

SENATE FINANCE COMMITTEE SUBSTITUTE FOR
SENATE BILL 241

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

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.

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.

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1 Income from investment of the fund shall be credited to the
2 fund. Money in the fund shall be expended only as provided in
3 this section.

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

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

9 (2) in consultation with the state treasurer.

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

17 D. On July 1 of each year, a distribution shall be
18 made from the early childhood education and care fund to the
19 early childhood education and care program fund in an amount
20 equal to the greater of five percent of the average of the
21 year-end market values of the fund for the immediately
22 preceding three calendar years or five hundred million dollars
23 (\$500,000,000).

24 E. In fiscal years 2026 through 2031, the
25 legislature may appropriate up to a total of one billion

1 dollars (\$1,000,000,000) from the early childhood education and
 2 care fund to the early childhood education and care program
 3 fund, which shall be in addition to any other appropriations or
 4 distributions made pursuant to this section; provided that an
 5 appropriation made pursuant to this subsection shall not exceed
 6 an amount that would decrease the total balance in the early
 7 childhood education and care fund to below ten billion dollars
 8 (\$10,000,000,000).

9 ~~[E-]~~ F. In addition to the distribution pursuant to
 10 Subsection D of this section, money in the early childhood
 11 education and care fund may be expended in the event that
 12 general fund balances, including all authorized revenues and
 13 transfers to the general fund and balances in the general fund
 14 operating reserve, the appropriation contingency fund, the
 15 tobacco settlement permanent fund, the state-support reserve
 16 fund and the tax stabilization reserve, will not meet the level
 17 of appropriations authorized from the general fund for a fiscal
 18 year. In that event, to avoid an unconstitutional deficit, the
 19 legislature may appropriate from the early childhood education
 20 and care fund to the general fund only in the amount necessary
 21 to meet general fund appropriations for that fiscal year and
 22 only if the legislature has authorized transfers from the
 23 appropriation contingency fund, the general fund operating
 24 reserve, the tax stabilization reserve and the tobacco
 25 settlement permanent fund that exhaust those fund balances."

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

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

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

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

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

17 B. "child care assistance" means funding
18 administered by the department to a child care facility to
19 provide child care for eligible children through the child care
20 assistance program;

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

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

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

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

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

17 H. "early intervention" means services provided
18 through the family, infant, toddler program of the department
19 that are designed to meet the developmental needs of children
20 from birth to age three who have or who are at risk of having a
21 developmental delay or disability;

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

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

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1 Act;

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

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

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

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

13 O. "resident" means a person who is domiciled in
14 New Mexico, including a person who is homeless or who is
15 temporarily residing in a domestic violence or homeless
16 shelter; provided that for the purposes of the Child Care
17 Assistance Program Act, a person may have only one domicile;
18 and provided further that for a federally eligible applicant,
19 the applicant's residency determination shall be aligned with
20 applicable federal regulations;

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

24 Q. "unearned income" means income in the form of
25 benefits, such as benefits received pursuant to state and

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1 federal programs, child support, pensions, gifts, loans, grants
2 and other income that is not income received as gross wages
3 from employment or as profit from self-employment."

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

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

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

13 B. To participate in the child care assistance
14 program, an application shall be submitted to the department in
15 the manner and form prescribed by the department and shall
16 align with applicable federal regulations. Subject to the
17 provisions of Subsection C of this section, a person is
18 eligible for child care assistance if an application is
19 submitted on behalf of a resident child receiving child care
20 assistance who is under the age of thirteen years at the time
21 of application, or under the age of nineteen years if the child
22 is physically or mentally incapable of caring for the child's
23 self or is under court supervision. The department shall
24 redetermine eligibility for child care assistance at a
25 frequency level aligned with federal regulation.

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

5 (1) employed;

6 (2) a full-time student and enrolled in at
7 least twelve credit hours at an accredited educational
8 institution;

9 (3) a part-time student and enrolled in at
10 least six credit hours at an accredited educational
11 institution;

12 (4) enrolled in a state-approved job training
13 program, registered apprenticeship program or pre-
14 apprenticeship program;

15 (5) receiving aid from the federal temporary
16 assistance for needy families program;

17 (6) experiencing homelessness;

18 (7) under the age of twenty-one and attending
19 primary or secondary school;

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

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

25 (10) a foster parent; or

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

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

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

13 F. An application to the department shall include
14 documentation evidencing that the applicant meets the
15 requirements to be eligible to participate in the child care
16 assistance program and shall include documentation of earned
17 and unearned income. To determine residency in New Mexico, the
18 applicant shall provide a current New Mexico driver's license
19 or other documentation proving residence in New Mexico as
20 determined by department rule; provided that for a federally
21 eligible applicant, the applicant's residency determination
22 shall align with applicable federal regulations.

