

Date of Hearing: April 28, 2021

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 865 (Quirk-Silva) – As Introduced February 17, 2021

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

SUBJECT: Childcare services: alternative payment programs: direct deposits: reserve funds

SUMMARY: Makes changes to the California Child Care and Developmental Services Act (CCDSA) regarding administrative and payment processes for Alternative Payment Program (APP) agencies. Specifically, **this bill:**

- 1) Requires that APPs reimburse childcare providers based upon the maximum certified hours of need, as documented on the certificate or voucher. Eliminates the requirement for APPs to reimburse childcare providers based on criteria that includes:
 - a) The hours of service provided that are broadly consistent with certified hours of need;
 - b) For families with variable schedules, the actual days and hours of attendance, up to the maximum certified hours; and
 - c) For license-exempt providers that provide part-time services, the actual days and hours of attendance, up to the maximum certified hours.
- 2) States, for purposes of reimbursement to childcare providers through APPs, that contractors are not required to document nonoperational days.
- 3) Eliminates the authorization for each licensed childcare provider to alter rate levels for subsidized children once per year, and eliminates the requirement to provide the APP and resource and referral agency (R&R) with the updated information to reflect any changes.
- 4) Eliminates the requirement that APPs verify provider rates at least once per year by randomly selecting 10% of licensed childcare providers serving subsidized families.
- 5) Eliminates the requirement for the California Department of Education (CDE) to develop regulations for addressing discrepancies in the provider rate levels identified through the rate verification process.
- 6) Authorizes APPs and providers operating or providing services and contractors operating or providing services to use an electronic signature that complies with state and federal standards instead of a digital signature to have the same effect as a handwritten or manual signature.
- 7) Updates the requirement for the CDE, upon the request of a childcare provider, to request that the Controller provide payment via direct deposit into the contractor's account of the financial institution of the contractor's choice, by removing a timing reference to the implementation of the Financial Information System for California (Fi\$Cal) at the CDE.

- 8) Revises the maximum amount of a reserve fund balance for alternative payment model and certificate childcare contracts from 2% to 15% of the parts of the contract that are allowed for administration and supportive services, or \$1,000, whichever is greater.

EXISTING LAW:

- 1) Establishes the California Child Care and Developmental Services Act (CCDSA) for the purpose of providing a comprehensive, coordinated, and cost-effective system of childcare and development services, as specified, for children from infancy to 13 years of age, and their parents, through full- and part-time programs. (Education Code (EC) 8200 *et seq.*)
- 2) States the intent of the Legislature that all families have access to childcare and development services, as specified, regardless of ethnic status, cultural background, or special needs, and the intent that subsidized child care and development services be provided to eligible families, to the extent funding is available. (EC 8202)
- 3) Defines “alternative payments” (Aps) to include payments made by one childcare agency to another agency or provider for the provision of childcare and development services, and payments that are made by an agency to a parent for the parent's purchase of childcare and development services. (EC 8208 (a))
- 4) Defines “alternative payment program” (APPs) as a local government agency or nonprofit organization that has contracted with the CDE, as specified, to provide alternative payments and to provide support services to parents and providers. (EC 8208 (b))
- 5) Authorizes the use of childcare and development funds for APPs in order to maximize parental choice in selecting an appropriate childcare setting, and establishes requirements regarding APPs, as specified. (EC 8220 *et seq.*)
- 6) Requires the CDE to contract with local contracting agencies for APPs in order for services to be provided throughout the state, as specified. (EC 8220.1 (a))
- 7) Requires childcare providers authorized to provide services using alternative payments to submit to the APP a monthly attendance record or invoice for each child who received services, that contains specified information. (EC 8221.5)
- 8) Prohibits an APP from making payments to providers in excess of the rate charged to full-cost families; requires APPs to reimburse providers in accordance with a biennial Regional Market Rate (RMR) survey, as specified; authorizes a licensed childcare provider to alter rate levels for subsidized children once per year; and requires an APP to verify provider rates at least once per year to confirm that the rates reasonably correspond to those charged to nonsubsidized families for equivalent levels of service. (EC 8222)
- 9) Requires that the total cost for administrative and support services not exceed 17.5% of the total contract amount for APPs. (EC 8223)
- 10) Requires an APP to provide notice to a childcare provider at least 14 days before the effective date of any change in reimbursement amounts for childcare services; a change in the hours of care, rates, or schedules; an increase or decrease in parent fees; or a termination of services. (EC 8227.7)

