State of Maine

Early Childhood Educator Workforce Salary Supplement System Rules

10-148 CODE OF MAINE RULES

CHAPTER 30



Department of Health and Human Services

Office of Child and Family Services

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Augusta, Maine 04333-0011

**10 DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**148 OFFICE OF CHILD AND FAMILY SERVICES**

**Chapter 30 Early Childhood Educator Workforce Salary Supplement System Rules**

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| **TABLE OF CONTENTS** | **PAGE** |
| **SECTION 1: Purpose and Definitions** | **3** |
| **SECTION 2: Early Childhood Educator Eligibility Requirements**  | **5** |
| **SECTION 3: Program Registration** | **6** |
| **SECTION 4: General Requirements** | **7** |
| **SECTION 5: Tiers** |  **9** |
| **SECTION 6: Compliance Monitoring****SECTION 7: Improper Salary Supplement Funding Payments** | **9****10** |
| **SECTION 8: Appeals** |  **13** |
|  |  |

**SECTION 1: PURPOSE and DEFINITIONS**

1. **Purpose**

Maine’s Early Childhood Educator Workforce Salary Supplement System is designed to:

* Increase early childhood educators’ regular pay through monthly salary supplements;
* Incentivize continuing education of the early childhood workforce; and
* Raise the overall quality of care for young children.

The Early Childhood Educator Workforce Salary Supplement System is funded and administered by Maine’s Department of Health and Human Services, Office of Child and Family Services (OCFS). The Early Childhood Educator Workforce Salary Supplement program is a system that provides salary supplements to early childhood educators who provide direct services to children in a child care facility licensed under 22 M.R.S. § 8301-A (2) or a family child care provider licensed under 22 M.R.S. § 8301-A (3). Any salary supplement funding provided by the department under this Rule to a child care facility or family child care provider must be paid by that child care facility or family child care provider to eligible facility or provider employees in order to increase salaries for any early childhood educator who provides direct child care services to children.

This rule applies to any child care program licensed under 22 M.R.S. § 8301-A. This is not a licensing rule. This rule:

* Outlines procedures for Early Childhood Educator Workforce Salary Supplements, including 3 tiers based on education and experience;
* Explains how a licensed program must enroll in the Early Childhood Educator Workforce Salary Supplement System; and
* Describes how licensed programs can appeal from Department decisions regarding Overpayments and Underpayments.
1. **Definitions**

For purposes of this rule, the following terms have the following meanings:

1. **Administrative Errors** means errors caused solely by the Department.
2. **Career Lattice** means Maine Roads to Quality Professional Development Network’s Career Lattice which awards levels of achievements to persons based on training and employment history or earned credentials. Refer to: <https://mrtq.org/registry/>
3. **Child or Children** means a person or persons under the age of thirteen (13).
4. **Child Care and Development Fund (CCDF)** means the federally funded, State-administered program that provides assistance to low-income families who need child care due to work, work-related training, and/or attending school.
5. **Child Care Facility** as defined at 22 M.R.S. § 8301-A(1-A) (B).
6. **Compliance Monitoring** means the Department’s review of required documentation, including Payroll Records, for compliance with this rule.
7. **Department**means the Maine Department of Health and Human Services, Office of Child and Family Services (OCFS).
8. **Department-approved** meansconsent by the CCDF State Child Care Administrator or his/her designee.
9. **Direct Services to Children** means the providing of care, education, protection, supervision, or guidance to children.
10. **Director** means a person with primary responsibility for administering an Early Care and Education Program and ultimate supervisory authority over any Child Care Staff Members. A Director may or may not be a Program Owner.
11. **Early Care and Education** means the care, education, protection, supervision, and guidance of Children from birth through school age.
12. **Early Care and Education Program (Program)** means, for purposes of this rule, a licensed Family Child Care Provider, or licensed Child Care Facility.
13. **Early Childhood Educator (Educator)** means an individual:
	1. Who is employed by a Child Care Facility or Family Child Care for compensation, including an owner, a contract employee, or self-employed individual; and
	2. Whose activities involve Direct Services to Children.
14. **Early Childhood Educator Workforce Salary Supplement Payment (Salary Supplement)** means the individual salary supplement paid monthly to each Early Childhood Educator by a Program Owner from the Salary Supplement Funding provided by the Department under this rule.
15. **Early Childhood Educator Workforce Salary Supplement System** means the program established in 22 M.R.S. § 3737-A and implemented by this rule.
16. **Family Child Care Provider** as defined at 22 M.R.S. § 8301-A(1-A) (C).
17. **License** means written permission by the Department, whether initial, renewal, temporary, or conditional, that authorizes a person to be a Family Child Care Provider or operate a Child Care Facility.
18. **Maine Roads to Quality (MRTQ) Professional Development Network (PDN) Registry** means an on-line portal that uses a member’s work, education, and training histories, along with any professional credentials, to assign a level on the appropriate Career Lattice. MRTQ PDN Registry consists of a partnership between the Cutler Institute at the University of Southern Maine, the University of Maine Center for Community Inclusion and Disability Studies, and the Maine Afterschool Network.
19. **Overpayment** means when the amount paid exceeds the amount that would have been paid if the Early Care Educator Workforce Salary Supplement Payment had been calculated correctly based on information submitted in the Registry Portal, verified, and acted on in a timely manner.
20. **Payroll Records** means documentation associated with paying individual employees. Payroll Records includes, but is not limited to, direct deposit authorization forms and paystubs that shows itemization of the Early Childhood Educator Workforce Salary Supplement Payment being paid to individual Early Childhood Educators.
21. **Program Owner** means a person with any ownership interest in a licensed Family Child Care or Child Care Facility or whose name appears on any license issued by the Department for the Program.
22. **Registration Portal** means the website that provides registration information for individual Early Care and Education Program’s Salary Supplement Funding details.
23. **Salary Supplement Funding** means a monthly payment by the Department to an Early Care and Education Program equal to each of the Program’s employees’ Salary Supplement Payment for the previous month, and which must be paid by the Program to increase wages for each employee who provides direct services to children.
24. **State Child Care Administrator**means the person in the Department responsible for administering the CCDF grant.
25. **Underpayment** means when the amount paid is less than the amount that would have been paid if the Early Care Educator Workforce Salary Supplement Payment had been calculated correctly based on information submitted in the Registration Portal, verified, and acted on in a timely manner.
26. **Volunteer** means a person who helps or provides services without compensation in an Early Care and Education Program.

