

AMENDED IN ASSEMBLY MAY 6, 2015

AMENDED IN ASSEMBLY APRIL 9, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 233**

---

---

**Introduced by Assembly Member Lopez**

February 4, 2015

---

---

An act to amend Sections 8220, 8221.5, 8222, 8225, 8263, 8269, and 8273 of the Education Code, relating to child care.

LEGISLATIVE COUNSEL'S DIGEST

AB 233, as amended, Lopez. Child care and development services: alternative payment programs: reimbursement rates.

The Child Care and Development Services Act has a purpose of providing a comprehensive, coordinated, and cost-effective system of child care and development services for children from infancy to 13 years of age and their parents, including a full range of supervision, health, and support services through full- and part-time programs. The act requires the State Department of Education to contract with local contracting agencies for alternative payment programs that are intended to allow for maximum parental choice in child care. The act, to provide maximum parental choice, authorizes alternative payment programs to include certain things, including a subsidy that follows the family from one provider to another, as provided. Existing law authorizes funds appropriated for the act to be used for alternative payment programs to allow for maximum parental choice, as provided.

This bill would, to provide maximum parental choice and access, instead require alternative payment programs to include these certain things, and to also include an eligibility determination process of every

~~12 months.~~ *things.* The bill would authorize funds appropriated for the act to also be used to allow for maximum parental access, as provided.

The act requires certain child care providers to submit to the alternative payment program a monthly attendance record or invoice, as provided, and requires the record or invoice to be maintained by the child care provider in the unaltered original form in which it was created.

This bill would delete the requirement that the child care provider maintain the record or invoice in the unaltered original form in which it was created.

~~The act requires an alternative payment program to verify provider rates no less frequently than once a year, as provided, and requires the department to develop regulations for addressing discrepancies in provider rate levels identified through this verification process. The act requires a child care provider to post the provider's rates and discounts or scholarship policies, if any.~~

*This bill would delete these requirements. this requirement.*

The act requires, when making referrals, every agency operating both a direct service program and an alternative payment program to provide at least 4 referrals, as provided, to a family.

This bill would instead require a resource and referral agency to provide at least 4 referrals to a family, as provided.

The act provides that a family enrolled in a state or federally funded child care and development program whose services would otherwise be terminated, as provided, may continue to receive child development services, as provided.

~~This bill would also require that a family enrolled in a state or federally funded child care and development program to be considered eligible for services for 12 months from time of initial, or annual, eligibility determination~~ *subsequent to enrollment, a child be deemed eligible for services for a period of 12 months.*

The act requires a physical examination and evaluation, including age-appropriate immunization, before, or within 6 weeks of, enrollment, as provided. *Existing law requires a child to be temporarily excluded from the program if there is good cause to believe the child is suffering from a recognized contagious or infectious disease, as provided.*

~~This bill would delete this requirement.~~ *instead specify that if the child care provider has good cause to believe that a child is suffering from a recognized contagious or infectious disease, the child would be temporarily excluded from the program, as provided.*

The act requires the Superintendent to adopt rules, regulations, and guidelines to facilitate the funding and reimbursement procedures.

This bill would require the Superintendent to adopt these rules, regulations, and guidelines to facilitate the funding and reimbursement procedures for contractors operating centers, family child care homes, or both.

The act requires the Superintendent to establish a fee schedule for families using preschool and child care and development services.

This bill would authorize the contractor to require a child care provider to collect the family fee, as deducted from the child care provider reimbursement, or to collect the family fee amount directly from the parent. The bill would authorize specified contractors to develop a written policy that directs parents to pay family fees directly to the child care provider, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 8220 of the Education Code is amended  
2 to read:

3 8220. (a) Upon the approval of the State Department of  
4 Education, funds appropriated for the purposes of this chapter may  
5 be used for alternative payment programs to allow for maximum  
6 parental choice and access. Various methods of reimbursement  
7 for parental costs for child care may be utilized. All payment  
8 arrangements shall conform to the eligibility criteria and the parent  
9 fee schedule established pursuant to Sections 8263 and 8265.

10 (b) To provide for maximum parental choice and access,  
11 alternative payment programs shall include the following:

12 ~~(1) An eligibility determination process of every 12 months.~~

13 ~~(2)~~

14 (1) A subsidy that follows the family from one provider to  
15 another within a given alternative payment program.

