

## The Child Care and Development Block Grant (CCDBG) Act of 2014 Final CCDF Regulations – Key Highlights September 30, 2016 (Federal Register [pages 67438-67595](#))

The final Child Care and Development Fund (CCDF) rule provides guidance to the states in implementing the CCDBG Act of 2014, which is designed to:

- Protect the health and safety of children in child care;
- Help parents make informed consumer choices and access information to support child development;
- Provide equal access to stable, high quality child care for low-income children; and,
- Enhance the quality of child care and the early childhood workforce.

In general, the final CCDF regulations are likely to affect providers caring for children on subsidy as well as those providers who do not. For example, the background check requirements apply to all providers while the requirement for annual inspections is more narrowly applied to only providers receiving a subsidy. The Administration for Children & Families (ACF) recommends, however, that states conduct inspections annually for all children – regardless of subsidy receipt. Payment practices are much improved as well as how states set payment rates. While ACF does not require payments at the 75<sup>th</sup> percentile of market rates, there are many changes in the “equal access” section that will push states to set higher rates to support the cost of quality care. The final regulations do not prohibit providers from charging fees in excess of subsidy rates for families, however, reporting requirements will require reporting these fees to states (and states in turn will report these fees to HHS). The regulations also require much more transparency (in general) for data that is collected and reported. This is important because shedding more light on these issues that have not previously been known will help push policies and funding to support better practices (i.e., higher rates to support high quality care). More details about the changes are listed below, including page numbers for additional information.

### **CCDBG Regulations Affecting Child Care Providers and the Families and Children They Serve**

#### **Section 98.21 Eligibility Determination Processes, 12-month eligibility. (Federal Register page 67579)**

Lead agencies shall re-determine a child’s eligibility for child care services no sooner than 12 months following the initial determination or most recent redetermination. A child is to receive services at least at the same level regardless of:

- A change in family income, if that family income does not exceed 85% of state median income for a family of the same size; or
- A temporary change in the ongoing status of the child’s parent.

A child who turns 13 during the year is not automatically cut off. Families cannot be cut off from assistance because they move within state, but a state can discontinue assistance for a family moving out of state.

Lead agencies have the option of cutting off assistance due to a parent’s loss of work or cessation of attendance at a job training or educational program if that change in status is “permanent” – not temporary. If a Lead agency exercises this option, assistance must be continued for no less than 3 months. At the end of the 3 month period, if the parent is engaged in a qualifying work, education or training activity AND has income below 85% of SMI, assistance cannot be terminated and the child must

continue receiving assistance until the next scheduled redetermination or at Lead agency option- an additional minimum 12 month period.

- Lead agencies cannot increase family co-payments within the 12 month period (unless a family enters the graduated phase-out range).
- Lead agencies can terminate assistance for excessive unexplained absences (defined by states) after multiple attempts by the Lead agency or designated entity to contact the family and provider.

Also, important with regard to CCDF subsidy receipt:

- Families are only required to report income changes if they exceed 85% of SMI or there is a non-temporary change in parent work/job training status (or if a family is in the graduated phase-out range).
- Families can report reductions in income and Lead agencies are required to make subsidy adjustments if such income changes would result in lower co-pays or higher assistance.
- Lead agencies are required to take into consideration children's development and learning and to promote continuity of care.

### **Graduated Phase-out. (Federal Register page 67580)**

Lead agencies must have a two-tiered eligibility process (entry and exit). For states that set the second tier of eligibility below 85% of SMI (but above the initial entry level), states must take into account the typical household budget of a low-income family and provide justification that the second eligibility threshold is:

- Sufficient to accommodate increases in family income over time that are typical for low-income workers and that promote and support family economic stability, and reasonably allows a family to continue accessing child care services without unnecessary disruption. Lead agencies can gradually increase copays for families at the second tier.

The preamble encourages Lead agencies that set their second tier below 85% of SMI to consider how families that lose their subsidy will access ongoing care. ACF reminds states that the final rule uses 7 percent of family income as a benchmark for affordable child care. *"Any calculations about affordability should either incorporate this benchmark or provide justification for how families can afford to spend a higher percentage of their income on child care."* Note: Lead agencies are also required to collect data on any amounts providers charge families that exceed the required copay when the provider's price exceeds the CCDF subsidy.

### **Section 98.45 Payment practices: (Federal Register page 67587) [part of the equal access section]**

The Lead agency shall demonstrate in the state plan that it has established payment practices that ensure timeliness of payment either:

- Paying prospectively prior to the delivery of services, or
- Paying within no more than 21 days of the receipt of a complete invoice.

