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**Re: Child Care and Development Fund (CCDF) State Plan—
July 1, 2016 to September 30, 2018**

The Child Care Law Center is the only statewide legal center solely dedicated to ensuring that good quality child care and early education is available to every child, family, and community, with particular attention to the needs of children who are low income, have disabilities, or face other barriers to 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 2016 to 2018 ("the Plan").[1] The state plan process is the public's opportunity to participate in deciding how the state will provide services that use CCDF money over the next three years.[2] The California Department of Education ("CDE"), as the CCDF Lead Agency for California, has the responsibility develop the Plan, consulting with appropriate stakeholders and coordinating the provision with other child care and early childhood development programs.[3] 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. This is a vital step toward delivering on the promise to provide "access to stable, high quality child care and early learning experiences [that] improves the odds of success for two generations – parents and children – who rely on child care…."[4]

Since the last CCDF state plan process, Congress passed the Child Care Development Block Grant Act of 2014 ("CCDBG" or "the Act"). The Act represents the biggest change in the child care legal landscape in almost twenty years. The Act includes significant new changes to improve the health, safety, and quality of child care and to improve low-income working families' access to child care assistance and care that promotes child development. The state must achieve compliance with a number of the new provisions in the Act by September 30, 2016.

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[1] Plan available at http://www.cde.ca.gov/sp/cd/re/documents/stateplandraft1618.pdf.
[2] *See* 45 CFR 98.14(c)(1). (Purpose of notice and state hearing is "to provide the public an opportunity to comment on the provision of child care services under the Plan.") In advance of the hearing, the Lead Agency must "make available to the public the conent of the Plan…that it proposes to submit to the Secretary." 45 CFR 98.14(c)(3).
[3] Section 658D(b). All section references unless otherwise noted are to the Child Care Development Block Grant Act of 2014, Public Law No: 113-186.
[4] CCDF Pre-print for Public Comment 9-14-15 at p. 4.

Notwithstanding this sea change, the draft Plan largely *reports* the current provision of services without indicating how the Lead Agency *plans* to provide services over the next three years, and as importantly, how it plans to comply with the Act's new requirements. We believe that lack of forward-thinking frustrates the intent of a planning and public hearing process. The Plan process offers us the opportunity to set California's considerable state resources to the goals of Reauthorization: to making our state subsidized child care programs more child-focused, family friendly, and fair to providers. Do our current policies and practices further those goals? If not, are there attainable ones that would better further the goals? The Plan can and should adopt policies and recommendations, even if it cannot execute them without legislative action.

Our comments focus on sections in which the draft Plan mistakenly identifies the status of CCDBG implementation as "fully implemented"; or, in which the Plan identifies California's status as non-compliant with the CCDBG but states there is "no proposal" for making it so. We have proposed strategies that we believe would assist California in achieving implementation of the CCDBG.

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

A. Consultation in the Development of the CCDF Plan (Plan § 1.3) Should Reference, and the Plan Should Incorporate, Relevant Information Produced External to the Plan Process

1. Consultation with the State Advisory Council on Early Childhood Education and Care (SAC) (Plan § 1.3.1, p. 13) Should Reference and Be Guided by the 2013 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. 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."[5] Although not produced as part of the Plan process, the CCELP was released after submission of the most recent Plan, to fulfill similar goals. Referencing and adopting the CCELP as a guiding policy statement for the CCDF Plan is an easily attainable policy that will further the general goals of the Act, and fulfill the specific new requirement to consult with the SAC in developing the State plan.[6]

[5] *See* CCELP, availalble at http://www.cde.ca.gov/sp/cd/ce/documents/compearlylearningplan2013.pdf.
[6] Section 658E(c)(2)(R).

2. Consultation in the Development of the CCDF Plan (Plan § 1.3.1, pp. 13-14) Should Incorporate December 8, 2015 Informational Briefing on the Implications of CCDF Reauthorization for California

The Plan should incorporate by reference the substantial efforts undertaken by the legislature and the child care field, through 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 formed a coordinating committee with six child care resource and referral, provider, parent, and administrator organizations for the purpose of coordinating proposals from the field on implementation of the Act. With input from a broad group of organizations, the committee identified priority topics; drafted Topic Sheets; and circulated the Topic Sheets to stakeholders representing diverse perspectives and geographic areas. On November 9, 2015, child care stakeholders from 38 organizations came together to discuss the Topic sheets, after which the Topic sheets were once again revised, resulting in the formulation of specific policy. The committee maintained open lines of communication with CDE about our activities and intent throughout this process. Notwithstanding differing perspectives, the views of California parents, child care providers, administrators, and policy experts converged in ways that allowed us to pinpoint policies the state could 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, and respond to the proposals.[7]

