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Executive Office of the President of the United States  
Office of Management and Budget

Office of Information and Regulatory Affairs  
Human Resources and Housing Branch  
New Executive Office Building  
Room 10235  
Washington, DC 20503

**FAX TRANSMITTAL**

FAX: 202-395-6974

DATE: 6/11/98

TO: Andrea Kane

FROM: Meq Brooks

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Total number of pages (Including Transmittal Sheet): 4

Recipient's Fax Number: 6-7431

Recipient's Telephone Number: 6-5573

Comments:

This just arrived - please coordinate with  
Neera. We'll be in touch to discuss  
next steps

Amendments to the CCDBG Regulations - 1998

-- Regulatory Decisions --

Statutory Provision	Proposed Regulation	Final Regulation
<p><b>Public Hearing -</b>                      658D(b)(1)(C)* - Hearing on the Plan must be held with "sufficient time and statewide distribution" to allow for public comment. (modifies public hearing provision)</p> <p>*References are to the Child Care and Development Block Grant Act, as amended, unless otherwise noted.</p>	<ul style="list-style-type: none"> <li>◆ requires at least 20 days' notice</li> <li>◆ hearing to be held before the plan is submitted to ACF, but no more than 9 months in advance of the effective date of the Plan</li> <li>◆ Lead Agency to describe distribution of the hearing notice in its Plan</li> </ul>	<p><b>Change:</b> Added a requirement that State provide information on the <u>content</u> of the plan prior to the hearing. (This does not have to be in the preprinted plan format.)</p>
<p><b>Health and Safety -</b>                      658E(c)(2)(F) - "Certify" provisions are in place which include prevention and control of infectious diseases (including immunization), building and physical premises safety, health &amp; safety training. (continued provision amended by replacing "assure" with "certify")</p>	<ul style="list-style-type: none"> <li>◆ as proposed in the joint child care regulatory amendments in 1994, requires States and Territories to establish immunization requirements that assure that children receiving CCDF services are immunized</li> </ul> <p>Note: tribal standards to be separately established under new statutory requirement for the Secretary to develop minimum child care standards in consultation with the Tribes.</p>	<p><b>Change:</b> No change in substance, but revised wording that may have led to the concerns about our authority to regulate, i.e., took out language that required States and territories to "establish" immunization requirements. Also revised language to clarify that immunization is not the sole requirement related to the statutory requirement on prevention and control of infectious diseases.</p>

Statutory Provision	Proposed Regulation	Final Regulation
<p><b>Consumer Education - 658E(c)(2)(D) - Lead Agency must certify it will collect and disseminate to parents of eligible children and to the general public, consumer education information to promote informed child care choices. (revision)</b></p> <p><b>TANF Work Activities Penalty Exception - 407(c)(2), Social Security Act - State may not sanction a single custodial parent with a child &lt; age 6 for failure to participate in TANF work activities if family has demonstrated inability (as determined by the State) to obtain needed child care. (new)</b></p>	<ul style="list-style-type: none"> <li>◆ certification in Plan per statutory language</li> <li>◆ Lead Agency to inform parents about the TANF rule, including the TANF agency's definitions or criteria used for making determinations re. whether care is unavailable, unsuitable, etc., and fact that the exception from work activities does not suspend the TANF "clock"</li> <li>◆ Lead Agency to include in the CCDF Plan definitions or criteria used in TANF for the exception to the individual penalty for not participating in TANF work activities</li> </ul>	<p><b>Changes:</b> Require only TANF families be informed of the TANF rule. Added general requirement that consumer education must include the information on the availability of the full range of providers, and information on health and safety.</p>

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Statutory Provision	Proposed Regulation	Final Regulation
<p><b>Administrative Costs - 658E(c)(3)(C)</b> - limited to 5% of the aggregate amount of funds available to the State to carry out [the CCDF]. (new)</p> <p>Note: Conference Agreement lists items Congress does not consider to be administrative costs.</p>	<ul style="list-style-type: none"> <li>◆ retains the former list of administrative costs in the regulations, except for those items Conference Agreement indicates are not administrative costs</li> <li>◆ expenditures on the three items removed from the list of administrative costs (determining eligibility, establishing and operating a certificate program, and developing systems) to be tracked on the forthcoming CCDF financial management form</li> <li>◆ Tribes exempted from the 5% cap; 15% administrative cap is proposed for all Tribes</li> </ul>	<p><b>Change:</b> Revised regulation to clarify that the cap is on the expenditures from each fiscal year's allotment, not from the expenditures made in a fiscal year.</p>
<p><b>Reporting Requirements - Sec. 658K(a)</b> as amended includes a list of case-specific data.</p>	<ul style="list-style-type: none"> <li>◆ data elements listed in the proposed rule reflect the statute, except for a couple of items, including Social Security head of household.</li> </ul>	<p><b>Changes:</b> Changes to the data section reflect the technical amendments to PRWORA.</p> <p><b>Retained SS# collection.</b></p>
<p><b>Certificate Availability - Sec. 658E(c)(2)(A)</b> Requires Lead Agency to offer the family of an eligible child who is offered CCDF services to enroll the child with a provider who has a grant or contract or to receive a certificate.</p>	<ul style="list-style-type: none"> <li>◆ preamble provides clarification that there is no required proportion of certificates to contracts, encourages appropriate balance between contracts and certificates in States that offer both.</li> <li>◆ no change in regulations.</li> </ul>	<p><b>Change:</b> Withdrew language that attempted a clarification of certificate availability.</p>

**Other changes:**

- corrected language regarding what constitutes an independent audit;
- restored language on funds returned during the obligation period;
- reflected technical amendments on the FMAP rate for the matching funds and on redistribution of funds "allotted," rather than "awarded";
- added new material on tribal construction.

