August 28, 2023

The Honorable Xavier Becerra
Secretary of United States Department of Health and Human Services
The U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Becerra,

The American Public Human Services Association (APHSA), the bipartisan membership association representing state and local human services agencies, and its affinity group, the National Association of State Child Care Administrators (NASCCA), appreciate the opportunity to review and provide comment in response to the Notice of Proposed Rulemaking (NPRM) Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF) RIN number 0970–AD02.

The feedback detailed in this comment was gathered from state CCDF Lead Agency leadership. As those responsible for administering CCDF regulations, they present a valuable perspective and are essential to the successful implementation of proposed changes in the rule. CCDF Administrators bring a unique understanding of how federal changes translate into practical implementation. Further, many Lead Agencies were able to enact some of the policy changes codified in the proposed rule to varying degrees using child care relief funds and have experiential knowledge of what will be required in terms of time, resources, and systemic changes.

Access to high-quality, affordable child care is a cornerstone of our country's economic infrastructure, empowering families to thrive in the workforce and fostering economic opportunity. However, numerous families still face significant barriers in obtaining the child care they need. These challenges not only limit workforce participation but also contribute to economic insecurity.

APHSA and our members strongly support the intentions behind the proposed rulemaking, aiming to reduce family costs for child care, expand parent options, improve provider payment practices, and streamline family enrollment processes. The efforts of the Administration for Children and Families (ACF) to build a robust early childhood system that benefits families, providers, and businesses are commendable.

However, in the absence of additional funding, we remain concerned that the increased costs Lead Agencies will incur to implement requirements set forth in the proposed rule will create tradeoffs that could force states to curb access to their programs. Comprehensive and sustainable child care reform requires solutions that address each pillar of child care–affordability, quality, and access. With temporary pandemic funding expiring and a woefully underfunded child care subsidy structure, lead child care agencies will struggle to implement the proposed rule without reducing access. This is particularly true for states with the least means to offset new costs with increased state funding–typically, those with large populations in deep poverty and the greatest need for robust child care programs. We urge ACF to consider

feasibility and resource constraints in all aspects of the rulemaking that will impose significant new costs and requirements onto Lead Agencies. Examine strategies to mitigate unintended consequences of these costs and administrative burdens that could further strain under-resourced child care agencies.

In our enclosed comments, APHSA more deeply examines impacts and considerations for specific provisions and their implementation timelines, and offers recommendations to promote the successful rollout of the rule. For questions regarding these comments, please contact Emily Adams–Policy Associate, Child Care and Early Childhood Programs, at eadams@aphsa.org.

Sincerely,

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Chair, National Association of State Child Care Administrators
Director, Child Development and Care
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Impacts of Unfunded Mandates

CCDBG operates as a block grant, designed for states to exercise flexibility in administering the grant within their jurisdiction to best balance the needs of families, providers, and the overall reach of the program. At ongoing appropriated levels of funding, states consistently struggle to meet each of these needs completely. Mandates in the proposed rule that would require enrollment-based prospective payment practices and maximum co-payment levels for families ultimately dictate to states how to prioritize limited resources that cannot adequately address all access, affordability, and quality goals of the program. We urge ACF to consider flexibility in adherence to requirements when states face untenable tradeoffs in order to meet the demands set forth in the rule.

Many Lead Agencies have successfully adopted policy changes in recent years that align with the direction set forth in the proposed rule through the use of temporary pandemic child care relief funds. While these funds proved critical in stabilizing the child care market during the pandemic, their funding is coming to an end, with Stabilization grants set to expire in the next month and enhanced CCDBG funds expiring September 2024.

With the proposed rule taking effect at the same time as enhanced funding expires, many states are struggling to sustain or enact best practices in family co-payments and provider payment practices that would be codified in the proposed rule. Some states have already petitioned their legislatures for augmented funding–with mixed success–to sustain policies implemented during the pandemic using expiring supplemental federal funds that alleviate costs for families and stabilize providers. Even in states that have had success in obtaining additional resources to implement best practices, changes that have been authorized do not wholly meet the entirety of policy changes reflected in the proposed rule. Prospects for additional state investment will be a significant obstacle for many Lead Agencies. Absent securing additional funding, in order to maintain or adopt these practices, states may reduce the number of children and families served, potentially leading to increased waitlists.

Lowering Family Costs for Child Care

Prohibit Family Co-payments That Are a Barrier to Child Care Access: Establishes that family co-payments cannot be more than 7 percent of a family's income. (§ 98.45(b)(5))

Considerations:

Implementing a cap of 7% on family copayment costs would enhance affordability for families in need of child care. However, Lead Agencies that adopted such policies during the pandemic found them to be financially burdensome, and there is no supplemental funding allocated for this requirement. Consequently, Lead Agencies might face the difficult choice of serving fewer children and families, potentially leading to expanded waitlists.

