EducationCounsel
Policy | Strategy | Law | Advocacy

Unpacking the Child Care and Development Fund Notice of Proposed Rule Making

EducationCounsel | **January 15, 2026**

On January 5, 2026, the U.S. Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking (NPRM) entitled Restoring Flexibility in the Child Care and Development Fund (CCDF). The proposed rule would rescind four requirements for Child Care and Development Fund (CCDF) Lead Agencies[1] that were previously added in the 2024 rule during the Biden Administration:

- Limiting family co-payments for child care subsidies to no more than 7% of household income;
- Using grants and contracts to build child care supply for underserved populations, including infants and toddlers, children with disabilities, and underserved geographic areas;
- Paying child care providers prospectively to conform with generally accepted payment practices;
- Paying based on enrollment rather than attendance, which helps to address fixed costs.

HHS also notes in its proposed rule that, although these policies would no longer be requirements, states may continue to implement them as they are still allowable under the Child Care and Development Block Grant (CCDBG) Act. Specifically, the NPRM states that "Lead Agencies would continue to have the flexibility to implement the policies required by the 2024 rule, but HHS would no longer require implementation of the rescinded requirements." In the most recent state plan, Lead Agencies were required to indicate how they would implement these new requirements. Many were in the process of implementing policy changes. When ACF approved the 2025-2027 state plans, the agency provided many states with two year waivers to address technology and legislative changes necessary for implementation.

The NPRM frames these changes as offering states more flexibility in how they choose to implement requirements of the CCDBG Act and reducing state burden to implement the 2024 requirements. The Administration's public communication about the NPRM, however, has focused on preventing fraud. Given that this is just the first step in the rule making process, the Administration may ultimately issue different policy requirements and flexibilities in the final rule.

The four provisions that the NPRM proposes rescinding are discussed in detail below, including reasons why states should strongly consider implementing these policies even if HHS does rescind them as requirements. Following the four provisions, we provide an overview of the 2024 rule's provisions that the NPRM does *not* seek to rescind and conclude with some implications of the proposed rule for CCDF Lead Agencies.

---

[1] The CCDF Lead Agency is the entity within the state, tribal, or territory government responsible for implementing and overseeing the child care subsidy program and quality funds.

1. NPRM Would Repeal the 7% Cap on Family Co-Payments for Child Care Subsidies.

The CCDBG Act requires a sliding fee scale and that co-payments cannot be a barrier to a child participating in child care subsidy. The state payment to the provider plus the family co-payment constitute the total provider payment. The 2024 rule required states to set co-payments at no more than 7% of family income and publish the sliding fee scale online.

The 7% cap was intended to respond to the fact that low-income families spend a much larger share of their income on child care as compared to higher income families—averaging one-third of their pay. Between 2005 and 2021, CCDF co-payments rose faster than inflation, increasing by an average of 18% after adjusting for inflation. Too often, families that most need subsidies cannot afford to participate due to the co-payment.

When HHS published the 2024 rule, the department cited Federal data showing that in 11 states, co-payments amounted to more than 7% of family income. In 20 states, policies allowed at least some families to pay even more—sometimes as much as 27% of their income. And in 16 states, there were no clear limits on how much families can be required to pay.

The new NPRM proposes to remove the 7% federal cap on the co-payment, allowing states to set co-payments. However, it notes that states must still ensure that co-payments are not a barrier to subsidy participation, as required by the CCDBG Act. The NPRM also indicates that states should decide the balance between reducing co-payments and serving more families with high co-payments.

2. NPRM Would Remove the Requirement for States to Provide Some Child Care Services through Contracts and Grants.

Most families participating in the child care subsidy system receive a voucher and then find a child care provider that is participating in the subsidy program. The CCDBG Act requires that parents are offered either a voucher or a contracted slot. The Act further requires that states take steps to improve the supply and quality of child care for infants and toddlers, children with disabilities, children in underserved areas, and children that need child care during non-traditional hours.

The 2024 rule required states to provide some child care through grants and contracts for children with disabilities, infants and toddlers, and families in underserved geographic areas to fulfill the statutory requirement that parents are offered a voucher or contracted slot and to build child care supply for underserved communities. The NPRM removes this requirement, but notes that "this proposed rescission would not impact a Lead Agency's ability to choose to use grants and contracts to provide direct services." The NPRM indicates that the change is designed to increase parent choice in the child care subsidy program.

