

EMERGING TRENDS IN CHILD CARE REGULATION

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Emerging Trends In Child Care Regulation

by

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Preface:

I was asked by Karen Kroh (NARA's President) to represent NARA at a conference sponsored by the Federal Regional Office (Region VII) of the Administration for Children and Families (of the US Department of Health & Human Services). This conference was held on March 13 & 14 in Kansas City, Missouri. The paper that follows is a revised version of the paper that was presented at that conference on Thursday, March 13, 1997.

Introduction:

The safeguarding of our young children through the application of state regulatory measures has a history in our nation of over 110 years. The evolution of that process has already been documented, other than to mention that the regulation of child day care first became widespread public policy throughout our nation during the period of World War II, necessitated by the employment of young mothers in the production of war materials, and the resultant need for safe child day care. It is my purpose to share with you some impressions from my perspective regarding emerging trends in the regulation of child day care, and to share the results of a survey that was recently taken regarding child day care regulation in our nation and to draw from that some lessons.

I believe that we find ourselves at an interesting, albeit challenging, intersection of emerging trends regarding the regulation of child day care programs. Our nation is embarked on the implementation of the most massive change in our welfare programs that we have seen since the enactment of Aid to Dependent Children (ADC) legislation in 1935. With the new emphasis on return to work, there is obviously an increased need for easily accessible, safe day care. This is an emerging trend that seems obvious to all. Concomitant with this trend is another emerging trend: the popularization of new and exciting research the underscores the importance of providing infants and toddlers with not only a safe and healthful environment, but one that stimulates cognitive, motor, and speech development through a variety of enriching experiences and exposures. This trend is best illustrated by the recent TIME magazine cover story, about which I will have more to say later in the paper. A third trend is a disturbing one, and seems to run counter to the other two trends that I have identified: the trend toward deregulation. The trend to deregulate is often accompanied or even propelled by an attitude that is anti-government. Rather than seeking to improve regulation, and to ensure that it is fair, balanced, but societally responsible, these forces seem intent on dismantling regulation. Not all states, by any means, have fallen victim to these political forces, but the trend is prevalent.

Summary Of Survey Results Regarding Child Day Care

Page 2

But, these are impressions, and what was needed was some objectivity by which we could measure the degree to which these trends may be influencing the regulation of child day care across our nation. Towards that end, a survey instrument was developed (all too hurriedly) and sent to all fifty states and the District of Columbia. Less than two months time was available to conduct this survey. I do apologize both for the lack of quality and precision in the questionnaire (no time to test it or to have it reviewed), and for the limited time by which states had to return the completed survey. Nevertheless, some interesting data was obtained and pertinent points can be made as a result of the survey.

State Responses:

Responses were received as of March 27, from 26 states, the District of Columbia, and Puerto Rico. This represents slightly more than 50% of the states including most of the large populous states such as California, New York, Texas, Pennsylvania, New Jersey, Ohio, and Michigan who did return survey questionnaires. The State of New York's responses, do not include, however, the City of New York. (Throughout this summary report, when I refer to "states," the District of Columbia is included in the data, but Puerto Rico is not.)

Trends Regarding Increase/Decrease in Numbers of Center & Homes To Be Regulated:

Over the past five years, there has been an increase of 15% in the number of regulated child day care centers. In the same period of time, there has been an increase of 7% in the number of regulated family day care homes/group day care homes. I find this to be a surprising statistic. In fact, two states reported a sizable decrease in the number of regulated day care homes during the past five years. Those states are California (which experienced a 13% reduction) and Texas (which experienced a 12% reduction). Delaware experienced a slight decrease in the number of day care homes (1.2%). With the exception of these states, all states responding reported increased in the number of regulated child day care centers and homes. While this information was not specifically requested (it should have been, in retrospect), at least 9 of the reporting states indicated that they either register or approve family day care homes using a method other than licensure. One state (West Virginia) indicated that they do not regulate day care homes.

There is a demonstrable increase in the number of child day care centers and homes across America. The obvious implication of this trend is the need for increased staff resources to ensure that the floor of protection for young children is not diluted or diminished.

