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Agency of Human Services

Shannon Christian, Director
Office of Child Care
Administration for Children and Families
Mary E. Switzer Building
330 C ST SW, Room 4502
Washington, DC 20201

May 1, 2018

Dear Ms. Christian,

The Vermont Agency of Human Services, Department for Children and Families is seeking your assistance with specific requirements of the final rule of the Child Care Development Fund (CCDF) based on the Child Care and Development Block Grant Act of 2014. We are requesting assistance to find options for relief from the six requirements described below. In addition, if we are unable to fully meet any of the requirements listed below, we would like information on the potential consequences for the state.

Request for Relief Based on Policy Concerns

Draft CCDF Plan Section 3.4

Requirement: Lead Agencies are required to establish and periodically revise a sliding-fee scale for CCDF families that varies based on income and the size of the family in determining each family's contribution (i.e., co-payment) that is not a barrier to families receiving CCDF funds (658E(c)(5)). In addition to income and the size of the family, the Lead Agency may use other factors when determining family contributions/co-payments. Lead Agencies, however, may NOT use cost of care or amount of subsidy payment in determining copayments (98.45(k)(2)).

Current state practice: Vermont has established a sliding fee scale based on family size and income that expresses a child's subsidy benefit as a percent of the state rate (see Vermont's state plan for a detailed explanation).

Justification for relief: Our understanding of the reasoning behind this regulation is that there is an assumption that cost factors in the sliding fee scale will incentivize families to choose lower quality child care. When paired with a significantly tiered reimbursement rate, Vermont has documented that our current sliding fee scale does not incentivize lower quality care for subsidized families. We believe that Vermont's sliding fee scale creates a gradual reduction in dependence on subsidy that supports parents trying to achieve independence from public assistance (an identified purpose in the Act). Vermont's sliding fee scale is intended to identify and mitigate the benefit cliff low-income families face as their incomes rise.



The Vermont Legislature and the State's Early Childhood Advisory Council (Building Bright Futures) convened a Blue Ribbon Commission on Financing High Quality Affordable Child Care from September 2015 – November 2016 which examined, among other things, policy issues related to affordability including the structure of the sliding fee scale for access to subsidies. Vermont's current sliding fee scale was examined and compared to a sliding fee scale based on a percent of family income without regard to subsidy payments. The Commission came to consensus that, properly resourced and aligned with livable wage scales, Vermont's current sliding fee scale is the most effective way to create a subsidy program that allocates available resources equitably and to provide affordable access to high quality child care. Please see the report at: <http://buildingbrightfutures.org/blue-ribbon-commission/>

If the intent of this restriction in regulation is to ensure that state subsidy programs do not incentivize subsidized families to choose lesser quality care because of cost, Vermont's child care financial assistance program (CCFAP) data is evidence that significant tiered reimbursement rates mitigate this risk. The rate of subsidized families in high quality care, as measured by percent of subsidized children in programs with 3-5 STARS in the state QRIS, has increased steadily from 27.6% in 2010, when tiered reimbursement rates were introduced, to 62.9% in 2017 and continues to rise. Please see the example below that illustrates how Vermont's quality program, STARS, impacts co-payments for families and provider rates to providers to incentivize the use of higher quality programs.

**How STARS Impacts Co-Payment for Families
Receiving Child Care Financial Assistance (CCFAP)**

Family with one infant looking for a child care center, who is eligible for 100% of CCFAP. Two program options:

Program One:

STARS Level	No STARS
Program Full Time Weekly Infant Rate (<i>Average Market Rate for programs not participating in STARS</i>)	\$251.09
CCFAP Base Rate	\$150.36
STARS quality factor	\$0.00
Total CCFAP Rate Paid to Provider	\$150.36
Co-payment Parent will Pay to Provider	\$100.73

Program Two:

STARS Level	5 STARS
Program Full Time Weekly Infant Rate (<i>Average Market Rate for 5 STAR programs</i>)	\$253.24
CCFAP Base Rate	\$150.36
STARS quality factor	\$45.11
Total CCFAP Rate Paid to Provider	\$195.47
Co-payment Parent will Pay to Provider	\$57.77

We believe Vermont’s combined policies, including our current sliding fee scale for eligibility, are meeting the statutory standard outlined in the Child Care and Development Block Grant Act even though we may not be meeting the more detailed requirements as set forth in the regulation. It would create a significant hardship to shift to an alternative sliding fee scale. Such a change would require: staff resources redeployed from other quality and policy work to this transition; a financial analysis and shift of financial resources that would likely mean moving funds from the current tiered reimbursement to the restructured sliding fee scale; a redesign and update to our information technology system that would require staffing and funds we do not have at our disposal – this alone would take more than 18 months to achieve; and a significant communication strategy to explain to policymakers and stakeholders in Vermont why we are making the change and not following the recommendations of the Blue Ribbon Commission.

