



ADMINISTRATION FOR  
**CHILDREN & FAMILIES**



Child Care and Development Fund  
**FINAL RULE:**  
Equal Access Provisions



# This Session Will Cover:

- Payment Rates
- Co-Payments
- Payment Practices
- Access for Specific Populations
- How Equal Access Applies to Tribes

45 CFR 98.45



# Equal Access

The law continues to require Lead Agencies to:

- Certify that payment rates are sufficient to ensure equal access for eligible children that are comparable to child care services provided to children whose parents are not eligible for CCDF; and
- Provide a summary of the facts used to determine that payment rates are sufficient to ensure equal access.

# Equal Access: Components



The final rule requires each CCDF Lead Agency to provide the following summary of facts in its Plan (**new provisions in bold**):

1. How a choice of the full range of providers is available, **including the extent to which child care providers participate in the CCDF subsidy system and any barriers to participation;**
2. How payment rates are adequate, **based on most recent market survey or alternative methodology; rates must be updated every three years.**

# Equal Access: Components (Cont.)

3. **How base payment rates enable providers to meet the health, safety, quality, and staffing requirements.**
4. **How the Lead Agency took the cost of higher quality child care into account, including how rates for higher quality relate to the estimated cost of care at each level of quality.**

45 CFR 98.45(b)



# Key Change from NPRM

The law added that co-payments should not be a barrier to families receiving CCDF assistance.

NPRM	Final Rule
Required States to prohibit CCDF providers from charging mandatory fees above the family copayment.	<b>Removes this prohibition.</b>  Now requires States to provide a rationale and data.

# Equal Access: Components (Cont.)

5. How family co-payments are affordable; **a rationale for the Lead Agency's policy on whether child care providers may charge additional amounts to families above the required co-payment; and data on the extent to which providers charge above co-pay if provider's price exceeds subsidy payment.**
6. **How payment practices support equal access to a range of providers.**
7. **How and on what factors the Lead Agency differentiates payment rates.**
8. Any additional facts considered by the Lead Agency.



45 CFR 98.45(b)

# Payment Rates: Market Rate Survey or Alternative Methodology

- Lead Agency must base provider payment rates on a valid market rate survey or alternative methodology (e.g. cost estimation model).
  - Market rate survey must be statistically valid and reliable. The benchmarks are outlined in the preamble.
  - Alternative methodology must be submitted for advanced ACF approval.

# Alternative Methodology in lieu of MRS: Excerpts From Final Rule Preamble

- *The reauthorized Act allows a Lead Agency to base payment rates on an alternative methodology, such as a cost estimation model, in lieu of a market rate survey. A cost estimation model is one such alternative approach in which a Lead Agency can estimate the cost of providing care at varying levels of quality based on resources a provider needs to remain financially solvent. The Act specifically mentions cost estimation models, and we anticipate that such models would account for key factors that impact the cost of providing care—such as: staff salaries and benefits, training and professional development, curricula and supplies, group size and ratios, enrollment levels, facility size, and other costs.*

# Statistically Valid and Reliable MRS

## Excerpts from Final Rule Preamble

- *A market rate survey is an examination of prices, and Lead Agencies have flexibility to use data collection methodologies other than a survey (e.g., administrative data from resource and referral agencies or other sources) so long as the approach is statistically valid and reliable.*

# Statistically Valid and Reliable MRS

## Excerpts from Final Rule Preamble

- *ACF is not defining statistically valid and reliable within the regulatory language but is establishing a set of benchmarks, largely based on CCDF-funded research to identify the components of a valid and reliable market rate survey. (Grobe, D., Weber, R., Davis, E., Kreader, L., and Pratt, C., Study of Market Prices: Validating Child Care Market Rate Surveys, Oregon Child Care Research Partnership, 2008).*

# Statistically Valid and Reliable MRS

- ACF will consider a market rate survey to be statistically valid and reliable if it meets the following benchmarks:
  - Includes the priced child care market.
  - Provides complete and current data.
  - Represents geographic variation.
  - Uses rigorous data collection procedures.
  - Analyzes data in a manner that captures market differences.

