

Licensing and Public Regulation of Early Childhood Programs

A position statement of the National Association for the Education of Young Children

Adopted 1983; revised 1992 and 1997

One of the most dramatic changes in American family life in recent years has been the increased participation of young children in nonparental child care and early education settings. Between 1970 and 1993 the percentage of children regularly attending these types of arrangements soared from 30 to 70% (Department of Health and Human Services n.d.). Much of the demand comes from the need for child care that has accompanied the rapid rise in maternal labor force participation. Increased demand for early childhood care and education services also comes from families who—regardless of parents' employment status—want their children to experience the social and educational enrichment provided by good early childhood programs.

Background

Families seeking nonparental arrangements choose among a variety of options: *centers* (for groups of children in a nonresidential setting), *small family child care homes* (for 6 or fewer children in the home of the care provider), *large family or group child care homes* (typically for 7 to 12 children in the home of a care provider who employs a full-time assistant), *in-home care* (by a nonrelative in the family home), and *kith and kin care* (provided by a relative, neighbor, or friend to children of one family only).

The responsibility to ensure that any and all of these settings protect and nurture the children in their care is shared among many groups. Families are ultimately responsible for making informed choices about the specific programs that are most appropriate for their own children. Early childhood professionals and others engaged in providing or supporting early childhood services have an ethical obligation to uphold high standards of practice. Others within the community, including employers and community organizations, who benefit when children and families have access to high-quality early childhood programs also share in the responsibility to improve the quality and availability of early childhood services. Government serves a number of important roles, including

- **licensing** and otherwise regulating so as to define and enforce minimum requirements for the legal operation of programs available to the public;

- **funding programs and supporting infrastructure**, including professional development and supply-building activities;
- **providing financial assistance** to help families with program costs;
- **supporting research and development** related to child development and learning and early childhood programs as well as data gathering for community planning; and
- **disseminating information** to inform consumers, service providers, and the public about ways to promote children's healthy development and learning, both at home and in out-of-family settings.

While many of these functions can and should occur at multiple levels of government, the licensing function is established by laws passed by state legislatures, creating offices that traditionally play the primary role in regulating the child care market by defining requirements for legal operation. States vary considerably in the methods and scope of regulation, using processes that may be called licensing, registration, or certification. These terms can have different meanings from state to state.

The importance of an effective system of public regulation

The primary benefit from public regulation of the child care and early education market is its help in ensuring children's rights to care settings that protect them from harm and promote their healthy development. The importance of these rights is underscored by a growing body of research evidence that emphasizes the importance of children's earliest experiences to their development and later learning (Center for the Future of Children 1995; Hart & Risley 1995; Bredekamp & Copple 1997; Kagan & Cohen 1997). Emerging research on brain development indicates that the degree of responsive caregiving that children receive as infants and toddlers positively affects the connections between neurons in the brain, the architecture of the brain itself (Newberger 1997; Shore 1997). Given the proportion of children who spend significant portions of their day in settings outside their family, ensuring that these environments promote healthy development becomes increasingly important.

Research documents that those states with more effective regulatory structures have a greater supply of higher quality programs (Phillips, Howes, & Whitebook 1992; Helburn 1995). Additionally, in such states differences in quality are minimized between service sectors (e.g., nonprofit and proprietary programs) (Kagan & Newton 1989).

Children who attend higher quality programs consistently demonstrate better outcomes. These differences are apparent in many areas: *cognitive functioning and intellectual development* (Lazar et al. 1982; Clarke-Stewart & Gruber 1984; Goelman & Pence 1987; Burchinal, Lee, & Ramey 1989; Epstein 1993; Helburn 1995; Peisner-Feinberg & Burchinal 1997); *language development* (McCartney 1984; Whitebook, Howes, & Phillips 1989; Peisner-Feinberg & Burchinal 1997); and *social development* (McCartney et al. 1982; Clarke-Stewart 1987; Howes 1988; Whitebook, Howes, & Phillips 1989; Peisner-Feinberg & Burchinal 1997). The demonstrated outcomes appear in cross-sectional studies conducted at a specific point in time as well as in longitudinal studies over time (Carew 1980; Howes 1988; Vandell, Henderson, & Wilson 1988; Howes 1990; Schweinhart et al. 1993; Barnett 1995). The differences in outcomes occur even when other family variables are controlled for, including maternal education and family income level (Helburn 1995; NICHD 1997).

