



# AFSCME Facts

## **Child Care and Development Fund Final Rule** Yvonne Bramble, Care and Leave Policy Advocate April 10, 2024

This fact sheet provides an overview of recent revisions to the regulations governing the Child Care and Development Fund (CCDF). The CCDF is the primary federal funding source providing child care assistance for low-income families. The revisions were proposed and adopted by the Administration for Children and Families (ACF), an agency within the U.S. Department of Health and Human Services. In response to the proposed changes, AFSCME praised the rule's efforts to make child care more affordable and improve payment practices for child care providers while urging ACF to take stronger action to prioritize the interests of home-based providers and institute greater federal oversight over the rule's implementation.

### **The final rule (detailed below) focuses on three key areas:**

- 1) Making child care more affordable by capping co-payments charged to families receiving CCDF subsidies.
- 2) Stabilizing child care providers by requiring states to use grants and contracts and to pay prospectively and based on enrollment.
- 3) Reducing bureaucratic hurdles faced by families by clarifying options states can take to simplify the application and renewal process.

**All provisions of the rule will be effective as of April 30, 2024.** States are required to include information about their compliance with the rule in their CCDF state plan submissions due July 1, 2024. **States have the option of requesting a temporary compliance waiver of up to two years,** but this waiver must be targeted to specific provisions and states must show measurable progress toward implementing the full rule over the waiver period.

In general, **affiliates representing family child care providers should consider staying in touch with their members and allies to monitor implementation of the final rule** and ensure that providers and the families they serve can benefit fully. **Affiliates should also consider allying with community partners to lobby for their state to take advantage of state options clarified by or newly allowed under this rule,** including repeal of laws barring subsidy payments from exceeding private pay rates and passing new policies reducing administrative hurdles and costs for families.

**Provisions of the Final Rule and Recommendations for AFSCME Affiliates**

| <b>Provision</b>                                 | <b>Description</b>   | <b>Citation ‡</b>                               | <b>Requirement?</b>      | <b>Recommended Action</b>   |
|--|--|---|--------------------------|---|
| <b>1. Reducing Child Care Costs for Families</b> |  |   |                          |   |
| <b>Capping Co-payments for Families</b>          | States must cap co-payments at no more than 7% of a family’s income.   | § 98.45(b)(5)<br>§ 98.45(l)(3)<br>§ 98.45(n)(5) | Yes.                     | <p>Responding to AFSCME feedback, section 98.45(n)(5) clarifies that states must demonstrate in their CCDF state plan that they are not reducing payments to child care providers in order to lower or waive co-payments. Affiliates may want to monitor implementation to ensure that states do not reduce provider reimbursement rates to make up for the cost of lowering or waiving co-payments.</p> <p>Affiliates can ally with partners to advocate that their state further lower the cap and ensure affordability for families.</p> |
| <b>Waiving Co-payments for Families</b>          | States have the ACF pre-approved option to waive co-payments for eligible families with incomes up to 150% of the federal poverty level; children who are in foster and kinship care; those experiencing homelessness; those with a child with a disability; and those enrolled in Head Start or Early Head Start. | § 98.45(l)(4)<br>§ 98.45(n)(5)                  | No, just a state option. | <p>Responding to AFSCME feedback, section 98.45(n)(5) clarifies that states must demonstrate in their CCDF state plan that they are not reducing payments to child care providers in order to lower or waive co-payments. Affiliates may want to monitor implementation to ensure that states do not reduce provider reimbursement rates to make up for the cost of lowering or waiving co-payments.</p> <p>Affiliates can ally with partners to advocate that their state fully waive co-</p>  |