**SECTION 2: EARLY CHILDHOOD EDUCATOR ELIGIBILITY REQUIREMENTS**

1. **Early Childhood Educator Eligibility Requirements.** To be eligible for Salary Supplements under the Early Childhood Educator Workforce Salary Supplement System, an Early Childhood Educator must:
	* + 1. Be employed by a Child Care Facility or Family Child Care Provider for compensation (including as an employee, owner, independent contractor, or self-employed) at any time in the month prior to the Early Childhood Educator Workforce Salary Supplement Payment (Volunteers are not eligible for Salary Supplements);
			2. Provide Direct Services to Children; and
			3. Be enrolled for the prior month in the MRTQ PDN Registry with a registration that meets the following requirements:
				1. Have and maintain an “Active” status;
				2. Be at least Level One on the PDN Direct Care Lattice;
				3. Have one of the following as their position:

Assistant Director;

Assistant Director/Lead Teacher;

Assistant Teacher/Teacher Aide;

Substitute/Teacher Aide

Camp Counselor;

Education Technician;

Family Child Care Assistant;

Family Child Care Owner/Provider;

Lead Teacher;

Program Director/Coordinator; or

Program Director/Lead Teacher.

* + - * 1. Have responsibility that indicates one of the following:

Direct Care;

Direct Care & Administrative;

Direct Care & Supervisory; or

Direct Care, Administrative, & Supervisory.

* + - 1. Early Childhood Educators that leave employment within the field of providing Direct Services to Children prior to payment of the Salary Supplement for the prior month are not eligible for the payment.
			2. Early Childhood Educators may seek assistance from the PDN Registry to enroll in the PDN Registry.
			3. Early Childhood Educators employed at more than one Program are eligible for only one Salary Supplement.
1. **Directors and Owners.** Directors and Program Owners are eligible for the Early Childhood Educator Workforce Salary Supplement Payment if they meet the requirements of section 2(A) above.

