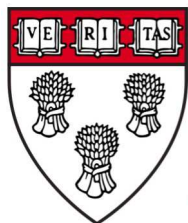


THE CHILD AND ADULT CARE FOOD PROGRAM IN MASSACHUSETTS



Harvard

Food Law and Policy Clinic

A Division of the Center for Health Law and Policy Innovation

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INTRODUCTION

It is on the news almost every day: lack of access to healthy foods is putting the health of American children at risk. The rate of food security (access at all times to enough food for an active, healthy life) has diminished due to the poor economic climate.¹ In 2010, more than 8 million children lived in food-insecure households, and almost 1 million lived in households with very low food security.² Further, obesity rates for children aged 6 to 11 have doubled in the last 30 years.³ In fact, according to the CDC, “1 of 7 low-income preschool-aged children is obese.”⁴ Although at first glance childhood obesity and food insecurity seem to be issues of diametrically opposite concern, the two issues are inextricably linked. Clearly children need a better diet, but in the current economic climate, it is difficult for low-income parents to access healthy food for their children. Fortunately, there are government programs in place that aim to provide access to healthy and nutritious food.

This policy paper explores the Child and Adult Care Food Program (“CACFP” or “Program”) and its attendant federal and Massachusetts state regulations. CACFP is a federal nutrition assistance program that provides reimbursements for food served to young children in child care centers, family day care homes, after-school programs, and emergency shelters, as well as adults in long-term care facilities.

In addition to providing vital support to the economic viability of family child care providers, CACFP provides well-documented health benefits for children in participating programs.⁵ One report, for example, found that children who were likely receiving CACFP meals were 28% less likely to be in fair or poor health and 26% less likely to be hospitalized than children whose meals were supplied from home.⁶ Children in programs participating in CACFP are also more likely to be a healthy weight and height for their age.⁷ With such salutary effects, participation in the Program should be encouraged. While participation has been increasing, less than half of family day care homes participate nationwide.⁸

To understand both the accomplishments of CACFP and the potential barriers to success in Massachusetts, we researched the role of federal and state regulations in the implementation of the Program, and joined with the Bessie Tarrt Wilson Initiative for Children (BTWIC) to conduct interviews with a diverse group of stakeholders, including providers of both family child care homes and center-based care (“Providers”). These interviews, which offered much insight into the Program’s intricacies, were done over a period of two months in spring 2012 and focused on identifying the highest-level issues with CACFP. Our research has produced many potential solutions, along with many questions that we believe would benefit from further investigation. Thus our recommendations are preliminary and

¹ See FOOD RESEARCH & ACTION CTR., HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 3 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf.

² *Food Security in the U.S.: Key Statistics and Graphics*, USDA ECON. RESEARCH SERV., <http://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-us/key-statistics-graphics.aspx#insecure> (last updated July 13, 2012).

³ *Research Synthesis—Preventing Obesity Among Preschool Children*, ROBERT WOOD JOHNSON FOUNDATION (Oct. 2011), available at <http://www.rwjf.org/files/research/73468.childcaresynthesis.pdf>.

⁴ *Healthy Kids, Healthy Futures: Two-Year Evaluation Report*, NORTHEASTERN UNIV. (2010), available at <http://www.northeastern.edu/healthykids/wp-content/uploads/HKHF-Year-Two-Evaluation-Report.pdf>.

⁵ See Rachel Cooper & Geri Hency, *Child and Adult Care Food Program: Participation Trends*, FOOD RESEARCH & ACTION CTR., at 2–3 (2011), available at http://frac.org/newsite/wp-content/uploads/2009/05/cacfp_participation_trends_report_2011.pdf (summarizing and citing research on CACFP).

⁶ *Child Care Feeding Programs Support Young Children’s Healthy Development*, CHILDREN’S HEALTHWATCH 1 (2010), available at http://www.childrenshealthwatch.org/upload/resource/cacfp_brief_jan10.pdf.

⁷ *Id.*

⁸ *How To Promote Access to Good Nutrition in Child Care Settings*, FOOD RESEARCH & ACTION CTR. 1 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf.

necessarily brief. Policy advocates should therefore consider this report as a starting point when considering next steps.

EXECUTIVE SUMMARY

As concern over the health trajectory of America's youngest and most vulnerable members amplifies, stakeholders are seeking viable solutions to the crisis. The Child and Adult Care Food Program ("CACFP" or "Program") is a federal nutrition assistance program that provides reimbursements for food served to young children in child care centers, family day care homes, after-school programs, and emergency shelters, as well as adults in long-term care facilities. Although CACFP encompasses a wide range of nutrition assistance programs, this report focuses specifically on CACFP's requirements for nutrition, eligibility, and reimbursement in the child care setting (impacting children ages 0-5). CACFP helps to close a significant gap in the provision of nutritious food to more than 50 percent of pre-school aged children attending child care centers in the nation⁹ at a crucial stage of their development. Nutritional deficiencies at this early age have been associated with impairment of neuropsychological function, retardation of growth and development, and reduced immunity to disease.¹⁰ In Massachusetts, CACFP helps to meet the nutritional needs of about 50,000 children from low-income families in child care each day.¹¹

By supplementing the food budgets of child care providers, CACFP reimbursements help make child care more affordable for families. The Program also allows Providers to allocate more of their limited financial resources to educational purposes and thereby raise the overall standard of the care provided.¹² For family child care providers in particular, CACFP reimbursements are crucial to the economic viability of their businesses. Family child care providers often must rely on CACFP payments in addition to vouchers, which are state-provided subsidies for child care given to families based on their income and other factors.¹³

The Program has thus far been quite successful, managing to provide healthy food to some of Massachusetts's poorest children; however, there are still many remaining children that the Program has yet to reach. Notably, the gaps in CACFP participation are not usually the consequence of a facility's lack of interest in government assistance, but rather, a result of the onerous program requirements and oftentimes confusing hurdles associated with enrollment in a government program like this one. These barriers arise in the context of agency enforcement of state and federal regulations, as well as in the regulations themselves. Such barriers have left many participating providers and their sponsors frustrated, and just as importantly, have likely dissuaded potential participants from attempting to enroll.

⁹ *School Health Guidelines to Promote Healthy Eating and Physical Activity*, CTRS FOR DISEASE CONTROL AND PREVENTION (2011), available at <http://www.cdc.gov/mmWR/pdf/rr/rr6005.pdf>.

¹⁰ *What is the relationship between child nutrition and school outcomes?*, CENTRE FOR RESEARCH ON THE WIDER BENEFITS OF LEARNING (2006), available at <http://www.learningbenefits.net/Publications/ResReps/ResRep18.pdf>.

¹¹ *Nutrient and MyPyramid Analysis of USDA Foods in Five of Its Food and Nutrition Programs*, US DEP'T. OF AGRIC. C-1 (2012), available at <http://www.fns.usda.gov/ORR/menu/Published/CNP/FILES/NutrientMyPyramid.pdf> (citing the average CACFP daily participation in Massachusetts for FY 2009 as 52,144 children). CACFP reaches over 3.2 million children nationwide. *How To Promote Access to Good Nutrition in Child Care Settings*, FOOD RESEARCH & ACTION CTR. 1 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf.

¹² *How To Promote Access to Good Nutrition in Child Care Settings*, FOOD RESEARCH & ACTION CTR. 1 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf.

¹³ *Financial Assistance/Vouchers*, CHILD CARE RESOURCE CENTER, http://www.ccrinc.org/financial_assistance_and_vouchers.php (last visited May 4, 2012).

Some specific barriers include attendance-based reimbursement policies (forcing providers to take the loss when fewer children than anticipated show up), the burdensome amount of recordkeeping and paperwork required, invasive auditing practices, and concern over the Program’s nutritional guidelines.

In partnership with the Bessie Tarrt Wilson Initiative for Children (BTWIC), we initiated a broad inquiry into the opportunities and challenges facing CACFP’s child nutrition provisions in Massachusetts. Together, we interviewed providers of family child care homes and center-based care (referred to collectively as “providers” in this report), CACFP sponsoring organizations (sponsors), and child care licensors from the Massachusetts Department of Early Education & Care (DEEC).

As a result of what we learned from these interviews, we developed a report that provides an overview of CACFP’s requirements for nutrition, eligibility, and reimbursement in the child care setting (impacting children ages 0-5), and explains how the program operates in each of the child care center and family day care home settings, as well as detailing the specific responsibilities of sponsors. The report then addresses Program challenges in four categories: general, sponsor, center-based care, and family-based care. We conclude by outlining preliminary policy recommendations as well as areas where further investigation is warranted.

Recognizing the barriers facing CACFP, we make the following recommendations to improve the implementation of CACFP’s child nutrition provisions in Massachusetts:

- **Increase funding.** More funding—from federal, state, or private sources—to cover things like increasing the meal-reimbursement rate, reimbursing providers for one additional meal or snack a day, or for reimbursing providers for meals that are prepared but not served due to accident or absence, would encourage more providers to remain in or join the Program.
- **Boost participation.** The reach of the program could be extended through diverse initiatives, including producing materials to explain CACFP’s complicated requirements to un-enrolled providers, partnering with community-based programs to conduct outreach, attempting to reach non-English speaking family care providers, and, at the micro level, examining the federal “area eligibility” test for Tier 1 eligibility.
- **Streamline the program.** To achieve a reduction in the amount of paperwork both providers and sponsors must complete, the state should consider putting more forms and requirements online, creating more efficient methods for providers to record meals and sponsors to edit them, and ensuring that state auditors stop requiring handwritten attendance records from providers.
- **Monitor federal-level nutrition regulations.** State and local advocates should monitor federal-level changes to CACFP’s nutrition requirements and push for more stringent requirements and guidance at the state level.
- **Provide better trainings and support.** Training sessions need to be more plentiful, more specifically tailored to providers’ needs, and more consistent; state-level advocates should examine the best training practices of other states for ideas.
- **Facilitate collaboration between DESE and DEEC.** To ensure proper enforcement of the USDA dietary guidelines—a duty that seems to be stuck in a gray area between DESE and DEEC—officials from both agencies should meet to review their duties and publish a clear list of guidelines they will follow in sharing responsibility for nutrition monitoring in Massachusetts.
- **Empower and educate parents.** Facilitating parental understanding of CACFP’s nutrition and meal standards would allow parents to take their proper role as the strongest advocates for improved nutrition in child care centers and family day care homes.

I. LEGAL BACKGROUND

Because our research concentrates on the needs of children in the zero-to-five age range, this report focuses on the operation of CACFP in child care centers and family day care homes. This section will review the roles of the federal and state governments in implementing and administering the Program, introduce the main classes of benefits that the Program makes available to child care providers, discuss the nutritional requirements that apply to meals served under the Program, and provide a brief overview of the eligibility and licensing requirements for CACFP participants. Finally, it will discuss the operation of the Program, including eligibility and reimbursement rates, in three different settings: child care centers, family day care homes, and sponsoring organizations.

A. The Role of the Federal Government

CACFP began in 1968 as a pilot program under the National School Lunch Act (the “Act”), and became a permanent feature of the federal child nutrition landscape in 1978.¹⁴ The Program subsidizes meals and snacks served to children at participating child care centers, family day care homes, at-risk afterschool programs, and emergency shelters, in addition to elderly and functionally impaired adults at nonresidential adult day care facilities.¹⁵ The Food and Nutrition Service (FNS) of the United States Department of Agriculture (USDA) administers the Program at the federal level, including issuing guidelines and regulations to implement the Act. These guidelines and regulations are incredibly important as they must be met in order for Providers to receive reimbursement. Further, they set out the minimum nutritional standards for the food being provided to each age group. Consequently, the federal regulations have a significant and direct impact on the health of the children affected by CACFP. In 2010, USDA was instructed by Congress to create new nutritional guidelines for CACFP in order to bring the Program into compliance with the U.S. Dietary Guidelines for Americans.¹⁶ These new guidelines will be created via a rulemaking process that should occur throughout 2012 to 2013, but at the time of this writing, the proposed rule had not yet been published.¹⁷

The federal government also provides financial support to states to help them manage the direct implementation of the Program. USDA regulations set out an allocation for administrative expenses incurred by state agencies in providing technical and supervisory assistance under the Program.¹⁸ Further, the Act provides that each state agency administering CACFP is entitled to receive up to 1.5 percent of the CACFP funds used by that State during the second preceding fiscal year to conduct Program audits.¹⁹

In addition to financial support, the Act directs the USDA to assist states in fulfilling their administrative duties for CACFP. The USDA must provide technical assistance and training in program management and oversight to state agencies,²⁰ as well as help states develop the training programs that they are required

¹⁴ *Child & Adult Care Food Program: Legislative History*, FOOD & NUTRITION SERV., <http://www.fns.usda.gov/cnd/Care/history.htm> (last updated Nov. 30, 2011).

¹⁵ *Child & Adult Care Food Program, About*, FOOD & NUTRITION SERVICE, <http://www.fns.usda.gov/cnd/Care/CACFP/aboutcacfp.htm> (last updated Feb. 21, 2012).

¹⁶ See 42 U.S.C.A. § 1766(u)(3)(B) (2011).

¹⁷ *Implementation Plan: Healthy, Hunger-Free Kids Act of 2010*, FOOD & NUTRITION SERVICE, http://www.fns.usda.gov/cnd/Governance/Legislation/implementation_actions.pdf (last updated Mar. 27, 2012).

¹⁸ 7 C.F.R. § 235.4 (2012).

¹⁹ 42 U.S.C.A. § 1766(i)(2)(A) (2011); beginning in FY2016, the USDA will be permitted to increase this figure to a maximum of 2 percent for any state agency able to demonstrate its ability to “improve program management” with the extra funding. See *id.* at § 1766(i)(2)(B).

²⁰ *Id.* at § 1766(q)(1).

to provide in order to “facilitate effective operation” of CACFP.²¹ The USDA also administers funding resources that provide incentives to prospective program sponsors to encourage them to join CACFP, as well as to current sponsors who wish to expand their sponsorship.²²

B. The Role of the State Government

States are responsible for the direct administration of the Program.²³ Each state must assign administrative duties to a state-level agency, and in Massachusetts, there are two administrative agencies of particular importance. The Department of Elementary and Secondary Education (DESE) is the designated CACFP administrator²⁴ and the Department of Early Education and Care (DEEC) is the licensing agency for all child care centers in the state.²⁵ USDA regulations lend substance to these administrative duties. State agencies must “provide sufficient consultative, technical, and managerial personnel to: (1) [a]dminister the [p]rogram; (2) [p]rovide sufficient training and technical assistance to institutions; (3) [m]onitor Program performance; (4) [f]acilitate expansion of the Program in low-income and rural areas;²⁶ and (5) [e]nsure effective operation of the Program by participating institutions.”²⁷ While the federal government’s role is a significant one, the state still has a considerable amount of power over CACFP’s administration. Thus, the state’s role is crucial to the Program’s success.

C. CACFP Program Benefits

CACFP provides two classes of benefits to participating providers: (1) reimbursements for meals and snacks served and (2) food (or cash in lieu of food) donated by the USDA. Benefit levels and required documentation procedures vary by both provider type and benefit type. Consequently, this section will provide a simplified overview of the general features of each class of benefits.

Meal Reimbursements

Reimbursements are the core benefit of the Program. The Act sets out different reimbursement rates for child care providers and family day care homes, and more detail on the calculation of these rates in different child care settings is available in Part II.E, *infra*. However, it is possible to make a few preliminary remarks about this key component of CACFP.

Each participating Provider may be reimbursed for up to two meals and one snack or two snacks and one meal per child per day.²⁸ Reimbursement rates are not tied to the actual cost of the food served. Rather, the Provider receives a set sum determined according to provider type and/or the child’s family income. Reimbursement is based on two factors: compliance with the required meal pattern²⁹ and documentation of the child’s eligibility (both are further discussed below).³⁰ Therefore, it is possible in

²¹ *Id.* at § 1766(k).

²² 7 C.F.R. § 226.12(b)(1) (2002).

²³ 7 C.F.R. § 226.3 (2011). FNS administers the Program in states where both (a) it has continuously done so since October 1, 1980, and (b) the state has not elected to assume these duties. *Id.*

²⁴ *Child and Adult Care Food Program*, MASS. DEP’T ELEMENTARY & SECONDARY EDUC., <http://www.doe.mass.edu/cnp/nprograms/cacfp.html> (last updated Dec. 15, 2011).

²⁵ *Family, Large & Small Group, and School-Age Child Care Licensing*, MASSACHUSETTS EXECUTIVE OFFICE OF EDUCATION, <http://www.mass.gov/edu/birth-grade-12/early-education-and-care/licensing/family-large-and-small-group-and-school-age/> (last visited June 15, 2012).

²⁶ Facilitating Program expansion entails conducting outreach to child care providers that might serve as Program sponsors in low-income and rural areas. 7 C.F.R. § 226.6(g) (2011).

²⁷ *Id.* at § 226.6. States must also establish application review requirements. *Id.*

²⁸ 42 U.S.C.A. § 1766(f)(2)(B) (2011); 7 C.F.R. § 226.2 (2011).

²⁹ *See* 7 C.F.R. § 226.20(c) (2011).

