

June 19, 2018
Monique Jacobson, Cabinet Secretary
Early Childhood Services, Children, Youth and Families Department
P.O. Drawer 5160, Santa Fe, NM 87502
Fax: (505) 827-9978

VIA FACSIMILE
CC: Gwendolyn Jones
Office of Child Care Region VI Program Manager
Suite 958
1301 Young Street
Dallas, TX 75202
Phone: (214) 767-3849

RE: Draft 2018-2021 Child Care and Development Fund (CCDF) State Plan

Dear Secretary Jacobson:

Please accept the following as the New Mexico Center on Law and Poverty's comments on the proposed 2018-2021 Child Care and Development Fund State Plan ("the plan").

The New Mexico Center on Law and Poverty (the Center) is a non-profit law firm dedicated to advancing economic and social justice. We work with low-income New Mexicans to improve living conditions, increase opportunities and protect the rights of people living in poverty. We are committed to working with the Child Youth and Families Department (CYFD) and share your goals for a robust implementation of the Child Care and Development Block Grant (CCDBG) Reauthorization.

New Mexico has the highest rate of child poverty in the United States and child care assistance is a critical work support for low income families. However, families who are struggling to make ends meet are less likely to have access to child care assistance in New Mexico, where the Department estimates that just 1/3 of eligible families participate in the program. CYFD must administer the child care assistance program and establish eligibility criteria that promote economic success for New Mexico families by ensuring people who are eligible can access the program. We encourage CYFD to capitalize on the flexibilities provided by the CCDBG in administering child care assistance to increase access and streamline administrative processes. This will ensure that working families experience the fewest barriers possible in getting and maintaining quality child care assistance and that the Department does not expend unnecessary administrative resources. We also urge the Department to immediately promulgate regulations that explain the eligibility criteria based on income and how co-payments are calculated, as required by state law.

Comments on specific portions of the plan are below:

Eligibility Criteria Based on Family Income

The content in the state plan defining income and eligibility are one of the only places that income eligibility is explained in any way. Families do not have a way to determine if they are financially eligible for assistance or to predict what the required co-payment will be. The lack of information creates confusion and prevents eligible families from seeking assistance. Further, the Department restricts eligibility without proper notice to families and has not taken steps to determine whether the co-payment schedule is affordable.

The eligibility level for child care assistance must be promulgated into state regulation.

The Department's regulations provide that families with income at or below 200% of the federal poverty level (FPL) are considered financially eligible for participating in the Child Care Assistance Program.¹ Currently, CYFD's website states that "[t]he Child Care Assistance Program subsidizes the cost of child care for low-income families (at or below 150% of the federal poverty level)... Once determined eligible for Child Care Assistance, families can remain eligible up to 200% FPL." Changes to the income eligibility levels affect families served by the Department and thus constitute a rule under New Mexico law.² If CYFD intends to cap financial eligibility at 150% FPL, state law requires that the change in eligibility standard be promulgated into regulation with an opportunity for public comment.³

CCDF Co-payments are not explained to applicants and must be in state regulations

The federal Child Care and Development Block Grant (CCDBG) requires states to establish, by rule, a sliding fee scale that provides for family cost sharing.⁴ New Mexico law defines a "rule" as any "standard...which affects persons not members or employees of the issuing agency, including affecting persons served by the agency."⁵ Rules are not effective if they are not promulgated according to the procedures in the State Rules Act and CYFD Act, and then filed with the State Register.⁶ An important part of the requirement is public notice and an opportunity to comment on the specific regulatory content. CYFD has not taken the required steps to legally implement co-payment requirements for low income families. First, the co-payment schedule linked in the draft plan does not work. Second, in practices the copayment requirements are partially communicated to families in an incomplete chart that is buried in a difficult to locate page on the Department's website.

The State Rules Act requires state agencies to, among other requirements, issue a notice of proposed rulemaking describing the proposed rule, hold a public hearing on the rule, accept and consider public comment and publish the final rule in the State register.⁷ The Department's current imposition of co-payment requirements is illegal because CYFD does not have authority to implement these requirements without a regulation.

