

CHAPTER 3400
DEPARTMENT OF CHILDREN, FAMILIES, AND
LEARNING
CHILD CARE FUND

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3400.0010 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of parts 3400.0010 to 3400.0230 is to govern the administration of the child care fund and to reduce, according to a sliding fee schedule, the costs of child care services for eligible families to enable them to seek or retain employment or to participate in education or training programs to obtain employment. Parts 3400.0010 to 3400.0230 set eligibility standards for recipients and administrative requirements for agencies administering child care funds.

Subp. 2. **Applicability.** Parts 3400.0010 to 3400.0230 apply to all county and human service boards providing child care assistance to eligible families under Minnesota Statutes, sections 119B.01 to 119B.16.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 3400.0010 to 3400.0230, the following terms have the meaning given them in this part.

Subp. 2. **ACCESS child care program.** "ACCESS child care program" means the AFDC child care program authorized under Minnesota Statutes, section 119B.05, subdivision 6.

Subp. 3. **ACCESS participant.** "ACCESS participant" means an individual participating in the ACCESS child care program.

Subp. 4. **Administering agency.** "Administering agency" means a county social services agency or a public or nonprofit agency designated by the county board to administer the child care fund.

Subp. 5. **Administrative expenses.** "Administrative expenses" means costs associated with the administration of the child care fund. Administrative expenses include:

A. salaries, wages, and related payroll expenses incurred in the administration of the child care fund including direct personnel costs, expenses for general administration and supervision, and expenses for secretarial, clerical, accounting, and other support services;

B. travel and transportation and per diem or subsistence expenses;

C. expenses for materials and office supplies;

D. publication, telephone, postage, and photocopy expenses; and

E. other expenses directly attributable to the child care fund.

Subp. 6. **Aid to families with dependent children or AFDC.** "Aid to families with dependent children" or "AFDC" means Aid to Families with Dependent Children program

authorized under title IV–A of the Social Security Act and Minnesota Statutes, chapter 256. AFDC provides financial assistance and social services to needy families with dependent children.

Subp. 7. **AFDC caretaker.** “AFDC caretaker” has the meaning given caretaker in Minnesota Statutes, section 256.736, subdivision 1a, clause (c).

Subp. 8. **Allocation.** “Allocation” means the share of the total state appropriation of child care funds that a county may earn and be reimbursed for in a state fiscal year. A county’s allocation may be raised or lowered during the fiscal year when the commissioner redistributes unexpended or unencumbered allocations.

Subp. 9. **Applicant.** “Applicant” has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 2.

Subp. 10. **Child.** “Child” has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 4.

Subp. 11. **Child care.** “Child care” means the care of a child in or out of the child’s own home for gain or otherwise, on a regular basis, for any part of a 24–hour day, by someone other than a parent, stepparent, legal guardian, eligible relative caretaker, or their spouses.

Subp. 12. **Child care assistance.** “Child care assistance” means financial assistance for child care that is funded under Minnesota Statutes, sections 119B.01 to 119B.16.

Subp. 13. **Child care fund.** “Child care fund” means the child care assistance programs under Minnesota Statutes, sections 119B.01 to 119B.16.

Subp. 14. **Child care services.** “Child care services” has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 3.

Subp. 15. **Commissioner.** “Commissioner” means the commissioner of the Department of Children, Families, and Learning or the commissioner’s designated representative.

Subp. 16. **County board.** “County board” has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 7.

Subp. 17. **Department.** “Department” means the Department of Children, Families, and Learning.

Subp. 18. **Documentation.** “Documentation” means a written statement or record that substantiates or validates an assertion made by a person or an action taken by an administering agency.

Subp. 19. **Education program.** “Education program” has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 8.

Subp. 20. **Eligible relative caretaker.** “Eligible relative caretaker” means a person identified under part 9500.2440, subpart 7, items A to D, who is a caretaker of a dependent child but who is not a member of the assistance unit.

Subp. 21. **Employability development plan or EDP.** “Employability development plan” or “EDP” means a plan developed for an AFDC caretaker by an employment and training service provider or person designated by the county to provide employment and training services. The EDP defines the AFDC caretaker’s employment and training goals and outlines the training, education, and support services the AFDC caretaker needs to achieve those goals. All employability development plans must receive county approval and meet the requirements of Public Law Number 100–485, Minnesota Statutes, sections 119B.01 to 119B.16, and parts 3400.0010 to 3400.0230.

Subp. 22. **Employment and training service provider.** “Employment and training service provider” means a provider certified by the commissioner of economic security under Minnesota Statutes, section 268.0122, subdivision 3, to deliver employment and training services.

Subp. 23. **Family.** “Family” has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 10.

