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2 **Regulatory Compliance Monitoring Paradigms and the Relationship of Regulatory**
3 **Compliance/Licensing with Program Quality: A Policy Commentary**

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10 **Abstract**

11 This policy commentary deals with two key issues within regulatory science related to the best
12 methods for measuring regulatory compliance: Program monitoring paradigms and the
13 relationship of regulatory compliance/licensing with program quality. Examples from program
14 monitoring paradigms include: 1) Substantial versus Monolithic. 2) Differential Monitoring
15 versus One size fits all monitoring. 3) “Not all standards are created equal” versus “All standards
16 are created equal”. 4) “Do things well” versus “Do no harm”. 5) Strength based versus Deficit
17 based. 6) Formative versus Summative. 7) Program Quality versus Program Compliance. 8) 100-
18 0 scoring versus 100 or 0 scoring. 9) QRIS versus Licensing. 10) Non-Linear versus Linear.
19 Examples from the relationship of regulatory compliance/licensing with program quality include:
20 1) “Do no harm” versus “Do good”. 2) Closed system versus Open system. 3) Rules versus
21 Indicators. 4) Nominal versus Ordinal measurement. 5) Full versus Partial compliance. 6)
22 Ceiling effect versus No Ceiling effect. 7) Gatekeeper versus Enabler. 8) Risk versus
23 Performance.

24 *Keywords:* regulatory compliance, program monitoring, licensing, program quality.

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30 This commentary on policy will deal with two key issues within regulatory science that need to
31 be dealt with by licensing researchers and regulatory scientists as they think through the best
32 methods for measuring regulatory compliance: 1) Program monitoring paradigms; 2)
33 Relationship of regulatory compliance/licensing and program quality. The examples drawn are
34 from early care and education but the key elements and implications can be applied to any field
35 of study related to regulatory science that involves rules/regulations/standards. For the purposes
36 of this manuscript “rules” will be used to describe or refer to “rules/regulations/standards”.

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38 *Program Monitoring Paradigms:*

39 This section provides some key elements to two potential regulatory compliance monitoring
40 paradigms (Differential/Relative versus Absolute/Full) for regulatory science based upon the
41 Regulatory Compliance Theory of Diminishing Returns (Fiene, 2019).

42 As one will see, there is a need within regulatory science to get at the key measurement issues
43 and essence of what is meant by regulatory compliance. There are some general principles that
44 need to be dealt with such as the differences between individual rules and rules in the aggregate.
45 Rules in the aggregate are not equal to the sum of all rules because all rules are not created nor
46 administered equally. And all rules are to be adhered to, but there are certain rules that are more
47 important than others and need to be adhered to all the time. Less important rules can be in
48 substantial compliance most of the time but important rules must be in full compliance all of the
49 time (Fiene, 2019).

50 Rules are everywhere. They are part of the human services landscape, economics, banking,
51 sports, religion, transportation, housing, etc... Wherever one looks we are governed by rules in

52 one form or another. The key is determining an effective and efficient modality for negotiating
53 the path of least resistance in complying with a given set of rules. It is never about more or less
54 rules, it is about which rules are really productive and which are not. Too many rules stifle
55 creativity, but too few rules lead to chaos. Determining the balance of rules is the goal and
56 solution of any regulatory science paradigm.

57 Differential/Relative versus Absolute/Full Regulatory Compliance Paradigms: this is an
58 important key organizational element in how rules are viewed when it comes to compliance. For
59 example, in an absolute/full approach to regulatory compliance either a rule is in full compliance
60 or not in full compliance. There is no middle ground. It is black or white, no shades of gray as
61 are the cases in a differential/relative paradigm. It is 100% or zero. In defining and viewing these
62 two paradigms, this dichotomy is the organizational key element for this paper. In a
63 differential/relative regulatory compliance paradigm full compliance is not required and
64 emphasis on substantial regulatory compliance becomes the norm.

65 Based upon this distinction between differential/relative and absolute/full regulatory compliance
66 paradigms, what are some of the implications in utilizing these two respective approaches.

