Restoring Flexibility in the Child Care and Development Fund (CCDF)
A Proposed Rule by the Department of Health and Human Services on 01/05/2026

February 4, 2026

Robert F. Kennedy, Jr.
Secretary of United States Department of Health and Human Services

RE: Docket number ACF-2026-0001 / RIN number 0970-AD20

Dear Secretary Kennedy,

The Child Care and Development Fund (CCDF) is a crucial program that helps bring child care within reach for families with low incomes, especially as the cost of care skyrockets across the country. Communities nationwide depend on the viability of this program, the stability it can offer providers and early educators, and the early learning services that help set children up for success in school and beyond. We are writing to offer feedback on the CCDF proposed rule to ensure it continues to provide the strongest support to children, parents, providers, and the economy.

The Center for Law and Social Policy (CLASP) is a national, non-partisan, anti-poverty organization that has advocated for policy solutions that support the needs of people with low incomes for over 50 years. CLASP develops practical yet visionary strategies for reducing poverty, promoting economic security, and advancing racial equity. CLASP works at the federal, state, and local levels and has deep expertise in child care and early education, postsecondary education, and job quality policies, including those that impact the early childhood education workforce. The National Women's Law Center (NWLC) fights for gender justice – in the courts, in public policy, and in our society – working across the issues that are central to the lives of women and girls. NWLC uses the law in all its forms to change culture and drive solutions to the gender inequity that shapes our society and to break down the barriers that harm all of us – especially women of color, LGBTQ people, and low-income women and families.

Both of our organizations offer a deep expertise in the CCDF, understand the various challenges of existing child care policy as well as the solutions to improve it, and desire an equitable and accessible child care system that works for children of all ages. We work extensively with state CCDF administrators and state advocates. We are submitting comments for consideration to ensure child care systems across the country will continue to implement policies that best serve children, families, and providers.

The 2024 rule – *Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund* – was developed specifically to address the widespread and mounting affordability crisis in the child care sector, insufficient and delayed payments for providers, and inadequate child care supply that limits options for families.[1] The provisions included in that rule were developed on the basis of extensive data, research, and feedback from both the field and from parents, and were aimed at maximizing program participation, boosting parent choice of care type, and improving program integrity.

The fiscal challenges states are facing in supporting their child care systems are not a direct result of the 2024 final rule but rather the cumulative effects of decades of inadequate child care funding and the expiration of essential COVID-19 child care relief resources. The financial pressures experienced by states will be further exacerbated by the significant cuts to public programs made by H.R. 1. As our organizations noted during the 2023 NPRM process, states have long operated with insufficient federal investments in CCDF and therefore additional resources were critical to effectively implement the proposed provisions and address that historic underinvestment. We acknowledged that true long-term, systemic changes require Congressional action and significant funding, and could not be achieved by only this change in rule. However, the changes provided a crucial step in the right direction. The 2024 rule set guardrails to ensure improved affordability, access, and provider stability within the statute. Rolling back these provisions in response to funding gaps does not address the underlying problem. Instead, it risks further destabilizing the care that children, families, and providers rely on.

Further, the reversal of the 2024 rule does little to improve flexibility in the program – which is already designed to ensure families can seek out a range of care options while allowing states flexibility in developing high-quality child care programs and policies. The proposed rule fails to address any documented issues with the existing standards and will weaken the program, undermining its intended purpose and curtailing its ability to meet its statutory requirements. Moreover, rolling back these provisions will have an outsized impact on smaller providers, both center-based and home-based, who operate on small profit margins and benefit from more stable and consistent payment practices. The proposed rule would also result in greater costs and burdens on parents and families with low incomes, who rely on the program to work, go to school, and provide for their families.

Ultimately, state leaders, advocates, and child care experts, in consultation with families, understand best what the field needs to ensure program integrity, improve access, and support children's early learning, and the regulatory requirements for the program should reflect those insights. The proposed rule would have the opposite effect, failing to consider the expertise of the early childhood community, which is made up of center- and home-based child care providers, advocates, administrators, families, and more. It also fails to consider the significant costs and burdens that the proposed rule would impose on parents and providers – and undermines the efforts of state administrators who have already implemented 2024 rule changes to pay providers more fairly and promote access to early learning.

[1] Office of Child Care, Administration for Children and Families, "2024 CCDF Final Rule: Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund," https://acf.gov/occ/outreach-material/2024-ccdf-final-rule.

