DO STATES REQUIRE CHILD CARE PROGRAMS TO EDUCATE CHILDREN?

Report #2: Preschool and Child Care Center Rules

A Discussion Draft by Gwen Morgan and Sarah LeMoine

This report is part of a five brief series that also includes:

Report #1: State Center Licensing Requirements for Child Development and Early Education
Report #3: Infant/Toddler Rules to Assure Early Education and Strong Relationships
Report #4: Qualifications and Experience Requirements for Center Teachers and Directors
Report #5: The Role of State Licensing Agencies in Quality Improvement of Centers
INTRODUCTION

In response to questions from Senate staff, the authors undertook a study of the states’ child care center licensing rules to determine whether the states require child care centers to provide education for young children in all licensed programs, or whether they intend only to protect the physical health and safety of children. The study examines only the baseline requirements that states require of all center programs that are permitted by the licensing agency to operate. Report #2 focuses on the differences between preschool and full-day programs, and also clarifies whether and how part-day programs are regulated.

★CENTRAL QUESTION★
To what extent do the states require licensed child care centers to provide an educational program for all children?

★REPORT #2 SUB-QUESTION★
Do states consider all licensed programs to be educational, or do they view preschools as educational and full-day programs as attending to “just health and safety?”

The authors assume that centers should meet all of the developmental needs of children, including the need to learn. If children from low-income families need a comprehensive program such as Head Start, then all low-income children should be receiving comprehensive services, and all of their parents should be able to access health and social services for their children. If all children should reach kindergarten ready to succeed in school, then all children in preschool programs—full- or part-day—should be given educational programs that support their intellectual development and the social-emotional maturity that leads to such readiness. Despite program and funding delineations and varying target groups, there is only one set of young children in the United States.

Parent cooperative nursery schools were widely used during the 1950s. During this time, Federal government agencies made a pragmatic decision that programs that were “primarily educational” were within the domain of the Department of Education, while those that were “primarily care” were the province of the Children’s Bureau and the Women’s Bureau of the Department of Labor. This distinction recognized that there is a blurred line in defining early childhood programs—both education and care are present in all programs. It became hard to distinguish what a program “primarily” was, as more and more states’ rules addressed all elements of development. The states’ child care licensing laws began to cover part-day programs more frequently during this period. Over time, any distinction between education and care has diminished or even disappeared in many states. From a higher education perspective, the same professional preparation in early childhood education and child development prepares teachers for both full-day and part-day programs.

States that regulate both full-day and part-day programs have long recognized that child care center rules should describe an educational program staffed by teachers who understand how young children learn, and that part-day programs must be safe and healthy as well as educational.
These goals have often been expressed in developmental language (US Department of Health, Education and Welfare, 1967). In states that license only full-day programs or in states where two different agencies set rules for two types of early childhood programs, there may be a lingering belief that preschool and child care are entirely different. When the same licensing agency licenses both types of programs, there is usually little, if any distinction.

An important administrative distinction is that licensing regulates programs in the private sector. Programs that are run by the state or a local public agency, such as public schools, have their own authority to operate. It is not easy for a state licensor to take away permission to run a program for children from another governmental agency. A few states, like Maine, do license programs run by public schools, but most states consider regulation of public and private school systems to be the responsibility of the Department of Education. Even when the Education agency sets standards for preschools, the strong tradition of local school autonomy and the lack of staff for inspection undermine their ability or desire to act as a regulatory agency.

When part-day programs (including private preschool programs and Head Start) operate in spaces owned by public schools, licensing requirements for child:adult ratios and teachers prepared in early education have not always been applied. Programs affected by a disparity of standards acutely feel a sense of regulatory unfairness.

For this aspect of the study, we focused on licensing rules, states’ intentions, and the definitions used by the states for licensing. We examined whether there were differences in the rules themselves that might indicate that some licensed programs must be more or less educational than others. Whether the states’ education agencies could apply and enforce standards of quality is beyond the scope of this study, but we looked at what was covered and what was required in the licensing laws and rules.

WHAT WE FOUND IN STATE REGULATIONS

Program Definitions

In almost every state, licensing laws do not cover certain broad categories of programs such as those operated by public schools or other public agencies; those with parents on the premises; care by parents and relatives; programs not offered on a regular basis; and activities for school-age children that do not assume responsibility for the children. In a few states there are also exemptions for certain types of programs that apply for exemptions such as Montessori programs and faith-based programs.