67 Listed below are the basic implications of the two approaches on program monitoring systems
68 listing the differential/relative versus the absolute/full regulatory compliance paradigms.

69 There are ten basic implications that will be addressed: 1) Substantial versus Monolithic. 2)
70 Differential Monitoring versus One size fits all monitoring. 3) “Not all standards are created
71 equal” versus “All standards are created equal”. 4) “Do things well” versus “Do no harm”. 5)
72 Strength based versus Deficit based. 6) Formative versus Summative. 7) Program Quality versus
73 Program Compliance. 8) 100-0 scoring versus 100 or 0 scoring. 9) QRIS versus Licensing. 10)
74 Non-Linear versus Linear.

75 1) Substantial versus Monolithic: in monolithic regulatory compliance monitoring systems, it is
76 one size fits all, everyone gets the same type of review (this is addressed in the next key element
77 below) and is more typical of an absolute paradigm orientation. In a substantial regulatory
78 compliance monitoring system, programs are monitored on the basis of their past compliance
79 history and this is more typical of a relative paradigm orientation. Those with high compliance
80 may have fewer and more abbreviated visits/reviews while those with low compliance have more
81 comprehensive visits/reviews.

82 2) Differential Monitoring versus One Size Fits All Monitoring: in differential monitoring
83 (Differential/Relative Paradigm), more targeted or focused visits are utilized spending more time
84 and resources with those problem programs and less time and resources with those programs that
85 are exceptional. In the One Size Fits All Monitoring (Absolute/Full Paradigm), all programs get
86 the same type/level of review/visit regardless of past performance.

87 3) “Not all standards are created equal” versus “All standards are created equal”: when looking
88 at standards/rules/regulations it is clear that certain ones have more of an impact on outcomes
89 than others. For example, not having a form signed versus having proper supervision of clients
90 demonstrates this difference. It could be argued that supervision is much more important to the
91 health and safety of clients than if a form isn’t signed by a loved one. In a differential/relative
92 paradigm, all standards are not created nor administered equally; while in an absolute/full
93 paradigm of regulatory compliance, the standards are considered created equally and
94 administered equally.

95 4) “Do things well” versus “Do no harm” (this element is dealt with in the second component to
96 this paper below as well): “doing things well” (Differential/Relative Paradigm) focuses on
97 quality of services rather than “doing no harm” (Absolute/Full Paradigm) which focuses on

98 health and safety. Both are important in any regulatory compliance monitoring system but a
99 balance between the two needs to be found. Erring on one side of the equation or the other is not
100 in the best interest of client outcomes. "Doing no harm" focus is on the "least common
101 denominator" – the design and implementation of a monitoring system from the perspective of
102 focusing on only 5% of the non-optimal programs ("doing no harm") rather than the 95% of the
103 programs that are "doing things well".

104 5) Strength based versus Deficit based: in a strength-based monitoring system, one looks at the
105 glass as “half full” rather than as “half empty” (deficit-based monitoring system). Emphasis is on
106 what the programs are doing correctly rather than their non-compliance with standards. A
107 strength-based system is non-punitive and is not interested in catching programs not doing well.
108 It is about exemplars, about excellent models where everyone is brought up to a new higher level
109 of quality care.

110 6) Formative versus Summative: differential/relative regulatory compliance monitoring systems
111 are formative in nature where there is an emphasis on constant quality improvement and getting
112 better. In absolute/full regulatory compliance monitoring systems, the emphasis is on being the
113 gate-keeper (more about the gate-keeper function in the next section on regulatory
114 compliance/licensing and program quality) and making sure that decisions can be made to either
115 grant or deny a license to operate. It is about keeping non-optimal programs from operating.

116 7) Program Quality versus Program Compliance: (this element is dealt with in greater detail in
117 the second component of this manuscript) differential/relative regulatory compliance monitoring
118 systems focus is on program quality and quality improvement while in absolute/full regulatory
119 compliance monitoring systems the focus is on program compliance with rules/regulations with
120 the emphasis on full, 100% compliance.