At a time when care remains out of reach for families[2] – and many face significant barriers to affording basic needs, like housing, health care, and food[3] – rolling back the 2024 provisions will only weaken the sector; drive more early educators from the field; and fuel higher costs for families. **Therefore, we oppose the proposed rule and urge the Administration for Children and Families to preserve these provisions and withdraw its proposed rule – Restoring Flexibility in the Child Care and Development Fund (CCDF).**

Below, you can find our comments on specific provisions outlined in the proposed rule.

Repeal of The 7 Percent Cap on Family Co-payments

- **The proposed rule repeals the following provision from the 2024 final rule:**
  - § 98.45(l)(3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part, not to exceed 7 percent of income for all families, regardless of the number of children in care who may be receiving CCDF assistance.

Research indicates that, for families with low incomes, the cost of child care is a barrier to access at any co-payment level.[4] Families with low incomes spend an average of 35 percent of their income on child care costs, while families with higher incomes spend 7 percent of their income on average, according to data from the Survey of Income and Program Participation. Needing to spend higher percentages of income on care demonstrates that child care is particularly unaffordable for families who are eligible for CCDF, and higher costs lead to tighter budgets and harder decisions for families who are already in a challenging financial position. Eliminating affordability parameters for families receiving CCDF subsidies needlessly opens the door to increased co-payments that can impede the intended purpose of the law to "best suit the needs of children and parents," (42 U.S.C. 9857(b)(1)).

Based on the 2025–2027 CCDF State Plans, 34 states and the District of Columbia indicate their maximum co-payment is at or below 7 percent, while most remaining states have temporary waivers.[5] This widespread adoption demonstrates that states recognize the importance of keeping co-payments affordable and have been able to implement this

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[2] RAPID Survey Project, "Parents of young children report widespread disruptions and challenges to child care access," https://rapidsurveyproject.com/article/parents-of-young-children-report-widespread-disruptions-and-challenges-to-child-care-access/.

[3] Nani Oesterle, "Stanford Survey Shows Families with Young Children – and their Caregivers – Increasingly Struggle to Meet Basic Needs," https://www.hiltonfoundation.org/learning/stanford-survey-shows-families-with-young-children-and-their-caregivers-increasingly-struggle-to-meet-basic-needs/.

[4] Gina Adams and Eleanor Pratt, "Assessing Child Care Subsidies through an Equity Lens: A Review of Policies and Practices in the Child Care and Development Fund," September 2021, https://www.urban.org/sites/default/files/publication/104777/assessing-child-care-subsidies-through-an-equity-lens.pdf.

[5] Child Care Aware of America, "A Snapshot of State Responses in Draft CCDF Plans," https://info.childcareaware.org/hubfs/SnapshotofStateCCDFPlanResponsesUpdated.pdf.

requirement within a short timeframe and without undue burden. In addition, these affordability parameters have engendered significant reliance interests by many families and providers in these states, who have enrolled in and structured their programs based on the existing cap on family co-payments. Maintaining a clear affordability threshold therefore builds on existing state practice and supports the work that has already taken place to come into compliance.

Families who have multiple children receiving a subsidy would be hit the hardest by the proposed rule, which eliminates previous guidance that caps the co-payment at 7 percent "regardless of the number of children in care who may be receiving CCDF assistance," (§ 98.45(l)(3)). In fiscal year (FY) 2023, approximately 1.6 million children from 994,000 families received CCDF child care assistance per month – meaning that a significant portion of families receiving assistance have more than one child enrolled through CCDF and could see their costs increase dramatically under new regulations.[6]

The 7 percent cap translates statutory intent that "co-payments should not be a barrier to families receiving CCDF assistance" into a measurable threshold (Section 658E(c)(5)). This rescission would ultimately force a number of families to base child care decisions on cost rather than on the option that best meets their needs, or even lose access to child care programs altogether. As the 2024 rule recognized, *see* 89 Fed. Reg. at 15, increased barriers to affordable child care jeopardizes the ability of many parents, and especially mothers, to participate in the workforce, work more hours, or otherwise support themselves and their families. Further, without defining "barriers to access" clearly, proposed language creates inconsistency and inequities across states and territories in affordability and access. **As families face inflation and a rising cost of living, we urge the Administration to not remove the guardrails that ensure affordability for families participating in CCDF.**

Repeal of the Requirement to Use Some Grants or Contracts for Direct Services

- **The proposed rule repeals the following provision from the 2024 final rule:**
    - § 98.30(b)(1) Lead Agencies shall increase parent choice by providing some portion of the delivery of direct services via grants or contracts, including at a minimum for children in underserved geographic areas, infants and toddlers, and children with disabilities.

