



## Q&As on the Child Care and Development Fund Final Rule

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### OVERVIEW

#### What is the Child Care and Development Fund (CCDF)?

- The CCDF is a federal and state partnership program (over \$5 billion in federal funding) authorized under the Child Care and Development Block Grant Act (CCDBG) and administered by states, territories, and tribes with funding and support from the Administration for Children and Families' Office of Child Care. States use CCDF to provide financial assistance to low-income families to access child care so they can work or attend a job training or educational program.
- The CCDF program helps fund child care assistance for 1.4 million children, under age 13, each month.
- In addition, states use the CCDF to invest in quality to benefit millions more children by building the skills and qualifications of the teacher workforce, supporting child care programs to achieve higher standards, and providing consumer education to help parents select child care that meets their families' needs.

#### How many children and families are currently being served by CCDF?

Nearly 1.4 million children under age 13 from almost 850,000 low-income working families are served by CCDF each month. This support enables their parents to work and participate in education or training to improve their job prospects. In addition, CCDF funds support state, territory, and tribal initiatives to improve the quality of child care for all children in our nation.

#### How many child care providers serve children receiving CCDF subsidies?

Nationally, approximately 340,000 child care providers served children receiving CCDF subsidies in FY 2015. A fourth of those providers were child care centers, and 75 percent were home-based providers. Home-based providers include family child care homes, group child care homes, and care provided in the child's home.

## **How does CCDF support parental choice?**

Parents in eligible low-income families receive help paying for child care at a provider of their choice. The parent may select any provider meeting the state's health and safety requirements that ensure basic protections for children. Parents receive consumer education and information on such topics as what to look for in a quality child care provider.

## **How does CCDF benefit families who do not receive subsidies?**

Many children who receive no direct assistance from CCDF benefit from the program's health and safety requirements as well as accessible consumer information and education for their parents and providers. In addition, states spend a portion of CCDF funds on activities to improve the quality of care—such as training and professional development for caregivers, teachers and directors, and quality rating and improvement systems that provide information to parents and improve quality. These activities reach far beyond the children receiving subsidies to benefit many of the approximately 12.5 million children in child care.

## **REAUTHORIZATION AND THE NEW REGULATIONS (OR FINAL RULE)**

### **What is CCDBG reauthorization?**

- The Child Care and Development Block Grant (CCDBG) Act is the law (along with Section 418 of the Social Security Act) that authorizes the federal child care subsidy program known as Child Care and Development Fund (CCDF).
- On November 19, 2014, the President signed into law bipartisan legislation that reauthorized the CCDBG Act for the first time since 1996. The law made many important statutory changes focused on reforming child care in this country to better support the success of both parents and children in low-income families and increase their access to healthy, safe, high quality child care. The final rule published by HHS updates the CCDF regulations to provide detail and clarification based on the law.

### **Why is HHS publishing new regulations?**

- It has been over 18 years since HHS last issued comprehensive child care regulations. In 2014, Congress reauthorized the Child Care and Development Block Grant (CCDBG) Act on a bipartisan basis and these new rules were necessary to provide clarity to states on how to implement the law and administer the program in a way that best meets the needs of children, child care providers, and families.
- Since the last revisions, we have learned a lot about the difference high-quality child care can have on young children's development and learning. Consistent with the changes in the law, this rule sets up new guidelines designed to ensure that children will

be in safer, higher-quality care that supports their healthy growth and development; providers receive the support and training they need to meet the needs of children in their care; parents have the information they need to make informed decisions about care; care arrangements are more stable for children; and that parents have access to the provider of their choice.

### **What is a “final rule” compared to a Notice of Proposed Rule Making (NPRM)?**

- While an NPRM is a draft of the rule to which the public can provide comment, a final rule has passed through all the phases of development and is published in its final form.
- The CCDF final rule responds to approximately 150 comments received on the NPRM during the public comment period. Changes made to the final rule include:
  - Adding more worker protections to the background check appeals process;
  - Giving states more flexibility to establish eligibility and phase-out policies;
  - Eliminating some restrictions on provider payment practices related to parent copayments; and
  - Removing the requirement for states to use some grants or contracts for child care subsidies.

### **Who is affected by the new law and regulations?**

When fully implemented, this bipartisan law and new regulations will raise the bar for child care in the country. The reforms made by reauthorization will benefit the more than 1.4 million children receiving child care subsidies, as well as children cared for alongside them who receive no direct assistance from CCDF but benefit from safer child care settings with better skilled teachers and staff. Low-income parents who receive subsidies to make child care affordable will receive more stable assistance as they work toward economic security. In addition, all parents who use child care, regardless of income, will benefit from new health and safety protections for our nation’s children, like background checks for providers, and public information about the health and safety track records of providers and information about the quality of services.

The law will also have an impact on the requirements and professional development opportunities for individual teachers and staff working in child care settings that serve children receiving CCDF-funded child care assistance. Thousands of child care providers serving CCDF children across the country will receive monitoring visits and must meet new health and safety standards. Finally, the law impacts the state, territorial, and tribal agencies that administer the CCDF program, who will be implementing the requirements. The Administration for Children and Families (ACF) will continue to partner with these agencies and provide technical assistance to assist them.

