

STRONG LICENSING: THE FOUNDATION FOR A QUALITY EARLY CARE AND EDUCATION SYSTEM

Research-based Preliminary Principles and Suggestions to Strengthen
Requirements and Enforcement for Licensed Child Care

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Consumer Protection Through Prevention

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Table of Contents

2	–	ACKNOWLEDGMENTS
4	–	INTRODUCTORY SUMMARY and COMMENTARY
9	–	WHAT IS LICENSED CHILD CARE?
13	–	WHO IS IN LICENSED CHILD CARE?
16	–	WHAT ARE THE ISSUES? IMPROVING CHILD CARE LICENSING PROGRAMS
26	–	OTHER APPROACHES TO STRENGTHENING QUALITY
27	–	POLICY ANALYSIS AND STRATEGIES: PRELIMINARY CHILD CARE LICENSING PRINCIPLES
41	–	CONCLUSIONS
43	–	APPENDICES
67	–	ADDITIONAL TABLES FOR ANALYSIS
76	–	REFERENCES
84	–	AUTHOR

INTRODUCTORY SUMMARY AND COMMENTARY

Licensing significantly impacts the quality of care children receive. The caliber of the licensing program determines the nature of its impact.

With more than 11 million children in out-of-home child care programs, many of which are licensed by states, child care licensing requirements¹ and enforcement must be strong and dependable. Licensed child care requirements and their effective enforcement are one of the more critical and strategic sets of program standards states have to protect and nurture young children while promoting their optimal development (NACCRA, 2010; see NARA & NCCIC, 2009).

Our nation and its families are experiencing profound, ongoing shifts that suggest licensed child care programs may be more important now than ever. These changes include: the marked growth in employed mothers; the increased understanding of the long-term significance of brain development in the first five years of life and, in turn, on children's subsequent school readiness; the rapid transition to a technology-driven, knowledge-based economy; and, the implications of all these changes for our nation's current and projected demographic and economic conditions.

Parents need to know that they can count on state licensing programs to monitor and enforce quality child care that is licensed to protect their children while promoting children's learning and development, particularly before they enter kindergarten. However, a lack of specific federal requirements or guidelines for child care quality compliance, intensified by the enforcement challenges currently facing state licensing programs, results in considerable variation of child care quality across states.

Strengthening licensing requirements and their enforcement is one of the more efficient ways available to achieve a positive impact on a substantial proportion of children in out-of-home care. Because licensing requirements are legally enforceable, and because so many young children participate in licensed child care prior to entering kindergarten, strengthening licensing requirements and enforcement has the potential to reach each state's children in licensed care in consistent ways – and to do so in a relatively short period of time.

¹ States often use the terms “rule” or “standard” when referring to a requirement or regulation that must be met to receive or retain a license. Although those terms will sometimes be used, the term “requirement” will most often appear; it is clearer, especially for those outside the field. “Standard” is a context-dependent term, e.g., may only mean “commonly accepted,” or may refer to approval criteria used in voluntary (non-enforceable) systems such as Quality Rating Improvement Systems (QRIS), accreditation, etc. In licensing, however, both “rules” and “standards” *are* enforceable – but they are constructed and enforced differently. A regulation constructed as a “standard” requires the use of judgment, interpretation, or context for enforcement, e.g., to determine when a toy is “safe,” or when a classroom is “clean,” or has “developmentally appropriate materials.” Many requirements actually *must* be constructed as standards because they deal with a non-exact mix of characteristics that exist along a positive-to-negative range of effects, e.g., safe, clean and orderly rooms must not undermine children's need for active exploration. In contrast, a regulation constructed as a “rule” is more precise, conveys no intentional leeway, and needs little or no interpretation, e.g., requiring safety covers on electrical outlets when not in use, or prescribing a formula to calculate the depth of resilient surfacing on playgrounds. Regulations must use both types of construction to protect children from the variety of risks associated with care-activities and situations. Licensing agencies use interpretation guides and other strategies to achieve consistent enforcement of both types of requirements, especially standards, and provide similar guidance to licensees.

Understanding what constitutes licensed child care sets the stage for understanding how licensing protects – or fails to protect – children. Licensed care varies considerably both within and across states, for example, in types and settings, by how many children are in care, by program requirements, and by enforcement effectiveness. While the requirements vary, issues common to licensing, including why licensing is important for school readiness and the nature of variations that exist in state licensing standards, do not. This paper addresses the principles and practices that should guide the formulation, revision, and enforcement of child care program requirements.

PROGRAM REQUIREMENTS AND THEIR ENFORCEMENT MATTER

Clear guidance now exists for states to improve their child care licensing services. The principles for improving the efficacy of protection requirements and their enforcement are research-based, steeped in best practices, and consistent with what is working well in state licensing programs. These principles should guide states as they begin to examine and narrow the gap between their existing licensing requirements and higher quality, voluntary program standards set through other mechanisms in Early Care and Education (ECE) systems, such as quality rating and improvement systems and early learning standards.

Effective, high quality licensing consists of at least three distinct components: a strong enabling statute, strong program requirements, and strong enforcement. To address quality care and education for children adequately, states must take a multi-faceted approach to establishing effective licensing programs with both the authority and the capacity to promulgate and enforce quality-focused requirements. At a minimum, such facets should be guided by key principles and characteristics for a strong licensing law, for strong child care program requirements, and for strong licensing agency operations and enforcement. These principles are summarized below and described in more depth later in the paper.

THE LICENSING STATUTE

The licensing statute, enacted by the state legislature, establishes the scope of facilities subject to licensure and the scope of authority, responsibilities, and enforcement methods for the licensing agency. The characteristics of strong statutes include but are not limited to:

- No exemptions or definitional exclusions for regularly operating settings that offer supervision or care.
- Clear authority and provisions to investigate and to close illegal operations.
- Appeal rights and processes that apply to adverse enforcement actions.
- Initial and recurring background clearances for caregivers; that is, fingerprint-based national and state records checks for convictions and founded abuse/neglect/cruelty.
- Authority and direction in enforcement activities, such as issuances and complaint response, which may also include frequency, intervals/duration, and/or response times in key activities.

- A basis to use a full continuum of enforcement options, with agency discretion to secure compliance using a range of positive and adverse interventions, from instruction to injunction.

THE LICENSING REQUIREMENTS

The body of requirements (often referred to as “standards”) adopted by the licensing agency establishes the scope and quality of regulatory prescriptions and proscriptions that, collectively, create facilities’ physical, social, learning, and organizational environments.² Indicators of strength include but are not limited to the use of:

- Scheduled reviews of regulations every three to four years, plus event-triggered reviews required to respond to urgent demands.
- Broad public outreach and consultation in drafting and revising regulations.
- Requirements that are kept research-based, current, and designed to respond to known public risks and to the strengths and weaknesses in the industry’s prevailing conditions.
- Requirements that reflect the understanding that the benefits of early learning stem directly from the nature of children’s relationships with their adult caregivers. Caregivers must know how children learn and be able to foster their optimal development.
- A body of requirements designed with a holistic focus on child well-being. Collectively, the body of requirements creates a safe environment that promotes healthy physical, social, emotional, and cognitive development.
- Attention to operational reasonableness and cost considerations, including provisions for phasing in new requirements if necessary.
- Sound interpretation guidelines and procedures manuals, updated as necessary, to help both providers and inspectors apply the requirements correctly, fairly, and consistently.

THE LICENSING AGENCY

The licensing agency must be structured, staffed, and managed to ensure proper performance of all functions and tasks implicit in and incidental to sound administration of the licensing law and regulations, for example, operational and enforcement policies and practices, provider and community engagement, and similar key performance areas. Strength indicators reflecting best practices for regulatory agency performance include but are not limited to:

² As indicated below, licensing agencies lack authority to adopt regulations directly or unilaterally. In the administrative procedures statutes, states establish methods that govern the adoption of regulations, which may be further defined in governors’ executive orders. These specify minimum requirements for public notification and input opportunities and for external reviews and approvals addressing both content and legal issues. Required approvals typically include governmental agencies/boards designated because of relevant expertise or authority, legislative oversight committees, and elected officials, such as governor and office of the attorney general. Although the licensing agency lacks adoption authority, it is responsible for assessing and justifying changes needed, for proposing and negotiating changes, and for coordinating the state’s requirements for lawful adoption and promulgation.

- Adequate funding and executive/legislative support to operate the agency according to law, policy, and regulatory best practices.
- Adequate staffing to support routine monitoring of facilities twice annually, increasing to four or more times annually as needed until satisfactory compliance is stable or the facility is closed. The workload standard for inspectors should be 50-60, calculated by a best-practice method that considers local conditions.
- Effective management and leadership focused on program planning and on management systems and procedures to achieve reciprocal reinforcement among all components and functions. Management uses research and evaluation to drive program compliance and quality improvement. Methods ensure that actions are correct, timely, thorough, objective, and consistent across the agency. The agency uses a systematic, risk-based enforcement decision method.
- Acquisition and retention of suitably educated, well-qualified regulatory and support services personnel, with initial and ongoing training in regulatory theory and practice provided.
- Systematic methods to achieve an agency-wide culture built on data-driven continuous learning, a shared vision of performance excellence, and a comprehensive continuous quality improvement function steered by sound measurements.
- Effective provider support services designed to promote providers' knowledge, compliance, and accountability; the services emphasize compliance-related technical assistance and workforce development.
- Communication and collaboration systems that maintain coordination with the agency's many stakeholder groups, including key legislative committees. Facility compliance reports are Internet-available, as are agency performance reports and other pertinent resources for providers, consumers, and other stakeholder groups.
- Direct linkages to legal counsel and well-defined systems of administrative appeals that protect the rights of licensees and care-consumers.

Using these principles, states will be able to identify strengths, weaknesses, and inconsistencies within their licensing programs. Policy makers and licensing administrators must think holistically about licensing principles and characteristics to ensure that they guide the formulation and enforcement of child care regulatory requirements in a systematic and intentional manner. Together, these principles provide a means for each state to assess its licensing program's readiness to construct a strong foundation for quality care throughout the early care and education system.

Despite the disturbing unevenness in current quality and rigor, it is noteworthy that all states have concluded that child care meets the public-protection test that precedes any proper decision to regulate products and services. In fact, research and experience have steadily expanded appreciation of the need to address both immediate and developmental risks that were not recognized when child care licensing began more than a century ago.

Adopting federal requirements (or “national standards”) for child care quality compliance would magnify the benefits of quality child care immeasurably – and not only by providing children and families with equal opportunities for development and protection throughout the nation. Significant benefits and cost reductions also would accrue in such functions and tasks as research, program/system assessments to improve planning and funding decisions, and workforce development. Additionally, properly designed national requirements and enforcement methods could lead to operational efficiencies at both state and national levels by reducing redundant efforts, for example in developing requirements, resource documents, and training materials.

Finally, a frequently overlooked outcome is that stronger regulation benefits providers. More than is characteristic of many other types of regulation, human care regulation always has been mindful of the special nature of care-giving – and well aware that caregivers must be nurtured before the industry can nurture the nation’s young. Licensing agencies are keenly attuned to the residual effects of an industry rooted in a history of an unpaid or underpaid and under-educated female workforce. Both directly and collaboratively, every strong licensing agency engages in strengthening the industry – walking a carefully drawn line between positive enforcement methods (to motivate and to enhance the skills of suitable caregivers) and adverse enforcement methods (to weed out facilities that pose too great a risk to the public).

The National Association for Regulatory Administration (NARA) presents these child care licensing principles for consideration. The hope is that these principles will be used by states – and perhaps the nation – to help review, revise, promulgate, and enforce an integrated set of model regulatory policies and practices that could boost the quality of children’s health, safety, and development throughout their early learning experiences in licensed care. NARA supports a vision of effective licensing programs reinforced by increased administrative and financial support and fully prepared to protect and promote children’s development. Ultimately, building a strong nation is achieved by developing capable children.

STRONG LICENSING: THE FOUNDATION FOR A QUALITY EARLY CARE AND EDUCATION SYSTEM

WHAT IS LICENSED CHILD CARE?

The purpose of this paper is to establish the pivotal role child care licensing plays in protecting, nurturing, and promoting the development of young children in out-of-home care. Specifically, we must be clear about what child care licensing requirements are and are not; to whom they apply; who provides licensed child care; and, what current child care licensing issues are. Only then can we understand how strengthening licensing requirements – including their enforcement – supports voluntary approaches to raising the quality of child care (such as early learning standards and quality rating and improvement systems).

METHODOLOGY

To determine the content to include for this paper and its resulting *Preliminary Child Care Licensing Principles (Principles)*, NARA hired a child development consultant, formed a National Advisory Committee for the project, and reviewed a number of research and policy papers focused on what child care licensing does to protect children’s health and safety effectively while promoting their optimal development. Because states and child care providers typically refer to a variety of well-known resources when researching quality child care program requirements and enforcement, NARA examined these same resources, among others, when researching and recommending its *Principles (See Section V, Policy Analysis and Strategies: Preliminary Child Care Licensing Principles)*.

CHILD CARE LICENSING REQUIREMENTS

To protect children in licensed child care, states adopt requirements that providers must meet to obtain and retain licensure. The drafting and adoption process is prescribed in law and is exacting, requiring public involvement and comment opportunities as well as reviews by legislative and administrative authorities. The child care licensing office within each state monitors compliance with its requirements. Both program requirements and monitoring methods vary widely from state to state. Program requirements prescribe: what each state considers citizenry-supported essential elements of quality that should be in place to protect children’s health and safety (see National Conference of State Legislatures, NCSL, 1999); how a program operates; what qualifications and skills practitioners (or caregivers) must have; and (in most cases), what kinds of early learning activities and

experiences are regularly available to children in the licensed child care environment (Morgan & LeMoine, 2004; LeMoine & Morgan, 2004; see NARA & NCCIC, 2009).

Accordingly, just because a program is licensed does not mean that it provides quality care. If states fail to adopt (and to enforce) quality program requirements, licensed programs likely will not provide quality care. Child development researchers often have defined quality in terms of a program's ability to protect children's health and safety and to educate young children – contributing to the development of the whole child. Program requirements that enable such quality care include trained teachers who have necessary child development knowledge, skills, and competencies to engage children in, and promote their love of learning (Morgan & LeMoine, 2004; Ramey & Ramey, 2000; Shonkoff & Phillips, 2000). In other words, quality programs concurrently address all aspects of child development (NICHD, 2000, 2001; Ramey, 2000). These multiple domains of development include: physical and motor development; social and emotional development; approaches toward learning; language, literacy and communication skills; and cognitive skills (Kagan, Scott-Little, & Frelow, 2003; National Educational Goals Panel, 1991). States that do not require quality programming to address children's development fail to protect children adequately against risks to their health and safety, as well as to their overall developmental well-being.

It remains the case then, that there are significant inconsistencies in the quality of states' licensing requirements and enforcement practices, and it has long been documented that the vast majority of licensed care available is not good quality (see Cost, Quality, & Child Outcomes Study Team, 1995; see Fiene et al., 2002). Many states are trying out a variety of strategies throughout their licensing processes to improve the quality of their licensed programs – even in the midst of our nation's current economic crisis (see *Appendix B: State Strategies to Improve Licensing Policies and Practices*). However, the quality of licensed care is currently a “mixed bag.” Uneven quality in early care and education programs has been documented repeatedly in evaluation studies (see Goffin & Washington, 2007; Early et al., 2006). Seminal research documents that only 15 percent or less of child care centers provide good-quality care, as rated by trained observers (Cost, Quality, & Child Outcomes Study Team, 1995), and current National Association of Child Care Resource and Referral Agencies (NACCRRA) ratings of state licensing program requirements and enforcement practices, compared to best practices, seem to confirm such findings.

BRIEF HISTORY OF POLICY

It is important to note that there are no *mandatory* federal standards governing the quality of licensed care, and the only existing law relative to child care licensing program standards is the Child Care and Development Block Grant (CCDBG) federal funding requirement. CCDBG mandates only that programs not required to be licensed or registered must at least meet the state's basic health and safety standards.

Historically, child care was seen solely as a work support. Now, the term “child care licensing program requirements” not only addresses protection against immediate harm to children’s safety and healthy, but also the level of quality children must have while in non-parental care to protect them against cumulative developmental risks to reaching their full potential (National Association for Regulatory Administration, NARA & National Child Care Information Center, NCCIC, 2009; see Shonkoff & Phillips, 2000). However, our country has not been able to apply what we know to what we do to provide, on a consistent basis, quality care that is licensed. This failure stems, in large part, from the belief that upfront financial costs of care meeting higher quality program requirements are more expensive. Because most states do not, or believe they cannot, provide enough help to parents to pay for high quality care; the concern is that higher quality program requirements may push families out of the licensed child care market entirely. Still, parents want and need quality care for their children and states’ laws typically mandate their licensing programs to require child care providers to provide care that protects children while promoting their overall well-being.

WHY STRONG LICENSING MAY IMPROVE SCHOOL READINESS

The vast majority of children’s overall development takes place within the first five years of life; with 85 percent of brain development having occurred by the time children reach age three. Understanding how critical the early years are for children’s success in school and in life has resulted in widespread agreement about the importance of quality early learning experiences. Research has consistently demonstrated that quality early learning programs are beneficial for children’s school readiness. Children experience developmental consequences as a result of their early learning experiences, and these consequences can be positive or negative for their brain development (Frede, 1995; Shore, 1997; Shonkoff & Phillips, 2000). Research indicates that children who enjoy high quality care – particularly during the first four years of life – are more likely to be better prepared for school upon entrance to kindergarten and also more likely to experience long-term educational success (Schweinhart, 2004; see Vandell & Pierce, 2003).

The presence or absence of quality licensing program requirements and enforcement in licensed care settings significantly impacts children. Strong licensing not only answers the question of “how well” children are protected against risks to their health, safety, and overall development but also “for how many.” Licensing is the only set of legally enforceable requirements in place to safeguard children in out-of-home care through regular monitoring and enforcement of compliance with program requirements while children are away from their parents. Because so many parents with young children work outside of the home, licensed care can have a significant impact on millions of children.