³⁰ 42 U.S.C.A. § 1766 (2011).

some situations for a provider to be reimbursed for either more or less than was actually spent on meals for the Program.

In addition to stipulating the reimbursement rates for providers, the Act sets out a number of payment-related administrative requirements. States must pay all valid reimbursement claims submitted by centers within forty-five days of their receipt,³¹ but may also elect to provide these payments up to one month in advance.³² Invalid claims are subject to recovery, if already paid, or denial.³³

Donated USDA Foods

The Act also provides that, in addition to the monetary support the federal government already provides, the USDA shall deliver donated foods, or cash in lieu of the food, to states in order to supplement the meal reimbursements that are the core benefit of CACFP.³⁴ Each state's minimum eligibility for donated USDA foods for a given school year is determined by multiplying the number of lunches and suppers served through CACFP in that state during the previous school year by the established per-meal federal assistance rate.³⁵ For the period from July 1, 2011, through June 30, 2012, this federal assistance rate was 22.25 cents per meal.³⁶ Nationwide, less than 20% of child care centers currently request donated foods, instead opting to receive cash in lieu.³⁷

Each state is required to ask all new centers to state their preference for either donated foods or cash in lieu, and it must honor these stated preferences unless it can demonstrate to FNS that "distribution of commodities to the number of such institutions would be impracticable."³⁸ A state may apply to the USDA for permission to replace all or a portion of its donated foods for CACFP or other USDA in-kind food programs with cash in lieu.³⁹ The donated foods program applies only to centers and not to family child care providers.

In 2009, Massachusetts was one of eighteen states that did not elect to receive cash in lieu for every one of its centers statewide.⁴⁰ This means that some centers in Massachusetts receive donated foods while others receive cash in lieu. In Massachusetts, child care centers are eligible to receive donated foods as food or as cash in lieu, but family day care homes are not eligible to receive donated foods; instead, they are eligible for administrative funds in addition to their meal reimbursements.⁴¹ Most child care centers

³¹ 42 U.S.C.A. § 1766(f)(1)(A) (2011).

³² *Id.* at § 1766(f)(4).

³³ *Id.* at § 1766(f)(1).

³⁴ *See id.* at § 1766(h)(1)(A).

³⁵ 42 U.S.C.A. § 1766(h)(1)(B) (2011); THEA PALMER ZIMMERMAN ET AL., WESTAT, NUTRIENT AND MYPYRAMID ANALYSIS OF USDA FOODS IN FIVE OF ITS FOOD AND NUTRITION PROGRAMS 2–6 (2012), available at <http://www.fns.usda.gov/ORA/menu/Published/CNP/FILES/NutrientMyPyramid.pdf>.

³⁶ Food Distribution Program: Value of Donated Foods From July 1, 2011 Through June 30, 2012, 76 Fed. Reg. 139,43256 (July 14, 2011).

³⁷ *Schools/CN Commodity Programs: Frequently Asked Questions*, FOOD & NUTRITION SERV., http://www.fns.usda.gov/fdd/programs/schcnp/schcnp_faqs.htm (last updated Feb. 17, 2012).

³⁸ 7 C.F.R. § 226.6(h) (2011).

³⁹ 42 U.S.C.A. § 1765(a) (2011); 42 U.S.C.A. § 1766(h)(1)(D) (2011).

⁴⁰ *See* THEA PALMER ZIMMERMAN ET AL., WESTAT, NUTRIENT AND MYPYRAMID ANALYSIS OF USDA FOODS IN FIVE OF ITS FOOD AND NUTRITION PROGRAMS C-3 to C-4 (2012), available at <http://www.fns.usda.gov/ORA/menu/Published/CNP/FILES/NutrientMyPyramid.pdf>. The other states receiving Donated Foods in 2009 were: Alaska, Arkansas, California, Colorado, Delaware, Maine, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Oklahoma, Pennsylvania, Vermont, Virginia, and West Virginia.

⁴¹ Email from Marion Browning, Food Distribution Coordinator, Massachusetts Department of Elementary and Secondary Education (June 26, 2012) (on file with authors).

in Massachusetts opt for the cash in lieu of the offered food.⁴² Through conversations with child care centers, family day care homes, and sponsors (who receive these funds on behalf of family day care homes), it became apparent that many child care centers and sponsors seemed unaware of the additional funds available to them through this program.⁴³ This could be due to the fact that when the Commonwealth issues a payment to a child care center or a sponsor, the payment may be for a lump sum without a breakdown or explanation.⁴⁴ As a result, these entities could in fact be receiving cash in lieu of donated foods in addition to their other funds, but not be aware of it.⁴⁵ More research is needed to determine the availability of cash in lieu and whether centers are taking advantage of these extra funds in Massachusetts, as well as how this program is operating nationwide.

D. Meal Pattern & Nutritional Requirements

The meal patterns and nutritional requirements set up by the USDA work together in an effort to create a standard that ensures healthy meals for the children that consume them. The meal patterns lay out the types of food (fruit, grains, etc.) and portion size while the nutritional requirements determine whether the type of food has enough nutritional value to promote the children's health. For illustration, if the meal pattern were to require a vegetable for a given meal, nutritional requirements would not allow for potato chips to fulfill the requirement.

Meal Patterns

CACFP utilizes a meal pattern model to set the nutritional requirements for meals served under the Program. Meals must contain the minimum amounts specified for the child's age of each of the required components in order to be eligible for CACFP reimbursement.⁴⁶ Providers may elect to provide extra food⁴⁷ and/or serve family-style meals.⁴⁸

USDA regulations set out three different meal patterns for children aged one to twelve years: breakfast, lunch/supper, and snack.⁴⁹ Each of these meal patterns contains a list of required meal components and minimum portion sizes for each of three age groups (one to two, three to five, and six to twelve).⁵⁰ Each meal (breakfast, lunch, and supper) must contain one item from each of the following categories: milk; fruit, vegetable, and/or fruit juice; and grains.⁵¹ Lunch and supper must also include two items from the fruit, vegetable, and/or fruit juice category, as well as meat or a meat alternative.⁵² Snacks must include any two of the four components, except that a snack may not solely consist of fruit juice and milk.⁵³

Providers are required to follow a separate set of meal patterns for infants (birth through eleven months).⁵⁴ Providers must serve either breast milk or formula to each infant at each meal,⁵⁵ and must

⁴² Email from Marion Browning, Food Distribution Coordinator, Massachusetts Department of Elementary and Secondary Education (June 5, 2012) (on file with authors).

⁴³ Interviews with Child Care Providers (Mar.-Apr. 2012).

⁴⁴ Email from Marion Browning, Food Distribution Coordinator, Massachusetts Department of Elementary and Secondary Education (June 26, 2012) (on file with authors).

⁴⁵ *Id.*

⁴⁶ See 7 C.F.R. § 226.20(c) (2011).

⁴⁷ *Id.* at § 226.20(d).

⁴⁸ *Id.* at § 226.20(p).

⁴⁹ Charts detailing the child meal pattern requirements are available in Appendices A–C.

⁵⁰ See Appendices A–C, *infra*.

⁵¹ See Appendices A–C, *infra*.

⁵² See Appendix B, *infra*.

⁵³ See Appendix C, *infra*.

⁵⁴ Charts detailing the infant meal pattern requirements are available in Appendices D–F.

⁵⁵ 7 C.F.R. § 226.20(b)(2) (2011).

make solid foods available after consulting with the parents to determine that the child is “developmentally ready” to accept them.⁵⁶ CACFP reimburses providers for both formula-based meals and breast milk provided that the provider prepares the bottle and feeds the infant the breast milk.⁵⁷ However, if the parent brings the formula from home or the mother breastfeeds the baby directly, the meal is only reimbursable if the provider supplies at least one other meal component.⁵⁸

Nutritional Requirements

Providers must ensure that the meals and snacks that they serve under the Program meet “minimum nutritional requirements prescribed by the [USDA] on the basis of tested nutritional research.”⁵⁹ However, in the past, CACFP meals and snacks did not need to conform to the U.S. Dietary Guidelines for Americans (the “Guidelines”).⁶⁰ Rather, the USDA simply needed to ensure that the Program subsidized meals that were “consistent with the *goals* of the most recent . . . Guidelines” and “promote[d] the health” of the children served.⁶¹ While adherence to the Guidelines aims to ensure healthy food access, because the requirements can be so vague, the results were mixed. For example, Providers were allowed to supply full-strength fruit juice (including juice from concentrate) to satisfy the fruit component, but not a “juice cocktail” or “juice drink.”⁶² While juice is more beneficial for the child’s health than a juice cocktail, an actual fresh fruit would be even more beneficial.

The Healthy, Hunger-Free Kids Act of 2010 (HHFKA),⁶³ the most recent reauthorization of the Child Nutrition Act, required the USDA to issue new nutrition guidelines for CACFP in order to bring the Program into compliance with the most recent Guidelines.⁶⁴ The USDA sought recommendations from the Institute of Medicine (IOM) for changes to the CACFP meal pattern requirements to bring the Program into compliance with the Guidelines,⁶⁵ but the IOM recommendations, released in November 2010, have not yet been implemented through USDA regulations.⁶⁶

In its recommendations, the IOM flagged many issues with CACFP’s current nutritional standards,⁶⁷ and USDA must now issue new regulations to implement these recommendations into law. The new

⁵⁶ *Id.* at (b)(4).

⁵⁷ Stanley C. Garnett, Director of Child Nutrition Division, *Issues Related to Feeding Infants in the Child and Adult Care Food Program (CACFP)*, USDA FOOD & NUTRITION SERV., Apr. 20, 2000, <http://www.fns.usda.gov/cnd/care/regs-policy/InfantMeals/2000-04-20.htm>.

⁵⁸ 7 C.F.R. § 226.20(b)(2) (2011) (except in the case of infants up to three months old, in which case a provider may serve only breastmilk or formula provided by the parent and be reimbursed without providing any additional meal components 7 C.F.R. § 226.20(b)(5)(i) (2011))

⁵⁹ 42 U.S.C.A. § 1766(g)(2)(A) (2011).

⁶⁰ One exception is that any milk included in a meal or snack reimbursed under CACFP must be served according to the most recent version of the Guidelines. *See* 42 U.S.C.A. § 1766(g)(4)(A) (2011).

⁶¹ 42 U.S.C.A. § 1766(g)(2)(B)(i) (2011) (emphasis added).

⁶² *See Crediting Foods In the Child & Adult Care Food Program*, MID-ATLANTIC REGION FOOD & NUTRITION SERV. (Jan. 2001) *available at* <http://www.nutritionnc.com/snp/pdf/credfood.pdf>.

⁶³ Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.).

⁶⁴ *See* 42 U.S.C.A. § 1766(u)(3)(B) (2011).

⁶⁵ *See* INST. OF MED., CHILD AND ADULT CARE FOOD PROGRAM: ALIGNING DIETARY GUIDANCE FOR ALL 2 (Suzanne P. Murphy et al. eds., 2011), *available at* <http://www.fns.usda.gov/ora/MENU/Published/CNP/FILES/cacfpom.pdf>.

⁶⁶ On April 9, 2012, FNS published proposed rules to effectuate certain provisions of the HHFKA. *See* Child and Adult Care Food Program: Amendments Related to the Healthy, Hunger-Free Kids Act of 2010, 77 Fed. Reg. 21018 (Apr. 9, 2012) (to be codified at 7 C.F.R. pt. 226).

⁶⁷ *See* INST. OF MED., CHILD AND ADULT CARE FOOD PROGRAM: ALIGNING DIETARY GUIDANCE FOR ALL 8 (Suzanne P. Murphy et al. eds., 2011), *available at* <http://www.fns.usda.gov/ora/MENU/Published/CNP/FILES/cacfpom.pdf> (recommending that the new meal pattern requirements require *both* fruits and vegetables at every meal).

Nutrition Standards for the National School Lunch and School Breakfast Programs address many of the problems currently facing CACFP and addressed by the IOM recommendations.⁶⁸ Among other changes, the standards separate the fruit and vegetable serving requirements, introduce weekly minimum vegetable subgroup servings, stipulate that half of the grains offered during the week must be “whole grain-rich,” and limit sodium, trans fat, and calories from saturated fat.⁶⁹ If the USDA implements similar changes to the nutritional guidelines for CACFP, many of the providers’ concerns with the quality of Program meals and snacks will be alleviated. USDA was instructed to release the new CACFP guidelines by January 2012,⁷⁰ but at the time of this writing, the proposed regulation had not yet been published. Publication is now estimated for 2013 instead.⁷¹

The USDA is required to provide technical assistance to providers to facilitate their compliance with the nutritional requirements of the Program.⁷² This assistance must include a published handbook containing recommendations, guidelines, and best practices⁷³ and must cover the following topics: nutrition education, menu planning, nutrition labels, food preparation, and food purchasing.⁷⁴

While these standards and guidelines are issued by the USDA, states have the power to require stricter adherence to the Guidelines or, as some states have done, issue stricter requirements of their own.⁷⁵ For example, West Virginia changed its minimum nutritional requirements for CACFP in order to lead to more actual adherence to the Dietary Guidelines.⁷⁶ In the past, providers in West Virginia could be credited for grains/breads if their primary ingredient was either enriched or whole grain or made from enriched or whole grain flour. Now, among other requirements and recommendations, one whole grain product must be served a day, and all grain products must contain less than six grams of sugar.⁷⁷ Another state with higher nutritional standards is Texas.⁷⁸ While the USDA requires that children ages 2 and older be served low-fat or non-fat milk, Texas further restricts the milk options for all licensed child care facilities to unflavored milk, except for special occasions.⁷⁹

E. Eligibility & Licensing

The Act divides providers into two general groups, child care centers and family day care homes, and most of the eligibility criteria are specific to the particular child care setting. Part II.F, *infra*, will discuss these context-specific eligibility criteria, and this section will discuss the eligibility requirement that applies to all CACFP providers: state or local licensure.

⁶⁸ *Id.*

⁶⁹ *Id.* at 4090–96.

⁷⁰ See 42 U.S.C.A. § 1766(u)(3)(B) (2011).

⁷¹ *Implementation Plan: Healthy, Hunger-Free Kids Act of 2010*, FOOD & NUTRITION SERVICE, http://www.fns.usda.gov/cnd/Governance/Legislation/implementation_actions.pdf (last updated Mar. 27, 2012).

⁷² 42 U.S.C.A. § 1766(u)(3)(A) (2011).

⁷³ *Id.* at § 1766(u)(3)(F).

⁷⁴ *Id.* at § 1766(u)(3)(C).

⁷⁵ See, e.g., *Best Practices for Healthy Eating*, W. VA. DEP’T. OF EDUC.: OFFICE OF CHILD NUTRITION, *available at* <http://wvde.state.wv.us/nutrition/CACFP/LOTguide.pdf>.

⁷⁶ See *id.*

⁷⁷ *WV Childcare Nutrition Standards: Changes*, W. VA. DEP’T. OF EDUC.: OFFICE OF CHILD NUTRITION, *available at* <http://wvde.state.wv.us/nutrition/CACFP/ProviderNutritionGuidelineChanges.pdf>.

⁷⁸ TEX. DEP’T. OF AGRIC., CHILD & ADULT CARE FOOD PROGRAM DAY CARE HOMES HANDBOOK: MANAGING THE PROGRAM (June 2012) *available at* <http://www.squaremeals.org/Portals/8/FND%20Forms/Program%20Handbooks/DCH%20Handbook%20-%20Section%204000.pdf>.

⁷⁹ *Id.*

Only institutions that are licensed or approved by the relevant state or local agency to provide child care services may receive Program benefits.⁸⁰ As a result, states serve as gatekeepers to CACFP through their licensing mechanisms. They are in a position to use their roles as licensors to supplement CACFP's nutritional requirements by setting a higher nutritional floor for child care programs under their jurisdiction.

In Massachusetts, child care providers are licensed at the state level by the Department of Early Education and Care (DEEC).⁸¹ Providers must satisfy several criteria to earn state licensure, two of which are specific to nutrition and food service. First, all child care providers and programs, not just those participating in CACFP, must "design and implement a nutrition program that meets the [USDA] guidelines for the nutritional and dietary needs and feeding requirements of each child"⁸² Second, recent updates to the licensing requirements stipulate that providers must receive basic training in both USDA nutrition requirements and food choking hazards.⁸³

At first glance, it appears that Massachusetts has used its role as a CACFP gatekeeper to ensure that child care providers demonstrate actual compliance with the Guidelines,⁸⁴ not just compliance with the Guidelines' goals, as is the minimum requirement.⁸⁵ However, each DEEC licensor has a caseload of about 300-400 child care programs, and each program receives an auditing visit for license renewal once every three years.⁸⁶ DEEC licensors focus their audits on food safety and choking hazards rather than nutritional compliance.⁸⁷ As a result, DEEC licensors rely on the administrators of CACFP at DESE and sponsor organizations to enforce the nutrition-related elements of the licensing requirements.⁸⁸ To summarize, while CACFP does not actually require compliance with the Guidelines,⁸⁹ it appears that there are stronger nutrition requirements on the books in Massachusetts; however, they are not being implemented by Massachusetts licensors.

F. Operation of CACFP in Different Care Settings

CACFP includes different eligibility requirements and reimbursement rates for the two primary types of child care settings: center-based care and family child care.

