

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; Pub. L. 113–186, §4, Nov. 19, 2014, 128 Stat. 1972.)

#### AMENDMENTS

2014—Subsec. (a). Pub. L. 113–186, §4(a), substituted “Governor” for “chief executive officer” and “designate an agency (which may be an appropriate collaborative agency), or establish a joint interagency office, that complies with the requirements of subsection (b) to serve as the lead agency for the State under this subchapter” for “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”.

Subsec. (b)(1)(E). Pub. L. 113–186, §4(b), added subpar. (E).

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 3-year period.

#### (c) Requirements of a plan

##### (1) Lead agency

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

##### (2) Policies and procedures

The State plan shall:<sup>1</sup>

##### (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) Monitoring and inspection reports

The plan shall include a certification that the State, not later than 1 year after the State has in effect the policies and practices described in subparagraph (K)(i), will make public by electronic means, in a consumer-friendly and easily accessible format, organized by provider, the results of monitoring and inspection reports, including those due to major substantiated complaints about failure to comply with this subchapter and State child care policies, as well as the number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year, for eligible child care providers within the State. The results shall also include information on the date of such an inspection, and, where applicable, information on corrective action taken.

#### (E) Consumer and provider education information

The plan shall include a certification that the State will collect and disseminate

<sup>1</sup>So in original. Subpars. (D) and following do not continue from introductory provisions.

(which dissemination may be done, except as otherwise specified in this subparagraph, through resource and referral organizations or other means as determined by the State) to parents of eligible children, the general public, and, where applicable, providers—

(i) information about the availability of the full diversity of child care services that will promote informed child care choices and that concerns—

(I) the availability of child care services provided through programs authorized by this subchapter and, if feasible, other child care services and other programs provided in the State for which the family may be eligible, as well as the availability of financial assistance to obtain child care services in the State;

(II) if available, information about the quality of providers, as determined by the State, that can be provided through a Quality Rating and Improvement System;

(III) information, made available through a State Web site, describing the State process for licensing child care providers, the State processes for conducting background checks, and monitoring and inspections, of child care providers, and the offenses that prevent individuals and entities from serving as child care providers in the State;

(IV) other programs for which families that receive child care services for which financial assistance is provided under this subchapter may be eligible, including the program of block grants to States for temporary assistance for needy families established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), Head Start and Early Head Start programs carried out under the Head Start Act (42 U.S.C. 9831 et seq.), the program carried out under the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621 et seq.), the supplemental nutrition assistance program established under the Food and Nutrition Act of 2008 (7 U.S.C. 2011 et seq.), the special supplemental nutrition program for women, infants, and children established under section 1786 of this title, the child and adult care food program established under section 1766 of this title, and the Medicaid and State children's health insurance programs under titles XIX and XXI of the Social Security Act (42 U.S.C. 1396 et seq., 1397aa et seq.);

(V) programs carried out under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.);

(VI) research and best practices concerning children's development, including social and emotional development, early childhood development, and meaningful parent and family engagement, and physical health and development (particularly healthy eating and physical activity); and

(VII) the State policies regarding the social-emotional behavioral health of young children, which may include positive behavioral intervention and support models, and policies on expulsion of preschool-aged children, in early childhood programs receiving assistance under this subchapter; and

(ii) information on developmental screenings, including—

(I) information on existing (as of the date of submission of the application containing the plan) resources and services the State can deploy, including the coordinated use of the Early and Periodic Screening, Diagnosis, and Treatment program under the Medicaid program carried out under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) and developmental screening services available under section 619 and part C of the Individuals with Disabilities Education Act (20 U.S.C. 1419, 1431 et seq.), in conducting developmental screenings and providing referrals to services, when appropriate, for children who receive assistance under this subchapter; and

(II) a description of how a family or eligible child care provider may utilize the resources and services described in subclause (I) to obtain developmental screenings for children who receive assistance under this subchapter who may be at risk for cognitive or other developmental delays, which may include social, emotional, physical, or linguistic delays.

**(F) Compliance with State licensing requirements**

**(i) In general**

The plan shall include a certification that the State involved 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.