16 ~~(3)~~

17 (2) Choices, when possible, among hours of service including  
18 before and after school, evenings, weekends, and split shifts.

19 ~~(4)~~

20 (3) Child care and development services according to parental  
21 choice, including use of family day care homes, general center

1 based programs, and other state-funded programs to the extent that  
2 those programs exist in the general service area and are in  
3 conformity with the purposes and applicable laws for which those  
4 programs were established, but excluding state preschool programs.

5 SEC. 2. Section 8221.5 of the Education Code is amended to  
6 read:

7 8221.5. (a) Child care providers authorized to provide services  
8 pursuant to this article shall submit to the alternative payment  
9 program a monthly attendance record or invoice for each child  
10 who received services that, at a minimum, documents the dates  
11 and actual times care was provided each day, including the time  
12 the child entered and the time the child left care each day. The  
13 information shall be documented on a daily basis.

14 (b) The monthly attendance record or invoice shall, at a  
15 minimum, be signed by the parent or guardian of the child receiving  
16 services and the child care provider once per month to attest that  
17 the child’s attendance is accurately reflected. The verification of  
18 attendance shall be made by signature at the end of each month of  
19 care and under penalty of perjury by both the parent or guardian  
20 of the child receiving services and the child care provider.

21 (c) The monthly attendance record or invoice shall be maintained  
22 by the child care provider.

23 (d) The alternative payment program shall accept the monthly  
24 attendance record or invoice as documentation of the hours of care  
25 provided if the attendance record or invoice includes adequate  
26 information documented on a daily basis, including, at a minimum,  
27 the dates and actual times care was provided each day, including  
28 the time the child entered and the time the child left care each day.  
29 The alternative payment program shall reimburse child care  
30 providers based upon the following criteria:

31 (1) The hours of service provided that are broadly consistent  
32 with certified hours of need.

33 (2) For families with variable schedules, the actual days and  
34 hours of attendance, up to the maximum certified hours.

35 (3) For license-exempt providers that provide part-time services,  
36 the actual days and hours of attendance, up to the maximum  
37 certified hours.

38 (e) For purposes of this section, a monthly attendance record  
39 or invoice is defined as documentation that includes, at a minimum,  
40 the name of the child receiving services, the dates and actual times

1 care was provided each day, including the time the child entered  
2 and the time the child left care each day, that is signed under  
3 penalty of perjury by both the parent or guardian and the child care  
4 provider, attesting that the information provided is accurate.

5 SEC. 3. Section 8222 of the Education Code is amended to  
6 read:

7 8222. (a) Payments made by alternative payment programs  
8 shall not exceed the applicable market rate ceiling. Alternative  
9 payment programs may expend more than the standard  
10 reimbursement rate for a particular child. However, the aggregate  
11 payments for services reimbursed by the agency during the contract  
12 year shall not exceed the assigned reimbursable amount as  
13 established by the contract for the year. An agency shall not make  
14 payments in excess of the rate charged to full-cost families. This  
15 section does not preclude alternative payment programs from using  
16 the average daily enrollment adjustment factor for children with  
17 exceptional needs as provided in Section 8265.5.

18 (b) Alternative payment programs shall reimburse licensed child  
19 care providers in accordance with a biennial market rate survey  
20 pursuant to Section 8447, at a rate not to exceed the ceilings  
21 established pursuant to Section 8357.

22 (c) An alternative payment program shall reimburse a licensed  
23 provider for child care of a subsidized child based on the rate  
24 charged by the provider to nonsubsidized families, if any, for the  
25 same services, or the rates established by the provider for  
26 prospective nonsubsidized families. A licensed child care provider  
27 shall submit to the alternative payment program a copy of the  
28 provider's rate sheet listing the rates charged, and the provider's  
29 discount or scholarship policies, if any, along with a statement  
30 signed by the provider confirming that the rates charged for a  
31 subsidized child are equal to or less than the rates charged for a  
32 nonsubsidized child.

33 (d) An alternative payment program shall maintain a copy of  
34 the rate sheet and the confirmation statement.