Many children, however, are cared for in unlicensed settings without such protections in place. Although there is a chance that such settings may offer care that keeps some children healthy and safe, there simply is no way to ensure – or to require – that the quality of care being offered matches that provided in licensed settings. In addition, there is no way to monitor or enforce the presence or absence of quality indicators in unregulated care settings (Cost, Quality, & Outcomes Study, 1995).

Also, violation records of licensed facilities are available to parents seeking the best provider for their children whereas unlicensed care would have no such records available. That is, unregulated human care businesses are not subject to oversight – or to investigation – unless a specific complaint alleges conduct that rises to the level of abuse/neglect/endangerment or operational matters covered under other general laws.

The enforcement of licensing program requirements has the potential to keep children safe and developing in healthy, positive ways – effectively setting the conditions for school readiness and greater success in life. Though it is not possible to measure the number of incidents, accidents, and cumulative risks to children prevented by licensed care, it is possible to recognize the many measures states put into place to keep children safe. From conducting background checks on caregivers who work with children to implementing preventative program standards that reduce the transmission of disease, injury, and death, the protections offered by quality licensing program requirements ensure children’s safety and well-being and also increase the likelihood that they will experience quality care (Shonkoff & Phillips, 2000; Zigler, 2010). Knowing they have a place to go where they can trust adults to meet their needs, develop relationships with others, explore the world around them, and satisfy their curiosity to promote their love of learning is an immeasurable benefit to children as they not only prepare for kindergarten, but also prepare to succeed in life (Schweinhart, 2004; NICHD, 1996).

Research has continuously documented the benefits of children’s quality early experiences with their subsequent preparedness—or lack of preparedness—for successful experiences in formal schooling. Without strong program requirements and enforcement, children’s preparation for school is weakened. Children, especially children at risk, who have not had adequate supports and opportunities throughout their early learning experiences to appropriately stimulate their development, may need remedial education and many other publicly-funded supports – which costs the state more time and more money, and costs children a portion of their limited time in which to reach their full potential (Rolnick & Grunewald, 2003).

Overall, states can improve the likelihood of children’s readiness for school by making at least three conscious choices to actively protect and promote children’s optimal development in licensed, non-parental care: (1) proposing and promulgating strong, quality-focused, evidence-based licensing requirements; (2) adequately monitoring and enforcing compliance with such quality program requirements; and (3) reducing or eliminating statutory exclusions and exemptions from licensure that currently apply to many child care settings that have assumed the same care and supervision responsibilities as licensed settings. By making the choice to adopt and implement these policies, states can create a solid foundation upon which to build a thriving early care and education system.

WHO IS IN LICENSED CHILD CARE?

Child care is in high demand, largely due to the proportion of young children whose mothers work outside the home. In 2004, 62.2 percent of mothers with children under the age of six were working (US Bureau of Labor and Statistics, 2005). In 2010, roughly 44 percent of young children (i.e., 11 million out of approximately 25.1 million children ages birth through 11 years) were in out-of-home care (see NACCRRRA, 2010; www.childstats.gov/americaschildren/tables/pop1.asp). In 2007, child care slots were available to children in licensed care for roughly 40 percent of young children (i.e., more than 9.5 million child care slots for approximately 23.9 million children ages birth through age 11 years; see NARA & NCCIC, 2009; www.childstats.gov). These child care slots were available in a total of 325,289 licensed facilities within the United States, representing care provided in a variety of settings.

Most states license care in child care centers, family child care and group family care homes, for-profit businesses, and not-for profits. However, some states exempt particular child care programs from licensing. Making licensed child care available in a variety of settings (e.g., child care centers and family child care homes) increases its accessibility to a diverse group of parents while increasing the likelihood that, with adequate licensing program requirements and enforcement in place, the care is safe and healthy and provides their children with quality early learning experiences.

LICENSED CHILD CARE CENTERS

All states' laws and child care center licensing regulations define the type of center-based facility that is required to be licensed. Although each state's definition of child care centers varies, many elements are commonly included among many states. Examples of elements common to state definitions of child care centers include: minimum number of children in a facility (37 states); services provided for fewer than 24 hours per day per child (35); services provided on an ongoing basis (24); ages of children in a facility (minimum/maximum) (21); services provided for payment or compensation (19); and provider and children are not related by blood, marriage, and/or adoption, and children are not from one family (i.e., are not siblings) (17) (NARA & NCCIC, 2009).

FAMILY CHILD CARE HOMES

States' laws and regulations also define home-based facilities that are required to be licensed. These most often refer to child care that is provided in the home of the non-relative adult caretaker. There are two types of licensed family child care homes: (1) small family child care homes; and (2) large or group family child care homes. Although not all states use the same terminology to describe child care that is provided in a child care provider's home, the classification of family child care (FCC) is

typically based on the number of children receiving care and/or employees providing care in a particular family child care home (NARA & NCCCIC, 2009).

Small family child care homes. *Small family child care homes* typically share a number of common elements across various state definitions. Most often, small FCCs are child care programs located in the provider's residence that usually include one provider and a small number of children. Examples of other elements common to small FCCs include: FCC provider is the holder of the license (22 states); and services are provided in the residence of the provider/licensee (17) (NARA & NCCCIC, 2009).

Large/group family child care homes. A child care program, located in the provider's residence, and that typically includes one provider, an assistant, and a large number of children is often considered a *large or group FCC home*. A total of 39 states include large/group homes in their regulations either by licensing or by registration or certification. However, 12 states do not have this category in their licensed facilities.

For example, many states define large/group FCC homes as the care of 7-12 children, where 18 states specify seven children as the minimum number of children allowed and 20 states specify 12 children as the maximum number allowed.³ However, seven states do not specify minimum numbers of children in their large/group FCC home definitions and one state does not have a maximum number of children allowed (NARA & NCCCIC, 2009).

Licensing thresholds. All state child care licensing regulations define the levels of center-based facilities or family child care homes that are required to be licensed. Each state has a minimum number of children in care (that is, the threshold) that determines when a license is required.

When it comes to care provided in *FCC homes*, most states require licensure, however states vary considerably in the number of children FCC providers can have in care before they must become licensed. While some states require all FCC providers to be regulated as soon as they are providing care for one child, several states exempt providers caring for up to five children, and a handful of states exempt providers caring for an even larger number of children (Schulman & Blank, 2007):

- Ten states require all non-relative family child care providers to meet licensing or regulation requirements as soon as they are caring for one child (Alabama, Connecticut, Delaware, District of Columbia, Kansas, Maryland, Massachusetts, Michigan, Oklahoma, and Washington) (USDHHS, NCCCIC, 2006).
- Five states exempt FCC providers caring for one child or the children of only one family (California, Colorado, Florida, Minnesota, and South Carolina).

³ States may have policies and procedures that could allow licensure in a residence for more children than their stated FCC maximums – but only if the home is defined and licensed under *child care center* regulations. To serve a larger number in a residence, however, often requires some structural modification to meet more stringent building and fire safety codes that apply to centers. Hence, what is administratively possible may not be feasible when the modification costs are identified.

- Eight states exempt FCC providers caring for up to two children (Georgia, Hawaii, Maine, Montana, New York, North Carolina, Vermont*, and Wyoming**).
- Eleven states exempt FCC providers caring for up to three children (Illinois ***, Kentucky, Nebraska, New Hampshire, North Dakota, Oregon***, Pennsylvania, Rhode Island, Texas, West Virginia, and Wisconsin).
- Seven states exempt FCC providers caring for up to four children (Alaska, Indiana, Iowa, Mississippi, New Jersey, and Virginia).
- Three states exempt home-based providers caring for up to six children (Idaho, Louisiana, and Ohio).
- South Dakota exempts home-based providers caring for up to twelve children.

Note: * Vermont also exempts providers caring for children from two families, regardless of how many total children from those families are in their care. ** Wyoming also exempts providers caring for children from a single family, regardless of how many total children from that family are in their care. ***Illinois and Oregon also exempt providers caring for children from a single family, regardless of how many total children from that family are in their care.

LICENSING EXEMPTIONS

Some states legally exempt certain programs or providers from licensure. In fact, there are at least 15 different *center-based* facilities/program types exempt from licensure across all states. For example, 26 states exempt facilities with small numbers of children in care (e.g., FCC) from being licensed, while 17 states exempt programs that offer religious instruction, 12 states exempt facilities operated by religious organizations, and 11 states exempt preschool programs operated by private schools or school systems (see NARA & NCCIC, 2009).

Exempting facilities of any kind from licensure – whether based upon religious affiliation or on geographical or programmatic factors – creates serious gaps in child care protection. Without being licensed, child care programs lack the regulation and enforcement protections necessary to reduce risks to children. Exemptions, if providers are not required to meet at least health and safety program standards, can jeopardize the immediate well being of children. Because licensing requirements are mandatory for licensed child care programs, and so many young children participate in licensed child care prior to kindergarten entry, strengthening licensing requirements and enforcement has the capacity and the potential to reach each state’s licensed programs caring for young children in consistent ways over a relatively short period of time. Overall, strengthening licensing requirements and enforcement across all 50 states and requiring regulation of *all* child care facilities is an efficient and responsible way to ensure safe, quality child care for millions of children.

WHAT ARE THE ISSUES? IMPROVING CHILD CARE LICENSING PROGRAMS

WHY CHANGE IS NEEDED

To make sound social policy decisions regarding the regulation of child care, the first step, and the driving purpose of this paper, is to understand that the extent to which decisions that states make have life-long effects for young children. Moreover, policy leaders and citizens in general must also grasp the broader implications of these effects. Failure to create opportunities for young children's optimal development, which adversely affects brain development and academic achievement, means children may be missing the stimulation necessary to reach their full potential. Research repeatedly confirms that licensing requirements and enforcement affect the quality of care and developmental stimulation children experience in out-of-home care environments.

As the preceding section discussed, state legislatures make the first critical decisions that affect the quality of care for children when they determine what child care shall be exempt from regulation. States' subsequent decisions about the nature of licensing requirements and enforcement practices obviously will not matter for children who are served in unlicensed care.

For children who are served in licensed care, however, it is important first to understand what *kinds* of care-program requirements are selected and how much those licensing requirements and their associated enforcement protect (or fail to protect) children.

WHAT GETS DETERMINED: QUALITY INDICATORS

To reach a feasible set of licensing requirements that will support the level of quality care necessary to protect children while promoting their development, providers and other constituents must provide input, together with the state, as to how best to make proposed program requirements work for all affected parties. The resulting licensing requirements for care programs, then, are the consensus of what gets selected.

States have access to model standards through a number of organizations that focus on optimal development for young children. Current resources, such as Caring For Our Children (CFOC) and publications from organizations such as the National Association of Child Care Resource and Referral Agencies (NACCRRA), and from accreditation bodies such as the National Association for the Education of Young Children (NAEYC) and the National Association for Family Child Care (NAFCC), all provide guidelines to help states understand what makes up higher quality program standards and to strengthen licensing requirements. Some states use these resources to help them meet such evidence-based recommendations. However, states vary greatly in their financial ability and/or political willingness to refer to and/or to incorporate these higher quality guidelines and to strengthen the quality of licensing requirements.

For licensed child care, including child care centers and family child care homes, program requirements include child care program elements that are common among licensing requirements. Sound licensing program requirements should be clearly written, reasonable to implement, relevant to risks children would otherwise encounter, and developed by a citizen-based democratic process (such as the Model Administrative Procedures Act, APA). When licensing requirements are based upon research and best practices linked to children’s safety, well-being, and/or school readiness, these can be referred to as quality indicators. Quality indicators promote the types of interactions between adults and children, and between children and their peers, that support young children’s learning and development (*see Vandell & Wolfe, 2000; see Pianta, 1997*) and protect children from immediate risks to their health and safety. What gets selected as a licensing requirement is important – it affects the quality of care that either protects or fails to protect children against risks associated with their health, safety, and readiness for school.

Key quality indicators. Quality indicators exist for program and practitioner (care-giver) regulations. Indicators for program requirements such as child-staff ratio, group size, and playground requirements, and for practitioner requirements such as staff qualifications and training are just a few examples of non-exhaustive, key indicators consistently identified in the research that promote children’s health, safety, and overall well-being (Fiene, 2002; CFOC, 2002).

PROGRAM REQUIREMENTS

Child-staff ratios and group size. Best practice recommendations for selection of licensing requirements governing child-staff ratios state, “no more than three (CFOC, 2002)-to-four infants (six weeks to 15 months old) should be cared for by a caregiver in a child care center at any time” (NAEYC, NACCRRA, 2009;). Lower *child-to-staff ratios* (fewer children per staff member) and smaller *group sizes* (total number of children in a specified group for a given space) have been associated with lower disease transmission (Collet, Burtin, Kramer, Bossard & Ducruet, 1994; Bredekamp, 1990); increased monitoring of healthy and safe practices (Hayes, Palmer, & Zaslow, 1990); improved care giving behavior and safety conditions (severity and frequency of complaints or reports of abuse and neglect) (Russell & Clifford, 1987); and significantly more caregiver time interacting with the children in their care – such as comforting, responding, instructing, questioning, and praising. (NICHD Early Child Care Research Network, 1996; Ruopp, Travers, Glantz, & Coelen, 1979). Teachers with fewer children in their care engage in more verbal communication with children and this has been associated with greater language development in children (Palmerus, 1996). Children in smaller groups and in care situations with fewer children per teacher also have been shown to be more cooperative and compliant, and to exhibit greater innovation and more social competence than children in larger groups (Clarke-Stewart, Gruber, & Fitzgerald, 1994). Overall, the smaller the total number of children caregivers are responsible for at one time, the more positive and individual attention children get from their caregivers, and such attention promotes more positive outcomes for children.

Space requirements. Best practice research recommends that each child has at least 35 square feet of usable space in a child care environment, whether in a child care center or a family child care home (CFOC, 2002; Prescott & David, 1976), and most states meet this requirement. The amount of indoor space available per child in out-of-home child care environments has been associated with positive and negative child outcomes. When adequate space is organized to promote developmentally appropriate skills, children are better able to make good use of their learning time through their play and work (Kruvant, Redish, & Dodge, 1976). In contrast, children who are crowded in inadequate spaces are at increased risk of developing upper respiratory infections and of injury from simultaneous activity (Fleming, Cochi, Hightower et al., 1987; CFOC).

Educational materials. In general, all children need a variety of materials to support quality educational experiences within each developmental domain. Most states require that licensed child care providers, whether child care centers or family child care homes, have a certain type and/or quantity of child equipment and/or materials available for children's activities. This typically means materials such as fine motor/manipulatives; books and literacy; dramatic play/pretend; art supplies/creative activities; gross motor equipment (both indoors and outdoors); music; science/experimental/math (counting/sorting); and sensory.

Having such an array of educational materials to work with is necessary for children no matter which type of care they are in, although requirements and recommendations for specific types and quantities of materials may differ for child care centers and family child care homes. For example, for child care centers, NACCRRRA recommends that child care programs have educational activities and materials to promote six developmental domains: social, physical, language/literacy, cognitive/intellectual, emotional and cultural (2009).

For family child care homes, the NAFCC accrediting body requires educational materials for each age group of children in family child care. For infants, toddlers, preschoolers, and school-age children this means that children in each age group will have toys and materials that support large and small motor development; language and literacy development; art; science; and, mathematics.

Health and safety: Immunizations. There are a number of different quality indicators to protect children's health and/or safety. However, this paper will use two examples to illustrate best practices necessary for adequate protection of children in the areas of basic health and safety: Immunizations and Sudden Infant Death Syndrome (SIDS). Best practices for child immunizations are to follow the latest version of the Advisory Committee on Immunization Practices (ACIP) of the U.S. Public Health Service and the American Academy of Pediatrics (AAP) immunization schedule (CFOC, 2004). In addition, all licensed child care programs should require that children be immunized prior to attendance (NACCRRRA, 2010). Research has continuously demonstrated that immunizations are one of the most effective ways to reduce the spread of infectious diseases among young children (Fiene, 2004; see Bond & Lester, 1999; Ferson, 1997; Middleton, 1995). This is important as the majority of

research on infectious diseases in children using out-of-home child care shows that children in preschool or long hours in child care centers are more likely to experience more frequent infections and more sick days than young children who are cared for at home or in a family child care home (Ferson, 1997). To minimize these risks, all young children should be appropriately immunized.

Health and safety: Sudden Infant Death Syndrome (SIDS) Reduction. Recent research has consistently shown that the supine (back) position presents the least risk of SIDS for infants (Task Force on Infant Sleep Position and Sudden Infant Death Syndrome, 2000). For example, infants who are back-sleepers at home, but are put to sleep on their stomachs (prone position) in child care settings have a higher risk of SIDS (Moon, Patel, & Shaefer, 2000). Best practices (CFOC, 2002) recommend that unless a child has a note from a physician specifying otherwise, infants shall be placed in a supine (back) position for sleeping to lower the risks of Sudden Infant Death Syndrome (SIDS). In addition, soft surfaces and gas-trapping objects such as pillows, quilts, sheepskins, soft bumpers or waterbeds shall not be placed under or with an infant for sleeping. Despite a number of child deaths across the nation, only about half of states that license child care centers and/or family child care homes (small and/or large) require measures in their licensed family child care homes that reduce the likelihood of SIDS, (NACCRRRA, 2010; see Table 1). Putting into place the respective health and safety program requirements that correlate with best practices to reduce disease, injury, and death mitigates the risks of these occurring in out-of-home child care environments (Wrigley & Dreby, 2005).