# Requirements That Apply to Both MRS & AM

- Develop and conduct market rate survey or alternative methodology no earlier than two years before the date of submission of the Plan.
- Reflect variations in cost by geographic area, type of provider, and age of child.
- Consult in advance with: State Advisory Council; local child care program administrators; local child care resource and referral agencies; organizations representing caregivers, teachers, directors; and other appropriate entities.

45 CFR 98.45(c ), (d) & (e)

# Requirements That Apply to Both MRS & AM (Cont.)

The final rule requires Lead Agencies to track through the market rate survey or alternative methodology, or through a separate source, information on the extent to which:

- (1) Child care providers are participating in the CCDF subsidy program and any barriers to participation, including barriers related to payment rates and practices; and
- (2) CCDF child care providers charge amounts to families more than the required family co-payment in instances where the provider's price exceeds the subsidy payment, including data on the size and frequency of any such amounts.

45 CFR 98.45(d)(2)

# Requirements: Detailed Report

- Make widely available, including on web, a detailed report with results of market rate survey or alternative methodology no later than 30 days after its completion.
- The detailed report must include:
  - Estimated cost of care to support implementation of the health, safety, quality, and staffing requirements.
  - Estimated cost of care necessary to support higher-quality child care services at each level of quality.
  - Response to stakeholder views and comments.
- Payment rates must be set in accordance with this information.

# Setting Payment Rates

## Excerpt from the Final Rule Preamble

*We restate the continued importance of the **75<sup>th</sup> percentile** as a benchmark for gauging equal access by Lead Agencies conducting a market rate survey. Established as a benchmark for CCDF by the preamble to the 1998 Final Rule (63 FR 39959), Lead Agencies and other stakeholders are familiar with this rate as a proxy for equal access. Setting rates at the 75th percentile demonstrates that CCDF families have access to at least three-quarters of all available child care. Retaining this benchmark also allows for accountability and comparability across States using a market rate survey approach, which can be useful in gauging equal access and monitoring trends in rates and access to quality care over time.*

# Key Change from NPRM

The law requires the State to take into consideration the cost of higher quality when setting payment rates.

## NPRM

Required States to describe how their rates provided access to care of comparable quality to care available to families above the federal eligibility limit (85% of SMI).

## Final Rule

**Removes this requirement.**

Adds that State must take into account how payment rates for higher-quality relate to estimated cost of care at each level of quality.

# Payment Rates for Higher Quality

## Excerpts from the Final Rule Preamble

- *Lead Agencies may take different approaches to setting rates for higher-quality care, including increasing base payment rates, using pay differentials or higher rates for higher-quality care, or other strategies, such as direct grants or contracts that pay higher rates for child care services that meet higher-quality standards.*

# Payment Rates for Higher Quality

## Excerpts from the Final Rule Preamble (Cont.)

- *ACF acknowledges that rates above the benchmark of 75th percentile may be required to support the costs associated with high-quality care. In order for providers to offer high-quality care that meets the needs of children from low-income families, they need sufficient funds to be able to recruit and retain qualified staff, use intentional approaches to promoting learning and development using curriculum and engaging families, and provide safe and enriching physical environments.*

# Family Co-Payments

- Requires affordable co-pays that are not barrier to families.
- Prohibits Lead Agency from increasing co-pays within the min. 12 months eligibility period (unless the family is eligible through the graduated phase-out provision).
- *Recommends* a new benchmark of no more than 7% of a family's income;



# Family Co-Payments (Cont.)

- Allows waiving of co-pays for families that meet criteria established by the Lead Agency (in addition to families below poverty or protective services); and
- Prohibits co-pays based on the cost of care or amount of subsidy payment.

# Improving Payment Practices & Provider Stability

- Ensure **timely payment** for services
  - **Pay prospectively prior to delivery of services, OR**
  - Pay within no more than 21 calendar days of the receipt of a complete invoice for services.



