

Regulatory Theory & Global Implications

Dr. Sonya Stevens
NARA

Regulatory Theory and Licensing

Objectives

- ✓ Introduce the theories driving licensing policies across the globe
- ✓ Learn how rules shape our economic behavior
- ✓ Discuss current trends and driving forces within the shifting landscape



Theoretical Background

What is Regulatory Theory

➤ **Examines how rules and standards are:**

- Designed
- Implemented
- Enforced

➤ **Aims to manage:**

- Market behavior
- Social risk
- Public welfare



Licensing as a Regulatory Tool



- ✓ Grants permission to operate
- ✓ Requires meeting defined standards
- ✓ Functions as a:
 - Quality assurance mechanism
 - Risk control tool
 - Barrier or filter for market entry

Public Interest Theory

The Public Interest Theory emphasizes licensing for quality control, preventing negligence, and guaranteeing competent care in sensitive areas like elder care, mental health, and child care.

➤ **Purpose of Licensing**

- Protect consumers
- Ensure safety and quality

➤ **Common Risks**

- May oversimplify political and social complexity
- Can overlook diversity and individual needs

➤ **Underlying Assumption**

- Consumers lack the information to assess quality
- Regulators act as neutral guardians of the public good



Public Choice Theory

The Public Choice Theory focuses on the "rent-seeking" behavior, arguing that rigorous licensing acts primarily as a barrier to competition rather than a safeguard for the public.

➤ Purpose of Licensing

- Rules may prioritize Licensees over consumers
- Regulation can become a tool for economic protectionism

➤ Underlying Assumption

Regulators and professionals respond to incentives, just like market actors

➤ Common Risks

- Influenced by incumbent professionals
- Reduced competition and innovation



Current Trends (2024-2026)



CRITIQUE OF MONOPOLY

A push to **reduce regulations** and/or favor *certification* over *licensing* to lower barriers to entry.



EXPANSION OF PROFESSIONALIZATION

A trend toward **increased licensing** in fields such as social work to ensure safety and equity.

REFORMING LICENSING

Global momentum toward **reforming licensing** to remove unnecessary hurdles that limit access.

The “Third Lens”

Public Interest and **Public Choice**
theories each explain *part* of licensing



Real-world licensing systems operate under political constraints, limited resources, and human behavior

Shifting the Central Question

➤ From “Should?” → to “How?”

- Licensing is no longer debated primarily as an idea
- The focus is now on design, implementation, and administration

➤ Implementation Quality Matters

- Clarity
- Consistency
- Proportionality
- Administrative capacity

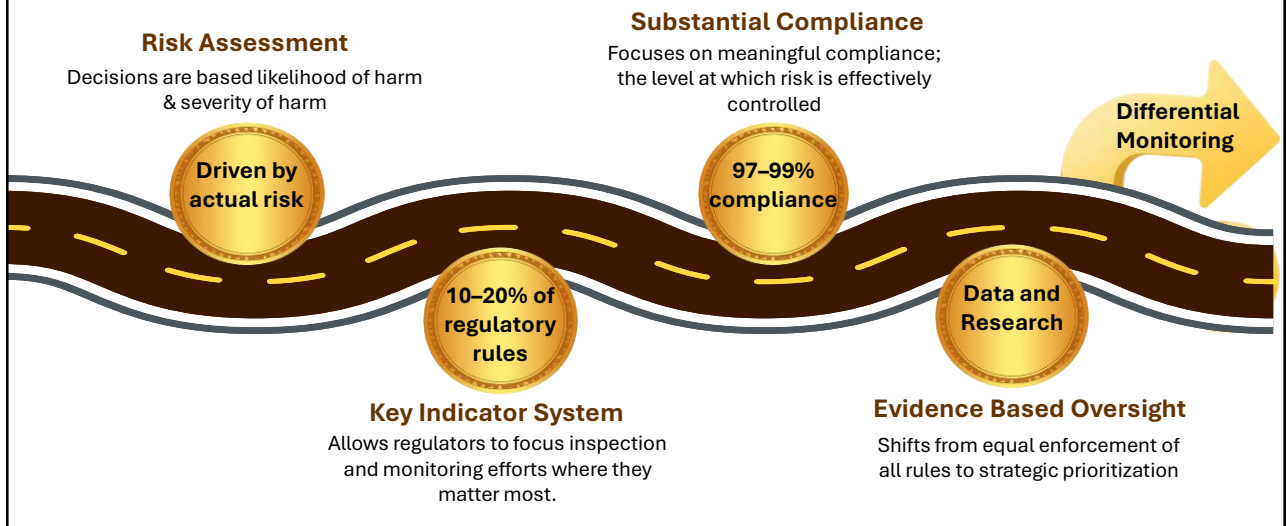
➤ Design Questions Now Dominate

- What level of risk warrants regulation?
- Which rules predict safety and quality?
- How should oversight differ by provider performance?