## **How many children could benefit from the changes in reauthorization? The 1.4 million kids receiving financial assistance each month or the nearly 12.5 million in child care?**

There are 1.4 million children receiving federal CCDF support each month who will most directly benefit from the changes in this final rule. However, many of the nearly 12.5 million children in child care - including those not supported by a federal subsidy - will also benefit from the new regulations. This is because many of those children share classrooms and resources with children receiving federal support. In addition, CCDF quality investments may be used by states to benefit all children and can impact all child care programs regardless of whether or not they receive federal funding.

## **How will the new regulations make child care more healthy, safe, and high quality?**

Based on the new law, these regulations establish minimum standards, training, and monitoring requirements to ensure that child care for children receiving CCDF financial assistance protects their health and safety.

There are also several provisions to improve child care settings for all children across the country. For example, the law requires that all states use the same set of comprehensive background checks for all child care teachers and staff. In addition, states must develop professional development systems to improve the knowledge and skills of the individual teacher and staff working with children in child care. Finally, the law targets funding for investments in improving quality of child care, including a percentage specifically for care of infants and toddlers.

## **How will the new law and regulations support child development and school readiness?**

Improving the development of children is now a key purpose of the CCDBG Act. The law and regulations require states and territories to have professional development systems to help those working with young children promote their social, emotional, physical, and cognitive development, and to address behavioral challenges. There are also new requirements to help parents make informed consumer choices and access information to support their children's development. The law requires states to collect and publicly share information on child development, family engagement, developmental screenings for young children, and quality child care with parents, providers, and the public.

## **How will the new law and regulations help working low-income parents achieve financial stability?**

Congress added requirements to provide more stable child care assistance for families on the path to financial stability, including extending their children’s eligibility for child care regardless of temporary changes in parents’ earnings and work, training, or school schedules. This improvement makes it easier for parents to maintain employment or finish education programs and not worry about losing their safe and high quality child care. It also requires that states and Territories not unduly disrupt parents’ employment in order to maintain their eligibility, and adopt processes that take into account irregular fluctuations in earnings.

## **What are the major provisions of the final rule?**

- 1) Protect the health and safety of children in child care-- This rule provides details on health and safety standards established in the CCDBG Act of 2014, including health and safety training, comprehensive background checks, and monitoring of child care providers
- 2) Help parents make informed consumer choices and access information to support child development --The Act and this rule expand consumer education available to parents, the public, and child care providers—including requirements for a consumer-friendly and easily accessible website, posting of monitoring reports, and providing information about best practices in child development.
- 3) Support equal access to stable, high quality child care for low-income children-- New requirements in the Act and rule provide minimum time periods of child care assistance to families and strengthen payment rates and practices to promote access to care.
- 4) Enhance the quality of child care and the early childhood workforce-- The Act and rule increase the share of funds directed towards quality improvement activities, including a new set-aside for infant and toddler quality, and require training and professional development for caregivers, teachers, and directors working in child care.

## **TRIBES**

### **How do the provisions in the final rule apply to Tribes?**

Congress left discretion to HHS to determine how new provisions would apply to Tribes. The Administration for Children and Families (ACF) engaged Tribes in consultation to decide how to do so. CCDF Tribal allocations vary from less than \$25,000 to over \$12 million. The final rule recognizes that Tribes receiving smaller CCDF grants may not have sufficient resources or infrastructure to effectively operate a program that complies with all CCDF requirements.

Therefore, in the final rule, statutory provisions apply differently based on whether Tribes have large allocations, medium allocations, and small allocations. Those Tribes receiving the largest allocations are expected to meet most CCDF requirements. Tribes receiving smaller allocations are exempt from specific provisions in order to account for the size of the grant awards.

## EFFECTIVE DATES/COMPLIANCE

### When do the requirements of the final rule become effective?

Provisions of this final rule generally became effective on November 29, 2016, 60 days after the final rule's publication date in the Federal Register, although many of the provisions have different or delayed implementation dates. For example, requirements from the CCDBG Act were effective on the date of signature (November 19, 2014) unless otherwise specified in the law.

### How will ACF determine compliance with the new requirements?

States and territories are expected to be in full compliance by October 1, 2018, which marks the beginning of the next triennial CCDF plan period. ACF will determine compliance with provisions in this final rule through review and approval of the Federal FY 2019 – 2021 CCDF Plans that become effective at that date, and through the use of federal monitoring of progress in accordance with section 98.90 prior to that date. After that date, federal monitoring will assess the level of states/territories' compliance.

For Tribal Lead Agencies, ACF will determine compliance through review and approval of the Federal FY 2020 - 2022 Tribal CCDF Plans that becomes effective October 1, 2019. See further discussion of effective and compliance dates in the background section of this rule.

