



Office of Children and Family Services

KATHY HOCHUL
Governor

SUZANNE MILES-GUSTAVE, ESQ.
Acting Commissioner

August 23rd, 2023

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Child Care

Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>

Re: 88 FR 45022

ACF-2023-0003/ RIN 0970-AD02 Notice of Proposed Rulemaking: Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)

To Whom This May Concern:

The New York State Office of Children and Family Services (NYS OCFS) is pleased to submit the following comments in response to the above-referenced Notice of Proposed Rulemaking (NPRM) that was published in the Federal Register, 88 FR 45022, on July 13th, 2023. NYS OCFS believes that many of the proposals in this NPRM align with current New York State child care initiatives that will improve child care assistance services for children and families in New York state.

Since the inception of the Child Care Development Fund (CCDF) authorized through the Child Care and Development Block Grant Act of 1990 and the most recent reauthorization of 2014, NYS OCFS has worked with our federal partners at the Office of Child Care to support the CCDF goals of providing financial child care assistance, ensuring the health and safety of children, and promoting quality improvement activities. Many of the proposed changes found in the current NPRM align with New York State's 2023-2024 enacted budget which included expanding eligibility for child care assistance by raising the income limit to the maximum allowed by federal law, authorizing districts to use presumptive eligibility to provide child care assistance, mandating that the Child Care Assistance Program (CCAP) pay for 80 absences per child per year, and capping family co-payments at one percent of family income above the federal poverty level.

Regarding the proposed copayment threshold of no more than 7% of a family's income detailed in the NPRM [p. 45027, 1st column; § 98.45(b)(5)], NYS OCFS supports this proposal as it aligns with OCFS' plan to reduce family copayments to 1% percent of family income above the poverty level. Given that the 1% threshold that NYS OCFS is already implementing represents a lower dollar amount than the proposed 7% of gross income, NYS OCFS is fully prepared to meet this standard. As NYS OCFS prepares to raise the income eligibility limit for families to 85% of state median income, it is imperative that we also lower the copayment percentage so that families do not find themselves eligible for child care assistance but unable to afford a prohibitively high

copayment. High copayments may prevent families from completing the application process or even applying for child care assistance.

NYS OCFS also appreciates the proposal to allow lead agencies discretion to waive copayments for additional populations as proposed in the NPRM [p. 45052, first column; § 98.45(l)(4)]. NYS OCFS currently waives co-payments for families receiving Temporary Assistance, foster families caring for children in foster care, families experiencing homelessness, families with children receiving protective or preventive services and certain other families. This additional flexibility will allow states to determine which populations are most in need of relief from copayments and to enact such exemptions in accordance with a state's available level of funding.

NYS OCFS supports expanding consumer education efforts as included in the NPRM [p. 45051, second column; §98.33(a)(4)-(8)]. This includes the enhanced requirements related to informing the public regarding eligibility levels and co-payment policies. The NYS OCFS website currently displays eligibility levels and lists every local district's child care plan, which clearly states the copayment level in that district.

A major component of the NPRM relates to payment rates and practices [p. 45052, first column; § 98.45(m)(1)]. The prevailing practice in New York State for private pay families is to pay the provider in advance of services being provided to the child, generally on a weekly basis. Private pay families are routinely required to pay based on enrollment rather than attendance. Private pay families are also often required to pay for program closures for holidays and other program closures. Under the NPRM, child care assistance payments would also be made prospectively. NYS OCFS supports this change to the regulations. However, CCAP in New York does not currently pay prospectively, and this would represent a major shift in practice. As such, substantial changes would be needed to our payment systems, and sufficient time and resources would be needed to implement any requirement to pay prospectively.