Request: We request that Vermont be allowed to continue use of our current sliding fee scale structure as long as our data indicates that subsidized families are continuing to access high quality care.

Draft CCDF Plan Section 5.4.1

Requirement: The CCDBG Act requires States and territories to have in effect requirements, policies and procedures to conduct criminal background checks for all child care staff members (including prospective staff members) of all child care providers that are 1) licensed, regulated, or registered under state/territory law; or, 2) all other providers eligible to deliver CCDF services (e.g., license-exempt CCDF eligible providers). Background check requirements apply to any staff member who is employed by a child care provider for compensation, including contract employees and self-employed individuals; whose activities involve the care or supervision of children; or who has unsupervised access to children. For family child care (FCC) homes, this requirement includes the caregiver and any other adults residing in the family child care home who are age 18 or older. This requirement does not apply to individuals who are related to all children for whom child care services are provided. A criminal background check must include 8 specific components, which encompass 3 in-state checks, 2 national checks, and 3 inter-state checks. 45 CFR 98.43 and 98.16(o)

Current state practice: Under Vermont child care regulations for Licensed and Registered Family Child Care Homes (FCCH) (eff. 2016) all family child care providers and any person who works with or has unsupervised access to children in care are cleared through fingerprint supported background checks that meet this federal regulation. Individual providers and staff are responsible for the cost of having fingerprints taken (usually between \$20 and \$25 per person) while CDD pays the processing fee at the Vermont Criminal Information Center (VCIC) (about \$16 per person).

All family members and residents in a FCCH over age 16 are cleared through a rigorous in-state background check that does not include fingerprinting. (see attached description of databases checked as part of Vermont's in-state background check process).

Justification for relief: CDD believes the requirement of fingerprints for all adults residing in the home who are age 18 or older is a financial burden on FCCH providers and would be cost prohibitive for new and current providers. In addition, there is a concern, that to avoid the cost of fingerprinting, providers may fail to disclose all persons residing in the home, thereby putting the safety and security of the children at risk if all household members are not subjected to a rigorous background check. Increased family fingerprinting requirements may lead to more providers choosing to operate informal child care outside of regulation and forgo subsidy, thereby decreasing access to child care for subsidized families. Mirroring a national trend, the number of Family Child Care Homes in Vermont has been shrinking steadily over the past seven years. In a rural state like ours, Family Child Care Homes are a critical part of the supply of high quality child care – we can't afford additional barriers to entry into the formal system.

Vermont's in-state background checks, in place for many years prior to the CCDBG Act of 2014, are rigorous and complete covering criminal records, child abuse and neglect, adult abuse and neglect and the state sex offender registry. These in-state background checks have been effective in identifying prohibited persons. In 2017, we processed 5,516 background clearances for individuals required to be fingerprinted in all types of licensed child care programs. We denied 69 individuals based on Vermont's in-state background checks. After fingerprinting, Vermont learned of 2 additional individuals, out of 5,516 (.04%), that also met denial criteria due to convictions in other states. One of those convictions was not

grounds for prohibition under federal rules and Vermont was able to clear that individual to work in child care. Our licensing rules are clear and explicit that only those individuals in a Family Child Care Home that have had a fingerprint-supported background check may participate in care of the children.

Request: We request that Vermont be allowed to continue current practice, as specified in our child care regulations for Registered and Licensed Family Child Care Homes, which requires a fingerprint supported background check (meeting all federal requirements) for any individuals who participate in the care of the children and a rigorous in-state background check for all other individuals residing in the home over the age of 16.

Request for Relief Based on Resource Constraints

Draft CCDF Plan Section 4.4.1

Requirement: Lead Agencies must certify that CCDF payment rates are sufficient to ensure equal access for eligible families to child care services comparable to those provided by families not receiving CCDF assistance (98.16(a)).