Section 3.3.2 states that the Department calculates co-payments based on income and family size as well as the block of time that the child is in care and will provide a discount for two or more children enrolled in the program. The cost for the family per hour of care needed is not explained in the Department's regulations or in the online copayment chart. Instead, the Department's regulations state that a family pays the same co-payment for a child that is attending hours or less and families have the same co-payment if they are attending anywhere between 8-29 hours. The Department states that families pay half the co-payment for a second child, however the regulations and co-payment chart do not explain how a second child's rate is discounted if that child is attending for less hours than the first child. The results of the Department's vague and overly arbitrary co-payment schedule is that families cannot determine what their co-payments will be before they apply and they have no way to make sure it has been calculated correctly. CYFD must immediately promulgate regulations that explain to families how co-payments will be calculated based on income and other factors described in the State Plan. This is also the only way that CYFD can get feedback on whether the co-payment calculation method is actually affordable for families, as required by Section 3.4.6. CYFD should also consider the fact that families are responsible for taxes on

¹ See NMAC 8.15.2.9.

² See NMSA 1978, §14-4-2(F) and 1978 § 9-2A-7(D).

³ NMSA 1978 §14-4-5.3 and 1978 § 9-2A-7(D).

⁴ 42 U.S.C.A. § 9858c (c)(5).

⁵ NMSA 1978, §14-4-2(F) and NMSA 1978 § 9-2A-7(D).

⁶ NMSA 1978, §14-4-5 (A) NMSA and 1978 § 9-2A-7(D).

⁷ NMSA 1978, §14-4-5.2 (A) NMSA and 1978 § 9-2A-7(D).

the provision of child care assistance in addition to co-payments in determining whether the co-payment is affordable.

Create Strong Partnerships and Coordination Strategies

Under the CCDBG, CYFD is required to efficiently coordinate its services and programs in order to expand accessibility and continuity of care. We encourage CYFD to re-assess its plan to make sure that it is meeting this objective and provide the following suggestions for implementation:

Meaningful Public Comment (1.3.2)

Twenty-day public comment period is not sufficient to collect input from the large number of communities and stakeholders who are impacted by the Department's administration of the Child Care Assistance program. A 60 day comment period would provide opportunity for more public participation in the process and posting notices in CYFD offices would reach families and providers in our state that do not have regular internet access.

Child Care Resource and Referral System (1.7)

The State should broaden the New Mexico Kids Child Care Resource & Referral system for resource and referral services beyond child care assistance to include referrals to other early learning programs. For example, more than half of children served in CCDBG-funded childcare live in households with incomes below the federal poverty level. This makes a large share of the children eligible for Head Start/Early Head Start as well as child care assistance.⁸ CYFD should provide eligible families applying for or receiving child care assistance with a referral to a Head Start or Early Head Start program. Connecting families with other early learning programs increases educational opportunities for children and economic success of families. This is because it allows parents to combine programs that operate on part-day schedule- as is the case with many Head Start programs-with CCDBG funds to cover the remaining hours of the day while parents work.

Family Engagement With Outreach and Consumer Education (2)

Pulltogether.org is one of three websites with content about child care assistance eligibility. The Department's plan refers to the pulltogether.org website as a "movement and website dedicated to providing outreach." This website has the least amount of information for families in need of child care assistance. For example, the pulltogether website instructs families to call the pull together hotline or contact a local CYFD office to apply for benefits.⁹ However, the CYFD website actually has the application.¹⁰ The newmexicokids.org website has information about finding a child care provider.¹¹

Consumer and Provider Education (2.5)

CYFD does not adequately inform the public of the eligibility requirements for child care assistance in New Mexico. The CYFD website contained information stating that an applicant

⁸ U.S. Department of Health and Human Services, Administration for Children and Families, 101: Early Head Start-Child Care Partnerships, 2014,

https://www.acf.hhs.gov/sites/default/files/ece/ece_ccp_101_final_hhsacf_logo_2014.pdf

⁹ <https://pulltogether.org/childcare/financial-help-for-child-care/>

¹⁰ <https://cyfd.org/child-care-services/child-care-assistance>

¹¹ <https://www.newmexicokids.org/parents-and-families/childcare-search/ccrn/>

would be eligible for assistance with income below 100% of the federal poverty level, even though CYFD stated publically that individuals are eligible with incomes up to 150% FPL. CYFD does not provide resources that assist a family or community service group to determine if a family is financially eligible for assistance. The website “Am I Eligible?” does not provide information in income eligibility or co-payment costs.¹² CYFD must immediately create a resources that explains how the Department determines eligibility for child care assistance based on income. This must include state regulations that explain eligibility for the program as described above.