CACFP in the Child Care Center Setting

Within the general category of child care centers, the Act further divides these facilities into two subsets: non-profit and for-profit child care centers. All state-licensed non-profit centers are eligible for CACFP reimbursements.⁹⁰ For-profit centers, on the other hand, must meet eligibility requirements in order to participate in the Program. The Act provides two eligibility tests by which for-profit centers can

⁸⁰ See 42 U.S.C.A. § 1766(a)(5) (2011).

⁸¹ Interviews with Dep't of Early Educ. & Care Licensors (Mar.-Apr. 2012).

⁸² 606 MASS. CODE REGS. 7.12(1) (2010).

⁸³ *Id.*; see *Questions & Answers About the New Family, Group and School Age Child Care Regulations*, MASS. EXEC. OFFICE OF EDUC. (May 19, 2009), <http://www.mass.gov/edu/birth-grade-12/early-education-and-care/laws-regulations-and-policies/child-care-regulations-and-policies/q-and-a-new-child-care-regs.html>.

⁸⁴ See *supra* notes 81–83 and accompanying text.

⁸⁵ See *supra* notes 59–62 and accompanying text.

⁸⁶ Interviews with Dep't of Early Educ. & Care Licensors (Mar.-Apr. 2012).

⁸⁷ *Id.*

⁸⁸ *Id.*; see *QUESTIONS FROM PROVIDER TRAININGS REGARDING EEC'S NEW REGULATIONS*, MASS. DEP'T OF EARLY EDUC. & CARE 12 (2009), *available at* http://www.eec.state.ma.us/docs1/Workforce_Dev/20091211qa_provider.pdf ("Programs that are part of the Dept. of Elementary and Secondary Education's Food Program will receive nutrition training from the Food Program. Others should check with their health care consultant for nutrition training resources.")

⁸⁹ See *supra* notes 81–83 and accompanying text.

⁹⁰ 42 U.S.C.A. § 1766(a)(2)(A) (2011).

qualify for CACFP reimbursement: a Title XX test and an enrollment test.⁹¹ Under the Title XX test, a for-profit center must be receiving federal child care subsidies, or Title XX funds, for at least 25% of “children in care” (enrolled or licensed capacity, whichever is less).⁹² Under the enrollment test, at least 25% of children in care must be eligible for free or reduced-price meals,⁹³ and providers must collect documentation from the parents of eligible children to verify that they meet this requirement.⁹⁴ Both tests use data for the calendar month preceding the initial or renewal application.⁹⁵

Benefits: Meal reimbursement rates for centers are keyed to the national average payment rates for free, reduced-price, and paid lunches under 42 U.S.C.A. §§ 1753 and 1759a (for Program lunches and suppers),⁹⁶ and breakfasts under 42 U.S.C.A. §§ 1773(b) and 1759a (for Program breakfasts).⁹⁷ Free, reduced-price, and paid snacks are reimbursed at rates determined pursuant to 42 U.S.C.A. § 1759a.⁹⁸ Children from families at or below 130% of the federal poverty line are eligible for free meals, and those at or below 185% of the poverty line are eligible for reduced-price meals.⁹⁹ For Massachusetts and the rest of the contiguous states, the reimbursement rates in effect from July 1, 2011, through June 30, 2012, range from \$0.07 per paid snack to \$2.77 per free lunch or supper.¹⁰⁰ A chart listing all of the reimbursement rates by location, free/reduced/paid status, and meal type is available in Appendix G, *infra*.

Administrative Requirements: The Act provides a number of methods for centers to enroll in the Program. Eligible centers may apply directly to the state agency for CACFP reimbursements as independent centers.¹⁰¹ Under federal law, they may apply for reimbursements through sponsors rather than through the state agency directly,¹⁰² but Massachusetts generally does not allow centers to apply through sponsors.¹⁰³ Centers are also permitted to apply as sponsoring organizations for participating family day care homes.¹⁰⁴

Centers that elect to operate independently must enter into an agreement with the state agency.¹⁰⁵ Rather than requiring centers to re-contract periodically with the state agency as was required in the past,¹⁰⁶ a time-consuming and burdensome process, the HHFKA stipulated that states had to implement a revised contracting process whereby the state agencies would enter into permanent operating agreements with eligible centers.¹⁰⁷ This change, effective as of July 2011, promises to reduce the administrative burdens and costs associated with Program participation and increase center participation rates.

⁹¹ See *id.* at § 1766(a)(2)(B); 7 C.F.R. § 226.2 (2011).

⁹² 42 U.S.C.A. § 1766(a)(2)(B) (2011); 7 C.F.R. § 226.2 (2011).

⁹³ 42 U.S.C.A. § 1766(a)(2)(B) (2011); 7 C.F.R. § 226.2 (2011).

⁹⁴ 7 C.F.R. § 226.17(b)(8) (2011).

⁹⁵ *Id.* at § 226.2; 42 U.S.C.A. § 1766(a)(2)(B) (2011).

⁹⁶ 42 U.S.C.A. § 1766(c)(1) (2011).

⁹⁷ *Id.* at § 1766(c)(2).

⁹⁸ *Id.* at § 1766(c)(3) (2011).

⁹⁹ See FOOD & NUTRITION SERV., NATIONAL SCHOOL LUNCH PROGRAM 1 (2011), available at <http://www.fns.usda.gov/cnd/lunch/aboutlunch/NSLPFactSheet.pdf>.

¹⁰⁰ See Appendix G, *infra*.

¹⁰¹ 42 U.S.C.A. § 1766(d)(1)(C)(i) (2011).

¹⁰² 7 C.F.R. § 226.2 (2011).

¹⁰³ Interview with CACFP Sponsor Organization (Feb. 5 2013).

¹⁰⁴ 42 U.S.C.A. § 1766(d)(1)(C)(i) (2011).

¹⁰⁵ See 7 C.F.R. § 226.6(b)(4)(i) (2011).

¹⁰⁶ See *id.* at § 226.6.

¹⁰⁷ Healthy, Hunger-Free Kids Act of 2010 § 331, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.).

Independent centers and sponsored centers are subject to different review and audit requirements,¹⁰⁸ but center independence has no impact on reimbursement rates. States are required to conduct reviews of independent center compliance with Program requirements, with extra attention being paid to centers that have previous records of serious deficiencies.¹⁰⁹ Each year, these reviews must cover at least 33.3% of all independent centers and sponsors, and at least 15% of the reviews must be unannounced.¹¹⁰ Each center must be reviewed at least once every three years.¹¹¹ If the center has committed serious deficiencies, it will be denied renewal.¹¹²

CACFP in the Family Day Care Home Setting

Family day care homes are family and group day care providers that offer child care services out of a private home.¹¹³ Such providers do not qualify to apply for direct CACFP reimbursement from the state; instead, they must apply for CACFP reimbursements through sponsors.¹¹⁴ As of May 2012, Massachusetts had over 6,800 family day care providers,¹¹⁵ and roughly 70% participated in CACFP.¹¹⁶

All family day care homes are eligible for CACFP funding, but the Act sets forth a two-tiered payment rate structure, in which family day care homes are classified as either Tier I (higher payment) or Tier II.¹¹⁷ A family day care home must meet one of the following three tests (applied in this order) in order to qualify for the higher Tier I rates: the school area test, the census test, or the provider income test¹¹⁸

- Under the elementary school area test, all family day care homes located within areas served by elementary schools in which at least 50% of enrolled children are eligible for free or reduced-price meals are considered to have Tier I status.¹¹⁹
- Under the census test, automatic Tier I eligibility is granted to all family day care homes located within FNS-designated geographic areas in which at least 50% of children reside in households eligible for free or reduced-price meals.¹²⁰

¹⁰⁸ See *infra* notes 109–111 and accompanying text; *infra* notes 135–139 and accompanying text.

¹⁰⁹ 7 C.F.R. § 226.6(m) (2011).

¹¹⁰ *Id.* at § 226.6(m)(6).

¹¹¹ *Id.* at § 226.6(m)(6).

¹¹² Previously, states were required to deny the renewal applications of centers that had committed at least one “serious deficiency.” The new system of permanent agreements, which no longer includes a full renewal process, requires states to check for such deficiencies during the compliance review process that takes place every three years. See *id.* at § 226.6(c)(2)(i) (2011) (Serious deficiencies include: “[s]ubmission of false information on the institution’s application,” “[f]ailure to operate the Program in compliance with . . . performance standards,” “[f]ailure to comply with the bid procedures and contract requirements of applicable [f]ederal procurement regulations,” “[u]se of a food service management company that is in violation of health codes,” “[f]ailure by a sponsoring organization of day care homes to properly classify day care homes as tier I or tier II,” “[f]ailure to perform any of the other financial and administrative responsibilities required by [§ 226.6],” and “[f]ailure to properly implement and administer the day care home termination and administrative review provisions.”).

¹¹² 42 U.S.C.A. § 1766(d)(1)(2)(C) (2011).

¹¹³ 7 C.F.R. § 226.6(2) (2011).

¹¹⁴ Cf. 42 U.S.C.A. § 1766(d)(1)(B)(ii) (2011).

¹¹⁵ *Early Education and After School Programs*, MASSACHUSETTS EXECUTIVE OFFICE OF EDUCATION, <http://www.eec.state.ma.us/ChildCareSearch/EarlyEduMap.aspx> (Enter “Boston, MA” in “Street and City, or Zip Code” field; enter “300” in “Search Within” field; select “Family Child Care” in “Child care type” field; click “Search.”) (last visited May 7, 2012).

¹¹⁶ We were unable to locate the number of participating family day care providers in 2012, but there were 4,901 participating during FY 2011, and assuming that number did not change, participation would be about 72%. See *id.*; FOOD RESEARCH & ACTION CTR., STATE OF THE STATES: MASSACHUSETTS 2 (2011), available at <http://frac.org/wp-content/uploads/2010/07/ma.pdf>.

¹¹⁷ See *id.* at § 1766(f)(3)(A)(iii).

¹¹⁸ See *id.* at § 1766(f)(3)(A)(ii)(I); see also 7 C.F.R. § 226.2 (2011) (containing outdated definitions of Tier I and II day care homes that do not comply with the most recent version of the Act).

¹¹⁹ *Id.*

- Under the provider income test, a family day care home qualifies for Tier I reimbursement if the household of the care provider meets the income requirements for free or reduced-price meals.¹²¹

Benefits: CACFP reimbursement rates are based on the Tier I or Tier II eligibility. In general, family day care homes that do not qualify for the more generous Tier I payments¹²² are reimbursed at the lower Tier II rates, though homes may elect to receive Tier I payments for those individual children they serve that meet the more stringent Tier I eligibility (as described below).¹²³ As with the reimbursement rates for centers, payment rates for family day care homes are adjusted annually by the USDA.¹²⁴ For Massachusetts and the rest of the contiguous states, Tier I rates range from \$0.69 per snack to \$2.32 per lunch or supper, and Tier II rates range from \$0.19 per snack to \$1.40 per lunch or supper.¹²⁵ A chart listing all of the reimbursement rates by location, provider tier, and meal type is available in Appendix G, *infra*.

Administrative Requirements: Family day care homes that do not qualify for Tier I reimbursement have three different options. (1) They may choose to receive only Tier II rates of reimbursement for all children served.¹²⁶ (2) They may elect to receive Tier I payments for those individual children in their care who come from households meeting the income guidelines in 42 U.S.C.A. § 1758 (the Program Requirements section of the National School Lunch Program) for free or reduced-price meals.¹²⁷ (Note that the sponsor of a family day care home that elects this option must verify the household income of each child for which the family day care home claims Tier I eligibility.¹²⁸) (3) Finally, they may choose to receive Tier I reimbursement for those individual children in their care who are categorically eligible by virtue of being enrolled in a federal or state child care or other benefit program.¹²⁹

Sponsoring Organizations

Sponsors are child care centers or other institutions that administer CACFP for other centers or family day care homes.¹³⁰ Sponsors deal with the state as an intermediary on behalf of these providers, submitting reimbursement claims, distributing Program funds, and monitoring provider compliance with Program requirements.¹³¹

Eligibility: A center that is not participating in CACFP may serve as a sponsor if the state agency determines that (a) the center is eligible to participate in the Program and (b) the center's participation as a sponsor would "help to ensure" Program access to otherwise un-served centers, family day care homes, or children.¹³² As of January 2011, Massachusetts had twenty-five sponsors of family day care homes, only a handful of which were not also operating as center-based providers of child care

¹²⁰ *Id.*

¹²¹ 42 U.S.C.A. § 1766(f)(3)(A)(ii)(I) (2011).

¹²² *Id.* at § 1766(f)(3)(A)(ii).

¹²³ *Id.* at § 1766(f)(3)(A)(iii).

¹²⁴ *Id.* at § 1766(f)(3)(A).

¹²⁵ See Appendix G, *infra*.

¹²⁶ 42 U.S.C.A. § 1766(f)(3)(A)(iii)(I) (2011).

¹²⁷ *Id.* at § 1766(f)(3)(A)(iii)(II).

¹²⁸ *Id.* at § 1766(f)(3)(A)(iii)(III)(aa).

¹²⁹ *Id.* at § 1766(f)(3)(A)(iii)(II)(bb); see also 7 C.F.R. § 226.2 (2011).

¹³⁰ 7 C.F.R. § 226.2 (2011).

¹³¹ See *id.* at § 226.16.

¹³² 42 U.S.C.A. § 1766(d)(1)(C)(i) (2011).

services.¹³³ States are required to develop standard form agreements for sponsors to use when they contract with a center or family day care home.¹³⁴

Administrative Duties: To fulfill their administrative duties, sponsors perform three main tasks: editing reported meals, conducting reviews, and providing training. First, prior to each month's reimbursements, sponsors must at minimum ensure that the provider is serving only the approved meal types and that there are no discrepancies between the meals claimed by a provider and the provider's stated enrollment.¹³⁵ For each claiming period in which the sponsor conducts a review of a provider's home, the sponsor must review the provider's records for five consecutive days to determine the accuracy of meal counts.¹³⁶ To do so, they must compare the recorded number of meals served at each mealtime with attendance records for each meal.¹³⁷ Second, sponsors must conduct detailed reviews of each provider three times per year.¹³⁸ Finally, to meet the federal training minimum, Massachusetts requires that sponsors provide six hours of training annually to their sponsored care providers.¹³⁹

Funding: Sponsors are eligible to receive reimbursements for certain administrative costs of the Program.¹⁴⁰ Every month, each sponsor is entitled to an administrative payment determined by multiplying the administrative payment rate by the number of homes claiming reimbursements through that Sponsor during the month.¹⁴¹ The USDA adjusts the administrative payment rates annually to reflect changes in the Consumer Price Index.¹⁴² Additionally, sponsors of family day care homes that meet certain criteria are entitled to receive additional payments to start or expand their operations to reach more family day care homes,¹⁴³ but according to such organizations in Massachusetts, expansion funds are not currently available in the state.¹⁴⁴ These standards include requiring providers to document that they employ the equivalent of one full-time staff person to perform monitoring for each 50 to 150 day care homes it sponsors, and/or each 25 to 150 centers it sponsors.¹⁴⁵ In establishing a full-time status, the staff equivalent may include: time spent on scheduling, travel, review time, follow-up activity, report writing, and activities related to the annual updating of children's enrollment forms.¹⁴⁶

Compliance: Just as sponsors are required to monitor Program compliance for the providers they serve, states are required to conduct reviews of sponsor compliance with Program requirements, with extra attention to sponsors that have previous records of serious deficiencies.¹⁴⁷ Each year, these reviews must cover at least 33.3% of all independent centers and sponsors, and at least 15% of the reviews must

¹³³ See MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., DIRECTORY OF FAMILY DAY CARE SPONSORS (2011), available at <http://www.doe.mass.edu/cnp/nprograms/fdcspendors.pdf>.

¹³⁴ 42 U.S.C.A. § 1766(j)(1) (2011).

¹³⁵ 7 C.F.R. § 226.10(c) (2011) (requiring sponsors to determine each month at minimum that "each facility has been approved to serve the types of meals claimed" and to "[c]ompare the number of children enrolled for care at each facility, multiplied by the number of days on which the facility is approved to serve meals, to the total number of meals claimed by the facility for that month").

¹³⁶ *Id.* at § 226.16(d)(4)(ii).

¹³⁷ *Id.* at § 226.16(d)(4)(ii).

¹³⁸ *Id.* at § 226.16(d)(4)(iii).

¹³⁹ MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., FAMILY DAY CARE POLICIES AND PROCEDURES 23; see also 7 C.F.R. § 226.16(d)(i)(1)–(3) (2011).

¹⁴⁰ 42 U.S.C.A. § 1766(d)(4) (2011).

¹⁴¹ *Id.* at § 1766(f)(3)(B). See Appendix G for a chart detailing the per-home administrative payment rates.

¹⁴² *Id.* at § 1766(f)(3)(B).

¹⁴³ 7 C.F.R. § 226.16(b) (2011).

