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THE CHILD CARE AND DEVELOPMENT FUND 2024 RULE: DETAILED SUMMARY AND STATE EXAMPLES

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OVERVIEW

On March 1, 2024, the U.S. Department of Health and Human Services (HHS), Administration for Children and Families (ACF) announced regulatory changes to the Child Care and Development Fund (CCDF). CCDF is the primary federal funding source devoted to helping families with low incomes afford child care and to increasing the quality of child care for all children. Under CCDF, funding is provided to states, and states have flexibility to determine certain policies within federal parameters. The changes in the final rule include new requirements states will have to meet to 1) lower families' child care costs; 2) improve child care provider payment rates and practices; and 3) simplify subsidy eligibility and enrollment. The final rule also recommends, but does not require, that states adopt additional policies and procedures to meet these goals. The 2024 CCDF Final Rule also includes technical and other changes to improve clarity and program implementation. The full rule can be **found in the Federal Register**.

In April 2023, President Biden released an **Executive Order on Increasing Access to High-Quality Care and Supporting Caregivers** that directed federal agencies to "make all efforts to provide support for caregivers, increase access to affordable care for families, and provide more care options for families."[1] As a response to this order, ACF first announced proposed changes to CCDF with the Notice of Proposed Rulemaking (NPRM) on July 13, 2023, followed by a 45-day public comment period. ACF received 1,639 unique comments from state agencies, Tribal Nations, child care resource and referral agencies, faith-based organizations, provider organizations, labor unions, child care providers, parents, individual members of the public, and members of Congress. In response to this feedback, ACF made some changes to the proposed rule language before publishing the final rule in March.

Timeline

The changes included in the final rule take effect **April 30, 2024**. ACF is aware that implementing some of the provisions in the final rule will require a range of legislative and administrative processes, including some technology and data system changes, that may take time.[2] States that are not in compliance with the provisions of the final rule by April 30, 2024, may request a temporary transitional and legislative waiver, beginning in May 2024, for an extension of up to two years to ensure there is enough time to execute the steps to comply. ACF recently provided more guidance and resources to support states on the **waiver process.** Beginning on May 1, 2024, Lead Agencies can apply for transitional and legislative waivers through November 30, 2024 for certain provisions in the final rule. For Tribal Lead Agencies, ACF will determine compliance through review and approval of the fiscal year (FY) 2026-2028 Tribal CCDF Plans that become effective October 1, 2025. The rule changes have been incorporated into the **final FY 2025–2027 CCDF State and Territory Plan Preprint,** which states must submit to ACF by July 1, 2024, and will be effective October 1, 2024.

Waivers

States and territories that are not in compliance with the provisions of this final rule on the effective date may request a **temporary waiver** for an extension of up to two years if needed to come into compliance. For Tribal Lead Agencies, ACF will determine compliance through review and approval of the FY2026-2028 Tribal CCDF Plans that become effective October 1, 2025.

This resource summarizes the changes required or encouraged in the final CCDF rules and outlines encouragements to consider. We focus on requirements and encouragements and do not cover every aspect of the final rule, such as technical changes and clarifications on background checks and other provisions. However, we have provided examples from states that have already implemented key requirements as well as other information to support state efforts.

This rule is not directly attached to additional funding or higher allocations for states. However, the recent Further Consolidated Appropriations Act of 2024 includes a $725 million, or 9 percent, increase in discretionary funds to the Child Care and Development Block Grant (CCDBG) above last year's allocation.[3] While the increase to CCDBG is needed, concerns related to economic recovery, unemployment, and inflation persist, as well as the looming expiration of American Rescue Plan funds on September 30, 2024.[4] Some states have been able to allocate additional state resources to child care and early education. But fully supporting state implementation of the requirements outlined, in addition to implementing any of the encouraged improvements, requires significant and sustained new federal and state investment.

FINAL RULE SUMMARY

The 2024 CCDF final rule outlines what states are required to implement, as well as encouragements to strengthen child care systems.