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Internal

4/2/97

Proposed Amendments to the CCDBG Regulations - 1997  
--Major Regulatory Decisions --

Statutory Provision	Proposed Regulation	Flexibility
<p><b>Public Hearing</b> - 658D(b)(1)(C)* - Hearing on the Plan must be held with "sufficient time and statewide distribution" to allow for public comment. (modifies public hearing provision)</p> <p>*References are to the Child Care and Development Block Grant Act, as amended, unless otherwise noted.</p>	<ul style="list-style-type: none"> <li>◆ requires at least 20 days' notice</li> <li>◆ hearing to be held before the plan is submitted to ACF, but no more than 9 months in advance of the effective date of the plan</li> <li>◆ State to describe distribution of the hearing notice in its Plan</li> </ul>	<ul style="list-style-type: none"> <li>◆ method of distribution</li> <li>◆ population targeted for notice</li> <li>◆ treatment of written comments</li> </ul>
<p><b>Coordination</b> - 658D(b)(1)(D) - Coordination with "other Federal, State and local child care and early childhood development programs." (continued provision)</p>	<ul style="list-style-type: none"> <li>◆ requires coordination with public health, employment services/workforce development, public education, and TANF agencies</li> </ul>	<ul style="list-style-type: none"> <li>◆ method of coordination</li> <li>◆ only a limited set of the most critical agencies were required, although others could have been listed</li> </ul>
<p><b>Health and Safety</b> - 658E(c)(2)(F) - "Certify" provisions are in place which include prevention and control of infectious diseases (including immunization), building and physical premises safety, health &amp; safety training. (continued provision amended by replacing "assure" with "certify.")</p>	<ul style="list-style-type: none"> <li>◆ same as proposed in the joint child care regulatory amendments in 1994, requires States and Territories to establish immunization requirements that assure that children receiving CCDF services are immunized.</li> </ul> <p>Note: tribal standards to be separately established under new statutory requirement for the Secretary to develop minimum child care standards in consultation with the Tribes.</p>	<ul style="list-style-type: none"> <li>◆ does not impose Federal standards, rather relies on the decision of the State or Territory regarding what requirements to apply</li> </ul>

Statutory Provision	Proposed Regulation	Flexibility
<p><b>Equal Access</b> - 658E(c)(4)(A) -</p> <ul style="list-style-type: none"> <li>◆ "Certify," instead of "assure." (new)</li> <li>◆ Payment rates that provide CCDF-eligible families with equal access to the same range of care as ineligible families. (continued)</li> <li>◆ Plan to contain a "summary of the facts" relied on by the State in setting payment rates that ensure equal access. (new)</li> <li>◆ Requirement for payment rates to vary by category of provider or age of child. (deleted)</li> </ul>	<ul style="list-style-type: none"> <li>◆ certification in Plan per statutory language</li> <li>◆ summary of facts in Plan must address: <ul style="list-style-type: none"> <li>--choice of full range of providers;</li> <li>--adequate payment rates based on a local market rate survey; conducted within two years prior to the effective date of the current State plan;</li> <li>--affordable copayments.</li> </ul> </li> <li>◆ prohibition against establishing different payment rates based on a family's status, e.g. TANF family</li> <li>◆ preamble discussion highlights key components of "equal access" and suggests benchmarks</li> </ul>	<ul style="list-style-type: none"> <li>◆ does not dictate provisions of the market survey or require that rates be set at a certain level</li> <li>◆ current provisions regarding sliding fees scales continue unchanged</li> <li>◆ preamble recommends benchmarks, but State has flexibility overall to demonstrate "equal access"</li> </ul>
<p><b>Consumer Education</b> - 658E(c)(2)(D) - State must certify will collect and disseminate to parents of eligible children and the general public, consumer education information to promote informed child care choices. (revision)</p> <p><b>TANF Work Activities Exception</b> - 407(c)(2), Social Security Act - State may not sanction a single custodial parent with a child &lt; age 6 for failure to participate in TANF work activities if family has demonstrated inability (as determined by the State) to obtain needed child care. (new)</p>	<ul style="list-style-type: none"> <li>◆ certification in Plan per statutory language</li> <li>◆ State CCDF Lead Agency to inform parents about the TANF rule, including the State's definitions or criteria used for making determinations re: whether care is unavailable, unsuitable, etc., and fact that the exception from work activities does not suspend the TANF "clock"</li> <li>◆ State to include in the CCDF Plan definitions or criteria used for the exception to the penalties for not participating in TANF work activities</li> </ul>	<ul style="list-style-type: none"> <li>◆ does not regulate on how consumer education information is to be collected and disseminated; since other, new parts of the statute require States to: report on the manner in which consumer education is provided in their biannual report; and maintain a record of parental complaints that is made available to the public</li> <li>◆ does not seek to require specific policies and procedures for making determinations regarding the TANF exception</li> </ul>

