Date of Hearing: April 10, 2024

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 2381 (Bonta) – As Amended March 21, 2024

[Note: This bill was double referred to the Assembly Human Services Committee and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: California state preschool programs: reimbursement rates

SUMMARY: Requires that, as of July 1, 2025, a California State Preschool Program (CSPP) contractor be reimbursed based upon the lesser of the contract amount, the net costs to operate the program, or the reimbursement rate multiplied by the number of children enrolled. Specifically, **this bill**:

1) Requires that, as of July 1, 2025, the contract reimbursement rate for a CSPP be based on the lesser of:

   a) The maximum reimbursable amount stated in the contract;

   b) Net reimbursable program costs; or

   c) The product of the adjusted child-days of enrollment multiplied by the contract rate.

EXISTING LAW:

1) Establishes the "Early Education Act" to provide an inclusive and cost-effective preschool program that provides high-quality learning experiences, coordinated services, and referrals for families to access health and social-emotional support services through full- and part-day programs and that all families have equitable access to a high-quality preschool program, regardless of race or ethnic status, cultural, religious, or linguistic background, family composition, or children with exceptional needs. (Education Code (EC) 8200 *et seq.*)

2) Defines "CSPP" to mean those programs that offer part-day and/or full-day educational programs for eligible three- and four-year-old children. These programs may be offered by a public, private, or proprietary agency, and operated in childcare centers or family childcare homes operating through a family childcare home education network. (EC 8205)

3) Requires the CSPP to include, but not be limited to, part-day age and developmentally appropriate programs designed to facilitate the transition to kindergarten for three- and four-year-old children in educational development, health services, social services, nutritional services, parent education and parent participation, evaluation, and staff development. (EC 8235)

4) Requires that CSPP contractors be reimbursed for services based upon the lesser of the following:

   a) The maximum reimbursable amount as stated in the annual preschool contract; or

b) The net reimbursable program costs; or

c) The product of the adjusted child-days of enrollment for certified children, times the contract rate per child day of enrollment, times the actual percentage of attendance plus 5%, but in no case to exceed 100% of enrollment. (5 California Code of Regulations. (California Code of Regulations (CCR) 17812)

5) Requires a part-day CSPP to be for a minimum of three hours per day for 175 days per year and a full-day CSPP for 246 days per year. (EC 8207)

6) Provides that families seeking part-day CSPP must meet at least one requirement in the following areas to be eligible for state preschool:

   a) A family is a current aid recipient; income eligible; homeless; or one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited; or

   b) A child with exceptional needs, defined as:

      i) Children under three years of age who have been determined to be eligible for early intervention services pursuant to the California Early Intervention Services Act; or

      ii) Children who have been determined to be eligible for special education and related services by an individualized education program (IEP) team according to law for children with disabilities.

   c) Has a member of its household who is certified to receive benefits from Medi-Cal, CalFresh, the California Food Assistance Program, the California Special Supplemental Nutrition Program for Women, Infants, and Children, the federal Food Distribution Program on Indian Reservations, Head Start, Early Head Start, or any other designated means-tested government program. (EC 8205, EC 8208)

7) Authorizes a CSPP to provide services to children in families whose income is no more than 15% above the income eligibility threshold, after all eligible three- and four-year old children have been enrolled, and limits this provision to no more than 10% of children enrolled. (EC 8208)

8) Requires that families seeking full-day CSPP meet both of the following requirements:

   a) The family is a current aid recipient; income eligible; homeless; or one whose children are recipients of protective services, or whose children have been identified as being abused, neglected, or exploited, or at risk of being abused, neglected, or exploited; or has a child with exception needs; or has a member of the household who is eligible for specified means-tested government programs; and

   b) The family needs the childcare services because of either of the following:

      i) The child is homeless; is a recipient of child protective services; is being neglected, abused, or exploited, or at risk of being neglected, abused, or exploited;

ii) The child's parents are engaged in vocational training; engaged in an educational program for English learners or to attain a high school diploma; employed or seeking employment; seeking permanent housing; or incapacitated.

