



IOWA LEAGUE OF CITIES

ANNUAL CONFERENCE & EXHIBIT

Fostering Childcare Availability in Your City

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Overview Ahlers & Cooney

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Ahlers & Cooney has represented
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Please note that this presentation is intended for informational and educational purposes and to provide general statements from federal law, state law, and agency guidance. Federal and state law may differ on particularized areas and this outline does not include all legal considerations. Each situation varies based on the individualized facts and the law is constantly evolving.

Please consult with your attorney for specific legal information, advice, or individualized inquiries.



The Problem



Scarcity of Childcare Availability in Iowa

- **75%** – Percentage of families with all parents working and children under age 6
- **235,696** – Number of children ages 0 to 5 in the State of Iowa
- **173,481** – Number of childcare spaces registered with Iowa Child Care Resource and Referral

**data as of July 2021, summarized by Iowa Child Care Resource & Referral
(<https://iowaccrr.org/resources/files/Data/FY21/FY21%201%20State%20of%20Iowa.pdf>)

Scarcity of Childcare Availability in Iowa

- “Childcare deserts” in the state
- As of January 2020:
 - Approximately **40%** of cities in Iowa have children but no known childcare
 - Approximately **47%** of cities have some known childcare, but fewer spots than children in the city’s population

**data from Iowa Child Care Resource & Referral
(<https://iowaccrr.org/data/>)

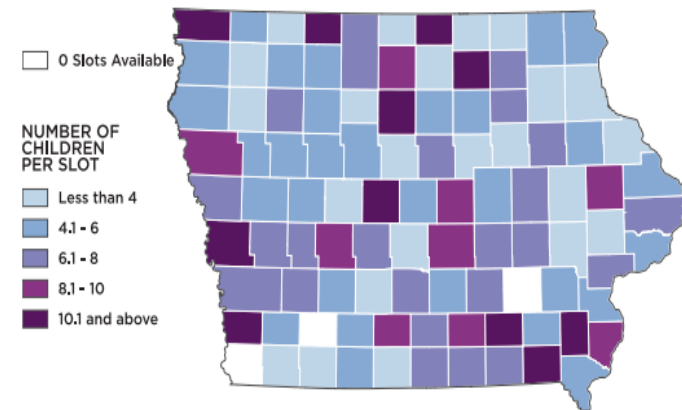
Scarcity of Childcare Availability in Iowa

Governor Reynold's Child Care Task Force Report

Published in November 2021 indicated:

- 23% of Iowans overall live in a childcare desert
- Percentage increases to 35% in rural areas
- Additionally, the report indicated that the average monthly cost of childcare was \$1,031 – more expensive than housing for the average Iowa family.

NUMBER OF CHILDREN PER OPEN CHILD CARE SLOT
Infants and Toddlers Only, Child Care Centers and Licensed Early Head Start Programs Only



SOURCE: Derived from 2020 Iowa Department of Human Services child care licensing information for providers of care for infants and toddlers and the U.S. Census American Community Survey - 5 year estimates.

****Source:** Governor's Child Care Task Force Report, November 2021,
https://governor.iowa.gov/sites/default/files/documents/IGOV_ChildcareTF_Report_112021.pdf?utm_medium=email&utm_source=govdelivery

The Economic Cost

Iowa's childcare shortage costs the State's economy approximately **\$935 million annually**

"We know that the key to economic growth is a highly skilled and qualified workforce."

Governor Reynolds

"A child care shortage that prevents parents from entering or remaining in the workforce hinders our ability to meet this challenge."

