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STATE ACCESS BARRIERS IN PROGRAMS FUNDED BY THE CHILD CARE AND DEVELOPMENT BLOCK GRANT

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The Child Care and Development Block Grant (CCDBG) is the primary source of funding for state child care assistance programs. The federal law and regulations provide states with guidance for structuring state child care programs, but have allowed states to exercise significant discretion in designing their program policies. While the flexibility inherent in the federal rules has been widely used by states, there has been increasing recognition that state child care program structure and policies often inadvertently create barriers for eligible families in accessing and maintaining benefits.

With passage of the Improper Payments Information Act (IPIA)¹ in 2002 and new CCDBG regulations on Error Rate Reporting² in 2007, the federal government began to require states to adopt child care program policies intended to reduce improper payments. The IPIA and Error Rate Reporting rules emphasize documentation as a means to avoid improper payments, but the intensive documentation requirements entail additional administrative costs and can create barriers for families attempting to obtain subsidized child care.³

This paper will briefly focus on the research on state administrative barriers; the underserved populations that are particularly affected by administrative barriers; the need for due process protections; the impact of the IPIA and the CCDBG Error Rate Reporting rules; and the use of CCDBG State Plans as a vehicle for state and federal review of program policies that may restrict access to subsidized child care.

State Administrative Barriers

The most common state administrative barriers families face in accessing subsidized child care include:

- Overly complex application and recertification requirements for parents
- Stringent and repetitive documentation rules
- Rigid interim reporting requirements and strict application of eligibility rules to changed family circumstances
- Administrative agencies' structure and policies that limit or discourage interaction with subsidy administrators
- Complicated fee policies
- Strict termination policies
- Overly bureaucratic documentation processes, and slow payment processes for providers that discourage willingness to serve subsidized families
- Intense focus on preventing improper payments, and detecting and punishing fraud
- Failure to provide due process protections



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These barriers, and the efforts of some states to establish a genuine balance between “family friendly” policies that enable families to access benefits and policies that reduce the likelihood of improper payments, have been documented by a variety of researchers and advocates.⁴ Most significantly, the Urban Institute has published a series of papers analyzing barriers in the administration of subsidized child care, and examining various state efforts to reduce those barriers.⁵

The structural and policy barriers to establishing and maintaining eligibility for child care subsidies have a particularly negative effect on vulnerable populations, including parents who are non-English speakers or have limited proficiency in English and may have issues related to their immigration status⁶, parents with limited education and literacy, parents with disabilities or whose children have disabilities or special health problems, families facing mental health, domestic violence, substance abuse or other problems that increase the difficulty of interacting with a highly bureaucratic system.⁷

In developing administrative systems for subsidized child care, state agencies must attempt to balance four goals⁸: 1. supporting the ability of eligible families to sustain stable employment and move toward self-sufficiency; 2. supporting children’s development in decent quality care settings that allow for parental choice and continuity of care;⁹ 3. keeping administrative costs low in order to serve more eligible families; 4. minimizing improper payments and preventing, detecting and punishing fraud to preserve funding for eligible families. In response to state concerns and federal directives, including the IPIA and the CCDBG Error Rate Reporting regulations, states have emphasized the fourth goal of minimizing improper payments and preventing fraud in ways that have been detrimental to the other program goals. Together with a generally bureaucratic approach to benefits programs, this emphasis on improper payments has led some states to develop policies and practices that create significant barriers to accessing child care subsidies, especially for the lowest income and least stable families. While some of these policies can create greater efficiency, the vast majority increase administrative costs.

Los Angeles County Analysis of Barriers

Los Angeles County, which used CCDBG, TANF and Head Start funds to provide subsidized child care to 138,821 children in 2007 (nearly 30% of California’s subsidized child care caseload)¹⁰, is currently undertaking efforts to address administrative barriers following a study of cash aid recipients that documented significant problems in TANF-funded CalWORKs Stage 1 child care.¹¹ The study, commissioned by the L.A. Department of Public Social Services (DPSS), found that over the six month observation period (November 2006 – April 2007) over half (55%) of parents receiving cash assistance who requested subsidized child care were denied benefits. **The study documents that more than half (52%) of the requests were denied because the parent “failed to submit proper paperwork.”**¹² The results of the study demonstrated that Los Angeles, like other counties in California, has overly complex application processes and forms, with stringent and repetitive documentation requirements. The structure and policies of the thirteen local Alternative Payment programs that contract with the county to administer the child care subsidy program, and the complexity of their interaction with DPSS staff, often limits parents in their efforts to successfully apply for child care benefits. The study documented the predictably negative effect that denial of child care benefits had on these families. The study found that over half of the parents (in a separate 2003 cohort) with denied requests for child care were sanctioned,



and 70% became “noncompliant” with their Welfare-to-Work program more than once, while only 28% of parents with no denied child care requests were sanctioned.

