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DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 98

RIN 0970-AD20

Restoring Flexibility in the Child Care and Development Fund (CCDF)

AGENCY: Office of Child Care (OCC), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule amends the Child Care and Development Fund (CCDF) regulations to reduce costs and burden for States and Territories administering the CCDF program. It rescinds the requirements to limit family co-payments to 7 percent of family income, to provide some direct services through grants or contracts, to pay providers prospectively, and to pay providers based on enrollment. A plain language summary of this final rule is posted at https://www.regulations.gov/document/ACF-2026-0001-0002.

DATES: *Effective:* [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Megan Campbell, Supervisory Child Care Program Specialist, Policy, Data, and Planning Division, Office of Child Care, Administration for Children and Families, Department of Health and Human Services, Washington, DC 202-690-6499 or *OCCPolicyInfo@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Statutory Authority

II. Background

III. Executive Summary

Effective Dates

Costs, benefits, and transfer impacts

Severability

IV. Development of Regulation

V. General Comments and Cross-Cutting Issues

VI. Section-by-Section Discussion of Comments and Regulatory Provisions

Subpart B—General Application Procedures

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

Subpart E—Program Operations (Child Care Services) Lead Agency and Provider Requirements

Subpart F—Use of Child Care and Development Funds

Subpart I—Indian Tribes

VII. Regulatory Process Matters

Paperwork Reduction Act

Executive Order 13132

Assessment of Federal Regulations and Policies on Families

VIII. Regulatory Impact Analysis

IX. Tribal Consultation Statement

I. Statutory Authority

This final rule is being issued under the authority granted to the Secretary of Health and Human Services by the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended (42 U.S.C. 9857, *et seq.*), and section 418 of the Social Security Act (42 U.S.C. 618).

II. Background

The CCDBG Act, hereafter referred to as the "Act" (42 U.S.C. 9857 *et seq.*), together with section 418 of the Social Security Act (42 U.S.C. 618), authorize the Child Care and Development Fund (CCDF), which is the primary federal funding source dedicated to supporting working families with low incomes to afford child care and to increase the quality of child care

for all children. CCDF funds child care services in the 50 States, the District of Columbia, 5 Territories, and 264 Tribal organizations. Federal Fiscal year (FFY) 2026 enacted CCDF funding is $12.381 billion awarded by formula to States, Territories, and Tribes. CCDF child care subsidies, primarily administered through vouchers, help working families with low incomes access child care that best meets their needs. In FFY 2023, the most recent year for which data is available, CCDF provided subsidies to more than 1.6 million children from 994,000 families each month.[1] CCDF also promotes the quality of child care for all children in care by requiring CCDF Lead Agencies to spend at least 12 percent of their CCDF funding each year on activities to improve child care quality. In FFY 2022, States spent $2.9 billion on activities to improve the quality of child care and an additional $477 million on improving the quality and supply of infant and toddler care.[2]

Congress last reauthorized the CCDBG Act in 2014 (P.L. 113-186), and HHS published regulations implementing the new provisions of the Act in September 2016 (81 FR 67438). The 2016 regulations built on the priorities Congress included in the 2014 reauthorization. In July 2023, HHS proposed changes to a limited number of provisions in the CCDF regulations (88 FR 45022). The changes were codified in a final rule published by HHS in March 2024 (89 FR 15366).

Since publication of the March 2024 final rule, 55 of 56 States and Territories have requested and received two-year transitional and legislative waivers because they all needed additional time to implement at least one of the new requirements. Several States and Territories have shared with HHS that some of the requirements added in the March 2024 final rule are more costly and difficult to implement than HHS had estimated. More recently, 19 States have requested new transitional and legislative waivers for two additional years to implement the

[1] https://acf.gov/occ/data/fy-2023-preliminary-data-table-1
[2] https://acf.gov/occ/data/ccdf-expenditures-overview-fy-2022-all-appropriation-years

changes because of the high cost and extensive systems changes necessary to come into compliance.

In addition, States have expressed concerns about the increased potential for fraudulent payments associated with the requirements added in the March 2024 final rule. This concern is magnified by the fact that CCDF funding has risen significantly in recent years, from $8.1 billion in FFY 2019 to $12.4 billion in FFY 2026. This 50 percent increase in funding warrants appropriate accountability measures, including the prevention of any fraudulent payments. The 2020 Government Accountability Office (GAO) report *Child Care and Development Fund: Office of Child Care Should Strengthen Its Oversight and Monitoring of Program-Integrity Risks* (GAO-20-227) identified program integrity risks for CCDF, including the need to fully assess fraud risks.[3] Every year, single audits identify findings for the CCDF program across the range of compliance requirements, including findings related to insufficient internal controls. To address increased focus on allegations of fraud, the President issued an Executive Order 14395 "Establishing the Task Force to Eliminate Fraud" to coordinate and accelerate a comprehensive national strategy to stop fraud, waste, and abuse within Federal benefit programs, including programs administered jointly with State, local, tribal, and territorial partners.[4]

In January 2026, HHS proposed to rescind the four most onerous requirements from the March 2024 final rule, including requirements to limit family co-payments to 7 percent of family income, to provide some direct services through grants or contracts, to pay child care providers prospectively, and to pay providers based on a child's authorized enrollment. This final rule codifies those recissions. These changes prioritize Lead Agency flexibility and align with the purposes of the Act. This final rule continues to allow States, Territories, and Tribes the option

[3] https://www.gao.gov/products/gao-20-227#summary_recommend
[4] https://www.federalregister.gov/documents/2026/03/19/2026-05497/establishing-the-task-force-to-eliminate-fraud

to implement these policies based on their own assessment of what works best for children, families, and child care providers in their communities and what best supports their ability to prevent fraud within the CCDF program.

By removing four overly prescriptive requirements, this final rule responds to Executive Order 14192, *Unleashing Prosperity through Deregulation* and restores State, Territory, and Tribal flexibility for designing and operating their CCDF programs as they deem most appropriate. Under this Executive Order, "It is the policy of the executive branch to be prudent and financially responsible in the expenditure of funds, from both public and private sources, and to alleviate unnecessary regulatory burdens placed on the American people."

The final rule also responds to Secretary Robert F. Kennedy Jr.'s directive to "launch the most sweeping deregulatory initiative in the history of the Department" of Health and Human Services by "eliminating bureaucratic red tape and "aggressively deregulating to return the freedoms eroded over decades by unnecessary and burdensome regulations." 90 FR 20394.

III. Executive Summary

This final rule rescinds four requirements added in the March 2024 final rule that are costly, burdensome, and overly prescriptive, especially compared to other block grant programs. As is standard with block grant programs, Lead Agencies continue to have the flexibility to implement the policies formerly required by the March 2024 final rule. All four rescissions apply to States and Territories. Only the repeal of the family co-payment limit applies to Tribal Lead Agencies, as Tribal Lead Agencies are already exempt from the requirements related to payment practices. Once this final rule takes effect, HHS will no longer require implementation of all rescinded requirements. Forthcoming guidance will outline the process HHS will follow to terminate existing transitional and legislative waivers for rescinded requirements.