There is a serious shortage of child care across the country, particularly for families living in low income or rural areas, families with infants and toddlers, children with disabilities, and families in need of non-traditional hour care – despite the importance of reliable, quality child care for healthy development of these children and the well-being of their families.[7]

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[6] Office of Child Care, Administration for Children and Families, "FY 2023 Preliminary Data Table 1 - Average Monthly Adjusted Number of Families and Children Served," January 2026, https://acf.gov/occ/data/fy-2023-preliminary-data-table-1.

[7] Annie D. Schoch, Cassie S. Gerson, Tamara Halle, and Meg Bredeson, "Children's Learning and Development Benefits from High Quality Early Care and Education: A Summary of the Evidence," U.S. Department of Health and Human Services, Administration for Children and Families, Office of Planning,

- There are 14.8 million children nationwide in need of child care, compared to 10.8 million licensed child care slots – and the gap in supply is wider in rural areas.[8]
- There are an estimated 2.2 million children ages 5 and under who have a reported disability,[9] yet their families struggle to access child care; 34 percent of parents of children with disabilities experience at least some difficulty finding child care, compared to 25 percent for parents with nondisabled children.[10]
- Forty-three percent of children in the U.S. have a parent working nontraditional-hours,[11] yet only 34 percent of listed home-based providers and just 8 percent of center-based providers offer non-traditional hour care.[12]

Grants and contracts can be an effective tool and strategy for addressing the shortage of these and other types of care, helping increase the supply, stability, and quality of child care by reducing provider uncertainty (42 U.S.C. 9858c(c)(2)(M)). Grants and contracts can also improve parent choice by expanding the range of quality options in communities where currently few are available – such as low-income neighborhoods and rural communities. In addition, grants and contracts enhance the resources available to a wide range of providers who would not otherwise be able to provide care where there are shortages. As of December 2024, there were already 10 states using grants or contracts for infant and toddler care, nine states using grants or contracts to address the supply of care in underserved areas, and six states using grants or contracts for care for children with disabilities.[13] Further, a recent National Association for the Education of Young Children (NAEYC) early care and education workforce survey showed that 73 percent of child care directors and administrators indicated they'd be more likely to accept families with subsidies if they could receive grants and contracts to serve infants and toddlers and children with disabilities.[14]

Research, and Evaluation, August 2023, https://www.acf.hhs.gov/sites/default/files/documents/opre/%232023-226%20Benefits%20from%20ECE%20Highlight%20508.pdf

[8] Buffet Early Childhood Institute, Child Care Aware of America, and Bipartisan Policy Center, "New Interactive Reveals 4.2 Million Children Nationwide Lack Access to Child Care, Costing U.S. Economy up to $329 Billion," September 2025, https://buffettinstitute.nebraska.edu/news-and-events/news/2025/09/new-interactive-map-reveals-42-million-children-nationwide-lack-access-to-child-care.

[9] Government Accountability Office, "Child Care Accessibility: Agencies Can Further Coordinate to Better Serve Families with Disabilities," September 2024, https://www.gao.gov/products/gao-24-106843.

[10] Cristina Novoa, "The Child Care Crisis Disproportionately Affects Children with Disabilities," Center for American Progress, January 2020, https://www.americanprogress.org/article/child-care-crisis-disproportionately-affects-children-disabilities/.

[11] Brian Knop, "Parents Burning the Midnight (and Weekend) Oil," November 2017, https://www.census.gov/newsroom/blogs/random-samplings/2017/11/parents_burning_the.html.

[12] National Survey of Early Care and Education Project Team, Fact Sheet: Provision of Early Care and Education During Non-Standard Hours (OPRE Report #2015-44) (Washington, DC: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Planning, Research and Evaluation, 2015), https://acf.gov/opre/report/fact-sheet-provision-early-care-and-education-during-non-standard-hours.

[13] Administration for Children and Families, "Final 2024 Rule Implementation," December 2024, https://acf.gov/sites/default/files/documents/occ/2024-CCDF-Final-Rule-Implementation-Fact-Sheet.pdf.