121 8) “100 – 0 scoring” versus “100 or 0 scoring”: in a differential/relative regulatory compliance
122 monitoring system, a 100 through zero (0) scoring can be used where there are gradients in the
123 scoring, such as partial compliance scores. In an absolute/full regulatory compliance monitoring
124 system, a 100% or zero (0) scoring is used demonstrating that either the standard/rule/regulation
125 is fully complied with or not complied with at all (the differences between nominal and ordinal
126 measurement is dealt with in the next section on regulatory compliance/licensing and program
127 quality).

128 9) QRIS versus Licensing: examples of a differential/relative regulatory compliance monitoring
129 system would be QRIS – Quality Rating and Improvement Systems. Absolute/full regulatory
130 compliance systems would be state licensing systems. Many programs talk about the punitive
131 aspects of the present human services licensing and monitoring system and its lack of focus on
132 the program quality aspects in local programs. One should not be surprised by this because in
133 any regulatory compliance system the focus is on "doing no harm" rather than "doing things
134 well". It has been and continues to be the focus of licensing and regulations in the USA. The
135 reason QRIS - Quality Rating and Improvement Systems developed in early care and education
136 was to focus more on "doing things well" rather than "doing no harm".

137 10) Non-Linear versus Linear: the assumption in both differential/relative and absolute/full
138 regulatory compliance monitoring systems is that the data are linear in nature which means that
139 as compliance with rules increases, positive outcomes for clients increases as well. The problem
140 is the empirical data does not support this conclusion. It appears from the data that the
141 relationship is more non-linear where there is a plateau effect with regulatory compliance in
142 which client outcomes increase until substantial compliance is reached but doesn't continue to
143 increase beyond this level. There appears to be a “sweet spot” or balancing of key rules that

144 predict client outcomes more effectively than 100% or full compliance with all rules – this is the
145 essence of the Theory of Regulatory Compliance (Fiene, 2019) – substantial compliance with all
146 standards or full compliance with a select group of standards that predict overall substantial
147 compliance and/or positive client outcomes.

148 As the regulatory science and administrative fields in general continue to think about the
149 appropriate monitoring systems to be designed and implemented, the above structure should help
150 in thinking through what these measurement systems’ key elements should be. Both paradigms
151 are important, in particular contexts, but a proper balance between the two is probably the best
152 approach in designing regulatory compliance monitoring systems.

153

154 *Regulatory Compliance/Licensing and Quality*

155 This part of the policy commentary will delineate the differences between regulatory compliance
156 and quality. It will provide the essential principles and elements that clearly demonstrate the
157 differences and their potential impact on program monitoring. Obviously, there is some overlap
158 between this section and the above section dealing with regulatory compliance monitoring
159 paradigms. When we think about regulatory compliance measurement, we are discussing
160 licensing systems. When we think about quality, we are discussing Quality Rating and
161 Improvement Systems (QRIS), accreditation, professional development, or one of the myriad
162 quality assessment tools, such as the Classroom Assessment Scoring System (CLASS) or
163 Environment Rating Scales (ERS’s). All these systems have been designed to help improve the
164 health and safety of programs (licensing) to building more environmental quality (ERS), positive

165 interactions amongst teachers and children (CLASS), enhancing quality standards (QRIS,
166 accreditation), or enhancing teacher skills (professional development).

167 There are eight basic principles or elements to be presented (they are presented in a binary
168 fashion demonstrating differences): 1) “Do no harm” versus “Do good”. 2) Closed system versus
169 Open system. 3) Rules versus Indicators. 4) Nominal versus Ordinal measurement. 5) Full versus
170 Partial compliance. 6) Ceiling effect versus No Ceiling effect. 7) Gatekeeper versus Enabler. 8)
171 Risk versus Performance.

172 1) Let’s start with the first principal element building off what was discussed in the above
173 section, “Do No Harm” versus “Do Good”. In licensing, the philosophy is to do no harm, its
174 emphasis is on prevention, to reduce risk to children in a particular setting. There is a good deal
175 of emphasis on health and safety and not so much on developmentally appropriate programming.
176 In the quality systems, such as QRIS, accreditation, professional development, Environmental
177 Rating Scales, CLASS, the philosophy is to do good, its emphasis is looking at all the positive
178 aspects of a setting. There is a good deal of emphasis on improving the programming that the
179 children are exposed to or increasing the skill set of teachers, or improving the overall
180 environment or interaction that children are exposed to.

