

place, and support college students to serve as mentors and reading partners to pre-school children in Head Start programs; and

(G) to carry out other activities determined by the center to improve the overall quality of the Head Start program carried out by the agency and the program carried out under the bonus grant involved.

(e) Research and reports

(1) Research

The Secretary shall, subject to the availability of funds to carry out this subsection, award a grant or contract to an independent organization to conduct research on the ability of the centers of excellence to use the funds received under this section to improve the school readiness of children receiving Head Start services, and to positively impact school results in the earliest grades. The organization shall also conduct research to measure the success of the centers of excellence at encouraging the center's delegate agencies, additional Head Start agencies, and other providers of early childhood education and development programs in the communities involved to meet measurable improvement goals, particularly in the area of school readiness.

(2) Research report

Not later than 48 months after December 12, 2007, the organization shall prepare and submit to the Secretary and Congress a report containing the results of the research described in paragraph (1).

(3) Reports to the Secretary

Each center of excellence shall submit an annual report to the Secretary, at such time and in such manner as the Secretary may require, that contains a description of the activities the center carried out with funds received under this section, including a description of how such funds improved services for children and families.

(f) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to make bonus grants to centers of excellence under subsection (b) to carry out activities described in subsection (d) and research and report activities described in subsection (e).

(Pub. L. 97-35, title VI, § 657B, as added Pub. L. 110-134, § 26, Dec. 12, 2007, 121 Stat. 1444.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(1)(B)(vi)(III), (IV), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Title I of the Act is classified generally to subchapter I (§ 6301 et seq.) of chapter 70 of Title 20, Education. Subparts 2 and 3 of part B of title I of the Act are classified generally to subparts 2 (§ 6371 et seq.) and 3 (§ 6381 et seq.), respectively, of part B of subchapter I of chapter 70 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

The Individuals with Disabilities Education Act, referred to in subsec. (c)(1)(B)(vi)(V), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175. Part C of the Act is classified generally to subchapter III (§ 1431 et seq.) of

chapter 33 of Title 20, Education. Section 619 of the Act is classified to section 1419 of Title 20. For complete classification of this Act to the Code, see section 1400 of Title 20 and Tables.

§ 9852c. General provisions

(a) Limitation

Nothing in this subchapter shall be construed to authorize or permit the Secretary or any employee or contractor of the Department of Health and Human Services to mandate, direct, or control, the selection of a curriculum, a program of instruction, or instructional materials, for a Head Start program.

(b) Special rule

Nothing in this subchapter shall be construed to authorize a Head Start program or a local educational agency to require the other to select or implement a specific curriculum or program of instruction.

(c) Definition

In this subchapter, the term "health", when used to refer to services or care provided to enrolled children, their parents, or their siblings, shall be interpreted to refer to both physical and mental health.

(Pub. L. 97-35, title VI, § 657C, as added Pub. L. 110-134, § 27, Dec. 12, 2007, 121 Stat. 1448.)

SUBCHAPTER II-A—HEAD START
TRANSITION PROJECT

§§ 9855 to 9855g. Repealed. Pub. L. 105-285, title I, § 119, Oct. 27, 1998, 112 Stat. 2728

Section 9855, Pub. L. 101-501, title I, § 132, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-382, title III, § 391(v)(1), Oct. 20, 1994, 108 Stat. 4025, defined terms used in this subchapter.

Section 9855a, Pub. L. 101-501, title I, § 133, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-252, title I, § 125(a), May 18, 1994, 108 Stat. 650, related to Head Start transition grants.

Section 9855b, Pub. L. 101-501, title I, § 134, Nov. 3, 1990, 104 Stat. 1238; Pub. L. 103-382, title III, § 391(v)(2), (3), Oct. 20, 1994, 108 Stat. 4025, related to eligibility for Head Start transition grants.

Section 9855c, Pub. L. 101-501, title I, § 135, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 103-382, title III, § 391(v)(4), Oct. 20, 1994, 108 Stat. 4025, related to requirements for awarding Head Start transition grants.

Section 9855d, Pub. L. 101-501, title I, § 136, Nov. 3, 1990, 104 Stat. 1239; Pub. L. 102-119, § 26(d), Oct. 7, 1991, 105 Stat. 607; Pub. L. 103-382, title III, § 391(v)(5)-(7), Oct. 20, 1994, 108 Stat. 4025, related to applications for Head Start transition grants.

Section 9855e, Pub. L. 101-501, title I, § 137, Nov. 3, 1990, 104 Stat. 1241, related to evaluation of and report on programs assisted under Head Start transition project.

Section 9855f, Pub. L. 101-501, title I, § 138, Nov. 3, 1990, 104 Stat. 1242, related to payments and Federal share of payments under Head Start transition project.

Section 9855g, Pub. L. 101-501, title I, § 139, Nov. 3, 1990, 104 Stat. 1242, related to coordination with programs established under the Follow Through Act.

SUBCHAPTER II-B—CHILD CARE AND
DEVELOPMENT BLOCK GRANT

CODIFICATION

Subchapter is based on subchapter C of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat.

1388-236, and amended by Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.

§ 9858. Authorization of appropriations

There is authorized to be appropriated to carry out this subchapter \$1,000,000,000 for each of the fiscal years 1996 through 2002.

(Pub. L. 97-35, title VI, §658B, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §603(a), Aug. 22, 1996, 110 Stat. 2279.)

AMENDMENTS

1996—Pub. L. 104-193 reenacted section catchline without change and amended text generally. Prior to amendment, text read as follows: "There are authorized to be appropriated to carry out this subchapter, \$750,000,000 for fiscal year 1991, \$825,000,000 for fiscal year 1992, \$925,000,000 for fiscal year 1993, and such sums as may be necessary for each of the fiscal years 1994 and 1995."

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 615 of title VI of Pub. L. 104-193 provided that:

"(a) IN GENERAL.—Except as provided in subsection (b), this title [see Short title of 1996 Amendment note set out under section 9801 of this title] and the amendments made by this title shall take effect on October 1, 1996.

"(b) EXCEPTION.—The amendment made by section 603(a) [amending this section] shall take effect on the date of enactment of this Act [Aug. 22, 1996]."

SHORT TITLE

For short title of this subchapter as the Child Care and Development Block Grant Act of 1990, see section 658A(a) of Pub. L. 97-35, as amended, set out as a note under section 9801 of this title.

SMALL BUSINESS CHILD CARE GRANT PROGRAM

Pub. L. 110-28, title VIII, §8303, May 25, 2007, 121 Stat. 206, provided that:

"(a) ESTABLISHMENT.—The Secretary of Health and Human Services (referred to in this section as the 'Secretary') shall establish a program to award grants to States, on a competitive basis, to assist States in providing funds to encourage the establishment and operation of employer-operated child care programs.

"(b) APPLICATION.—To be eligible to receive a grant under this section, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require, including an assurance that the funds required under subsection (e) will be provided.

"(c) AMOUNT AND PERIOD OF GRANT.—The Secretary shall determine the amount of a grant to a State under this section based on the population of the State as compared to the population of all States receiving grants under this section. The Secretary shall make the grant for a period of 3 years.

"(d) USE OF FUNDS.—

"(1) IN GENERAL.—A State shall use amounts provided under a grant awarded under this section to provide assistance to small businesses (or consortia formed in accordance with paragraph (3)) located in the State to enable the small businesses (or consortia) to establish and operate child care programs. Such assistance may include—

"(A) technical assistance in the establishment of a child care program;

"(B) assistance for the startup costs related to a child care program;

"(C) assistance for the training of child care providers;

"(D) scholarships for low-income wage earners;

"(E) the provision of services to care for sick children or to provide care to school-aged children;

"(F) the entering into of contracts with local resource and referral organizations or local health departments;

"(G) assistance for care for children with disabilities;

"(H) payment of expenses for renovation or operation of a child care facility; or

"(I) assistance for any other activity determined appropriate by the State.

"(2) APPLICATION.—In order for a small business or consortium to be eligible to receive assistance from a State under this section, the small business involved shall prepare and submit to the State an application at such time, in such manner, and containing such information as the State may require.

