

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 241

57TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2026

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO CHILDREN; ENACTING THE CHILD CARE ASSISTANCE PROGRAM ACT; ESTABLISHING THE CHILD CARE ASSISTANCE PROGRAM; PROVIDING FOR PAYMENTS TO CHILD CARE FACILITIES THAT PARTICIPATE IN THE CHILD CARE ASSISTANCE PROGRAM; PROVIDING ELIGIBILITY AND REGULATORY REQUIREMENTS; PROVIDING FOR ADDITIONAL APPROPRIATIONS TO THE EARLY CHILDHOOD EDUCATION AND CARE PROGRAM FUND.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-29A-1 NMSA 1978 (being Laws 2020, Chapter 3, Section 1, as amended) is amended to read:

"9-29A-1. EARLY CHILDHOOD EDUCATION AND CARE FUND.--

A. The "early childhood education and care fund" is created within the state treasury. The fund shall consist of distributions, appropriations, gifts, grants and donations. Income from investment of the fund shall be credited to the fund. Money in the fund shall be expended only as provided in this section.

B. The state investment officer, subject to the approval of the state investment council, shall invest money in the early childhood education and care fund:

(1) in accordance with the prudent investor rule set forth in the Uniform Prudent Investor Act; and

(2) in consultation with the state treasurer.

C. The state investment officer shall report quarterly to the legislative finance committee and the state investment council on the investments made pursuant to this section. Annually, a report shall be submitted no later than October 1 each year to the legislative finance committee, the revenue stabilization and tax policy committee and any other appropriate interim committees.

D. On July 1 of each year, a distribution shall be made from the early childhood education and care fund to the

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early childhood education and care program fund in an amount equal to the greater of five percent of the average of the year-end market values of the fund for the immediately preceding three calendar years or five hundred million dollars (\$500,000,000).

E. In fiscal years 2026 through 2031, the legislature may appropriate up to a total of one billion dollars (\$1,000,000,000) from the early childhood education and care fund to the early childhood education and care program fund, which shall be in addition to any other appropriations or distributions made pursuant to this section; provided that an appropriation made pursuant to this subsection shall not exceed an amount that would decrease the total balance in the early childhood education and care fund to below ten billion dollars (\$10,000,000,000).

[E.] F. In addition to the distribution pursuant to Subsection D of this section, money in the early childhood education and care fund may be expended in the event that general fund balances, including all authorized revenues and transfers to the general fund and balances in the general fund operating reserve, the appropriation contingency fund, the tobacco settlement permanent fund, the state-support reserve fund and the tax stabilization reserve, will not meet the level of appropriations authorized from the general fund for a fiscal year. In that event, to avoid an unconstitutional deficit, the

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legislature may appropriate from the early childhood education and care fund to the general fund only in the amount necessary to meet general fund appropriations for that fiscal year and only if the legislature has authorized transfers from the appropriation contingency fund, the general fund operating reserve, the tax stabilization reserve and the tobacco settlement permanent fund that exhaust those fund balances."

SECTION 2. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 2 through 8 of this act may be cited as the "Child Care Assistance Program Act"."

SECTION 3. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Child Care Assistance Program Act:

A. "at-risk child" means a child who may be vulnerable to or experiencing negative outcomes due to factors such as poverty, domestic violence, substance abuse, mental health issues, family involvement in the justice system, housing instability or homelessness; who has or is at risk of having a developmental delay or a disability; or whom the children, youth and families department identifies as experiencing or at risk for abuse or neglect;

B. "child care assistance" means funding administered by the department to a child care facility to

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provide child care for eligible children through the child care assistance program;

C. "child care facility" means a public or private entity, facility or premises that is licensed or registered and regulated by the department at which children receive child care services, including care, education and supervision, for less than twenty-four hours per day;

D. "consensus revenue estimating group" means the professional economists or revenue analysts from the department of finance and administration, the taxation and revenue department, the department of transportation and the legislative finance committee;

E. "department" means the early childhood education and care department;

F. "developmental delay" means a discrepancy between chronological age, after correction for prematurity, and developmental age in one or more of the following areas of development: cognition; communication; physical and motor development, including vision and hearing; social and emotional development; and adaptive development;

G. "disability" means a severe chronic disability of a person that is attributable to a mental or physical impairment;

H. "early intervention" means services provided through the family, infant, toddler program of the department

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that are designed to meet the developmental needs of children from birth to age three who have or who are at risk of having a developmental delay or disability;