• **Repeal the federally mandated cap on family co-payments at § 98.45(*l*)(3).** This final rule removes the mandatory 7 percent cap that was imposed in the March 2024 final rule, and reverts to the previous requirement that matches the statutory language that co-payments cannot be a barrier to families receiving child care assistance. This change restores Lead Agency flexibility to decide how best to balance the trade-offs between reducing child care costs for families participating in CCDF and serving additional families with higher co-payments. According to FFY 2025-2027 CCDF State and Territory Plan data, as of March 2026, 31 states, the District of Columbia, and 5 territories currently limit co-payments to 7 percent or less of family income. Under this final rule, Lead Agencies may continue to set family co-payments to align with community needs.

• **Repeal the requirement to use some grants or contracts for direct services at § 98.30(b)(1)**. The March 2024 final rule mandated States and Territories to use some grants or contracts to provide direct services for infants and toddlers, children with disabilities, and children in underserved geographic areas. This requirement is excessively prescriptive by mandating grants or contracts for particular populations and is difficult to implement. The stringent requirements mean that even some States that have a long history of using grants or contracts for direct services for the identified populations would have to make significant changes to meet the requirements of the March 2024 final rule. By repealing this requirement, HHS is ensuring that parents can use federal funding through vouchers or certificates to access the providers of their choice that will meet their unique needs.

• **Repeal the requirement to pay child care providers prospectively at § 98.45(m)(1)**. The March 2024 final rule required provider payment in advance of or at the beginning of the delivery of service (*i.e.*, prospectively) with limited exceptions. This final rule rescinds this requirement and reverts to the option established in the 2016 final rule for States and Territories to pay providers prospectively or on a reimbursement basis. This change increases Lead Agency flexibility to develop payment policies that they believe best support

program integrity and combat potential fraud in their CCDF programs. As required by the Act at Section 658E(c)(4)(B)(iv) (42 U.S.C. 9858c(c)(4)(B)(iv)), States and Territories must still ensure that child care providers are paid in a timely manner, which is critical for providers to participate in CCDF and increases the options available to parents.

• **Repeal the requirement to pay child care providers based on a child's enrollment rather than attendance at § 98.45(m)(2).** The March 2024 final rule required States and Territories, with limited exceptions, to pay providers based on a child's authorized enrollment. This policy, once fully implemented, was estimated to cost $16.5 million per year. With its repeal, States and Territories will have the opportunity to use more of their CCDF budget to provide direct services for eligible children. The change provides greater flexibility and multiple allowable options to meet the statutory requirement to delink provider payments from a child's occasional absences. States and Territories will also have increased flexibility to support program integrity and combat potential fraud in their CCDF programs.

Effective Dates.

This final rule will become effective 60 days from the date of its publication.

Costs, benefits, and transfer impacts.

By rescinding four of the mandatory provisions added by the March 2024 final rule, this final rule will prevent the occurrence of the estimated transfers and costs reported in the 2024 Regulatory Impact Analysis (RIA), with the exception of the anticipated economic impacts in the first year. 89 FR 15400-11.

Over a 5-year time horizon covering 2025 through 2029, HHS estimates annualized transfers of $23.4 million using a 3-percent discount rate and $22.8 using a 7-percent discount rate; and annualized costs of $6.7 million using a 3-percent discount rate and $6.6 million using a 7-percent discount rate. Negative costs represent cost savings and negative transfers represent a reversal of the direction of transfers compared to the 2024 RIA. Transfers represent a shift in

payments from one party to another but do not affect the total resources available to society. In this context, transfers under the March 2024 final rule represented a transfer of payments from parents and child care providers to Lead Agencies. By rescinding the policies from the March 2024 final rule, the transfers in this final rule now represent the transfer of payments from Lead Agencies to parents and child care providers.

To produce an estimate of cost savings under Executive Order 14192, HHS assumes the impacts of the proposed changes on costs in 2029 will extend in perpetuity. HHS estimates that this final rule will generate $6.1 million in annualized cost savings at a 7-percent discount rate, discounted relative to year 2024, in perpetuity.

Severability.

The provisions of this final rule are intended to be severable, such that, in the event a court were to invalidate any particular provision or deem it to be unenforceable, the remaining provisions would continue to be valid. The changes address a variety of issues relevant to child care. None of the provisions in the final rule contained herein are central to an overall intent of the final rule, nor are any provisions dependent on the validity of other, separate provisions.

IV. Development of Regulation

Since publication of the March 2024 final rule, several States and Territories have reiterated to HHS that some of the requirements added in the March 2024 final rule are more costly and difficult to implement than HHS had estimated. This feedback has been shared through State and Territory CCDF plan appendices, in-person meetings and focus groups with CCDF administrators, and technical assistance inquiries. The changes in this final rule are informed by these concerns and designed to provide CCDF Lead Agencies with additional flexibility in administering their CCDF program.

HHS published a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 5, 2026, (91 FR 207) proposing revisions to CCDF regulations. HHS provided a 30-day

comment period during which interested parties could submit comments in writing electronically through Regulations.gov or via e-mail to the Office of Child Care.

During the 30-day comment period, HHS received **1,244** comments from State human services and educational agencies; members of the U.S. Congress; national, State, and local early childhood and family-focused advocacy organizations, including research and policy organizations; labor unions; child care resource and referral agencies; and provider organizations. Child care providers, parents, and individual members of the public also submitted comments. Of the comments received, 1,138 were posted on www.regulations.gov and 106 were not posted because they contained inappropriate language or were not submitted in the English language. HHS also received several comments that are not addressed below because they were beyond the scope of the proposed regulatory changes or were vague or incomplete.

Of the 1,138 comments posted on www.regulations.gov, **998 comments** were unique and 246 comments were duplicate comments. Some national, State and local organizations and groups of child care providers coordinated to submit the same comment separately. Others submitted one comment signed by or on behalf of hundreds of individuals.

HHS received comments from seven State CCDF Lead Agencies: Georgia, Missouri, New Mexico, North Dakota, Ohio, Tennessee, and Texas. Individuals submitted 787 comments. Child care providers submitted 276 comments. Of the remaining comments, 57 comments came from national organizations, and 80 comments came from State and local organizations. HHS also received 3 comments from Congressional members or groups of members. A comment from Senator Jon Husted supported rescinding the requirement to pay providers based on enrollment. Comments from the Democratic Women’s Caucus and a bicameral group of 74 Democratic Senators and Representatives were in opposition to the proposed changes.

At the conclusion of the public comment period, HHS analyzed the content of the comments to inform the development of this final rule. To support the analysis of public

comments, HHS staff used a large language model, a type of artificial intelligence (AI), as a tool to conduct an initial scan of comment content, sentiment, and language. The AI output was thoroughly analyzed and refined by content experts. All comments were reviewed by content experts to determine each commenter's support or opposition towards the policies proposed in the NPRM.

Public comments reflected a range of perspectives, with commenters expressing support and opposition for the proposed rescissions. All comments were reviewed and informed the Department's consideration of the final rule.

Changes in this final rule affect the State, Territory, and Tribal agencies that administer the CCDF. HHS has and will continue to consult with State, Territory, and Tribal agencies and provide technical assistance throughout implementation.

