



## **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

### **Administration for Children and Families**

#### **45 CFR Part 1302**

#### **RIN 0970-AC63**

### **Secretarial Determination to Lower Head Start Center-Based Service Duration Requirements**

**AGENCY:** Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notification; Head Start center-based service duration requirements.

**SUMMARY:** The Secretary of Health and Human Services has the authority, on or before February 1, 2020, to lower the percentage of center-based funded enrollment slots for which Head Start programs must provide 1,020 annual hours of planned class operations, based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment. The Secretary hereby gives notice of his exercise of that authority to reduce the percentage from 100 percent (all) of a Head Start program's center-based slots, to 45 percent of a Head Start program's center-based slots.

**DATES:** This action is effective [insert date of publication in the Federal Register].

**ADDRESSES:** Office of Head Start, Mary Switzer Bldg., 330 C Street, SW, Washington DC 20201.

**FOR FURTHER INFORMATION CONTACT:** Colleen Rathgeb, Division Director for Planning, Oversight and Policy, Office of Head Start, OHS\_duration@acf.hhs.gov, (202) 358-3263 (not a toll-free call). Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

**Head Start Duration Requirements**

The Office of Head Start (OHS) has long established performance requirements for Head Start programs in regulation, including duration requirements. For more than two decades, Head Start programs have been required to meet a minimum service duration of 3.5 hours per day, 4 days per week, for 128 days per year for center-based funded slots.<sup>1</sup> 45 CFR 1302.21(c)(2)(i). However, in September 2016, OHS revised the regulations governing the Head Start program, known as the Head Start Program Performance Standards. *See* 81 FR 61293 (Sept. 6, 2016). Those standards required Head Start programs<sup>2</sup> to provide,

- (1) By August 1, 2019, 1,020 annual hours of planned class operations over the course of at least eight months per year for at least 50 percent of its Head Start center-based funded enrollment; and

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<sup>1</sup> “Center-based slots” refers to Head Start-funded slots.

<sup>2</sup> In this notice, “Head Start” refers to programing services to preschool-age children, and does not refer to Early Head Start services.

(2) By August 1, 2021, a program must provide 1,020 annual hours of planned class operations over the course of at least eight months per year for all of its Head Start center-based funded enrollment. *See* 45CFR 1302.21(c)(2).

Under the new regulations, this requirement is a minimum; programs can choose to operate some or all slots at a greater number of annual hours. The 1,020 hours requirement represents an increase from the existing minimum requirement of 3.5 hours per day, 4 days per week, for 128 days per year, which is equivalent to 448 annual hours. The regulation, however, authorized the Secretary to reduce those requirements, by February 1, 2018 and February 1, 2020, respectively, based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment. *See* 45 CFR 1302.21(c)(3).

As noted, the 100 percent service duration standard is one of two requirements OHS included in the performance standards to phase-in full day, full school year services for all Head Start center-based slots over five years. OHS based its decision to require Head Start programs to provide 1,020 annual hours of service to all center-based slots, by August 1, 2021, on a body of research that suggests children in poverty benefit from longer exposure to high-quality early learning programs than what is provided by part-day and/or part-year programs. Research on full-day programs, instructional time, summer learning loss, and attendance all indicate longer service duration is linked with improved child outcomes<sup>3</sup> and increased parental workforce

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<sup>3</sup> *Advisory Committee on Head Start Research and Evaluation: Final Report*. (2012). Washington, DC: Office of Head Start, Administration for Children and Families, U.S. Department of Health and Human Services.; Li, W. (2012). *Effects of Head Start hours on children's cognitive, pre-academic, and behavioral outcomes: An instrumental variable analysis*. Presented at Fall 2012 Conference of the Association for Public Policy Analysis and Management.; Robin, K. B., Frede, E. C., Barnett, W. S. (2006.) *NIEER Working Paper - Is More Better? The Effects of Full-Day vs Half-Day Preschool on Early School Achievement*. NIEER.; Walston, J.T., and West, J. (2004). *Full-day and Half-day Kindergarten in the United States: Findings from the Early Childhood Longitudinal Study, Kindergarten Class of 1998–99 (NCES 2004–078)*. U.S. Department of Education, National

participation.<sup>4</sup> Moreover, increased service duration allows teachers more time to provide individualized and content-rich learning that is important for positive child outcomes, and also better supports working families who need a safe, nurturing care environment for their children during the day.

### **The January 2018 Notice**

On January 19, 2018, the Secretary issued a document, under 45 CFR 1302.(c)(3)(i), reducing to zero the percent of Head Start center-based slots required to provide 1,020 annual hours of service by August 1, 2019. *See* 83 FR 2743 (Jan. 19, 2018). As explained at the time, the decision was made due to insufficient funding to support the implementation of the 50 percent service duration requirement without significant slot loss.