Research is also consistent in identifying the structural factors most related to high quality in early childhood programs:

- small groups of children with a sufficient number of adults to provide sensitive, responsive caregiving;
- higher levels of general education and specialized preparation for caregivers or teachers as well as program administrators; and
- higher rates of compensation and lower rates of turnover for program personnel (Whitebook, Howes, & Phillips 1989; Hayes, Palmer, & Zaslow 1990; Galinsky et al. 1994; Helburn 1995; Kagan & Cohen 1997; Whitebook, Sakai, & Howes 1997). Many of these factors can be regulated directly or influenced by regulatory policy.

Despite widespread knowledge of what is needed to provide good quality in early childhood programs, many programs fail to do so. Two large-scale studies of licensed centers and family child care homes found that only about 10 to 15% of the settings offered care that promoted children's healthy development and learning. For infants and toddlers, the situation is grave: as many as 35 to 40% of the settings were found to be inadequate and potentially harmful to children's healthy development (Galinsky et al. 1994; Helburn 1995).

Support for an effective licensing system falls short

An effective licensing system minimizes the potential for harmful care, but regulatory systems in many states receive inadequate support to fully protect children's healthy development and learning. The lack of support can be seen in five broad areas: (1) some states set their basic floor for protection too low, failing to reflect research findings about the factors that create risk of harm; (2) a large number of settings in some states are exempt from regulation; (3) the licensing office in some states is not empowered to adequately enforce the rules; (4) multiple regulatory systems may apply to individual programs, resulting sometimes in overlapping or even contradictory requirements; and (5) policymakers may view licensing as unnecessary because they believe it seeks the ideal or imposes an elitist definition of quality rather than establishing a baseline of protection. Each of these issues is discussed briefly below.

1. Some states set their basic floor for protection too low, with licensing rules that fail to reflect research findings about the factors that promote or hinder children's healthy development. Clear links exist between the quality of early childhood programs in child care centers and homes and the quality of the public regulatory systems governing these services. Not only is the overall quality level of services provided to children higher in states with more stringent licensing systems (Phillips, Howes, & Whitebook 1992; Helburn 1995), but also demonstrable improvements can be seen in program quality in states that have worked to improve aspects of their licensing processes (Howes, Smith, & Galinsky 1995). Despite such compelling evidence as to the importance of strong licensing systems, a 1997 study looking at grouping, staff qualifications, and program requirements found that "the majority of states' child care regulations do not meet basic standards of acceptable/appropriate practice that assure the safe and healthy development of very young children" (Young, Marsland, & Zigler in press). Similar findings also have been reported on licensing standards for the care of four-year-olds (Snow, Teleki, & Reguero-de-Aviles 1996).

2. A large number of settings in some states are exempt from regulation. Many children are unprotected because they receive care outside their families in programs that are legally exempt from regulation. Exemptions affect both centers and family child care homes. Among centers the most common licensing exemptions are for part-day programs (roughly half of the states) and programs operated by religious institutions (nine states) (Children's Foundation

1997). Programs operated by or in public schools are sometimes exempt from licensing, although in some cases public school programs must meet comparable regulatory standards. Many states exempt family child care providers from regulation if they care for fewer children than stipulated as the threshold for regulation. About half of the states set such a threshold, ranging from 4 to 13 children (Child Care Law Center 1996).

3. States do not always provide the licensing office with sufficient funding and power to effectively enforce licensing rules. A 1992 report found that “many states face difficulties protecting children from care that does not meet minimum safety and health standards” (General Accounting Office 1992, 3). According to the report, staffing and budget cuts forced many states to reduce on-site monitoring, a key oversight activity for effective enforcement. These cutbacks occurred during a time of tremendous growth in the number of centers and family child care homes. The number of centers is estimated to have tripled between the mid 1970s and early 1990s, while the number of children enrolled quadrupled (Willer et al. 1991). An indicator of the growth in the number of regulated family child care providers is found in the recorded increase in the number of home-based participants in the USDA Child and Adult Care Food Program (regulation being a requirement of participation) from 82,000 in 1986 to nearly 200,000 in 1996 (Morawetz 1997).

