

August 2, 2013

Cheryl Vincent
Office of Child Care
Administration for Children and Families
U.S. Department of Health and Human Services
370 L'Enfant Promenade SW
Washington, DC 20024

RE: National Women's Law Center Comments on Proposed Rule
Child Care and Development Fund (CCDF) Program, 45 CFR Part 98
(RIN 0970-AC53/ACF-2013-0001)

Dear Ms. Vincent,

The National Women's Law Center (the Center) is a non-profit, non-partisan organization that has been a leader in research, analysis, and advocacy on child and dependent care assistance policies as a critical support for women and their families.

We appreciate the opportunity to respond to the proposed rule published May 20, 2013 at 78 Fed. Reg. 29442, which would substantially revise existing regulations governing the Child Care and Development Fund (CCDF) program. We applaud the proposed regulations for taking important steps to encourage safe, high-quality care for children receiving child care assistance and to make the process for obtaining and retaining child care assistance more family-friendly.

However, we are concerned that the regulations entail significant additional costs for states, communities, and child care providers. We appreciate that the Administration for Children and Families (ACF) has reviewed existing state policies to determine the extent to which states are already implementing steps consistent with policies that would be required under the proposed rule. However, the proposed regulations would impose significant new costs to many states that do not have policies similar to those proposed in the regulations—for example, for states that do not have an existing quality rating and improvement system and states that do not currently conduct annual monitoring visits to all providers receiving CCDF funds. The new regulations will be particularly difficult to implement at this time, when many states are cutting back on staff due to federal sequestration cuts.

If states are required to divert additional funds to comply with these new regulations, they will have less funding available to provide child care assistance to families—and those families who lose or are denied child care assistance may end up using poor-quality care because they cannot afford better options, or may be unable to take advantage of

employment opportunities necessary to support their families. States may also have less funding available to support adequate reimbursement rates for child care providers, which could lower the quality of care for children receiving child care assistance.

Our comments on specific sections of the proposed rule follow, including our recommendations to minimize the costs of compliance with certain proposed provisions and thereby limit the risk of reducing access to child care services for low-income families. In addition, we urge ACF to seriously consider the comments submitted by state agencies, which are best positioned to quantify the costs associated with the proposed rule and the likely impact on access to services, and to identify other unintended consequences.

Section 98.14(a)(1): Plan process

In addition to the new partners that would be required to participate in developing the CCDF plan under the proposed regulations, we recommend including the state Child and Adult Care Food Program agency as a required partner.

Section 98.16(g)(6): Plan provisions—Job search

We support the proposal to require states to allow parents to receive child care assistance during at least some period of job search. While most states (46) currently permit parents to continue to receive child care assistance after losing a job, many of these states only allow parents to receive child care assistance while searching for a job for a short time—a month or less; just 16 states allow parents to initially qualify for assistance while searching for a job. This provision will emphasize to states the importance of permitting parents to receive child care assistance during a period of job search to grant parents time to look for work, ensure that child care will be available when a parent begins a new job, and avoid disruptions in children's care.

Section 98.16(h): Plan provisions—Continuity of care and stability for families

We support ACF in its efforts to promote continuity of care for children and make the child care assistance system more family-friendly. We agree with the proposal requiring Lead Agencies to indicate in their CCDF plans how they will help promote these objectives by describing policies that take into account developmental needs of children when authorizing child care services, ensure timely eligibility determination and processing of applications, and promote employment and income advancement for parents. We recommend that ACF add language in this section of the final rule to require that Lead Agencies also describe policies that facilitate obtaining and retaining child care assistance for parents, including measures to minimize administrative burdens on families.

As noted in the preamble, this proposed rule includes provisions to make the CCDF program more “family friendly” by reducing unnecessary administrative burdens on families. While some Lead Agencies have taken steps to reduce the burden on families applying for and receiving subsidies, others continue to have significant hurdles in place. Lead Agencies may have onerous requirements, such as requiring fingerprinting of parents and others who are picking up children from child care programs or child support

cooperation requirements, which may deter parents from seeking assistance. ACF should be explicit in the preamble to the regulations that these policies are not consistent with intended reforms to make the system more family-friendly and that states should implement policies that facilitate, rather than impede, parents' access to child care assistance that helps them go to work and support their families.