Playground safety: Surfacing requirements. As another quality indicator, playground equipment and materials provide an outdoor environment that is rich in opportunities for children's development – but also full of chances for injuries to occur if adequate protections are not part of playground design and regular upkeep requirements. Materials put underneath playground equipment to absorb children's falls are known as *resilient surfacing*. To protect children against injuries associated with falls from playground equipment, states must first require such program standards for playground surfacing. Best practices recommend that the depth of these materials should be proportionate to the critical height value of the playground equipment as tested by the National Program for Playground Safety (NPPS, 2000; Consumer Product Safety Commission, CPSC, 2004). Research has consistently demonstrated that the most common injuries in child care occur on playgrounds (Briss, Sacks, Addiss, Kresnow, & O'Neill, 1994; NPPS, 2000). These injuries are typically due to falls from climbing equipment and lack of adequate resilient surfacing. In a national study examining the risk of injury associated with child care center attendance, approximately one out of every five of playground injuries resulted from falls from climbing equipment, and more than half of fractures and concussions were caused by these same types of falls. Overall, the most important risk factor for injuries is the height of climbing equipment and lack of adequate resilient surfacing, which also demands regular raking and replenishment to maintain the required depth during usage.

PRACTITIONER REQUIREMENTS

Practitioner regulations include requirements such as having completed a certain number of training hours, specific training credentials (such as Child Development Associate, CDA), and teacher certification (such as Early Childhood Education Bachelor's degree). Requirements can vary widely. To qualify as a teacher in a licensed child care program may be as minimal as having a negative result on a tuberculosis test, being at least 18 years old, and having a state driver's license (but no pre-service qualifications or high school diploma or its equivalent) (see *NARA & NCCIC, 2009*). Alternatively, more rigorous practitioner standards, such as those used in nationally accredited programs, and for certain positions (such as center Directors) in states with quality licensing requirements, may require a degree in child development or early childhood education (for example, Bachelor, Associate), as well as additional childhood specific teacher certification. No state requires child care teachers to have a college degree and, as of 2008, this is reportedly true for specialized training in early childhood as well (*Barnett, Epstein, Friedman, Boyd, & Hustedt, 2008*). This weakness is understandable, given the financial challenges within ECE systems (such as the cost of providing and obtaining child care and the cost of adequate compensation for teachers). Teachers should be required – and supported – to obtain specialized training in ECE, however, in view of the important role child care teachers play in helping to shape children's ability to reach their full potential during their most critical periods of development (see *Appendix A: Early Care and Education Systems Development*).

Staff qualifications and training. Staff qualifications and training are important indicators for quality practitioner and care requirements. Caregivers with formal education or specialized training at the college level have been shown to engage in more positive behaviors toward children. For example, caregivers with a college degree or with college-level, specialized training behave less harshly and more sensitively, display less detachment and are less punitive, and engage in more positive interactions with children in their care (Fiene, 2002). Specifically, caregivers with such qualifications and training display more warmth, enthusiasm, and developmentally appropriate communication with children, and they are more involved with and interested in them while also being less hostile or threatening toward, or harshly critical of, children (Arnett, 1989; Whitebook, Howes, & Phillips, 1989). In addition, the more education caregivers have, the more likely they are to have children in their care who are more socially competent and compliant (presumably at least in part as a result of their care), (Clarke-Stewart, Gruber, & Fitzgerald, 1994). Children with caregivers who have more education also score higher on developmental assessments of preschoolers, including their knowledge of information such as shapes, sizes, and parts of the body as well as measures of intellectual ability including language comprehension, verbal fluency, and memory (Clarke-Stewart, Gruber, & Ainsley, 1984).

Beyond children's developmental benefits, staff training programs have also been shown to decrease the likelihood of immediate physical harm to children's health and safety. Specifically, targeted staff

training reduces the number of accidental injuries in child care centers (Ulione, 1997) and increases staff ability to identify signs and symptoms of childhood illnesses and to employ infection control, further preventing child and staff illnesses and injuries, and to provide basic first aid for children (Ulione, 1997). Thus, the more child development education and training caregivers have, the more likely they are to promote children's overall well-being and to protect children's health and safety.

WHAT GETS DETERMINED: EFFECTIVE CHILD CARE LICENSING PROGRAMS

Above and beyond the statutes that authorize state agencies to promulgate the scope and quality of requirements by which child care programs (and practitioners) must operate, state child care licensing agencies must effectively monitor and enforce such requirements. Well designed, appropriately staffed regulatory programs protect the public and promote the availability of quality care when they are equipped to use a comprehensive array of strategies and interventions ranging from monitoring and supporting licensees to improve their care of children to closing unsafe programs (NARA, 2009).

Effective licensing programs put such practices into place and can be recognized by such characteristics as: (1) strong administrative support from executive and legislative branches of government; (2) adequate funding; (3) sound licensing requirements; (4) legally sound enforcement procedures; (5) strong provider support; (6) sound consumer education; and (7) collaboration and coordination with each part of the larger early care and education system.

Administrative support and adequate funding. Strong administrative support empowers licensing programs with strong licensing laws, with political will, and with quality requirements and means of enforcement to take necessary legal actions that adequately protect children and set the conditions for quality child care that is licensed. Such support can also provide necessary funding to appropriately staff licensing programs with well-trained and educated staff who are skilled in observation and documentation (monitoring), and who can interpret and apply licensing requirements consistently. An adequate staffing complement of professionals who are well-prepared in regulatory theory and practices will also include necessary coverage for such specialized functions as staff/provider training and policy management and for readily accessible back-up expertise in areas such as health, research, and performance improvement oversight.

Licensing requirements. Sound licensing requirements (that is, requirements designed to match quality indicators, as previously discussed) are key to establishing the threshold for quality child care. However, parents and the public cannot be assured that quality care is actually being provided to children in licensed care without strong provider support services and adequate enforcement techniques in place to be sure that providers are meeting these program requirements.

ENFORCEMENT PROCEDURES

Monitoring. Licensing staff can help providers achieve and maintain compliance with program requirements when legally sound monitoring and enforcement procedures are in place and when they are able to implement strong support and technical assistance programs. Licensing typically uses at least three categories of techniques to enforce licensing program requirements: (1) monitoring; (2) technical assistance; and (3) sanctions. Licensing program requirements are enforced through *monitoring* which takes place during licensing inspections (compliance evaluation visits). During these inspections, licensing staff observe and record what they see to determine whether providers are meeting state licensing program requirements (NARA & NCCIC, 2009). Licensors also inspect facilities as a follow up if the state receives complaints about them; if violations are found, then licensors work with providers to create a corrective action plan.

Problems exist across the nation with the frequency of licensing inspections. For example, in California all licensed care environments – including child care centers and family child care homes – are required to be inspected only once every five years. When facilities are not being inspected on a frequent basis, there is a lower likelihood of implementing program requirements – and a lower likelihood of detecting and correcting non-compliances before they pose a serious risk to children’s health and safety (see Wrigley & Dreby, 2005). Research shows that states with adequate licensing enforcement supports in place, such as more frequent inspections (for example, best practices recommend a minimum of licensing inspections at least once per year; four times per year including inspections by health and fire departments, NACCRRRA, 2009; 2010), seem to do better than would be expected by the strength of their regulations alone (see Phillips, Mekos, Scarr, McCartney, & Abbott-Shim, 2000). By doing so, states can assure accountability for programs as well as for the practitioners that operate within such programs.

Differential monitoring. One method some states are using as a strategy to increase the frequency of monitoring inspections for licensed programs is referred to as differential monitoring. Specifically, differential monitoring (also known as “risk assessment monitoring” or “risk based monitoring,” NARA & NCCIC, 2009) is a monitoring technique whereby the frequency of inspections a licensed facility receives varies according to the facility’s compliance history with program requirements. Facilities that exhibit a low level of compliance are inspected more frequently. Typically, states using, or planning to use, differential monitoring are trying to identify and realize licensing efficiencies and to improve consistent enforcement throughout their business processes. Although controversial, the use of differential monitoring as an effective method to improve licensing efficiencies and consistency is growing in its popularity and is currently being considered and/or used by a number of states (see Table 2).

State example: California. Most recently, California has developed a model for differential monitoring of its licensed child care facilities and is currently proposing adoption by the legislature (NACCRRRA National Military Advisory Group Presentation by Gloria Merk, State of California, June, 2010). Once proposed policies are approved, anticipated field testing to assess the feasibility and effectiveness of this approach is scheduled to begin as early as July 2011 (see http://www.mycccl.ca.gov/default.asp?b=New_Directions). Given the lack of adequate staffing resources and the extremely reduced funding under which the State of California is operating, the Community Care Licensing (CCLD)'s current Frequency of Inspection Protocol is to conduct compliance inspections of all facilities at least once every five years, and to conduct an annual random sample of 30 percent of facilities. However, due to the ongoing fiscal crisis in California, CCLD has lost 30 percent of the staffing resources necessary to complete the mandated inspections.

To increase health and safety protections for those in its care, without incurring additional staff expenses, CCLD proposes to increase the current frequency of inspections by implementing a new Frequency of Inspection Protocol using a Licensing Indicator System (LIS), which is a differential monitoring approach, called the Health and Safety Compliance Review System. California purports that this newly proposed system will provide CCLD with a reliable method for moving forward with continuous quality improvement and technical assistance, compliance, and enforcement activities with a particular emphasis on increased frequency of inspection for licensed facilities.

Technical assistance. In addition to conducting evaluation inspections while monitoring child care providers, child care licensing staff also support child care providers by offering *technical assistance*. Licensors provide technical assistance to help providers understand and meet the licensing requirements for which they are responsible; to share information about child care safety and health, quality, and child development; to be available for provider questions; and to provide access to information about other state-and locally-funded and administered programs that support child care facilities.

Sanctions. When providers are either unable or unwilling to achieve compliance with licensing requirements within a risk-reasonable amount of time, sanctions are necessary. Sanctions are legally enforceable penalties licensing agencies impose on facilities that fail (typically repeatedly) to meet licensing requirements. Collectively, they constitute options to intervene into unsafe child care situations. They include such actions as: a warning notice/letter; mandated training or other corrective action; fines; reduction in operating capacity; and, closing programs through non-renewal or revocation of the license. A license conveys permission to operate, which is contingent on providing care that complies with requirements intended to ensure that the program is safe and beneficial for children. Imposing consequences on unsafe programs ensures that licensed facilities will come into compliance with state program requirements or will forfeit their license (NARA & NCCIC, 2009).

COMMUNITY EDUCATION AND ENGAGEMENT

Consumer education. Consistently educating consumers on the various roles that licensing staff and programs, providers, parents, and the community play is also important. Consumers must understand “what licensing is” and how various community members play different roles as “the eyes and ears” in helping state child care licensing programs adequately protect children while promoting their development. In addition, licensing programs must educate consumers about their right to publicly accessible, non-confidential regulatory information. This includes internet-based information such as complaints filed against licensed child care providers and compliance histories for licensees.

ECE System participation. Finally, actively participating in early care and education systems helps licensing programs align policies and services with those of their partners where appropriate. For example, strong collaboration among ECE partners and with state licensing programs as either a leader or an integral partner is necessary to develop and promote a system of incentives to recognize or reward child care providers that consistently comply with mandatory as well as voluntary quality program standards. Effective partnerships are likely to increase the chances that such voluntary quality enhancements as quality rating systems and accreditation will be well-publicized, well-understood, and will provide viable options for licensed child care providers willing to implement such program standards.

The characteristics described above constitute the basics for effective child care licensing programs. In contrast, when licensing programs lack these components – are not well-designed, or do not have adequate staff in place to ensure proper practice – children’s safety and well-being can be greatly compromised. As a case in point, failure to properly enforce background check program requirements, in one tragic instance, led to the death of a three-month-old infant in the care of a family child care provider licensed in Georgia who had previously been charged with Child Protective Services violations (NACCRA, 2010). Establishing adequate requirements fortified through training and by agency policies and workloads that ensure sound enforcement – such as monitoring whether licensed providers have been cleared through thorough criminal background checks – equips licensing staff with an array of strategies that could help protect against tragedies such as child death, sexual abuse, and abuse and neglect (see Blank, 1994; Phillips, 1986). The risks of poor quality program standards and enforcement not only may include cumulative detriments to children’s overall developmental potential, but may also put children’s health, safety, and potentially their lives at risk.

In sum, the strength of quality program standards – especially when it comes to child care licensing requirements – often depends upon the capacity and ability to hold programs accountable by adequately monitoring and enforcing those program requirements as well (see Griffin & Fiene, 1995; NACCRA 2009; 2010). Moreover, when licensed programs are not monitored, states have difficulties enforcing their regulations and revoking the licenses of individuals who should not have the privilege of operating state-licensed child care programs (see Gormley, 1997). To have effective

licensing programs, states must design strong quality licensing requirements and have adequate administrative support and staffing to accomplish frequent and appropriate enforcement of those requirements.

STATE VARIATIONS IN LICENSING PROVISIONS

Considerable variation exists among intents of state legislatures for licensed child care program requirements. These intents range from consumer protection to health and safety, to child development, to education, to family employment support, to unique state goals. There are likely a number of different reasons for the variation and inconsistencies in state licensing program standards. The reasons may include issues such as: political barriers within executive and legislative branches; failure to conduct regularly scheduled periodic reviews of regulations or a lack of support for agency regulatory recommendations; resistance to “cost drivers” such as child-staff ratios, group size, and/or space requirements that some providers, state child care council members, and/or legislators are either unable or unwilling to support; and, philosophical differences such as discomfort with the concept of regulation or in acknowledging the abundance of research documenting the need for quality care in children’s earliest years of development (e.g., see http://www.dss.virginia.gov/files/division/olra/cdcc/meeting/minutes/2004/2004-02-12_minutes.pdf and <http://jlarc.state.va.us/Meetings/September04/DayCare.pdf>).

State licensing provisions vary widely—for various reasons, children may not be adequately protected as a result. Despite such wide variation across child care licensing programs throughout the nation, it is common for states to strive for consistency in implementing, monitoring, and enforcing child care licensing practices within their own states. States that are trying to meet best practices may benefit from collaborating with their peers in other states whose regulatory program strategies have been effective under given political and economic conditions in supporting quality program standards and enforcement. In addition, it would serve our nation to establish and implement federal guidelines that require consistent, quality program standards and practices across *every* state so that *all* children—regardless of which state they live in—have the opportunity to access out of home care that adequately protects and promotes their full potential. [SEE APPENDICES AND TABLES FOR STATE EXAMPLES.]

COSTS

States may be asking themselves, “How good is good enough?” (*See Appendix B: Examining Existing Program Standards*). Although some low- and no-cost strategies may exist to help states close the gap between their current licensing programs and how much better they want them to be in the near future (*see Appendix C: State Strategies to Improve Licensing Policies and Practices*), it is clear that there are often costs associated with quality improvements. Due to the financial costs of putting some of these improvements into place, it is equally important that states ask themselves, “What are

the tradeoffs and the long term costs of inaction?” Even during a time when states across our entire nation are experiencing severe cutbacks to staffing and to programs, it is imperative that states focus on core, quality licensing program standards and enforcements to adequately protect children against risks to their health, safety, and well-being.

SUPPORT

State child care licensing programs must have strong support from executive and legislative branches of government at federal and state levels to successfully carry out their mandated responsibilities to protect, safeguard, and nurture children (Pope, 1997). Ensuring that state licensing programs have adequate administrative and financial supports is essential for licensing programs to be effective and to put quality program standards and enforcements into place. The federal government should put child care requirements in place emphasizing the importance of child care licensing and quality improvements. In addition, states must have the political will to craft and apply strong licensing laws with well resourced systems that allow consistent application and enforcement of program standards across all licensed child care programs.

OTHER APPROACHES TO STRENGTHENING QUALITY

CHILDREN’S EARLY LEARNING STANDARDS

Although strengthening licensing requirements and enforcement is likely one of the more effective and efficient ways to boost the quality of care children experiences, other quality enhancement efforts that are connected to state licensing programs may positively influence children’s early learning experiences as well. These include children’s early learning standards (i.e., early learning guidelines) and quality rating systems (i.e., quality rating and improvement systems, QRIS). Children’s early learning standards are concerned with what children need to know and be able to do, typically, by the time they enter kindergarten (Ackerman & Sansanelli, 2010; Kagan & Rigby, 2003). Many states with early learning standards for preschoolers also have early learning standards in place for infants and toddlers. Early learning standards are important as they are used in concert with licensed child care program requirements to improve the quality of children’s education experiences (Neuman & Roskos, 2005; Scott-Little, Kagan, & Frelow, 2003).

State early learning standards and licensing requirements both help practitioners promote young children’s development and yet, although complementary, each of these sets of standards is distinct. In licensing requirements, the primary emphasis is preventing immediate risks to children’s health and safety and preventing cumulative risks to their overall development and well-being. However, the emphasis in most state early learning standards is first and foremost on helping children develop

language and thinking skills. Although different domains of development are addressed through early learning standards, and these may promote children’s health and well-being, most states emphasize language and cognitive domains whereas standards within domains of learning and development, such as physical fitness and relationships, are less often emphasized (Scott-Little, Kagan, & Frelow, 2006; see Grolund, 2006).

Most notably, early learning standards are different from licensing requirements because of their *voluntary* nature. Most often, meeting state early learning standards is voluntary and program and practitioner compliance with these standards will not be monitored or enforced with state mandates to protect children against harm. Licensing requirements and enforcement set the foundation for early learning standards to be put into effective practice.

QUALITY RATING AND IMPROVEMENT SYSTEMS

Quality Rating and Improvement Systems (QRIS) comprise another strategy states are using to enhance the quality of care for children and that is rooted in licensing. States began using quality rating systems as a strategy to invest in child care quality mechanisms that have the potential for systemic improvements to child care services. QRIS rates child care programs based on increasing quality program standards. As one of the forerunners of QRIS, North Carolina is considered the model state for how to build QRIS into a licensing system and is one of several states using a rated license as a strategy to incorporate the QRIS star rating directly into the participating program’s child care license. In addition, although not necessarily using rated licenses, 23 states require licensure for child care centers to enroll in the first tier of their QRIS, and 19 states have this same licensure requirement for family child care home eligibility.

