

Cooperative Ownership as a Health Justice Intervention: A Promising Strategy to Advance Health Equity Through the U.S. Childcare System

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Abstract: In their article “The Civil Rights of Health,” Harris and Pamukcu offer a framework connecting civil rights law to unjust health disparities with the aims of creating broader awareness of subordination as a root cause of health inequities and inviting policymakers to create new legal tools for dismantling it. They close with a call to action. Here, we take up their call and propose cooperative enterprises as a health justice intervention. To illustrate this conceptualization, we focus on childcare as a system with robust connections to social, economic, and health equity for children, workers, and families.

The COVID-19 pandemic unfolded alongside dramatic changes in the global economy, massive domestic unemployment, and waves of civil unrest in response to police murders of unarmed Black people and the long-standing history of structural racism in the United States.¹ Early in the pandemic, before vaccines became widely available, strategies for mitigating infection were limited to wearing face coverings, encouraging telecommuting, and enacting measures to restrict public gatherings, require physical distancing, and close schools and childcare facilities.² While to varying degrees protective against the spread of disease, these policies and the changes they brought to our social and economic systems have led to dramatic increases in unemployment and exacerbated inequities in wealth and income.³ The childcare sector was particularly affected by the pandemic. Conservative estimates show that between January and April of 2020, two-thirds of childcare centers that had been operating

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had closed, and one-third of them were still closed in April 2021.⁴

The ongoing COVID-19 pandemic also shed light on the fact that, as a nation, we have done too little, too late to protect our most vulnerable workers. Low-wage essential workers — the majority of whom are people of color, women, young adults, or immigrants — face the greatest health risks and suffer the largest financial consequences of pandemic responses.⁵ The United States has more than 53 million low-wage workers, more than half of whom are ages 25–54 and 40 percent of whom are raising children.⁶ Childcare workers, overwhelmingly female and with a higher proportion of individuals of color than the general population,⁷ are among the lowest-paid workers⁸ and often rely on government programs to make ends meet.⁹ Resolving the challenges associated with the pandemic and its broader social and economic inequities for children, families, and workers requires a focus on policy levers for change that work across multiple systems and sectors.¹⁰

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Childcare as a Health Justice Issue

Children require safe, nurturing environments to support their growth and development, and they often depend on a network of caregivers — including parents, family members, and childcare providers — to help them thrive.¹³ Despite the critical role of early childcare and its associated positive long-term educational and health outcomes, lack of access to safe, affordable, high-quality childcare has been a persistent issue in the United States. The childcare sector has been chronically underfunded, leading to a lack of licensed childcare options in many communities across the country. Further, the COVID-19 pandemic-related closures contributed to the loss of nearly 400,000 jobs in the childcare industry.¹⁴ Compared with white families, families of color were disproportionately affected by childcare closures.¹⁵

The lack of available childcare slots, coupled with

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activism aimed at eliminating health inequities, could be used to address these complex challenges. The many definitions of *health justice* have three core elements: First, the approach recognizes that health disparities stem from upstream determinants of health that are structured by law and policy. Second, a commitment to using law as a tool for promoting health equity. This commitment extends the domain of health law beyond healthcare to include the range of policy domains conceptualized as affecting health and population health gaps.¹¹ Third, the approach centers the perspectives of frontline communities in collaborations that include public health, law, and community advocates.¹²

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the often prohibitively high cost when slots are available, has created tremendous hurdles for families. Many middle-income and rural communities are “childcare deserts,” where local demand for childcare slots in licensed programs outpaces supply.¹⁶ This dearth of childcare has affected women in particular, who, as default primary caregivers, often have had to choose between caring for their children and engaging in paid work.¹⁷ Even before the COVID-19 pandemic, high costs and limited availability created racial and economic inequities in access to childcare. The cascade of impacts brought by the pandemic have exacerbated inequities in access to childcare, threatened both safe and stable employment for care providers, and affected families’ ability to afford care and maintain earnings.