Statutory Provision	Proposed Regulation	Flexibility
<p><b>"70% Rule"</b> - 418(b)(2), Social Security Act - State shall ensure that not less than 70% of the total amount of funds received by the State in a fiscal year under [sec. 418] are used to provide child care assistance to families who are receiving assistance under a State program under [title IV-A], families who are attempting through work activities to transition off of such assistance program, and families who are at risk of becoming dependent on such assistance program. (new)</p> <p>658E(c)(2)(H) - State plan must demonstrate the manner in which the State will meet the specific child care needs of the above families. (new)</p>	<ul style="list-style-type: none"> <li>◆ regulations reflect the statute for the States</li> <li>◆ Tribes exempted from the provision</li> </ul>	<ul style="list-style-type: none"> <li>◆ based on consultations, which strongly recommended that ACF not regulate, no further regulation is proposed.</li> <li>◆ decision based partly on argument that the at-risk population referenced in Sec. 418 of the Social Security Act and the low income population may be considered to be the same populations; although we left it to the discretion of the State to devise separate definitions</li> </ul>
<p><b>Quality</b> - 658G - State shall use not &lt; 4% of CCDF funds for activities that are designed to provide comprehensive consumer education, activities that increase parental choice, and activities designed to improve the quality and availability of child care. (revision)</p>	<ul style="list-style-type: none"> <li>◆ reflects the statute; list of quality activities formerly contained in the statute is retained but regulation also states that "any other activities consistent with the intent [of the statute]" is allowable</li> <li>◆ activities must be described in the State plan</li> </ul>	<ul style="list-style-type: none"> <li>◆ does not limit quality activities</li> </ul>
<p><b>Administrative Costs</b> - 658E(c)(3)(C) - limited to 5% of the aggregate amount of funds available to the State to carry out [the CCDF]. (new)</p> <p>Note: Conference report lists items Congress does not consider to be administrative costs.</p>	<ul style="list-style-type: none"> <li>◆ retains the former list of administrative costs in the regulations, except for those items Conference Agreement states are not administrative costs</li> <li>◆ Tribes exempted from the 5% cap; 15% administrative cap is proposed for all Tribes</li> </ul>	<ul style="list-style-type: none"> <li>◆ responds to consultations and Conference Report</li> </ul>

Statutory Provision	Proposed Regulation	Flexibility
<p><b>Matching Funds and Maintenance of Effort (MOE) - 418(a)(2)(C), Social Security Act - States receive matching funds (at the FY 1995 FMAP rate) on the basis of the formula of the former At-Risk Child Care program. In order to receive matching funds, a State must maintain effort at its FY 94 or 95 level of expenditures for the now-repealed title IV-A child care programs as well as use its Mandatory Funds. (new)</b></p>	<ul style="list-style-type: none"> <li>◆ allowable expenditures, for both matching and MOE, are expenditures for activities that meet the goals and purposes of the CCDBG Act and that are described in the State Plan</li> <li>◆ as in the former At-Risk Child Care rules, public donated funds may be certified by the contributing agency as representing expenditures eligible for match</li> <li>◆ instead of being transferred to the Lead Agency, private donated funds may be certified by BOTH the contributing and receiving agency as expenditures eligible for match</li> <li>◆ public pre-Kindergarten (pre-K) expenditures may be counted for MOE, without limits, if State does not reduce its level of expenditures for full-day/full-year child care</li> <li>◆ public pre-K expenditures may be counted for match, without any other limits, if the State describes in its plan how it will ensure that pre-K serves the needs of working parents</li> </ul>	<ul style="list-style-type: none"> <li>◆ gives States the flexibility they need to be able to secure their full allotment of matching funds</li> <li>◆ does not limit MOE to only those activities that were allowable under the former IV-A child care programs, as we did in the Program Instruction of 10/30/96</li> <li>◆ does not require private donated funds to be transferred to the Lead Agency, as we did in the Program Instruction of 10/30/96</li> <li>◆ does not place burdensome restrictions on the use of pre-K as match; in the preamble, we provide some additional flexibility regarding the method of counting pre-K children served (in contrast to the method required under the previous per child count method required for the former IV-A child care programs)</li> </ul>