Subp. 24. **Family copayment fee.** “Family copayment fee” means the unsubsidized portion of the provider charge the family must contribute as its share of child care costs.

Subp. 25. **Full calendar month.** “Full calendar month” means from the first day of a month to the last day of that month.

Subp. 26. **Full-day basis.** "Full-day basis" means child care provided by a provider for more than five hours per day.

Subp. 27. **Half-day basis.** "Half-day basis" means child care provided by a provider for between one and five hours per day.

Subp. 28. **Household status.** "Household status" means the number of individuals residing in the household and the relationship of the individuals to one another.

Subp. 29. **Human services board.** "Human services board" has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 11.

Subp. 30. **Income.** "Income" has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 12.

Subp. 31. **In kind service.** "In kind service" means a child care payment made on behalf of an AFDC caretaker by a third party to cover the difference between allowable child care costs and the dependent care deduction under part 9500.2580, for employed AFDC caretakers, or to cover the allowable cost of child care without a dependent care deduction for AFDC caretakers participating in education or training programs under Minnesota Statutes, section 119B.05.

Subp. 32. **Legal nonlicensed caregiver.** "Legal nonlicensed caregiver" means a child care provider exempt from licensing under Minnesota Statutes, section 245A.03.

Subp. 33. **Overpayment.** "Overpayment" means the portion of a child care payment that is greater than the amount for which a recipient is eligible.

Subp. 34. **Provider.** "Provider" has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 13.

Subp. 35. **Provider rate.** "Provider rate" means the amount the provider charges for child care.

Subp. 36. **Recipient.** "Recipient" means a family receiving child care assistance under the child care fund.

Subp. 37. **Redetermination.** "Redetermination" means the process by which information is collected periodically by the county and used to determine whether a recipient is eligible for continued assistance under the child care fund.

Subp. 38. **Registration.** "Registration" means the process used by the county to obtain from a legal nonlicensed caregiver the information required under part 3400.0140, subpart 5.

Subp. 39. **State median income.** "State median income" means the state's annual median income for a family of four, adjusted for family size, developed by the Bureau of Census and published annually by the United States Department of Health and Human Services in the Federal Register.

Subp. 40. **Student.** "Student" means an individual enrolled in an educational program as defined in subpart 19. A student is a full-time student if the student is enrolled in the minimum equivalent of 12 credits or 20 hours of classroom training per week. A student is a part-time student if the student is (1) a non-AFDC student enrolled in a minimum equivalent of six credits or ten hours of classroom training per week up to the minimum equivalent of full-time student status; or (2) an AFDC student who is less than a full-time student but is in compliance with the education or training requirements in his or her employability development plan.

Subp. 41. **Transition year child care.** "Transition year child care" means the transition child care assistance guaranteed under United States Code, title 42, section 602(g).

Subp. 42. **Transition year families.** "Transition year families" has the meaning given it in Minnesota Statutes, section 119B.01, subdivision 16.

Subp. 43. **Vendor payment.** "Vendor payment" means a payment made by a county or administering agency directly to a provider of child care services on behalf of a recipient.

Subp. 44. **Weekly basis.** "Weekly basis" means child care provided by a provider for more than 35 hours per week.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; L 1994 c 483 s 1; L 1Sp1995 c 3 art 16 s 13*

3400.0030 NOTICE OF BASIC SLIDING FEE PROGRAM ALLOCATION.

By June 1 of each year, the commissioner shall notify all county and human services boards of their allocation under the basic sliding fee program.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0040 GENERAL ELIGIBILITY REQUIREMENTS AND ASSISTANCE STANDARDS FOR ALL APPLICANTS.

Subpart 1. Applicant requirements and standards. In addition to specific eligibility requirements under parts 3400.0060, 3400.0080, and 3400.0090, all applicants for child care assistance shall be governed by the standards and requirements in subparts 2 to 16.

Subp. 2. Informational release. The county shall offer an applicant an opportunity to sign an informational release to permit the county to verify whether an applicant qualifies for child care assistance. The county shall indicate the purpose and intended use of the information, whether the individual may refuse or is legally required to supply the information, any known consequences from supplying or refusing to supply the information, and the identity of other agencies or individuals authorized to receive the data.

Subp. 3. Documentation of eligibility information. An applicant requesting child care assistance must document income eligibility, residence, work, and education or training status. The county shall verify an applicant's eligibility to receive child care assistance at the time of the application; when there is a change in household status, family size, employment, income, education or training status; and at each redetermination under part 3400.0180. When contacting third parties to confirm eligibility information, the county shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13.

Subp. 4. Recipient reporting responsibilities. A recipient must follow the reporting procedures in items A to C.

A. A recipient must notify the county of any changes in marital or household status, address, employment or education status, provider, and any change in income from the amount reported on the application form or the last redetermination, whichever occurred later.