I. "early intervention provider" means a person who provides early intervention;

J. "early pre-kindergarten program" means an early pre-kindergarten program as defined in the Pre-Kindergarten Act;

K. "earned income" means income received as gross wages from employment or as profit from self-employment;

L. "incapacitation" means a person is unable to meet an eligibility requirement due to an inability to care for a child because of a disability, health-related illness, rehabilitation treatment or other reason as determined by the department;

M. "legal guardian" includes both a temporary and permanent legal guardian or custodian;

N. "pre-kindergarten program" means a pre-kindergarten program as defined in the Pre-Kindergarten Act;

O. "resident" means a person who is domiciled in New Mexico, including a person who is homeless or who is temporarily residing in a domestic violence or homeless shelter; provided that for the purposes of the Child Care Assistance Program Act, a person may have only one domicile; and provided further that for a federally eligible applicant,

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the applicant's residency determination shall be aligned with applicable federal regulations;

P. "tiered quality rating system" means the system developed by the department to rate the level of quality of a licensed child care facility; and

Q. "unearned income" means income in the form of benefits, such as benefits received pursuant to state and federal programs, child support, pensions, gifts, loans, grants and other income that is not income received as gross wages from employment or as profit from self-employment."

SECTION 4. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] CHILD CARE ASSISTANCE PROGRAM--
ELIGIBILITY REQUIREMENTS.--

A. The "child care assistance program" is created in the department to provide child care assistance for eligible children, subject to appropriation. The department shall promulgate rules necessary to carry out the provisions of the program.

B. To participate in the child care assistance program, an application shall be submitted to the department in the manner and form prescribed by the department and shall align with applicable federal regulations. Subject to the provisions of Subsection C of this section, a person is eligible for child care assistance if an application is

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submitted on behalf of a resident child receiving child care assistance who is under the age of thirteen years at the time of application, or under the age of nineteen years if the child is physically or mentally incapable of caring for the child's self or is under court supervision. The department shall redetermine eligibility for child care assistance at a frequency level aligned with federal regulation.

C. To be eligible to participate in the child care assistance program, each parent or legal guardian of a child receiving child care assistance who lives in the household with the child shall be:

- (1) employed;
- (2) a full-time student and enrolled in at least twelve credit hours at an accredited educational institution;
- (3) a part-time student and enrolled in at least six credit hours at an accredited educational institution;
- (4) enrolled in a state-approved job training program, registered apprenticeship program or pre-apprenticeship program;
- (5) receiving aid from the federal temporary assistance for needy families program;
- (6) experiencing homelessness;
- (7) under the age of twenty-one and attending

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primary or secondary school;

(8) participating in services pursuant to the federal Comprehensive Addiction and Recovery Act of 2016 provided by the children, youth and families department;

(9) a grandparent raising the grandparent's grandchild;

(10) a foster parent; or

(11) engaged in an eligible activity or exempted from the eligible activity for a reason, including incapacitation, as determined by department rule and in accordance with federal regulations.

D. If a parent or legal guardian who applies for child care assistance has an annual household income greater than six hundred percent of the federal poverty level, the eligibility for child care assistance shall be limited to the hours of care supported by the parent's or legal guardian's qualifying activity schedule.

E. Eligibility may be granted for up to ninety days for applicants seeking employment.

F. An application to the department shall include documentation evidencing that the applicant meets the requirements to be eligible to participate in the child care assistance program and shall include documentation of earned and unearned income. To determine residency in New Mexico, the applicant shall provide a current New Mexico driver's license

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or other documentation proving residence in New Mexico as determined by department rule; provided that for a federally eligible applicant, the applicant's residency determination shall align with applicable federal regulations.

G. Unless determined necessary by the department, a child shall not be eligible for child care assistance for the hours of care in which the child is enrolled in a head start program, an early head start program, an early pre-kindergarten program or a pre-kindergarten program.

H. The department may make a presumption of eligibility for the child care assistance program based on proof of the child's residency and proof of parentage or guardianship before the documentation required pursuant to Subsection C of this section is received. Presumption of eligibility shall not exceed the allowable duration permitted by the federal government upon initial application."

SECTION 5. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] FISCAL CONTROLS.--

A. A parent or legal guardian may be required to pay a child care facility a copayment for child care services; provided, however, that the department shall provide a parent or legal guardian with ninety days' notice prior to the implementation of a copayment.