### **The March 2019 Notice of Proposed Rulemaking**

OHS has also revisited the merits of the 100 percent service duration standard and became concerned that this requirement may be too prescriptive to afford programs flexibility to design and operate service models that best meet the needs of the families they serve, especially in light of insufficient federal appropriations for all programs to meet this requirement. Although research points to the benefits of increased service duration for an individual child and family, research cannot answer whether the population as a whole benefits more when fewer children are served for a longer period of time in high-quality early education programs as compared to more

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Center for Education Statistics. Washington, DC: U.S. Government Printing Office.; Wasik, B. & Snell, E. (2015). *Synthesis of Preschool Dosage: Unpacking How Quantity, Quality and Content Impacts Child Outcomes*. Temple University, Philadelphia, PA.

<sup>4</sup> Gibbs, C. R. (2014). A Matter of Time? Impact of Statewide Full-day Kindergarten Expansions on Later Academic Skills and Maternal Employment. *The Department of Labor 2013-2014 Scholars Program*, 2.; Morrissey, T. W. (2017). Child care and parent labor force participation: A review of the research literature. *Review of Economics of the Household*, 15(1), 1-24.

children being served for a shorter time in high-quality early education programs. Therefore, OHS issued a Notice of Proposed Rulemaking (NPRM) on March 26, 2019, that proposed to remove the 100 percent service duration standard. OHS issued the NPRM with the goals of reducing regulatory burden and restoring flexibility to Head Start grantees to design programs that best meet the needs of their local communities. The public comment period has since ended, and OHS is currently reviewing the comments and considering its next steps.

In the meantime, if the 100 percent service duration standard were to go into effect without additional funding from Congress to support it, Head Start programs would be required to decrease, significantly, the number of center-based slots available in Head Start programs because they would have to extend the number of hours for which they provide classroom services. The performance standards regulation authorizes the Secretary to lower this requirement by February 1, 2020, based on an assessment of available funding, to avoid significant slots loss in Head Start due to this requirement. As OHS considers the next steps for the overall policy direction on service duration, OHS needs to consider the impact that the 100 percent service duration standard would have on the number of children that each Head Start grantee services and address any significant slot loss in those Head Start programs.

### **Authority**

The requirements under 45 CFR 1302.21(c)(3)(ii) of the Head Start Program Performance Standards allows the Secretary to lower the 100 percent service duration requirement described in 45 CFR 1302.21(c)(2)(iv), on or before February 1, 2020, based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment in Head Start. That section provides, On or before February 1, 2020, the Secretary

may lower the required percentage described in paragraph (c)(2)(iv) of this section [establishing the 100 percent service duration requirement], based on an assessment of the availability of sufficient funding to mitigate a substantial reduction in funded enrollment. 45 CFR 1302.21(c)(3)(ii).

In the January 2018 Federal Register document, HHS and OHS removed the parallel provision that required at least 50 percent of a Head Start program's center-based slots provide 1,020 hours of classroom operations per year – meaning that Head Start grantees did not have to significantly reduce slots in order to meet this requirement.

### **Funding Assessment**

Based on the information and the Head Start program assessment provided to him, the Secretary concludes that Head Start appropriations are not sufficient to allow the requirement at 45 CFR 1302.21(c)(2)(iv), for 100 percent of each Head Start program's center-based slots to operate for 1,020 annual hours, to go into effect without resulting in a substantial reduction in Head Start center-based slots.

In fiscal year (FY) 2016, Congress appropriated \$294 million to support an increase in hours of program operations across Head Start and Early Head Start. At that time, the 100 percent service duration standard was not in effect. However, eligible programs that wished to voluntarily increase hours of program operations for their Head Start or Early Head Start center-based slots could submit an application to receive supplemental funds. Head Start programs operating less than 40 percent of their center-based slots for 1,020 hours were eligible to apply for funding. Due to the limited availability of funding, OHS used the 40 percent threshold to prioritize those Head Start programs operating the fewest full day, full school year slots and to

help ensure all Head Start programs had at least 40 percent of their slots operating at 1,020 annual hours. Over 600 Head Start programs were able to increase service duration for their center-based slots through this funding opportunity.

Subsequently, in FY 2018, Congress appropriated an additional \$260 million to further support an increase in hours of operation for Head Start programs. Head Start programs that operated less than 45 percent of their center-based slots at 1,020 hours, and wished to increase hours of program operation, were eligible to submit an application to receive funds. Over 500 programs were able to increase service duration for 45 percent of their Head Start center-based slots to 1,020 hours per year. Some eligible programs chose not to apply for one or both rounds of additional funding to support longer service duration.