The Plan should reflect this legislature and community-initiated input activity in addition to CDE's official public hearing and input sessions (Plan § 1.3.2, pp. 15-16). The Plan should mark "child care resource and referral agencies…provider groups or associations…labor organizations…and parent groups or organizations" among groups with whom the Lead Agency consulted in the development of the CCDF Plan through "other manner of participation," (Plan § 1.3.1, pp. 12 and 14) as these groups participated vigorously in offering Plan input through the legislative briefing and related convening.. More important, the *content* of these consensus proposals that grew out of these opportunities for input should be reflected in the Plan itself. The Plan should accurately reflect that input included proposals that have not been adopted, rather than asserting that "no proposals" have been made. The issues for which proposals were made include: graduated phase-out of assistance (Plan § 3.1.5, p. 56), fluctuation in earnings (Plan § 3.1.6, p. 57), payment rates sufficient to ensure equal access (Plan § 4.4.2, p. 89), and pre-service training in Act specified health and safety requirements (Plan § 5.1.6, p. 112).

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

1. Coordination with Other Federal, State, Local Early Childhood Programs Serving Infants and Toddlers with Disabilities (Plan § 1.4, p. 18)

[7]The Topic Sheets and proposals developed from that collaborative process were submitted to CDE and are available at http://childcarelaw.org/2015/11/attend-the-legislative-briefing-on-ccdf-december-8th-in-the-state-legislature/.

The Act requires that the state coordinate CCDF child care services with early childhood programs that serve infants and toddlers with disabilities to expand accessibility and continuity of care and assist children enrolled in early childhood programs to receive full-day services.[8]

On September 14, 2015, the U.S Departments of Education (ED) and Health and Human Services (HHS) jointly released the "Policy Statement on Inclusion of Children with Disabilities in Early Childhood Programs," ("Policy Statement on Inclusion"), The Policy Statement on Inclusion includes recommendations to States relevant to the Act's coordination requirements. The Plan should reference and be guided by the ED/HHS Policy Statement on Inclusion. Among other recommendations to states, the Policy Statement on Inclusion urges states to create a state-level interagency task force and plan for inclusion. It recommends that states "leverage existing early childhood councils or taskforces…This council should build on existing early childhood efforts, bring partners together, co-create a written vision statement for early childhood inclusion, and carry out an inclusion state plan."[9]

The Plan responds to the Act's coordination requirement by describing of the Map to Inclusive Child Care Project ("Map Project"), and referencing the website for the Map Project and Center on the Social and Emotional Foundations for Early Learning ("CSEFEL") (Plan § 1.4.1, p. 18). The MAP Project and CSEFEL fulfill valuable roles in supporting inclusion of children with disabilities, but they primarily coordinate by providing resources and supports to help child care providers, educators, specialists and families include children with disabilities or other special needs in child care and community settings. They do not coordinate with the authority to care out the kind of program and service decisions that expand accessibility and continuity of care and enable a child enrolled in an early childhood program to receive full-day services. There are relevant coordination components in the Map Project's Strategic Plan, but many of the strategies remain to be accomplished.[10] The Plan should reference and pursue coordination strategies identified in the Map Project's Strategic Plan.

The Plan omits reference to the State Interagency Coordinating Council on Early Intervention (ICC), which advises the California Department of Developmental Services (CDSS) regarding the early intervention services system established by California under the federal early intervention program, Part C of the Individuals with Disabilities Education Act (IDEA). States that receive financial assistance under Part C must establish an ICC.[11] ICC members must include at least one member from a State agency responsible for child care.[12] The Plan should reference the ICC and the state should pursue coordination of services for infants and toddlers through the ICC in conjunction with the MAP Project.

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 as necessary to meet goals in their

[8] Section 658E(c)(2)(O).
[9] Policy Statement on Inclusion, available at http://www2.ed.gov/policy/speced/guid/earlylearning/joint-statement-full-text.pdf, at p. 8.
[10] *See* Map Project Strategic Plan, available at http://www.cainclusion.org/camap/strategic.html
[11] 20 U.S.C. § 1441(a); 34 C.F.R. §303.600.
[12] 20 U.S.C. § 1441(b)(1)(I); 34 C.F.R. 303.601(a)(9).

individual family services plan ("IFSP") or individualized education program ("IEP"). Better coordination with early intervention and special education systems can increase access to child development opportunities for these children, as well as reducing 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, including payment for child care services which fulfill goals in IFSPs and IEPs, are appropriately handled through ongoing coordination between CDE's Early Education and Support Division and its Special Education Division, CDDS in its administration of Early Start, the ICC, and the MAP Project.