- Under the final rule, states are required to:
    - Cap family co-payments at 7 percent of household income for families receiving child care subsidies.
    - Post current information about co-payment sliding fee scales on their consumer education sites, including waived co-payment policies and estimated co-payment amounts.
    - Implement payment practices for child care providers serving families receiving subsidies that are consistent with the private-pay market, including paying prospectively and paying based on enrollment instead of attendance.
    - Provide some services through grants and contracts to help increase the supply and quality of child care for children in underserved areas, infants and toddlers, and children with disabilities.
    - Implement subsidy eligibility policies and procedures that minimize disruptions to families and lessen the burden of CCDF administrative requirements on families.
- Under the final rule, states are encouraged to:
    - Waive co-payments for additional populations, including families with income up to 150 percent of the federal poverty level; children who are in foster or kinship care; families experiencing homelessness; families with a child with a disability; and families enrolled in Head Start or Early Head Start.
    - Consider a child presumptively eligible for subsidy prior to full documentation and verification.
    - Use a family's enrollment in, or verification used for, other public benefits programs to confirm eligibility for CCDF.
    - Pay providers caring for children receiving subsidy the state's established subsidy rate to better account for the actual cost of care, even if the state's established rate is greater than the price the provider charges parents who do not receive the subsidy.
    - Offer online subsidy applications.

Below are further details and state examples for policies and practices that are required and encouraged under the new rule.

POLICIES AND PRACTICES REQUIRED BY THE NEW CCDF RULE

LOWER CHILD CARE COSTS FOR FAMILIES PARTICIPATING IN CCDF

Cap family co-payments

Co-payments cannot exceed 7 percent of a family's income. This provision in the final rule remains the same as in the NPRM. If a family receives CCDF for multiple children, their total co-payment amount cannot exceed 7 percent of their income. States must set their co-payment amounts within this parameter and post updated information about co-payment sliding fee scales on their consumer education sites, including waived co-payment policies and estimated co-payment amounts. States must demonstrate in their CCDF State Plan that lowering co-payments does not impact the total payment to a provider: the subsidy payment rate amount and family co-payment. In other words, states must make up the difference and ensure providers are not paid less because of capped co-payments. Including this information on the total payment to a provider is a new requirement in the final rule that addresses concerns that co-payment caps could lead to reduced payment rates. ACF makes clear in the final rule that it expects to closely monitor Lead Agency payment rates to ensure reductions in family co-payments do not result in a transfer of costs to providers.

In addition to the required 7 percent cap, ACF encourages states to adopt lower co-payment caps and minimize or waive co-payments for more families. The rule allows states to waive co-payments more easily for specific populations: families with incomes up to 150 percent of the federal poverty level, children who are in foster and kinship care, those experiencing homelessness, those with a child with a disability, and those enrolled in Head Start or Early Head Start.

States have made progress toward this policy with federal relief funding, and some states, like California, New Hampshire, Rhode Island, and Washington have passed legislation and included funding in their state budgets to keep co-payments under 7 percent. ACF found that 20 states, in their 2022-2024 CCDF Plans, indicated they allow some family co-payments above the 7 percent threshold, meaning there is still progress to be made.

POST CURRENT INFORMATION AND CONSUMER EDUCATION

States are required to post current information about their system of cost-sharing (co-payments) based on family size and income. Under this new requirement, Lead Agencies are required to post about their sliding fee scale for parent co-payments, including policies related to waiving co-payments and estimated co-payment amounts for families.

IMPROVE CHILD CARE PROVIDER PAYMENT RATES AND PRACTICES

The final rule requires that CCDF provider payment practices meet generally accepted payment practices used in the private pay market. The required and encouraged changes will greatly improve predictability and stability for providers receiving CCDF.

Prospective payments

States and territories must ensure timely provider payments by paying providers in advance of or at the beginning of the delivery of child care services, with some minor exceptions. This provision in the final rule remains the same as in the NPRM. Only a few states pay prospectively now, though there are a few examples of states that have recently begun paying providers prospectively:

- North Dakota began paying prospectively in October 2023.
- In 2023, Maryland also began paying providers in advance by condensing service periods from every two weeks to a single, monthly service period. The state will make these payments twice a month.
- In 2023, West Virginia also began reimbursing providers based on enrollment through August 2024. The state initially made these payments using COVID-era federal funding and is now using funds from the Temporary Assistance for Needy Families program.