Lack of meaningful sanctions makes enforcement of existing regulations difficult (Gormley 1997). Licensing offices in all states have the power to revoke licenses, but some states have a much broader range of enforcement tools. Others lack funding to adequately train licensing personnel and fail to receive appropriate legal backup for effective enforcement.

Although most states require that a facility license be prominently posted, many states do not require prominent posting or public printing of violation notices when facilities fail inspections. Information about licensing violations is only available in some states by checking the files in the state licensing office (Scurria 1994). The high demand for child care and early education services can exert pressures to keep even inadequate facilities open (Gormley 1995).

4. Multiple regulatory layers exist, sometimes with overlapping or even contradictory requirements. Different laws have created different inspection systems for different reasons, all affecting child care programs. Programs typically must comply with local zoning, building and fire safety, and health and sanitation codes in addition to licensing. A lack of coordination of requirements can frustrate new and existing providers and undermine the

overall effectiveness of the regulatory system. For example, state and local regulatory structures sometimes impose contradictory requirements on family child care providers (Gormley 1995). If providers react by “going underground,” children suffer.

5. Policymakers may view licensing as unnecessary because they believe it seeks the ideal or imposes an elitist definition of quality rather than establishing a baseline of protection. By definition, licensing rules represent the most basic level of protection for children. Licensing constitutes official permission to operate a center or family child care home; without this permission, the facility is operating illegally. Licensing rules combined with other regulatory requirements, such as environmental health codes, zoning provisions, and building and fire safety codes, define the *floor* for acceptable care that all child care programs must meet. In the current deregulatory climate, efforts to improve licensing rules and provide better basic protections for children’s healthy development have sometimes been misrepresented as attempts to impose a “Cadillac” or ideal of quality child care that is too costly and unrealistic for all programs to achieve. When such misrepresentations succeed, the floor or safety net that licensing provides to protect children in out-of-family care is weakened.

Drawing upon a conceptual framework first espoused by Norris Class (1969), Morgan (1996) distinguishes multiple levels of standards needed to achieve quality in early childhood programs. As the strongest of governmental interventions, licensing must rest on a basis of the prevention of harm. Other regulatory methods, including approval of publicly operated programs, fiscal control and rate setting, and credentialing and accreditation, provide additional mechanisms that, building upon the basic floor of licensing, can encourage programs to achieve higher standards.

Nonregulatory methods can also promote higher quality services: for example, public and consumer awareness and engagement, professional development of teachers/caregivers and administrators, networking and information sharing among professionals, and dissemination of information regarding best practices. These standards can interact and be dynamic. For example, licensing rules can reference credentialing standards, or fiscal regulation can reflect higher rates for accredited programs. Also, greater knowledge of the importance of various factors in preventing harm to children’s healthy development and learning can result in changes in licensing rules so as to raise the level of basic protection over time.

NAEYC's position

The National Association for the Education of Young Children (NAEYC) affirms the responsibility of states to license and regulate the early care and education market by regulating centers, schools, and family and group child care homes. The fundamental purpose of public regulation is to protect children from harm, not only threats to their immediate physical health and safety but also threats of long-term developmental impairment.

NAEYC recommends that states continue to adopt and improve requirements that establish a basic floor of protection below which no center, school, or family child care or group home may legally operate. Basic protections should, at a minimum, protect children by striving to prevent the risk of the spread of disease, fire in buildings as well as other structural safety hazards, personal injury, child abuse or neglect, and developmental impairment.

Licensing rules should be coordinated statewide and streamlined to focus on those aspects that research and practice most clearly demonstrate as reducing these types of harm. Licensing rules and procedures should be developed in a context that recognizes other strategies and policies that encourage all programs to strive continuously for higher standards of quality. Such strategies and policies include application of levels of funding standards and rates for the public purchase or operation of services; maintenance of broadly accessible registries of programs or providers who meet nationally recognized standards of quality (such as NAEYC accreditation); provision of a broad array of training and technical assistance programs to meet the varied needs of different types of providers; and development and dissemination of model standards or best practices.

Public regulation of early childhood program facilities, including licensing, represents a basic level of protection afforded to all children in settings outside their family. Additional strategies and policies along with licensing are needed to support the provision of high-quality services for all families who want or need them. These strategies and policies, however, cannot substitute for licensing in providing basic protection.