**SECTION 3: PROGRAM REGISTRATION**

1. **Registration Eligibility.** Any licensed Early Care and Education Program holding an active and current license is eligible to participate in the Early Childhood Educator Workforce Salary Supplement System.
2. **Registration Process.** An eligible Early Care and Education Program must register for the Early Childhood Educator Workforce Salary Supplement System in accordance with the following:
	1. Directors must ensure all Child Care Staff Members eligible for Salary Supplements under this rule register with Maine’s Professional Development Network (PDN) Registry.
	2. Directors must register their Early Care and Education Program with the Early Childhood Educator Workforce Salary Supplement System through the Department’s online Registration Portal. Each Program location must register separately with the Department, even if the Early Care and Education Program operates in multiple locations.
	3. The Department will approve a Program’s registration within the Registration Portal. When registering through the Registration Portal, the Program will receive email confirmation of the approval and the amount approved within 5 days of submitting initial registration. This email will include a list of each approved Educator that is registered, and the amount of Salary Supplement Funding based upon the tier of that Educator. The Program must retain a copy of this email for Educator a minimum of three (3) years.
3. **Mandatory Registration.** Any licensed Early Care and Education Program eligible to register with the Early Childhood Educator Workforce Salary Supplement System must do so.
	1. Individual Educators may opt out of participating in the Early Childhood Educator Workforce Salary Supplement System.
4. **Vacation Eligibility.** Early Care and Education Programs will continue eligibility as long as the Early Childhood Educators are still actively employed by the Program during those vacation periods.

**SECTION 4: GENERAL REQUIREMENTS**

**A. OCFS Responsibilities.** The Early Childhood Educator Workforce Salary Supplement System administered by OCFS:

* + - 1. Maintains 3 tiers based on the MRTQ PDN Registry levels of Early Childhood Educators. The second tier provides a salary supplement that is at least 50% greater than the first tier, and the third tier is at least 50% greater than the second tier.
			2. Pays Salary Supplement Funding to each licensed Early Care and Education Program once per month. The amount of Department-approved Salary Supplement Funding paid to a Program shall be based on the information provided in the Registration Portal.
	1. Enrolled Early Care and Education Programs will receive email notification from the Department if an Educator becomes ineligible due to ineligible position title, inactive MRTQ PDN Registry status, or ineligible MRTQ PDN Registry Career Lattice, or does not have a direct care responsibility.
		+ 1. If an eligible Educator changes employment mid-month to another enrolled Early Care and Education Program, the Department will contact the Early Care and Education Programs to request updates to their MRTQ PDN Registry and the Registration Portal based on the Educator’s employment status for current month’s Salary Supplement Funding.
			2. Provide technical assistance to Early Care and Education Programs, including instruction on registering and updating information in the Registration Portal and explanations of the tiers.
1. **Early Care and Education Program Responsibilities.** Any Early Care and Education Program that receives Salary Supplement Funding must:
	* + 1. Pay Early Childhood Educator Workforce Salary Supplements out to eligible Early Childhood Educator**s** at least once per month in accordance with the following:
				1. Early Childhood Educator Workforce Salary Supplements can be paid either through separate payments or in the Educator’s regular paycheck and included in the following payroll cycle as long as Payroll Records show documentation that correct Early Childhood Educator Workforce Salary Supplements were actually paid to each eligible Educator. Programs are responsible for ensuring and documenting that Salary Supplement Funding received by the Department is used to increase Educator wages, consistent with this rule.

The Department may allow Programs an administrative fee, as feasible based upon the total number of staff registered with the Salary Supplement System and the annual program budget as determined by the State of Maine. The administrative fee amount will be clearly identified in the Registration Portal with the monthly Salary Supplement Funding allowance. Any additional money retained by the Program and not paid out to Educators will result in a determination of Overpayment of Salary Supplement Funding.

* + - * 1. Salary Supplements paid by Programs to Educators under this rule must actually increase wages for eligible Educators. Salary Supplements may not be used to supplant wages earned by the Early Childhood Educator. For example, lowering an Educator’s base wage and making up the difference with a Salary Supplement is a violation of this rule and will result in a determination of Overpayment of Salary Supplement Funding.
				2. If an Early Childhood Educator no longer works at an Early Care and Education Program, the Registration Portal must be updated prior to the next Salary Supplement Funding payment period to reflect the departure.
			1. Review and update staff changes on the Registration Portal by midnight of the last day of each month prior to the next Salary Supplement Funding payment.
			2. Maintain accurate Payroll Records which detail each individual Educator’s Early Childhood Educator Workforce Salary Supplement total and retain those records for a minimum of three (3) years, and make those records available to the Department upon request. Payroll Records must be sufficient to demonstrate that each Early Childhood Educator received the correct Early Childhood Educator Workforce Salary Supplement Payment every month they were eligible for such Salary Supplement.
			3. Have an accurate vendor code on file with the Department; and
			4. Participate in Compliance Monitoring.
1. **Monthly Updates**. Participating Early Care and Education Programs must update Early Childhood Educator names, career lattice level, and email addresses whenever staffing changes occur within the program. The staffing changes must be updated in both the PDN Registry and in the Registration Portal by midnight of the last day of each month. Payments received are for the previous month’s employed Early Childhood Educators.