*Some changes here*

Statutory Provision	Proposed Regulation	Flexibility
<p><b>Penalties</b> - 658I(b)(2)(A) - Secretary's options for penalties on States that do not operate in substantial compliance with the statute or plan (revised)</p> <p>658I(b)(2)(B) - Secretary may impose additional sanctions (continued provision)</p>	<ul style="list-style-type: none"> <li>◆ revision reflects the amended statute, which allows the Secretary to require the State to reimburse improperly expended funds or to deduct an amount equal to improperly expended funds from the next year's administrative expenses</li> <li>◆ added provision clarifying that the Secretary may impose other penalties, including sanctions for failing to submit required reports</li> </ul>	
<p><b>Application</b> - 658E(a) - requires an application to be submitted to the Secretary "at such time, in such manner, and containing such information as the Secretary shall by rule require ..." (continued provision)</p>	<ul style="list-style-type: none"> <li>◆ in lieu of a separate application with budget estimates that are no longer necessary (due to statutory changes related to quality expenditures and administrative costs) -- provides that the application consist of the biennial plan, the new child care financial reporting form, and the certifications required by statutes other than the CCDBG Act</li> </ul>	<ul style="list-style-type: none"> <li>◆ reduces administrative burdens</li> </ul>
<p><b>Registration</b> - 658E(c)(2)(E)(ii) - States to register providers of CCDBG services if they were not otherwise licensed or regulated (deleted)</p>	<ul style="list-style-type: none"> <li>◆ if the State chooses not to maintain a registration process, it must at least maintain a list of providers serving children receiving CCDF subsidies who are unlicensed or otherwise unregulated</li> </ul> <p>Note: this provision is intended to facilitate payment and facilitate providing unregulated providers serving CCDF-subsidized children with health &amp; safety information.</p>	<ul style="list-style-type: none"> <li>◆ States may choose between registration and maintaining a list.</li> </ul>

Statutory Provision	Proposed Regulation	Flexibility
<b>In-home Care - 45 CFR 98.30, Parental Choice, 658E(c)(2)(a) (continued)</b>	◆ as proposed in joint rule of 1994, allows Lead Agency to restrict or limit in-home care for other reasons than cost effectiveness	◆ increases flexibility, but does not eliminate a category of care that may be necessary to promote work

Proposed Amendments to the CCDBG Regulations - 1997  
 -- Major Regulatory Decisions - Indian Tribes --

Statutory Provision	Proposed Regulation	Flexibility
<b>Lead Agency</b> - 658D(a) - State CEO to designate a State agency to serve as lead agency to administer CCDF.	◆ Tribal resolution identifying Lead Agency must be included in CCDF Plan.	◆ Provides certain protections to tribal grantees from "unauthorized" applications/plans or changes in consortia membership.
<b>Coordination</b> - 658D(b)(1)(D) - Coordination with "other Federal, State and local child care and early childhood development programs." (continued provision)	◆ Tribal consortia must describe the direct child care services funded by CCDF for each participating tribe.	◆ Ensures that services are being delivered at tribal or village level.
<b>Data</b> - 658O(d) - Data sources cited for States. Law is silent on Tribal data sources.	◆ Self-certification of tribal child counts.	◆ Based on consultations and comments from <u>Federal Register</u> Notice requesting comments on proposed data change and approach.
<b>Construction/Renovation</b> - 657O(c)(6) - Tribal grantees may request approval to spend funds for construction and/or renovation (but may not result in a decrease in level of child care services compared to the preceding fiscal year).	◆ New section describing certain requirements and uniform approval process.	◆ Based on consultations; minimal regulations proposed; explains that requests must be made in accordance with uniform procedures established by program instruction.
<b>Minimum Child Care Standards</b> - 658E(c)(2)(E) - In lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Tribes, shall develop minimum child care standards which reflect tribal needs and available resources.	◆ Until developed, tribal grantees must continue to have in place tribal and/or State licensing requirements for health and safety standards.	◆ Increases flexibility; ACF is developing consultation process with Tribes to establish minimum standards.
<b>Exempt vs. Nonexempt Grantees</b> - No Statutory Provision	◆ Retains regulatory requirements for larger tribes (including quality set-aside and certificate program requirement). NPRM requests comments on eliminating this distinction and having one set of requirements for all tribal Lead Agencies.	◆ Greater flexibility in designing and implementing CCDF programs.

6-5523  
 JL  
 418-8440  
 888-982-1935  
 346-4450  
 226-5791  
 Matty Mocko  
 401-9223  
 Olivia 401-2337

2 open issues

1) Pre-K

HHS agreed to concept of cap,  
 wants 25% rather than 10%

~~Indicate cap~~

say bet 10-25%

get public comment

2) Administrative cost

Corb rept lang - OMB wanted out  
 - HHS

Precedent has  
 set goal.

if we can million more jobs

3 million more independence

To pay the same

## Outstanding Issues HHS Proposed Child Care Rule

### 1. Use of State Pre-K Expenditures as Match and MOE

The proposed rule, like the previous IV-A child care regulations, allows States to use State pre-kindergarten expenditures to qualify for MOE and match under child care. Under the previous regulations, States did not claim a substantial amount of Federal funds using pre-K expenditures as match because they needed to identify IV-A children in pre-K programs and then attribute costs to them, a difficult and time-consuming process. The new child care law expands eligibility for child care assistance and removes certain restrictions in previous law that based child care eligibility on IV-A status. Eligibility is now based in general on income level and family work status. In the preamble of the proposed rule, HHS proposes a methodology that will make it substantially easier for States to determine pre-K costs for children who meet the new eligibility criteria, and will allow States to claim more Federal funds using pre-K expenditures.