OHS has conducted an assessment of available funding and the percentages of slots individual programs currently operate at 1,020 annual hours. Approximately 30 percent of Head Start center-based programs currently operate all of their slots for 1,020 hours or longer per year. Conversely, approximately 10 percent of Head Start center-based programs do not operate any of their slots for 1,020 hours per year. Approximately 78 percent of Head Start center-based programs operate at least 45 percent of their slots at 1,020 hours per year. Approximately 59 percent of Head Start center-based programs operate at least 50 percent of their slots at 1,020 hours per year.

Based on this assessment, ACF/OHS estimates that full implementation of the requirement at 45 CFR 1302.21(c)(2)(iv) for the remaining programs to operate 100 percent of their Head Start center-based slots for 1,020 annual hours would cost approximately \$730 million in additional funding. In the absence of additional appropriations to support longer

duration, Head Start programs would have to adjust (reduce) the number of slots available, in order to be able to operate the remaining slots at 1,020 hours per year. The requirement would result in a loss of approximately 73,800 Head Start slots, which represents roughly 11 percent of existing Head Start slots. This loss would constitute a substantial reduction in Head Start funded enrollment, and therefore makes lowering the 100 percent requirement necessary.

The FY 2020 President's Budget did not request an increase in appropriations to support longer service duration in Head Start. OHS does not expect sufficient funding to become available for Head Start programs to meet the Head Start Program Performance Standards 100 percent duration standard by August 2021. However, currently 78 percent of Head Start programs (1,050 programs) operate at least 45 percent of their center-based slots at 1,020 hours. In contrast, 410 Head Start programs operate less than 45 percent of their center-based slots at 1,020 hours. If OHS were to require all Head Start programs to operate at least 45 percent of their center-based slots at 1,020, OHS assumes that approximately 20 percent of all Head Start center-based programs (290 programs, or approximately 70 percent of Head Start programs that operate less than 45 percent of their center-based slots at 1,020 hours on an annual basis) would apply for and receive a waiver of this requirement.<sup>5</sup> This would leave 120 programs (representing 6,600 center-based slots) that would likely need to increase duration for some of their slots in order to meet a requirement to operation 45 percent of their center-based slots at 1,020 hours per year. OHS estimates that it would cost \$25.5 million for these programs to meet such a requirement; to meet the requirement, without an increase in funding, would require such

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<sup>5</sup> In order to receive a waiver of the 100 percent duration requirement, a program would have to demonstrate the their proposed program design effectively supports children's development and progress in early learning outcomes and better meets the needs of parents.

programs to decrease the number of center-based Head Start slots by less than 1 percent or approximately 2,600 Head Start slots.

OHS believes lowering the 1,020 annual hour requirement from 100 percent to 45 percent reflects prior Congressional appropriations because the most recent appropriations allowed programs to increase the percentage of slots that operate for 1,020 hours up to 45 percent. This will mitigate the chance of substantial slot loss that would likely occur under a 100 percent requirement.

Based on this assessment presented by OHS, the Secretary of Health and Human Services determines that there is insufficient funding for Head Start programs to implement a 100 percent service duration requirement of 1,020 hours per year, without a substantial reduction in funded enrollment. Accordingly, the Secretary exercises his authority to lower the required percentage from 100 percent to 45 percent, based on the assessment that there is sufficient Head Start funding available such that a requirement that 45% of center-funded slots operate at 1,020 hours per year would not result in a substantial reduction in funded enrollment. Accordingly, by this notice, HHS lowers the 100 percent duration requirement to 45 percent.

### **Conclusion**

In accordance with 45 CFR 1302.21(c)(3)(ii), the Secretary determines that there is not sufficient funding available to mitigate a substantial reduction in funded enrollment resulting from the requirement described in 45 CFR 1302.21(c)(2)(iv), that 100 percent of a Head Start program's center-based funded enrollment operate for 1,020 annual hours of planned classroom operations by August 1, 2021, and hereby lowers that percentage from 100 percent to 45 percent. This determination is effective immediately. Because the performance standards govern the

Secretary's discretion in this matter, and authorize the Secretary to take this action, no public comment process is required.

The service duration requirements for Head Start center-based programs described in 45 CFR 1302.21(c)(2)(i) and (ii) also remain in effect for those slots not operating at 1,020 annual hours. Under these requirements, a Head Start center-based program must provide, at a minimum, at least 160 days per year of planned class operations if it operates for five days per week, or at least 128 days per year if it operates four days per week. Classes must operate for a minimum of 3.5 hours per day. These requirements are minimums, and programs can choose to operate some slots longer each day and/or for more days per year. Additionally, the requirement that Early Head Start programs provide 1,380 annual hours of planned class operations for all center-based enrollment remains in effect.

Dated: December 19, 2019.

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Alex M. Azar II,

Secretary, Department of Health and Human Services.

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