Congress of the United States
Washington, DC 20515

August 28, 2023

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services (HHS)
200 Independence Avenue, S.W.
Washington, D.C. 20201

RE: Docket number ACF–2023–0003 / RIN number 0970–AD02

Dear Secretary Becerra,

We write in support of the U.S. Department of Health and Human Service's (the Department) proposed regulation to improve child care access, affordability, and stability in the Child Care and Development Block Fund (CCDF). CCDF provides child care assistance for working families with low incomes to help them pay for child care in a program of their choice that meets their family's needs. In FY2020, the program reached 900,000 families with 1.5 million children.[1]

High-quality, affordable child care is a necessity for millions of working families across the country. Improving child care access supports children's healthy development, improves families' economic security, and strengthens the nation's economy overall. Despite its importance, our nation's child care system is not working well for anyone: chronic underinvestment in child care means care is unaffordable and difficult to find for working families, wages are untenably low for child care workers, and most small child care businesses struggle to stay in business when relying on funding from parent fees alone. Nationally, the average cost of child care in 2022 was over $10,000 per year, comprising 10 percent of the median married family's income, and 33 percent of the median household income for a single parent.[2]

CCDF reaches just 16 percent of children who are eligible for assistance.[3] With finite resources, lead agencies must make difficult tradeoffs between the number of children they serve and the payment rates they offer to providers to support high-quality care and wages for staff. The only way to fix this fundamentally broken system is through substantial, permanent, public investment in child care, such as investments included in our proposals and in the President's FY24 Budget request.

As we work toward greater system reform, we applaud the steps the Department is taking in this proposed rule to improve child care access, affordability, and stability for families receiving child care subsidies through the CCDF program. We are pleased to see several of our priorities related to child care affordability and administration of subsidy programs reflected in this proposal, such as capping families' child care costs at 7 percent of their income, expanding the number of families who are eligible to receive free child care, increasing child care subsidy rates and payment practices that support the cost of delivering high-quality child care, reducing barriers to qualifying for and accessing child care subsidies for working families, and building the supply of child care through grants and contracts, particularly for underserved populations.[4]

We strongly support the ways that these proposed policy changes would strengthen the existing child care subsidy system through making care more affordable and easier to access for families who currently qualify for

[1] https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-1.
[2] https://www.childcareaware.org/catalyzing-growth-using-data-to-change-child-care-2022/.
[3] https://aspe.hhs.gov/sites/default/files/documents/1d276a590ac166214a5415bee430d5e9/cy2019-child-care-subsidy-eligibility.pdf.
[4] https://www.congress.gov/bill/118th-congress/senate-bill/1354.

child care subsidies and improving the stability of child care providers serving children using child care subsidies. We ask that you maintain the following proposed provisions in the final rule and provide additional recommendations for consideration.

1. ***Cap families' child care copayments at 7 percent of income***

We enthusiastically support the Department's proposal in § 98.45(b)(5) to ensure no family pays more than 7 percent of their income on child care. Ensuring no family receiving a child care subsidy pays more than 7 percent of their income toward child care helps achieve a central goal of CCDF to make care more affordable for families. This provision also reflects statutory requirements to ensure that copayments do not present a barrier to access for families and that CCDF families have equal access to child care. We urge the Department to consider 7 percent as the maximum payment and to continue working to lower child care costs for working families as much as possible.

The most recently available data from the 2019 Survey of Income and Program Participation show higher income families spend 7 percent of their income on child care, while lower income families spend as much as 35 percent of their income on care. These data demonstrate how child care for the CCDF-eligible population continues to be unaffordable and that lower income families are paying a greater proportion of their income than higher income families.[5] We agree that 7 percent should be considered the ceiling for the percentage of income that families spend on child care, but also suggest consideration for a progressive sliding fee scale in line with our legislative proposals, whereby lower income families contribute a lower percentage of their income toward child care.

We believe that requiring the 7 percent cap, rather than continuing to leave it up to state discretion, is necessary to ensure copays for CCDF families do not pose a barrier to accessing child care – as required by statute – and to promote equal access to a range of providers for families using child care subsidies. According to FY2022-2024 state plans, some lead agencies are charging CCDF families as much as 40 percent of their income for child care.[6] The proposed rule cites data demonstrating that family copayments are rising at a rate higher than inflation. Additional research shows that copayments as a percentage of family income have increased over the past two decades for some families.[7] This reflects a concerning trend that child care costs are increasing for working families and that lead agencies are passing on increased child care costs to these families through copayments. This is counter to the purpose of CCDF to lower costs for working families.