2. Early Childhood Programs Serving Children in Foster Care (Plan § 1.4, pp. 20-22).

The Plan's recital of Education Code section 8263 further does not explain how the Lead Agency plans to *coordinate* services to expand accessibility and continuity of care for foster children. The Plan should offer a description of how the Lead Agency plans to coordinate with CDSS and child welfare agencies to ensure that CDE child care program administrators expand and maintain enrollment of children in foster care. To expand accessibility and continuity of care for children in foster care, the Plan should clarify that CDE child care programs do not just "include access for children in foster care" (Plan § 1.4, p. 20), but rather that children in foster care are categorically eligible for child care. Some CDE contractors reject child care referrals by child welfare agencies, because of their erroneous belief that children in foster care, those who have been removed from their home of origin by a child welfare agency, are ineligible for child care pursuant to the Education Code sections 8263 (a)(1)(D) and 8263(a)(2)(A), which establish the categorical eligibility of foster children.[13] Some contractors also reject referrals from child welfare agencies because they believe that an individual licensed as an LCSW must make the referral for a child who is eligible for child care services and child care waiting list priority status pursuant to Cal. Educ. Code § 8263 (a)(1)(D) & (a)(2)(A) and (b)(1)(A)-(B). The Plan should explain that a child welfare professional making the referral need not be a licensed clinical social worker (LCSW), to ease coordination of referrals from CDSS and county welfare departments.[14]

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

The development of the Plan presents a unique opportunity for California to simplify its child care systems, and to work to align and connect them with other key safety net programs. The Plan should use the opportunity of the new federal requirement of a statewide website (Plan § 2.3) to plan for one statewide, integrated portal for all required parent and provider education information (Plan § 2.2); enrollment in the full range of subsidized child care programs; and linkage to enrollment in other human service programs.

The Plan states that California's consumer education website is fully implemented and meeting all Federal requirements. (Section 2.3.1, p. 50). However, our current licensing website

[13] *See also infra* Section (III)(A)(1)(regarding eligibility on the basis of protective services).

[14]Child welfare workers who are best informed about a child's circumstances in foster care may not be LCSWs. County welfare workers may instead, for example, be credentialed as an Associate Social Worker ("ASW"); a Master's in Social Work ("MSW"); Marriage and Family Therapist ("MFT"); or a Doctor of Psychology ("PsyD").

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.[15] There is nothing on the licensing website to indicate where a parent or provider could find any of the further "Consumer and Provider Education Information" required by Sections 658E(c)(2)(E). The Plan should indicate an intent to disseminate the information required by Section 658E(c)(2)(E) through the statewide website required by Section 658E(c)(2)(D).

The statewide website should bridge and coordinate, through our existing resource and referral system, information collected about availability of child care and of subsidies, as well as of quality improvement opportunities for providers. The website should be parent-friendly, with dynamic capacity to answer questions parents need to ask about child care, allow parents to apply on-line for child care subsidies, and track their place on a centralized waiting/eligibility list. This would assist the state in providing not only parents, but state and federal policymakers, with meaningful data about the impact of CCDBG implementation and its impact on availability and waiting lists for subsidized child care services. Data collected for the website could also be used to create an alternative rate methodology, which could save costs by obviating the need for a regional market rate survey.

The Plan should also describe in Section 2.2.3 how it will utilize information that is already collected to determine eligibility and automate cross-program benefit referrals. The Plan does not address the ways in which the statewide website could also promote access to the CCDF subsidy program, as well as other state benefits to which families who are CCDF eligible are entitled. The Plan asserts that the "State of California is committed to promoting technologies that improve and expand services through communication, data sharing and interdepartmental collaboration." (Plan § 2.2.3, p. 40.) However, none of the data systems that the Plan thereafter references allow linkage between the state's subsidized child care programs and the human service programs and parent education information that Section 658E(c)(2)(E) references.

Plan Section 2.2.3 should embrace development of web and/or phone-based application procedures to simplify the eligibility determination process through effective examples from other states and non-child-care programs, and also embrace linkage to other 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, Medi-Cal, 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. 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 access.

[15] For example, as the Plan acknowledges, 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 § 2.3.1(d), p. 50.)

