



Risk Assessment and Licensing Compliance

Introduction

The Child Care and Development Block Grant Act places significant responsibility for ensuring the health and safety of children in child care with the child care licensing system. It is a priority of the Office of Child Care, Administration for Children and Families, U.S. Department of Health and Human Services (OCC) to work with States, Territories, and Tribes to strengthen standards to ensure safety, health, and well-being, while supporting child care providers to meet standards.

States' licensing systems are operating under competing pressures to both improve the health and safety of children in child care while maximizing administrative cost efficiencies. With limited resources, licensing administrators are working to ensure that monitoring visits focus on what is most important in keeping children safe. In the absence of research that assesses the efficacy of various approaches, States are moving ahead with different methods to identify and reduce the risk of harm to children. Some strategies include:

- Identifying requirements where violations pose a greater risk to children, e.g., serious or critical standards;
- Assigning a weight to each standard to further distinguish levels of regulatory compliance;
- Increasing monitoring frequency for programs with low levels of compliance, e.g., differential monitoring;
- Helping providers, parents, and licensing staff better understand the potential consequences of serious noncompliance;
- Identifying providers in need of technical assistance; and
- Using more sophisticated data systems to target case management and improve consistency in enforcement actions.

The National Association for Regulatory Administration (NARA), in *Recommended Best Practices for Human Care Regulatory Agencies* (2009), presents the characteristics of a strong licensing agency, including:

Maintains a research-based risk-assessment method whereby industry-wide and facility-specific risks, including both immediate and cumulative risks, are identified and prioritized; focuses inspections and technical assistance accordingly; and, applies the agency's enforcement continuum systematically to avert or abate priority risks, to build consistent compliance, and to improve overall consumer protection across all relevant domains. (p. 6)¹

This paper presents a range of approaches States have taken to assess the risk of harm to children when facilities are not in compliance with licensing requirements. Included are examples of seven States—Florida, North Carolina, Ohio, Oklahoma, Texas, Utah, and Virginia—that have a process for risk assessment or define levels

The National Center on Child Care Quality Improvement (NCCCQI) does not endorse any non-Federal practice, organization, publication, or resource.

¹ NARA. (2009). *Recommended Best Practices for Human Care Regulatory Agencies*. Lexington, KY. Retrieved April 11, 2013 at http://www.naralicensing.drivhq.com/publications/NARA_Best_Practices.pdf.

of noncompliance or violations in their child care licensing regulations generally based on the risk posed to children. These examples are meant to represent a range of state approaches. The National Resource Center for Health and Safety in Child Care and Early Education (NRC) has the full text of State child care licensing regulations on its Web site at <http://nrckids.org/STATES/states.htm>.

State Examples

Florida

Florida Department of Children and Families

Child Care Services

Office of Child Care Regulation and Background Screening

Phone: 850-488-4900/888-352-2842 (call center)

<http://www.dcf.state.fl.us/programs/childcare/about.shtml>

In Florida, violations of the minimum health and safety standards are automatically classified as Class I, Class II or Class III based on the severity of the violation. The definitions of the three classes are found in “Chapter 65C-22 Child Care Standards” of the *Florida Administrative Code* (see excerpt below). The classification of the licensing standards is found in *CF-FSP Form 5316 Child Care Facility Standards Classification Summary* at [http://ccrain.fl-dcf.org/\(X\(1\)\)/documents/2/443.pdf](http://ccrain.fl-dcf.org/(X(1))/documents/2/443.pdf).

In monitoring programs, Florida will conduct an abbreviated inspection if the facility had no Class I or Class II deficiencies for at least two consecutive years. Enforcement actions, such as monetary fines, are determined by the classification of violations and number of occurrences. Licensing inspection reports are posted on the Florida Department for Children and Families Web site at <http://204.90.20.58/childcare/provider/providersearch.aspx> and include violation classifications.

- “Chapter 65C-22 Child Care Standards” in *Florida Administrative Code* (1/13/2010)
<http://nrckids.org/index.cfm/resources/state-licensing-and-regulation-information/florida-regulations/>

65C-22.010 Enforcement.

(1) Definitions.

(d) “Violation” means a finding of noncompliance by the department or local licensing authority of a licensing standard.

1. “Class I Violation” is an incident of noncompliance with a Class I standard as described on CF-FSP Form 5316, March 2009, Child Care Facility Standards Classification Summary, which is incorporated by reference. A copy of the CF-FSP Form 5316 may be obtained from the department’s website at www.myflorida.com/childcare. Class I violations are the most serious in nature, pose an imminent threat to a child including abuse or neglect, and which could or does result in death or serious harm to the health, safety or well-being of a child.

