



# CHILD CARE LAW CENTER

Publications

## **CHILD CARE AND THE CHILD WELFARE SYSTEM: SUBSIDIES AND CHILD CARE OPTIONS**

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SUBSIDIES AND CHILD CARE OPTIONS**

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**I. INTRODUCTION**

This publication focuses on the primary child care subsidy programs in California and special considerations each program may have for families involved in the child welfare system. Procuring high quality child care plays a critical role in supporting parents' ability to maintain employment. Child care subsidies are an important public resource for low-income parents who need peace of mind that their children are being well taken care of while they are working, attending school, or taking job training classes. Foster parents, legal guardians and other caregivers who have children receiving child welfare services have a particular need for access to high quality, affordable child care that maintains stability for the child placed in their homes and gives children the opportunity to develop in a nurturing environment.

California offers a variety of federal and state funded child care subsidy programs. Each program has specific eligibility criteria that can be difficult to navigate. Moreover, certain programs have special rules that facilitate access to child care for children receiving child welfare services. These special rules include waiving income requirements and child care fees and moving children to the top of the enrollment waiting list. Oftentimes, parents caring for a child receiving child welfare services are not aware of their priority eligibility for child care subsidy programs. This publication describes the primary child care programs that are available to these families.

Section II defines the key child welfare terms used throughout this publication. Section III gives an overview of the primary child care subsidy programs in California, including the eligibility requirements and how a child's involvement in the child welfare system may or may not affect the parent's eligibility for child care. Section IV outlines what public benefits count as income for eligibility for child care subsidies. Section V discusses how the state agencies pay child care providers and how parents are assessed for potential cost sharing, including family fees and co-payments. Section VI offers an overview of the types of child care available in California and types of child care from which parents who receive child care subsidies can choose. The final section gives a description of the resource and referral agencies (R&Rs) located in each county.

## II. DEFINITIONS

Following is a list of definitions of key child welfare legal terms used in this publication.

- (1) *The Child Welfare System* is a group of services designed to promote the well-being of children by keeping children safe from abuse and neglect, achieving permanency, and strengthening families to care for their children successfully.<sup>1</sup> The child welfare system includes “preventative, protective, foster care and adoption services.”<sup>2</sup>
- (2) *Foster Care* is “the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.”<sup>3</sup> Children in foster care are dependents of the juvenile court and usually enter the foster care system because they have been, or are substantially at risk of being, physically, emotionally, or sexually abused and/or neglected.<sup>4</sup> Foster care placements include, but are not limited to, foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes.<sup>5</sup> Because moving from home to home is often traumatizing for a child who has been uprooted from her or his original home and creates a situation where it is difficult for a child to develop healthy attachments with her or his caregivers and others, California requires that foster care be a temporary method of care and that moving between foster homes until the child reaches the age of majority should be discontinued.<sup>6</sup>
- (3) *Child Welfare Services*, also called *Child Protective Services* (*Protective Services* or *CPS*), refers to the state and county child welfare agencies, with offices in every county, that deliver services aimed at protecting children from abuse and neglect. Protective Services is also referred to as the support services that children may receive when they are in the child welfare system. California Department of Education (CDE) defines CPS services as: “[c]hildren receiving protective services through the local county welfare department as well as children identified by a legal, medical, social service agency or emergency shelter as abused, neglected or exploited or at risk of abuse, neglect or exploitation.”<sup>7</sup> CPS services include crisis intervention, family preservation and other support services.<sup>8</sup> Children and families may receive CPS services while children are living in one of the following situations: (1) with a biological or adoptive parent, (2) with a relative caregiver, (3) with a nonrelative caregiver, (4) with a relative legal guardian, or (5) with a nonrelative legal guardian. Children who are adopted by a relative or nonrelative may also receive post-adoption CPS services.

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<sup>1</sup> See CAL. WELF. & INST. CODE §§16500 *et seq.*

<sup>2</sup> U.S. Dep’t of Health & Human Servs., Information Memorandum 10-04 (2010).

<sup>3</sup> CAL. WELF. & INST. CODE §11400(f).

<sup>4</sup> See 45 C.F.R. § 1355.20 (2013); CAL. WELF. & INST. CODE § 300.

<sup>5</sup> 45 C.F.R. § 1355.20; CAL. WELF. & INST. CODE §11402.

<sup>6</sup> CAL. WELF. & INST. CODE § 396.

<sup>7</sup> CAL. CODE REGS. tit. 5, § 18078(c) (2013).

<sup>8</sup> Dep’t of Social Servs., Child Protective Services, <http://www.dss.cahwnet.gov/cdssweb/pg93.htm> (last visited July 30, 2013).

### **III. CHILD CARE SUBSIDY PROGRAMS AND SPECIAL CONSIDERATION FOR CHILDREN IN THE CHILD WELFARE SYSTEM**

This section focuses on the eligibility requirements for the primary child care subsidy programs in California, including special consideration each program may have for children receiving child welfare services.

The child care subsidy programs discussed are:

- (A) California Work Opportunity and Responsibility to Kids (CalWORKs)
- (B) Non-CalWORKs CDE
- (C) State Preschool
- (D) Head Start
- (E) Title IV-E
- (F) Other county and local programs

#### **A. CALWORKS CHILD CARE**

CalWORKs, also known as “cash aid,” is California’s welfare program under the federal Temporary Assistance for Needy Families (TANF) program.<sup>9</sup> In addition to cash aid, CalWORKs provides other services, such as child care, to qualified low-income families.<sup>10</sup>

##### **1. QUALIFYING FOR CALWORKS CHILD CARE**

In order to qualify for CalWORKs child care services, a CalWORKs participant must be:

- A current or former CalWORKs cash aid participant or eligible for diversion services,
- Responsible for the child(ren) needing care, and
- Employed, seeking employment, or participating in welfare-to-work activities approved by the county welfare department.<sup>11</sup>

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<sup>9</sup> CAL. MANUAL OF POLICIES & PROCEDURES [hereinafter *MPP*] § 42-762.1.

<sup>10</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep’t of Social Servs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013).

<sup>11</sup> CAL. EDUC. CODE § 8350.5; CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; CAL. CODE REGS. tit. 5, §§ 18406 & 18421; for income eligibility for CalWORKs see CAL. CODE REGS. tit. 5, §§ 18406 & 18421 (explaining “a family is income eligible if the family’s adjusted monthly income based upon the family size is at or below 75% of the state median income. Adjusted monthly income is the total countable income received by members of the family included in the family size determination minus verified child support payments paid by the parent whose child is receiving child care services. Except for child support payments paid by the parent, monthly income shall not be adjusted because of voluntary or involuntary deductions.”). For family size used in income calculation, see CAL. CODE REGS. tit. 5, §§ 18100 & 18078(f) (defining family as “the parents and the children for whom the parents are responsible, who comprise the household in which the child receiving services is living.”). For whether a benefit counts towards income total for purposes of determining child care eligibility and family fees, see §§ 18078(s) (defining “total countable income” as including any “public assistance” [(s)(3)], “survivor’s benefits” [(s)(8)], and “foster care payments” [(s)(11)] and 18078(a) (defining “adjusted monthly income” as excluding “SSI” [(a)(9)] and “adoption assistance payments” [(a)(7)]). CalWORKs and KinGap are “public assistance,” and not among the benefits listed as excluded from income in the “adjusted monthly income” regulation.

## 2. CALWORKS STAGES 1, 2 & 3

CalWORKs child care is separated into Stage 1, Stage 2, and Stage 3.<sup>12</sup> Generally, Stage 1 child care is available to CalWORKs participants who work or participate in welfare-to-work activities and to former participants if child care is unavailable in Stage 2 due to insufficient funding or for other reasons.<sup>13</sup> Parents may be eligible for Stage 2 child care if they receive CalWORKs cash aid, received CalWORKs cash aid within the last 24 months, or are eligible for a lump-sum diversion payment or diversion services, and have an income that does not exceed 70 percent of the State Median Income (SMI).<sup>14</sup> Parents may remain eligible for Stage 2 child care for up to two years after transitioning off the CalWORKs cash aid program.<sup>15</sup> Stage 3 is available to families where the parents are former CalWORKs participants, transitioning off CalWORKs, or received a lump-sum diversion payment or diversion services, and who have an income that does not exceed 70 percent of the SMI.<sup>16</sup>

California Department of Social Services (DSS) administers CalWORKs Stage 1 and California Department of Education (CDE) administers CalWORKs Stages 2 and 3.<sup>17</sup> Stages 1 and 2 are entitlement programs, while Stage 3 has capped funding and is therefore available only to the extent funds permit.<sup>18</sup>

## 3. AGE REQUIREMENTS FOR CHILDREN

CalWORKs provides child care for the children of CalWORKs participant who are:

- 10 years old or younger,
- 11 and 12 years old, *to the extent funds are available,*

<sup>12</sup> Dep't of Social Servs., Child Care, <http://www.cdss.ca.gov/cdssweb/PG78.htm> (last visited July 30, 2013).

<sup>13</sup> CAL. EDUC. CODE § 8351(a), (c); MPP §§ 47-101 *et seq.*

<sup>14</sup> CAL. EDUC. CODE §§ 8263.1 (a) & 8353; CAL CODE REGS. tit., 5 §§ 18406 (a)(3), 18408 (d), 18078(m) (defining "parent" as "biological parent, adoptive parent, stepparent, foster parent, caretaker relative, legal guardian, domestic partner of the parent as defined in Family Code section 297, or any other adult living with a child who has responsibility for the care and welfare of the child"); CAL. WELF. & INST. CODE § 11266.5(a), (b) (explaining that the CalWORKs lump-sum diversion program is a one-time cash aid payment for people who qualify and who do not need CalWORKs cash aid for an extended amount of time); *see id.* § 11201 (defining "unemployed parent" as "a natural or adoptive parent with whom the child is living.").

<sup>15</sup> CAL. EDUC. CODE § 8353; CAL CODE REGS. tit. 5, § 18408.

<sup>16</sup> CAL. EDUC. CODE § 8354; CAL CODE REGS. tit. 5, § 18421.

<sup>17</sup> CAL. WELF. & INST. CODE §§ 11323.6 & 11323.8; CAL. EDUC. CODE § 8351; CAL. CODE REGS. tit. 5, §§ 18405, 18420.

