation of medical experts, early care and education experts, child developmental experts, public health and environmental experts."

Rethinking Specific Regulations: Staff-Child Ratios and Staff Qualifications:

Fiene highlights staff-child ratios and group sizes as consistently debated regulations with significant impact on cost, numbers, and quality. He notes, "Nothing has changed, it was the focal point back in the 1970's (Abt, 1979) and it is today (Fiene & Stevens, 2021)."

He suggests "think[ing] outside the regulatory compliance box" by considering alternative rules, such as linking slightly increased staff-child ratios with "the most highly qualified staff."

He proposed this idea in a 1997 article, suggesting that the additional revenue generated by an extra child could be used as a salary increase for the more qualified staff.

Data-Driven Decision Making in Regulatory Compliance:

Fiene emphasizes that "regulatory compliance with rules is a measurement issue, so it should be solved in a corresponding way, use the data, do not ignore the empirical evidence and leave it up to the whims of the political process."

He points to studies by the National Association for Regulatory Administration (NARA) as resources for using data to inform regulatory decisions.

Avoiding Knee-Jerk Reactions to the Child Care Crisis:

Fiene cautions against the notion that "the only solution is to increase availability and affordability at the expense of health, safety and quality via deregulation."

He advocates for utilizing the "empirical regulatory compliance data available (Fiene, 2025)" to make informed choices in addressing the child care trilemma.

Key Quotes:

"Recently, in the early care and education field, there has been a great deal of discussion about deregulation of early care and education standards/ rules/regulations in order to have increased access to child care..."

"...substantial regulatory compliance with child care rules and regulations may be equivalent to full (100 percent) regulatory compliance with all child care rules and regulations."

"Advocates point to *Caring for Our Children* (AAP, APHA, NRCHSCC, 2019) as the go-to-document because it provides a solid floor to quality while building on this base to demonstrate best practices. Others, mostly in the political arena, point to it as an example of over-regulation, too many rules to follow."

"Let's pivot and think about using *Caring for Our Children Basics* (ACYF, 2015) as our point of discussion rather than arbitrarily removing rules with this deregulation mind set because it is politically expedient. Let's be driven by the empirical evidence and the science which *Caring for Our Children Basics* (ACYF, 2015) is derived from solid regulatory compliance methodologies of risk assessment and key indicator rule/regulatory/ standard identification."

"Let's be honest, probably the most discussed standard is staff-child ratios and group sizes. It has the greatest impact on cost (staff), numbers (children), and quality."

"The point of this research abstract position paper is for us to take a step back and avoid a knee-jerk reaction to dealing with the child care crisis and that the only solution is to increase availability and

affordability at the expense of health, safety and quality via deregulation..."

Conclusion:

Fiene's "Fiene Exchange.pdf" strongly advocates for a science-based approach to child care regulation, moving away from politically motivated deregulation. He proposes utilizing the framework of regulatory science, particularly the theory of substantial compliance and methodologies of risk assessment and key indicator identification. By leveraging existing empirically-based standards like *Caring for Our Children Basics*, Fiene suggests a path towards balancing the critical elements of quality, access, and affordability in early care and education, while prioritizing the safety and well-being of children. He encourages a data-driven and thoughtful re-evaluation of regulations, exemplified by his innovative suggestion regarding staff-child ratios and staff qualifications.