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

The Plan should support family stability through accurate income eligibility information (Plan § 3.1.4); squarely address graduated phase-out (Plan § 3.1.5) and fluctuation in earnings (Plan § 3.1.6) requirements by proposing changes to raise the exit ceiling to qualify for child care subsidies to 85 percent of the State Median Income; and accurately reflect California's non-implementation of 12-month eligibility (Plan § 3.3.1) and policies to prevent disruption of work (Plan § 3.3.3) and support legislative proposals to implement those requirements.

A. Eligibility Criteria Based on Reason For Care (Plan § 3.1.3)

1. *Does the Lead Agency provide child care to children in protective services?(Plan § 3.1.3(c), 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' defined in EC Section 8202(k) as children who are so identified in a written referral from a medical, or social service agency, or emergency shelter." Education Code section 8208(k) defines only "children at risk of abuse, neglect, or exploitation," but does not define "protective services."[16] 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). Receipt of protective services; identification as abused, neglected, or exploited; and identification as at-risk of abuse, neglect, and exploitation, are independent bases for categorical eligibility. Confusion over these categories denies critical child care services to vulnerable, eligible children and families.

In defining "protective services," the Plan should include the legal definition 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." Id. Child welfare agencies may either initiate protective services for the family on a voluntary basis, wherein the child may remain in the family home or be placed in foster care, or initiate protective services through the court system, wherein 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.[17]

[16] *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.

[17] *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.

The Plan should explain in section 3.1.3(c) that a family meets 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).

B. Eligibility Criteria Based on Family Income (Plan § 3.1.4)

The Plan does not comply with the pre-print's "Reminder" that "income limits must be provided in terms of current State Median Income (SMI)…." (Plan § 3.1.4(b), p. 55.) It instead defines income eligibility according to an "SMI Source and year" it identifies as "California Department of Finance, 2007." Id. The outdated income data results in a misleading chart of progress toward CCDBG income eligibility targets (Plan § 3.1.4(b), p. 56). Column (a), purporting to show 100% SMI, and (b), purporting to show 85% SMI, are inaccurate. Column (d), purporting to show the percentage SMI reflected by the entry income dollar amount per month, is dishonest. Column (d) states that the entry income dollar amount reflects 70% SMI, when the dollar amount reflects approximately 57-60% SMI (depending on family size), if provided as instructed in terms of current Bureau of Census data. The chart in Plan section 3.1.4 should use current census data, which will better track the reach of California's subsidized child care programs across its current population, across time, and in comparison to other states.

The Plan notes that San Francisco, San Mateo, and Alameda counties set their own income eligibility limits upon approval from CDE, but states nothing further about the criteria in these individualized county child care subsidy plans. (Plan § 3.1.4(b), p. 54).[18] The plans include higher exit income limits.[19] In San Mateo and San Francisco, entry income limit is the state benchmark SMI under Education Code section 8263.1, but families phase-out at 80% of 2010 SMI, with a family fee schedule under which they pay approximately ten percent of their monthly income in child care fees. Alameda County established a similar pilot project in 2015, authorized through January 1, 2021.[20] The Plan should offer more information about these pilot projects, which serve as valuable planning tools to guide California in implementing updated income eligibility criteria, and phase-out exit income (*see infra* Plan § (III)(B).

We further recommend that the response to the question of how the lead agency defines "income" for the purposes of eligibility at the point of determination (Plan § 3.1.4(a)) explain how income-priority and waiting lists affect this determination, and give the median income of families coming off waiting lists for subsidized child care programs. Targeting low-income

[18] The likely typographic error, characterizing of the three counties as "2" jurisdictions, should be corrected.
[19] Cal. Educ. Code §§ 8335 through 8347.5.
[20] Educ. Code §§ 8340, et seq.

populations through income prioritization is both sound policy and consistent with federal requirements under Act section 658E(c)(3)(B). However, income-priority and limited resources mean that the median income of families *entering* child care programs is significantly lower than the current income threshold of 70% of (2007) SMI. Providing this data will both track the state's success in prioritizing low-income families, and its progress towards the goal of reaching a wide range of moderate income families.

C. Graduated Phase-Out of Assistance (Section 3.1.5) and Fluctuation in Earnings (Section 3.1.6)

The Act requires that states provide for a graduated phase-out of assistance for families whose income has increased at the time of re-determination but remains below the federal threshold of 85% of SMI.[21] The Plan acknowledges that the graduated phase-out requirement is "not implemented" in California. (Plan § 3.1.5, p. 56).