"(3) PREFERENCE.—

"(A) IN GENERAL.—In providing assistance under this section, a State shall give priority to an applicant that desires to form a consortium to provide child care in a geographic area within the State where such care is not generally available or accessible.

"(B) CONSORTIUM.—For purposes of subparagraph (A), a consortium shall be made up of 2 or more entities that shall include small businesses and that may include large businesses, nonprofit agencies or organizations, local governments, or other appropriate entities.

"(4) LIMITATIONS.—With respect to grant funds received under this section, a State may not provide in excess of \$500,000 in assistance from such funds to any single applicant.

"(e) MATCHING REQUIREMENT.—To be eligible to receive a grant under this section, a State shall provide assurances to the Secretary that, with respect to the costs to be incurred by a covered entity receiving assistance in carrying out activities under this section, the covered entity will make available (directly or through donations from public or private entities) non-Federal contributions to such costs in an amount equal to—

"(1) for the first fiscal year in which the covered entity receives such assistance, not less than 50 percent of such costs (\$1 for each \$1 of assistance provided to the covered entity under the grant);

"(2) for the second fiscal year in which the covered entity receives such assistance, not less than 66⅔ percent of such costs (\$2 for each \$1 of assistance provided to the covered entity under the grant); and

"(3) for the third fiscal year in which the covered entity receives such assistance, not less than 75 percent of such costs (\$3 for each \$1 of assistance provided to the covered entity under the grant).

"(f) REQUIREMENTS OF PROVIDERS.—To be eligible to receive assistance under a grant awarded under this section, a child care provider—

"(1) who receives assistance from a State shall comply with all applicable State and local licensing and regulatory requirements and all applicable health and safety standards in effect in the State; and

"(2) who receives assistance from an Indian tribe or tribal organization shall comply with all applicable regulatory standards.

"(g) STATE-LEVEL ACTIVITIES.—A State may not retain more than 3 percent of the amount described in subsection (c) for State administration and other State-level activities.

"(h) ADMINISTRATION.—

"(1) STATE RESPONSIBILITY.—A State shall have responsibility for administering a grant awarded for the State under this section and for monitoring covered entities that receive assistance under such grant.

“(2) AUDITS.—A State shall require each covered entity receiving assistance under the grant awarded under this section to conduct an annual audit with respect to the activities of the covered entity. Such audits shall be submitted to the State.

“(3) MISUSE OF FUNDS.—

“(A) REPAYMENT.—If the State determines, through an audit or otherwise, that a covered entity receiving assistance under a grant awarded under this section has misused the assistance, the State shall notify the Secretary of the misuse. The Secretary, upon such a notification, may seek from such a covered entity the repayment of an amount equal to the amount of any such misused assistance plus interest.

“(B) APPEALS PROCESS.—The Secretary shall by regulation provide for an appeals process with respect to repayments under this paragraph.

“(i) REPORTING REQUIREMENTS.—

“(1) 2-YEAR STUDY.—

“(A) IN GENERAL.—Not later than 2 years after the date on which the Secretary first awards grants under this section, the Secretary shall conduct a study to determine—

“(i) the capacity of covered entities to meet the child care needs of communities within States;

“(ii) the kinds of consortia that are being formed with respect to child care at the local level to carry out programs funded under this section; and

“(iii) who is using the programs funded under this section and the income levels of such individuals.

“(B) REPORT.—Not later than 28 months after the date on which the Secretary first awards grants under this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the results of the study conducted in accordance with subparagraph (A).

“(2) FOUR-YEAR STUDY.—

“(A) IN GENERAL.—Not later than 4 years after the date on which the Secretary first awards grants under this section, the Secretary shall conduct a study to determine the number of child care facilities that are funded through covered entities that received assistance through a grant awarded under this section and that remain in operation, and the extent to which such facilities are meeting the child care needs of the individuals served by such facilities.

“(B) REPORT.—Not later than 52 months after the date on which the Secretary first awards grants under this section, the Secretary shall prepare and submit to the appropriate committees of Congress a report on the results of the study conducted in accordance with subparagraph (A).

“(j) DEFINITIONS.—In this section:

“(1) COVERED ENTITY.—The term ‘covered entity’ means a small business or a consortium formed in accordance with subsection (d)(3).

“(2) INDIAN COMMUNITY.—The term ‘Indian community’ means a community served by an Indian tribe or tribal organization.

“(3) INDIAN TRIBE; TRIBAL ORGANIZATION.—The terms ‘Indian tribe’ and ‘tribal organization’ have the meanings given the terms in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n).

“(4) SMALL BUSINESS.—The term ‘small business’ means an employer who employed an average of at least 2 but not more than 50 employees on the business days during the preceding calendar year.

“(5) STATE.—The term ‘State’ has the meaning given the term in section 658P of the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n).

“(k) APPLICATION TO INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—In this section:

“(1) IN GENERAL.—Except as provided in subsection (f)(1), and in paragraphs (2) and (3), the term ‘State’ includes an Indian tribe or tribal organization.

“(2) GEOGRAPHIC REFERENCES.—The term ‘State’ includes an Indian community in subsections (c) (the second and third place the term appears), (d)(1) (the second place the term appears), (d)(3)(A) (the second place the term appears), and (i)(1)(A)(i).

“(3) STATE-LEVEL ACTIVITIES.—The term ‘State-level activities’ includes activities at the tribal level.

“(l) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, \$50,000,000 for the period of fiscal years 2008 through 2012.

“(2) STUDIES AND ADMINISTRATION.—With respect to the total amount appropriated for such period in accordance with this subsection, not more than \$2,500,000 of that amount may be used for expenditures related to conducting studies required under, and the administration of, this section.

“(m) TERMINATION OF PROGRAM.—The program established under subsection (a) shall terminate on September 30, 2012.”

GOALS OF SUBCHAPTER

Section 658A(b) of subchapter C (§658A et seq.) of chapter 8 of subtitle A of title VI of Pub. L. 97-35, as added by Pub. L. 104-193, title VI, §602(3), Aug. 22, 1996, 110 Stat. 2279, provided that: “The goals of this subchapter are—

“(1) to allow each State maximum flexibility in developing child care programs and policies that best suit the needs of children and parents within such State;

“(2) to promote parental choice to empower working parents to make their own decisions on the child care that best suits their family’s needs;

“(3) to encourage States to provide consumer education information to help parents make informed choices about child care;

“(4) to assist States to provide child care to parents trying to achieve independence from public assistance; and

“(5) to assist States in implementing the health, safety, licensing, and registration standards established in State regulations.”

§ 9858a. Establishment of block grant program

The Secretary is authorized to make grants to States in accordance with the provisions of this subchapter.

(Pub. L. 97-35, title VI, §658C, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858b. Lead agency

(a) Designation

The chief executive officer of a State desiring to receive a grant under this subchapter shall designate, in an application submitted to the Secretary under section 9858c of this title, an appropriate State agency that complies with the requirements of subsection (b) of this section to act as the lead agency.

(b) Duties

(1) In general

The lead agency shall—

(A) administer, directly or through other governmental or nongovernmental agencies,

the financial assistance received under this subchapter by the State;

(B) develop the State plan to be submitted to the Secretary under section 9858c(a) of this title;

(C) in conjunction with the development of the State plan as required under subparagraph (B), hold at least one hearing in the State with sufficient time and Statewide distribution of the notice of such hearing, to provide to the public an opportunity to comment on the provision of child care services under the State plan; and

(D) coordinate the provision of services under this subchapter with other Federal, State and local child care and early childhood development programs.

(2) Development of plan

In the development of the State plan described in paragraph (1)(B), the lead agency shall consult with appropriate representatives of units of general purpose local government.

(Pub. L. 97-35, title VI, §658D, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-236; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §604, Aug. 22, 1996, 110 Stat. 2281.)

AMENDMENTS

1996—Subsec. (b)(1)(A). Pub. L. 104-193, §604(1)(A), substituted “governmental or nongovernmental agencies” for “State agencies”.

Subsec. (b)(1)(C). Pub. L. 104-193, §604(1)(B), inserted “with sufficient time and Statewide distribution of the notice of such hearing,” after “hearing in the State”.

