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Washington DC 20005

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Office of Child Care
Attention: Cheryl Vincent
370 L'Enfant Promenade, SW.
Washington, DC 20024

Re: ACF Docket No. 2013-0001

Dear Ms. Vincent,

The National Child Care Association (NCCA) and its 5,000 members across the country are gratefully for the opportunity to comment on this proposed rule which will have a major impact on our industry. NCCA's top priority is providing comprehensive quality early education and care to the children and families in our communities. This rule jeopardizes this goal. As providers of care to over 600,000 children from newborns to five years old each day, it is as important to us as it is to government that children receive the highest quality early age education, delivered in the safest and most secure environment. We agree with many of the regulations and laws being proposed at the federal level. Many states have already enacted them. There are numerous other areas, however, where early childhood education providers have difficulties with compliance from practical or financial perspectives. NCCA has outlined below some problematic areas in the current proposal and, hopes that Health and Human Services (HHS) will consider our experience and suggestions as you move forward with the rule.

Regulations, funding, employee payroll, training, private pay tuition, facility compliance, and government subsidies are interrelated; even the slightest changes in one category can upset the balance in others. Consequently, NCCA and its members urge caution and a thoughtful approach to new regulations. Parents currently enjoy and value an array of choices in quality, affordable early age education, in a mixed delivery system. We believe these choices must be preserved to provide families with the options that best fit them, and ensure the best possible outcome for our nation's most vulnerable and treasured assets.

Background

The Early Education and Care industry grew out of the development of community-based providers, from friends and family to privately operated home care, nursery schools and childcare. The principal service was babysitting for working parents. The proliferation of single-parent and two-parent working families drove the rapid growth and diversification of the childcare industry. In addition, developing scientific and sociological research demonstrated the importance of quality early learning experiences and environments for our youngest learners. The private sector ranges from single-owner operated centers and small local and regional chains, to national franchise operations and large corporate operations. Among this population of providers, there are thousands of privately-owned early childhood education (ECE) centers, including family home care, religiously-affiliated child care facilities,

as well as public providers in school districts and Head Start centers. These facilities are as different and varied as the communities they serve. Some studies estimate that there are more childcare workers in the country than secondary education teachers. Early childhood care providers are an important part of these communities, providing an essential service to millions of working parents and families, and providing peace of mind that their children are in a safe and healthy environment while they earn a living.

Workforce

Early care and education is an intense, stressful job for which many workers receive insufficient compensation. In the past, owners, operators, teachers and staff of ECE facilities were often mothers, grandmothers, and young adults who baby sat for family and friends. These were honest, caring people with a desire to work with children. Many years ago it was believed this was all that was required. The latest research now proves that more training and better skills sets are necessary to maximize childhood development. The industry has had a reputation for high staff turnover, which is emblematic of the low wages and stresses of the position. An early childhood director may hire and train a degreed teacher with the full knowledge that the teacher may soon leave for higher wages and benefits in a local district school.

Years ago, training requirements were limited to CPR and basic fire and health safety. Accordingly, the cost of running a childcare facility was generally affordable. As the industry has developed and matured, additional professional development, education and training requirements have been added (which vary from state to state). Many states that regulate and license early childhood centers require substantially increased training and education for teachers and directors. Some states require Bachelor's degrees in ECE. But while the educational requirements of staff have increased, wages have largely remained stagnant. The early childhood workforce is extremely diverse across the country making it difficult to attract qualified staff with limited resources and benefits. Rural New Mexico is quite different from the affluent suburbs of Philadelphia or Los Angeles.

Education and retention is crucial for all young learners in the first five years of life. NCCA recommends that federal funding accessible to states be used for, "Retention Grants", as is the case in Pennsylvania. For example, staff members are rewarded with cash bonuses according to their level of education, with the highest incentive at \$4000 for directors with four-year degrees and \$3000 for teachers. Such programs aid industry in attracting and retaining more highly-skilled, better educated staff who desire to continue their education. In addition, we strongly recommend that the highly successful "TEACH" program, currently active in several states, be expanded nation-wide. TEACH is an incentive for ECE staff that provides funding for college classes to complete Associate and Bachelor degrees in early childhood education. These incentives build a highly trained and skilled early childhood education work force.

Pre-service hours and training is a major concern to licensed providers of ECE. We agree that all ECE professionals should be skilled and knowledgeable in crucial safety and health areas such as CPR, child development and sudden infant death syndrome, all of which are already required by most states. The

difficulty occurs, from a practical standpoint, in implementing this training prior to a new hire's entry into the classroom. Such training is not immediately available, and some courses take considerable time to complete. With classes scheduled at various times throughout the year, it is difficult to arrange staff schedules necessary to provide pre-service training. NCCA asks HHS to allow greater flexibility for newly hired staff regarding mandatory pre-service hours training.

