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State Plan Public Hearing Coordinator
Early Education and Support Division
California Department of Education
1430 N Street, Suite 3410
Sacramento, CA 95814

By email to statepln@cde.ca.gov

**Re: Child Care and Development Fund (CCDF) State Plan —
October 1, 2019 to September 30, 2021**

Introduction

The Child Care Law Center is a statewide legal organization dedicated to preserving and increasing the availability of quality child care and early education for every child, family, and community. We pay particular attention to the barriers that vulnerable children face – children living in high-poverty communities, children with disabilities, homeless children, foster children, and dual language learners – in obtaining safe, stable child care. We appreciate the opportunity to provide input regarding California’s Child Care and Development Fund (CCDF) Plan for federal fiscal years 2019 to 2021 (“the Plan”).¹ We submit these comments on behalf of all California children who will benefit from the development of a robust CCDF state plan that incorporates relevant recommendations and fully complies with the requirements of the Federal Act.

Since the last state plan covering 2016-2018 was submitted, California has made significant improvements in family eligibility policies, resulting in more continuous, stable child care. As of July 1, 2017, families now have true 12 month eligibility, promoting stable, continuous child care, reducing paperwork burdens for working parents, and easing administrative burdens.² Updating and raising the income eligibility thresholds ensures that families no longer fall off the eligibility cliff when they get a small raise, or a few extra hours of work. The Child Care Law Center applauds CDE in implementing these critical family-friendly policies.

The current planning process coincides with the largest single increase in CCDBG funding history. California will receive an additional \$232 million or a 39% increase in overall CCDF, bringing its total funding to over \$827 million. The FFY 2018 funding increase comes with increased federal expectations that California now has the financial ability to meet new health

¹ Plan available at <http://www.cde.ca.gov/sp/cd/re/documents/stateplandraft1618.pdf>.

² School Finance: Education Omnibus Trailer Bill, A.B. 99, 2017-18 Sess., § 10 (Cal. 2017) (enacted).

and safety, consumer website, and licensing requirements while simultaneously improving access for additional low-income children to affordable, quality child care.

Through the development of a comprehensive, forward-looking Plan, CDE has an opportunity to create the roadmap leading us to a seamless child care delivery system that truly meets the needs of California’s children and working families, supports a professional, adequately compensated workforce, builds on existing strategies, and fully complies with the Act. This is a vital step toward delivering on the Act’s promise to “protect the health and safety of children in child care; help parents make informed consumer choices and access information to support child development; provide equal access to stable child care for low-income children; and enhance the quality of child care and the early childhood workforce.”³

The Child Care Law Center urges CDE to follow the recommendation of the Administration of Children and Families (ACF), to approach the development of the Plan “in a cross-cutting integrated manner.”⁴ While the draft plan includes constructive ideas in several areas, it largely *reports* on the current provision of services rather than proposing how CDE, as the Lead Agency, plans to improve access, coordination of services and an integrated delivery system over the next three years, and where improvements still need to be made. We urge CDE to use this opportunity to strengthen California’s existing child care system by creating a Plan that will move us toward an accessible, professionalized, high-quality child care program that is coordinated and comprehensive – and serves more of California’s low-income children, with special attention to vulnerable populations.

I. CCDF LEADERSHIP AND COORDINATION WITH RELEVANT SYSTEMS (PLAN SECTION 1)

1.3 In Developing the CCDF Plan, CDE should Reference and Incorporate Existing Comprehensive Action Plans Produced External to the Plan Process.⁵

1.3.1 Consultation with the State Advisory Council (SAC) on Early Childhood Education and Care Should Incorporate the California Comprehensive Early Learning Plan (CCELP)

California’s Plan for providing services over the next three years should reference and be guided by the CCELP policy statement and specific recommendations. Led by the Governor’s appointed SAC and jointly released by CDE and California Department of Social Services (“CDSS”) in 2013, the CCELP represents contributions by more than 2,700 stakeholders. It “provides key direction for the State in the development of a high-quality birth-to-age-five system that provides all children with the knowledge and skills they need to achieve long-term success...it suggests changes that, if implemented, would make California’s early learning system more coherent and effective.”⁶ Although not produced as part of the Plan process, referencing and adopting the CCELP as a guiding policy statement for the CCDF Plan will further the

³ CCDF Pre-print for Public Comment 4/10/18, at p. 1.

⁴ *Id.*

⁵ All numbers that begin a topic heading refer to that specific section in the Draft Plan.

⁶ See CCELP, available at <http://www.cde.ca.gov/sp/cd/ce/documents/compearlylearningplan2013.pdf>.

general goals of the Act, provide a comprehensive roadmap to guide the Lead Agency, and fulfill the specific requirement to consult with the SAC in developing the State plan.⁷

1.3.1 Consultation in the Development of the CCDF Plan Should Also Incorporate the December 2015 Legislative Briefing and Input Session on the Implications of CCDF Reauthorization for California

The Plan should also incorporate the substantial efforts undertaken by the Legislature and the child care field, in a December 8, 2015 informational briefing and related materials, to provide input to CDE and assist in implementing the Act. In August 2015, the Child Care Law Center and Children Now commenced a process to make recommendations on how California should implement the Act. With input from a broad array of organizations, and notwithstanding the breadth of stakeholder perspectives, California parents, child care providers, administrators, and policy experts converged on a set of priority policies the state should adopt in the Plan process and through legislation. On December 8, 2015, Senator Holly Mitchell hosted a heavily attended informational briefing on the implications of the Act for California. The coordinating committee presented testimony on its proposals and Topic Sheets. CDE, on invitation, presented and answered questions on implementation of the Act.⁸ The content of these consensus proposals should be reflected in the Plan itself, and should accurately reflect which of the proposals have not yet been adopted. These include: improving access for all children who are eligible for affordable child care, with special attention to vulnerable children and families (Plan § 3.2); promote parent engagement through outreach and consumer information that enables them to make choices that best suit their families' needs (Plan §2.1-2.3); payment rates that are sufficient and timely to ensure equal access for low-income children (Plan § 4, 4.3-4.4), annual licensing inspections (Plan § 5.1); and pre-service and ongoing training in specified health and safety topics (Plan § 5.1.6).