Governor Reynolds

** Source: "Gov. Reynolds announces new investments in child care following task force recommendations, November 3, 2021, <https://governor.iowa.gov/press-release/gov-reynolds-announces-new-investments-in%C2%A0child-care%C2%A0following-task-force>

Solutions

State-Wide Efforts

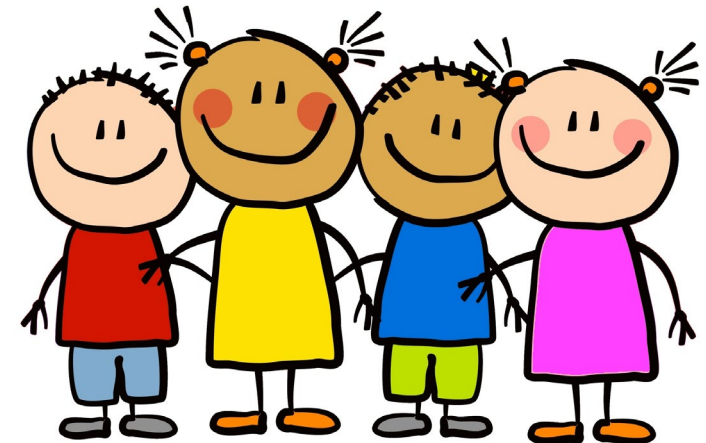


Recent State Legislation

HF 2198 - 2022

The Act does two things to attempt to alleviate the load on childcare workers:

- Lowers the minimum age to work in a childcare facility from 18 to 16.
- Raises the worker to child ratio (fewer children to each worker)



Recent State Legislation

HF 2127 – 2022

This Act allows childcare providers to ask parents enrolled in the State's Child Care Assistance Program to pay the difference between what the State covers and what the normal cost for their services are

(if the provider and parents agree in writing to the additional payments prior to provision of the childcare)



CCA only covers around 50% to 70% of the true costs of private childcare.

Recent State Legislation

HF 260 – 2021

Raised the number of children that an unregistered home-based childcare provider can provide care for – up to six children if at least one is of school age.

The limit was previously five.



Recent State Legislation

HF 302 – 2021

Started a gradual phase-out of childcare assistance money to those with rising incomes.

Under the old system families would be immediately cut off after raising above a certain income level. Now families can be **225% above the federal poverty line** before the aid is totally cut off, with a gradual lowering of aid money up to that point.



Shared Services Project for Childcare Providers

- In response to Governor's Child Care Task Force Report (November 2021), Early Childhood Iowa and Iowa Department of Human Services have been developing a “**Shared Services Alliance**” framework.
- Reduce administrative burdens on childcare providers:
 - Childcare management system (CCMS)
 - Provision of technical assistance, such as financial management consultants to encourage successful financial model for childcare providers
- Childcare management system planned to launch in January 2023

Child Care Business Incentive Grant Program

- Encouraging employers to develop on-site childcare programs, or partner with nearby existing childcare centers to create additional spots paid for by the employer
- \$25 Million allocated for the Program
 - Funding allocation through American Rescue Plan Act (ARPA) funds received by the State
- Grant applications were due July 2022
 - Unclear whether there will be future rounds of funding

Solutions – Local Efforts

City Governments Want to Help



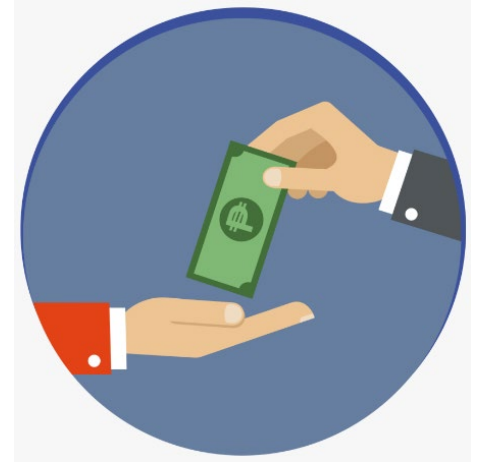
Option #1: Provide Financial Assistance to Private Providers

