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Improving Child Care Access, Affordability, and the Child Care and Development Fund (CCDF) - A Proposed Rule by the Health and Human Services Department on 7/13/2023

August 28, 2023

The Honorable Xavier Becerra
Secretary of United States Department of Health and Human Services
Administration for Children and Families

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

Dear Secretary Becerra,

On behalf of the National Association for Family Child Care (NAFCC), we want to thank you for your commitment to addressing the challenges that face families seeking access to child care and creating a first step to ensuring family child care educators are paid life sustaining wage and true cost of care, so they can continue to provide quality care and education in their communities. Family child care (FCC) educators, often women of color, are the lifeline in their communities who have stabilized the ECE workforce at the height of COVID. For instance, NAFCC educators kept their doors open for frontline and essential workers in their communities, often offering extended and nontraditional hours to make sure families had the community support needed to get through a national crisis. Unfortunately, as the rest of the economy has recovered, **the supply of FCC is declining,** which started well before the pandemic. Child Care Aware of America recently found a decrease of 10,000 (10%) FCC programs from 107,783 in 2019 to 97,393 in 2021. This is on top of the more than 97,000 (25%) licensed family child care homes closed in the United States between 2005 and 2017. With the feedback and consideration of our family child care educators, leaders and advocates, NAFCC would like to highlight important sections that will significantly impact home-based family child care, a field that is already stretched thin, ensuring the proposed changes result in stronger child care options in communities that need it most.

NAFCC is a nationwide non-profit organization dedicated to promoting high quality child care by strengthening the profession of family child care for nearly one million paid home-based early learning programs, serving almost 40% of the 6.7 million children who receive care from a nonrelative on a regular basis. Since 1982, NAFCC has been supporting family child care throughout the country as educators make the intentional choice to offer high-quality early care and education in their homes. NAFCC supports and leverages a nationwide network of over 3500 providers and partners in expanding and promoting the power of family child care, by connecting practice, policy, and research. We promote quality child care programs reflective of early childhood professionals and support all who care for, educate, and work on behalf of young children in home-based settings.

Access to high-quality and affordable child care has transformational effects in under-resourced communities, and impacts children, families, and the child care workforce, as well as the nation atlarge. Ensuring parents have secure care for their child(ren), while pursuing job opportunities and advancement or educational pursuits benefits not only families, but our entire economy. The Child Care and Development Fund (CCDF) is a lifeline for families who receive it, but far too few families who are eligible receive support. Only one in six children eligible[1] for child care assistance under federal law received it as of data from 2019.

The policy improvements included in the Notice of Proposed Rulemaking (NPRM) reflect positive steps forward. Because of the child care relief funding, as well as states' broader efforts to improve their own child care policies, many states are in the midst of implementing policies with both federal and state resources that are reflected in the proposed rules. However, the impending expiration of ARPA child care funds—this September for stabilization grants funding and next September for CCDBG supplemental funding—and the ongoing debates over appropriations and the budget are creating tremendous uncertainty about future funding levels for CCDF. And in the absence of sufficient funding, it will be extremely challenging for states and territories to fully and faithfully implement the changes in the proposed rule without tradeoffs.

We also acknowledge that states may need time to approve legislative and/or administrative changes, adopt technology upgrades, train staff, inform families and providers, and take other steps necessary to implement any new rules. That is why it is imperative to also secure additional resources at this moment, so that states can maintain the policies and strides that they have made throughout the pandemic with relief resources. Without such resources, the inequities in how states continue to advance these important policies and goals will be exacerbated.

We thank you for addressing both the programmatic and systemic challenges within child care programs to build a better system and address the needs of families, providers, and communities. We acknowledge, as do you, that true long-term, systemic changes require Congressional action and significant investment, and will not be achieved by this change in rules, but these changes will provide movement in the right direction. We have included various considerations on the proposed rules by section which you will find below. Our comments focus solely on the proposals and modifications in the NPRM and are not exhaustive of the broader improvements we know would benefit children, families, and providers.

Lowering Families' Costs for Child Care

- § 98.45(I)(3) **Provides for affordable family copayments not to exceed 7 percent of income for all families,** regardless of the number of children in care who may be receiving CCDF assistance, that are not a barrier to families receiving assistance under this part;

[1] Office of the Assistant Secretary for Planning and Evaluation, "Factsheet: Estimates of Child Care Eligibility & Receipt for Fiscal Year 2019," September 2022, https://aspe.hhs.gov/reports/child-care-eligibility-fy2019.

