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Improving Child Care Access, Affordability, and the Child Care and Development Fund (CCDF)

A Proposed Rule by the Department of Health and Human Services on 7/13/2023

August 28, 2023

The Honorable Xavier Becerra

Secretary of United States Department of Health and Human Services

RE: Docket number ACF–2023–0003 / RIN number 0970–AD02

Dear Secretary Becerra,

The National Association for the Education of Young Children (NAEYC), along with 41 Affiliate organizations from 37 states, appreciates the opportunity to provide comments in response to the Administration for Children and Families (ACF's) proposed amendments to the CCDF Final Rule to improve child care access, affordability and stability. For nearly 100 years, and in partnership with approximately 60,000 members representing early childhood educators, advocates, and allies across the country, NAEYC's mission has been to promote high-quality early learning opportunities for every child birth through age 8 and advance a diverse, dynamic early childhood profession. As such, we appreciate that ACF is prioritizing changes to CCDF regulations to reduce family costs and other barriers to child care assistance and increase the supply of care available for families receiving subsidies by improving provider payment practices and supporting more stable operations for participating providers.

We are particularly supportive of changes that are likely to grow the supply of providers who are able to successfully and sustainably participate in the subsidy system, including those changes that increase stability by paying programs prospectively and expanding states' commitments to growing supply through grants and contracts.

NAEYC has signed on to shared comments from a group of national organizations, which are aligned with areas where ACF is requesting comment. Our specific comments below are therefore focused only on areas we want to address in additional depth, and are particularly informed by NAEYC's August 2023 survey of the early education field on the proposed regulations, which yielded more than 4,500 responses from 50 states, DC and Puerto Rico, and which we reference throughout these comments.[i]

Introduction and Need for Substantial, Sustainable Investments

Decades of research show that when children and families have access to high-quality child care and early learning opportunities, including the support of diverse, well-trained and well-compensated early educators, the benefits are immense, both to the individuals who are served, but also to society more broadly. At the same time, we must

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acknowledge that, as a country, we have never made the investments necessary to ensure all or even most families with young children have equitable access to the early education opportunities that help them thrive.

The Child Care and Development Block Grant (CCDBG) provides critical support to help low-income working families access child care and early learning opportunities, but is only able to serve 16 percent of children eligible to receive assistance under federal rules.[ii] Access to child care assistance has also historically not guaranteed access to affordable, high-quality care for the families who receive it. Under CCDBG, many states set provider reimbursement rates at levels that make it difficult for providers to hire and retain early educators at fair wages, and far below the true cost of providing high-quality care, limiting the child care options of families receiving assistance. High copayment rates, and burdensome application processes and eligibility verification practices also make it more difficult for eligible families to obtain and utilize subsidies. Because Black children are more likely than children of other races and ethnicities to receive child care assistance under CCDBG, there are also negative racial equity implications for policies and practices that constrain families' access to high-quality care under CCDBG.[iii]

Temporary federal funding for COVID relief, largely provided through the American Rescue Plan Act (ARPA), was critical in supporting states in reversing policies and practices that made it more difficult for families to access quality care through CCDBG. Over the past two years, many states have taken significant steps forward to implement some of the policy changes reflected in these proposed rules, including capping or eliminating copayments for all or some families, reducing application burdens and establishing presumptive eligibility policies, and supporting provider stability by moving to enrollment-based rather than attendance-based payment practices.

These changes, which have occurred in states across the political and geographic spectrum are a clear indication that the will and desire exists to enact many of the changes included in this proposed rule, when funding is available. However, with federal emergency child care stabilization and supplemental CCDBG funding beginning to expire this September, it may be challenging for some states to permanently implement these positive changes without either securing new resources and/or making tradeoffs.

As positive changes in this proposed rule move forward, we encourage the Administration to utilize every tool at its disposal to support Congress and state policymakers in securing the resources needed to effectively and equitably implement these changes, while providing clear guidance and monitoring to ensure that tradeoffs do not unintentionally undermine the resources available to early educators to serve children and families in their communities.