**SECTION 5: TIERS**

An Educator’s Tier is based on the highest PDN Registry level they achieved in the previous month.

1. **Tier 1.** Level One through Four on PDN career lattice <https://www.mrtq.org/wp-content/uploads/2023/06/MRTQ_Lattices.pdf>
2. **Tier 2.**  Level Five and Six on PDN career lattice <https://www.mrtq.org/wp-content/uploads/2023/06/MRTQ_Lattices.pdf>

Tier 2 Educators receive a monthly salary supplement of 150% of the Tier 1 monthly salary supplement.

1. **Tier 3.** Level Seven and Eight on PDN career lattice <https://www.mrtq.org/wp-content/uploads/2023/06/MRTQ_Lattices.pdf>

Tier 3 Educators receive a monthly salary supplement of 150% of the Tier 2 monthly salary supplement.

1. The Department will determine Tier amounts based on current annual budget and total number of Educators enrolled in the System.
2. Salary Supplement amounts and any changes to amounts will be posted on the Early Childhood Educator Workforce Salary Supplement Program website: <https://www.maine.gov/dhhs/ocfs/provider-resources/early-childhood-educator-workforce-salary-supplement-program>

**SECTION 6: COMPLIANCE MONITORING**

The Department will conduct Compliance Monitoring of Programs and their staff at its discretion. The Department will email the Director of the Early Care and Education Program a set of questions related to workforce retention due to the Early Childhood Educator Workforce Salary Supplement System and request Payroll Records sufficient to determine the correct Early Childhood Educator Workforce Salary Supplement Payment was paid out to each eligible Early Childhood Educator for each of the previous months requested.

The program director has thirty (30) calendar days from the date of the email to respond.

After thirty (30) calendar days with no response, the Department shall give written notice to the Early Care and Education Program withholding future Salary Supplement Funding until a response is received.

The Department will also email each individual Early Childhood Educator using the Educator’s current email address in the PDN Registry to verify that they have received all Salary Supplements from the Early Care and Education Program.

Early Childhood Educators can contact the Department with questions or concerns regarding any Early Childhood Educator Workforce Salary Supplement Payment or to report not being issued the Early Childhood Educator Workforce Salary Supplement Payment by the Early Care and Education Program.

Early Care and Education Programs will maintain, retain, and provide Payroll Records to the Department upon request. Payroll Records must be retained for a minimum of three (3) years.

When Payroll Records submitted to the Department are not sufficient to determine the correct Early Childhood Educator Workforce Salary Supplement Payment was paid to every eligible Educator by the Early Care and Education Program for each of the previous months requested, the Department will provide written notice withholding future Salary Supplement Funding until a response is received. Early Care and Education Programs have thirty (30) calendar days from the date that the notice was sent to provide Payroll Records demonstrating corrections were made to the Early Childhood Educator’s Early Childhood Educator Workforce Salary Supplement Payment. If such Payroll Records are not provided, or remain insufficient to determine the correct Early Childhood Educator Workforce Salary Supplement Payment was paid to every Educator by the Early Care and Education Program each of the previous twelve months, the Department will determine that an Overpayment was caused by the Early Care and Education Program, and recoup the Overpayment consistent with this Rule.