(See: <http://nccic.acf.hhs.gov/qrresourceguide/index.cfm?do=qrabout>).

The growth of QRIS across states is due, at least in part, to the appealing “ladder design” where programs that voluntarily participate are gradually able to improve over time. The challenge for QRIS is that when states build quality enhancements upon foundations where licensing requirements and/or enforcement are weak, the intended benefits may not be realized. An effective QRIS requires strong quality licensing requirements and enforcement practices, additional licensing and monitoring staff, plus ample program improvement resources for child care programs, to assist providers with meeting higher sets of program standards (see Groginsky, Robinson, & Smith, 1999; GAO-02-897).

POLICY ANALYSIS and STRATEGIES: PRELIMINARY CHILD CARE LICENSING PRINCIPLES

It is clear that quality care that is licensed must be founded on at least two chief components: strong program requirements and strong enforcement. By proposing at least a preliminary set of child care licensing principles for consideration, NARA, which is accepted by the field as the repository for

expertise regarding child care licensing, aims to provide policy makers, licensing staff, and other persons working on behalf of children with a rich, concentrated, ready-to-use resource to guide their work in developing and implementing quality child care licensing regulations, operating processes, and best practices. The licensing principles presented are overarching in nature, and based upon an analysis of evidence-based research, recommended best practices, and examples provided by states that are steadily making improvements to licensing requirements and enforcement. Through licensing regulations, states must effectively communicate what their expectations are for licensed early learning experiences for children – experiences that merely keep children safe and healthy are necessary but not sufficient.

PRINCIPLES FOR CONSIDERATION

To address quality licensing requirements for children adequately, states must take a multi-faceted approach to establishing effective licensing programs with the capacity to promulgate, implement, and enforce quality licensing policies and practices. Three major components – the statute, the regulations, and licensing agency practices – must all work together to support that mission because of the nature of their reciprocal effects on one another. The principles and characteristics of a strong, effective licensing program should include, but not be limited to, those described below.

THE LICENSING STATUTE

The licensing statute, enacted by the legislature, establishes the scope of facilities subject to licensure as well as the scope of authority, responsibilities, and enforcement methods for the licensing agency to administer the law. The provisions of that and other applicable law bind a licensing agency. It is legally obliged to perform duties and responsibilities included in its enabling statute and must conform its regulations and practices to what the law either expressly requires or permits by legally principled interpretation of the law's more broadly stated duties and responsibilities.

The characteristics of a strong licensing statute include but are not limited to:

- No exemptions or definitional exclusions for regularly operating settings that offer supervision/care.
- Clear authority and provisions to investigate and to close illegal operations.
- Appeal rights and processes that apply to adverse enforcement actions.
- Initial and recurring background clearances for caregivers; i.e., fingerprint-based national and state records checks for convictions and founded abuse/neglect/cruelty.
- Authority and direction in enforcement activities such as issuances and complaint response, which may also include frequency, intervals/duration, response times in key activities.

- A basis to use a full continuum of enforcement options, with agency discretion to secure compliance using a range of positive and adverse interventions, from instruction to injunction.

THE LICENSING REQUIREMENTS

The formulation of licensing requirements encompasses not only the content and effectiveness of those requirements but also the use of an open, broadly participative, and transparent process for their development and eventual implementation. The process, which may use an external facilitator, should help convey the message that the licensing requirements are primarily to benefit children, which, in turn, benefits the society at large (both immediately and across children's life-spans), rather than being over-focused, for example, on providers, parents, or licensors. The body of rules and requirements adopted within the statute's intent by the licensing agency establishes the scope and quality of regulatory prescriptions and proscriptions that, collectively, create facilities' physical and social environments. Indicators of strength include but are not limited to the use of:

- *Scheduled reviews of rules every three to four years, plus event-triggered reviews required to respond to urgent demands.*
- *Broad public outreach and consultation in drafting and revising regulations.* The goals of the process are to gather good ideas and information; to create a shared understanding of the needs and issues; to broaden ownership of the resulting regulations across the entire stakeholder community; and, to establish vehicles to keep providers and other stakeholders informed throughout the adoption and eventual implementation phases of the process. The appropriate legislative committees and gubernatorial oversight arm should be kept informed of agency operations as a routine matter but should be kept closely informed of policy options and intentions related to a review and revision of licensing regulations.
- *Regulations that are kept research-based, current, and designed to respond to known public risks and to the strengths and weaknesses in the industry's prevailing conditions.* Regulations should be written with careful attention to organization, clarity, internal consistency, and coordination with other applicable laws/regulations. The document should follow the state's prescribed style⁴ and be easy for readers to understand. Each requirement is a directive and therefore must be enforceable; that is, sufficiently clear and specific for inspectors (and licensees) to determine when it has been met.
- *Requirements that reflect the understanding that the benefits of early learning stem directly from the nature of children's relationships with their caregivers.* Caregivers must know how children learn and be able to foster their optimal development. To accomplish this, the requirements will

⁴ States generally have a Registrar of Regulations to oversee the regulatory development process and to maintain both the state's official *Register of Regulations* and a prescribed "style manual" to help agencies produce clear, consistently well-formatted and well-organized documents that providers and the general public will find easy to use and understand. Requirements must be clear, succinct statements of what is to be done (or not done), when, where, how, by whom. Regulations do not provide the rationale, which instead may be included in the agency's Interpretation Manual when warranted. However, a clearly organized, fully-indexed regulatory document with well-selected section titles and headers does promote an intuitive grasp of the purpose of each requirement while making it easier for users to locate needed information quickly.

also address caregiver and supervisory qualifications in terms of education, demonstrated competencies, and ongoing training access.

- *A body of requirements designed with a holistic focus on child well-being.* Collectively, the body of requirements must work together to create an environment that is safe, healthy, and actively promotes (age/stage/individualized) optimal development across all domains. In addition to protection from immediate health and safety risks associated with children and care-environments, the requirements should ensure activities and interactions that promote: physical well-being and motor development; social and emotional development; motivation and positive approaches toward learning; development of language and communication skills; and development of cognitive/reasoning skills and general knowledge. To promote the reassurance of a sense of unity and continuity for children between home and facility, the regulation should require and invite parental involvement, communication, and parental access to their children's care giving environments.
- *Attention to operational reasonableness and cost considerations,* such as: emphasis on no- or low-cost improvements; including provisions for phasing in new requirements if necessary; and providing, or locating resources in facilities that need to implement improvements or regulatory upgrades.
- *Sound interpretation guides and procedures manuals,* updated as necessary, to help both providers and inspectors to apply the requirements correctly, fairly, and consistently.

THE LICENSING AGENCY

The licensing agency must be structured, staffed, and managed to ensure proper performance of all functions and tasks implicit in and incidental to sound administration of the licensing law and regulations, e.g., operational and enforcement policies and practices, provider and community engagement, and similar key performance areas. The agency's information management system is key to effective and efficient performance in nearly all agency-performed functions. In the context of this paper, note that an up-to-date, accurate electronic database and supporting technology, integrated with other key agencies and with other parts of the early care and education system, are vital linking vehicles to facilitate broad-based assessments, planning, and communication. Strength indicators reflecting best practices for regulatory agency performance include but are not limited to:

- *Adequate funding and executive/legislative support* to operate the agency according to law, policy, and regulatory best practices.
- *Adequate staffing* to support routine monitoring of facilities twice annually (and not less than annually within a rigorous differential monitoring system), increasing to four or more times annually as needed until satisfactory compliance is stable or the facility is closed. The workload standard should be calculated to account for local variables but the average workload for inspectors should not exceed 50-60 facilities.

- *Effective management and leadership* focused on program planning, on management systems and procedures to achieve reciprocal benefits from and among all components and functions, and on research and evaluation to drive program compliance and quality improvement. Methods ensure that actions are correct, timely, thorough, objective, and consistent across the agency; agency uses a systematic, risk-based enforcement decision method.
- *Acquisition and retention of suitably educated, well-qualified regulatory and support services personnel.* Ongoing training in regulatory theory and practice is provided.
- *Systematic methods* to achieve an agency-wide culture built on data-driven continuous learning, a shared vision of performance excellence, and a comprehensive continuous quality improvement function steered by regular assessment, responsive planning, and sound measurements.
- *Effective provider support services* designed to promote providers' knowledge, motivation, compliance, and accountability; the services emphasize compliance-related technical assistance and workforce development.
- *Communication and collaboration systems that maintain coordination with the agency's many stakeholders;* agency performance/activity reports and facility compliance reports are web-available. One goal of the communication and collaboration function is to promote an understanding of the ways in which licensing requirements and their enforcement are the foundation for the community of stakeholders' strivings toward quality supports for optimal development during the powerful window-of-opportunity available in children's early years.
- *Direct linkages to legal counsel and well-defined systems of administrative appeals* that protect the rights of licensees and care-consumers.

AN EXPANDED EXAMINATION OF THE LICENSING ENFORCEMENT FUNCTION

The preceding sections provided an overview of the broad principles and underpinnings of the licensing enforcement function as glimpsed through the three major components of licensing: law, regulatory requirements, and agency administration. Enforcement, however, needs a fuller treatment. Essentially, enforcement is what makes the protection that society promises vulnerable people real and viable. It threads through the entire fabric of a licensing program yet is often the least understood function in licensing, which is, itself, a little-understood governmental responsibility.

Consequently, licensing enforcement is sometimes not only irrationally feared by providers and lawmakers but also resisted – often unconsciously – by some licensors, who typically come from “helping professions” rather than “law enforcement” backgrounds. Moreover, the very nature of human care licensing leads to a logical preference for positive enforcement; that is, achieving compliance through teaching and technical assistance. Experience shows that most providers *want* to “do right by children,” even those who prove not to have the essential skills and resources to be entrusted with their care.

Licensors also know that being able to help providers start and maintain a quality childcare program is a win-win:

- For children and families;
- For providers who get the benefit of considerable coaching and assistance to succeed – and with reduced liability exposure;
- For the economy that gets the benefit of a new business;
- For employers of working parents;
- For schools and other social services that will need to do less remediation as children emerge strong and capable; and,
- For the future economy when those children apply success-directed capabilities, attitudes and skills they developed in their early learning years.

By way of review, this is the broad sketch of enforcement incorporated in the three components:

- *Enforcement begins with Constitutional and statutory law.* There, the rights of citizens and property owners are established, as are the responsibilities and powers vested in a governmental (regulatory) agency to ensure that the legitimate interests of other affected people are also protected. The law also provides licensees with due process and appeal rights in the agency's exercise of regulatory authority.
- *The theme of enforcement (to balance, clarify, and find nexus in those potentially conflicted private/public and consumer/provider interests) continues in the process of establishing regulations.* To gain sufficient support for adoption, a proposed regulation must withstand debate in public hearings and reviews by the legal and administrative bodies assigned that function for the state. To be valid – and able to withstand any subsequent challenges on appeals – a regulation not only must conform to law and reason but also be enforceable in the practical sense (clear, specific, measurable, etc.).
- *Finally, the agency's methods of compliance determination and enforcement must be able to withstand any claim that it has applied a requirement improperly, unfairly, unequally, arbitrarily, etc.* This demand gives rise to many agency functions and responsibilities in such areas as staff development and performance expectations, provider assistance, consumer education, and public access to all of its information that is not specifically restricted by privacy and confidentiality laws. The agency is obliged to inform all parties of their rights and options as well as their responsibilities throughout the licensing process but especially in the event of adverse findings and resulting actions taken against a license/application.

Clearly, whatever authority a licensing agency has is carefully bounded by very familiar legal principles and ethics. Whatever it proposes to do and whatever actions it takes are open to public

scrutiny. And, any adverse action the agency takes against a license⁵ or application is subject to review and ruling by either an administrative law judge (hearing officer) or, in the case of a provider alleged to be operating illegally, a judge in a court of competent jurisdiction.

Continuing to a closer examination of the enforcement function, an agency that is adequately staffed, trained, and funded provides the infrastructure necessary to put strong, quality-directed licensing requirements in place and to appropriately enforce them (see Koch, Collins, & Azer, 2005). A number of well-integrated activities are necessary to enforce licensing requirements that protect the health, safety, and well-being of children (see NARA *Recommended Best Practices for Human Care Regulatory Agencies*, 2009, available at www.naralicensing.org). The preliminary principles and suggestions offered below focus on a subset of seven critical enforcement activities: staff education and training; workload management; enforcement management; compliance monitoring inspections; differential monitoring; provider support and technical assistance; and sanctions (see *Appendix D: Definitions of Enforcement Aspects*).

EXPANDED ENFORCEMENT PRINCIPLES AND SUGGESTIONS FOR CONSIDERATION

Staff Education and Training

1. Ensure licensing staff requirements address staff education and training, as well as knowledge and competencies necessary for licensing staff to perform the enforcement function effectively. Require of all licensors:
 - At least a Bachelor's degree education.
 - Initial and ongoing annual training according to the agency's training plan and individuals' needs-assessments. Content areas include, but are not limited to: licensing theory and practice, the needs of relevant populations in care, facility characteristics, data usage, regulatory writing, etc. Staffs have ongoing responsibility to read and be able to apply new or revised policies and procedures that may not require formal instruction. The agency provides close licensor supervision and regular opportunities for case presentations to promote consistency in methods, practices, and decision-making.
 - Specific job roles in the agency (e.g., supervisors, policy and training specialists, office support staffs, etc.) also have access to appropriately well-developed annual training services because all positions ultimately contribute to the agency's performance, including its enforcement performance.

⁵ Although the recipient of a sanction may feel personally attacked, regulatory theory is quite clear that the agency is taking adverse action against the license (or application), *not* against the licensee or applicant. The agency is assessing compliance, not "judging" the licensee as a person; the concepts of guilt or innocence are not applicable, as they would be in criminal law. This aspect of maintaining the objective/impersonal nature of the "regulatory stance" is explained more fully under the header, "Sanctions."

2. Create a culture of learning through knowledge sharing for licensing staff and licensees
 - Training services meet high standards of quality in adult education design and delivery.
 - Staff development and provider training programs are well planned, monitored and evaluated, respond to identified needs (i.e., existing and emergent), and are integrated into all agency and unit operating plans.

Workload Management

1. Establish and examine:
 - Effective staff-to-facility workload standards
 - Periodically review how the state's unique licensing situation affects key workload variables⁶ that determine the amount of time necessary to adequately monitor and enforce provider compliance with program standards and offer ample technical assistance

Example variables:

- Travel required to and from each facility
 - Number of regulated facilities and the proportion of new to established facilities
 - Number of low-compliance facilities requiring heavier monitoring/assistance and the number being prepared for major sanctions or in active appeal status
 - Number and rate of new and renewal licenses
 - Number and complexity of regulations being applied
2. Limit inspector caseloads to recommended levels if the thorough analysis mentioned above is not established and maintained.

Example: No more than 50 facilities per staff member (NACCRRRA, 2009; 2010; NARA⁷, 2010)

3. Efficient licensing inspections:

Examples:

- Use electronic licensing forms and automated technology solutions
- Use a well-developed risk-based enforcement management system that includes indicators/triggers for increased (differential) monitoring and adverse action
- Consider when the use of an inspection team may be more efficient or effective than a single inspector, such as large facilities or serious/complex complaints

⁶ NARA published a paper on workload assessment methodology, authored by Harold Gazan in 1999, and has listed additional variables in the reader version of its "Recommended Best Practices." Both documents are available at www.naralicensing.org.

⁷ In its *Recommended Best Practices*, NARA recommends that agencies use the calculation method to ensure that workloads are manageable for local conditions. Absent that data, NARA has observed that most agencies without immediately identifiable, problematic peculiarities in local characteristics can usually perform essential tasks acceptably if workloads do not exceed an average range of 50-60 facilities across the complement of inspectors.

Enforcement Management

1. Ensure that enforcement performance methods and expectations are in effect:
 - Maintain close monitoring and regular management review for high-risk cases
 - High risk cases include, but are not limited to:
 - Facilities on enforcement watch due to compliance deficits
 - Forcible closure cases operating during appeals
 - Facilities operating on substandard licenses or on settlement agreements
 - Facilities being sold or closed

2. Specify, in procedures and protocols, triggers for more frequent inspections or contacts for:
 - Facilities with significant compliance issues
 - Facilities that are in or emerging from a sanction
 - Facilities that are undergoing significant changes

Example: Changes in management, structure, or other changes in the business environment, including changes in the care population that could logically destabilize facility operations or portend adverse effects on consumer care

3. Regularly update policies and procedures resources for consistent application and enforcement of the requirements.

4. Establish for each set of licensing requirements, and train/require staff to refer to interpretive guidelines, that clearly state:
 - Intent of each requirement
 - Method to assess compliance with the requirement
 - Threshold of compliance, used to determine whether to cite the facility as *non-compliant*
 - Revise or reinforce the process with:
 - Up-dates as new or altered interpretative guidance is developed, for example, in response to experience with requirements or as new products or methods come on the care scene and raise questions about the applicability of, or options to comply with, a requirement
 - Peer review and presentation of cases
 - Reviews of compliance data for logic and consistency

COMPLIANCE MONITORING INSPECTIONS

Recognize that licensure, monitoring inspections, and enforcement are the most effective ways state licensing programs can ensure children's safety and well-being in licensed child care settings.

1. Frequently monitor programs for compliance with program standards:
 - NACCRRRA recommends at least four times per year including health, safety, and fire departments (NACCRRRA, 2009; 2010a; 2010b)
 - NARA recommends at least two licensing specific inspections per year (not including inspections by other agencies), with provision for not less than one per year for high compliance facilities if the agency uses an effective differential (risk-based) monitoring system, (NARA Best Practices, 2009)

Example: Agency makes more frequent inspections than would otherwise be required when licensees have problems complying with licensing program standards

- Include unannounced visits
- Ensure licensing decisions and actions are timely, fair, objective, thorough, and recognizably consistent from person to person, and from office to office
- Develop and use available tools that will promote consistency without leading to inflexibility and rigidity that can arise when consistency is confused with uniformity, however.