B. A recipient must report the changes listed in item A within ten calendar days after the change. In cases of an income change, the date of change begins on the day that the recipient receives payment at the new rate.

C. A recipient's failure to report any changes under this subpart or to update information for redetermination is just grounds to terminate child care assistance.

Subp. 5. Eligible applicants. In a family with a single parent, or unmarried legal guardian or eligible relative caretaker, the applicant must meet employment, education, or training requirements and other eligibility requirements under the basic sliding fee program or the AFDC child care program.

In a family with two parents, a parent and stepparent, a legal guardian and spouse, or an eligible relative caretaker and spouse, at least one parent, legal guardian, eligible relative caretaker, or spouse must meet employment, education, or training requirements and other eligibility requirements under the basic sliding fee program or the AFDC child care program. *The other parent, legal guardian, eligible relative caretaker, or spouse must:*

A. meet employment, education, or training requirements and other eligibility requirements under the basic sliding fee program or the AFDC child care program; or

B. be unable to care for the applicant's child or dependent as determined by a medical doctor or by an assessment by the local social services agency.

Subp. 6. Selection of provider. An applicant may select a provider at the time of application or within 30 calendar days after the application for child care assistance has been approved.

Subp. 7. Maximum weekly child care assistance. A family may not receive more than 60 hours of child care assistance per child per week.

Subp. 8. Child care assistance during employment. In addition to other eligibility requirements, employed persons eligible for child care assistance under part 3400.0060,

3400.0080, or 3400.0090 must work ten hours or more per week and receive at least the state minimum wage for all hours worked. Child care assistance during employment shall be granted for the number of hours worked including break and meal time and up to two hours per day for travel time.

Subp. 9. Child care assistance in support of employment. A county may grant child care assistance in support of employment for nonwork hours when all of the following conditions exist:

A. child care assistance is not provided under the child care fund during working hours;

B. the family meets the eligibility requirements of subpart 5;

C. the employee cannot reasonably modify his or her nonwork schedule to provide child care; and

D. the child care assistance does not exceed the amount of assistance that would be granted under subpart 8 during employment.

Subp. 10. Child care assistance during education or training. To the extent of available allocations, counties shall provide child care assistance to students eligible under part 3400.0060 or 3400.0080 and enrolled in county-approved education or training programs according to items A to C.

A. Counties may grant full-time students:

(1) child care on a half-day or full-day basis for the days of class and on non-class days, if needed for study, as determined by the county;

(2) child care on a weekly basis; or

(3) child care according to the standards in item B.

Child care assistance granted under item A, subitem (1) shall not be less than the standard under item B and may not exceed 60 hours of child care per child per week.

B. Part-time students shall receive child care for:

(1) all hours of actual class time and credit hours for independent study and internships;

(2) time periods between nonconsecutive classes;

(3) up to two hours per day for travel time; and

(4) two hours per week per credit hour for postsecondary students for study and academic appointments.

When a part-time student has more than one hour between classes on any one day, the study and academic appointment time authorized under subitem (4) shall be reduced by the number of hours between classes.

C. Child care assistance for remedial classes is subject to county approval under subpart 12. Upon county approval of the remedial class or classes, the county shall authorize child care assistance necessary to enable the student to attend class and to complete class assignments.

Subp. 11. Child care assistance during employment and education or training. Employed students are eligible for child care assistance during employment and education or training. Counties shall use the standards in subparts 8 and 10 to determine the amount of child care assistance. Child care assistance during employment and education may not exceed 60 hours per child per week.

Subp. 12. Acceptable course of study. An acceptable course of study for a student eligible under part 3400.0060 is an education or training program approved by the county that will reasonably lead to full-time employment opportunities as determined by the county. An acceptable course of study for a student eligible under part 3400.0080 is an education or training program described in the AFDC caretaker's EDP.

Subp. 13. Satisfactory progress in education program. Subject to the limitation in subpart 14, a county shall provide child care assistance to students with an approved education or training program for the length of the education or training program if the student is making satisfactory progress in the education or training program. Satisfactory progress in the education or training program means a student remains in good standing in the education

or training program and meets the requirements of the student's education plan under part 3400.0060 or employability development plan under part 3400.0080. If the county determines that a student is not making satisfactory progress towards completion of an education or training program, the county shall notify the student and discontinue child care assistance according to part 9565.5110, subpart 10.

Subp. 14. Maximum education and training under child care fund. The maximum length of time a student is eligible for child care assistance under the child care fund for education and training is described in items A to E.