2. “Class II Violation” is the second or subsequent incident of noncompliance with an individual Class II standard as described on CF-FSP Form 5316. Class II violations are less serious in nature than Class I

violations, and could be anticipated to pose a threat to the health, safety or well-being of a child, although the threat is not imminent.

3. "Class III Violation" is the third or subsequent incident of noncompliance with an individual Class III standard as described on CF-FSP Form 5316. Class III violations are less serious in nature than either Class I or Class II violations, and pose a low potential for harm to children.

4. "Technical Support Violations" are the first or second occurrence of noncompliance of an individual Class III standard or the first occurrence of noncompliance of an individual Class II standard.

(2) Disciplinary Sanctions.

(a) Enforcement of disciplinary sanctions shall be applied progressively for each standard violation. In addition, providers will be offered technical assistance in conjunction with any disciplinary sanction. The department shall take into consideration the actions taken by the facility to correct the violation when determining the appropriate disciplinary sanction.

(b) Each standard violation has an assigned classification based on the nature or severity of the violation(s) as identified within the Child Care Facility Standards Classification Summary, CF-FSP Form 5316.

(c) A violation of a Class II standard that results in death or serious harm to a child shall escalate to a Class I violation.

(d) Failure to submit a completed CF-FSP Form 5017, Application for a License to Operate a Child Care Facility, which is incorporated by reference in paragraph 65C-22.001(1)(a), F.A.C. for renewal of an annual license at least 45 days prior to the expiration date of the current license constitutes a licensing violation. The department shall issue an administrative complaint imposing a fine of \$50.00 for the first occurrence, \$100.00 for the second occurrence, and \$200.00 for each subsequent occurrence within a five year period.

(e) Disciplinary sanctions for licensing violations that occur within a two year period shall be progressively enforced as follows:

1. Class I Violations.

a. For the first and second violation of a Class I standard, the department shall, upon applying the factors in Section 402.310(1), F.S., issue an administrative complaint imposing a fine not less than \$100 nor more than \$500 per day for each violation, and may impose other disciplinary sanctions in addition to the fine.

b. For the third and subsequent violation of a Class I standard, the department shall issue an administrative complaint to suspend, deny or revoke the license. The department, upon applying the factors in Section 402.310(1), F.S., may also levy a fine not less than \$100 nor more than \$500 per day for each violation in addition to any other disciplinary sanction.

2. Class II Violations.

- a. For the first violation of a Class II standard, the department shall issue a formal warning letter stating the department's intent to take administrative action if further violations of the standard occur. The violation will be classified as "Technical Support."
- b. For the second violation of the same Class II standard, the department shall issue an administrative complaint imposing a fine of \$50 for each violation. This violation, and subsequent violations, of the same standard within a two year period will be classified as "Class II."
- c. For the third violation of the same Class II standard, the department shall issue an administrative complaint imposing a fine of \$60 per day for each violation.
- d. For the fourth violation of the same Class II standard, the department shall issue an administrative complaint placing the provider's license on probation status for a period not to exceed six months, and the department shall also issue an administrative complaint imposing an additional fine of \$75 per day for each violation.
- e. For the fifth and subsequent violation of the same Class II standard, the department shall issue an administrative complaint to suspend, deny, or revoke the license, and the department shall also issue an administrative complaint imposing an additional fine of \$100 per day for each violation.

3. Class III Violations.

- a. For the first violation of a Class III standard, technical assistance shall be provided. The violation will be classified as "Technical Support."
- b. For the second violation of the same Class III standard, the department shall issue a formal warning letter stating the department's intent to take administrative action if further violations of the standard are found. The violation will be classified as "Technical Support."
- c. For the third violation of the same Class III standard, the department shall issue an administrative complaint imposing a fine of \$25 for each violation. This violation and subsequent violations of the same standard within a two year period will be classified as "Class III."
- d. For the fourth violation of the same Class III standard, the department shall issue an administrative complaint imposing a fine of \$30 per day for each violation.
- e. For the fifth violation of the same Class III standard, the department shall issue an administrative complaint placing the provider's license on probation status for a period not to exceed six months, and the department shall also issue an administrative complaint imposing a fine of \$40 per day for each violation.
- f. For the sixth and subsequent violation of the same Class III standard, the department shall issue an administrative complaint to suspend, deny, or revoke the license, and the department shall also issue an administrative complaint imposing a fine of \$50 per day for each violation.