Suggestion: Provide guidance to Lead Agencies, particularly in states or territories with extensive wait lists, when there is a shortage of resources to meet this requirement. Due to concerns about reducing access to child care for families in states where this would be a significant financial burden, we recommend including an option for a hardship exemption for this requirement. States that are unable to meet a 7% copayment cap without reducing access could request a waiver. We recommend states have the option to describe how they are creating policies and working towards increasing affordability for families if they are unable to meet the 7% copayment cap.

Allow Lead Agencies to Waive Co-payments for Additional Families: Encourages states to waive co-payments for:

- Eligible families with income up to 150 percent of the federal poverty level; and
- Eligible families with a child with a disability. (§ 98.45(l)(4))

Considerations:

Encouraging Lead Agencies to waive co-payments for additional families, including those up to 150% of the federal poverty level (FPL) and families with a child with a disability, would increase affordability and reduce economic hardship on families. However, states already have the authority to waive co-payments based on their own guidelines.

Suggestion:

Variables such as cost of living lead some states to consider that a percentage of SMI calculation is more targeted in considering co-payment burden. We appreciate that states have the authority to waive copayments based on state guidelines and suggest ACF consider encouraging states to determine a threshold of 150% of FPL or a comparable SMI threshold.

Improve Parent Options for Child Care and Strengthen Provider Payment Practices

Expand Sustainable Payment Practices: States must make on-time payments based on enrollment. Requires states to use private-pay practices that account for child care fixed costs by paying prospectively prior to the delivery of services and paying child care providers based on a child's enrollment or an alternative equally stabilizing approach. (§ 98.45(m)(1) and (2))

Considerations:

Lead Agencies recognize the importance of on-time, enrollment-based payment practices that increase stability in the supply of child care. Implementing this requirement across all fifty states will take a significant investment of time and money, which CCDF agencies are at differing levels of readiness to implement.

Some states would face challenges in implementing prospective payment methods, including technological system changes and potential administrative and legislative adjustments. The short timeline for implementation (60 days) is considered unattainable due to the complex changes required in business processes and IT infrastructure. Lead Agencies also have concerns around program integrity and the need to verify attendance to prevent duplicative payments.

Suggestions:

The shift to on-time payments based on enrollment will require a minimum of one year for states to fully implement, given the extensive changes to IT systems and the need to obtain legislative and regulatory changes in state policy. Given the backlogs in IT project implementation, variations in frequency of legislative sessions, coordination required with providers and unions, and other administrative hurdles to implementation, we strongly recommend ACF allow state to request up to a two-year delay in implementation to ensure successful rollout.

The final rule should retain flexibility for states to define terms such as "fixed cost" and attendance that meets enrollment requirements but guidance around terms like "alternative equally stabilizing approach" and how to ensure two providers are not paid in one month for the same child would be welcome.
There is concern that prospective payment practices may increase the risk of fraud or overpayment and require significant monitoring and verification resources above and beyond current capacity among Lead Agencies. We request clarification on how prospective payments that are duplicative in the case of a family switching providers or other payments to providers that are ultimately deemed ineligible will impact Lead Agencies liability and quality control reviews. We also suggest that ACF does not penalize states for implementing this requirement in good faith.

Before changing the rule, we encourage ACF to incorporate the cost of this change in its regulatory impact analysis. Some states have implemented payment based on enrollment rather than attendance through pandemic funds and have data available on the financial impacts.

Encourage States Pay the Established Subsidy Rate: Encourages states to pay child care providers caring for children receiving CCDF subsidies the state's established subsidy rate to better account for the actual cost of care, even if that amount is greater than the price the provider charges parents who do not receive subsidy. (§ 98.45(g))

Considerations:

In some states, the Lead Agency does not have the authority to pay providers more than their posted rate and these changes will require legislative approval. Lead agencies in some states are likely to experience challenges building consensus with legislatures about paying providers at a higher rate for their services compared to what they charge private-paying families.

Lead Agencies understand and agree with the overarching goal to increase provider stability, however, CCDF may account for a low percentage of the overall child care market, which would not lead to significant changes in the market as a whole. Additionally, given that most states use market rate surveys to determine subsidy rates–which likely underestimate the true cost of care–using current subsidy rates as the best practice for provider rates may be a faulty target to follow. Further, as previously noted, this mandate will increase the cost per subsidy slot for Lead Agencies, resulting in less overall access and longer waitlists absent additional funding.

Suggestions:

When finalizing its rule, ACF should clearly articulate that, while encouraged, this policy is not a requirement and states will not be penalized in federal monitoring if they do not adopt it. Further, to help get to the root of inequities in subsidy rates, ACF should prioritize technical assistance strategies to help states adopt alternative cost models to market rate surveys that better reflect the true cost of care.