This final rule maintains the structure and organization of the current CCDF regulations. The preamble in this final rule discusses the changes to current regulations. Where language of previous regulations remains unchanged, the preamble explanation and interpretation of that language published with all prior final rules are also retained, unless specifically modified in the preamble to this rule. (See 57 FR 34352, Aug. 4, 1992; 63 FR 39936, Jul. 24, 1998; 72 FR 27972, May 18, 2007; 72 FR 50889, Sep. 5, 2007; 81 FR 67438, Sept. 30, 2016; 89 FR 15366 March 1, 2024).

V. General Comments and Cross-Cutting Issues

This final rule includes substantive changes in four key policy areas in the CCDF regulations. HHS received and reviewed comments on all the significant proposed changes. Following review of all comments, HHS has maintained all proposed changes from the NPRM. Specific comments are discussed in the section-by-section analysis later in this final rule.

Most of the State commenters and organizations that represent State and local human services agencies expressed overall support for the proposed recissions, noting that the proposals

would remove costly requirements and increase flexibility for Lead Agencies. One State expressed overall opposition to the NPRM, and a different State did not express support or opposition but requested clarification about whether States would continue to have the option to implement the policies proposed for rescission.

The majority of unique public comments opposed the changes proposed in the NPRM. Commenters who opposed the NPRM argued that the changes may make child care more costly for families, noting the importance of ensuring co-payments are not a barrier to child care access. Commenters also opposed the NPRM because they argued that the proposed changes to provider payment practices may not be consistent with private pay practices which could potentially hurt child care provider operations and lead providers to stop participating in the CCDF program.

Commenters also noted that many States and Territories had already started making policy and systems changes to implement the requirements included in the March 2024 final rule, including making costly systems investments that may not be easily undone. These commenters expressed concerns that the time and funding used for these changes would be wasted if the proposed changes were finalized.

HHS acknowledges concerns raised by commenters who opposed the NPRM but moves forward with rescinding the four requirements as proposed. This final rule does not prohibit any State or Territory from implementing the four rescinded requirements. Lead Agencies that have already dedicated resources and made system changes to implement may continue to do so. The flexibility this final rule allows Lead Agencies to pause and reassess whether formerly required policies are the best way to meet the unique needs of the families, children, and providers in their State or Territory and not simply to meet federal requirements. HHS reiterates the importance for Lead Agency flexibility in developing CCDF policies that support child care affordability and provider payment practices that promote parental choice for CCDF-eligible families. HHS will continue its regular work of supporting CCDF Lead Agencies through guidance and

technical assistance in partnership with the CCDF-funded Child Care Technical Assistance Network.

VI. Section-by-Section Discussion of Comments and Regulatory Provisions

HHS received comments about changes proposed to specific subparts of the regulation. Below, HHS identifies each subpart, summarizes the comments, and responds to them accordingly.

Subpart B—General Application Procedures

§ 98.16 Plan Provisions

Supply of child care. The final rule amends § 98.16(x), removes paragraphs (y) and (z), and redesignates § 98.16(aa) through (*ll*) to (y) through (jj) to conform with the changes described below in §§ 98.30 and 98.50 removing the requirement to use some grants or contracts for direct child care services. The change to § 98.16(x) restores language from the 2016 final rule that the CCDF Plan must: Identify shortages in the supply of high-quality child care providers; list the data sources used to identify supply shortages; and describe the method of tracking progress to support equal access and parental choice.

The amended language at § 98.16(x) is based on statutory language at Section 658E(c)(2)(M) of the Act (42 U.S.C. 9858c(c)(2)(M)), which requires the Lead Agency to describe strategies to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours. As described in the Act, the strategies may include alternative payments rates to child care providers, the provision of direct contracts or grants to community-based organizations, offering child care certificates to parents, or other means determined by the Lead Agency. In addition to alternative payment rates and contracts, Lead

Agencies may consider other strategies, including training and technical assistance to child care providers to increase quality for these types of care.

Comment: HHS received comments supporting removal of the underlying requirement that Lead Agencies must use grants or contracts for some direct services. Commenters suggested options for descriptions and data points that should be required within the State and Territory CCDF Plans to demonstrate a Lead Agency's efforts to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities, and children who receive care during nontraditional hours, as required by the Act. Commenters also provided suggestions of data points that Lead Agencies should be required to provide in the CCDF Plan related to the supply of child care services for these specific populations of children.

Response: Prior to final publication of the CCDF Plan, draft versions of the document are published in the Federal Register with a request for public comment. Through those public comment periods, commenters can provide input on the draft Plan document, including any suggestions for additional information that should be collected from Lead Agencies.

Subpart D—Program Operations (Child Care Services) Parental Rights and Responsibilities

§ 98.30 Parental Choice

The final rule rescinds the requirement at § 98.30(b)(1) for States and Territories to provide some portion of the delivery of direct services via grants or contracts, including at a minimum for children in underserved geographic areas, infants and toddlers, and children with disabilities. This change restores State and Territory flexibility and does not impact a Lead Agency's ability to utilize grants or contracts for some direct child care services if they choose to do so. From the publication of the first CCDBG rules in 1992 until the March 2024 final rule, CCDF regulations provided for the option for Lead Agencies to provide some direct child care services through grants or contracts, while ensuring that all families must be offered the option to

receive a child care certificate. The March 2024 final rule placed new and difficult mandates on State and Territory Lead Agencies to establish grants or contracts for some direct services for particular populations. This final rule restores the flexibility for Lead Agencies that existed prior to the March 2024 final rule by removing the mandate for State and Territory Lead Agencies to provide at least some direct child care services through grants and contracts. The Act requires that a State or Territory CCDF Plan provide assurances that parents participating in CCDF be offered "the option either- to enroll such child with a child care provider that has a grant or contract for the provision of such services; or to receive a child care certificate." 42 U.S.C. 9858c(c)(2)(A)(i). If a Lead Agency chooses to utilize grants or contracts for some direct child care services, the Lead Agency must continue to offer all families the option to receive a child care certificate for all CCDF-eligible children.

Comment: Commenters supporting the proposed changes argued that the requirement for Lead Agencies to use some grants or contracts for direct services would negatively impact parental choice, noting that child care vouchers or certificates provide the greatest amount of flexibility for families to locate and enroll their child with a child care provider that aligns with their child and family's needs. Those opposing the proposed changes raised concerns that the recission of the requirement would limit parental choice to locate and enroll their child in a child care provider of their choosing due to child care supply constraints.

Response: HHS rescinds the requirement to use some grants or contracts for direct services for infants and toddlers, children with disabilities, and children in underserved geographic areas. Lead Agencies may continue, at their option, to contract for the provision of some direct child care services; however, parents must always be offered the option to receive CCDF child care through a child care certificate they can use for an eligible provider of their choosing. Parental choice is a central tenant of the Act and CCDF regulations. Within CCDF programs, the funding mechanism that allows the greatest degree of flexibility and parental choice is the use of child care vouchers or certificates. These certificates allow parents to select

from any child care provider that accepts the Lead Agency's vouchers or certificates, allowing families to choose from a wider range of child care providers than just those with which the Lead Agency may have direct service grants or contracts. It is important for parents, especially parents of children of the identified populations who may need specialized care, to have maximum flexibility to choose a provider that matches their unique needs and values.

Comment: Commenters also expressed support for the proposed rescission because the requirement to use some grants or contracts for direct services was overly prescriptive and difficult for States and Territories to implement.