¹⁴⁴ Interview with CACFP Sponsor Organization (Feb. 5, 2013).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ 42 U.S.C.A. § 1766(d)(2)(C) (2011).

be unannounced.¹⁴⁸ Each sponsor serving up to 100 providers must be reviewed at least once every three years, and each sponsor serving more than 100 providers must be reviewed at least once every two years.¹⁴⁹ The review must include an assessment of a sample of the providers served by that sponsor.¹⁵⁰ The required sample size depends on the number of providers that the sponsor serves.¹⁵¹

II. PROGRAM CHALLENGES

During spring 2012, we met with a sample of child care providers and state licensing officials to engage in a series of frank discussions about their experiences with CACFP. During these interviews, we gathered valuable information about how the Program is administered on the ground. We asked participants to share Program successes, as well as any concerns that they had with the Program, either as designed or as administered.

In Massachusetts, CACFP helps to meet the nutritional needs of about 50,000 children from low-income families in child care each day.¹⁵² It is difficult to get a sense of the CACFP participation rate for the state (the number of CACFP-eligible children compared to the number of children served by the Program), but recent data has shown that the number of family day care homes participating in CACFP in Massachusetts dropped by 30%—from just over 7000 total homes to around 4900 homes—between 1996 and 2011.¹⁵³ In that same time, the number of child care centers participating in CACFP Massachusetts increased from 700 to just over 730.¹⁵⁴ While some of the children from the previous family day care homes may still receive Program benefits through center-based care, it is likely that some children who would be eligible for the Program are not currently being served.

This section summarizes the most important challenges presented by CACFP—identified through our research on the Program and our interviews with these CACFP participants and administrators—and proposes tentative solutions to the challenges presented. Additional research is needed to identify which of the proposed solutions are the most viable. Challenges are grouped into four categories: (A) General challenges, (B) Sponsor challenges, (C) Center-based challenges, and (D) Family day care home-based challenges. Broader policy recommendations are outlined in the following section.

A. General Challenges

Although many providers flagged challenges that were specific to their particular child care settings and roles in the Program, others raised concerns with CACFP that apply across the board. This section puts forth the most important of these general concerns. Because these challenges affect providers of all types, the solutions proposed in this section may provide especially promising starting points for policy advocacy that is high-impact and cost-effective.

¹⁴⁸ 7 C.F.R. § 226.6(m)(6) (2011).

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* New Sponsors serving at least five Providers must also be reviewed within 90 days of Program operations. *Id.*

¹⁵² *Nutrient and MyPyramid Analysis of USDA Foods in Five of Its Food and Nutrition Programs*, US DEP'T. OF AGRIC. C-1 (2012), available at <http://www.fns.usda.gov/ORR/menu/Published/CNP/FILES/NutrientMyPyramid.pdf> (citing the average CACFP daily participation in Massachusetts for FY 2009 as 52,144 children). CACFP reaches over 3.2 million children nationwide. *How To Promote Access to Good Nutrition in Child Care Settings*, FOOD RESEARCH & ACTION CTR. 1 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf.

¹⁵³ Rachel Cooper & Geri Henchy, FOOD RESEARCH & ACTION CTR., *Child & Adult Care Food Program: Participation Trends 2012* (2012), available at http://frac.org/newsite/wp-content/uploads/2009/05/cacfp_participation_trends_report_2012.pdf. It is also worth noting that Massachusetts was ranked 17th in the nation in terms of percent change in number of CACFP-participating family day care homes and 47th in terms of percent change in number of CACFP-participating child care centers.

¹⁵⁴ *Id.*

Financial Concerns

Reimbursement Rates

Issue: CACFP provides meal reimbursements in amounts that vary based on provider type and child need. Some providers are able to cover the entire cost of their food programs with CACFP funds alone, particularly if they have the ability to command high-volume discounts because they have a large number of sites or because they have partnered with other providers to purchase food in bulk.¹⁵⁵ But others struggle to keep their food costs within their CACFP allowances, as the reimbursement rates for meals and snacks are often not adequate to compensate providers for the total costs of the meals they provide.¹⁵⁶ Child care centers are generally better off financially and can absorb some of the financial burdens associated with utilizing CACFP, whereas family day care homes are more likely to struggle with these costs, due to their small scale operations and dearth of additional financial resources. This is especially the case for providers focused on increasing the nutritional quality of the meals they serve, since fresh produce, whole grains, lower-fat dairy products, and healthy meats can be more expensive to purchase, store, and prepare than other grocery items.¹⁵⁷

These providers have adopted a number of strategies to manage their expenses. Some of these strategies are more desirable than others. Unfortunately, some providers react to the low reimbursement rates by choosing to forgo fresh produce, opting instead to purchase canned or frozen items in bulk or to select lower-quality foods.¹⁵⁸ Others request that parents send lunches with their children, opting to provide only snacks and/or breakfast,¹⁵⁹ neither of which requires providers to serve meat or a meat alternate.¹⁶⁰ Studies have shown that meals from home are far less nutritious than those served by CACFP providers.¹⁶¹ Others, however, have achieved efficiency without sacrificing nutritional quality. For example, one family day care provider reports pooling food orders with a group of similar providers in order to command better rates with suppliers and meal providers.¹⁶²

One particularly problematic area is that of infant formula reimbursement rates. CACFP requires providers to serve iron-fortified formula to all infants whose parents do not provide breast milk,¹⁶³ despite the fact that many of these parents would otherwise be eligible for WIC payments to cover the cost of the formula. While the option is available to the parents to provide their own formula, the incentive to do so is minimal. Further, the provider cannot request that the parent provide breast milk or formula.¹⁶⁴ This requirement troubles providers because the reimbursement rates for infants are the

¹⁵⁵ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*; see also FOOD RESEARCH & ACTION CTR., HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 5 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf (“Cost is one of the most commonly cited barriers to providing healthier foods.”).

¹⁵⁹ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁶⁰ See Appendices A & C, *infra*.

¹⁶¹ See SHANNON WHALEY ET AL., IT’S 12 O’CLOCK . . . WHAT ARE OUR PRESCHOOLERS EATING FOR LUNCH? AN ASSESSMENT OF NUTRITION AND THE NUTRITION ENVIRONMENT IN LICENSED CHILD CARE IN LOS ANGELES COUNTY 24 (2008), available at <http://cfpa.net/ChildNutrition/ChildCare/CFPAPublications/Gilbert-LA-ChildCareLunchAssessment-2008.pdf> (“[F]ood brought from home had significantly poorer food quality than food from providers. Food brought from home was of significantly poorer quality than all groups except family homes without CACFP and centers with state CACFP sponsorship.”).

¹⁶² Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁶³ 7 C.F.R. § 226.20(b)(2) (2011).

¹⁶⁴ See Memorandum from Maureen B. Staggenborg, Bureau Chief, Bureau of Adult Education and Nutrition Programs to Children and Adult Care Food Program (CACFP) Sponsors (July 1, 2003), available at http://www.sde.ct.gov/sde/lib/sde/pdf/deps/nutrition/cacfp/memos/om_10c_03.pdf.

same as for children of other ages,¹⁶⁵ but formula is more expensive than other foods.¹⁶⁶ For this reason, some providers have difficulty paying for the formula with CACFP funds alone.¹⁶⁷

Further, the number of meals Providers can be reimbursed for is not in the best interest of the children's health. Providers often serve more than three meals or snacks per day to children, especially if the children come for before and after school care.¹⁶⁸ In fact, national child care standards now indicate that children should eat small meals and snacks throughout the day.¹⁶⁹

Potential Solution: One beneficial change that could occur at the state or federal level would be an increase in the number of meals or snacks that could be reimbursed per day. Until 1995, providers were able to receive reimbursements for up to three meals and one snack.¹⁷⁰ Additionally, at the state level, Massachusetts can and should do more to encourage and facilitate collective purchasing and other cost-cutting workarounds that do not affect the overall nutritional quality of the meals reimbursed through CACFP. Massachusetts can also use state money to supplement the Program by increasing the reimbursement rates across the board for providers within its jurisdiction. It is possible that providers who have left the Program because of its burdensome administrative requirements¹⁷¹ might choose to return if the rates were increased, even by a small amount.

Administrative Funding

Issue: CACFP provides some administrative funding to compensate sponsors for time spent managing and implementing the Program, but this funding is only available to sponsors, not child care centers or family day care homes.¹⁷² Both child care centers and family day care homes need to spend a significant amount of time completing all of the paperwork that is required for Program participation. Center administrators report that the claims reporting process requires up to two full working days per month, or about ten percent of a single staff member's time on the job.¹⁷³ However, under the current payment structure, centers receive no administrative support payments to facilitate this work.

Two center-based providers commented that CACFP food reimbursements do not provide enough funding for a center to run an entire food program, including food services staff, menu planning, and administrative staff time.¹⁷⁴ Rather, they noted that the Program functions more as a supplement to an existing food program that is also supported by other funding streams.¹⁷⁵ Unfortunately, if centers or family day care homes do not have the funding to start a food service program, CACFP is of little use.

Potential Solution: If Massachusetts wants to alleviate some of the financial burdens associated with administering the program, the state should offer more funds to cover these costs. The state should conduct research to determine if the current level of paperwork is truly required for the successful

¹⁶⁵ See Appendix G, *infra*.

¹⁶⁶ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ FOOD RESEARCH & ACTION CTR., HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 4 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf.

¹⁷⁰ *Id.*

¹⁷¹ See *infra* notes 180–207 and accompanying text.

¹⁷² Cf. 42 U.S.C.A. § 1766(d)(4) (2011) (providing a method for claiming administrative expenses that is exclusive to sponsoring organizations).

¹⁷³ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

implementation of the program. Alternatively, the state could provide free training in an effort to make claim reporting more efficient.

Attendance-based Reimbursement

Issue: CACFP reimburses providers by paying for meals actually served, with a cap of one meal per child.¹⁷⁶ In other words, if a provider orders enough food for eight children and only six show up that day, only the six meals actually served are eligible for reimbursement. If the provider is unable to save the two uneaten meals for another day, they will go to waste and the provider will have to take the loss or find an alternative source of funding to pay for them.

For providers who purchase non-perishable foods in bulk, these daily fluctuations may not generate a great deal of waste. However, for providers who attempt to maximize the nutritional quality of the meals that they serve, either by providing large quantities of perishable produce (e.g., leafy greens) or by ordering hot prepared meals from an outside contractor, waste is more of a problem.¹⁷⁷ Because menu planning generally takes place on a monthly basis, unused fresh groceries and hot meals cannot generally be preserved or incorporated into the next day's menu.¹⁷⁸

Accidents are another source of food waste, and the Program's rigid reimbursement requirements do not allow providers any flexibility in accommodating children who spill or drop their food.¹⁷⁹ One center reported that a child spilled her milk during an audit visit, and while the auditor did not disqualify the reimbursement for the meal, the provider could not ensure that the child actually drank a full serving of milk without paying out-of-pocket for the extra food.¹⁸⁰ This is because giving the child a second serving to replace the wasted product would not be reimbursable.¹⁸¹ CACFP does not have the flexibility to allow multiple meals per child. This requirement is intended to prevent fraud and duplication, but it also means that providers must absorb the costs of spilled food, a common occurrence among toddlers and young children.

Potential Solution: Federal-level advocates should consider advocating for an allowance for double reimbursement for meals that are documented as spilled, or perhaps for a small margin on top of each reimbursement to cover accidents at the table.

State-Level Administration

Recordkeeping & Paperwork

Issue: CACFP regulations provide that state administrators must designate the required recordkeeping methods for the institutions in their jurisdiction.¹⁸² One of the most common provider complaints about CACFP is the amount of paperwork that must be completed both annually and on an ongoing basis in order to remain eligible for their food reimbursements.¹⁸³

In particular, providers question the need to record portion sizes and feeding times for each child, rather than using more efficient methods such as overall tallies.¹⁸⁴ One center-based provider with multiple

¹⁷⁶ 7 C.F.R. § 226.11(c)(1) (2011).

¹⁷⁷ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁷⁸ *Id.*

¹⁷⁹ *See* 7 C.F.R. § 226.11(c)(1) (2011).

¹⁸⁰ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁸¹ 7 C.F.R. § 226.11(c)(1) (2011).

¹⁸² *Id.* at § 226.11(e).

¹⁸³ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁸⁴ *Id.*

building sites also reported that the state auditor required the center to produce handwritten attendance and meal records.¹⁸⁵ The provider expressed frustration with the fact that the center was not permitted to satisfy Program requirements using more efficient record-keeping methods, such as emailing electronic totals to the administrator instead of being required to record paper tallies for each classroom.

Despite the potential savings in both time and money that electronic recordkeeping might facilitate, some state CACFP administrators still seem to require providers to keep handwritten paper records. It is possible that these requirements only apply to center-based providers, or that only certain DESE auditors request these handwritten records.

Potential Solution: More research is needed to determine the status of this rule in Massachusetts. In any case, DESE has the authority to streamline its recordkeeping requirements,¹⁸⁶ and more low-income providers might be able to participate in the Program if the recordkeeping duties were less burdensome and required less time, space, and paper.¹⁸⁷

Auditing Practices

Issue: Many CACFP participants, particularly sponsors administering large networks of affiliate sites, report smooth working relationships with the state CACFP administrators and auditors who perform annual on-site audits (also called “administrative reviews”) of their compliance.¹⁸⁸ These providers praise the state for being responsive and accessible, both day-to-day and during the audit process, and they claim that the audit process is fair and compliance-driven.¹⁸⁹ However, some center-based providers claim that state auditors seem more focused on uncovering noncompliance than on correcting suboptimal performance or providing technical assistance.¹⁹⁰ Notably, centers that lacked strong day-to-day working relationships with DESE officials were more likely to raise concerns about the tenor of the auditing process.¹⁹¹

At one center, a state auditor disqualified the meal reimbursement for a child who failed to drink his entire serving of milk, despite the fact that the center had already purchased and served both the milk and the other food that he consumed.¹⁹² Rather than advising the provider to encourage the children to finish their meals or even admonishing her to be more vigilant in future feedings, the auditor docked the meal from the center’s reimbursement claim.¹⁹³

Another center reported that state auditors seem eager to uncover mistakes in the required enrollment paperwork for eligible students.¹⁹⁴ For most children receiving meals reimbursed under the Program, providers are required to collect a variety of sensitive information, including family income and Social Security numbers.¹⁹⁵ Although federal regulations only require annual updates,¹⁹⁶ centers report that

¹⁸⁵ *Id.*

¹⁸⁶ See 7 C.F.R. § 226.11(e) (2011).

¹⁸⁷ See FOOD RESEARCH & ACTION CTR., HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 3 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf (recommending that CACFP administrators “streamline program operations, increase flexibility, and maximize technology and innovation to reduce parent paperwork and allow sponsors and providers to operate most effectively”).

¹⁸⁸ Interviews with Child Care Providers (Mar.-Apr. 2012); Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

¹⁸⁹ *Id.*

¹⁹⁰ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ 7 C.F.R. § 226.15(e) (2011).

because the update periods are incompatible with the fiscal year, they are forced to collect this information from parents multiple times per year.¹⁹⁷ Collecting this information is particularly hard with respect to children whose parents do not drop them off or pick them up at the center, and parents who are simply not cooperative.¹⁹⁸

Despite the difficulty of collecting this income information, some providers felt that DESE auditors respond harshly when they discovered an enrollment form that had not been signed or was missing a Social Security number.¹⁹⁹ In at least one case, a provider noted that DESE auditors had disqualified all meals claimed for a child for an entire year rather than giving the provider an opportunity to correct the deficiency.²⁰⁰ Program regulations require centers to keep documentation of enrolled children's eligibility for free or reduced-price meals on file, but the regulations merely state that insufficient documentation "shall be *grounds for* the denial of reimbursement for meals served during the period covered by the records in question and for the denial of reimbursement for costs associated with such records."²⁰¹ Thus, it seems that DESE retains the discretion to permit corrections rather than requiring (or allowing) its auditors to dock poorly-papered claims without giving centers the opportunity to remedy the deficiency.

Similar experiences have taught many centers that the auditing process can be invasive, burdensome, and almost guaranteed to result in funding cuts, and few providers feel that their audits have provided any value in the form of technical assistance, training, or support.²⁰² Of course, it is important to the future viability and financial integrity of the Program that false claims be detected, rejected, and discouraged. Federal regulations require that providers keep certain information in their records, and state auditors should not be criticized for attempting to enforce these regulations in good faith. However, DESE need not solely view the audits as an opportunity to uncover provider wrongdoing and fraud. Rather, the state agency should focus on the auditing process more as a tool to assist largely compliant providers in streamlining and improving the management of their food programs.

Potential Solution: There is a simple organizational change that might help DESE to institutionalize this alternate approach to auditing and compliance. Currently, DESE auditors visit enrolled providers only once every three years, and a different auditor generally performs the review each time.²⁰³ Thus, many centers lack an ongoing working relationship with the agency, and some report difficulty in knowing who to contact with inquiries or in getting responses to emails and questions about Program compliance.²⁰⁴ By contrast, for child care center licensing, DEEC assigns one licenser to each licensed entity.²⁰⁵ This licenser serves as an ongoing resource and partners with the provider to maximize the quality of its child care services.²⁰⁶ Adopting a similar model might make it easier for DESE auditors to establish positive working relationships with the child care providers that they serve.

Notification of Program Changes

¹⁹⁶ *Id.* at § 226.15(e)(3).