NAEYC's principles for effective regulation

NAEYC offers the following 10 principles for implementing an effective regulatory system.

1. Any program providing care and education to children from two or more unrelated families should be regulated; there should be no exemptions from this principle.

NAEYC believes that all types of care and education programs within the child care market should be regulated to provide basic protections to children. These protections must apply to all programs, without limiting definitions, exemptions, or exceptions. Whenever programs are exempted, not covered, or given special treatment, children are vulnerable and the entire regulatory system is weakened. NAEYC believes that programs should be regulated regardless of sponsorship, regardless of the length of program day, and regardless of the age of children served. NAEYC explicitly opposes exemption of part-day programs or programs sponsored by religious organizations because such exemption does not provide an equal level of health and safety protection for all children.

NAEYC's definition of licensed care specifically excludes care by kith and kin when a family engages an individual to care solely for their children. A family support/education model that provides helpful information and support to individuals caring for children is likely to be more effective and meaningful in reaching kith-and-kin providers than a formal licensing model. Programs targeted to parents of young children to help them in their role as their child's first teacher should also be accessible to kith-and-kin caregivers. If kith-and-kin providers are paid with public funds, NAEYC supports the application of funding standards to these arrangements.

2. States should license all facilities that provide services to the public, including all centers, large family or group child care homes, and small family child care homes (i.e., grant permission to operate).

NAEYC recommends that all centers or schools (serving 10 or more children in a nonresidential setting) be licensed facilities. Facility licensure should include an on-site visit prior to licensure and periodic inspections to monitor continued compliance. Licensing rules should focus on the aspects deemed most critical to maintaining children's safety and their healthy development, both in terms of their immediate physical health and well-being and their long-term well-being in all areas of development. NAEYC supports the use of *Stepping Stones to Using "Caring for Our Children"* (National Resource Center for Health and Safety in Child Care 1997) to identify those requirements in the National Health and Safety Performance Standards (APHA & AAP 1992) most needed for prevention of injury, morbidity, and mortality in child care settings.

Licenses are typically granted to privately administered programs rather than publicly operated programs, although some states do require publicly operated programs (such as those administered by the state department of education) to be licensed. If licensure is not required of publicly operated

programs, the administering agency should ensure that the program's regulatory standards and enforcement procedures are at least equivalent to those applied to licensed facilities. Such language should be written into law to empower the administering agency to develop statewide policies for implementation.

States currently vary widely in their definitions and procedures for regulating family child care homes. NAEYC recommends the adoption of consistent definitions of *small family child care homes* as care of no more than 6 children by a single caregiver in her home, including the caregiver's children age 12 or younger; and of *large family child care homes* as care in the caregiver's residence employing a full-time assistant and serving 7 to 12 children, including the caregiver's children age 12 or younger. When infants and toddlers are present in a small family child care home, no more than three children should be younger than age three, unless only infants and toddlers are in the group and the total group size does not exceed four. Large family child care homes should meet the same ratios and group sizes recommended for use in centers.

For small family child care homes, NAEYC supports licensing methods that are designed to achieve full regulatory coverage of all home-based care providers in a state. These methods sometimes do not require an on-site inspection prior to operation. NAEYC believes that such methods—whether called registration, certification, or another form of licensing—are viable ways to license small family child care homes provided that (1) standards are developed and applied; (2) permission to operate may be removed from homes that refuse to comply with the rules; (3) parents are well informed about the standards and the process; and (4) an effective monitoring process, including on-site inspections, is in place. NAEYC believes that large family child care homes should be licensed in the same way as centers, with an inspection prior to licensure.

3. In addition to licensing facilities, states should establish complementary processes for professional licensing of individuals as teachers, caregivers, or program administrators (i.e., grant permission to practice).

The skills and qualifications of the individuals working in an early childhood program are critically essential to creating environments that promote children's healthy development and learning. Establishing licenses for the various roles included in early childhood centers and family child care homes not only protects children's healthy development by requiring the demonstration of key competencies but also enhances early childhood professionalism and career development. In addition, individual licensure holds promise for increasing the compensation of staff (Kagan & Cohen 1997).