Worker-Owned Childcare Cooperatives and the Civil Rights of Health

Against this backdrop, we propose worker-owned childcare cooperatives as a health justice intervention. In the United States, childcare arrangements for children up to five years old take a variety of forms, including childcare centers, family childcare homes (paid and regulated care provided in a caregiver's residence), nanny care, and "informal" care provided by friends, family, and neighbors.¹⁸ There are three common ownership structures for childcare centers: non-profit, for-profit, or public governmental provider. It is estimated that 71% of childcare centers are incorporated as for-profit businesses (an estimated 39% are corporations, 25% are individual proprietorships, 7% are partnerships, and 1% utilize some other form of incorporation) and 29% are nonprofit and governmental establishments.¹⁹ In a capitalist system, for-profit corporations concentrate ownership of the enterprise and its profits among owner-operators or shareholders and are incentivized to maximize profit. In investor-owned firms, businesses are obligated to maximize returns for investors even when that obligation creates conflicts of interest with ethical standards, their employees, or their customers. Nonprofit childcare centers differ from for-profit entities in that they are exempt from most taxes and must reinvest leftover revenue back into the organization instead of treating it as profit.²⁰

According to the International Cooperative Alliance, a cooperative is "an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically-controlled enterprise."²¹ The foundational values and governance principles of cooperative enterprises include caring for others, social responsibility, democracy, equality, and solidarity. As such, they have the potential to institutionally value care, implement labor practices, and transform market relationships in ways that promote equity and justice.²² Childcare cooperatives can take several different forms, with distinct legal structures that confer varying advantages. For example, family childcare homes, which operate out of providers' houses, can join together to form cooperatives that allow them to take advantage of economies of scale — for example, in food purchases — while remaining separate businesses.²³ Multi-stakeholder cooperative childcare centers include both parents and workers as members, and they can qualify for tax-exempt status as a nonprofit in certain circumstances.²⁴ Parent cooperatives are organized as nonprofits in which parent-members elect the board of directors.²⁵ Worker-owned

childcare cooperatives, the focus of this article, use values-driven business models that center worker and community benefits in their mission and operations. In contrast to workers in traditional businesses, worker-owners of cooperatives participate in the management of the enterprise through democratic practices and can share in profits.²⁶ Because workers share the profits and wealth building from business growth over time, the success of a cooperative business increases its capacity to actualize its values. In this section, we use elements of the civil rights of health framework to articulate why establishing robust policy and financial support ecosystems for worker-owned childcare cooperatives is a health justice strategy.

Harris and Pamukcu offer the civil rights of health as a framework at the intersection of public health and law to address the root causes of health inequities through the pathways of population, place, and power.²⁷ These pathways are underpinned by subordination based on race, gender, or other social or economic differentials. The population pathway describes how population-based health disparities result from subordination based on political and social factors as opposed to individuals' genetics or behavior. The place-based pathway describes how the geography of health inequity is shaped by access, or the lack thereof, to local resources for health, and how these factors compound over generations. The power pathway describes how individual and collective agency operate as determinants of health. Harris and Pamukcu emphasize that the pathways are entwined and that addressing upstream determinants of health inequities requires dismantling subordination as their common root.

Worker-owned childcare cooperatives have the potential to dismantle subordination by acting on all three pathways identified in the civil rights of health framework. Cooperatives can address the population-based pathway by creating jobs, increasing wages, and generating wealth for women, people of color, and immigrants, which is critically important for the women and people of color who represent most worker-owners in cooperative enterprises.²⁸ For example, cooperative workers can earn above-market wages and access shared business ownership.²⁹ Childcare cooperatives can also create more equitable access to safe high-quality care for children, thereby reducing racial and income-based disparities in learning.³⁰

Further, cooperative enterprises dismantle place-based subjugation by addressing the failures of private markets to provide needed goods and services, such as high-quality, affordable childcare.³¹ Because they are typically owned by community residents, cooperatives

serve as community anchors by stabilizing local economies, creating jobs, spending locally, and developing human and social capital. Cooperative economic models have a long history in the African American community as a strategy for creating jobs, generating wealth, and ensuring local control over access to goods and services where discrimination has been pervasive and government intervention and private markets have failed.³² Thus, cooperatives are an apt response to the failure of the childcare market during the early pandemic and the ways in which that failure continues to exacerbate racial and gender inequities in access to quality care for children and in access to income for workers and parents.

