

Child Care in the “Build Back Better Act”

Updated November 18, 2021

On November 3, 2021, the House Rules Committee released a modified version of the “Build Back Better Act” (H.R. 5376) in [Rules Committee Print 117-18](#). This version would establish a “Birth Through Five Child Care and Early Learning Entitlement” ([§23001](#)). On November 17, the Congressional Budget Office [estimated](#) the Birth Through Five program would cost roughly \$273 billion over the 10-year budget window (not accounting for revenue interactions).

Appropriations

Section 23001 would appropriate mandatory funding to the Department of Health and Human Services (HHS) for child care programs in states, Indian tribes, tribal organizations, and territories. Funding for activities in FY2022-FY2024 would be capped. State appropriations for these years would be designated for particular activities (**Table 1**), including direct services (e.g., subsidies, payment rates), quality (e.g., supply-building, facilities), and administration. Beginning in FY2025, appropriations for states, tribes, and territories would be set at “such sums as may be necessary” to ensure funds are sufficient for all eligible children seeking assistance. Capped funding would be available for grants to localities and Head Start expansions in states that opt not to participate in the program.

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Table I. Birth Through Five Appropriations

(In billions of dollars; shown in the year for which funds were designated to carry out activities)

	FY2022	FY2023	FY2024	FY2025	FY2026	FY2027
States ^a						
Direct services	11.460	16.235	20.055			
Quality	5.730	8.118	10.028			
Direct services or quality	4.126	5.845	7.220	such sums ^b	such sums ^b	such sums ^b
Administration	1.604	2.273	2.808			
Indian tribes/organizations	0.960	1.360	1.680	such sums	such sums	such sums
Territories ^c	0.120	0.170	0.210	such sums	such sums	such sums
Localities	0.000	0.950	0.950	0.950	0.950	0.950
Head Start expansion	0.000	2.850	2.850	2.850	2.850	2.850
Federal administration	0.130	0.130	0.130	0.130	1.06% of total prior-year state appropriation	1.06% of total prior-year state appropriation
Total	24.130	37.930	45.930	—	—	—

Source: CRS analysis of [Rules Committee Print 117-18](#).**Notes:** Such sums = such sums as may be necessary. Totals may not sum due to rounding. Appropriations would generally remain available through FY2027.

- a. Includes Puerto Rico in FY2022-FY2024.
- b. The bill would provide a single “such sums” appropriation for all eligible activities carried out by states. Federal payments for spending on quality activities would be limited to 5% to 10% of total prior-year payments to the state.
- c. Includes American Samoa, Guam, Northern Mariana Islands, and U.S. Virgin Islands in all years. Includes Puerto Rico in FY2025-FY2027.

State Spending

Funds provided by the section shall supplement, not supplant, other federal, state, and local spending on child care based on average spending in FY2019-FY2021. Additionally, states must meet maintenance-of-effort requirements in all years, set at the average of state spending in the preceding three years.

Spending in FY2025-FY2027 would be subject to federal-state matching rules that vary by activity. The federal share would be 95.440% of expenditures for direct services, an enhanced [Medicaid matching rate](#) for quality activities, and 53.022% for administrative costs. Federal rates would be set slightly higher than under [prior versions](#) of the bill, perhaps reflecting an expectation that federal payments may be subject to reduction through [mandatory sequestration](#).

States would cover the nonfederal share with state or local funds, or philanthropic or private donations. (For quality and administrative costs, this could be provided in cash or in kind.) States could count existing spending toward their nonfederal share, though dollars counted as nonfederal share generally should not be considered nonfederal share for another federal award.

Eligible Children

Eligible children would generally be those ages 0-5 (and not yet in kindergarten) with family incomes at or below

- 100% of state median income (SMI) in FY2022,
- 125% of SMI in FY2023,
- 150% of SMI in FY2024, and
- 250% of SMI in FY2025-FY2027.

(In FY2022-FY2024, subject to HHS approval, states could serve children with incomes up to 250% of SMI if income-prioritization rules are met.)

A child's parent/s generally must participate in an eligible activity (e.g., employment, job search, education/training, family leave). Certain vulnerable children and children with a parent over 65 would be exempt from parental activity requirements. HHS would set eligibility rules for tribal children, which may not be more stringent than rules for other children.

Eligible Child Care Providers

Eligible child care providers must (1) be [licensed](#), (2) participate in the state's [tiered system for measuring quality](#) (within three years), and (3) meet [health and safety requirements](#) under the Child Care and Development Block Grant (CCDBG) Act. Certain CCDBG-eligible providers in good standing would be considered eligible for 3½ years.

Within 2½ years of receiving funds, states must have licensing standards and pathways for providers seeking licensure to be made eligible. (Presently, states may [exempt](#) some providers from licensing rules and licensure pathways may not always exist.)

Within three years, states must have a tiered system for measuring the quality of participating providers. The top tier must use standards that are, at minimum, equivalent to [Head Start performance standards](#). The system must help providers at lower tiers progress to higher tiers. States must assure that within six years of enactment, all families can choose a provider at the highest tier.

Payment Rates

Within three years of receiving assistance, states must certify that child care payment rates would be set using a [cost estimation model or study](#) approved by HHS. Rates must use the most recent estimates/study, be updated annually for cost-of-living changes, and reflect providers' quality ratings. Rates must be adequate to ensure providers can pay wages that are equivalent to those of elementary educators with similar credentials and experience and that are, at minimum, living wages. States must, within three years, have a wage ladder for staff of certain providers.

Family Copayments

Participating families with income at or below 75% of SMI would have no copayment for child care. Copayments would increase with income until reaching 7% of family income for those with incomes above 150% of SMI. Certain populations would be exempt from copays (e.g., vulnerable children, those eligible for Head Start). States must prohibit child care providers from charging families more than the required copay.

Author Information

Karen E. Lynch
Specialist in Social Policy

Conor F. Boyle
Analyst in Social Policy

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