**(ii) License exemption**

If the State uses funds received under this subchapter to support a child care provider that is exempt from the corresponding licensing requirements described in clause (i), the plan shall include a description stating why such licensing exemption does not endanger the health, safety, or development of children who receive services from child care providers who are exempt from such requirements.

**(G) Training and professional development requirements**

**(i) In general**

The plan shall describe the training and professional development requirements that are in effect within the State designed to enable child care providers to promote the social, emotional, physical, and cognitive development of children and to improve the knowledge and skills of the

child care workforce. Such requirements shall be applicable to child care providers that provide services for which assistance is provided in accordance with this subchapter.

**(ii) Requirements**

The plan shall provide an assurance that such training and professional development—

(I) shall be conducted on an ongoing basis, provide for a progression of professional development (which may include encouraging the pursuit of postsecondary education), reflect current research and best practices relating to the skills necessary for the child care workforce to meet the developmental needs of participating children, and improve the quality of, and stability within, the child care workforce;

(II) shall be developed in consultation with the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i))), and may engage training providers in aligning training opportunities with the State's training framework;

(III) incorporates<sup>2</sup> knowledge and application of the State's early learning and developmental guidelines (where applicable), the State's health and safety standards, and incorporates social-emotional behavior intervention models, which may include positive behavior intervention and support models;

(IV) shall be accessible to providers supported through Indian tribes or tribal organizations that receive assistance under this subchapter; and

(V) to the extent practicable, are appropriate for a population of children that includes—

(aa) different age groups;

(bb) English learners;

(cc) children with disabilities; and

(dd) Native Americans, including Indians, as the term is defined in section 450b of title 25 (including Alaska Natives within the meaning of that term), and Native Hawaiians (as defined in section 7517 of title 20).

**(iii) Information**

The plan shall include the number of hours of training required for eligible providers and caregivers to engage in annually, as determined by the State.

**(iv) Construction**

The Secretary shall not require an individual or entity that provides child care services for which assistance is provided in accordance with this subchapter to acquire a credential to provide such services. Nothing in this section shall be construed to prohibit a State from requiring a credential.

**(H) Child-to-provider ratio standards**

**(i) Standards**

The plan shall describe child care standards for child care services for which assistance is made available in accordance with this subchapter, appropriate to the type of child care setting involved, to provide for the safety and developmental needs of the children served, that address—

(I) group size limits for specific age populations, as determined by the State;

(II) the appropriate ratio between the number of children and the number of providers, in terms of the age of the children in child care, as determined by the State; and

(III) required qualifications for such providers, as determined by the State.

**(ii) Construction**

The Secretary may offer guidance to States on child-to-provider ratios described in clause (i) according to setting and age group, but shall not require that the State maintain specific group size limits for specific age populations or child-to-provider ratios for providers who receive assistance in accordance with subchapter.<sup>3</sup>

**(I) Health and safety requirements**

The plan shall include a certification 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 in accordance with this subchapter. Such requirements—

(i) shall relate to matters including health and safety topics consisting of—

(I) the prevention and control of infectious diseases (including immunization) and the establishment of a grace period that allows homeless children and children in foster care to receive services under this subchapter while their families (including foster families) are taking any necessary action to comply with immunization and other health and safety requirements;

(II) prevention of sudden infant death syndrome and use of safe sleeping practices;

(III) the administration of medication, consistent with standards for parental consent;

(IV) the prevention of and response to emergencies due to food and allergic reactions;

(V) building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;

(VI) prevention of shaken baby syndrome and abusive head trauma;

(VII) emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-

<sup>2</sup>So in original. Probably should be "incorporate".

<sup>3</sup>So in original. Probably should be "with this subchapter."

caused event (such as violence at a child care facility), within the meaning of those terms under section 5195a(a)(1) of this title;

(VIII) the handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(IX) for providers that offer transportation, if applicable, appropriate precautions in transporting children;

(X) first aid and cardiopulmonary resuscitation; and

(XI) minimum health and safety training, to be completed pre-service or during an orientation period in addition to ongoing training, appropriate to the provider setting involved that addresses each of the requirements relating to matters described in subclauses (I) through (X); and

(i) may include requirements relating to nutrition, access to physical activity, or any other subject area determined by the State to be necessary to promote child development or to protect children's health and safety.