In a number of the state statutes, definitions make it clear that all early care and education programs, by whatever name they are known, are covered by licensing. The table on the following page illustrates some definitional examples.
### Program Definition Example

<table>
<thead>
<tr>
<th>State</th>
<th>Definition Example</th>
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<tbody>
<tr>
<td>AL</td>
<td>“Day care center” includes facilities commonly called child care centers, day nurseries, nursery schools, kindergarten, and play groups <em>with or without stated educational purposes.</em></td>
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<tr>
<td>MD</td>
<td>Regulates by the licensing rules “a child care center, preschool, child development center, nursery school, before-and-after-school program, school-age program, early childhood learning center, by whatever name known.”</td>
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<tr>
<td>NH</td>
<td>“Group child care center” means a child day care agency in which child day care is provided for preschool children and up to five school-age children, whether or not the service is known as a day nursery, nursery school, kindergarten, cooperative, child day care center, day care center for the developmentally disabled, progressive school, Montessori school, or by any other name.</td>
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<tr>
<td>NJ</td>
<td>The term “child care center” means any facility for children under 13 for less than the 24 hour day, including day care centers, drop-in centers, night-time centers, recreation centers operated by county or city recreation/parks departments, day nursery, nursery and play school cooperatives, early childhood centers, centers for young children with special needs, centers serving sick children, infant/toddler centers, school-age programs, employment-related centers, or kindergarten not part of a public or private elementary school system.</td>
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<tr>
<td>OR</td>
<td>“Child care facility” means any facility that provides child care in a center or … home, including those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center.</td>
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</table>

Three of these definitions do not include the word “preschool,” while two of them do. If the state licenses part-day programs, then presumably any private preschool is covered under “any other name.” Preschools operated by public schools are not usually covered by state licensing regulations. A few states, such as Nevada and Nebraska, promulgate different sets of rules for child care centers and private preschools. However, the rules for full-day programs are most often applied to all programs, and any educational distinction between the two has diminished in most states.

In the states’ rules, we found four different situations regarding program licensure. A state might:

1) Exempt part-day programs from licensing if they are accredited by the Department of Education;  
2) Have two sets of rules, one for full-day and one for private part-day programs;  
3) Assume that part-day programs do not need to be regulated at all; or  
4) Apply a single set of rules to both full- and part-day programs, making minor adaptations appropriate to differences in the types of licensees.
Regulating Both Child Care Centers and Preschools

Nevada is an example of a state that licenses both child care centers and preschools, using a different set of rules for each program. Nevada’s rule-writers have attempted to make a distinction between the two types of center that they license, but the distinction is difficult to make. Some of the differences between the two sets of rules in Nevada include the following:

- Qualifications for staff are set higher for preschools.
  - Licensed child day care programs must have “learning objectives.”
    - The rules stipulate that “every licensee shall develop a program … for optimal mental growth, learning experiences planned with the aid of the child’s parents which ensure harmony with the life style and cultural background of the child.”
  - Licensed preschools have nine objectives stipulated in the rules. Only the third objective is explicitly directed at learning in the preschool program.
    - Preschools are defined as “a facility in which the licensee has established specific goals to enhance each child’s cognitive, social, emotional, physical, and creative development. A licensee must develop a specific plan for child care and instruction which is designed to achieve [nine] objectives, the third of which is development in the child of an interest and joy in learning.”

As stated in Report #1: State Center Licensing Requirements for Child Development and Early Education, many other states require of all their child day care centers what Nevada requires of its licensed preschools—indicating that these other states view all types of child care as an educational program. However, trying to find this specific distinction in states’ rules is complicated and can be very confusing.

Length of the Day

There is one clear distinction between full-day licensed child care and part-day preschool or nursery school programs, whether licensed or not: the length of the day. For a full-day program, the licensing rules are likely to require that all developmental needs be met. Further, the children and their teachers require a different kind of pacing than they would need in a part-day program. Pacing is important for full-day programs, where both children and staff have longer hours. A part-day program can proceed at a faster pace.