To that end, it is important to ensure that the 7 percent cap on copayments for families is not passed on to child care providers through reduced child care subsidy payments for providers. We appreciate that the preamble states that "this proposal does not decrease the amount paid to the child care provider, but rather, shifts some of the cost from families to Lead Agencies."[8] However, for clarity, we suggest the inclusion of a provision in § 98.45(b)(5) or wherever appropriate to require lead agencies to certify and describe how any reduction in family copays as a result of this provision will be covered by a corresponding increase in the lead agencies' share of provider payments so as to ensure providers do not see a reduction in resources.

We also urge the Department to retain the data element in § 98.71(a)(11) regarding the amount of money that a child care provider charges to a family receiving a CCDF subsidy that is above the co-payment set by the Lead Agency. Further, we urge the Department to take steps to collect detailed information on this practice. A

[5] https://www.americanprogress.org/article/working-families-spending-big-money-child-care/.
[6] https://dwss.nv.gov/uploadedFiles/dwssnvgov/Child%20Care%20Plan%20FFY%202022-2024.pdf#page=79.
[7] https://nwlc.org/resource/at-the-crossroads-state-child-care-assistance-policies-2021/.
[8] 88 FR 45027.

fundamental goal of this proposal is to cap families' child care payments at 7 percent of their income. This goal will be undermined if child care providers charge families amounts on top of their state-determined copay amount because payment rates are insufficient to cover their costs. This costly practice is allowed in 38 states.[9] Absent data collection on this practice, it will be difficult to determine to what extent child care is becoming more affordable for families using subsidies, as well as to what extent the costs of implementing the 7 percent copayment cap or copayment waivers are being passed on to families via providers.

While we understand this data has not been collected due to concerns of administrative burden on lead agencies and providers, we urge the Department to consider less onerous options for collecting this critical information. For example, the Department could consider collecting this information from a sample of providers, similar to the sampling process used for program integrity case record reviews, or by conducting a survey child care providers and parents using funding provided for federal research and evaluation activities.

2. ***Support access to free child care for families***

We applaud the steps the proposed rule takes in § 98.45(l)(4) to encourage states to expand access to free child care for working families, including encouraging states to waive payments for families earning up to 150 percent of the federal poverty level (FPL). For families with low incomes as well as other populations, even a nominal copayment can serve as a barrier to accessing assistance for child care.

We also strongly support the provision in § 98.45(l)(4) to waive copayments for children with disabilities to help reduce barriers to accessing child care that is not only high-quality and affordable, but also inclusive and developmentally appropriate. In addition to children with disabilities, we recommend the Department include a provision explicitly encouraging lead agencies to waive copayments for children experiencing homelessness, children in foster or kinship care, and children served through the Head Start program in §98.45(l)(4). These populations are not always automatically considered for copayment waivers through the protective services pathway. For example, just 8 states include children experiencing homelessness and only about half of states include children in foster care in their lists of families in need of protective services.[10] Waiving copayments is a way to reduce barriers to accessing child care for these highly mobile and particularly vulnerable populations.

Further, some families served through the Head Start program also rely on child care subsidies to cover the cost of child care during extended working hours. We believe clarifying that these families can be categorically considered for waived copayments could help reduce barriers for families, promote continuity of services, and provide clarity for lead agencies, Head Start programs, and families. Income eligibility for Head Start is less than 150 percent of FPL, so most Head Start families would meet the 150 percent FPL criteria. Additionally, this would align standards between Head Start (where no payment is required) and child care for families and providers participating in an Early Head Start Child Care Partnership. This would also be in line with provisions elsewhere in the proposed rule, which would allow enrollment in other benefit programs, such as Head Start, to be used as part of the CCDF eligibility determination process.

3. ***Increase the stability of child care providers and build child care supply***

We support provisions included in § 98.45(m)(1) to require states to pay providers based on enrollment, in § 98.30(b)(1) to require states to use grants and contracts for child care services and in § 98.45(m)(2) to require states to pay child care providers prospectively. These provisions are critical for achieving key goals of CCDF, including promoting parent choice and equal access for families using child care subsidies, improving the

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[9] https://ccdf.urban.org/sites/default/files/ccdf_policies_database_2020_book_of_tables_jan2023.pdf (Table 29).
[10] https://www.acf.hhs.gov/sites/default/files/documents/occ/3.1.2ci-FFY2022.pdf.

supply and quality of child care for underserved populations, and ensuring payment practices for families receiving CCDF assistance reflect generally accepted payment practices for private-pay families. We also applaud the Department's efforts to include provisions to help build the supply of child care, particularly for populations that face particular shortages of child care options, such as infants and toddlers, children with disabilities, and children who need child care during nontraditional hours.