Payroll is at 80% of a school's budget and increasing with enforced low staff to child ratios in ECE. The issue at hand is compliance with the strict teacher to child ratios; it is not uncommon to find instances of employees failing to provide advance notice of termination, thus leaving ECE centers in a precarious position. In such cases, the inability to place a new employee in the classroom places the center out of compliance and can force them to ask parents not to bring their children back until the position is filled. This is a nightmare scenario for the parents, the provider, and ultimately the children. Additionally, there are times when a newly hired person is not a good match for the position. The employer may have paid out hundreds of dollars for pre-service training and classes only to have that person leave, thus, creating the need to repeat the process. It is therefore recommended that resources be allocated to the states for the purpose of pre-service ECE staff training in the mandated knowledge areas. Inflexible and unfunded requirements can place many ECE providers who are doing great work in danger of bankruptcy, affecting a parent's access to quality and choice. When quality licensed providers disappear, the only choice left for parents is unregulated, unlicensed care. This places children at risk and defeats the purpose of having sound oversight.

Regulations

The ECE community is a highly regulated industry. The members of NCCA and most other licensed providers believe in appropriate oversight; however we believe that the focus of inspections should be improvement, not punishment. Licensed providers want to provide the highest quality of care, and many do so without regard for financial gain. ECE workers are dedicated, hard working professionals who work five-day, 40-hour weeks, almost 52 weeks a year. Whereas it is to everyone's advantage to have someone who understands the industry come and evaluate their practices, methods, safety and standards, inspections are often subjective and inconsistent. These inconsistencies become evident once the multitude of different inspectors arrives at ECE centers throughout the calendar year. Further, inspectors are often overwhelmed by their own staff shortages, budget restraints, and workloads, leaving no continuity for ECE owners and operators. It is necessary that ECE licensed professionals receive fair and equal evaluations that hold all providers to the same standards. Unlicensed, unregulated providers, whether home care, center-based, school district or government affiliated centers, must be held to the same level of accountability as the lawful, regulated, licensed providers. Inequitable levels of accountability establishes undeserved financial advantage of early learning environments of lesser quality over licensed high quality centers. This inequality promotes low quality and dangerous situations for our youngest children.

States have been the responsible regulating authority through various departments with varying names across the country. Using Pennsylvania as an example, the Department of Public Welfare is responsible for licensing and inspecting child care centers; licensing is predominantly concerned with basic safety

and welfare issues such as ratios, child per square footage, etc. In recent years, many states have initiated new assessment instruments such as the Quality Rating System (QRS), utilizing STAR initiative-type rating scales with research-based indicators concerning environment, curriculum, health and safety, and instructional strategies including attention to developmentally appropriate practice. Many STARS initiatives are based upon the instrument developed at the University of North Carolina called the Environmental Rating Scale (ERS), also known as QRS. Pennsylvania has an excellent model that offers grant opportunities for all center structures that participate in moving up the STARS ladder to achieve the highest rating. The highest rating in Pennsylvania is a 4 STAR level whereas in other states it is 5 STARS. However, as states have struggled with their budgets in recent years, there have been cuts in funding or eliminations of such programs, and other states have not had the financial resources to implement these initiatives. Financial resources from the federal government to states for their continuation or initiation of high quality early childhood initiatives would be most beneficial in supporting providers complying with regulations, increasing the quality of care and education, and improving the qualifications of the workforce.

Almost every state requires state criminal background checks which are relatively inexpensive, and affordable for most ECE providers. Many states are now requiring FBI criminal checks and fingerprinting of staff members at varying intervals, i.e. two-year vs. five-year time periods. Anecdotal evidence from our members indicate that while they are not ideologically opposed to the rule, the cost is becoming prohibitive and in some cases compliance is problematic because it can take six weeks or longer for final results. As is the case with pre-service training, if a new hire cannot enter a class or begin work without the clearance, a hardship will occur. An alternative solution is currently under consideration in Texas, which would allow newly-hired staff to begin working before the results are received pursuant to signing a document attesting to their lack of criminal record. NCCA would like this flexibility at the federal level as well so that all member businesses can utilize this option if need be. We also recommend that consideration be given to the ECE providers for free or reduced fees regarding the cost of FBI clearances and finger printing.

NCCA and its members support spot inspections and random checks. We believe that our mission and performance should be the same every day. Many states have already enacted spot inspections and others are proposing them. It should be noted that our ECE centers and staff are observed and inspected every day by the parents who legally are entitled to access, at all times, to their children. In Pennsylvania, inspections and visits are conducted by an array of local, state, and national entities, including the DPW licensing agent, the local fire department, building safety checks from the PA Department of Labor, as well as the Department of Education and the Health Department. Further, my own center in Pennsylvania participates in the Pre-K Counts program that provides Pre-K to economically disadvantaged and at-risk children, which requires added inspections. Finally the National Early Childhood Program Accreditation, a detailed and rigorous inspection employed nationally, accredits my center.

