

Briefing Document: Rethinking Regulatory Compliance in Childcare

Source: Excerpts from "Fiene Rules That Work.pdf" by Richard Fiene, American Scientist

Date: October 26, 2023

Prepared For: [Intended Audience - e.g., Policy Makers, Regulatory Agencies, Childcare Advocates]

Executive Summary:

This briefing document summarizes the key arguments presented by Richard Fiene, a veteran regulatory scientist, regarding the limitations of the traditional "full compliance" model in childcare regulation and the benefits of adopting a "substantial regulatory compliance" approach utilizing "differential monitoring." Fiene argues that striving for 100% compliance often leads to a focus on bureaucratic tasks at the expense of program quality and staff development. His research indicates a plateauing and even diminishing return in program quality beyond a certain level of high (but not necessarily perfect) compliance. He advocates for a shift towards identifying and prioritizing "rules that work" – those most closely linked to safety and quality outcomes – through the use of key indicators and risk assessments, ultimately leading to more effective and efficient resource allocation and better outcomes for children.

Main Themes and Important Ideas:

1. The Limitations of Full Compliance:

Fiene draws an analogy to the fable of the father and son with the donkey, illustrating how trying to satisfy every single regulation can become counterproductive and distract from the core purpose.

He observes that programs striving for perfect compliance often overemphasize paperwork and administrative tasks, leaving less time for direct work with teachers and curriculum improvement.

"In the lead-up to evaluations, staff at perfectly compliant programs spend so much time dotting i's and cross-ing t's that they have little left over for working with classrooms or teachers, whereas staff at slightly less compliant facilities, though equally careful about observing rules, fuss less with paper-work and work more with teachers on improving skills and curriculum."

Fiene's research demonstrates that program quality does not increase linearly with compliance approaching 100%. Instead, quality plateaus and may even decline beyond "substantial regulatory compliance" (around 98-99%).

"When researchers compared violations found during licensing reviews and inspections to the quality of the violat-ing programs, they found that a linear relationship did indeed exist between quality and compliance—but only as one moved from low compliance lev-els to substantial regulatory compliance (that is, 98–99 percent). Between that and 100 percent compliance, quality consistently plateaued and, as some 2010s replication studies suggested, even showed diminishing returns."

The "all-or-nothing" approach of full compliance generates skewed data, increases the risk of false positives and false negatives in assessments, and operates under the flawed assumption that quality directly correlates with 100% compliance.

"The all-or-nothing approach to regula-tory compliance and licensing fails as a standard because it generates skewed data, raises the risks of false negatives and false positives, and springs from a false assumption that program qual-ity increases in step with 100 percent compliance."

2. The Theory of Regulatory Compliance:

Fiene proposes a "theory of regulatory compliance" that focuses on evaluating which rules are truly effective in promoting safety and quality, rather than simply aiming for compliance with all rules.

"The point of my team's approach, which I call the the-ory of regulatory compliance, is not to ask whether we need more or fewer rules, or more thorough or less thorough compli-ance, but rather to evaluate which rules truly prove effective."

"It is never about more or fewer rules; it is about which rules are really productive and which are not."

This theory advocates for "substantial regulatory compliance" as a more pragmatic and effective goal, recognizing that high levels of compliance (around 97-99%) can achieve similar or better quality outcomes than striving for perfect compliance.

"If, as data suggested, substantially compliant programs provided the same or better care as fully compliant ones, then clearly we needed to rethink our program evaluation strategies."

3. Differential Monitoring:

To implement the theory of regulatory compliance, Fiene champions "differential monitoring," an approach that focuses monitoring efforts on "key indicators" and "risk assessments."

"If substantial compliance with some rules rather than full compliance with all rules best ensures the childcare pro-gram quality, then the question natu-rally arises: "Which rules?" Conceiv-ably, some rules should weigh more heavily than others—say, the ones that data show most closely relate to safety and quality. Such is precisely the idea behind differential monitoring."

Key Indicators: These are rules that statistically predict overall compliance. Compliance with these key rules suggests a higher likelihood of compliance with other regulations.