Subsec. (b)(2). Pub. L. 104-193, §604(2), struck out at end “Such consultations may include consideration of local child care needs and resources, the effectiveness of existing child care and early childhood development services, and the methods by which funds made available under this subchapter can be used to effectively address local shortages.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title

§ 9858c. Application and plan

(a) Application

To be eligible to receive assistance under this subchapter, a State shall prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary shall by rule require, including—

- (1) an assurance that the State will comply with the requirements of this subchapter; and
- (2) a State plan that meets the requirements of subsection (c) of this section.

(b) Period covered by plan

The State plan contained in the application under subsection (a) of this section shall be designed to be implemented during a 2-year period.

(c) Requirements of a plan

(1) Lead agency

The State plan shall identify the lead agency designated under section 9858b of this title.

(2) Policies and procedures

The State plan shall:

(A) Parental choice of providers

Provide assurances that—

(i) the parent or parents of each eligible child within the State who receives or is offered child care services for which financial assistance is provided under this subchapter are given the option either—

(I) to enroll such child with a child care provider that has a grant or contract for the provision of such services; or

(II) to receive a child care certificate as defined in section 9858n(2) of this title;

(ii) in cases in which the parent selects the option described in clause (i)(I), the child will be enrolled with the eligible provider selected by the parent to the maximum extent practicable; and

(iii) child care certificates offered to parents selecting the option described in clause (i)(II) shall be of a value commensurate with the subsidy value of child care services provided under the option described in clause (i)(I);

and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.

(B) Unlimited parental access

Certify that procedures are in effect within the State to ensure that child care providers who provide services for which assistance is made available under this subchapter afford parents unlimited access to their children and to the providers caring for their children, during the normal hours of operation of such providers and whenever such children are in the care of such providers and provide a detailed description of such procedures.

(C) Parental complaints

Certify that the State maintains a record of substantiated parental complaints and makes information regarding such parental complaints available to the public on request and provide a detailed description of how such record is maintained and is made available.

(D) Consumer education information

Certify that the State will collect and disseminate to parents of eligible children and the general public, consumer education information that will promote informed child care choices.

(E) Compliance with State licensing requirements

(i) In general

Certify that the State has in effect licensing requirements applicable to child care services provided within the State, and provide a detailed description of such requirements and of how such requirements are effectively enforced. Nothing in the preceding sentence shall be construed to require that licensing requirements be

applied to specific types of providers of child care services.

(ii) Indian tribes and tribal organizations

In lieu of any licensing and regulatory requirements applicable under State and local law, the Secretary, in consultation with Indian tribes and tribal organizations, shall develop minimum child care standards (that appropriately reflect tribal needs and available resources) that shall be applicable to Indian tribes and tribal organizations receiving assistance under this subchapter.

(F) Establishment of health and safety requirements

Certify that there are in effect within the State, under State or local law, requirements designed to protect the health and safety of children that are applicable to child care providers that provide services for which assistance is made available under this subchapter. Such requirements shall include—

- (i) the prevention and control of infectious diseases (including immunization);
- (ii) building and physical premises safety; and
- (iii) minimum health and safety training appropriate to the provider setting.

Nothing in this subparagraph shall be construed to require the establishment of additional health and safety requirements for child care providers that are subject to health and safety requirements in the categories described in this subparagraph on November 5, 1990, under State or local law.

(G) Compliance with State and local health and safety requirements

Certify that procedures are in effect to ensure that child care providers within the State that provide services for which assistance is provided under this subchapter comply with all applicable State or local health and safety requirements as described in subparagraph (F).

(H) Meeting the needs of certain populations

Demonstrate the manner in which the State will meet the specific child care needs of families who are receiving assistance under a State program under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.], families who are attempting through work activities to transition off of such assistance program, and families that are at risk of becoming dependent on such assistance program.

(3) Use of block grant funds

(A) General requirement

The State plan shall provide that the State will use the amounts provided to the State for each fiscal year under this subchapter as required under subparagraphs (B) through (D).

(B) Child care services and related activities

The State shall use amounts provided to the State for each fiscal year under this sub-

chapter for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b),¹ with priority being given for services provided to children of families with very low family incomes (taking into consideration family size) and to children with special needs.

(C) Limitation on administrative costs

Not more than 5 percent of the aggregate amount of funds available to the State to carry out this subchapter by a State in each fiscal year may be expended for administrative costs incurred by such State to carry out all of its functions and duties under this subchapter. As used in the preceding sentence, the term “administrative costs” shall not include the costs of providing direct services.

(D) Assistance for certain families

A State shall ensure that a substantial portion of the amounts available (after the State has complied with the requirement of section 418(b)(2) of the Social Security Act [42 U.S.C. 618(b)(2)] with respect to each of the fiscal years 1997 through 2002) to the State to carry out activities under this subchapter in each fiscal year is used to provide assistance to low-income working families other than families described in paragraph (2)(H).

(4) Payment rates

(A) In general

The State plan shall certify that payment rates for the provision of child care services for which assistance is provided under this subchapter are sufficient to ensure equal access for eligible children to comparable child care services in the State or substate area that are provided to children whose parents are not eligible to receive assistance under this subchapter or for child care assistance under any other Federal or State programs and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access.

(B) Construction

Nothing in this paragraph shall be construed to create a private right of action.

(5) Sliding fee scale

The State plan shall provide that the State will establish and periodically revise, by rule, a sliding fee scale that provides for cost sharing by the families that receive child care services for which assistance is provided under this subchapter.

(d) Approval of application

The Secretary shall approve an application that satisfies the requirements of this section.

(Pub. L. 97-35, title VI, §658E, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat.

¹ See References in Text note below.

1388-237; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §605, Aug. 22, 1996, 110 Stat. 2281; Pub. L. 105-33, title V, §5602(1), Aug. 5, 1997, 111 Stat. 645.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2)(H), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Paragraphs (2) through (5) of section 658A(b), referred to in subsec. (c)(3)(B), means pars. (2) through (5) of section 658A(b) of Pub. L. 97-35, which are set out as a note under section 9858 of this title.

AMENDMENTS

1997—Subsec. (c)(2)(E)(ii). Pub. L. 105-33 substituted “tribal organizations receiving” for “tribal organization receiving”.

1996—Subsec. (b). Pub. L. 104-193, §605(1), substituted “implemented during a 2-year period” for “implemented—

“(1) during a 3-year period for the initial State plan; and

“(2) during a 2-year period for subsequent State plans”.

Subsec. (c)(2)(A). Pub. L. 104-193, §605(2)(A)(i)(II), in closing provisions, substituted “and provide a detailed description of the procedures the State will implement to carry out the requirements of this subparagraph.” for “except that nothing in this subparagraph shall require a State to have a child care certificate program in operation prior to October 1, 1992.”

Subsec. (c)(2)(A)(i). Pub. L. 104-193, §605(2)(A)(i)(I), struck out “, other than through assistance provided under paragraph (3)(C),” after “provided under this subchapter” in introductory provisions.

Subsec. (c)(2)(B). Pub. L. 104-193, §605(2)(A)(ii), substituted “Certify that procedures are in effect” for “Provide assurances that procedures are in effect” and inserted before period at end “and provide a detailed description of such procedures”.

Subsec. (c)(2)(C). Pub. L. 104-193, §605(2)(A)(iii), substituted “Certify that the State maintains” for “Provide assurances that the State maintains” and inserted before period at end “and provide a detailed description of how such record is maintained and is made available”.

Subsec. (c)(2)(D). Pub. L. 104-193, §605(2)(A)(iv), amended heading and text of subpar. (D) generally. Prior to amendment, text read as follows: “Provide assurances that consumer education information will be made available to parents and the general public within the State concerning licensing and regulatory requirements, complaint procedures, and policies and practices relative to child care services within the State.”

Subsec. (c)(2)(E). Pub. L. 104-193, §605(2)(A)(v), amended heading and text of subpar. (E) generally, substituting provisions relating to compliance with State licensing requirements for provisions relating to compliance with State and local regulatory requirements.

Subsec. (c)(2)(F), (G). Pub. L. 104-193, §605(2)(A)(vi), (vii), substituted “Certify” for “Provide assurances”.