Connecting to Other Public Benefits and Programs/Applying for Services

A central goal of the CCDBG is to improve the development of children participating in its childcare assistance programs.¹³ The state must ensure that families that CYFD facilitates enrollment in other assistance programs, for which families are eligible.

The State’s Temporary Assistance for Needy Families (TANF) program plays a critical role in improving outcomes for low-income children by giving families a small amount of cash assistance to pay for basic needs. Emerging neuroscientific research reveals that there are strong correlations between household income and brain function in young children.¹⁴ Studies show that even a modest increase in income can dramatically improve children’s achievement.¹⁵ The Supplemental Nutrition Assistance Program (SNAP) program reduces child hunger and alleviates poverty.¹⁶ When adding SNAP benefits to income, the depth and severity of child poverty declined by as much as 21.3%.¹⁷ Many families who receive child care assistance are also eligible for TANF, and a larger share are also eligible for SNAP. Every child who receives CYFD child care is eligible for Medicaid.

We applaud efforts to increase coordination between programs to improve access to child care for TANF clients by reducing the number of physical documents required to bring into appointments for child care eligibility. Long term, we encourage HSD and CYFD to create an integrated eligibility system which will allow streamlined access to all public benefits programs. Eliminating the duplicative requirements between programs can mean greater access for families and cost savings for the State because client data is shared across programs in one system. Moreover, ensuring low-income families have access to all benefits programs for which they may be eligible not only addresses the immediate basic needs that must be met, but also raises the likelihood of long-term success.

Finally, CYFD should measure co-enrollment to identify barriers for eligible families accessing benefits. We encourage CYFD to measure and regularly report on the number of families enrolled in CYFD child care assistance that also receive SNAP, TANF, Medicaid, GA, and LI-HEAP.

¹² <https://pulltogether.org/childcare/financial-help-for-child-care>

¹³ 42 U.S.C.A. § 9857

¹⁴ See, for example, Greg J. Duncan and Katherine Magnuson, *The Long Reach of Early Childhood Poverty*, Pathways Winter 2011, available at

https://web.stanford.edu/group/scspi/_media/pdf/pathways/winter_2011/PathwaysWinter11_Duncan.pdf

¹⁵ *Id.*

¹⁶ Food Research and Action Center, *SNAP and Public Health: The Role of the Supplemental Nutrition Assistance Program in Improving the Health and Well-Being of Americans*, available at www.frac.org

¹⁷ *Id.*

Increase Accessibility to Consumer Information for Limited English Proficiency Households (2.1.1)

The CCDBG Act requires that child care program “promote involvement by parents and family members in the development of their children in child care settings.”¹⁸ The State is required in its plan to demonstrate consumer-friendly practices such as providing materials that are culturally responsive in order to promote informed child care choices amongst all participants, including limited English proficiency (LEP) clients. The U.S. Department of Health and Human Services (HHS) also requires state agencies receiving financial assistance from HHS (such as CYFD) to “take reasonable steps to provide LEP persons with meaningful opportunity to participate in HHS-funded programs.”¹⁹ In certain circumstances, the failure of a state agency to ensure that LEP persons can effectively participate in HHS funded programs may violate the prohibition against national origin discrimination under Title VI regulations.²⁰

CYFD is not meeting federal language access requirements because vital documents for program participation are available only in English. The Department does not have critical outreach content in languages other than English. For example, application instructions and instructions on how to pick a qualified child care provider are not provided in any language other than English. Once a family is determined eligible for assistance, they will not receive eligibility information in any language other than English. Non-English speakers are required to sign a contract that details an individual’s eligibility and co-payment that are only in English. This deprives eligible children of child care assistance. For example, the New Mexico Kids Website provides a basic contract for providers which the parents must complete and sign, however the contract is only available in English.²¹ Other important documents, including the “Child Care Assistance Field Office Locations,” “Child Care Applicant Checklist” and “Child Care Assistance Brochure” are only available in English on the CYFD website.²² The only document that is available in Spanish on the website is the “Child Care Assistance Application.”²³ CYFD must have these important documents translated into multiple languages and make them readily available to applicants. Doing so is legally required and will remove unnecessary barriers for LEP participants and will promote informed participation in the program in accordance with HHS rules.