## 12-MONTH ELIGIBILITY

### What is the minimum length of time for re-determining a family's eligibility?

Lead Agencies are required to provide *at least* 12 months of CCDF eligibility to a child before the child's next re-determination. This is regardless of changes in the family's income (as long as income does not exceed the federal threshold of 85% of State Median Income) or temporary changes in the parent's participation in work, training, or education activities.

This essentially provides for continuous eligibility for families throughout the minimum 12-month period as long as they do not exceed the federal income threshold or experience a non-temporary change in work, education or training that affects eligibility. To clarify:

- Lead Agencies may not terminate CCDF assistance during the minimum 12-month period if a family has an increase in income that exceeds the state's income eligibility threshold, but not the federal threshold of 85% State Median Income (SMI).
- In addition, the Lead Agency may not terminate assistance prior to the end of the minimum 12-month period if a family experiences a temporary job loss or temporary

change in participation in a training or education activity. In addition to temporary job loss, the final rule defines “temporary change.” (See question below for additional information).

Longer eligibility periods promote continuity of care and extend the time period that eligible children and families have access to child care assistance. Low-income families can experience rapid and multiple employment changes within a short period of time and unemployment and job loss are very disruptive to families. Retention of eligibility during a temporary period of unemployment or extended leave due to illness, for example, can alleviate some of the stress on families and facilitate a smoother transition back into the workforce.

Stable child care is critical to strengthening parents’ ability to go to work, improve their prospects in the job market, and increase their earning potential.

In addition, continuity is important for creating the stable conditions children need for their healthy development and preparing for school. Research shows that children have better educational and developmental outcomes when they have continuity in their child care arrangements. Concurrently, research has shown that frequent changes in arrangements are associated with higher levels of stress and negative behavior in young children (Dicker, S., and Gordon, E., Zero to Three, 2004).

### **What is considered a “temporary change” in a family’s work, education or training?**

The final rule defines “temporary change” at § 98.21(a)(1)(ii) to include, at a minimum:

- 1) Any time-limited absence from work for an employed parent due to reasons such as need to care for a family member or an illness;
- 2) Any interruption in work for a seasonal worker who is not working between regular industry work seasons;
- 3) Any student holiday or break for a parent participating in training or education;
- 4) Any reduction in work, training or education hours, as long as the parent is still working or attending training or education; and
- 5) Any other cessation of work or attendance at a training or education program that does not exceed three months, or a longer period of time established by the Lead Agency

The above circumstances represent temporary changes to the parents’ schedule or conditions of employment, but do not constitute permanent changes to the parents’ status as being employed or attending a job training or educational program. This definition is in line with Congressional intent to stabilize assistance for working families. Lead Agencies must consider all changes on this list to be temporary, but should not be limited by this definition and may consider additional changes to be temporary.

## **Are there additional reasons that would allow a Lead Agency to end assistance prior to the end of the eligibility period?**

The Lead Agency may discontinue assistance prior to the next re-determination in limited circumstances where there have been:

- I. Excessive unexplained absences despite multiple attempts by the Lead Agency or designated entity to contact the family and child care provider, including prior notification of possible discontinuation of assistance;
- II. A change in residency outside of the state, territory, or tribal service area; or
- III. Substantiated fraud or intentional program violations that invalidate prior determinations of eligibility.

For excessive unexplained absences, if the Lead Agency chooses this option, it shall define the number of unexplained absences that shall be considered excessive.

## **ACCESS FOR HOMELESS CHILDREN AND FAMILIES**

### **Does CCDF define a “child experiencing homelessness?”**

The final rule defines a child experiencing homelessness, adopting the definition from section 725 of Subtitle VII–B of the McKinney-Vento Act (42 U.S.C. 11434a). Using the McKinney-Vento Act’s definition, without modification here, will lead to better consistency in identifying children and in information collection. This definition is also used by Head Start and education programs. Section 725 of Subtitle VII–B of the McKinney-Vento Act defines “homeless children and youth” as individuals who lack a fixed, regular, and adequate nighttime residence. The term includes:

- Children and youth who are:
  - sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as doubled-up);
  - living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations;
  - living in emergency or transitional shelters;
  - abandoned in hospitals; or
  - awaiting foster care placement;
- Children and youth who have a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings;
- Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
- Migratory children who qualify as homeless because they are living in circumstances described above.



## **Do special requirements apply to how Lead Agencies serve homeless families?**

Yes, Lead Agencies are required to use CCDF funds to:

- Allow homeless children to receive CCDF assistance after an initial eligibility determination but before providing required documentation (including documentation related to immunizations);
- Provide training and technical assistance to child care providers on identifying and serving homeless children and families; and
- Conduct specific outreach to homeless families.

Stable access to high-quality child care provides tremendous benefits to all children, especially our nation's most vulnerable children. Children and their families who experience homelessness face many challenges. Improving access to child care will help buffer children and families from the challenges and risks associated with homelessness by supporting children's learning and development in safe, stable and nurturing environments. It can also support a parent in stable employment, which may improve a family's financial situation such that it can find more permanent housing.