- 11) Requires the CDE to request the State Controller to, upon the request of a childcare contractor, make payments via direct deposit by electronic funds transfer through the Financial Information System for California (Fi\$Cal) Project into the contractor's account at the financial institution of the contractor's choice, on or after the date on which the SPI determines that the Fi\$Cal project has been implemented within the CDE. (EC 8262.3)
- 12) Prohibits a contractor from retaining a reserve fund balance for AP model child care contracts of more than 2% of the administration and supportive services portion of the contract; or \$1,000, whichever is greater. (EC 8450)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, "California's child care and early learning system is carried mainly on the backs of low-income Black and Brown women who are struggling more than ever to make ends meet. Our subsidized childcare system further harms the fiscal health of these family childcare providers by only allowing for reimbursement when a family actually shows up. It does not factor in that a family childcare provider must hold the slot for a child regardless of whether the child is in attendance or not. Family childcare business owners that support California's subsidized working families with access to childcare and early learning opportunities deserve to be treated the same way as private childcare business owners."

Subsidized childcare. California's subsidized childcare system is designed to provide assistance to parents and guardians who are working, in training, seeking employment, incapacitated, or in need of respite. This childcare is available through a number of programs. Parents participating in California Work Opportunity and Responsibility to Kids (CalWORKs), as well as families transitioning from and no longer receiving CalWORKs aid, can be eligible for childcare, which is offered in three "stages." The Department of Social Services (CDSS) administers Stage 1, and CDE administers Stages 2 and 3. CDE also administers non-CalWORKs childcare. The largest programs are: General Child Care, which includes contracted centers and family childcare homes; the California State Preschool Program (CSPP), which provides developmentally, culturally, and linguistically appropriate curriculum to eligible three- and four-year olds; and, APPs, which provide vouchers that can be used to obtain child care in a center, family child care home, or from a license-exempt provider.

Certain eligibility and prioritization rules apply to subsidized childcare in California. Families are eligible for non-CalWORKs subsidized childcare if they meet at least one requirement in each of two areas: eligibility and need. First, they must meet one of the eligibility criteria, which are currently receiving aid, being income-eligible, being homeless, or having children who are recipients of protective services or who have been identified as being, or at risk of being, abused, neglected, or exploited. Second, the family must meet one of the "need" requirements which are either that the child has been identified by a legal, medical, or social services agency or emergency shelter as a recipient of protective services or being (or at risk of being) abused, neglected or exploited, or the parents need to be employed or seeking employment, engaged in vocational training, seeking permanent housing for family stability, or incapacitated.

Transition of childcare programs from the CDE to the CDSS. According to the CDE, California is committed to building a system of early learning and care which is more integrated and coordinated to promote a high-quality, affordable, early childcare system designed to

comprehensively and effectively serve the children and families in our state. The enacted state budget for Fiscal Year 2020-21 transitions responsibility for certain child care and development programs and nutrition program from the CDE to the CDSS, effective July 1, 2021, including:

- Stages 2 and 3 of the CalWORKs Child Care Programs;
- General Child Care and Development Programs (CCTR);
- Alternative payment programs (CAPP);
- Migrant alternative payment programs (CMAP);
- Migrant Child Care and Development Programs (CMIG); and
- Child Care and Development services for children with severe disabilities.

