

AMENDED IN ASSEMBLY MAY 31, 2016
AMENDED IN ASSEMBLY APRIL 12, 2016
AMENDED IN ASSEMBLY APRIL 5, 2016
AMENDED IN ASSEMBLY MARCH 18, 2016
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2133

Introduced by Assembly Member Chu

February 17, 2016

An act to add ~~Sections 8221.6 and 8221.7~~ *Section 8221.6* to the Education Code, relating to child care and development.

LEGISLATIVE COUNSEL'S DIGEST

AB 2133, as amended, Chu. Child care: alternative payment programs: ~~appeals~~ *complaint* process.

Existing law, the Child Care and Development Services 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.

This bill would ~~require the department to establish a 2-step appeals process for parents who receive child care subsidies, as specified, and a 2-step appeals process for family child care providers who receive child care subsidy payments,~~ *provide that a licensed or license-exempt child care provider who receives payment through a designated alternative payment program may file a complaint, alleging that the alternative payment program has not complied with federal or state law or regulation, pursuant to the Uniform Complaint Procedures in the California Code of Regulations, as specified.*

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. *It is the intent of the Legislature to codify the*
2 *rights of child care providers who are paid to provide child care*
3 *through an alternative payment program to file a complaint with*
4 *the State Department of Education when a child care provider has*
5 *reason to believe that the alternative payment program contractor*
6 *has violated federal or state law or regulation.*

7 SEC. 2. *Section 8221.6 is added to the Education Code, to*
8 *read:*

9 8221.6. (a) *A licensed or license-exempt child care provider*
10 *who receives payment through the alternative payment program*
11 *may file a complaint, alleging that an alternative payment program*
12 *has not complied with federal or state law or regulation, pursuant*
13 *to the Uniform Complaint Procedures set forth in Chapter 5.1*
14 *(commencing with Section 4600) of Division 1 of Title 5 of the*
15 *California Code of Regulations.*

16 (b) *For purposes of this section, alternative payment programs*
17 *are operated by contractors reimbursed under the following*
18 *contract types:*

- 19 (1) *The California Alternative Payment Program.*
- 20 (2) *The CalWORKs Stage 2 Program.*
- 21 (3) *The CalWORKs Stage 3 Program.*
- 22 (4) *The Migrant Alternative Payment Program.*

23 (c) *The operation of this section is contingent upon the*
24 *enactment of an appropriation for this purpose in the annual*
25 *Budget Act or another statute.*

26 ~~SECTION 1. It is the intent of the Legislature to do all of the~~
27 ~~following:~~

28 ~~(a) To ensure that parents eligible for child care subsidies~~
29 ~~through the alternative payment program, also known as the~~
30 ~~contractor, receive accurate and reliable information as to their~~
31 ~~eligibility for services and their right to choose the appropriate~~
32 ~~early education program for their child, and that eligible providers~~
33 ~~are able to care for subsidized children in accordance with state~~
34 ~~statute.~~

1 ~~(b) To ensure that the providers of care receive appropriate~~
2 ~~referrals and accurate and timely payment for their services.~~

3 ~~(c) To establish appeals processes to ensure that parents and~~
4 ~~providers have administrative remedies when they have reason to~~
5 ~~believe that a decision by an alternative payment program is~~
6 ~~incorrect.~~

7 ~~SEC. 2. Section 8221.6 is added to the Education Code, to~~
8 ~~read:~~

9 ~~8221.6. (a) The department shall establish a two-step appeals~~
10 ~~process for parents who receive subsidies that includes a first step~~
11 ~~within the alternative payment program agency with the hearing~~
12 ~~officer being an administrative employee other than the employee~~
13 ~~who made the decision that is being appealed, and a second step~~
14 ~~within the Early Education and Support Division. The department's~~
15 ~~decision shall be final.~~

16 ~~(b) (1) (A) The contractor, through the notice of action, shall~~
17 ~~notify the parent of his or her appeal rights as established under~~
18 ~~this section any time a notice of action is sent to the parent. As~~
19 ~~used in this section, "contractor" means the local contracting~~
20 ~~agency that has entered into an agreement with the department for~~
21 ~~an alternative payment program.~~

22 ~~(B) The contractor shall complete a notice of action if the~~
23 ~~application for services is approved, or when changes are made to~~
24 ~~the service agreement. These changes may include, but are not~~
25 ~~necessarily limited to, an increase or decrease in parent fees, an~~
26 ~~increase or decrease in the amount of services or termination of~~
27 ~~services, or a violation of parental choice.~~

28 ~~(C) The contractor shall mail or deliver the notice of action to~~
29 ~~the parent at least 14 calendar days before the effective date of the~~
30 ~~intended action.~~