North Carolina

Division of Child Development

Regulatory Services Section

North Carolina Department of Health and Human Services

Phone: 919-662-4499 or 800-859-0829 (in-state calls only)

http://ncchildcare.dhhs.state.nc.us/providers/pv_sn2_lr.asp

North Carolina issues rated licenses depending on the level of quality in a child care program. There are five levels of the rated license. Level 1 is achieved if the facility meets the minimum licensing requirements. Levels 2–5 are based on facilities earning points by meeting additional requirements related to the program standards and education levels of staff. Additional information about the rated licensing is available at

http://ncchildcare.dhhs.state.nc.us/providers/pv_sn2_ov_sr.asp.

Point demerits are assigned if facilities are out of compliance with the minimum requirements. The points are used to calculate a compliance history percentage—the number of demerits earned is divided by total possible demerits. Compliance on minimum licensing requirements must be maintained at 75% for the past 18 months to maintain a Level 1 license.

The following are excerpts from the State child care licensing regulations pertaining to point demerits for noncompliance.

- “Chapter 9 - Child Care Rules” in “Title 10A Health and Human Services,” in *North Carolina Administrative Code* (8/1/2010)
<http://nrckids.org/index.cfm/resources/state-licensing-and-regulation-information/north-carolina-regulations/>

10A NCAC 09 .0304 ON-GOING REQUIREMENTS FOR A PERMIT

(e) The Division shall assess the compliance history of a center by evaluating the violations of requirements that have occurred. Demerits shall be assigned for each occurrence of violations of these requirements:

- (1) Supervision of children (6 points),
- (2) Staff/child ratio (6 points),
- (3) Staff qualifications and training (2 to 5 points),
- (4) Health and safety practices (3 to 6 points),
- (5) Discipline (6 points),
- (6) Developmentally appropriate activities (2 to 4 points),
- (7) Adequate space (6 points),
- (8) Nutrition and feeding practices (1 to 3 points),
- (9) Program records (1 to 3 points), and
- (10) Transportation (1 to 3 points), if applicable.

The point value of each demerit shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits from the total demerits possible and converting to a percentage.

The yearly compliance history percentage shall be averaged over the specified time period as in accordance with G.S. 110-90(4) for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Section.

(f) Each center shall maintain accurate records and documents as described in Rule .0302(c) and (d) of this Section, and these records and documents shall be made available to the Division for review to verify compliance with provisions of this Chapter and the General Statute.

Ohio

Bureau of Child Care and Development

Ohio Department of Job and Family Services

Phone: 614-752-0435 or 866-886-3537, option 4

<http://jfs.ohio.gov/cdc/page2.stm>

Legislation passed in 2005—House Bill 11—gave the Ohio Department of Job and Family Services (ODJFS) the responsibility to recommend sanctions that would be imposed on persons or entities that violate child care provider regulations. After a multi-year effort, called Regulation for the 21st Century, a two-part system was proposed. The first part of the system is a set of progressive sanctions, based on the scope and severity of the violation(s). The second part of the system is a weighted licensing system, in which rules that place children at serious risk of harm are assigned higher point values. Ohio has defined Serious Risk Noncompliances (SRNC) as they work toward the weighted licensing system. Information about Ohio's definitions of SRNC is available at http://jfs.ohio.gov/cdc/Licensing_Compliance.stm and includes a guide for programs to understand these definitions.

From the licensing regulations, requirements with the highest risk of harm if violated were organized into three large categories: Lack of Supervision, Administrative Negligence, and Environmental Hazards. A summary document of these requirements chosen as SRNC is available at <http://jfs.ohio.gov/cdc/RiskRules.pdf>. Licensing inspection reports are posted on the Ohio Department of Job and Family Services Web site at <http://www.odjfs.state.oh.us/cdc/query.asp> and include information about SRNC and whether the noncompliance was fully, partially, or not addressed by the provider.

Having a SRNC on its licensing record could prevent a program from being eligible for Step Up to Quality (Ohio's quality rating and improvement system) until a visit occurs without any of these violations. A SRNC at a program that is already Star Rated could result in a warning, suspension, or removal of the Star Rating. Rated programs with strong licensing records may be eligible for fewer full licensing compliance reviews during inspections, which are conducted at least twice a year. Additional information about Step Up to Quality is available at <http://jfs.ohio.gov/cdc/stepUpQuality.stm>.