Strategies for Creating Family-Friendly Policies

The CCDBG reauthorization includes important policy changes designed to reduce burdens for families trying to get and keep child care assistance. Eliminating barriers and unnecessary program complexities encourages families to apply and prevents them from unduly losing their

¹⁸ Child Care and Development Fund (CCDF) Program, 80 FR 80466-01, (658A(b)(3)) T

¹⁹ U.S. Department of Health and Human Services, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/index.html>

²⁰ *Id.*

²¹ See https://www.newmexicokids.org/sdm_downloads/basic-contract-for-providers-3/

²² See <https://cyfd.org/child-care-services/child-care-assistance>

²³ See *Id.*

assistance. We submit the following recommendations for achieving greater accessibility in the CYFD child care assistance program.

Work Activities (3.1.3)

The State plan defines “working” to include, amongst other things, any activity that meets the TANF work requirement.²⁴ This should be expanded to include any SNAP related work requirements. NMAC 8.15.2.10 provides that an applicant can demonstrate employment with current proof of earned income or participation in the temporary assistance to needy families (TANF) program or the supplemental nutrition assistance program. The State Plan must be revised to be consistent with the State regulations on child care assistance.

Fluctuation in Earnings

The CCDBG Act requires states to demonstrate in their plans how their processes for initial determination and re-determination take into account irregular fluctuations in earnings.²⁵ The federal government provides state agencies with considerable flexibility in determining how it will verify eligibility. For this reason, we suggest that the state take the least burdensome approach for families and workers.

In addition to averaging family income, we encourage the State to implement the following practices and promulgate coinciding regulations to ensure that fluctuations in earnings are properly accounted for.

- **Request representative paychecks.** We urge CYFD to request representative paychecks instead of current paystubs for income verification purposes. This takes into account that many families may experience a temporary spike in income due to working increased hours (e.g., retail at the holidays, tourism in summer) over a short period, while recognizing that those earnings are not representative of the family’s income over the course of a year.
- **Disregard temporary income.** By disregarding temporary income, the State can ensure that irregular influxes in income, including temporary changes that mean that monthly income exceeds 85% of SMI, do not affect eligibility or copayments. Taking into account a family’s sudden influx of income that is not expected to be long-lasting can lead to termination of eligibility or increased copayments. This causes temporary loss of assistance, only for the family to return to the program within a short period of time. Disregarding temporary income prevents eligible children from experiencing gaps in services and saves the state in administrative costs of processing multiple applications and denials.
- **Allow for self-attestation or a collateral statement when other methods of verification are not available.** The State must provide alternative methods of documenting income for parents who work in jobs that pay in cash and/or who work for employers who are unwilling to provide documentation of employment and earnings. This flexibility is especially important for immigrant families who are who are disproportionately employed in these types of jobs. In the absence of such flexible verification practices, the Department risks violating Title VI of the Civil Rights Act

²⁴ NMCCDF Plan, Page 44, Section 3.1.2

²⁵ Child Care and Development Fund (CCDF) Program, 80 FR 80466-01 658E(9)(c)(2)(N)(i)(II)

which prohibits discrimination against applicants for public benefits programs based on their national origin.²⁶ According to HHS, application procedures that “have the effect of deterring eligible applicants and recipients who live in immigrants families from enjoying equal participation in and access to these benefit programs based on their national origin...may...violat[e] Title VI.”²⁷ We encourage the Department to promulgate regulations similar to NMAC 8.100.130.9 (used by the Human Services Department) to allow for alternative forms of verification.