A. A student is eligible for a maximum of 48 months of child care assistance for education or training from the child care fund. A four-year education or training program must be directed towards a baccalaureate degree. The time limit under this item does not apply to basic or remedial educational programs needed to prepare for postsecondary education or employment. Basic or remedial education programs include high school, general equivalency diploma, and English as a second language. Basic or remedial programs that run concurrently with a postsecondary program are not exempt from the time limit under this item.

B. A student who has completed an education or training program under the child care fund may receive child care assistance for a second education or training program if:

(1) the child care assistance needed to complete the second program when combined with the child care assistance previously received does not exceed the equivalent of 48 months;

(2) the student has been unable to find full-time employment and the student does not have marketable skills; and

(3) at least one year has passed since the student completed the first program.

C. A student with a baccalaureate degree may obtain child care assistance for continuing education units or certification or coursework necessary to update credentials to obtain or retain employment.

D. A student who has once dropped out of an education or training program or who once failed to complete an education or training program while receiving child care assistance is eligible for child care assistance to enable the student to complete the program or begin a new program if the child care assistance needed to complete the earlier program or new program when combined with the child care assistance previously received does not exceed 48 months. A student applying for child care assistance under this item must be treated as a new applicant.

E. A student may receive child care assistance for a second baccalaureate degree if:

(1) the student did not receive child care assistance under the child care fund for the first baccalaureate degree; and

(2) the student does not have marketable skills.

Subp. 15. Changes in education and training programs. A proposed change in an education or training program is subject to county approval before the change may be made.

Subp. 16. Ineligibility for failure to pay fees under the child care fund. A family that fails to pay the provider charge or family copayment fee under the child care fund shall lose eligibility for child care assistance as long as such fees are owed unless satisfactory arrangements for repayment are made that are acceptable to the provider and the county. If a county is aware that fees are owed under the child care fund and satisfactory repayment is not being made, the county shall not authorize child care assistance until satisfactory repayment arrangements are made.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0050 JOB SEARCH.

To the extent of available allocations, counties shall provide persons eligible under part 3400.0060 who are seeking employment and persons eligible under part 3400.0080 who have an approved EDP including job search as an authorized activity, up to 240 hours of child care during job search. At the option of the individual in job search and with prior county approval, child care may be used at a rate that is less than full time provided the total child

care assistance does not exceed 240 hours of child care per calendar year. For the purpose of this part, job search includes locating, contacting, and interviewing with potential employers and preparing for job interviews.

Statutory Authority: *MS s 256H.02; 256H.035; 256H.055*

History: *18 SR 1144*

3400.0060 BASIC SLIDING FEE PROGRAM.

Subpart 1. **Basic sliding fee program; funding sources.** The basic sliding fee program includes funding from federal, state, and county sources. Federal funds available under United States Code, title 42, sections 602(i) and 9858, that are allocated to the basic sliding fee program shall be expended as provided in this part.

Subp. 2. **Basic sliding fee allocation.** The commissioner shall allocate child care funds for the basic sliding fee program as provided in Minnesota Statutes, section 119B.03, subdivisions 6 to 8.

Subp. 3. **Federal funding.** Counties shall claim, in the manner prescribed by the commissioner, federal funding for child care expenditures for all eligible recipients who are in employment, education, training, or other preemployment activities allowed under the federal grant and reimbursement programs. The commissioner shall allocate any federal earnings to the county that claimed the federal funding and the county shall use the earnings to expand funding for child care services under the basic sliding fee program.

Subp. 4. **Reallocation of unexpended or unencumbered funds.** The commissioner shall reallocate unexpended or unencumbered funds according to items A to D.

A. The commissioner may reallocate unexpended or unencumbered funds following the first, second, and third quarters as provided in Minnesota Statutes, section 119B.03, subdivision 5. Following the fourth quarter, the commissioner shall review county expenditures under the basic sliding fee program and shall reallocate unearned allocations to counties that earned their full allocation.

B. The amount reallocated to any county shall be based on earnings in excess of its allocation. The amount reallocated shall not be greater than the earnings in excess of allocation minus the county's maintenance of effort required under Minnesota Statutes, section 119B.11, subdivision 4.

C. If the amount of funds available for reallocation is less than total county earnings in excess of allocations, the reallocated funds shall be prorated to each county based on the ratio of the county's earnings in excess of its allocation to the total of all county earnings in excess of their allocation.

D. If the amount of funds available for reallocation is greater than total county earnings in excess of allocations under the basic sliding fee program, the funds remaining after the basic sliding fee reallocation shall be carried forward to the second year in the biennium in proportion to the county earnings.

Subp. 5. **Families eligible for assistance under the basic sliding fee program.** To the extent of available allocations, a family is eligible for child care assistance under the basic sliding fee program if:

A. the applicant meets eligibility requirements under part 3400.0040;

B. the applicant is not an AFDC caretaker; and

C. the family has an annual gross income that does not exceed 75 percent of the state median income for a family of four, adjusted for family size.