<sup>18</sup> CAL. WELF. & INST. CODE § 11323.2(a) (requiring that people who qualify for CalWORKs Stage 1 must receive services: "Necessary supportive service shall be available to every participant in order to participate in the program activity to which he or she is assigned or to accept employment or the participant shall have good cause for not participating under subdivision (f) of Section 11320.3."). See also CAL. WELF. & INST. CODE § 11325.23(d) ("Supportive services reimbursement shall be provided for any participant in a self-initiated training or education program approved under this subdivision."); MPP § 47-220.2 ("Child care shall be paid for every client when the following conditions are met."). CDE has wavered on whether Stage 2 is an entitlement. The Child Care Law Center interprets Stage 2 as an entitlement per CAL. EDUC. CODE § 8353(a) (requiring that "[a] family leaving cash aid under the CalWORKs program shall receive up to two years of child care, if otherwise eligible, as needed to continue the family's employment."); CAL. CODE REGS. tit. 5, § 18408(a); MPP § 47-301.5. Although the entitlement is contingent on the availability of funds, the Legislature makes clear its intention to ensure that funds are sufficient. See CAL. EDUC. CODE § 8359.1; CAL. WELF. & INST. CODE § 11322.4.

- **11 years old or older and under court supervision, or**
- 11 years old or older (up to 21) and mentally or physically unable to care for himself or herself (*i.e.*, have a disability), with written verification from a physician or psychologist.<sup>19</sup>

#### **4. CHILD'S RELATIONSHIP TO THE ASSISTANCE UNIT**

CalWORKs refers to “family” as the “Assistance Unit” (AU), which is “a group of related individuals living in the same home who have been determined eligible for CalWORKs cash assistance.”<sup>20</sup> CalWORKs child care requires that the child must be one of the following:

- A member of the AU,
- Would be a member of the AU but for the receipt of foster care benefits or Supplemental Security Income/State Supplemental Program (SSI/SSP), or
- Is not a member of the AU, but the parent or guardian requesting Stage 1 child care benefits is responsible for supporting the child, and needs care for the child in order to work or participate in an approved welfare-to-work activity.<sup>21</sup>

DSS's California Manual of Policies and Procedures (MPP) gives the following example of a CalWORKs participant who is eligible for CalWORKs child care for her non-biological child:

A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47-201.123, that is, children whom the client is responsible to support.<sup>22</sup>

#### **5. RESIDENCY REQUIREMENT**

The CalWORKs participant must be a legal resident of California.<sup>23</sup>

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<sup>19</sup> CAL. WELF. & INST. CODE § 11323.2(a)(1)(A)–(B); MPP §§ 47-201.2-3.

<sup>20</sup> MPP § 47-110(a)(2).

<sup>21</sup> CAL. WELF. & INST. CODE § 11323.2(a)(1)(A); MPP § 47-201.11.

<sup>22</sup> MPP § 47-201.2.124.

<sup>23</sup> HUMAN SERVICES AGENCY OF SAN FRANCISCO, CALWORKS ELIGIBILITY HANDBOOK 128, *available at* <http://www.sfhsa.org/asset/ReportsDataResources/CalWORKsHandbook.pdf> (defining “residency” for CalWORKs as a client who can establish physical presence in the state without any durational requirements. The client must show proof of the county in which he or she resides in order to determine county responsible for paying aid. Moving out of state with a spouse shows intent to change state residency.) (last visited August 20, 2013); CAL. WELF. & INST. CODE § 11100 (explaining that continued absence from California for 60 days or longer is prima facie evidence of intent to change residence. Clients who are continuously absent for 30 days must show their intent to remain residents of California or to become residents outside of California. Aid will be terminated immediately to clients who cannot show California residency); CAL. WELF. & INST. CODE § 11104 (explaining that non-U.S. citizens who were lawfully admitted for permanent residence or are otherwise lawfully residing in the U.S. are eligible for CalWORKs); Dep’t of Social Servs., *Frequently Asked Questions About CDSS Programs*, <http://www.dss.cahwnet.gov/getinfo/faq/faqsprogram.html> (last visited August 20, 2013) (explaining that a non-U.S. citizen qualifies if he/she: “is a refugee, asylee, Cuban/Haitian entrant or Amerasian immigrant in his/her first 7 years of U.S. residency; or an active duty member of or an honorably-discharged veteran of the U.S. Armed Forces, or is the spouse or unmarried dependent child of such a person; or has worked and earned 40

## **6. NO SPECIAL CONSIDERATIONS FOR CHILDREN IN THE CHILD WELFARE SYSTEM**

With the exception of allowing children who are over 11 years old and under court supervision to receive child care, CalWORKs child care does not have special eligibility or priority enrollment considerations for children in the child welfare system. Eligibility for child care is based solely on the CalWORKs participant's status.<sup>24</sup> That is, if the parent, guardian, or caregiver is a current or former participant of CalWORKs, then his or her child may be eligible for CalWORKs child care.

Moreover, relative caregivers who qualify for non-income based cash aid, "Non-Needy Relative Caregiver CalWORKs," *do not* qualify for CalWORKs child care based on their Non-Needy Relative Caregiver status.

### **B. NON-CALWORKS CHILD CARE PROGRAMS THROUGH THE CALIFORNIA DEPARTMENT OF EDUCATION**

The California Department of Education (CDE) administers all statewide child care programs in California, except for CalWORKs Stage 1 Child Care. CDE contracts with nearly 800 public and private agencies to provide child care to nearly 500,000 children through vouchers, subsidized child care centers and preschools.<sup>25</sup> Examples of CDE child care and early development programs include general child care, after-school programs, and State Preschools.

#### **1. ELIGIBILITY AND NEED REQUIREMENTS**

Families receiving non-CalWORKs CDE child care must meet *eligibility* and *need* criteria for child care. To meet the *eligibility* criteria, the parent must either be (1) a current aid recipient, (2) income eligible, (3) homeless, or (4) have a child/children receiving protective services, or identified as abused, neglected, or exploited, or at risk of being abused, neglected, or exploited ("at-risk status").<sup>26</sup>

Parents will satisfy the *need* criteria if they are either: (1) engaged in vocational training, (2) working or seeking employment, (3) seeking permanent housing, (4) incapacitated, or (5) have a child in protective services or with at-risk status.<sup>27</sup>

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quarters of credit under Social Security. Work credits earned by a spouse, or by a parent while the noncitizen was under 18, may also count toward the 40 quarters of Social Security credits; or was already receiving SSI/SSP Program benefits when the eligibility law was changed on August 22, 1996; or is a noncitizen member of specified Indian tribes, or native American who comes under Section 289 of the Immigration and Naturalization Act; or was residing in the United States as of August 22, 1996, and is determined disabled (including blind), regardless of the onset date of the disability; or is an SSI/SSP recipient who filed his/her application before January 1, 1979, and the SSA has no clear and convincing evidence that he or she does not meet the current eligibility standards.").

<sup>24</sup> MPP §§ 47-110(c)(4), 47-220.1-3. "Parent" includes biological, adoptive, and foster parent.

<sup>25</sup> Cal. Dep't of Education, Child Care and Development Programs, <http://www.cde.ca.gov/sp/cd/op/cdprograms.asp> (last visited July 30, 2013).

<sup>26</sup> CAL. EDUC. CODE §§ 8263.1 ("income eligible" means that a family's adjusted monthly income is at or below 70 percent of the state median income, adjusted for family size, and adjusted annually."), 8263.1(a).

<sup>27</sup> *Id.* § 8263(a)(2).

**2. AGE REQUIREMENTS FOR CHILDREN**

Non-CalWORKs CDE child care programs serve children from infancy to age 13.<sup>28</sup>

**3. CHILD’S RELATIONSHIP TO FAMILY**

The child receiving child care must be a member of the qualifying family. CDE defines “family” as:

the parents and the children for whom the parents are responsible, who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, “family” shall be considered the child and related siblings.<sup>29</sup>

**4. RESIDENCY REQUIREMENT**

Eligibility for non-CalWORKs CDE child care is based on the child’s residency. The child must live in California while child care services are received.<sup>30</sup> Further, the immigration status of the child and parent is not taken into account for eligibility purposes, unless the United States Department of Justice has issued a final order of deportation to the child and/or parent.<sup>31</sup>

**5. SPECIAL CONSIDERATIONS FOR CHILDREN WITH OPEN CHILD PROTECTIVE SERVICES (CPS) CASES**

Non-CalWORKs CDE child care programs give the following special eligibility, priority enrollment status, and payment considerations for children with open CPS cases. These child care programs also require proof of CPS involvement and impose time limits on how long a child may receive child care based on CPS or at-risk status.

**a. AUTOMATIC ELIGIBILITY FOR CHILDREN WITH OPEN CPS CASES**

Parents, foster parents, and caregivers automatically qualify for non-CalWORKs CDE child care on behalf of children in their care who have open CPS cases or at-risk status, regardless of income.<sup>32</sup> That is, the eligibility and need criteria are both met solely based on the child’s open CPS case status.<sup>33</sup> The law makes no reference to with whom or where the child must be placed.

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<sup>28</sup> *Id.* § 8208(i).

<sup>29</sup> CAL. CODE REGS. tit. 5, § 18078(f).

<sup>30</sup> *Id.* § 18107(a).

<sup>31</sup> *Id.* § 18107(d).

<sup>32</sup> *See* CAL. EDUC. CODE § 8263(a).