Fluctuating Work Schedules

Many parents receiving child care assistance work in jobs with irregular hours or unpredictable schedules.²⁸ However, despite a great need, there is often an inadequate supply of licensed care available during non-traditional hours. To address this barrier for families working non-traditional hours, we encourage the State to do the following:

- **Provide direct contracts or grants to providers willing to offer care during non-traditional hours.** Providing direct contracts to caregivers who provide care during non-traditional hours offers a predictable income stream to providers that may be otherwise reluctant to provide such care. A direct contract (versus a third party contract with the parent who may be subject to job loss or may experience long periods between work without the need for childcare) provides consistency and reliability for the provider thereby creating greater incentive to provide care during non-traditional hours.
- **Provide data on efficacy of pay differential for non-traditional hour care providers.** In the plan, CYFD states that it pays a differential rate to providers who provide care during non-traditional hours as follows: 5% for 1-10 hours per week; 10% for 11-20 hours per week; and 15% for 21 or more hours per week.²⁹ The state should demonstrate through reported data that its 5/10/15 percent increase is a large enough differential to serve as incentive for caregivers to provide care during non-traditional hours.
- **Use contracts to extend the Headstart or pre-k services.** By using CCDBG funds to fund contractual agreements to extend the day or year of Head Start, Early Headstart or pre-k services, parents can rely on having sufficient childcare without having to create a piecemeal care plan amongst several different providers. We encourage CYFD to enter into contracts with these providers to provide continuity of care for program participants.

²⁶ See U.S. Department of Health and Human Services, *Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, <http://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/guidance-federal-financial-assistance-recipients-title-VI/index.html>

²⁷ See U.S. Department of Health and Human Services, *Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (CHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits*, <http://www.hhs.gov/civil-rights/for-individuals/special-topics/national-origin/tri-agency/index.html>

²⁸ Liz Watson, Lauren Frohlich, and Elizabeth Johnston, *Collateral Damage: Scheduling Challenges for Workers in Low-Wage Jobs and Their Consequences*, NWLC, 2014,

http://www.nwlc.org/sites/default/files/pdfs/collateral_damage_scheduling_fact_sheet.pdf

²⁹ NMCCDF Plan, Page 68, Section 4.3.2.

- **Provide support for family/friend/neighbor (FFN) caregivers.** FFN caregivers often serve as critical support systems to working families. In order to meet the broad goals of the CCDBG, CYFD should foster FFN caregiving by providing training on early childhood development and appropriate care as well as, materials, books and supplies that support healthy development to FFN providers.

Timeliness of Eligibility Determinations

The Department does not track the timeliness of its processing of applications and renewals. CYFD is required to determine eligibility within 10 days of a client turning in all the required documentation of eligibility.³⁰ However, CYFD does not track or report on the timeliness of processing. We urge the Department to track the percent of cases timely processed and the reason for any delays to identify unnecessary delays in the provision of child care assistance. To the extent the Department requires an appointment in order to process an application, this requirement is not defined as an eligibility requirement in state regulation. Therefore, it is illegal for the Department to deny assistance to families who fail to appear for interviews.

Option to Terminate Assistance prior to 12 months

The CCDBG law allows States to continue child care eligibility for the full 12-month eligibility period even if the parent experiences a non-temporary loss of job, education, or training that affects eligibility.³¹ States, however, are required to provide a period of continued assistance of *at least 3 months* for families experiencing a temporary job loss to allow parents to engage in job search, resume work, or to attend an education or training program.³² In its plan, the State indicates that it is not providing additional job search time beyond the mandatory minimum of three months and that benefits will be terminated for at least some families after less than 12 months of eligibility.³³

We strongly encourage the State to provide greater flexibility to participating families who experience a temporary job loss. In 2018, New Mexico has one of the highest unemployment rates in country, at 5.4 percent.³⁴ With such a high unemployment rate, it is reasonable that job searches may take longer than 3 months, especially in rural areas of the State. The state should put into place measures to ensure that recipients who are making a good faith effort a job search are not deprived of much needed assistance if they are, through no fault of their own, unable to obtain employment within 3 months.