9) Requires a CSPP contractor to reserve a portion of its full-day enrollment for three and four-year old children with exceptional needs as follows:

   a) From July 1, 2022, to June 30, 2023: at least 5%;

   b) From July 1, 2023, to June 30, 2024: at least 7.5%; and

   c) Beginning July 1, 2024: at least 10%.

10) Establishes the Standard Reimbursement Rate (SRR) beginning July 1, 2021, at $12,968 for full-day CSPP and $5,621 for part-day CSPP, and requires, beginning with the 2022-23 fiscal year, that the SRR be increased by a cost of living adjustment (COLA), as specified. Requires that, beginning January 1, 2022, contractors receiving the SRR be reimbursed for the greater of the 75^{th} percentile of the 2018 Regional Market Rate (RMR) survey or the contracted per child reimbursement rate as of December 31, 2021, as increased by the COLA. (EC 8242)

11) Establishes, beginning January 1, 2022, the RMR ceilings at the greater of the 75th percentile of the 2018 RMR survey for that region or the RMR ceiling that existed in that region on December 31, 2021. (Welfare and Institutions Code (WIC) 10374.5)

12) Requires the California Department of Education (CDE), in collaboration with the Department of Social Services (DSS), to implement a plan that establishes reasonable standards and assigned reimbursement rates for childcare and development services, to vary by length of program year and hours of service, establishes amounts for, and provides for an annual cost-of-living adjustment to, the SRR for contracted providers, and provides for adjustments to the SRR based upon specified reimbursement factors. (EC 8242)

11) Requires the Governor and the Child Care Providers Union (CCPU), consistent with the agreement dated June 25, 2021, to establish a Joint Labor Management Committee (JLMC) to develop recommendations for a single reimbursement rate structure that addresses quality standards for equity and accessibility while supporting positive learning and developmental outcomes for children. (WIC 10280.2)

12) Requires the DSS, in consultation with the CDE, to convene a working group separate from the JLMC, to assess the methodology for establishing reimbursement rates and the existing quality standards for childcare and development and preschool programs, as specified. Further, requires the workgroup to, no later than August 15, 2022, provide recommendations, including, but not limited to, recommendations on how the DSS should define childcare workforce competencies and how these competencies would align with rate reform, to the JLMC, Department of Finance (DOF), and the Joint Legislative Budget Committee. (WIC 10280.2)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, "Access to early learning opportunities is a key determinant to the future success of a child. Research shows that children from disadvantaged communities gain more substantial benefits than their affluent peers from attending free, high-quality preschool. This is why we created the California State Preschool Program (CSPP) to provide a core class curriculum that is developmentally, culturally, and linguistically appropriate for the children served. Unfortunately, we saw a significant enrollment decline in 2020 due to the COVID-19 pandemic. Although enrollment has risen since 2020, it is still well below pre-pandemic levels. AB 2831 will strengthen the early learning and care system by allowing CSPPs to be funded based on enrollment, aligning them with Head Start and the private pay market, and helping to stabilize programs as they recover from the pandemic. This will ensure that CSPPs are able to cover their fixed costs, allowing them to focus more on the sustainability and quality of their programs, giving California children the early learning opportunities that they deserve."

Focus on enrollment versus attendance. Based upon current regulations, CSPP contractors are reimbursed based on the lesser of the total contract amount, the net program costs, or the level of enrollment as adjusted by an attendance factor. This bill would remove the attendance factor, so that the third factor for consideration for reimbursement would be the level of enrollment of children in the CSPP, regardless of their actual attendance. This would align CSPP providers with Head Start and the private pay market and help to cover their fixed costs, as they rebuild their enrollment which suffered significantly during the COVID-19 pandemic and has yet to fully recover.