Income eligibility thresholds, which apply at exit as well as entry have been frozen since 2007 at 70% of a SMI based on income data from a decade ago.[22] A family of four loses eligibility for services if its income exceeds $46,896.[23] The average California Self-Sufficiency Standard for two adults with one preschooler and one school-age child was $63,979 in 2014.[24] . If the family of four includes two, full-time workers, earning the $15 minimum wage achieved in some localities and sought statewide, it would earn $62,400, well over current income limits for child care, but still short of the self-sufficiency standard. In Alameda County this minimum wage earning family of four with a preschool and a school age child would pay $19,236 for child care.[25] As a result, families lose eligibility for any child care assistance long before they achieve self-sufficiency. If income eligibility relied on current data from the U.S. Census Bureau, the family of four would meet eligibility criteria at entry with an income of $57, 218.[26] If exit income were set at the current 85% of SMI, the family would remain eligible for assistance until its income reached $69, 479. Family fees would allow increasing family financial participation as the family progressed toward greater self-sufficiency at the higher exit threshold.

Insofar as it is true, as the Plan indicates, that a change in the current lack of phase-out "would require legislative and gubernatorial *approval*," (Plan § 3.1.5, p. 56)(emphasis added), then the Plan should indicate that the Lead Agency will ask the Legislature to conform income thresholds to requirements of the Federal Act, rather than waiting "upon direction from the

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[21] Section 658E(c)(2)(N)(iv).

[22] Cal. Educ. Code § 8263.1(c)("Notwithstanding any other law, for the 2012-13, 2013-14, 2014-15, and 2015-16 fiscal years, the income eligibility limits shall be 70 percent of the state median income that was in use for the 2007-08 fiscal year, adjusted for family size.")

[23] CDE Management Bulletin 11-06, *Updated Child Development Income Ceilings*, available at http://www.cde.ca.gov/sp/cd/ci/mb1106.asp

[24] The Insight Center for Community and Economic Development, California Family Economic Self-Sufficiency Standard (Self-Sufficiency Standard), measures the minimum income necessary to cover a family's basic expenses - housing, food, child care, health care, transportation, and taxes - without public or private assistance. The tool, widely used by policymakers, foundations, and service providers, is available at http://www.insightcced.org/tools-metrics/self-sufficiency-standard-tool-for-california/.

[25] Id.

[26] U.S. Census Bureau, *Median Family Income in the Past 12 Months (in 2014 Inflation-Adjusted Dollars) By Family Size*, available at https://www.census.gov/hhes/www/income/data/statemedian/

Legislature and Governor." Id. The Plan asserts that "To date, no proposals have been put forward" on this issue. Id. In convening stakeholders for the December 8, 2015 legislative informational briefing, Child Care Law Center found broad consensus in support of a proposal to increase the exit threshold to a level at or close to 85% SMI. Child Care Law Center has indicated this consensus and proposal in multiple input and fora including both state plan hearing testimony and materials for the legislative briefing. Identifying raising the exit income threshold to 85% SMI as a priority would demonstrate a commitment to providing child care until a family can achieve self-sufficiency, rather than cycling back into poverty. The Plan should include and support this proposal.

The higher exit income, in conjunction with our proposal for implementation of 12-month eligibility (*infra* Plan § (III)(D)), would further implement the Act's requirement that the Plan demonstrate how the state processes for determination and redetermination take into account irregular fluctuation in earnings (Plan § 3.1.6, p. 57.). The Plan currently acknowledges a lack of policies that comply with the fluctuation in earnings requirement, while claiming incorrectly that "no proposals" have been made to rectify the Plan's non-compliance.

D. Increasing Access for Vulnerable Children and Families (Plan § 3.2)

1. *Improving Access for Children with Special Needs*

The Plan states that "Services are not prioritized for children with exceptional needs." This statement is not consistent with the law. 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."*[27]

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. [28]

1. Improving Access for Homeless Children and Families (Section 3.2.2)

The Child Care Law Center commends the State for including numerous constructive ideas in this section of the Plan. The Plan should also articulate support for reducing the service limitations and documentation required when seeking permanent housing is the basis of need for child care.[29] In addition to reducing access for this vulnerable population, the service limitation on seeking permanent housing as a basis for need, which currently restricts child care to 60 working days, does not conform with the 12-month provision in Section 658E(c)(2)(N)(i).

[27] Educ. Code § 8263 (b)(2)(emphasis added).
[28] *See supra* Plan § (I)(B)(1).
[29] Cal. Code Regs. Tit. 5 §18091.