1.4. Coordination with Partners to Expand Accessibility and Continuity of Care

1.4.1 Coordination with Other Federal, State, Local Early Childhood Programs Serving Infants and Toddlers with Disabilities

The Act requires that the state coordinate CCDF child care services with early childhood programs that serve infants and toddlers with disabilities, among other vulnerable populations. The goal of this coordination is to (1) ensure that children with disabilities or developmental delays, or at risk of developmental delays, are being identified, screened, and provided comprehensive and inclusive child care and other services;⁹ and (2) expand accessibility and continuity of care for children with disabilities, especially during the transition to an IEP at or before their third birthday.¹⁰

⁷ Section 658E(c)(2)(R).

⁸ The Topic Sheets and proposals developed from that collaborative process were submitted to CDE and are available at: <http://childcarelaw.org/what-we-do/policy-work/child-care-development-block-grant/>.

⁹ The Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et seq.*, 34 C.F.R. Part 303; California Early Intervention Services Act, Cal. Govt. Code Secs. 95000, 95006.

¹⁰ Section 658E(c)(2)(O); see also, 42 C.F.R. 98.14(a)(3).

The Draft Plan states that CDE participates in the quarterly meetings of the State Interagency Coordinating Council on Early Intervention (ICC), which advises the California Department of Developmental Services (CDDS) regarding the California early intervention services system established under the federal early intervention program, Part C of the Individuals with Disabilities Education Act (IDEA). The Plan should spell out how it works with the ICC and the Early Start Program to pursue coordination of services for infants and toddlers through the ICC.

The ICC should be the hub for integrated delivery of services to children with exceptional needs, yet the Plan does not specify how it will align and coordinate CCDF-funded services with this comprehensive state inclusion program. The Plan should address coordination for children with special needs who meet state or federal criteria for early intervention services under the [Early Start Program](#), for those children aged 0-3, so that they are not only identified early, but so there is better coordination between school districts and Regional Centers under IDEA Part C, and so that payments are properly allocated (see below). The Plan should not only reference the ICC and the Early Start Program, it should describe its efforts to better coordinate services for infants and toddlers through the ICC and the Early Start Program, as described in the MAP Project Strategic Plan.

1.4.1 Head Start state collaboration (p.15)

The Plan states, “[t]hrough ongoing meetings and updates, the CHSSCO works internally with the CDE Data team to discuss options for data collection and shares with the groups the needs of the Head Start field for those programs that have both Head Start and State funded programs.” The Plan should include whether data collection includes tracking families who receive CalWORKs. It should also include how and to what extent Head Start and CDE state-funded programs share family data for eligibility purposes. Through tracking whether families receive CalWORKs and data sharing, the CDE child care contractor will know automatically whether the family should receive CalWORKs child care, instead of unnecessarily placing the family on a state-funded child care waiting list. Proper tracking and data sharing would help ensure continuity of care and keep families from falling through the cracks.

1.41 Coordination with Public Health, Including Agency Responsible for Immunization (pp. 16-17)

SB 277 requires children in licensed child care to be immunized, with limited exceptions. Current law and guidance does not clearly address the rights of children who have IFSPs and IEPs who have not been immunized. There is a great deal of uncertainty in the field about how to interpret this statutory provision.¹¹ CDE should work with the CDSS Community Care Licensing Division to clarify. Until regulations are promulgated, guidance needs to be released regarding how to serve unimmunized children with IFSPs and IEPs, while not violating the ADA’s requirement that children with disabilities receive their special educational services in the least restrictive environment.

¹¹ Cal. Health & Safety Code, § 120335(h) states, “This section does not prohibit a pupil who qualifies for an individualized education program, pursuant to federal law and Section 56026 of the Education Code, from accessing any special education and related services required by his or her individualized education program.”

1.41 Coordination of goals and process with Temporary Assistance for Needy Families Program (p.19)

The Plan needs to articulate how the CDE and CDSS coordinate and share pertinent eligibility data to ensure that TANF families maintain continuity of care and experience no break in services at the time of transfer between programs. California law already provides that eligible families should not experience a break in services when transferring between state and CalWORKs child care, and through the various stages of CalWORKs child care.¹² However, improvements need to be made to the process as families are still falling through the cracks. The Plan should reference California Assembly Bill 60 (Santiago) that helps to ensure families do not unnecessarily lose their child care by simplifying enrollment through technological upgrades. AB 60 is currently working its way through the legislative process and is currently referred to the Senate Human Services Committee.¹³ If enacted, this bill would provide for limited on-line data access between county welfare departments and local child care contractors in order to seamlessly transfer families to new child care and development programs.

The Plan also states that California provides CalWORKs child care to families that are at risk of needing CalWORKs cash assistance, presumably through the CalWORKs Diversion Program.¹⁴ The diversion program is left to county discretion to determine eligibility and that decision is not appealable. Data demonstrates that it is very seldom offered or utilized.

1.41 Coordination goals and process for child care resource and referral agencies, child care education organizations, and providers of early childhood education training and professional development (p.20)

The state plan should also include a description of the child care navigator's role in coordinating continuity of care through the Emergency Child Care Bridge Program, which provides for emergency, time-limited child care vouchers for families with children in out-of-home care and parenting youth in foster care. Each participating county must have a child care navigator at the local R&R. The navigator coordinates with the child care contractors and child welfare departments to ensure families find child care and develop a plan for long-term child care that meets their needs.

