

Model State Legislation Addressing Financialization in the Child Care Sector



INTRODUCTION

Child care has long been a sector characterized by private ownership of programs with care provided in mixed delivery settings. However, there is growing awareness of the role of private equity firms and other investor-owned entities in the sector, and recent and growing expansions in public financing of early care and education will assuredly spur more investor-owned activism in the market. At the same time, the fallout driven by private equity investment in other sectors presents a warning of the threats posed by unregulated acquisition, which could further destabilize the already fragile yet crucial industry.

Accordingly, child care providers, parents, policymakers and other stakeholders working to strengthen the early care and education systems in their states—including expanding access to affordable, quality care for families and improving compensation of providers—seek transparency protections to track private equity and other investor-driven interests in child care and to ensure that taxpayer funds are used to benefit children and those who care for them rather than investors, shareholders, and corporate executives. This proposal presents a legislative framework that facilitates stakeholders’ understanding of the child care landscape in the state, prioritizes clear requirements attached to the receipt of public funds, and establishes mechanisms to monitor compliance and enforce them as needed. **This includes a focus on:**

1. Program Registration and Transparency

Across and even within states, a patchwork of requirements related to registration and licensing makes it difficult to reliably establish the capacity of the formal child care system to meet families’ needs, let alone to track the share of that capacity controlled by investor-backed entities.

Our proposal to institute a tiered reporting system is designed (1) to enable data-driven analysis that can be used to shape system-wide improvements and establish funding goals and benchmarks, and (2) to monitor the activities of investor-backed programs in the child care sector. Additional reporting requirements are triggered under the proposal based on (a) receipt of publicly-funded child care assistance and (b) type of ownership, in order to minimize the burdens on providers and capture information directly related to our goal of ensuring the proper and accountable use of public funds.

2. Conditions on the Receipt of Publicly-Funded Child Care Assistance

The child care sector has historically been characterized by both nonprofit and for profit program ownership across a diversity of settings and types, a mix that promotes parental choice and has provided opportunities for economic entrepreneurship, especially for women and women of color. Balancing this diversity with the public’s interest in ensuring that child care workers are treated and compensated equitably and that public funds are used to promote access and affordability for families rather than to profit remote investors, this model legislation section sets forth requirements to be attached to publicly-funded child care slots and receipt of other public funds designated for child care programs; these requirements are designed to allow for a reasonable return, prevent the extractive tactics typically driving investor-owned enterprises and limit program consolidation that could further destabilize a community’s child care market.

3. Reporting

To promote transparency and accountability, our proposal requires regular updating of the registration information prescribed under Section II. We see data collection and dissemination as a key component of broader reform efforts, particularly to ensure program compliance with the requirements contemplated by Section III and ongoing eligibility for public funding.

We encourage legislators and advocates to work with their local child care community to tailor this model legislation to their state and local contexts before introducing. For technical assistance, please contact Nina Dastur at Community Change ndastur@communitychange.org or Hibba Meraay at Americans for Financial Reform hibba@ourfinancialsecurity.org

The state model legislation is based on a framework crafted by a working group of organizers, advocates, and other experts during Fall 2024 - Spring 2025. We deeply appreciate the time, knowledge and direction of the working group participants and their feedback on the legislative drafts, including experts from Americans for Financial Reform, Center for Economic and Policy Research, the CEO Project of the Ohio Organizing Collaborative, Private Equity Stakeholder Project, Roosevelt Institute, and State Innovation Exchange, as well as Elliot Haspel, Elizabeth Leiwant of Neighborhood Villages and Melissa Boteach at Zero To Three.

SUMMARY

Model legislation for states to apprehend the role of corporate and private equity ownership in the child care sector and establish reasonable conditions on the receipt of publicly-funded child care assistance and other subsidies in the child care sector, and align state registration and reporting requirements to reflect these goals. Key provisions include (1) modernizing definitions to more accurately identify entities participating in the child care sector; (2) updating state registration and licensing requirements to track engagement in the sector; (3) ensuring that taxpayer investments are directed to promote accessibility, affordability, and quality in publicly-financed programs; and (4) expanding state oversight of child care programs receiving public funds to prevent profiteering.