<sup>33</sup> *Id.*

**b. PRIORITY ENROLLMENT FOR CHILDREN WITH OPEN CPS CASES**

Non-CalWORKs CDE child care programs prioritize child care enrollment for children receiving protective services or who have at-risk status.<sup>34</sup> Within the first priority, children receiving protective services must be enrolled before children with at-risk status.<sup>35</sup> If an agency is unable to enroll a child in the first priority category, the agency must then refer the family to the local resource and referral agency (R&R) to locate services for the child.<sup>36</sup> Moreover, contractors must maintain a current waiting list in accordance with admission priorities or participate in a county child care centralized eligibility list.<sup>37</sup> Contractors must also contact applicants in order of priority on the waiting list as vacancies become available.<sup>38</sup>

**c. PAYING FOR CHILD CARE FOR CHILDREN WITH OPEN CPS CASES OR AT-RISK STATUS**

Families with children who have open CPS cases or at-risk status are exempt from family fees in non-CalWORKs CDE child care programs for a specified amount of time. Families receiving CPS services may be exempt from fees for up to 12 months, while families with children identified as at-risk may be exempt from fees for up to 3 months.<sup>39</sup> The cumulative period of time for exemption from fees in both categories of families may not exceed 12 months.<sup>40</sup>

**d. REQUIRED DOCUMENTATION FOR CHILDREN WITH OPEN CPS CASES**

To qualify for child care priority status based on receiving protective services or at-risk status, the applicant's file must contain a written referral, dated within the six months immediately preceding the date of application for services, from a legal, medical, social service agency or emergency shelter.<sup>41</sup> The written referral must include:

- (a) A statement from the local county welfare department, child protective services unit certifying that the child is receiving child protective services and that child care and development services are a necessary component of the child's protective services plan; or
- (b) A statement by a legally qualified professional that the child is at risk of abuse or neglect and the child care and development services are needed to reduce or eliminate that risk; and
- (c) The probable duration of the child protective service plan or the at-risk situation; and

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<sup>34</sup> CAL. EDUC. CODE § 8263(b)(1)(A); CAL. CODE REGS. tit. 5, § 18106(a).

<sup>35</sup> CAL. CODE REGS. tit. 5, § 18106(a).

<sup>36</sup> CAL. EDUC. CODE § 8263(b)(1)(A).

<sup>37</sup> CAL. CODE REGS. tit. 5, § 18106(e).

<sup>38</sup> *Id.* § 18106(e).

<sup>39</sup> CAL. EDUC. CODE § 8273.1 (a)(b); CAL. CODE REGS. tit. 5, § 18110(a).

<sup>40</sup> CAL. EDUC. CODE § 8273.1(c).

<sup>41</sup> CAL. CODE REGS. tit. 5, § 18092.

- (d) The name, address, telephone number and signature of the legally qualified professional who is making the referral.<sup>42</sup>

**e. TIME LIMITS FOR CHILDREN WITH OPEN CPS CASES AND AT-RISK STATUS**

Children who are identified as at-risk are eligible to receive child care for up to three months, but the time limit may be extended if they start receiving protective services.<sup>43</sup> Children who receive CPS services are eligible for child care services up to twelve months.<sup>44</sup> This time limit may be extended if the county child welfare agency recertifies the child care referral.<sup>45</sup>

Once the family runs up against the child care time limit based on CPS eligibility, child care must be continued without disruption so long as the family qualifies for child care based on other eligibility criteria, including income and need for child care.<sup>46</sup> As noted above in this section under “Child’s Relationship to Family,” children and their siblings who do not live with their biological or adoptive parents are considered their own family when determining income eligibility and family fee payments for non-CalWORKs CDE child care.<sup>47</sup> Because a minor’s income is likely to be low, most children meet the income eligibility requirement for child care services.

**C. STATE PRESCHOOL PROGRAM**

CDE also administers the State Preschool program through local educational agencies, colleges, community-action agencies, and private nonprofit agencies.<sup>48</sup> The program provides a developmentally age-appropriate core curriculum, while serving the cultural and linguistic needs of children and facilitating their transition into kindergarten.<sup>49</sup> State Preschools offer “educational development, health services, social services, nutritional services, parent education and participation, evaluation, and staff development.”<sup>50</sup> Children in State Preschools also receive free snacks and meals at school.<sup>51</sup>

State Preschools may either be part-time or full-day, with some offering “wraparound child care services,” offered before and after school, or for the remainder of the year after the part-day school program has ended, in order to meet the child care needs of parents, guardians, and caregivers.<sup>52</sup>

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<sup>42</sup> *Id.*

<sup>43</sup> CAL. EDUC. CODE § 8263(b)(1)(B).

<sup>44</sup> *Id.* § 8263(b)(1)(C).

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* § 8263 (c).

<sup>47</sup> CAL. CODE REGS. tit. 5, § 18078(f).

<sup>48</sup> CAL. EDUC. CODE § 8235(a); California Department of Education, Child Care and Development Programs, <http://www.cde.ca.gov/sp/cd/op/cdprograms.asp> (last visited July 30, 2013).

<sup>49</sup> California Department of Education, Child Care and Development Programs, *supra*.

<sup>50</sup> CAL. EDUC. CODE § 8235(a).

<sup>51</sup> Cal. Dep’t of Education, Child Care and Development Programs, <http://www.cde.ca.gov/sp/cd/op/cdprograms.asp> (last visited July 30, 2013).

<sup>52</sup> CAL. EDUC. CODE §§ 8235 (a), 8239(g).

State Preschools are subject to the same Title 5 regulations as non-CalWORKs CDE child care programs, but have unique qualifying criteria and age requirements listed below.

### **1. ELIGIBILITY AND NEED REQUIREMENTS**

The California Education Code governing eligibility and need requirements for non-CalWORKs CDE programs also governs the State Preschool program. Parents are eligible for the part-time preschool program if they are: (1) a current aid recipient, (2) income eligible, (3) homeless, or (4) have a child/children receiving protective services, or identified as at-risk.<sup>53</sup>

Only families whose children attend the full-time preschool program must meet the need criteria.<sup>54</sup> The need criteria require that the child receives protective services or is identified as at-risk, *or that* the parent is: (1) engaged in vocational training, (2) working or seeking employment, (3) seeking permanent housing, or (4) incapacitated.<sup>55</sup> Families whose children attend the part-time program are exempt from the need requirement and continue to remain eligible for the part-time program, after enrollment, for the rest of the program year.<sup>56</sup>

After the preschool enrolls all eligible children, part-time preschool programs may enroll other children if their income is no more than 15 percent above the income eligibility limit.<sup>57</sup> No more than 10 percent of enrolled children may be from families with incomes above the eligibility threshold.<sup>58</sup>

### **2. AGE REQUIREMENTS AND PRIORITY ENROLLMENT**

State Preschools serve children ages three and four.<sup>59</sup> After children with CPS or at-risk status are enrolled (see below), four-year-olds have priority enrollment status over three-year-olds.<sup>60</sup> At least one-half of the enrolled students must be four years old, unless CDE approves an exception to this rule.<sup>61</sup>

### **3. AUTOMATIC ELIGIBILITY AND PRIORITY ENROLLMENT FOR CHILDREN WITH OPEN CPS CASES AND AT-RISK STATUS**

Like other non-CalWORKs CDE programs, three- and four-year-olds who have open CPS cases or at-risk status automatically qualify for the part-time and full-time State Preschool program, regardless of income or where they live, and have priority enrollment status.<sup>62</sup>

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<sup>53</sup> *Id.* §8235(b); *see id.* § 8263(a)(1).

<sup>54</sup> *See id.* § 8239(d).

<sup>55</sup> *Id.* § 8263(a)(2).

<sup>56</sup> *Id.* §§ 8235(b), 8237.

<sup>57</sup> *Id.* §§ 8235(c), 8263.1 (“‘income eligible’ means that a family’s adjusted monthly income is at or below 70 percent of the state median income, adjusted for family size, and adjusted annually.”).

<sup>58</sup> *Id.* § 8235(c).

<sup>59</sup> *Id.* § 8235(a).

<sup>60</sup> *Id.* § 8236(a).

<sup>61</sup> *Id.* § 8236 (b).

<sup>62</sup> *Id.* §§ 8235(b), 8239(d), 8236(a); CAL. CODE REGS. tit. 5, § 18131 (a).

## **D. HEAD START**

Head Start is a federally funded early childhood development program that provides “health, nutrition, social services and other services determined to be necessary by family needs assessments, in addition to education and cognitive development services” to young children.<sup>63</sup> The program also aims to respond to the individual ethnic, cultural, and linguistic needs of each family.<sup>64</sup> The Office of Head Start (OHS) regional offices directly fund Head Start-eligible local grantee agencies and delegate agencies, including private and non-profit agencies.<sup>65</sup> These local Head Start grantee and delegate agencies may also subcontract with other community entities to provide Head Start services.<sup>66</sup>

### **1. ELIGIBILITY REQUIREMENTS**

To be eligible for Head Start, children must either be: (1) in foster care, (2) from families with income below the poverty line set by the United States Department of Health and Human Services (HHS), (3) receiving public assistance or from families that would be eligible for public assistance in the absence of child care, or (4) homeless.<sup>67</sup> There are no need requirements.

Local Head Start agencies may enroll up to 10 percent of children from families with incomes exceeding HHS low-income guidelines, and another 35 percent of children from families with income up to 130 percent of the poverty line, from the area served.<sup>68</sup> The Head Start agency must still, however, prioritize enrollment for children in the above paragraph.<sup>69</sup> Moreover, at least 10 percent of the total number of enrollment opportunities in each program, during an enrollment year, must be available to children with disabilities.<sup>70</sup> Disabilities include physical,

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<sup>63</sup> U.S. Dep’t of Health & Human Servs., Office of Head Start, <http://www.acf.hhs.gov/programs/ohs/> (last visited July 30, 2013).

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> 42 U.S.C. §§ 9840(a)(1)(B)(i)-(ii) (explaining “that children from low-income families shall be eligible for participation in programs assisted under this subchapter if their families’ incomes are below the poverty line, or if their families are eligible or, in the absence of child care, would potentially be eligible for public assistance; that homeless children shall be deemed to be eligible for such participation;...”), 9832(19) (defining “poverty line” as “the official poverty line (as defined by the Office of Management and Budget).”); *see also* 45 C.F.R. §§ 1305.4(b)(1), 1305.2(l) (defining, “low-income family” as “a family whose total annual income before taxes is equal to, or less than, the income guidelines. For the purpose of eligibility, a child from a family that is receiving public assistance or a child in foster care is eligible even if the family income exceeds the income guidelines.”).

<sup>68</sup> 42 U.S.C. §§ 9840(a)(1)(B)(iii), 9840(a)(1)(B)(iii)(I)(aa)-(bb) (explaining that the local Head Start agencies may enroll these children from families with income above the federal poverty line if the Head Start agency “establishes and implements outreach and enrollment policies and procedures that ensure such agency is meeting the needs of children eligible under clause (i) or (ii) (or subclause (I) if the child involved has a disability) prior to meeting the needs of children eligible under this subclause; and in prioritizing the selection of children to be served, the Head Start agency establishes criteria that provide that the agency will serve children eligible under clause (i) or (ii) prior to serving the children eligible under this subclause.”); *see also* 45 C.F.R. § 1305.4(b)(2).