Payments based on enrollment

States and territories must pay child care providers based on a child's authorized enrollment, rather than attendance, to the extent practicable. This provision in the final rule remains the same as in the NPRM. Additionally, states are encouraged to pay the state's established subsidy rate to all providers, even if the established rate is greater than a provider's price for parents not receiving subsidy. This practice is allowed and encouraged by ACF. States can adopt this practice to promote equitable payments across providers receiving subsidies and better account for the actual cost of care.

The final rule does include some flexibility on the payment requirement, if a state can demonstrate that certain policies are not considered generally accepted payment practices in the private child care market for certain types of care. If a state says it cannot pay based on enrollment, the state must describe its alternate approach in the CCDF Plan and provide evidence that the proposed alternative reflects private pay practices for most child care providers in the state or territory and does not undermine the stability of child care providers participating the CCDF program.

A few states pay based on enrollment, and many additional states began paying based on enrollment with pandemic-era federal relief funding. However, as this funding has ended, many states have returned to paying based on attendance. For example:

- New Jersey currently has this policy funded through June 2024.
- West Virginia is using Temporary Assistance for Needy Families funding to extend this policy through August 2024 but does not have plans to extend it beyond then.
- Montana and Mississippi have both made permanent changes to base payments on enrollment.

ADDRESS SUPPLY THROUGH GRANTS OR CONTRACTS

States must use some grants or contracts to increase the supply and quality of slots for three populations: 1) children in underserved geographic areas; 2) infants and toddlers; and 3) children with disabilities. The final rule lays out expectations for states to use grants and contracts for all three populations, and states must use data to determine the gap or need and identify the appropriate proportion of each population to be served using grants or contracts. Additionally, the final rule further clarifies that grants solely to improve the quality of child care services would not satisfy the requirement.

This will be a big change for most states. As of FY2022-2024 CCDF State Plans, only eight states were using grants and contracts.[5] The final rule adds children in underserved geographic areas to the list of groups required to be served with grants or contracts. It also removes the requirement to use grants or contracts for nontraditional-hour care, recognizing that contracts might not be the most effective way to address this unmet need, since nontraditional-hour care is often provided by family, friend, and neighbor caregivers.

- State example and resource: **Oregon** has been using grants and contracts to address supply for families with infants and toddlers.
- The Office of Children and Families released an implementation guide on the use of contracts for child care slots.[6]

POLICIES AND PRACTICES ENCOURAGED BY THE NEW CCDF RULE

In addition to the requirements in the rule outlined earlier in this brief Lead Agencies are encouraged to take additional steps to increase access for families and support to providers.

ELIGIBILITY VERIFICATION ENCOURAGEMENTS

Lead Agencies have the flexibility to use enrollment in other benefit programs to satisfy specific components of CCDF eligibility without additional documentation (e.g., income eligibility, work, participation in education or training activities, or residency), or to satisfy CCDF eligibility requirements in full if eligibility criteria for other benefit programs is completely aligned with CCDF requirements.

Lead Agencies are expressly permitted to examine eligibility criteria of benefit programs in their jurisdictions to predetermine which benefit programs have eligibility criteria aligned with CCDF. Once programs are identified as being aligned with CCDF income and other eligibility requirements, Lead Agencies have the option to use the family's enrollment in such public benefit programs to verify the family's CCDF eligibility or to limit the documentation required to fulfill CCDF eligibility if the programs are not in complete alignment.

Presumptive Eligibility

Presumptive eligibility is a policy that allows families to receive temporary child care assistance while their eligibility for the program is being determined.[7] Lead Agencies have the flexibility to collect minimal information to determine presumptive eligibility and are not required to fully verify the simplified eligibility information at the time of presumptive eligibility determination.

The final rule recommends that Lead Agencies consider flexibilities for families that may have difficulties obtaining standard documentation. As Lead Agencies have a great deal of flexibility in establishing the eligibility and verification requirements for families, ACF recommends that they consider a wide range of circumstances in which families may be able to verify their eligibility.

Currently there are four **states** and one locality that have a presumptive eligibility policy: **Delaware**, **Maryland**, **Montana**, **Wyoming**, and **Monroe County, New York**. Maryland's policy is the most recent and came about through larger legislation that includes presumptive eligibility and is currently in the implementation process.