Pending Applications and Average Length of Time to Process Applications:

The span of numbers went from a low of 67 (Nebraska) to a high of 2771 (California). Most states reported that they are able to handle applications within a 90 day period, some states requiring up to a half a year. Two states indicated that a year may be needed (New York & Oklahoma), and one state indicated that it may take up to a year and a half (Pennsylvania) to get to and complete the licensing process. Each of these three states intends to increase its resources for licensing.

Five states indicated that the length of time to process applications has increased from what it was five years ago. Twelve states indicated that the length of time had not increased from what it was five years ago. From the data, it appears that the increase in the length of time it takes to process a licensing application is related to staff resources not keeping pace with the increase of licensed day care providers. Yet, some of those states are not planning to increase resources (i.e. Delaware, Michigan & Vermont).

Impact of Welfare Reform on Child Day Care Licensing and Staffing Issues:

Many respondents indicated that it was too early to make an informed judgment as to whether Welfare Reform legislation and policy changes were resulting in an increase in the number of child day care license applications, or having an impact on licensing. Twelve states did indicate, however, that welfare reform was already having an impact on licensing. Fourteen states indicated that they will be adding resources to enable them to meet increased workload demands, some which are anticipated to be the result of welfare reform. Twelve states indicated that they were not adding staff resources. One state indicated that they had just added 6 staff (West Virginia).

Three states are reducing staff through a hiring freeze, but no states reported budget reductions or lay-offs. Michigan, Nebraska, and Virginia are the three states that are reducing staff by means of a hiring freeze; interestingly, each of those states also reported significant increases in the number of providers to be regulated.

Rules Revision:

Only seven states reported that their child day care center rules predated 1990; and only two states reported that their family day care home rules predated 1990 (Michigan and the District of Columbia). Most states agreed with the notion that as rules are rewritten, more attention needs to be given to the cost impact of rules, but (as a couple of respondents indicated) not at the expense of child protection. Many respondents agree that more attention needs to be given to measurability. Respondents were divided, however, on the issue of whether or not there should be fewer rules. One respondent indicated that fewer rules may or may not mean better regulation. Indeed!

Non-traditional forms of child day care are needed according to twenty-one responding states; and seventeen responding states indicated that to some degree, their current rules

address special types of child day care. Eight states indicated that their rules did not address these special types of child care arrangements.

Adverse Actions:

This portion of the survey was the least precise. Definitions of terms vary from one state to another. Some states included denial of original issuance and suppression of illegal operations as well. Generally, the responses did indicate that more enforcement actions are being taken now than was true five or six years ago.

Provisional license issuance was another category that was confusing because of state differences. Some states issue the initial license as a provisional. A few states use a provisional license as an adverse action. Most states indicated that they did not know how many or the percent of licensees who were on a provisional license in 1990. (The collection of data and computerization of licensing processes is increasing among states. Several respondents indicated that their state had only recently computerized their operations.)

Consultation:

All states reported that consultation is either encouraged or required by statute. A few indicated that workloads prevented staff from being able to carryout this activity to the degree desired.

Religious Exemptions:

Of the reporting states, five have religious exemptions. Of those, two indicated that the exemption does not include fire and health safety requirements. None of the states had been granted religious exemption within this decade.

What is the Most Important Issue Confronting Your Agency Today? What Single Issue Regarding Child Day Care Regulation Concerns You Most?

These questions prompted some interesting comments, and a few rather lengthy responses, indicative of the depth of concern that those authors had regarding key issues. Because of the sensitive nature of some of the comments, states will not be identified. A couple even requested anonymity.

There were twelve states that commented regarding the need for staff resources to meet an increased workload. These statements varied in how they were worded, but the essence of their concern was the inability to maintain essential levels of child protection when workloads increased. Two other respondents discussed the need for resources to increase staff development/training.

The second most common comment had to do with achieving a balance among three competing pressure points: a) having reasonable regulations, b) maintaining essential child protection, and, c) ensuring affordable child day care for parents with a marginal income. There were five comments regarding this issue.