<sup>69</sup> 42 U.S.C. § 9840(a)(1)(B)(iii)(II)(bb); 45 C.F.R. § 1305.4(b)(2).

<sup>70</sup> 45 C.F.R. § 1305.6(c).

cognitive, communicative, learning or emotional; physical, cognitive, or emotional developmental delays; and serious emotional disturbances.<sup>71</sup>

## **2. AGE REQUIREMENTS**

Head Start serves children ages 3 to 5 from low-income families. Some Head Start programs offer Early Head Start to children from ages 0 to 3.<sup>72</sup>

## **3. RESIDENCY REQUIREMENT**

Children must reside within a Head Start program's approved service area to qualify for Head Start services, and therefore, Head Start may request reasonable documentation to confirm residency.<sup>73</sup>

## **4. SPECIAL CONSIDERATION FOR CHILDREN IN FOSTER CARE**

Head Start makes the following special considerations for children in foster care:

### **a. AUTOMATIC ELIGIBILITY FOR CHILDREN IN FOSTER CARE**

Similar to non-CalWORKs CDE child care programs, children in foster care are categorically eligible for Head Start, regardless of income.<sup>74</sup> Additionally, parents who receive kinship care payments on behalf of a child, such a child is automatically eligible for Head Start.<sup>75</sup>

However, parents who retain physical custody of their children who have open child welfare cases *are not* categorically eligible for Head Start and must therefore qualify based on one of the other categorical criteria, such as income.<sup>76</sup> For example, if a child in foster care is reunified with her biological or adoptive mother during the enrollment process for Head Start, and the child still has an open CPS Case, the biological or adoptive mother must qualify for Head Start based on other eligibility criteria. However, if the foster child reunifies with her biological or adoptive mother *after* she is already in Head Start, the child may remain in the program for two years, based on her foster care status at time of enrollment.<sup>77</sup>

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<sup>71</sup> See *Id.* § 1305.2(a).

<sup>72</sup> 45 C.F.R. § 1305.4; U.S. Dep't of Health & Human Services, Office of Head Start, <http://www.acf.hhs.gov/programs/ohs/> (last visited July 30, 2013).

<sup>73</sup> 45 C.F.R. §§ 1305.3(b), 1305.4(a).

<sup>74</sup> *Id.* § 1305.2(l).

<sup>75</sup> *Id.*; U.S. Dep't of Health & Human Services, Office of Head Start, [http://eclkc.ohs.acf.hhs.gov/hslc/standards/Policy%20Clarifications%20and%20FAQs/i\\_pc\\_actual.htm](http://eclkc.ohs.acf.hhs.gov/hslc/standards/Policy%20Clarifications%20and%20FAQs/i_pc_actual.htm) (last visited July 30, 2013).

<sup>76</sup> U.S. Dep't of Health & Human Servs., Information Memorandum 10-04 (2010) (defining "child welfare system" as a "[a] system which includes preventative, protective, foster care and adoption services.").

<sup>77</sup> 45 CFR §§ 1305.2(l) & 1305.7(c); U.S. Dep't of Health & Human Services, Office of Head Start, [http://eclkc.ohs.acf.hhs.gov/hslc/standards/Policy%20Clarifications%20and%20FAQs/i\\_pc\\_actual.htm](http://eclkc.ohs.acf.hhs.gov/hslc/standards/Policy%20Clarifications%20and%20FAQs/i_pc_actual.htm) (last visited July 30, 2013).

**b. PRIORITY ENROLLMENT ENCOURAGED FOR CHILDREN IN THE CHILD WELFARE SYSTEM**

The Office of Head Start *encourages*, but does not require, Head Start programs to prioritize enrollment for children with open child welfare cases, irrespective of where they are placed.<sup>78</sup> OHS urges Head Start and Early Head Start agencies to collaborate with child welfare agencies in establishing selection criteria that prioritize children with open child welfare cases; creating a screening protocol and standardized referral process for children with open child welfare cases; arranging trainings on both agencies' respective services, and designating a Head Start/Early Head Start liaison who works specifically with child welfare agencies.<sup>79</sup>

**c. REQUIRED DOCUMENTATION FOR CHILDREN IN FOSTER CARE**

To verify categorical eligibility for children in foster care, foster parents, legal guardians or other caregivers must show proof that the child is in foster care.<sup>80</sup>

**d. LENGTH OF ENROLLMENT DEPENDS ON TYPE OF ELIGIBILITY**

Children who qualify as income eligible and are participating in a program remain eligible for that enrollment year as well as for the subsequent year.<sup>81</sup> Children in foster care who are adopted during the enrollment process are no longer categorically eligible for Head Start and must qualify based on the adoptive parent's income.<sup>82</sup>

**E. TITLE IV-E FOSTER PARENT CHILD CARE PROGRAM**

The Title IV-E Foster Care Program is a federal entitlement program that “helps to provide safe and stable out-of-home care for children until the children are safely returned home, placed permanently with adoptive families or placed in other planned arrangements for permanency.”<sup>83</sup> The Foster Care Program is authorized under Title IV-E of the Social Security Act and administered by state and local public child welfare agencies. The federal government

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<sup>78</sup> U.S. Dep't of Health & Human Servs., Information Memorandum 10-04 (2010) (“The purpose of this IM is to reinforce the Head Start commitment to serving abused and neglected children through its grantees and delegate agencies...OHS encourages Head Start/Early Head Start to prioritize children in the public child welfare system when establishing criteria and selecting children and families for Head Start/Early Head Start Services.” The IM defines “child welfare system” as a “[a] system which includes preventative, protective, foster care and adoption services.”).

<sup>79</sup> U.S. Dep't of Health & Human Servs., Information Memorandum 10-04 (2010).

<sup>80</sup> U.S. Dep't of Health & Human Servs., Office of Head Start, Eligibility, Recruitment, Selection, Enrollment and Attendance,

[http://eclkc.ohs.acf.hhs.gov/hslc/standards/Policy%20Clarifications%20and%20FAQs/i\\_pc\\_actual.htm](http://eclkc.ohs.acf.hhs.gov/hslc/standards/Policy%20Clarifications%20and%20FAQs/i_pc_actual.htm) (last visited July 30, 2013).

<sup>81</sup> 45 C.F.R. § 1305.7(c).

<sup>82</sup> See U.S. Dep't of Health & Human Servs., Office of Head Start, Eligibility, Recruitment, Selection, Enrollment and Attendance,

[http://eclkc.ohs.acf.hhs.gov/hslc/standards/Policy%20Clarifications%20and%20FAQs/i\\_pc\\_actual.htm](http://eclkc.ohs.acf.hhs.gov/hslc/standards/Policy%20Clarifications%20and%20FAQs/i_pc_actual.htm) (last visited July 30, 2013).

<sup>83</sup> Administration for Children and Families, U.S. Dep't of Health & Human Services, Title IV-E Foster Care, <http://www.acf.hhs.gov/programs/cb/resource/title-ive-foster-care> (last visited July 30, 2013).

provides federal financial participation (FFP) for all qualified expenditures made by state and local government agencies.<sup>84</sup> California has a 50 percent FFP rate for “foster care maintenance payments” to support the child, as well as qualified additional expenditures.<sup>85</sup>

The Foster Parent Child Care Program (FPCCP) is the subsidized child care component of the Title IV-E Foster Care Program in California. Foster care maintenance payments are intended to cover the costs of caring for a child, including “daily supervision” of the child, which encompasses specified child care costs.<sup>86</sup> California also gives counties the option of implementing FPCCP specifically to cover the costs of child care licensed by the Community Care Licensing Division or legally license-exempt child care.<sup>87</sup> No state funding exists for FPCCP, but counties have the option of providing child care for children in foster care and can claim FFP for children who are federally eligible up to age 13.<sup>88</sup> The county welfare department administers and determines eligibility for FPCCP and is also responsible for informing foster parents about the program, including referring them to their local resource & referral program for information about how to obtain child care.<sup>89</sup> Participating counties as of May 2012 included Butte, Lassen, Orange, San Francisco, San Mateo, Santa Clara, Siskiyou, San Benito, and Yolo.<sup>90</sup>

### 1. ELIGIBILITY REQUIREMENTS

Families in FPCCP must have children who are eligible for AFDC-FC foster care benefits, which requires that the child was removed from the physical custody of his/her parent, relative, or legal guardian by a juvenile court order or pursuant to a voluntary placement agreement, and be deprived of parental support. Further, the child must be living: (1) in a licensed group home, or with (2) an approved relative, (3) an approved nonrelative extended family member, (4) a licensed nonrelative (foster parent), or (5) a non-related legal guardian.<sup>91</sup>

Similar to the “need requirements” in the aforementioned child care programs, FPCCP funds may only be used while the foster parent: (1) attends foster parent training, (2) works (while the

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<sup>84</sup> 42 U.S.C. § 674(a)(1).

<sup>85</sup> *Id.* (In other words, California must match 50 percent of the FFP. The match amount is equal to the federal medical assistance percentage); *id.* § 1396d(b) (federal medical assistance percentage).

<sup>86</sup> 42 U.S.C. §675(4); 45 C.F.R. § 1355.20(a); Administration for Children and Families, U.S. Dep’t of Health and Human Services, Child Welfare Policy Manual, 8.3B.1, Answer to Question 3, [http://www.acf.hhs.gov/cwpm/programs/cb/laws\\_policies/laws/cwpm/policy\\_dsp.jsp?citID=46](http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=46).

<sup>87</sup> CAL. WELF. & INST. CODE § 11410; Cal. Dep’t of Soc. Servs., All County Letter 05-23 (2005) (describing the Foster Parent Child Care Program generally. ACL 05-23 provides that foster parents must select child care providers licensed by Community Care Licensing Division, or license-exempt providers registered with the California Trustline Registry, and who meet Health and Safety requirements in the CalWORKs Eligibility and Assistance Manual, Division 47, Chapter 47-600, *et seq.*)

<sup>88</sup> *See id.*

<sup>89</sup> *Id.* (referring counties to CalWORKs Stage 1 materials to help design Program notices and forms); a county may refer to its “county welfare department” by another name.