Other programs supporting early education, as well as the school and summer child nutrition meal programs currently administered by CDE, remain under the responsibility of CDE, including:

- California State Preschool Program (CSPP);
- Quality Rating and Improvement System Grants for CSPP;
- The Inclusive Early Education Expansion Program;
- The American Indian Early Childhood Education Program;
- Transitional Kindergarten; and
- Special Education Services for Young Children with Disabilities.

COVID-19 has had severe impacts on California's early childhood system. Prior to the disruptions caused by COVID-19, more than 1.2 million children in California were enrolled in early learning and care programs across the state. As of June 2020, more than 1/3 of early learning and care programs were closed for in-person care and those that were open were operating at reduced enrollment. Program closures and restrictions on group sizes due to the pandemic have displaced large numbers of children. Based on the survey data, nearly eight of 10 children (78%) enrolled in licensed early learning programs prior to COVID-19 were no longer receiving care in those programs, as of June or July 2020. (American Institute for Research (AIR) 2021).

From the start of the pandemic in March 2020 through the end of October 2020, the CDSS estimates 2,030 family childcare homes and 390 childcare centers have closed permanently, making it harder for families to work and care for their children.

Although many programs that closed expected to reopen, they faced significant barriers to doing so. All providers identified critical needs for their programs, including funding for basic

operating expenses like staff salaries and supplies, protections for their health and the health of their staff and families, and guidance on how to follow new regulations and protocols.

Alternative Payment Programs. APPs do not provide direct child development services or programs; instead, they assist families in arranging childcare services and make payments directly to the childcare provider selected by the family. The CDE currently contracts with 76 APP agencies to administer three childcare programs—CalWORKs Stage 2, CalWORKs Stage 3, and the Alternative Payment Program. Of the 76 AP agencies, 51 are nonprofit community-based organizations, 14 are county offices of education, nine are county welfare departments, one is a school district, and one is a city government. These programs receive state and federal funds to provide a variety of supports and payment services that enable eligible low-income families to access subsidized childcare using vouchers. More broadly, APPs are charged with increasing parental choice in childcare and addressing the individual needs of the families they serve.

Families who are participating in welfare-to-work activities under the CalWORKs program or who are low-income but do not qualify for CalWORKs receive a voucher from an APP. The voucher (also known as the certificate or Notice of Action) includes the maximum certified hours of eligible childcare the family is eligible for based on their need requirements (for example, hours per week the parents are working and are unable to care for their child). Then, they are typically referred to a local childcare resource and referral (R&R) agency. The R&R, also funded through state and federal dollars, assists a family by helping identify and access the appropriate and desired child development program for the child or children. Childcare vouchers can be used to access childcare at a licensed center or family childcare home or from a license-exempt childcare provider who meets certain criteria, including passing a background screening. However, due to a lack of state resources and budget cuts, access to programs able to accept vouchers is limited. Should a family be unable to find appropriate care, they are placed on a waiting list, if one is available. According to the Legislative Analyst’s Office (LAO), in 2019-20, there were a total of 54,340 AP voucher slots serving non-CalWORKs children and families, a 21% increase in slots from the prior year. Although waiting lists are maintained at the local level, California does not have a statewide, aggregate waiting list, making it challenging to understand the true unmet need.

Reimbursement rates. Two different sets of rate schedules apply to providers of subsidized childcare. For programs utilizing vouchers, which allow families to access childcare through their choice of a licensed day care center, a licensed family childcare home, or license-exempt child, providers are reimbursed using the Regional Market Rate (RMR). This rate is based on a biannual state-commissioned survey of the cost of childcare birth through age 13 in various geographical regions across the state. These rates vary significantly from one county to another, reflecting differences in the cost of care.