Subsec. (c)(2)(H). Pub. L. 104-193, §605(2)(A)(viii), added subpar. (H) and struck out heading and text of former subpar. (H). Text read as follows: “Provide assurances that if the State reduces the level of standards applicable to child care services provided in the State on November 5, 1990, the State shall inform the Secretary of the rationale for such reduction in the annual report of the State described in section 9858i of this title.”

Subsec. (c)(2)(I). Pub. L. 104-193, §605(2)(A)(viii), struck out heading and text of subpar. (I). Text read as

follows: “Provide assurances that not later than 18 months after the date of the submission of the application under this section, the State will complete a full review of the law applicable to, and the licensing and regulatory requirements and policies of, each licensing agency that regulates child care services and programs in the State unless the State has reviewed such law, requirements, and policies in the 3-year period ending on November 5, 1990.”

Subsec. (c)(2)(J). Pub. L. 104-193, §605(2)(A)(viii), struck out heading and text of subpar. (J). Text read as follows: “Provide assurances that funds received under this subchapter by the State will be used only to supplement, not to supplant, the amount of Federal, State, and local funds otherwise expended for the support of child care services and related programs in the State.”

Subsec. (c)(3)(A). Pub. L. 104-193, §605(2)(B)(i), substituted “subparagraphs (B) through (D)” for “subparagraphs (B) and (C)”.

Subsec. (c)(3)(B). Pub. L. 104-193, §605(2)(B)(ii), inserted “and related activities” after “services” in heading, substituted “The” for “Subject to the reservation contained in subparagraph (C), the”, substituted “for child care services on a sliding fee scale basis, activities that improve the quality or availability of such services, and any other activity that the State deems appropriate to realize any of the goals specified in paragraphs (2) through (5) of section 658A(b)” for “for—

“(i) child care services, that meet the requirements of this subchapter, that are provided to eligible children in the State on a sliding fee scale basis using funding methods provided for in subsection (c)(2)(A) of this section”, substituted “special needs.” for “special needs; and”, and struck out cl. (ii) which read as follows: “activities designed to improve the availability and quality of child care.”

Subsec. (c)(3)(C). Pub. L. 104-193, §605(2)(B)(iii), amended heading and text of subpar. (C) generally. Prior to amendment, text read as follows: “The State shall reserve 25 percent of the amounts provided to the State for each fiscal year under this subchapter to carry out activities designed to improve the quality of child care (as described in section 9858e of this title) and to provide before- and after-school and early childhood development services (as described in section 9858f of this title).”

Subsec. (c)(3)(D). Pub. L. 104-193, §605(2)(B)(iv), added subpar. (D).

Subsec. (c)(4)(A). Pub. L. 104-193, §605(2)(C), substituted “State plan shall certify” for “State plan shall provide assurances”, inserted “and shall provide a summary of the facts relied on by the State to determine that such rates are sufficient to ensure such access” after “Federal or State programs”, and struck out at end “Such payment rates shall take into account the variations in the costs of providing child care in different settings and to children of different age groups, and the additional costs of providing child care for children with special needs.”

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858d. Limitations on State allotments**(a) No entitlement to contract or grant**

Nothing in this subchapter shall be construed—

(1) to entitle any child care provider or recipient of a child care certificate to any contract, grant or benefit; or

(2) to limit the right of any State to impose additional limitations or conditions on contracts or grants funded under this subchapter.

(b) Construction of facilities

(1) In general

Except as provided for in section 9858m(c)(6) of this title, no funds made available under this subchapter shall be expended for the purchase or improvement of land, or for the purchase, construction, or permanent improvement (other than minor remodeling) of any building or facility.

(2) Sectarian agency or organization

In the case of a sectarian agency or organization, no funds made available under this subchapter may be used for the purposes described in paragraph (1) except to the extent that renovation or repair is necessary to bring the facility of such agency or organization into compliance with health and safety requirements referred to in section 9858c(c)(2)(F) of this title.

(Pub. L. 97-35, title VI, §658F, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-240; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §606, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-193 substituted “Except as provided for in section 9858m(c)(6) of this title, no funds” for “No funds”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858e. Activities to improve quality of child care

A State that receives funds to carry out this subchapter for a fiscal year, shall use not less than 4 percent of the amount of such funds for activities that are designed to provide comprehensive consumer education to parents and the public, activities that increase parental choice, and activities designed to improve the quality and availability of child care (such as resource and referral services).

(Pub. L. 97-35, title VI, §658G, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-241; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §607, Aug. 22, 1996, 110 Stat. 2283.)

AMENDMENTS

1996—Pub. L. 104-193 reenacted section catchline without change and amended text generally, substituting current provisions for provisions requiring State receiving financial assistance under this subchapter to utilize not less than 20 percent of such assistance for one or more of following: resource and referral pro-

grams, grants or loans to assist in meeting State and local standards, monitoring of compliance with licensing and regulatory requirements, training, or improving salaries or other compensation to staff.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858f. Repealed. Pub. L. 104-193, title VI, § 608, Aug. 22, 1996, 110 Stat. 2284

Section, Pub. L. 97-35, title VI, §658H, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-241; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036, related to early childhood development and before- and after-school services.

EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as an Effective Date of 1996 Amendment note under section 9858 of this title.

§ 9858g. Administration and enforcement

(a) Administration

The Secretary shall—

(1) coordinate all activities of the Department of Health and Human Services relating to child care, and, to the maximum extent practicable, coordinate such activities with similar activities of other Federal entities;

(2) collect, publish and make available to the public a listing of State child care standards at least once every 3 years; and

(3) provide technical assistance to assist States to carry out this subchapter, including assistance on a reimbursable basis.

(b) Enforcement

(1) Review of compliance with State plan

The Secretary shall review and monitor State compliance with this subchapter and the plan approved under section 9858c(c) of this title for the State.

(2) Noncompliance

(A) In general

If the Secretary, after reasonable notice to a State and opportunity for a hearing, finds that—

(i) there has been a failure by the State to comply substantially with any provision or requirement set forth in the plan approved under section 9858c(c) of this title for the State; or

(ii) in the operation of any program for which assistance is provided under this subchapter there is a failure by the State to comply substantially with any provision of this subchapter;

the Secretary shall notify the State of the finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is

less than or equal to any improperly expended funds, or a combination of such options.

(B) Additional sanctions

In the case of a finding of noncompliance made pursuant to subparagraph (A), the Secretary may, in addition to imposing the sanctions described in such subparagraph, impose other appropriate sanctions, including recoupment of money improperly expended for purposes prohibited or not authorized by this subchapter, and disqualification from the receipt of financial assistance under this subchapter.

(C) Notice

The notice required under subparagraph (A) shall include a specific identification of any additional sanction being imposed under subparagraph (B).

(3) Issuance of rules

The Secretary shall establish by rule procedures for—

(A) receiving, processing, and determining the validity of complaints concerning any failure of a State to comply with the State plan or any requirement of this subchapter; and

(B) imposing sanctions under this section.

(Pub. L. 97-35, title VI, §658I, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-242; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §609, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (b)(1). Pub. L. 104-193, §609(1), struck out “, and shall have the power to terminate payments to the State in accordance with paragraph (2)” before period at end.

Subsec. (b)(2)(A). Pub. L. 104-193, §609(2), in closing provisions, substituted before period at end “finding and shall require that the State reimburse the Secretary for any funds that were improperly expended for purposes prohibited or not authorized by this subchapter, that the Secretary deduct from the administrative portion of the State allotment for the following fiscal year an amount that is less than or equal to any improperly expended funds, or a combination of such options” for “finding and that no further payments may be made to such State under this subchapter (or, in the case of noncompliance in the operation of a program or activity, that no further payments to the State will be made with respect to such program or activity) until the Secretary is satisfied that there is no longer any such failure to comply or that the non-compliance will be promptly corrected”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858h. Payments

(a) In general

Subject to the availability of appropriations, a State that has an application approved by the Secretary under section 9858c(d) of this title

shall be entitled to a payment under this section for each fiscal year in an amount equal to its allotment under section 9858m of this title for such fiscal year.

(b) Method of payment

(1) In general

Subject to paragraph (2), the Secretary may make payments to a State in installments, and in advance or by way of reimbursement, with necessary adjustments on account of overpayments or underpayments, as the Secretary may determine.