## **Are children experiencing homelessness considered a priority category?**

Yes. Children experiencing homelessness are now included in § 98.46 "Priority for child care services," along with children of families with very low family income and children with special needs (which may include vulnerable populations as defined by the Lead Agency).

Lead Agencies have flexibility as to how they offer priority to these populations, including by prioritizing enrollment, waiving copayments, paying higher rates for access to higher-quality care, or using grants or contracts to reserve slots for priority populations, though Lead Agencies must meet the requirements specific to serving children experiencing homelessness at § 98.51 and § 98.41(a)(1)(i)(C).

## **Can homeless children receive CCDF if they don't have immunizations or documentation?**

Yes, as part of their health and safety requirements, Lead Agencies must establish a grace period that allows homeless children and children in foster care to receive CCDF services while their families are taking the necessary actions to comply with immunization and other health and safety requirements. Due to the importance of immunizations in protecting children's health, ACF strongly encourages Lead Agencies to implement systemic supports to ensure children get immunized, including homeless and foster children under this provision. ACF anticipates providing additional guidance in this area.

The final rule requires Lead Agencies establish grace periods in consultation with the state, tribal, or territorial health agency. This provision is included at § 98.41(a)(1)(i)(C)(1). This will

provide some valuable safeguards to health and safety of children in care while also allowing some considerations for the logistical challenges of the most vulnerable children and families.

## **CONSUMER EDUCATION**

### **How does the law and final rule help parents make more informed child care choices?**

- The law and rule requires states to provide information to the public about choosing child care. Specifically, the rule requires states to establish a consumer education website with certain components, including:
  - A localized list of providers, searchable by zip code
  - The quality of the program, if that information is available
  - Results of monitoring visits to a program
  - Other information, such as how parents can contact the state or local child care resource and referral organizations, which will help parents to choose care that best meets their needs.
- States must also develop and disseminate materials to parents with young children to help them understand the importance of monitoring their child's development during key milestones in those first years, including highlighting how parents and child care providers may access early screenings for developmental problems.
- CCDF parents must be given a consumer statement with easily understandable information about the provider they choose, including health and safety records, last date of inspection, and any voluntary quality standards met by the provider. The statement must also include general information about background checks, parental complaints, and equal access.
- Additionally, the rule clarifies that states will have to coordinate with the development of the national [childcare.gov](http://childcare.gov) website to meet requirements established by the CCDBG Act. Specifically, states must provide the Department of Health and Human Services with access to consumer education databases in order for HHS to provide this information through [childcare.gov](http://childcare.gov).

### **What information must states make available on the consumer education website?**

States must post the following information on a consumer-friendly and easily accessible website:

- (1) Lead Agency policies and procedures;
- (2) Information on availability of child care providers;
- (3) Quality of child care providers;
- (4) Provider-specific monitoring and inspection reports;

- (5) Aggregate number of deaths, serious injuries, and instances of substantiated child abuse in child care settings each year;
- (6) Referral to local child care resource and referral organizations; and,
- (7) Directions on how parents can contact the Lead Agency, or its designee, and other programs to better understand information on the website.

## **Which child care providers must be included in the consumer education website?**

There are three types of provider-specific information required for the consumer education website: a localized list of all providers that is searchable by zip code and differentiates whether they are licensed or license-exempt providers; provider-specific quality information based on a QRIS or other transparent system of quality indicators, if available for the provider; and, monitoring and inspection results.

The final rule gives Lead Agencies the flexibility to decide which license-exempt CCDF providers are included in the localized list of child care providers. We encourage Lead Agencies not to have a blanket policy regarding including these providers in the zip-code search, but rather suggest being mindful about the different types of license-exempt providers in their state, as well as mindful of providers that might want to be included in searches for marketing purposes.

However, if a Lead Agency has quality information based on a QRIS or other transparent system of quality indicators, then this information must be available to parents and the general public, regardless of the provider's licensing status. This approach is consistent with the statutory language indicating that quality information should be included "if available."

In addition, Lead Agencies must post provider-specific monitoring and inspection reports for all licensed child care providers and for all providers eligible to serve CCDF children (regardless of licensing status), unless the provider is related to all the children in their care. This approach is consistent with the Act, ensures that parents know the health and safety records of their child care provider, and promotes transparency of public dollars.

## **What are the requirements for the monitoring and inspection reports?**

Lead Agencies must post provider-specific results of monitoring and inspection reports, including those reports that are due to major substantiated complaints (as defined by the Lead Agency) about a provider's failure to comply with health and safety requirements and other Lead Agency policies. The final rule requires Lead Agencies to post full monitoring and inspection reports. In order for inspection results to be consumer-friendly and easily accessible, Lead Agencies must use plain language for parents and child care providers and caregivers to understand. In the case that full reports are not in plain language, Lead Agencies must post a plain language summary or interpretation in addition to the full monitoring and inspection report.