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We applaud the Department's recognition that child care must be more affordable to support low-income families and families of color who often cannot afford the cost of child care. We appreciate and support the 7 percent copayment cap per family, regardless of the number of children.

While requiring states to cap their copayment fees at 7 percent is a good start, states need increased and sustained funding to meet the recommended copayment requirement. When surveying NAFCC participating family child care educators who are leaders in their states and communities themselves, they expressed real concern with the states' ability to provide sustained and timely subsidies for families who need access to care the most, leaving family child care providers to shoulder the burden of the gap in their funding and wages while making the difficult decision to either raise the cost of care in their programs, or consider closing their programs altogether. *Home-based family child care educators cannot afford to shoulder the burden if states cannot provide timely and sustained payments to families and home-based child care programs.*

NAFCC's 2022-2023 annual survey of about 400 responses shows that the average hourly rate for an FCC educator is $12.56 per hour while working an average of 68 hours per week. 71% of participating providers expressed they cannot afford basic benefits such as health insurance, retirement or feel they do not have professional sustainability. 55% expressed that their income is insufficient to hire staff, a requirement to maintain their licensing when caring for 2 or more infants in many states.

It is our recommendation that the additional cost of care, once a family's copayment is capped at 7 percent is not passed along to providers by reducing payments: instead, these additional costs should be covered by the Lead Agency. Otherwise, providers who rely on family contributions may face compensation and operational challenges that could prevent them from staying open or staying in the child care workforce. A real expressed possibility especially with the expiration of the ARPA funds this September.

We understand that providers are concerned about adverse consequences of lowered payment rates, and we deeply appreciate ACF's intent to "closely monitor Lead Agency payment rates to ensure reductions in family copayments do not lead to funding cuts for providers." We recommend that ACF further clarify and specify the mechanisms that will be implemented to ensure state payment rates are not lowered in response to the requirements around family copayments. This will also help providers move away from circumstances where they have to pass lost costs back to parents by charging families additional amounts above the required copayment, as is allowed by 38 states.

Building Supply with Grants and Contracts to Expand Parent Choice

- § 98.30(b)(1) **Require states and territories to provide some child care services through grants and contracts** as one of many strategies to increase the supply and quality of child care, including at a minimum, using some grants or contracts for infants and toddlers, children with disabilities, and nontraditional hour care.

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We are supportive of the proposal to require states and territories to use grants and contracts for child care services, at a minimum for infants and toddlers, children with disabilities, and nontraditional-hour care. We appreciate the recognition that there is a serious shortage of child care, particularly for these populations. This shortage justifies the proposed rule requiring states and territories to employ grants and contracts—among other approaches—to address the problem. By reducing provider uncertainty, grants and contracts can be an effective tool for increasing the supply, stability, and quality of child care.

We recommend that the proposed rule require states and territories to design their grants and contracts and the application process for grants and contracts so that they are available and accessible to all types of child care providers, including small child care centers, licensed and regulated family child care homes, and family, friend, and neighbor care providers that meet the state's or territory's requirements for participation in the CCDBG program; grants and contracts should also be available to networks that support home-based child care providers. Parents often prefer home-based settings for their very young children and children with disabilities because of the familiarity and one-on-one attention these settings offer.[2] Parents working nontraditional hours are also often more comfortable having their child cared for by a relative or in another home-based setting during late night, overnight, or early morning hours.[3] Grants and contracts should reflect and respond to these preferences in order to build a supply that truly meets families' and children's needs.

The proposed rule should also provide a clear definition of grants and contracts so that states and territories are not fulfilling this requirement in name only. To have a real impact on the supply of child care, contracts and grants should provide a structure that is substantially different than an individual voucher. Grants and contracts should not only provide prospective payment and payment based on enrollment—which would be required for vouchers as well under the proposed rule—but also offer other advantages to the grantee/contracting program, such as higher payment rates, a commitment that the resources will be provided for an extended period of time, and technical assistance (including in the application process), coaching, monitoring, and other supports to help the grantee/contractor open a new child care program or expand an existing program, recruit and retain child care teachers and other staff, meet CCDBG and/or licensing standards, offer specialized care (such as care for children with disabilities or care during nontraditional hours), and continually improve quality.