Option #2: Partner with Large Employers

Option #3: Direct Creation of Childcare Facilities

Option #1: Provide Financial Assistance to Private Providers

- **Two sources of potential authority:**
 - Iowa Code Chapter 15A – Economic Development
 - Iowa Code Chapter 403 – Urban Renewal
- Must identify applicable legal authority before providing public money to a private entity
 - Iowa Constitution, Article III provides “no public money or property shall be appropriated for local, or private purposes, unless such appropriation, compensation, or claim, be allowed by two thirds of the members elected to each branch of the general assembly.”
 - The Iowa General Assembly has enacted numerous laws declaring certain endeavors to be “public” purposes.
 - Recent State Auditor discussion and guidance related to this topic



Chapter 15A Authority

- Iowa Code Chapter 15A declares that “economic development” is a public purpose
- Definition of “economic development”:
 - “For purposes of this chapter, ‘economic development’ means private or joint public and private investment involving the creation of new jobs and income or the retention of existing jobs and income that would otherwise be lost.” Iowa Code Section 15A.1

Chapter 15A Authority

“Before public funds are used for grants, loans, tax incentives, or other financial assistance to private persons or on behalf of private persons for economic development, the governing body of the [city] dispensing those funds ... shall determine that a public purpose will reasonably be accomplished by the dispensing or use of those funds. In determining whether the funds should be dispensed, the governing body ... shall consider any or all of the following factors:

- (a) “Businesses that add diversity to or generate new opportunities for the Iowa economy should be favored over those that do not.”
- (c) “Development policies in the dispensing or use of the funds should be targeted toward businesses that generate public gains and benefits, which gains and benefits are warranted in comparison to the amount of the funds dispensed.”
- (d) “Development policies in dispensing the funds should not be used to attract a business presently located within the state to relocate to another portion of the state unless the business is considering in good faith to relocate outside the state or unless the relocation is related to an expansion which will generate significant new job creation. Jobs created as a result of other jobs in similar Iowa businesses being displaced shall not be considered direct jobs for the purpose of dispensing funds.”

Chapter 15A Authority

Other Requirements:

- Must ensure no environmental issue
- Must ensure no discrimination based on age, color, creed, national origin, race, religion, marital status, sex, physical disability, or familial status
- Avoid conflict of interest
 - Conflicts must be disclosed in writing
 - Council member or employee having conflict of interest must not participate in the decision-making process
 - However, council action not void unless the improper vote is decisive

Chapter 15A – Mechanics of Providing Financial Assistance

Consider available funds.

There is no financing mechanism built into Chapter 15A authority (unlike TIF for urban renewal projects).

- General Fund monies?
- Funds on hand in “economic development” fund or a revolving loan fund established for economic development?
- Utility Surplus monies?
- Local Option Sales Tax funds?



Chapter 403/Urban Renewal Authority

- Various objectives that can be pursued under urban renewal authority, including the promotion of commercial and industrial economic development
- Declaration of policy in Iowa Code Section 403.2 includes:
 - “need for programs to alleviate and prevent conditions of unemployment”
 - “necessary to assist and retain local industries and commercial enterprises to strengthen and revitalize the economy of this state and its municipalities”
 - “encourage the location and expansion of commercial enterprises to more conveniently provide needed services and facilities of the commercial enterprises to municipalities and the residents of the municipalities”

Childcare as an Economic Development Project

- Businesses need employees to have access to childcare, in order to be available for employment
- Childcare providers are commercial businesses that create employment opportunities
- Economic cost of insufficient childcare availability



Chapter 403/Urban Renewal – Mechanics of Providing Financial Assistance

Comparison to Chapter 15A authority:

More procedural steps required to use Urban Renewal authority than Chapter 15A authority

Urban Renewal offers authority to use Tax Increment Financing (TIF) – a financing mechanism for urban renewal projects

Chapter 403/Urban Renewal – Mechanics of Providing Financial Assistance

Urban Renewal Procedural Steps:

- Establish geographic boundaries of an urban renewal area that include the project site:
 1. Adopt of a new urban renewal plan/establish new URA
 2. Amend boundaries of an existing URA to add project site into URA (done by amendment of existing UR Plan)
 - ***Must be an urban renewal area designated for commercial and/or industrial economic development***
 - Current law does not allow for designations of an existing urban renewal area to be changed