This table illustrates differences in the full-time daily rate for children from birth to 24 months:

Childcare Setting	Fresno County	Los Angeles County	Alameda County
Childcare center	\$72.73	\$96.53	\$114.06
Family childcare home	\$45.53	\$54.40	\$72.20
License-exempt care	\$31.87	\$39.48	\$50.54

This table illustrates differences in the full-time daily rate for children from 2- to 5-years-old:

Childcare Setting	Fresno County	Los Angeles County	Alameda County
Childcare center	\$48.81	\$67.37	\$81.64
Family childcare home	\$41.73	\$51.96	\$67.19
License-exempt care	\$29.21	\$36.37	\$47.03

Providers of contracted care – childcare and development programs that contract directly with the CDE, as opposed to voucher-based care – are reimbursed according to a uniform statewide rate system based on the Standard Reimbursement Rate (SRR). The fiscal year 2018-19 SRR for General Child Care is \$47.98 per child per day of enrollment or \$11,995 per year based on 250 days of operation. However, acknowledging the higher costs associated with providing care to certain populations, state law provides for “adjustment factors” to be multiplied by child days of enrollment to arrive at an adjusted SRR.

Variable Schedules. For families with a variable and/or unpredictable schedule, reimbursement to the childcare provider is based on the actual days and hours for which services were provided as documented on the monthly attendance record or invoice, up to the maximum certified need for services, as documented on the childcare voucher. As a provider is unable to predict the actual hours that a child will be in attendance, it is difficult to predict the revenue that will be generated, creating potential negative fiscal impacts. Some argue that this also impacts parental choice as some childcare providers, including centers, may be reluctant to accept a voucher from a family on a variable schedule as the provider cannot count on the spot being used on a regular basis, and thus cannot count on the corresponding revenue generation.

Executive Order EO-N-45-20. On April 4, 2020, the Governor signed Executive Order N-45-20, which was subsequently enacted in SB 820 (Committee on Budget and Fiscal Review), Chapter 110, Statutes of 2020, to facilitate childcare for children of essential critical infrastructure workers by waiving certain programmatic and administrative requirements in response to the COVID-19 pandemic. These policy changes require family childcare providers be reimbursed by an APP according to the maximum certified hours on a childcare voucher, regardless of attendance. This allows childcare providers to more accurately plan and budget. The reimbursement provision enacted in SB 820 expires on June 30, 2021.

Administrative changes proposed in this bill. This bill, sponsored by the California Alternative Payment Program Association (CAPPA), proposes a number of administrative and fiscal changes to the operations of the APP system, including the following:

- **Reimbursing for maximum certified hours of need.** This bill would require that the provider be paid for the maximum certified hours in their contract, rather than based upon the child’s attendance. *The Committee may wish to consider* that this will likely create instances where subsidized care is paid for, but not provided for those days or hours when care is not utilized up to the maximum certified hours;
- **Increasing allowable reserves.** Currently, an APP Reserve Account balance may not exceed 2% of the sum of the amounts allowed for administrative and supportive services, or \$1,000, whichever is greater. According to the sponsors, this is insufficient for agencies to deal with delays in contract augmentations, payments lost in the mail, or other unforeseen instances. This bill would increase the allowable reserve to 15%; and

- **Removing the requirement that an APP verify provider rates once per year.** Licensed providers who accept vouchers are required to keep rate sheets for the amount charged to nonsubsidized families for equivalent levels of service. Currently, licensed providers may alter their rate sheet once per year by providing both the alternative payment contractor and the R&R agency with their updated rate sheets. Contractors must verify provider rates no less frequently than once a year by randomly selecting 10% of licensed childcare providers serving subsidized families. The purpose of this verification process is to confirm that rates reported to the APPs reasonably correspond to those reported to the R&R agency and the rates actually charged to nonsubsidized families. This bill removes provisions authorizing licensed providers to alter rate levels for subsidized childcare programs once per year, and eliminates the requirement to provide the APP and the R&R with information on any changes in rates.