23 G. Unless determined necessary by the department, a
24 child shall not be eligible for child care assistance for the
25 hours of care in which the child is enrolled in a head start

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1 program, an early head start program, an early pre-kindergarten
2 program or a pre-kindergarten program.

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

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

12 "[NEW MATERIAL] FISCAL CONTROLS.--

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

18 B. Beginning after one of the conditions pursuant
19 to Subsection C of this section is met, and continuing through
20 the remainder of the applicable fiscal year, the department
21 shall implement one or more of the following:

22 (1) a sliding scale payment schedule
23 applicable to monthly copayments as provided in Subsection D of
24 this section;

25 (2) a waitlist as provided in Subsection E of

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1 this section if demand for child care assistance exceeds the
2 availability of funds within the fiscal year; or

3 (3) a combination of both Paragraphs (1) and
4 (2) of this subsection.

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

8 (1) the number of children receiving child
9 care assistance services exceeds that year's projected
10 enrollment by three percent as determined by the department and
11 reported to the legislative finance committee on August 1 of
12 each calendar year;

13 (2) the state recurring general fund revenue
14 growth percentage is projected to be lower than the percentage
15 change in the annual consumer price index for all urban
16 consumers for the prior calendar year as determined by the
17 consensus revenue estimating group;

18 (3) the twelve-month average percentage change
19 in the annual consumer price index for all urban consumers
20 exceeds three percent;

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

25 (5) the department identifies a different or

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1 additional condition.

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

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

14 (2) copayments shall be three percent or less
15 of the annual household income for a household with income
16 greater than six hundred percent but not exceeding nine hundred
17 percent of the federal poverty level for all children in care;
18 provided that the amount shall not exceed twenty-five percent
19 of the average rate paid for the applicable age group to the
20 child care facility; and

21 (3) copayments shall be seven percent or less
22 of the annual household income for a household with income
23 greater than nine hundred percent of the federal poverty level
24 for all children in care; provided that the amount shall not
25 exceed fifty percent of the average rate paid for the

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1 applicable age group to the child care facility.

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

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

15 G. The department shall provide child care
16 assistance to children aged six through twelve years who are
17 eligible for federal child care assistance, and the department
18 shall not exceed thirteen thousand child care assistance slots
19 for children aged six through twelve years who are not
20 federally eligible, except as provided for a child through age
21 eighteen years if that child is under court supervision or is
22 physically or mentally incapable of self-care. The department
23 shall maintain a waitlist and prioritize applicants based on
24 whether an application is for an at-risk child and on families'
25 annual incomes from lowest to highest percentage of the federal

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1 poverty level."

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

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

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

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

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

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

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

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

25 (6) incorporate feedback and input from early

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1 childhood education and development experts, a diverse group of
 2 child care facilities of a variety of facility types, families
 3 and organizations representing child care directors, teachers
 4 and other staff.

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

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

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

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

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

21 (1) not accept or receive child care
 22 assistance for hours that a child is enrolled in a head start
 23 program or an early head start program or is eligible for an
 24 early pre-kindergarten program or a pre-kindergarten program,
 25 except when determined necessary by the department;

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

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

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

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

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

23 (7) report to the department program
24 participation, professional qualifications of staff members,
25 salaries and benefits for each employee and the employee

1 benefit structure;

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

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

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

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

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

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

17 (f) each investment in the business by
18 any person or entity comprising a ten percent equity stake or
19 greater;

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

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

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

3 (9) comply with department requirements
4 promulgated by rule.

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

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

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

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

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

25 "[NEW MATERIAL] DEPARTMENT DUTIES--SHARING OF

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1 INFORMATION.--

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

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

16 (2) report any suspected intentional misuse of
17 funds to local law enforcement and the local district attorney
18 or the attorney general for prosecution; provided that upon a
19 report being made to law enforcement pursuant to this
20 paragraph, the department shall report the suspected
21 intentional misuse of funds by the child care facility to the
22 state auditor, who shall investigate the child care facility.

23 B. The department shall perform at least two
24 unannounced visits per year to each child care facility that
25 shall include a compliance review of the Child Care Assistance

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1 Program Act requirements and compliance with the rules set by
2 the department.

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

8 D. By September 1, 2026 and each September 1
9 thereafter, the department shall provide to the legislative
10 health and human services committee and the legislative finance
11 committee a report on implementation of the Child Care
12 Assistance Program Act, including costs, a review of the cost
13 estimation model and payment rates set pursuant to Section 5 of
14 the Child Care Assistance Program Act, program participation,
15 children and families served by that act, the distribution of
16 child care assistance based on an eligibility category, income
17 and race or ethnicity by the tiered quality rating system
18 throughout the state and the information reported pursuant to
19 Subsection A of Section 6 of that act.

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