

CHILD CARE

FACT SHEET

New Provisions in Proposed Child Care Regulations

June 2013

On May 20, 2013, the Administration for Children & Families (ACF) issued new proposed regulations governing the Child Care and Development Fund (CCDF) program. Public comments on the proposal are due by August 5, 2013.

The proposed rule represents the first comprehensive update to the CCDF regulations since they were issued in 1998. The new regulations would make significant changes to current regulations in four main areas:

- Health and safety
- “Family-friendly” policies
- Child care quality
- Program integrity

ACF expects that new provisions will become effective 30 days after the publication of a final rule and incorporated into the review of FY 2016-2017 CCDF plans, but the agency “welcomes comment on specific provisions included in this proposed rule that may warrant a longer phase-in period.” The proposed new requirements for state agencies and child care providers are summarized below.

ACF will accept comments on all aspects of the proposed rule. *Issues on which ACF has specifically requested comments are noted in italics below.*

I. Health and Safety (45 CFR § 98.41)

The proposed rule includes a number of new requirements related to health and safety, and ACF has requested comment on the appropriate phase-in period for providers already serving CCDF children to meet these requirements.

As under existing regulations, states would be permitted to exempt certain relatives from the health

and safety regulations, including the monitoring provisions. The proposed rule would also allow states to exempt caregivers in the child’s home.

Building and physical premises safety requirements.

States would be required to ensure that child care providers serving CCDF children:

- Comply with state and local fire, health, and building codes, including the capacity to evacuate children, prior to serving children receiving a CCDF subsidy (or within an appropriate timeframe for providers currently serving children). *ACF has requested comments on whether it is reasonable to require code compliance prior to serving CCDF children, and on the process for inspecting programs that are already serving children.*
- Conduct comprehensive criminal background checks, including fingerprints. *ACF has requested comments on whether background checks should be required for personnel in child care centers or individuals in family child care homes who do not directly care for children.*
- Maintain plans for emergency preparedness and response.

Pre-service/orientation training requirements.

States would be required to ensure child care providers serving CCDF children conduct pre-service or orientation training that covers the following subjects:

- First Aid and CPR, medication administration, poison prevention, and preventing the spread of infectious disease;
- Safe sleep practices, prevention of shaken baby syndrome, management of common childhood illnesses, and (if applicable) transportation and child passenger safety;

- Child development, nutrition and physical activity, and caring for children with special needs;
- Recognition of child abuse and neglect; and
- Emergency preparedness and response.

ACF has requested comments on whether there should be a minimum number of hours required for pre-service and ongoing training; whether the final rule should specify a format for the training; and whether the training requirements should be linked to accountability measures (e.g., continuing education credits).

Monitoring requirements. To ensure compliance with the health and safety requirements, states would be required to establish specific monitoring procedures for providers serving CCDF children. These procedures:

- Must include unannounced, on-site monitoring. *ACF has requested comments on its recommendation that providers receive an initial monitoring visit and at least one unannounced visit annually.*
- Must require unannounced monitoring visits in response to complaints.
 - At § 98.32, the proposed rule would require Lead Agencies to establish a hotline for parental complaints.
- Must require providers serving CCDF children to report serious injuries or deaths of children occurring in child care.
 - At § 98.16(v), the proposed rule would require Lead Agencies to conduct an annual assessment of all injuries and deaths in child care.
- May not solely rely on self-certification by providers without documentation or other verification that requirements have been met.

II. Family-Friendly Policies

The proposed rule would encourage – and in some cases, require – states to implement certain policies to make the CCDF program more family-friendly. Under proposed § 98.16(h), the CCDF plan would contain a “description of policies to promote continuity of care for children and stability for families receiving services,” including policies that support timely eligibility determinations and promote employment for parents.

Specifically, under the proposed rule, states must:

- **Establish 12-month eligibility** (§ 98.20(b)). The proposed rule provides that a “Lead Agency shall re-determine a child’s eligibility for child care services no sooner than 12 months following the initial determination or most recent re-determination.” A Lead Agency would have the option to allow a child to remain eligible until the next re-determination, which may occur at intervals longer than 12 months. The CCDF plan must specify any requirements for families to report changes in circumstances that may impact eligibility between re-determinations. *ACF has requested comments on the impact of the 12-month eligibility proposal, “particularly any benefits or burdens it may have for CCDF families and to better understand implications for Lead Agencies.”*
 - **Allow a period of job search for families receiving CCDF that lose employment** (§ 98.16(g)(6)). For purposes of determining CCDF eligibility, states must define “working” to include some period of job search. States retain discretion to determine the length of this period and to decide whether job search is an eligible activity for families initially applying for a subsidy.
 - **Consider the developmental needs of the child when authorizing child care services** (§98.20(d)). States are not required to limit authorized child care services based on the work, training or educational schedule of the parents and may, for example, authorize hours to facilitate wrap-around with Head Start or extend hours to support a child’s enrollment in high quality care.
- In addition, the proposed rule would grant states flexibility to:
- **Establish criteria for waiving family co-pays** (§ 98.42). States would no longer be limited to waiving co-pays for families with income below the federal poverty level. The proposed rule also specifies that Lead Agencies may not use cost of care or subsidy payment rate as a factor in setting co-payment amounts.
 - **Broadly define the “protective services” eligibility category** (§ 98.20(a)(2)). Lead Agencies may identify specific populations of vulnerable children to include in this category (e.g., children in homeless or immigrant families), not limited to children involved in the child welfare system.