<sup>90</sup> DEP’T OF SOCIAL SERVS., LOCAL ASSISTANCE 215 (2012).

<sup>91</sup> CAL. WELF. & INST. CODE § 114102 (a)-(d); MPP § 45-202.511. For definitions of “relative” and “nonrelative extended family member,” see CAL. WELF. & INST. CODE § 11400(m)(n).

child is not in school), (3) attends administrative case/judicial reviews, or (4) attends case conferences or team meetings on behalf of the child.<sup>92</sup>

## **F. OTHER CHILD CARE PROGRAMS AND LOCAL PROGRAMS**

In addition to the main child care subsidy programs above, California has a variety of other smaller state and locally funded early childhood development programs, including: Cal-Learn, California School Age Families Education Program (Cal-SAFE), Migrant Child Care and Development, Education for Homeless Children and Youth, Child and Adult Care Food Program, Even Start Family Literacy Program, Striving Readers, Severely Handicapped Program, Community Colleges CalWORKs Child Care Stage 2, Community Colleges Cooperative Agencies Resources for Education, Community Colleges Early Learning Laboratory Schools, and Community Colleges Child Care Tax Bailout. Parents may locate their local resource and referral agency at <http://www.rnnetwork.org>, to find out about the specifics and availability of these programs.

## **IV. BENEFITS THAT COUNT AS INCOME FOR CHILD CARE ELIGIBILITY**

Foster parents and other caregivers are entitled to state or federal foster care payments to help provide for support of the child in their care. They may also receive other types of cash aid benefits on behalf of a child, such as SSI for a child with a disability. Even after the CPS case is closed, legal guardians or adoptive parents may continue to receive benefits, such as KinGAP (Kinship Guardianship Assistance Payment), or AAP (Adoption Assistance Payment), depending on the child's legal status. Children who have never had any involvement with the child welfare system and live with a legal guardian through placement by a probate court may also be entitled to benefits to help provide support of a child.

For income eligibility and family fee calculation purposes, a child and his or her siblings who do not live with their biological or adoptive parent are counted as their own family.<sup>93</sup> For example, when a foster parent applies for child care for a child in foster care placed in his/her home, that foster child is considered to be a family of "one." Certain kinds of financial assistance that the parent receives on behalf of the child, such as foster care payments and KinGAP, are counted as income to the child, not the parent, and taken into account for eligibility purposes of child care.<sup>94</sup>

<sup>92</sup> Cal. Dep't of Soc. Servs., All County Letter 05-23 (2005).

<sup>93</sup> For family size used in income calculation, see CAL. CODE REGS. tit. 5, §§ 18100 ("For income eligibility and family fee purposes, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, only the child and related siblings shall be counted to determine family size. In these cases, the adult(s) must meet a need criterion as specified in Education Code section 8263(a)(2).") and 18078(f) (defining "family" as "the parents and the children for whom the parents are responsible, who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, 'family' shall be considered the child and related siblings.").

<sup>94</sup> See CAL. CODE REGS. tit. 5, § 18078 (s) (defining "total countable income" as "all income of the individuals counted in the family size that includes, but is not limited to, the following: ... "public assistance" [(s)(3)] and "foster care payments" [(s)(11)].") KinGap is "public assistance," and not among the benefits listed as excluded from income in the "adjusted monthly income" regulation.

Other types of financial assistance that foster parents or other caregivers receive affect their income eligibility for child care subsidies. For example, public cash assistance, child support and spousal support from a former spouse or absent parent, and survivor and retirement benefits count toward the parent's "total countable income" for income eligibility purposes.<sup>95</sup> Financial assistance excluded from countable income includes federal supplemental security income and state supplemental program (SSI/SSP) benefits; earnings of a child under age 18; AAP; and loans, grants, and scholarships prohibited from being used for living costs.<sup>96</sup> Please refer to the accompanying chart for how income is counted depending on a child's legal status.

## **V. PAYING FOR SUBSIDIZED CHILD CARE: CONTRACTED CHILD CARE AND CHILD CARE VOUCHERS**

Child care subsidies in California either come in the form of "contracted child care" or a "voucher." Contracted child care programs are local agencies and school districts, including State Preschool, general child care, and migrant child care, that contract directly with CDE to provide child care services. The available contracted placements for children whose families receive child care subsidies are often called "slots." Contracted child care is usually center-based, but CDE also contracts with groups of home-based child care providers associated with contracted centers, called "Family Child Care Home Education Networks." Many contracted providers also serve families that pay full-cost child care. CDE makes child care payments, on behalf of families receiving child care subsidies, directly to these programs.

Families that qualify for child care subsidies may elect to use vouchers to pay for licensed child care centers, licensed child care homes, and child care providers who are legally exempt from licensing requirements (see Section VI Part B).<sup>97</sup> Child care subsidies are not true "vouchers"; families are not given certificates with a stated value that they use to pay for care from any possible provider. Rather, CDE contracts with local Alternative Payment Programs (APPs), which pay providers directly based on a specified voucher amount for which each family

<sup>95</sup> *Id.* § 18078(s)(3), (7) & (8). For a full list of what income counts toward "total countable income," please see the entire list under § 18078(s).

<sup>96</sup> For a full list of income that is not counted for eligibility purposes, see CAL. CODE REGS. tit. 5, §§ 18406 & 18421; for family size used in income calculation, see CAL. CODE REGS. tit. 5, §§ 18100 ("For income eligibility and family fee purposes, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, only the child and related siblings shall be counted to determine family size. In these cases, the adult(s) must meet a need criterion as specified in Education Code section 8263(a)(2).") and 18078(f) (defining "family" as "the parents and the children for whom the parents are responsible, who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, 'family' shall be considered the child and related siblings."). For whether a benefit counts towards income total for purposes of determining child care eligibility and family fees, see §§ 18078(s) (defining "total countable income" as "all income of the individuals counted in the family size that includes, but is not limited to, the following:"... "public assistance" [(s)(3)], "survivor's benefits" [(s)(8)], and "foster care payments" [(s)(11)]) and 18078(a) (defining "adjusted monthly income" as excluding "SSI" [(a)(9)] and "adoption assistance payments" [(a)(7)]). CalWORKs and KinGap are "public assistance" and not among the benefits listed as excluded from income in the "adjusted monthly income" regulation.

<sup>97</sup> CAL. EDUC. CODE § 8220; CAL. CODE REGS. tit. 5, § 18227.

qualifies.<sup>98</sup> However, when child care takes place in the parent’s home, the voucher is paid directly to the parent as the employer of the provider.<sup>99</sup>

Generally, Alternative Payment Programs (APPs) administer CalWORKs Stages 2 and 3 and non-CalWORKs vouchers. Some APPs also administer CalWORKs Stage 1 vouchers through contracts with their local CWD. In a few counties, CWDs contract with CDE to act as APPs in administering CalWORKs Stages 2 and 3 vouchers.

### **A. CO-PAYMENTS AND FAMILY FEES**

Two types of out-of-pocket expenses for parents, guardians, and caregivers receiving child care subsidies are “co-payments” and “family fees.” When a parent selects a child care provider who charges a higher fee than the maximum subsidized child care payment rate, the parent is responsible for this extra cost. The extra cost is the co-payment, which the parent makes directly to the provider.<sup>100</sup>

The family fee is separate from the co-payment and is solely based on the family’s income and size.<sup>101</sup> When determining family fee, the amount the provider charges is irrelevant. Family fees associated with non-CalWORKs CDE child care programs are calculated according to the CDE graduated fee schedule, based on the State Median Income (SMI) for all subsidized child care.<sup>102</sup> CalWORKs, Head Start, and Title IV-E participants are not charged a family fee for child care.<sup>103</sup>

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<sup>98</sup> CAL. EDUC. CODE §§ 8220.1; 8223.

<sup>99</sup> MPP § 47-420.2.

<sup>100</sup> MPP §§ 47-110(c)(2), 47-110(f)(1), 47-401.3; CAL. CODE REGS. 5, § 18076.1(a), (b) (which does not use the term “co-payment” but is clear in its meaning: a family may choose a child care provider that charges more than the maximum the subsidy will pay, but in that situation, the family is responsible to pay the difference between the rate charged by the provider and the maximum payment rate). See also CAL. CODE REGS. 5, § 18109(a)(4) (“The fee assessed and collected shall be either the fee indicated on the fee schedule, the actual costs of services or the contract maximum daily/hourly rate, whichever is least.”); CAL. CODE REGS. tit. 5, §§ 18414(b) (Stage 2), 18429(b) (Stage 3).

<sup>101</sup> MPP § 47-110(f)(1).

<sup>102</sup> CAL. EDUC. CODE §§ 8263(f), 8263.1(a); CAL. CODE REGS. 5, §§18108, 18414, 18429; MPP § 47-401.8 (Stage 1); CAL. DEP’T OF EDUC., MB 06-16, CHANGES IN LAW AFFECTING ALTERNATIVE PAYMENT PROGRAMS AND FAMILY CHILD CARE HOME EDUCATION NETWORKS UTILIZING THE REGIONAL MARKET RATE CEILINGS. Federal law does not prohibit the charging of family fees, but it does recommend reasonable restrictions so family fees do not exceed 10 percent of a family’s income. See 63 Federal Register 39,960; 45 C.F.R. § 98.43 (fees should be affordable and should not impede access to child care).

<sup>103</sup> CAL. EDUC. CODE § 8447(g); Cal. Dep’t of Soc. Servs., All-County Letter 09-57, CALWORKS PROGRAM UPDATES REGARDING THE REGIONAL MARKET RATE, RESTRICTIONS TO THE DAILY RATE REIMBURSEMENTS, STATE MEDIAN INCOME, AND FAMILY FEES (2009); 45 C.F.R. § 1305.9 (explaining that federal regulations prohibit Head Start programs from soliciting, encouraging, or any other way conditioning a child’s enrollment or participation upon condition of a fee); see Cal. Dep’t of Soc. Servs., All County Letter 05-23 (2005) (explaining that child care costs for children in the Title IV-E child care program are covered by federal pass-through funds and the county. The amount of payment is based on the Regional Market Rate Ceilings outlined in “All County Letter, 03-41.” There is no mention of a family fee).