Response: According to FFY 2025-2027 CCDF State and Territory Plan data, as of March 2026, only 7 States and 1 Territory have implemented grants or contracts for children with disabilities, 11 States and 1 Territory have implemented grants or contracts for infants and toddlers, and 10 States have implemented grants or contracts for children in underserved geographic regions. HHS is dedicated to ensuring maximum State flexibility in implementing CCDF, this final rule rescinds this burdensome requirement.

Comment: Those opposing the proposed changes raised concerns that the recission of the requirement to use some grants or contracts for direct child care services for children in underserved geographic areas, infants and toddlers, and children with disabilities would limit parental choice because there may be a lack of the type of child care they need in their area, particularly for children with disabilities or in rural areas. Commenters noted that grants or contracts for direct services can be a useful tool in addressing these supply gaps.

Response: This final rule does not prohibit a State or Territory's from providing direct child care services through grants or contracts if the Lead Agency finds this funding mechanism a useful tool to address supply gaps. However, the requirement for providing some grants or contracts for direct child care services has thus far shown to be an expensive and complicated

process for Lead Agencies to adopt, and inhibits their ability to provide direct child care services in the manner they determine to be best for their State or Territory's CCDF program.

Subpart E—Program Operations (Child Care Services) Lead Agency and Provider Requirements
§ 98.45 Equal Access

Demonstrating Affordable Co-Payments. The final rule makes a conforming change at § 98.45(b)(5) and removes the requirement for Lead Agencies to describe in their CCDF Plans how co-payments "do not exceed 7 percent of income for all families." Lead Agencies are still required to demonstrate in their CCDF Plan how their co-payments are based on a sliding fee scale and are not a barrier to families receiving CCDF assistance. The final rule conforming change aligns with the final rule rescission of the requirement at § 98.45(*l*)(3) to limit family co-payments to 7 percent of family income.

Comment: Commenters requested that States demonstrate that they considered the previous 7 percent benchmark or other regional economic data when establishing their sliding fee scales.

Response: CCDF regulations at § 98.45(*b*)(5) continue to require Lead Agencies to provide a summary of data and facts in their CCDF Plans describing how co-payments based on a sliding fee scale are affordable. The final rule restores flexibility to States to define affordability in a manner consistent with their State context, including using local or regional economic data to understand when co-payment amounts become barriers to families receiving CCDF assistance.

Family Co-payments. The final rule at § 98.45(*l*)(3) rescinds the requirement for States, Territories, and Tribes to establish co-payment policies for families that are "not to exceed 7 percent of income for all families, regardless of the number of children in care who may be receiving CCDF assistance." Section 658E(c)(5) of the Act requires Lead Agencies to establish and periodically revise a sliding fee scale that provides for cost sharing (i.e., co-payment) that is

"not a barrier to families receiving" CCDF assistance. 42 U.S.C. 9858c(c)(5). The Act does not specify what constitutes "a barrier." The final rule restores Lead Agency flexibility to decide how best to balance limited resources by having lower family co-payments and serving fewer families or having higher family co-payments and serving more families. According to FFY 2025-2027 CCDF State and Territory Plan data, as of March 2026, 37 Lead Agencies currently limit co-payments to 7 percent or less of a family's income. These Lead Agencies have the flexibility to continue their established co-payment policies.

Comment: Commenters who supported this proposal emphasized State flexibility in establishing co-payment policies and agreed that Congress provided more flexibility in the statutory co-payment requirement than allowed under the 7 percent cap.

Response: Section 658E(c)(5) of the Act provides Lead Agencies flexibility in defining what constitutes "a barrier to families." HHS has rescinded the requirement to cap family co-payments at 7 percent of a family's income.

Comment: Commenters who supported the recission noted that the 7 percent cap requirement posed fiscal and operational challenges for many States in absence of additional funding. Commenters also noted that repealing the federally mandated 7 percent cap would support the flexibility for States to manage their child care programs while adapting to changing budget limitations. Commenters also noted the implications of balancing affordable co-payments with available CCDF funding, especially given many States already face long child care waitlists.

Response: Implementing the 7 percent cap on family co-payments may cause difficult financial decisions for Lead Agencies. The final rule rescinds the requirement to cap family co-payments at 7 percent of family income and restores Lead Agency flexibility to determine a sliding fee scale that meets the CCDF requirement of not being "a barrier" to families receiving assistance within budget constraints.

Comment: Commenters who opposed this proposal to rescind the co-payment cap requested HHS retain the 7 percent cap requirement. Commenters noted that States are already implementing the 7 percent cap with a positive impact on families and child care. Commenters shared research and anecdotal information about the impact of reduced co-payments for families in their States.

Response: Lead Agencies continue to have the flexibility to limit co-payments to a percentage of family income. States currently implementing the 7 percent cap have the flexibility to continue to limit co-payments in this way. States also have the flexibility to limit co-payments based on a lower threshold to support affordability. Based on the FFY 2025-2027 CCDF State and Territory Plans, as of March 2026, 15 states and the District of Columbia currently limit family co-payments to 7 percent of family income and 16 States and 5 Territories cap co-payments at a level less than 7 percent (e.g., limit co-payments to 1 percent of family income).

Comment: Commenters who opposed the proposal argued that removing the 7 percent cap would be detrimental for families due to child care affordability and access concerns, especially coupled with general rising cost of living. Commenters noted that eliminating affordability parameters for families receiving CCDF subsidies may open the door to increased co-payments that can impede the intended purpose of the law to best meet the needs of children and parents, (42 U.S.C. 9857(b)(1)).

Response: Lead Agencies continue to be required to establish sliding fee scales that are not a "barrier to families receiving assistance." Lead Agencies have the flexibility to take into account general rising cost of living for families receiving CCDF when developing their cost sharing and sliding fee scale policies.

Comment: Commenters who opposed the proposal highlighted the implications rescinding the 7 percent cap may have on provider stability and parental choice for CCDF families if high co-payments result in families needing to disenroll children from providers.

Response: Lead Agencies continue to have the flexibility to develop cost-sharing and sliding fee policies that support affordability and allow families to choose providers that best meet their preferences and child care needs. HHS encourages Lead Agencies to exercise their flexibility to ensure any changes in family co-payments does not impact the availability of providers and parent choice.

Comments: Commenters noted that the NPRM did not address whether HHS would be recommending a benchmark for co-payments. Both those who supported and opposed the proposal expressed concerns about how Lead Agencies would ensure that co-payments were not a barrier to accessing child care assistance without a required or recommended level. Commenters suggested that HHS reinstate the 7 percent recommended benchmark established in the preamble to the 2016 final rule.

Commenters noted the benefit of HHS conducting a comprehensive study to better understand child care affordability in today's market and questioned the validity of the 7 percent co-payment benchmark for affordability included in the 2016 final rule. Commenters from various States offered specific and local data on affordable co-payments and general child care affordability.

Response: HHS will not be recommending a benchmark for co-payments at this time. The optional Federal benchmark for family co-payments of no more than 7 percent of family income established in the preamble to the 2016 final rule was based on 2011 data from a U.S. Census Bureau report that showed families, on average, spent 7 percent of income on child care. 81 FR 67467-68. These data are outdated and therefore cannot be used to support a new national

recommendation. HHS may conduct research on how co-payments impact a family's access and participation in CCDF to inform potential future recommendations.