Section 98.16(t): Plan provisions—Payment practices

We support the proposal requiring Lead Agencies to describe how they will achieve timely reimbursement to child care providers and explain how their payment practices support provision of high-quality child care and promote the participation of providers in the subsidy system. However, we recommend that the regulations include a definition of “timely” reimbursement and examples of provider payment practices for Lead Agencies to adopt that would advance these objectives—for example, practices that promptly notify providers of changes in parents' eligibility status, reimbursement for days during children's absences and holidays, and reimbursement to cover registration fees and other fees charged to private-paying parents.

Section 98.20(a)(2): Eligibility for child care services—Income limits

We support the requirement that states base the CCDF eligibility threshold on the most recent state median income (SMI) data published by the Census Bureau. This requirement does not mandate that states establish eligibility at any particular income level, but it does ensure greater comparability and transparency in states' eligibility levels. However, given that some state median incomes have declined in recent years, a few states that adjust their income limits annually for the updated SMI have actually lowered their income limits as a dollar amount. We suggest that the preamble to the regulations encourage states to maintain their income limits at the same level as a dollar amount, rather than reducing their income limits, if state median income declines.

Section 98.20(a)(3)(ii): Eligibility for child care services—Vulnerable children

We appreciate the clarification provided by this proposed provision, which authorizes Lead Agencies to permit specific populations of vulnerable children to be eligible for child care assistance, even if they are not formally involved with the child protective services system. This provision recognizes the challenges faced by a range of vulnerable children and the importance of helping them receive stable, supportive child care, independent of their guardian's work status or income level or their engagement with child protective services.

Section 98.20(b): Eligibility for child care services—One-year certification period

We support the proposal requiring Lead Agencies to adopt a one-year eligibility period for families receiving child care assistance, with an option for Lead Agencies to permit families who initially meet the eligibility criteria to remain eligible for the full year without reporting changes (even if the family's circumstances relevant to eligibility change during that one-year period). This provision will ease burdens on parents, who often do not have time to repeatedly recertify their continued eligibility for child care assistance while balancing work and family demands. It also helps limit disruptions in

care for children, who greatly benefit from stability in their child care arrangements. It reduces administrative burdens and administrative costs for states as well. Finally, it allows for greater coordination between child care assistance programs and other programs providing support to families and children.

While we support the overall provision, we suggest a revision in keeping with the goal of encouraging greater coordination across programs. Lead Agencies should be permitted to use an eligibility period of less than 12 months during the initial period of the family's eligibility if necessary to align with another program. For example, if a family were already receiving benefits through another program when they applied for child care assistance and were due to renew their eligibility for that program in two months, the Lead Agency could require the family to renew their child care assistance eligibility at the same time that they renewed their other benefits, so the recertification cycles of both programs would be synchronized from that time forward.

We also appreciate ACF's recommendations in the preamble that Lead Agencies consider a two-tiered eligibility policy as a strategy that allows families to retain child care assistance while experiencing modest income improvements, and that Lead Agencies avoid tracking all eligibility criteria between re-determinations. We recommend that ACF clarify in the final rule, however, that families retain the right to report changes in work status or income; in some cases, such changes will benefit families due to, for example, an increase in work hours that would enable them to receive assistance for more hours of child care, or a decrease in income that would result in a lower copayment.

Section 98.20(d): Eligibility for child care services—Developmental needs of children

We commend the proposal to require Lead Agencies to consider the developmental needs of children when determining their eligibility for services, which appropriately emphasizes children's healthy and successful development as an essential goal of the CCDF program. We appreciate the clarification in the preamble that Lead Agencies 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.

Section 98.30(h): Parental choice—Encouraging high-quality care

We support the proposed language indicating that ensuring parental choice does not preclude providing information and incentives to encourage the selection of high-quality child care. However, the preamble to the regulations should state that higher reimbursement rates are essential to enable providers to achieve and sustain high levels of quality and to incentivize high-quality providers to serve children receiving child care assistance.

We appreciate that the preamble does acknowledge that while parents should be encouraged to choose high-quality care, parents in certain circumstances—such as parents working nontraditional hours—may have limited child care options available to them. A recent study from the Urban Institute found that lower-income women living in households with preschool-age children are 17 to 30 percent more likely than other

women to work nonstandard schedules,¹ and the need for care during nontraditional hours may well grow in the coming years due to trends in the economy. The 30 occupations predicted to add the most jobs by 2020 are dominated by women and are mainly low-wage—and these low-wage jobs are characterized by nontraditional hours, unpredictable schedules, and inflexible workplaces. Child care assistance policies must reflect these realities. Policies that encourage the use of high-quality care should not prevent families from using informal care that may best accommodate parents' work schedules.