There were comments regarding the impact of deregulation, and whether this may result in a diminishing of an essential level of protection for young children, who are particularly vulnerable to overcrowding, diminished staff to children ratios, and inadequate cognitive and motor-skill development. A respondent mentioned a concern for infant care.

Two respondents expressed concerns related to the impact of re-engineering principles and re-organization. Somewhat similar to this concern, is that expressed by another respondent about their licensing program losing its visibility within the Department's increased focus on welfare reform initiatives. There was a comment about the fear of privatization of licensing.

Two respondents addressed the need for increased public awareness of the value of child day care regulation. One of those respondents used an interesting phrase to express this issue. This person stated that there was "a need to excite the public" regarding the need for and benefits of a quality licensing program.

Conclusion:

It is difficult to draw any one conclusion from the survey. It is obvious that the number of regulated child day care providers is growing considerably, and that staff resources to ensure a standard floor of protection is being strained. There seemed to be a thread of concern running through many of the responses that speaks of a fear of the future. A fear that has more to do with a lack of respect for the mission that is carried out by licensing units.

The challenge of maintaining child care that is affordable, available, and at the same time safe (not only in a fire safety sense, but in a relational and emotional cognitive sense) has never been greater, in my opinion. No one desires to see the level of regulation of airlines diminished (the recent experience of ValueJet has underscored that). But, the value of child care regulation is having to be defended too often. We need to develop greater support from outside of those groups that are responsible for regulating child care. We need to solicit the support of business leaders, whose employees have fewer days of absence when those employees have access to reliable, quality child care. And, we need to develop more advocates among consumers of child care who have positions of influence within the community.

A recent issue of *TIME* Magazine (February 5, 1997) had a cover story article on: "How a child's brain develops and what it means for child care and welfare reform." In that article, the value of creating a stimulating environment for infants and young children was dramatically illustrated. Let me quote from that article:

"Deprived of a stimulating environment, a child's brain suffers. Researchers at Baylor College of Medicine, for example, have found that children who don't play much or are rarely touched develop brains 20% to 30% smaller than normal for their age. . . Rich experiences, in other words, really do produce rich brains." And later in the article: "There is an urgent need, say child-development experts, for preschool programs designed to boost the brain power of youngsters born into impoverished rural and inner-city households. Without such programs, they warn, the current drive to curtail welfare costs by pushing mothers with infants and toddlers into the work force may well backfire."

These findings serve to reinforce what child development experts have been emphasizing for a long time that child care for infants and toddlers must be more than just "baby-sitting" in a fire safe building. These findings have relevance to staff to children ratios for infants and young children; relevance to the patterns of interaction between staff and child and child with child. But, how we do this without making licensing overly intrusive and burdensome is a challenge that we must creatively and responsibly meet.

I would like to address three challenges that confront us today and suggest how we may address them:

A. The challenge to avoid crafting rules that set down too much process detail and thereby become unnecessarily burdensome, and restrict creativity. Put in other words, we need to make rules user friendly, without compromising child protection.

Let me illustrate what I mean by this. For an example, it is appropriate to have as a licensing goal the reduction of opportunity for an unauthorized person to remove a child from a child care provider. How does one address this goal in writing a rule. The preferred approach would be to have a rule that simply states that a child care provider shall have a policy that will ensure that a child shall not be released to an unauthorized person. Leave the provider the creativity to design a system that is appropriate to that provider. The purpose of the licensing agency is to: 1) determine whether the provider has a policy/system in place, 2) determine whether it is adequate and appropriate, and, 3) determine whether staff are knowledgeable and use the system. Too often, licensing agencies craft rules that require considerable paperwork, resulting in a rule that focuses more on a process than on the ultimate goal of the rule.

B. The challenge to exercise enforcement action that is fair, unbiased, and measured.

Enforcement actions are serious matters. We should neither shirk from the responsibility nor be overly eager to express a show of police power. To achieve an appropriate balance between over and under regulation requires a staff who are well trained in the nuances of rule interpretation, are knowledgeable regarding the rules of evidence, and have access to experienced and supportive supervision whenever enforcement actions are initiated and implemented. Consistency of rule application and enforcement occurs only when there is excellent communication between policy makers and field operations, where there is ongoing staff development, and where staff have a clear understanding of the licensing process.