**(J) Compliance with state and local health and safety requirements**

The plan shall include a certification that procedures are in effect to ensure that child care providers within the State, that provide services for which assistance is made available in accordance with this subchapter, comply with all applicable State and local health and safety requirements as described in subparagraph (I).

**(K) Enforcement of licensing and other regulatory requirements**

**(i) Certification**

The plan shall include a certification that the State, not later than 2 years after November 19, 2014, shall have in effect policies and practices, applicable to licensing or regulating child care providers that provide services for which assistance is made available in accordance with this subchapter and the facilities of those providers, that—

(I) ensure that individuals who are hired as licensing inspectors in the State are qualified to inspect those child care providers and facilities and have received training in related health and safety requirements, and are trained in all aspects of the State's licensure requirements;

(II) require licensing inspectors (or qualified inspectors designated by the lead agency) of those child care providers and facilities to perform inspections, with—

(aa) not less than 1 precensure inspection, for compliance with health, safety, and fire standards, of each such child care provider and facility in the State; and

(bb) not less than annually, an inspection (which shall be unannounced) of each such child care provider and fa-

cility in the State for compliance with all child care licensing standards, which shall include an inspection for compliance with health, safety, and fire standards (inspectors may inspect for compliance with all 3 standards at the same time);

(III) require the ratio of licensing inspectors to such child care providers and facilities in the State to be maintained at a level sufficient to enable the State to conduct inspections of such child care providers and facilities on a timely basis in accordance with Federal, State, and local law; and

(IV) require licensing inspectors (or qualified inspectors designated by the lead agency) of child care providers and facilities to perform an annual inspection of each license-exempt provider in the State receiving funds under this subchapter (unless the provider is an eligible child care provider as described in section 9858n(6)(B) of this title) for compliance with health, safety, and fire standards, at a time to be determined by the State.

**(ii) Construction**

The Secretary may offer guidance to a State, if requested by the State, on a research-based minimum standard regarding ratios described in clause (i)(III) and provide technical assistance to the State on meeting the minimum standard within a reasonable time period, but shall not prescribe a particular ratio.

**(L) Compliance with child abuse reporting requirements**

The plan shall include a certification that child care providers within the State will comply with the child abuse reporting requirements of section 5106a(b)(2)(B)(i) of this title.

**(M) Meeting the needs of certain populations**

The plan shall describe how the State will develop and implement strategies (which may include alternative reimbursement 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 State) to increase the supply and improve the quality of child care services for—

(i) children in underserved areas;

(ii) infants and toddlers;

(iii) children with disabilities, as defined by the State; and

(iv) children who receive care during nontraditional hours.

**(N) Protection for working parents**

**(i) Minimum period**

**(I) 12-month period**

The plan shall demonstrate that each child who receives assistance under this subchapter in the State will be considered to meet all eligibility requirements

for such assistance and will receive such assistance, for not less than 12 months before the State or designated local entity redetermines the eligibility of the child under this subchapter, regardless of a temporary change in the ongoing status of the child's parent as working or attending a job training or educational program or a change in family income for the child's family, if that family income does not exceed 85 percent of the State median income for a family of the same size.

**(II) Fluctuations in earnings**

The plan shall demonstrate how the State's or designated local entity's processes for initial determination and redetermination of such eligibility take into account irregular fluctuations in earnings.

**(ii) Redetermination process**

The plan shall describe the procedures and policies that are in place to ensure that working parents (especially parents in families receiving assistance under the program of block grants to States for temporary assistance for needy families under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)) are not required to unduly disrupt their employment in order to comply with the State's or designated local entity's requirements for redetermination of eligibility for assistance provided in accordance with this subchapter.

**(iii) Period before termination**

At the option of the State, the plan shall demonstrate that the State will not terminate assistance provided to carry out this subchapter based on a factor consisting of a parent's loss of work or cessation of attendance at a job training or educational program for which the family was receiving the assistance, without continuing the assistance for a reasonable period of time, of not less than 3 months, after such loss or cessation in order for the parent to engage in a job search and resume work, or resume attendance at a job training or educational program, as soon as possible.