As part of their “Program of Activities” section, most states’ rules require a current written daily schedule to be posted in each room of a licensed center. In general, both licensed part-day programs and full-day programs must meet this requirement. This stipulation provides evidence that the licensing visitor can use to determine whether the full range of developmental learning experiences are included in the curriculum each day. In addition, we found that states are setting some criteria for this schedule that reflect goals for pacing as an element of quality.

Longer hours can mean greater outcomes for children. But too many transitions, too many shifts from one thing to another, too many interruptions of a child’s engagement, and too much monotonous sameness, quickly destroy quality and undermine learning. Skilled staff in full-day programs make an intentional effort to limit the number of transitions children experience in a
day. Licensors review programs’ schedules with consideration of pacing, as well as attention to whether all developmental needs are being addressed.

Pacing, as an element of quality, has not received much specific research attention (Hayes, Palmer & Zaslow, 1990; Mattick & Perkins, 1971). We found more examples than expected of the word “pace” or “pacing” in the states’ rules. Even when the specific word is not used, the regulations show a concern for pacing in sections that address daily and program schedules.

Forty-two states have rules for the pacing of activities in their rules for child care centers. In some, a flexible schedule is mandated. Many states require a balance of times for quiet and active activities, and/or a balance between small and large group activities.
Child-initiated activities and/or teacher-initiated activities are mentioned by 31 states. This particular factor, the balance between teacher control of the child’s time and the child’s control of choices during the day, has been found to affect the child outcomes of the program (Berrueta-Clement, Schweinhart, Barnett, Epstein, & Weikart, 1992; Abt Associates, 2000; Cost, Quality, and Outcomes Study Team, 1995).

At least eleven states not only require child- and teacher-initiated activities, but also specifically address the issue of balancing control: Connecticut, Georgia, Iowa, Maryland, New Jersey, New York, North Carolina, Rhode Island, Tennessee, Vermont, and Washington.

We found these rules about pacing, balancing different types of activities, and balance of control between teacher and child in states that license both full-day and part-day programs.

**Regulation by State Education Agencies**

When part-day programs are not licensed by the state, they are sometimes regulated instead by the state’s Board of Education, or Department, as in Pennsylvania, and Alaska. Such programs may be accredited—voluntary or as a requirement. Since our study was based on licensing rules, we did not look at what is required for accreditation. Yet, when a program is sponsored by an education agency, it is likely assumed that the program is educational. It is also probable that they are not inspected. In some states, programs that are not licensed by the state may not be regulated at all.
SUMMARY and CONCLUSIONS

There is extensive evidence that at least 45 and up to 49 states mandate an educational program in licensed private child care programs. Most of them consider that both full-day centers and part-day preschools are educating children. They do not limit their regulatory scope to narrowly defined risks of harm only to children’s physical health and safety.

Most states’ rules take a developmental approach to the care and education of young children. States do not consider education of children to be immeasurable and intangible; instead, they have written evidence-based rules that can be enforced. The rules can assist in educating new providers about children’s needs and program provisions.

Educating young children in licensed care can be required through licensing. Maintaining a baseline of necessary quality can be achieved, using the powers of the state, when the licensing agency is adequately staffed to visit, inspect, and apply sanctions to maintain a necessary level of quality. In some states, there are exceptions, however, which shield many programs from effective regulation.

If part-day preschools meet the needs of families, are not exempt from regulation, have an appropriate curriculum, and are inspected by a regulatory agency, these programs can achieve good quality. However, many families require supplementary arrangements to cover their working hours, and to meet their children’s needs for continuity of relationships.

Much of the supply of child care in the United States is mediocre to poor (CQO Study Team, 1995). The authors do not assume that poor or mediocre quality is caused by low standards or by state rule-makers dealing solely with “health and safety” narrowly defined. The quality of centers for children in the United States reflects the inconsistent coverage and the low level of resources that the governments and businesses have made available to make programs affordable for families.

However, a newer emphasis on levels of quality and continuous improvement may result in a stronger role for licensing in improving quality and assuring appropriate early childhood education, in collaboration with funding agencies. *Report #1: State Center Licensing Requirements for Child Development and Early Education* includes some of this statutory language. *Report #5: The Role of State Licensing Agencies in Quality Improvement of Centers* addressed these newer innovations found in our study.
REFERENCES