To the extent practicable, rates must support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by:

- Paying based on a child’s enrollment rather than attendance;
- Providing full payment if a child attends at least 85% of the authorized time;
- Providing full payment if a child is absent 5 days or fewer days in a month; or
- An alternative approach for which the Lead agency provides a justification in its plan.

Payments must reflect generally accepted payment practices of child care providers who do not receive CCDF subsidies, paying on a part-time or full-time basis (rather than hourly basis) and paying for reasonable registration fees.

- Also, providers must receive prompt notice of changes to a family’s eligibility status that may impact payment- no later than the day the Lead agency becomes aware that such a change will occur.

**Note:** The preamble references state investments in electronic time and attendance systems that link to provider payments. *“These systems may be used to track whether a child is enrolled and attending care; however, Lead agencies should ensure that such systems do not link attendance and payment so tightly as to violate this [see absence policy above] provision.”*

### **Section 98.45 Equal Access (Federal Register page 67586)**

The Lead agency is required to use the market rate survey or alternative cost modeling in setting rates (i.e., it’s not a paper exercise, this information needs to inform rate setting). ACF is not requiring that rates be set at the 75<sup>th</sup> percentile, however, the preamble strongly discourages Lead agencies from paying less. The CCDF state plan shall include a summary of the data and facts relied on to determine its payments to ensure equal access. At a minimum, the summary shall include the following:

- How a choice of the full range of providers is made available, and the extent to which child care providers participate in the CCDF subsidy system and any barriers to participation including barriers related to payment rates and practices.
- How payment rates are adequate and have been established based on the most recent market rate survey or alternative methodology.
- How base payment rates enable providers to meet health, safety, quality, and staffing requirements.
- How the Lead agency took the cost of higher quality into account, including how payment rates for higher quality care, as defined by the Lead agency using a quality rating and improvement system or other system of quality indicators, relate to the estimated cost of care at each level of quality,
- How co-payments based on a sliding fee scale are affordable and if applicable, a rationale for the Lead Agency’s policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts to families.
- How the Lead agency’s payment practices support equal access to a range of providers by providing stability of funding and encouraging more child care providers to serve children receiving CCDF subsidies;
- How and on what factors the Lead agency differentiates payment rates; and
- Any additional facts the Lead agency considered in determining its rates.

Lead agencies will need to track information on the extent to which:

- Child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices; and
- CCDF child care providers charge amounts to families more than the required co-payment in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts.

Changes to market rate/alternative methodology process:

- Consultation: The State Advisory Council on Early Childhood Education and Care (SAC), organizations representing caregivers, teachers, and directors.
- After conducting the survey, the Lead agency must: prepare a detailed report containing the results, and make the report widely available, including posting it on the internet within 30 days.
- The report must include the results of the survey or alternative methodology, the estimated cost of care varying by geography, type of provider, age of the child, etc., to support: child care providers' implementation of the health, safety, quality and staffing requirements; higher quality care; and the Lead agency's response to stakeholder views and comments.

### **Section 98.41 Health and Safety Requirements (Federal Register page 67582)**

All providers caring for CCDF children (except relatives) shall have minimum health and safety training on:

- Prevention of sudden infant death syndrome and use of safe sleeping practices; administration of medication; prevention and response to emergencies due to a food and allergic reaction; building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic; prevention of shaken baby syndrome, abusive head trauma, and child maltreatment; emergency preparedness and response planning; handling and storage of hazardous materials; appropriate precautions in transporting children (if applicable); pediatric first aid and CPR; recognition and reporting of child abuse and neglect; and may include: nutrition, access to physical activity, caring for children with special needs, or any other topic determined by the Lead agency.

Lead agencies shall describe in the state plan: group size limits for specific age children; child:staff ratios; required qualifications for caregivers; and a certification that caregivers, teachers, and directors will comply with child abuse reporting requirements.

### **Section 98.42 Enforcement of Licensing and Health and Safety requirements (Federal Register page 67583)**

Licensed providers serving CCDF children shall be subject to not less than one pre-licensure inspection and at least one annual unannounced inspection. License-exempt providers are subject to at least one annual inspection for compliance with health and safety (e.g., the list of 9 topics). Individuals hired as inspectors must be qualified and have received training in health and safety. Inspections are to be performed by licensing inspectors or qualified inspectors designated by the Lead agency. Lead agencies may use differential monitoring and develop alternative monitoring requirements for care provided in a child's home. The ratio of inspectors to workload must be maintained at a level sufficient to enable effective inspections on a timely basis.