Monitoring and inspection reports must be posted in a timely manner and include information about the date of inspection, information about any corrective actions taken by the Lead Agency and child care provider, where applicable, and prominently display any health and safety violations, including any fatalities or serious injuries that occurred at that child care provider. Lead Agencies must also post, at a minimum, three years of results, where available. This final rule also requires Lead Agencies to establish a process for correcting inaccuracies in the reports in order to ensure fairness to providers.

### **Does the final rule require monitoring and inspection reports be posted within 90 days of an inspection?**

No, the final rule does not require that all monitoring and inspection reports be posted within 90 days of the inspection. The final rule does include a recommended 90 day benchmark. It would be most helpful to parents to have reports posted as quickly as possible, but we believe 90 days is reasonable considering the complexities related to the monitoring and inspection process and reports.

## **HEALTH AND SAFETY REQUIREMENTS**

### **Do CCDF health and safety requirements apply to license-exempt CCDF providers?**

Yes, the CCDBG Act required that even if a child care provider that is otherwise exempt from licensing by the Lead Agency provides services to a child receiving CCDF assistance, that child care provider is subject to health and safety requirements in the CCDF law. The only exception to this requirement is for providers who are caring only for their own relatives. Lead Agencies have the option of exempting relatives from some or all of CCDF health and safety requirements provided there are no other unrelated children who are cared for in the same setting.

Many states exempt certain types of child care providers from licensing, for example school-age programs operated by a public school or programs operated by religious organizations. In addition, states have different thresholds for requiring family child care providers to become licensed. For example, some states require family child care homes to become licensed when they serve 2 or more unrelated children, while other states allow family child care providers to care for up to 5 children before becoming licensed. If such providers are serving children receiving CCDF assistance, those providers must receive the requisite health and safety training and receive inspections under the law, even if they are exempt from state licensing laws.

### **Can states exempt certain providers from licensing requirements?**

Yes, but the Act required that states must explain in the CCDF Plan any licensing exemptions and describe why such exemption does not endanger the health, safety, or development of children in the care of such providers. The Lead Agency must provide a description of such exemptions and a demonstration for any exemptions based on:

1. Provider category, type, or setting;
2. Length of day;
3. Providers not subject to licensing because the number of children served falls below a state-defined threshold; and
4. Any other exemption to licensing requirements.

In addition, license-exempt providers serving CCDF children (with the exception of relatives if exempted by the state) must meet CCDF health and safety requirements.

### **In which specific topic areas must Lead Agencies develop health and safety requirements?**

Lead Agencies must have health and safety requirements in place for child care providers that serve children receiving CCDF assistance that cover the following topics:

1. Prevention and control of infectious diseases (including immunization);
2. Prevention of sudden infant death syndrome and use of safe sleep practices;
3. Administration of medication, consistent with standards for parental consent;
4. Prevention/response to emergencies due to food and allergic reactions;
5. Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;
6. Prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;
7. Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event (such as violence at a child care facility);
8. Handling and storage of hazardous materials and the appropriate disposal of biocontaminants;
9. Appropriate precautions in transporting children (if applicable);
10. Pediatric first-aid and CPR; and
11. Recognition and reporting of child abuse and neglect.

The final rule also includes the following options health and safety requirements topics:

- Nutrition and physical activity
- Access to physical activity;
- Caring for children with special needs; or
- Any other subject area determined by the Lead Agency to be necessary to promote child development or to protect children's health and safety.

### **Are CCDF providers required to have minimum health and safety trainings?**

Yes, Lead Agencies must have pre-service or orientation training and on-going minimum health and safety training requirements (appropriate to the provider setting) for providers serving

CCDF children in the topic areas, and the final rule adds child development, and how to report child abuse. ACF expects that these trainings will be part of a broader systematic approach and progression of professional development within a state that will result in opportunities for child care providers to accumulate knowledge, competencies, and credits toward eventual completion of professional certification or higher education. Note that the law requires Lead Agencies to implement a progression of professional development, based on current research and best practices, and aimed improving the quality and stability of the child care workforce.

### **Is there a minimum number of training hours required?**

No, the law does not specify a required number of training or education hours, nor does the final rule include a minimum requirement. However, the Lead Agency must report their minimum number of annual training hours required for CCDF providers in their Plan.

While the final rule does not require any specific number of pre-service and ongoing training hours for CCDF health and safety training, ACF recommends 30 hours of pre-service training and between 24 and 30 hours of ongoing training annually is a reasonable benchmark (based on recommendations in *Caring for Our Children: National Health and Safety Performance Standards, Guidelines for Early Care and Education Programs, 2011*). ACF strongly encourages Lead Agencies to look at all training- including on-going annual training – as a meaningful opportunity to help child care staff progress professionally and pursue credentials and higher education.

### **What are the new child abuse reporting requirements?**

Lead Agencies must certify that all child care providers within the state will comply with child abuse reporting requirements of the Child Abuse Prevention and Treatment Act (CAPTA), which requires that a state have “provisions or procedures for an individual to report known and suspected instances of child abuse and neglect, including a state law for mandatory reporting by individuals required to report such instances.” Note that this requirement applies to all child care providers within the state, regardless of whether or not they serve children receiving CCDF assistance.