The DPSS study documented that the administrative barriers affecting cash aid families applying for child care had a particularly harsh effect on struggling populations. The study found that parents who spoke languages other than English were 33% more likely to face a denied request, and that parents who had received mental health, substance abuse or domestic violence services were almost 90% more likely to experience denied child care requests. The DPSS study did not examine denial rates for families in which the parents or the children had disabilities or special health care needs, but other studies have documented that these families face similar obstacles in accessing benefits.¹³

Absence of Due Process Protections

The current CCDBG statute and regulations provide states with very limited requirements and guidance regarding parents’ due process rights with respect to application for and receipt of subsidized child care. Section 658E(c)(2)(C) of the Child Care and Development Block Grant Act,¹⁴ and Section 98.32 of the CCDBG regulations¹⁵ require the states to maintain a record of substantiated parental complaints and to make information regarding such parental complaints available to the public on request. The rules also require state Lead Agencies to certify that the state maintains a record of such complaints and provides a detailed description of how such record is maintained and is made available.

This rule has been interpreted by some states to reference solely parental complaints against child care providers rather than against the state or its contractors in the administration of subsidies. The extent to which due process is constitutionally required for applicants and recipients of CCDBG child care subsidies has not been a focus of federal or state agencies. However, it seems certain that providing parents with an opportunity to challenge questionable and potentially illegal actions by the agency administering child care benefits is beneficial to the fair and effective operation of state subsidy programs. While many states provide some type of appeal and hearing process, their policies often do not include all of the protections appropriate for recipients of public benefits.¹⁶ With the data now available documenting the significant barriers some families face in accessing subsidized child care, the federal regulations should be revised to provide additional direction to the states on appeal and hearing procedures, and the states should be required to provide detailed documentation of their policies in the State Plan.

Impact of the Improper Payments Information Act and Error Rate Reporting

The Improper Payments Information Act of 2002 (IPIA) requires Federal agencies to identify programs that are vulnerable to improper payments and to estimate annually the amount of underpayments and overpayments made by these programs.¹⁷ CCDBG was identified as a program susceptible to significant erroneous payments. HHS revised the CCDBG regulations to provide for the reporting of error rates in the expenditure of block grant funds, and established a methodology for calculating error rates.¹⁸ States have significant flexibility in designing their programs, but they are subject to a disallowance of any federal funds spent on ineligible children or families. These requirements place additional scrutiny on administrative errors associated with client eligibility and improper authorizations for payment. In response, state agencies have revised



structures and policies for determining eligibility and payment to require even greater documentation of every aspect of eligibility, increased reporting requirements and in-person contact with agencies that administer subsidies.¹⁹ These policies place increased burdens on parents and create barriers to access and retention of subsidies.

While subsidy administrators must ensure the financial integrity of their programs, the challenge is to find the right balance between avoiding improper payments and other program goals. By federal definition, an improper payment is one made in a way that is inconsistent with federal or state policy regarding eligibility or payment. For this reason, states have a significant amount of control over what is considered a proper or improper payment, and can structure their policies to balance all program goals. In a recent Urban Institute report, *Designing Subsidy Systems to Meet the Needs of Families*,²⁰ “one respondent noted that there is a fine line between regulating improper payments and creating systems that are too burdensome for parents. She believed that if agencies stress that caseworkers be overly diligent on avoiding fraud, then they will see their job as more to keep people off the program than to help parents access it.”²¹ If a state identifies a policy that is inadvertently contributing to improper payments, it can choose to redefine the policies to address the problem and at the same time support families’ access and retention of subsidies.

It is also unclear whether a strong focus on minimizing improper payments is cost effective, as some policies can significantly increase administrative burden and staff costs. States should be required to assess the effectiveness of their eligibility and payment policies, and determine their impact in limiting access for families as well as the administrative costs associated with the increased documentation and verification requirements.

Proactive Use of State Plans to Assess and Eliminate Barriers

The CCDBG State Plans should serve as vehicles for state and federal review to ensure that states are giving priority for services to children of families with very low family incomes and to children with special needs as required by section 658E(c)(3)(B). State Plans should also be used by states to analyze unmet needs, and to examine program policies that may restrict access to subsidized child care. In California, as in many states, the current State Plan²² lacks the background information necessary to serve as a useful planning and reporting document. The rationale for particular policy options is rarely offered, and there is little information that explains or puts in context a particular policy approach.

