

§ 98.17

are not available throughout the entire service area;

(4) A description of how the Lead Agency will meet the needs of certain families specified at § 98.50(e).

(5) Any additional eligibility criteria, priority rules and definitions established pursuant to § 98.20(b);

(h) A description of the activities to provide comprehensive consumer education, to increase parental choice, and to improve the quality and availability of child care, pursuant to § 98.51;

(i) A description of the sliding fee scale(s) (including any factors other than income and family size used in establishing the fee scale(s)) that provide(s) for cost sharing by the families that receive child care services for which assistance is provided under the CCDF, pursuant to § 98.42;

(j) A description of the health and safety requirements, applicable to all providers of child care services for which assistance is provided under the CCDF, in effect pursuant to § 98.41;

(k) A description of the child care certificate payment system(s), including the form or forms of the child care certificate, pursuant to § 98.30(c);

(l) Payment rates and a summary of the facts, including a biennial local market rate survey, relied upon to determine that the rates provided are sufficient to ensure equal access pursuant to § 98.43;

(m) A detailed description of how the State maintains a record of substantiated parental complaints and how it makes information regarding those complaints available to the public on request, pursuant to § 98.32;

(n) A detailed description of the procedures in effect for affording parents unlimited access to their children whenever their children are in the care of the provider, pursuant to § 98.31;

(o) A detailed description of the licensing requirements applicable to child care services provided, and a description of how such licensing requirements are effectively enforced, pursuant to § 98.40;

(p) Pursuant to § 98.33(b), the definitions or criteria used to implement the exception, provided in section 407(e)(2) of the Social Security Act, to individual penalties in the TANF work requirement applicable to a single custo-

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dial parent caring for a child under age six;

(q)(1) When any Matching funds under § 98.53(b) are claimed, a description of the efforts to ensure that pre-Kindergarten programs meet the needs of working parents;

(2) When State pre-Kindergarten expenditures are used to meet more than 10% of the amount required at § 98.53(c)(1), or for more than 10% of the funds available at § 98.53(b), or both, a description of how the State will coordinate its pre-Kindergarten and child care services to expand the availability of child care; and

(r) Such other information as specified by the Secretary.

[63 FR 39981, July 24, 1998, as amended at 72 FR 27979, May 18, 2007]

§ 98.17 Period covered by Plan.

(a) For States, Territories, and Indian Tribes the Plan shall cover a period of two years.

(b) The Lead Agency shall submit a new Plan prior to the expiration of the time period specified in paragraph (a) of this section, at such time as required by the Secretary in written instructions.

§ 98.18 Approval and disapproval of Plans and Plan amendments.

(a) *Plan approval.* The Assistant Secretary will approve a Plan that satisfies the requirements of the Act and this part. Plans will be approved not later than the 90th day following the date on which the Plan submittal is received, unless a written agreement to extend that period has been secured.

(b) *Plan amendments.* Approved Plans shall be amended whenever a substantial change in the program occurs. A Plan amendment shall be submitted within 60 days of the effective date of the change. Plan amendments will be approved not later than the 90th day following the date on which the amendment is received, unless a written agreement to extend that period has been secured.

(c) *Appeal of disapproval of a Plan or Plan amendment.* (1) An applicant or Lead Agency dissatisfied with a determination of the Assistant Secretary pursuant to paragraphs (a) or (b) of this section with respect to any Plan

or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Assistant Secretary asking for reconsideration of the issue of whether such Plan or amendment conforms to the requirements for approval under the Act and pertinent Federal regulations.

(2) Within 30 days after receipt of such petition, the Assistant Secretary shall notify the applicant or Lead Agency of the time and place at which the hearing for the purpose of reconsidering such issue will be held.

(3) Such hearing shall be held not less than 30 days, nor more than 90 days, after the notification is furnished to the applicant or Lead Agency, unless the Assistant Secretary and the applicant or Lead Agency agree in writing on another time.

(4) Action pursuant to an initial determination by the Assistant Secretary described in paragraphs (a) and (b) of this section that a Plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Assistant Secretary subsequently determines that the original decision was incorrect, the Assistant Secretary shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied. The hearing procedures are described in part 99 of this chapter.

Subpart C—Eligibility for Services

§ 98.20 A child's eligibility for child care services.

(a) In order to be eligible for services under § 98.50, a child shall:

- (1)(i) Be under 13 years of age; or,
- (ii) At the option of the Lead Agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision;
- (2) Reside with a family whose income does not exceed 85 percent of the State's median income for a family of the same size; and
- (3)(i) Reside with a parent or parents (as defined in § 98.2) who are working or attending a job training or educational program; or
- (ii) Receive, or need to receive, protective services and reside with a parent or parents (as defined in § 98.2)

other than the parent(s) described in paragraph (a)(3)(i) of this section.

(A) At grantee option, the requirements in paragraph (a)(2) of this section and in § 98.42 may be waived for families eligible for child care pursuant to this paragraph, if determined to be necessary on a case-by-case basis by, or in consultation with, an appropriate protective services worker.

(B) At grantee option, the provisions in (A) apply to children in foster care when defined in the Plan, pursuant to § 98.16(f)(7).

(b) Pursuant to § 98.16(g)(5), a grantee or other administering agency may establish eligibility conditions or priority rules in addition to those specified in this section and § 98.44 so long as they do not:

- (1) Discriminate against children on the basis of race, national origin, ethnic background, sex, religious affiliation, or disability;
- (2) Limit parental rights provided under Subpart D; or
- (3) Violate the provisions of this section, § 98.44, or the Plan. In particular, such conditions or priority rules may not be based on a parent's preference for a category of care or type of provider. In addition, such additional conditions or rules may not be based on a parent's choice of a child care certificate.

Subpart D—Program Operations (Child Care Services)—Parental Rights and Responsibilities

§ 98.30 Parental choice.

(a) The parent or parents of an eligible child who receives or is offered child care services shall be offered a choice:

- (1) To enroll the child with an eligible child care provider that has a grant or contract for the provision of such services, if such services are available; or
- (2) To receive a child care certificate as defined in § 98.2. Such choice shall be offered any time that child care services are made available to a parent.

(b) When a parent elects to enroll the child with a provider that has a grant or contract for the provision of child care services, the child will be enrolled