When families have gaps in childcare assistance, children frequently get bounced between providers. This can have a negative effect on children's social and emotional development. Maintained eligibility during a longer job search period makes it easier for parents to apply for jobs and ensures that they have child care in place when they ultimately become employed. Ensuring continuing eligibility also eases administrative burdens on the State associate with

³⁰ NMAC 8.15.2.16 (D)

³¹ Child Care and Development Fund (CCDF) Program, 80 FR 80466-01 658E(c)(2)(N)(iii)

³² See CCDF Reauthorization Frequently Asked Questions at [http://www.acf.hhs.gov/programs/occ/resource/ccdf-reauthorization-faq#Eligibility Processes](http://www.acf.hhs.gov/programs/occ/resource/ccdf-reauthorization-faq#Eligibility%20Processes).

³³ NMCCDF Plan, Page 55, Section 3.3.2

³⁴ See Bureau of Labor Statistics, *Local Area Unemployment Statistics* at <https://www.bls.gov/web/laus/laumstrk.htm>.

processing and re-processing applications as families lose assistance and have to reapply for the programs.

The federal government encourages states to provide eligibility for a period longer than 12 months to align with other program requirements. We urge CYFD to extend eligibility beyond 12 months to align with Head Start, Early Head Start, pre-K or other collaborative programs without interruption.

Reporting changes to ensure that reporting requirements are not more burdensome and to avoid an impact on continued eligibility between redeterminations.

We are pleased with the multiple avenues for a family to report changes described in Section 3.3.3(d). However, the Child Care Assistance field office voicemail recordings states that if a client wishes to report a change, the report must be made in writing. The Department must instruct all field offices to 1) immediately change their voicemail systems or any other method of communication with the public that includes this illegal demand for verification and 2) accept and properly document notification of changes by any means provided by the participants, e.g. verbal notifications of change should be documented in the participant's case file.

Increasing access for Vulnerable Children and Families (3.2)

Serving Families Who Receive TANF

New Mexico law provides that TANF participants shall be considered priority I level in receiving child care assistance.³⁵ Yet HHS reports that only 4% of TANF participants in New Mexico receive child care assistance.³⁶ CYFD can take action to ensure that families who receive TANF have full access to child care assistance, as required by law:

- **Work with the HSD to ensure that SL Start, is referring families to CYFD for child care assistance.** SL Start, HSD's corporate contractor charge with administering the State's TANF program has a pattern and practice of not referring all families who receive TANF to CYFD to seek child care assistance. Instead, the contractor determines that only certain families can receive child care assistance and refers them on that basis. This limited referral deters eligible families from seeking assistance at CYFD and conflicts with NMAC 8.102.620.15, which states that CYFD must authorize all child care to TANF participants after an initial 30 day period.
- **Increase Duration of TANF Work Participation Agreements.** CYFD should work with HSD to increase the duration of TANF Work Participation Agreements or seek an alternative basis for certifying CYFD child care hours. Child care placement agreements (the child care contract) are issued for the same length of time as the TANF Work Placement Agreement (WPA). Unfortunately, SL Start issues WPAs for very short periods of time, usually just one month at a time. This has the unintended consequence of limiting child care contracts to just one month. Each time a TANF participant receives a new WPA, they have to go to CYFD and request a new child care placement agreement. These overlapping bureaucratic requirements impose serious

³⁵ NMAC 8.15.2.9(A).

³⁶ U.S. Department of Health and Human Services, Administration for Children and Families, Characteristics and Financial Circumstances of TANF Recipients, Fiscal Year 2013
http://www.acf.hhs.gov/sites/default/files/ofa/tanf_characteristics_fy2013.pdf

burdens on families that hinder their ability to achieve financial independence. The time and travel it takes to comply with this process restricts families' ability to meet TANF program requirements and to find work. CYFD could create a 12 month child care contract and impose a reporting requirement on the family to notify CYFD if TANF work hours change. An even better option, would be to create an interface between CYFD and NM Works to streamline enrollment and renewal of benefits.