As previously mentioned, families with young children, families with children of different age ranges, children with different abilities and families working nontraditional hours often look to a home-based setting for care. Family Child Care educators participating in NAFCC services acknowledged that too few grant opportunities are available to them or if available, a noticeable

[2] Home Grown, "Home-Based Child Care Fact Sheet," May 25, 2023, https://homegrownchildcare.org/wp-content/uploads/2023/05/Home-Grown-Child-Care-Fact-Sheet-final.pdf

[3] Home Grown, "Home-Based Child Care Fact Sheet," May 25, 2023, https://homegrownchildcare.org/wp-content/uploads/2023/05/Home-Grown-Child-Care-Fact-Sheet-final.pdf

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disparity in the amount of the award in funding made available to family child care educators as opposed to their center-based counterparts. For instance, NAFCC's Ohio state representative participated in Ohio's inclusion grant program where the requirements of providers and center-based educators were identical. Home-based family child care programs were awarded $2500 whereas center-based programs received $50,000.

We recommend that states and federal agencies also gain further education on the actual cost of child care and the positive impact home-based family child care has in communities who need it most. For instance, FCC educators participating in NAFCC's programming are accredited, licensed or registered and participate in ongoing professional development and often hold their Child Development Associates (CDA) program and other degrees, yet are navigating razor thin profit margins while being isolated and excluded from grant opportunities often available to center-based or larger programs. In essence, our family child care educators are highly skilled, highly educated and trained educators providing culturally reflective care. While the facility size of FCC programs is limited, many FCC programs operate multiple shifts and care for more children and families than their capacity at any time indicates. These types of variations should be taken into account when setting grant amounts. There needs to be equitable access to grant opportunities for family child care educators that are accessible in multiple languages to lessen the barrier.

Improving Parent Choice in Child Care and Strengthening Payment Practices to Child Care Providers

- § 98.45(m)(1) **Require states to pay prospectively (not as a reimbursement) and** § 98.45(m)(2) **based on enrollment not attendance**, or some alternative proposed by the Lead Agency and approved by the OCC. Those that say they cannot pay prospectively must provide evidence that their proposed alternative reflects private pay practices for most child care providers in the state, territory, or Tribe and does not undermine the stability of child care providers participating in the CCDF program.

As part of a commitment to bringing additional providers into the subsidy system to increase family choice and ensuring that programs are supported by payments that are consistent, timely, and reflect the true costs of quality care, we are very supportive of the requirement to pay providers prospectively. This practice increases stability, supports the ECE workforce across settings, and aligns with the payment practices of the vast majority of programs that serve families paying out of pocket. According to NAFCC's annual survey, 59% of our educators are receiving payment from private paying families prospectively, where 65% expressed being paid either beginning of the week or beginning of the month. Twenty-eight states took steps to pay based on enrollment or use contracts to provide direct services using COVID-19 funding and a majority of states opted to use CCDBG funding to provide grants to child care providers during the COVID-19 pandemic to help support their businesses throughout periods of reduced enrollment or temporary closure.[4]

[4] Office of Child Care, "COVID Investments in Child Care: Supporting Children, Families, and Providers," May 25, 2023, https://www.acf.hhs.gov/occ/infographic/covid-investments-child-care-supporting-children-families-and-providers

Though states are moving towards paying per enrollment rather than attendance, family child care educators in participating states still express serious delay in payment practices. For instance, family child care providers in Virginia and Maryland expressed their frustration in waiting for payments that have been delayed for 2 months from their respective states. Providers from Nevada expressed a need for states to figure out their subsidy payroll system, highlighting that their compensation amounts to less than minimum wage. Their overall sentiment is participating in a slow-moving subsidy program for low wages does not incentivize them to participate because it is simply unsustainable. They are now facing the decision of whether to continue to accept families with subsidies or figure out an alternative model that will allow them to remain open. Our Virginia State Representative expressed that the county payment can take up to 45 days. Providers cannot wait so long for payment; they cannot keep employees because of delayed payments, "It's a disservice for [5]

Lead agencies should also support the research and analysis of the true cost of care in family child care settings without the process or outcomes of the study being punitive to family child care educators. FCC educators in some states expressed concerns about their ability to provide accurate information for cost of care studies without additional trusted advisors and support. In one state, FCC educators were unable to access stabilization funds because they were unable to provide information for the state's cost model within the short time frame while others had to hire an accountant to complete the paperwork. Given the nuances of the FCC business model, they should be provided with adequate support, coaching, time and resources to provide accurate information.