Child care deserts are a pervasive problem across the U.S., particularly in rural areas and low-income communities. Supply issues limit parent choice, often leaving parents with limited options especially after considering location and operating hours that align with their work hours. A recent analysis found that there are 4.2 million children who potentially need child care without access to a formal slot. Directly funding child care providers through grants and contracts builds child care supply, offering parents more options while also retaining the ability to use a voucher if they prefer a different provider.

Child care options are even more scarce for infants and toddlers, children with disabilities, and families in rural areas. States can award grants and contracts to a range of child care providers, including home-based and faith-based child care providers.

Despite a statutory requirement to offer families the option of a voucher or contracted slots, HHS reported in the 2024 rule that only 10 states and territories offered slots through a contract or grant when the 2024 rule was published. A survey of Virginia providers who do not participate in the child care subsidy program found that over one-third would consider participating if offered a grant or contract. A NAEYC survey found that 80% of providers would apply for a grant or contract to serve infants and toddlers or children with disabilities, or offer child care in underserved geographic areas. An evaluation of grants and contracts in Pennsylvania found that they led to increased provider stability and improved quality as compared to vouchers.

3. NPRM Would Rescind the Requirement to Pay Child Care Providers Prospectively to Align with General Payment Practices.

The CCDBG Act requires that child care providers are paid for children participating in the subsidy program in the same way as they are paid for children who are not receiving subsidies. In the 2024 rule, HHS made the argument that most child care providers require that families pay for child care at the beginning of the service period, rather than after services are rendered. Thus, the final rule required that child care providers participating in the subsidy program are paid at the beginning of the service period.

Lead Agency payment practices are an important aspect of ensuring families participating in CCDF have equal access to care as private pay families. Payment practices also support the ability of providers to participate in CCDF so that parents have a choice in affordable child care options for their children. For example, the aforementioned NAEYC survey to inform comments on the 2024 rule indicated that nearly three quarters said they would be more likely to participate if they received timely payments.

HHS proposes rescinding this requirement in favor of greater state flexibility. Although HHS proposes rescinding this approach as a CCDF requirement, the NPRM notes once again that “the proposed changes would not impact a Lead Agency’s ability to choose to pay providers prospectively, and Lead Agencies that currently pay providers in advance of delivering child care services may continue to do so.” Furthermore, the NPRM acknowledges the value of timely payments, noting that child care providers have indicated that they choose not to participate in the child care subsidy program or limit the number of children receiving subsidies that they will serve due to delays in payments, which impacts parent choice. In the NPRM, HHS also requests comments on whether the final rule should include a deadline of 7 or 14 days for state payments (following receipt of an invoice). The Administration notes the need to balance state flexibility with provider stability, which contributes to the range of child care providers accepting subsidy payments and the choices available to participating parents.

4. NPRM Would Change the Requirement to Reflect Fixed Costs in Payment Rates.

The CCDBG Act requires states to set policies that help providers cover their fixed costs, including by delinking provider payments from a child’s occasional absences, such as those due to holidays or illnesses. The NPRM proposes to remove the requirement to pay providers based on enrollment and revert to a previous CCDF policy that offers states the option of paying based on enrollment, paying the full amount provided that the child is present 85% of the time, providing the full payment provided the child is absent no more than 5 days in a month, or an alternative approach articulated in the state plan.

Most provider operating costs are fixed, meaning that they do not fluctuate based on whether a child attends on a particular day. For example, payroll, facilities costs, insurance, and equipment costs are constant regardless of an occasional absence. When a provider is not paid for absences, it essentially amounts to a pay cut and can be challenging to manage. Paying based on attendance departs from how child care providers charge private paying families, which generally require payment regardless of whether or not the child attends on a given day.

Policies that improve timely and fair payments provide stable funding, which encourages more providers to participate in subsidy programs and enhances parent choice. Like paying prospectively, paying based on enrollment supports financial stability for providers and allows more to participate in subsidy, thereby increasing parent choice. The NAEYC survey found that 80% of child care providers would be more likely to participate in the subsidy program if payments were based on enrollment. At the time that HHS published the 2024 rule, the department estimated that the requirements to pay based on time and based on enrollment would increase payment for 150,000 child care providers.