Comment: Commenters argued that States should be discouraged from increasing co-payment amounts above current levels for families unless an evidence-based benchmark is established. Commenters noted that States should be encouraged to adopt policies that take into account affordability for families with multiple children in care.

Response: HHS may conduct research to examine affordability in child care and affordable co-payments. Lead Agencies have the flexibility to develop cost-sharing policies to ensure affordability when multiple children are in care. The recission of the 7 percent cap restores Lead Agency flexibility to make cost sharing and sliding fees policies that balance affordability and funding availability.

Payment Practices. This final rule makes key changes at § 98.45(m) to restore Lead Agency flexibility regarding CCDF payment practices.

Timely Payments to Providers. This final rule repeals the requirement at § 98.45(m)(1) that Lead Agencies pay CCDF child care providers in advance of or at the beginning of delivery of services (*i.e.,* prospectively). This change restores Lead Agency flexibility regarding the timing of payments to CCDF providers and provides Lead Agencies with the option to pay providers prospectively or on a reimbursement basis. As required by the Act at Section 658E(c)(4)(B)(iv) (42 U.S.C. 9858c(c)(4)(B)(iv)), States and Territories must still ensure that child care providers are paid in a timely manner. When child care providers are not paid in a timely manner, they may choose not to participate in the CCDF program, which can limit child care options for parents. Therefore, the final rule requires Lead Agencies to either pay child care providers prospectively or to reimburse child care providers within 21 days of receiving a completed invoice.

Comments: Commenters who supported the proposed rescission emphasized the need for increased flexibility for Lead Agencies. They noted that timely payments were important, but that there were other ways to ensure this while allowing some State discretion in policymaking that balances supporting providers and families with program integrity and accountability.

Response: This final rule rescinds the requirement to pay providers prospectively, restoring Lead Agency flexibility to pay CCDF providers within a timeframe that works best for families and providers in their individual State or Territory, while also ensuring sound stewardship of taxpayer dollars.

Comments: Commenters who opposed the proposed rescission argued that prospective payment is more in line with the private pay child care market and is a stabilizing practice for child care providers that are predominantly small businesses. More specifically, commenters said that delayed payments make it difficult to cover fixed costs, such as payroll and other operating expenses, in a timely manner.

Response: Rescinding the requirement to pay providers prospectively does not prohibit this payment practice. Lead Agencies continue to have the flexibility to pay providers prospectively if the payment practice meets the needs of their individual State or Territory. As of March 2026, nine Lead Agencies have implemented policies to pay all child care providers prospectively, per the FFY 2025-2027 CCDF State and Territory Plans. Ensuring timely provider payments is a statutory requirement and is important for parent choice as it relates to the impact on providers' businesses and the availability of child care providers. Moving forward, HHS intends to strengthen monitoring and oversight of the requirement to pay providers within 21 days in order to ensure payments to providers are timely, while maintaining State flexibility in administration of CCDF programs.

Comment: HHS requested comments in the NPRM on the appropriate timeframe for providers to receive payment after submitting a completed invoice. All commenters who

responded voiced support for a timeframe shorter than 21 days, but specific comments varied from general support to more specific timeframes such as three days or 14 days.

Response: HHS considered commenters' suggestions and has decided to maintain the proposed 21-day payment requirement as a minimum standard, while restoring Lead Agency flexibility to pay providers prospectively or on a reimbursement basis.

Delinking Payments from Absences. The final rule repeals the requirement at 45 CFR 98.5(m)(2) that State and Territory Lead Agencies pay child care providers based on a child's authorized enrollment. This change restores Lead Agencies' flexibility to implement options to meet the statutory requirement to support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable. Under the final rule, Lead Agencies may meet this statutory requirement by: (1) Paying providers based on a child's enrollment, rather than attendance; (2) providing a full payment to providers as long as a child attends for 85 percent of the authorized time; (3) providing full payment to providers as long as a child is absent for five or fewer days in a four week period; or (4) establishing an alternative approach justified in the CCDF Plan. According to FFY 2025-2027 CCDF State and Territory Plan data, as of March 2026, 29 Lead Agencies currently pay providers based on authorized child enrollment. These Lead Agencies have the flexibility to continue their established payment policies.

HHS reminds Lead Agencies that regardless of the approach a Lead Agency takes to delink payments from an eligible child's absences, Lead Agencies are required to ensure integrity and accountability through implementing processes to ensure sound fiscal management, identify areas of risk, train Lead Agency staff and other agency staff about program requirements and integrity, and regularly evaluate internal control activities (§ 98.68). All Lead Agencies are strongly encouraged to collect and review provider attendance and billing records, conduct

quality control or quality assurance reviews, and swiftly enforce corrective actions and penalties when violations occur.

Comment: Commenters supported the proposal to rescind the requirement to pay providers based on authorized enrollment and argued that Lead Agencies should retain their flexibility to design and operate their CCDF programs as they deem most appropriate. These commenters further argued that HHS lacked the authority to restrict Lead Agencies to only one approach.

Response: The final rule maintains the language in the NPRM that restores additional flexibilities for States, Territories, and Tribes to continue to have the option to adopt payment policies based on their own assessment of what works best for children, families, and child care providers in their communities.

Comment: HHS received comments generally opposed to the practice of paying providers based on enrollment. These commenters described the unintended consequences of the practice, including increasing child care costs, program integrity concerns, and ability to combat potential fraud. In addition, commenters recommended removing the option that States delink absences from provider payments thereby ensuring that payments are made only for services provided.

Response: It is important for Lead Agencies to have flexibility to implement payment practices that they believe best support program integrity and combat potential fraud within their CCDF programs. This final rule allows Lead Agencies the option to reimburse child care services based on attendance. Section 658E(c)(2)(S) of the Act requires States to implement enrollment and eligibility policies that support the fixed costs of providing child care services by delinking provider reimbursement rates from an eligible child's occasional absences due to holidays or unforeseen circumstances such as illness, to the extent practicable. The final rule allows Lead Agencies to implement practices other than paying providers based on enrollment and is consistent with the requirement in the Act.

Comment: HHS received comments concerned with ensuring that Lead Agencies implement provider payment practices that safeguard against improper or fraudulent payments. While some commenters had reservations that paying providers based on enrollment was transparent enough to employ such safeguards, other commenters encouraged Lead Agencies to implement robust controls regardless of their payment practices.

Response: HHS is dedicated to ensuring that CCDF funds are spent providing child care to eligible children attending eligible child care providers. As discussed above, Lead Agencies must take steps to address improper payments and fraud. Lead Agencies that choose to pay child care providers based on enrollment are strongly encouraged to collect attendance records to ensure that the child still needs care and that the child care provider is operating within CCDF requirements.

Comment: Commenters opposed to the proposal described enrollment-based payment as the best approach to ensure providers' financial stability and ability to meet the expenses of their fixed operational costs. They argued that it is a generally accepted practice among families paying for child care privately to pay a fixed fee to providers based on enrollment regardless of a child's daily attendance. Commenters maintained that providers opt out of participating in CCDF when they are not paid based on enrollment. In addition, commenters warned that providers who are unwilling or unable to absorb the loss of income due to a child's absence may pass those costs to families.

