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Testimony of the Office of Child and Family Services
Department of Health and Human Services

Before the Joint Standing Committee on Health and Human Services

In Opposition to LD 1729, *An Act to Reduce Child Care Provider Regulation*
Hearing Date May 10, 2023

Senator Baldacci, Representative Meyer, and Honorable Members of the Joint Standing Committee on Health and Human Services, I am Dr Todd Landry, Director of the Office of Child and Family Services I am here today to testify in opposition to LD 1729, *An Act to Reduce Child Care Provider Regulation*

LD 1729 proposes several changes to the laws and regulations impacting child care providers, including

- Establishing a Child Care Appeal Review Panel to review and make determinations regarding disputes between DHHS and providers regarding compliance with licensing or certification requirements, complaints, etc
- Requiring payment for child care services under the Child Care Subsidy Program (CCSP) that is at least equal to the 75th percentile of the market rate and requires that for children with special needs the payment must be higher than the 75th percentile
- Establishing that a provider who has been in operation for at least five years and has had satisfactory inspections may receive a license that is good for 5 years
- Limits inspections as a result of complaints to the substance of the complaint
- Authorizes conditional employment for up to 90 days for an individual working in a child care facility
- Authorizes the recipient of CCSP to pay the difference between what is paid by CCSP and the amount charged by the provider for a non-CCSP child
- Amending the capacity limits for some providers from three to five
- Removing the Department's authority to publish information regarding inspections on a publicly available website
- Requiring the Department to develop a plan for a sliding scale for income and subsidy to reduce the "cliff"
- Requiring the Department to amend its rules for Family Child Care Providers and Facilities to increase staffing ratios and change requirements relating to inspections and licensing, including allowing for providers to deviate from required teacher/child ratios in "extenuating circumstances"

OCFS strongly opposes the provisions of this bill that would grant authority to a group of providers and members of the public to determine disputes between child care providers and the Department regarding licensure. An independent appeal process which is completed through the Office of Administrative Hearings already exists. OCFS believes they continue to be the best qualified independent arbiters of such disputes, which involve interpreting the Department's rules as they apply to providers. The review

panel proposed by this bill is also able to decide on “alternative compliance requests ” The statute does not define this term, but the Department’s interpretation is that this means a provider who does not want to follow a rule could request an alternative through this process. There are serious concerns about arbitrary actions with the panel able to override promulgated rules as well as the potential impact of these deviations from rule on Maine’s eligibility to receive Child Care and Development Block Grant (CCDBG) funding (which is the primary source of funding for CCSP)

OCFS is also concerned about the provisions of this bill which would allow for staff to be hired conditionally for up to 90 days. This could mean an individual whose background makes them unsafe to care for children could be providing direct care for children for up to three months before those concerns are recognized through a background check. This undermines the safety of children and creates concern for compliance with CCDBG which requires comprehensive, fingerprint-based background checks. 45 CFR 98.43(i) requires criminal background checks “prior to the date an individual becomes a child care staff member of the provider ” Furthermore, the bill references the Maine Background Check Center which is not utilized for background checks of child care staff. Currently the average turnaround time for a child care provider background check is between four and seven days.

OCFS is also concerned that Maine would be out of compliance with federal regulation if it could no longer publish information about providers on a publicly accessible website. CCDBG (§98.16) requires that the State make results of provider monitoring available in a consumer-friendly and easily accessible manner. §98.33 requires the results of monitoring and inspections for all eligible and licensed child care providers be posted publicly in a timely manner for consumers to review.

The changes proposed in this bill also risk CCDBG funding by modifying the licensing term and limiting the Department’s ability to inspect all aspects of the program when investigating a complaint. Annual monitoring of providers is a requirement under CCDBG. §98.42(b)(2)(B)(ii) requires “not less than annually, an unannounced inspection for compliance with all child care licensing standards, which shall include an inspection for compliance with health and safety and fire standards ” In addition, by limiting the oversight of the licensing team when responding to a complaint, the Department would be unable to address anything not contained in the complaint, regardless of the significance. This includes lack of working smoke detectors, lack of adequate staffing, physical plant safety concerns, etc. OCFS believes the current renewal process and response to complaints allows for regular confirmation that the provider is meeting all licensing requirements, many of which are integral to the health and safety of the children in the provider’s care.

OCFS also has concerns with the provision of this bill that would allow providers to charge parents receiving CCSP the difference between what is paid by the Department and the providers cost for non-CCSP children. This too would endanger CCDBG funding as it violates the current federal regulation. In addition, it would further limit the ability of families with low income to access high quality child care for their children, which is the very barrier we seek to address with CCSP.

OCFS also has significant concerns about changes to the current staffing ratios for providers. OCFS’ current requirements for staffing were promulgated in the rules to balance the need for appropriate supervision of very young children and reasonable staffing requirements for providers. OCFS believes that child safety and wellbeing is of the utmost concern given that parents are entrusting their children to

the care of these providers, and we believe that increasing ratios will risk the safety of children and the trust of parents in the system

OCFS' existing rules, policies, and procedures are intended to ensure the safety and wellbeing of children served in the State's child care providers and we believe that portions of this bill would create significant risk. The portions of this bill that would put Maine out of compliance with CCDBG requirements would likely result in a financial penalty that would have a direct negative impact on the State's ability to serve children and families through CCSP.

Finally, OCFS has already implemented several of the components outlined in this bill, for example, OCFS is already paying providers at the 75th percentile of the market rate and providing 35% additional subsidy for children with special needs.

Thank you for your time and attention. I would be happy to answer any questions you may have and to make myself available for questions at the work session.