1.5 Optional Use of Combined Funds, CCDF Matching and Maintenance-of-Effort Funds

1.5.1 How does the Lead Agency choose to combine funding for CCDF services for any required early childhood program (pp. 23-25)

It is difficult to determine how funding streams can be combined for the different child care programs without knowing the source(s) of funding for each child care program. The CDE should create a CDE webpage that identifies the funding source(s) for each child care program. This webpage should be updated each fiscal year after the state budget is passed.

This section should also explain how CDE intends to draw down more title IV-E funds for foster children in child care and how these matching funds are tracked. As a condition of

¹² Cal. Educ. Code § 8263(c); Cal. Educ. Code § 8350(b).

¹³ http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB60.

¹⁴ California CalWORKs Program Manual of Policies and Procedures, §

receiving funds for the Emergency Child Care Bridge Program, participating counties must, to the maximum extent possible, leverage federal funding pursuant to Title IV-E of the federal Social Security Act. However, counties do not have descriptive guidance on how to leverage Title IV-E funds.

Many children whose families are eligible for CCDF child care services, and who meet the definition of having “exceptional needs,” may also be entitled to have part or all of their child development program paid for by IDEA Part B or C funds, if necessary to meet goals in their individual family services plan (“IFSP”) or individualized education program (“IEP”). Better coordination with early intervention and special education systems can increase access of children with disabilities to inclusive child development opportunities, as well as leveraging increased funding for children with disabilities. This will also reduce pressures on waiting lists for child care services for children without disabilities. The Plan should improve access for children with exceptional needs by ensuring referral for early intervention and special education services, paying or locating payment for child care services which fulfill goals in IFSPs and IEPs, and engaging in ongoing coordination between CDE’s Early Education and Support and Special Education Divisions through the MAP Project, CDDS in its administration of Early Start, and the ICC. Additionally, the Plan should describe how it will ensure more universal application of the higher payment rates that are available to child care providers who are serving children with an IEP or IFSP, and roll back burdensome documentation rules that prevent providers from receiving these adjustment factors.

In order to link comprehensive services to vulnerable children in child care or develop the supply of child care for vulnerable populations, the CDE needs to release clear guidance to child care contractors on the eligibility requirements for families whose children are recipients of protective services (“CPS”), or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited (“at-risk”). Under California law, these families are categorically eligible and prioritized for non-CalWORKs CDE administered child care. However, child care contractors throughout the state are incorrectly applying the law, which is resulting in these vulnerable children not receiving child care and/or families not being able to care for these children because they cannot afford child care. The CDE should release a Management Bulletin, followed by regulations, to clarify the eligibility requirements for these families, how to implement the law, and how these children must receive continuity of services after their categorical eligibility ends when their family remains eligible for child care based on other criteria.

1.7 Coordination With Local or Regional Child Care Resource and Referral Systems

1.7.1. Are consumers receiving the necessary consumer education through the Lead Agency’s funding a system of local or regional CCR&R organizations? (pp.30-31)

The Plan’s consumer education component should include how the CDE and CDSS will inform parents which health and safety regulations will not apply in LEA-based preschool programs. By July 1, 2019, LEA-administered preschools will no longer be subject to Title 22 health and safety requirements, such as:

- Initial licensing and inspection of the safety of physical surroundings, with an emphasis on hazards to very young children;

- Regular, unannounced health and safety inspections;
- Parent (consumer) access to a transparency website where individual facility inspection reports, licensing status, complaints and their resolution are posted and may be reviewed;
- Confidential, on-line complaint process which triggers an inspection within 10 days.

The Plan notes this new license exemption but does not explain how it will address this issue, or the rationale for why this particular exemption will not endanger the health and safety of children. (see §§ 2.2.3 and 2.3.1, below).

II. OUTREACH AND CONSUMER EDUCATION (PLAN SECTION 2).

2.1 Outreach to Families With Limited English Proficiency and Persons With Disabilities

The Plan maintains that the local R&R's will meet the Lead Agency's commitment to provide multi-lingual services, but imposes no requirement on them or on local contractors to do so. The Dymally-Alatorre Bilingual Services Act ("Bilingual Services Act") requires local agencies to provide language access services to Limited English Proficient (LEP) speakers.¹⁵

2.3 Consumer Education Website (pp. 39-40)

The Draft Plan states that "CDE has funded the California R&R Network to develop a statewide child care website...that will eventually result in a consumer-friendly and accessible website... (Plan § 2.3.1) There is no timeline for its funding, development or implementation. The State Plan should detail CDE's commitment to, and timeframe for, fully implementing the state's consumer education database, known as the My Child Care Plan database.

There is currently a bill pending in the Legislature, [AB2960](#), which would provide the needed legislative authorization, and a multi-year process for stakeholder input and the full development of a consumer database. In addition to stating that the database feasibility study and additional funds are needed for the site to be operational, we urge the commitment of a portion of the one-time quality set-aside funds for the next phase of the database. This Plan section should also provide an estimated timeline for this project, the scope of the project and the anticipated benefits of the database. For example, the My Child Care Plan database could collect real-time data on provider rates, obviating the need to conduct costly biennial Regional Market Rate surveys. Additionally, the State Plan should articulate the need to develop an integrated child care data system that allows linkages between the consumer education database, the workforce registry, CDSS Licensing and QRIS websites to ensure streamlined eligibility and enrollment for families, quality services for children, and accessible workforce and program supports. The website should be parent-friendly, with dynamic capacity to answer questions parents have about child care, allow parents to apply online for the range of child care subsidies available to them, have eligibility determined, and track their place on a waiting/eligibility list. The Plan should also describe in Section 2.3 how it will utilize information that is already collected to determine eligibility and automate cross-program benefit referrals.

