



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 17, 2023

Daniel Edney, MD, State Health Officer
Mississippi State Department of Health
Post Office Box 1700
Jackson, Mississippi 39215-1700

Re: Licensure Exemption Status of Entities Participating in the Child Care
Payment Program or Other Subsidy Programs

Dear Dr. Edney:

The Office of the Attorney General has received your request for an official opinion.

Question Presented

Are entities affiliated with a national organization that charges only a nominal annual membership fee, including but not limited to the Boys and Girls Club of America and the YMCA, exempt from licensure requirements pursuant to Mississippi Code Annotated Section 43-20-5(a)(iv) if they participate in subsidy programs such as the Child Care Payment Program administered by the Mississippi Department of Human Services?

Brief Response

Your question turns on whether receiving funding through a subsidy program would equate to “receiv[ing] monthly, weekly or daily payments for services,” as provided in Section 43-20-5(a)(iv); this is a question of fact that must be determined on a case-by-case basis. If it is determined that an entity receives “monthly, weekly or daily payments” from a subsidy program, the entity will not meet the requisite exemption requirements of Section 43-20-5(a)(iv).

Applicable Law and Discussion

Sections 43-20-1 *et seq.*, are collectively known as the “Mississippi Child Care Licensing Law,” and Section 43-20-5(a) sets forth certain exemptions from the provisions of the chapter. Relevant here, Section 43-20-5(a)(iv) exempts:

[a]ny membership organization affiliated with a national organization that charges only a nominal annual membership fee, *does not receive monthly, weekly or daily payments for services*, and is certified by its national association as being in compliance with the association's minimum standards and procedures including, but not limited to, the Boys and Girls Club of America, and the YMCA.

(emphasis added).

Based on this exemption, you ask whether entities affiliated with a national organization that charges only a nominal annual membership fee, such as the Boys and Girls Club and the YMCA, are exempt from licensure requirements if they participate in subsidy programs such as the Child Care Payment Program ("CCPP") administered by the Mississippi Department of Human Services. This question turns on whether receiving funding through a subsidy program would equate to "receiv[ing] monthly, weekly or daily payments for services." This is a question of fact that must be determined on a case-by-case basis. Pursuant to Section 7-5-25, the Attorney General shall issue written opinions upon prospective questions of law; we cannot opine upon questions of fact.

This said, for informational purposes, we note that the source of "payment," as provided in Section 43-20-5(a)(iv), is immaterial. Accordingly, it is the opinion of this office that if it is determined that an entity receives "monthly, weekly or daily payments" from a subsidy program such as the CCPP, the entity will not meet the requisite exemption requirements of Section 43-20-5(a)(iv), even if the entity would meet the requirements but for its participation in the subsidy program.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Maggie Kate Bobo

Maggie Kate Bobo
Special Assistant Attorney General