## **VI. TYPES OF CHILD CARE IN CALIFORNIA**

Child care in California falls into three categories: (A) licensed; (B) license-exempt; and (C) care by a foster parent and/or family caregiver. California child care subsidy programs require that parent participants select licensed or license-exempt child care.<sup>104</sup> Similarly, foster parents must choose a child care provider who is licensed or passes background check requirements, unless the care falls into one of the exceptions, in which the “reasonable and prudent parent standard” applies.<sup>105</sup>

### **A. LICENSED CHILD CARE**

The Community Care Licensing Division (CCLD), administered by DSS, is the state agency responsible for licensing, regulating, and enforcing DSS laws and regulations related to child care homes and centers in California.<sup>106</sup> All California licensed child care providers must comply with DSS licensing laws and regulations to obtain and maintain their child care licenses.<sup>107</sup>

Examples of licensed child care include infant care, day care, preschool, and nursery schools. The state splits the definition of child care into two categories: “child care homes” and “child care centers,” with each category subject to specific regulations.

#### **1. FAMILY CHILD CARE HOMES**

Also referred to as “family day care homes,” family child care homes are operated by licensed child care providers in the provider’s own home and “[r]eflect[] a home-like environment where non-medical care and supervision is provided for periods of less than 24 hours.”<sup>108</sup> Family child care homes often offer more flexibility with regard to schedules and rules than do child care centers.

California law distinguishes between “small family day care homes” and “large family day care homes.”<sup>109</sup> The main difference is that small family day care homes are licensed to take care of up to 8 children, while large family day care homes are licensed to take care of up to 14 children.<sup>110</sup>

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<sup>104</sup> CAL. CODE REGS. tit. 5, §§ 18227 (Alternative Payment Program), 18411 (CALWORKs Stage I), 18426 (CALWORKs Stage II; Cal. Dep’t of Soc. Servs., All County Letter 05-23 (2005); MPP §§ 47-260, 47-260.4 (explaining that a subsidized-paid provider may not be a parent, legal guardian, or member of the assistance unit).

<sup>105</sup> CAL. CODE REGS. tit. 22, § 8937(a) (exceptions to requirement of licensed care for occasional and short-term babysitting, as well as alternative caregiving for a period of care over 24 hours but less than 72 hours); CAL. WELF. & INST. CODE §§ 362.04 (“reasonable and prudent parent standard”), 362.05(a) (exception for “extracurricular, enrichment and social activities” from non-licensed care).

<sup>106</sup> Cal. Dep’t of Soc. Servs., *Becoming a Licensed Child Care Provider*, <http://cclld.ca.gov/PG487.htm> (last visited July 30, 2013).

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> CAL. HEALTH & SAFETY CODE § 1596.78 (b)-(c).

<sup>110</sup> *Id.*

## 2. CHILD CARE CENTERS

Also referred to as “day care centers,” child care centers are licensed to take care of more children than family child care homes and are usually located in a commercial building.<sup>111</sup> The maximum number of children in a child care center depends on the specific license granted to the facility. Factors determining maximum number of children include: space, fire clearance regulations, and number of staff.<sup>112</sup> Child care centers are also more extensively regulated than family child care homes.<sup>113</sup> Like family child care homes, child care centers provide non-medical supervision to children for less than 24-hour periods.<sup>114</sup>

### B. LICENSE-EXEMPT CHILD CARE

Some child care providers are legally exempt from obtaining a child care license. License-exempt child care providers need not comply with state licensing laws and regulations.<sup>115</sup> However, most license-exempt child care providers accepting subsidies must register with Trustline, California’s voluntary criminal background check registry for child care home providers.<sup>116</sup> Examples of license-exempt child care may include care by a relative; care for children of only one nonrelative family (in addition to caregiver’s own children) in the home of a caregiver; and other programs that meet certain criteria such as co-ops, camps and recreational programs; and before- and after-school programs.<sup>117</sup> Child care subsidies may not be used to pay for co-op care or for care by a parent, legal guardian, or member of the assistance unit (family members living in the home).<sup>118</sup>

### C. CARE BY FOSTER PARENT/FAMILY CAREGIVER — PAID FAMILY LEAVE

Parents, foster parents, and adoptive parents who are employed and pay into State Disability Insurance may be eligible for up to six weeks of paid time off to care for and bond with their child within 12 months of the child’s birth or placement in the home under the California Paid Family Leave Act.<sup>119</sup> Parents need not be licensed child care providers to be eligible for California Paid Family Leave benefits. Paid Family Leave benefits are approximately 55 percent of the employee’s weekly wages, calculated according to the highest-earning quarter within the previous 15 months.<sup>120</sup> The six weeks of paid time off does not need to be taken all

<sup>111</sup> Cal. Dep’t of Soc. Servs., Becoming a Licensed Child Care Provider, <http://cclld.ca.gov/PG487.htm> (last visited July 30, 2013).

<sup>112</sup> CAL. CODE REGS. tit. 22, § 101179.

<sup>113</sup> See Cal. Dep’t of Soc. Servs., Child Care, <http://www.dss.cahwnet.gov/ord/PG587.htm> (last visited July 30, 2013).

<sup>114</sup> Cal. Dep’t of Soc. Servs., Becoming a Licensed Child Care Provider, <http://cclld.ca.gov/PG487.htm> (last visited July 30, 2013).

<sup>115</sup> CAL. HEALTH & SAFETY CODE § 1596.792.

<sup>116</sup> *Id.* §§ 1596.66(a), 1596.67(a) (explaining that providers who are grandparents, aunts, or uncles by marriage, blood, or court decree are not required to be TrustLine registered); see TrustLine, <http://www.trustline.org/> (last visited July 30, 2013).

<sup>117</sup> *Id.* § 1596.792 (including full list of license-exempt child care).

<sup>118</sup> CAL. HEALTH & SAFETY CODE § 1596.792(e)(3); MPP § 47-260.4.

<sup>119</sup> CAL. UNEMP. INS. CODE § 3300.

<sup>120</sup> Paid Family Leave California, Basics of California PFL Program, <http://www.paidfamilyleave.org/learn/basics.html> (last visited July 30, 2013).

at one time.<sup>121</sup> More information on the Paid Family Leave program is available at <http://www.paidfamilyleave.org/> or from the Employment Development Department [http://www.edd.ca.gov/Disability/More\\_PFL\\_information.htm](http://www.edd.ca.gov/Disability/More_PFL_information.htm).

## **VII. RESOURCE AND REFERRAL AGENCIES (R&RS)**

For specific questions regarding local child care programs that are available in each county and eligibility requirements, including special requirements for foster parents and other caregivers, community members may contact their local R&R. R&Rs are located in every county throughout California and assist parents, guardians, and caregivers, regardless of income, in locating child care (including information about how to assess for quality) and applying for subsidies, provide support services to aspiring providers, and serve as a local community resource for child care. Community members can find their local R&R through the website of the California Child Care Resource and Referral Network: <http://www.rnetwork.org>

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Laurie Furstenfeld, Staff Attorney

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This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of September 2013, but the law changes often. This document does not render legal or other professional advice. If you need legal advice, you should seek the services of a competent attorney.

This document was produced with assistance from Youth Law Center and with financial support from the Legal Services Trust Fund, State Bar of California.

The Child Care Law Center is nonprofit legal services organization. Our work focuses exclusively on child care-related legal and policy issues. Staff attorneys are experts in the laws that help low-income and vulnerable children get and keep good quality child care.

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<sup>121</sup> *Id.*

**CHILD CARE AND THE CHILD WELFARE SYSTEM: SUBSIDIES AND CHILD CARE OPTIONS  
REFERENCE CHART FOR TYPE OF PLACEMENT**

Type of Placement	Primary Benefits Available to Parent/Foster Parent/Caregiver	Count as income for child care? <sup>1</sup>	Primary Child Care Subsidy Programs
<b>Open CPS, Home with Parent</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based)</li> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	<p>Yes</p> <p>No</p> <p>Yes</p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Parent must be current/former recipient of aid for self<sup>2</sup></li> <li>• <b>CDE (Non-CalWORKs)</b> – Children eligible based on CPS or “at-risk” status have priority enrollment, <i>regardless of income</i>. 12-month limit if eligibility based on CPS, 3- month limit if eligibility based on at-risk status, unless recertified by CCSW for longer period or eligible under other category; both CPS and at-risk status exempt from family fee for up to 12 months<sup>3</sup></li> <li>• <b>State Preschool</b> – Three- and four-year-olds eligible based on CPS or at-risk status qualify for part-time and full-time program, and have priority enrollment, <i>regardless of income</i><sup>4</sup></li> <li>• <b>Head Start</b> – Children in foster care qualify, <i>regardless of income</i><sup>5</sup>; OHS encourages counties to prioritize children in the child welfare system<sup>6</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>7</sup></li> </ul>
<b>Open CPS, Placed with Relative</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based or non-needy relative caregiver assistance)</li> <li>• <b>Federal Foster Care, Youakim</b> (specialized care rates)</li> <li>• <b>State Foster Care</b> (for a relative who is not federally eligible who is planning to adopt when parental rights have been terminated)</li> </ul>	<p>Yes</p> <p>Yes</p> <p>Yes</p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Relative caregiver must be current/former recipient of aid for self; non-needy relative caregiver does not qualify<sup>8</sup></li> <li>• <b>CDE (Non-CalWORKs)</b> – Children eligible based on CPS or “at-risk” status have priority enrollment, <i>regardless of income</i>. 12-month limit if eligibility based on CPS, 3- month limit if eligibility based on at-risk status, unless recertified by CCSW for longer period or eligible under other category; both CPS and at-risk status exempt from family fee for up to 12 months<sup>9</sup></li> <li>• <b>State Preschool</b> – Three- and four-year-olds eligible based on CPS or at-risk status qualify for part-time and full-time program, and have priority enrollment, <i>regardless of income</i><sup>10</sup></li> <li>• <b>Head Start</b> – Children in foster care qualify, <i>regardless of income</i><sup>11</sup>; OHS encourages counties to prioritize children in the child welfare system<sup>12</sup></li> <li>• <b>Title IV-E</b> – Depends on whether county participates; applies only to federally eligible foster children up to age 13<sup>13</sup></li> </ul>