Current state practice: Vermont's current rates are aligned with 2008 Market Rate Survey results with a few minor adjustments as funding has allowed. Vermont deploys a number of strategies to mitigate the impact of low rates that create high co-payments on subsidized families and child care providers. These are what we describe in our CCDF State Plan in response to this requirement. We retain an entitlement to participation in some level of subsidy for all eligible families up to 300% of FPL. We have not elected to freeze enrollment or create a waiting list, which we would see as creating an access to care issue

Justification for relief: As the state agency responsible for CCFAP, we share concern that our provider reimbursement rates that do not keep pace with the child care market constrain access to child care programs for subsidized families. It would be disingenuous for us to certify that our current rates ensure equal access. Neither federal or state resources, or the combination of these two, support an increase in child care rates in Vermont's CCFAP. Annually we model and report on what it would take to reach the most current market rates in CCFAP as part of the state budget process. The Governor proposed re-allocation of education funding to raise CCFAP rates in 2017 that was not accepted by the legislature. It's a difficult time to find sufficient new resources to close the gap. With lack of resources to fully fund the program as currently designed as a reality, the alternative policy we could employ is to end the entitlement to assistance for all eligible families and freeze enrollment or establish a waiting list. We believe that this approach limits equal access for potentially eligible families and children on the wait list and deters families from applying. It doesn't feel like good policy or a fair solution for children and families in Vermont.

Request: We request a waiver on the requirement to certify that rates ensure equal access until the time that sufficient state and federal resources are available to fully fund the program with alignment to current market rates.

Draft CCDF Plan Section 5.4.2

Requirement: A child care provider must submit a request to the appropriate state/territory agency for a criminal background check for each child care staff member, including prospective child care staff members, prior to the date an individual becomes a child care staff member and at least once every 5 years thereafter. (98.43(d)(4)).

Current state practice: Any newly operating child care program owner, home or center based, must complete both in state record check processes and Federal Bureau of Investigation (FBI) fingerprint check prior to approval and operation of the child care program. Prospective child care staff members in centers must submit a record check authorization prior to starting work with children and must be supervised at all times until all clearances from the fingerprint supported background check have been received by CDD.

Justification for relief: Vermont is a small rural state where access to fingerprinting sites during regular hours of operation can be problematic. It is possible that it may take 1 – 2 weeks for a prospective child care worker to have their fingerprints taken. The Vermont Crime Information Center (VCIC), which processes fingerprint supported background checks in Vermont, takes an additional 2 weeks (minimum) to receive and process prints and send results to CDD. Vermont does not have high speed processing entities that can expedite this process. When we've inquired about attracting or purchasing such services, we've been told the state does not have the critical mass of individuals needing the service for that support intermediaries or national chains that have sufficient security to support such services. For those reasons, it usually takes a minimum of 3 – 4 weeks for prospective child care workers to submit fingerprints and be cleared for unsupervised work with children.

Vermont is experiencing a shortage of child care programs, and existing child care programs struggle to attract and retain staff in a very tight labor market. If a worker is let go or leaves with little or no notice, programs need to preserve staff: child ratios during the hiring process. It's difficult for them to meet our requirement that new workers not have any unsupervised contact with children for the 2 – 4 weeks between hire date and when background clearances are complete. The additional requirement that will not allow workers to even begin work in the program until that 2-4-week period elapses will mean either violations of staff: child ratios that endanger children's safety or closing classrooms, leaving families without child care and programs without income, waiting for background clearances to process. In a competitive job market, the best candidates for work with children may go elsewhere to work if no job can be started in child care less than 4 weeks from the date its offered.

CDD is struggling to balance the needs of families for reliable and continuous child care options, child care businesses to maintain a viable income and quality staff members, and the requirements of CCDF. We feel that Vermont's requirement of direct supervision of any staff who has not yet completed all record checks, supported by our current regulations for Center Based Child Care and Preschool Programs meets the intent of the rule to protect children while supporting child care businesses to remain open. A four to six week wait from the time of interview to start is not viable option for child care businesses in Vermont, especially for assistants and lead teachers.

That said we will continue to pursue streamlined processes and technology that can shorten the turn around on fingerprint supported background checks to a more reasonable period.

Request: We are working to implement a process that will result in a fingerprint supported background check clearance for prospective employees prior to beginning work. This requires coordination with the Vermont Crime Information Center and other stakeholders. We request a waiver of the requirement to complete fingerprint supported background checks prior to employment in a child care program until we can employ technology and a process that can turn results of such background checks around in a more reasonable time frame (less than a week). Pursuant to our current regulations, we will continue to ensure that new employees are supervised at all times until cleared through a fingerprint supported background check.