We are concerned that this new methodology could result in a substantial cost shift from State pre-K programs to Federal child care programs. The preamble itself notes that: "The potential exists for a State with a sufficiently large pre-K program to divert all State funds away from other child care programs and fulfill its MOE and matching requirements solely through pre-K expenditures." The proposed rule includes one provision to address this problem: States that wish to use pre-K expenditures to meet the child care MOE requirements must ensure that they do not reduce their number of full-day/full-year child care slots. (The requirement would not apply if a State wishes to use pre-K expenditures for child care matching purposes only.) There are no other requirements relating to State pre-K expenditures which would prevent States from shifting their pre-K costs into Federal child care programs.

Two changes should be made to the rule to further protect against the cost-shifting scenario described by HHS: (1) In order to prevent States from refinancing and reducing their own pre-K expenditures by taking advantage of Federal matching funds, States should be required to document and maintain their level of effort on pre-K programs if they use pre-K funds to meet the child care MOE or match requirements. This would ensure that Federal funds used for State pre-K activities augment those activities rather than supplant them. (2) To further minimize the possibility of State cost-shifting from pre-K programs, a 10% cap should be placed on the amount of State match and MOE funding for child care that may be pre-K expenditures.

### 2. Use of Donated Funds Not Under State Control as Match and MOE

The proposed child care rule, similar to previous regulations in child care and other matching programs, allows States to use funds donated from private sources to qualify for Federal matching purposes. The proposed rule, however, stipulates that private donated funds do not have to be transferred to or under the administrative control of the State to be eligible for Federal match. Instead, they may be donated to an entity designated by the State to receive donated funds. Currently, the use of donated funds for match is very limited. OMB has two concerns with this proposal: (1) There are very limited oversight and accountability provisions relating to the private

how defined

why not needed

agencies that are designated to accept donated funds. (2) The incentives on these agencies is unclear. (Donations and taxes in other programs, such as Medicaid, resulted in serious abuses.) To address these problems, OMB believes additional accountability measures should be placed on the entities that receive and distribute donated funds (such as independent audits that verify proper use of funds, and State reports on patterns of use and child care provided through funds from donation-accepting entities). In addition, a 10% cap should be placed on the percentage of State match and MOE fund for child care that may be donated funds. Since the amount of donated funds has been very small in the past, a 10% cap provides sufficient flexibility to States.

### 3. Administrative Costs

The welfare reform bill places a 5% limitation on State administrative costs under the new child care program created by the legislation. (Existing, pre-welfare reform CCDBG regulations placed a 10% cap on administrative costs, with Secretarial authority to allow an additional 5% upon State petition.) The welfare statute reads: "Not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter. *As used in the preceding sentence, the term 'administrative costs' shall not include the costs of providing direct services.*"

The managers' statement accompanying the legislation attempts to clarify the definition of administrative costs. It reads: "The cap of 5 percent on administrative costs is included in both the House and Senate passed bills. To help States implement this provision, the Department of Health and Human Services should issue regulations, in a timely manner and prior to the deadline for submission of State plans, that define and determine true administrative costs, as distinct from expenditures for services. Eligibility determination and redetermination, preparation and participation in judicial hearings, child care placement, the recruitment, licensing, inspection, reviews and supervision of child care placements, rate setting, resource and referral services, training, and the establishment and maintenance of computerized child care information *are an integral part of service delivery and should not be considered administrative costs.*"

The list of activities cited in the managers' statement includes many activities that under other programs count as administrative costs and do not reflect the provision of direct services. The proposed rule would exclude the full list of these activities, even though a number of the items are defined as administrative activities under the current CCDBG regulations (such as determining eligibility, establishing and operating a certificate program, and developing systems). This broad list of administrative activities could allow States to increase their administrative costs without limitation, and potentially reduce the number of children who would otherwise be served with child care subsidies. To prevent this from happening, OMB believes some additional limitation should be placed on administrative costs. The rule should limit costs for activities listed in the managers' statement to 10%, in addition to activities included in the regulation under the 5% statutory cap. This would provide a total of 15% for administrative activities, an amount consistent with the existing CCDBG regulations.

**Wendy A. Taylor** 05/23/97 03:27:14 PM

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Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc: Jeffrey A. Farkas/OMB/EOP, Edwin Lau/OMB/EOP, Laura Oliven Silberfarb/OMB/EOP

Subject: Child Care -- 4% Penalty

The child care rule imposes up to a 4 percent penalty against discretionary funds (Page 162-163. Page 255. Sec. 98.92.b.2.). Since it is not specifically authorized in statute, we thought this should be called to your attention. Please let us know if you have any concerns with this provision.

Wendy A. Taylor 05/23/97 03:31:22 PM

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Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: Additional Questions on Child Care Rule

----- Forwarded by Wendy A. Taylor/OMB/EOP on 05/23/97 03:30 PM. -----

Wendy A. Taylor 05/22/97 05:46:59 PM

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Record Type: Record

To: mmocko @ acf.dhhs.gov @ INET @ LNGTWY

cc:

Subject: Additional Questions on Child Care Rule

We have the following questions and comments.