Licensing of individuals is also a more cost-effective way of regulating qualifications centrally rather than through a licensing visit.

A number of states are implementing career or personnel registries (Azer, Capraro, & Elliott 1997); individual licensure can build upon and complement these efforts. Personnel licensure should provide for multiple levels and roles, such as teacher/caregiver, master or lead teacher/caregiver, family child care provider, master family child care provider, and early childhood administrator. Attaining a license should require demonstration of the skills, knowledge, and competencies needed for the specific role. (For further information, see NAEYC's *Guidelines for Preparation of Early Childhood Professionals* [NAEYC 1996] and "A Conceptual Framework for Early Childhood Professional Development" [Willer 1994]).

Multiple licenses are needed because of the diversity of roles and functions fulfilled by program personnel; multiple levels help to establish a career ladder with meaningful opportunities for career advancement, with higher levels of compensation linked to higher levels of qualification and demonstrated competence. In states in which early childhood teacher licensure or certification already exists for public school personnel, early childhood personnel licensing should be coordinated with these efforts. Individual licensure efforts may also be used to provide a form of consumer protection for families using in-home care by enabling them to check the credentials of a potential employee.

4. Licensing standards should be clear and reasonable and reflect current research findings related to regu-lative aspects that reduce the risk of harm.

Licensing rules reflect public policy, not program specifications. Highly detailed descriptions of program implementation are inappropriate for inclusion in licensing rules. Such areas are better addressed through consumer education and professional development. For example, requiring programs to establish a planned program of activities to enhance children's development and learning would be an appropriate licensing rule; specifying the number of blocks to be available in a classroom would not.

NAEYC recommends that the licensing standards address health and safety aspects, group size, adult-child ratios, and preservice qualifications and inservice requirements for staff (referencing individual licensing standards). Periodic review and revision (every five years) are needed to ensure that rules reflect current issues as well as the latest knowledge and practice. Licensing rules should be widely publicized to parents and the public; these groups, along with service providers, should also participate in the review and revision of the rules.

5. Regulations should be vigorously and equitably enforced.

Enforcement is critical to effective regulation. Effective enforcement requires periodic on-site inspections on both an announced and unannounced basis, with meaningful sanctions for noncompliance. NAEYC recommends that all centers and large and small family child care homes receive at least one site visit per year. Additional inspections should be completed if there are reasons (such as newness of the facility, sanction history, recent staff turnover, history of violations, complaint history) to suspect regulatory violations. Unannounced visits have been shown to be especially effective when targeted to providers with a history of low compliance (Fiene 1996).

Clear, well-publicized processes should be established for reporting, investigating, and appealing complaints against programs. Parents and consumers especially should be informed of these processes. Staff should be encouraged to report program violations of licensing rules. If whistle-blowing laws do not exist or do not cover early care and education workers, such legislation should be enacted. Substantiated violations should be well publicized at the program site as well as in other venues (such as resource-and-referral agencies, newspapers, public libraries, online, etc.) easily accessible to parents and consumers. Lists of programs with exemplary compliance records also should be widely publicized along with lists of programs that meet the requirements of recognized systems of quality approval, such as NAEYC accreditation.

Sanctions should be included in the regulatory system to give binding force to its requirements. Enforcement provisions should provide an array of enforcement options such as the ability to impose fines; to revoke, suspend, or limit licenses; to restrict enrollment or admissions; and to take emergency action to close programs in circumstances that are dangerous to children. When threats to children's health and safety are discovered, sanctions should be promptly imposed without a delayed administrative hearing process. The vulnerability of children mandates the highest level of official scrutiny of out-of-family care and education environments.

6. Licensing agencies should have sufficient staff and resources to effectively implement the regulatory process.

Staffing to handle licensing must be adequate not only to provide for timely processing of applications but also to implement periodic monitoring inspections and to follow up complaints against programs. Licensing agencies must consider a number of factors in determining reasonable caseloads, for example, program size and travel time between programs. NAEYC believes that, on the average, regulators' caseloads should be no more than 75 centers and large

family child care homes or the equivalent; NAEYC recommends 50 as a more desirable number. States that do not make on-site inspections prior to licensing small family child care homes may assume larger caseloads, but allow for timely processing of licenses, periodic on-site inspections, and prompt follow-ups to complaints.