Draft CCDF Plan Section 5.3.2 and 5.36

Requirement: Lead agencies must require licensing inspectors to perform inspections—with no fewer than one pre-licensure inspection for compliance with health, safety, and fire standards—of each child care provider and facility in the state/territory. Licensing inspectors are required to perform no fewer than one annual, unannounced inspection of each licensed CCDF provider for compliance with all child care licensing standards; it shall include an inspection for compliance with health and safety (including, but not limited to, those requirements described in 98.41) and fire standards; inspectors may inspect for compliance with all three standards—health, safety, and fire—at the same time (658E(c)(2)(K)(i)(II); 98.16 (n); 98.42(b)(2)(i)).

Requirement: a) To certify, describe the state/territory policies and practices regarding the ratio of licensing inspectors to child care providers (i.e., number of providers per number of child care providers) and facilities in the state/territory and include how the ratio is sufficient to conduct effective inspections on a timely basis. (658E(c)(2)(K)(i)(III); 98.42(b)(3))

Current state practice: CDD currently has nine licensing field specialist positions. The ratio of licensing field specialist to child care program currently ranges from 108 to 183 child care programs per licensing field specialist. This is not sufficient to comply with annual, unannounced inspections for every regulated child care provider (which is our goal). We are visiting about 57% of child care programs annually. We conduct a pre-licensure inspection for all applicants to become regulated child care programs of any type. We respond to and investigate all complaints received on the Child Care Consumer Line.

Justification for relief: DCF has requested additional licensing field specialist positions from the legislature, however those positions were not approved. We will continue to identify and request the resources it will take to grow the licensing staff to maintain a ratio of Licensing Field Specialists to providers that supports compliance with the annual unannounced visit rule.

Request: We request a waiver of the requirement to maintain licensing staff to provider ratios that support annual unannounced visits to every provider accepting CCDF subsidies until such time as sufficient positions have been approved and funded.

We appreciate your consideration of these requests for relief and are proud to report that Vermont is in full compliance with the requirements of the CCDBG Act of 2014, with the exception of the few noted in this letter. We would be pleased to meet with you in person in either Boston or Washington in order to explain further our perspective and request. We would appreciate a response from you in time to incorporate your specific guidance in relation to these matters into the Vermont State Plan for CCDF for 2019 – 2021, which must be submitted no later than June 30, 2018. We also wish to understand the

consequences for our state if we are unable to comply by the established deadlines. We look forward to your reply and will check in with you about this request in one week if we don't hear from you sooner.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Schatz", with a long horizontal flourish extending to the right.

Ken Schatz, Commissioner

cc: Reeva Sullivan Murphy, Deputy Commissioner for Child Development
Melissa Riegel-Garrett, Vermont State Child Care Administrator
Anne Rada, Vermont State Child Care Co-Administrator
Shireen Riley, Office of Child Care, Region I, Regional Program Manager
Sam Reinstein, Office of Child Care, Region I, Program Specialist

ATTACHMENT

List of Databases Checked as Part of Vermont's In-State Background Check Process

- Bright Futures Information System (BFIS) – for previous licensure history with CDD (regulatory history such as previously suspended/revoked license may impact an application for licensure when the subject of the background clearance is the identified owner/licensee for the application)
- Vermont Adult Abuse Registry (AAR) – for substantiations of adult abuse and/or neglect
- Department for Children and Families, Family Service Division (FSD) Net – for any findings of alleged child abuse or neglect (e.g. child care licensing action prior to 2005, abuse/neglect substantiations or foster home red flags) or open FSD cases in which the subject of the background clearance is named as a perpetrator
- Family Service Division (FSD) Databases – this database is used when information of concern is identified during the review of FSDNet to view detailed information such as:
 - Child care data prior to BFIS (year 2005)
 - Open or closed FSD cases
 - Open or closed Foster Home cases
 - Court findings of abuse and neglect (CHINS A for abuse or CHINS B for neglect)
- Vermont Criminal Conviction Record Internet Service (VCCRIS) – for Vermont criminal convictions
- Vermont Case Access System (VCAS) – this database is used when information of concern is identified during the review of VCCRIS for details related to Vermont criminal convictions and/or during the review of FSDNet and/or FSD Databases for details related to a CHINS finding of abuse and/or neglect
- National Sex Offender Public Website (NSOPW) – for national sex offender information
- Child Abuse and Neglect registry in any and all states the subject stated he/she has lived within the last 5 years provided the state's statutes allow for this information to be shared with Vermont