SECTION I: DEFINITIONS

As used in [this Act] the following words shall have the following meanings:

“Affiliate” means

1. A person, entity, or organization that directly, indirectly, or through one or more intermediaries controls, is controlled by, or is under common control or ownership of another person, entity, or organization.
2. A person, entity, or organization whose business is operated under a lease, management or operating agreement by another entity, or a person substantially all of whose property is operated under a management or operating agreement with another entity;
3. An entity that operates the business of substantially all of the property of another entity under a lease or operating agreement;
4. Any out of state operations and corporate affiliates of an affiliate as defined in sections (a), (b), or (c) above, including significant equity investors, real estate investment trusts, and management services organizations.

“Beneficial Owner” means any individual who, directly or indirectly, either (i) directly or indirectly exercises substantial control over a reporting company, or (ii) owns or controls at least 25 percent of the ownership interests of such reporting company.

“Capital Distribution” means

1. A cash or share dividend;
2. A share repurchase;
3. A share redemption;
4. A share buyback;
5. A payment of interest or fee on a share of stock; and
6. Any other transaction similar to a transaction described in provisions (a) through (e) of this section.

“Change in control” means an arrangement in which any other person or entity acquires direct or indirect control over the operations of a child care provider in whole or in substantial part. For purposes of [this Act], “arrangement” shall include any agreement, association, partnership, joint venture, management services agreement, professional services agreement, staffing agreement, or other scheme that results in a change in governance or control of a child care entity.

“Child Care facility” means any place or program operated as a business or service on a regular or continuous basis, whether for compensation or not, whose primary function is the protection, care and supervision of children under 13 years of age outside their homes for a period of fewer than 24 hours a day by a person other than a child’s own parent, guardian, or relative, as defined by rules promulgated by the Department.

“Child Care Provider” and **“Child Care entity”** including the term “provider” means a person or entity licensed, registered or otherwise authorized by the Department to provide child care services in the state or a child care setting, including but not limited to [family child care programs, group family child care, and child care centers].

“Child care services” means the developmentally appropriate care and supervision of children under 13 years of age for fewer than 24 hours a day by a child care provider.

“Control” including the terms “controlling,” “controlled by” and “under common control with” means the direct or indirect power to direct or cause the direction, management or policies of a person, entity or organization through ownership, contractual agreement, or other relationship/arrangement. A person or entity that directly or beneficially owns 10 percent or more equity interest, or the equivalent thereof, of another person or entity shall be deemed to control the person or entity owned.

“Department” means the state agency that administers the state’s child care assistance program.

(a) “Employee” means an individual who performs services for and under the control and direction of an employer for wages or other remuneration, including former employees, or natural persons employed as independent contractors to carry out work in furtherance of an employer’s business enterprise who are not themselves employers.

(b) “Employer” means any person, firm, partnership, institution, corporation, or association that employs one or more employees.

“Licensee” means a person or entity that the Department approves to receive assistance for child care services pursuant to the state’s child care subsidy program [and a provider rate agreement].

“Material change transaction” means the occurrence of any of the following events during a single transaction or in a series of related transactions that affects competition or access in one or more geographic regions of a state involving a child care provider within the state:

1. A corporate merger including one or more child care providers;
2. An acquisition of one or more child care providers. For the purposes of [this Act], “acquisition” includes the direct or indirect purchase in any manner, including but not limited to lease, transfer, exchange, options, receipt of a conveyance, creation of a joint venture, or any other manner of purchase such as by a private equity group, hedge fund, publicly traded company, real estate investment trust, or any subsidiaries thereof, of a material amount of the assets or operations of a child care provider as defined in regulations established by the Department pursuant to [the state’s Administrative Procedures Act];
3. Any affiliation, arrangement, or contract that results in a change of control of a child care provider;
4. The formation of a partnership, joint venture, or parent organization;
5. A sale, purchase, lease, affiliation, or transfer of control of a board of directors or other governing body of a child care provider;
6. A real estate sale or lease agreement involving a material amount of assets of a child care provider; or
7. The closure of a child care facility or the closure, discontinuance, or significant reduction of any essential child care service by a child care provider.

“Net operating profit” means the profit from a child care provider’s core business activities, calculated as the provider’s gross revenue minus operating expenses, taxes, interest, depreciation and amortization.

“Ownership or investment interest” means any of the following:

1. Direct or indirect possession of equity in the capital, stock, or profiting totaling more than 5% of an entity;
2. Interest held by an investor or group of investors who engages in the raising of capital or returning of capital and who invests, develops, or disposes of specified assets; or
3. Interest held by a pool of funds by investors, including a pool of funds managed or controlled by private limited partnerships, if those investors or the management of that pool or private limited partnership employ investment strategies of any kind to earn a return on that pool of funds.