Subp. 6. **Basic sliding fee program waiting lists.** Counties must keep a written record of families who have requested child care assistance. When a family requests information about child care assistance, the county shall perform a preliminary determination of eligibility. If it appears that a family is or will be eligible for child care assistance and funds are not immediately available, the family shall be placed on a child care waiting list. The county shall provide a means of identifying students placed on the basic sliding fee waiting list. If it appears that a family is eligible for child care assistance and funds are available or if a family requests an application, the family shall be given a child care assistance application.

Subp. 7. Waiting list; transfer of transition year families to the basic sliding fee program. The county shall place transition year families on the county's basic sliding fee program waiting list effective the earliest of the following dates:

- A. the date the family became eligible for transition year child care assistance;
- B. the date the family began participating in the ACCESS child care program under part 3400.0080, subpart 2; or
- C. the date the family enrolled in Project STRIDE.

If a transition year family moves to a new county, the waiting list date established under items A to C shall transfer with the family. If a transition year family comes to the top of the county's basic sliding fee program waiting list before the transition year ends, the county shall encumber basic sliding fee program funds for those months remaining in the state fiscal year after the transition year ends. When the transition year ends, the county shall move the transition year family into the basic sliding fee program. A transition year family that does not come to the top of the county's basic sliding fee program waiting list before completion of the transition year shall be moved into the basic sliding fee program as funding becomes available according to the priority under Minnesota Statutes, section 119B.03, subdivision 4.

Subp. 8. Application for child care assistance. A family must apply for child care assistance in the family's county of residence.

Subp. 9. County child care responsibility when family moves. When a family that is receiving child care assistance from the basic sliding fee program moves to a new county within Minnesota, the original county must continue to provide child care assistance for two full calendar months if child care is needed and the family remains eligible for child care assistance under the basic sliding fee program. The new county shall treat a family that moves to the county and requests child care assistance as a new applicant.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0070 CONTINUED ELIGIBILITY UNDER THE BASIC SLIDING FEE PROGRAM.

To the extent of available allocations, a county may not refuse continued child care assistance to a family receiving assistance under the basic sliding fee program when there is a change in the family's financial or household status. However, the family's annual gross income may not exceed 75 percent of the state median income for a family of four, adjusted for family size, and the family must meet all other eligibility requirements under the basic sliding fee program. Except for the education time limit under part 3400.0040, subpart 14, and the job search time limit under part 3400.0050, counties may not set a time limit for eligibility under the basic sliding fee program.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0080 AFDC CHILD CARE PROGRAM.

Subpart 1. Families guaranteed child care assistance under the AFDC child care program. Except as provided in subpart 2, families eligible for guaranteed child care assistance under the AFDC child care program are families listed under Minnesota Statutes, section 119B.05.

Subp. 2. ACCESS child care program. AFDC caretakers who are recipients of AFDC and not part of an assistance unit eligible or required to participate in Project STRIDE are eligible for child care assistance under the ACCESS child care program if enrolled in an education, training, or job search program authorized in their EDP. Each county shall enroll participants in the ACCESS child care program to the extent of the county's entitlement of family slots authorized under Minnesota Statutes, section 119B.05, subdivision 6. Counties shall prioritize eligibility for child care assistance under the ACCESS child care program in the county's child care fund allocation plan under part 3400.0150.

Subp. 3. Approved EDP required under ACCESS. Before a county may grant child care assistance under subpart 2, the ACCESS participant must have an EDP approved by the county. The EDP must meet the requirements under Minnesota Statutes, section 256.736, subdivision 10.

Subp. 4. **Conversion to Project STRIDE.** Subject to the time limitations of parts 3400.0040, subpart 14, and 3400.0050, child care assistance must continue under the ACCESS child care program until the participant loses AFDC eligibility or is enrolled in Project STRIDE. When an ACCESS participant is enrolled in Project STRIDE, the ACCESS participant's EDP shall continue as the approved EDP for Project STRIDE.

Subp. 5. **AFDC caretakers required to have EDP.** All AFDC caretakers applying for child care assistance to support training or preemployment activities including job search must have an EDP authorizing the child care assistance.

Subp. 6. **Child care assistance in support of employment.** AFDC caretakers applying for child care assistance to support employment are guaranteed assistance for allowable child care costs above any dependent care deductions if the provider is eligible for payment under the child care fund.

Subp. 7. **AFDC federal program reimbursement.** Counties shall claim, in the manner prescribed by the commissioner, federal reimbursement under appropriate federal programs for child care expenditures for all eligible AFDC caretakers who are in activities allowed under the federal reimbursement programs. The commissioner shall allocate any federal earnings to the county that claimed the federal reimbursement.