**(iv) Graduated phaseout of care**

The plan shall describe the policies and procedures that are in place to allow for provision of continued assistance to carry out this subchapter, at the beginning of a new eligibility period under clause (i)(I), for children of parents who are working or attending a job training or educational program and whose family income exceeds the State's income limit to initially qualify for such assistance, if the family income for the family involved does not exceed 85 percent of the State median income for a family of the same size.

**(O) Coordination with other programs**

**(i) In general**

The plan shall describe how the State, in order to expand accessibility and continu-

ity of care, and assist children enrolled in early childhood programs to receive full-day services, will efficiently, and to the extent practicable, coordinate the services supported to carry out this subchapter with programs operating at the Federal, State, and local levels for children in preschool programs, tribal early childhood programs, and other early childhood programs, including those serving infants and toddlers with disabilities, homeless children, and children in foster care.

**(ii) Optional use of combined funds**

If the State elects to combine funding for the services supported to carry out this subchapter with funding for any program described in clause (i), the plan shall describe how the State will combine the multiple sets of funding and use the combined funding.

**(iii) Rule of construction**

Nothing in clause (i) shall be construed to affect the priority of children described in clause (i) to receive full-day prekindergarten or Head Start program services.

**(P) Public-private partnerships**

The plan shall demonstrate how the State encourages partnerships among State agencies, other public agencies, Indian tribes and tribal organizations, and private entities, including faith-based and community-based organizations, to leverage existing service delivery systems (as of the date of the submission of the application containing the plan) for child care and development services and to increase the supply and quality of child care services for children who are less than 13 years of age, such as by implementing voluntary shared services alliance models.

**(Q) Priority for low-income populations**

The plan shall describe the process the State proposes to use, with respect to investments made to increase access to programs providing high-quality child care and development services, to give priority for those investments to children of families in areas that have significant concentrations of poverty and unemployment and that do not have such programs.

**(R) Consultation**

The plan shall include a certification that the State has developed the plan in consultation with the State Advisory Council on Early Childhood Education and Care designated or established pursuant to section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)).

**(S) Payment practices**

The plan shall include—

(i) a certification that the payment practices of child care providers in the State that serve children who receive assistance under this subchapter reflect generally accepted payment practices of child care providers in the State that serve children who do not receive assistance under this sub-

chapter, so as to provide stability of funding and encourage more child care providers to serve children who receive assistance under this subchapter; and

(ii) an assurance that the State will, to the extent practicable, 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<sup>4</sup> circumstances such as illness.

**(T) Early learning and developmental guidelines**

**(i) In general**

The plan shall include an assurance that the State will maintain or implement early learning and developmental guidelines (or develop such guidelines if the State does not have such guidelines as of November 19, 2014) that are appropriate for children from birth to kindergarten entry, describing what such children should know and be able to do, and covering the essential domains of early childhood development for use statewide by child care providers. Such guidelines shall—

(I) be research-based, developmentally appropriate, and aligned with entry to kindergarten;

(II) be implemented in consultation with the state<sup>5</sup> educational agency and the State Advisory Council on Early Childhood Education and Care (designated or established pursuant to section 642B(b)(1)(A)(i)<sup>6</sup> of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i));<sup>7</sup> and

(III) be updated as determined by the State.

**(ii) Prohibition on use of funds**

The plan shall include an assurance that funds received by the State to carry out this subchapter will not be used to develop or implement an assessment for children that—

(I) will be the sole basis for a child care provider being determined to be ineligible to participate in the program carried out under this subchapter;

(II) will be used as the primary or sole basis to provide a reward or sanction for an individual provider;

(III) will be used as the primary or sole method for assessing program effectiveness; or

(IV) will be used to deny children eligibility to participate in the program carried out under this subchapter.

**(iii) Exceptions**

Nothing in this subchapter shall preclude the State from using a single assessment as determined by the State for children for—

(I) supporting learning or improving a classroom environment;

(II) targeting professional development to a provider;

(III) determining the need for health, mental health, disability, developmental delay, or family support services;

(IV) obtaining information for the quality improvement process at the State level; or

(V) conducting a program evaluation for the purposes of providing program improvement and parent information.