Lead Agencies also have the flexibility to establish provisions such as the duration of presumptive eligibility, provided it does not extend beyond three months; how frequently a family could be approved for presumptive eligibility; defining when presumptive eligibility begins, such as allowing presumptive eligibility on the date it is determined or on the date that the child care services begin; and for whom they allow it (e.g., children with disabilities, children receiving or needing to receive protective services, other priority populations), though we recommend that Lead Agencies thoughtfully consider why presumptive eligibility would be allowed for some groups and not others.

If a child is found to be ineligible due to eligibility requirements established by the Lead Agency, but still qualifies under federal requirements (i.e., if the Lead Agency sets income eligibility below 85 percent of state median income (SMI), but the family income is still lower than the federal threshold), the Lead Agency could implement a policy allowing CCDF funds to be used to provide child care benefits for the remainder of the presumptive eligibility period for up to three months.

When children are newly added to the case of a family already participating in the subsidy program (e.g., new siblings), Lead Agencies may implement presumptive eligibility for the additional child while waiting for necessary additional information such as proof of relationship or provider payment information. As discussed earlier, ACF recommends that Lead Agencies leverage existing family eligibility verification as much as possible to determine the additional child's presumptive and full eligibility and add additional children to the program.

Eligibility Determination Period

Lead Agencies have the flexibility to establish eligibility periods longer than 12 months, which allows the eligibility period for existing children to align with an additional child's eligibility period.

Co-Payment Encouragements

In addition to the copayment changes states are required to make, they are encouraged to take other steps to reduce cost burdens for families receiving subsidies.

- **Flexibility to go lower than 7 percent:** ACF encourages Lead Agencies to adopt lower copayment caps and minimize or waive co-payments for more families.
- **Waiving co-payments for additional families:** Lead Agencies have the flexibility to waive co-payments for additional families, as feasible.
- **Defining family unit and income:** ACF allows Lead Agencies the flexibility to specify how to define family income, which has implications for both a family's eligibility for CCDF assistance and the family's required co-payment amount.
- **Co-payment collection:** Lead Agencies retain the flexibility to determine their own policies on collecting co-payments.
- **Tribal co-payments:** All CCDF Tribal Lead Agencies have the flexibility to waive parent copayments for all parents receiving CCDF assistance.
- **Provider payments:** Lead Agencies have the flexibility to determine the length of the service period and may choose to pay providers on a weekly, bi-weekly, or monthly basis, or another period as appropriate.

Enrollment Simplification Encouragements

The final rule encourages states to consider policies to simplify and streamline enrollment processes for families.

- **Online subsidy applications:** States are encouraged to offer online subsidy applications. States without online subsidy applications will be expected to demonstrate in their CCDF Plans why implementation of an online subsidy application is impracticable.
- **Aligning eligibility periods for additional siblings:** States are encouraged to align eligibility periods to the new child's eligibility period so that all the children's re-determinations can occur at the same point in time to limit any burden on the family and the state Lead Agency. This alignment can be done by extending the eligibility period for the existing child or children beyond 12 months.
- **Categorical eligibility with other assistance programs:** States have the flexibility to use enrollment in other benefit programs to satisfy specific components of CCDF eligibility without additional documentation (e.g., income eligibility, work, participation in education or training activities, or residency) or to satisfy CCDF eligibility requirements in full if eligibility criteria for other benefit programs is completely aligned with CCDF requirements.

Tribal Care

The final rule honors tribal sovereignty and exempts Tribal Lead Agencies from many of the requirements that are outlined in the rule but are provided with several new flexibilities related to construction, family co-payments, and provider payment practices.[8] The provisions include:

- **Lowering family costs for child care**
  - Allows Tribal Lead Agencies to waive any parent child care co-payments by exempting all tribal Lead Agencies from the CCDF requirement to establish a sliding fee scale.
  - Tribal Lead Agencies are exempt from the requirement to cap family co-payments at 7 percent of a family's income. However, should a tribal Lead Agency choose to keep co-payments for any reason, it is encouraged that the family co-payment be as minimal as possible and under 7 percent of the family's income.
- **Increasing flexibility for major renovations**
  - The definition of major renovation is based on the cost of renovations and the "extent of alterations to the facility."[9] Renovations are considered major renovation at the same totals as non-tribal Lead Agencies, which are $350,000 for centers and $50,000 for family child care homes adjusted annually for inflation.
  - The final rule extends the construction and major renovation liquidation period for Tribal Lead Agencies. The rule establishes a three-year obligation period and two-year liquidation period for construction and major renovation funds.[10]
- **Making family enrollment easier and faster**
  - The final rule encourages tribal Lead Agencies to consider enrollment policies that would deem a child presumptively eligible for child care subsidy.
  - The rule encourages tribes to use a family's enrollment from other public benefits programs to verify eligibility for CCDF.
  - The rule requires tribes to implement eligibility policies and procedures that minimize disruptions to parent employment, education, or training opportunities, including at the first determination of a child or family's eligibility.[11]

- **Other exemptions**
    - The final rule exempts Tribal Lead Agencies from 1) posting current information about their sliding fee scales for parent co-payments online; 2) using some grants or contracts for direct services to increase the supply of child care; and 3) making prospective payments to providers based on enrollment.

Conclusion

The release of this final rule provides the opportunity for states to take the necessary first steps toward strengthening child care systems by supporting providers and increasing access to child care assistance for families. Though sustained efforts and funding are necessary to serve all eligible children and families across the country, this final rule to the Child Care and Development Fund opens a path to better supports in the future.

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Appendix

Regulatory Impact Analysis

The U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation explains that the regulatory impact analysis (RIA) includes, among other assessments, the anticipated benefits and costs of the proposed regulatory change and assesses the distribution of the impacts.[12]

This RIA only quantifies the estimated impact of the final rule on the Lead Agencies, parents, and child care providers that interact with the CCDF program, which is a small portion of the child care market. Whether a family can access and afford child care has far-reaching impacts on labor market participation and potential earnings, which in turn affects businesses' ability to recruit and retain a qualified workforce, affecting overall economic growth.[13] ACF's projections in this RIA assume a third of the full costs/transfers/benefits in year 1, and two-thirds in year 2, with full implementation in year 3 and the following years.

Based on the calculations in the RIA, ACF estimates the quantified annualized impact of both required and recommended policies to be:

- **$206.6 million in transfers**: Transfers are payments between persons or groups that do not affect the total resources available to society. They are a benefit to recipients and a cost to payers, with zero net effects. This total amount in transfers includes the impact of required policies and recommended policies.
    - **Impact of required policies:** $57.2 million in transfers.
        - **Policies**: Additional child eligibility, enrollment-based payment, and permissible co-payments.

    - **Impact of recommended policies:** $149.4 million in transfers.
        - **Policies**: Presumptive eligibility, paying established payment rate, waiving co-payments for additional populations.
- **$13.1 million in costs**: Costs include compliance costs (administrative, capital and operations, and government implementation) and market and economy-wide impacts. This total cost includes the impact of required policies and recommended policies.
    - **Impact of required policies**: $9 million in costs.
        - **Policies**: Grants and contracts; and Systems (IT).
    - **Impact of recommended policies**: $4.1 million in costs.
        - **Policies**: Systems (IT).
- **$15.3 million in benefits**: Benefits include mortality risk reductions, morbidity risk reductions, and other outcomes. This total only includes those benefits that could be quantified, which stem from recommended policies on easing families' access to assistance. The **preamble to the rule** discusses other potential benefits that could not be quantified.
    - **Impact of recommended policies**: $15.3 million in benefits.
        - **Policies**: Lowering parents' cost of care; expanding parents' options for child care; strengthening payment practices to child care providers; making it possible for more providers to accept families with a subsidy; and easing family enrollment into the subsidy program.

Partner Resources

- CLASP has several resources on presumptive eligibility, including a **fact sheet** on the policy and a **FAQ** page.
- Child Care Aware of America **released a brief** on the final rule in March 2024 outlining the changes to the Child Care and Development fund.
- National Association for the Education of Young Children (NAEYC) released a **resource** on the costs of harmful state deregulation policies and how they can negatively impact provider well-being and child care supply.

ENDNOTES

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[13] "The Economics of Child Care Supply in the United States," U.S. Department of the Treasury, September 2021, https://home.treasury.gov/system/files/136/The-Economics-of-Childcare-Supply-09-14-final.pdf.