- (1) Page 11. Are the immunization requirements identical to the 1994 rule? Page 11 describes a ■new■ requirement, whereas elsewhere the references seem to be to the 1994 proposal.
- (2) Page 170 (Sec. 98.1.b.2). The goal to ■enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the CCDF■ seems beyond the scope of the legislation. Please address.
- (3) p. 27 (preamble); p. 179 (rule) --does the rule allow for profit centers to administer the program and is this a change from the existing rule? The statute does not mandate one way or the other. Does the local market rate survey include rates of for profit centers? Did it before this rule? If not, do we expect a change in average rates? (pp. 79-85; 204)
- (4) Page 31. The discussion on linkages with public education may be seen as inflammatory; in light of the repeal of the authorization for before-and after-school care. Can the text be toned down, and the phrase ■To the contrary, we have strengthened the requirements■ should be deleted in place of ■We have included requirements...■?

- (5) p.38 (preamble) -- What financial information is required along with the CCDF Plan for the initial application?
- (6) Page 50. What are the cost impacts of including foster care children in the eligible groups for child care assistance?
- (7) Page 54. Were States ever previously allowed under CCDBG or IV-A to provide certificates in the form of cash? What is the effect of allowing this now?
- (8) p. 55-63; 70-71;87 (preamble); p. 196-197; 201; 204-205 (rule) -- Why is the requirement to register unregulated care providers dropped? Are there reporting requirements for this type of care? Page 201 of the rule exempts relative and in-home care from health and safety requirements. Does this apply to State and local laws?
- (9) Page 58. The first sentence in the second full paragraph, which reads: ■ However, most lead agencies report that the need for subsidized low-income child care far exceeds the available funding. ■ is difficult to justify when not all of the mandatory/matching funds are projected to be spent. Please address.
- (10) p. 63 (preamble); p. 197 (rule) --With regards to Parental Access, do we need an exception for CPS cases?
- (11) Page 66. The requirement that States must provide consumer information about the TANF child care exception for single custodial parents with kids below age 6 could be viewed as a back-door attempt to regulate in TANF. Please address
- (12) p. 74-75 (preamble): WIC is the Special Supplemental Nutrition Program for Women, Infants, and Children. Can ACF revise the first full sentence on page 75 to read: " For example, local WIC clinics check the immunization records of WIC participants, assist families to find a primary health care provider, and provide immunization information. On-site immunization services are sometimes also provided at local WIC clinics."?
- (13) Page 85. What effect will the elimination of the 10 percent limit on payment differences within a category of care have on the overall costs of care?
- (14) Page 91 & 94. Why don't the 4% quality expenditure requirement and the 5% cap on administrative costs apply to MOE funds?
- (15) Page 94. We've asked our OGC about the applicability of the conference report language which states that numerous administrative activities are not administrative activities for purposes of the 5% cap on administrative costs. We are waiting for a response. States could dramatically increase their administrative costs under child care because of this statement. The policy also

raises questions about administrative cost allocation between public assistance programs, especially since the administrative costs will be matched at FMAP and not 50%. Are expenditures under the quality requirement countable as administrative costs?

- (16) Pages 95–96. The discussion at the bottom of page 95 and top of page 96 on administrative costs is unclear. Please clarify.
- (17) Page 99. The statement at the top of the page that: ■ These non–Federal dollars need not be expended before matching funds are claimed, provided that all of the State–only dollars will be expended by the end of the FY for which match is claimed ■ is not fully consistent with the draft Cash Management Improvement Act policy statement developed by HHS with Treasury on the drawdown of matching child care funds. Please address.
- (18) Page 101. The first full paragraph includes the statement that ■ the same State expenditure may be used to meet both the child care and TANF MOE requirements provided the expenditure meets the requirements of both programs. ■ Can ACF clarify that States which receive matching funds may count none of their State spending on child care --either MOE or match --to count as MOE for purposes of the TANF contingency fund?
- (19) Pages 107–108. We are concerned with the proposal for pre–K expenditures to qualify for MOE and match. What are the potential costs? States didn't claim much under IV–A because it was difficult for them to identify IV–A children. It will be easier for them to identify potentially eligible children under the methodology proposed in the preamble. This could result in a huge cost shift to child care.
- (20) Pages 101–102. What level of donated funds is expected to be received by private agencies? What are the cost impacts of this proposal? Has ACF considered a cap on donated funds similar to pre–K expenditures? (Same comment on reg language on page 215.) Will making donated funds eligible for a match lead to a decrease in State expenditures?
- (21) Page 115. The second sentence in the paragraph at the bottom should include the following at the end: ■ and are only available on an annual basis. ■ This indicates the difference between the mandatory and matching funds.
- (22) In general, the description of the use of matching funds should reflect the principles in the draft CMIA policy statement on child care.
- (23) Page 115. Is the description of having two years to obligate discretionary funds consistent with the appropriations provisions which have generally made funding available only on an annual basis?