Response: This final rule does not prohibit a Lead Agency's ability to pay providers based on a child's authorized enrollment, and Lead Agencies that currently pay providers based on enrollment may continue to do so. Section 658E(c)(2)(S)(ii) of the Act requires Lead Agencies to delink payments from occasional absences. This final rule reinstates Lead Agencies' flexibility to adopt policies based on their own assessment of what works best for children, families, and child care providers in their communities.

Comment: HHS requested comments in the NPRM on the appropriate number of paid absence days or attendance rates to ensure providers participate in the CCDF program to support parental choice, while ensuring Lead Agency flexibility. HHS received a range of recommendations on the appropriate number of paid absence days and attendance rates. Commenters also recommended that the paid absences be applied at the provider level rather than the child level so that one provider's payment would not be affected by a child's absences with a secondary provider. In addition, commenters recommended that any allowable absence policy be aligned with health and safety standards that may result in a child's chronic absenteeism.

Response: This final rule maintains the options proposed in the NPRM, including the options to provide full payment to providers as long as a child is absent for five or fewer days in a four week period or attends for 85 percent of the authorized time. Lead Agencies retain the flexibility to implement more generous absence policies that pay providers the full payment if a child has more than five absences.

Restructuring to Align with Previous Regulations. This final rule revises § 98.45 to revert to the paragraph structure of the 2016 final rule. First, the final rule moves language from the introduction at § 98.45(m) requiring provider payment practices to reflect generally accepted payment practices to § 98.45(m)(3). This change aligns with regulatory language in the 2016 final rule, which included this text when describing the requirement to pay providers based on a part-time or full-time basis and to pay for reasonable mandatory fees. This paragraph structure change does not change requirements related to paying providers on a part-time or full-time basis or to pay for reasonable mandatory fees.

Second, the final rule removes unnecessary language at § 98.45(n)(4) that indicates Lead Agencies are able to take "precautionary measures when a provider is suspected of fiscal mismanagement." This language was added in the March 2024 rule to reinforce that States and Territories could choose not to pay a provider prospectively and based on enrollment if that

provider was suspected of fraud. States and Territories already had, and continue to have, the responsibility to take actions when a provider has been suspected of fraud. Lead Agencies have sufficient flexibility in the revised regulatory language for payment practices to adjust payment policies in response to suspected provider fraud. Therefore, HHS has removed this redundant provision. Lastly, the final rule removes paragraphs § 98.45(n)(4) and (5), combine § 98.45(m)(3) and (4) under a revised § 98.45(m)(3), and redesignate the provisions at § 98.45(n)(1) – (3) as § 98.45(m)(4) – (6).

HHS did not receive comments on these technical changes.

Clarification on Total Payment to Providers. The final rule removes language at § 98.45(n)(5) to require States and Territories to demonstrate in their CCDF Plan that the total payment to a provider (subsidy payment amount and family co-payment) is not impacted by cost-sharing policies. This clarification was included in the March 2024 final rule in response to comments on the requirement at § 98.45(*l*)(3) to limit family co-payments to 7 percent of family income and concerns that reductions in family co-payments could reduce the amount received by child care providers. Given that the final rule rescinds the requirement for States and Territories to limit family co-payments to 7 percent of family income, this clarification is no longer needed.

Comments: Commenters opposed the removal of language at § 98.45(n)(5). Commenters argued that removing the requirement for Lead Agencies could weaken transparency and public oversight and discourage provider participation and ultimately reduce access for families. Commenters also asserted that providers should not be expected to effectively subsidize lower costs for families due to reduced payments.

Response: This final rule removes the language at § 98.45(n)(5). HHS reminds Lead Agencies that the Act requires Lead Agencies to set payment rates at levels that provide CCDF families equal access to child care services that are comparable to care provided to children whose parents are not eligible for CCDF. 42 U.S.C. § 9858c(c)(4)(A). Under CCDF, payments to providers are a combination of the Lead Agency share and the parent share (i.e., co-payment).

HHS encourages Lead Agencies to exercise their flexibility in setting payment rates to ensure co-payment policies do not result in decreases in total payment to providers.

Subpart F—Use of Child Care and Development Funds

§ 98.50 Child Care Services

The final rule makes conforming changes to § 98.50(a)(3) and (b) that align with the recission of the requirement in § 98.30(b) discussed earlier in this preamble, which required States and Territories to use grants or contracts for some direct child care services for children in underserved geographic areas, infants and toddlers, and children with disabilities. This final rule revises § 98.50(a)(3) by deleting "including grants or contracts for slots for children in underserved geographic areas, for infants and toddlers, and children with disabilities. Grants solely to improve the quality of child care services like those in (b) of this section would not satisfy the requirements at § 98.30(b)." The final rule also revises § 98.50 (b) by deleting (b)(4) completely. This provision is no longer relevant due to the changes in § 98.30(b) to remove the requirement to utilize grants or contracts for some direct child care services.

Comment: HHS received comments that supported the proposed recission of the requirement to utilize grants or contracts for some direct child care services but requested clarification on the continued allowability of utilizing CCDF funds to implement grants or contracts to provide some direct services and utilization of grants for general child care supply-building activities.

Response: Lead agencies may continue, at their option, to utilize CCDF funding to implement grants or contracts for some direct child care services; however, they are no longer required to do so. Lead Agencies may also continue to use CCDF funding to provide grants to child care providers that do not involve the provision of direct services, such as grants to assist with start-up funds for new child care providers.

Subpart I—Indian Tribes

This subpart addresses requirements and procedures for Indian Tribes and Tribal organizations applying for or receiving CCDF funds and serves as the Tribal summary impact statement as required by Executive Order 13175.[5] The amendments in this subpart are conforming changes and do not change requirements for Tribal CCDF Lead Agencies.

§ 98.81 Application and Plan Procedures and § 98.83 Requirements for Tribal Programs

Paragraphs 98.81(b)(6) and 98.83(d)(1) specify from which provisions all Tribal Lead Agencies are exempted. All Tribal Lead Agencies were already exempted from the previous requirement to provide some direct services through grants or contracts. Because this final rule rescinds the requirements for States and Territories to provide services through grants or contracts, the provisions exempting Tribal Lead Agencies from the requirement are no longer necessary. Therefore, this final rule removes §§ 98.81(b)(6)(x), 98.83(d)(1)(i), and 98.83(d)(1)(x).

HHS did not receive comments on these conforming changes.

The final rule does not amend § 98.83(d)(1)(vi), which exempts all Tribal Lead Agencies from the requirement for a sliding fee scale at § 98.45(*l*). However, as discussed above, the change removes the requirement for Tribal Lead Agencies with medium and large allocations that choose to implement cost-sharing and require family co-payments for their CCDF programs to cap family co-payments to 7 percent of the family's income. Tribes with small allocations were already exempt from the requirement to limit family co-payments to 7 percent of income. With this final rule, all Tribal Lead Agencies now have maximum flexibility in establishing those co-payment amounts.

[5] https://www.federalregister.gov/documents/2000/11/09/00-29003/consultation-and-coordination-with-indian-tribal-governments.

VII. Regulatory Process Matters

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*., as amended) (PRA), all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. As required by this Act, HHS will submit any proposed revised data collection requirements to OMB for review and approval.

The final rule modifies the previously approved ACF-118 CCDF State and Territory Plan information collection, but HHS has not yet initiated the OMB approval process to implement these changes. HHS will publish **Federal Register** notices soliciting public comment on specific revisions to this information collection and the associated burden estimates and will make available the proposed form and instructions for review.