Arguments in support. The California Resource and Referral Network writes, “California is currently in the midst of a childcare crisis and has seen capacity for care reduced by nearly one-third in the past year. According to the California Department of Social Services, a staggering 2,930 Family Child Care Homes and Centers in state permanently closed their doors in 2020. Thousands of working moms and dads lost access to childcare. Prior to the crisis, California’s family childcare providers who provided subsidized parents on a varied work schedule with childcare were reimbursed based on the attendance of a family. This policy in and of itself created a disincentive for providers to accept enrollment of a subsidized child. During COVID, Governor Newsom issued an executive order to stabilize providers and require reimbursement for the space held for a subsidized family regardless of attendance. This action was instrumental in reducing the exodus of providers and halting further closures. California’s working families must have access to stable childcare if our economy is ever to rebound. AB 865 supports the childcare work force and reimburses them for holding a space for a child regardless of whether the child attends. AB 865 values childcare providers as business owners and recognizes their work as an integral part of California’s economy.”

Related legislation. SB 820 (Committee on Budget and Fiscal Review), Chapter 110, Statutes of 2020, allows from July 1, 2020, to June 30, 2021, family childcare providers to be reimbursed based on enrollment rather than on child attendance.

AB 2883 (Quirk-Silva) of the 2019-20 Session, was similar to this bill and would have changed to the CCDSA regarding administrative and payment processes for APP agencies. This bill was held in the Senate Education Committee.

AB 603 (Quirk Silva), Chapter 706, Statutes of 2017, requires APPs to establish a program of electronic banking for childcare providers and to send notice to a provider of changes in specified factors related to childcare services and rates.

AB 1106 (Weber), Chapter 716, Statutes of 2017, requires an APP to have no less than 36 months to expend allocated funds and excludes all or part of the basic allowance for housing provided to specified military personnel from counting as income for purposes of determining eligibility for childcare and development programs.

AB 1712 (Oberholte), Chapter 324, Statutes of 2016, authorizes childcare contractors to use digital signatures and requires that those signatures have the same force and effect as manual signatures, as specified.

AB 271 (Obernolte), Chapter 476, Statutes of 2015, expands the existing authority of APPs and childcare providers to use electronic methods for storage of documents or records and use of digital signatures pursuant to current state standards.

REGISTERED SUPPORT / OPPOSITION:

Support

Bananas
C5 Children's School
California Alternative Payment Program Association
California Child Care Resource and Referral Network
California Legislative Women's Caucus
Catalyst Community
Catalyst Family INC.
Child Action, INC.
Child Care Alliance of Los Angeles
Child Care Providers United (CCPU)
Child Care Resource Center
Child Development Associates
Child Development Resources of Ventura County, INC.
Children Now
Children's Council of San Francisco
Children's Council San Francisco
Children's Home Society of California
Children's Resource & Referral of Santa Barbara County
Community Action Partnership of San Luis Obispo County, INC.
Community Child Care Council (4CS) of Alameda County
Community Child Care Council of Sonoma County
Community Resources for Children
Connections for Children
Council for Strong America
Crystal Stairs, INC.
Del Norte Child Care Council
Early Care and Education Consortium
Early Care Educators of San Francisco
Family Child Care Association of San Francisco
Fight Crime: Invest in Kids
Good Samaritan Family Resource Center
Kai Ming Head Start
Low Income Investment Fund
Marin Child Care Council
Mission: Readiness
North Coast Opportunities
Northern Directors Group
Options for Learning
Parent Voices San Francisco
Readynation

San Francisco Child Care Planning & Advisory Council
San Francisco Early Care & Education Advocacy Coalition
San Francisco Ece Advocacy Coalition
Santa Barbara County Education Office
Santa Barbara Women's Political Committee
Sierra Nevada Children's Services
Siskiyou Child Care Council
Solano Family & Children's Services
True Sunshine Preschool Center
Valley Oak Children's Services, INC.
Wu Yee Children's Services
One individual

Opposition

None on file

Analysis Prepared by: Marguerite Ries / ED. / (916) 319-2087