(2) Limitation

The Secretary may not make such payments in a manner that prevents the State from complying with the requirement specified in section 9858c(c)(3) of this title.

(c) Spending of funds by State

Payments to a State from the allotment under section 9858m of this title for any fiscal year may be obligated by the State in that fiscal year or in the succeeding fiscal year.

(Pub. L. 97-35, title VI, §658J, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-243; amended Pub. L. 102-27, title III, §310, Apr. 10, 1991, 105 Stat. 153; Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(a), (c)(1), Nov. 4, 1992, 106 Stat. 5035, 5036; Pub. L. 103-171, §8, Dec. 2, 1993, 107 Stat. 1994; Pub. L. 104-193, title VI, §610, Aug. 22, 1996, 110 Stat. 2284.)

AMENDMENTS

1996—Subsec. (c). Pub. L. 104-193 substituted “obligated” for “expended” and “succeeding fiscal year” for “succeeding 3 fiscal years”.

1993—Subsec. (c). Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(a). See 1992 Amendment note below.

1992—Pub. L. 102-401 and Pub. L. 102-586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

Subsec. (c). Pub. L. 102-586, §8(a), as amended by Pub. L. 103-171, substituted “expended” for “obligated” and “succeeding 3 fiscal years” for “succeeding fiscal year”.

1991—Subsec. (c). Pub. L. 102-27 substituted “obligated” for “expended”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 8(d) of Pub. L. 102-586 provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting section 9858q of this title and amending this section and section 9858n of this title] shall take effect on the date of enactment of this Act [Nov. 4, 1992].

“(2) APPLICATION.—The amendments made by this section shall not apply with respect to fiscal years beginning before October 1, 1992.”

§ 9858i. Reports and audits

(a) Reports

(1) Collection of information by States

(A) In general

A State that receives funds to carry out this subchapter shall collect the information

described in subparagraph (B) on a monthly basis.

(B) Required information

The information required under this subparagraph shall include, with respect to a family unit receiving assistance under this subchapter information concerning—

- (i) family income;
- (ii) county of residence;
- (iii) the gender, race, and age of children receiving such assistance;
- (iv) whether the head of the family unit is a single parent;
- (v) the sources of family income, including—
 - (I) employment, including self-employment;
 - (II) cash or other assistance under—
 - (aa) the temporary assistance for needy families program under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and
 - (bb) a State program for which State spending is counted toward the maintenance of effort requirement under section 409(a)(7) of the Social Security Act (42 U.S.C. 609(a)(7));
 - (III) housing assistance;
 - (IV) assistance under the Food and Nutrition Act of 2008 [7 U.S.C. 2011 et seq.]; and
 - (V) other assistance programs;
- (vi) the number of months the family has received benefits;
- (vii) the type of child care in which the child was enrolled (such as family child care, home care, or center-based child care);
- (viii) whether the child care provider involved was a relative;
- (ix) the cost of child care for such families; and
- (x) the average hours per month of such care;

during the period for which such information is required to be submitted.

(C) Submission to Secretary

A State described in subparagraph (A) shall, on a quarterly basis, submit the information required to be collected under subparagraph (B) to the Secretary.

(D) Use of samples

(i) Authority

A State may comply with the requirement to collect the information described in subparagraph (B) through the use of disaggregated case record information on a sample of families selected through the use of scientifically acceptable sampling methods approved by the Secretary.

(ii) Sampling and other methods

The Secretary shall provide the States with such case sampling plans and data collection procedures as the Secretary deems necessary to produce statistically valid samples of the information described in subparagraph (B). The Secretary may

develop and implement procedures for verifying the quality of data submitted by the States.

(2) Annual reports

Not later than December 31, 1997, and every 12 months thereafter, a State described in paragraph (1)(A) shall prepare and submit to the Secretary a report that includes aggregate data concerning—

- (A) the number of child care providers that received funding under this subchapter as separately identified based on the types of providers listed in section 9858n(5) of this title;
- (B) the monthly cost of child care services, and the portion of such cost that is paid for with assistance provided under this subchapter, listed by the type of child care services provided;
- (C) the number of payments made by the State through vouchers, contracts, cash, and disregards under public benefit programs, listed by the type of child care services provided;
- (D) the manner in which consumer education information was provided to parents and the number of parents to whom such information was provided; and
- (E) the total number (without duplication) of children and families served under this subchapter;

during the period for which such report is required to be submitted.

(b) Audits

(1) Requirement

A State shall, after the close of each program period covered by an application approved under section 9858c(d) of this title audit its expenditures during such program period from amounts received under this subchapter.

(2) Independent auditor

Audits under this subsection shall be conducted by an entity that is independent of the State that receives assistance under this subchapter and be in accordance with generally accepted auditing principles.

(3) Submission

Not later than 30 days after the completion of an audit under this subsection, the State shall submit a copy of the audit to the legislature of the State and to the Secretary.

(4) Repayment of amounts

Each State shall repay to the United States any amounts determined through an audit under this subsection not to have been expended in accordance with this subchapter, or the Secretary may offset such amounts against any other amount to which the State is or may be entitled under this subchapter.

(Pub. L. 97-35, title VI, §658K, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-243; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §611, Aug. 22, 1996, 110 Stat. 2284; Pub. L. 105-33, title V, §5602(2), Aug. 5, 1997, 111 Stat. 646; Pub.

L. 110-234, title IV, § 4002(b)(1)(B), (2)(FF), May 22, 2008, 122 Stat. 1096, 1098; Pub. L. 110-246, § 4(a), title IV, § 4002(b)(1)(B), (2)(FF), June 18, 2008, 122 Stat. 1664, 1857, 1859.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1)(B)(v)(II)(aa), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Food and Nutrition Act of 2008, referred to in subsec. (a)(1)(B)(v)(IV), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, which is classified generally to chapter 51 (§2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

CODIFICATION

Pub. L. 110-234 and Pub. L. 110-246 made identical amendments to this section. The amendments by Pub. L. 110-234 were repealed by section 4(a) of Pub. L. 110-246.

AMENDMENTS

2008—Subsec. (a)(1)(B)(v)(IV). Pub. L. 110-246, § 4002(b)(1)(B), (2)(FF), substituted “Food and Nutrition Act of 2008” for “Food Stamp Act of 1977”.

1997—Subsec. (a)(1)(B)(iv). Pub. L. 105-33, § 5602(2)(A)(i)(I), added cl. (iv) and struck out former cl. (iv) which read as follows: “whether the family includes only one parent;”.

Subsec. (a)(1)(B)(v). Pub. L. 105-33, § 5602(2)(A)(i)(II)(aa), substituted “including—” for “including the amount obtained from (and separately identified)—” in introductory provisions.

Subsec. (a)(1)(B)(v)(II). Pub. L. 105-33, § 5602(2)(A)(i)(II)(bb), added subcl. (II) and struck out former subcl. (II) which read as follows: “cash or other assistance under part A of title IV of the Social Security Act;”.

Subsec. (a)(1)(B)(x). Pub. L. 105-33, § 5602(2)(A)(i)(III), substituted “month” for “week”.

Subsec. (a)(1)(D). Pub. L. 105-33, § 5602(2)(A)(ii), added subpar. (D) and struck out heading and text of former subpar. (D). Text read as follows: “The Secretary may disapprove the information collected by a State under this paragraph if the State uses sampling methods to collect such information.”

Subsec. (a)(2). Pub. L. 105-33, § 5602(2)(B), substituted “Annual” for “Biannual” in heading and “12” for “6” in introductory provisions of text.

1996—Pub. L. 104-193, § 611(1), substituted “Reports” for “Annual report” in section catchline.

Subsec. (a). Pub. L. 104-193, § 611(2), amended heading and text of subsec. (a) generally. Prior to amendment, text related to requirement of reports by Dec. 31, 1992, and annually thereafter, which include specification of expenditures under section 9858c(c)(3) of this title, data on fulfillment of child care needs, description of improvements in affordability and availability, description of review of State licensing and regulatory requirements and policies and results of review, explanation of any reductions in child care standards, and description of standards and health and safety requirements applicable to providers.

Subsec. (b)(1). Pub. L. 104-193, § 611(2)(3)(A), substituted “an application approved” for “a application approved”.