CCDF title/code	Relevant section in the proposed rule	OMB Control Number	Expiration Date	Description
ACF–118 (CCDF State and Territory Plan)	§§ 98.16 (and related provisions).	0970-0114	03/31/2027	The final rule rescinds requirements which States and Territories are required to report in the CCDF Plans.

The table below provides current approved annual burden hours and estimated annual burden hours for the existing information collection that is modified by this final rule.

ANNUAL BURDEN ESTIMATES						
Instrument	Total number of respondents	Total number of responses per respondent	Current approved average burden	Current annual burden hours	Estimated average burden hours per	Estimated annual burden hours

			hours per response		response based on final rule	based on final rule
ACF–118 (CCDF State and Territory Plan)	56	0.33	150	2,800	150	2,800

HHS did not receive any public comments on these burden estimates, which were included in the NPRM.

Executive Order 13132

Executive Order 13132 requires federal agencies to consult with State and local government officials if they develop regulatory policies with federalism implications. Federalism is rooted in the belief that issues that are not national in scope or significance are most appropriately addressed by the level of government close to the people. This rule does not have substantial direct impact on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule does not pre-empt State law. In large part, the changes included in the final rule are adopting practices already implemented by many States or are increasing flexibilities in administering the CCDF program. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families Section 654 of the Treasury and General Government Appropriations Act of 2000 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. HHS believes it is not

necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action taken in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

VIII. Regulatory Impact Analysis

Introduction

HHS has examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, Executive Order 14192, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*), and the Congressional Review Act (5 U.S.C. 801 *et seq.*, Pub. L. 104-121).

Executive Orders 12866 and 13563 direct us to assess all benefits and costs of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Information and Regulatory Affairs (OIRA) has determined that this final rule is significant under Section 3(f) of Executive Order 12866 and that it does not meet the criteria set forth in 5 U.S.C. 804(2) under the Congressional Review Act. Executive Order 14192 requires that any new incremental costs associated with significant new regulations "shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least ten prior regulations." This final rule is considered an E.O. 14192 deregulatory action. HHS estimates that this final rule will generate $6.1 million in annualized cost savings at a 7 percent discount rate, discounted relative to year 2024, over a perpetual time horizon.

The Regulatory Flexibility Act (RFA) requires agencies to consider the impact of their regulatory proposals on small entities. The January 5, 2026 NPRM proposed regulatory changes that would provide additional flexibility to States, Territories, and Tribes. The proposed changes would not have a direct impact on small entities. However, removing the requirement to pay child care providers based on authorized enrollment may have an indirect impact on some small

child care centers and family child care homes that participate in CCDF. The extent of this indirect impact would depend on whether States, Territories, and Tribes choose to pay based on enrollment or attendance. HHS estimates this indirect impact will be less than 1 percent of total CCDF funding that is paid to child care providers each year. HHS calculated the impact by comparing the $8.8 million annual transfer from child care providers to States and Territories for enrollment-based payments (discussed in more detail in the Summary of Economic Impacts) to the annual amount of CCDF funding paid to child care providers for direct services, $11.408 billion in FY 2022[6] (the most recent year for which data are available). Thus, our analysis concludes that the indirect impacts of the final rule will be lower than 3 percent of the annual revenue of a potentially impacted small entities, corresponding to HHS's default threshold of a "significant economic impact" in the context of the analytic requirements of the Regulatory Flexibility Act.

The Secretary certified that the January 5, 2026, proposed rule would not have a significant economic impact on a substantial number of small entities. HHS did not receive any public comments that raised issues with that certification, nor did we receive any comments that would cause us to assess any additional impacts that might be relevant to the analytical requirements of the RFA. This final rule maintains the changes proposed in the NPRM. Thus, the Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (UMRA) generally requires that each agency conduct a cost-benefit analysis; identify and consider a reasonable number of regulatory alternatives; and select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule before promulgating any proposed or final rule that includes a Federal mandate that may result in expenditures of more than $100 million (adjusted for inflation) in at least one year by State, local, and Tribal governments, in the aggregate, or by the

[6] https://acf.gov/occ/data/ccdf-expenditures-overview-fy-2022-all-appropriation-years

private sector. Each agency issuing a rule with relevant effects over that threshold must also seek input from State, local, and Tribal governments. The current threshold after adjustment for inflation is $193 million, using the most current (2025) Implicit Price Deflator for the Gross Domestic Product. This final rule will not result in an expenditure in any year that meets or exceeds this amount.

Background and Summary of Economic Impacts

On July 13, 2023, HHS published a notice of proposed rulemaking (NPRM) that proposed revisions to Child Care and Development Fund (CCDF) regulations.[7] After considering the public comments, on March 1, 2024, HHS published a final rule that made regulatory changes to CCDF ("March 2024 final rule"),[8] which contained a regulatory impact analysis (2024 RIA) that reported monetary estimates of the economic impacts. On January 5, 2026, HHS published an NPRM ("Restoring Flexibility in the Child Care and Development Fund") that proposed rescinding specific provisions of the March 2024 final rule. This NPRM included a regulatory impact analysis that detailed the economic impact of these rescissions. Following the public comment period HHS is publishing this final rule, which rescinds four of the mandatory provisions of the March 2024 final rule including those relating to enrollment-based payment, 7 percent cap on co-payments, prospective payments, and grants or contracts for direct services. As a starting point for analyzing the impact of this final rule, HHS adopted the estimated economic impacts in the March 2024 final rule as capturing the baseline scenario of no further regulatory action. This approach follows our methodology for assessing the impacts of the January 5, 2026 NPRM. Table 1 reports yearly transfers and costs associated with the

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[7] Office of Child Care, Administration for Children and Families, Department of Health and Human Services. July 13, 2023. "Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)" notice of proposed rulemaking. Federal Register. 88 FR 45022.

[8] [8] Office of Child Care, Administration for Children and Families, Department of Health and Human Services. March 1, 2024. "Improving Child Care Access, Affordability, and Stability in the Child Care and Development Fund (CCDF)" final rule. *Federal Register*. 89 FR 15366.

relevant requirements of the March 2024 final rule.[9] While the prospective payments policy does not appear as a separate line item in this analysis, its impacts were accounted for in the "systems" cost estimate included in the March 2024 final rule.

Table 1. Relevant Requirements in the March 2024 Final Rule, Transfers and Costs (in millions)

Transfers by Year	**2025**	**2026**	**2027**	**2028**	**2029**
Enrollment-based Payment	$8.8	$8.8	$17.5	$17.5	$17.5
7% Co-Payment Cap	$8.4	$8.4	$16.7	$16.7	$16.7
Total Transfers	$17.2	$17.2	$34.2	$34.2	$34.2
Costs by Year	**2025**	**2026**	**2027**	**2028**	**2029**
Grants and Contracts	$3.3	$3.3	$6.5	$6.5	$6.5
Systems	$10.9	$10.9	$0.0	$0.0	$0.0
Total Costs	$14.2	$14.2	$6.5	$6.5	$6.5

By rescinding specific regulations added by the March 2024 final rule, this Restoring Flexibility in the Child Care and Development Fund final rule would prevent the occurrence of the estimated transfers and costs reported in the 2024 RIA, with the exception of the anticipated economic impacts in the first year. For the purposes of this analysis, HHS assumes those impacts have already occurred and cannot be recovered or did not occur as the result of a temporary transitional waiver of the requirements granted to some States. Thus, when considering the economic impacts of this final rule, HHS does not report any impacts on transfers or costs in 2025. In subsequent years, HHS reports the inverse of the monetary estimates identified in Table 1 as the impacts of the final rule. Table 2 reports these estimates, where negative costs represent cost savings, and negative transfers represent a reversal of the direction of transfers compared to the 2024 RIA. In this context, transfers under the March 2024 final rule that represented increases in Lead Agency payments to child care providers represent reductions in Lead Agency payments to child care providers.