**(iv) No Federal control**

Nothing in this section shall be construed to authorize an officer or employee of the Federal Government to—

(I) mandate, direct, control, or place conditions (outside of what is required by this subchapter) around adopting a State's early learning and developmental guidelines developed in accordance with this section;

(II) establish any criterion that specifies, defines, prescribes, or places conditions (outside of what is required by this subchapter) on a State adopting standards or measures that a State uses to establish, implement, or improve such guidelines, related accountability systems, or alignment of such guidelines with education standards; or

(III) require a State to submit such guidelines for review.

**(U) Disaster preparedness**

**(i) In general**

The plan shall demonstrate the manner in which the State will address the needs of children in child care services provided through programs authorized under this subchapter, including the need for safe child care, for the period before, during, and after a state of emergency declared by the Governor or a major disaster or emergency (as such terms are defined in section 5122 of this title).

**(ii) Statewide child care disaster plan**

Such plan shall include a statewide child care disaster plan for coordination of activities and collaboration, in the event of an emergency or disaster described in clause (i), among the State agency with jurisdiction over human services, the agency with jurisdiction over State emergency planning, the State lead agency, the State agency with jurisdiction over licensing of child care providers, the local resource and referral organizations, the State resource and referral system, and the State Advisory Council on Early Childhood Education and Care as provided for under section 642B(b) of the Head Start Act (42 U.S.C. 9837b(b)).

**(iii) Disaster plan components**

The components of the disaster plan, for such an emergency or disaster, shall include—

(I) evacuation, relocation, shelter-in-place, and lock-down procedures, and

<sup>4</sup> So in original. Probably should be "unforeseen".

<sup>5</sup> So in original. Probably should be capitalized.

<sup>6</sup> So in original. Probably should be "642B(b)(1)(A)(i)".

<sup>7</sup> So in original. Another closing parenthesis probably should precede the semicolon.

procedures for communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions;

(II) guidelines for the continuation of child care services in the period following the emergency or disaster, which may include the provision of emergency and temporary child care services, and temporary operating standards for child care providers during that period; and

(III) procedures for staff and volunteer emergency preparedness training and practice drills.

**(V) Business technical assistance**

The plan shall describe how the State will develop and implement strategies to strengthen the business practices of child care providers to expand the supply, and improve the quality of, child care services.

**(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 in accordance with subparagraphs (B) through (D).

**(B) Child care services and related activities**

**(i) In general**

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, activities that improve access to child care services, including the use of procedures to permit enrollment (after an initial eligibility determination) of homeless children while required documentation is obtained, training and technical assistance on identifying and serving homeless children and their families, and specific outreach to homeless families, and any other activity that the State determines to be appropriate to meet the purposes of this subchapter (which may include an activity described in clause (ii)), 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.

**(ii) Report by the Assistant Secretary for Children and Families**

**(I) In general**

Not later than September 30 of the first full fiscal year after November 19, 2014, and September 30 of each fiscal year thereafter, the Secretary (acting through the Assistant Secretary for Children and Families of the Department of Health and Human Services) shall prepare a report that contains a determination about whether each State uses amounts provided to such State for the

fiscal year involved under this subchapter in accordance with the priority for services described in clause (i).

**(II) Penalty for noncompliance**

For any fiscal year that the report of the Secretary described in subclause (I) indicates that a State has failed to give priority for services in accordance with clause (i), the Secretary shall—

(aa) inform the State that the State has until the date that is 6 months after the Secretary has issued such report to fully comply with clause (i);

(bb) provide the State an opportunity to modify the State plan of such State, to make the plan consistent with the requirements of clause (i), and resubmit such State plan to the Secretary not later than the date described in item (aa); and

(cc) if the State does not fully comply with clause (i) and item (bb), by the date described in item (aa), withhold 5 percent of the funds that would otherwise be allocated to that State in accordance with this subchapter for the first full fiscal year after that date.

