Family Child Care Home Provider Challenges
with Unemployment Compensation Under the CARES Act
May 19, 2020

Under the CARES Act (P.L. 116-136), many self-employed individuals impacted by COVID-19 are eligible for the new Pandemic Unemployment Assistance program as well as the $600 supplemental weekly unemployment payment under the new Federal Pandemic Unemployment Compensation program. However, the translation of concept to state policy in many states has precluded family child care providers from receiving either unemployment compensation or partial unemployment compensation based on a significant loss of income.

Within communities across the country, family child care home providers have reported inconsistencies with regard to the implementation of unemployment assistance for the self-employed. The U.S. Department of Labor has issued more than 20 guidance documents about unemployment benefit implementation related to federal legislation enacted in March. However, the guidance has not addressed the unique challenges faced by home-based child care providers.

Home-based child care providers are operating a small business. In 2016, throughout the U.S., these sole proprietors earned more than $9 billion in revenue. An April Bipartisan Policy Center survey of families with children under age five found that nearly 50 percent of parents who used family child care homes reported that their provider was closed. For home-based providers who have remained open this spring, many have had a significant loss of income (e.g., as a result of COVID-19, they now care for two children in their home rather than six). Although home-based providers are impacted by COVID-19, state unemployment rules are not designed to support the child care home business construct.

State definitions of “unemployed” vary. In many states, individuals who are unemployed (or partially unemployed) must show a reduction in hours as well as earnings. The family child care business model does not fit that framework. Typically, family child care providers care for children 55 hours per week. In addition, on average they work more than 10 additional hours per week on business activities such as cleaning, record-keeping, activity planning, and more. The business model for home-based child care does not expand one-for-one based on the number of children in care (i.e., a 40 hour week for one child, an 80 hour week for two children, a 120 hour week for three children, etc.). For example, a provider may care for four children. If the parents of two of the children in her care no longer pay her for services (due to a COVID-19 impact), she has a 50 percent reduction in income (or more depending on the age of the children in care). However, her hours may not change. She may still be working 55 hours per week. Many state unemployment rules are based on a reduction in hours and income. However, the business model for family child care does not involve expanding the hours of operation for each child in care (e.g., a provider with one child in care may work 55 hours per week, but if she adds an additional child to her program, she is not working 110 hours per week). The result has been that not only are family child care providers not eligible for state unemployment, but they are also not eligible for the new federal Pandemic Unemployment Assistance program.

State conditions related to Average Weekly Benefit Amount. In many states, if a family child care provider earns more than the average weekly benefit amount, despite that level of assistance representing an income far below what they customarily earn, and despite the significant loss of income incurred based on the reduction in the number of children served, such providers are not eligible for partial unemployment. This seems contrary to CARES Act section 2102(d)(1)(A)(i), “the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed, except that the amount may not be less than the minimum weekly benefit amount described in section 625.6 of title 20, Code of Federal Regulations,” and (A)(ii) “the amount of Federal Pandemic Unemployment Compensation under section 2104”.... And, under CARES Act section 2102(d)(2) “in the case of a covered individual who is self-employed... who would not otherwise qualify for unemployment compensation under state law, the assistance authorized under subsection (b) for a week of unemployment shall be calculated in accordance with
Covered COVID-19 related reasons. The term “covered individuals” means individuals who are not eligible for state unemployment benefits and who provide self-certification that such individuals are “otherwise able to work and available for work within the meaning of applicable state law, except the individual is unemployed, partially unemployed, or unable or unavailable because” of one of the COVID-19 related reasons listed in section 2102(a)(3)(A)(ii)(I) of the CARES Act. Reduced enrollment because parents no longer send their child to child care is not explicitly listed. However, the enrollment reduction is related to the COVID-19 public health emergency. The statute offers some flexibility under 2102(a)(3)(A)(ii)(I) “(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance,” however, it appears additional Congressional guidance is needed for consistent application in implementation across the country.

U.S. Department of Labor (DOL) Guidance. Under DOL Guidance Frequently Asked Questions (FAQ), Unemployment Insurance Program Letter No. 16-20 Change 1, Question #42 a question in the guidance is related to a ridesharing service driver and asks if independent contractors may similarly receive Pandemic Unemployment Assistance. The DOL answer is “Yes. An independent contractor may be eligible for PUA if he or she is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons. This includes an independent contractor who experiences a significant diminution of work as a result of COVID-19.” While family child care providers are not independent contractors, the construct of their business model may be similar where they incur a significant loss of income as a result of the COVID-19 public health emergency.

Child Care Availability and the Economy. The availability of child care is critical so that as Governors re-open businesses and services, parents with young children have access to child care as they return to work. Prior to the COVID-19 public health emergency, the number of family child care homes had declined over the past decade by more than 20 percent. The impact of COVID-19 on the supply of family child care homes has only exacerbated this trend. Parents choose family child care providers for the home-like atmosphere, relatively less expensive price (although still expensive), and more personal setting rather than a large center. It is critical that the number of family child care homes not further decline, particularly at a time when parent preferences for small home-based settings may increase given the anxiety throughout states about potential community spread of COVID-19.

Proposed Solution: Congress should provide additional technical changes to the CARES Act to:

- clarify that family child care home providers are eligible for Pandemic Unemployment Assistance or partial compensation payments under Pandemic Unemployment Assistance (as well as the federal Pandemic Unemployment Compensation program) notwithstanding state requirements related to earnings and hours, or
- provide additional instruction to the U.S. Department of Labor to ensure guidance is issued that recognizes the construct of family child home businesses to ensure that a significant loss of income related to COVID-19 triggers at least a partial unemployment benefit.

At stake is the loss of a supply of child care in a small setting that can help support parents as they return to work. Children, families, employers, communities, and regional economies depend on it.

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