E. Protection for Working Parents (Plan § 3.3) 12-Month Eligibility (Plan § 3.3.1), [Optional] Termination of Assistance Prior to 12-Months (Plan § 3.3.2), and Prevent Disruption of Work (Plan § 3.3.3)

With respect to 12-month eligibility, the Plan asserts that"it is unclear if California's current law and regulation fully comply with the definition of 12-month eligibility included in the reauthorization of CCDBG"; that we need federal guidance; and, contrary to pre-print directions, leaves all planning sections blank. (Plan § 3.3.1, p. 68.) Similarly, the Plan states that "lacking final federal guidance, it is unclear if" we currently have policies that prevent disruption of work. (Plan § 3.3.3, p. 71.) The Plan marks "yes," in response to question as to whether "the State…terminates assistance prior to 12 months due to parent's loss of work or cessation of attendance at job training or education program ONLY." (Plan § 3.3.2, p. 69.)

There is no need for final federal guidance, given that California's current law and practice violates the plan language of the Act:

> [E]ach child who receives assistance…will be considered to meet all eligibility requirements for such assistance and will receives such assistance for not less than 12 months before the state or designated local entity re-determines 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.[30]

The state routinely terminates children's prior to 12 months. Redetermination intervals under current law may not exceed 12-months, but nothing prevents them from being shorter than 12 months.[31] Statutes and regulations limit services to less than 12 months for families who are eligible on the basis of (1) seeking employment; (2) seeking permanent housing; and, (3) children 'at-risk' of abuse or neglect.[32]

The state requires families to report changes in family income, size, and need for services even if the changes have no effect on eligibility.[33] Student parents are burdened with particularly elaborate interim reporting requirements.[34] Families who have a "variable schedule," which means the contractor cannot predict the actual hours of need, are given up to a maximum number of actual hours worked and required to submit pay stubs (multiple pay stubs, if multiple jobs)

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[30] Section 658(c)(2)(N)(i).
[31] Cal. Code Regs. tit. 5 § 18103(a)(3).
[32] Educ. Code §§ 8263(a)(1)(D), 8263(a)(2)(A)(ii), (b)(1)(B)('at risk' only 3 months without further certification), 8263(d)(seeking employment 60-days unless generally extended under specified circumstances); Cal. Code Regs. tit. 5 § 18091(a) (seeking permanent housing only 60 days).
[33] Cal. Code Regs. tit. 5 §§ 18102 (families told to notify contractors within 5 days of any changes in family income, family size, or category of need for services), 18083(e)(whenever such changes occur, contractors must update a family's application to document continued need and eligibility and determine any change to fee within 30 days).
[34] Cal. Code Regs. tit. 5 §§ 18087 (c) (requiring parents to report any change in class schedule within five days of requesting the change) and (h)(requiring parents to provide official interim progress reports within ten days of their release by institution).

indicating the days and hours of employment, written statements from their employers (multiple written statements, if multiple employers), or other records of their time every four months.[35]

CDE contractors have discretion to terminate services for failure to report within five days even changes that do not effect eligibility; they are required to terminate if reported information shows that income exceeds the current eligibility threshold, which is far below 85% of SMI. The federal pre-print clearly directs, "Note that this change means a State/Territory may not terminate CDF assistance during the 12-month period if a family has an increase in income that exceeds the State's income eligibility threshold, but not the federal threshold of 85% SMI." Plan § 3.3.1, p. 67.

Not only are California's reporting requirements illegal under the Act, but every affected party in the current reporting arragement, from parents, to child care providers, to administrators, to policy advocates, has articulated the broad consensus that the state's current reporting rules are harmful, unproductive, and should change. Much research has documented both the "churning" of families in and out of subsidies, and the potential long-term harm to children and families of the resulting gaps in coverage.

The Plan should reflect the status quo of non-implementation of the Act. It should further indicate that the Lead Agency will pursue regulatory changes and support legislative proposals to undo non-conforming service limitations, and to reduce current burdensome reporting requirements for parents, providers, program administrators, and employers.

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

The Plan should identify the impossibility of ensuring equal access for eligible children with stagnant payment rates and outdated payment practices. It should include a proposal to set payment rates in accordance with the most recent market rate survey or alternative methodology result (Plan § 4.3.3); to determine that payment rates are sufficient to ensure equal access (Plan § 4.4); and to set payment practices that reflect generally accepted payment practices for non-CCDF child care providers in California (Plan § 4.5).

A. Payment Rates Sufficient To Ensure Equal Access (Plan § 4.4.2)

The Plan notes little more than that rates are set by Legislature and Governor and that there "To date there are no proposals to change this policy," to certify that rates are sufficient to ensure equal access. (Plan § 4.4.2. pp. 89-90.) This statement does not meet the Act's required certification.

