

1 AN ACT

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

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

13 "9-29A-1. EARLY CHILDHOOD EDUCATION AND CARE FUND.--

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

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

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

25 (2) in consultation with the state

1 treasurer.

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

9 D. On July 1 of each year, a distribution shall be
10 made from the early childhood education and care fund to the
11 early childhood education and care program fund in an amount
12 equal to the greater of five percent of the average of the
13 year-end market values of the fund for the immediately
14 preceding three calendar years or five hundred million
15 dollars (\$500,000,000).

16 E. In fiscal years 2026 through 2031, the
17 legislature may appropriate up to a total of seven hundred
18 million dollars (\$700,000,000) from the early childhood
19 education and care fund to the early childhood education and
20 care program fund, which shall be in addition to any other
21 appropriations or distributions made pursuant to this
22 section; provided that an appropriation made pursuant to this
23 subsection shall not exceed an amount that would decrease the
24 total balance in the early childhood education and care fund
25 to below ten billion dollars (\$10,000,000,000).

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

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

21 "SHORT TITLE.--Sections 2 through 8 of this act may be
22 cited as the "Child Care Assistance Program Act"."

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

25 "DEFINITIONS.--As used in the Child Care Assistance

1 Program Act:

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

10 B. "child care assistance" means funding
11 administered by the department to a child care facility to
12 provide child care for eligible children through the child
13 care assistance program;

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

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

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

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

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

10 H. "early intervention" means services provided
11 through the family, infant, toddler program of the department
12 that are designed to meet the developmental needs of children
13 from birth to age three who have or who are at risk of having
14 a developmental delay or disability;

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

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

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

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

1 department;

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

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

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

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

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

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

25 "CHILD CARE ASSISTANCE PROGRAM--ELIGIBILITY

1 REQUIREMENTS.--

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

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

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

24 (1) employed;

25 (2) a full-time student and enrolled in at

1 least twelve credit hours at an accredited educational
2 institution;

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

6 (4) enrolled in a state-approved job
7 training program, registered apprenticeship program or
8 pre-apprenticeship program;

9 (5) receiving aid from the federal temporary
10 assistance for needy families program;

11 (6) experiencing homelessness;

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

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

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

19 (10) a foster parent; or

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

24 D. If a parent or legal guardian who applies for
25 child care assistance has an annual household income greater

1 than six hundred percent of the federal poverty level, the
2 eligibility for child care assistance shall be limited to the
3 hours of care supported by the parent's or legal guardian's
4 qualifying activity schedule.

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

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

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

23 H. The department may make a presumption of
24 eligibility for the child care assistance program based on
25 proof of the child's residency and proof of parentage or

1 guardianship before the documentation required pursuant to
2 Subsection C of this section is received. Presumption of
3 eligibility shall not exceed the allowable duration permitted
4 by the federal government upon initial application."

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

7 "FISCAL CONTROLS.--

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

13 B. Beginning after one of the conditions pursuant
14 to Subsection C of this section is met, and continuing
15 through the remainder of the applicable fiscal year, the
16 department shall develop and implement one or more of the
17 following:

18 (1) a sliding scale payment schedule
19 applicable to monthly copayments as provided in Subsection D
20 of this section;

21 (2) a waitlist as provided in Subsection E
22 of this section if demand for child care assistance exceeds
23 the availability of funds within the fiscal year; or

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

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

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

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

15 (3) the twelve-month average percentage
16 change in the annual consumer price index for all urban
17 consumers exceeds three percent;

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

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

24 D. For a sliding scale payment schedule applicable
25 to monthly copayments pursuant to Paragraph (1) of

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

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

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

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

25 E. For a waitlist maintained pursuant to

1 Paragraph (2) of Subsection B of this section, to avoid a
2 possible funding deficiency, the department shall prioritize
3 all available child care assistance for children with
4 developmental delays or disabilities, at-risk children and
5 children from birth to age three in households with annual
6 household incomes of less than four hundred percent of the
7 federal poverty level. The department shall report to the
8 legislative health and human services committee and the
9 legislative finance committee biannually regarding waitlist
10 implementation, including the number of children added to the
11 waitlist by month and the number of children moved off of the
12 waitlist by month. The reports shall include redacted
13 demographic information, including each family's annual
14 income as a percentage of the federal poverty level, the
15 length of time each child has been on the waitlist, the age
16 of the child and the child's at-risk factors, if applicable.