Oklahoma

Division of Child Care

Department of Human Services

Phone: 405-521-3561 or 800-347-2276

<http://www.okdhs.org/programsandservices/cc/prvdrs/lic/default.htm>

Oklahoma has defined three levels of noncompliance: numerous, repeated, and serious. Below is an excerpt from the regulations that define these levels. These levels are used as guidance in determining the appropriate case management response. For example, additional monitoring visits will be conducted if the facility has numerous, repeated, or serious compliance issues. Technical assistance is provided to these facilities to help them come into compliance.

The levels of noncompliance also impact facilities participating in Reaching for the Stars, the quality rating and improvement system. Star levels may be denied or reduced, if a facility has numerous, repeated, or serious noncompliances with applicable licensing requirements within a 24 month time frame; or a serious incident occurs resulting in injury or imminent risk of harm to children. Additional information about Reaching for the Stars is available at <http://www.okdhs.org/programsandservices/cc/stars/>.

- *340:110-1-9.3. Non-compliance with Requirements (7/1/2011)*
<http://www.okdhs.org/library/policy/oac340/110/01/0009003.htm>

(c) Numerous, repeated, and serious non-compliance.

(1) Numerous non-compliance is any monitoring visit with:

(A) five or more items documented as non-compliant on the monitoring report for a family child care home or large child care home;

(B) six or more items documented as non-compliant on the monitoring report for a child care center, part-day children's program, or school-age program with a licensed capacity of less than 60; or

(C) Seven or more items for a child care center, part-day children's program, or school-age program with a licensed capacity of 60 or more.

(2) Repeated non-compliance is three or more documented incidents of non-compliance with the same requirement within the last 12 months. For missing immunizations to be considered a repeat non-compliance, they must be regarding the same child.

(3) Serious non-compliance is a non-compliance with licensing requirements that exposes children to conditions that present an imminent risk of harm. Imminent risk of harm must be assessed based on the age of the child, the amount of time the caregiver was out of compliance, and the caregiver's efforts to mitigate the risk. Serious non-compliances are identified through licensing observations, confirmed complaint investigations, and/or self-reported incidences. Some examples of non-compliance that may be considered as serious are:

- (A) Staff-child ratio;
- (B) Supervision of children;
- (C) Sleep position;
- (D) Prohibited disciplinary actions;
- (E) Licensed capacity;
- (F) Use of passenger restraints;
- (G) Water activities;
- (H) Pools and other water hazards;
- (I) Multiple hazards;
- (J) Weapons;
- (K) Reporting child abuse;
- (L) Knowingly permitting access to children by persons identified as restricted or registrants²;
- (M) Failure to obtain background investigations or Child Care Restricted Registry searches;
- (N) Administering medication to children;
- (O) Room temperatures;
- (P) Heat sources and loss of any utility service;
- (Q) Compliance file and or posting;
- (R) Cardio-pulmonary resuscitation and first aid training;
- (S) Liability insurance; and
- (T) Vehicle liability insurance.

Texas

Child Care Licensing

Department of Family and Protective Services

Phone: 512-834-3195 or 800-862-5252

http://www.dfps.state.tx.us/Child_Care/About_Child_Care_Licensing/

Each of the Child Care Licensing Minimum Standards in Texas has been assigned a weight (High, Medium High, Medium, Medium Low, or Low) based on the risk that a violation of that standard presents to children. Weights are noted within the minimum standards documents in the left margin next to each standard or subsection. Only those standards that can be violated (marked as a deficiency) are weighted. The Texas licensing standards are available at <http://nrckids.org/index.cfm/resources/state-licensing-and-regulation-information/texas-regulations/>.

Licensing staff document observations to capture the scope and severity of the deficiency, but the weighted standards are now part of the licensing database and decisionmaking process, resulting in more consistent and equitable enforcement practices. The Child Care Licensing Automation Support System (CLASS)³ Risk Review is a tool that supplements the professional assessments of licensing staff. The CLASS Risk Review produces

² Identification as “restricted or registrants” is related to findings from the Oklahoma Child Care Restricted Registry (criminal history). According to the Oklahoma Department of Human Services, individuals identified as registrants are prohibited from licensure, ownership, employment, and/or residence in a licensed child care facility. See <https://ccrrpublicijl.okdhs.org/ccrrpublicijl/public/> for additional information.

³ CLASS is the Child Care Licensing Automation Support System. It is a computer application used by Texas licensing staff for record management.

enforcement recommendations based upon the type, number, weight, and repetition of violations over the course of an operation's two-year compliance history. An electronic Risk Analysis summary can be requested by staff seeking feedback on corrective actions. Facilities with serious deficiencies or a significant number of deficiencies, repeat deficiencies, or that fail to make corrections timely, are inspected more frequently to monitor the level of risk to children.