31 ~~(D) If the parent disagrees with an action, the parent may file a~~
32 ~~request for a hearing with the contractor within 30 calendar days~~
33 ~~of the date the notice of action was received.~~

34 ~~(E) Upon the filing of a request for hearing, the intended action~~
35 ~~shall be suspended until the review process has been completed.~~
36 ~~The review process is complete when the appeal process has been~~
37 ~~exhausted, including the second step at the department, or when~~
38 ~~the parent abandons the appeal process.~~

39 ~~(F) Within 10 calendar days following the receipt of the request~~
40 ~~for a hearing, the contractor shall notify the parent of the time and~~

1 place of the hearing. The time and place of the hearing shall, to
2 the extent possible, be convenient for the parent and shall be held
3 no later than 14 calendar days after the date when the notice of
4 hearing was sent to the parent.

5 (G) The hearing shall be conducted by an administrative staff
6 person who shall be referred to as “the hearing officer.” The
7 hearing officer shall be at a staff level higher in authority than the
8 staff person who made the contested decision.

9 (H) The parent, or the parent’s representative of his or her
10 choosing, shall be required to attend the hearing. If the parent or
11 the parent’s representative fails to appear at the hearing, the parent
12 shall be deemed to have abandoned the appeal.

13 (I) The contractor shall arrange for the presence of an interpreter
14 at the hearing if one is requested by the parent.

15 (J) The hearing officer shall explain to the parent the legal,
16 regulatory, or policy basis for the intended action.

17 (K) During the hearing, the parent shall have an opportunity to
18 explain the reason or reasons he or she believes that the contractor’s
19 decision was incorrect. The contractor’s staff shall present any
20 material facts they believe were omitted by the parent.

21 (L) The hearing officer shall mail or deliver to the parent a
22 written decision within 10 calendar days after the hearing.

23 (2) If the parent is receiving Stage 1 CalWORKs child care
24 funding, the appeals process applicable to the CalWORKs program
25 pursuant to Chapter 2 (commencing with Section 11200) of Part
26 3 of Division 9 of the Welfare and Institutions Code shall apply.

27 (e) (1) If the parent disagrees with the written decision from
28 the contractor, the parent has 30 calendar days in which to appeal
29 to the Early Education and Support Division.

30 (2) If the parent does not submit an appeal request to the Early
31 Education and Support Division within 30 calendar days, the
32 parent’s appeal process shall be deemed abandoned and the
33 contractor may implement the intended action.

34 (3) The parent shall specify in the appeal request the reason or
35 reasons why he or she believes the contractor’s decision is
36 incorrect.

37 (4) Upon receipt of an appeal request, the Early Education and
38 Support Division shall request copies of the basic data file
39 including the intended notice of action and the contractor’s written
40 decision and other relevant materials from the contractor. The

1 ~~Early Education and Support Division may also conduct any~~
2 ~~investigations, interviews, or mediation necessary to resolve the~~
3 ~~appeal.~~

4 ~~(5) The decision of the Early Education and Support Division~~
5 ~~shall be mailed or delivered to the parent and the contractor within~~
6 ~~30 calendar days after receipt of the appeal request.~~

7 ~~(d) (1) The contractor shall comply with the decision of the~~
8 ~~Early Education and Support Division immediately upon receipt~~
9 ~~of that decision.~~

10 ~~(2) The contractor shall be reimbursed for child care and~~
11 ~~development services that are delivered to a family during the~~
12 ~~appeal process.~~

13 ~~(3) If a contractor's determination that a family is ineligible is~~
14 ~~upheld by the Early Education and Support Division, services to~~
15 ~~the family shall cease upon receipt of the Child Development~~
16 ~~Division's decision by the contractor. If such a decision is made,~~
17 ~~the contractor shall notify the affected provider and parent of that~~
18 ~~decision.~~

19 ~~(e) As used in this section, "Early Education and Support~~
20 ~~Division" means the Early Education and Support Division of the~~
21 ~~department.~~

22 ~~SEC. 3. Section 8221.7 is added to the Education Code, to~~
23 ~~read:~~

24 ~~8221.7. (a) The department shall establish a two-step appeals~~
25 ~~process for licensed and license-exempt family child care providers~~
26 ~~who receive subsidy payments through an alternative payment~~
27 ~~program. The first step shall be within the alternative payment~~
28 ~~program agency with the hearing officer being an administrative~~
29 ~~employee other than the employee who made the decision that is~~
30 ~~being appealed, and a second step within the Early Education and~~
31 ~~Support Division. The department's decision shall be final.~~

32 ~~(b) (1) The contractor, through the certificate that authorizes~~
33 ~~the provider to care for a child in the subsidy program, shall notify~~
34 ~~the provider of his or her appeal rights as established under this~~
35 ~~section. Appealable issues may include, but are not necessarily~~
36 ~~limited to, lack of notification of change in the status of parents'~~
37 ~~eligibility for care, accurate payments for services rendered, and~~
38 ~~timeliness of payments for services rendered if submitted~~
39 ~~timesheets are complete and have met the timeframes in the~~
40 ~~contractor's schedule of timesheet submissions. As used in this~~

1 section, “contractor” means the local contracting agency that has
2 entered into an agreement with the department for an alternative
3 payment program.