¹⁵ CAL. GOV'T CODE § 7290, *et seq.*

Our current licensing website addresses only some of the monitoring and inspection reports required by Section 658(c)(2)(D), and only with respect to licensed child care facilities.¹⁶ The Plan should indicate an intent to fund the consumer education database that will disseminate the information required by Section 658E(c)(2)(E) for all CCDF and non-CCDF-funded providers through the statewide website required by Section 658E(c)(2)(D).

2.2.3 CDE's Process for Screening, Substantiating and Responding to Complaints for non-CCDF Providers

California has built a robust complaint process that guarantees an on-line, anonymous complaint system, with an investigation that occurs within ten days. This process protects children, and the availability of complaint history has helped parents make informed child care choices. The Plan references the fact that as of July 1, 2019, all LEA-administered state preschool programs will become license exempt, but the Plan omits any reference to how these exempt entities will be part of the state consumer website, and how families will have access to information regarding violations or incidents that may have occurred. The Uniform Complaint Process applicable to LEA-administered preschools effective July 1, 2019 provides no method for parents to ascertain the history of complaints against a particular child care entity. The Plan does not respond to the request that the Plan should include the rationale for exempting LEA-administered preschools from licensing; the Plan merely references multiple statutory exemptions.

Plan Section 2.2.3 should embrace development of web and/or phone-based application procedures and eligibility determinations in order to reduce burdens on working families. Other states and other California non-child care programs provide effective examples of such linked program data systems to streamline verification procedures. For example, CCDBG families may be eligible for, and should be referred to CalWORKs, Head Start, LIHEAP, CalFresh, WIC, CACFP, MediCal, and IDEA programs. Similarly, a family that qualifies for one of these related benefit programs, such as CalFresh with a gross income at or below 200% of the federal poverty level, is automatically income eligible for subsidized child care. None of the data systems that the Plan references allow linkage between the state's subsidized child care programs and the human service programs and parent education information contained in Section 658E(c)(2)(E). The Plan should capitalize on the horizontal integration of child care and other benefit programs to promote cross-program access and enrollment. We recommend amendment of the Plan to incorporate these and further methods to promote cross-program access.

III. STABLE CHILD CARE FINANCIAL ASSISTANCE (SECTION 3).

With the adoption of 12 month continuous child care eligibility, increased income eligibility thresholds and a graduated phase-out, CDE has made significant strides in establishing stable child care financial assistance for families. The Plan should describe how it will further support family stability through accurate income eligibility calculation that aligns the rules governing treatment of fluctuating income with the CalWORKs program rules, and adopt policies to prevent disruption of work (Plan § 3.3.3). These include requiring contractors to accept

¹⁶ For example, information about deaths, serious injuries, and incidences of substantiated child abuse in child care settings is not available to the public through the website or elsewhere. (Plan § 2.3.8).

electronic submission of all recertification materials, including the digitally signed application and all verification documents from both parent and provider.

3.1 Eligible Children and Families

3.1.2 Eligibility Criteria for Children in Protective Services (pp. 60-61)

The Plan should explain that California law does not restrict the “protective services” category to children only in foster care. While most children in foster care receive protective services and therefore qualify under this category, a child with CPS categorical eligibility need not be in foster care.

The correct citations for whether the Lead Agency waives the income eligibility requirements for cases in which children receive, or need to receive, protective services are Educ. Code §§ 8263(a)(1)(A)(iv) and 8263(a)(1)(B)(i)(I)-(II). These provisions establish that families whose children receive CPS, or whose children have been identified as at-risk of being abused, neglected, or exploited need not meet income eligibility requirements; these families meet both the eligibility and service need requirements to receive non-CalWORKs CDE child care. Education Code § 8273.1 states that families who have CPS or at-risk categorical eligibility for non-CalWORKs CDE child care may be exempt from family fees for up to 12 months.

3.1.3 Does the Lead Agency provide child care to children in protective services?(p. 54)

The Plan affirms that the Lead Agency provides child care to children in protective services, but inadequately defines “protective services” as, “children at risk of abuse, neglect, or exploitation.”¹⁷ CDE regulations, consistent with Education Code § 8263(a)(1), broadly define the “child protective services” category as “children receiving protective services through the local county welfare department as well as children identified by a legal, medical, social service agency or emergency shelter as abused, neglected or exploited or at risk of abuse, neglect or exploitation.” Cal. Code Regs. tit. 5, § 18078(c). Children in protective services; children identified as abused, neglected, or exploited; and children identified as at-risk of abuse, neglect, and exploitation, are three independent bases for categorical eligibility under the “protective services” label. Confusion over these categories denies critical child care services to vulnerable, eligible children and families.

In defining “protective services,” the Plan should include the full range of child welfare services for children who are alleged to be the victims of child abuse, neglect, or exploitation. Welfare and Institutions Code section 16501(a)(2) defines "child welfare services" to include “a continuum of services, including emergency response services, family preservation services, family maintenance services, family reunification services, and permanent placement services, including supportive transition services.” The law explains that “the individual child's case plan is the guiding principle in the provision of these services.” Child welfare agencies may either initiate protective services for the family on a voluntary basis, where the child may remain in the family home or be placed in foster care, or initiate protective services through the court system,

¹⁷ See Educ. Code § 8208(k)(“ "Children at risk of abuse, neglect, or exploitation" means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.”) The citation in the Plan, Education Code section 8202(k), does not exist.

where the child may remain in the family home or be placed in foster care, or the family may be referred to community based service providers, or they may deem the child abuse allegations as unfounded and close the investigation without offering any services.¹⁸

The Plan should explain in section 3.1.3(c) that a family meets both categorical eligibility and need requirements for child care under three distinct scenarios:

- (1) on referral from the local county welfare department because the child receives protective services within the meaning of Welfare and Institutions Code sections 16500, *et seq.* (“child protective services” status);
- (2) on referral from a legal, medical, social service agency or emergency shelter that has identified the child as abused, neglected, or exploited (“abused, neglected, or exploited” status); and,
- (3) on referral from a legal, medical, social service agency or emergency shelter that has identified the child as at-risk of being abused, neglected, or exploited (“at risk” status).