Universally, home-based family educators expressed that they are not being paid anywhere near the true cost of care. We know that family child care educators provide care and early childhood education from their homes, so financial models must take into account the cost of care and standard business practices.

- § 98.45(g) 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.

We are supportive of the codification of the language ensuring that all providers are paid at the CCDF agency established rate, even when that rate exceeds their private pay price. This practice will support the continued stability of providers and have the potential to mitigate providers leaving the subsidy system in pursuit of higher or more stable wages. The department must use the tools available to them to ensure this practice is adopted by every state. It is imperative to the sustainability of the field that child care providers not be penalized if their private pay price differs from the CCDF agency established rate. Family child care educators are already over-burdened and underpaid and working multiple shifts to simply earn a life sustaining wage and retaining staff.

Implementing Technical and Other Changes for Improved Clarity: Definition of "Major Renovation"

- § 98.2 Specifically, we propose setting the threshold at $250,000 for centers and $25,000 for family child care homes in recognition that costs will vary based on the size of the child care program, with annual adjustments based on inflation that will be posted on the OCC website.

We applaud increasing the threshold for major renovations. NAFCC is concerned that codifying a static threshold for major renovations may provide clarity but may not be the best approach. Instead, NAFCC recommends that the final rule establish that ACF establish a floor of $75,000 for FCCs in year one, and will issue subsequent annual guidance containing a cost level that constitutes a major renovation, which accounts for regional adjustments, setting, and other factors, and that is established in consultation with experts and available studies and data on child care renovation costs.

Reducing Bureaucracy for Better Implementation

- § 98.21 At a Lead Agency's option, **a child may be considered presumptively eligible for up to three months** and begin to receive child care subsidy prior to full documentation and eligibility determination.

We appreciate the proposal regarding the use of presumptive eligibility for children, while their eligibility for subsidies is being fully determined. This proposed rule encourages states to employ a transformative solution that seeks to minimize bureaucratic barriers for families in need.[6]

As written in this proposed rule, a presumptive eligibility policy would allow families to receive immediate access to child care services for up to three months, while their eligibility for the program is being determined. This proposed rule allows states the option to provide eligible families with prompt support, ensuring that families can engage in work or educational pursuits, as well as support enhanced child development outcomes.[7]

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[6] How Presumptive Eligibility Can Help Families Access Child Care, CLASP, May 2023, https://www.clasp.org/publications/fact-sheet/how-presumptive-eligibility-can-help-families-access-child-care/

[7] Presumptive Eligibility in Child Care: Frequently Asked Questions, CLASP, May 2023, https://www.clasp.org/publications/fact-sheet/presumptive-eligibility-in-child-care-frequently-asked-questions/

However, states must also provide timely payment practices to child care providers and not be penalized if the family does not qualify. Our family child care educators express that their home states may take up to 30-45 days to submit payment causing them to consider whether to participate in their state's subsidy program. We agree a more streamlined approach will benefit both families and family child care educators.

Moreover, the proposed rule further ensures that providers are paid for services rendered, regardless of 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 significant step toward ensuring that providers are supported, and states can utilize the necessary resources to create a presumptive eligibility policy. The requirement for Lead Agencies to track and assess the numbers of presumptively eligible children who turn out to be ineligible further demonstrates a commitment to accountability and continuous improvement in the eligibility determination process.

Conclusion

We appreciate the Department's efforts to address issues facing families, children, and child care educators in child care systems across the country and the opportunity to share comments and feedback. We encourage the Department to deepen their investment in the child care system especially when resources for home-based child care program are few and far in-between. NAFCC's biggest recommendation is to consider home-based family child care programs when thinking through implementation. Many of the FCC professionals participating in NAFCC's programming are highly skilled, highly educated and trained experts providing highly specialized and culturally competent care in their communities. Because of this, families prefer home-based child care in their communities to educate and care for their children. Thank you for your consideration of these comments regarding the proposed rulemaking. If you have any questions, please contact Erica Phillips, National Care Association for Family Child Care, ephillips@nafcc.org.

Sincerely,

Erica Phillips
Executive Director