C. The challenge to avoid unnecessary duplication, contradictory regulations (i.e. fire safety versus building codes versus health regulations versus ADA requirements), and jurisdictional skirmishes that prolong the licensing process and increase the costs of operation for the provider and ultimately for the consumer.

This issue is one that gives regulatory agencies a bad name. Legislators and government leaders become frustrated with these conflicts that often become interminably lengthy to resolve. We must do better at reducing these inter-agency jurisdictional squabbles.

The following quotation from Professor Gwen Morgan's unpublished monograph (1995) speaks eloquently to this issue.

"Broadly speaking, regulation is a middle ground between a reliance on market forces and a reliance on government to provide needed goods and services. Services are privatized and regulated in the public interest. . . There are (however) many unconnected regulators at the local level. Opportunities exist to examine the rules for overlap and inconsistency (as Hawaii has done), and to create a single system where these separate regulators serve on a team (as Oregon has done, and as Ohio is doing). Total quality management concepts do not accept the separateness of these different actions which a previous age accepted as necessary because of the different legal bases of the different inspections."

The degree to which we successfully address these and other challenges may determine the ability of the licensing agency to be more visible, and to have the respect it deserves, and the resources needed to achieve its very important mission of protecting children.

Each of you who is involved in licensing, stands as a vanguard to ensure that our nation's most precious resource, its children, are receiving child care in an environment that is healthful, safe, stimulating, and fun. You are IMPORTANT! Do not let the lack of

Summary Of Survey Results Regarding Child Day Care
Page 8

visibility, the lack of organizational respect, the heavy workload take away from the reality of your importance. You are making a difference, and I congratulate each of you who is a regulator of child care programs.

(Attached as an appendix are the sheets that contain the responses to the survey instrument by state. This survey and project was undertaken by the National Association for Regulatory Administration. This is a professional association the mission of which is "to promote excellence in human care regulation through leadership, education, collaboration and service.")

Survey Results Regarding Child Day Care Regulation

	# of Licensed		Differences 5 years ago		Applications		Avg. length	Longer than	Welf. Reform	# of direct	Adding staff		Reducing staff by	
	Centers	Homes	Centers	Homes	Pending	for lic. proc.	5 yrs ago?	more apps.?	line staff?	yes or no	budget cuts?	lay-offs?	hire freeze?	
Alabama	231	489	6	190	100	60 - 180	No	Probably	10 FT 23 PT	No	No	No	No	
Alaska														
Arizona														
Arkansas														
California	12,820	45,532	1,340	-6479	2771	90	NK	NK	192	Yes	No	No	No	
Colorado														
CT														
Delaware	250	1950	54	-25	120	15 to 180	No	No	10	No	No	No	No	
Florida														
Georgia	1139	5617	200	NK	100	60 - 90	NK	Possibly	42	No	No	No	No	
Hawaii	516	482	NK	NK	62	60 - 90	NK	Yes	25	No	No	No	No	
Idaho	472	175						Yes		No	No	No	No	
Illinois														
Indiana	641	2821	10	800	70	180	No	Possibly	7	Yes	No	No	No	
Iowa	1567	4694	164	344	NK	120	No	Possibly	32	No	No	No	No	
Kansas														
Kentucky														
Louisiana														
Maine														
Maryland														
Mass.	2215	10997	50	1000	190	45 - 180	No	Yes	48	Yes	No	No	No	
Michigan	4610	16810	721	2972	NK	30 - 180	Yes	Yes	83	No	No	No	Yes	
Minn.														
Miss.														
Missouri	1644	2641	549	231	525	90	No	No	64	Yes	No	No	No	
Montana	264	2050	88	564	NK	30	No	Yes	12	Yes	No	No	No	
Nebraska	711	3924	223	682	67	10 - 40	No	No	25	No	No	No	Yes	
Nevada	403	636	37	147	100	90	No	Yes	15	Yes	No	No	No	
N. Hamp.														
N.Jersey	3070	4115	920	85	208	90	No	NK	22	No	No	No	No	
New Mex.														
New York	4777	16,295	729	7511	1622	60 - 365	No	Yes	67*	Yes*	No	No	No	
N.Carolina														