These proposals build on the work that is happening across many states and agencies as lead agencies voluntarily implemented several of the proposed provisions during the COVID-19 pandemic. For example, twenty eight states took steps to pay based on enrollment or use contracts to provide direct services using COVID-19 funding and a majority of States opted to use Child Care and Development Block Grant (CCDBG) funding to provide grants to child care providers during the COVID-19 pandemic to help support their businesses throughout periods of reduced enrollment or temporary closure.[11] Additionally, we provided $24 billion in funding in the American Rescue Plan Act for Child Care Stabilization Grants, which reached 220,000 child care providers, or 8 out of 10 licensed child care programs, representing a successful strategy for sustaining and strengthening the supply of child care, and demonstrating every state can successfully administer grants to child care providers.

There is also clear statutory authority for these provisions. Section 658E(c)(2)(A) of the CCDBG Act makes clear that grants or contracts are a key element of parental choice of child care providers, stating that a parent shall have the option to enroll their child with a child care provider that has a grant or contract, or to receive a child care certificate. Parents would no longer have that option if a lead agency does not provide for any grants or contracts.

Additionally, Section 658E(c)(2)(M) of the CCDBG Act clearly states that direct contracts or grants are a strategy to increase the supply and quality of child care for underserved populations, including infants and toddlers, children with disabilities and children who need child care during nontraditional hours. According to CCDF data, 20 states report serving *no* children with disabilities through CCDF[12], and 21 states report serving *no* children experiencing homelessness through CCDF[13], demonstrating that additional strategies are necessary to ensure lead agencies provide services to these underserved populations. Therefore, we recommend the Department also require lead agencies to use grants and contracts to support child care access for children experiencing homelessness and children in foster care or kinship care in §98.16(y) of the proposed regulations.

Section 658E(c)(2)(S) of the CCDBG Act also requires States to certify their payment practices reflect generally accepted payment practices of child care providers in the State that serve private pay families. This is required in order to provide stability of funding and encourage more child care providers to serve children receiving CCDF assistance. The section also requires states to delink subsidy payments from children's absences to the extent practicable. Paying child care providers prospectively and based on enrollment reflects commonly accepted child care payment practices for non-subsidy children and will help incentivize more child care providers to serve children using subsidies. We also recommend that the Department clarify that CCDF payments should cover any days that providers are closed for in-service or professional development, which is another common practice for private-pay families and supports child care quality improvement efforts.

4. ***Reduce barriers to enrollment for families***

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[11] https://www.acf.hhs.gov/occ/infographic/covid-investments-child-care-supporting-children-families-and-providers.
[12] https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-21.
[13] https://www.acf.hhs.gov/occ/data/fy-2020-preliminary-data-table-19.

We support the proposed provisions to make enrollment in CCDF less burdensome for families, including the proposed provisions in § 98.21(h) and § 98.21(d) related to (1) a period of presumptive eligibility for families; (2) supporting enrollment of siblings and (3) using eligibility for other programs to streamline the eligibility process. No family should forgo critical income or lose out on a potentially life changing job opportunity because they are waiting for approval for a child care subsidy.

5. ***Recognizing mandatory funding for Tribes and Territories secured in ARPA:***
We support updating existing regulations to reflect mandatory funding that we secured for Tribes and Territories through the Child Care Entitlement to States (CCES) in the American Rescue Plan Act (ARPA). These updates include conforming changes to reflect that ARPA allocated $100 million through the CCES for Tribes instead of tying Tribal CCES funding to a percentage of total funding allocated through section 418(a)(3)(B) of the Social Security Act. It also includes updated regulations to reflect that Territories now receive $75 million in annual mandatory funds through CCES, and makes other conforming edits to existing regulations.

Conclusion:

While we support the policy changes proposed in this rule and believe they will strengthen the program for families and providers, we urge the Department to take as many steps as possible to ensure the implementation of these policy changes does not disrupt child care assistance for working families currently served through the program. For example, the Department could require lead agencies to provide a plan for how they will gradually phase in the proposed requirements in a manner that will not remove families currently receiving services from their programs.

This proposal continues to underscore the need for increased investments in CCDF, such as those that we have consistently advocated for through the annual appropriations process as well as other legislative proposals.[14] We also encourage the Department to carefully consider resources as it works to finalize the rule and strongly believe that significant investment and reform for child care is necessary for the proposed changes to yield their full benefit for families and providers, and to continue to increase the number of families receiving child care assistance across the country who so desperately need it.

Sincerely,

Bernard Sanders
United States Senator
Chairman, Committee on Health, Education, Labor, and Pensions

Robert C. "Bobby" Scott
Member of Congress
Ranking Member, Committee on Education and the Workforce

[14] https://www.ffyf.org/wp-content/uploads/2023/04/FINAL-Senator-Casey-Early-Care-and-Education-Appropriations-Letter-Fiscal-Year-2024-FY24.pdf; https://www.congress.gov/bill/118th-congress/senate-bill/1354.

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United States Senator

Robert P. Casey, Jr.
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