Subsec. (b)(2). Pub. L. 104-193, § 611(2)(3)(B), substituted “the State that receives” for “any agency administering activities that receive”.

Subsec. (b)(4). Pub. L. 104-193, § 611(2)(3)(C), substituted “entitled under this subchapter” for “entitled under this subchapter”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment of this section and repeal of Pub. L. 110-234 by Pub. L. 110-246 effective May 22, 2008, the date of enactment of Pub. L. 110-234, except as otherwise provided, see section 4 of Pub. L. 110-246, set out as an Effective Date note under section 8701 of Title 7, Agriculture.

Amendment by section 4002(b)(1)(B), (2)(FF) of Pub. L. 110-246 effective Oct. 1, 2008, see section 4407 of Pub. L. 110-246, set out as a note under section 1161 of Title 2, The Congress.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858j. Report by Secretary

Not later than July 31, 1998, and biennially thereafter, the Secretary shall prepare and submit to the Committee on Economic and Educational Opportunities of the House of Representatives and the Committee on Labor and Human Resources of the Senate a report that contains a summary and analysis of the data and information provided to the Secretary in the State reports submitted under section 9858i of this title. Such report shall include an assessment, and where appropriate, recommendations for the Congress concerning efforts that should be undertaken to improve the access of the public to quality and affordable child care in the United States.

(Pub. L. 97-35, title VI, § 658L, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-244; amended Pub. L. 102-401, § 3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, § 612, Aug. 22, 1996, 110 Stat. 2285; Pub. L. 105-33, title V, § 5602(3), Aug. 5, 1997, 111 Stat. 646.)

AMENDMENTS

1997—Pub. L. 105-33 substituted “1998” for “1997”.

1996—Pub. L. 104-193 substituted “July 31, 1997, and biennially thereafter” for “July 31, 1993, and annually thereafter” and “Committee on Economic and Educational Opportunities” for “Committee on Education and Labor”.

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

CHANGE OF NAME

Committee on Labor and Human Resources of Senate changed to Committee on Health, Education, Labor, and Pensions of Senate by Senate Resolution No. 20, One Hundred Sixth Congress, Jan. 19, 1999.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858k. Limitations on use of financial assistance for certain purposes

(a) Sectarian purposes and activities

No financial assistance provided under this subchapter, pursuant to the choice of a parent under section 9858c(c)(2)(A)(i)(I) of this title or through any other grant or contract under the State plan, shall be expended for any sectarian purpose or activity, including sectarian worship or instruction.

(b) Tuition

With regard to services provided to students enrolled in grades 1 through 12, no financial assistance provided under this subchapter shall be expended for—

- (1) any services provided to such students during the regular school day;
- (2) any services for which such students receive academic credit toward graduation; or
- (3) any instructional services which supplant or duplicate the academic program of any public or private school.

(Pub. L. 97-35, title VI, §658M, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-244; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858l. Nondiscrimination

(a) Religious nondiscrimination

(1) Construction

(A) In general

Except as provided in subparagraph (B), nothing in this section shall be construed to modify or affect the provisions of any other Federal law or regulation that relates to discrimination in employment on the basis of religion.

(B) Exception

A sectarian organization may require that employees adhere to the religious tenets and teachings of such organization, and such organization may require that employees adhere to rules forbidding the use of drugs or alcohol.

(2) Discrimination against child

(A) In general

A child care provider (other than a family child care provider) that receives assistance under this subchapter shall not discriminate against any child on the basis of religion in providing child care services.

(B) Non-funded child care slots

Nothing in this section shall prohibit a child care provider from selecting children for child care slots that are not funded directly with assistance provided under this subchapter because such children or their family members participate on a regular basis in other activities of the organization that owns or operates such provider.

(3) Employment in general

(A) Prohibition

A child care provider that receives assistance under this subchapter shall not discriminate in employment on the basis of the religion of the prospective employee if such employee's primary responsibility is or will be working directly with children in the provision of child care services.

(B) Qualified applicants

If two or more prospective employees are qualified for any position with a child care provider receiving assistance under this subchapter, nothing in this section shall prohibit such child care provider from employing a prospective employee who is already participating on a regular basis in other activities of the organization that owns or operates such provider.

(C) Present employees

This paragraph shall not apply to employees of child care providers receiving assistance under this subchapter if such employees are employed with the provider on November 5, 1990.

(4) Employment and admission practices

Notwithstanding paragraphs (1)(B), (2), and (3), if assistance provided under this subchapter, and any other Federal or State program, amounts to 80 percent or more of the operating budget of a child care provider that receives such assistance, the Secretary shall not permit such provider to receive any further assistance under this subchapter unless the grant or contract relating to the financial assistance, or the employment and admissions policies of the provider, specifically provides that no person with responsibilities in the operation of the child care program, project, or activity of the provider will discriminate against any individual in employment, if such employee's primary responsibility is or will be working directly with children in the provision of child care, or admissions because of the religion of such individual.

(b) Effect on State law

Nothing in this subchapter shall be construed to supersede or modify any provision of a State constitution or State law that prohibits the expenditure of public funds in or by sectarian institutions, except that no provision of a State constitution or State law shall be construed to prohibit the expenditure in or by sectarian institutions of any Federal funds provided under this subchapter.

(Pub. L. 97-35, title VI, §658N, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-245; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858m. Amounts reserved; allotments**(a) Amounts reserved****(1) Territories and possessions**

The Secretary shall reserve not to exceed one half of 1 percent of the amount appropriated under this subchapter in each fiscal year for payments to Guam, American Samoa, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(2) Indians¹ tribes

The Secretary shall reserve not less than 1 percent, and not more than 2 percent, of the amount appropriated under section 9858 of this title in each fiscal year for payments to Indian tribes and tribal organizations with applications approved under subsection (c) of this section.

(b) State allotment**(1) General rule**

From the amounts appropriated under section 9858 of this title for each fiscal year remaining after reservations under subsection (a) of this section, the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

The term “young child factor” means the ratio of the number of children in the State under 5 years of age to the number of such children in all States as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

The term “school lunch factor” means the ratio of the number of children in the State who are receiving free or reduced price lunches under the school lunch program established under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to the number of such children in all the States as determined annually by the Department of Agriculture.

(4) Allotment percentage**(A) In general**

The allotment percentage for a State is determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A)—

(i) exceeds 1.2 percent, then the allotment percentage of that State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, then the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—

(i) determined at 2-year intervals;

(ii) applied for the 2-year period beginning on October 1 of the first fiscal year beginning on the date such determination is made; and

(iii) equal to the average of the annual per capita incomes for the most recent period of 3 consecutive years for which satisfactory data are available from the Department of Commerce at the time such determination is made.

(c) Payments for benefit of Indian children**(1) General authority**

From amounts reserved under subsection (a)(2) of this section, the Secretary may make grants to or enter into contracts with Indian tribes or tribal organizations that submit applications under this section, for the planning and carrying out of programs or activities consistent with the purposes of this subchapter.

(2) Applications and requirements

An application for a grant or contract under this section shall provide that:

(A) Coordination

The applicant will coordinate, to the maximum extent feasible, with the lead agency in the State or States in which the applicant will carry out programs or activities under this section.

(B) Services on reservations

In the case of an applicant located in a State other than Alaska, California, or Oklahoma, programs and activities under this section will be carried out on the Indian reservation for the benefit of Indian children.

(C) Reports and audits

The applicant will make such reports on, and conduct such audits of, programs and activities under a grant or contract under this section as the Secretary may require.

(3) Consideration of secretarial approval

In determining whether to approve an application for a grant or contract under this section, the Secretary shall take into consideration—

(A) the availability of child care services provided in accordance with this subchapter by the State or States in which the applicant proposes to carry out a program to provide child care services; and

(B) whether the applicant has the ability (including skills, personnel, resources, community support, and other necessary components) to satisfactorily carry out the proposed program or activity.

¹ So in original. Probably should be “Indian”.

(4) Three-year limit

Grants or contracts under this section shall be for periods not to exceed 3 years.

(5) Dual eligibility of Indian children

The awarding of a grant or contract under this section for programs or activities to be conducted in a State or States shall not affect the eligibility of any Indian child to receive services provided or to participate in programs and activities carried out under a grant to the State or States under this subchapter.