3.1.3 Eligibility criteria based on family income (pp. 61-63)

The Plan should indicate that California law now requires the Department of Finance set the State Median Income (SMI) guidelines using the most recent census data. Currently, families who do not live in one of the 13 pilot counties must still earn 70% or lower of SMI to be financially eligible for CDE-administered child care. The requirement to keep SMI data current became effective July 1, 2017.

3.1.7 Graduated phase-out of assistance (p.66)

The answer to subsection (b) is incorrect. The graduated phase-out of assistance is defined to include those families whose income is above the initial income threshold, but remains below the federal threshold of 85% of SMI. The Lead Agency does increase the copay for families within the graduated phase out. As a family approaches 85% of SMI, the family’s copayment increases to a maximum of 10% of gross income as the family’s monthly adjusted income increases. (Plan, § 3.4 Family Contributions to Payments).

3.2 Increasing Access for Vulnerable Children and Families

1. Improving Access for Children with Special Needs

The Plan states that the eligibility criteria for CCDF-funded programs do not prioritize services for children with special needs. (Plan, p. 73). There is, as described in the Plan, an exception to the income eligibility limits for families who have children with special needs, but only after all income-eligible children have been served. In addition, the Plan should explain that within the second priority for child care services, “If two or more families are in the same priority in relation to income, *the family that has a child with exceptional needs shall be admitted first.*”¹⁹

¹⁸ See Welf. and Inst. Code §§ 301, 16501, 16506, 16507, 16507.3, 16507.4, and Child Welfare Services Manual, Manual of Policies and Procedures, Division 31, Chapter 31, 31-125, 31-201, 31-210 and 31-215.

¹⁹ Educ. Code § 8263 (b)(2)(emphasis added).

As discussed above, better coordination can also increase access to child development opportunities for children with special needs, as well as reducing pressures on waiting lists for child care services for children without disabilities. The Plan should improve access for children with special needs by assuring that referral for early intervention and special education services, including payment for portions of the child care day that fulfill goals in IEPs and IFSPs, are appropriately handled through ongoing coordination with CDE’s Special Education Division, CDSS, the ICC, and the Map Project.²⁰

3.2.1 Prioritization of Services for Homeless Children (pp. 72-73)

While being homeless is a separate basis for establishing both eligibility and service needs, homeless children are not prioritized for services. Nor does the Lead Agency require local contractors to engage in the outreach and application assistance that is required to ensure that homeless children and families have equal access to CCDF-funded child care services.

3.2.2 Improving Access for Homeless Children and Families

The Child Care Law Center commends the State for adopting the expansive definition of homeless found in the McKinney-Vento Homeless Assistance Act. The Education Code, § 8263, provides that “being homeless” establishes categorical eligibility and service need. Yet, the soon-to-be issued Management Bulletin 18-03 takes a step in the wrong direction by broadening the homeless definition used to establish categorical eligibility, and then denying the service need of a homeless family who has self-certified. This additional verification is particularly onerous for homeless families who are in crisis. It also contravenes the special protections for homeless individuals contained in McKinney-Vento against imposing burdensome verification requirements. The Superintendent of Public Instruction, pursuant to his authority to adopt rules and regulations to carry out the purposes of the Child Care and Development Act, and to adopt eligibility rules that comply with federal law governing homeless children, may promulgate additional means of verification of the service need. Cal. Educ. Code Sections 8261(a) and 8263(a)(1). The Plan should also articulate support for eliminating burdensome verification requirements on homeless families in establishing the service need, when that additional 3rd party verification is not required by law.

3.2.3 Lead Agencies must establish a grace period to allow homeless children and children in foster care to receive CCDF assistance while providing a reasonable time to comply with immunization and other health and safety requirements (p. 77)

The answer to subsection (a), “N/A,” regarding a grace period for foster children is incorrect for children in foster care. Cal. Health and Safety Code §120341 states:

(a) The governing authority shall admit a foster child, as defined in subdivision (a) of Section 48853.5 of the Education Code, whose immunization records are not available or are missing.

²⁰ See *supra* Plan § (I)(B)(1).

(b) This section shall not alter the obligation of the governing authority to obtain a foster child's immunization records pursuant to Section 48853.5 of the Education Code or to ensure the immunization of a foster child pursuant to this chapter.

3.3 Protection for Working Families

3.3.3 Change reporting during the 12-month eligibility period (p. 80)

The answer to subsection (b) regarding additional reporting requirements states that “Subgrantees may set policies (e.g. attendance) and may discontinue care for non-attendance.” The Plan should instead state that the CDE must set attendance policies for contractors per the CCDF requirements. The CCDF regulations provide that families must receive at least 12 months of continuous child care unless their adjusted monthly income exceeds 85% of SMI and that contractors cannot discontinue child care due to a “time-limited absence.” 45 CFR §§ 98.20 - 98.21. The preamble to this section provides:

States have the option of terminating child care within the 12 month eligibility period in very limited circumstances, including when a family has “excessive unexplained absences.” If the state exercises this option, the Lead Agency must define “the number of unexplained absences that shall be considered excessive.”²¹ It is important that CDE set standard practices and provide the definition of excessive unexplained absences to create consistency and promote equity throughout the state.

The regulation also cautions states that in setting a standard policy regarding termination due to excessive unexplained absences, ‘we stress that every effort should be made to contact the family prior to terminating benefits.’ Such efforts should be made by the Lead Agency or designated entity, which may include coordinated efforts with the provider to contact the family. It is ACF’s view that unexplained absences should account for at least 15 percent of a child’s planned attendance before such absences are considered excessive. This 15 percent aligns generally with Head Start’s attendance policy and ACF will consider it as a benchmark when reviewing and monitoring this requirement. Adopting attendance policies that align with Head Start will also further the Act’s directive that “to the extent practicable, support the fixed costs of providing child care services by delinking provider payments from a child’s occasional absences.”