Inspection reports on the Texas Department of Family and Protective Services Web site include a count of deficiencies by weight level. For each facility, there is an explanation of the monitoring process and weighted standard. For each deficiency, the following details are provided: the standard risk level, whether the deficiency was corrected during the visit, the correction deadline date, the date the correction was verified, and additional narrative. The online compliance history does not include deficiencies or corrective or adverse actions until after the child care provider has had due process or waived his or her rights. The search engine for facility licensing records is available at http://www.dfps.state.tx.us/Child_Care/Search_Texas_Child_Care/CCLNET/Source/CPA/ppSearchTXChildCare2.aspx.

For more information, see "Section 4500: Evaluating Risk to Children" in the Texas' *Licensing Policy and Procedures Handbook* at http://www.dfps.state.tx.us/handbooks/Licensing/Files/LPPH_pg_4300.asp#LPPH_4500.

Utah

Bureau of Child Development

Child Care Licensing Program

Phone: 801-584-8294

<http://health.utah.gov/licensing/>

Rule violations are classified as Level 1, 2, or 3 violations, depending on both the seriousness of harm to a child that could result from the violation, as well as the likelihood that harm will occur. Level 1 findings are categorized as "cited" findings the first time they occur. Level 2 and 3 findings are initially classified as "technical assistance" findings, which mean that providers are given technical assistance and the opportunity to correct the violation.

Definitions of the violation levels are available in the "Introduction" section of the *Child Care Center Rule Interpretation Manual* at <http://health.utah.gov/licensing/rules/Interpretation/Center/Section%201-%20Introduction.pdf>. Utah's interpretation manuals include noncompliance levels for each licensing requirement. The manuals are available at <http://health.utah.gov/licensing/rules.htm>.

The number of rule violations and/or the severity of the violations determine if providers may be placed on a conditional license with additional monitoring inspections. The frequency of monitoring inspections may also increase due to noncompliance during the conditional period.

The Bureau of Child Development Web site provides a licensing history that includes the finding category (cited, repeat cited), the noncompliance level, and the date the correction was verified. It includes substantiated complaint allegations and "cited" findings for the past two years but does not include any inspections completed in the last 30 days. Additional information is available at <http://health.utah.gov/licensing/findaprovider.htm>.

Virginia

Virginia Department of Social Services

Division of Licensing Programs

Phone: 804-726-7165 or 800-543-7545

<http://www.dss.virginia.gov/family/cc/>

Virginia has developed a human services risk assessment process to evaluate the impact of rule violations. A description of the risk assessment process is found in the *Risk Assessment and Adverse Enforcement Guidance Manual* (October 2007) at

http://www.dss.virginia.gov/files/division/licensing/cdc/intro_page/current_providers/guidance_procedures/risk_assessment_guidance_manual.pdf. Licensing staff use a Risk Assessment Matrix to assess the severity of harm

(extreme, serious, or moderate) and probability of harm (high, medium, and low) for licensing standards. The matrix is available at

http://www.dss.virginia.gov/files/division/licensing/cdc/intro_page/current_providers/guidance_procedures/risk_assessment_matrix.pdf.

Virginia also uses a process to determine how often particular rules are included in inspections. For example, rules that pose the most risk of harm to children if violated are reviewed during all inspections. Virginia has assigned licensing standards to one of three "frequency" of inspection designations:

- ◆ F-1 standards are weighted as a higher risk and must be inspected at each visit
- ◆ F-2 standards are inspected annually
- ◆ F-3 standards are inspected each licensure period (every 2 years)

A list of the key child care health and safety standards subject to risk ratings (F-1 standards) is available at

http://www.dss.virginia.gov/files/division/licensing/cdc/intro_page/current_providers/guidance_procedures/cdc_key_health_and_safety_standards.pdf.

Conclusion

The States presented in this paper have used several approaches with one common objective—to identify licensing requirement violations that pose the greatest risk of harm to children. As cited in the introduction, NARA's "Best Practices" recommend that effective licensing include a focus on identifying risks when measuring compliance, technical assistance for providers to improve, and enforcement methods that are consistent with the seriousness of a violation. When faced with limited staff and resources, States are seeking ways to assess a provider's compliance with the regulations and adjust the frequency of licensing visits and other monitoring activities accordingly, such as allocating resources to those facilities where the environment may be harmful to the children. Providers can also be rewarded for being in full compliance with the rules with fewer visits or a more streamlined approach to monitoring.

The States highlighted in this paper reflect the NARA best practices and can serve as models for other States to explore and adapt to their unique needs and circumstances.