181 2) Closed system versus Open system. Licensing is basically a closed system. It has an upper
182 limit with full compliance (100%) with all rules. The goal is to have all programs fully comply
183 with all rules. However, the value of this assumption has been challenged over the years with the
184 introduction of the Regulatory Compliance Theory of Diminishing Returns (Fiene, 2019). With
185 quality systems, they have a tendency to be more open and far reaching where attaining a perfect
186 score is very difficult to come by. The majority of programs are more normally distributed where
187 with licensing rules the majority of programs are skewed positively in either substantial or full

188 compliance. It is far more difficult to distinguish between the really best programs and the
189 mediocre programs within licensing but more successful in quality systems.

190 3) Rules versus Indicators/Best Practices. Licensing systems are based around specific
191 standards/rules/regulations that either are in compliance or out of compliance. It is either a
192 program is in compliance or out of compliance with the specific rule. With quality systems, there
193 is more emphasis on indicators or best practices that are measured a bit more broadly and deal
194 more with process than structure which is the case with licensing. It is the difference between
195 hard and soft data as many legal counsels term it. There is greater flexibility in quality systems.

196 4) Nominal versus Ordinal measurement. Licensing systems are nominally based measurement
197 systems. Either you are in compliance or out of compliance. Nothing in-between. It is either a
198 yes or no response for each rule. No maybe or partial compliance. With quality systems, they are
199 generally measured on an ordinal level or a Likert scale. They may run from 1 to 3, or 1 to 5, or
200 1 to 7. There is more chances for variability in the data than in licensing which has 1 or 0
201 response. This increases the robustness of the data distribution with ordinal measurement.

202 5) Full or None versus Gradients or Gray Area. Building off of the fourth element, licensing
203 scoring is either full or not. As suggested in the above elements, there is no in-between category,
204 no gradient or gray area. This is definitely not the case with quality systems in which there are
205 gradients and substantial gray areas. Each best practice can be measured on a Likert scale with
206 subtle gradients in improving the overall practice.

207 6) Ceiling effect versus No Ceiling. With licensing there is definitely a ceiling effect because of
208 the emphasis on full 100% compliance with all rules. That is the goal of a licensing program, to

209 have full compliance. With quality systems, it is more open ended in which a ceiling effect is not
210 present. Programs have many ways to attain excellence.

211 7) Gatekeeper versus Enabler: Licensing has always been called a gatekeeper system. It is the
212 entry way to providing care, to providing services. It is a mandatory system in which all
213 programs need to be licensed to operate. In Quality systems, these are voluntary systems. A
214 program chooses to participate, there is no mandate to participate. It is more enabling for
215 programs building upon successes. There are enhancements in many cases.

216 8) Risk versus Performance: Licensing systems are based upon mitigating or reducing risks to
217 children when in out of home care. Quality systems are based upon performance and excellence
218 where this is rewarded in their particular scoring by the addition of a new Star level or a Digital
219 Badge or an Accreditation Certificate.

220 There has been a great deal of discussion in the early care and education field about the
221 relationship between licensing, accreditation, QRIS, professional development, and technical
222 assistance. It is important as we continue this discussion to pay attention to the key elements and
223 principles in how licensing and these quality systems are the same and different in their
224 emphases and goals, and about the implications of particular program monitoring paradigms and
225 measurement strategies. For other regulatory systems outside the human services field, the same
226 type of model can be applied positioning compliance and quality as a continuum one building off
227 of the other because I feel that with the introduction of more quality into a regulatory context
228 will help to ameliorate the ceiling and plateau effect of diminishing returns on performance and
229 outcomes.

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233 *Reference:*

234 Fiene, R. (2019). A treatise on Regulatory Compliance. *Journal of Regulatory Science*, Volume

235 7, 2019. <https://doi.org/10.21423/jrs-v07fiene>