

DSS

Serving Children and Families

LILLIAN B. KOLLER, J.D.
STATE DIRECTOR

NIKKI R. HALEY
GOVERNOR

August 5, 2013

Ms. Cheryl Vincent
Administration for Children and Families
Office of Child Care
370 L'Enfant Promenade S.W.
Washington, DC 20024

Dear Ms. Cheryl Vincent:

On behalf of the South Carolina Department of Social Services (DSS), I would like to respectfully submit comments regarding the Proposed Rule or Notice for Proposed Rulemaking (NPRM) on the Child Care and Development Fund Program (CCDF, ACF-2013-0001) released on May 20, 2013, by the U.S. Department of Health and Human Services (HHS) through the Administration for Children and Families (ACF).

The health and safety of children in South Carolina is of paramount importance to our State. At the direction of Governor Nikki R. Haley, DSS has established the Division of Early Care and Education, to promote child safety, encourage quality child care, and ensure that child care providers have the skills to nurture and teach the children they care for each day.

Although the proposed regulations clearly seek to improve child development, child well-being, and therefore school readiness, they cannot be implemented without incurring significant costs, not all of which are financial. Therefore, we disagree with the ACF proposed regulations for the reasons outlined below:

- The mandates included in the proposed regulations have not undergone congressional review. In the NPRM, HHS states that "this regulation is not a major rule as defined in 5 U.S.C. Chapter 8". In fact, the regulations appear to go far beyond existing law. South Carolina is a strong proponent of the democratic process, transparent government, and accountability, and we believe that these issues should be debated in Congress to obtain critical state input. Once the foundational laws are in place, regulations should be written that mirror congressional intent. These regulations would reverse that process.
- Implementation of programs like CCDF can only be successful when a federal-state partnership exists. When federal regulations or administrative policies require revision, it is essential that state administrators be at the table. States could provide advice and guidance to federal staff and help them avoid the unintended consequences that are inherent in this proposed rule.

Yet states not only had no input, state administrators had no advance notice that the regulations were being released for comment. In the same way that states are accountable to the federal government, the federal government should work collaboratively with the states.

- Although CCDF is a block grant, which should ensure that states have great flexibility in designing programs that meet the needs of their differing populations, the proposed rule offers a “cookie-cutter” approach which seriously limits state flexibility. An example of this is the requirement for states to implement a 12-month eligibility period. Although South Carolina has chosen to implement a 12-month eligibility period, we reserve the right to make these decisions based on the success of our established policies. Since states are mandated to be accountable for the accuracy of subsidy payments, a process with which we agree, states should have broad autonomy in program design, with the expectation that we will meet federal accountability standards.
- A number of the requirements in the proposed rule will be very costly to states and clearly represent unfunded mandates. It would cost South Carolina millions of dollars to implement the proposed regulations in their entirety. For example, if South Carolina was required to implement grants and contracts in rural areas of the State, as included in the NPRM, we would have to spend a minimum of \$2,000,000 to implement the provision. It would cost an additional \$300,916 to monitor Family, Friend and Neighbor providers, and \$696,879 to ensure that fire and health inspections were performed on exempt and Family Friend and Neighbor providers. There are many other provisions which would also be costly. Yet the NPRM indicates that the total cost for all states would not exceed the \$100 million threshold established in “section 202 of the Unfunded Mandates Reform Act of 1995”. Based on our assessment of the implementation costs, we strongly disagree with the ACF approach.
- The proposed rule would have a significant impact on the child care provider community. As an example, the costs for training would likely be passed on to providers, who, in this economy, can ill afford the rise in their overhead costs. In South Carolina, the majority of licensed centers are enrolled in the State subsidy program and corresponding Quality Rating and Improvement System (QRIS), so additional costs could also have a significant impact on the resources available to all families seeking child care. Providers could be forced to reduce or eliminate their services altogether because of the unintended consequences of the proposed regulations. Working parents must have reliable child care in order to work and contribute to the state and national economies, rather than relying on public welfare programs.
- State lawmakers are responsible for the establishment of laws and regulations related to state licensing requirements, which should remain outside the scope of federal regulation. The NPRM mandates that states provide a detailed description of licensing requirements, any exemptions to the requirements, and a rationale for such exemptions. State agencies should be able to enforce the decisions of their policymakers and without federal intervention.

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- CCDF funding is limited, and should therefore be passed through to states to serve children and families rather than be retained at the federal level, unless absolutely necessary. Although states have recently experienced a serious reduction in funding due to sequestration cuts, ACF is seeking to effectively double the amount of money awarded to them for technical assistance services to states. The NPRM indicates that the Secretary can withhold $\frac{1}{2}$ of one percent for the provision of technical assistance, whereas they currently receive $\frac{1}{4}$ of one percent. South Carolina opposes this federal increase, and would add that federal technical assistance plans should be based on formal state surveys, and that ACF should provide a yearly report to the states detailing how they allocated the technical assistance dollars based on state-identified priorities.
- The Improper Payment Rate should be established by Congress, not by the Secretary of HHS as provided for in the proposed rule. This, too, should undergo regular congressional review and approval so that states can be assured that the rates are data-driven and are not changed without notice.

South Carolina asks that ACF withdraw the NPRM. It constitutes an unfunded mandate which will be costly to states and seriously limit state flexibility. Our State would welcome a partnership with ACF which involves actively including state administrators at the table in the development of reasonable requirements that don't result in negative unintended consequences for children, families, and providers.

We appreciate the opportunity to provide comments on the proposed regulations. Please direct questions to Ms. Leigh Bolick, Director, Division of Early Care and Education, at 803-898-7134 or leigh.bolick@dss.sc.gov.

Sincerely,



Lillian B. Koller, J.D.
State Director



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