(6) Construction or renovation of facilities**(A) Request for use of funds**

An Indian tribe or tribal organization may submit to the Secretary a request to use amounts provided under this subsection for construction or renovation purposes.

(B) Determination

With respect to a request submitted under subparagraph (A), and except as provided in subparagraph (C), upon a determination by the Secretary that adequate facilities are not otherwise available to an Indian tribe or tribal organization to enable such tribe or organization to carry out child care programs in accordance with this subchapter, and that the lack of such facilities will inhibit the operation of such programs in the future, the Secretary may permit the tribe or organization to use assistance provided under this subsection to make payments for the construction or renovation of facilities that will be used to carry out such programs.

(C) Limitation

The Secretary may not permit an Indian tribe or tribal organization to use amounts provided under this subsection for construction or renovation if such use will result in a decrease in the level of child care services provided by the tribe or organization as compared to the level of such services provided by the tribe or organization in the fiscal year preceding the year for which the determination under subparagraph (B) is being made.

(D) Uniform procedures

The Secretary shall develop and implement uniform procedures for the solicitation and consideration of requests under this paragraph.

(d) Data and information

The Secretary shall obtain from each appropriate Federal agency, the most recent data and information necessary to determine the allotments provided for in subsection (b) of this section.

(e) Reallotments**(1) In general**

Any portion of the allotment under subsection (b) of this section to a State that the Secretary determines is not required to carry out a State plan approved under section 9858c(d) of this title, in the period for which the allotment is made available, shall be real-

lotted by the Secretary to other States in proportion to the original allotments to the other States.

(2) Limitations**(A) Reduction**

The amount of any reallotment to which a State is entitled to under paragraph (1) shall be reduced to the extent that it exceeds the amount that the Secretary estimates will be used in the State to carry out a State plan approved under section 9858c(d) of this title.

(B) Reallotments

The amount of such reduction shall be similarly reallocated among States for which no reduction in an allotment or reallotment is required by this subsection.

(3) Amounts reallocated

For purposes of any other section of this subchapter, any amount reallocated to a State under this subsection shall be considered to be part of the allotment made under subsection (b) of this section to the State.

(4) Indian tribes or tribal organizations

Any portion of a grant or contract made to an Indian tribe or tribal organization under subsection (c) of this section that the Secretary determines is not being used in a manner consistent with the provision of this subchapter in the period for which the grant or contract is made available, shall be allotted by the Secretary to other tribes or organizations that have submitted applications under subsection (c) of this section in accordance with their respective needs.

(f) "State" defined

For the purposes of this section, the term "State" includes only the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 97-35, title VI, §658O, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-246; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 104-193, title VI, §613, Aug. 22, 1996, 110 Stat. 2286; Pub. L. 105-33, title V, §5602(4), Aug. 5, 1997, 111 Stat. 646; Pub. L. 106-78, title VII, §752(b)(17), Oct. 22, 1999, 113 Stat. 1170.)

REFERENCES IN TEXT

The Richard B. Russell National School Lunch Act, referred to in subsec. (b)(3), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1999—Subsec. (b)(3). Pub. L. 106-78 substituted "Richard B. Russell National School Lunch Act" for "National School Lunch Act".

1997—Subsec. (c)(6)(C). Pub. L. 105-33 substituted "subparagraph (B)" for "subparagraph (A)".

1996—Subsec. (a)(1). Pub. L. 104-193, §613(1)(A), made technical amendment to heading, inserted "and" before "the Commonwealth of the Northern Marianna Islands", and struck out "and the Trust Territory of the Pacific Islands" before "to be allotted in accordance".

Subsec. (a)(2). Pub. L. 104-193, § 613(1)(B), substituted “less than 1 percent, and not more than 2 percent,” for “more than 3 percent”.

Subsec. (c)(5). Pub. L. 104-193, § 613(2)(A), substituted “activities carried out” for “activities carried out”.

Subsec. (c)(6). Pub. L. 104-193, § 613(2)(B), added par. (6).

Subsec. (e)(4). Pub. L. 104-193, § 613(3), added par. (4). 1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, § 5082(2), which added this section.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

§ 9858n. Definitions

As used in this subchapter:

(1) Caregiver

The term “caregiver” means an individual who provides a service directly to an eligible child on a person-to-person basis.

(2) Child care certificate

The term “child care certificate” means a certificate (that may be a check or other disbursement) that is issued by a State or local government under this subchapter directly to a parent who may use such certificate only as payment for child care services or as a deposit for child care services if such a deposit is required of other children being cared for by the provider. Nothing in this subchapter shall preclude the use of such certificates for sectarian child care services if freely chosen by the parent. For purposes of this subchapter, child care certificates shall not be considered to be grants or contracts.

(3) Repealed. Pub. L. 104-193, title VI, § 614(2), Aug. 22, 1996, 110 Stat. 2287

(4) Eligible child

The term “eligible child” means an individual—

(A) who is less than 13 years of age;

(B) whose family income does not exceed 85 percent of the State median income for a family of the same size; and

(C) who—

(i) resides with a parent or parents who are working or attending a job training or educational program; or

(ii) is receiving, or needs to receive, protective services and resides with a parent or parents not described in clause (i).

(5) Eligible child care provider

The term “eligible child care provider” means—

(A) a center-based child care provider, a group home child care provider, a family child care provider, or other provider of child care services for compensation that—

(i) is licensed, regulated, or registered under State law as described in section 9858c(c)(2)(E) of this title; and

(ii) satisfies the State and local requirements, including those referred to in section 9858c(c)(2)(F) of this title;

applicable to the child care services it provides; or

(B) a child care provider that is 18 years of age or older who provides child care services only to eligible children who are, by affinity or consanguinity, or by court decree, the grandchild, great grandchild, sibling (if such provider lives in a separate residence), niece, or nephew of such provider, if such provider complies with any applicable requirements that govern child care provided by the relative involved.

(6) Family child care provider

The term “family child care provider” means one individual who provides child care services for fewer than 24 hours per day, as the sole caregiver, and in a private residence.

(7) Indian tribe

The term “Indian tribe” has the meaning given it in section 450b(e) of title 25.

(8) Lead agency

The term “lead agency” means the agency designated under section 9858(a)¹ of this title.

(9) Parent

The term “parent” includes a legal guardian or other person standing in loco parentis.

(10) Repealed. Pub. L. 104-193, title VI, § 614(5), Aug. 22, 1996, 110 Stat. 2287

(11) Secretary

The term “Secretary” means the Secretary of Health and Human Services unless the context specifies otherwise.

(12) Sliding fee scale

The term “sliding fee scale” means a system of cost sharing by a family based on income and size of the family.

(13) State

The term “State” means any of the several States, the District of Columbia, the Virgin Islands of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(14) Tribal organization

(A) In general

The term “tribal organization” has the meaning given it in section 450b(l) of title 25.

(B) Other organizations

Such term includes a Native Hawaiian Organization, as defined in section 4909(4)¹ of title 20 and a private nonprofit organization established for the purpose of serving youth who are Indians or Native Hawaiians.

(Pub. L. 97-35, title VI, § 658P, as added Pub. L. 101-508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388-248; amended Pub. L. 102-401, § 3, Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, § 8(c), Nov. 4, 1992, 106 Stat. 5036; Pub. L. 103-171, § 8, Dec. 2, 1993, 107

¹ See References in Text note below.

Stat. 1994; Pub. L. 104-193, title VI, §614, Aug. 22, 1996, 110 Stat. 2287; Pub. L. 105-33, title V, §5602(5), Aug. 5, 1997, 111 Stat. 646.)

REFERENCES IN TEXT

Section 9858 of this title, referred to in par. (8), does not contain a subsec. (a) and does not relate to designation of lead agencies. For provisions relating to designation of a State agency to act as a lead agency, see section 9858b(a) of this title.

Section 4909 of title 20, referred to in par. (14)(B), was repealed by Pub. L. 103-382, title III, §363, Oct. 20, 1994, 108 Stat. 3975.

AMENDMENTS

1997—Par. (13). Pub. L. 105-33 substituted “and” for “or” after “American Samoa.”