Reimbursement for childcare is complex. Subsidized childcare providers in California are reimbursed based upon either the RMR or SRR:

1) ***RMR.*** Voucher-based programs, including CalWORKs and the Alternative Payment Programs (APP), are required to follow Title 22 health and safety regulations and are reimbursed based upon the RMR. In California, the RMR survey collects data about the prices that early learning and care programs charge for nonsubsidized care, in addition to other information. This information is then used by the Legislature to determine the reimbursement ceilings for each county, determine ceilings across different early learning and care settings (e.g., centers, family childcare homes), and used to determine ceilings based on other characteristics of the services provided (e.g., part-day, full-day, age group). Federal regulations require the use of the most recent survey in determining reimbursement ceilings, but states have flexibility in how they use the survey results. Specifically, states can set reimbursement ceilings at a certain percentile of the survey. As of June 2022, the reimbursement ceilings in California were based on the 2018 RMR survey, inclusive of a hold harmless provision.

2) ***SRR.*** Until January 1, 2022, California used the SRR for most direct contract programs that follow Title 5 education quality standards in addition to Title 22. These include the CSPP and general childcare (CCTR). The SRR is specified in the annual Budget Act. The SRR was structured as a base rate with adjustment factors for length of service (hours enrolled per day) and specific populations (e.g., infants, children with severe disabilities, limited and non-English speaking). These adjustment factors were applied to the SRR on a per child basis. The SSR is a single statewide rate with no regional variation. The SRR was lower for some programs than the rate they would have received through the RMR, even though the SRR-

reimbursed programs were required to meet additional educational program quality requirements in addition to licensing standards.

In 2021-22, the state shifted direct contract providers to the RMR to the extent that the relevant RMR was higher than the SRR. The current weighted statewide average is $12,698 per child for full-day CSPP and $5,621 for part-day CSPP.

Childcare reimbursements fail to support quality childcare. The U.S. Department of the Treasury (DOT) notes that the following factors contribute to the market failure of early learning and care:

- Quality early learning and care services benefit society by supporting overall positive child development outcomes and supporting families' abilities to work;
- Most families are unable to pay for the cost of quality early learning and care for their children;
- Early learning and care programs do not receive sufficient revenue, either by private fees collected from families or by the public subsidy system, to meet the true cost of providing quality care, having the impact of limiting the extent to which families can access care and learning opportunities for their children; and
- Early learning and care educators are underpaid. In part, this is because early learning and care educators are disproportionately women of color who are undervalued and underpaid in the labor market broadly.

The DOT also describes how the federal and state governments contribute to the market failure through the reimbursement rate system:

- The current institutionalized structure for rate setting, using an RMR survey, sets rates based on prices charged to families, which programs often deflate based on families' abilities to pay. This regionalized rate-setting structure institutionalizes low rates in low-income areas;
- Government subsidies and current levels of public investment fail to provide sufficient funding to cover the cost of providing quality early learning and care;
- Government has not invested sufficient funds to ensure families can afford child care;
- Early learning and care programs make ends meet by limiting the compensation and benefits provided to their staff or themselves;
- There is a shortage of licensed child care programs and early learning and care opportunities for the children and families that need them; and
- The impacts of these failures are disproportionately felt by low-income women of color, from the family fees they pay to utilize early learning and care services for their children to the low wages they receive when providing these services themselves.

Actual costs of care. A key component of the childcare reimbursement rate conversation is that often the reimbursement rates paid to providers do not cover the true cost of care. Recent increases in inflation have resulted in higher costs to providers when purchasing the supplies necessary to maintain quality care, such as milk, baby formula, and baby wipes. A March 2023 brief from the Child Care Resource Center demonstrates that the cost of providing care for a preschooler in a full-time childcare center exceeds the current reimbursement rate and the 2018 rate when adjusted for inflation.