Subp. 8. **County child care responsibility when a family moves to another county.** Except for families with an EDP in effect, a county is responsible for providing child care assistance to an AFDC family that moves to another county within Minnesota according to Minnesota Statutes, section 256G.07.

If an EDP is in effect, the county responsible for the EDP must provide child care assistance, if needed and the family remains eligible, through completion of the EDP or two full calendar months, whichever is longer. After completion of the EDP or two full calendar months, whichever is longer, if the family has applied for and is eligible for child care assistance under the AFDC child care program, the family shall receive child care assistance from the new county.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0090 TRANSITION YEAR CHILD CARE.

Subpart 1. **Notice to family of eligibility.** The department must notify a family, in writing, at the time the family becomes ineligible for AFDC of its potential eligibility for transition year child care under this part. The notification must include information on how to establish eligibility for transition year child care and on the family's rights and responsibilities under the transition year child care program.

Subp. 2. **Eligibility.** Transition year child care assistance may only be used to support employment-related expenses. A family is eligible for transition year child care if the conditions in items A to E are met.

A. The family is no longer eligible for AFDC due to increased hours of, or increased income from, employment or the loss of income disregards due to the time limitations.

B. The family received AFDC in at least three of the six months immediately preceding the first month of ineligibility and at least the last month of AFDC was paid by Minnesota.

C. The family requests transition year child care, provides the county information necessary for determining eligibility and fees, and the family's income does not exceed 75 percent of the state median income for a family of four, adjusted for family size.

D. The child retains its "dependent child" status throughout the transition year. A "dependent child" is one who meets an AFDC basis of eligibility due to an absent, incapacitated, or unemployed parent. Transition year child care may be paid only for the care of a child who would be a dependent child if the family was receiving an AFDC grant, or for children who would have been eligible for AFDC except for the child's receipt of SSI or Title IV-E foster care benefits.

E. The former AFDC caretaker who applies for transition year child care must continue to cooperate with child support enforcement throughout the transition year period.

Eligibility for transition year child care begins the first month the family is ineligible for AFDC for the reasons identified in item A, and continues for 12 consecutive months. A former AFDC caretaker may apply for transition year child care any time during the year after losing eligibility for AFDC and, notwithstanding the application date, shall receive transition year child care assistance for all eligible months. Eligibility for transition year child care cannot extend beyond 12 months after the initial date of eligibility for that transition year child care.

Subp. 3. Loss of transition year child care eligibility. A family is not eligible for transition year child care for any remaining portion of the 12-month period if the former AFDC caretaker fails to cooperate with the county to establish payments and enforce child support obligations, or the former AFDC caretaker terminates employment without good cause. Termination of employment for the reasons in items A to E is considered to be for good cause.

A. The job is not suited to the physical or mental capacity of the AFDC caretaker or it has had an adverse effect on the AFDC caretaker's physical or mental health. A claim made under this item must be documented by a licensed physician or licensed psychologist.

B. The job site is unsafe under health and safety standards established by the Occupational Safety and Health Administration and the Minnesota Department of Economic Security.

C. The former AFDC caretaker documents discrimination at the job site on the basis of age, sex, race, religion, or place of national origin.

D. The gross hourly employment earnings are less than the federal or state minimum wage, whichever applies, for that type of employment.

E. The former AFDC caretaker has accepted other employment that provides equal or better income or benefits.

Subp. 4. Reestablishment of AFDC eligibility during transition year period. If a transition year family reestablishes eligibility for AFDC during the transition year period and subsequently meets the conditions in subpart 2, the family qualifies for a new 12-month transition year period. If the family received AFDC for only one or two of the previous six months, but meets the requirements in subpart 2, items A and C to E, the family is entitled to the remaining months of the transition year, treating the month or months on AFDC as a suspension of the child care benefit but not the transition year period. To receive child care assistance while receiving AFDC, the family must meet the AFDC child care requirements under part 3400.0080.

Subp. 5. Breaks during transition year when child care is not needed. If there are breaks during the transition year when child care is not needed, there is a suspension of the child care benefit but not the transition year period.

Subp. 6. Family copayment fee. A transition year family must pay a family copayment fee based on the family's gross income according to the sliding fee program schedule established under part 3400.0100.

Subp. 7. County child care responsibility when a family moves to another county. Except for families with an EDP in effect, a county is responsible for providing child care assistance to a transition year family that moves to another county within Minnesota according to Minnesota Statutes, section 256G.07.

If an EDP is in effect, the county responsible for the EDP must provide child care assistance, if needed and the family remains eligible, through completion of the EDP or two full calendar months, whichever is longer. After completion of the EDP or two full calendar months, whichever is longer, if the family has applied for and is eligible for child care assistance under the transition year program, the family shall receive child care assistance from the new county.