3.3.4 Prevent Disruption of Work

California’s adoption of 12 month eligibility and increased income guidelines has provided critical protection for California’s working parents. These policies that prevent disruption of work should be supplemented with rules governing fluctuating income that align

²¹ 45 CFR § 98.21 states:

5)... the Lead Agency may discontinue assistance prior to the next re-determination in limited circumstances where there have been: ...

(i) Excessive unexplained absences despite multiple attempts by the Lead Agency or designated entity to contact the family and provider, including prior notification of possible discontinuation of assistance;

(A) *If the Lead Agency chooses this option, it shall define the number of unexplained absences that shall be considered excessive.* (emphasis added).

with the CalWORKs fluctuating income rules, and with the ability for working parents to conduct their eligibility, change and recertification activities electronically.

3.4 Family Contribution to Payments

3.4.4 Contribution of Payments for families who are receiving or need to receive protective services (p. 83)

The Plan answer, “When the CPS plan indicates that fees shall be waived” is incorrect. Families who have CPS or at-risk categorical eligibility for non-CalWORKs CDE child care may be exempt from family fees for up to 12 months. Educ. Code § 8273.1.

IV. ENSURE EQUAL ACCESS TO HIGH QUALITY CARE FOR LOW-INCOME CHILDREN (SECTION 4).

California has made progress in setting some (but not all) payment rates in accordance with the most recent market rate survey or alternative methodology (Plan § 4.3.3). The use of valid statistical data to set the rates is a challenge in a state the size and breadth of California, and the most recent RMR does not necessarily reflect localized child care costs in the private market. It also bakes in income inequities between high-income and high-poverty communities.

The Plan should identify the work of the current Rate Reform Stakeholder Group in its efforts to define a uniform, regionalized rate structure that reflects the cost of providing quality care across all settings, sets payment rates at a sufficient level to ensure equal access to quality care without causing price escalations that harm the 70% of families paying for care on the private market (Plan § 4.4). In addition, the Plan should set payment practices that reflect generally accepted payment practices for non-CCDF child care providers in California (Plan § 4.5).

4.4.2 Payment Rates Sufficient To Ensure Equal Access

We urge the State Plan to more accurately describe the need for reimbursement rate reform, the current efforts that are underway to develop plans for a single rate system, an anticipated timeline and what legislative and administrative changes will be necessary to reach that goal. This section should be informed by the work of the stakeholder group that has been meeting for the past year to look at the best strategies to consolidate the current bifurcated reimbursement system into a single regional system which would increase overall compensation for providers based on the existing requirements for care, and support the economic viability of all types of care.

The stakeholder group has been actively considering the implications for raising existing compensation in higher cost regions while keeping up with the cost of living throughout the state. There is interest in the group in building the system over time to compensate for higher quality standards across all types of care, with the understanding that caution will need to be taken to minimize impact on the 70% of fee paying parents who struggle to pay for their care, while trying to promote and improve care quality overall.

There is a broad consensus among parents, child care providers, administrators, and many policy makers that the system cannot be friendly to families, child-focused, or fair to child care providers without a significant increase in child care rates.

The Plan should:

- Accept the recommendation of the CDE-CDSS Continuous Improvement Task Force to delink child care payments for families with variable schedules from exact days and hours of care;
- Adopt a plan to merge the Regional Market Rate (RMR) and the Standard Reimbursement Rate (SRR) to create a single, tiered rate system that accounts for regionalized rates over the same period and supports a living wage across all types of child care; and
- Adopt a plan to bring the license-exempt provider rates to a minimum of 80% of the licensed family child care rate, with all rates calculated by comparison to the comparable licensed provider rate (i.e., hourly license exempt to hourly licensed rate).

4.5 Payment Practices and Timeliness of Payments

The plain language of the Act requires that payment practices “reflect generally accepted payment practices of child care providers...who do not receive assistance.”²² Final regulations implementing the Act provide that, “[t]o the extent practicable, enrollment and eligibility policies support the fixed costs of providing child care services by delinking provider payment rates from an eligible child's occasional absences....”²³ California pays all child care providers following the month in which services were provided. For the parents with variable work schedules, the state pays only for actual days and hours during which the child received child care. No unsubsidized child care providers, particularly licensed facilities with fixed overhead and staff costs, would characterize as a “generally accepted payment practice” a child care arrangement in which the parent routinely paid the child care provider only at the end of the month, and only for care that matched the exact days and hours during which the child was with the child care provider. Child care providers that receive payment from multiple child care program contracts must maintain elaborate records and accept different rates (if they maintain both contracted slots and accept voucher payment), further deviating from generally accepted payment practices, in contravention of the Act.

For families with variable work schedules, the recommendation of the CDE-CDSS Continuous Improvement Stakeholder Group is to look at the maximum authorization, and if it is for a full-time schedule (30 hours or more), then the provider should be paid for a full-time space that has been reserved for that child, so long as the attendance is “broadly consistent” with that full-time attendance.

The Plan does not adequately describe how the Lead Agency will ensure the timeliness of payments by either paying prospectively or paying within no more than 21 days of invoice submission. CDE does not currently have payment practices that ensure that sub-grantees are complying with this specific time frame. Current regulations delegate to the sub-grantee the

²² Section 658E(c)(2)(S)(i).

²³ 42 CFR 98.15(a)(8).

discretion to decide what constitutes a timely payment. These rules do not comply with the Act and make it more difficult for providers to stay in business.