45 CFR 98.45(I)

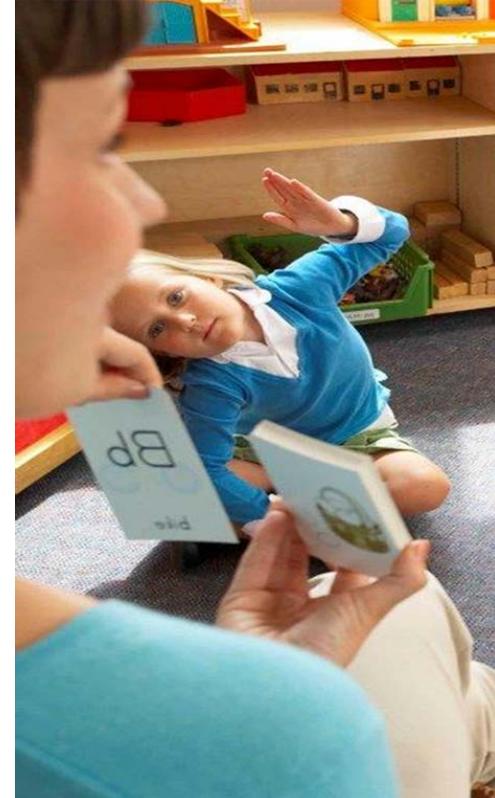
# Improving Payment Practices & Provider Stability (Cont.)

- **Delink provider payments from children's occasional absences** to the extent practicable
  - Pay based on enrollment rather than attendance, **OR**
  - Provide full payment if child attends 85% of authorized time, **OR**
  - Provide full payment if child is absent 5 or fewer days, **OR**
  - An alternative approach justified in the CCDF Plan.

45 CFR 98.45(l)

# Improving Payment Practices & Provider Stability (Cont.)

- 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):
  - Paying on a part-time or full-time basis (rather than smaller increments).
  - Paying for reasonable mandatory registration fees that the provider charges to private-paying parents.



# Improving Payment Practices & Provider Stability (Cont.)

- Provide payment for any services in accordance with written payment agreement or authorization for services that includes information on payment policies (rates, schedules, fees) and dispute resolution process.
- 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.
- Include timely appeal and resolution processes for any payment inaccuracies and disputes.

# Ensuring Access for Specific Populations

- Prioritize CCDF Services for
  - Very Low Income
  - Special needs
  - Homeless
- Provide outreach and services to families with Limited English Proficiency (LEP) and persons with disabilities, and facilitate participation for providers with LEP or disabilities.

45 CFR 98.46(a) and 98.16(dd)



# **Tribal CCDF Framework**



# A Tiered Approach to Tribal Requirements

The final rule establishes 3 tiers of tribal grantees based on the size of their allocation, with reduced req. for medium and smaller allocations.

- Large Allocations: over \$1 million (34 Tribes)
- Medium Allocations: \$250,000 to \$1 million (72 Tribes)
- Small Allocations: under \$250,000 (153 Tribes)

{45 CFR 98.80(a)}



# How do the Equal Access Requirements Apply to Tribes?

- Tribes receiving large and medium allocations are subject to the majority of these requirements.
  - Tribes receiving small allocations are exempt
- All Tribes are exempt from the conducting a market rate survey or alternative methodology.
  - But Tribes receiving large or medium allocations must have rates that support quality.

# Questions & Additional Information

For additional information and resources on the Final Rule, please visit:

<http://www.acf.hhs.gov/occ/ccdf-reauthorization>

To submit questions, please email: [CCDF.reauthorization@acf.hhs.gov](mailto:CCDF.reauthorization@acf.hhs.gov)





Thank you for all you do for  
children and families!



# Roadmap to Key Provisions in 45 CFR 98.45 (Equal Access)

Citation	Topic
98.45(a)	Certification that payment rates are sufficient
98.45(b)	Summary of data and facts in the Plan
98.45(c) and (d)	Market rate survey or alternative methodology
98.45(e)	Consultation with stakeholders
98.45(f)(1)	Detailed report
98.45(f)(2)	Setting payment rates
98.45(k)	Family co-payments
98.45(l)	Provider payment practices