Finally, cooperative enterprises create a context for disrupting a health disparities pathway based on inequities in access to political power. Although cooperatives can be structured in different ways, they share a commitment to democratic principles and transparent governance, and workers maintain a majority stake in decision making.³³ Worker-owned cooperatives can empower workers to have agency over their own compensation structures and workplace safety measures.³⁴ Membership in a cooperative enterprise also provides experiential learning about democratic principles and can catalyze capacity for political action.³⁵

Legal Infrastructure for Worker-Owned Childcare Cooperatives

As recognized in the health justice framework, laws and policies have played a central role in creating inequities, and they are critical tools in undoing those same inequities. Through formal legal research and conversations with key partners in the field, we explored the various federal, state, and local laws that support or hinder formation of worker cooperatives. This section outlines findings from that research and examines the ways in which the policy environment has both facilitated and inhibited the successful creation of worker-owned childcare cooperatives. In particular, we examine the ways in which formation of cooperatives is affected by state business incorporation statutes; laws and policies governing various childcare and small business financing mechanisms; and childcare licensing laws.

To receive certain protections afforded by the law, all businesses must adopt a legal structure as set out by state law. State statutes governing business formation recognize different business structures, which impose different requirements and enable different benefits. No single structure facilitates the formation of worker-owned cooperatives across all states. With respect to corporate entities, some states have

statutes designating worker-owned cooperatives as a specific form of incorporation; others specify forms of incorporation for other types of cooperatives or cooperatives generally; and still others have no cooperative incorporation statutes at all.

The lack of a specific statute for incorporation of a worker-owned cooperative is not necessarily a barrier to forming one, insofar as worker-owned cooperatives can still be created as another type of business entity, including one that does not require incorporation, such as a limited liability company.³⁶ But incorporation as a worker-owned cooperative, which is only possible in those states that have cooperative incorporation codes, offers some benefits. For example, it offers clarity about the type of business and provides legal protection of the principles and practices that underlie cooperatives.³⁷ In addition, it facilitates access to a type of tax benefit provided by the IRS to cooperatives — Subchapter T — which can reduce tax liability in certain instances.³⁸ It also, in some states, means that the business can use the word *cooperative* in its name.³⁹ Accordingly, in states that lack specific cooperative statutes, the enactment of such laws has the potential to reduce administrative barriers, facilitate legal protections and tax advantages, and ease the creation of worker-owned childcare cooperatives.

Even when worker-owned childcare cooperatives can incorporate as such, other laws may stand in the way of their formation. For example, financing is of primary concern to anyone starting a business. The United States Small Business Administration (SBA) provides government-backed loans that can cover a wide range of business start-up costs through its 7(a) Loan Program.⁴⁰ However, under current law, all loans require an owner with at least a 20% stake in the business to sign a personal guarantee. This rule effectively excludes cooperatives from participating because they tend to have many owners, each with less than a 20% stake.⁴¹ Other public and private lenders often have similar guarantee requirements.