III. Child Care Quality

The proposed rule would substantially revise and expand existing CCDF regulations relating to child care quality, including mechanisms to evaluate program quality and distribute relevant information to families participating in the CCDF program.

Under the proposed rule, states would be required to:

- **Establish a “transparent system of quality indicators”** (§ 98.33(b)). States may decide which providers to include in the quality indicators system, which is intended to “provide parents with a way to differentiate the quality of child care providers available in their communities through a rating or other descriptive method.”

ACF recommends a quality rating improvement system (QRIS) to implement this requirement. States may use an alternative system but it must:

- Include provider-specific information about quality of care;
- Describe the standards used to assess the quality of child care providers;
- Take into account teaching staff qualifications and/or competencies, learning environment, curricula and activities; and
- Disseminate provider-specific quality information to the public through a consumer education website (see below) or another approved mechanism.

ACF has requested comments on these categories.

- **Establish a consumer education website** (§ 98.33(a)). The website must provide user-friendly, provider-specific information about applicable health and safety and licensing requirements, as well as records of any violations of those requirements and compliance actions taken. *ACF has requested comments on the elements that should be included in a consumer education website.*
- **Provide a consumer statement for parents receiving CCDF** (§ 98.33(c)). The statement must include information about available child care options and specific information about the provider selected by the parent, including compliance with health and safety requirements and any voluntary quality

standards met pursuant to the system of quality indicators. *ACF has requested comments regarding state experiences with collecting and sharing provider information, including types of information from background checks that are shared with parents seeking child care.*

- **Set payment rates that promote equal access to quality care** (§ 98.43). In a summary of facts used to determine that provider payment rates ensure equal access for CCDF-eligible families to child care services comparable to those provided to non-eligible families, the Lead Agency must show how payment rates are adequate based on either a valid, local “market price study” (terminology changed from “market rate survey”) or an alternative methodology approved by ACF. The summary must also include “[a]ny additional facts the Lead Agency considered in determining that its payment rates ensure equal access, such as information on the cost of providing quality child care.”

Proposed § 98.43(c) requires states to “take into account the quality of child care when determining payment rates.” And in a new provision of the CCDF plan (proposed at § 98.16(t)), states must include a description of how their payment practices support high quality care and ensure timely reimbursement for services. *ACF has requested comments on rate setting approaches that can ensure payment rates provide access to high quality care.*

- **Use grants or contracts for direct services linked to the supply of high quality care** (§ 98.50(b)(3)). Under the proposed rule, states would be required to use at least some grants or contracts to fund direct services in areas that lack sufficient high-quality child care options. Child care vouchers would continue to be available to any parents offered CCDF child care services.

The proposed rule maintains the requirement in § 98.51 that at least four percent of CCDF funds be used to support quality activities, and requires a new annual performance report to ACF that includes a description of progress towards performance goals established to improve the quality of child care (see §§ 98.16(v), 98.51(f)). The rule also amends the list of allowable quality improvement activities at § 98.51(a)(2) to encourage – but not require – states to establish a framework for guiding and measuring quality activities.

In the preamble to the proposed rule, ACF explains that all of the quality improvement activities previously listed at § 98.51(a)(2) “are incorporated into this new framework, and the proposed revision should not be interpreted as an indication that the previously delineated activities are no longer allowable activities toward meeting the minimum quality expenditure requirement.” The recommended framework includes the following revised list of activities:

- Activities to ensure health and safety of children;
- Establishment of early learning guidelines;
- Implementation of quality improvement systems;
- Implementation of professional development systems;
- Infrastructure to build provider capacity to promote children’s health, serve vulnerable children, and implement family engagement strategies;
- Assessment and evaluation of quality activities; and
- Any other activities consistent with quality improvement goals.

IV. Program Integrity

The proposed rule includes a new section, **§ 98.68 – Program Integrity**. Under this section, states would be required to establish: a) internal controls to ensure sound fiscal management and identify risks; b) processes to identify fraud and other program violations; c) procedures to document and verify eligibility; and d) processes to investigate and recover fraudulent payments. The preamble notes that this proposal would “formalize changes made to the CCDF Plan which require Lead Agencies to report in these areas.”

Additional proposals related to program integrity include:

- **Sub-grantee monitoring** (§ 98.16(b)). The proposed rule would require the CCDF plan to include a description of how the Lead Agency will monitor program implementation responsibilities undertaken by agencies other than the Lead Agency.
- **Higher technical assistance set-aside** (§ 98.60(b)). The proposed rule would increase the set-aside from $\frac{1}{4}$ of one percent to $\frac{1}{2}$ of one percent of CCDF funds.
- **Error rate reviews** (§ 98.102(c)). States with improper payment rates that exceed a level set by ACF must submit corrective action plans.