Co-payment Threshold p. 45027, 1st column § 98.45(l)(3) and Co-payment Flexibilities p. 45028, 2nd column § 98.45(l)(4)

NAEYC appreciates the Department's prioritization of lowering costs for families by capping family copayments at 7 percent of income. With the support of new federal funds, many states have prioritized temporarily reducing or eliminating family copayments in recent years, recognizing that these costs are particularly burdensome for families with low-incomes, and can prove to be a barrier to access to child care. These states' actions have meant that copayments for a family of 3 at 150 percent of poverty decreased as a percentage of income in 17 states between

2021 and 2022. Copayments for a family of 3 living at 150 percent of poverty remained above the recommended standard of 7 percent of family income in only 11 states.[iv]

States have similarly been taking advantage of opportunities to waive copayments for additional populations, and we are also supportive of ACF's proposal to provide states with greater flexibility in this area. Families with lower incomes who face increased barriers to paying any copayment should be prioritized, as should families facing particularly challenging circumstances, such as those caring for children in foster care, homeless families or those at risk of becoming homeless, families involved with the state child welfare agency, teen parents, families enrolled in Head Start or Early Head Start, families receiving TANF assistance, and those caring for children with special needs. To mitigate the cliff effect and achieve a range of policy goals, states should also have the flexibility to waive copayments for families with higher incomes, when resources allow. Additionally, states should be encouraged to waive copayments for priority workforce populations, as an incentive to bring more workers into high-need fields. Given well-documented workforce shortages in the child care sector, states should, for example, be able to easily prioritize waiving copayments for early educators eligible to participate in CCDF themselves.

We appreciate ACF's acknowledgement that reducing expenses for families should not come at the cost of decreasing payments for providers. We also appreciate the language in the NPRM regarding monitoring of Lead Agency payment rates to ensure reductions in family co-payments do not lead to funding cuts for providers. However, concern that states would reduce provider payment rates to pay for these required changes clearly stood out in NAEYC's provider survey.

- Of the 73% of providers who responded to our survey who currently serve children using subsidy, 81% were somewhat or very concerned that their state would decrease provider payment rates as a result of these specific policy changes in this NPRM, and despite ACF's commitment to ongoing monitoring.

Given these shared concerns, we would like to see further clarification and specificity from ACF, including explicit guidance to Lead Agencies, on the mechanisms that will be implemented to ensure payment rates are not lowered as a result of these changes.

If providers see their reimbursement rates decrease, as they are clearly concerned will happen, these provisions could have the unintended consequence of further reducing choice in the child care market for families receiving subsidies, particularly if it means that providers are unable to afford serving families receiving subsidy as a result.

States should also not be expected to rely on providers being able to make up any difference by charging parents fees above the copayment rate, which is not a desirable outcome from any perspective.

- In our survey, among program directors, 27% indicated they live in one of the 12 states that do not allow providers to charge families over copayment, 34% indicated their program does not do so even though their state is one of the 38 that does allow it, and 27% (29% of family child care owners/operators) indicated that they sometimes or always charge families more than required by copayment, so that they can cover their costs.

- However, this percentage could rise in the wake of the new provisions. If families' state-required co-payments go down in ways that result in an overall decrease in provider payments, 43% of directors and 49% of family child care providers surveyed percent said it was very or somewhat likely that they would have to respond by increasing families' additional payments.

Consumer Education p. 45028, 3rd column, § 98.33(a)(8)

We are supportive of the requirement of Lead Agencies to post current information about their process for setting the sliding fee scale for parent copayments and other related policies. For families, having information about copayments, and the circumstances in which they are waived, is crucial to decision-making about accessing child care services. As for specific information that should be included in posts on consumer education websites and accessible via mobile devices, the Department should consider recommending that Lead Agencies use simple, concise language that is accessible to all families, including those with limited literacy and those for whom English is not their primary language. The information should include a clear definition of copayments, how the copayments are calculated, the copayment policies such as when they must be paid, the copayment and sliding fee scale, how parents and providers were engaged in the process for determining the copayment and sliding fee scale, and whether the state allows providers to charge fees over and above the copayment rate.