35 (e) A licensed child care provider shall submit to the local  
36 resource and referral agency a copy of the provider's rate sheet  
37 listing rates charged, and the provider's discount or scholarship  
38 policies, if any, and shall self-certify that the information is correct.

39 (f) A licensed child care provider may alter rate levels for  
40 subsidized children once per year and shall provide the alternative

1 payment program and resource and referral agency with the updated  
2 information pursuant to subdivisions (c) and (e), to reflect any  
3 changes. An alternative payment program may implement an  
4 altered rate level once per year.

5 *(g) An alternative payment program shall verify provider rates*  
6 *no less frequently than once a year by randomly selecting 10*  
7 *percent of licensed child care providers serving subsidized families.*  
8 *The purpose of this verification process is to confirm that rates*  
9 *reported to the alternative payment programs reasonably*  
10 *correspond to those reported to the resource and referral agency*  
11 *and the rates actually charged to nonsubsidized families for*  
12 *equivalent levels of services. It is the intent of the Legislature that*  
13 *the privacy of nonsubsidized families shall be protected in*  
14 *implementing this subdivision.*

15 *(h) The department shall develop regulations for addressing*  
16 *discrepancies in the provider rate levels identified through the*  
17 *rate verification process in subdivision (g).*

18 SEC. 4. Section 8225 of the Education Code is amended to  
19 read:

20 8225. When making referrals, a resource and referral agency  
21 shall provide at least four referrals, at least one of which shall be  
22 a provider over which the agency has no fiscal or operational  
23 control, as well as information to a family on the family's ability  
24 to choose a ~~license-exempt~~ license-exempt provider.

25 SEC. 5. Section 8263 of the Education Code is amended to  
26 read:

27 8263. (a) The Superintendent shall adopt rules and regulations  
28 on eligibility, enrollment, and priority of services needed to  
29 implement this chapter. In order to be eligible for federal and state  
30 subsidized child development services, families shall meet at least  
31 one requirement in each of the following areas:

32 (1) A family is (A) a current aid recipient, (B) income eligible,  
33 (C) homeless, or (D) one whose children are recipients of protective  
34 services, or whose children have been identified as being abused,  
35 neglected, or exploited, or at risk of being abused, neglected, or  
36 exploited.

37 (2) A family needs the child care services (A) because the child  
38 is identified by a legal, medical, or social services agency, or  
39 emergency shelter as (i) a recipient of protective services or (ii)  
40 being neglected, abused, or exploited, or at risk of neglect, abuse,

1 or exploitation, or (B) because the parents are (i) engaged in  
2 vocational training leading directly to a recognized trade,  
3 paraprofession, or profession, (ii) employed or seeking  
4 employment, (iii) seeking permanent housing for family stability,  
5 or (iv) incapacitated.

6 *(b) Subsequent to enrollment, a child shall be deemed eligible*  
7 *for services for a period of 12 months.*

8 ~~(b)~~

9 (c) Except as provided in Article 15.5 (commencing with Section  
10 8350), priority for federal and state subsidized child development  
11 services is as follows:

12 (1) (A) First priority shall be given to neglected or abused  
13 children who are recipients of child protective services, or children  
14 who are at risk of being neglected or abused, upon written referral  
15 from a legal, medical, or social services agency. If an agency is  
16 unable to enroll a child in the first priority category, the agency  
17 shall refer the family to local resource and referral services to  
18 locate services for the child.

19 (B) A family who is receiving child care on the basis of being  
20 a child at risk of abuse, neglect, or exploitation, as defined in  
21 subdivision (k) of Section 8208, is eligible to receive services  
22 pursuant to subparagraph (A) for up to three months, unless the  
23 family becomes eligible pursuant to subparagraph (C).

24 (C) A family may receive child care services for 12 months on  
25 the basis of a certification by the county child welfare agency that  
26 child care services continue to be necessary or, if the child is  
27 receiving child protective services during that period of time, and  
28 the family requires child care and remains otherwise eligible. This  
29 time limit does not apply if the family's child care referral is  
30 recertified by the county child welfare agency.

