



## Office of Children and Family Services

ANDREW M. CUOMO  
Governor

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Commissioner

January 14, 2021

U.S. Department of Health and Human Services  
Administration for Children and Families  
Office of Child Care  
Submitted via e-mail: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain)

**Re: 85 FR 81209**

**Submission for OMB Review; Child Care and Development Fund Plan for States/Territories for FFY 2022-2024 (ACF-118; OMB #0970-0114)**

To Whom This May Concern:

The New York State Office of Children and Family Services (NYS OCFS) is pleased to submit the following comments in response to the above-referenced proposed information collection activity that was published in the Federal Register, 85 FR 81209, on December 15, 2020. NYS OCFS believes that many of the proposed updates and structure of the Child Care and Development Fund Plan for States/Territories for FFY 2022-2024 improve the clarity.

As way of background, NYS OCFS is required to submit a plan for the Child Care and Development Fund (CCDF) Plan (the Plan) for States and Territories in accordance with Section 658E of the Child Care and Development Block Grant Act of 1990 (CCDBG Act), as amended, CCDBG Act of 2014. NYS OCFS has analyzed the proposed CCDF Plan for States and Territories for FFY 2022-2024 by section and wish to share some positive feedback and a few clarifying points on specific sections/questions.

First, in relation to the Disaster Preparedness and Response Plan, NYS OCFS appreciates the changed format of this section, noted as Section 1.8. Specifically, the changed format gives flexibility in how often a Plan should be updated and which entities, if any, should collaborate in updating the process. By allowing states to certify by checking that the current State Disaster Preparedness and Response Plan includes the required elements, as opposed to providing a narrative summary, these specific improvements to formatting and flexibility in the Plan are extremely beneficial to our state and agency in the completion of the CCDF Plan.

NYS OCFS would also like to take this opportunity to comment on the Assess Market Rates and Analyze the Cost of Child Care section of the CCDF Plan, Section 4.2. NYS OCFS views the opportunity to request a waiver for up to one additional year, until July 1, 2022, to complete the required Market Rate Survey and/or ACF pre-approved alternative methodology, and narrow cost analysis, due to the COVID-19 pandemic as beneficial. NYS has been greatly affected by COVID-19 and the ability to submit a waiver for extension will provide NYS the opportunity to continue to focus efforts on providing support and guidance to child care providers during the pandemic and as we transition into recovery.

Notwithstanding NYS OCFS' positive view of most of the revisions made to the State and Territories Plan pre-print, there are a number of areas that our agency believes may require further clarification or discussion. NYS OCFS wishes to share the following comments regarding section/question specific considerations which were included in the Plan. First, regarding questions 3.2.5, Graduated Phase Out, and 3.4.1, 12-Month Eligibility Period, these two portions of the pre-print Plan do not offer options that work for NYS due to where NYS OCFS is in the implementation process. NYS OCFS recommends that a check box be added to indicate that full compliance has not been met and add an additional option to provide an explanation for why full compliance has not been met.

Additionally, NYS OCFS wishes to share a concern regarding Section 2.2, Parental Complaint Process, which describes the lead agency as responsible for maintaining a record of substantiated parental complaints and the reporting requirements. NYS OCFS believes that limiting this section to only parental complaints is too narrow and we are concerned the way this section is written that it may deter others from making complaints if the requirement is not more inclusive. In NYS complaints are received from many other sources, which include neighbors, community members, employees, prospective parents, etc. NYS OCFS recommends that this section be expanded to not just reference complaints from parents, but to also include the general public. Further, NYS OCFS also recommends that complaints not be solely categorized as parental complaints for reporting purposes and public display, as only having parental complaints displayed may compromise the anonymity in the complaint process. While the specific source of the complaint may not be listed, in many instances it could be relatively easy for a program to deduce where the complaint originated from. The concern is that this potentially discourages complaints from being initiated by only making a reference to a single potential source versus broadening the pool of potential sources.

Next, NYS OCFS has concerns that several areas under the Consumer Education requirements appear to be new and/or go beyond the CCDBG Act and CCDF regulations. NYS OCFS believes that question 2.3.7(a), regarding information about all areas covered by a monitoring visit being required to be posted on the website if full monitoring reports include areas of non-compliance only, is a new requirement that was not previously identified. In New York, inspection types vary (e.g., initial inspection, renewal, complaint investigation, monitoring visit), as well as the scope of the inspection. For example, in addition to a set of core health and safety standards, the checklists used for a monitoring inspection contain a computer-generated sampling of items. Subsequently, each visit is different. Therefore, depending on the degree of regulatory compliance that is observed, the scope of an inspection may or may not be expanded, which results in there being no single version of an inspection checklist, especially for a monitoring visit.

NYS OCFS also has concerns about question 2.3.7(b), regarding monitoring and inspection reports. The Preamble to the 2016 final CCDF rules and regulations addressed the decision not to include a requirement to post provider-specific information on serious injuries and death in the final rule. Yet, 2.3.7(b) asks that states certify that the monitoring and inspection reports and/or plain language summaries include, *"Health and safety violations, including those violations that resulted in fatalities or serious injuries occurring at the provider. Describe how these health and safety violations are prominently displayed."* Additionally, in relation to question 2.3.7(b), specifically the check box relating to *"Corrective action plans taken by the state and/or child provider,"* the CCDBG Act and CCDF regulations do not require the corrective action plans to be posted.

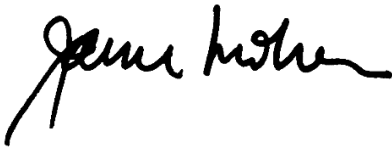
Further, Section 2.3.7(f) requires that lead agencies *"describe the process for providers to appeal the findings in [monitoring and inspection] reports. Description of the process should include the time requirements and*

*timeframes for: filing the appeal, conducting the investigation and removal of any violations from the website determined on appeal to be unfounded.*" This requirement goes beyond the requirements of the CCDBG and CCDF regulatory requirements. While a process for correcting inaccuracies in reports is required, the Preamble to the CCDF final rule specifically states that "we declined to add a regulatory requirement for States to have an appeals process for monitoring findings... We leave it to the discretion of the Lead Agency to work with providers to determine the best approach." An appeals process was recommended, but not required.

Lastly, NYS OCFS has concerns regarding question 2.3.8(b), which relates to aggregate data on serious injuries, death, and substantiated cases of child abuse that have occurred in child care settings each year. Specifically, NYS OCFS has concerns surrounding the requirement that states certify that, *"the total number of children in care by provider category/licensing status,"* is included in the aggregate data report on serious incidents. CCDBG Act and CCDF regulations do not require this level of reporting.

In conclusion, thank you for the opportunity to provide these comments and share our concerns. We hope our comments will be thoughtfully considered. Should you have any questions or need further clarification, we would be pleased to provide additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Janice Molnar", with a stylized, flowing script.

Janice M. Molnar, Ph.D.  
Deputy Commissioner  
Division of Child Care Services