	<ul style="list-style-type: none"> <li>• <b>SSI</b></li> <li>• <b>Survivor's Benefits</b></li> </ul>	No Yes	<ul style="list-style-type: none"> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>14</sup></li> </ul>
<b>Open CPS, Placed with Non-Relative</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based)</li> <li>• <b>Federal Foster Care, AFDC</b> (specialized care rates)</li> <li>• <b>State Foster Care</b> (for a non-relative who is not federally eligible )</li> <li>• <b>Dual Agency, ARM</b></li> <li>• <b>SSI</b></li> <li>• <b>Survivor's Benefits</b></li> </ul>	Yes  Yes  Yes  N/A <sup>15</sup> No Yes	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Caregiver must be current/former recipient of aid for self<sup>16</sup></li> <li>• <b>CDE (Non-CalWORKs)</b> – Children eligible based on CPS or “at-risk” status have priority enrollment, <i>regardless of income</i>. 12-month limit if eligibility based on CPS, 3- month limit if eligibility based on at-risk status, unless recertified by CCSW for longer period or eligible under other category; both CPS and at-risk status exempt from family fee for up to 12 months<sup>17</sup></li> <li>• <b>State Preschool</b> – Three- and four-year-olds eligible based on CPS or at-risk status qualify for part-time and full-time program, and have priority enrollment, <i>regardless of income</i><sup>18</sup></li> <li>• <b>Head Start</b> – Children in foster care qualify, <i>regardless of income</i><sup>19</sup>; OHS encourages counties to prioritize children in the child welfare system<sup>20</sup></li> <li>• <b>Title IV-E</b> – Depends on whether county participates; applies only to federally eligible foster children up to age 13<sup>21</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>22</sup></li> <li>•</li> </ul>

<b>Open CPS, dependency Legal Guardianship (relative)</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based or non-need relative caregiver assistance)</li> <li>• <b>Federal Foster Care, Youakim</b> (specialized care rates for relative caregivers)</li> <li>• <b>State Foster Care</b> (for a relative who is not federally eligible who is planning to adopt when parental rights have been terminated – unlikely if legal guardianship</li> </ul>	Yes  Yes  Yes	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Relative caregiver must be current/former recipient of aid for self; non-need relative caregiver does not qualify<sup>23</sup></li> <li>• <b>CDE (Non-CalWORKs)</b> – Children eligible based on CPS or “at-risk” status have priority enrollment, <i>regardless of income</i>. 12-month limit if eligibility based on CPS, 3- month limit if eligibility based on at-risk status, unless recertified by CCSW for longer period or eligible under other category; both CPS and at-risk status exempt from family fee for up to 12 months<sup>24</sup></li> <li>• <b>State Preschool</b> – Three- and four-year-olds eligible based on CPS or at-risk status qualify for part-time and full-time program, and have priority enrollment, <i>regardless of income</i><sup>25</sup></li> <li>• <b>Head Start</b> – Children in foster care qualify, <i>regardless of income</i><sup>26</sup>; OHS encourages counties to prioritize children in the child welfare system<sup>27</sup></li> <li>• <b>Title IV-E</b> – Depends on whether county participates; applies only to federally eligible foster children up to age 13<sup>28</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>29</sup></li> </ul>
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	<p>is the permanent plan)</p> <ul style="list-style-type: none"> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	<p>No Yes</p>	
<p><b>Open CPS, dependency Legal Guardianship (non-relative)</b></p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based)</li> <li>• <b>Federal Foster Care, AFDC</b> (specialized care rates)</li> <li>• <b>State Foster Care</b> (for a non-relative who is not federally eligible)</li> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	<p>Yes Yes Yes No Yes</p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Guardian must be current/former recipient of aid for self<sup>30</sup></li> <li>• <b>CDE</b> (Non-CalWORKs) – Children eligible based on CPS or “at-risk” status have priority enrollment, <i>regardless of income</i>. 12-month limit if eligibility based on CPS, 3- month limit if eligibility based on at-risk status, unless recertified by CCSW for longer period or eligible under other category; both CPS and at-risk status exempt from family fee for up to 12 months<sup>31</sup></li> <li>• <b>State Preschool</b> – Three- and four-year-olds eligible based on CPS or at-risk status qualify for part-time and full-time program, and have priority enrollment, <i>regardless of income</i><sup>32</sup></li> <li>• <b>Head Start</b> – Children in foster care qualify, <i>regardless of income</i><sup>33</sup>; OHS encourages counties to prioritize children in the child welfare system<sup>34</sup></li> <li>• <b>Title IV-E</b> – Depends on whether county participates; applies only to federally eligible foster children up to age 13<sup>35</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>36</sup></li> </ul>
<p><b>Closed CPS, dependency Legal Guardianship (relative)</b></p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based or non-needy relative caregiver assistance)</li> <li>• <b>KinGap</b></li> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	<p>Yes Yes No Yes</p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Relative caregiver must be current/former recipient of aid for self; non-needy relative caregiver does not qualify<sup>37</sup></li> <li>• <b>CDE</b> (non-CalWORKs) – Requires non-CPS eligibility (e.g. income)<sup>38</sup></li> <li>• <b>State Preschool</b> – Requires non-CPS eligibility (e.g. income)<sup>39</sup></li> <li>• <b>Head Start</b> – Requires non-foster care eligibility (e.g. income)<sup>40</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>41</sup></li> </ul>
<p><b>Closed CPS, dependency Legal Guardianship (non-relative)</b></p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based)</li> <li>• <b>State Foster Care</b></li> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	<p>Yes Yes No Yes</p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Guardian must be current/former recipient of aid for self<sup>42</sup></li> <li>• <b>CDE</b> (non-CalWORKs) – Requires non-CPS eligibility (e.g. income)<sup>43</sup></li> <li>• <b>State Preschool</b> – Requires non-CPS eligibility (e.g. income)<sup>44</sup></li> <li>• <b>Head Start</b> – Requires non-foster care eligibility (e.g. income)<sup>45</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>46</sup></li> </ul>

<b>Open CPS, Adoptive Placement with a relative</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based)</li> <li>• <b>AAP</b></li> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	Yes  No No Yes	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Parent must be current/former recipient of aid for self<sup>47</sup></li> <li>• <b>CDE</b> (Non-CalWORKs) – Children eligible based on CPS or “at-risk” status have priority enrollment, <i>regardless of income</i>. 12-month limit if eligibility based on CPS, 3- month limit if eligibility based on at-risk status, unless recertified by CCSW for longer period or eligible under other category; both CPS and at-risk status exempt from family fee for up to 12 months<sup>48</sup></li> <li>• <b>State Preschool</b> – Three- and four-year-olds eligible based on CPS or at-risk status qualify for part-time and full-time program, and have priority enrollment, <i>regardless of income</i><sup>49</sup></li> <li>• <b>Head Start</b> – Children in foster care qualify, <i>regardless of income</i><sup>50</sup>; OHS encourages counties to prioritize children in the child welfare system<sup>51</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>52</sup></li> </ul>
<b>Open CPS, Adoptive Placement with a non-relative</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based)</li> <li>• <b>AAP</b></li> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	Yes  No No Yes	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Parent must be current/former recipient of aid for self<sup>53</sup></li> <li>• <b>CDE</b> (Non-CalWORKs) – Children eligible based on CPS or “at-risk” status have priority enrollment, <i>regardless of income</i>. 12-month limit if eligibility based on CPS, 3- month limit if eligibility based on at-risk status, unless recertified by CCSW for longer period or eligible under other category; both CPS and at-risk status exempt from family fee for up to 12 months<sup>54</sup></li> <li>• <b>State Preschool</b> – Three- and four-year-olds eligible based on CPS or at-risk status qualify for part-time and full-time program, and have priority enrollment, <i>regardless of income</i><sup>55</sup></li> <li>• <b>Head Start</b> – Children in foster care qualify, <i>regardless of income</i><sup>56</sup>; OHS encourages counties to prioritize children in the child welfare system<sup>57</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>58</sup></li> </ul>
<b>Closed CPS, Adopted</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based)</li> <li>• <b>AAP</b></li> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	Yes  No No Yes	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Parent must be current/former recipient of aid for self<sup>59</sup></li> <li>• <b>CDE</b> (non-CalWORKs) – Requires non-CPS eligibility (e.g. income)<sup>60</sup></li> <li>• <b>State Preschool</b> – Requires non-CPS eligibility (e.g. income)<sup>61</sup></li> <li>• <b>Head Start</b> – Requires non-foster care eligibility (e.g. income)<sup>62</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>63</sup></li> </ul>
<b>Probate Guardianship, relative</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need based or non-needy relative caregiver)</li> <li>• <b>SSI</b></li> </ul>	Yes  No	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Relative caregiver must be current/former recipient of aid for self; non-needy relative caregiver does not qualify<sup>64</sup></li> <li>• <b>CDE</b> (non-CalWORKs) – Requires non-CPS eligibility (e.g. income)<sup>65</sup></li> <li>• <b>State Preschool</b> – Requires non-CPS eligibility (e.g. income)<sup>66</sup></li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Survivor’s Benefits</b></li> </ul>	Yes	<ul style="list-style-type: none"> <li>• <b>Head Start</b> – Requires non-foster care eligibility (e.g. income)<sup>67</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>68</sup></li> </ul>
<b>Probate Guardianship, non-relative</b>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> (need-based)</li> <li>• <b>State Foster Care</b></li> <li>• <b>SSI</b></li> <li>• <b>Survivor’s Benefits</b></li> </ul>	<p>Yes</p> <p>Yes</p> <p>No</p> <p>Yes</p>	<ul style="list-style-type: none"> <li>• <b>CalWORKs</b> – Guardian must be current/former recipient of aid for self<sup>69</sup></li> <li>• <b>CDE</b> (non-CalWORKs) – Requires non-CPS eligibility (e.g. income)<sup>70</sup></li> <li>• <b>State Preschool</b> – Requires non-CPS eligibility (e.g. income)<sup>71</sup></li> <li>• <b>Head Start</b> – Requires non-foster care eligibility (e.g. income)<sup>72</sup></li> <li>• <b>First Five, county or local programs</b> – Check with local R&amp;R<sup>73</sup></li> </ul>

<sup>1</sup> For family size used in income calculation, see CAL. CODE REGS. tit. 5, §§ 18100 (2013) (“For income eligibility and family fee purposes, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, only the child and related siblings shall be counted to determine family size. In these cases, the adult(s) must meet a need criterion as specified in Education Code section 8263(a)(2).”). For general definition of “family” see § 18078(f) (“‘Family’ means the parents and the children for whom the parents are responsible, who comprise the household in which the child receiving services is living. For purposes of income eligibility and family fee determination, when a child and his or her siblings are living in a family that does not include their biological or adoptive parent, ‘family’ shall be considered the child and related siblings.”). For whether benefit counts as “total countable income” for purposes of determining child care eligibility and family fees, see § 18078 (s) (defining “total countable income” as including “public assistance” [(s)(3)], “survivor’s benefits” [(s)(8)], & “foster care payments” [(s)(11)] ) & 18078(a) (defining “adjusted monthly income” as excluding “SSI”[(A)(9)] and “adoption assistance payments” [(a)(7)] ). CalWORKs and KinGap are public assistance, and not among the benefits listed as excluded from income for purposes of determining adjusted monthly income.