[14] Upcoming data from the 2026 NAEYC ECE Workforce Survey.

Most child care assistance is made available to parents through vouchers or certificates which they can use for the care of their choosing, and vouchers and certificates would continue to be widely available to parents in all states even with current regulations requiring some use of contracts. Contracts simply add an option for those parents who are left without choices because the child care options they need are not available. By offering providers greater financial stability and predictability, contracts help build the supply of child care, particularly the types of care that are in shortest supply.[15] **We urge the Administration to continue requiring states to utilize some grants and contracts to help promote access for those who need it most.**

Repeal of the Requirement to Pay Child Care Providers Prospectively

- **The proposed rule repeals the following provision from the 2024 final rule:**
    - § 98.45(m)(1) Ensure timeliness of payment to child care providers by paying in advance of or at the beginning of the delivery of child care services to children receiving assistance under this part;

Paying child care providers prospectively – either in advance of or at the start of service delivery – offers significant benefits for both providers and families. Prospective payment helps to stabilize child care operations, increase family choice by supporting a broader supply of care options, and align subsidy payment practices with those used by private-pay families.

Private-pay families commonly pay for child care services weekly, bi-weekly, or monthly in advance of care. A survey conducted by the National Association for the Education of Young Children (NAEYC) found that 77 percent of child care directors and administrators require families to pay prospectively.[16] In contrast, many states reimburse providers serving children in the subsidy system only after care has been delivered, often weeks later. These delays can create significant financial strain and threaten program stability. Providers have reported that slow reimbursement makes participation in the subsidy system challenging, leading some to limit the number of children receiving subsidies they serve or to forgo participation in the subsidy system altogether. This is especially true for family child care providers, whose smaller profit margins limit flexibility in covering basic operating expenses such as rent, mortgage costs, utilities, and supplies and compliance-related expenses that require up-front payment.

We are encouraged by the progress states continue to make toward adopting payment practices that reflect those generally accepted in the private-pay child care market. Several states have

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[15] State Subsidy Policies in Early Education Programs' Decisions to Accept Subsidies: Evidence from Nationally Representative Data," 2023, Early Education and Development 35 (4): 859–77. doi:10.1080/10409289.2023.2244859; Roberta Weber and Deana Grobe, "Contracted Slots Pilot Program Evaluation: Final Report," Oregon State University, Family Policy Program, November 2015, https://health.oregonstate.edu/sites/health.oregonstate.edu/files/occrp/pdf/cs-final-report-11-30-2015.pdf; Kate Giapponi Schneider, Marji Erickson Warfield, Pamela Joshi, Yonsook Ha, and Dominic Hodgkin, "Insights into the Black Box of Child Care Supply: Predictors of Provider Participation in the Massachusetts Child Care Subsidy System," 2017, Children and Youth Services Review 79: 148-159, https://www.sciencedirect.com/science/article/abs/pii/S0190740917300750

[16] NAEYC, "Improving Child Care Access, Affordability, and the Child Care and Development Fund (CCDF): A Proposed Rule by the Department of Health and Human Services on 7/13/2023," August 2023, https://www.naeyc.org/sites/default/files/wysiwyg/user-73607/naeyc_nprm_comments.final.pdf.

implemented prospective payment models, including Hawaii, Kansas, Maine, Maryland, New Hampshire, North Dakota, South Carolina, Utah, Texas, and Wisconsin – and many providers in these states have grown to rely on this model in developing and implementing their programs.[17]

Implementing prospective payments for child care subsidies better aligns subsidy policies with standard private-pay practices and support providers' ability to manage ongoing expenses. According to the same NAEYC survey, 73 percent of child care leaders indicated they would be more likely to accept families using subsidies if states paid providers in advance of services.[18] Improved payment practices, such as prospective payments, can strengthen the supply of child care and expand family choice in addition to stabilizing providers' businesses. In contrast, rescission of this requirement would destabilize child care operations, while decreasing child care options and family choice. **Therefore, we urge the Administration to continue to require states to pay providers prospectively.**

Repeal of the Requirement to Pay Child Care Providers Based on a Child's Enrollment Rather Than Attendance

- **The proposed rule repeals the following provision from the 2024 final rule:**
    - § 98.45(m)(2) Support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by: (i) Basing payment on a child's authorized enrollment; or, (ii) An alternative approach for which the Lead Agency provides a justification in its Plan that the requirements at paragraph (m)(2)(i) of this section are not practicable, including evidence that the alternative approach will not undermine the stability of child care programs.