Subp. 8. County denial of transition year child care application. A county shall deny an application for transition year child care when the information submitted by the former AFDC caretaker is insufficient to determine eligibility or if the information indicates ineligibility. When an application is denied, the county must send a notice to the applicant. The notice must state the reason for denial and inform the applicant of the right to appeal under Minnesota Statutes, section 256.045.

Subp. 9. **Continuation of child care pending appeal.** If a transition year family appeals a suspension, reduction, discontinuation, or termination of child care assistance before the effective date of the proposed action, the action shall not be taken until the appeal has had a fair hearing as provided under part 3400.0230, subpart 1. Child care assistance payments made pending a fair hearing are subject to recovery, when, as a result of the hearing, the commissioner finds that the transition year family was not eligible for continued child care assistance. The county shall recoup an overpayment under this subpart as provided in part 3400.0140, subpart 19.

Statutory Authority: *MS s 256H.02; 256H.035; 256H.055*

History: *18 SR 1144; L 1994 c 483 s 1*

3400.0100 FAMILY COPAYMENT FEE SCHEDULE.

Subpart 1. **Non-AFDC family copayment fees.** Non-AFDC families participating in the sliding fee program with an income greater than the federal poverty level must pay a family copayment fee for child care services as provided in subpart 4. Non-AFDC families participating in the sliding fee program with an income less than or equal to the federal poverty level must pay a family copayment fee for child care services as provided in subpart 3.

Subp. 2. **AFDC family copayment fees.** AFDC families participating in the AFDC child care programs shall be governed by AFDC program rules regarding child care costs. Employed AFDC recipients must use their dependent care disregard before using the child care fund except as federal and state waivers allow. The child care fund shall cover the cost of child care for unemployed AFDC recipients in education, training, or preemployment activities up to the maximum amount set under part 3400.0130 without applying a disregard. If the provider's charge for child care is greater than the maximum provider rate allowed under part 3400.0130, AFDC families shall pay, in addition to the dependent care disregard, the difference between the maximum provider rate allowed and the provider charge.

Subp. 3. **Non-AFDC family copayment fee for families with incomes less than or equal to the federal poverty level.** Subject to the maximum provider rate established under part 3400.0130, a family whose income is less than or equal to the federal poverty level for a family of that size shall pay a monthly copayment fee as provided in items A and B.

A. If the family is a transition year family, the monthly family copayment fee is \$1. If federal regulations permit a state to waive a family's contribution, there is no family copayment fee.

B. If the family is not a transition year family, there is no family copayment fee.

If the provider's charge for child care is greater than the maximum provider rate allowed under part 3400.0130, non-AFDC families shall pay, in addition to any monthly copayment fee, the difference between the maximum provider rate allowed and the provider charge.

Subp. 4. **Calculation of non-AFDC family copayment fee.** Except as provided in subpart 3, a non-AFDC family's monthly copayment fee is a fixed percent of its annual gross income. The fixed percent is based on the relationship of the family's annual gross income to 100 percent of state median income for a family of four, adjusted for family size. The fixed percent is set forth in item C.

The monthly family copayment fee for families with annual incomes greater than the federal poverty level is determined as follows:

A. The family's annual gross income is converted into a percentage of state median income for a family of four, adjusted for family size, by dividing the family's annual gross income by 100 percent of the state median income for a family of four, adjusted for family size. The percentage must be carried out to the nearest 100th of a percent.

B. If the family's annual gross income is greater than the federal poverty level for a family of the same size but less than 42.01 percent of the state median income for a family of four, adjusted for family size, the family's monthly copayment fee is 50 percent of the rate under item C, subitem (1), rounded to the nearest whole dollar.

C. If the family's annual gross income is greater than the federal poverty level and between 42.01 and 75.00 percent of the state median income (SMI) for a family of four, adjusted for family size, the monthly copayment fee is the fixed percentage established for that income range in subitems (1) to (58) multiplied by the highest possible income within that income range, divided by 12, and rounded to the nearest whole dollar.