<sup>2</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep’t of Social Servs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013).

<sup>3</sup> CAL. EDUC. CODE 8263 § (b)(1); CAL. CODE REGS. tit. 5, § 18106(a); Cal. Dep’t. of Educ., Management Bulletin 06-14 (2006) (clarifying procedures regarding child development services and fee assessment for children who receive CPS and “at risk” services).

<sup>4</sup> CAL. EDUC. CODE §§ 8235(b), 8239(d), 8236(a); CAL. CODE REGS. tit. 5, § 18131 (a).

<sup>5</sup> 45 C.F.R. § 1305.2(l) (2013).

<sup>6</sup> U.S. Dep’t of Health & Human Srvs., Info. Memorandum 10-04 (2010) (“The purpose of this IM is to reinforce the Head Start commitment to serving abused and neglected children through its grantees and delegate agencies...OHS encourages Head Start/Early Head Start to prioritize children in the public child welfare system when establishing criteria and selecting children and families for Head Start/Early Head Start Services.” The IM defines “child welfare system” as a “[a] system which includes preventative, protective, foster care and adoption services.”).

<sup>7</sup> First Five Website, <http://www.cfcf.ca.gov/> (last visited Aug. 30, 2013); Cal. Child Care Resource & Referral Network, <http://www.rrnetwork.org> (last visited Aug 30, 2013).

<sup>8</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep’t of Social Servs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent’s current or past receipt of cash assistance). Non-needy relative caregivers ineligible for childcare because cash grant is based on child’s eligibility, not the caregiver’s eligibility.

<sup>9</sup> CAL. EDUC. CODE 8263 § (b)(1); CAL. CODE REGS. tit. 5, § 18106(a); Cal. Dep’t. of Educ., Management Bulletin 06-14 (2006) (clarifying procedures regarding child development services and fee assessment for children who receive CPS and “at risk” services).

<sup>10</sup> CAL. EDUC. CODE §§ 8235(b), 8239(d), 8236(a); CAL. CODE REGS. tit. 5, § 18131 (a).

<sup>11</sup> 45 C.F.R. § 1305.2(l) (2013).

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<sup>13</sup> Title IV-E provides for “foster care maintenance payments.” For definition of foster care maintenance payments, see 42 U.S.C. § 675(4)(A). While the payment covers “daily supervision,” CA also gives counties the option to participate in “the Foster Parent Child Care Program” to cover child care specifically. Cal. Dep’t of Soc. Svcs., All County Letter 05-23 (2005) (explaining that the Foster Parent Child Care Program “[i]s available to all counties statewide and is intended to enable a foster parent to receive child care as needed, maintain a stable home environment, and strengthen county foster care recruitment efforts.”). Participating counties as of May 2012 include “Butte, Lassen, Orange, San Francisco, San Mateo, Santa Clara, Siskiyou, San Benito, and Yolo.” DEP’T OF SOCIAL SVCS., LOCAL ASSISTANCE 215 (2012).

<sup>14</sup> First Five Website, <http://www.cafc.ca.gov/> (last visited Aug. 30, 2013); Cal. Child Care Resource & Referral Network, <http://www.rnetwork.org> (last visited Aug 30, 2013).

<sup>15</sup> In practice, for child care eligibility, ARM rates are included in foster care or APP benefits; they are not counted as separate benefits. Email from Candace Gray, Foster Care Eligibility Program Support Analyst, Office of Early Care & Education City & County of San Francisco Human Services Agency, to John Tsutakawa, Program Director, Office of Early Care & Education City & County of San Francisco Human Services Agency (Mar. 19, 2013) (on file with author).

<sup>16</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep’t of Social Svcs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent’s current or past receipt of cash assistance).

<sup>17</sup> CAL. EDUC. CODE 8263 § (b)(1); CAL. CODE REGS. tit. 5, § 18106(a); Cal. Dep’t. of Educ., Management Bulletin 06-14 (2006) (clarifying procedures regarding child development services and fee assessment for children who receive CPS and “at risk” services).

<sup>18</sup> CAL. EDUC. CODE §§ 8235(b), 8239(d), 8236(a); CAL. CODE REGS. tit. 5, § 18131 (a).

<sup>19</sup> 45 C.F.R. § 1305.2(l) (2013).

<sup>20</sup> U.S. Dep’t of Health & Human Svcs., Info. Memorandum 10-04 (2010) (“The purpose of this IM is to reinforce the Head Start commitment to serving abused and neglected children through its grantees and delegate agencies...OHS encourages Head Start/Early Head Start to prioritize children in the public child welfare system when establishing criteria and selecting children and families for Head Start/Early Head Start Services.” The IM defines “child welfare system” as a “[a] system which includes preventative, protective, foster care and adoption services.”).

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<sup>22</sup> First Five Website, <http://www.cafc.ca.gov/> (last visited Aug. 30, 2013); Cal. Child Care Resource & Referral Network, <http://www.rnetwork.org> (last visited Aug 30, 2013).

<sup>23</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep’t of Social Svcs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent’s current or past receipt of cash assistance). Non-needy relative caregivers ineligible for childcare because cash grant is based on child’s eligibility, not the caregiver’s eligibility.

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<sup>25</sup> CAL. EDUC. CODE §§ 8235(b), 8239(d), 8236(a); CAL. CODE REGS. tit. 5, § 18131 (a).

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<sup>26</sup> 45 C.F.R. § 1305.2(l) (2013).

<sup>27</sup> U.S. Dep't of Health & Human Svcs., Info. Memorandum 10-04 (2010) (“The purpose of this IM is to reinforce the Head Start commitment to serving abused and neglected children through its grantees and delegate agencies...OHS encourages Head Start/Early Head Start to prioritize children in the public child welfare system when establishing criteria and selecting children and families for Head Start/Early Head Start Services.” The IM defines “child welfare system” as a “[a] system which includes preventative, protective, foster care and adoption services.”).

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<sup>29</sup> First Five Website, <http://www.cafc.ca.gov/> (last visited Aug. 30, 2013); Cal. Child Care Resource & Referral Network, <http://www.rnetwork.org> (last visited Aug 30, 2013).

<sup>30</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep't of Social Svcs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent's current or past receipt of cash assistance).

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<sup>33</sup> 45 C.F.R. § 1305.2(l) (2013).

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<sup>36</sup> First Five Website, <http://www.cafc.ca.gov/> (last visited Aug. 30, 2013); Cal. Child Care Resource & Referral Network, <http://www.rnetwork.org> (last visited Aug 30, 2013).

<sup>37</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep't of Social Svcs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent's current or past receipt of cash assistance). Non-needy relative caregivers ineligible for childcare because cash grant is based on child's eligibility, not the caregiver's eligibility.

<sup>38</sup> *See* CAL. EDUC. CODE § 8263(A)(1)(A)-(C), (2)(B)-(2)(B).

<sup>39</sup> *See* CAL. EDUC. CODE §§ 8235(b), 8239(d).

<sup>40</sup> 45 C.F.R. §§ 1305.2(l) & 1305.4 (2013).

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<sup>41</sup> First Five Website, <http://www.cafc.ca.gov/> (last visited Aug. 30, 2013); Cal. Child Care Resource & Referral Network, <http://www.rnetwork.org> (last visited Aug 30, 2013).

<sup>42</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep't of Social Servs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent's current or past receipt of cash assistance).

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<sup>44</sup> *See* CAL. EDUC. CODE §§ 8235(b), 8239(d).

<sup>45</sup> 45 C.F.R. §§ 1305.2(l) & 1305.4 (2013).

<sup>46</sup> First Five Website, <http://www.cafc.ca.gov/> (last visited Aug. 30, 2013); Cal. Child Care Resource & Referral Network, <http://www.rnetwork.org> (last visited Aug 30, 2013).

<sup>47</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep't of Social Servs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent's current or past receipt of cash assistance).

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<sup>59</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep't of Social Servs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent's current or past receipt of cash assistance).

<sup>60</sup> *See* CAL. EDUC. CODE § 8263(A)(1)(A)-(C), (2)(B)-(2)(B).

<sup>61</sup> *See* CAL. EDUC. CODE §§ 8235(b), 8239(d).

<sup>62</sup> 45 C.F.R. §§ 1305.2(l) & 1305.4 (2013).

<sup>63</sup> First Five Website, <http://www.cafc.ca.gov/> (last visited Aug. 30, 2013); Cal. Child Care Resource & Referral Network, <http://www.rrnetwork.org> (last visited Aug 30, 2013).

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<sup>69</sup> CAL. WELF. & INST. CODE §§ 11323.2 & 11323.25; Dep't of Social Servs., CalWORKs, <http://www.cdss.ca.gov/calworks/> (last visited August 30, 2013); Cal. Manual of Policies and Procedures [hereinafter MPP] § 47-201.123; *see* example 1 MPP § 47-201.124 (“A single parent requests CalWORKs Stage One child care both for her children and her sister's unaided children who are residing with her while her sister is in jail. The children's father is absent. In this case the sister's children meet the requirement in Section 47201.123, that is, children whom the client is responsible to support.”). *See* MPP §§ 47-110(c)(4), 47-220.1-2 (defining eligibility based on parent's current or past receipt of cash assistance).

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<sup>72</sup> 45 C.F.R. §§ 1305.2(l) & 1305.4 (2013).

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