NCCA recommends that providers who become nationally accredited by an accepted accrediting agency, and who are annually inspected, be exempt from state licensing agency inspections. Many states that have quality rating systems will immediately grant highest rating to nationally accredited centers. This

encourages national accreditation. Inspections by the accrediting organizations can ease a state's financial and work load burdens by ensuring centers and providers that are already inspected are of the highest standards. These resources can be focused on improving the quality of those struggling with quality and the unregulated, unlicensed providers. We recommend that the federal government provide resources to the states so that they may offer, as part of their STARS program or otherwise, grants for licensed providers to become and maintain national accreditation. It will improve quality across the country, give parents better choices, and establish high standard environments for children.

A great number of states have already instituted web sites to disseminate information pertaining to the center quality, and citations a licensed center has received. Parents should be informed and do their homework in searching for the right ECE program for their children. A complaint made to a licensing authority can be anonymous. Often time, complaints are made by angry or disgruntled employees or by a vindictive parent or even an outside contractor. Just about anyone can file an anonymous complaint and prompt an immediate inspection. There are legitimate complaints that need immediate attention. However, it is worthwhile giving an example of a situation of a disgruntled employee. The employee called the licensing authority to complain about an unwarranted violation of the ratio policy (a serious area of non-compliance). The next day when the inspector came to visit, the disgruntled employee walked out of the room, causing the center to be cited for a ratio violation. Stories of similar experiences have been reported. Having that citation placed on a web site with no explanation gives the wrong impression to the public. In other instances, citations for minor infractions can be made to sound more severe by a general public unfamiliar with the jargon used by inspectors. We do not oppose the posting of this information on a public website geared toward informing about the quality, inspection and complaint record of the licensed provider. We recommend giving the provider the opportunity to respond with an explanation and the corrective action taken. This is paramount to a fair and accurate system. If we believe that parents should have the information, it should be accurate.

Funding

It is essential to preserve the mixed delivery system, to provide choice for parents, to improve quality and to promote diversity in early education and care. Allowing one type of delivery system to control the funding or to promote funding for some providers over others would be harmful to many family businesses that provide needed services and jobs in their communities. Quality in ECE exists because of dedicated, hard working individuals and competition with accountability. The accountability is no longer solely about having a nicer playground or a slick building design. Today it is about quality of programs and outcomes, as well as the physical aesthetics. Competition drives quality. Government funding needs to be distributed fairly to promote fair competition. Taxpaying entities should not be favored over tax exempt entities, and vice versa. In the same regard, public entities should not be favored over private ones. The private licensed provider is crucial to the current mixed delivery system. This system is beneficial to parents, providing options and choice for what best suits their needs. Destruction of this system would limit choice for parents and families, and would drive them into unregulated, unlicensed care, placing the children at greater risk. We strongly recommend fair and equal funding to coincide with fair and equal regulations.

The members of the National Child Care Association would like all concerned, state and federal regulators and legislators, to know that there are hundreds of thousands of at-risk, economically disadvantaged children currently on child care subsidy waiting lists throughout the country. We applaud efforts to improve quality and safety for the millions of children and parents we serve every day. NCCA strongly urges that serious consideration be given to this underserved population of children by giving more funding to the states to reduce the child care subsidy waiting lists. We all know this is money well invested, as there is a \$7 return for every dollar invested in early childhood education. Children who attend a quality ECE program will be better prepared for kindergarten and first grade. They will be more likely to succeed and to be productive citizens, less likely to end up on welfare or in prison. These children are our future. We owe them a bright future. We also urge the improvement of quality choices for parents by increasing the childcare subsidy rate to 100% of cost of care across the United States. Currently because rates are so low in some areas, many children are turned away have additional Co-pays and their choices are limited. Providers are, in essence, being asked to subsidize this group because the payment rates are below the true cost of care. It is becoming more difficult for licensed providers to endure the financial burden of these insufficient subsidy rates.

Summary

The Early Education and Care Industry plays a vital role in the economy. It affords millions of Americans the opportunity for safe, developmentally appropriate care and education for their children. It also employs millions of Americans. Regulations, oversight, and accountability are vital to the safety of children in ECE settings and for peace of mind of parents. Government is the key player in regulatory oversight. The regulations should be flexible, in some instances, to allow for compliance and should be made affordable for providers with assistance from government that mandates compliance. It is clear that the state governments have been and are in the forefront of regulatory compliance and oversight. The federal government's role should be to assist the states in their implementation of programs and regulations, not create an additional and duplicative layer of laws and regulation which only serves to create more bureaucracy, confusion, and expense. Additional expenses for oversight takes needed funds away from underserved children waiting for the opportunity to participate in a quality early childhood educational program. Helping licensed regulated providers with flexibility and funding will result in higher quality, a better trained workforce, and better outcomes for children. Strengthening the current mixed delivery system will promote quality and growth of the industry, create more jobs, and afford parents more choices. NCCA recommends a thoughtful approach to the federal government's role in Early Education and Care, including Pre-K and Kindergarten. NCCA is thankful for being allowed to participate in this conversation. We look forward to being a vital partner in helping state and federal officials to craft legislative and regulatory policy that makes sense, that keeps our children safe and that promotes growth and quality.

Respectfully submitted on behalf of NCCA,
Ron Seidman
VP