Childcare reimbursement rates have also lagged when compared to increases in the minimum wage. A March 2023 report from the California Budget & Policy Center notes that, while the minimum wage has increased 55% from 2016-17 to 2022-23:

> The rate ceilings for childcare providers across all 58 counties generally have not kept pace with the rising minimum wage after the most recent increase to payment rates enacted in 2021-22. In the state's most populous county, Los Angeles, payment rates for licensed childcare centers for preschool-aged children increased by less than half as much as the statewide minimum wage. Providers in some counties, such as Riverside County, saw minuscule rate increases of less than 5%. In 27 counties, due to weaknesses in the rate-setting methodology, licensed centers have not received a single rate increase for care for preschool-age children since 2016-17. Policymakers have not consistently updated the SRR each year so that contract providers can keep pace with rising staff costs and the increasing price of food and supplies. From 2016-17 to 2022-23, the SRR increased by 36.6%, falling short of the 55% increase in the state minimum wage.

Master Plan for Early Learning and Care. The Budget Act of 2020 appropriated $5 million for a long-term strategic plan to provide a roadmap to comprehensive, quality, and affordable childcare and preschool for children from birth through age twelve, including a fiscal framework that provides for ongoing funding to significantly expand early learning and care in the state, including options to generate needed revenues and examine alternative funding streams. The final report, *California for All Kids, Master Plan for Early Learning and Care,* was released in December 2020. The report recommends the adoption of a tiered reimbursement rate with appropriate adjustments:

> Adopting a new reimbursement rate structure provides an anchor to transform the early learning and care system around the key values of equity and quality. The current structure has multiple independent rates. It lacks cohesion. Moving to a tiered reimbursement rate would facilitate connections that are currently lacking and help clarify and encourage workforce development, a key factor in improving quality. California's subsidy reimbursement structure shares some features in common with other states but differs most notably in reimbursing for higher quality.

UPK Mixed Delivery Quality and Access Workgroup. In September 2022, AB 185 (Committee on Budget), Chapter 571, Statutes of 2022, established the Universal Pre-K Mixed Delivery Quality and Access Workgroup in order to provide recommendations on best practices for increasing access to high-quality universal preschool programs for three- and four-year old children offered through a mixed-delivery model. The provisions of AB 185 required the workgroup to be established no later than December 1, 2022, and required the Superintendent of Public Instruction (SPI), in consultation with the Director of the DSS, to provide a report to the

Legislature and DOF no later than January 15, 2023. The 2023 budget extended the deadline for the delivery of the workgroup's report.

Rate and Quality Workgroup (RQWG). The RQWG, established by AB 131, Chapter 116, Statutes of 2021, and administered by the DSS, was formed. Members of the RQWG include representatives from CCPU, state-funded center-based contractors, childcare and development experts, family representatives, Head Start programs, Alternative Payment Programs (APP), and the administration. The RQWG was tasked with making recommendations to:

- Work toward equity as an outcome and implement equity as a process;
- Replace the current methodology for setting rates with an alternative methodology that would, among other things, set a living wage floor;
- Create a single rate structure to address historical inequities; and,
- Continuously reevaluate the rate-setting methodology to address equity and adjust for changing conditions and rising costs.

Among the final recommendations of the RQWG are the following:

- Use an alternative methodology instead of the current market rate survey to set base rates to compensate early learning and care providers for the cost of meeting current state requirements. The price of early learning and care in a broken market should no longer be the basis for setting reimbursement rates;
- Create a single rate structure that specifies base rates and is designed to address historical inequities; and
- Continuously evaluate the rate-setting methodology to address equity and adjust for changing conditions and rising costs.

Urgent need for reimbursement rate increases. The RQWG, recognizing the urgency of the crisis in California's childcare system, further recommends that the state not wait for alternative methodology approval from the federal government before raising current reimbursement rates. They recommend that the state invest more funding for reimbursement rates immediately, as providers are struggling to maintain programs with current funding based upon 2018 market rates.