Expanding Parent Choice with Grants and Contracts p. 45029, 1st column, §§ 98.16(y), 98.30(b), and 98.50(a)(3)

NAEYC deeply appreciates ACF's proposed amendment to the CCDF rule to require states and territories to provide some child care services through grants and contracts. These mechanisms can be critical to increasing stability, supporting compensation for early childhood educators, and growing the supply of care, particularly considering certain populations, including infants and toddlers, children with disabilities, and families needing care during non-traditional hours. We appreciate ACF's elevation of the reality that, for populations where there is not sufficient care available in communities, access to a subsidy voucher alone cannot guarantee families can choose care that meets their needs.

Grants and contracts can expand this choice by providing additional resources and supports to providers and early educators contracted to serve populations that are more expensive or more difficult to serve. In addition to prospective payment and payment based on enrollment, which would also be required for vouchers under this proposed rule, ACF should direct Lead Agencies to ensure grants and contracts offer providers other advantages to support their use. Higher payment rates; long-term commitments; initial and continued technical assistance; and coaching and other professional supports to help providers grow their programs, recruit and retain quality early educators, meet licensing requirements, offer specialized care to populations with special needs, and continue to improve quality are key.

NAEYC's survey of providers provides strong evidence that early education programs would welcome the opportunity to expand services offered to infants and toddlers, children with disabilities, and children who need care during non-traditional hours if grants and contracts were available to serve those families.

- The vast majority (80%) of program directors and administrators and family child care owner/operators we surveyed indicated they would definitely or maybe be interested in applying for grants and contracts to serve these populations.

- In particular, 57% of respondents overall said they might be interested in grants to expand care for infants and toddlers (including 64% of family child care homes); 40% said the same for children with disabilities; and 23% identified interest in expanding for non-traditional hour care (including 28% of family child care homes).

This broad-based interest should inform ACF's guidance and encouragement to Lead Agencies to ensure any application processes for grants and contracts are themselves designed for simplicity and equitable access, translated into multiple languages, and offered with technical assistance and supports that level the playing field for smaller child care centers and family child care homes, in particular. Given well-documented challenges families face in finding care for these particular populations, we are confident that requiring states and territories to utilize grants and contracts to expand high quality options for these families will notably improve parent choice for families benefiting from CCDBG. ACF should also encourage Lead Agencies to, where supported by data, expand their use of grants and contracts as a strategy to increase high-quality options for families beyond just the specific populations highlighted in the NPRM, and with a focus on increasing educator compensation.

Payment Practices p. 45031, 1st column, § 98.45(m)(1) and (2) § 98.45(l)(2)

NAEYC is very supportive of proposed changes to the CCDF final rule to ensure payment practices to programs for families participating in subsidy are reflective of private pay practices. These changes, including prospective payment and payment based on enrollment rather than attendance offer providers increased stability and will support more providers in participating in the subsidy system.

Enrollment Instead of Attendance

NAEYC is very supportive of this change in policy, and is confident it will be helpful in increasing child care supply for families using child care subsidies.

- 80% of child care center directors / administrators and family child care owner / operators who responded to the August survey said they would be more likely to serve families using subsidies if the state paid based on enrollment not attendance.

- This includes areas where supply is deeply needed; 74% of respondents working in programs serving infants and toddlers and 72% of respondents working in programs in rural areas said they would be more likely to accept any and/or more families using subsidy if the state paid based on enrollment.

Prospective Payments

Likewise, in our survey of early educators, we asked about prospective payment practices in their programs.

- Only 12% of respondents in private pay programs said the families in their programs pay for care at the end of a period.

- Overall, 77% of directors and administrators responded that they require families to pay prospectively for care, either at the beginning of every week, two weeks, or month of care.

It is extremely common practice for families to pay for child care upfront, and we strongly agree with ACF's proposed moves to align subsidy payment practices with practices in the private market. Our survey responses affirm that more aligned and fairer payment practices such as this will also lead to increased choice for families receiving subsidies.

- 73% of directors and administrators, as well as family child care owner/operators indicated they would be more likely to accept families using subsidies if the state paid programs prospectively.

