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Comments of Schuyler Center for Analysis and Advocacy
On OCFS Proposed Rulemaking That Amends Part 415 of Title 18
To Implement Increasing the Child Care Subsidy Reimbursement Rate to the 80th Percentile of the Market Rate and Raising Child Care Assistance Eligibility to 300% of Federal Poverty Level

July 5, 2022

The Schuyler Center for Analysis and Advocacy is a 150-year-old statewide, nonprofit organization dedicated to policy analysis and advocacy in support of public systems that meets the needs of disenfranchised populations and people living in poverty. Among our priorities: ensuring comprehensive and strategic investment in our youngest New Yorkers when their brains and bodies are most rapidly developing, with impacts that can last a lifetime. Schuyler Center leads and participates in many statewide coalitions and campaigns, including the Empire State Campaign for Child Care.

We welcome the opportunity to provide comments on the Office of Children and Family Services’ June 2022 amendments to New York’s child care subsidy regulations, implemented in June as emergency regulations.

As a preliminary matter, we welcome these amendments insofar as they will enable more New York families to gain access to high quality, affordable child care, and, in many cases, over a longer period of time, providing families and children more stability and certainty. These amendments also move New York slowly, but steadily in the direction of providing universal child care for all the state’s families.

The remainder of these comments provide specific recommendations on the proposed subsidy regulations. We urge OCFS to incorporate these recommendations in the final regulations.

§415.9 Market Rates

The Schuyler Center strongly supports New York’s increase of the child care subsidy reimbursement rate to the 80th percentile of the most recent market rate survey. We also strongly support the change in the determination of the special needs rate in §415.9(h)(4) by
removing the cost of care from the determination and reducing the administrative burden placed on providers. This reimbursement increase, if afforded quickly to all child care providers, will help New York meet its CCDF obligation to ensure families receiving child care subsidies are afforded equal access to high quality child care. (See 45 CFR §98.45).

We strongly encourage OCFS in the final regulations to require local social services districts to automatically increase provider rates without requiring each provider to make an independent showing of the cost of care. This requirement has proven to be a formidable and unnecessary administrative burden for both providers and administrators. For many providers – disproportionately family-based providers, the majority of whom are women of color – this requirement has prevented them from availing themselves of many prior reimbursement rate hikes. They fear they will be once again barred from access this new rate hike. Further, the local social service district must direct resources to approving the rate requests, even though the market rate survey itself has already established that an increase in rates is warranted.

The bottom line: New York’s process for determining the market rate and setting the percentile meets the federal requirements at 45 CFR §98.16 for establishing rates and for ensuring equal access at 45 CFR §98.45. Indeed, this requirement that each provider make an individualized showing of their cost of care arguably runs counter to the federal requirement of ensuring subsidy payment rates are sufficient to ensure equal access. Insofar as this requirement prevents many providers from accessing the rates New York has deemed necessary to provide high quality care and is a barrier to equal access. We note and appreciate that OCFS has offered child care providers that serve only children receiving child care subsidies with a simplified means of providing eligibility for the new market rate. However, this improvement still leaves out the many providers that serve children receiving subsidies and those paying privately, and still creates an unnecessary hurdle for those providers serving only families with access to child care subsidies. Accordingly, we urge New York to make this and future rate hikes universally and automatically applicable to all providers.

§415.1(o) and §415.2 Income Eligibility

The Schuyler Center strongly supports the new state requirement increasing eligibility up to 300% of the state income standard (equivalent to the Federal Poverty Level). Expanding eligibility for child care subsidies to 300% of the federal poverty level means that beginning August 1, 2022, an eligible family of four earning up to $83,250 ($54,930 for a family of 2) will be eligible for assistance to pay for child care. This increase stands to make tens of thousands of New York families newly eligible for child care assistance. This expansion will change lives, and we welcome OCFS’s swift issuance of rules to implement this eligibility expansion.

To ensure that this historic subsidy expansion equitably reaches all eligible New York families, we urge OCFS to take the following additional steps:

1. Publicize this expanded assistance using new and creative methods, recognizing that this newly eligible group of families may not have dealings with county social services agencies or the other customary touch-points for child care assistance. They will need to be reached in other ways.
2. Encourage the Governor to sign and swiftly implement A.10209-A (Lunsford)/S.9029-A (Ramos) — 24-month eligibility option. This bill will permit local social service districts to authorize families to receive child care assistance for up to 24 months between eligibility determinations. The unfortunate reality is that few families experience significant enough increases in family income that would change their eligibility for child care assistance. This proposal will relieve counties of a significant, and unnecessary administrative burden at exactly the time that counties will (hopefully) be facing an influx of new subsidy applicants. This new law may help counties handle the influx.

3. Encourage the Governor to sign, and swiftly implement A.7661 (Hevesi)/S.6655-A (Brisport) — Decoupling child care subsidies from parents’ hours of work. This proposal offers enhanced early education opportunities for children, provides stable, reliable child care for families, and more stability for providers, by allowing parents who work part-time or fluctuating hours access to full-time child care assistance. According to a recent report by A Better Balance and the Community Service Society, Women in the Workforce, nearly one-third of low-income New York mothers in the workforce reported working in the app-based gig economy. Recent federal guidance, recognizing the changing landscape of work, encourages lead agencies to “consider the working conditions that characterize low wage work … when determining subsidy policies” CCDF-ACF-IM 2021-03. This law is exactly the kind of law needed to modernize New York’s child care subsidy rules to ensure the families that most need child care assistance can access it.

4. Remove the minimum wage floor for child care eligibility, which could permit thousands of New York families to newly access child care assistance. OCFS could do so by removing the stipulation that “engaged in work” must include “earning wages at a level equal to or greater than the minimum amount required under Federal and State Labor Law for the type of employment” at §415.1(o)(1)(i). For self-employed families, and families participating in the gig economy, we urge the removal of the provision at §415.1(o)(1)(ii) that self-employment produces personal income equal to or greater than the minimum wage or has the potential for growth in earnings to produce such an income within one year.

Thank you for this opportunity to submit comments on these regulations.

Respectfully yours,

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