### **Do States have the flexibility to set staff-to-child ratio and group size requirements for child care?**

Yes, the law and rule require States to describe in the CCDF Plan their standards for group sizes and child-to-provider ratios that apply to CCDF services; however, such standards are to be determined by the State. The law expressly prohibits federal standards in this area, and States retain the authority to set child care rules and regulations on ratios and group size. Specifically, the law indicates that HHS may offer guidance to States, but shall not require States to maintain specific limits or ratios. The preamble to the final rule contains recommendations for States based on *Caring for Our Children: National Health and Safety Performance Standards*, produced with the expertise of researchers, physicians, and practitioners.

## **MONITORING REQUIREMENTS**

### **What are the new monitoring requirements?**

Lead Agencies are required to conduct monitoring visits for all providers serving CCDF children including all license exempt providers (except, at Lead Agency option, those that serve only relatives), but there are different monitoring requirements for CCDF providers who are licensed and CCDF providers who are license-exempt.

- *For Licensed CCDF Providers* – Lead Agencies must conduct 1 pre-licensure inspection for health, safety, and fire standards and annual, unannounced inspections.
- *For License-Exempt CCDF and CCDF-eligible Providers (except, at Lead Agency option, those serving only relatives)* – Lead Agencies must conduct annual inspections for compliance with health, safety, and fire standards. The law does not require that these monitoring visits be unannounced, but ACF recommends that states consider unannounced visits for license-exempt providers since experience shows they are effective in promoting compliance.

In addition to the new requirements to conduct monitoring visits, Lead Agencies are now required to have policies in place to ensure that:

- Licensing inspectors are qualified and have received training in related health and safety requirements; and
- Ratio of inspectors to providers is sufficient to ensure visits occur in a timely manner. ACF will issue additional guidance on best practices in this area.

### **Are monitoring requirements the same for care provided in the child’s home?**

The Lead Agency has the option of developing alternate monitoring strategies for care provided in the child’s home that are appropriate to the setting. A child’s home may not meet the same standards as other child care facilities, and this provision gives Lead Agencies flexibility in conducting more streamlined and targeted inspections.

For example, Lead Agencies may choose to monitor in-home providers on basic health and safety requirements such as training and background checks. Lead Agencies could choose to focus on health and safety risks that pose imminent danger to children in care. This flexibility cannot be used to bypass the monitoring requirement altogether. Lead Agencies should develop procedures for notifying parents of monitoring protocols and consider whether it would be appropriate to obtain parental permission prior to entering the home for inspection purposes.

### **Can Lead Agencies use a differential monitoring strategy?**

Yes, a Lead Agency has the option of using differential monitoring strategies, provided that the monitoring visit is still representative of the full complement of licensing and CCDF health and safety standards. Many Lead Agencies use differential monitoring approaches, which are intentionally designed in such a way that though not every licensing standard is specifically checked for compliance, the monitoring visit is indicative of the full range of the licensing requirements. Often differential monitoring involves monitoring programs using a subset of requirements to determine compliance. There are two methods that Lead Agencies have used to identify these critical rules:

- Key Indicators: An approach that focuses on identifying and monitoring those rules that statistically predict compliance with all the rules; and
- Risk Assessment: An approach that focuses on identifying and monitoring those rules that place children at greater risk of mortality or morbidity if violations or citations occur.

The key indicators approach is often used to determine the rules to include in an abbreviated inspection form or checklist. A risk assessment approach is most often tied to classifying or categorizing rule violations and can be used to identify rules where violations pose a greater risk to children, distinguish levels of regulatory compliance, or determine enforcement actions based on categories of violations. Note that monitoring strategies that rely on sampling of providers or allow for a frequency of less than once per year for providers that meet certain criteria are not allowable. The law clearly states that each child care provider serving a child receiving CCDF assistance shall receive an inspection of not less than annually. ACF plans to issue guidance on monitoring.

## **BACKGROUND CHECKS**

### **Which child care providers are subject to the background checks requirements?**

All licensed, regulated, and registered child care providers and all child care providers eligible to deliver CCDF services (with the exception of those individuals who are related to all children for whom child care services are provided) are subject to the Act's background check requirements. Section 98.43(a)(1)(i) of the final rules applies this requirement to all licensed, regulated, or registered providers, regardless of whether they receive CCDF funds and all license-exempt CCDF providers (with the exception of individuals who are related, as defined in the definition of *eligible child care provider*, to all children for whom child care services are provided).

### **Who is required to undergo a comprehensive background check?**

Section 658H(i)(2) of the Act (42 USC 9858f(i)(2)) defines a child care staff member as someone (other than an individual who is related to all children for whom child care services are provided) who is employed by the child care provider for compensation or whose activities involve unsupervised access to children who are cared for by the child care provider. This



definition, like the definition of child care provider, is broad. It encompasses not only caregivers, teachers, or directors, but also janitors, cooks, and other employees of a child care provider who may not regularly engage with children, but whose placement at the facility gives them the opportunity for unsupervised access. Given that these individuals are employed by a child care provider, they are included in the statute's definition. Therefore, it is important that they also complete a comprehensive background check in order to ensure and protect children's safety.