4 (2) The contractor, through the certificate of authorization for
5 care, shall initially notify the provider of the terms and conditions
6 of services to a parent and his or her children and any changes
7 thereafter. The contractor shall mail or deliver the notice of changes
8 to the provider at least 14 calendar days before the effective date
9 of the intended change. If the provider disagrees with an action,
10 the provider may file a request for a hearing with the contractor
11 within 30 calendar days of the date the notice was received by the
12 provider.

13 (3) Upon the filing of a request for hearing, the intended action
14 shall be suspended until the review process has been completed.
15 The review process is complete when the appeal process has been
16 exhausted, including the second step at the department or when
17 the provider abandons the appeal process.

18 (4) Within 10 calendar days following the receipt of the request
19 for a hearing, the contractor shall notify the provider of the time
20 and place of the hearing. The time and place of the hearing shall,
21 to the extent possible, be convenient for the provider and shall be
22 held no later than 14 calendar days after the date when the notice
23 of hearing was sent to the provider.

24 (5) The hearing shall be conducted by an administrative staff
25 person who shall be referred to as “the hearing officer.” The
26 hearing officer shall be at a staff level higher in authority than the
27 staff person who made the contested decision.

28 (6) The provider, or the provider’s representative of his or her
29 choosing, is required to attend the hearing. If the provider or the
30 provider’s representative fails to appear at the hearing, the provider
31 shall be deemed to have abandoned the appeal.

32 (7) The contractor shall arrange for the presence of an interpreter
33 at the hearing if one is requested by the provider.

34 (8) The hearing officer shall explain to the provider the legal,
35 regulatory, or policy basis for the intended action.

36 (9) During the hearing, the provider shall have the opportunity
37 to explain the reason or reasons he or she believes that the
38 contractor’s decision is incorrect. The contractor’s staff shall
39 present any material facts that they believe were omitted by the
40 provider.

1 ~~(10) The hearing officer shall mail or deliver to the provider a~~
2 ~~written decision within 10 calendar days after the hearing.~~
3 ~~(e) (1) If the provider disagrees with the written decision from~~
4 ~~the contractor, the provider has 30 calendar days in which to appeal~~
5 ~~to the Early Education and Support Division.~~
6 ~~(2) If the provider does not submit an appeal request to the Early~~
7 ~~Education and Support Division within 30 calendar days, the~~
8 ~~provider's appeal process shall be deemed abandoned and the~~
9 ~~contractor may implement the intended action.~~
10 ~~(3) The provider shall specify in the appeal request the reason~~
11 ~~or reasons why he or she believes the contractor's decision is~~
12 ~~incorrect.~~
13 ~~(4) Upon receipt of a request for appeal, the Early Education~~
14 ~~and Support Division shall request copies of the basic data file,~~
15 ~~including the intended notice of action and the contractor's written~~
16 ~~decision and other relevant materials from the contractor. The~~
17 ~~Early Education and Support Division may also conduct any~~
18 ~~investigations, interviews, or mediation necessary to resolve the~~
19 ~~appeal.~~
20 ~~(5) The decision of the Early Education and Support Division~~
21 ~~shall be mailed or delivered to the provider and the contractor~~
22 ~~within 30 calendar days after receipt of the appeal request.~~
23 ~~(d) (1) The contractor shall comply with the decision of the~~
24 ~~Early Education and Support Division immediately upon receipt~~
25 ~~of that decision.~~
26 ~~(2) The contractor shall be reimbursed for any child care and~~
27 ~~development services that are delivered by a provider during the~~
28 ~~appeal process.~~
29 ~~(3) If a contractor's determination is upheld by the Early~~
30 ~~Education and Support Division, the intended action proposed by~~
31 ~~the contractor shall be carried out or upheld. If the appeal is upheld,~~
32 ~~the contractor shall notify the provider and the parent who was~~
33 ~~initially affected by the original decision.~~
34 ~~(e) As used in this section, "Early Education and Support~~
35 ~~Division" means the Early Education and Support Division of the~~
36 ~~department.~~