

# Strong Licensing

## The Foundation for a Quality Early Care and Education System

### NARA's Call to Action



Quality child care licensing is the most crucial and strategic means available to protect, nurture, and promote optimal development for the more than 11 million children under age 5 known to be in care every week. Licensing rules are the threshold of quality care, upon which other quality enhancements are built, and substantially influence the larger early care and education (ECE) system.

### **The nation and the states have not kept licensing programs aligned with goals in early brain development and school readiness**

The federal government has not set standards or guidelines for meaningful regulatory requirements to ensure that current federal funds for child care and early education are buying beneficial care. States are free to set their own licensing laws, care requirements, and enforcement practices. The result? Persistent and disturbing inconsistencies, gaps, and shortcomings in regulatory protections for children across the nation.

Such regulatory failings often blindsides parents. Parents frequently make two natural but incorrect assumptions: that states license all care and that states require safe and beneficial care through licensing rules and compliance enforcement. In general, however, states do not license all child care. States do not adopt licensing rules adequately designed to ensure essential protection of children's health, safety, and optimal support across all spheres of development. And, with few exceptions, states do not provide the frequency of inspections and effective enforcement to ensure consistent compliance with whatever rules they have adopted.

Converging events have posed dramatic challenges and opportunities that have not been adequately conceptualized or addressed 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.
- Significant increases in the range and complexity of the characteristics and needs of the children in care, which increase needs and risks in care settings.
- Mirroring national demographics, the range of socio-economic, cultural, and language diversity increased. The number of children with more diverse and more serious special needs has also increased, and the risks to their protection and development are especially grave.
- 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 life. This links to national concerns about the quality of our smaller future workforce.
- Repeated findings that the quality of children's child care experiences is generally well below what is needed for school-readiness and optimal development.
- Studies that report significant economic returns for children and society from investments in quality early education.

Effective licensing can, and should, improve outcomes related to all these areas. Conversely, the lack of effective licensing impedes good outcomes in all such areas. In short, licensing is the foundation intended to safeguard quality development for the nation's vital human assets. That foundation is currently flawed, however, and must be retooled to perform its purpose effectively.

### **What do children need for optimal development and school readiness?**

Informed by a rich and growing body of research and experience, we now understand that children need far more than the physically safe and clean environments that were a major focus of care, as well as its licensure, through the first half of the 20th Century. We now understand that young children are also hard at work building brain structure and functionality as they decode their physical and social surroundings. To do this, they proceed as keen observers, imitators, and natural scientists while interacting with their social and physical environments.

During their early years, children need affectionate encouragement to develop the foundational physical, cognitive, linguistic, social, and emotional skills and attitudes required to succeed in school and in life. Chief among these is the abiding self-confidence that comes of doing childhood's work in a well-planned, developmentally appropriate environment that is safe, nurturing, and stimulating. In such settings, adults encourage children's natural inquisitiveness and experimentation across all spheres and stages of development.

Conversely, children who encounter indifferent, uninvolved, inept, or discouraging adult guides in an ill-designed learning program are more likely to emerge with stunted curiosity - and with a lack of confidence in themselves and in the external world.

The real question is: Which children can build the workforce, the families, the communities, and the nation we need? The next question: How can we increase the probability that children will be prepared to succeed when they enter their adult roles?

### **Strengthened Licensing Programs: The Key Step in a Path Forward**

The states' existing child care licensing infrastructure is the one most logically suited to be retooled and

expanded to tackle these challenges. The most cost-effective strategy to achieve the long-term national benefits of strong child care and development settings would be to upgrade the existing state-level activity that already licenses settings serving more than 80 percent of the identifiable children in care.

Another logical inference is that continuing to allow, and pay for, low-quality child care increases subsequent societal costs at school and community levels. Additionally, employers increasingly require a workforce of better educated, life-long learners who can adapt to rapid changes in a business environment and in its applicable technology. An ill-prepared workforce costs businesses.

Further, states have a ready means to expand the benefits of a strong licensing service. They need only remove or narrow statutory exemptions and exclusionary definitions that currently either deny licensure to many forms of care or relegate them to a weaker form of regulation. A side benefit of a more inclusive licensing policy is the benefit to planning, evaluation, and research efforts. It is very nearly impossible to obtain accurate basic data or to make meaningful comparisons across the states with the current variability of scope, methodology, and terminology. Establishing a common foundation for essential quality of care should also enhance the efforts of Quality Rating and Improvement Systems (QRIS), which are voluntary in nature.