B. Beginning after one of the conditions pursuant

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to Subsection C of this section is met, and continuing through the remainder of the applicable fiscal year, the department shall implement one or more of the following:

- (1) a sliding scale payment schedule applicable to monthly copayments as provided in Subsection D of this section;
- (2) a waitlist as provided in Subsection E of this section if demand for child care assistance exceeds the availability of funds within the fiscal year; or
- (3) a combination of both Paragraphs (1) and (2) of this subsection.

C. The department shall implement one or more of Paragraphs (1) through (3) of Subsection B of this section if, in a given year, any of the following conditions is met:

- (1) the number of children receiving child care assistance services exceeds that year's projected enrollment by three percent as determined by the department and reported to the legislative finance committee on August 1 of each calendar year;
- (2) the state recurring general fund revenue growth percentage is projected to be lower than the percentage change in the annual consumer price index for all urban consumers for the prior calendar year as determined by the consensus revenue estimating group;
- (3) the twelve-month average percentage change

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in the annual consumer price index for all urban consumers exceeds three percent;

(4) the average price for west Texas intermediate crude oil during the applicable fiscal year is less than fifty dollars (\$50.00) per barrel as determined by the consensus revenue estimating group; or

(5) the department identifies a different or additional condition.

D. For a sliding scale payment schedule applicable to monthly copayments pursuant to Paragraph (1) of Subsection B of this section, the payment schedule shall be implemented to ensure that the amount appropriated for the child care assistance program is sufficient to meet the costs of the program and that a monthly copayment shall not exceed one-twelfth of the percentages provided in Paragraphs (1) through (3) of this subsection as applied to an applicant's annual household income. The payment schedule shall be as follows:

(1) copayments for an applicant with an annual household income of six hundred percent or less of the federal poverty level shall be waived;

(2) copayments shall be three percent or less of the annual household income for a household with income greater than six hundred percent but not exceeding nine hundred percent of the federal poverty level for all children in care; provided that the amount shall not exceed twenty-five percent

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of the average rate paid for the applicable age group to the child care facility; and

(3) copayments shall be seven percent or less of the annual household income for a household with income greater than nine hundred percent of the federal poverty level for all children in care; provided that the amount shall not exceed fifty percent of the average rate paid for the applicable age group to the child care facility.

E. For a waitlist maintained pursuant to Paragraph (2) of Subsection B of this section, to avoid a possible funding deficiency, the department shall prioritize all available child care assistance for children with developmental delays or disabilities, at-risk children and children from birth to age three in households with annual household incomes of less than four hundred percent of the federal poverty level.

F. The department shall expend federal child care assistance funds, including required state match and maintenance of efforts amounts, for federally eligible children prior to expending state funds for child care assistance. The department shall reasonably ensure that eligible federal and state child care tax benefits are maximized.

G. The department shall provide child care assistance to children aged six through twelve years who are eligible for federal child care assistance, and the department shall not exceed thirteen thousand child care assistance slots

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for children aged six through twelve years who are not federally eligible, except as provided for a child through age eighteen years if that child is under court supervision or is physically or mentally incapable of self-care. The department shall maintain a waitlist and prioritize applicants based on whether an application is for an at-risk child and on families' annual incomes from lowest to highest percentage of the federal poverty level."

SECTION 6. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] PAYMENT RATES FOR CHILD CARE ASSISTANCE SERVICES.--

A. Payment rates for the child care assistance program, including copayments, shall be subject to the availability of funds and shall be set by rule of the department and updated as required by federal law. Payment rates shall:

(1) be based on a cost estimation model in accordance with the requirements of the federal child care and development fund program authorized by the federal Child Care and Development Block Grant Act of 1990, as amended;

(2) correspond to differences in quality based on the tiered quality rating system of the department;

(3) be sufficient to meet the requirements of each tier and ensure adequate wages for child care facility

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staff;

(4) include thresholds appropriate for each facility type and age groups of children and full-time, part-time or wrap-around care;

(5) include a differential rate for care that is provided during nontraditional hours of operation; and

(6) incorporate feedback and input from early childhood education and development experts, a diverse group of child care facilities of a variety of facility types, families and organizations representing child care directors, teachers and other staff.

B. The department may create an enhanced monthly rate schedule with a monthly payment rate not to exceed an average of ten percent above the rate provided in Subsection A of this section for a child care facility.

C. The portion of the rates set pursuant to this section that are used for salaries and benefits and toward the wage scale and career ladder shall be determined by rule of the department, with a report submitted to the legislature within two weeks of making a determination pursuant to this subsection."