Licensing effectiveness is increasingly judged by how it works, not by theory alone.

Fiene's Theory of Regulatory Compliance



Emphasis on Regulatory Craft

Rule Clarity and Usability

- Clear, understandable rules improve compliance
- Reduces unintentional violations and confusion

Proportional Enforcement

- Regulatory responses align with severity of risk
- Distinguishes technical errors from meaningful harm

Administrative Discretion

- Judgment is guided within structured boundaries
- Balances flexibility with accountability

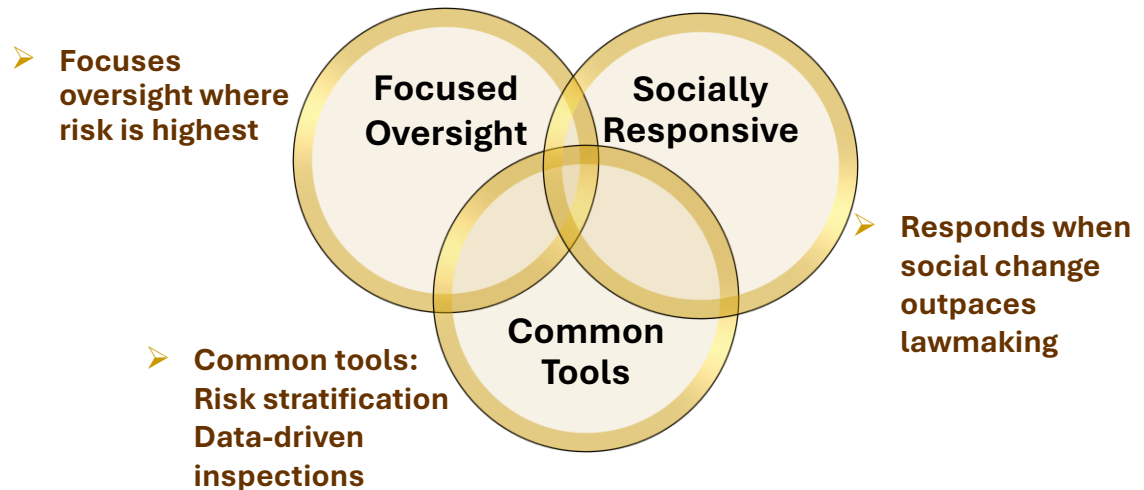
Consistency and Fairness in Inspections

- Shared standards and calibrated inspectors
- Builds legitimacy and trust in the system

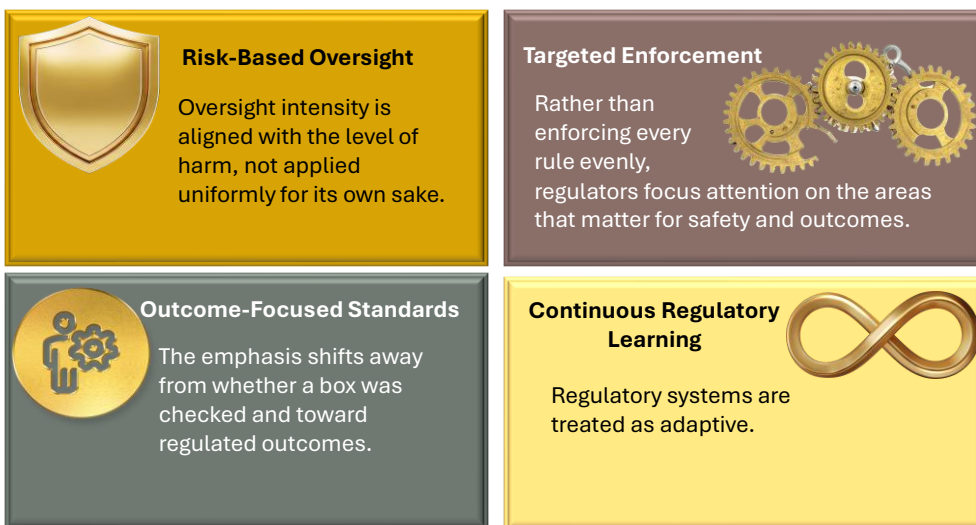


Well-designed policies succeed or fail based on how they are administered.

Risk-Based Regulation



Employing Practical Reform



Global Trends

Global Practices

This approach is not theoretical; it's being actively applied across the globe!



United Kingdom



The UK uses a risk-responsive inspection model

European Union



Implementation discretion is delegated to national regulators, making regulatory craft essential for consistency and legitimacy

Russia

Oversight intensity is adjusted based on assessed risk rather than applied uniformly.



