

## Legal Section-by-Section Summary

*An Act Providing Affordable and Accessible High Quality Early Education and Care to Promote Child Development and Well-Being and Support the Economy in the Commonwealth*

### **H.605 (Reps. Gordon & Madaro) & S.362 (Sens. Lewis & Moran)**

#### SECTION 1: Adds Defined Terms

Amends G.L. c. 15D, § 1A, by inserting additional defined terms to avoid ambiguity in the Act. Significant additions are:

“Department’s agents,” added in order to include, among others, the private entities referred to in chapter 15D as “regional child care resource and referral agencies” and other private entities that play a role in administering child care subsidies. Under existing law, there is some ambiguity as to the authority of the Dept. of Early Education and Care (EEC) regarding these entities, which is problematic because they are charged with critical, publicly-funded functions in the Mass. early education and child care system, including: a) serving as the interface with low income families who apply for or need to keep subsidized child care; b) approving, denying, reducing, and termination subsidies to families, applying EEC policies; and c) information and assistance to families in locating appropriate, available providers. EEC administers the payment of subsidies and is responsible for ensuring compliance with all applicable federal and state law regarding use of public funding for subsidies.

“Early education and care,” added to clarify that this term covers care for school-aged children, as currently provided in G.L. c. 15D and EEC regulations and policies. The term is used in EEC’s name but, undefined, leaves some confusion, as it may be read to refer only to education and child care for children from birth to pre-K or an even narrower range.

“High needs,” added to enable brevity in referring to the content included in the term throughout the Act.

#### SECTION 2: Adds new EEC duties

Amends G.L. c. 15D by adding a new § 2A (subsections (a)-(l)), delegating new and more specific duties to EEC related to implementing the major purposes of the Act – to increase affordability, accessibility, and availability of early education and child care through expanding subsidies, direct funding to providers to meet the full costs of high-quality care, increased compensation to provider staff, and other measures.

- a) Ensure equal access to the publicly-funded early education and child care system to parents with disabilities and to children with disabilities to receive child care services. Requires EEC to establish a Director of Disability Access position. The Dept. of Transitional Assistance did this with highly beneficial results, including injecting disability access considerations into development of changes in policies and procedures of all types.

- b) Ensure equal access to parents and children with limited English proficiency through use of bilingual staff and interpreters and translation of documents into the 8 most common languages in Mass.
- c) Increase responsiveness to inquiries by parents concerning obtaining and retaining subsidies and other matters entrusted to EEC – including prompt response by child care resource and referral agencies and early education and child care providers that serve as subsidy administrators.
- d) Inform families with high needs children of openings with providers who serve these children. This is a need that was raised by families, community helpers working with families, and providers who serve these children.
- e) Develop a sound methodology for determining the actual costs of high-quality early education and child care, considering children’s ages, geographic locations within the state, and the range and nature of children’s needs.

The methodology must include four components: (1) basic costs of the provider’s operation, including compensation to staff; (2) costs of services to children and families with high needs; (3) costs of compliance with all applicable federal and state laws, including administrative requirements, which are key to the state’s retaining and increasing funding; and (4) costs of addressing additional policy goals, such as filling gaps in early education and child care services for children in certain age ranges (notably infants and toddler) or living in certain parts of the state with few providers.

- f) Use the methodology to determine the full costs annually, for use in determining funding needed for direct provider funding, under § 13B.
- g) Comply with all requirements necessary to maintain existing federal funding for early education and child care and to secure new funding that may become available.
- h) Annually assess cost of fully implementing key provisions in the Act.
- i) Annually assess extent of unmet needs for transportation to and from care, non-standard hours care, and substitute care, and cost of meeting these needs.
- j) Annually collect information, relevant to monitoring progress toward the goals of the Act, from early education and child care providers that receive funding through EEC.
- k) Annual reports to and others to enable oversight, including by EEC itself, of implementation of the Act.

SECTION 3: Adds new EEC Board duties

Amends G.L. c. 15D, § 3, by inserting a paragraph obligating the EEC Board to ensure that the department complies with the duties developed in this Act.

SECTION 4: Adds new EEC Commissioner duties

Amends G.L. c. 15D, § 4, revising an existing paragraph and adding a new paragraph. The new provisions: 1) expressly delegate authority to the Commissioner to ensure compliance with c. 15D by EEC and its agents, including child care resource and referral agencies and any entity that administers child care subsidies; 2) require EEC's agents to comply with the Commissioner's requests for information or corrective action. These are good government-related improvements. The revised provision requires the Commissioner to recommend a budget that meets the costs of implementing this Act.

SECTION 5: Amends G.L. c. 15D, by adding §§ 13A-13D, creating a structure to increase affordable, high-quality early education and care.

Section 13A, subsections (a)-(q): Expansion and improvement of EEC's child care subsidy system