“Principal” means:

1. the president, vice president, secretary, treasurer, manager, or similar officers of a corporation as provided for under [the state’s incorporation statute], nonprofit corporation as provided for under [the state’s nonprofit incorporation statute], cooperative as provided for under [the state’s statute governing cooperatives] or worker cooperative corporation as provided for under [the state’s statute governing worker cooperatives].

2. a director of a corporation as provided for under [the state's incorporation statute], nonprofit corporation as provided for under [the state's nonprofit incorporation statute], cooperative as provided for under [the state's statute governing cooperatives] or worker cooperative corporation as provided for under [the state's statute governing worker cooperatives];
3. A member of a member-managed limited liability company as provided for under [the state's LLC statute].
4. A manager of a manager-managed limited liability company as provided for under [the state's LLC statute]; or
5. A partner of a partnership as provided for under [the state's partnership statute] or a general partner of a limited partnership as provided for under [the state's limited partnership statute].

“Private equity fund” means a publicly traded or non-publicly traded company that collects capital investments from individuals or entities and purchases a direct or indirect ownership share or controlling interest of a child care provider.

“Retaliatory action” means an adverse action taken by an employer or his or her agent to discharge, threaten, penalize, or in any other manner discriminate against any employee or former employee exercising his or her rights under Section [#] of this act, including (i) adverse employment actions or threats to take such adverse employment actions against an employee in the terms of conditions of employment including but not limited to discharge, suspension, or demotion; (ii) actions or threats to take such actions that would adversely impact a former employee's current or future employment; or (iii) threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status or the suspected citizenship or immigration status of an employee's family or household member to a federal, state, or local agency.

“Significant equity investor” or **“significant equity investment”** means:

1. Any private equity fund with a direct or indirect ownership or investment interest in a child care provider;
2. An investor, group of investors, or other entity that directly or indirectly possesses equity in 5% or more of the capital, stock, or profits of a child care provider;
3. Any private equity fund, investor, group of investors or other entity with a direct or indirect controlling interest in a child care provider or that operates the business or substantially all of the property of a child care provider under a lease, management, or operating agreement.

“Ultimate parent” means an entity that is at the top of a corporate or organizational hierarchy, is not controlled by any other entity or person, and exercises control, directly or indirectly, over all other entities in its chain of command.

SECTION II: REPORTING OF OWNERSHIP AND CONTROL OF CHILD CARE PROGRAMS TO PROMOTE TRANSPARENCY

1. Registration of business operations

- a. Each child care provider shall report to the Department, in a form and manner to be defined by the Department, the following information:
 - i. Legal name of the child care entity;
 - ii. Business address of the child care entity;
 - iii. An email address for the director or other person designated to receive communications from the Department;
 - iv. Business identification numbers of the entity, as applicable, including either:
 1. Taxpayer Identification number (TIN); or
 2. Employer Identification Number (EIN)
 - v. Name and contact information for a representative of the entity;
 - vi. The name and business address of the owner of the entity;
 - vii. Whether a significant equity investor holds an ownership interest in the provider;
 - viii. The locations of the entity's operations;
 - ix. The provider's total licensed capacity, which shall be the maximum number of children that can be cared for at any given time. The provider's capacity shall be specified by group size based on the age of children to be served by the provider;
 - x. The provider's tuition and fee arrangement child care services, detailed by the age of the child and type of enrollment; and

- xi. Whether the entity participates in the [State's Child Care Assistance program] through means which shall include, but shall not be limited to, accepting vouchers for payments through the selection by an eligible family and through payment or reimbursement for a slot or slots for which the provider contracts directly with the Department.

- b. The information outlined in subparagraph (a) of this section shall be reported on no less than an annual basis and within two (2) days of the consummation of a material change transaction involving the provider.
- c. Child care centers located in public school buildings currently used for elementary, middle or secondary public education programs and approved and operated by the State [Department of Education] shall be exempt from the requirements of subparagraph (a).