Section 98.33(b): Consumer education—Quality indicators

We understand that the new provision requiring Lead Agencies to implement an extensive system of quality indicators is intended to provide additional information to parents about the quality of their child care options, and we support this goal. However, we are concerned that the proposed requirements will create a significant burden for states, particularly for those that do not have an existing quality rating and improvement system (QRIS). It will be difficult for states to effectively implement a quality indicator system without additional staff to design and administer it and without additional resources to help providers improve their quality. Even if a state uses an alternative to a complete QRIS to comply with the proposed requirement, there will be significant new administrative and other costs for the state, as well as for providers that would be required to compile and submit data to the state.

Therefore, instead of requiring states to adopt a complete system of new indicators, we recommend allowing states to meet the objective of better informing parents by making information that they already collect—such as the components of the state's child care licensing requirements and general information about the Child and Adult Care Food Program (how it operates and how it benefits children and providers)—available to parents in easy-to-understand language.

Section 98.41(a)(2)(i): Health and safety requirements—Background checks

We support the proposal to strengthen background checks for child care providers to ensure children's well-being and safety in child care. However, the final rule should make clear that states must provide appropriate protections for child care providers, including the right to appeal findings, to ensure that they are not permanently penalized as the result of inaccurate information. Moreover, while we agree that states should maintain discretion to determine the circumstances in which the results of a background check will bar a provider from serving children, we recommend that the preamble to the final rule encourage states to employ individualized assessments of a provider's criminal history when practicable and appropriate, to allow flexibility where, for example, categories of potentially disqualifying crime(s) are very broad; where there is disparate enforcement of drug or other crimes across communities; and/or where a long time has passed since a crime on a provider's record occurred.

¹ María E. Enchautegui, Urban Inst., *Nonstandard Work Schedules and the Well-Being of Low-Income Families*, at 15 (July 2013), available at <http://www.urban.org/UploadedPDF/412877-nonstandard-work-schedules.pdf>.

In addition, the preamble to the final regulations should emphasize the importance of timely processing of background checks and encourage Lead Agencies to work closely with state entities responsible for such checks to ensure that the process is as efficient as possible. States should also be required to provide up to three months retroactive pay for family child care and license-exempt providers that care for children while waiting for the background checks to be completed and are then cleared. Providers awaiting background check results should be permitted to work under the supervision of an employee who has been cleared by a background check.

ACF has requested comment on whether background checks should apply to individuals in family child care homes serving children receiving child care assistance. We recommend that all individuals age 18 and over in such a family child care home be subject to background checks. We also recommend that background checks be required for all full- and part-time employees and contract workers in child care centers, including administrative, food service, and maintenance personnel on site while children are in care.

In addition, we recommend that states be allowed to use CCDF funding to cover the cost of the background checks for family child care providers and individuals living in their homes as well as for license-exempt providers. To the extent practicable, states should ensure that the cost of the background checks is not a barrier for these providers, who can meet an important need for many families (such as families working nontraditional hours).

Finally, we recommend that ACF examine whether any of the background checks required by the proposed rule are duplicative; if the agency determines that any of the background checks only uncover information that is already captured by other background checks, providers should no longer be required to undergo those background checks.

Section 98.41(a)(3): Health and safety requirements—Minimum training

We support the proposed requirements for minimum pre-service/orientation training on health and safety. While providers should make every effort to complete the requisite training prior to working with children, to ensure that care is available when families need it, we agree it is appropriate to allow providers to fulfill their training requirements during an initial service period (orientation period) defined by the Lead Agency.

We also recommend that the final rule specify that the required training should be offered in multiple formats (including online) and in language(s) appropriate for the audience, to account for diversity of need and varying circumstances of providers.

Section 98.41(a)(3)(vi): Health and safety requirements—Training on nutrition

We support the inclusion of training on age-appropriate nutrition in the new health and safety training requirements and recommend specifying in the regulations that Child and Adult Care Food Program training in this area be deemed to fulfill this requirement.

Section 98.41(d)(1): Health and safety requirements—Monitoring

We support the proposed requirement that CCDF providers be subject to initial monitoring visits as well as unannounced monitoring visits to protect the health and safety of children in the care of these providers, although we reiterate our concern regarding state capacity to meet this requirement without additional resources. In light of this concern, while we support ACF's proposal to require unannounced visits on an annual basis for licensed/regulated providers, we recommend that the final rule allow states to determine the frequency with which license-exempt providers will be subject to unannounced visits.