4.6 Supply-Building Strategies to Meet the Needs of Certain Populations

4.6.1 Shortages in Supply, data sources used, and method of tracking progress to support equal access and parental choice.

We welcome CDE's efforts to increase the supply and quality of child care for children in underserved areas, infants and toddlers, children with disabilities and children whose parents need care for non-traditional hours. Use of the LPC data can be helpful for assessing need within a particular county, but to be an effective source for making county comparisons and ensuring equal access across the state, it should be publicly available on the CDE website where statewide assessments can be made.

The need for infant and toddler spaces has reached crisis proportions. The slight increase in the number of infant and toddler slots in Centers is more than offset by the precipitous drop in infant and toddler spaces in family child care homes. Since most parents prefer family child care homes for infants and toddlers, and they also provide the most flexible schedules, more must be done to stop the loss of family child care homes that is happening across the state. The first step is to recognize that the RMR does not accurately reflect the cost of providing infant care, and to provide an adjustment factor similar to that received in Title 5 family child care homes. This can augment the quality incentives that should fully include licensed family child care providers.

New infant and toddler spaces will open up in family child care homes if we:

- Provide reimbursement for inspections and local zoning permit costs
- Provide grants to pay for fire inspections and cover coming into compliance with fire code and paying for fire inspections
- Offer professional development training and incentive payments
- Offer grants to experienced large family child care providers to mentor and assist new providers.

STANDARDS AND MONITORING PROCESSES (SECTION 5).

We are one of only a few remaining states in the entire country that does not conduct annual or more frequent unannounced monitoring visits to licensed child care centers. We are one of the few states without a continuing education requirement for child care providers (with the exception of CPR and pediatric first aid for some designated child care providers or child care staff). The lift to get us where the new law has gone is huge, because we have not kept up, step by step.

5.1 Licensing Requirements

ACF has made clear that the state must certify that it has in effect licensing requirements applicable to all child care services provided within the state, including both CCDF and non-CCDF funded providers. While a state may adopt reasonable exemptions, it must explain how

those exemptions do not endanger the health, safety or development of children. The Plan cites to the provision in Cal. Health & Safety Code that exempts California State Preschool programs from licensing by July 1, 2019, but provides no rationale or explanation of how this exemption keeps children safe and healthy. The answer that reports of abuse, neglect or any situation that affects the safety of the child will be investigated by CPS after the fact is cold comfort indeed, and is no replacement for proactive monitoring and on-site inspections.

5.2 Health and Safety Standards and Requirements for CCDF Providers

To meet federal requirements, California must institute ongoing health and safety training beyond the state's mandated bi-annual child abuse reporter training. We urge CDE to articulate the state's plan, including a timeline for implementation, for coordinating and offering ongoing health and safety trainings in the 10 required topics that are free, available on-line and in all of the threshold languages; and provide the regulatory or statutory mandates for that training and its frequency. To the extent that statutory authorization is needed to mandate these trainings, or to offer specific ones on-line, the State Plan should describe those needed legal changes.

5.2.2 Health and safety standards for CCDF providers (pp. 116-122)

The directions instruct that the health and safety standards are “different from the health and safety training requirements.” Most of the answers in this section only cite to the training requirements and do not provide the “standard,” content covered, and/or “practices required” as required by the directions. For example, the answer to question 11 “Recognition and reporting of child abuse and neglect,” recites the training requirements. The standards for being a mandated reporter and where to make a report are found in the Cal. Penal Code sections 11164 *et seq.* Answers to these questions should also note where state law, regulations, or guidance lack standards. For example, the answer to question 6 should include the standards and practices child care providers must adhere to in order to prevent shaken baby syndrome, abusive head trauma, and child maltreatment. The answer here only provides the law about the required training. Similarly, question 3, “Administration of medication, consistent with standards for parental consent” and question 4, “Prevention of and response to emergencies due to food and allergic reactions” do not provide the standards or practices child care providers must follow to administer medication or how to prevent and respond to food and allergic reactions.

Answers to these questions also lack specific citations within the Cal. Health and Safety Code and corresponding regulations. Citing to the broad range of statutes in “California *H&SC*, sections 1596.70 - 1597.7” provides inadequate guidance and many times, these statutes do not provide the required standards, content covered, and practices required. These answers should also note that some of the regulations need to be updated to comport with current California law. For example, the Title 22 child care regulations need to be updated to state that a provider may not accept an unimmunized child based on a “personal beliefs exemption.” CDE and CDSS also need to issue clarifying regulations and guidance on the enrollment policies for unimmunized children with disabilities while still complying with the American Disabilities Act and other state disability laws.

5.2.3 Health and safety training for CCDF providers on required topics

The Plan should clarify that the California Health & Safety Code sections 1596.866 *et seq.* require only, “one director or teacher at each day care center, and each family day care home

licensee who provides care” to take the majority of the Health and Safety training once. The only ongoing required Health and Safety trainings are:

- Pediatric first aid;
- Pediatric CPR; and
- Recognizing and reporting child abuse and neglect

The law also requires a staff person with current course completion in pediatric first aid and pediatric CPR be onsite at all times, and must be present when children are off-site for facility activities.

The CCDF regulations preamble encourages states to offer no- or low-cost trainings available online and in-person to “meet the varied needs of child care caregivers.” California law should be updated to require trainings in all the CCDF required topics. To ensure California training requirements are in compliance with the CCDF and are accessible to child care providers, they should be:

- Required to be taken by all child care providers,
- Ongoing,
- Available online at no-cost,
- Available in-person at low- or no-cost
- Translated into the threshold languages required by the Dymally-Alatorre Bilingual Services Act.