2. Notwithstanding the requirements set forth in subparagraph (1) of this section, at the time of filing of the report required under subparagraph (1), a child care provider that participates in or aims to participate in the [State's child care assistance program] in the ensuing year, accepts public funding under a program financed by the state to improve the compensation of the child care workforce, or receives publicly-supported financing for the construction, renovation or other capital improvement of a child care facility shall report to the Department, in a form and manner to be defined by the Department, the following additional information:

- a. The schedule of copayments and any additional fees charged to families, including but not limited to families for whom the child care provider accepts vouchers for payments and families for which the provider receives payment or reimbursement for a slot or slots for which the provider contracts directly with the Department;
- b. A schedule of the wages, salary, employee benefits and any other compensation provided to employees of the provider at the time of filing of the report;
- c. An accounting, on a template to be developed by the Department, of the child care provider's net operating profit for the previous calendar year, including a report detailing any and all management, monitoring, and franchise fees that the provider incurred; and
- d. An analysis of staff turnover for the previous calendar year, detailed by position and tenure.

3. A child care provider subject to the requirements set forth in subparagraph (2) of this Section] that includes a significant equity investor as defined by [this Act] shall additionally report, in a form and manner to be defined by the Department, the following information:

- a. The total funds received from the Department, including the amount of loans, grants or other benefits received in the previous calendar year;
- b. The use of the proceeds identified in subparagraph (a);
- c. Any loans forgiven or discharged;
- d. The entity's debt to asset ratio at the time of filing of the report required under this subsection;
- e. The compensation provided to a Principal as defined under [this Act] in the previous calendar year;
- f. The pay ratio between the chief executive officer and the median pay of employees;
- g. The beneficial owner(s) of the provider;
- h. Any acquisitions or closures of child care programs and related services in the state by the entity's ultimate parent in the past year;
- i. The workforce demographics of the provider;
- j. For childcare providers operating under a franchise model or management or monitoring agreement, any changes to these agreements that affect:
 - i. Ownership or control of the entity;
 - ii. Financial arrangements, including fee structures or revenue-sharing models;
 - iii. Operational standards, policies, or practices dictated by the agreement; or
 - iv. Terms impacting workforce policies, including staffing levels, wages, or benefits.

SECTION III: CONDITIONS ON RECEIPT OF PUBLICLY-FUNDED CHILD CARE ASSISTANCE

1. A child care provider that participates in the [State's child care assistance program], accepts public funding under a program financed by the state to improve the compensation of the child care workforce, or receives publicly-supported financing for the construction, renovation, or other capital improvement of a child care facility shall be required to:

- a. Expend all funds to support the provision of child care services at the child care facility that serves the family for whom the Department has provided a voucher or for which the provider receives payment or reimbursement for a slot or slots under a contract or grant with the Department;
- b. Adopt a position of neutrality and commit to non interference in the event there is an attempt by a labor organization to organize workers;
- c. Participate in the state's [child care assistance] program, either by executing a contract or grant with the Department or by accepting a voucher or certificate for the provision of services to subsidy-eligible children;
- d. Adopt policies that provide for reasonable work hours and reliable work schedules; and
- e. Where the Department uses a cost model to establish reimbursement rates for the [State's child care assistance program], maximize the productivity and effectiveness of their workers by investing in training, safe workplaces, fair compensation, and reasonable health and retirement benefits.

2. A child care provider that participates in the [State's child care assistance program], accepts public funding under a program financed by the state to improve the compensation of the child care workforce, or receives publicly-supported financing for the construction, renovation or other capital improvement of a child care facility shall be prohibited from using public funds to:

- a. Provide any incentive compensation, bonus, or severance payment to Principals as defined under this Act, senior executives, any of the next twenty most highly compensated employees, consultants of the company, and department or division managers of the company;
- b. Cover management or franchise costs or fees, or otherwise direct funds to a parent company or other affiliate;
- c. Make a capital distribution; or
- d. Provide compensation to senior executives, any of the next twenty most highly compensated employees, consultants of the company, and department or division managers of the company in excess of an indirect cost rate agreement to be determined by the Department;

3. A child care provider with significant equity investment that participates in the [State's child care assistance program], accepts public funding under a program financed by the state to improve the compensation of the child care workforce, or receives publicly-supported financing for the construction, renovation or other capital improvement of a child care facility shall be prohibited from:

- a. initiating or executing program closings or staff layoffs within 24 months of the original receipt of funds; or
- b. purchasing or otherwise securing an equity investment in another child care provider within the state for a period of 12 months from the original receipt of funds.

For the purposes of this subparagraph, the original receipt of funds shall be defined as the first receipt of public funds after completion of the acquisition of the child care provider.