- (24) Page 119. Same comment as above. The advance appropriation for FY98 makes funds available only for a one-year period. Do States in fact have the ability to obligate funds over two full years as the bottom of the first paragraph notes?
- (25) Page 213. As noted in the comments on the related preamble language, Sec. 98.53.(c). needs to be updated to reflect the draft CMIA policy statement on child care.
- (26) p. 214 --Can States count title XX child care spending as matching funds?
- (27) Page 219. Sec. 98.60.(b) should include the following insert before ■The Secretary■: ■Subject to the availability of appropriations, in accordance with the apportionment of funds from the Office of Management and budget, the Secretary:■ This conforms with the previous regulation on technical assistance.

**Wendy A. Taylor** 05/23/97 03:31:32 PM

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Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: Additional Questions on Child Care Rule

----- Forwarded by Wendy A. Taylor/OMB/EOP on 05/23/97 03:30 PM

**Wendy A. Taylor** 05/23/97 03:31:22 PM

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Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: Additional Questions on Child Care Rule

----- Forwarded by Wendy A. Taylor/OMB/EOP on 05/23/97 03:30 PM

**Wendy A. Taylor** 05/22/97 05:46:59 PM

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Record Type: Record

To: mmocko @ acf.dhhs.gov @ INET @ LNGTWY

cc:

Subject: Additional Questions on Child Care Rule

We have the following questions and comments.

- (1) Page 11. Are the immunization requirements identical to the 1994 rule? Page 11 describes a ■new■ requirement, whereas elsewhere the references seem to be to the 1994 proposal.
- (2) Page 170 (Sec. 98.1.b.2). The goal to ■enhance the quality and increase the supply of child care for all families, including those who receive no direct assistance under the CCDF■ seems beyond the scope of the legislation. Please address.

- (3) p. 27 (preamble); p. 179 (rule) --does the rule allow for profit centers to administer the program and is this a change from the existing rule? The statute does not mandate one way or the other. Does the local market rate survey include rates of for profit centers? Did it before this rule? If not, do we expect a change in average rates? (pp. 79-85; 204)
- (4) Page 31. The discussion on linkages with public education may be seen as inflammatory, in light of the repeal of the authorization for before-and after-school care. Can the text be toned down, and the phrase "To the contrary, we have strengthened the requirements" should be deleted in place of "We have included requirements...?"
- (5) p.38 (preamble) -- What financial information is required along with the CCDF Plan for the initial application?
- (6) Page 50. What are the cost impacts of including foster care children in the eligible groups for child care assistance?
- (7) Page 54. Were States ever previously allowed under CCDBG or IV-A to provide certificates in the form of cash? What is the effect of allowing this now?
- (8) p. 55-63; 70-71;87 (preamble); p. 196-197; 201; 204-205 (rule) -- Why is the requirement to register unregulated care providers dropped? Are there reporting requirements for this type of care? Page 201 of the rule exempts relative and in-home care from health and safety requirements. Does this apply to State and local laws?
- (9) Page 58. The first sentence in the second full paragraph, which reads: "However, most lead agencies report that the need for subsidized low-income child care far exceeds the available funding." is difficult to justify when not all of the mandatory/matching funds are projected to be spent. Please address.
- (10) p. 63 (preamble); p. 197 (rule) --With regards to Parental Access, do we need an exception for CPS cases?
- (11) Page 66. The requirement that States must provide consumer information about the TANF child care exception for single custodial parents with kids below age 6 could be viewed as a back-door attempt to regulate in TANF. Please address
- (12) p. 74-75 (preamble): WIC is the Special Supplemental Nutrition Program for Women, Infants, and Children. Can ACF revise the first full sentence on page 75 to read: " For example, local WIC clinics check the immunization records of WIC participants, assist families to find a primary health care provider, and provide immunization information. On-site immunization services are sometimes also provided at local WIC clinics."?

- (13) Page 85. What effect will the elimination of the 10 percent limit on payment differences within a category of care have on the overall costs of care?
- (14) Page 91 & 94. Why don't the 4% quality expenditure requirement and the 5% cap on administrative costs apply to MOE funds?
- (15) Page 94. We've asked our OGC about the applicability of the conference report language which states that numerous administrative activities are not administrative activities for purposes of the 5% cap on administrative costs. We are waiting for a response. States could dramatically increase their administrative costs under child care because of this statement. The policy also raises questions about administrative cost allocation between public assistance programs, especially since the administrative costs will be matched at FMAP and not 50%. Are expenditures under the quality requirement countable as administrative costs?
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Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

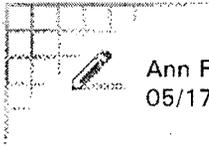
Subject: Child Care Comments

- (1) [page 14] Please revisit the discussion regarding the impact of the immunization requirement. The regulatory language in 98.41 is explicit – "States shall establish immunization requirements...that assure children...are immunized." The rule provides limited exceptions. While it is true that States require most centers to immunize, it is our understanding that States do not always impose such requirements on family and/or group homes who are not regulated.

Thus, in setting such a standard, the rule will very likely require small providers, who are not currently subject to immunization requirements, to adhere to them. ACF's argues that because States are provided flexibility on the implementation of the standard, the rule does not directly affect small businesses. This assertion does not seem accurate.