States should be required to use their State Plans to provide a summary of the “state of the state” that identifies which families are being served and which eligible families are not receiving services, how the state has addressed issues around the fragmentation of services, and ways to address any administrative barriers that limit access, especially for vulnerable families. This would provide HHS ACF and a state’s stakeholders with valuable information as they review the current status of the subsidized child care program and develop suggestions for improvement. Without knowing what the state identifies as gaps and unmet needs in serving the population of families eligible under CCDF guidelines, it is difficult to evaluate recommended programs or the progress made during the implementation of the plan, or provide meaningful input for future improvements. While no official assessment of unmet need exists in the California state plan, advocates have found barriers for families with limited English proficiency to be significant, including a lack of



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appropriate language capacity both in agency staff and in materials, and evidence that children with disabilities remain underserved throughout the state.

Recommended Actions

Federal policy is an important element in reducing barriers for low income and other vulnerable families in accessing subsidized child care. As Congress and HHS Administration for Children and Families begin to contemplate reauthorization of CCDBG, it will be important to focus on many aspects of the program. It is essential for the federal government to significantly increase its investment in CCDBG, and to require similar increases in state investment in order to provide states with the resources necessary to expand and improve their programs. The federal rules governing use of CCDBG funds should be revised to ensure states are directing child care benefits to the families in greatest need. CCDBG rules should also require states to use the State Plan process to review their programs, alter structures and revise policies to remove access barriers for eligible families. In addition, states must be required to provide genuine appeal and hearing rights to subsidy applicants and recipients so parents can challenge questionable, unfair or illegal actions taken by state subsidy agencies and the contractors that administer child care benefits.

CCLC looks forward to working with our partners in the advocacy community, Congress and the new administration in significantly increasing access to early care and education and subsidized child care programs for all eligible families.

¹ Public Law No: 107-300

² 45 CFR Part 98, Subpart K – Error Rate Reporting, published September 5, 2007; available at: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2007_register&docid=fr05se07-7.pdf.

³ See, Adams, Gina, Kathleen Snyder, Patti Banghart, the Urban Institute Child Research Team. 2008. *Designing Subsidy Systems to Meet the Needs of Families: An Overview of Policy Research Findings*. Washington, DC: The Urban Institute. Available at: http://www.urban.org/UploadedPDF/411611_subsidy_system.pdf.

⁴ See, Lesser, Dan. 2008. *A Federal Agenda for Affordable, Quality Child Care*. Chicago, IL: Sargent Shriver National Center on Poverty Law, Clearinghouse Review Journal of Poverty Law and Policy, November-December 2008, pp 394-399, available at: <http://www.povertylaw.org/clearinghouse-review/issues/2008/2008-12-01/lesser>;

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⁵ See, Adams, Gina, Kathleen Snyder, Patti Banghart, the Urban Institute Child Research Team. 2008. *Designing Subsidy Systems to Meet the Needs of Families: An Overview of Policy Research Findings*. Washington, DC: The Urban Institute. Available at: http://www.urban.org/UploadedPDF/411611_subsidy_system.pdf; Adams, Gina, Kathleen Snyder, and Jodi R. Sandfort. 2002. *Getting and Retaining Child Care Assistance: How Policy and Practice Influence Parents' Experiences*. Washington, DC: The Urban Institute. *Assessing the New Federalism* Occasional Paper 55; Available at: <http://www.urban.org/UploadedPDF/310451.pdf>. Adams, Gina, Pamela Holcomb, Kathleen Snyder, Robin Koralek, and Jeffrey Capizzano. March 2006. *Child Care Subsidies for TANF Families: The Nexus of Systems and Policies*. Washington, DC: The Urban Institute. Available at: <http://www.urban.org/publications/311305.html>. Holcomb, Pamela, Gina Adams, Kathleen Snyder, Robin Koralek, Karin Martinson, Sara Bernstein, and Jeffrey Capizzano. 2006. *Child Care Subsidies and TANF: A Synthesis of Three Studies on Systems, Policies, and Parents*. Washington, DC: The Urban Institute. Available at: <http://www.urban.org/Publications/311302.html>. Snyder, Kathleen, Patti Banghart, and Gina Adams. 2006. *Strategies to Support Child Care Subsidy Access and Retention: Ideas from Seven Midwestern States*. Washington, DC: The Urban Institute. Available at: http://www.urban.org/UploadedPDF/411377_subsidy_access.pdf. Snyder, Kathleen, Sara Bernstein, and Robin Koralek. 2006. *Parents' Perspectives on Child Care Subsidies and Moving from Welfare to Work*. Washington, DC: The Urban Institute. Available at: <http://www.urban.org/publications/311303.html>. Zedlewski, Sheila R., Pamela Holcomb, and Pamela Loprest. 2007. *Hard-to-Employ Parents: A Review of Their Characteristics and the Programs Designed to Serve Their Needs*. Low-Income Working Families Paper 9. Washington, DC: The Urban Institute. Available at: <http://www.urban.org/publications/411504.html>.

