Maine Children's Alliance

Advocating for the well-being of all Maine families.

Testimony of Rita Furlow
Maine Children's Alliance
Before the Joint Standing Committee on Health and Human Services
LD 2199
An Act to Ensure Subsidy Reimbursements and Emergency Financial Assistance for Certain Child Care Providers
February 20, 2024

Good afternoon, Senator Baldacci and Representative Meyer, and esteemed members of the Joint Standing Committee on Health and Human Services, my name is Rita Furlow. I am the Senior Policy Analyst at the Maine Children's Alliance. I am providing testimony in support of LD 2199, An Act to Ensure Subsidy Reimbursements and Emergency Financial Assistance for Certain Child Care Providers. The Maine Children's Alliance is a statewide non-partisan, non-profit research and advocacy organization whose mission is to promote sound public policies to improve the lives of all Maine children, youth, and families.

The federal Child Care Development Block Grant and Maine's recently enacted Child Care Affordability Program exist to support the needs of children and their parents. We know that 69.6 percent of children under the age of six have both parents in the workforce.[1] Unfortunately, we are lacking enough child care educators in Maine to serve all of the children and their families who need child care.

Most child care providers require parents to pay in advance so that they can meet their payroll and pay their bills. Another standard practice is that if a child is out sick or on vacation with their family, the parent must continue to pay the provider regardless of attendance. The early childhood educator still must pay their staff, rent, and utilities.

Yet Maine's current child care subsidy system links payments for providers to a child's daily attendance. This is an historic practice that the federal government has been encouraging states to change. Maine eliminated the practice during the pandemic but reinstated it as the pandemic era funding came to an end.

Policies such as these serve as a disincentive for providers to accept children who participate in the subsidy program. Child care businesses operate on tight profit margins. State and federal policies that result in child care providers losing money ultimately harm the families that desperately need child care so they can work.

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[1] CHILDREN UNDER AGE 6 WITH ALL AVAILABLE PARENTS IN WORK FORCE, DETAILED IN MAINE, The Annie E. Casey Foundation, KIDS COUNT Data Center, https://datacenter.kidscount.org

In July of 2023, the U.S. Department of Health and Human Services, Administration for Children and Families, issued proposed new federal rules, including a suggested change relating to the attendance payment practice. The Notice of Proposed Rulemaking states the following:

> *Second, to support child care provider stability, make it easier for providers to serve children with child care subsidies, and increase parent choices in care, we propose to amend § 98.45(m) to require Lead Agencies to implement payment policies that are consistent with the private-pay market. Specifically, we propose to require Lead Agencies to pay child care providers serving CCDF families prospectively and to either pay these child care providers based on a child's enrollment or an alternative equally stabilizing approach proposed by the Lead Agency and approved by the OCC in the Lead Agency's CCDF Plan.*[2]

We also urge the committee to create an emergency fund to support child care providers that may experience an unexpected financial loss that could result in the closure of a child care facility or family child care home. Early childhood programs are made up of a mix of public and private entities, ranging from large centers to small home-based programs, to informal family, friend, and neighbor care. They are structured as sole proprietorships, small businesses, or nonprofit organizations. In Maine, according to a 2019 report, 76 percent of providers were sole proprietors.[3] What these different models have in common is that they are financed by their customers, parents.

A fundamental flaw in the child care system is that for a program to stay financially viable, it must have full enrollment and collect full tuition from all enrolled families. These tight margins often result in too many providers being on the financial edge. The need for a new furnace or a new roof can mean financial ruin. Over the years, we have heard of too many providers who may utilize credit cards or even mortgage their homes to keep their child care program afloat.

Given the importance to families, local businesses, and entire communities, we recommend that the committee support the development of a program that will support a provider with either grants or low-interest loans along with critical financial and business supports. We are hopeful that as the state develops a long-term plan to improve the financial viability of providers and their staff, that this program is a short-term solution that can keep a program from closing while providing them with valuable business supports. We suggest that an organization, such as Coastal Enterprises, Inc., that has been providing financial guidance and supports to new child care providers along with administering child care facility grants has the ability to quickly establish such a program.

Thank you for your attention and consideration.

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[2] Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF), A Proposed Rule by the Health and Human Services Department on 07/13/2023

[3] Committee for Economic Development of The Conference Board. Child Care in State Econ- omies: (2019). Maine. https://www.ced.org/assets/reports/childcareimpact/fact_sheets/ revised/Maine%20Fact%20Sheet%20131 2019.pdf

Attachment # 1

LD 2199

Below is relevant language relating to the enrollment and payment issues from proposed federal rules that were announced in July of 2023 by the Department of Health and Human Services, Administration for Children and Families to amend the Child Care and Development Fund (CCDF) regulations.

Title: Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)

A Proposed Rule by the Health and Human Services Department on 07/13/2023

Comments closed on 08/28/2023

See the following link for the full document:
https://www.federalregister.gov/documents/2023/07/13/2023-14290/improving-child-care-access-affordability-and-stability-in-the-child-care-and-development-fund-ccdf

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Improving Parent Choice in Child Care and Strengthening Payment Practices (§§ 98.16, 98.30, 98.45, 98.50)

As previously discussed, the availability of affordable high-quality child care that meets families' needs continues to lag well behind demand, and this inadequate supply makes it very difficult for families to afford and access high-quality child care that meets their needs, which subsequently harms labor force participation, family economic wellbeing, and healthy child development. Congress recognized the need to increase the supply of high-quality child care and included new requirements in the 2014 reauthorization for Lead Agencies to develop and implement strategies to increase the supply and quality of care for children in underserved communities, infants and toddlers, children with disabilities, and children in need of care during non-traditional hours (section 658E(c)(2)(M), 42 U.S.C. 9858c(c)(2)(M)). Yet Lead Agencies, providers, and parents continue to report significant struggles to find child care, and thin operational margins, low wages, and difficult job conditions remain significant barriers to grow the supply.