31 (2) Second priority shall be given equally to eligible families,  
32 regardless of the number of parents in the home, who are income  
33 eligible. Within this priority, families with the lowest gross monthly  
34 income in relation to family size, as determined by a schedule  
35 adopted by the Superintendent, shall be admitted first. If two or  
36 more families are in the same priority in relation to income, the  
37 family that has a child with exceptional needs shall be admitted  
38 first. If there is no family of the same priority with a child with  
39 exceptional needs, the same priority family that has been on the  
40 waiting list for the longest time shall be admitted first. For purposes

1 of determining order of admission, the grants of public assistance  
2 recipients shall be counted as income.

3 (3) The Superintendent shall set criteria for, and may grant  
4 specific waivers of, the priorities established in this subdivision  
5 for agencies that wish to serve specific populations, including  
6 children with exceptional needs or children of prisoners. These  
7 new waivers shall not include proposals to avoid appropriate fee  
8 schedules or admit ineligible families, but may include proposals  
9 to accept members of special populations in other than strict income  
10 order, as long as appropriate fees are paid.

11 (e)

12 (d) Notwithstanding any other law, in order to promote  
13 continuity of services, a family enrolled in a state or federally  
14 funded child care and development program whose services would  
15 otherwise be terminated because the family no longer meets the  
16 program income, eligibility, or need criteria may continue to  
17 receive child development services in another state or federally  
18 funded child care and development program if the contractor is  
19 able to transfer the family’s enrollment to another program for  
20 which the family is eligible before the date of termination of  
21 services or to exchange the family’s existing enrollment with the  
22 enrollment of a family in another program, provided that both  
23 families satisfy the eligibility requirements for the program in  
24 which they are being enrolled. ~~These families shall be considered~~  
25 ~~eligible for services for 12 months from time of initial, or annual,~~  
26 ~~eligibility determination.~~ The transfer of enrollment may be to  
27 another program within the same administrative agency or to  
28 another agency that administers state or federally funded child  
29 care and development programs.

30 (e)

31 (e) In order to promote continuity of services, the Superintendent  
32 may extend the 60-working-day period specified in subdivision  
33 (a) of Section 18086.5 of Title 5 of the California Code of  
34 Regulations for an additional 60 working days if he or she  
35 determines that opportunities for employment have diminished to  
36 the degree that one or both parents cannot reasonably be expected  
37 to find employment within 60 working days and granting the  
38 extension is in the public interest. The scope of extensions granted  
39 to all contractors pursuant to this subdivision shall be limited to  
40 the necessary geographic areas and affected persons, which shall

1 be described in the Superintendent's order granting the extension.  
2 It is the intent of the Legislature that extensions granted pursuant  
3 to this subdivision improve services in areas with high  
4 unemployment rates or areas with disproportionately high numbers  
5 of seasonal agricultural jobs, or both.

6 *(f) A physical examination and evaluation, including*  
7 *age-appropriate immunization, shall be required before, or within*  
8 *six weeks of, enrollment. A standard, rule, or regulation shall not*  
9 *require medical examination or immunization for admission to a*  
10 *child care and development program of a child whose parent or*  
11 *guardian files a letter with the governing board of the child care*  
12 *and development program stating that the medical examination*  
13 *or immunization is contrary to his or her religious beliefs, or*  
14 *provide for the exclusion of a child from the program because of*  
15 *a parent or guardian having filed the letter. However, if the child*  
16 *care provider has good cause to believe that a child is suffering*  
17 *from a recognized contagious or infectious disease, the child shall*  
18 *be temporarily excluded from the program until the governing*  
19 *board of the child care and development program is satisfied that*  
20 *the child is not suffering from that contagious or infectious disease.*

21 ~~(e)~~

22 *(g) Regulations formulated and promulgated pursuant to this*  
23 *section shall include the recommendations of the State Department*  
24 *of Health Care Services relative to health care screening and the*  
25 *provision of health care services. The Superintendent shall seek*  
26 *the advice and assistance of these health authorities in situations*  
27 *where service under this chapter includes or requires care of*  
28 *children who are ill or children with exceptional needs.*

29 ~~(f)~~

30 *(h) The Superintendent shall establish guidelines for the*  
31 *collection of employer-sponsored child care benefit payments from*  
32 *a parent whose child receives subsidized child care and*  
33 *development services. These guidelines shall provide for the*  
34 *collection of the full amount of the benefit payment, but not to*  
35 *exceed the actual cost of child care and development services*  
36 *provided, notwithstanding the applicable fee based on the fee*  
37 *schedule.*

38 ~~(g)~~

39 *(i) The Superintendent shall establish guidelines according to*  
40 *which the director or a duly authorized representative of the child*

1 care and development program will certify children as eligible for  
2 state reimbursement pursuant to this section.