### **Section 98.43 Background Checks (Federal Register page 67584)**

While the background check requirement has an effective date of September 30, 2017, the preamble strongly encourages states to establish policies and procedures well in advance of that date. The comprehensive background check requirement applies to all licensed, regulated, and registered care (NOT just providers who serve CCDF children). The components of a background check include:

- (1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;
- (2) A search of the National Crime Information Center's National Sex Offender Registry; and
- (3) A search of the following registries, repositories, or databases in the state where the child care staff member resides and each state where such staff member resided during the preceding 5 years;
  - I. State criminal registry or repository, with the use of fingerprints being required in the state where the staff member resides, and option in other states
  - II. State sex offender registry or repository; and
  - III. State-based child abuse and neglect registry and database.

Note: All child care providers and prospective providers are subject to these background checks (except relatives, unless a state chooses to require such coverage). With regard to centers, contract employees are covered as well as any staff who might have unsupervised access to children. With regard to homes, all individuals age 18 and older who reside in the home are covered.

Access to the NCIC is limited, which means Lead agencies will need to partner with law enforcement agencies. The same is true for third party vendors who also do not have access to the NCIC for noncriminal justice purposes. Because of the uncharted territory on the NCIC front, the preamble explains that ACF will not begin to determine compliance on the requirement to search NCIC's NSOR file until after guidance is issued by ACF and the FBI. Nevertheless, states should proceed with developing processes for the other checks. The rule allows provisional employment (i.e., supervision of staff whose background checks are not complete by individuals with a completed check) AFTER the FBI or State fingerprint checks are completed.

### **Section 98.44 Training and Professional Development (Federal Register page 67585)**

The Lead agency is required to develop a framework for training and professional development in consultation with the State Advisory Council on Early Childhood Education and Care (SAC). There are 6 components: (1) core knowledge and competencies; (2) career pathways; (3) advisory structures; (4) articulation; (5) workforce information; and (6) financing. While states are not required to set any particular credential as a licensing qualification or point of entry on the pathway, the preamble urges that the pathway should form a transparent, efficient sequence of stackable, and portable credentials from entry level that can build to more advanced professional competency recognition, and at each step, aligned to improved compensation.

Training and professional development is to promote the social, emotional, physical and cognitive development of children and improve the knowledge and skills of the workforce. Child development is listed as a topic for pre-service training (although presumably that is an overview and additional training in child development would be part of an ongoing training framework, which also includes knowledge and application of state Early Learning Guidelines and social-emotional behavior intervention models).

The state plan must include the minimum number of hours of annual training/professional development required. Also, the state plan must describe how health and safety training is maintained/updated.

Pre-service or orientation health and safety training (which must be conducted within the first 3 months) was moved from the health and safety section to the training and professional development section. The preamble explains that this is the foundation for a continuum of professional development.

Among the requirements for health and safety training is a requirement for CPR and first aid training. The preamble was vague on this requirement and the regs do not provide much detail about it. The preamble says, *“states and territories have flexibility in how they will provide this training and comply with the provision... With regard to flexibility and demonstrating competence, we recognize that some training for preservice or orientation will not result in certification and others that will, such as pediatric first aid and CPR. We remind states and territories that they must set requirements for ongoing, annual professional development and must address certain topics beyond health and safety as outlined in the Act.”* I think the issue is that CPR is not really a training but a certification. However, the CCDBG Act did not require certification, only training. Therefore, states will have to decide if they want people trained or certified (i.e., able to conduct CPR in an emergency or not). I think the intent was for CPR certification, however, the language in the Act said training.

### **Section 98.33 Consumer Education (Federal Register page 67581)**

The preamble encourages Lead agencies or their partners such as child care resource and referral agencies, to use information from a QRIS or other system of quality indicators to make recommendations and help parents make informed child care decisions, for example, by listing the highest rated providers at the top of a referral list and providing information about the importance of high quality child care.

Lead agencies must have consumer friendly web sites that at a minimum include seven components: (1) policies and procedures, (2) information on availability of child care providers (localized list of providers searchable by zip code), (3) quality of child care providers, (4) provider specific monitoring and inspection reports, (5) aggregate number of deaths and serious injuries (for each provider category and licensing status) and instances of substantiated child abuse in child care settings, (6) referral to local child care resource and referral organizations, and (7) directions on how parents can contact the Lead agency or its designee, and other programs to better understand information on the web site.

The localized list of providers must differentiate between licensed and license-exempt providers. The list must include all licensed providers and at the discretion of the state may include license-exempt providers. Lead agencies must ensure that the localized list includes a clear indicator if a serious injury or death due to a substantiated health and safety violation has occurred at that provider. This clear indicator should link to the monitoring and inspection report (or plain language summary of the report) that provides more detail and context. While not required, Lead Agencies are encouraged to include additional information beyond what is required by the statute, including contact information, enrollment capacity, years in operation, education and training of caregivers, and languages spoken by caregivers. There were a number of comments urging that license-exempt home providers not be required to be listed. The final rule gives flexibility to states to decide which license-exempt providers are to be included in the localized list. The preamble strongly encourages Lead agencies not to have a blanket policy regarding these providers in the zip code search.