Section 98.43(a)(2)(ii) of the final rule includes contract and self-employed individuals in the definition of child care staff members, as they may have direct contact with children. In addition, the final rule includes individuals, age 18 or older, residing in a family child care home in the definition of child care staff members and, therefore, subject to background checks, as well as the disqualifying crimes and appeals processes. These individuals may also have unsupervised access to children, so completing a background check is a necessary safeguard to protect the children in care. The definition of child care staff member generally covers any individual who is employed by the child care provider and any individual who may have unsupervised access to children in care.

### **Do volunteers need to undergo background checks?**

Volunteers who provide infrequent and irregular service that is supervised or parent volunteers who are supervised do not meet the definition of child care staff member. Volunteers who come into a child care facility to help with a classroom party, read to students, or assist with recess are not "caring for or supervising children for a child care provider." Rather, volunteers in the situations described above are providing additional assistance under supervision of the primary caregiver.

Volunteers are not specifically included in the Act, nor have we specifically included them in the regulation. Therefore, states have the discretion to create their own policies and screening processes for volunteers. However, it is ACF's view that volunteers who have not had background checks may not be left with children unsupervised. Volunteers who have unsupervised access to children must have background checks that comply with the statute.

### **What components are included in a comprehensive background check?**

In the final rule, we are consolidating the list of required components in the regulations at § 98.43(b) to:

- 1) A Federal Bureau of Investigation fingerprint check using Next Generation Identification;
- 2) A search of the National Crime Information Center's National Sex Offender Registry, after guidance is issued by ACF and the Federal Bureau of Investigation; and
- 3) A search of the following registries, repositories, or databases in the state where the child care staff member resides and each state where such staff member resided during the preceding 5 years:

- i. State criminal registry or repository, with the use of fingerprints being required in the state where the staff member resides, and optional in other states;
- ii. State sex offender registry or repository; and
- iii. State-based child abuse and neglect registry and database.

### **How often must background checks be conducted?**

Section 658H(d) of the Act (42 USC 9858f(d)) requires child care providers to submit requests for background checks for each staff member prior to when the individual becomes a staff member and at least once every five years. These requirements are included in the regulations at § 98.43(d)(1) and (2). For staff members employed prior to the enactment of the CCDBG Act of 2014, the provider must request a background check prior to September 30, 2017 (the last day of the second full fiscal year after the date of enactment) and at least once every five years.

### **Can a prospective staff member begin work while waiting for the request?**

In recognition of the possible logistical constraints and barriers to parents accessing the care they need, § 98.43(d)(4) of the final rule allows prospective staff members to provide services to children while under supervision and on a provisional basis, after completing either the FBI fingerprint check or the search of the state criminal repository, using fingerprints in the state where the staff member resides. Until all the background check components have been completed, the prospective staff member must be supervised at all times by someone who has already received a qualifying result on a background check within the past five years. States may pose additional requirements beyond this minimum. We note that the new regulatory language aligns with the requirements in the Head Start Performance Standards and hope the language allows for better partnerships between the two programs.

### **What are the costs of a background check?**

Lead Agencies have the flexibility to determine who pays for background checks (*e.g.*, the provider, the applicant, or the Lead Agency) but Section 658H(f) of the Act (42 USC 9858f(f)), which is reiterated at § 98.43(f), requires that the fees charged for completing a background check may not exceed the actual cost of processing and administration. The cost of conducting background checks varies across states and territories. The current FBI fee is \$14.75 to conduct a national fingerprint check (subject to change). According to FY 2014-2015 CCDF State Plan data, most Lead Agencies report low costs to check state registries.

ACF recognizes the important role that fees play in sustaining a background check system. While states and territories cannot profit from background check fees, we do not want to prevent fees that support the necessary infrastructure. Fees cannot exceed costs and result in return to state general funds, but they can be used to build and maintain background check infrastructure. Further, we expect that Lead Agencies using third party contractors to conduct background checks will ensure that these contractors are not charging excessive fees that

would result in huge profits. ACF does not want background check fees to be a barrier or burden for entry into the child care workforce.

## **QUALITY**

### **What does the final rule do to enhance the quality of child care and the early childhood workforce?**

The law and final rule includes several provisions aimed at improving the quality of child care and supporting the early childhood workforce. Some of these provisions are:

- Gradually increasing (over a five year period) the proportion of funds states must use for quality from four percent to nine percent, and describing allowable quality activities (*e.g.*, training and professional development, quality rating and improvement systems, etc.);
- Adding a new three percent infant and toddler set-aside to improve the supply and quality of providers serving the youngest children;
- Helping parents make informed consumer choices and access information to identify high- quality care;
- Requiring states to take the cost of quality into account when setting rates; and
- Requiring states to have training and professional development requirements and a progression of professional development for CCDF providers, including caregivers, teachers, and directors.

