Risk Assessment and Licensing Decision Making Matrices: Taking into Consideration Rule Severity and Regulatory Compliance Prevalence Data

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This short paper combines the use of risk assessment and licensing decision making matrices. In the past, risk assessment matrices have been used to determine the frequency of monitoring and licensing visits and scope of reviews based upon individual rule severity, risk factors, or both. Notably, these data were lacking because they had not been aggregated to determine what type of licensing decisions should be made based upon prevalence, probability, or regulatory compliance history data. The approach described here is a proposed solution to that problem.
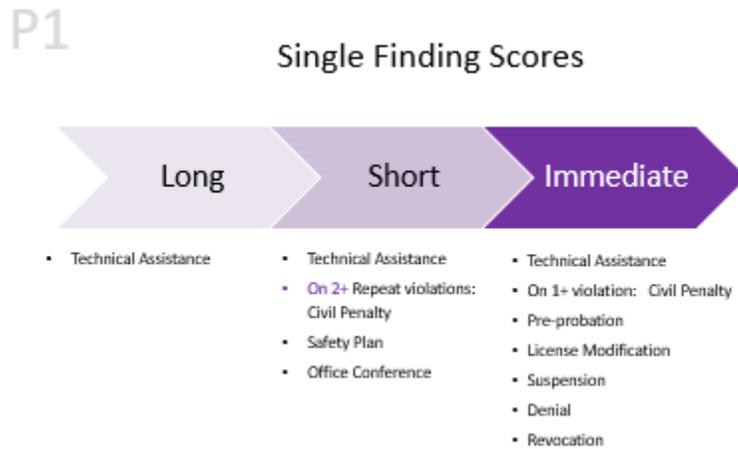
Washington State's HB 1661 (2017) redefined the department's facility licensing compliance agreement (FLCA) process. One feature of this new process is to allow licensed providers to appeal violations noted on the FLCA that do not involve "health and safety standards.[1]" To determine what licensing rules are and are not "health and safety standards" under the new definition, the department worked with community and industry stakeholders, and sought extensive public input, to assignment weights to licensing regulations. These weights were based on each regulation's risk of harm to children. A rule designed to protect against the lowest risk of harm was assigned a "1" and a rule designed to protect against the highest risk of harm was assigned an "8". Weights of "2" through "7" were determined accordingly. These weights were then grouped into three different categories based on risk:

- **Weights 8, 7 and some 6 = immediate concern**
- **Weights 4, 5 and most 6 = short term concern**
- **Weights 1, 2, and 3 = long term concern**

Using the new risk categories, the department developed a two-prong approach that considers both the risk of harm to children at the time a violation is monitored (single findings) and the risk of harm to children arising from violations noted for a given provider over a four year period (historical or overall findings). Used together, the department will assess the single findings and the historical findings to determine appropriate licensing actions, ranging from offering technical assistance to summarily suspending and revoking a child care license. In addition, the department will also note how many times a provider violates the *same* rule, with the severity of a licensing action increasing each time. For example, a violation within the short term concern category could be subject to a civil penalty when violated the second (or potentially the 3rd) time in a four-year period. Whereas, a violation in the immediate concern category could be subject to a civil penalty or more severe action upon the first violation. (See Graphic for Step 1).

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[1] Washington law governing child care and early learning defines "health and safety standards" to mean "rules or requirements developed by the department to protect the health and safety of children against substantial risk of bodily injury, illness, or death." RCW 43.216.395(2)(b).

Step 1:

P1

Single Finding Scores

Long	Short	Immediate
• Technical Assistance	• Technical Assistance • On 2+ Repeat violations: Civil Penalty • Safety Plan • Office Conference	• Technical Assistance • On 1+ violation: Civil Penalty • Pre-probation • License Modification • Suspension • Denial • Revocation

A more difficult task is assigning initial thresholds for the overall finding score. It is this second step (Step 2) where we need to consider probability and severity side by side as depicted in Chart 1 below which is generally considered the standard Risk Assessment Matrix in the licensing research literature:

 ***Step 2:***

Chart 1 – Risk Assessment Matrix

		Probability/	Prevalence		
	Levels	**High**	**Medium**	**Low**	**Weights**
Risk/	**High**	*9*	*8*	*7*	*7-8*
Severity	**Medium**	*6*	*5*	*4*	*4-6*
	Low	*3*	*2*	*1*	*1-3*
	# of Rules	*8 or more*	*3-7*	*2 or fewer*	

The next step (Step 3) is to build in licensing decisions using a graduated Tiered Level system as depicted in the following figure. In many jurisdictions, a graduated Tiered Level system is used to make determinations related to monitoring visits (frequency and scope) and not necessarily for licensing decisions.
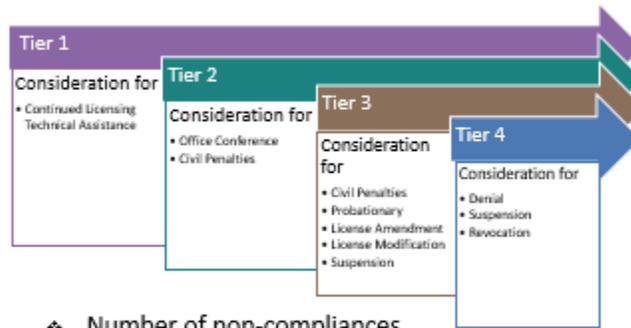
Step 4 involves combining steps 1 and 2 into a revised risk assessment matrix as depicted in the following chart:

Step 4:

Risk Assessment (RA) Matrix Revised

	Levels	High	Medium	Low
	Immediate	9	8	7
Risk/Severity	**Short-term**	6	5	4
	Long-term	3	2	1
			Probability	
	Regulatory Compliance (RC): # of Rules out of compliance and In compliance	8+ rules out of compliance. 92 or less regulatory compliance.	3-7 rules out of compliance. 93 – 97 regulatory compliance.	2 or fewer rules out of compliance. 98 – 99 regulatory compliance.

The last step (Step 5) is to take steps 3 and 4 and combine them together into the following charts which will provide guidance for making licensing decisions about individual programs based upon regulatory compliance prevalence, probability, and history as well as rule risk/severity data.

Step 5:

Licensing Decision Making Matrix*

Tier 1 = (1 – 2) RA Matrix Score

Tier 2 = (3) RA Matrix Score
Tier 3 = (4 – 5) RA Matrix Score

Tier 4 = (6 – 9) RA Matrix Score

*Regulatory Compliance (RC)(Prevalence/Probability/History + Risk/Severity Level)

Tier 1 = ((RC = 93 – 97) + (Low Risk)); ((98 – 99) + (Low Risk)) = Tier 1

Tier 2 = (RC = 92 or less) + (Low Risk) = Tier 2

Tier 3 = ((RC = 93 – 97) + (Medium Risk)); ((98 – 99) + (Medium Risk)) = Tier 3

Tier 4 = (RC = (92 or less) + (Medium Risk)) = Tier 4; ((93 -97) +(High Risk)) = Tier 4; ((98 – 99) + (High Risk)); ((92 or less) + (High Risk)) = Tier 4+

The following algorithms should be followed in moving from the Risk Assessment Matrix (RAM) (Step 4) to the Licensing Decision Making Matrix (Step 5):

1) Σ (Yr1 RC + Yr2 RC + Yr3 RC + Yr4 RC).
2) Identify all rules by high, medium, low, no risk levels. HR, MR, LR, NULL.
3) HR = Tier4.
4) Σ NC Total/# of Years = Average NC.
5) Σ NC by RCH, RCM, and RCL.
6) LR + RCL or LR + RCM = Tier 1.
7) LR + RCH = Tier 2.
8) MR + RCL or MR + RCM = Tier 3.
9) MR + RCH or HR + RCM or HR + RCL = Tier 4.
    HR + RCH = Tier 4+.

Risk Level:
HR = High Risk (7-8 weights)
MR = Medium Risk (4-6 weights)
LR = Low Risk (1-3 weights)
Prevalence Level:
RCH = High Non Compliance (NC) (8+) or Low Regulatory Compliance (RC) (92 or less)
RCM = Medium Non Compliance (3-7) or Medium Regulatory Compliance (93-97)
RCL = Low Non Compliance (1-2) or High Regulatory Compliance (98-99)