

designate, in an application submitted to the Secretary under section 9858c of this title, an appropriate State agency that complies with the requirements of subsection (b) of this section to act as the lead agency.

(b) Duties

(1) In general

The lead agency shall—

(A) administer, directly or through other governmental or nongovernmental agencies, the financial assistance received under this subchapter by the State;

(B) develop the State plan to be submitted to the Secretary under section 9858c(a) of this title;

(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State with sufficient time and Statewide distribution of the notice of such hearing, to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

(2) Development of plan

In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government.

(Pub. L. 97-35, title VI, § 658D, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 604, Aug. 22, 1996, 110 Stat. 2281.)

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104-193, § 604(1)(A), substituted “governmental or nongovernmental agencies” for “State agencies”.

Subsec. (b)(1)(C). Pub. L. 104-193, § 604(1)(B), inserted “with sufficient time and Statewide distribution of the notice of such hearing,” after “hearing in the State”.

Subsec. (b)(2). Pub. L. 104-193, § 604(2), struck out at end “Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title

§ 9858c. Application and plan

(a) Application

To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

(1) an assurance that the State will comply with the requirements of this subchapter; and

(2) a State plan that meets the requirements of subsection (c) of this section.

(b) Period covered by plan

The State plan contained in the application under subsection (a) of this section shall be designed to be implemented during a 2-year period.

(c) Requirements of a plan

(1) Lead agency

The State plan shall identify the lead agency designated under section 9858b of this title.

(2) Policies and procedures

The State plan shall:

(A) Parental choice of providers

Provide assurances that—

(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter are given the option either—

(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

(II) to receive a child care certificate as defined in section 9858n(2) of this title;

(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.

(B) Unlimited parental access

Certify that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers and provide a detailed description of such procedures.

(C) Parental complaints

Certify that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request and provide a detailed description of how such record is maintained and is made available.

(D) Consumer education information

Certify that the State will collect and disseminate to parents of eligible children and the general public, consumer education in-

formation that will promote informed child care choices.

(E) Compliance with State licensing requirements

(i) In general

Certify that the State has in effect licensing requirements applicable to child care services provided within the State, and provide a detailed description of such requirements and of how such requirements are effectively enforced. Nothing in the preceding sentence shall be construed to require that licensing requirements be applied to specific types of providers of child care services.

(ii) Indian tribes and tribal organizations

In lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter.

(F) Establishment of health and safety requirements

Certify that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under this subchapter. Such requirements shall include—

- (i) the prevention and control of infectious diseases (including immunization);
- (ii) building and physical premises safety; and
- (iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on November 5, 1990, under State or local law.

(G) Compliance with State and local health and safety requirements

Certify that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

(H) Meeting the needs of certain populations

Demonstrate the manner in which the State will meet the specific child care needs of families who are receiving assistance under a State program under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], families who are attempting through work activities to transition off of such assistance program, and families that

are at risk of becoming dependent on such assistance program.

(3) Use of block grant funds

(A) General requirement

The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) through (D).

(B) Child care services and related activities

The State shall use amounts provided to the State for each fiscal year under this subchapter for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b),¹ with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs.

(C) Limitation on administrative costs

Not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter. As used in the preceding sentence, the term “administrative costs” shall not include the costs of providing direct services.

(D) Assistance for certain families

A State shall ensure that a substantial portion of the amounts available (after the State has complied with the requirement of section 418(b)(2) of the Social Security Act [42 U.S.C. 618(b)(2)] with respect to each of the fiscal years 1997 through 2002) to the State to carry out activities under this subchapter in each fiscal year is used to provide assistance to low-income working families other than families described in paragraph (2)(H).

(4) Payment rates

(A) In general

The State plan shall certify that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access.

(B) Construction

Nothing in this paragraph shall be construed to create a private right of action.

¹ See References in Text note below.

(5) Sliding fee scale

The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

(d) Approval of application

The Secretary shall approve an application that satisfies the requirements of this section.

(Pub. L. 97-35, title VI, §658E, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-237; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §605, Aug. 22, 1996, 110 Stat. 2281; Pub. L. 105-33, title V, §5602(1), Aug. 5, 1997, 111 Stat. 645.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(H), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Paragraphs (2) through (5) of section 658A(b), referred to in subsec. (c)(3)(B), means pars. (2) through (5) of section 658A(b) of Pub. L. 97-35, which are set out as a note under section 9858 of this title.

AMENDMENTS

1997—Subsec. (c)(2)(E)(ii). Pub. L. 105-33 substituted “tribal organizations receiving” for “tribal organization receiving”.

1996—Subsec. (b). Pub. L. 104-193, §605(1), substituted “implemented during a 2-year period” for “implemented—

“(1) during a 3-year period for the initial State plan; and

“(2) during a 2-year period for subsequent State plans”.