## **EQUAL ACCESS**

### **How will the final rule support equal access to child care?**

Consistent with Section 658E(c)(4) of the Act (42 USC 9858c(c)(4)), the final rule at § 98.45(a) continues to require Lead Agency to certify in its CCDF Plan that payment rates for CCDF subsidies are sufficient to ensure equal access for eligible children to child care services that are comparable to child care services provided to children whose parents are not eligible to receive child care assistance. The final rule also requires each Lead Agency to provide a summary of the facts the Lead Agency used to determine that payment rates are sufficient to ensure equal access.

### **Payment Rates**

### **What type of survey or methodology is required for states to set subsidy payment rates?**

The final rule at § 98.45(c) requires states to conduct either: (1) a market rate survey that reflects variations in the price of child care services by geographic area, type of provider, and

age of child, or (2) an alternative methodology, such as a cost estimation model, in order to set payment rates. States must demonstrate the following practices:

- Use methods that are statistically valid and reliable in conducting a survey;
- Receive advanced approval from ACF prior to conducting an alternative methodology;
- Develop and conduct the survey or alternative methodology no earlier than two years before the date of submission of the CCDF Plan;
- Consult with the State Advisory Council, local child care program administrators, local child care resource and referral agencies, organizations representing caregivers, teachers and directors, and other appropriate entities prior to developing and conducting the survey or alternative methodology.
- Prepare a detailed report containing the results of the survey or alternative methodology, and make the results widely available no later than 30 days after completion, including by posting the results on the Internet.
- Set CCDF subsidy payment rates in accordance with the results of the current market rate survey or alternative methodology

### **What is the difference between market rate survey and alternative methodology?**

A market rate survey measures the prices charged by child care providers for child care services. A cost estimation model, a type of alternative methodology specifically mentioned in the Act, measures the full cost to providers of delivering child care services.

### **What is the 75<sup>th</sup> percentile and why is it an important benchmark of whether families can access child care?**

As discussed in the preamble to the final rule (81 FR 67512), the 75th percentile is an important benchmark for gauging equal access. The 75th percentile payment rate was established as a benchmark for CCDF by the preamble to the 1998 Final Rule (63 FR 39959), Lead Agencies and other stakeholders are familiar with this rate as a proxy for equal access. To establish payments at the 75th percentile, rates within categories from the market rate survey/or alternative methodologies are arranged from lowest to highest. The 75th percentile is the number separating the 75 percent of lowest rates from the 25 percent that are highest. Setting rates at the 75th percentile demonstrates that CCDF families have access to at least three-quarters of all available child care. Retaining this benchmark also allows for accountability and comparability across states using a market rate survey approach, which can be useful in gauging equal access and monitoring trends in rates and access to quality care over time. This is particularly important because the rule now requires states to set base payment rates *at least* at a level sufficient to cover the costs to providers of the health, safety, quality, and staffing requirements included in the Act and the final rule.

## **Co-payments**

### **Can a Lead Agency use the cost, price of care, or subsidy payment rate as a factor in setting co-payment amounts?**

No, Lead Agencies may not use the cost, price of care, or subsidy payment rate as a factor in setting co-payment amounts. The final rule also amends the previous regulatory language, now § 98.45(k), by adding language that the cost-sharing should not be a barrier to families receiving assistance.

### **Is Lead Agency allowed to increase family co-payments within the minimum 12-month eligibility period?**

As discussed under § 98.21(a)(3), Lead Agencies cannot increase family co-payments within the minimum 12-month eligibility period unless the family's income is in a graduated phase-out of care as described at § 98.21(b)(2). When designing fee scales, we encourage Lead Agencies to consider how their fee scales address affordability for families at all income levels. Lead Agencies should ensure that small increases in earnings during the graduated phase-out period do not trigger large increases in co-payments, in order to ensure stability for families as they improve their economic circumstance and transition off child care assistance.

### **Are states allowed to waive copayments for low-income families?**

The final rule allows for copayments to be waived for families whose incomes are at or below the poverty level for a family of the same size, for children in protective services, or other criteria the Lead Agency establishes.

### **Why is there a recommended benchmark to ensure family copayments don't exceed 7 percent of family's income?**

The Act requires that copayments not be a barrier for families who are receiving CCDF assistance to access child care. According to the U.S. Census Bureau, the percent of monthly income American families spend on child care on average has stayed constant between 1997 and 2011 (most recent data available), at around seven percent. Among families who pay for child care, poor families on average spend approximately four times the share of their income on child care compared to higher income families. (Who's Minding the Kids? Child Care Arrangements: Spring 2011, U.S. Census Bureau, 2013.) As CCDF assistance is intended to offset the disproportionately high share of income that low-income families spend on child care in order to support parents in achieving economic stability, CCDF families should not be expected to pay a greater share of their income on child care than reflects the national average.