¹⁹⁷ Interviews with Child Care Providers (Mar.-Apr. 2012).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ See 7 C.F.R. § 226.15(e)(2) (2011) (emphasis added).

²⁰² Interviews with Child Care Providers (Mar.-Apr. 2012).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Interviews with Dep't of Early Educ. & Care Licensors (Mar.-Apr. 2012).

²⁰⁶ *Id.*

Issue: CACFP is a dynamic program, with reimbursement rates and eligibility requirements that change on an annual basis, if not more frequently. Providers struggle to keep their food service practices in compliance with the latest versions of federal, state, and sometimes sponsor-created regulations. DESE reportedly notifies providers of important changes by posting updates on a web-based portal for registered CACFP participants, but enrolled providers do not receive any kind of written notification, either by e-mail or in hard copy, when important rule changes occur.²⁰⁷ One provider noted that many centers without a great deal of CACFP experience often struggle to interpret and implement these changes, and several providers expressed their desire for a simple monthly or quarterly newsletter with readable explanations of important Program updates.²⁰⁸

Potential Solution: DESE should institute a periodic newsletter clarifying Program requirements and providing important updates. This low-cost initiative would make it much easier for busy providers to keep up with Program changes and requirements, and might also reduce the incidence of errors and non-compliance uncovered later, during the auditing process. DESE should work with providers to determine the best frequency and format for such a newsletter, and should partner with sponsors who have already implemented their own newsletter systems for ideas and possible collaboration.

Nutritional Requirements

Stronger nutritional guidelines

Issue: Meals served through CACFP must follow meal pattern requirements, which generally stipulate that each child must receive some combination of milk, produce, grains, and/or meat (or meat alternate) with each meal or snack.²⁰⁹ In addition to naming the required meal components, these requirements also designate the minimum portion sizes for each component.²¹⁰ However, as described above, these meal patterns merely establish a nutritional floor that does not necessarily guarantee compliance with the USDA Dietary Guidelines.²¹¹ Many providers report that they invest significant time and other resources into making their food programs nutritious, but most admit that CACFP itself does not require them to do so.²¹² In fact, several center-based providers believe that the meal pattern requirements occasionally have the incongruous effect of reducing the nutritional quality of a reimbursable meal.²¹³ A few examples illustrate the point:

- If a provider would like to serve potatoes with a meal, he/she must also serve a grain product, since the meal pattern treats potatoes as a vegetable.²¹⁴
- The meal pattern treats fruits and vegetables as interchangeable meal components, so it is possible for a fully reimbursable meal program to avoid serving vegetables altogether.²¹⁵
- Providers are not required to serve a variety of fruits and vegetables throughout the week or month.²¹⁶
- Frozen and canned produce can be served in place of fresh items.²¹⁷

²⁰⁷ Interviews with Child Care Providers (Mar.-Apr. 2012).

²⁰⁸ *Id.*

²⁰⁹ See *supra* notes 46–53 and accompanying text.

²¹⁰ *Id.*

²¹¹ See *supra* notes 59–62 and accompanying text.

²¹² Interviews with Dep’t of Early Educ. & Care Licensors (Mar.-Apr. 2012).

²¹³ *Id.*

²¹⁴ See N.Y. STATE DEP’T OF HEALTH, CREDITING FOODS IN CACFP 9 (2008), available at <http://www.health.ny.gov/prevention/nutrition/cacfp/docs/creditfoods.pdf>; Appendices A–B, *infra*.

²¹⁵ See Appendices A–C, *infra*.

²¹⁶ *Id.*

- Cheese can be served in place of meat, poultry, or fish.²¹⁸
- The required serving size for cheese is very large; it is identical to that for meat, poultry, and fish, despite the much higher fat content of cheese.²¹⁹ The 1.5-ounce serving for 3-to-5-year-olds is the equivalent of about two whole deli slices of cheese.²²⁰

Possible Solution: Massachusetts need not rely solely on the USDA to strengthen nutrition in child care settings. DESE can take steps to encourage providers to serve meals that meet or exceed the standards set up by the Dietary Guidelines, either by partnering with DEEC, which determines if a center receives the licensure necessary to participate in CACFP, to strengthen their joint nutritional monitoring efforts,²²¹ or by providing incentives for providers whose meals exceed the nutritional floor set out by CACFP. Some states have even started using their licensing requirements to improve the nutritional quality of the food programs in child care settings by opting to specify certain nutritional benchmarks rather than merely mandate general compliance with the Dietary Guidelines or simply recommend higher specific standards. For example, California recently enacted legislation to improve the nutritional quality of beverages served in all licensed child care facilities, prohibiting most beverages with added sweeteners and limiting fruit juice to one serving per day.²²² This is similar to the heightened standards seen in West Virginia and Texas.²²³ Massachusetts should consider adopting more stringent nutritional guidelines, either for CACFP participants only (as West Virginia has done) or as part of the licensure process for all licensed child care facilities (similar to California and Texas). Care should be taken to ensure that any changes to the licensure would not be overly difficult for busy DEEC licensors to incorporate into their audits or to enforce without further training or expertise.

Finally, the New York State Department of Health has produced a guidebook for providers that distinguishes between foods that are “creditable,” meaning that they qualify as meal pattern components and are eligible for reimbursement, and those that are “nutritious.”²²⁴ A series of user-friendly charts contains a simple frowning face symbol for discouraged, but still creditable, foods. According to the guidebook: “This symbol means foods are creditable but not recommended. These items may be high in salt, fat, sugar or low in nutritional value.”²²⁵ Until federal-level changes tighten the nutrition requirements for CACFP reimbursements or the state changes its regulations, such soft guidance is a great tool that state administrators can use to encourage providers to increase the of nutritional quality of meals received while still following the meal pattern requirements, and focus on serving truly nutritious meals to the children in their care.²²⁶

²¹⁷ N.Y. STATE DEP’T OF HEALTH, CREDITING FOODS IN CACFP 9 (2008), *available at* <http://www.health.ny.gov/prevention/nutrition/cacfp/docs/creditfoods.pdf>

²¹⁸ See Appendices B–C, *infra*.

²¹⁹ *Id.*

²²⁰ *Id.*; Kraft Natural Slices: Cheese Slices, KRAFT FOODS, <http://www.kraftrecipes.com/Products/ProductInfoDisplay.aspx?SiteId=1&Product=2100003706> (last visited May 7, 2012).

²²¹ See *supra* notes 81–89 and accompanying text.

²²² See *Addressing Childhood Obesity by Studying Preschool Children*, ROBERT WOOD JOHNSON FOUNDATION (May 31, 2011), <http://www.rwjf.org/childhoodobesity/product.jsp?id=72435>.

²²³ See *supra* notes 75–79 and accompanying text.

²²⁴ See N.Y. STATE DEP’T OF HEALTH, CREDITING FOODS IN CACFP (2008), *available at* <http://www.health.ny.gov/prevention/nutrition/cacfp/docs/creditfoods.pdf>.

²²⁵ *Id.* at 7.

²²⁶ See also FOOD RESEARCH & ACTION CTR., HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 3 (Apr. 2010), *available at* http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf (recommending that the USDA “provide training, education, and technical assistance . . . emphasizing increased consumption of whole grains, fruits and vegetables, and lower-fat dairy and protein foods”).

Overly complicated or strict guidelines regarding age-appropriate food and food components

Issue: In addition to reporting frustration with the rigid meal pattern requirements and flagging the nutritional laxity of the current CACFP system, a few providers expressed frustration with the age-related food guidance that they receive from the state.²²⁷ For instance, DEEC issues guidance on choking hazards and other food safety issues for licensed child care entities.²²⁸ Although these requirements do not come directly from CACFP, providers recognize they could be barred from claiming reimbursements for meals if they do not comply with these regulations as state licensure is necessary to participate in CACFP.²²⁹

Potential Solution: DESE and DEEC should cooperate to streamline their food program requirements, and DEEC should seek feedback from care providers before establishing rigid food safety rules that reduce meal service flexibility.

B. Sponsor challenges

We spoke with sponsoring organizations of both child care centers and family day care homes to better understand the challenges sponsors face in administering CACFP. It is especially important to be attentive to their concerns at this juncture, as the number of sponsoring organizations nationwide has significantly declined since the mid-1990s.²³⁰ Sponsors are not only essential for administering the Program, but they can also further its nutrition and health aims and serve as an active force in expanding enrollment, particularly since sponsorship is needed in order for family day care homes to enroll in CACFP.

Program Administration

Recordkeeping & Paperwork

Issue: The General Challenges section, *supra* Part III.A, noted the unwieldy amount of paperwork that providers must complete to remain eligible for reimbursements. Likewise, the most significant challenge CACFP poses for sponsoring organizations is its recordkeeping burden.

To illustrate the extent of sponsors' recordkeeping requirements, consider the following examples of the various kinds of information sponsors of family day care homes must collect, aggregate, and keep on file for each provider they sponsor: enrollment information for each child; information used to classify family day care homes as Tier I day care homes; information used to determine the Tier I eligibility of individual children enrolled in Tier II day care homes; daily attendance records and daily meal counts, by type; copies of menus, and any other food service records required by DESE; information concerning the location and dates of home review, any problems noted, and the corrective action prescribed and effected; and information on training sessions held.²³¹

Sponsors expressed frustration that they have to stretch their already limited reimbursement payments to create records of all the information just listed. They also found it burdensome to comply with recordkeeping requirements they believe to be unessential to the Program's administration. As one

²²⁷ Interviews with Child Care Providers (Mar.-Apr. 2012).

²²⁸ *Id.*; 606 MASS. CODE REGS. 7.12(1) (2010); see *Questions & Answers About the New Family, Group and School Age Child Care Regulations*, MASS. EXEC. OFFICE OF EDUC. (May 19, 2009), <http://www.mass.gov/edu/birth-grade-12/early-education-and-care/laws-regulations-and-policies/child-care-regulations-and-policies/q-and-a-new-child-care-regs.html>.

²²⁹ *Id.*; see 42 U.S.C.A. § 1766(a)(5) (2011) (requiring providers to meet state licensing requirement in order to get reimbursed).

²³⁰ FOOD RESEARCH & ACTION CTR., *HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 5* (2010), *available at* http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf.

²³¹ See 7 C.F.R. § 226.15(e)(3)-(14) (2011).

example of such a requirement, sponsors pointed to the rule that forms be updated to reflect minor changes, such a provider's decision to shift lunchtime from 12:00 PM to 12:10 PM. Sponsors found such a task to be resource intensive, and could not identify the purpose behind the requirement.²³²

Sponsors also flagged the editing process as particularly time-consuming because it requires that they comb through each provider's menu for each meal to determine its compliance with the meal pattern requirements.²³³ One sponsor we spoke with noted that the use of proprietary software created specifically for the management of CACFP eases this burden. The software utilized by that particular sponsor is called *Minute Menu*, and it allows providers to record their meal components and attendance counts online. Sponsors can then conduct their edits through the program, which has certain features to make the process easier, such as not allowing providers to submit meals that do not contain all the components of a meal pattern. This check certifies to the reviewing sponsor that any meals recorded in *Minute Menu* count for reimbursement. Not all providers, however, are comfortable using computers and some sponsors allow those providers to submit their records by hand, which then require extra time to be reviewed and input into the sponsors' files.²³⁴

Potential Solution: Overall, efforts to reduce paperwork can reduce cost and should be encouraged. Ineffective administrative requirements, including those that do not prevent abuse or ensure program compliance, should be eliminated.²³⁵ One such successful elimination was the recent removal of block claims, which required sponsors to verify that the number of meals claimed for a particular meal type, e.g. breakfast, was the same number for fifteen consecutive days.²³⁶ With the elimination, sponsors no longer need to complete edit checks or conduct unannounced visits in order to check for block claims.²³⁷ Additionally, one particularly burdensome information-gathering requirement was alleviated in 2010.²³⁸ Under the HHFKA, Tier II family day care homes are now allowed to assist in transmitting parents' income information to the sponsor (with the parents' consent), rather than requiring the sponsor to collect this information itself like in the past.²³⁹

Reduction of CACFP paperwork does not have to rely on federal-level change. At the state level, DESE should also continue to streamline its paperwork requirements and allow as many administrative tasks to be completed online as possible, as sponsors seem to appreciate the added ease of online form completion.²⁴⁰ One significant solution to the paperwork burden has already been implemented in

²³² Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²³³ MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., FAMILY DAY CARE POLICIES AND PROCEDURES 22 ("Meal counts may only be submitted for reimbursable meals."); see also 7 C.F.R. § 226.10(c) (2011) (requiring that, at minimum, sponsors ensure monthly that each facility is approved to serve the type of meal claimed and that there are no discrepancies between the meals claimed and the number of enrolled children).

²³⁴ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²³⁵ See FOOD RESEARCH & ACTION CTR., HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 3 (2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf (recommending that CACFP administrators "streamline program operations, increase flexibility, and maximize technology and innovation to reduce parent paperwork and allow sponsors and providers to operate most effectively").

²³⁶ MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., FAMILY DAY CARE POLICIES AND PROCEDURES 34.

²³⁷ Memorandum from Kathleen C. Millet, Exec. Dir., Office for Nutrition, Health and Safety Programs, to Children and Adult Care Food Program (CACFP) Sponsors (Jan. 14, 2012), available at <http://www.doe.mass.edu/news/news.aspx?id=5974>.

²³⁸ Healthy, Hunger-Free Kids Act of 2010 § 333, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.).

²³⁹ *Id.* HHFKA also requires USDA to formulate policies for provider participation in this process. *Id.* The proposed policies have recently been published. 77 Fed. Reg. 21018, 21022–21023 (Apr. 9, 2012) (to be codified at 7 C.F.R. pt. 226) (allowing the provider to assist in collecting income eligibility applications but precluding them from reviewing the applications).

²⁴⁰ Interviews with Sponsoring Organizations (Mar.-Apr. 2012). As noted in the General Challenges section, DESE has the authority to implement these changes. See 7 C.F.R. § 226.11(e) (2011).

Massachusetts. DESE has classified certain neighborhoods as automatically qualifying as Tier I,²⁴¹ which reduces paperwork for sponsors because they no longer have to work through the various tests to classify providers. Classifying additional neighborhoods in this manner might also encourage more family day care home providers to join the program.

Massachusetts can also look to the innovative programs other states have implemented to reduce administrative hurdles. For example, the Illinois State Board of Education, in conjunction with the Illinois Department of Human Services, created an online system that allows CACFP providers to check the children enrolled in their care directly against the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance to Needy Families (TANF) databases.²⁴² The system allows quick identification of children who qualify for free CACFP meals and/or snacks and eliminates the need to complete additional household eligibility paperwork for children already in the SNAP and TANF database.²⁴³

Implementation of a similar program in Massachusetts would assist in ensuring that family day care homes would more easily be able to receive Tier I reimbursement for those children who should be eligible. This should not be too difficult for Massachusetts to do, as it recently updated its systems in order to allow for SNAP/TANF databases to be accessed by schools for direct certification of National School Lunch Program free and reduced-price lunch eligibility, so Massachusetts should be able to provide access to these databases for CACFP providers and sponsors in order to directly certify Tier I CACFP eligibility, as Illinois has done.

Staffing Needs

Issue: As explained above, the basic administrative requirements of CACFP are a heavy load. All the sponsors we spoke with explained that completing these duties requires significantly more employee time than is funded by CACFP's reimbursement rates. Sponsors therefore rely on funding from other sources to be able to pay for enough employee hours to complete the Program's administrative duties.²⁴⁴

Potential Solution: Reduction in CACFP's paperwork and recordkeeping burden would help to diminish this mismatch between reimbursement rates and actual staffing costs. Another policy solution would be to advocate, at the federal or state level, for increased funding for sponsoring organizations that is substantial enough to fully cover staffing costs.

Civil Rights Data Collection Form

Issue: One very specific concern for sponsors is the USDA's requirement that they complete the Civil Rights Data Collection Form each year as part of their monitoring responsibilities.²⁴⁵ The form requires that sponsors assess the race and ethnicity of each child present at the time of the inspection of each center or family day care home.²⁴⁶ It also asks the sponsor to determine whether there is any separation

²⁴¹ See Kathleen C. Millet, *2012 Area Eligible Schools*, MASS. DEP'T ELEMENTARY & SECONDARY EDUC. (Feb. 13, 2012), <http://www.doe.mass.edu/cnp/nprograms/cacfp.html?section=aec>.

²⁴² NUTRITION PROGRAMS DIV., ILLINOIS STATE BD OF EDUC., Guidance Document Issued for Child and Adult Care Food Program *available at* http://www.isbe.state.il.us/nutrition/pdf/cacfp_edcs_guidance.pdf.

²⁴³ *Id.*

²⁴⁴ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²⁴⁵ FOOD & NUTRITION SERV., CIVIL RIGHTS COMPLIANCE AND ENFORCEMENT—NUTRITION PROGRAMS AND ACTIVITIES 17 (2005), *available at* <http://www.fns.usda.gov/cr/documents/113-1.pdf>; *see also* MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., FAMILY DAY CARE POLICIES AND PROCEDURES 41 (explaining the federal requirement).