SECTION 7. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] REQUIREMENTS--CHILD CARE FACILITIES--EARLY INTERVENTION PROVIDERS--

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A. A child care facility that participates in the child care assistance program shall:

(1) not accept or receive child care assistance for hours that a child is enrolled in a head start program or an early head start program or Sf11→~~is-eligible~~

~~for~~ Sf11 an early pre-kindergarten program or a pre-kindergarten program, except when determined necessary by the department;

(2) not accept or require payment or donations in any form from an eligible child's family who is participating in the child care assistance program for an eligible child to be admitted or enrolled beyond the rate paid by the department for the hours paid for through the child care assistance program;

(3) refer an at-risk child to appropriate programs of the department and, when applicable, to an appropriate tribal department for services;

(4) meet and maintain required training as set by rule of the department to identify and refer at-risk children to home visiting and the family, infant, toddler programs of the department and of tribal departments, as appropriate;

(5) meet and maintain required professional development and certification pathways, as set by rule of the department;

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(6) not unreasonably exclude early intervention providers from accessing a child care setting to provide early intervention services. If intervention providers are excluded for any reason, a facility shall notify the department within forty-eight hours;

(7) report to the department program participation, professional qualifications of staff members, salaries and benefits for each employee and the employee benefit structure;

(8) submit an annual report to the department by July 1 of each year in a manner prescribed by the department that contains the following child care facility business information:

(a) the legal name and address of the business;

(b) the legal name and address of any management company, owner or entity with a direct or indirect ownership interest in the business;

(c) the name and address, if applicable, of any members of a board of directors of the business;

(d) the legal structure of the business, including its form of organization;

(e) the legal structure of any owner or ownership entity of the business;

(f) each investment in the business by

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any person or entity comprising a ten percent equity stake or greater;

(g) each debt or lien against the business comprising at least ten percent of the annual revenue of the business;

(h) all documentation of any changes in ownership of the business in the past five years, including sales, transfers, mergers or acquisitions; and

(i) all details of any out-of-state sources of funding or investment for the business; and

(9) comply with department requirements promulgated by rule.

B. If a child is referred for early intervention, an early intervention provider shall not intervene without express authorization by the parent, legal guardian or custodian of the child.

C. The department shall create a reporting mechanism for early intervention providers to report suspected child abuse or neglect occurring in a child care facility and for a child care facility to report suspected child abuse or neglect by early intervention providers.

D. A child care facility that participates in the child care assistance program shall notify the department of any ownership changes to the facility within sixty days of the transaction closing.

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E. Nothing in the Child Care Assistance Program Act shall be construed to limit language- and culturally appropriate child care or limit any educational regulations adopted by Indian nations, tribes or pueblos related to language- and culturally appropriate child care."

SECTION 8. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] DEPARTMENT DUTIES--SHARING OF INFORMATION.--

A. The department shall develop the child care assistance program to enhance child care quality and improve the development of participating children. Through the administration of the child care assistance program, the department shall promote parental choice, allowing parents to choose the care that best suits the child's family through a mixed delivery system that includes public, private, nonprofit, for-profit and faith-based child care facilities; provided that the land grant permanent fund may only be used for nonsectarian or nondenominational services. In carrying out its duties, the department shall:

(1) implement internal controls that ensure integrity of and accountability for the child care assistance program while maintaining continuity of the program; and

(2) report any suspected intentional misuse of funds to local law enforcement and the local district attorney

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or the attorney general for prosecution; provided that upon a report being made to law enforcement pursuant to this paragraph, the department shall report the suspected intentional misuse of funds by the child care facility to the state auditor, who shall investigate the child care facility.

B. The department shall perform at least two unannounced visits per year to each child care facility that shall include a compliance review of the Child Care Assistance Program Act requirements and compliance with the rules set by the department.

C. Registered child care providers shall not be eligible for capital improvement costs, maintenance costs or repair costs funded by the state or through the child care assistance program. The department shall provide by rule a pathway for licensure of registered child care providers.

D. By September 1, 2026 and each September 1 thereafter, the department shall provide to the legislative health and human services committee and the legislative finance committee a report on implementation of the Child Care Assistance Program Act, including costs, a review of the cost estimation model and payment rates set pursuant to Section 5 of the Child Care Assistance Program Act, program participation, children and families served by that act, the distribution of child care assistance based on an eligibility category, income and race or ethnicity by the tiered quality rating system

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throughout the state and the information reported pursuant to Subsection A of Section 6 of that act.

E. All agencies that are part of the children's cabinet pursuant to the Children's Cabinet Act shall share data and other information necessary with the department in order for the department to carry out the provisions of the Child Care Assistance Program Act."

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