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 dramatic increase in child care rates. Current rates are based on an obscure formula indirectly tied to data from surveys conducted six or more years ago, and widely regarded as flawed. Payment rates have not kept pace with increases in the cost of child care.

[35] Cal. Code Regs. Tit. 5 § 18086(b)(2).

The Plan should indicate that the Lead Agency will urge raising rates in compliance with federal equal access requirements as a priority issue to the Legislature.

B. Payment Practices and Timeliness of Payments (Plan § 4.5)

Our family participation and payment rules scrutinize parents' hour by hour activities and minimal income changes at the expense of their children's stable routine. Any unsubsidized parent with experience using child care could tell you that parents pay at the beginning of the month for a fixed amount of child care time in the coming month, usually a part day or full day schedule, fixed to certain days of the week. The Plan asserts that "lacking federal guidance" it is unclear if California is in compliance with this provision of the Act. (Plan § 4.5.1, p. 91.) The plain language of the Act demonstrates that we are not in compliance. The Act requires that payment practices "reflect generally accepted payment practices of child care providers…who do not receive assistance."[36] 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.

The Plan should:

- Assert CDE support to increase provider rates by at least 20 percent of the difference between the present rate and the most current market rate with the intent to fully fund rates within 5 years;
- Support a system for delinking payment for child care for families with variable schedules from exact days and hours of care
- Adopt plan to merge the Regional Market Rate (RMR) and the Standard Reimbursement Rate (SRR) into create a single, tiered rate system that accounts for regionalized rates over the same period;

V. STANDARDS AND MONITORING PROCESSES (SECTION 5).

The original CCDBG contained minimal safety and quality requirements and few parameters for subsidy administration. It leaned heavily toward supporting parent's work-related needs rather than their children's developmental needs. California's system reflects this outdated approach. We are one of only six 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 (outside CPR and

[36] Section 658E(c)(2)(S)(i).

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.

A. Health and Safety Training Requirements (Plan § 5.1.6)

The Act requires all child care providers who receive CCDF assistance, with the exception of providers who care for their own relatives, to take specific Health and Safety topics. (Section 658E(c)(2)(I)(i).) The Plan lists the topics where California is in compliance, but states there are "no proposals to change this policy." (Plan § 5.1.6(b), p.112.) This is false. 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. Successful legislation last year (AB 1207, Lopez) requiring child care providers to take training every two years on recognizing and reporting child abuse, was born out of the Health and Safety Workgroup. Previous bills to require unannounced annual inspections also derived from its work. The Plan should recognize and support this work.

The Plan asserts, "Health and Safety training requirements are established by the legislature and Governor." (Plan § 5.1.6(a), p.111.) Some policy proposals must be approved by the Legislature and Governor, but the Lead Agency retains authority to undertake regulatory reform within the confines of the law. The Plan further defers by stating that some online training modules will become available, but that they cannot be required without Legislative action. (Plan § 5.1.6(a), p. 111.) This may be true, but the Plan states no course of action for requiring these trainings through legislation. 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 institute child care health and safety reform.

Where the Plan gives the current status of training requirements, it should give the more accurate statement that the 16 hours of training is required *before* licensure, and that only "[o]ne director or teacher at each day care center, and each family day care home licensee who provides care" must take the training."[37] Under current law, the only person at a licensed center who has received any training could be a center director who does not work with the children, or a single teacher. Similarly, child care provider assistants in family child care are not required to take the pre-service training. It is further entirely possible for no one at a licensed facility to have taken

[37] Cal. Health & Safety Code § 1596.866(a).

preventative health training in decades: with the exception of CPR and pediatric first aid training, there are no required ongoing training requirements.

The Plan should adopt a policy of coordinating and offering trainings without decreasing access to child care. The field has suggested working with the Resource and Referral Agencies to facilitate and provide outreach about required trainings. The Plan should further propose to coordinate QRIS, community college, and other quality improvement initiatives and certify trainings meet Licensing requirements so that child care providers do not needlessly spend time and money on duplicative trainings. Child care centers share that sometimes they need to meet the training and inspection requirements of three different programs, including Licensing, when many of the requirements are the same. The current overlap in health and safety and quality efforts and jurisdiction wastes resources. The Plan should outline a strategy to coordinate and better streamline CCDF quality dollars and other quality funding to ensure child care providers can meet training requirements. One tracking system where all license and license-exempt child care providers can document Licensing-approved trainings they have taken would be very useful for child care providers, and for monitoring purposes. Aligning training requirements with those required by other certificated professional and education programs will incentivize child care providers to take trainings by helping them advance in their careers.