Regulatory personnel responsible for inspecting and monitoring programs should have preparation and demonstrated competence in early childhood education and child development, program administration, and regulatory enforcement, including the use of sanctions. These criteria should be included in civil service requirements for licensing staff.

7. Regulatory processes should be coordinated and streamlined to promote greater effectiveness and efficiency.

Rules and inspections should be coordinated between the licensing agency and those agencies responsible for building and fire safety and health and sanitation codes so that any overlap is reduced to a minimum and contradictions resolved. In many cases coordination will require reform at a statewide level, as different requirements derive from different laws, are implemented by different agencies, and respond to different constituencies (Center for Career Development 1995). Coordination with funding agencies is also crucial. Licensing personnel can provide program monitoring for the funding agency, thus eliminating duplicate visits; funding possibly can be withheld in cases of substantiated violations.

Other methods for consideration in streamlining the regulatory process include (1) establishing permanent rather than annual licenses for centers, allowing for the revocation of the license for cause at any time, and conducting inspection visits at least annually to determine continued compliance; (2) coordinating local teams that monitor and inspect for licensing and regulation of health, fire, and building safety codes; and (3) removing zoning barriers. NAEYC believes that centers and family child care homes should be regarded as a needed community service rather than as commercial development and should be permitted in any residential zone. Planning officials should take into account the need for these services as communities develop new housing and commercial uses.

8. Incentive mechanisms should encourage the achievement of a higher quality of service beyond the basic floor.

In addition to mandated licensing rules that establish a floor for quality below which no program is allowed to operate, governments can use incentive mechanisms to encourage programs to achieve higher levels of quality. Examples of incentive mechanisms include funding stan-

dards, higher payment rates tied to demonstrated compliance with higher levels of quality, and active publicity on programs achieving higher quality. Given the nature of the early childhood field as severely underfunded, these mechanisms should be implemented in conjunction with funding targeted to help programs achieve and maintain higher levels of quality, or else the strategy simply enlarges the gulf between the *haves* and *have-nots*. Differential monitoring strategies, whereby programs maintaining strong track records and experiencing low turnover in personnel receive shortened inspections or are eligible for longer-term licenses, also may serve as incentives to programs for providing higher quality care.

9. Consumer and public education should inform families, providers, and the public of the importance of the early years and of ways to create environments that promote children's learning and development.

Actively promoting messages about what constitutes good settings for young children not only encourages parents to be better consumers of services in the marketplace but also, because these messages will reach providers outside the scope of regulation (family members and in-home providers), may help improve the quality of other settings. Public service announcements, the development and dissemination of brochures and flyers that describe state/local standards, open workshops, and ongoing communication with organized parent groups and well-care programs are all excellent ways for the regulatory agency to raise the child-caring consciousness of a community. A highly visible regulatory system also helps to inform potential and existing providers of the existence of standards and the need to comply with the law.

10. States should invest sufficient levels of resources to ensure that children's healthy development and learning are not harmed in early care and education settings.

NAEYC believes that public regulation is a basic and necessary component of government's responsibility for protecting all children in all programs from the risk of harm and for promoting the conditions that are essential for children's healthy development and learning and must be adequately funded. Additionally, government at every level can and should support early childhood programs by ensuring sufficient funding for high-quality services, opportunities for professional development and technical assistance to service providers, consumer education to families and the general public, and child care resource-and-referral services to families.

Early childhood regulation in context

An effective system of public regulation is the cornerstone of an effective system of early childhood care and education services, because it alone reaches all programs in the market. But for the regulatory system to be most effective, other pieces of the early childhood care and education services system also must be in place, including (1) a holistic approach to addressing the needs of children and families that stresses collaborative planning and service integration across traditional boundaries of child care, education, health, employment, and social services; (2) systems that recognize and promote quality; (3) an effective system of professional development that provides meaningful opportunities for career advancement to ensure a stable, well-qualified workforce; (4) equitable financing that ensures access for all children and families to high-quality services; and (5) active involvement of all stakeholders—providers, practitioners, parents, and community leaders from both public and private sectors—in all aspects of program planning and delivery. NAEYC is committed to ensuring that each of these elements is in place. As early childhood educators, we believe that nothing less than the future of our nation—the well-being of its children—is at stake.

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