Chapter 403/Urban Renewal – Mechanics of Providing Financial Assistance

Urban Renewal Procedural Steps:

- Identify the “urban renewal project” in the urban renewal plan document
 - Urban renewal project could be:
 - Grant agreement with existing childcare facility
 - Development agreement supporting new childcare facility construction
 - City-constructed infrastructure to support new childcare facility site (e.g., water main extension)
- Required process to adopt a new urban renewal plan, or to amend existing urban renewal plan
 - Either process requires two Council meetings, about 30 days apart



Chapter 403/Urban Renewal – Mechanics of Providing Financial Assistance

Difficulty in Using TIF for Childcare Projects

A benefit to Urban Renewal authority over Chapter 15A authority is the financing mechanism of TIF.

But, childcare facilities are often exempt from real property taxes, so are not Tax Increment “generators.”

There must be Tax Increment available from other properties in the Urban Renewal Area in order to use TIF.

Chapter 403/Urban Renewal – Mechanics of Providing Financial Assistance

Administering Urban Renewal Project

- If a grant agreement or development agreement:
 - Negotiate terms for the City's assistance and the Provider's responsibilities
 - Prepare agreement with detailed terms and conditions for each party's obligations
 - Consider "annual appropriation" term if providing a multi-year incentive – to avoid full incentive amount from counting against your city's constitutional debt limit
 - If using TIF, City Council must hold a public hearing on the agreement prior to approval
 - Monitor performance under agreement

Chapter 403/Urban Renewal – Mechanics of Providing Financial Assistance

Administering Urban Renewal Project

- If City-constructed infrastructure:
 - City must finance infrastructure – e.g., issue bonds
 - Essential corporate purpose – can avoid election
 - Urban renewal – subject to reverse referendum
 - If using TIF, must timely certify the “debts” or “obligations” that trigger reimbursement through the TIF process
 - TIF is a delayed reimbursement/financing mechanism
 - For example, a debt certified on 2022 TIF debt certification (due Dec. 1, 2022) will contribute to Tax Increment collection in FY 23-24

Option #2: Partner with Large Employers in Your Community

- Similar concept as the State's Child Care Business Incentive Grant Program
 - Leverage the needs of local employers (needing employees to have accessible and affordable childcare)
 - Use Chapter 15A Authority or Chapter 403/Urban Renewal Authority to provide financial assistance



Option #3: Direct Creation of Childcare Facilities

- Financing construction of a childcare facility through bonds
 - General corporate purpose bond issuance
 - Subject to reverse referendum (unless under dollar amount threshold)



NOTE: This is likely the most complicated way to provide a “solution.” Cities generally aren’t “in the business” of providing childcare.

“City Enterprises”

City enterprises include:

- “Child care centers providing child care or preschool services, or both. For purposes of this paragraph, ‘child care’ means providing for the care, supervision, and guidance of a child by a person other than the parent, guardian, relative, or custodian for periods of less than twenty-four hours per day on a regular basis. For purposes of this paragraph, ‘preschool’ means child care which provides to children ages three through five, for periods of time not exceeding three hours per day, programs designed to help the children to develop intellectual skills, and motor skills, and to extend their interest and understanding of the world about them.”
- Iowa Code Section 384.24(2)(I)

“City Enterprises”

- In theory, could try to issue revenue bonds – repayable only through revenues of a “city enterprise” – to support the city enterprise
- In reality, a city is unlikely to be able to sell revenue bonds based upon revenues of a childcare facility.
 - Childcare facilities are not high revenue businesses.
 - *Van Den Boom v. City of Eldora* – Eldora used USDA revenue bonds to build and operate a childcare facility as a “city enterprise.” Ultimately, the City was unable to generate sufficient revenues from the childcare facility to repay the loans. The City had to refinance the USDA loans through a general fund loan agreement.
** 829 N.W.2d 589 (Iowa District Court for Hardin County, March 2013)

Q & A Time



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