**SECTION 7: IMPROPER SALARY SUPPLEMENT FUNDING PAYMENTS**

1. **Underpayments and Overpayments**
	* + 1. If the Department pays an Early Care and Education Program less Salary Supplement Funding than its eligible Educators are entitled to in Salary Supplements under this rule, the result is an Underpayment. The amount of the Underpayment is the difference between the total amount of Salary Supplements all employees were eligible for in a given period and the amount of Salary Supplement Funding received by the Program for the same period.
2. **Overpayments**
	* + 1. If the Department pays an Early Care and Education Program more Salary Supplement Funding than its eligible employees are entitled to for Salary Supplements under this rule, the result is an Overpayment. The amount of an Overpayment determined under this subsection is the difference between the amount of Salary Supplement Funding received by the Program for a given period and the total amount of Salary Supplements all employees were eligible for over the same period.
			2. If an Early Care and Education Program uses Salary Supplement Funding for any purpose other than to pay a correct Salary Supplement to each eligible Early Child Educator, the result is an Overpayment. The amount of an Overpayment determined under this subsection is the difference between the amount of Salary Supplement Funding received by the Program for a given period and the total amount of Salary Supplements paid by the Program to Educators to increase wages over the same period.
3. **Underpayments**
	* + 1. The Department must receive notification of an alleged Underpayment from the Early Care and Education Program along with supporting documentation sufficient to establish the Underpayment within thirty (30) calendar days of the date Salary Supplement Funding is issued to the Early Care and Education Program. The Department will review the provided documentation and its own records to determine if an Underpayment occurred. The Department will provide written notice of its decision on an alleged Underpayment.
			2. In the event of an Underpayment, the Department shall pay an Early Care and Education Program the amount of the Underpayment within sixty (60) calendar days of the date that the Department determines that an Underpayment occurred. If the Early Care and Education Program has an outstanding Overpayment, the amount of the Underpayment shall be used to offset the outstanding Overpayment and any remaining balance of the Underpayment shall then be paid to the Early Care and Education Program.
			3. Early Care and Education Programs that disagree with a Department determination regarding an Underpayment may request a hearing to appeal that determination.
4. **Determination of Overpayment**

Overpayments may be discovered within three (3) years of the date that the Department pays an Early Care and Education Program Salary Supplement Funding. Overpayments may result from Department administrative error or be caused by the Early Care and Education Program. Overpayments caused by the Early Care and Education Program may be voluntarily reported by the Early Care and Education Program, or will be determined by the Department through its Compliance Monitoring as described in this Rule.

Overpayments caused by Department administrative error will be recouped by the Department from the Early Care and Education Program. The Department shall recover Overpayments as provided in sections 7(E)-(F) of this Rule, below.

Overpayments that are not caused by a Department Administrative Error shall be classified as caused by the Early Care and Education Program.

Overpayments caused by the Early Care and Education Program shall include, but not be limited to:

Inaccurate reporting of licensing status or Early Childhood Educator eligibility requirements, such as the number of Early Childhood Educators at a given PDN Registry level.

Cashing a replacement check for Salary Supplement Funding after falsely claiming that the original check was lost, stolen or destroyed.

Providing inaccurate or insufficient Payroll Records for Compliance Monitoring.

The Department shall make a preliminary determination of whether the Overpayment was caused by a misrepresentation.

Where the Department makes a preliminary determination that an Early Care and Education Program may have committed a misrepresentation, the case may be referred to the DHHS Fraud Investigation Unit pursuant to 22 M.R.S. § 13 and the Department may pursue establishment of a misrepresentation.

1. **Notice of Overpayment**
	* + 1. Early Care and Education Programs shall be provided with written notice of Overpayment by the Department.
			2. The written notice of Overpayment shall be sent to the Department’s last known address for the Early Care and Education Program, by U.S. Postal Service first class mail.
			3. The written notice of Overpayment shall contain:

Amount of the Overpayment;

Period of the Overpayment;

A statement that the Overpayment will be considered payable in full thirty (30) calendar days from the date of the notice;

Explanation of why the Overpayment occurred;

Responsibility for repayment through Maine Revenue Services Tax Setoff (if applicable); and

Contact information for the Department for making repayment arrangements.

1. **Methods of Repayment**
	* + 1. Overpayments must be repaid to the Department in full within thirty (30) calendar days of:
				1. When the Program voluntarily reports the Overpayment, or
				2. The date of the written notice of Overpayment.
			2. Programs may request an alternative repayment plan from the Department, which the Department may approve at its sole discretion.
			3. If the Program fails to repay the full amount of the Overpayment to the Department, or does not comply with a Department-approved repayment plan, the Department will withhold Salary Supplement Funding until the amount of the Overpayment is recouped. If the Early Care and Education Program does not actively receive Salary Supplement Funding, the Department shall recover the Overpayment through the quickest legally permissible means.

**SECTION 8: APPEALS**

1. **Administrative Hearing.**
	* 1. To appeal a Department decision regarding Overpayment or Underpayment, the Early Care and Education Program must request an Administrative Hearing from the Department within ten (10) calendar days of receiving the Department’s written notice regarding the challenged Overpayment or Underpayment determination.
		2. The Office of Administrative Hearings shall notify the Program in writing of the date, time, and place of the hearing, and shall designate a hearing officer.
		3. The hearing shall be held in conformity with the Maine Administrative Procedure Act and the Administrative Hearings Regulations, 10-144 C.M.R. ch. 1.

EFFECTIVE DATE: 03/11/24