Build Supply with Grants and Contracts: Requires states to provide some child care services through grants and contracts as one of many strategies to increase the supply and quality of child care for infants and toddlers, children with disabilities, and nontraditional hour care. (§ 98.16, § 98.30(b), and § 98.50(a)(3))

Considerations:

The language of requiring states to provide "some" child care services through grants and contracts is unclear. States are eager for solutions to provide care for high-priority populations, however, there is concern that developing these procurement processes may be resource-intensive and could tie up funds that could be put to immediate use to increase supply. In states that have worked systematically to prioritize incentives within their subsidy rate structure for nontraditional hour care and child care for

infants, toddlers, and children with disabilities, mandating separate grants and contracts may be unnecessary and ineffective. Further, as previously noted, with pandemic-era Stabilization Grants expiring, increasing funding towards grants and contracts will require tradeoffs in states' investments in their subsidy slots and payment rates.

Suggestion:

Allow Lead Agencies more flexibility in determining how to meet the goal of increased capacity for priority populations, at minimum establishing an opt-out provision for states that demonstrate intentional investment for underserved communities in their subsidy structure.

Make Family Enrollment Easier and Faster

Encourage Faster Eligibility: Encourages state enrollment policies to consider a child presumptively eligible for subsidy prior to full documentation and verification. (§ 98.21(e), (h)(5), and (a)(5)(iv))

Considerations:

Considering a child to be presumptively eligible based on parameters set by the Lead Agency should reduce the administrative burden for families. For states to successfully adopt this policy, clear guidance is needed on expected verification, monitoring, and reporting requirements that will need to be deployed to prevent improper payments. ACF should develop guidance in such a way that does not add excessive administrative burden to Lead Agencies that could deter states from adopting presumptive eligibility policies.

Suggestions:

Provide guidance on minimum verification, monitoring, and reporting requirements for states that adopt presumptive eligibility policies. Provide clarification for Lead Agencies who are unable to meet this encouraged practice without significant financial or administrative burden that there will not be penalties if they choose not to implement this change.

Simplify Verification: Encourages states to use a family's enrollment in other public benefits programs or documents or verification used for other benefit programs to verify eligibility for CCDF. (§ 98.21(g)(1) and (2))

Considerations:

Encouraging states to simplify verification for eligibility by allowing families to use documentation of enrollment in other benefits programs with comparable eligibility guidelines would decrease the administrative burden on families without undue burden on Lead Agencies.

Suggestions:

Lead Agencies may be interested in guidance and technical assistance on how to develop more automated processes across benefit programs that can be used to verify eligibility.

Minimize disruptions to families: Requires states to implement eligibility policies and procedures that minimize disruptions to parent employment, education, or training opportunities and encourages online applications. (§ 98.21(f)(1))

Considerations:

Lead Agencies are in agreement with the goals of the proposed rule and the need to establish inclusive and accessible opportunities for parents to apply for child care assistance. However, the current challenges

faced by parents in navigating the program reflect persistent underinvestment in the infrastructure to administer child care. Simply mandating Lead Agencies address the problem, without adequate resources to do so, fails to get to the root cause of problems experienced in the system, such as outdated technology and understaffing. Further, it is clear that specific mandates that are likely to be included as part of this provision–such as establishing an online application–will take well beyond 60 days for agencies to properly implement.

Suggestions:

As part of its final rulemaking, ACF should consider temporary flexibilities, such as waiving the administrative cost cap, for Lead Agencies to make necessary investments to meet application process requirements. Further, ACF should clarify its expectations and enforcement of this provision and prioritize technical assistance aimed at supporting states in meeting the criteria. Lastly, ACF should provide at minimum one year from issuance of detailed guidance for states to meet the requirements set forth in the provision.

State Plans

Lead Agencies have voiced concern regarding the timing of the FY 2025-2027 CCDF Plan Preprint and the NPRM. We anticipate that states will have already committed time and resources to developing state plans from an existing template that does not reflect these changes. Lead Agencies will need to duplicate their efforts to amend a state plan and budget developed prior to the rule authorization. In anticipation of this, we suggest OCC provide clear guidance to Lead Agencies on how to draft plans that are adaptable and consider the potential for impending rule change. In the implementation timelines included in the proposed rule we encourage ACF to consider the additional time states will need to gather stakeholder feedback and revise their state plan.

Conclusion

We are grateful for the opportunity to provide comments on the proposed rules. APHSA and our members believe that these changes hold the potential to provide essential support to children, families, and providers. However, the success of the proposed rules hinges on providing Lead Agencies with the necessary resources to effectively implement them without reducing slots or compromising services.