The Plan’s reference the statute does not adequately “*describe its requirements* for pre-service or orientation training and ongoing training.” In most instances, Cal. Health and Safety Code §1596.866 does not describe the requirements of the of the CCDF training topics. A better source of authority is Cal. Code of Regulations, Title 22, §§ 100000.1 *et seq.* “Training Standards for Child Care Providers,” specifies the training course content and whether the content is required or optional. For example, neither section 1596.866 nor Title 22 regulations specify the requirements for “Administration of medication, consistent with standards for parental consent” (section 1596.8661 only covers certain types of medications). However, Cal. Code of Regs., Tit. 22 section 100000.30 (b)(1)(E) states that the preventive health and safety training must cover, “Process for review of medical form information, including medication administration, allergies, immunizations, and health insurance;”.

Currently, some of the CCDF required training topics are not required by California law. It is incorrect to cite to section 1596.866 in these instances. For example, California does not require training on “Emergency Preparedness and Response.” Cal. Health & Safety Code section 1596.866(a)(3) states, “The training *may* include instruction in sanitary food handling, emergency preparedness and evacuation, and caring for children with special needs.” Cal. Code of Regs., Title 22 § 100000.30(c)(10) also states the training *may* include “Earthquake and emergency preparedness.” The, “Recognition and reporting of child abuse and neglect” training is found in § 1596.8662, not § 1596.866.

The California Regulatory Health and Safety Workgroup (“the Health and Safety Workgroup”), whose members are professionals and experts in early childhood education, child care, and health and safety, was created for the specific purpose to address health and safety deficiencies in child care statewide, conduct thorough research on how to address health and safety deficiencies, and develop research-based proposals for child care health and safety

regulatory and legislative reform. Officials from the federal Office of Child Care, and CDE, CDSS, and Emergency Medical Services Authority regularly participate in these meetings.

The Health and Safety Workgroup’s subcommittees have researched, written policy papers and developed policy proposals on many of the training topics that the Act requires, including disaster preparedness, children with disabilities and other special health care needs, child care annual inspections, child abuse prevention, infectious disease prevention, safe sleep practices, prevention of shaken baby syndrome and many more. The Plan should recognize and support this work.

5.3 Monitoring and Enforcement Policies and Practices for CCDF Providers

5.3.1 Enforcement of licensing and health and safety requirements (p. 131)

The Draft Plan cites to a broad range of statutes and regulations to respond to the request that the state, in order “To certify, **describe the procedures** to ensure that CCDF providers comply with all applicable State and local health and safety requirements.” The Plan responds:

the Child Day Care Act per California *H&SC*, sections 1596.70 - 1597.71 or see regulations and procedures on the Child Care Licensing Program Webpage for “Laws and Regulations” at: <http://www.cdss.ca.gov/inforesources/Child-Care-Licensing/Resources-for-Providers/Laws-and-Regulations>

Citing to this broad range of statutes does not *describe the procedures* that ensure CCDF providers comply with the Health and Safety requirements listed at 45 C.F.R. §98.41. The Plan needs to specify the actual procedures and cite to the specific sections of the law and regulations.

5.3.2 Inspections for Licensed CCDF Providers

The field has repeatedly asked CDE in public hearings, input sessions, and stakeholder meetings to guide the legislature and Governor on what legislative action is necessary to develop annual inspections for licensed care. The Plan does not offer any proposal to increase the frequency of inspections from their current once every three year minimum. While the Key Indicator Tool is a worthwhile tool to target resources to problematic child care sites, it does not replace annual inspections. The Plan mistakenly checks the box indicating that it conducts annual inspections of licensed child care centers and family child care homes once a year, when in fact, it readily admits that annual frequency is only met on those providers who have already been found out of compliance. The Plan should identify a proposal to come into compliance with annual inspections, the estimated budget to accomplish this, taking into account the cost reductions that will occur when LEA-administered preschools are taken out of the licensing regime.²⁴ Given our increased CCDBG funding, this licensing function can be met while simultaneously increasing access to quality care for low income children.

Utilizing child care visiting and mentoring programs would broaden the goal of inspections to support child care providers in how to comply with licensing requirements, rather than focusing primarily on penalizing noncompliance. A supportive, well-coordinated inspection process will

²⁴ In 2015, a bill to phase in annual inspections beginning January 2019 was introduced in the Assembly, AB 74 (Calderon). The Assembly and Senate Appropriations Committees estimated the cost at \$13.5 million in the first year and \$10.5 million annually thereafter.

increase the health and safety in child care, and broaden access to licensed care, by paving the road for licensure by license-exempt providers.

VI. Qualified and Effective Child Care Workforce (Plan § 6).

The Plan should include a proposal to expand the California Early Care and Education Workforce Registry to assess and further professional development efforts; and should require all entities that receive state funding for quality improvement or professional development to participate through a designated representative in developing a plan to collaborate at a regional level. It should identify a strategy to create a coordinated infrastructure for child care professional development and quality improvement. The infrastructure should support the critical dual role of community colleges in supporting student parents and providing hands-on training; enable career mobility, incentivize education and training, and be captured by a workforce registry; make quality coaching and technical assistance available to providers, particularly to serve children special needs; inform providers of training requirements and how they are tracked; includes a crosswalk between professional development and quality improvement initiatives that is financially efficient, clear, and mutually supportive; provide a clear framework for quality improvement to guide locally driven efforts.

VII. CONCLUSION

The federal government has been urging the state to come into compliance with federal requirements contained in the 2014 CCDBG Reauthorization and move us to a more child-oriented, stable, higher quality, professionalized set of child care programs. We urge CDE to use this opportunity to strengthen California's existing child care system, creating a detailed Plan moving us toward a more coordinated and comprehensive, accessible, quality, and professionalized child care program -- and one serving more of California's low-income children, with special attention to vulnerable populations.

Once again, thank you for this opportunity to provide comments on the Plan.

Sincerely,

A handwritten signature in blue ink that reads "Rishi Dwan Kober". The signature is fluid and cursive, with the first name "Rishi" being the most prominent.

Senior Policy Attorney