Monitoring and inspection reports must be posted going back 3 years. In the event monitoring reports are not in plain language, Lead agencies must post a plain language summary or interpretation in addition to the full monitoring and inspection report. Reports must include health and safety violations (including any fatalities or serious injuries that occurred at that child care provider).

Parents are to be given consumer statements on providers (even if they have already selected the provider prior to the intake process).

### **Section 98.53 Quality Set-Aside (Federal Register page 67588)**

There are 10 options as specified in statute for states to choose among for quality set-aside investments. **The final regulation clarified that activities to improve the quality of child care services are not restricted to activities related to providers serving CCDF children (i.e., quality set-aside funds are to strengthen the quality of care community-wide/state-wide).** The final regulations require Lead agencies to submit an annual report, including a quality progress report and expenditure report, to the Secretary of HHS which includes:

- A description of the activities carried out under the quality set-aside;
- The measures the state will use to evaluate progress in improving the quality of care and data on the extent to which the state has met these measures;
- A report describing any changes to state regulations, enforcement mechanisms, or other state S

### **Transparency Highlights:**

### **Section 98.18 Approval and disapproval of Plans and Plan Amendments (Federal Register page 67578)**

Approved plans shall be amended whenever a substantial change in the program occurs. A plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved or denied within 90 days. Plans and plan amendments must be publicly posted by Lead agencies.

### **Section 98.19 Requests for Temporary Relief from Requirements (Waivers) (Federal Register page 67578)**

There are two types of waivers: (1) Transitional and Legislative Waivers and (2) Waivers for Extraordinary Circumstances. Transitional waivers are limited to a one-year period (unless extended) and Extraordinary waivers are limited to no more than two years (unless extended). Generally, extraordinary waivers are related to a natural disaster or state financial crisis. Waiver requests must indicate the type of waiver being sought, what sanction or requirement a state seeks relief from, how a waiver from that sanction or provision will, by itself, improve the delivery of child care services for children and a certification or description of how the health, safety, and well-being of children will not be compromised as a result.

### **Section 98.65 Audits and financial reporting (Federal Register page 67591)**

Lead agencies shall submit financial reports, in a manner specified by ACF, quarterly for each fiscal year. At a minimum, a state or territorial Lead Agency's quarterly report shall include the following information on expenditures including discretionary, mandatory, re-allotted funding, TANF transfers, matching funds and maintenance of effort (MOE) funds:

- Child care administration
- Quality activities, including any subcategories
- Direct services

- Non-direct services including establishment and maintenance of computerized child care information systems; certificate program cost/eligibility determination; all other non-direct services and such other information as required by the Secretary.

The following reports are to be posted on the internet in a timely manner: annual administrative data reports, quarterly financial reports, and annual quality progress reports.

**Section 98.71 Content of Report. (Federal Register page 67592)**

At a minimum, a state or territory's quarterly case-level report to the Secretary shall include:

- The total monthly family income and family size used for determining eligibility
- Zip code of residence of the family and zip code of the location of the child care provider
- Gender and month/year of birth of children
- Ethnicity and race of children
- Whether the head of the family is a single parent
- The sources of family income and assistance from employment (including self-employment), cash, or other program support (i.e., TANF, SSI, Food Stamps, housing assistance, etc.).
- The month/year child care assistance to the family started
- The type of child care in which the child was enrolled (such as FCC, in-home care, or center-based care)
- Whether the child care provider was a relative
- The total monthly child care co-payment by family
- **If applicable, any amount charged by the provider to the family more than the required copay in instances where the provider's price exceeds the subsidy payment**
- The total expected dollar amount per month to be received by the provider for each child
- The total hours per month of such care
- Unique identifier of the head of the family unit receiving child care assistance and of the child care provider
- Reasons for receiving care
- Whether the family is homeless
- Whether the parent(s) are in the military service
- Whether the child has a disability
- Primary language spoken at home
- Date of the child care provider's most recent health, safety and fire inspection
- Indicator of the quality of the child care provider; and
- Any additional information that the Secretary may require

State Lead agencies must also report the number of children served by payments through certificates or vouchers, contracts or grants and cash under public programs, listed by the primary type of child care services provided during the last month of the report period (or the last month of service for those children leaving the program before the end of the report period);

- The manner in which consumer education information was provided to parents and the number of parents to whom such information was provided
- The total number (without duplication) of children and families served under CCDF;
- And any other additional information as required by the Secretary.