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|   | States can propose in their CCDF state plan to waive co-payments for additional populations.  |                             |   | payments for eligible families named in the rule and designate additional populations according to state need.  |
| <b>2. Strengthening Payment Practices and Stabilizing Payments for Child Care Providers</b> |   |                             |   |   |
| <b>Grants and Contracts</b>   | States must provide some child care services through grants or contracts, including at minimum, for children in underserved geographic areas, infants and toddlers and children with disabilities.                | § 98.30(b)<br>§ 98.50(a)(3) | Yes, states must provide grants or contracts for the specified populations and can choose to make them more widely available. | Affiliates can ally with partners to advocate that their state support parent choice by providing more services through grants and contracts, especially for underserved populations, for care during nontraditional hours and for home-based child care providers. |
| <b>Delinking Subsidy Rates from Private Pay Rates</b>                                       | States have the option to pay child care providers at the full, established subsidy payment rate, even if that amount is greater than the price the provider charges private pay families.                        | § 98.45(g)                  | No, just a state option.  | Affiliates can ally with partners to advocate that their state pay the established rate, regardless of private pay prices. This may include repealing laws prohibiting subsidy payments above the private pay rate.   |
| <b>Paying Providers Based on Established Payment Practices</b>                              | States must demonstrate in their CCDF state plan that they have established payment practices for subsidy-accepting providers based on generally accepted payment practices of child care providers not receiving | § 98.45(m)                  | Yes.  | Affiliates may want to monitor implementation to ensure providers are paid appropriately in accordance with this section.   |

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|   | subsidies. That includes prospective payment and pay based on enrollment (described below) as well as pay on a part-time or full-time basis and pay for reasonable, mandatory registration fees.   |               |  |   |
| <b>Paying Providers Prospectively</b>                       | States must ensure timeliness of payment to child care providers by paying in advance of or at the beginning of delivery of subsidized child care services.  | § 98.45(m)(1) | Yes.   | Affiliates may want to monitor implementation to ensure providers are paid in a timely manner. States are no longer allowed to pay providers within 21 days of receiving a completed invoice. |
| <b>Paying Providers Based on Enrollment</b>                 | States must support the fixed costs of child care services by either basing pay on a child’s authorized enrollment or using an alternative approach.<br><br>If using an alternative approach, the state must justify in its CCDF state plan that the approach will not undermine the stability of child care programs. | § 98.45(m)(2) | Yes, but states can try to justify an alternative approach in their CCDF state plan. | Affiliates may want to monitor implementation to ensure providers are paid based on enrollment and that any alternative approaches do not undermine the stability of their members.           |
| <b>3. Reducing Administrative Hurdles Faced by Families</b> |  |               |  |   |
| <b>Presumptive Eligibility</b>                              | States can choose to consider children presumptively eligible for subsidy prior to full verification of their eligibility.   | § 98.21(e)    | No, just a state option.   | Affiliates can ally with groups representing families to advocate that their state adopt presumptive eligibility.   |

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|   |  |                          |   | Section 98.21(e)(2) clarifies that states must pay child care providers for caring for children deemed presumptively eligible like any other child. If a child is deemed ineligible when their full eligibility is verified, the state cannot try to recover those funds from the provider.  |
| <b>Reducing Application Burden for Families</b> | States must implement eligibility policies and procedures that minimize disruptions to parent employment, education or training opportunities to the extent possible. This may include online applications and simplifying eligibility verification. | § 98.21(f)<br>§ 98.21(g) | Yes, states must reduce burden, but states may choose how to comply.        | Affiliates can ally with groups representing families to advocate that their state adopt policies and procedures that reduce application burdens, such as online, mobile-friendly applications and using data from other benefits programs like TANF or SNAP to simplify eligibility verification.   |
| <b>Eligibility for Additional Siblings</b>      | States must offer 12 months of eligibility for children who are newly added to the case of a family already participating in CCDF. States cannot reduce the new child’s eligibility period to align with the previous children.                      | § 98.21(d)               | Clarifies an existing requirement and specifies an encouraged state option. | Affiliates can ally with groups representing families to advocate that their state adopt the more generous alignment policy when new children are added to a family’s CCDF case (e.g., through birth or when a school aged child needs subsidized after school care). Under this more generous policy, previous children will have their 12-month eligibility period aligned with the new child to simplify redetermination. |

‡ All citations are to Title 45 of the Code of Federal Regulations.