Survey Results Regarding Child Day Care Regulation

	# of Licensed		Differences 5 years ago		Applications		Avg. length		Longer than		Welf. Reform		# of direct		Adding staff		Reducing staff by	
	Centers	Homes	Centers	Homes	Pending	for lic. proc.	5 yrs ago?	more apps.?	fine staff?	yes or no	budget cuts?	lay-offs?	hiring freeze?					
N.Dakota																		
Ohio	3717	7058	625	NK	119	NK	NK	Too Soon	40	No	No	No	No					
Oklahoma	4002	1773	266	NK	404	180 - 365	Yes	Yes	77	Yes	No	No	No					
Oregon																		
Pennsylv.	3334	4282	450	2256**	88	100 - 500	NK	Possibly	48	Yes	No	No	No					
R. I.																		
S. Carolina																		
S. Dakota																		
Tenn.	2740	1759	534	578	80	NK	Yes	NK	67	Yes	No	No	No					
Texas	7892	13860	1550	-1859	NK	45	NK	NK	307	Yes	No	No	No					
Utah																		
Vermont	500	1600	0	0	125	45 - 90	Yes	Yes	5	No	No	No	No					
Virginia	2144	1602	954	1168	258	70	Yes	NK	49	No	Unknown	No	Yes					
Wash. St.	1816	8322	NK	NK	644	90	NK	No	78	Yes	No	No	No					
Wash. DC	356	208	-10	-52	110	NK	No	Yes	5	Yes	No	No	No					
W. Virginia	310	NK	NK	NK	NK	60	NK	Yes	10	Just Have (6)	No	No	No					
Wisconsin	2227	2643	427	1107	128	30 - 90	NK	Yes	46.5	Yes	No	No	No					
Wyoming																		
TOTALS	64,368	162,335	9887	11220	7829		5-Yes 12-No	12-Yes 4-No	14-Yes 12-No	25-No	26-No	3-Yes 22-No						

Note: * New York (uses contracts with some local government entities. Contract resources are being increased.)

NA=Not available

NK=Not known

Puerto Rico	454	209	234	96	248	90	No	Yes	67	Yes	No	No	No
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Survey Results Regarding Child Day Care Regulation

Center	Rules Revised last? Homes	Rules rewrite: more or less attention to: costs	Rules rewrite: more or less attention to: measurability	# of rules	Need for?	Non-traditional day care Rules for?	Suspension actions taken in 1996?	Suspension actions taken in 1990?	Revocation actions taken in 1996?	Revocation actions taken in 1990?
Alabama										
Alaska	1996	NA	Yes	NA	Yes	Yes	NK	NK	NK	NK
Arizona										
Arkansas										
California	In progress	More	More	More	Yes	Yes	NK	NK	411	NK
Colorado										
CT										
Delaware	1988	NA	NA	NA	Yes	Yes	9	NK	3	6
Florida										
Georgia	1991	NA	NA	NA	Yes	No	0	0	10	2
Hawaii	In Progress	More	More	More	Yes	No	2	NK	4	NK
Idaho	1993	NA	NA	NA	Yes	No	NK	NK	0	0
Illinois										
Indiana	1985	More	More	Fewer	Yes	NK	81	36	13	NK
Iowa	1996	More	More	NK	Yes	Yes	0	NK	0	NK
Kansas										
Kentucky										
Louisiana										
Maine										
Maryland										
Mass.	1997	More	More	Fewer	No	Yes	12	NK	13	NK
Michigan	1989	More	NA	NA	No	Yes	6	2	38	20
Minn.										
Miss.										
Missouri	1991	More	More	Fewer	No	No	0	5	8	0
Montana	1997	Less	More	More	Yes	No	0	NK	0	NK
Nebraska	1995	NA	NA	NA	Yes	Yes	1	0	24	23
Nevada	1996	More	More	Fewer	Yes	Yes	3	NK	3	1
N. Hamp.										
N.Jersey	1995	More	Less	Fewer	No	Yes	6	7	18	0
New Mex.										
New York	1996	More	More	Fewer	Yes	Yes	4	NK	30	NK
N.Carolina										