Example: The agency should have authority to grant stipulated variances to its regulations (or outright waivers, although these should be used even more rarely). Many compliance complications providers experience can be addressed with creative technical assistance. If not, the agency should have a carefully designed process to receive and evaluate a facility's request to meet the *intent* of the requirement by alternative means, subject to the sole approval of the agency director. If used, the agency must establish a data system to track granted deviations to evaluate such variables as consistency, results, need (including changes in the conditions that prompted granting the variance), etc. Well-designed and carefully managed flexibility can be necessary to respond to unique conditions. Supplying conscientious, consistent responses can help to dispel the myths about regulatory rigidity and its ill effects on consumers and businesses.

- Regularly examine and improve review and inspection tools and protocols
- To examine and improve consistency, develop a structured case review system with a mix of methods and reviewers; for example, supervisor, peers in same and different offices, and a mix of case and inspection types (e.g., new facility, regular monitoring, complaint response, etc.)

2. Increase communication with parents and with providers:
 - Make inspection and complaint reports available online (NACCRRRA, 2009a; 2010a); also post parent-focused information about the licensing process
 - Hold regular provider meetings (e.g., 2-4 annually) with time for open dialogue as well as short training or information sessions

3. Consider Differential (Risk-Based) Monitoring methods; use data to:
 - Examine associations between and among specific program requirements, violations, compliance histories and relative risk for licensed facilities, then tailor the scope or frequency of inspections for greater attention to those requirements and facilities. It requires extensive analysis of facility characteristics/profiles to develop a suitable method. The agency must avoid methods that cannot be fully defended as justified and unbiased – and would be well-advised to request a review of its intended policy by legal staff.
 - Perform ongoing assessment of the results not only to identify needed refinements but also because of the inherent risks in this method. The truism “what gets checked is what gets done” applies – and experience shows that many facilities slip into serious non-compliance without the regular reinforcement of inspections and associated coaching. A sound and creative design may overcome some of the inherent pitfalls, but continued evaluation of results is essential.

4. Provider Support and Technical Assistance – Give providers the technical assistance and support necessary to help them understand and meet licensing requirements but in ways that avoid creating dependency on the inspector to find problems or solutions:
 - Share information about child care safety and health, quality, and child development.
 - Connect them with local resources.
 - Monitor their facilities to help make sure they are meeting state licensing requirements.
 - Follow up promptly if the agency gets complaints about licensed facilities and work with them to create plans to come into sustained compliance if the complaint is founded.
 - Be available for their questions.
 - Take action to ensure children are in a safe and healthy environment in accordance with respective state laws and requirements, including those administered by other agencies (see <http://www.del.wa.gov/publications/licensing/docs/ProviderHandbook.pdf>)
 - Provide access to information about other state- and locally-funded and administered programs that support child care facilities.

Example: Licensors can help providers understand why it is necessary to replace, refurbish, or remove window cord blinds (a child entanglement and strangulation hazard), how to do so, and where to get necessary supplies (see http://www.del.wa.gov/publications/licensing/docs/WindowCoverings_QandA.pdf).

Example: Licensors may direct providers to phone numbers, meetings, brochures, and websites about how to access grants to help offset costs of quality improvements such as, but not limited to, child care playground equipment, furniture, and reading materials (e.g., see http://ncchildcare.dhhs.state.nc.us/providers/pv_providres.asp or www.ncsmartstart.org).

SANCTIONS

A license is a covenant between the licensee and the state (representing the people's interests), and both parties are legally and ethically obliged to keep their bargains, commitments, and promises. It is incorrect to view a sanction as "punishment" or as an accusation that the sanctioned provider is a "bad" or "guilty" person. A sanction is simply one of two things: either an action to try to restore (enforce) the terms of the original bargain or an action to terminate a bargain that was not fulfilled.

Inherent in the agency's authority to issue a license is its responsibility to monitor programs to ensure that sanctions are:

- Issued when compliance is not maintained
- Selected according to a systematic risk-assessment model

[Note: The agency is also responsible for managing a process to investigate and suppress illegal operations. Suppression is not a regulatory sanction. It is enforcement of the licensing law, not the regulations. However, for reasons of convenience and expertise, the function is typically assigned to the licensing agency rather than to local law enforcement. Unlike sanctions, suppression cases go directly before a court without an administrative hearing. The sole issue is that the agency has found the facility subject to licensure but operating without a license; the quality of care being offered is not being adjudicated.]

As permitted within statutory provisions and as governed by agency policies, the agency should establish a structured continuum of enforcement to position its use of sanctions (sometimes referred to as a "progressive enforcement system"). The continuum consists of three levels: prevention, intermediate sanctions, and forcible closure sanctions.

Teaching-based, prevention-focused enforcement strategies typically are not viewed as sanctions but instead as (non-appealable) requirements adopted by the agency in its procedural regulations; that is, the licensee need only be generally informed of the agency's rules and operational practices. Some examples are:

- Require posting of all inspection reports and sanction notifications in the facility where current consumers and personnel can readily see them. (This is in addition to cumulatively posting the same or similar information on the Internet.)
- Require applicants or new licensees to take training offered by the agency or to undertake self-study of requirements, with agency confirmation of correct understanding.
- Inspect new facilities frequently and allow more on-site time for technical assistance.
- Require licensee to acknowledge receipt of violation reports and to submit a specific corrective action plan for all but very minor lapses that are easily corrected (often while the inspector is on-site) and that are not indicative of a systemic weakness.
- Use the process to teach the provider to see and address precursor conditions, patterns, and causal relationships in violations as well as to emphasize management accountability.
- Teach the cause-targeted corrective action planning method to prevent recurrence of same or similar violations.

Intermediate sanctions aimed at motivation or deterrence are usually appealable, although the statute may leave the agency sole-discretion in some matters (for example, type/duration of license to issue) or specify an internal-only review if incorporated in a procedural regulation (usually concluded by an agency head decision after prior review by personnel not involved in the original decision). In general, and even if not directly required by the statute, the agency should offer licensees the essence of the legal “right to be heard” in order to access a remedy that is within the administrative agency’s authority to grant, for example, a supervisory review of a finding the licensee disputes. This is both proper within administrative law and is an important demonstration of the agency’s commitment to such fundamental democratic values as fairness, objectivity, and the right to due process. Some tools to consider are:

- A risk-based system or method to guide selection from the available array of intermediate sanctions according to the extent of risk inherent in violating a given requirement.
- A point-system for violations that ties to ranges in monetary penalties, based at least in part on a theory of negating fiscal gains from allowing conditions that underlie violations, such as insufficient or insufficiently trained personnel or dangerously outworn equipment. The system should include a point-range where the risk-level is unacceptable and only termination of the license is considered. (Violation risks can be point-weighted along such variables as severity, speed-to-impact, numbers of children impacted, whether violations are narrowly focused or so widespread as to suggest management breakdown, pattern of repetition, inability to sustain compliance, etc.)
- Another intermediate option might be issuance of a provisional/probationary status license; that is, a short-term “impaired status” license that will be followed by termination unless the facility qualifies for a regular license. This gives notice to the provider and customers that conditions are unsatisfactory and, absent prompt correction, forcible closure action will soon follow. (Depending on the law, a provisional/probationary license, per se, might not be appealable (if issued when a

regular license is expiring, or might only qualify for a truncated administrative review/appeal of particular violations.)

- A temporary reduction in capacity until a serious condition is remedied if doing so would reduce risk to an acceptable level while the operator pursues full correction)

Forcible closure sanctions are always subject to formal appeal provisions because the licensee has acquired, and is threatened with loss of, a property right represented in the license. The sanctions do, however, include some gradations that the agency may consider in light of the level of risk and the time normally required to execute them. (Recall that the suppression of illegal operations is not a sanction.)

- The agency may refuse renewal of an expiring license
- The agency may revoke a license during its effective dates.
- The agency may seek an emergency suspension/closure action, which will require access to an expedited process for any appeal of the requested suspension as well as the permanent closure case that would follow. The agency must be prepared to prove that the risk to children is both very high and imminent, such that it would be imprudent to allow the facility to remain in operation during a normal appeal process.

[Note: In the course of forcible closure actions, the licensee may offer a “settlement agreement” in lieu of closure. The agency (usually through its attorney) may (but is not obliged to) entertain the offer, to negotiate more acceptable conditions, or to accept an offer. The agency must evaluate the immediacy of risk to children as well as the capability and sincerity of the licensee in deciding whether to accept or to decline. Settlement agreements normally connote some degree of acknowledgment by the licensee of serious non-compliance and commit the licensee to strong efforts to achieve full compliance quickly; that is, settlement agreements often go well beyond what is ordinarily required in the regulations. They also commit the agency to follow up with close oversight of performance and additional inspections to confirm sustained success.]

SOME CAUTIONARY NOTES ON PROGRESSIVE ENFORCEMENT SYSTEMS

- The agency must ensure that both licensees and licensors fully understand that the use of a continuum of progressively severe responses does not commit the agency to use them step-wise. A single incident may give evidence of a failure in judgment and responsibility so egregious that the agency cannot responsibly consider intermediate sanctions. A licensing agency has both the right and the responsibility to move directly to forcible closure action when providers are unable or unwilling to comply with requirements designed to protect the health, safety, and developmental well-being of children.

- Similarly, the system must be designed (and communicated) as a way to structure the process for more consistent exercise of professional judgment and decision-making at the organizational level. However, it is not intended, nor is it feasible, to try to replace professional judgment with a rigid formula. For example, if violations are weighted to determine amounts for fiscal sanctions, point-ranges should tie to penalty-brackets. This will increase decision-consistency and transparency while also allowing the decision-makers some (narrowed) latitude to take into account the different case circumstances typically found in real-life cases: history, attitudes, patterns, contributing circumstances, etc.

CONCLUSIONS

This paper recognizes strong licensing programs as offering one of the more critical and strategic sets of legally enforceable child care program requirements states have to adequately protect and nurture a significant number of young children while promoting their optimal development in out-of-home care. Converging events have posed dramatic challenges and opportunities that have not been conceptualized or addressed adequately at either national or state levels. With respect to child care regulatory practices, some key forces in motion are:

- Rapid growth in the demand for child care as maternal employment surged.
- An undetermined number of children in care that is either unregulated or is regulated by a method even less robust and reliable than licensure.
- Few states staffed or otherwise empowered to promulgate and enforce strong licensing requirements.
- Expanded knowledge, not yet fully applied, from accelerated research in brain development. Particularly relevant are findings related to the influence of adult interaction during the first five years and, specifically, the strong link between early brain development and readiness to succeed in school and in later life. Repeated findings are that the quality of children's child care experiences is generally well below that needed for school-readiness and optimal development.

Parents need to know that they can rely on state licensing programs to monitor and enforce quality child care that is licensed to protect their young children while promoting their learning and development, particularly for the many young children in out-of-home child care settings before entering kindergarten. However, the lack of specific federal program requirements or guidelines for child care quality compliance, combined with the enforcement challenges state licensing programs currently face, results in considerable variation and deficits across states.

Clear guidance is offered here for states' consideration of how to improve the quality of their program requirements and enforcement for licensed child care. The principles presented suggest that

states use a multi-faceted approach to establish effective licensing programs with strong program quality requirements and strong enforcement. The principles and suggestions presented are based on research, recommended practices, and current examples of what is working well in state licensing programs. These principles should serve as a resource to states as they seek to examine and narrow the gap between existing mandatory program requirements and higher quality but voluntary program standards, such as state early learning standards and quality rating systems, throughout ECE systems. Specifically, states will be able to identify strengths, weaknesses, and inconsistencies within their licensing programs. In addition, this work should help policy makers and licensing administrators consider licensing program requirements and enforcement principles that can guide child care regulatory operations in a systematic manner, rather than investing in a collection of incremental initiatives that further fragment and weaken attempts to improve the overall quality of early learning experiences for children.

The hope is that these principles will be used to help review, revise, promulgate, and enforce an integrated set of model regulatory policies and practices that aim to boost the quality of children's health, safety, and development throughout their early learning experiences in licensed care.

Moreover, arguments presented in this paper support a vision of effective licensing programs, buttressed by increased administrative and financial support, that are capable of implementing stronger licensing requirements and enforcement. If the nation stops short of that vision, it will not adequately protect and promote the development of the children who embody all our national hopes of achievement and leadership required for the demanding future that will soon pass into their hands.

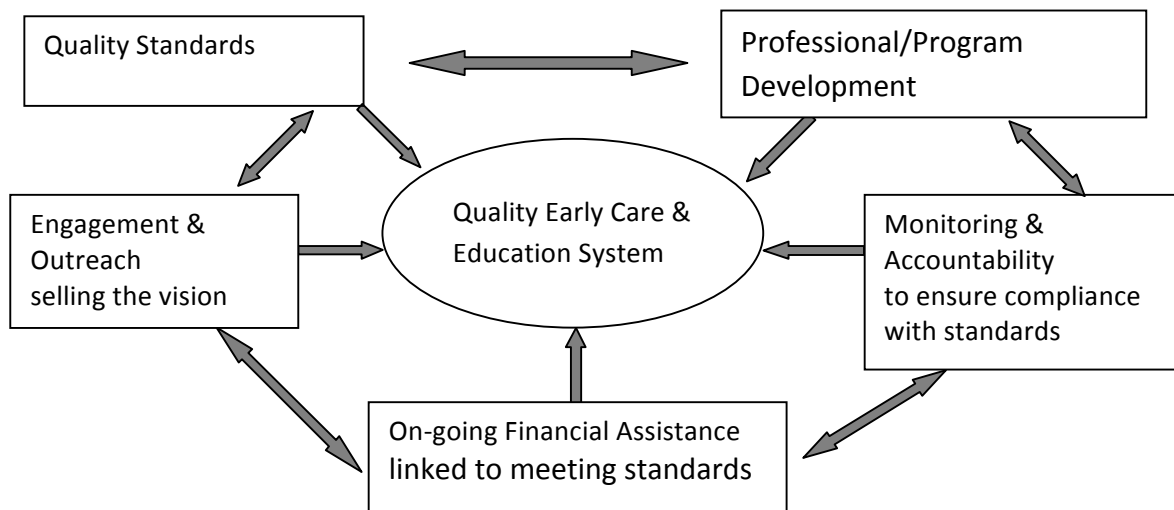
APPENDICES

APPENDIX A: EARLY CARE AND EDUCATION SYSTEMS DEVELOPMENT

One significant early learning policy question that state leaders continue to grapple with is how best to “move the needle” on increasing the quality of care, especially for the most vulnerable children, while leveraging federal and state dollars to make a measurable impact on child outcomes – and to do so before they reach kindergarten. While considering how best to create a menu of services including policy mandates as well as policy incentives, several states have taken a systems approach to tackle this issue, and many have relied upon Mitchell and Stoney’s “Alliance model” of a quality early care and education system (2005). The model includes many inter-related pieces necessary to strengthen the entire ECE system. Specifically, states have used this approach as a guide to help them align existing subsystems and to identify gaps in funding and services.

All of the pieces of the model are, of course essential to building a quality ECE system.

Figure 1: QUALITY EARLY CARE AND EDUCATION SYSTEM



Adapted from Mitchell & Stoney, 2005; Alliance for Early Childhood Finance: A Model Early Care and Education System Design

Two state examples using components within the Alliance model to improve their ECE system quality are Pennsylvania and North Carolina. To guide its work on early childhood system reform, the Pennsylvania BUILD initiative used the Alliance model. The team began by detailing each of the pieces of the model: Quality Standards; Professional/Program Development; Monitoring and Accountability; Financial Assistance; and Engagement and Outreach. For the Quality Standards piece, they outlined all of the program and practitioner standards that were used by any part of the early care and education system in any part of the state. They followed the same process for each of the

remaining pieces of the model, identifying each subsystem throughout (e.g., Professional/Program Development; Monitoring and Accountability; etc). In addition, when identifying all forms of financial assistance, the team also included information regarding whether that assistance was explicitly linked to compliance with quality program standards (e.g., licensing). The team followed this exercise by working on how they would implement a coordinated, quality ECE system, ensuring alignment within each piece of the model. One example is their latest approach to Professional/Program Development, “Keys to Quality,” which is purposely linked to the Pennsylvania quality rating system (Keystone Stars) (Mitchell & Stoney, 2005). These are, of course, inextricably tied to child care licensing program standards, which also underwent improvements.

Since 2006, Pennsylvania (PA) has strengthened its Quality Standards – and this intentionally includes its licensing program standards and oversight. By creating a diverse and inclusive workgroup of stakeholders, (e.g., providers, parents, advocates, contractors) and agency partners (e.g., other Commonwealth agencies as well as staff within the Department of Public Welfare) and working with legislative committees throughout the development process, Pennsylvania was able to successfully amend regulations for child care centers, group child care homes, and family child care homes in 2008. In addition, state administrators worked hard to ensure thorough communication and support about new policy mandates with its partners across the early care and education system who typically implement policy incentives including training, technical assistance, the subsidy program, provider organizations and professional development. For example, three critical partners in reinforcing quality licensing program standards are the Pennsylvania Key, that facilitates professional development opportunities and a variety of services for child care providers, Regional Keys that oversee the Keystone STARS quality program (Pennsylvania’s Quality Rating System), and Child Care Information Service Agencies that communicate with providers who participate in the child care subsidy program and provider organizations (personal communication with Jennifer Lau, State of Pennsylvania, July 6, 2010). Pennsylvania’s system reform work has resulted in an innovative mix of policy mandates as well as policy incentives that have increased its overall quality in licensing (NACCRRRA 2007 and 2009; NARA & NCCIC, 2009) as well as throughout its early care and education system (Bruner & Wright, 2009).