- a) EEC must use all funding received for child care subsidies to provide subsidies, i.e., not fail to spend it, and may also increase rates. For federal Child Care and Development Block Grant (CCDBG) funding, EEC must comply with federal rate-setting procedures. (See reference to the applicable federal law in § 2A (g), added by SECTION 2 of the Act. "Rates" are the maximum amount of subsidies paid per child, varying with age, location, and type of provider. Parent fee copayments and subsidies may not exceed the applicable rate.)
- b) EEC must provide subsidies to enable all families to afford care for children from birth through school-age, as already defined in c. 15D. Subsidies to school-age children shall extend through the end of the school year during which the child reaches the maximum age.
- c) All of the types of providers currently eligible to receive subsidies remain eligible.
- d) If funding permits, EEC must provide subsidies so that all children can access the benefits of early education and child care, regardless of parent activity or category of family. However, EEC must prioritize the existing activities and categories of families eligible for subsidies. Families experiencing domestic violence are added to those prioritized and the disability category is clarified, such that EEC must cease treating approval of subsidies needed due to disability as discretionary. This is a good government-related improvement.
- e) EEC must continue to provide subsidies to families involved with the Dept. of Children and Families, as required under G.L. 18B, § 2.
- f) EEC must continue to provide subsidies to current recipients of Transitional Aid to Families with Dependent Children (TAFDC) and former recipients during a transitional period, as required by St. 1995, c. 5, §§ (f) and (j) (as amended by subsequent session laws, cited in the bill).
- g) Expansion of funding for subsidies is prioritized by income ranges, in order to aid more of the lowest income families at the outset. The first priority is for families with income not exceeding 25% of SMI or experiencing homelessness or headed by a teen parent. No fees to be charged to families whose income does not exceed 50% of SMI.
- h) Fees for families with incomes above 50% of SMI are not to exceed 7% of income, and are to be set on a sliding scale using income after deducting 50% of SMI. High-income families will not receive subsidies if 7% of their countable income exceeds the maximum fees.

- i) For the purposes of financial eligibility for subsidies, only parents' income will be counted, in order to support non-parent relatives to provide kinship care, rather than leaving children to foster care.
- j) As required for CCDBG-funded subsidies, EEC shall continue to provide subsidies both through vouchers, which parents may use with any provider accepting subsidies, and through provider-based, contracted subsidized slots.
- k) EEC must require all providers accepting subsidies to enter contractual agreements to comply with all applicable federal and state requirements.
- l) EEC must accord families an opportunity for an administrative appeal hearing when denying applications for subsidies and prior to final action ending or reducing subsidies. For appeals of the denial of an application, where the appeal is needed to get the subsidy in the first place, EEC must process the appeal within 60 days. (Currently there is no time frame for these appeals, so the decisions come too late to help.)

In 2018, in a number of circumstances, EEC cut out the right to appeal altogether and/or the right to have the appeal before the family's child care subsidy is ended. This has resulted in families losing their children's slots with providers, parents losing jobs, and other harmful impact on children and their families. Administrative appeals play a critical role both for the affected families and in holding agencies accountable for administration of publicly funded benefits.

- m) Regardless of whether funding for subsidies has been increased, families who are receiving subsidies are protected from loss of the subsidy on the grounds of increased income after the effective date of this section, unless their income exceeds 125% of SMI.
- n) Regardless of whether funding for subsidies has been increased, families who begin receiving subsidies after the effective date of this section are protected from loss of the subsidy on the grounds of increased income, unless their income exceeds 125% of SMI.
- o) Adds restrictions on terminating subsidies to families with child care fee arrears, requiring adjustment of fees and arrears based on loss of income and affordable payment plans.
- p) EEC must review access barriers to subsidies annually.
- q) EEC must adopt regulations necessary to implement this section.

Section 13B, subsections (a)-(g): New direct funding program for providers

- a) Sets priorities for use of this funding: (1) expand affordability; (2) enable provision of high-quality early education and child care; (3) maintain and increase supply to address shortages related to location, child age, ability to serve children with disabilities, and need for non-standard hours; (4) increase compensation to provider staff; (5) enable providers to address and withstand emergency situations; and (6) increase capacity of providers to offer voluntary collateral services to enrolled children and families.

- b) Sets conditions for receipt of direct provider funding: (1) contractual agreements with EEC; (2) accept subsidies; (3) comply with increased compensation guidelines, subject to funding; and (4) provide data EEC requires.
- c) Sets factors EEC must consider in determining amount of funding to a particular provider: (1) number and ages of children enrolled; (2) capacity for more children; (3) smaller providers, such as family child care, lack economies of scale (but meeting many families' needs due to location, language capacity); (4) service to children with high needs; (5) cost variation due to location; and (6) cost to expand in locations with shortages.
- d) Sets priorities for selecting providers: (1) current service to high needs children; (2) capacity and expertise, if funded, to serve children with disabilities or children or parents with limited proficiency; (3) capacity and expertise, if funded, to serve children with high needs; (4) if funded, would address shortages based on location or age range of children served; and (5) innovation.
- e) Presumption of renewal of provider funding, if comply with all requirements, to promote stability.
- f) EEC must use the funding received, i.e., not fail to spend it.
- g) EEC to adopt regulations necessary to implement this section.

Section 13C: Establish early education and child care professional development grant program

EEC must develop a program, with currently available and any newly appropriated funding, to provide assistance through scholarships, loan forgiveness, and other financial aid directly to those in the field or seeking to enter the field.

Section 13D, subsections (a)-(f): Compensation to early education and child care provider staff

- a) EEC to establish compensation structure for staff who directly provide early education and care, commensurate with equivalent K-12 teaching positions.
- b) EEC to establish compensation guidelines for other provider staff positions.
- c) EEC to establish guidelines for employee benefits for provider staff.
- d) This section does not supersede collective bargaining rights.
- e) EEC to review and update compensation and benefits structure and guidelines annually.
- f) EEC to adopt regulations necessary to implement this section.

SECTION 6: EEC to provide the Legislature with preliminary assessment of administrative costs of implementation of Act.

SECTION 7: Nothing in Act alters child care provisions in St. 1995, c. 5, §§ (f) and (j), for TAFDC recipients and former recipients.

*Based on final bill filed 2-16-21*

SECTION 8: Nothing in Act alters child care provisions G.L. c. 18B, § 2, for families involved with DCF.

SECTION 9: Notwithstanding other laws to the contrary provision.

SECTION 10: Aspirational 5-year timeframe for full implementation.

SECTION 11: Act takes effect upon passage.