Child CARE

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 8 1994

MEMORANDUM FOR SALLY KATZEN AND BELLE SAWHILL

FROM: Laura Oliven and Michael Ruffner

SUBJECT: ACF Proposed Child Care Regulations

ACF has submitted a proposed rule which makes a number of changes to the existing Federal child care program and management structures they believe will increase regulatory coordination, enhanced quality of care and promotion of the health of children in the program. While many of the provisions may be good policy, they also have regulatory and budgetary impacts which need further analysis. Thus far, ACF has not submitted any cost estimates, legal, statutory or program analysis of the impacts from the proposed changes. Moreover, they have provided no support for their claim of cost neutrality.

The following is a brief summary of the significant changes proposed in the rule based on a quick review of a 100+ page rule:

REGULATORY ISSUES

- Requires that children receiving CCDBG services receive immunizations as a condition of participation in the program. Grantees have the option of expanding the requirement to Title IV-A child care programs. The only exceptions to this requirement will be for a) children cared for by relatives; b) children who receive care in their own homes; c) children whose parents object for religious reasons; and d) children whose medical conditions contraindicate immunization.

  Under current CCDBG law, the Federal government defers to State and local regulation of child care settings. The proposed rule would *require* States to include immunizations in health and safety plans for all child care settings under CCDBG. Current law says that "nothing in this paragraph [dealing with health and safety standards] shall be construed to require the establishment of *additional health and safety requirements* ... [that were not specified in State and local law] on the date of enactment of [the CCDBG Act]." It is not clear whether there is sufficient statutory basis for this policy.

  Currently, immunization policies vary widely, but most States require some

proof of immunizations for children enrolled in licensed or regulated child care center. The proposed rule would introduce a new requirement for participation in unregulated care such as family day care (care in a private home) and/ or care related to religious institutions. This provision would impose a federal mandate to immunize children in an arena of care that States have purposely not regulated.

- Eliminates the "effects test" from the CCDBG which prohibited States from imposing any health and safety requirements that significantly limited parental access to a category of care or type of provider. The "test" had no statutory basis, but was established to maximize parental choice and ensure that States did not regulate a category of care out of existence. (The "test" was added by the last Administration to limit Federal regulation of State, local and private entities.)

- Removes 10% cap on differential of payment within category of care. The cap was devised to prevent a State from paying an unregulated care provider much less than a regulated provider in the same category, i.e. a child care center and a church-based center.

COST ISSUES

The proposed rule has cost implications in two ways, 1) extends eligibility and increases allowable costs in entitlement programs and 2) displaces current eligibles and funding priorities in the capped child care programs.

Increased Outlays in Entitlement Programs

- Reimbursement for the IV-A programs is limited to the 75th percentile of local market rate. The proposed rule would eliminate the cap when the State recognizes the provider as giving a "higher quality" of child care. The State is allowed to define the higher quality criteria. This provision has the largest cost increase potential. In effect, it allows the Federally subsidized child care programs to reimburse more expensive care -- above the 75th percentile.

- Allows States to continue JOBS and At-risk child care to families that lose a job but are searching for another job, for up to one month if the care arrangements would otherwise be lost. Current regulations only allow continuation for up to one month if an activity is scheduled to begin within that month and the arrangement would otherwise be lost.

- States would have the option of making families who voluntarily leave AFDC eligible for TCC. Under current regulation a family can *only* become eligible if they lose AFDC eligibility due to increased income from employment or loss or the income disregards due to time limits. There may be legal prohibition against this provision. Section 402(g)(1)(A)(ii) states that

TCC is available "in any case where a family has ceased to receive [AFDC] as a result of increased hours of, or increased income from, ... employment ...." For example, this means recipients leaving because of marriage are now eligible for TCC.

- Eliminates the requirement that families formally "request" TCC child care before the State will provide it. It is not clear how States would implement this provision.

- Eliminates the requirement that the family contribute on a sliding fee basis in TCC to be compatible with the At-Risk program. There may be a legal issue in this change. Section 402(g)(1)(A)(viii) of the Social Security Act states that "A family shall contribute to child care provided under clause (ii) [TCC] in accordance with a sliding scale formula which shall be established by the State agency based on the family's ability to pay."

- Removes the requirement in AFDC and TCC child care that a physician or licensed or certified psychologist must make the determination that a child is physically or mentally incapacitated. Instead the State will be responsible for determining incapacitation, consistent with the CCDBG and At-Risk programs. It is unclear how States will implement this provision. However, using an administrative process may make it easier for the child to qualify for subsidized child care beyond age 13.

Displacement of Children or Program Funds

- For CCDBG, increases the allowable percentage spent on program administration from 10% to 15% of the funds authorized for program expenditures. Previously, grantees were authorized to spend 10% , but had the option to request a waiver for up to 15%.

- Changes the CCDBG policy to include foster care children in the State's definition of protective services cases. This means that a child could be eligible for CCDBG even if the parents are not working or in education and training. ACF has not estimated the increase in foster care population under this provision. This has the potential to displace children in the Grant program, whose parents need the care to work.

REVIEW OF ACF CHILD CARE PROGRAMS

The Agency for Children and Families (ACF) administers four Federally funded child care programs aimed at economically disadvantaged individuals. The programs are designed to form a continuum of seamless service as the individual goes from welfare to work. These programs include:

Aid to Families with Dependent (AFDC) Children Child Care: Child care for AFDC recipients who need child care for work or education and training, including those participating in the Job Opportunities and Basic Skills (JOBS) program. This is an open ended entitlement, and State expenditures are matched by the Federal government at the FMAP rate. (FMAP is a matching rate for some entitlement programs that varies according to the relative poverty population in the State.)

Transition Child Care (TCC): Child care for the 12 months after the individual becomes ineligible for AFDC due to work. This is an open ended entitlement, and State expenditures are matched by the Federal government at the FMAP rate.

At-Risk Child Care: Child care is aimed at low-income working families in need of such care and otherwise at risk of becoming eligible for AFDC. This is a State matched entitlement capped at $300 million.

Child Care and Development Block Grant (CCDBG): CCDBG is intended to provide child care services for low income families and to increase the availability, affordability and quality of child care and development services. 100% Federal funded at approximately $1 billion per year.