North Carolina used the model to design its system and subsequently evaluated the effects of its Professional/Program Development and Financial Assistance mechanisms to ensure they were adequately supporting child care programs striving to improve their licensing quality through participation in the improved quality system. In North Carolina, these Support functions are referred to as “Smart Start activities.” Smart Start activities include enhanced subsidies for higher child care quality or higher teacher education; license upgrades; technical assistance; quality improvement and facility grants; teacher education scholarships; and teacher salary supplements. Researchers found that the quality of licensed child care significantly increased from 1994 to 1999. In fact, twice as many centers in 1999 compared to 1994 scored in the “good to excellent” quality range. Not surprisingly the number of teachers (i.e., caregivers) participating in programs to obtain more education increased as well as the number of teachers having some college coursework. In addition,

the percentage of centers licensed at higher levels and the percentage of nationally accredited centers increased. Another important finding was that tiered reimbursement levels were positively related to participation in Smart Start. That is, the greater a program's participation in Smart Start support activities, the greater financial reimbursement they received for providing care for low-income children who receive subsidies. Finally, median teacher turnover remained steady at 17-20 percent, and group sizes and teacher-child ratios have remained fairly constant. An unexpected finding was that extensive previous participation in Smart Start did not guarantee that a center's current quality was high (GAO-02-897). Smart Start activities in North Carolina were largely successful at increasing overall child care quality in participating programs but ongoing systemic support was necessary to sustain increased quality. Through its innovative approach, not only has North Carolina improved the quality of care—and especially licensed care for children who receive subsidies— but it also has created an awareness of quality among parents, likely increasing the demand for such quality as well.

Overall, states such as Pennsylvania and North Carolina have used this model as a guide to help them examine each piece of their ECE system. Upon doing so, they were able to successfully improve segments of the system while integrating such pieces in a way that is strengthening the quality of their early care and education systems as a whole.

APPENDIX B: EXAMINING EXISTING PROGRAM REQUIREMENTS

One thing all states must do is create and enforce licensing requirements as the threshold of essential quality that each of their licensed programs must meet. States, and even cities, can successfully accomplish this task by asking how far away the quality of their existing licensing program standards and enforcement are from recommended best practices or “how good is good enough?” Once states have successfully answered these questions, they can then take action to narrow the gap between what they currently have in place what they need to put into place to protect and promote the development of children in quality child care settings that are licensed.

In-Depth Case Study: New York City. On a large-scale local level, New York City recently asked itself a set of similar questions. Largely due to accidents and child deaths, negative press, and pressure from families, new State and City laws were designed to protect children in care (Citizens Committee for Children of New York, CCC, 2004). In a report examining the monitoring and oversight of programs in New York City, Citizens Committee for Children of New York convened a Taskforce on the Quality Oversight of Child Care (i.e., Taskforce). The CCC Taskforce developed a questionnaire and asked center-based and family child care providers about their experiences with their local child care licensing agency. Seven areas were of key interest: licensing and oversight, staff screening, staff recruitment, qualifications and training, child health, facilities, and materials. In particular, the Taskforce was interested in health and safety regulations, provider experiences with compliance, the nature and availability of the local licensing agency’s technical assistance, provider and staff access to training and professional development activities, and whether additional provider support was necessary. The goal of the Taskforce was to make recommendations about how agencies in cities and states across the nation can strengthen the ability of licensed child care center and family child care home providers to offer quality child care (CCC, 2004).

The CCC’s study showed that providers reported inspections that were often delayed, and programs often operated with expired licenses while waiting for required paperwork and/or inspections. On a program level, providers reported that monitoring visits were inconsistent in terms of what individual licensors inspected but that each visit was thorough. Family child care providers reported that licensing visits often left them confused about licensors’ interpretations of child care program standards, and these same providers requested increased access to information and technical assistance to clarify these discrepancies. When it came to training, the study found that existing providers and staff had actually acquired more than the minimum level of mandatory training and wanted additional professional opportunities. Notably, however, providers expressed concern about whether they could afford to support staff (or themselves) with additional training opportunities due to costs, as difficulty recruiting and retaining qualified staff was a common theme. Child care center providers and staff consistently reported that a lack of funds presented challenges across a number of areas, including the ability to afford necessary materials and repairs. Finally, information technology was a concern as the City licensing agency’s outdated database of programs and providers risked putting additional strain on program funding. To this end, family child care providers reported being

worried about delayed payments from the City for child care provided to children who receive child care subsidies, and also about the provider's own eligibility to receive federal subsidies via the Child and Adult Care Food Program (CACFP) (CCC, 2004).

These findings suggested the need to strengthen oversight and technical assistance provided by the City's licensing agency. Specifically, recommendations to strengthen the Bureau of Day Care's infrastructure included recommendations to hire additional staff (i.e., reduce number of cases per licensor) and to use existing staff in better, more efficient ways. Implementing these recommended changes should enable the licensing agency to conduct timely inspections, keep registrations and licenses current, and provide technical assistance as necessary. Further, CCC recommended that the agency develop a time-sensitive, comprehensive quality improvement plan to improve the oversight and monitoring of child care programs, including elements associated with enforcement performance management, work process improvement and a staffing plan to successfully implement mandates specified in the most recent law, the Quality Child Care and Protection Act. Improved coordination within and between government agencies is also necessary to better execute shared monitoring responsibilities across multiple agencies. Finally, financing impacting child care quality must be accomplished through systemic investments at City and State levels, as results of an underfunded system (i.e., low wages and high staff turnover) have a negative impact on child care quality in New York City (CCC, 2004).

Studies such as this underscore the importance of strong child care regulations—including oversight and monitoring—to ensure child care quality in out of home settings. In sum, by equipping licensing programs with the administrative and financial support they need to be effective, states—and even cities—are beginning to significantly improve the strength and quality of their child care licensing program standards and enforcement.

APPENDIX C: STATE STRATEGIES FOR IMPROVING LICENSING POLICIES AND PRACTICES

Despite challenges states may face while trying to promulgate, implement, and enforce quality licensing program standards, a number of states have used innovative methods to successfully augment their regulatory processes in an effort to strengthen their program standards and enforcement practices, elevating the overall quality of their ECE systems. Leveraging the participatory APA process (previously described in this section) to include methods such as the use of data-based projected impacts, consensus-based approaches, and intentional communication with partners are proving to be successful strategies for proposing and promulgating rules governing strong licensing program standards. At the same time, using phased-in time frames and, at times, grandfathering approaches appear to make approval of proposed program standards and their subsequent implementation successful. Methods to successfully monitor and enforce such strong program standards include differential monitoring (e.g., use of risk assessment tools), as well as obtaining legal authority to exercise a wider variety of progressive adverse enforcement actions.

Although not every state using such methods necessarily ranks in the current “top 10” in the nation for its overall ratings in licensing requirements and oversight of either child care center or family child care homes, some states are near the top of the list and other states also have been working hard to notably improve their overall policy and practice score ratings, steadily increasing the quality of child care they license as a result (see NACCRRRA, 2007; 2008; 2009; 2010). For example, states such as New Jersey, Pennsylvania, Tennessee, and Washington have used a variety of effective techniques to bolster their licensing programs over the past few years, whether for one specific type of licensed care, a combination of care types, or all licensed care. In addition, the state of California is currently proposing significant improvements to its licensing program standards and enforcement practices for all licensed child care facilities. The state of Ohio has also recently recognized the need to strengthen its regulatory system as the foundation upon which to continue building its Bureau of Child Care and Development programs that support licensed child care quality and school readiness, and plans to do so by strengthening licensing enforcement standards and practices, as well as by increasing communication with providers and with parents.

STATE STRATEGIES TO STRENGTHEN LICENSING REQUIREMENTS AND ENFORCEMENT

Note – In the examples that follow, states received a zero from NACCRRRA because they do not inspect or visit family child care homes prior to issuing a license. The score these states otherwise would have received, if applicable, is listed below the zero.

State	Policy strategies	Practice strategies																		
<p>New Jersey</p> <p>Overall NACCRRRA ratings & rankings:</p> <p>Child Care Center</p> <table data-bbox="162 625 495 808"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2007</td> <td>50%</td> <td>22</td> </tr> <tr> <td>2009</td> <td>57%</td> <td>28</td> </tr> </tbody> </table> <p>Family Child Care *</p> <table data-bbox="162 982 495 1234"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>0%</td> <td>52</td> </tr> <tr> <td>2010</td> <td>0%</td> <td>52</td> </tr> </tbody> </table> <p>Note: voluntary licensing only</p>		Rating	Ranking	2007	50%	22	2009	57%	28		Rating	Ranking	2008	0%	52	2010	0%	52	<ul style="list-style-type: none"> • Provider surveys to create data-based, estimated projected cost impacts • Statewide presentations & technical assistance workshops before adoption & after implementation of newly adopted regulations 	<ul style="list-style-type: none"> • Communication with providers about changes & effective dates prior to implementation
	Rating	Ranking																		
2007	50%	22																		
2009	57%	28																		
	Rating	Ranking																		
2008	0%	52																		
2010	0%	52																		

State	Policy Strategies	Practice Strategies																		
<p>Washington</p> <p>Overall NACCRRRA ratings & rankings:</p> <p>Child Care Center</p> <table data-bbox="162 556 495 808"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2007</td> <td>59%</td> <td>4</td> </tr> <tr> <td>2009</td> <td>65%</td> <td>9</td> </tr> </tbody> </table> <p>Family Child Care</p> <table data-bbox="162 976 495 1228"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>74%</td> <td>2</td> </tr> <tr> <td>2010</td> <td>74%</td> <td>3</td> </tr> </tbody> </table>		Rating	Ranking	2007	59%	4	2009	65%	9		Rating	Ranking	2008	74%	2	2010	74%	3	<ul style="list-style-type: none"> • Consensus-based, partnership approach (i.e., via Negotiated Rule Making) to formulate proposed program standards prior to adoption; use of facilitator • Selection of mainly low- or no-cost program standards to amend 	<ul style="list-style-type: none"> • Written communication, interpretive guide & training to increase consistency of licensor & provider interpretation of regulations • Electronic licensing forms to increase licensing efficiencies
	Rating	Ranking																		
2007	59%	4																		
2009	65%	9																		
	Rating	Ranking																		
2008	74%	2																		
2010	74%	3																		

Washington is finalizing its proposed, consensus-based regulations. As of July 2010 these have not yet been implemented.

State	Policy Strategies	Practice Strategies																		
<p>Tennessee</p> <p>Overall NACCRRA ratings & rankings:</p> <p>Child Care Center</p> <table data-bbox="162 546 503 672"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2007</td> <td>55%</td> <td>7</td> </tr> <tr> <td>2009</td> <td>71%</td> <td>3</td> </tr> </tbody> </table> <p>Family Child Care</p> <table data-bbox="162 966 503 1239"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>34%</td> <td>23</td> </tr> <tr> <td>2010</td> <td>43%</td> <td>14</td> </tr> </tbody> </table>		Rating	Ranking	2007	55%	7	2009	71%	3		Rating	Ranking	2008	34%	23	2010	43%	14	<ul style="list-style-type: none"> • Consensus-based, partnership approach to formulate proposed program standards prior to adoption 	<ul style="list-style-type: none"> • Increased frequency of monitoring visits • Intensive, ongoing training for staff, providers, & partners to increase consistency of understanding & implementation • Differential monitoring • Case review (e.g., quality improvement) process • Bonus payments for compliance with increased quality • Phased-in implementation for cost-incurring, increased quality program standards • Technical assistance for providers to generate low- or no-cost compliance solutions
	Rating	Ranking																		
2007	55%	7																		
2009	71%	3																		
	Rating	Ranking																		
2008	34%	23																		
2010	43%	14																		

State	Policy Strategies	Practice Strategies																		
<p>Pennsylvania</p> <p>Overall NACCRRRA ratings & rankings:</p> <p>Child Care Center</p> <table data-bbox="162 693 503 945"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2007</td> <td>53%</td> <td>15</td> </tr> <tr> <td>2009</td> <td>61%</td> <td>16</td> </tr> </tbody> </table> <p>Family Child Care</p> <table data-bbox="162 1113 503 1470"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>0% (27)</td> <td>45</td> </tr> <tr> <td>2010</td> <td>0% (25)</td> <td>42</td> </tr> </tbody> </table>		Rating	Ranking	2007	53%	15	2009	61%	16		Rating	Ranking	2008	0% (27)	45	2010	0% (25)	42	<ul style="list-style-type: none"> • Consensus-based, partnership approach to formulate proposed program standards prior to adoption • Intentional, ongoing communication with legislative committees regarding intentions • Selection of low- or no-cost program standards to amend 	<ul style="list-style-type: none"> • Grandfathering provisions & phased-in approaches to minimize cost impact • Data-based list serves to electronically communicate with all providers
	Rating	Ranking																		
2007	53%	15																		
2009	61%	16																		
	Rating	Ranking																		
2008	0% (27)	45																		
2010	0% (25)	42																		

State	Policy Strategies	Practice Strategies																		
<p>California</p> <p>Overall NACCRRRA ratings & rankings:</p> <p>Child Care Center</p> <table data-bbox="162 693 503 945"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2007</td> <td>36%</td> <td>47</td> </tr> <tr> <td>2009</td> <td>41%</td> <td>48</td> </tr> </tbody> </table> <p>Family Child Care</p> <table data-bbox="162 1113 503 1365"> <thead> <tr> <th></th> <th>Rating</th> <th>Ranking</th> </tr> </thead> <tbody> <tr> <td>2008</td> <td>42%</td> <td>15</td> </tr> <tr> <td>2010</td> <td>37%</td> <td>23</td> </tr> </tbody> </table>		Rating	Ranking	2007	36%	47	2009	41%	48		Rating	Ranking	2008	42%	15	2010	37%	23	<ul style="list-style-type: none"> Development of more efficient inspections: Licensing Indicator System, “Health & Safety Compliance Review” tools & practices 	<ul style="list-style-type: none"> Differential monitoring Increased frequency of monitoring (i.e., compliance) inspections
	Rating	Ranking																		
2007	36%	47																		
2009	41%	48																		
	Rating	Ranking																		
2008	42%	15																		
2010	37%	23																		

California is proposing these strategies for adoption and approval by the state legislature; June 2010.

WHAT IS WORKING? QUESTIONS FOR EXEMPLARY STATE STRATEGIES

To better understand what is working for these states and the specific policy and practice strategies they used to strengthen their licensing program requirements and/or enforcement, NARA recently reached out to a number of state licensing administrators included in this sub-sample of states using such exemplary strategies.

State administrators were contacted by telephone and/or email in June of 2010 and sent a set of 10 questions addressing three overarching, licensing focus areas: policy, enforcement, and costs.

Answers pertained to: a specific set of licensed programs (e.g., only child care centers); a combination of programs (e.g., child care centers and small family child care homes); or all licensed facilities (e.g., child care centers, family child care homes, and group homes). Licensing and/or quality improvement staff and administrators used the questionnaire to share their perspectives about what is working for them in their states and why. The items included in the questionnaire follow:

Policy

- What are the incremental steps you have taken to strengthen your licensing program standards (rules, requirements, regulations) and any other applicable policies? How did you do it?
- What are the lessons that you learned?
- What, if anything, do you wish you had done differently?
- Which aspects of the licensing system were the most difficult to change? Why?
- Which aspects of the licensing system were the most difficult to get up to speed/up to scale (statewide)? Why?

Enforcement

- What are some ideas to approach oversight aspect of these program standards? That is, how will you (or have you) implemented these new, stronger program requirements?
- Is your implementation of these new, stronger program regulations different than it was before you were able to strengthen them? If so, how?
- Are you using a unique approach, such as a “risk assessment strategy” (or differential monitoring) to enforce these program requirements?
- If so, what does that look like in your state?

Cost

- Certain structural program requirements, such as teacher-child ratio and group size, are typically considered “high cost drivers” for providers. If you strengthened any program requirements with projected cost impacts, how were you able to do this?
- Did your program requirements and enforcement improvement include any low-cost or no-cost strategies?
- If so, what were these and how did you implement them?

New Jersey

New Jersey’s Department of Children and Families, Office of Licensing, for example, recently strengthened its licensing requirements for child care centers. To do so, the state took incremental steps including the following: soliciting and receiving recommendations from licensing staff; sending surveys to child care centers to assess their anticipated impact of the some of the proposed changes; inviting affected constituents (i.e., providers) to participate in an Ad Hoc workgroup; and conducting statewide presentations and technical assistance workshops prior to the adoption, and after implementation, of the new regulations. New Jersey learned that using this process to approach the development, proposal, and promulgation of strong licensing program requirements was successful and intends to repeat this process in the future (email communication with Gary Sefchik, State of New Jersey, June 30, 2010).

Staff in New Jersey recognized that the overall increase of more stringent requirements such as credentialed staffing and staff development for licensed child care centers was the most difficult to change due to the high rate of staff turnover within and across centers and the anticipated financial impact on them. This was also the licensing requirement that was most difficult to get up to scale statewide, and this was particularly the case as it pertained to center directors.

With regard to enforcement, New Jersey’s ideas to implement these new, stronger program requirements included notification of all licensed centers of the ensuing changes and effective dates. However, no changes were made to the way in which New Jersey approached its oversight or implementation of the new program requirements. That is, compliance violations observed during monitoring inspections were cited accordingly. The State of New Jersey does not currently use any differential monitoring techniques but inspects centers every three years at the time of the center’s renewal and conducts investigations when allegations are made about possible noncompliance with licensing requirement. (For more information, please see: www.state.nj.us/dcf/divisions/licensing/).

Strategies to adequately address improvements to program requirements that are associated with costs included the use of constituent surveys. New Jersey contacted potentially affected constituents

and asked them to provide detailed information pertaining to the staff-to-child ratios they currently had in place in their licensed child care centers. The state then compiled and examined the data and, as a result, determined the previously estimated cost impact would not be as severe as anticipated since many centers already voluntarily maintained or exceeded the proposed staff-to-child ratios prior to the proposed strong requirement being mandated. Finally, to ensure that providers would have adequate access to information and support without incurring additional and potentially unnecessary expenses, licensing staff conducted statewide presentations and technical assistance workshops prior to and after implementing the new regulations.