⁶ Matthews, Hannah, and Deana Jang. 2007. *The Challenges of Change: Learning from the Child Care and Early Education Experiences of Immigrant Families*. Washington, DC: Center for Law and Social Policy. Available at: http://www.clasp.org/publications/challenges_change.htm.

⁷ Moreno, Manuel, Halil Toros, Max Stevens. November 2007. *Stage 1 Child Care Subsidies for Welfare-to-Work Participants in Los Angeles County: An Analysis of Eligibility and Utilization Patterns*. Los Angeles: County of Los Angeles, Chief Executive Office, Service Integration Branch, Research and Evaluation Services. Available at: <http://www.ladpss.org/dpss/REQAD/pdf/CalWORKs%20Child%20Care%20Report%202007.pdf>.

⁸ Snyder, Kathleen, et al., Urban Institute, *Strategies to Support Child Care Subsidy Access and Retention: Ideas from Seven Midwestern States* (2006). Available at: http://www.urban.org/UploadedPDF/411377_subsidy_access.pdf.

⁹ Two key principles in federal CCDBG law direct state policy: "equal access" and "parental choice". States must demonstrate how a choice of the full range of providers is made available; how payment rates are adequate based on a local market rate survey; how copayments based on a sliding fee scale are affordable. The principle of parental choice prohibits states from significantly restricting provider options by expressly or effectively excluding any category of care or type of provider by state and local regulatory requirements, health and safety requirements, payment rates, registration requirements, or state and local rules and procedures.

¹⁰ King, Carlise. 2007. *2007 California Child Care Portfolio*. San Francisco: California Child Care Resource & Referral Network. Los Angeles County data available at: <http://www.rnetwork.org/publications/2007/la.pdf>.

¹¹ Moreno, Manuel, Halil Toros, Max Stevens. November 2007. *Stage 1 Child Care Subsidies for Welfare-to-Work Participants in Los Angeles County: An Analysis of Eligibility and Utilization Patterns*. Los Angeles: County of Los Angeles, Chief Executive Office, Service Integration Branch, Research and Evaluation Services. Available at <http://www.ladpss.org/dpss/REQAD/pdf/CalWORKs%20Child%20Care%20Report%202007.pdf>.

¹² Moreno, Manuel, Halil Toros, Max Stevens. November 2007. *Stage 1 Child Care Subsidies for Welfare-to-Work Participants in Los Angeles County: An Analysis of Eligibility and Utilization Patterns*. Los Angeles: County of Los Angeles, Chief Executive Office, Service Integration Branch, Research and Evaluation Services, p.12. Available at: <http://www.ladpss.org/dpss/REQAD/pdf/CalWORKs%20Child%20Care%20Report%202007.pdf>.

¹³ See, Cherlin, Andrew, Linda Burton, Judith Francis, Jane Henrici, Laura Lein, James Quane, and Karen Bogen. 2001. *Sanctions and Case Closings for Noncompliance: Who Is Affected and Why?* Welfare, Children, and Families Study, Policy Brief 01-1. Baltimore: Johns Hopkins University. Available at:

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¹⁴ CCDBG was first enacted under the Omnibus Budget Reconciliation Act of 1990 (P.L. 101-508) and authorized through FY1995. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA, P.L. 104-193) amended and reauthorized the CCDBG through FY2002, and repealed the legislative authority for previous child care programs for low-income working and welfare families under the program formerly known as Aid to Families with Dependent Children (AFDC).

¹⁵ 45 CFR 98 and 99

¹⁶ See, Jeffrey, Randall S., *The Importance of Due Process Protections After Welfare Reform*, Albany: Albany Law Review, Fall 2002. Available at: http://findarticles.com/p/articles/mi_hb3243/is_ai_n28962665.

¹⁷ US Department of Health & Human Services, Administration for Children and Families, Program Instruction CCDF-ACF-PI-2007-08, October 16, 2007. Available at:

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¹⁸ Measuring Improper Authorizations for Payment in the Child Care Program: Improper Authorization for Payment Data Collection Instructions. Available at:

http://www.acf.hhs.gov/programs/ccb/ccdf/ipi/dci_final/toc.htm.

¹⁹ See, California Department of Education, Child Development Division Management Bulletin 07-15. Available at: <http://www.cde.ca.gov/sp/cd/ci/mb0715.asp>; Management Bulletin 08-07. Available at:

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²¹ Id. at p. 11.

²² California Department of Education, Child Development Division, [Final CCDF State Plan FFY 2008 and 2009](http://www.cde.ca.gov/sp/cd/re/stateplan.asp), Available at: <http://www.cde.ca.gov/sp/cd/re/stateplan.asp>.