**(III) Waiver for extraordinary circumstances**

Notwithstanding subclause (II) the Secretary may grant a waiver to a State for one year to the penalty applied in subclause (II) if the Secretary determines there are extraordinary circumstances, such as a natural disaster, that prevent the State from complying with clause (i). If the Secretary does grant a waiver to a State under this section, the Secretary shall, within 30 days of granting such waiver, submit a report to the appropriate congressional committees on the circumstances of the waiver including the stated reason from the State on the need for a waiver, the expected impact of the waiver on children served under this program, and any such other relevant information the Secretary deems necessary.

**(iii) Child care resource and referral system**

**(I) In general**

A State may use amounts described in clause (i) to establish or support a system of local or regional child care resource and referral organizations that is coordinated, to the extent determined appropriate by the State, by a statewide public or private nonprofit, community-based or regionally based, lead child care resource and referral organization.

**(II) Local or regional organizations**

The local or regional child care resource and referral organizations supported as described in subclause (I) shall—

(aa) provide parents in the State with consumer education information referred to in paragraph (2)(E) (except

as otherwise provided in that paragraph), concerning the full range of child care options (including faith-based and community-based child care providers), analyzed by provider, including child care provided during non-traditional hours and through emergency child care centers, in their political subdivisions or regions;

(bb) to the extent practicable, work directly with families who receive assistance under this subchapter to offer the families support and assistance, using information described in item (aa), to make an informed decision about which child care providers they will use, in an effort to ensure that the families are enrolling their children in the most appropriate child care setting to suit their needs and one that is of high quality (as determined by the State);

(cc) collect data and provide information on the coordination of services and supports, including services under section 619 and part C of the Individuals with Disabilities Education Act [20 U.S.C. 1419, 1431 et seq.], for children with disabilities (as defined in section 602 of such Act (20 U.S.C. 1401));

(dd) collect data and provide information on the supply of and demand for child care services in political subdivisions or regions within the State and submit such information to the State;

(ee) work to establish partnerships with public agencies and private entities, including faith-based and community-based child care providers, to increase the supply and quality of child care services in the State; and

(ff) as appropriate, coordinate their activities with the activities of the State lead agency and local agencies that administer funds made available in accordance with this subchapter.

**(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 2015 through 2020<sup>8</sup> to the State to carry out activities under this subchapter in each fiscal year is used to provide assistance to low-income working families

including or in addition to families with children described in clause (i), (ii), (iii), or (iv) of paragraph (2)(M).

**(E) Direct services**

From amounts provided to a State for a fiscal year to carry out this subchapter, the State shall—

(i) reserve the minimum amount required to be reserved under section 9858e of this title, and the funds for costs described in subparagraph (C); and

(ii) from the remainder, use not less than 70 percent to fund direct services (provided by the State) in accordance with paragraph (2)(A).

**(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 in accordance with this subchapter are sufficient to ensure equal access for eligible children to child care services that are comparable to child care services in the State or substate area involved that are provided to children whose parents are not eligible to receive assistance under this subchapter or to receive child care assistance under any other Federal or State program, 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) Survey**

The State plan shall—

(i) demonstrate that the State has, after consulting with the State Advisory Council on Early Childhood Education and Care designated or established in section 642B(b)(1)(A)(i) of the Head Start Act (42 U.S.C. 9837b(b)(1)(A)(i)), local child care program administrators, local child care resource and referral agencies, and other appropriate entities, developed and conducted (not earlier than 2 years before the date of the submission of the application containing the State plan) a statistically valid and reliable survey of the market rates for child care services in the State (that reflects variations in the cost of child care services by geographic area, type of provider, and age of child) or an alternative methodology, such as a cost estimation model, that has been developed by the State lead agency;

(ii) demonstrate that the State prepared a detailed report containing the results of the State market rates survey or alternative methodology conducted pursuant to clause (i), and made the results of the survey or alternative methodology widely available (not later than 30 days after the completion of such survey or alternative methodology) through periodic means, including posting the results on the Internet;

(iii) describe how the State will set payment rates for child care services, for which assistance is provided in accordance with this subchapter—

<sup>8</sup> So in original. A closing parenthesis probably should appear.