Washington

Washington State has been steadily working with its partners to improve licensing program requirements for family child care homes. From January of 2007 through December of 2009, the Washington State Department of Early Learning (DEL) engaged in a legislatively-mandated, consensus-based process (called a negotiated rule making process, NRM) to draft these proposed program requirements. NRM is a process intended to solicit broad input from parents, child care providers, health and safety experts, licensing staff, and other interested stakeholders (e.g., family child care union representatives; advocates) about issues that affect the health, safety, and quality of the family home child care environment. The NRM process will lead Washington to requirements that are easily understood so that both licensors and providers will have clear ideas about what is expected to successfully comply with the program requirements

(See <http://www.del.wa.gov/laws/development/negotiated.aspx>).

To proceed with the NRM process, DEL identified 30 key participants who met every six to eight weeks to complete the foundational work necessary to draft proposed regulations affecting licensed family child care homes. Each participant also was part of a sub-committee that met at least two times each month. The NRM team determined that the recommendations would be divided into 13 topic areas and also established a framework of guiding principles for the process. The framework had a child-centered focus, meaning all decisions were based on the question, “What is best for children in family home child care settings?” The sub-committees took a topic and determined which regulations were needed based upon an examination of current Washington regulations, comparisons with other states’ rules, evidence-based research, discussion, and input from subject matter experts (email communication with Robert McLellan, State of Washington, July 6, 2010).

Washington reports having learned that when taking on a new approach to rule writing, involving a consensus-based approach, participants can expect all members to bring their own experiences and individual passions to the work. To stay focused on the timelines and final product, Washington used an experienced facilitator who helped with the consensus-based process. The facilitator helped move

along discussions if and when they stalled; or redirected the group on the child-centered focus if the conversation strayed.

In terms of recommendations for how states in similar situations might do things differently, Washington would have fully prepared meeting protocol and expectations prior to the beginning of the NRM process. Building these protocols and expectations as part of the process resulted in a substantial amount of time being spent on “housekeeping” issues, which take away from the initial effectiveness and efficiency of the group in developing recommendations for the proposed requirements. To fully prepare meeting protocols, DEL would have begun the process by placing stronger emphasis on program requirements that would *not* be on the table for negotiations. Specifically, these would have included regulations that globally spanned different categories of child care licenses such as: background checks, enforcement action, and any language contained within a statute that directs specific action or compliance.

The NRM approach was a completely new rule-writing approach for Washington and, as a result, proved to be difficult. DEL used its existing rules as a resource, and decided *not* to simply rewrite and revise each one – effectively challenging the process of past rule revisions. However, given the comprehensive examinations of the program requirements that the NRM team and each sub-committee conducted, it proved to be successful in the end.

Some aspects of the NRM process proved to be more difficult than others in terms of getting up to speed. For example, defining licensed versus unlicensed space and the impact of such definitions was particularly challenging. There was also tremendous discussion on safety around bodies of water and what should be regulated. Each of these topics of discussion was enlivened due to the great impact it would have on licensed family child care providers. In addition, the discussion on bodies of water was particularly passionate because of the link between recent child deaths and bodies of water near licensed providers in Washington State.

Ideas to approach oversight aspects of these new, stronger program regulations include training, communication, and an interpretative guide. DEL will conduct intensive training for its licensors as well as its licensed family child care home providers. Following adoption of the final requirements in 2010, Washington also will communicate with providers and develop a written interpretative guide to provide a common ground for the routine interpretation of the regulations for both the licensors and the providers. DEL believes these implementation strategies will strengthen licensing practices for all parties, beyond what simply putting the regulations into effect could accomplish.

Washington currently makes use of standard approaches to enforcement, with in-depth family child care home renewals occurring every three years, and monitoring visits occurring at least every year for child care centers, and every 18 months for family child care homes. Enforcement of program requirements is based upon indicator checklists. However, Washington is currently moving toward developing and implementing licensing efficiencies through the use of electronic licensing forms. DEL is also exploring incremental implementation of non-expiring licenses, risk-based modeling, weighted

regulations, and differential enhanced monitoring. Differential enhanced monitoring is monitoring that does not drop below a minimum threshold but provides additional monitoring, technical assistance, and coaching to sites that perform below requirements identified in the risk-based model.

DEL also considered cost when revising its licensing program requirements and practices. The majority of the work completed in Washington's NRM process involved mainly cost-neutral approaches for both the family child care provider and for the state. Washington law requires an economic impact study to be completed for rules that contain "high cost" drivers. To date, some of the areas that may require such a study include: pre-service training requirements, water well testing requirements, and septic testing requirements. (*Note:* As of July, 2010, Washington is currently moving toward formal adoption of these proposed rules but has not yet completed the public hearing process).

Tennessee

Tennessee addressed policy changes to its licensing program by responding to unsafe situations that led to child deaths by changes in legislation and by incorporating best practices into its program standards for child care centers as well as small and large family child care homes (email communication with Barbara Wall, State of Tennessee, July 14, 2010). After receiving training and consultation many years ago from a NARA consultant, the late Norris Class, licensing staff began to better understand and recognize their critical role as licensors in protecting the health, safety, and well-being of children. With an explosion of the demand for child care as a result of Welfare Reform and complementary child care subsidy usage, a critical need emerged to exercise stronger and more consistent enforcement of regulations that providers needed to meet to better protect, nurture, and educate children in their care.

Massive changes to child care laws in Tennessee passed through legislation in 2000, paving the way for stronger licensing requirements and procedures. Changes brought about in that law include: the implementation of criminal background checks; rated licensing requirements and report cards; more stringent staff-to-child ratios; additional monitoring by licensing staff; more comprehensive enforcement options; required annual environment assessments; increased licensing fees; and, insurance requirements. At the same time this legislation passed, new bonus payments were offered to providers serving subsidized children, with incrementally higher bonus payments made based upon the program's quality rating (see http://tennessee.gov/humanserv/adfam/cc_main.html).

Since that time, Tennessee has used a consensus-based approach to develop, propose, and promulgate its licensing requirements. Licensing staff report that their lessons learned include the multiple benefits of including providers and other state and community partners into the process of developing licensing requirements. Bringing Tennessee providers and partners into the process not

only allows for input from their unique perspectives but also allows for joint ownership of the program requirements that will govern their businesses. The partnership approach promotes better understanding of the “why” behind the rules and their connections to the health, safety, and well-being of children. Including all partners in the promulgation of licensing rules early and in a meaningful, intensive way also benefits the state and its ability to identify problems or unintended consequences in a timely manner.

APPENDIX D: IN-DEPTH STATE EXAMPLES

Tennessee

Keys to strengthening licensing standards and practices in Tennessee included the following:

Action Steps

- Increased the number of licensing supervisors and licensing evaluators statewide
- Reduced caseload per licensing evaluator
- Increased number of required monitoring visits per year
- Developed criteria for a required licensing report card with input from providers, other government agencies, community and state partners, child advocates, child care resource and referral agencies, and licensing staff
- Promulgated new rules
- Began environmental assessment of each required child care facility (i.e., agency) annually
- Developed a statewide child care resource and referral network for providers
- Developed training for providers that was at no cost to the provider
- Increased accountability throughout the licensing process, including provider “ownership” of required standards

Lessons Learned

- Change takes time and comes about slowly
- Perseverance and repeated attempts are necessary
- Balance is required for any change affecting licensed child care. Although proposed changes are set to increase child safety (or decrease child risk) and implement best practices, costs to the provider are a significant piece of the overall equation. Balancing quality with feasibility is challenging and what is in the best interest of the child may not always be what is financially feasible for providers
- Increased number of required monitoring visits per year
- Consistent statewide implementation is very difficult
- Be prepared to be viewed as “the enforcer” as opposed to “the friend”
- Lawmakers and the lawmaking process are complex

Keys to strengthening licensing standards and practices in Tennessee included the following:

Ideas to Approach Oversight

- Conducting frequent monitoring visits is the only way to ensure on-going compliance and to take advantage of opportunities to provide technical assistance.
- Educating and training staff, partners, and providers is key. Staff and partners need to be trained to increase understanding; staff also needs to be trained to consistently interpret and enforce requirements statewide; providers need to understand the reasons for requirements and how to meet them. Intensive training is provided on an ongoing basis, not only for new providers but also as refresher courses.
- State administrator(s) develops policy and procedures for statewide implementation

- Program supervisors coordinate training and work on interpretations
- Licensing administrators and/or supervisors meet frequently with licensors to learn how implementation is going and to make suggestions for improvement (e.g., quality improvement process)

Unique Approaches to Enforce Requirements

- Scheduling monitoring visits based on variation in quality ratings is proving to be successful. Licensed providers (i.e., agencies) with higher quality ratings require fewer monitoring visits per year.
- Developing a case review (e.g., quality improvement) process for use by licensing staff, in conjunction with legal staff, will increase the state's ability to more closely examine licensed child care programs whose compliance (or lack thereof) may warrant legal enforcement action.

Strategies to strengthen standards with projected cost impacts

- Implement a bonus payment system.
- Tennessee uses a bonus payment system for certificate (i.e., assisted child care) payments. The bonus is dependent upon the star rating achieved by the licensed child care provider (i.e., agency). Provider quality ratings include licensing compliance in quality components. The bonus is in addition to child care subsidy reimbursement payments.
- Invest heavily in low- or no-cost technical assistance, training, and educational opportunities for licensed child care providers.
- Use a phased-in implementation approach for more stringent requirements.
- Tennessee used a three-year, phased-in implementation period for stronger staff-to-child ratios
- Tennessee used a long-term, phased-in approach to bring licensed programs into compliance with newly adopted transportation requirements, as these were high cost items for providers.
- Work with licensed providers to assist them in developing low- or no-cost solutions to satisfactorily comply with licensing requirements. This is usually done on an individual, case-by-case basis looking at the specific needs of an individual program.

Pennsylvania

The Commonwealth of Pennsylvania has recently taken action to strengthen its licensed child care programs as well. In 2008, the Office of Child Development and Early Learning (OCDEL) amended the child care facility regulations for child care centers, group child care homes, and family child care homes.

On a policy level, Pennsylvania used its existing process to amend these program regulations as prescribed by law. OCDEL used a consensus-based approach to develop proposed regulations. Specifically, the state formed a workgroup made up of representative stakeholders interested in child care facilities that included advocacy groups and organizations, contractors, providers, parents, other Commonwealth agencies, and their partners within the Department of Public Welfare. The stakeholder group was intimately involved in developing the content of the amendments. Staff also relied heavily upon recognized research and expertise demonstrating the benefits of adopting and

implementing (and the risks of failing to implement) particular program requirements for children's safety, health, and well-being and shared these resources with its stakeholders. Throughout this process, OCDEL briefed the staff and chairs of respective Legislative Committees about their intention to amend the regulations and provided regular updates to these committee representatives as the process continued.

Pennsylvania learned to make every effort to include and involve stakeholders early in the process. In addition, staff learned how critical communication is to working through the regulation amendment process. Prior to 2008, the language of the statute had not been changed since 1981, and previous efforts to make necessary changes were unsuccessful. This was, understandably, frustrating for many individuals; the world of child care has changed immensely since that time and reflecting such changes in an updated and strengthened statute would be invaluable to parents, children, providers, and to the state. The challenges associated with making previous changes were political in nature and often pertained to differences in legislators' perspectives regarding child care and the appropriate degree of government oversight (email communication with Jennifer Lau, State of Pennsylvania, July 6, 2010).

Licensing system changes that proved to be most difficult, even after resolving political and legislative challenges to adopt and to promulgate newly strengthened child care program standards, were those that would likely be associated with higher costs to providers. This is especially true during economic challenges in the United States. Pennsylvania consistently commits to performing thorough fiscal analyses on any proposed regulatory changes. However, even for program requirements that may incur additional costs, it is necessary to raise the argument to protect children's safety. OCDEL tries to minimize expected cost impacts to providers by using grandfathering provisions, when appropriate, and by phasing-in implementation of such changes over time.

Due to the large number of facilities in Pennsylvania (8500 total), communicating with providers about changes to licensing requirements is likely the most difficult licensing policy change to get up to scale statewide. OCDEL developed list serves and now relies heavily on electronic communication to reach its licensed child care providers. In 2008, the task of training providers about the regulation changes involved more than 30 separate sessions in various locations across Pennsylvania and proved to be a large expense for the state with regard to staff time, travel, and respective costs. However, it was an investment in establishing clear communication with providers and helping them consistently understand how new licensing program requirements would be interpreted and implemented.

Pennsylvania continues to struggle, as many states do, with the issue of regulating faith-based facilities. Recent court cases affirmed the State's right to regulate all child care facilities. However, a petition for review is before the Pennsylvania State Supreme Court regarding an argument of religious liberty in relation to its regulatory authority. It is important to note that nothing in Pennsylvania statute or regulation prohibits religious teaching in child care facilities (see <http://www.dpw.state.pa.us/About/OCDEL/>).

In terms of enforcement, Pennsylvania believes that communication is key to enforcing program regulations. Providers must know about the regulation, and what it entails, to be able to comply with it. OCDEL uses a variety of means to communicate about the implementation and enforcement of program requirements. These include: training for providers; ongoing communication via list serves and newsletters; technical assistance provided by OCDEL staff when conducting inspections; and, required pre-operation orientation training for persons opening child care facilities (all types). In addition, Pennsylvania leverages its relationships with partners by making each of them aware of this same information so they can reinforce it with affected constituents as well. For example, partners typically include: the Pennsylvania Key that facilitates professional development opportunities and a variety of services for child care providers; Regional Keys that oversee the Keystone STARS quality program; Child Care Information Service Agencies that communicate with providers who participate in the child care subsidy program; and, provider organizations.

Implementation of Pennsylvania's new, stronger program requirements is also different from what it was beforehand. One key difference is existence of, and access to, additional resources. Pennsylvania had not issued amended regulations since 1992. The State now has many more resources available to more effectively implement and enforce licensing program standards. For example, using electronic communications and reaching out to providers through a broader array of agencies and supporting organizations significantly alters and improves implementation. Using such resources facilitates clearer and more frequent communication, better understanding, and greater consistency with providers and other constituents while enforcing licensing program requirements.

Pennsylvania uses different, and more, resources to implement its stronger licensing program requirements. However, it does not use approaches such as risk assessment strategies or differential monitoring to schedule and conduct licensing monitoring visits.

As it pertains to cost, some of the newly strengthened licensing requirements were associated with an estimated cost impact for providers. To offset such immediate costs, OCDEL used implementation strategies such as time-limited grandfathering clauses to bring currently licensed providers into compliance. For example, Pennsylvania was able to successfully pass and implement an improved regulations for protective (i.e., resilient) surfacing under outdoor embedded play equipment by putting into place a two-year, time-limited grandfathering provision for licensed facilities that were already operating in 2008. Over that two-year time limit, licensed providers were reminded repeatedly of the deadline for complying with the new requirement. Additionally, many newly strengthened program requirements selected for implementation were either low- or no-cost in nature.

Several of the newly strengthened program requirements were selected and approved for implementation due to their limited costs. Examples include: a new "back to sleep" requirement; strengthening the regulatory language relating to inclusion of children who have special needs; requiring a child service report every six months; improving language relating to other applicable laws

that impact child care facilities to make it more understandable and consistent; and requiring disposable gloves in each facility first aid kit.

Overall, each state included in this sub-sample of exemplary strategies to strengthen licensing program standards and enforcement comprehensively addressed issues throughout their respective licensing systems for one or more specific care types. New Jersey, Washington, Tennessee, and Pennsylvania used a variety of methods to improve their licensing requirements and enforcement processes while taking into account respective costs to providers. By building on these established strong methods and addressing additional areas and/or care types for improvement, states such as these can continue to strengthen early learning systems in their own jurisdictions as well as across our nation.

APPENDIX E: DEFINITIONS OF ENFORCEMENT ASPECTS

The enforcement of licensing regulations includes numerous elements to protect the health and safety of children (see NARA *Recommended Best Practices for Human Care Regulatory Agencies*, 2009). The preliminary principles included in this paper focus on a subset of seven aspects of enforcement: staff education and training; enforcement management; workload management; case review/quality improvement processes; monitoring compliance inspections; differential monitoring; provider support and technical assistance; and sanctions. These are defined below.

Staff education and training refers to the educational requirements licensing agencies put into place to ensure a qualified, competent licensing work force. It also includes the training supports put in place to provide licensing staff, as well as licensed providers, with opportunities to learn new information and/or to address any areas where deficiencies may be present.

Enforcement management pertains to enforcement performance standards, procedures, and protocols for licensors to achieve correct, consistent enforcement of their assigned providers and programs. It includes methods to identify and address inconsistencies and to confirm that provider compliance performance reflects consistent, correct interpretation and enforcement. Sound, systematic accountability methods must be in place to guide performance management. Enforcement management includes processes through which staff continuously examine high-risk cases to detect patterns of noncompliance, within and across licensed programs, and to assess whether such risks are associated with particular program standards and enforcement practices. Enforcement management systems include methods and triggers for such decisions as frequency/scope of inspections, type/duration of license issued, whether and how to sanction, etc. Staff also use data from these review findings to develop plans and processes designed to improve compliance for particular programs and for groups of programs with similar high-risk patterns.

Workload management refers to the use of methods necessary to balance the distribution of programs per licensor and to avoid such large caseloads that licensors cannot effectively apply sound methods of support and enforcement. Licensors in all offices are expected to apply consistent, fair, and effective interpretation and enforcement across all licensed facilities.

Compliance monitoring inspections refers to visits licensors make to licensed programs to inspect a facility and to assess compliance. During the inspection, licensors determine whether licensees are in compliance with the regulations for their program type.

Differential monitoring (also known as risk assessment monitoring or risk based monitoring) is a monitoring technique, i.e., is part of an enforcement management system. Its specific function is to determine the frequency or depth of monitoring based on an assessment of a facility's level of compliance with regulations. Facilities that have a number of citations for failure to meet licensing

program requirements exhibit a low level of compliance and, as a result, should receive more frequent inspections.