This NPRM proposes provisions to improve payment practices to child care providers so more providers will participate in the subsidy program, which in turn will increase parent choice in finding care that meets their needs. Prevalent payment practices in use in CCDF today can be destabilizing to providers and can disincentivize them from enrolling children who receive subsidies. Providers that do accept children who receive subsidies are incentivized to reduce costs further due to low or inconsistent subsidy payments, such as forgoing efforts to maintain or increase quality and enhance staff compensation. Correcting these detrimental payment practices is critical to the financial stability of child care providers and for helping families access high-quality child care that meets their needs.

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Sustainable Payment Practices

Second, to support child care provider stability, make it easier for providers to serve children with child care subsidies, and increase parent choices in care, we propose to amend § 98.45(m) to require Lead Agencies to implement payment policies that are consistent with the private-pay market. Specifically, we propose to require Lead Agencies to pay child care providers serving CCDF families prospectively and to either pay these child care providers based on a child's enrollment or an alternative equally stabilizing approach proposed by the Lead Agency and approved by the OCC in the Lead Agency's CCDF Plan.

Section 658E6(c)(2)(S) of the Act (42 U.S.C. 9858c(c)(2)(S)) requires Lead Agencies to certify that payment practices for child care providers receiving CCDF funds reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF assistance to support provider stability and encourage more child care providers to serve children receiving assistance from CCDF. The Act also requires the Lead Agency, to the extent practicable, to implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's attendance which includes occasional absences due to holidays or unforeseen circumstances, such as illness. In addition to payment rates, policies governing provider payments are an important aspect of equal access and support the ability of providers to provide high-quality care. Generally accepted payment practices for parents who pay privately for child care, which is most parents, require a set fee based on a child's enrollment, generally in advance of when services are provided.[86] Payments by parents who pay privately typically are not adjusted due to child absences.

This NPRM amends § 98.45(m)(1), as newly proposed, to require Lead Agencies to ensure timely provider payments by paying prospectively prior to the delivery of services to align with the Act's requirement that Lead Agencies use generally accepted payment practices. Prospective payment is the norm for families paying privately (*e.g.,* payment for child care for the month of February is due February 1st) because providers need to receive payment before services are delivered to meet payroll and pay rent. But according to the FY 2022–2024 CCDF States Plans, only eight states and territories pay providers prospectively. Current CCDF regulations allow lead agencies to pay providers within 21 days of receiving a completed invoice. This practice places an up-front burden on providers in serving CCDF families and makes it difficult for providers to accept child care subsidies; providers often mention delayed payments as a key reason why they do not participate in the CCDF program and that it has a destabilizing effect on child care operations.[87] This proposed change would also increase parent choice, making it easier for providers to accept subsidies and improving stability among child care providers serving children participating in CCDF.

At § 98.45(m)(2), as proposed, the NPRM deletes two of three current payment practice options at paragraph (m)(2)(ii), which allows for full payment if a child attends at least 85 percent of authorized time, and paragraph (m)(2)(iii), which allows for full payment if a child is absent five or fewer days a month, to require that Lead Agencies pay child care providers based on a child's enrollment rather than attendance at paragraph (m)(2)(i). Neither of the two options we propose to delete support a provider's fixed operational costs, continuity of care for children, or reflect the norm for families paying privately. This proposed change would also allow us to meet the Act's requirement to support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable. All Lead Agencies would have the option to collect attendance information to ensure children are still enrolled in the program, but this would not impact the provider's payment.

Thirty-six states and territories report they pay based on enrollment not attendance. The fixed costs of providing child care, including staff wages, rent, and utilities, do not decrease if a child is absent, which is why private pay families are generally required to pay for a full week or month, regardless of

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whether their enrolled child is absent. Providers in states that pay based on attendance either absorb the lost revenue associated with a child's occasional absences or choose not to participate in the subsidy system and limit parent choices.

The Act and 2016 CCDF final rule require Lead Agencies to implement § 98.45(l)(2) "to the extent practicable" so in continuing policy set in the preamble of the 2016 CCDF final rule, we interpret this language as setting a limit on the extent to which Lead Agencies must act, rather than providing a justification for not acting at all (81 FR 67517). We propose to revise paragraph (l)(2) to require Lead Agencies who determine they cannot pay based on enrollment, describe their approach in the CCDF Plan, 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. OCC expects to approve alternative approaches in only limited cases where a distinct need is shown.

We recognize that Lead Agencies may need additional flexibility in exceptional instances where a child care provider is suspected of fiscal mismanagement so we propose to add at § 98.45(m)(7) that Lead Agency payment practices may include taking precautionary measures when a provider is suspected of fraud. For example, it may be prudent in such cases for the Lead Agency to pay a provider retroactively as part of a corrective action plan or during an investigation.

These proposed changes are designed to align with generally accepted payment practices in the private child care market. We request comment on typical payment practices for families not receiving CCDF assistance and if there are other practices that may increase provider participation in the child care subsidy system.