"Key indicators are statistical pre-dictors of overall compliance—rules that, if a facility follows them, strongly suggest they will follow other rules as well. They very efficiently determine a facility's overall regulatory compliance without requiring a comprehensive in-spection."

Risk Assessment: This focuses on rules that, if violated, pose the greatest risk to children's health and safety. Stakeholders often participate in weighting rules based on their potential risk.

"Risk assessment focuses on those rules and regulations which, when breached, place children at great-est risk, such as rules that deal with supervision or hazardous materials handling, among others."

Differential monitoring allows for more targeted and efficient reviews, potentially reducing the time spent on inspections by approximately 50% compared to comprehensive reviews.

"Also, studies show that abbreviated, targeted, and focused reviews take approximately 50 percent less time than comprehensive reviews."

While differential monitoring focuses on key risk areas, comprehensive reviews are still necessary periodically (every 3-4 years) to validate the effectiveness of the key indicators and risk assessment rules.

4. Rethinking Compliance Measurement:

Fiene critiques the traditional "nominal" and binary (compliant/non-compliant) approach to licensing data, arguing that it is overly simplistic and leads to skewed data.

"Traditionally, licensing data are cat-egorical (sorted into groups such as "approved" or "denied"), unordered... and mutu-ally exclusive... In statisti-cal terms, such data are nominal... It is also binary: A program either follows a rule, or it doesn't."

He highlights the issue of inter-rater reliability, noting disagreements among assessors, which can lead to false positives and, more concerningly, false negatives (failing to identify actual violations that put children at risk).

"But research that tests reli-ability and replicability in the licensing field empirically shows a concerning degree of disagreement when a sec-ond observer validates the decision regarding regulatory compliance... These disagreements suggest a worry-ing number of false positives and false negatives."

"But even more concerning are false negatives, in which an evalu-ator says a program complies with a rule that it breaches, thereby placing clients at risk."

Fiene advocates for the adoption of "ordinal" measurement scales, similar to Likert scales used in quality assessments, to capture a more nuanced understanding of compliance.

"Inspired by this research, I have proposed replacing older nominal techniques with an ordinal scale like the Likert scale already used in qual-ity measurements..."

He proposes a "Regulatory Compliance Scale" with categories like "exceeding full compliance," "full compliance," "substantial compliance," and "mediocre compliance" to better reflect the reality of program performance and integrate quality considerations.

5. Integrating Quality into Regulatory Frameworks:

Fiene emphasizes that while full compliance remains the goal for health and safety, the theory of regulatory compliance aims to improve program quality and safety by focusing on the most impactful rules.

"The theory of regulatory compliance concerns the relationship between regu-latory compliance and program quality, not health and safety, where full com-pliance remains the goal."

He notes that the shortcomings of the traditional compliance model have led to the development of voluntary accreditation programs and quality rating and improvement systems, suggesting a need to integrate these quality assessments into the regulatory framework.

"It's time we folded quality assessments into regulatory compliance."

Fiene envisions a future of "integrative monitoring" that incorporates program quality directly into rule formulation and uses key indicators to forecast quality, rather than just predicting compliance.

Current Status and Future Directions:

While initially met with skepticism, the concept of substantial compliance has gained traction, with most U.S. states now allowing licensing for substantially compliant programs.

Differential monitoring is also being adopted, though the combined use of both key indicators and risk assessments remains limited.

The "Regulatory Compliance Scale" is a new and evolving metric currently under review.

Fiene calls for greater collaboration between licensing bodies, accreditation organizations, quality rating systems, and professional development systems to further refine and improve regulatory science.

He also suggests that the principles of the theory of regulatory compliance and differential monitoring may be applicable to other human service sectors beyond early care and education.

Conclusion:

Richard Fiene's work provides a compelling argument for a paradigm shift in childcare regulation. By moving away from a rigid focus on achieving 100% compliance with all rules and embracing a more strategic approach centered on substantial compliance and differential monitoring of key indicators and risks, regulatory agencies can potentially improve program quality, enhance child safety, and utilize limited resources more effectively. The proposed "Regulatory Compliance Scale" represents a promising step towards a more nuanced and informative system for evaluating childcare programs. Further research and collaboration across sectors will be crucial to fully realize the benefits of this evolving approach.