Provider support services and technical assistance are positive enforcement strategies and refer to the ways in which licensing staff provide licensed providers (or those who wish to become licensed) with ongoing information and practical supports. These may include, but not be limited to, answering specific questions, helping a licensee to develop options for problem-solving, and developing or making referrals to training opportunities to improve provider compliance and quality of care giving, including required pre-service training for applicants and new-licensees.

A **sanction** is an adverse enforcement action (i.e., a legally enforceable but appealable penalty), typically included among a menu of progressive enforcement action options. These range from intermediate sanctions (such as probation, restricted capacity, or fiscal penalties) to forcible closure actions (such as denial, non-renewal, or revocation of licensure). Licensing staff may impose sanctions when the licensee fails to comply (typically repeatedly) with licensing requirements.

ADDITIONAL TABLES FOR ANALYSIS

The tables below provide examples of quality indicators for program standards and enforcement across the nation. *Table 1: Examples of Quality Indicator Program Standards and Enforcement for Child Care Centers* demonstrates the wide variation that exists across state licensing program standards and enforcement, especially compared to what is considered by other organizations as best practice for licensed child care centers. *Table 2: Examples of Quality Indicator Program Standards and Enforcement for Family Child Care* also provides examples of state variations compared to best practices but focuses on family child care homes. *Table 3: Examples of Variations in State Licensing Strengths and Weaknesses* provides a few examples of strengths and weaknesses in child care licensing program standards and enforcement for child care centers from two states.

Table 1: Examples of Quality Indicator Program Standards and Enforcement for Child Care Centers - in 2007 from licensing agencies in each applicable state across the nation, Table 1 shows how many states meet or do not to meet best practices on quality indicators for program standards and enforcement practices applied to licensed child care centers (NARA & NCCIC, 2009). To demonstrate the degree to which states vary on key program standard indicators, example quality indicators are highlighted including: teacher-child ratio; indoor space; educational materials; health and safety (immunizations, SIDS); and playground safety (resilient surfacing). Two key enforcement practices were selected to show similarities and differences across all applicable states in the nation: frequency of inspections and background checks. In addition, program standards and enforcement practices that are common (or popular) among states are listed to show how close to or far from best practices states are on these indicators. Finally, other state practices are included as reference points of states that either exceed or struggle to meet common practices among states.

Quality Indicator	Best Practice	States Meet	States Do Not Meet	Common Practice	States Meet	Other State Practices
Ratio	Centers: <u>Infants</u> (Birth – 15 mos) 1 adult: 3 infants 1 adult: 4 infants	3/50 32/50		1 adult: 4 infants	32/50	*1 adult: 6 infants
Indoor Space	Centers: 35 Square Feet (SF) per child	42/50	7/50			*1/50 states: 40 SF/child
Educational Materials	Centers: Fine motor/manipulatives Books & literacy Dramatic play/pretend Art supplies/creative	30/38 29/38 28/38	8/38 9/38 10/38	Child equipment and/or materials requirements	38/38	

Quality Indicator	<i>Best Practice</i>	States Meet	States Do Not Meet	<i>Common Practice</i>	States Meet	Other State Practices
Educational Materials (continued)	activities	29/38	9/38			
	Gross motor equipment (indoor & outdoor)	31/38	7/38			
	Music	23/38	15/38			
	Science/Experimental/Math (counting/sorting)	20/38	18/38			
	Sensory	18/38	20/38			
Health & Safety: Immunizations	Requirement that children be immunized <i>Centers:</i>			Physicians can provide written statements to not have children immunized	35/50	Parents can provide written statements to not have children immunized 33/50
Health & Safety: SIDS	Requirements to place infants on their backs to sleep <i>Centers:</i>	28/50	22/50	Soft bedding/materials must not be used in cribs	20/50	Parents may authorize different sleep positions for infants 5/50
Playground Safety: Resilient Surfacing	Surfacing under playground equipment should be at a depth that is proportionate to the critical height value of the playground equipment as tested by NPPS <i>Centers:</i>	9/49	40	Requirements for surfaces underneath outdoor equipment	39/49*	
Frequency of Inspections	Requirement for <u>all</u> licensed child care programs to be inspected at least four times per year, including inspections by licensing, safety, health and fire departments <i>Centers:</i>	2/50	48/50	Requirement for all licensed child care programs to be inspected at least once per year.	26/50	Differential Monitoring as a strategy to stagger (&increase frequency of) regularly scheduled inspections. * <i>*This technique is popular but is currently controversial.</i> 13/50

Quality Indicator	<i>Best Practice</i>	States Meet	States Do Not Meet	<i>Common Practice</i>	States Meet	Other State Practices
Background Checks	Child care providers are required to undergo complete background checks, including state and federal checks of criminal history record using a fingerprint, child abuse registries and sex offender registries			State requires check of criminal history records Centers:	47/49	State requires checks of sex offender registries 13/49
Background Checks (Continued)	Centers:	2/49	47/49	State requires check of child abuse and neglect registries Centers:	41/49	
				State requires checks of fingerprint records Centers:	29/49	

The number of total states for each category of licensed care depends upon the number of states that license that type of facility and/or specific quality indicators that are regulated and/or licensed for that type of facility. See NARA & NCCIC, 2009.

Table 2: Examples of Quality Indicator Program Standards and Enforcement Practices for Family Child Care - Table 2 also uses data from the 2007 Child Care Licensing Study (NARA & NCCIC, 2009), however it showcases examples of state variations in program standards and licensing enforcement for family child care homes. Best, common, and other state practices are highlighted in an attempt to demonstrate program standards and enforcement inconsistencies across states.

Quality Indicator	Best Practice	States Meet	States Do Not Meet	Common Practice	States Meet	Other State Practices
Ratio	<p>FCC homes: The total number of children (whether related or not) in small family child care homes is limited based on the ages of children in care.</p> <ul style="list-style-type: none"> Count the provider’s children less than 12 years of age Limit the number of children to six (or eight if the additional two children were of school age). 	11/52**	41/52	<p>Small FCC homes: States do <u>not</u> have child-staff ratio requirements since there is typically only one provider in the home caring for a mixed-age group of children. Instead, states have requirements for the number of children allowed in a home when one provider is present.</p> <p>Large FCC homes: States have greatly varying child-staff ratio requirements, however not all states base these requirements on ages of children, because home providers typically care for mixed-age groups.</p>		
Ratio (Continued)	<ul style="list-style-type: none"> Allow only two children less than 24 months of age when older children (over 2 years of age) are present No more than three children if only infants & toddlers are in care. 	21/52**	31/52			
		20/52**	32/52			
		20/52**	32/52			
		<p><i>Note: 12 states allow no more than <u>two</u> children if only infants & toddlers are in care, whereas an additional 8 states meet the benchmark for no more than three.</i></p>				
	Small FCC homes:					*17/44

Quality Indicator	Best Practice	States Meet	States Do Not Meet	Common Practice	States Meet	Other State Practices	
Indoor Space	35 SF per child	25/44	19/44	25 SF/child	2	states: no space requirements	
	Large FCC homes: 35 SF per child	28/34	5/34			*1/34 states: 40 SF/child	
Educational Materials	Small FCC Homes: Fine motor/manipulatives	16/25	9/25	Child equipment and/or materials requirements	25/25		
	Books & literacy	16/25	9/25				
	Dramatic play/pretend	13/25	12/25				
	Art supplies/creative activities	13/25	12/25				
	Gross motor equipment (indoor & outdoor)	15/25	10/25				
	Music	9/25	16/25				
	Science/Experimental/Math (counting/sorting)	4/25	21/25				
	Educational Materials (Continued)	Sensory	6/25	19/25	Child equipment and/or materials requirements		23/23
		Large FCC Homes: Fine motor/manipulatives	16/23	7/23			
		Books & literacy	16/23	7/23			
Dramatic play/pretend		15/23	8/23				
Art supplies/creative activities		15/23	8/23				
Gross motor equipment (indoor & outdoor)		14/23	9/23				
Music		12/23	11/23				
Science/Experimental/Math (counting/sorting)	7/23	16/23					
	Sensory	6/23	17/23				
Health & Safety: Immuniza-	Requirement that children be immunized			Physicians can provide written statements to not have children		Parents can provide written statements	

Quality Indicator	Best Practice	States Meet	States Do Not Meet	Common Practice	States Meet	Other State Practices
tions	<p><i>Small FCC Homes:</i></p> <p><i>Large FCC Homes:</i></p>	<p>43/44</p> <p>39/39</p>	<p>1/44</p>	immunized	<p>25/44</p> <p>23/39</p>	<p>to not have children immunized</p> <p>24/44</p> <p>25/39</p>
Health & Safety: SIDS	<p>Requirements to place infants on their backs to sleep</p> <p><i>Small FCC Homes:</i></p> <p><i>Large FCC Homes:</i></p>	<p>22/44</p> <p>20/39</p>	<p>22/44</p> <p>19/39</p>	Soft bedding/materials must not be used in cribs	<p>15/44</p> <p>11/39</p>	<p>Parents may authorize different sleep positions for infants</p> <p>3/44</p> <p>1/39</p>
Playground Safety: Resilient Surfacing	<p>Surfacing under playground equipment should be at a depth that is proportionate to the critical height value of the playground equipment as tested by NPPS</p> <p><i>Small FCC Homes:</i></p> <p><i>Large FCC Homes:</i></p>	<p>2/34</p> <p>2/34</p>	<p>32/34</p> <p>32/34</p>	Requirements for surfaces underneath outdoor equipment	<p>23/34</p> <p>26/34</p>	
Frequency of Inspections	<p>Requirement for <u>all</u> licensed child care programs to be inspected at least four times per year, including inspections by licensing, safety, health and fire departments</p> <p><i>Small FCC homes:</i></p> <p><i>Large FCC homes:</i></p> <p><i>Small FCC homes:</i></p> <p><i>Large FCC homes:</i></p>	<p>2/44</p> <p>1/39</p>	<p>42/44</p> <p>38/39</p>	Requirement for all licensed child care programs to be inspected at least once per year.	<p>15/44</p> <p>14/39</p>	<p>Differential Monitoring as a strategy to stagger (and increase frequency of) regularly scheduled inspections. *</p> <p><i>*This technique is popular but is currently considered controversial.</i></p> <p>9/44</p> <p>10/39</p>
Background	Child care providers are			State requires		State

Quality Indicator	Best Practice	States Meet	States Do Not Meet	Common Practice	States Meet	Other State Practices
Checks	required to undergo complete background checks, including state and federal checks of criminal history record using a fingerprint, child abuse registries and sex offender registries			check of criminal history records		requires checks of sex offender registries
	<p>Small FCC homes:</p> <p>Large FCC homes:</p> <p><i>*Requires fingerprints in complete background checks, but not necessarily for both state and federal records</i></p>	3/44*	41/44	<p>Small FCC homes:</p> <p>Large FCC homes:</p> <p>State requires check of child abuse and neglect registries</p> <p>Small FCC homes:</p> <p>Large FCC homes:</p>	43/44 37/39	13/44 12/39
Background Checks (Continued)				State requires checks of fingerprint records		
				<p>Small FCC homes:</p> <p>Large FCC homes:</p>	38/44 34/39	
				<p>Small FCC homes:</p> <p>Large FCC homes:</p>	25/44 24/39	

The number of total states for each category of licensed care depends upon the number of states that license that type of facility and/or specific quality indicators that are regulated and/or licensed for that type of facility. *See NARA & NCCIC, 2009; and **NACCRRRA 2010; 2010.

Table 3: Examples of Variations in State Licensing Strengths and Weaknesses --Based on NACCRRRA state overall rankings and rating scores in licensing regulations and oversight, it is clear that some states may be strong in either licensing program standards or enforcement, while other states may be weak in both areas and, without adequate funding and support, rarely is it the case that any state is strong in both areas. In Table 3, Maine and Oklahoma were selected as state examples due to their relatively high (compared to the other states in the nation) ranking in one area yet relatively low ranking in another area. Similarly, their overall ratings reflect their proportionate scores on strength of regulatory oversight (i.e., monitoring and enforcement) and strength of regulations. These state examples demonstrate that it is possible to have strong quality program standards in place yet lack the proper supports to adequately enforce them. On the other hand, states can have very strong enforcement in place yet lack quality program standards with which providers must comply. Although each state has a number of different child care licensing program characteristics that may be considered strengths or weaknesses among different types of care, only those that were considered as key program standards or enforcement practices used in licensed child care centers were highlighted. For child care center licensing program standards these include: educational requirements for center staff; basic health and safety requirements; and provisions for parent involvement, communication, and visits. For regulatory enforcement these include: adequate monitoring; qualifications for licensing staff; and online inspection and complaint reports.

State	Examples of Strengths or Weaknesses	Ranking & Rating*	Program Standards or Enforcement Examples**
Maine	<p>Strength:</p> <p>Child Care Center Licensing Program Standards</p>	<p>16/52 High</p> <p>66% overall strength of center regulations scores</p>	<p>Educational requirements for center staff: Child care center teachers must have experience with young children before they assume their roles in classrooms, and teachers must also undergo 30 clock hours of training each year.</p> <p>Basic health & safety requirements: Infants are buffered against SIDS by standards to refrain from using any soft bedding in cribs, placing infants on their backs to sleep, and allowing only physicians to authorize other sleep positions.</p> <p>Provisions for parent involvement, communication, & visits: Has requirement for parent involvement and communication, and allows parental visits</p>
	<p>Weakness:</p> <p>Regulatory Enforcement</p>	<p>50/52 Low</p> <p>14% overall strength of regulatory oversight in centers</p>	<p>Adequate monitoring: Child care center programs are only inspected at the time of re-licensing and once during the licensing period.</p> <p>Licensors caseloads are not feasible. Licensors have, on average, a total of 179 cases each. This is compared to best practice recommendations of</p>

State	Examples of Strengths or Weaknesses	Ranking & Rating*	Program Standards or Enforcement Examples**
			<p>1:50 (NACCRRRA) or 1:75 (Government Accountability Office, GAO).</p> <p>Qualifications for licensing staff: There is no requirement for licensors to have an associate’s degree education.</p> <p>Online inspection & complaint reports: Reports of routine inspections conducted at all licensed child care programs & reports of those conducted because of complaints are not available online.</p>
Oklahoma	<p>Strength: Regulatory Enforcement</p> <p>Weakness: Child Care Center Licensing Program Standards</p>	<p>1/52 High</p> <p>90% overall strength of regulatory oversight in centers</p> <p>21/52 Low</p> <p>61% overall strength of center regulations scores</p>	<p>Adequate monitoring: Licenses all of its child care centers (i.e., there are no exemptions) and family child care homes.</p> <p>Inspects child care centers three times each year.</p> <p>Has a licensing caseload ratio of 1:50.</p> <p>Qualifications for licensing staff: Licensors are required to have a bachelor’s degree education and 40 clock hours of ongoing annual training.</p> <p>Online inspection & complaint reports: Reports of routine inspections conducted at all licensed child care programs & reports of those conducted because of complaints are available online.</p> <p>Educational requirements for center staff: Child care center teachers are not required to have completed a high school education. Teachers are only required to have completed the 10th grade and to be enrolled in a GED program to education young children in their care.</p> <p>Assistant teacher aides have not high school grade completion requirements, must only be enrolled in high school or a GED program, and are not required to complete any pre-service qualifications prior to working with children in their care.</p> <p>Center staff are required to complete only 12 hours of annual training.</p>

*Based on NACCRRRA ratings, 2009 ** See NARA & NCCIC, 2009

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AUTHOR

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Dr. Payne holds degrees in child development from Auburn and Florida State Universities' Colleges of Human Sciences, specializes in childcare quality, and public policy and completed her internship in psycho-social care for chronically and terminally ill children at Duke University Medical Center. Her previous research, and that of her colleagues, continues to be on the cutting edge, examining the quality of relationships between preschool children and their teachers and documenting the psycho-physiological consequences and benefits associated with the varying levels of quality that children experience in early care and education

Although trained as a child development researcher, Dr. Payne has: cared for infants and toddlers; taught preschool and kindergarten in inner-city neighborhoods; directed a rural, non-profit child care center; and, worked with parents across these settings. She has also worked with stakeholders and state legislatures. Her focus was to promote an understanding that the use of research-based policies and licensing regulations establishes quality early care and education environments, which, in turn, create important benefits for young children and their families – and for the public.

Most recently, Dr. Payne has been living out what she has learned regarding child development, this time in parenthood. She is the proud mother of baby twins Cameron and Kaelyn Payne, born on October 9, 2010.

In addition to her new role as Mother, she provides consultation services for clients on national and state levels. Before beginning her national consultation, Dr. Payne served as the Deputy Director of the Washington State Department of Early Learning (DEL) where she oversaw all DEL programs and policy work: its three Service Areas across the state; the Quality Division; the Systems, Partnerships and Collaboration Division; and the Parent Support and Programs Division.

Prior to DEL, she served as the Executive Director of the Washington State Association of Head Start and Early Childhood Education Assistance Program (ECEAP) and as a consultant to the Governor's Office on current early learning initiatives and developments in Washington State. Dr. Payne also has rich experiences in licensing regulation, including those she gained through her position as the Child Development Program Consultant at the Virginia Department of Social Services, which contribute to her keen understanding and ability to promote and to implement regulatory requirements. Dr. Payne has experience teaching, training, and working with a wide range of children and adults representing a variety of cultures, from infants at six weeks old, through graduate students up to 55 years of age, and many in between.

Through her rich and diverse education and experiences, she has been trained to effectively examine and communicate child development through research, teaching, and professional service. Dr. Payne's active engagement in local, state, and national leadership roles is another way in which she constantly strives to learn from others and to create new or enhance existing systems through which child development information, programs, and techniques can be accessed and applied for the benefit of all.