Africa

Risk-based regulation is often applied through sector-specific or development-driven frameworks, rather than comprehensive national systems



Indonesia

**The regulatory system
accepts that not every
provider always
requires the same level
of oversight.**



Australia

**Strong performers may
experience streamlined oversight,
while regulators retain the
capacity to intervene quickly if
risk indicators change**



Canada



**Aligns closely with
Fiene's model of
differential monitoring
and practical reform**

Shared Global Pattern

**Oversight is
increasingly
prioritized by risk**



**The core
standard is "Do
No Harm", not
"Do Everything
Equally"**

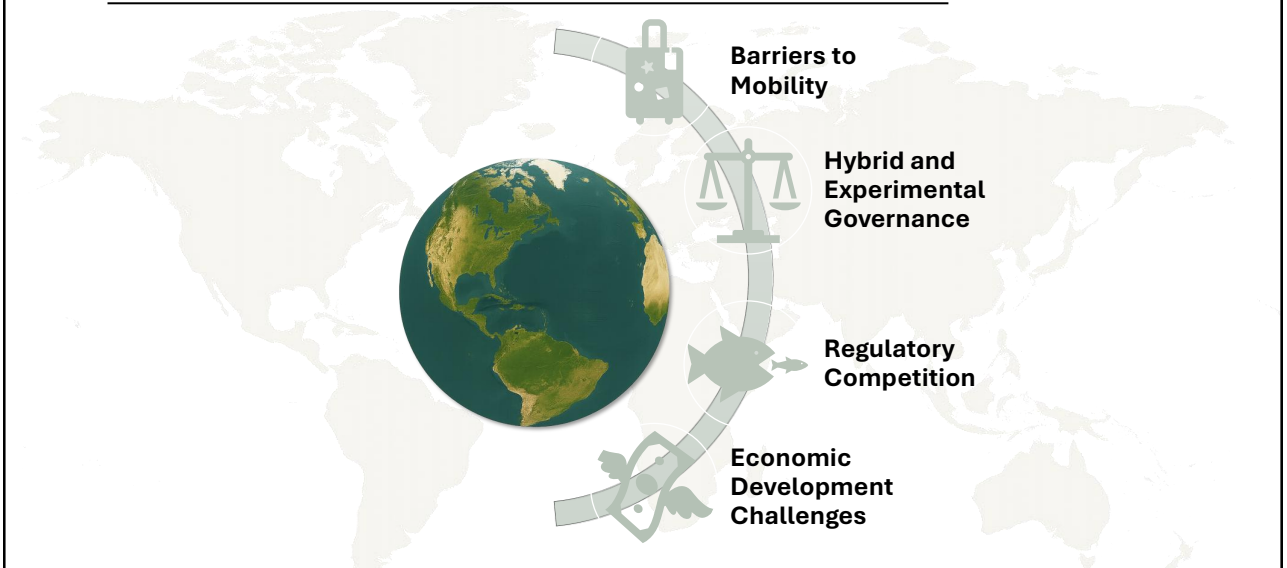


**Data is now central
to regulatory
attention**



**Inspection intensity
is being adjusted,
not equalized.**

Global Impacts



Taking A Closer Look into Human Services

Why is Human Care Licensing Different

Unlike other fields like medicine, human services are deeply cultural, social needs evolve faster than laws.

➤ **Definition of “quality” is subjective**

- Social Norms
- Legitimacy

➤ **Management of “Invisible Risks”**

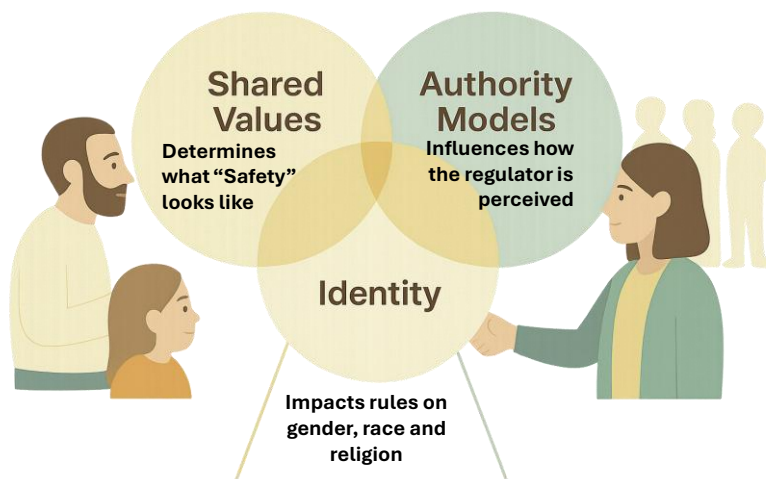
- Cultural Safety
- Health Equity

➤ **The Role of the Primary Advocate**

- Parental and Family Rights
- Language and Communication



Behavioral Compliance Theories



Key Takeaways



Licensing reflects competing regulatory theories

- Modern trend:
 - Risk-based
 - Evidence-driven
 - Flexible oversight
 - Focused on harm prevention
- Goal:
 - Better regulation
 - Balance public protection with efficiency and innovation

Questions



Sonya.stevens@naralicensing.org