[9] These estimates replicate Table 3 of the 2024 RIA, with all dollar values adjusted to 2024 dollars using the GDP deflator. Bureau of Economic Analysis. National Income and Product Accounts. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product. April 30, 2025 revision.

Table 2. Economic Impacts of the Final Rule Changes (in millions)

Year	2025	2026	2027	2028	2029
Total Transfers	$0.0	-$17.2	-$34.2	-$34.2	-$34.2
Total Costs	$0.0	-$14.2	-$6.5	-$6.5	-$6.5

Over a 5-year time horizon covering 2025 through 2029, HHS estimates annualized transfers of $23.4 million using a 3-percent discount rate and $22.8 using a 7 percent discount rate; and annualized costs of $6.7 million using a 3-percent discount rate and $6.6 million using a 7 percent discount rate. To produce an estimate of cost savings under E.O. 14192, HHS assumes the impacts of the changes on costs in 2029 will extend in perpetuity. HHS estimates that this final rule will generate $6.1 million in annualized cost savings at a 7 percent discount rate, discounted relative to year 2024, in perpetuity.

IX. Tribal Consultation Statement

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian Tribes when regulations have substantial direct effects on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. The discussion in subpart I in section IV of the preamble serves as the Tribal impact statement.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

List of Subjects in 45 CFR Part 98

Child care, Grant programs-social programs.

For the reasons set forth in the preamble, we amend 45 CFR part 98 as follows:

PART 98 – CHILD CARE AND DEVELOPMENT FUND

1. The authority citation for part 98 is revised to read as follows:

Authority: 42 U.S.C. 618, 9857 *et seq.*

2. Amend § 98.16 by:

a. Revising paragraph (x);

b. Removing paragraphs (y) and (z);

c. Redesignating paragraphs (aa) through (ll) as paragraphs (y) through (jj); and,

d. Revising newly redesignated paragraph (cc).

The revisions read as follows:

§ 98.16 Plan provisions.

* * * * *

(x) A description of the Lead Agency's strategies (which may include alternative payment rates to child care providers, the provision of direct grants or contracts, offering child care certificates, or other means) to increase the supply and improve the quality of child care services for children in underserved areas, infants and toddlers, children with disabilities as defined by the Lead Agency, and children who receive care during nontraditional hours, including whether the Lead Agency plans to use grants and contracts in building supply and how supply-building mechanisms will address the needs identified. The description must identify shortages in the supply of high-quality child care providers, list the data sources used to identify shortages, and describe the method of tracking progress to support equal access and parental choice. If the Lead Agency chooses to employ grants and contracts to meet the purposes of this section, the Lead Agency must provide CCDF families the option to choose a certificate for the purpose of acquiring care;

* * * * *

(cc) A description of payment practices applicable to providers of child care services for which assistance is provided under this part, pursuant to § 98.45(m), including practices to ensure

timely payment for services, to delink provider payments from children's occasional absences to the extent practicable, and to reflect generally-accepted payment practices;

* * * * *

3. Amend § 98.30 by revising paragraph (b) to read as follows:

§ 98.30 Parental choice.

* * * * *

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled with the provider selected by the parent to the maximum extent practicable.

* * * * *

4. Amend § 98.45 by:

a. Revising paragraphs (b)(5), (l)(3), and (m); and

b. Removing paragraph (n).

The revisions read as follows:

§ 98.45 Equal access.

* * * * *

(b) * * *

(5) How co-payments based on a sliding fee scale are affordable, as stipulated at paragraph (l) of this section; if applicable, a rationale for the Lead Agency's policy on whether child care providers may charge additional amounts to families above the required family co-payment, including a demonstration that the policy promotes affordability and access; analysis of the interaction between any such additional amounts with the required family co-payments, and of the ability of subsidy payment rates to provide access to care without additional fees; and data on the extent to which CCDF providers charge such additional amounts (based on information obtained in accordance with paragraph (d)(2) of this section);

* * * * *

(l) * * *

(3) Provides for affordable family co-payments that are not a barrier to families receiving assistance under this part; and

* * *

(m) The Lead Agency shall demonstrate in the Plan that it has established payment practices applicable to all CCDF child care providers that:

(1) Ensure timeliness of payment by either:

(i) Paying prospectively prior to the delivery of services; or

(ii) Paying within no more than 21 calendar days of the receipt of a complete invoice for services.

(2) To the extent practicable, support the fixed costs of providing child care services by delinking provider payments from a child's occasional absences by:

(i) Paying based on a child's enrollment rather than attendance;

(ii) Providing full payment if a child attends at least 85 percent of the authorized time;

(iii) Providing full payment if a child is absent for five or fewer days in a month; or,

(iv) An alternative approach for which the Lead Agency provides a justification in its Plan.

(3) Reflect generally accepted payment practices of child care providers that serve children who do not receive CCDF subsidies, which must include (unless the Lead Agency provides evidence that such practices are not generally-accepted in the State or service area):

(i) Paying on a part-time or full-time basis (rather than paying for hours of service or smaller increments of time); and

(ii) Paying for reasonable mandatory registration fees that the provider charges to private-paying parents.

(4) Ensure child care providers receive payment for any services in accordance with a written payment agreement or authorization for services that includes, at a minimum, information

regarding payment policies, including rates, schedules, any fees charged to providers, and the dispute resolution process required by paragraph (m)(6) of this section.

(5) Ensure child care providers receive prompt notice of changes to a family's eligibility status that may impact payment, and that such notice is sent to providers no later than the day the Lead Agency becomes aware that such a change will occur.

(6) Include timely appeal and resolution processes for any payment inaccuracies and disputes.

5. Amend § 98.50 by:

a. Revising paragraph (a)(3); and

b. Removing paragraph (b)(4).

The revision reads as follows:

§ 98.50 Child care services.

(a) * * *

(3) Using funding methods provided for in § 98.30; and

* * * * *

6. Amend § 98.81 by:

a. Removing paragraph (b)(6)(x);

b. Redesignating paragraphs (b)(6)(xi) and (xii) as paragraphs (b)(6)(x) and (xi); and,

c. Revising newly redesignated paragraph (b)(6)(xi).

The revision reads as follows:

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(6) * * *

(xi) The description of provider payment practices at § 98.16(cc).

* * * * *

§ 98.83 [Amended]

7. Amend § 98.83 by:

a. Removing paragraphs (d)(1)(i) and (x); and

b. Redesignating paragraphs (d)(1)(ii) through (xiv) as paragraphs (d)(1)(i) through (xii).

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Robert F. Kennedy, Jr.,

Secretary,

Department of Health and Human Services.

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