- (2) [page 42] ACF notes that substantive changes in Lead Agencies' plans must be reflected by amending the Plan per 98.18(b). Does the paperwork package account for this burden?
- (3) [page 50] Is the inclusion of the foster care population in the definition of protective services an expansion from the previous rule?
- (4) [page 54] Cash as a Certificate. We have significant concerns with the use of cash as a certificate. Previous rules reference the use of two-party checks where both the recipient and provider must sign, but NEVER cash directly to the individual. Please cite the legislative requirement mandating the option. Such a practice seems ripe for fraud. The preamble on page 54 strongly discourages this practice, but does not disallow it. It is not clear why not. Please explain.
- (5) [page 54] ACF requires Lead Agencies to require parents who receive cash to submit a statement to the Lead Agency attesting that the funds were used for child care and identifying the provider. This is third party reporting. Is the burden accounted for in an information collection?
- (6) We are missing page 68. Please provide.
- (7) [page 137] In the third paragraph, please delete the last sentence reading ■ Since it is a data element previously collected...this information. ■

- (8) [page 174] Has ACF provided definitions on group and family care in the paperworks?
- (9) [page 186] Plan Provisions. Why is it necessary to detail all of the Plan requirements in the rule? The requirements are explicit in the law. Is it necessary to put them in the rule as well?
- (10) [page 238] Content of Reports. Same comment as above.



Ann F. Lewis  
05/17/97 11:32:11 AM

*EK/CR -  
Keep this in mind*

Record Type: Record

To: Bruce N. Reed/OPD/EOP  
cc: Stephanie S. Streett/WHO/EOP  
Subject: Child Care standards

Is it possible that the President could announce the HHS regulations on child care health and safety standards, as mentioned in your 5/14 list , on June 30th in Boston ? We're looking for a strong message event that morning -- this is certainly a subject many people care about, and would work well in Boston.

**Wendy A. Taylor** 04/14/97 09:03:55 AM

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Record Type: Record

To: Cynthia A. Rice/OPD/EOP

cc:

Subject: Re: Proposed Child Care Regs 

Let's aim to get preliminary comments to me 2 weeks from today -- April 28th. My guess is that this will be an easier reg to review than some of the others down the road. I would like to start off on a good foot with HHS and try to move this as quickly as we can. You can send your comments via e-mail or whatever is easiest.

I'll check with Sally on the briefing. Thanks, and let me know if you have any questions as you review the rule.

Child care briefing  
re = new proposed rule

4/9

To be followed by bullet data - work reqs

State plans due July 1

Joan C.

~~Big picture~~

Highlights =

1) Public planning/hearing

Public notice

Required 20 days public notice

Have to have statewide

Must collaborate TANF agency,

employment agency + health agency

and other agency

2) Health & safety

~~Health & safety~~

- control of infectious disease

- physical safety

- training in health & safety

Reg - same as 1994 -

programs must have immunized  
most states require checks  
for f.d. care or centers

But many kids voucher  
States have to say how they will  
ensure this

Grace period - <sup>determined by state</sup> child could be in  
child care pending immuniz  
(Not for tribes)

3) Reimbursement <sup>rates</sup>

Part - Rates are up to 75% per diem  
IUA statute + IUA reg

Old CCDBG - nothing about  
rates except vary category  
of care + age of child

Left - parts "equal access" to  
care + comm  
- states ~~that~~ must provide  
funds ~~based on~~ re - how set  
rates

Newreg

- "equal access" means

a) - range of ccare

b) - rates to allow access anyway  
do not require spec<sup>ific</sup> rate

but - states must do market  
rate survey

- in preamble say 75% is considered  
"equal access"

c) co-payment =

law sup based on "family  
income + size"

benchmark = ~~no~~ in preamble

- no more than 10% of  
income on child care

d) Not different rate for welfare  
family than other families

## 2 requirements

1) state has to tell us

- how assume range

- how set rates  
(must do survey)

- how set co-pay

## 4) Consumer Education

---

- add: part of consumer education  
ignoring public info -> re = how
- define law

~~"affordability"~~

- can't sanction

no child under 6 etc.

- must inform that five year  
clock ticks

→ state defines affordability  
indiv must prove that  
she doesn't have it

## 5) Match

Prior - allowed private sector match  
- any private match has to turn over  
~~to state~~ - to state lead agency

proposal - state can enter into agreement  
w/o req

EX-

CO - check-off on state taxes for childcare  
Businesses don't want to turn over  
to state gov'ts

Does not count in-kind contributions

NO ~~Match~~ pre-K programs

Always allowed state pre-K \$ as match  
if kids were well eligible  
(match was only for IUA)

This rule = pre-K counts as match; states come  
up w/ way to determine if meet  
CEDBG standards

- Some states have big pre-K \$

→ have to certify that they are not  
reducing effort in full day

~~States have to certify that they are not  
reducing effort in full day~~

→ States have to tell feds how they  
are making pre-K more accessible  
to working families

Child home care

Kept it in reg as required type of care

~~States have to certify~~

States have to certify who gets

Contact = Mattie