### **Operating principles and characteristics for a strong licensing program**

Child care is a major force in the daily lives of millions of children. It is where they spend the majority of their waking time. Unless strong licensing is in place, random luck determines whether these settings provide encouraging, affirming, and developmentally beneficial experiences. The current reality is that the states' licensing services are disturbingly varied in quality, with most having readily identifiable shortcomings in one or more of the essential regulatory components. The three major components of a regulatory service are:

- **The licensing statute** (establishes the scope of subjectivity to licensure and the scope of authority, responsibilities, and enforcement methods for the licensing agency)

*Characteristics of strong statutes include but are not limited to:*

1. No exemptions or definitional exclusions for regularly operating settings that offer supervision/care for a fee.
  2. Clear authority and provisions to investigate and to close facilities operating in violation of the law.
  3. Appeal rights and processes that apply to enforcement actions.
  4. Initial and recurring background clearances for caregivers; i.e., fingerprint-based national and state records checks for convictions and founded abuse/neglect/cruelty.
  5. Authority and direction in enforcement activities such as issuances and complaint response, which may also include frequency, intervals/duration, response times in key activities.
  6. 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 rules/requirements** (scope and quality of regulatory prescriptions and proscriptions that create facility environments within the statute's intent)

*Strength indicators include but are not limited to the use of:*

1. Scheduled reviews of rules every three to four years, plus event-triggered reviews required to respond to urgent demands.
2. Broad public outreach and consultation in drafting and revising rules.
3. Rules that are kept research-based, and designed to respond to known public risks and to the strengths and weaknesses in the industry's current conditions.
4. Rules that reflect the understanding that the benefits of early learning stem directly from the nature of children's relationships with their adult guides. Adult guides must know how children learn and be able to foster their optimal development.

5. A body of rules designed with a holistic focus on child well-being. Collectively, the body of rules creates a safe, synergistic environment to promote development.
6. Attention to operational reasonableness and cost considerations, including provisions for phasing in new requirements if necessary.
7. Sound interpretation guides and procedures manuals, updated as necessary, to help both providers and inspectors to apply the rules correctly, fairly, and consistently.

- **The licensing agency** (staffing, 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:*

1. Adequate funding and executive/legislative support to operate the agency according to law and regulatory best practices.
2. 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 facilities.
3. Effective management and leadership focused on program planning, on management systems and procedures to achieve synergy 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.
4. Acquisition and retention of suitably educated, well-qualified regulatory and support services personnel; ongoing training in regulatory theory and practice is provided.

5. 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.
  6. Effective provider support services designed to promote providers' knowledge, compliance, and accountability; the services emphasize compliance-related technical assistance and workforce development.
  7. Communication and collaboration systems maintain coordination with the agency's many stakeholders; facility compliance reports are Web-available.
  8. Direct linkages to legal counsel and well-defined systems of administrative appeals protect the rights of licensees and care-consumers.
3. Fund the development and maintenance of model statutes and regulations. This would reduce an ongoing, time-consuming, and redundant workload on the states and would further narrow disruptive variability in these foundational documents.
  4. Extend invitations to NARA and other knowledgeable groups to consult and assist with the final drafting of these funding requirements, with the selection of implementation methods, and with the design of efficient methods to monitor states' timely and conscientious adherence to federal standards.
  5. Request states to implement these same performance standards in their laws, regulations and regulatory operations as the baseline for all child care settings whether or not federal funds are used. This promotes equal protection and expanded benefits for children while achieving fair competition for providers - outcomes that are in every state's best interest.

### **Recommendations for consistent protection in child care**

To create a consistent level of essential quality for all children in regularly operating, remunerated care, irrespective of sponsorship, geographic location, and state or federal agency service boundaries, NARA recommends that federal agencies:

1. Adopt common funding standards and/or guidelines required of regulatory agencies, modeled along the characteristics of strong licensing programs described in the previous section, as a condition for states to receive child care funds.
2. Include a reasonable set-aside in states' federal funding for effective licensure at these quality performance standards.

6. Request states to adjust their QRIS criteria, incentives, and supportive services as effective regulatory thresholds materialize.

**The National Association for Regulatory Administration believes that strong licensing is the nation's gift to its children - and its investment in its own future prosperity.**



National Association for Regulatory Administration, 403 Marquis Avenue, Suite 200, Lexington, KY 40502  
<http://www.naralicensing.org> Copyright © 2010 #1011-1108