As ACF recognizes in the preamble to the proposed rule, another way that states may minimize the new costs associated with monitoring is to coordinate with other agencies that already fulfill required functions, including agencies responsible for implementing the Child and Adult Care Food Program (CACFP). Specifically, we recommend that monitoring visits provided to comply with CACFP requirements be allowed to count toward the required monitoring visits, so as to minimize duplication.

We also recommend that the regulations allow a provider to operate for up to 60 days before receiving the initial monitoring visit so that a parent who needs child care to start work or retain employment is able to begin using that child care immediately. In addition, we recommend that the regulations require Lead Agencies to describe in their plans how they will complete the initial visits in a timely basis.

Section 98.42(c): Sliding fee scales—Waiver of copayment

We support the proposed regulation to allow Lead Agencies to waive the copayment for some families, not limited to families with incomes at or below the federal poverty level. In addition to families with very limited incomes, some families face high expenses or other extenuating circumstances that would render any copayment unaffordable, and would be unable to use child care assistance if they were required to pay a copayment.

Section 98.42(d): Sliding fee scales—Prohibition of using cost of care as a factor

We support the proposed prohibition of using the cost of care in determining the copayment of a family receiving child care assistance. Using cost as a factor can discourage parents from using higher-cost care, which is often higher-quality care, because it would result in a larger cost burden for them.

Section 98.43(b)(2): Equal access—Adequacy of payment rates

We strongly oppose allowing states to use an alternative methodology as a replacement for the local market rate study (which would be referred to as the "local market price study" under the proposed rule—a change in terminology that we approve). The local market price study is an essential benchmark that allows for accountability and comparability across states, which states can and do use in setting goals to encourage rate increases. States should not be given the option of abandoning market price studies for unproven, potentially challenging, and costly methods that may only be used to justify states' existing low market rates. We appreciate ACF's interest in obtaining information that would more accurately reflect the cost of providing child care, but this objective

would be better accomplished by encouraging states to consider methodologies that would supplement, not replace, existing local market price studies, or with a study on the cost of providing high-quality care conducted at the national level.

As another strategy to highlight gaps in provider reimbursement rates, we recommend that the final rule require states to include in their local market price study one or more survey question(s) asking providers whether reimbursement rates have affected their willingness to enroll children receiving child care assistance. We also recommend requiring each state to conduct a study examining the extent to which the total payment to providers for children receiving child care assistance falls short of the total payment for children supported with private-pay fees, due to low reimbursement rates as well as unpaid absent days, unpaid registration fees, copayments that are not received, or other factors.

In addition, we recommend that ACF include in the preamble to the final regulations, and/or in supplementary guidance document(s), more detailed information for states to help them conduct valid, reliable market price studies with sufficiently representative information on providers' prices.

Section 98.43(c): Equal access—Payment rates based on quality

We support the proposed provision requiring states to take into account the quality of child care when determining payment rates. However, we recommend that the preamble to the final rule strongly encourage states to set adequate base rates and pay higher rates for higher-quality care that truly reflect the additional costs of achieving and maintaining higher quality levels. Currently, in four-fifths of states that offer higher rates for higher-quality care, even the highest rates are below the 75th percentile of up-to-date market rates. We also recommend that the preamble strongly discourage states from lowering base rates and encourage them to instead differentiate rates by raising rates for providers at progressively higher levels of quality. While we recognize that states have limited resources, setting payment rates for providers that more accurately reflect the costs of high-quality care is likely to be a well-targeted and effective way to promote such high-quality care. Lowering base rates makes it even more challenging for programs to improve their services for children.

Section 98.50(b)(3): Child care services—Use of grants or contracts

We applaud the change in this regulation requiring Lead Agencies to use grants and contracts as well as certificates. Contracts can be an important mechanism for addressing shortages of care for particular groups of children or in particular communities, providing the stable income that is necessary for the financial viability of child care providers, and encouraging higher-quality standards. We appreciate, in particular, that the preamble notes that care for parents working nontraditional hours is in short supply, and that contracts may be a potential way to address this shortage. However, the effectiveness of contracts in boosting the quality and supply of care—whether for nontraditional-hour care or other types of care—depends on adequate payment levels for providers receiving contracts.

Section 98.71: Content of reports

We recommend adding to this section a requirement that Lead Agencies include in their annual aggregate reports to the Secretary information on the number of children served through funds spent directly from the Temporary Assistance for Needy Families (TANF) block grant, if such data are available.

The Center greatly appreciates this opportunity to comment.

Sincerely,



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