We do understand, however, that some current state procurement laws and rules might present barriers to immediately implementing prospective payment practices. We encourage ACF to consider this in establishing its timelines for implementation, and consider working with states to establish alternatives to prospective payments that still meet the proposed rule's intent of supporting more stable, predictable payment practices for providers to maximize parent choice.

Paying Above Private Pay Rates

Given the broken market in which child care operates, providers have to charge rates that families can afford to pay, and those rates often do not come close to meeting the true cost of providing high quality care, including supporting a well-compensated professional early childhood workforce. In the context of this reality, NAEYC is highly supportive of ACF's clarification that Lead Agencies may pay amounts above a provider's private pay rate to support quality.

- Of providers who live in a state where the Lead Agency has not allowed subsidy payments to exceed private rates, 93% said this clarification was very or somewhat important to them (63% said very important). This includes majorities of family child care providers, FFN providers, and providers from communities of color.

We believe clarifying that Lead Agencies can set a higher rate for child care services than providers can afford to charge private paying families not only serves the goal of attracting more providers to participate in the subsidy system and enhancing family choice, but also helps raise the bar for quality for all children and families being served in those programs, who benefit from having a better compensated, more consistent workforce. This provision is especially important as states and communities continue to explore the benefits of moving from traditional market rate surveys to cost of quality studies to set provider reimbursement rates.

We urge ACF to continue to explore payment practices that states could institute that would help providers participate more fully in the child care subsidy system, alongside federal and state investment. Programs want to serve families when they have the resources needed to do so.

- In the August survey, 91 percent of directors and administrators and 89 percent of family child care owner/operators indicated they would be more likely to accept families using subsidies if the state paid rates that covered the true cost of care.

Presumptive Eligibility p. 45032, 1st column, § 98.21(e) and (h)(5) § 98.21(a)(5)(iv); Eligibility Verification p. 45033, 2nd column, § 98.21(g); and Application Processes p. 45034, 1st column, § 98.21(f)(1)

While not in the same category as the other provider payment practices, we want to elevate the ways in which presumptive eligibility for families also becomes a provider support because of the way the proposed rule ensures that providers are paid for services rendered, regardless of a final eligibility determination. Specifying that payments to providers will not be deemed improper payments if a child is ultimately determined to be ineligible and will not be subject to disallowance—except in cases of fraud or intentional program violation—is a necessary step toward ensuring that providers are supported; that there is not a disincentive to work with families who are deemed presumptively eligible; and that states can utilize the necessary resources to create a presumptive eligibility policy.

In addition to clarifications around presumptive eligibility practices, we applaud ACF's proposed changes to the CCDF rule to clarify Lead Agencies' options to simplify eligibility verification by using documentation from and enrollment in other benefit programs to determine CCDF eligibility, as well as a requirement that Lead Agencies implement eligibility policies and procedures that minimize disruptions to families and to providers, including requiring online applications. Our early education field survey clearly indicates the challenges burdensome eligibility verification policies place on families.

- More than 82% of educators who responded to our survey indicated that, in their experiences, families sometimes or very often lose subsidies due to paperwork.

In support of ACF's goal in ensuring that Lead Agencies take steps to ease administrative burdens on families, we recommend that ACF clarify that any online applications for child care subsidies, along with consumer education opportunities, be developed in a manner that is mobile-friendly.

- More than 70% of early educators NAEYC surveyed indicated that the families they serve primarily access the internet via mobile devices.

Content of Reports p. 45037, 1st column, § 98.71(a)(11)

While we appreciate ACF's desire to minimize reporting burdens on providers and parents, we disagree with the proposed revision to the CCDF rule deleting the requirement that Lead Agencies report amounts charged by providers over the co-payment set by the lead agency. Given ACF's proposal to cap family co-payments at 7 percent of income, we believe it may be even more important to track these data moving forward, to ensure the program is achieving its goal of reducing the amount of money families pay for child care without passing costs or additional collection responsibilities onto the providers serving those families.