This bill does not address the overall need for rate reform within the childcare sector, however, it does potentially provide some relief to CSPP providers by allowing them to be reimbursed on the lesser of their contract amount, their net operating costs, or by the number of children enrolled rather than the attendance levels. As enrollment has failed to return to pre-COVID levels, many providers have struggled to meet their fixed costs.

Arguments in support. The State Superintendent of Public Instruction, Tony Thurmond, sponsor of the bill, writes "Funding CSPP programs based on enrollment will ensure programs have the resources to focus on the sustainability and quality of their programs to enable them to take advantage of this opportunity. It will enable programs to cover fixed costs that do not change based on enrollment and focus more on the sustainability and quality of their programs, including, but not limited to, allowing programs to focus on increasing supports for dual language learners, children with disabilities, and other children requiring additional support; improving retention of existing staff and providing professional development; and hiring new staff as needed.

The enrollment funding model aligns with Head Start and the private pay market in addition to the ongoing rate reform process and August 2022 recommendations issued by the Rate and Quality Workgroup convened by the California Department of Social Services and the California Department of Education. These recommendations reflect the importance of supporting the stability of the early education field and the need to fund programs based on the true cost of care and to implement an enrollment-based funding model."

Related legislation. AB 555 (Juan Carrillo) of the 2023-24 session included language similar to this bill as proposing to increase the priority for eligible 3-year old children in CSPP, and to amend adjustment factors for CSPP rates. This bill was held in the Senate Appropriations Committee.

AB 1352 (Bonta) of the 2023-24 Session would have created a statewide childcare pilot subcommittee of the Universal Pre-Kindergarten Mixed Delivery Quality and Access Workgroup to propose, evaluate, and collect evidence to support the creation of statewide pilot policies for childcare programs, permitted a local planning council to apply to CDE and CDSS to adopt an approved statewide pilot policy, and delayed the expiration of existing pilot projects from July 1, 2023, until July 1, 2025. This bill was held in the Senate Education Committee.

AB 51 (Bonta) of the 2023-24 Session would have made numerous changes to support a mixed delivery pre-kindergarten (pre-k) system, including amending the income eligibility threshold; requiring the CDE to reserve a portion of CSPP contracts for providers negatively impacted by the implementation of TK; requiring the development of regulations on comingling of children with and without subsidies in CSPP classrooms; requiring Expanded Learning Opportunities Programs (ELOP) serving TK pupils to be developmentally appropriate for students in TK; expanding the roles and responsibilities of Resource and Referral (R&R) agencies; and requiring the development of a new reimbursement rate schedule for CSPP. This bill was held on the inactive bill in the Senate.

AB 596 (Reyes) of the 2023-24 Session would have required the DSS, in consultation with the CDE, to develop and implement an alternative methodology for calculating subsidy payment rates for childcare and CSPP services, required the development of an equitable sliding scale for the payment of family fees, and prohibited family fees from being collected until the sliding scale was implemented. This bill was held in the Senate Appropriations Committee.

AB 210 (Committee on Budget), Chapter 62, Statutes of 2022, extends the 2021-22 Budget Act actions taken during the COVID-19 pandemic to waive family fees for childcare and create hold harmless policies for the 2022-23 fiscal year, including CSPP.

AB 131 (Committee on Budget) Chapter 116, Statutes of 2021, among other things, establishes a Rate Reform workgroup to be convened by CDSS for recommendations on rate methodology and existing program standards, including licensing standards, quality and environmental standards, and workforce competencies. Further, it requires the workgroup to submit recommendations to the Legislature no later than August 15, 2022 in order to inform the Joint Labor Management Committee recommendations on a single reimbursement rate system.

SB 246 (Leyva) of the 2021-22 Session would have required the DSS to establish a single reimbursement rate for early learning and care programs, including variation for regional costs and quality adjustment factors. This bill was held in the Assembly Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

State Superintendent of Public Instruction Tony Thurmond

Opposition

None on file

Analysis Prepared by: Debbie Look / ED. / (916) 319-2087