As with paying providers prospectively, paying providers based on enrollment represents best and common practice for child care programs and benefits both providers and families. For providers, enrollment-based payment practices allow for stability in planning and budgeting for child care businesses, and prevent programs from losing funding due to occasional absences, which can occur for a variety of reasons such as illness or vacations. Child care businesses already operate on thin profit margins and high fixed costs related to staffing and space, and those costs do not go down if a child is absent for several days for any reason.

Requiring payment based on enrollment doesn't just benefit child care programs, but also families who receive subsidy dollars by maximizing choice and minimizing risk of financial uncertainty. When subsidized care is not paid based on enrollment, providers may be more reluctant to serve families receiving subsidies or may ask parents receiving subsidies to cover the cost of any absent days, if allowed to do so under state policy, which would place a greater financial burden on the family.[19] Families unable to cover the cost of absent days out of their

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[17] Child Care Aware of America, "ECE Policy Across the U.S., 2020-Present," January 2026, https://www.childcareaware.org/state-policy-dashboard/.
[18] NAEYC, "Improving Child Care Access, Affordability, and the Child Care and Development Fund (CCDF): A Proposed Rule by the Department of Health and Human Services on 7/13/2023."
[19] Ibid.

own pocket risk losing the care that allows them to work. Enrollment-based payment practices protect families from unpredictable financial burdens and unstable child care arrangements.

Beyond the practical reasons for paying based on enrollment, requiring states to do so represents best alignment with the underlying statute governing CCDF. Under the CCDF, lead agencies are required to certify that payment practices under the subsidy program reflect generally accepted payment practices of providers in the state who do not accept child care assistance. Because of the reasons described above, enrollment-based pay does represent by far the most commonly accepted payment practice for providers only operating in the private market. Eighty percent of surveyed program directors/administrators (including 85 percent of centers and 89 percent of faith-based providers) charge families who pay out of pocket for days in which their children are absent.[20]

States are already making important progress towards embracing enrollment-based payment, with 24 states and DC doing so as of 2026. And importantly, for states that have moved towards enrollment-based payment, an analysis from Child Care Aware of America and New America found that those practices had a stabilizing effect for providers that rely on this structure.[21]

Importantly, while requiring states to embrace enrollment-based payments, the 2024 final rule also continues to give state lead agencies the flexibility to require attendance records to ensure children are utilizing subsidy dollars, and many states that pay based on enrollment continue to require and collect those data from providers as part of their efforts to ensure program integrity. In addition, states retain the flexibility to discontinue child care assistance prior to redetermination for excessive unexplained absences despite attempts to contact the family and provider.

We appreciate that the NPRM acknowledges the importance of continuing to prioritize delinking provider payments from occasional absences, as required under statute. **However, we strongly urge the Administration to continue to require states to pay providers based on authorized enrollment rather than reverting back to previous measures that are not as effective in maximizing family choice and supporting the stability of child care programs.**

Conclusion

A robust, well-resourced, and stable child care and early learning system helps children and families thrive. CCDF is a crucial part of that system, and the 2024 regulatory changes that promoted fair payment practices for providers, eased administrative burdens around enrollment, and limited the cost burden for families with low incomes were a critical step toward strengthening the sector and improving both access and affordability.

[20] Upcoming data from the 2026 NAEYC ECE Workforce Survey.
[21] Child Care Aware of America, “Child Care Payments: Attendance Vs. Enrollments,” June 2021, https://info.childcareaware.org/blog/child-care-payments-attendance-vs.-enrollments.

Undermining those provisions, such as those included in this proposed rule, will have the reverse effect – weakening the system, making it harder for providers to stay afloat, and further limiting options and jeopardizing access to child care for vulnerable families. The proposed rule would impose significant costs and burdens on children, families, providers, and broader communities – which the proposed rule has failed to address or meaningfully consider in its summary. **We urge the Administration for Children and Families to preserve these provisions and withdraw its proposed rule – Restoring Flexibility in the Child Care and Development Fund (CCDF).**

Thank you for your consideration of these comments for the proposed rulemaking. If you have any questions, please contact Alyssa Fortner (afortner@clasp.org) at CLASP and Karen Schulman (kschulman@nwlc.org) at NWLC.