- Our survey data do not indicate that this requirement would necessarily be overly burdensome on providers – 40% of directors and administrators, as well as family child care owner/operators indicated they currently share these data with their Lead Agencies, and more than half of directors and administrators serving children using subsidy (54%) indicated they thought programs should be required to share this info with the state.

- However, since just 35% of family child care owners / operators thought they should be required to share these data, we recommend increased attention to implementation of this requirement, should it stand, and supports that help providers in all settings meet the obligations.

Criminal Background Checks—§ 98.43(c)(1)

We recognize the ways in which this rule proposes to clarify existing requirements regarding criminal background checks; however, regarding the clarification that disallows child care providers from making employment determinations, we want to raise the need for attention to potential implications that could result in unacceptable delays in hiring. Approximately 20% of survey respondents said this rule would affect them (another 25% weren't sure), and they were concentrated in several states where background check processes are already a known issue.

Directors of early childhood programs and advocates regularly identify issues relating to backlogs and the time it takes for the Lead Agencies to provide results of background checks, which worsens the already-difficult hiring processes and staffing shortages. We urge ACF to do everything in its power to monitor the implementation of this clarification, and support Lead Agencies in providing timely background check results to programs so that they are not worsening an already difficult staffing environment.

Phase-in Period p. 45026, 1st column, p. 450141, 1st column

Finally, NAEYC appreciates ACF's acknowledgement that states and Lead Agencies will need time to phase-in the new provisions included in this NPRM, especially where changes will require action on the part of legislatures or state, territory or tribal rulemaking processes. In addition to prioritizing new resources for the child care system to support states in implementing the changes and continuing to build on progress made with ARPA and other COVID relief dollars, we encourage ACF to engage directly with state Lead Agencies to identify potential barriers to implementing these changes and appropriate timetables for enforcing them, and to offer flexibility, technical assistance, and guidance where needed to support states in equitably advancing these key priorities.

We also think it is important to acknowledge the simultaneous comment period currently open on the FY2025-2027 CCDF plan preprint as an opportunity to support states in thinking about how to implement these new rules, once final. As such, we recommend that, once these rule revisions are finalized, ACF incorporate them into a revised version of the FY2025-FY2027 CCDF plan in order to mitigate potential confusion around which rules to follow in planning for the next plan cycle.

Conclusion

We appreciate the Department's efforts to use this rulemaking process to increase child care affordability and supply, particularly by making common sense changes to how early childhood educators and the programs they work in are paid and supported. We are grateful for the opportunity to share comments, and to bring the expertise and experience of early childhood educators across states and settings to bear on these comments. Thank you for your consideration, and we look forward to working with you to implement the changes once the final rule is published. Don't hesitate to call on any of our organizations for more information in the meantime.

Signed,

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Southeast Alaska AEYC

Southern Arizona AEYC

Southwest Ohio AEYC

Texas AEYC

Utah AEYC

Vermont AEYC

Virginia AEYC

Wisconsin Early Childhood Association

[i] This online survey, created and conducted by NAEYC using SurveyMonkey, represents the responses of a non-randomized sample of 4,634 individuals working in early childhood education settings who completed the survey in English or Spanish between August 3-20, 2023. The respondents represent providers in 50 states as well as Washington, DC and Puerto Rico; 20% report that they work in family child care homes while 55% report that they work in center-based child care. Others work in public school preK, Head Start, and FFN settings. The survey links were shared widely through email newsletters, listservs, social media, and via partnerships. Cross-tabulations were used to understand survey responses by program and respondent characteristics.

[ii] Chien, N. (2022). Estimates of Child Care Eligibility and Receipt for Fiscal Year 2019. Office of the Assistant Secretary for Planning & Evaluation, U.S. Department of Health and Human Services. https://aspe.hhs.gov/sites/default/files/documents/1d276a590ac166214a5415bee430d5e9/cy2019-child-care-subsidy-eligibility.pdf.

[iii] Ibid.

[iv] Schulman, K. (2023). Precarious Progress: State Child Care Assistance Policies 2022. National Women's Law Center. https://nwlc.org/wp-content/uploads/2023/06/State-of-Child-Care-2023-FINAL.pdf.