

of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.).

(5) No private right of action

Nothing in this section shall be construed to create a private right of action if a provider has acted in accordance with this section.

(f) Fees for background checks

Fees that a State may charge for the costs of processing applications and administering a criminal background check as required by this section shall not exceed the actual costs to the State for the processing and administration.

(g) Transparency

The State must ensure that the policies and procedures under this section are published on the Web site (or otherwise publicly available venue in the absence of a Web site) of the State and the Web sites of local lead agencies.

(h) Construction

(1) Disqualification for other crimes

Nothing in this section shall be construed to prevent a State from disqualifying individuals as child care staff members based on their conviction for crimes not specifically listed in this section that bear upon the fitness of an individual to provide care for and have responsibility for the safety and well-being of children.

(2) Rights and remedies

Nothing in this section shall be construed to alter or otherwise affect the rights and remedies provided for child care staff members residing in a State that disqualifies individuals as child care staff members for crimes not specifically provided for under this section.

(i) Definitions

In this section—

(1) the term “child care provider” means a center-based child care provider, a family child care provider, or another provider of child care services for compensation and on a regular basis that—

(A) is not an individual who is related to all children for whom child care services are provided; and

(B) is licensed, regulated, or registered under State law or receives assistance provided under this subchapter; and

(2) the term “child care staff member” means an individual (other than an individual who is related to all children for whom child care services are provided)—

(A) who is employed by a child care provider for compensation; or

(B) whose activities involve the care or supervision of children for a child care provider or unsupervised access to children who are cared for or supervised by a child care provider.

(j) Effective date

(1) In general

A State that receives funds under this subchapter shall meet the requirements of this section for the provision of criminal background checks for child care staff members de-

scribed in subsection (d)(1) not later than the last day of the second full fiscal year after November 19, 2014.

(2) Extension

The Secretary may grant a State an extension of time, of not more than 1 fiscal year, to meet the requirements of this section if the State demonstrates a good faith effort to comply with the requirements of this section.

(3) Penalty for noncompliance

Except as provided in paragraphs (1) and (2), for any fiscal year that a State fails to comply substantially with the requirements of this section, the Secretary shall withhold 5 percent of the funds that would otherwise be allocated to that State in accordance with this subchapter for the following fiscal year.

(Pub. L. 97-35, title VI, § 658H, as added Pub. L. 113-186, § 7, Nov. 19, 2014, 128 Stat. 1990.)

REFERENCES IN TEXT

The Adam Walsh Child Protection and Safety Act of 2006, referred to in subsecs. (b)(5) and (c)(1)(C), is Pub. L. 109-248, July 27, 2006, 120 Stat. 587, which enacted chapter 151 (§16901 et seq.) of this title and enacted, amended, and repealed numerous other sections and notes in the Code. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (e)(4), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241. Title VII of the Act is classified generally to subchapter VI (§2000e et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

PRIOR PROVISIONS

A prior section 9858f, 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, prior to repeal by Pub. L. 104-193, title VI, § 608, Aug. 22, 1996, 110 Stat. 2284.

§ 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;

(3) provide technical assistance, such as business technical assistance, as described in section 9858c(c)(2)(V) of this title, to States (which may include providing assistance on a reimbursable basis) which shall be provided by qualified experts on practices grounded in scientifically valid research, where appropriate, to carry out this subchapter;

(4) disseminate, for voluntary informational purposes, information on practices that scientifically valid research indicates are most successful in improving the quality of programs that receive assistance with this subchapter; and

(5) after consultation with the heads of any other Federal agencies involved, issue guidance and disseminate information on best practices regarding the use of funding combined by States as described in section 9858c(c)(2)(O)(ii) of this title, consistent with laws other than this subchapter.

(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 subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options.

(B) Additional sanctions

In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

(C) Notice

The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

(3) Issuance of rules

The Secretary shall establish by rule procedures for—

(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

(B) imposing sanctions under this section.

(c) Request for relief

(1) In general

The Secretary may waive for a period of not more than three years any provision under

this subchapter or sanctions imposed upon a State in accordance with subsection (b)(2) upon the State's request for such a waiver if the Secretary finds that—

(A) the request describes one or more conflicting or duplicative requirements preventing the effective delivery of child care services to justify a waiver, extraordinary circumstances, such as natural disaster or financial crisis, or an extended period of time for a State legislature to enact legislation to implement the provisions of this subchapter;

(B) such circumstances included in the request prevent the State from complying with any statutory or regulatory requirements of this subchapter;

(C) the waiver will, by itself, contribute to or enhance the State's ability to carry out the purposes of this subchapter; and,¹

(D) the waiver will not contribute to inconsistency with the objectives of this law.