Safeguard Accessibility for Clients with Disabilities

We urge CYFD to be cognizant of accessibility for participants with disabilities. Failure to provide program modifications, support services, adequate screening and assessment, and the failure to operate programs so that they are accessible to and usable by people with disabilities may violate Section 504 of the Rehabilitation Act and Title II of the Americans with Disabilities Act (ADA). Non-discriminatory methods of administration can be achieved through training staff to screen for and accommodate people with disabilities, having a clear written policy incorporating accommodations and modifications, and conducting regular oversight of programs and policies. Further, CYFD must take steps to ensure that child care providers do not discriminate against children with disabilities. The state plan should include the Department's intention to provide child care assistance benefits to participants with disabilities in a non-discriminatory manner.

Eliminate CSED compliance for Victims of Domestic Violence

CYFD must ensure that exemptions from child support enforcement requirements are clearly explained and implemented. Currently, state regulations require that when one or both of the child's parents are absent from the home, the client shall apply for child support through the Child Support Enforcement Division (CSED) within six months of initial application with the child care assistance program.³⁷ An applicant can be exempted from the CSED cooperation requirement if he/she can demonstrate good cause.³⁸ Good cause includes, but is not limited to, situations where cooperation would lead to possible physical or emotional harm to the child, parent or guardian.³⁹ However, the participant who makes a claim for good cause is required to supply written documentation to establish the claim.⁴⁰

CYFD regulations do explain what types of documentary evidence can be used to establish good cause. Often caseworkers require that applicants produce orders of protection or police reports to document the violence. Requiring written documentation of the claim for good cause creates an unnecessary barrier for applicants and often puts them at risk of further harm. Written documentation should not be required to validate a claim of domestic violence. The Department must modify the regulations and train workers to screen for and provide good cause exemptions from CSED requirements. We also encourage the Department to create and publically display informational materials that explain exemptions from CSED cooperation requirements.

³⁷ NMAC 8.15.2.13(H)(1)

³⁸ NMAC 8.15.2.13(H)(3)

³⁹ NMAC 8.15.2.13(H)(3)(a)

⁴⁰ NMAC 8.15.2.13(H)(4)

We also encourage the Department to coordinate with CSED to ensure that CSED properly exempts families according to CYFD requirements. This includes identifying good cause exemptions and ensuring CSED does not find families to be out of compliance with CSED cooperation requirements for children who are not receiving or seeking benefits.

Data Reporting

In order to track CYFD's progress in meeting the goals of the CCDBG, CYFD should track and report data on the following:

- **Churn.** Churn is the term used to describe the process of households losing eligibility for failure to do a required application or renewal procedure, experiencing a short period without benefits only to reapply and regain eligibility.⁴¹ Churn costs the state money in administrative costs to re-process eligibility multiple times for eligible households and families go without critical assistance. The Department should measure and report on churn to identify unnecessary administrative procedures. One of the most accurate measures of churn is to report on the share of participants required to renew eligibility in a given month lose benefits for not complying with the process and end up returning to the program within a short period of time (90 days).
- **Co enrollment of families in child care assistance and other public benefit programs.** Tracking co-enrollment will aid the state in identifying barriers for families in receiving assistance that will support child well-being. In order to meet the State's own goal of providing TANF families with high priority, the State should consistently report on the number of TANF families enrolled in the child care assistance program.
- **Timeliness of Processing.** To ensure that benefits applications and renewals are timely processed, CYFD should track the time between initial application/submission of renewal documents and the time benefits are granted are renewed. Tracking this data will help CYFD identify delays in application processing and areas to improve worker training.

We encourage CYFD to use the CCDBG as an opportunity to streamline administration of child care assistance in New Mexico and improve access to the program for eligible families. To maximize the opportunities outlined in this letter, we would like to meet with the Department to discuss these comments. Please contact Maria Griego or Sovereign Hager at (505) 255-2840 or maria@nmpovertylaw.org and sovereign@nmpovertylaw.org at your earliest convenience. Thank you for the opportunity to comment on the Department's proposed plan.

Sincerely,

⁴¹Dottie Rosenbaum, *Lessons Churned: Measuring the Impact of Churn in Health and Human Services Programs on Participants and State and Local Agencies*, Center on Budget and Policy Priorities, March 2015

DRAFT