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

24 G. The department shall provide child care
25 assistance to children aged six through twelve years who are

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

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

13 "PAYMENT RATES FOR CHILD CARE ASSISTANCE SERVICES.--

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

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

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

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

1 facility staff;

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

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

8 (6) incorporate feedback and input from
9 early childhood education and development experts, a diverse
10 group of child care facilities of a variety of facility
11 types, families and organizations representing child care
12 directors, tribal representatives, advocacy organizations,
13 teachers and other relevant parties as determined by the
14 department.

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

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

25 SECTION 7. A new section of the Children's Code is

1 enacted to read:

2 "REQUIREMENTS--CHILD CARE FACILITIES--EARLY INTERVENTION
3 PROVIDERS.--

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

6 (1) not accept or receive child care
7 assistance for hours that a child is enrolled in a head start
8 program or an early head start program or an early
9 pre-kindergarten program or a pre-kindergarten program,
10 except when determined necessary by the department;

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

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

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

25 (5) meet and maintain required professional

1 development and certification pathways, as set by rule of the
2 department;

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

8 (7) report to the department program
9 participation, daily hours of operation, days of care
10 provided annually, professional qualifications of staff
11 members, including staff members' roles and levels as
12 established in the department's wage scale and career ladder
13 framework, salaries and benefits for each employee and the
14 employee benefit structure;

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

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

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

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

1 business;

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

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

6 (f) each investment in the business by
7 any person or entity comprising a ten percent equity stake or
8 greater;

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

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

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

17 (9) comply with department requirements
18 promulgated by rule.

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

23 C. The department shall create a reporting
24 mechanism for early intervention providers to report
25 suspected child abuse or neglect occurring in a child care

1 facility and for a child care facility to report suspected
2 child abuse or neglect by early intervention providers.

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

7 E. Funds received by a child care facility for
8 services provided by the facility pursuant to the child care
9 assistance program shall not supplant funds pursuant to the
10 state equalization guarantee distribution or funds
11 appropriated for instructional or general funding.

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

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

19 "DEPARTMENT DUTIES--SHARING OF INFORMATION.--

20 A. The department shall develop the child care
21 assistance program to enhance child care quality and improve
22 the development of participating children. Through the
23 administration of the child care assistance program, the
24 department shall promote parental choice, allowing parents to
25 choose the care that best suits the child's family through a

1 mixed delivery system that may include public, private,
2 nonprofit, for-profit, faith-based and tribal child care
3 facilities. In carrying out its duties, the department
4 shall:

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

8 (2) report any suspected intentional misuse
9 of funds to local law enforcement and the local district
10 attorney or the attorney general for prosecution; provided
11 that upon a report being made to law enforcement pursuant to
12 this paragraph, the department shall report the suspected
13 intentional misuse of funds by the child care facility to the
14 state auditor, who shall investigate the child care facility.

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

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

25 D. By September 1, 2026 and each September 1

1 thereafter, the department shall provide to the legislative
2 health and human services committee and the legislative
3 finance committee a report on implementation of the Child
4 Care Assistance Program Act, including costs, a review of the
5 cost estimation model and payment rates set pursuant to
6 Section 5 of the Child Care Assistance Program Act, program
7 participation by child care facility type, children and
8 families served by that act, the distribution of child care
9 assistance based on an eligibility category, income and race
10 or ethnicity by the tiered quality rating system throughout
11 the state, participation in the child and adult care food
12 program by child care facility type and the information
13 reported pursuant to Paragraphs (7) and (8) of Subsection A
14 of Section 7 of that act.

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

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