1996—Par. (2). Pub. L. 104-193, §614(1), in first sentence, inserted “or as a deposit for child care services if such a deposit is required of other children being cared for by the provider” after “payment for child care services”.

Par. (3). Pub. L. 104-193, §614(2), struck out heading and text of par. (3). Text read as follows: “The term ‘elementary school’ means a day or residential school that provides elementary education, as determined under State law.”

Par. (4)(B). Pub. L. 104-193, §614(3), substituted “85 percent” for “75 percent”.

Par. (5)(B). Pub. L. 104-193, §614(4), inserted “great grandchild, sibling (if such provider lives in a separate residence),” after “grandchild,” struck out “is registered and” after “such provider”, and substituted “any applicable requirements” for “any State requirements”.

Par. (10). Pub. L. 104-193, §614(5), struck out heading and text of par. (10). Text read as follows: “The term ‘secondary school’ means a day or residential school which provides secondary education, as determined under State law.”

Par. (13). Pub. L. 104-193, §614(6), inserted “or” after “Samoa,” and struck out “,” and the Trust Territory of the Pacific Islands” after “Northern Mariana Islands”.

Par. (14). Pub. L. 104-193, §614(7), designated existing text as subpar. (A), inserted heading, and added subpar. (B).

1993—Pars. (7), (14). Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(c)(2). See 1992 Amendment note below.

1992—Pub. L. 102-401, §3(a), and Pub. L. 102-586, §8(c)(1), made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

Par. (7). Pub. L. 102-586, §8(c)(2)(A), as amended by Pub. L. 103-171, which directed the amendment of par. (7) by substituting “section 450b(e) of title 25” for “section 450b(b) of title 25”, could not be executed because the words “section 450b(b) of title 25” did not appear subsequent to execution of the amendment by Pub. L. 102-401, §3(b)(1). See below.

Pub. L. 102-401, §3(b)(1), substituted “section 450b(e) of title 25” for “section 450b(b) of title 25”.

Par. (14). Pub. L. 102-586, §8(c)(2)(B), as amended by Pub. L. 103-171, which directed the amendment of par. (14) by substituting “section 450b(l) of title 25” for “section 450b(c) of title 25”, could not be executed because the words “section 450b(c) of title 25” did not appear subsequent to execution of the amendment by Pub. L. 102-401, §3(b)(2). See below.

Pub. L. 102-401, §3(b)(2), substituted “section 450b(l) of title 25” for “section 450b(c) of title 25”.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective as if included in the enactment of title VI of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, see section 5603 of Pub. L. 105-33, set out as a note under section 618 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-193 effective Oct. 1, 1996, see section 615 of Pub. L. 104-193, set out as a note under section 9858 of this title.

EFFECTIVE DATE OF 1992 AMENDMENTS

Amendment by Pub. L. 102-586 effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 8(d) of Pub. L. 102-586, set out as a note under section 9858h of this title.

Amendment by Pub. L. 102-401 effective Oct. 7, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see section 4 of Pub. L. 102-401, set out as a note under section 9835 of this title.

§ 9858o. Parental rights and responsibilities

Nothing in this subchapter shall be construed or applied in any manner to infringe on or usurp the moral and legal rights and responsibilities of parents or legal guardians.

(Pub. L. 97-35, title VI, §658Q, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-249; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858p. Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions of applications of this subchapter which can be given effect without regard to the invalid provision or application, and to this end the provisions of this subchapter shall be severable.

(Pub. L. 97-35, title VI, §658R, as added Pub. L. 101-508, title V, §5082(2), Nov. 5, 1990, 104 Stat. 1388-249; amended Pub. L. 102-401, §3(a), Oct. 7, 1992, 106 Stat. 1959; Pub. L. 102-586, §8(c)(1), Nov. 4, 1992, 106 Stat. 5036.)

AMENDMENTS

1992—Pub. L. 102-401 and Pub. L. 102-586 made identical technical corrections to directory language of Pub. L. 101-508, §5082(2), which added this section.

§ 9858q. Miscellaneous provisions

Notwithstanding any other law, the value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under this subchapter shall not be treated as income for purposes of any other Federal or Federally-assisted program that bases eligibility, or the amount of benefits, on need.

(Pub. L. 97-35, title VI, §658S, as added Pub. L. 102-586, §8(b), Nov. 4, 1992, 106 Stat. 5035; amended Pub. L. 103-171, §8, Dec. 2, 1993, 107 Stat. 1994.)

AMENDMENTS

1993—Pub. L. 103-171 made technical correction to directory language of Pub. L. 102-586, §8(b), which added this section.

EFFECTIVE DATE

Section effective Nov. 4, 1992, but not applicable with respect to fiscal years beginning before Oct. 1, 1992, see

section 8(d) of Pub. L. 102-586, set out as an Effective Date of 1992 Amendment note under section 9858h of this title.

**SUBCHAPTER II-C—CHILD CARE SAFETY
AND HEALTH GRANTS**

CODIFICATION

This subchapter was enacted as part of title XIV of div. A of the Children's Health Act of 2000, and not as part of chapter 8 of subtitle A of title VI of Pub. L. 97-35 which comprises this chapter.

§ 9859. Definitions

In this subchapter:

(1) Child with a disability; infant or toddler with a disability

The terms "child with a disability" and "infant or toddler with a disability" have the meanings given the terms in sections 1401 and 1431 of title 20.

(2) Eligible child care provider

The term "eligible child care provider" means a provider of child care services for compensation, including a provider of care for a school-age child during non-school hours, that—

(A) is licensed, regulated, registered, or otherwise legally operating, under State and local law; and

(B) satisfies the State and local requirements,

applicable to the child care services the provider provides.

(3) Secretary

The term "Secretary" means the Secretary of Health and Human Services.

(4) State

The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(Pub. L. 106-310, div. A, title XIV, §1401, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859a. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter \$200,000,000 for fiscal year 2001, and such sums as may be necessary for each subsequent fiscal year.

(Pub. L. 106-310, div. A, title XIV, §1402, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859b. Programs

The Secretary shall make allotments to eligible States under section 9859c of this title. The Secretary shall make the allotments to enable the States to establish programs to improve the health and safety of children receiving child care outside the home, by preventing illnesses and injuries associated with that care and promoting the health and well-being of children receiving that care.

(Pub. L. 106-310, div. A, title XIV, §1403, Oct. 17, 2000, 114 Stat. 1143.)

§ 9859c. Amounts reserved; allotments

(a) Amounts reserved

The Secretary shall reserve not more than one-half of 1 percent of the amount appropriated under section 9859a of this title for each fiscal year to make allotments to Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands to be allotted in accordance with their respective needs.

(b) State allotments

(1) General rule

From the amounts appropriated under section 9859a of this title for each fiscal year and remaining after reservations are made under subsection (a) of this section, the Secretary shall allot to each State an amount equal to the sum of—

(A) an amount that bears the same ratio to 50 percent of such remainder as the product of the young child factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States; and

(B) an amount that bears the same ratio to 50 percent of such remainder as the product of the school lunch factor of the State and the allotment percentage of the State bears to the sum of the corresponding products for all States.

(2) Young child factor

In this subsection, the term "young child factor" means the ratio of the number of children under 5 years of age in a State to the number of such children in all States, as provided by the most recent annual estimates of population in the States by the Census Bureau of the Department of Commerce.

(3) School lunch factor

In this subsection, the term "school lunch factor" means the ratio of the number of children who are receiving free or reduced price lunches under the school lunch program established under the National School Lunch Act (42 U.S.C. 1751 et seq.) in the State to the number of such children in all States, as determined annually by the Department of Agriculture.

(4) Allotment percentage

(A) In general

For purposes of this subsection, the allotment percentage for a State shall be determined by dividing the per capita income of all individuals in the United States, by the per capita income of all individuals in the State.

(B) Limitations

If an allotment percentage determined under subparagraph (A) for a State—

(i) is more than 1.2 percent, the allotment percentage of the State shall be considered to be 1.2 percent; and

(ii) is less than 0.8 percent, the allotment percentage of the State shall be considered to be 0.8 percent.

(C) Per capita income

For purposes of subparagraph (A), per capita income shall be—