A 2018 federal law — the Main Street Employee Ownership Act — encouraged elimination of the guarantee requirement from the 7(a) Loan Program without actually doing so.⁴² In contrast and serving as a model for future financing mechanisms, both the CARES Act's Paycheck Protection Program and the SBA's COVID-19 Economic Injury Disaster Loan program did not include a guarantee requirement, in response to advocacy by the cooperative community.⁴³ Two pending federal bills — a House version⁴⁴ and a Senate version⁴⁵ of the Capital for Cooperatives Act — would eliminate the requirement. At the state and local levels, governments can both ensure that regu-

latory frameworks for lending facilitate financing of cooperatives and encourage private lenders to remove guarantee requirements that foreclose cooperatives' ability to access capital.⁴⁶

Like many other industries, childcare is highly regulated, and every state has extensive licensing laws that serve several purposes, foremost of which is protecting the health and safety of children who are receiving care. Some of these laws act as barriers to the formation of childcare businesses generally and also to the formation of childcare cooperatives. For

but laws at all levels of government on topics from labor and employment to taxes and beyond should be updated to recognize the unique needs and benefits of cooperative ownership.⁵⁰ The government agencies and actors that implement and enforce those laws and policies also require education about the cooperative model in order to provide adequate support to workers seeking to form a cooperative. Moreover, some of the laws and policies that act as barriers are not specific to worker-owned childcare cooperatives insofar as they may make it more difficult to form and sustain

The potential of worker-owned childcare cooperatives to transform the existing childcare ecosystem should be explored further through additional research and partnerships between frontline childcare workers, community leaders, public health professionals, and legal advocates. This area is ripe for legal and policy innovation, and public health can play a critical role, given the strong evidence showing early childhood education as a social determinant of health. We offer this article as a means to start that conversation.

example, in some states, childcare licenses cannot be sold or transferred to new owners,⁴⁷ which can make it difficult to convert from traditional ownership to cooperative ownership while maintaining continuity of employees and operations, given that starting from scratch with the licensing process often comes with its own set of administrative barriers. Licensing laws can be updated to facilitate transfer, as the state of Washington has done. In 2019, the Washington legislature enacted a bill that, beginning in 2020, would allow licenses to be transferred to new owners.⁴⁸ More generally, the intense regulation of childcare can make it difficult for all childcare businesses, cooperatives included, to operate profitably, thus disincentivizing their creation. Recognizing that childcare licensing regulations have the potential to improve quality,⁴⁹ a review of such regulations to ensure that they are not unnecessarily impeding the supply of childcare could help facilitate creation of cooperatives as well as other types of childcare businesses.

An exhaustive review of the myriad laws and policies implicated in formation of worker-owned childcare cooperatives is beyond the scope of this article. However, it is clear that current legal structures do not adequately contemplate cooperative ownership as a business model. The ways in which businesses are incorporated, financed, and licensed are of primary importance in supporting the cooperative model,

either cooperatives generally (in the case of the 7(a) Loan Program) or childcare businesses generally (in the case of licensing laws). Nonetheless, what makes a business successful can also make a cooperative business successful, and both profitability and sustainability are essential to realize the benefits of this model as a health justice intervention.

Conclusion

The structural deficiencies of the United States childcare system can be addressed in many ways. Worker-owned childcare cooperatives are a solution that embodies key aspects of a health justice paradigm. Through democratically defined distribution of benefits and assets, they use law and policy to address disparities in structural determinants of health such as wealth and income.

By repositioning the locus of control, worker-owner cooperatives have the potential to contribute to a shift in mindset about childcare and about the role of essential community services in our economic system more broadly. By prioritizing decision making and participation by their workers, thus centering community priorities in their governance, cooperatives give workers the agency to reform that system. Additionally, legal and policy changes to support the development of worker-owned childcare cooperatives can contribute to a shift in mindset on a macro level by

formally recognizing the role and value of a worker-centered model.

The potential of worker-owned childcare cooperatives to transform the existing childcare ecosystem should be explored further through additional research and partnerships between frontline childcare workers, community leaders, public health professionals, and legal advocates. This area is ripe for legal and policy innovation, and public health can play a critical role, given the strong evidence showing early childhood education as a social determinant of health. We offer this article as a means to start that conversation.

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