(2) Contents

Such request shall be provided to the Secretary in writing and will—

(A) detail each sanction or provision within this subchapter that the State seeks relief from;

(B) describe how a waiver from that sanction or provision of this subchapter will, by itself, improve delivery of child care services for children in the State; and

(C) certify that the health, safety, and well-being of children served through assistance received under this subchapter will not be compromised as a result of the waiver.

(3) Approval

Within 90 days after the receipt of a State's request under this subsection, the Secretary shall inform the State of approval or disapproval of the request. If the plan is disapproved, the Secretary shall, at this time, inform the State, the Committee on Education and the Workforce of the House of Representatives, and the Committee on Health, Education, Labor, and Pensions of the Senate of the reasons for the disapproval and give the State the opportunity to amend the request. In the case of approval, the Secretary shall, within 30 days of granting such waiver, notify and submit a report to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate on the circumstances of the waiver including each specific sanction or provision waived, the reason as given by the State of the need for a waiver, and the expected impact of the waiver on children served under this program.

(4) External conditions

The Secretary shall not require or impose any new or additional requirements in exchange for receipt of a waiver if such requirements are not specified in this subchapter.

(5) Duration

The Secretary may approve a request under this subsection for a period not to exceed

¹ So in original. The comma probably should not appear.

three years, unless a renewal is granted under paragraph (7).

(6) Termination

The Secretary shall terminate approval of a request for a waiver authorized under this subsection if the Secretary determines, after notice and opportunity for a hearing, that the performance of a State granted relief under this subsection has been inadequate, or if such relief is no longer necessary to achieve its original purposes.

(7) Renewal

The Secretary may approve or disapprove a request from a State for renewal of an existing waiver under this subchapter for a period no longer than one year. A State seeking to renew their waiver approval must inform the Secretary of this intent no later than 30 days prior to the expiration date of the waiver. The State shall re-certify in its extension request the provisions in paragraph (2) of this subchapter, and shall also explain the need for additional time of relief from such sanction(s) or provisions approved under this law as provided in this subchapter.

(8) Restrictions

Nothing in this subchapter shall be construed as providing the Secretary the authority to permit States to alter the eligibility requirements for eligible children, including work requirements, job training, or educational program participation, that apply to the parents of eligible children under this subchapter. Nothing in this subsection shall be construed to allow the Secretary to waive anything related to his or her authority under this subchapter.

(Pub. L. 97-35, title VI, §658I, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-242; 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, §609, Aug. 22, 1996, 110 Stat. 2284; Pub. L. 113-186, §8(a), (b), Nov. 19, 2014, 128 Stat. 1994, 1995.)

AMENDMENTS

2014—Subsec. (a)(2). Pub. L. 113-186, §8(a)(1), inserted a comma after “publish” and struck out “and” at end.

Subsec. (a)(3). Pub. L. 113-186, §8(a)(2), added par. (3) and struck out former par. (3) which read as follows: “provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.”

Subsec. (a)(4), (5). Pub. L. 113-186, §8(a)(3), added pars. (4) and (5).

Subsec. (c). Pub. L. 113-186, §8(b), added subsec. (c).

1996—Subsec. (b)(1). Pub. L. 104-193, §609(1), struck out “, and shall have the power to terminate payments to the State in accordance with paragraph (2)” before period at end.

Subsec. (b)(2)(A). Pub. L. 104-193, §609(2), in closing provisions, substituted before period at end “finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options” for “finding and that no further payments may be made to such State under this subchapter (or,

in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the non-compliance will be promptly corrected”.

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.

§ 9858h. Payments

(a) In general

Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 9858c(d) of this title shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 9858m of this title for such fiscal year.

(b) Method of payment

(1) In general

Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation

The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 9858c(c)(3) of this title.

(c) Spending of funds by State

Payments to a State from the allotment under section 9858m of this title for any fiscal year may be obligated by the State in that fiscal year or in the succeeding fiscal year.

(Pub. L. 97-35, title VI, §658J, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-243; amended Pub. L. 102-27, title III, §310, Apr. 10, 1991, 105 Stat. 153; Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(a), (c)(1), Nov. 4, 1992, 106 Stat. 5035, 5036; Pub. L. 103-171, §8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104-193, title VI, §610, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-193 substituted “obligated” for “expended” and “succeeding fiscal year” for “succeeding 3 fiscal years”.

1993—Subsec. (c). Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(a). See 1992 Amendment note below.

1992—Pub. L. 102-401 and Pub. L. 102-586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

Subsec. (c). Pub. L. 102-586, §8(a), as amended by Pub. L. 103-171, substituted “expended” for “obligated” and “succeeding 3 fiscal years” for “succeeding fiscal year”.

1991—Subsec. (c). Pub. L. 102-27 substituted “obligated” for “expended”.

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.