3 ~~(h)~~

4 (j) Public funds shall not be paid directly or indirectly to an  
5 agency that does not pay at least the minimum wage to each of its  
6 employees.

7 SEC. 6. Section 8269 of the Education Code is amended to  
8 read:

9 8269. The Superintendent shall adopt rules, regulations, and  
10 guidelines to facilitate the funding and reimbursement procedures  
11 for contractors operating centers, family child care homes, or both,  
12 required by this chapter.

13 SEC. 7. Section 8273 of the Education Code is amended to  
14 read:

15 8273. (a) The Superintendent shall establish a fee schedule  
16 for families using preschool and child care and development  
17 services pursuant to this chapter, including families receiving  
18 services pursuant to paragraph (1) of subdivision (b) of Section  
19 8263. It is the intent of the Legislature that the new fee schedule  
20 shall be simple and easy to implement.

21 (b) The family fee schedule shall retain a flat monthly fee per  
22 family. The schedule shall differentiate between fees for part-time  
23 care and full-time care.

24 (c) A contractor operating pursuant to Section 8220 may develop  
25 a written policy that directs parents to pay family fees directly to  
26 the child care provider.

27 (1) The contractor shall provide written notification of the  
28 assessed fee to both the parent and the child care provider.

29 (2) The contractor shall deduct the amount of the family fee  
30 assessed to the parent when calculating the payment due to the  
31 child care provider.

32 (3) The contractor shall report its payment to the child care  
33 provider plus the assessed family fees as an expense on the  
34 attendance and expenditure reports as required by regulation.

35 (4) A contractor with a written policy directing parents to pay  
36 family fees directly to the child care provider are exempt from all  
37 of the following:

38 (A) Requiring families to pay family fees in advance of child  
39 care services.

1 (B) Requiring any record or proof that the family paid any  
2 applicable family fees to the child care provider.

3 (C) Notification of delinquent fees or termination for delinquent  
4 fees.

5 (d) The contractor is authorized to require child care providers  
6 to collect the family fee, which shall be deducted from the  
7 reimbursement to the child care provider, or to collect the family  
8 fee amount directly from the parent.

9 (e) Using the most recently approved family fee schedule  
10 pursuant to subdivision (f) of Section 8447, families shall be  
11 assessed a flat monthly fee based on income, certified family need  
12 for full-time or part-time care services, and enrollment, and shall  
13 not be based on actual attendance. A recalculation of a family fee  
14 shall not occur if attendance varies from enrollment unless a change  
15 in need for care is assessed.

16 (f) The Superintendent shall design the new family fee schedule  
17 based on the state median income data that was in use for the  
18 2007–08 fiscal year, adjusted for family size. The revised family  
19 fee schedule shall begin at income levels at which families  
20 currently begin paying fees. The revised fees shall not exceed 10  
21 percent of the family’s monthly income. The Superintendent shall  
22 first submit the adjusted fee schedule to the Department of Finance  
23 for approval.

24 (g) The income of a recipient of federal supplemental security  
25 income benefits pursuant to Title XVI of the federal Social Security  
26 Act (42 U.S.C. Sec. 1381 et seq.) and state supplemental program  
27 benefits pursuant to Title XVI of the federal Social Security Act  
28 (42 U.S.C. Sec. 1381 et seq.) and Chapter 3 (commencing with  
29 Section 12000) of Part 3 of Division 9 of the Welfare and  
30 Institutions Code shall not be included in total countable income  
31 for purposes of determining the amount of the family fee.

32 (h) Family fees shall be assessed at initial enrollment and  
33 reassessed at update of certification or recertification.

34 (i) It is the intent of the Legislature that the new family fees  
35 shall be cost neutral to the state and generate roughly the same  
36 amount of revenue as was generated under the previous family fee  
37 schedule.

O