²⁴⁶ CIVIL RIGHTS COMPLIANCE AND ENFORCEMENT—NUTRITION PROGRAMS AND ACTIVITIES, FOOD & NUTRITION SERV. 17 (2005), *available at* <http://www.fns.usda.gov/cr/documents/113-1.pdf>; *see also* Mass. Dep't of Elementary & Secondary Educ., Civil Rights Data Collection Form For Family Day Care (FDC) Homes: Child And Adult Food Program (2010).

during the eating period of children by race, color, national origin, sex, age, or disability.²⁴⁷ While the form clearly seeks to ensure that children enrolled in day care programs are not subject to discrimination, sponsors expressed discomfort with the task of ascertaining such detailed information about each child based only on a visual assessment. They also saw the form as another example of the unnecessary paperwork burden imposed by the program.

Potential Solution: The Day Care Home Review Form provided by DESE, which is completed during the sponsor's monitoring visits, already requires that the monitor check to ensure that civil rights violations are not occurring at the provider's home.²⁴⁸ It does not, however, require the monitor to make the sensitive ethnic and racial assumptions that the Civil Rights Data Collection Form does. A simple solution might be to advocate for the elimination of the Civil Rights Data Collection Form, and to instead rely on the civil rights monitoring already occurring during sponsor reviews and communicated via the Day Care Home Review Form. This change would have to occur at the federal level, however, since the USDA mandates completion of the Civil Rights Form.

Review Process

Issue: Sponsors conduct three reviews per year of each provider they monitor. They must review meal patterns, licensing, attendance at trainings, meal counts, menus, and accuracy of enrollment forms.²⁴⁹ Beyond this basic requirement, however, sponsors often feel compelled to provide additional reviews of providers' records and facilities.²⁵⁰ They do so not only to ensure compliance with the myriad reporting requirements of CACFP, but also to ensure that they are prepared for the rigorous review that DESE conducts of the sponsor itself.²⁵¹ Indeed, in one sponsor's experience, DESE always finds a problem when it completes its annual review of a random selection of the sponsors' providers.²⁵²

Potential Solution: To reduce the time that sponsors must spend scrutinizing their providers' records, DESE could focus less on critiquing sponsors for their providers' minor technical violations of CACFP regulations. Sponsors, by virtue of their reviewing duties, are already focused on the matters of everyday compliance. DESE's efforts simply duplicate this level of attention. Instead, DESE could focus on working with sponsors to tackle more fundamental issues, such as increasing the nutritional quality of the food providers serve, providing more effective training, or addressing the issues posed by providers' who demonstrate substantial noncompliance.

Renewal Process

Issue: The budget submissions/re-contracting process between DESE and sponsoring organizations occurs yearly.²⁵³ DESE requires significant amounts of detailed information, including management plans and administrative budgets for the year, as well as detailed information for every provider under the sponsors' authority.²⁵⁴ Sponsors criticize the process as internally redundant, as well as duplicative of the review of sponsors that DESE completes throughout the year. According to sponsors, the application

²⁴⁷ See, e.g., Mass. Dep't of Elementary & Secondary Educ., Civil Rights Data Collection Form For Family Day Care (FDC) Homes: Child And Adult Food Program (2010).

²⁴⁸ Mass. Dep't of Elementary & Secondary Educ., Child And Adult Food Program Child Day Care Home Review Form (2009).

²⁴⁹ 7 C.F.R. § 226.16(d) (2011).

²⁵⁰ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²⁵¹ See discussion of state audit process, *infra* 13–14.

²⁵² Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²⁵³ *Id.*; see also 7 C.F.R. § 226.6(b)(2) (2011) (requiring reapplication at least once every three years).

²⁵⁴ 7 C.F.R. § 226.16(b)(1) (2011).

takes several days to complete and is made more difficult by the fact that only certain parts of it may be done online.²⁵⁵

Potential Solution: Any streamlining that can be done to the budget submission/re-contracting process would help to relieve sponsors' complaints about this aspect of the Program. The HHFKA has made one such change at the federal level: sponsors renewing their contracts are no longer required to complete the whole contracting application each time. Instead, they must submit an annual certification that they still meet the Program's requirements.²⁵⁶ HHFKA mandates that the USDA develop a policy to implement this new process.²⁵⁷ Regardless of these proposed federal-level changes, at the state level, DESE should continue to put more elements of the application online and find other ways to streamline the process for sponsors.

Training

Issue: Massachusetts requires that sponsors provide six hours of CACFP training to their sponsored centers and family day care homes each year.²⁵⁸ The state has not provided any significant support, however, with providing training content. Sponsors must create and get approval for the material they plan to use at the trainings. In addition to the four yearly trainings one sponsor provides, the sponsor also prepares home study materials and examinations for those unable to attend trainings, which requires a significant amount of time.²⁵⁹ Sponsors who prepare materials in additional languages or for low-literacy providers face additional resource expenses.

Potential Solution: The burden tied to training could easily be addressed by preparation of training materials at the state level. This might also improve the quality of materials presented, or at least ensure a uniform message. Increased reimbursement to sponsors for preparation of training materials could be another potential solution.

Reimbursement

Issue: Sponsors generally expressed that the level of reimbursement they receive does not adequately compensate them for the work required to administer the program.²⁶⁰ Indeed, one advocacy group noted that actual costs for sponsors were on average five percent higher than the reimbursements received.²⁶¹

Potential Solution: Rates should at least be increased to cover costs, as sponsors play an essential role in ensuring access to CACFP at family day care homes that serve some of the most vulnerable families, and thus should be adequately compensated for the work that they do. Along these lines, according to a report published by the Food Research and Action Center (FRAC), funding increases could help sponsors provide "quality nutrition and wellness education, transportation to serve family day care homes in rural

²⁵⁵ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²⁵⁶ Healthy, Hunger-Free Kids Act of 2010 § 331(b), Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.).

²⁵⁷ *Id.*

²⁵⁸ MASS. DEP'T OF ELEMENTARY & SECONDARY EDUC., FAMILY DAY CARE POLICIES AND PROCEDURES 23.

²⁵⁹ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²⁶⁰ See 7 C.F.R. § 226.12(a) (2011) (setting out administrative costs payments). The reimbursement process will be simplified under changes implemented by the Healthy, Hunger-Free Kids Act of 2010. See Healthy, Hunger-Free Kids Act of 2010 § 334, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.); 77 Fed. Reg. 21018, 21019 (Apr. 9, 2012) (to be codified at 7 C.F.R. pt. 226) (proposing "to eliminate the 'lesser of' cost and budget comparisons for calculating administrative payments to day care home sponsoring organizations).

²⁶¹ FOOD RESEARCH & ACTION CTR., HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 5 (Apr. 2010), available at http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf.

areas, additional visits to ensure compliance and provide support, and extra time spent to help low-income providers overcome literacy and language issues.”²⁶² If sponsors could provide these additional services, the ease of participating in CACFP for providers would increase and, as a result, participation might increase as well.

It should be noted that some sponsors are creatively using CACFP resources to address the nutritional and health needs of enrolled children. One sponsor we met with, for example, sends her providers newsletters with healthy recipes and suggestions to increase children’s activity levels.²⁶³ Such sponsors should be recognized for their extra efforts and incentivized to expand this innovative work, perhaps through additional grants, similar to the subsidies that are available to cover start-up and expansion costs for new sponsors.²⁶⁴

Any significant increase to sponsor reimbursement rates at the federal level is unlikely in the current economy. However, in order to help sponsors plan multi-year budgets, HHFKA now allows family day care home sponsors to carry over a maximum of 10% of administrative payments into the succeeding fiscal year, allowing sponsors to utilize some of their payments for multi-year planning (subject to USDA regulations that will create procedures to implement this new rule).²⁶⁵ Massachusetts could, in addition, consider supplementing sponsor reimbursement rates to support well-managed and well-funded sponsors and ensure that they remain available to serve providers who wish to be part of CACFP.

C. Center-based challenges

Ability to employ food services workers

Issue: Family day care homes usually only employ the resident adult as the provider, and this adult is responsible for both supervision and food preparation. Child care centers, on the other hand, are sometimes able to rely on kitchen workers to provide meals for the enrolled children. However, many centers do not have enough funding to hire any kitchen workers. These centers must resort to serving bulk food items, setting aside some of their reimbursement funds to subsidize a kitchen service or even forgoing serving hot meals altogether.²⁶⁶ All of these strategies harm the nutritional quality of the meals served through CACFP.²⁶⁷

Some centers employ full-time staff members for food services, but CACFP funds are not meant to pay the salaries of chefs, nutritionists, or kitchen workers.²⁶⁸ Many Head Start providers and other centers with access to significant sources of additional federal/state money or private grants are able to hire such personnel in order to strengthen their food programs.²⁶⁹ These centers admit that they would be

²⁶² *Id.*

²⁶³ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²⁶⁴ *Cf.* 7 C.F.R. § 226.12(b)(1) (2011).

²⁶⁵ Healthy, Hunger-Free Kids Act of 2010 § 334, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.); *see* 77 Fed. Reg. 21018, 21023 (Apr. 9, 2012) (to be codified at 7 C.F.R. pt. 226) (proposing procedures to implement the carryover policy).

²⁶⁶ Interviews with Child Care Providers (Mar.-Apr. 2012).

²⁶⁷ These tactics, coupled with related financial challenges, may explain why at least one report found that center-based food programs that contract directly with the state and are not participating in Head Start serve lower-quality meals than both non-CACFP centers (likely serving higher-income populations) and CACFP family day care homes (as they have kitchens and fewer children to feed). SHANNON WHALEY ET AL., *IT’S 12 O’CLOCK . . . WHAT ARE OUR PRESCHOOLERS EATING FOR LUNCH? AN ASSESSMENT OF NUTRITION AND THE NUTRITION ENVIRONMENT IN LICENSED CHILD CARE IN LOS ANGELES COUNTY 25* (2008), *available at* <http://cfpa.net/ChildNutrition/ChildCare/CFPAPublications/Gilbert-LA-ChildCareLunchAssessment-2008.pdf>.

²⁶⁸ *Cf.* 42 U.S.C.A. § 1766(d)(4) (West, Westlaw through P.L. 112-89 (excluding P.L. 112-55, 112-74, 112-78, and 112-81)) (providing a method for claiming administrative expenses that is exclusive to sponsoring organizations).

²⁶⁹ Interviews with Child Care Providers (Mar.-Apr. 2012).

unable to offer such high-quality meals without the extra funding.²⁷⁰ One Head Start administrator commented that a budget of even \$10,000 per year for part-time kitchen staff would make it possible to maximize the nutritional quality of CACFP subsidized meals.²⁷¹ Another non-profit center claimed to be subsidizing the food program with other grant funding simply because its administrators value nutrition enough that they are willing to make the effort to squeeze it into the budget.²⁷² These other sources of federal, state, and private funding are not options for most family day care homes, thus leaving them without access to additional financial support to operate their programs.

Potential Solution: In the absence of an increase in federal-level reimbursements for CACFP or funding for centers to hire food service staff, states are free to supplement CACFP funding with their own benefits and assistance, and increasing the number of qualified workers attending to the nutritional needs of young children could greatly increase the quality of the meals that children receive from child care institutions. Alternatively, Massachusetts could partner with private sector organizations to offer grants to institutions with a demonstrated need for support in this area.

Training

State agencies administering CACFP are responsible for training sponsors and independent centers in Program requirements and nutrition, as well as assisting sponsors in their efforts to provide such trainings to their contracted facilities.²⁷³ In Massachusetts, DEEC shares information about CACFP benefits and sponsor organizations with newly licensed child care providers and DESE provides periodic trainings to Program participants.²⁷⁴

Trainings for Administrators

Issue: Many providers note that although they would like to attend more state-sponsored training sessions, they are unable to do so because trainings are held too infrequently in their part of the state.²⁷⁵ Additionally, several providers claim that the trainings could be more helpful, and that instead of simply reading from the USDA materials that are posted online, they would like state administrators to provide more substantive advice and assistance about serving nutritious foods in their local environment.²⁷⁶ Because the training sessions reportedly do not add a great deal of value, many providers have resorted to self-help, downloading materials from the FNS website and educating themselves on Program requirements.²⁷⁷ Overall, while this strategy may be empowering for some of the more sophisticated providers, the need to self-train may deter providers who are less comfortable navigating government documents from participating in CACFP or having successful programs.

Potential Solution: Many providers report that the USDA and state materials are too lengthy, and that they would prefer to receive summaries and other abbreviated materials highlighting the most important points.²⁷⁸ Additionally, instead of receiving guidance that is repetitive of what the USDA already offers, trainings could add value by providing concrete information on wholesalers and the outsourcing of meal preparation, or practical tips on saving time and money in the preparation and

²⁷⁰ *Id.*

²⁷¹ Interviews with Child Care Providers (Mar.-Apr. 2012).

²⁷² *Id.*

²⁷³ See *supra* note 139 and accompanying text.

²⁷⁴ Interviews with Child Care Providers (Mar.-Apr. 2012); Interviews with Mass. Dep't of Early Educ. & Care Licensors (Mar.-Apr. 2012).

²⁷⁵ Interviews with Child Care Providers (Mar.-Apr. 2012).

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ *Id.*

servicing processes, as many providers struggle to stay in compliance with rigid meal pattern requirements without wasting a great deal of teacher time that could otherwise be spent attending to the needs of the children in their care.²⁷⁹

Trainings for Teachers

Issue: In center-based care settings, office administrators often interface with CACFP representatives at the state or a sponsor organization, but teachers are generally the staff members responsible for meal service.²⁸⁰ As a result, center directors often find that they need to conduct frequent trainings and performance evaluations for their teaching staff in order to ensure overall Program compliance.²⁸¹ Although the state provides occasional trainings for directors and other administrative personnel, providers report that they have had to develop their own materials for teacher trainings.²⁸²

Potential Solution: Given that teacher compliance is a crucial component of the audit process, and of ensuring that children are receiving the attention and care that they deserve during mealtimes, the state should assist centers by either developing training materials that are tailored to the needs of teaching staff or offering CACFP trainings that target teachers specifically. Teachers do not need to learn the details of the online CACFP portal, but they do need to understand the attendance recordkeeping requirements and mealtime regulations, and their cooperation is essential for ensuring that Massachusetts child care centers' meals remain in compliance with federal law.

D. Family care-based challenges

Family care providers find CACFP reimbursements crucial to the financial viability of their businesses, but they are generally not concerned solely with the meals they prepare and serve. Often, as the sole employee of their business, they must also be teachers, janitors, administrators, and more. Their daily interactions with the Program have exposed them to some of the challenges it poses.

Sponsor Discretion

Issue: As explained above, family day care homes are only allowed to participate in CACFP if they are affiliated with a sponsor, and their only connection to the state is generally through interactions with their sponsor. Sponsors sometimes require providers to abide by additional rules beyond those in the Act, its implementing regulations, and the state rules promulgated by DESE. Providers may be unfairly limited by such restrictions. One provider we spoke with, for example, cited her sponsor's requirement that she submit weekly menus before the start of each week as particularly onerous.²⁸³ The provider prefers to buy organic milk and large amounts of fresh produce to serve more nutritious meals to her participants. To afford these higher quality foods with the CACFP reimbursement rates, she shops several times per week, and purchases what she finds on sale. This makes planning meals a week ahead very difficult because she cannot predict, for example, what fruit will be on sale in a particular week.²⁸⁴

DESE gives discretion to sponsors in other matters as well, for example, regarding the use of reimbursements for prepared foods. Some sponsors we spoke with had no prohibitions on using prepared foods to meet the meal pattern requirements, so long as providers followed health code requirements, such as refrigerating the food before it was served. In contrast, other sponsors prohibit

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ *Id.*

²⁸⁴ *Id.*

the use of prepared foods.²⁸⁵ One provider shared her efforts to use the food preparation company that prepared meals for the elementary schools in her neighborhood. By joining with other family day care homes in her neighborhood, she negotiated a per-meal rate with the company that stayed within CACFP's per-meal reimbursement rate. After speaking with DESE, which initially vetoed the plan, she was told by DESE that her sponsor could make the final decision. The sponsor said it would not consider the meals delivered by the food preparation company to be reimbursable because they were not prepared by the provider herself.²⁸⁶ As described above, in most family day care home settings, there is just one adult available to run the program and prepare the meals. Allowing family day care homes to contract with a company to bring in prepared foods can both reduce the burden on this individual and ensure that higher quality and more nutritious foods are served to the children in care.

Another area of sponsor discretion about which some family care providers expressed concern is the form of provider reimbursement. Some sponsors we interviewed noted that they provide itemized reimbursements to their providers that detail the number of meals served and the rate at which they are reimbursed.²⁸⁷ One provider, however, noted that she only receives a single check from her network administrator, who is also her CACFP sponsor, with no breakdown of the CACFP reimbursement that explains how many meals have been reimbursed and at what rate.²⁸⁸ This makes it challenging for the provider to keep track of finances or ensure that all the meals and snacks were properly reimbursed.

Potential Solution: For significant policy issues that are not clearly answered by the CACFP statute or regulations, DESE should decline to delegate authority to sponsors and instead set statewide guidelines, with input from sponsors and providers on the best solutions. This strategy would be beneficial, for example, for the discrete issues just discussed—timing of menu submissions, rules about prepared foods, and the information included on provider reimbursement checks. It would also avoid differential treatment for providers based the identity of their sponsor.