The NPRM indicates that the Administration proposes to rescind this requirement primarily due to the cost, which is $16.5 million annually and the desire to provide more state flexibility in how they account for providers' fixed costs in their payment policies. The cost represents savings to the state from reductions in payments to providers. The NPRM acknowledges the value of policies to pay based on enrollment rather than attendance, stating that "HHS believes that delinking payments is important to support providers' fixed costs of delivering child care services and to encourage providers' participation in CCDF." The NPRM further explains that paying for absences improves financial stability for child care providers, which may lead to higher provider participation rates in subsidy programs and more choices for parents. The NPRM requests public comment on whether the final rule should amend the state options for addressing fixed costs by lowering the threshold for a full payment to 75% attendance or allow for up to 10 absent days per month. As with the other proposed rescissions, the NPRM also acknowledges that states can continue to pay based on enrollment, stating that "Lead Agencies that currently pay providers based on enrollment may continue to do so."

ACF also released a press statement indicating that removing the requirement to pay based on attendance rather than enrollment would address concerns about fraud. However, the NPRM does not propose any changes to longstanding requirements that states investigate and recover fraudulent payments and have processes in place to identify fraud or program violations by reviewing attendance and billing records, record matching, quality control reviews, and staff training. States can continue to pay based on enrollment to avoid destabilizing providers and creating a disincentive to accept child care subsidies while also having strong program integrity and oversight mechanisms in place to prevent fraud.

Regulatory Provisions Retained

The NPRM proposes to retain some of the provisions in the 2024 rule, especially those that create additional options for states and does not impose new requirements in this phase of the rule making process.

- **Waiving co-payments:** Notably, the NPRM does not propose to rescind provisions of the 2024 rule that allow how states can choose to eliminate co-pays for families with an income below 150% of the poverty level (i.e., below about $40,000 for a family of three), a child with a disability, a child enrolled in Head Start or Early Head Start, a child in foster care, or other criteria established by the state.
- **Online applications and transparency:** The NPRM retains several provisions to make the subsidy system more consumer friendly and transparent for families, including an encouragement to create online applications for the subsidy and to post the sliding scale fee online and policies for waiving co-payments.
- **Making it easier for families to apply for subsidy:** The 2024 rule required states to minimize disruptions to parent employment, education, and job training through streamlined eligibility and enrollment processes. The Administration does not propose to remove changes from the 2024 rule designed to cut red tape and make it easier for families to enroll in the child care subsidy program. These provisions include encouraging presumptive eligibility so that families can start to receive child care subsidies while awaiting final eligibility verification, encouraging states to use a family's enrollment in other public benefit programs to confer child care subsidy eligibility, and allowing states to align eligibility redetermination periods when a new sibling is added.
- **Option to pay providers the full rate:** The NPRM also retains a provision in the 2024 rule designed to support the financial stability of child care providers and parent choice. This provision affirmed that states could pay providers the full subsidy rate to account for the actual cost of care, rather than private tuition rates that are often constrained by families' ability to pay higher prices.
- **Tribal flexibility:** The 2024 rule did not apply most requirements to Tribes and deferred instead to Tribal Lead Agencies. The NPRM retains the provision that exempts Tribes from having a sliding scale fee and allows them to determine appropriate family payments for their communities. While the NPRM notes the requirement for Tribal consultation when rulemaking impacts Tribes, it does not indicate it will engage in such consultation. Instead, the Administration states it will notify Tribes of the ability to submit public comments.

Implications for Lead Agencies

The NPRM is just a proposal and does not make changes to CCDF regulations at this time. HHS is accepting public comments through 2/4/26 and will issue a final rule that responds to public comment, which will become effective 60 days after publication.

- Lead Agencies and other stakeholders may submit comments on how the proposed changes will impact child care in their state, especially implications for families and providers participating in the child care subsidy program.

- As stated multiple times in the NPRM, the rescission of certain federal requirements does not impact a state's ability to continue to implement the policies in the 2024 rule. States can continue their implementation process to pursue goals related to child care affordability, parent choice, and provider stability.
- States that wish to change their state plan based on the NPRM should wait until a final rule becomes effective and then amend their state plan after undergoing a process for public input.
- For Tribal Lead Agencies, there are few practical implications of this NPRM because the 2024 rule exempted Tribes from most of the new requirements. The NPRM proposes that medium and large Tribes would no longer be required to limit co-payments to 7% of income, and can set co-payments at their discretion within CCDF requirements to ensure that costs are not a barrier to participation in subsidy.