The Plan's response to the requirement that it certify that the State ensures the health and safety of children served by license-exempt providers is as follows: "The State does not conduct on-site visits for license-exempt providers. However, license-exempt providers are investigated by Child Protective Services if there is any report of abuse, neglect or any situation that affects the safety of the child. As a result of these investigations, license-exempt providers may no longer qualify for reimbursement for care provided and funding would cease."(Plan § 5.1.8, p. 113.) This unhelpful response borders on callousness toward the children and families who rely on license-exempt child care, and demonstrates a lack of commitment to maintaining the supply and quality of license-exempt child care providers. The intent of the Act is to increase the availability and quality of child care. Many parents, particularly those with nontraditional and variable schedules and parents of infants, depend on license-exempt family members, friends, and neighbors to care for their children while they work. License-exempt care must remain a choice for parents and it must receive equal investment of health, safety, and quality resources. Because of the financial, administrative, and language barriers that many license-exempt child care providers experience, the field has offered proposals that include targeted, peer, online, and low to no-cost trainings as suggestions for how to ensure this much-needed population of child care providers can meet CCDF requirements.

B. Inspections for Licensed CCDF Providers (Plan § 5.2.2 (b)) and Inspections for License-Exempt Providers (Plan § 5.2.2 (c))

The Plan iterates that annual inspections for licensed providers requires additional funding and prior annual inspection bills have been unsuccessful. (Plan § 5.2.2(b), pp. 117-118.) It also mentions that the state has not established a process to monitor license-exempt facilities. The Plan offers no strategy for how to tackle these problems. The Plan should include that the Lead Agency will partner with the Resource and Referral Agencies and coordinate with QRISs, child care home visiting networks, child care mentoring programs, and other quality improvement

programs to conduct Licensed-approved inspections, especially for license-exempt providers. It should further include that the Lead Agency will pursue further annual inspection legislation that will conform current licensing law to the Act, and will include the field's suggestions to coordinate with other entities to reduce administrative cost. 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 non-compliance. A supportive, well-coordinated inspection process will increase the health and safety in child care, and broaden access to licensed care, by paving the road for licensure by license-exempt providers.

C. Child Abuse and Neglect Reporting (Plan § 5.2.2 (e))

The Plan states that, "beginning January 1, 2018, child care providers and their staff will be required by DSS to complete training on their mandated child abuse reporter duties and to renew their training every two years." (Plan § 5.2.2(e), p. 121.) The Plan should note that CDSS currently offers free online child abuse mandated reporter training in Spanish and English, and highlight that after January 1, 2018, it must include "[i]nformation on protective factors that may help prevent abuse, including dangers of shaking a child, safe sleep practices, psychological effects of repeated exposure to domestic violence, safe and age-appropriate forms of discipline, how to promote a child's social and emotional health, and how to support positive parent-child relationships." Some of this content, such as safe sleep practices and the dangers of shaking a child, are required training topics in the Act.

The Plan should include how the Lead Agency will coordinate with the Health and Safety Workgroup to make legislative proposals, develop a strategy to meet training requirements for license and license-exempt child care providers, adhere to annual inspection requirements, and how develop a strengths-based model for annual inspections that best fit the needs of child care centers, family child care providers, and license-exempt providers:

- Assert support for funding for annual inspections of licensed child care facilities
- Adopt a policy and plan to develop a system to track visits by Title 5, QRIS, and other approved groups as meeting CCDF licensing inspection requirement.
- Adopt a plan to create a model for health and safety training and monitoring of license-exempt providers that uses a supportive home-visit or engagement type model that involves the local resource and referral programs to meet monitoring requirements for providers who are not CCDBG exempt relatives.
- Support "hold harmless" approach with respect to child care access and note related need to fund child care provider training to meet additional health and safety requirements.
- Support financial remuneration and incentives for child care providers who participate in approved trainings or in home-visit program.

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 recommended similar changes with a surprisingly unified voice for several years, in regulations proposed in 2013 under the prior CCDBG, in the new Act, and in the recently proposed regulations under the Act: increase training and monitoring for both licensed and license exempt providers; update payment rates and practices; reduce the burden on families of maintaining eligibility. The Act has passed. We may get more detailed guidance, but we know the direction we need to head. That direction is more child-oriented, stable, higher quality, professionalized child care programs. When told to find higher ground, we do not wait to hear whether to take a car, bus, or train before locating a hill to climb. The Plan should describe not just floodplain but also the higher ground toward which the Lead Agency aims, so that we can begin the process of building toward that higher ground.

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

Sincerely,

Anna R. Levine
Senior Staff Attorney