

§ 98.34

pursuant to §98.11, other entities, and shall include:

(1) The procedures the TANF agency uses to determine if the parent has a demonstrated inability to obtain needed child care;

(2) The criteria or definitions applied by the TANF agency to determine whether the parent has a demonstrated inability to obtain needed child care, including:

- (i) "Appropriate child care";
- (ii) "Reasonable distance";
- (iii) "Unsuitability of informal child care";
- (iv) "Affordable child care arrangements";

(3) The clarification that assistance received during the time an eligible parent receives the exception referred to in paragraph (b) of this section will count toward the time limit on Federal benefits required at section 408(a)(7) of the Social Security Act.

(c) Include in the biennial Plan the definitions or criteria the TANF agency uses in implementing the exception to the work requirement specified in paragraph (b) of this section.

§ 98.34 Parental rights and responsibilities.

Nothing under this part shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

Subpart E—Program Operations (Child Care Services)—Lead Agency and Provider Requirements

§ 98.40 Compliance with applicable State and local regulatory requirements.

- (a) Lead Agencies shall:
 - (1) Certify that they have in effect licensing requirements applicable to child care services provided within the area served by the Lead Agency;
 - (2) Provide a detailed description of the requirements under paragraph (a)(1) of this section and of how they are effectively enforced.
- (b)(1) This section does not prohibit a Lead Agency from imposing more stringent standards and licensing or regulatory requirements on child care

45 CFR Subtitle A (10–1–03 Edition)

providers of services for which assistance is provided under the CCDF than the standards or requirements imposed on other child care providers.

(2) Any such additional requirements shall be consistent with the safeguards for parental choice in §98.30(f).

§ 98.41 Health and safety requirements.

(a) Although the Act specifically states it does not require the establishment of any new or additional requirements if existing requirements comply with the requirements of the statute, each Lead Agency shall certify that there are in effect, within the State (or other area served by the Lead Agency), under State, local or tribal law, requirements designed to protect the health and safety of children that are applicable to child care providers of services for which assistance is provided under this part. Such requirements shall include:

(1) The prevention and control of infectious diseases (including immunizations). With respect to immunizations, the following provisions apply:

(i) As part of their health and safety provisions in this area, States and Territories shall assure that children receiving services under the CCDF are age-appropriately immunized. Those health and safety provisions shall incorporate (by reference or otherwise) the latest recommendation for childhood immunizations of the respective State or territorial public health agency.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, Lead Agencies may exempt:

(A) Children who are cared for by relatives (defined as grandparents, great grandparents, siblings (if living in a separate residence), aunts, and uncles);

(B) Children who receive care in their own homes;

(C) Children whose parents object to immunization on religious grounds; and

(D) Children whose medical condition contraindicates immunization;

(iii) Lead Agencies shall establish a grace period in which children can receive services while families are taking the necessary actions to comply with the immunization requirements;

(2) Building and physical premises safety; and

(3) Minimum health and safety training appropriate to the provider setting.

(b) Lead Agencies may not set health and safety standards and requirements under paragraph (a) of this section that are inconsistent with the parental choice safeguards in §98.30(f).

(c) The requirements in paragraph (a) of this section shall apply to all providers of child care services for which assistance is provided under this part, within the area served by the Lead Agency, except the relatives specified in paragraph (e) of this section.

(d) Each Lead Agency shall certify that procedures are in effect to ensure that child care providers of services for which assistance is provided under this part, within the area served by the Lead Agency, comply with all applicable State, local, or tribal health and safety requirements described in paragraph (a) of this section.

(e) For the purposes of this section, the term "child care providers" does not include grandparents, great grandparents, siblings (if such providers live in a separate residence), aunts, or uncles, pursuant to §98.2.

§ 98.42 Sliding fee scales.

(a) Lead Agencies shall establish, and periodically revise, by rule, a sliding fee scale(s) that provides for cost sharing by families that receive CCDF child care services.

(b) A sliding fee scale(s) shall be based on income and the size of the family and may be based on other factors as appropriate.

(c) Lead Agencies may waive contributions from families whose incomes are at or below the poverty level for a family of the same size.

§ 98.43 Equal access.

(a) The Lead Agency shall certify that the payment rates for the provision of child care services under this part are sufficient to ensure equal access, for eligible families in the area served by the Lead Agency, to child care services comparable to those provided to families not eligible to receive CCDF assistance or child care assistance under any other Federal, State, or tribal programs.

(b) The Lead Agency shall provide a summary of the facts relied on to determine that its payment rates ensure equal access. At a minimum, the summary shall include facts showing:

(1) How a choice of the full range of providers, *e.g.*, center, group, family, and in-home care, is made available;

(2) How payment rates are adequate based on a local market rate survey conducted no earlier than two years prior to the effective date of the currently approved Plan;

(3) How copayments based on a sliding fee scale are affordable, as stipulated at §98.42.

(c) A Lead Agency may not establish different payment rates based on a family's eligibility status or circumstances.

(d) Payment rates under paragraph (a) of this section shall be consistent with the parental choice requirements in §98.30.

(e) Nothing in this section shall be construed to create a private right of action.

§ 98.44 Priority for child care services.

Lead Agencies shall give priority for services provided under §98.50(a) to:

(a) Children of families with very low family income (considering family size); and

(b) Children with special needs.

§ 98.45 List of providers.

If a Lead Agency does not have a registration process for child care providers who are unlicensed or unregulated under State, local, or tribal law, it is required to maintain a list of the names and addresses of unlicensed or unregulated providers of child care services for which assistance is provided under this part.

§ 98.46 Nondiscrimination in admissions on the basis of religion.

(a) Child care providers (other than family child care providers, as defined in §98.2) that receive assistance through grants and contracts under the CCDF shall not discriminate in admissions against any child on the basis of religion.

(b) Paragraph (a) of this section does not prohibit a child care provider from selecting children for child care slots