Another proposed change in payment practices would delink provider payments from a child's occasional absence and require payment for enrollment rather than attendance [p. 45052, first column; § 98.45(m)(2)]. NYS OCFS understands and agrees that this methodology ensures greater stability for child care providers. Although NYS OCFS does not currently pay providers based on enrollment, we do require payment to providers even when there has been more than an occasional absence. The current standard is for payment for a minimum of 24 absences per child, per year, per provider. Importantly, as part of the 2023-2024 enacted budget, this figure will increase to 80 absences per child, per year, per provider. We request clarification in the final rule as to whether NYS OCFS' absence payment practices are sufficient to meet the standard proposed in this NPRM.

An additional proposed change under payment rates and practices (p. 45051, second column, §98.30) would require states to contract to build supply for families requiring care for non-traditional hours, infants and toddlers, and children with disabilities. Although NYS OCFS does not currently contract with providers for slots, we recognize the benefits of contracting in terms of provider stability and building supply for certain populations. For NYS OCFS to undertake this practice, significant regulatory and system changes would be required, and NYS OCFS would

need to carefully evaluate how the introduction of contracts intersects with our existing measures in place to ensure parental choice. Given the breadth of the changes, NYS OCFS would require significant additional time to implement this requirement.

Lastly, regarding payment rates and practices (p.45052, first column, 98.45(g)), the NPRM encourages states to pay the full market rate even if that rate is higher than the provider charges private pay families. This would require a significant change in practice in terms of how NYS establishes and implements the existing market rate structure. NYS OCFS is aware that providers often charge less than the actual cost of care to maintain enrollment but does not have policies in place that allow for payment of the full market rate in situations where the private pay rate is lower. As a state, New York would be interested in exploring this practice in the future and believes that the clarification that states can pay a subsidy rate higher than a private pay rate would be foundational to making this sort of change.

NYS OCFS recognizes the importance of ensuring easier and faster program enrollment as outlined in the NPRM. As such, NYS OCFS supports the proposal of a three-month presumptive eligibility period. [p. 45050, third column; § 98.21(a)(5)(iv) and § 98.21(e)-(g)] As we understand the proposal, the applicant would initially be eligible based on minimal documentation or through qualifying for other benefits programs and would then have three months to submit required eligibility documentation while receiving child care assistance from the date of application. NYS OCFS agrees that three months is an adequate amount of time to allow a family to gather the necessary documentation. The proposed rule provides that a longer period may be required during times of natural disasters or other extenuating circumstances and NYS OCFS believes that flexibility as it applies to emergency situations might be beneficial to states. The NPRM also proposes a requirement that led agencies have an online application available for applicants [p. 45051, first column § 98.21(f)]. NYS OCFS believes such changes will increase the number of applicants to the program and make it more likely that applicants make it through the process to eligibility determination.

As noted in the NPRM [p. 45026, first column; p. 45041, first column], some of the proposed changes will require action on the part of state legislatures before implementation and revision of state regulations to fully comply with the content of the final rulemaking. NYS OCFS estimates that implementation of certain changes, specifically the proposal on paying prospectively and paying for contracted slots would necessitate state statutory changes requiring extensive lead time well beyond the 60 days suggested by the NPRM.

While NYS OCFS agrees with the Office of Child Care on the potential benefits for families in implementing the provisions contained in the NPRM, it is difficult for NYS OCFS to project cost estimates for each of the provisions. This concern was also expressed in the NPRM [p. 45040, second column; p. 45044, third column; p. 45047, third column]. NYS OCFS recognizes the importance of the overarching goals of the NPRM and supports these changes as necessary for the families in New York and across the country, especially reducing costs for families, improving payment rates and practices, and ensuring easier and faster program enrollment.

NYS OCFS appreciates the opportunity to provide feedback on proposed changes to the federal child care assistance program and shares the commitment of promoting healthy, safe, accessible, and high-quality child-care programs for families. Should you have any questions or need further clarification of our comments, we would be pleased to provide additional information.

Sincerely,

A handwritten signature in cursive script, reading "Suzanne Miles-Gustave", written in black ink. The signature is positioned above a horizontal line that extends across the width of the signature.

Suzanne Miles-Gustave, Esq.
Acting Commissioner