Prepared foods

Issue: As noted in the previous challenge, there appears to be confusion regarding the extent to which prepared foods may be used to meet the meal pattern requirements. This lack of clarity has resulted in sponsors adopting different policies on prepared foods.²⁸⁹ Neither the CACFP implementing statute nor regulations prohibit the use of prepared foods so long as they are creditable (may be counted towards meeting the meal pattern).²⁹⁰ Indeed, the apparent confusion among sponsor organizations of family care providers is not reflected in the practices of center-based providers. Centers, especially those without kitchens, regularly rely on food prepared by outside companies to feed participants.²⁹¹

Potential Solution: As noted above, allowing family day care homes to utilize prepared foods can reduce the burden on the provider while helping to ensure that higher quality and more nutritious foods are served. DESE could provide guidance to sponsors in this critical area by clarifying that prepared foods, so long as they are creditable, may be served in family day care homes. New York, for example, has created

²⁸⁵ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²⁸⁶ Interviews with Child Care Providers (Mar.-Apr. 2012).

²⁸⁷ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

²⁸⁸ Interviews with Child Care Providers (Mar.-Apr. 2012).

²⁸⁹ *Id.*

²⁹⁰ 7 C.F.R. § 226.20 (2011).

²⁹¹ Interviews with Sponsoring Organizations (Mar.-Apr. 2012).

an extensive guide for CACFP providers that explains in detail which foods are creditable, including common commercially prepared foods.²⁹²

Recordkeeping

Issue: Similar to sponsors, family care providers noted the challenge of keeping up with the extensive CACFP recordkeeping requirements. Providers are required to record meal counts “during the meal service or immediately after.”²⁹³ They must also record the elements of each meal served to document compliance with the meal pattern requirements.²⁹⁴ They must inform sponsors of any changes to meal service times, as well as if they will be out of the home during an approved meal service.²⁹⁵ Providers must keep enrollment forms on hand for all children participating in CACFP,²⁹⁶ which must be updated annually with the child’s usual days and hours of care and meals normally served to them.²⁹⁷ These forms must be signed by a parent or guardian.²⁹⁸ Providers might have to assist with gathering financial information from parents for reimbursement purposes, if their sponsor has not taken on this duty.²⁹⁹

Family care providers find these recordkeeping duties difficult because of the daily uncertainties involved with caring for children. Providers, for example, can never be sure when a child will come late and miss a meal they have already expended money to prepare. They also do not know when they will have a moment to record all the elements of the meals they have served, given the time it takes to plan and prepare the meals, as well as the additional duties they must perform as the sole caregiver and educator during the day.³⁰⁰

Of course, family care providers recognize the importance of keeping accurate records for reimbursement purposes. However, the recordkeeping burden appears to have a real impact on providers’ decisions to enroll in or remain in the Program. Several providers we spoke with attested to this fact, or alluded to providers they know who declined to join the Program because of its reputation for requiring onerous recordkeeping.³⁰¹

Providers also encounter difficulties recording meals when they care for different children at different times in the day. DEEC licenses unassisted providers to provide care for up to six children at one time.³⁰² But such providers may wish to claim meals for more than six children on a given day if, for example, a provider cares for four children before school, and three different children after school. Providers are wary, however, of claiming meals for more children than their licensed capacity. They are concerned that such claims might cause DEEC to incorrectly believe that they are operating beyond their licensed capacity and revoke their licenses. DEEC licensors confirm that sponsors often contact them with tips

²⁹² N.Y. STATE DEP’T OF HEALTH, CREDITING FOODS IN CACFP (2008), available at <http://www.health.ny.gov/prevention/nutrition/cacfp/docs/creditfoods.pdf>.

²⁹³ MA DEP’T OF ELEMENTARY & SECONDARY EDUC., FAMILY DAY CARE POLICIES AND PROCEDURES 23. Note, however, that CACFP regulations only require daily tallies. 7 C.F.R. § 226.13(d)(3)(i).

²⁹⁴ *Id.* at § 226.18(d).

²⁹⁵ MA DEP’T OF ELEMENTARY & SECONDARY EDUC., FAMILY DAY CARE POLICIES AND PROCEDURES 20.

²⁹⁶ *Id.* at 12.

²⁹⁷ 7 C.F.R. § 226.18(e).

²⁹⁸ *Id.*

²⁹⁹ See 7 C.F.R. § 226.18(b)(11) (for Tier II homes). HHFKA now allows sponsors to help procure this information. Healthy, Hunger-Free Kids Act of 2010 § 333, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.).

³⁰⁰ Interviews with Child Care Providers (Mar.-Apr. 2012).

³⁰¹ *Id.*

³⁰² CHILD CARE RES. CTR., TYPES OF CHILD CARE / MA CHILD CARE REGULATIONS AT-A-GLANCE, available at <http://www.cccinc.org/pdf/Types%20of%20Child%20Care-Regulations%20at%20a%20Glance%20II.pdf> (last visited May 4, 2012). Providers with an assistant may care for up to ten children at one time. *Id.*

about possible lapses in provider compliance with both CACFP regulations and state child care licensing regulations. Thus, providers have legitimate reason to be concerned.³⁰³

Potential Solution: Any means of streamlining recordkeeping duties for family care providers would help make the Program more manageable. Increasing providers' access to programs like *Minute Menu* might help in this regard. Additionally, sponsors and DEEC should work together to share information about providers who care for different children over the course of a day. This way, providers can be reimbursed for the meals they are actually serving and DEEC can be assured that such providers are following capacity restrictions.

Other issues

Language barriers

Issue: Some sponsors are inadequately prepared to meet the needs of non-English speaking or low-literacy family child care providers.³⁰⁴ For example, sponsors may not have monitors to conduct home reviews that are fluent in the provider's language, they may fail to provide required documents in the provider's language, or they may not offer trainings in the provider's language.

Potential Solution: Sponsors could work to better ensure that they are meeting the language needs of their providers and perhaps refer a provider to another sponsor if they are unable to do so. DESE could help to address the needs of this population by creating materials, such as required forms and training guides, in additional languages or for those with a low literacy level. DESE could also provide funds for translators to be used at provider trainings or when sponsors conduct home reviews.

Sensitivity during reviews

Issue: Both sponsor monitors and state monitors could be more sensitive of the daily challenges in a family day care home at the time of monitoring visits. It may not always be possible for providers to attend to monitors immediately and directly, and providers expressed frustration regarding sponsors and DESE monitor requests for paperwork and other data while they are trying to provide care.³⁰⁵

Potential Solution: Monitors should be attentive to the situation at family care homes and allow sponsors to keep their attention focused on the children as necessary.

Lack of access to food banks

Issue: While nonprofit centers are eligible to utilize foods from food banks, family care providers are categorized as for-profit and cannot use this resource, despite serving the same population as the nonprofits who have access to them.

Potential Solution: While it might be difficult to expand access to food banks, Massachusetts could increase access to nutritious foods for family care providers by providing vouchers for expensive items, such as produce and formula, or vouchers for use at farmers markets. It would be helpful to research whether other states offer similar benefits and identify best practices for implementing them.

III. PRELIMINARY RECOMMENDATIONS & NEXT STEPS

As noted in the introduction, this report is intended as a first step in a broader inquiry into CACFP in Massachusetts. The interviews we conducted with CACFP participants were completed over a period of

³⁰³ Interviews with Mass. Dep't of Early Educ. & Care Licensors (Mar.-Apr. 2012).

³⁰⁴ Interviews with Child Care Providers (Mar.-Apr. 2012).

³⁰⁵ *Id.*

weeks and focused on identifying the highest-level issues. Further, this report is limited in that it only examines the operation of CACFP (not other federal or state supplemental nutrition programs) and only in the context of early childhood care (not in the context of CACFP utilized in afterschool programs or for elder care services). This section provides some preliminary policy recommendations based on our research to date, as well as suggesting some avenues for potential future research that would assist in identifying other promising areas for reform.

Preliminary Policy Recommendations:

Based on our background research and interviews with CACFP providers and stakeholders, we believe that the possible solutions offered earlier in the report could all positively impact the CACFP program in Massachusetts if implemented. However, given the vital service offered by providers and their identification of profound hurdles to participation in CACFP, change on a broader scale is necessary. We have identified several important big picture areas where changes would be both feasible and impactful. We recommend the following areas as the best options for initial policy change:

1. Increase Funding

The most direct means of improving the efficacy of CACFP is to increase the funds dedicated to it. While increased funding from the federal government would be valuable, advocates need not rely on that source. As it does for the Women, Infant, and Children Nutrition Program (WIC),³⁰⁶ Massachusetts can also supplement CACFP at several key points. An increase in the meal-reimbursement rate would especially benefit family care-based providers for whom the current reimbursement rate is often not enough to cover the cost of meals and snacks. An alternative, potentially more cost effective approach, would be reimbursing providers for one additional meal or snack each day. Further, helping to cover the costs of meals that are prepared but not served due to absence or accident would also alleviate the burden on providers. These changes would improve providers' abilities to purchase quality, nutritious ingredients and better meet the cost of expensive infant formula.

As for the administrative costs of CACFP, both the federal government and the state of Massachusetts should consider increasing funding to compensate providers (who are currently not reimbursed for administrative expenses) and sponsors fully for their completion of the Program's extensive administrative duties. They could also allocate funds to help center-based programs pay for kitchen staff or hire nutritionists to assist with increasing the nutritional value of the meals they serve. Any of these funding needs could also be met through partnerships with private sources, such as foundations interested in food security or early childhood education and care, who might be willing to dedicate funds to specific parts of the Program. Ultimately, increased funding from either the federal government or the state of Massachusetts would encourage more providers to remain in or join the Program, another important advocacy goal.

2. Increase participation

Our initial research into CACFP has shown that advocates concerned about child nutrition should support the Program. It provides demonstrable benefits for children attending participating day cares by ensuring that they receive meals that meet minimum nutrition standards. It also helps those who provide child care to low-income families to maintain financially viable businesses. Since the Program has proven benefits, one of the top priorities for advocates should be finding ways to expand Program participation by different providers.

³⁰⁶ State Plan Letter from Judy Hause, Director—Nutrition Division, Mass. WIC Program, to public health community (Oct. 31, 2011) available at www.mass.gov/eohhs/docs/dph/wic/state-plan-letter-2012.doc.

An important next step for advocates and state partners should be to extend the reach of the Program by encouraging more providers to participate. As noted above, an increase in reimbursements could be an important tool in working towards enrollment of all eligible providers. Other possible initiatives might include increasing un-enrolled providers' familiarity with CACFP and producing materials that explain the complicated Program's requirements in an easily understandable manner. Advocates should also think about how to use sponsoring organizations, child care-provider networks, and other community-based programs to conduct outreach to family day care home providers that might otherwise be unaware of CACFP. Efforts to reach non-English speaking family care providers should also be encouraged. These providers are unlikely to have adequate information about CACFP and targeting them could significantly increase Program participation.

The Food Research and Action Center (FRAC) has proposed one micro-level solution that we find particularly worthwhile. It recommends that the federal "area eligibility" test for Tier I eligibility be changed to require that 40% of a neighborhood's families be low-income, rather than 50%.³⁰⁷ The test is especially effective for increasing enrollment because it does not require documentation of each child's household income, thus reducing paperwork for providers and sponsors.³⁰⁸ FRAC is concerned that the current low-income population threshold set by the eligibility test fails to qualify as Tier I many neighborhoods with significant amounts of low-income families.³⁰⁹ With FRAC's recommended change, more neighborhoods would qualify as Tier I and more providers would receive the higher Tier I reimbursements for meals and snacks served. The proposed change would therefore encourage greater participation from providers who find that the Tier II rates do not compensate them enough to deal with CACFP's administrative burden.³¹⁰ Even though this change would need to be made at the federal, rather than state level, advocates in Massachusetts can work with those in other states to push for such a modification to the eligibility test in order to ensure increased Program coverage for those most in need.

3. Streamline the program

The Healthy, Hunger-Free Kids Act of 2010 has made several changes to CACFP to address concerns about the paperwork and administrative burdens of the program.³¹¹ As mentioned in this report, these include allowing family care providers to assist with submitting family income forms; permitting centers to enter into permanent operating agreements with the states; streamlining the re-contracting process for sponsors; and allowing sponsors to carry over funds from the preceding fiscal year, which allows them to create multi-year budgets.³¹² While federal-level changes can still be made to improve the program, such as eliminating the requirement of the Civil Rights form, Massachusetts should also do what it can to reduce the amount of paperwork both providers and sponsors must complete. It should focus on removing forms that are not directly targeted to ensuring that CACFP is administered smoothly, and put more forms and requirements online where possible. Advocates should push for Massachusetts to consider creating more efficient methods for providers to record meals and for sponsors to edit them, such as by offering free access to *Minute Menu* or other software that is designed to manage food programs, and it should ensure that state auditors stop requiring center-based providers to keep

³⁰⁷ FOOD RESEARCH & ACTION CTR., HOW TO PROMOTE ACCESS TO GOOD NUTRITION IN CHILD CARE SETTINGS 4 (2010), *available at* http://frac.org/newsite/wp-content/uploads/2010/04/cnr03_cacfp.pdf. *See also* 42 U.S.C.A. § 1766(f)(3)(A)(ii)(I)(bb) (2011).

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.* at 4-5.

³¹¹ Healthy, Hunger-Free Kids Act of 2010 § 334, Pub. L. No. 111-296, 124 Stat. 3183 (codified as amended in scattered sections of 26 U.S.C.A.)

³¹² *Id.*

handwritten attendance records. Similarly, Massachusetts could implement a program like that utilized in Illinois in which CACFP providers can check the children enrolled in their care directly against the SNAP and TANF database in order to prove Tier I eligibility with reduced paperwork.³¹³

4. Monitor federal-level nutrition regulations

The USDA has recently amplified its focus on the quality of the foods subsidized by its child nutrition programs, particularly in the school lunch setting, and similar changes are on the horizon for CACFP. The meal pattern and nutrition requirements are at the core of the Program, which serves many children from low-income families and neighborhoods without a great deal of access to healthy foods. Therefore, CACFP's regulations create an important benchmark for the health and nutritional outcomes of needy children at one of the most critical times in their development. Local advocates should monitor federal-level changes to the Program's nutrition requirements and submit public comments responding to the proposed regulations that USDA will be releasing sometime in 2013.

However, Massachusetts need not wait until the USDA acts before addressing some of the nutritional deficiencies of the Program. Massachusetts should amend its child care licensing requirements, increase enforcement of existing requirements, or create additional state nutritional requirements to ensure that providers serve meals that reflect health experts' most current nutritional knowledge. The state should also provide soft guidance to providers to assist them in selecting healthy foods to fulfill the meal pattern requirements, as well as providing monetary or other incentives to providers who meet a higher nutritional bar than is set by CACFP. Finally, as mentioned previously, the state should take steps to help get information about updated regulations and guidelines out to providers in a more efficient and timely manner.

5. Provide better trainings and training support

CACFP regulations stipulate that states must provide technical support to providers and sponsors within their jurisdiction. While DESE offers training sessions every year to educate sponsors and child care center administrators on their duties under the Program, based on our research, we believe the trainings would be more effective if they were specifically tailored to the providers' needs. Some providers felt that the trainings were not plentiful enough, that they were held in inconvenient locations, and that they did not review relevant or helpful information. Massachusetts should examine the training practices of other states and identify potential models to improve its CACFP trainings.

On a related note, DESE provides scant training assistance to sponsors, who are required to train the family day care home providers that they serve. As a result, the quality of sponsor-hosted trainings varies widely, and family day care homes are not receiving consistent messages throughout the state. Similarly, center-based providers lamented the lack of DESE support for training teachers in Program requirements, and centers are left to develop their own training materials without assistance or funding for this task. DESE should take the lead in developing a consistent message for each of these settings, and in providing user-friendly materials that sponsors and centers can use to offer training sessions for the relevant individuals.

6. Increase collaboration between DESE & DEEC

The nutrition landscape in Massachusetts is complicated by the fact that DESE and DEEC share regulatory responsibility for food programs in child care settings. It is important that any overlap in the jurisdiction of DEEC and DESE be managed a way that will benefit the health of the children that the

³¹³NUTRITION PROGRAMS DIV., ILLINOIS STATE Bd OF EDUC., Guidance Document Issued for Child and Adult Care Food Program *available* at http://www.isbe.state.il.us/nutrition/pdf/cacfp_edcs_guidance.pdf.

Program serves. Further, as noted above, DEEC seems to have an overall positive relationship with providers. If DESE were to collaborate with DEEC, perhaps by coordinating reviews of providers, providers' experiences when working with state agencies might improve.

More generally, DESE and DEEC should collaborate more closely to ensure CACFP is implemented well and all foods served in child care settings are appropriate, nutritious, and healthy. It appears that enforcement of the USDA Dietary Guidelines is stuck in a gray area between the two state agencies, resulting in the loss of an otherwise superb opportunity for Massachusetts to improve the health and nutrition metrics of its youngest children. DESE and DEEC officials should meet to review their duties, and should work to draw up and publicize a clear list of guidelines they will follow in sharing responsibility for nutrition monitoring in Massachusetts. These efforts will ensure that providers understand their rights and duties under state and federal law. They will also ensure that providers are held accountable for the quality of the meals they serve, which is the ultimate goal of this report, as well as both CACFP and the state licensing requirements.