(I) in accordance with the results of the market rates survey or alternative methodology conducted pursuant to clause (i);

(II) taking into consideration the cost of providing higher quality child care services than were provided under this subchapter before November 19, 2014; and

(III) without, to the extent practicable, reducing the number of families in the State receiving such assistance to carry out this subchapter, relative to the number of such families on November 19, 2014; and

(iv) describe how the State will provide for timely payment for child care services provided under this subchapter.

**(C) Construction**

**(i) No private right of action**

Nothing in this paragraph shall be construed to create a private right of action if the State acted in accordance with this paragraph.

**(ii) No prohibition of certain different rates**

Nothing in this subchapter shall be construed to prevent a State from differentiating the payment rates described in subparagraph (B)(iii) on the basis of such factors as—

(I) geographic location of child care providers (such as location in an urban or rural area);

(II) the age or particular needs of children (such as the needs of children with disabilities and children served by child protective services);

(III) whether the providers provide child care services during weekend and other nontraditional hours; or

(IV) the State's determination that such differentiated payment rates may enable a parent to choose high-quality child care that best fits the parent's needs.

**(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 (that is not a barrier to families receiving assistance under this subchapter) 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; Pub. L. 113-186, § 5(a), (b), Nov. 19, 2014, 128 Stat. 1972.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(E)(i)(IV), (ii)(I), (N)(ii), 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. Titles XIX and XXI of the Act are classified generally to subchapters XIX (§ 1396 et seq.) and XXI (§ 1397aa et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Head Start Act, referred to in subsec. (c)(2)(E)(i)(IV), is subchapter B (§ 635 et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 499, which is classified generally to subchapter II (§ 9831 et seq.) of chapter 105 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of this title and Tables.

The Low-Income Home Energy Assistance Act of 1981, referred to in subsec. (c)(2)(E)(i)(IV), is title XXVI of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 893, which is classified principally to subchapter II (§ 8621 et seq.) of chapter 94 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8621 of this title and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (c)(2)(E)(i)(IV), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (c)(2)(E)(i)(V), (ii)(I), (3)(B)(iii)(II)(cc), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of chapter 33 of Title 20, Education. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

AMENDMENTS

2014—Subsec. (b). Pub. L. 113-186, § 5(a), substituted “3-year” for “2-year”.

Subsec. (c)(1). Pub. L. 113-186, § 5(b)(1), inserted “or established” after “designated”.

Subsec. (c)(2)(B). Pub. L. 113-186, § 5(b)(2)(A), inserted a comma after “care of such providers”.

Subsec. (c)(2)(D) to (V). Pub. L. 113-186, § 5(b)(2)(B), (C), added subpars. (D) to (V) and struck out former subpars. (D) to (H) which related to consumer education information, compliance with State licensing requirements, establishment of health and safety requirements, compliance with State and local health and safety requirements, and meeting the needs of certain populations, respectively.

Subsec. (c)(3)(A). Pub. L. 113-186, § 5(b)(3)(A), substituted “in accordance with” for “as required under”.

Subsec. (c)(3)(B). Pub. L. 113-186, § 5(b)(3)(B), designated existing provisions as cl. (i), inserted heading, substituted “activities that improve access to child care services, including the use of procedures to permit enrollment (after an initial eligibility determination) of homeless children while required documentation is obtained, training and technical assistance on identifying and serving homeless children and their families, and specific outreach to homeless families, and any other activity that the State determines to be appropriate to meet the purposes of this subchapter (which may include an activity described in clause (ii))” for “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)”, and added cls. (ii) and (iii).

Subsec. (c)(3)(D). Pub. L. 113-186, § 5(b)(3)(C), substituted “2015 through 2020” for “1997 through 2002” and “including or in addition to families with children described in clause (i), (ii), (iii), or (iv) of paragraph (2)(M)” for “other than families described in paragraph (2)(H)”.

Subsec. (c)(3)(E). Pub. L. 113-186, § 5(b)(3)(D), added subpar. (E).

Subsec. (c)(4). Pub. L. 113-186, § 5(b)(4), added par. (4) and struck out former par. (4). Prior to amendment, text read as follows:

“(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.”

Subsec. (c)(5). Pub. L. 113-186, §5(b)(5), inserted “(that is not a barrier to families receiving assistance under this subchapter)” after “cost sharing”.

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 licensing 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 Responsibility 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.