4. Nothing in this section shall be construed to supersede the terms and conditions imposed under [the statutory authority for the state's child care assistance program and related initiatives] or otherwise specified in any contract for assistance executed between the child care provider and the Department.

5. Any controlling private fund, any holder of an active interest in a controlling private fund, or any affiliate of a child care provider that aids, abets, facilitates, supports, or instructs a provider's violation of subsections (1) or (2) shall be jointly and severally liable under this subsection for any transfer made or obligation incurred, including for reasonable attorney's fees and costs awarded to a plaintiff under subsection (4) of Section V of this Act.

SECTION IV: COMPLIANCE AND REPORTING

- 1. Compliance—A child care provider subject to the provisions set forth in Section III of this Act** shall self-certify its compliance with the requirements and restrictions on a form and manner to be determined by the Department, provided that:
 - a. The self-certification shall include submission of the provider's audited financial statement for the time period covered by the certification;
 - b. The Department shall establish procedures for electronic submission of the certification and any accompanying materials; and
 - c. The Department shall provide technical and other assistance to meet reporting requirements to any child care provider for which twenty percent or more of the child care slots maintained by the provider are supported by [the state's child care assistance program]. Such assistance shall include but not be limited to financial assistance, software or templates for recordkeeping, and training related to meeting reporting requirements.
- 2. Notwithstanding the reporting requirements triggered by a material change transaction pursuant to paragraph (1)** (b) of Section II, any child care provider with [five] or more employees shall provide the Department with notice sixty (60) days prior to the merger, consolidation, or closure of any child care facility.
- 3. If the Department is made aware of a failure on the part of a child care provider to comply with the requirements of paragraph (1) of Section III or of a violation by a child care provider of the prohibitions set forth in paragraph (2) of Section III, it shall undertake enforcement action to compel compliance.** Such action may include, but is not limited to:
 - a. Meetings or telephone conversations between a child care provider and the Department to discuss corrective action plans;
 - b. Issuance of a written report which includes corrective action plans or requests that the child care provider submit a corrective action plan to the Department;
 - c. Notice of the intention to initiate enforcement through the recoupment of funds, imposition of a fine, or the limitation, suspension, termination, revocation, or denial of a child care license or registration;
 - d. Holding of a hearing to determine if a child care provider has failed to comply with the applicable law and regulation which resulted in request for repayment of public funds, the assessment of fines, suspension, limitation, revocation, or denial of the license or registration;
 - e. Issuance of a determination, after a hearing, that civil penalties should be imposed;
 - f. Determinations to deny, reject, revoke, terminate, suspend or limit a license or registration;
 - g. Issuance of orders to cease and desist operation of child care services;
 - h. Requests to the State Attorney General to seek injunctive relief against a licensee or registrant for repeated violations of the statute or regulation;
 - i. Requests to the State Attorney General to take such action as is necessary to collect civil penalties, or to bring about compliance with any outstanding hearing decision or order;
 - j. Publication of the names and addresses of child day care licensees or registrants whose licenses, registrations or applications for licensure or registration have been rejected, denied, limited, suspended, terminated or revoked, or against whom a fine has been assessed after an administrative hearing for a violation of the provisions set forth in Section III.

SECTION V: DATA COLLECTION

- 1. On no less than an annual basis, the Department shall publish a report of aggregated data detailing the capacity of the state's child care industry by program type and ownership arrangement.** Information in the report shall be disaggregated by age of child, geographic location, and based on the child care provider's receipt of public funding under [the state's child care assistance program]. Nothing in this section shall be construed to prevent the Department from including this information in any other regularly published report relating to the child care industry, so long as the information is updated no less than annually.

2. **The Department shall issue a report tracking violations of the requirements set forth in Section III disaggregated by program type and ownership arrangement.** As information is aggregated at the conclusion of any investigation, the Department shall update the report automatically on no less than a monthly basis.
3. **The state shall create a publicly accessible database of non-proprietary information collected pursuant to the registration requirements set forth in paragraphs (1)(a), (2)(a) and (d), and (3)(a),(b), (e), (f) and (g) of Section II.** The information contained in the database shall be made available in an open format and published as machine-readable data.

SECTION VI: SEVERABILITY

If any provision of this Act or the application of such a provision to any person, entity, or circumstance is held to be invalid or unconstitutional, the remainder of this Act and the application of its provisions shall remain.

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