Subsec. (c)(2)(A). Pub. L. 104-193, §605(2)(A)(i)(II), in closing provisions, substituted “and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.” for “except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992.”

Subsec. (c)(2)(A)(i). Pub. L. 104-193, §605(2)(A)(i)(I), struck out “, other than through assistance provided under paragraph (3)(C),” after “provided under this subchapter” in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 104-193, §605(2)(A)(ii), substituted “Certify that procedures are in effect” for “Provide assurances that procedures are in effect” and inserted before period at end “and provide a detailed description of such procedures”.

Subsec. (c)(2)(C). Pub. L. 104-193, §605(2)(A)(iii), substituted “Certify that the State maintains” for “Provide assurances that the State maintains” and inserted before period at end “and provide a detailed description of how such record is maintained and is made available”.

Subsec. (c)(2)(D). Pub. L. 104-193, §605(2)(A)(iv), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.”

Subsec. (c)(2)(E). Pub. L. 104-193, §605(2)(A)(v), amended heading and text of subpar. (E) generally, substituting provisions relating to compliance with State licens-

ing requirements for provisions relating to compliance with State and local regulatory requirements.

Subsec. (c)(2)(F), (G). Pub. L. 104-193, §605(2)(A)(vi), (vii), substituted “Certify” for “Provide assurances”.

Subsec. (c)(2)(H). Pub. L. 104-193, §605(2)(A)(viii), added subpar. (H) and struck out heading and text of former subpar. (H). Text read as follows: “Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on November 5, 1990, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 9858i of this title.”

Subsec. (c)(2)(I). Pub. L. 104-193, §605(2)(A)(viii), struck out heading and text of subpar. (I). Text read as follows: “Provide assurances that not later than 18 months after the date of the submission of the application under this section, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on November 5, 1990.”

Subsec. (c)(2)(J). Pub. L. 104-193, §605(2)(A)(viii), struck out heading and text of subpar. (J). Text read as follows: “Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State.”

Subsec. (c)(3)(A). Pub. L. 104-193, §605(2)(B)(i), substituted “subparagraphs (B) through (D)” for “subparagraphs (B) and (C)”.

Subsec. (c)(3)(B). Pub. L. 104-193, §605(2)(B)(ii), inserted “and related activities” after “services” in heading, substituted “The” for “Subject to the reservation contained in subparagraph (C), the”, substituted “for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b)” for “for—

“(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in subsection (c)(2)(A) of this section”, substituted “special needs.” for “special needs; and”, and struck out cl. (ii) which read as follows: “activities designed to improve the availability and quality of child care.”

Subsec. (c)(3)(C). Pub. L. 104-193, §605(2)(B)(iii), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 9858e of this title) and to provide before- and after-school and early childhood development services (as described in section 9858f of this title).”

Subsec. (c)(3)(D). Pub. L. 104-193, §605(2)(B)(iv), added subpar. (D).

Subsec. (c)(4)(A). Pub. L. 104-193, §605(2)(C), substituted “State plan shall certify” for “State plan shall provide assurances”, inserted “and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access” after “Federal or State programs”, and struck out at end “Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Respon-

sibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858d. Limitations on State allotments

(a) No entitlement to contract or grant

Nothing in this subchapter shall be construed—

(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

(b) Construction of facilities

(1) In general

Except as provided for in section 9858m(c)(6) of this title, no funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(2) Sectarian agency or organization

In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 9858c(c)(2)(F) of this title.

(Pub. L. 97-35, title VI, §658F, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-240; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §606, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-193 substituted “Except as provided for in section 9858m(c)(6) of this title, no funds” for “No funds”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858e. Activities to improve quality of child care

A State that receives funds to carry out this subchapter for a fiscal year, shall use not less than 4 percent of the amount of such funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services).

(Pub. L. 97-35, title VI, §658G, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat.

1388-241; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §607, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Pub. L. 104-193 reenacted section catchline without change and amended text generally, substituting current provisions for provisions requiring State receiving financial assistance under this subchapter to utilize not less than 20 percent of such assistance for one or more of following: resource and referral programs, grants or loans to assist in meeting State and local standards, monitoring of compliance with licensing and regulatory requirements, training, or improving salaries or other compensation to staff.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858f. Repealed. Pub. L. 104-193, title VI, § 608, Aug. 22, 1996, 110 Stat. 2284

Section, Pub. L. 97-35, title VI, §658H, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-241; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, related to early childhood development and before- and after-school services.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as an Effective Date of 1996 Amendment note under section 9858 of this title.

§ 9858g. Administration and enforcement

(a) Administration

The Secretary shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

(2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

(3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

(b) Enforcement

(1) Review of compliance with State plan

The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 9858c(c) of this title for the State.

(2) Noncompliance

(A) In general

If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 9858c(c) of this title for the State; or

(ii) in the operation of any program for which assistance is provided under this