7. Empower and Educate Parents

Parents can and should be the strongest advocates for improved nutrition in child care centers and family day care homes. As children in child care settings lack knowledge about good nutrition and are too young to advocate for themselves, it is up to the parents to understand CACFP's nutrition and meal standards to ensure that their children are being properly nourished. Parents should feel empowered to ask providers about the specific foods being offered to their children and discuss any concerns or inconsistencies with these providers. They can also consider working with other concerned parents and agencies to advocate for higher standards at the local or state level. Massachusetts advocates should educate and empower parents in order to arm them to better play this important role so they can push to raise the nutritional quality of foods in different types of child care settings and ensure that all children are getting the food and nutrients they need to grow into productive, healthy adults.

Areas for Additional Research:

As noted above, this report is intended as a first step in a broader inquiry into CACFP. Our capacity to conduct comprehensive interviews with stakeholders was limited and the report itself is restricted by its exclusive focus on CACFP. For these reasons, more research is likely needed to round out the recommendations put forward at this time. Below are some topics that would merit further investigation:

1. Gather Accurate Participation Data for CACFP in Massachusetts

One first step that would be helpful in assessing the success and barriers to the operation of CACFP in Massachusetts would be collecting better data on CACFP participation rates. Identifying the number of potentially eligible children and comparing that with the number of children currently receiving CACFP benefits would help to create an objective metric of success that could be charted over time by the state. Further, mapping participation data by location would provide a starting place for advocates and state agencies to use in identifying areas where more work is needed to ensure that the neediest children have access to healthy meals in this vulnerable stage of their lives. Participation rates for other similar programs, such as WIC, could provide a useful proxy for measuring CACFP participation rates, but it would be best for the state to track CACFP participation rates directly.

2. Interview CACFP Participants Outside of Boston and Non-participants

As this report is the initial step in looking into CACFP and its role in child nutrition, we conducted interviews in a limited geographic scope. We focused on CACFP sponsors and providers in Boston and the surrounding areas. A next step in researching the Program should be to extend the geographic scope

of the inquiry. It would be very helpful to interview participants outside of the Boston area in order to learn whether the challenges and barriers are the same as those in the Boston area and identify new Program challenges that may be unique to more suburban and rural areas. It is especially important to know if providers living in more suburban and rural areas have the same participation rates as those living in or very close to a major city and, if not, what can be done to increase their participation.

Similarly, it would be beneficial to interview providers (both child care centers and family day care homes) who do not participate in CACFP. For this report, we limited our interviews to those who participate in CACFP, either as providers or as sponsors. We heard a number of secondhand stories explaining why some providers choose not to participate in the Program, but we were unable to probe these reasons in greater detail. Interviewing non-participants may provide superior insight into the challenges and barriers to the Program and potential improvements, as they may have opted out of using the Program as a direct response to a specific requirement or set of requirements.

3. Look at Other State Practices

In addition to speaking with providers outside Boston and the state of Massachusetts, the next phase of research should look at state laws and state agency practices outside of Massachusetts. Examining how other states operate CACFP is central to identifying best practices for implementing the Program in Massachusetts. This inquiry would help to generate more specific recommendations about policy changes that can be advocated at the state level to help the program run more efficiently and increase participation. This report has already identified a couple of promising state-level initiatives, including New York's creditable foods handbook, West Virginia's minimum nutrition requirements, Illinois' program to allow providers to check names with SNAP/TANF enrollment lists, and the revisions to California's child care licensing guidelines. Other examples are sure to exist, and state-level programs tailored to specific challenges that are shared by Massachusetts can serve as a template for future changes in this state.

4. Consider CACFP's Limitations & Evaluate Other Food Programs

Although CACFP can be a significant force for improving children's health outcomes, it only reaches children when they are in child care. It would be useful to research other programs that aim to improve the quality of meals served at home to children in low-income families. The Supplemental Nutrition Assistance Program (SNAP, formerly known as food stamps) might be one place to begin the investigation. The Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC), which targets food assistance to vulnerable populations of women, infants, and children, is another. There may be ways to increase the nutritional quality of the food in that program or use it as a platform to provide education to parents about preparing healthy meals. It would be useful to learn more about these programs to determine how CACFP might be adapted to better complement them and also to ensure that we are taking targeted steps to provide healthy, nutritious food to young children in all different child care settings. Such coordination would help guarantee that young children receive the greatest benefit possible from the combined resources.

Additionally, programs like the National School Lunch Program should be further explored as they often complement the health aims of CACFP. Specifically, the recent changes made to the National School Lunch Program's nutrition standards can be used to implement similar standards in CACFP. In addition, it is important to always look for additional sources of funding. For example, the USDA offers grants, called Team Nutrition grants, for centers that want to make their food even healthier.³¹⁴

³¹⁴ *Team Nutrition Training Grants*, USDA FOOD & NUTRITION SERV., Apr. 27, 2012, <http://www.fns.usda.gov/tn/grants.html>.

5. Assess the Value of the USDA's Donated Foods in Lieu of Cash

As mentioned in the Legal Background section, the Act also provides that the USDA shall deliver donated foods to states in order to supplement the meal reimbursements that are the core benefit of the CACFP, though cash in lieu can be accepted instead. While we did not speak to providers or sponsors regarding donated foods, it would be worthwhile to learn more about the donated foods program. As the USDA has access to these foods in large quantities and at low prices, receiving donated foods could be a better and more affordable option for some providers. In assessing the value of opting into these programs, it would be helpful to speak with Providers who both decided in favor of and against receiving donated foods. We should also analyze the delivery of the donated foods or cash in lieu and ensure that centers and family day care homes are capitalizing on whatever resources are available under either option.

APPENDICES

APPENDIX A. Child Meal Pattern (Breakfast)

Child Meal Pattern Breakfast			
Select All Three Components for a Reimbursable Meal			
<i>Food Components</i>	<i>Ages 1-2</i>	<i>Ages 3-5</i>	<i>Ages 6-12¹</i>
1 milk fluid milk	1/2 cup	3/4 cup	1 cup
1 fruit/vegetable juice, ² fruit and/or vegetable	1/4 cup	1/2 cup	1/2 cup
1 grains/bread ³ bread or cornbread or biscuit or roll or muffin or cold dry cereal or hot cooked cereal or pasta or noodles or grains	1/2 slice 1/2 serving 1/4 cup 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup 1/2 cup 1/2 cup
<p>1 Children age 12 and older may be served larger portions based on their greater food needs. They may not be served less than the minimum quantities listed in this column.</p> <p>2 Fruit or vegetable juice must be full-strength.</p> <p>3 Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.</p>			

Source: *Child and Adult Care Program: Meal Patterns*, FOOD & NUTRITION SERVICE, http://www.fns.usda.gov/cnd/care/programbasics/meals/meal_patterns.htm (last visited Apr. 5, 2012).

APPENDIX B. Child Meal Pattern (Lunch or Supper)

Child Meal Pattern Lunch or Supper			
<i>Food Components</i>	<i>Ages 1-2</i>	<i>Ages 3-5</i>	<i>Ages 6-12¹</i>
1 milk fluid milk	1/2 cup	3/4 cup	1 cup
2 fruits/vegetables juice, ² fruit and/or vegetable	1/4 cup	1/2 cup	3/4 cup
1 grains/bread ³ bread or cornbread or biscuit or roll or muffin or cold dry cereal or hot cooked cereal or pasta or noodles or grains	1/2 slice 1/2 serving 1/4 cup 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup 1/2 cup 1/2 cup
1 meat/meat alternate meat or poultry or fish ⁴ or alternate protein product or cheese or egg or cooked dry beans or peas or peanut or other nut or seed butters or nuts and/or seeds ⁵ or yogurt ⁶	1 ounce 1 ounce 1 ounce 1/2 egg 1/4 cup 2 Tbsp. 1/2 ounce 4 ounces	1 1/2 ounces 1 1/2 ounces 1 1/2 ounces 3/4 egg 3/8 cup 3 Tbsp. 3/4 ounce 6 ounces	2 ounces 2 ounces 2 ounces 1 egg 1/2 cup 4 Tbsp. 1 ounce 8 ounces
<p>1 Children age 12 and older may be served larger portions based on their greater food needs. They may not be served less than the minimum quantities listed in this column.</p> <p>2 Fruit or vegetable juice must be full-strength.</p> <p>3 Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.</p> <p>4 A serving consists of the edible portion of cooked lean meat or poultry or fish.</p> <p>5 Nuts and seeds may meet only one-half of the total meat/meat alternate serving and must be combined with another meat/meat alternate to fulfill the lunch or supper requirement.</p> <p>6 Yogurt may be plain or flavored, unsweetened or sweetened.</p>			

Source: *Child and Adult Care Program: Meal Patterns*, FOOD & NUTRITION SERV., http://www.fns.usda.gov/cnd/care/programbasics/meals/meal_patterns.htm (last visited Apr. 5, 2012).

APPENDIX C. Child Meal Pattern (Snack)

Child Meal Pattern Snack			
Select Two of the Four Components for a Reimbursable Snack			
<i>Food Components</i>	<i>Ages 1-2</i>	<i>Ages 3-5</i>	<i>Ages 6-12¹</i>
1 milk fluid milk	1/2 cup	1/2 cup	1 cup
1 fruit/vegetable juice, ² fruit and/or vegetable	1/2 cup	1/2 cup	3/4 cup
1 grains/bread ³ bread or cornbread or biscuit or roll or muffin or cold dry cereal or hot cooked cereal or pasta or noodles or grains	1/2 slice 1/2 serving 1/4 cup 1/4 cup 1/4 cup	1/2 slice 1/2 serving 1/3 cup 1/4 cup 1/4 cup	1 slice 1 serving 3/4 cup 1/2 cup 1/2 cup
1 meat/meat alternate meat or poultry or fish ⁴ or alternate protein product or cheese or egg ⁵ or cooked dry beans or peas or peanut or other nut or seed butters or nuts and/or seeds or yogurt ⁶	1/2 ounce 1/2 ounce 1/2 ounce 1/2 egg 1/8 cup 1 Tbsp. 1/2 ounce 2 ounces	1/2 ounce 1/2 ounce 1/2 ounce 1/2 egg 1/8 cup 1 Tbsp. 1/2 ounce 2 ounces	1 ounce 1 ounce 1 ounce 1/2 egg 1/4 cup 2 Tbsp. 1 ounce 4 ounces
<p>1 Children age 12 and older may be served larger portions based on their greater food needs. They may not be served less than the minimum quantities listed in this column.</p> <p>2 Fruit or vegetable juice must be full-strength. Juice cannot be served when milk is the only other snack component.</p> <p>3 Breads and grains must be made from whole-grain or enriched meal or flour. Cereal must be whole-grain or enriched or fortified.</p> <p>4 A serving consists of the edible portion of cooked lean meat or poultry or fish.</p> <p>5 One-half egg meets the required minimum amount (one ounce or less) of meat alternate.</p> <p>6 Yogurt may be plain or flavored, unsweetened or sweetened.</p>			

Source: *Child and Adult Care Program: Meal Patterns*, USDA FOOD & NUTRITION SERV., http://www.fns.usda.gov/cnd/care/programbasics/meals/meal_patterns.htm (last visited Apr. 5, 2012).

APPENDIX D. Infant Meal Pattern (Breakfast)

Infant Meal Pattern Breakfast		
Birth through 3 Months	4 through 7 Months	8 through 11 Months
4-6 fluid ounces of formula ¹ or breastmilk ^{2,3}	4-8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 0-3 tablespoons of infant cereal ^{1,4}	6-8 fluid ounces of formula ¹ or breastmilk ^{2,3} ; and 2-4 tablespoons of infant cereal ¹ ; and 1-4 tablespoons of fruit or vegetable or both
<p>1 Infant formula and dry infant cereal must be iron-fortified.</p> <p>2 Breastmilk or formula, or portions of both, may be served; however, it is recommended that breastmilk be served in place of formula from birth through 11 months.</p> <p>3 For some breastfed infants who regularly consume less than the minimum amount of breastmilk per feeding, a serving of less than the minimum amount of breastmilk may be offered, with additional breastmilk offered if the infant is still hungry.</p> <p>4 A serving of this component is required when the infant is developmentally ready to accept it.</p>		

Source: *Child and Adult Care Program: Meal Patterns*, USDA FOOD & NUTRITION SERV., http://www.fns.usda.gov/cnd/care/programbasics/meals/meal_patterns.htm (last visited Apr. 5, 2012).

APPENDIX E. Infant Meal Pattern (Lunch or Supper)

Infant Meal Pattern Lunch or Supper		
Birth through 3 Months	4 through 7 Months	8 through 11 Months
4-6 fluid ounces of formula ¹ or breast milk ^{2,3}	4-8 fluid ounces of formula ¹ or breast milk ^{2,3} ; 0-3 tablespoons of infant cereal ^{1,4} ; and 0-3 tablespoons of fruit or vegetable or both ⁴	6-8 fluid ounces of formula ¹ or breast milk ^{2,3} ; 2-4 tablespoons of infant cereal ¹ ; and/or 1-4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans or peas; or ½-2 ounces of cheese; or 1-4 ounces (volume) of cottage cheese; or 1-4 ounces (weight) of cheese food or cheese spread; and 1-4 tablespoons of fruit or vegetable or both
<p>1 Infant formula and dry infant cereal must be iron-fortified.</p> <p>2 Breastmilk or formula, or portions of both, may be served; however, it is recommended that breast milk be served in place of formula from birth through 11 months.</p> <p>3 For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.</p> <p>4 A serving of this component is required when the infant is developmentally ready to accept it.</p>		

Source: *Child and Adult Care Program: Meal Patterns*, FOOD & NUTRITION SERV., http://www.fns.usda.gov/cnd/care/programbasics/meals/meal_patterns.htm (last visited Apr. 5, 2012).

APPENDIX F. Infant Meal Pattern (Snack)

Infant Meal Pattern Snack		
Birth through 3 Months	4 through 7 Months	8 through 11 Months
4-6 fluid ounces of formula ¹ or breast milk ^{2,3}	4-6 fluid ounces of formula ¹ or breast milk ^{2,3}	2-4 fluid ounces of formula ¹ or breast milk ^{2,3} , or fruit juice ⁵ ; and 0-½ bread ^{4,6} or 0-2 crackers ^{4,6}
<p>1 Infant formula and dry infant cereal must be iron-fortified.</p> <p>2 Breastmilk or formula, or portions of both, may be served; however, it is recommended that breast milk be served in place of formula from birth through 11 months.</p> <p>3 For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.</p> <p>4 A serving of this component is required when the infant is developmentally ready to accept it.</p> <p>5 Fruit juice must be full-strength.</p> <p>6 A serving of this component must be made from whole-grain or enriched meal or flour.</p>		

Source: *Child and Adult Care Program: Meal Patterns*, FOOD & NUTRITION SERV.,
http://www.fns.usda.gov/cnd/care/programbasics/meals/meal_patterns.htm (last visited Apr. 5, 2012).

APPENDIX G. Reimbursement and Administrative Support Rates (through June 30, 2012)

CHILD AND ADULT CARE FOOD PROGRAM (CACFP)

[Per meal rates in whole or fractions of U.S. dollars, effective from July 1, 2011–June 30, 2012]

Centers	Breakfast	Lunch and Supper ¹	Snack			
CONTIGUOUS STATES:						
PAID	0.27	0.26	0.07			
REDUCED PRICE	1.21	2.37	0.38			
FREE	1.51	2.77	0.76			
ALASKA:						
PAID	0.40	0.43	0.11			
REDUCED PRICE	2.11	4.10	0.61			
FREE	2.41	4.50	1.23			
HAWAII:						
PAID	0.30	0.31	0.08			
REDUCED PRICE	1.46	2.85	0.44			
FREE	1.76	3.25	0.89			
Day Care Homes	Breakfast		Lunch and Supper		Snack	
	Tier I	Tier II	Tier I	Tier II	Tier I	Tier II
CONTIGUOUS STATES	1.24	0.45	2.32	1.40	0.69	0.19
ALASKA	1.97	0.70	3.76	2.27	1.12	0.31
HAWAII	1.44	0.52	2.71	1.64	0.81	0.22

ADMINISTRATIVE REIMBURSEMENT RATES FOR SPONSORING ORGANIZATIONS OF DAY CARE HOMES PER HOME

[Per month rates in U.S. dollars]

	Initial 50	Next 150	Next 800	Each addl
CONTIGUOUS STATES	106	81	63	55
ALASKA	171	130	102	90
HAWAII	124	94	74	65

Source: Notice, Child and Adult Care Food Program: Payment Rates and Administrative Reimbursement Rates for the Period July 1, 2011 Through June 30, 2012, 76 Fed. Reg. 43255 (July 14, 2011); Correction, Child and Adult Care Food Program: Payment Rates and Administrative Reimbursement Rates for the Period July 1, 2011 Through June 30, 2012, 76 Fed. Reg. 44573 (July 26, 2011).