

Potential Solution to the Child Care Trilemma Revisited

Finding the "Right Rules"—The Holy Grail of Early Care and Education

by Richard Fiene

Rules and regulations: Can't live with them, Can't live without them.

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. 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 (National Association for the Education of Young Children: NAEYC, 2024). This discussion or controversy has been going on for a long time, it is nothing new. I remember back in the early 1970's when I was directing the Mary Elizabeth Keister Infant Toddler Demonstration Center at the

University of North Carolina at Greensboro and there were discussions about the revision to the Federal Interagency Day Care Requirements (FIDCR). What was the right mix, the balance of protections and quality enhancements for young children in child care that the Federal Department of Health, Education and Welfare wanted to promulgate nationally.

But I think there is a better way to deal with this discussion which is driven by regulatory science and the empirical evidence that has emerged over the past 50 years. Let's take this discussion out of the political domain and place it where it needs to be, firmly within the newly emerging regulatory science field and focus on regulatory compliance. There is a theory of regulatory compliance (Fiene, 2019) getting kicked around a good deal in the human services regulatory science field that has upended the way we make licensing decisions. The theory has been empirically proven in several studies throughout the U.S. and Canada (Fiene, 2025). The theory simply states 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. From a public policy and licensing decision making point of view, it changes program 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 with rules and regulations (Fiene, 2025).

So that is the theory but where do we start at a practitioner level? If we start at the baseline of early care and education

quality, then licensing and *Caring for Our Children (CFOC): The National Health and Safety Performance Standards, 4th Edition* (AAP, APHA, NRCHSCC, 2019), published by the American Academy of Pediatrics (AAP), the American Public Health Association (APHA), and the National Resource Center for Health and Safety in Child Care (NRCHSCC) is a good place to start because the CFOC is considered the default set of health and safety standards in the early care and education field. The standards were first published in the early 1990's and have been refined through several revisions and editions over the past several decades in response to the everchanging early care and education research literature related to health, safety and program quality. For over 30 years, the standards have been the reference for state child care licensing agencies as they think about promulgating new or revised rules/regulations/standards in their respective states. It is based upon the latest science in developmental psychology, pediatrics, and public health fields related to early care and education settings. The standards have been peer reviewed by expert technical panels representing all of the above areas of developmental psychology, pediatrics, public health, environmental health, etc. But it is a daunting document, over 700 standards are within this reference manual for the early childhood field.

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. But let's not forget what *Caring for Our Children* (AAP, APHA, NRCHSCC, 2019) is all about, protecting our children while in out of home care. Access to child care is important for many families, as is access to quality child care, as is access to safe and quality child care. Navigating these all is a delicate and challenging balance.

So, what is a potential solution to the child care trilemma? Let's look at regulatory science for potential guidance. As I said earlier, regulatory science is an emerging field, it is not well developed as the other physical and social sciences but it is making tremendous strides in the past 20-30 years. There are two parallel tracks, one dominated by the pharmaceutical industry and the other in the human services, in particular, in early care and education. In the pharmaceutical arena there is more concern about clinical trials and the efficacy of drugs and protection from side effects for individuals; in the human services arena there is more concern about protections from harm related to caregiving. And this is where regulatory science came into play with a new methodology in the human services that was emerging around 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 (Fiene, 2019, 2025).

Initially there was more focus on the risk assessment methodology to determine if certain *Caring for Our Children* (AAP, APHA, NRCHSCC, 2019) standards placed children at increased risk of morbidity and mortality if regulatory non-compliance occurred. The resulting document, *Stepping Stones to Caring for Our Children* (NRCHSCC, 2019), came about based upon this risk assessment rule methodology. It took the over 700 standards to distill it down to approximately 120 standards. It became a much more manageable document that state licensing agencies could use as a guide in revising and promulgating rules and regulations.

Later in the development and evolution of *Stepping Stones to Caring for Our Children* (NRCHSCC, 2019), again borrowing from the regulatory science field, the key indicator rule methodology was utilized to determine if there were a smaller set of standards that had more of a predictive value in protecting children when it came to regulatory compliance in an overall sense. This resulted in *Caring for Our Children Basics* (CFOCB) (ACF, 2015) (approximately 65 standards) which was originally proposed as a voluntary set of standards for all early care and education. I think it was a good idea back when it was first proposed in 2015 and I still think it is a good idea. To many, 65 standards may still sound like too many standards but these standards form the basis for the quality and safety arm when it comes to the child care trilemma, and indirectly impact accessibility and affordability. The more standards to meet, the greater the cost for programs which can make it more difficult for parents to access available care. As quality increases, so does cost while accessibility decreases based upon what parents can afford.

Let's begin here in attempting to address a revised solution to the child care trilemma. In this discussion about where the child care field is headed and the most recent call for deregulation (Hechinger Report, 2024)(NAEYC, 2024), 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. See how your state's child care rules size up with *Caring for Our Children Basics* (ACYF, 2015) in making sure that at the very least all these standards are in place. Templates from regulatory science have been developed



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Fiene is regarded as a leading international researcher/scholar on human services licensing measurement and differential monitoring systems. His theory of regulatory compliance has altered human services regulatory science and licensing measurement dramatically in thinking about how best to monitor and assess licensing rules and regulations through targeted and abbreviated inspection methodologies: differential monitoring, risk assessment, and key indicators. He received the National Association for Regulatory Administration President's Award in 2015 and the Pennsylvania Association for the Education of Young Children's Distinguished Career Voice for Children Award in 2020.

to do this comparison (Fiene, 2025). As a very important footnote regarding these standards, they were developed by a cross-representation of medical experts, early care and education experts, child developmental experts, public health and environmental experts. So all disciplines having an impact on child care services were well represented and consulted in the development of the standards.

Then once this is done in the aggregate, begin to look at the individual standards within *Caring for Our Children Basics* (ACYF, 2015). 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. This has been clearly demonstrated in the research literature for over 50 years. Nothing has changed, it was the focal point back in the 1970's (Abt, 1979) and it is today (Fiene & Stevens, 2021). But let's think outside the regulatory compliance box for a minute and maybe we do not look at staff-child ratios in isolation but cross it with another standard/rule such as the qualifications of staff and suggest an alternate rule where staff-child ratio can be increased slightly but only with the most highly qualified staff?! Like I said, let's think outside the regulatory compliance box. And while we are there, the fee that is attained by the program with the additional child should go to the more qualified staff as an add on to their salary. Yes, they have an additional child but they also have the revenue generated as a salary increase with the addition. This above approach I suggested in a Child Care Information Exchange article back in 1997 in how this approach could be utilized effectively as a potential solution to the child care trilemma (Fiene, 1997).

As with staff-child ratio and group size, we perform the same type of critical analysis utilizing the empirical regulatory compliance data available to make changes in the existing set of rules. As has been pointed out in the regulatory science research literature, 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 to determine what stays and what gets pitched. For the interested reader, there are several studies completed by the National Association for Regulatory Administration (NARA) which can guide one in determining how best to use data to make these decisions. These can be found at naralicensing.org/key-indicators

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 (NAEYC, 2024)(Hechinger Report, 2024). We now have an emerging regulatory science

(Fiene, 2025) to guide us and I hope we use it for making educated and informed choices as we move forward in attempting to solve the continuing child care trilemma.

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