Survey Results Regarding Child Day Care Regulation

Center	Rules Revised last? Homes	Rules rewrite: more or less attention to:		Non-traditional day care		Suspension actions taken		Revocation actions taken	
		costs	# of rules	Need for?	Rules for?	in 1996?	in 1990?	in 1996?	in 1990?
N.Dakota									
Ohio	1996	NA	NA	No	No	NA	NA	24	NK
Oklahoma	1996	NA	NA	Yes	Yes	NA	NA	53	6
Oregon									
Pennsylv.	1992	NA	NA	Yes	Yes	NA	NA	29	30
R. I.									
S.Carolina									
S. Dakota									
Tenn.	1993	More	More	Yes	Yes	4	1	1	0
Texas	1990	More	Fewer	Yes	Yes	13	4	37	NK
Utah									
Vermont	1996	NA	Fewer	NA	NA	1	2	20	7
Virginia	1993	Yes	Yes	Yes	Yes	2	3	7	4
Wash. St.	1996	NA	NA	Yes	Yes	14	NK	33	NK
Wash. DC	1975	NA	NA	Yes	No	0	NK	0	NK
W. Virginia	Not licensed	Same	Same	Yes	No	0	NK	1	NK
Wisconsin	1992	More	Same	Yes	Yes	4	0	2	2
Wyoming									
TOTALS				21-Yes 5-No	17-Yes 8-No	162	60	773	101
Puerto Rico	In Progress	1992	More	More	Yes	Yes	0	0	0

Survey Results Regarding Child Day Care Regulation

	% of Lic. on Provisional in 1996	in 1990	Staff Provide Consultation?	Exemptions for Religious	Granted within last 5 years?
Alabama					
Alaska	19%	NK	Yes	No	NA
Arizona					
Arkansas					
California	NK	NK	Yes	No	NA
Colorado					
CT					
Delaware	NK	NK	Yes	No	NA
Florida					
Georgia	10%	NK	Yes	No	NA
Hawaii	23%	NK	Yes	No	NA
Idaho	2%	NK	Yes	Yes	No
Illinois					
Indiana	NK	NK	Yes	Yes	No (1987)
Iowa	12%	NK	Yes	No	NA
Kansas					
Kentucky					
Louisiana					
Maine					
Maryland					
Mass.	NK	NK	Yes	No	NA
Michigan	7%	NK	Yes	No	NA
Minn.					
Miss.					
Missouri	0	0	Yes	Yes	No
Montana	NK	NK	Yes	No	NA
Nebraska	less than 1%	0	Yes	No	NA
Nevada	NA	NA	Yes	No	NA
N. Hamp.					
N.Jersey	17.50%	NK	Yes	No	NA
New Mex.					
New York	NA	NA	Yes	No	NA
N.Carolina					

Survey Results Regarding Child Day Care Regulation

	% of Lics. on Provisional in 1996	in 1990	Staff Provide Consultation?	Exemptions for Religious	Granted within last 5 years?
N.Dakota					
Ohio	5.50%	NK	Yes	No	NA
Oklahoma	less than 1%	NK	Yes	No	NA
Oregon					
Pennsylv.	10%	NK	Yes	No	NA
R. I.					
S.Carolina					
S. Dakota					
Tenn.	NK	NK	Yes	No	NA
Texas	17%	15%	Yes	No	NA
Utah					
Vermont	1%	NK	Yes	Yes	No
Virginia	less than 1%	NK	Yes	Yes	No (1979)
Wash. St.	3.50%	NK	Yes	No	NA
Wash. DC					
W. Virginia	NA	NK	Yes	No	NA
Wisconsin	15%	NK	Yes	No	NA
Wyoming					
TOTALS			23-Yes	5-Yes 19-No	
Puerto Rico	less than 1%	0	Yes	No	NA