- (1) 42.01 to 43.00 percent of SMI — 2.60%
- (2) 43.01 to 44.00 percent of SMI — 2.80%
- (3) 44.01 to 45.00 percent of SMI — 3.00%
- (4) 45.01 to 46.00 percent of SMI — 3.20%
- (5) 46.01 to 47.00 percent of SMI — 3.40%
- (6) 47.01 to 48.00 percent of SMI — 3.60%
- (7) 48.01 to 49.00 percent of SMI — 3.80%
- (8) 49.01 to 50.00 percent of SMI — 4.00%
- (9) 50.01 to 50.50 percent of SMI — 4.20%
- (10) 50.51 to 51.00 percent of SMI — 4.40%
- (11) 51.01 to 51.50 percent of SMI — 4.60%
- (12) 51.51 to 52.00 percent of SMI — 4.80%
- (13) 52.01 to 52.50 percent of SMI — 5.00%
- (14) 52.51 to 53.00 percent of SMI — 5.20%
- (15) 53.01 to 53.50 percent of SMI — 5.40%
- (16) 53.51 to 54.00 percent of SMI — 5.60%
- (17) 54.01 to 54.50 percent of SMI — 5.80%
- (18) 54.51 to 55.00 percent of SMI — 6.00%
- (19) 55.01 to 55.50 percent of SMI — 6.25%
- (20) 55.51 to 56.00 percent of SMI — 6.50%
- (21) 56.01 to 56.50 percent of SMI — 6.75%
- (22) 56.51 to 57.00 percent of SMI — 7.00%
- (23) 57.01 to 57.50 percent of SMI — 7.25%
- (24) 57.51 to 58.00 percent of SMI — 7.50%
- (25) 58.01 to 58.50 percent of SMI — 7.75%
- (26) 58.51 to 59.00 percent of SMI — 8.00%
- (27) 59.01 to 59.50 percent of SMI — 8.25%
- (28) 59.51 to 60.00 percent of SMI — 8.50%
- (29) 60.01 to 60.50 percent of SMI — 8.75%
- (30) 60.51 to 61.00 percent of SMI — 9.00%
- (31) 61.01 to 61.50 percent of SMI — 9.25%
- (32) 61.51 to 62.00 percent of SMI — 9.50%
- (33) 62.01 to 62.50 percent of SMI — 9.75%
- (34) 62.51 to 63.00 percent of SMI — 10.00%
- (35) 63.01 to 63.50 percent of SMI — 10.30%
- (36) 63.51 to 64.00 percent of SMI — 10.60%
- (37) 64.01 to 64.50 percent of SMI — 10.90%
- (38) 64.51 to 65.00 percent of SMI — 11.20%
- (39) 65.01 to 65.50 percent of SMI — 11.50%
- (40) 65.51 to 66.00 percent of SMI — 11.80%
- (41) 66.01 to 66.50 percent of SMI — 12.10%
- (42) 66.51 to 67.00 percent of SMI — 12.40%
- (43) 67.01 to 67.50 percent of SMI — 12.70%
- (44) 67.51 to 68.00 percent of SMI — 13.00%
- (45) 68.01 to 68.50 percent of SMI — 13.30%
- (46) 68.51 to 69.00 percent of SMI — 13.60%
- (47) 69.01 to 69.50 percent of SMI — 13.90%
- (48) 69.51 to 70.00 percent of SMI — 14.20%
- (49) 70.01 to 70.50 percent of SMI — 14.50%

- (50) 70.51 to 71.00 percent of SMI — 14.80%
- (51) 71.01 to 71.50 percent of SMI — 15.10%
- (52) 71.51 to 72.00 percent of SMI — 15.40%
- (53) 72.01 to 72.50 percent of SMI — 15.70%
- (54) 72.51 to 73.00 percent of SMI — 16.00%
- (55) 73.01 to 73.50 percent of SMI — 16.30%
- (56) 73.51 to 74.00 percent of SMI — 16.60%
- (57) 74.01 to 74.50 percent of SMI — 16.90%
- (58) 74.51 to 75.00 percent of SMI — 17.20%

D. If the provider's charge for child care is greater than the maximum provider rate allowed under part 3400.0130, families shall pay, in addition to the family copayment fee, the difference between the maximum provider rate and the provider charge. If the remaining monthly provider charge is less than \$20 per month upon payment of the family copayment fee, the family shall pay the remainder of the provider charge.

E. During the start-up month, the county shall prorate the copayment fee based on the number of calendar days remaining in the month.

Subp. 5. **Publication of state median income and fee schedule in State Register.** The department shall publish in the State Register the state median income for a family of four, adjusted for family size, and a fee schedule based on the formula in subpart 4, item C, within 120 days from the date the state median income is published in the Federal Register by the Department of Health and Human Services. Once published in the State Register, the department shall distribute a copy of the fee schedule and the updated estimate of state median income to each county. The updated fee schedule shall be used by the county to determine the family copayment fee for new applications and at a participating family's next redetermination beginning on the first day of the state fiscal year or, if published after July 1, the first day of the first full quarter that follows publication of the state median income in the State Register.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0110 CHILD CARE ASSISTANCE PAYMENTS.

Subpart 1. **Payment options.** The county may make child care payments to the child care provider or directly to an eligible family to reimburse the family for child care expenditures. If the county makes child care payments directly to an eligible family, it shall establish appropriate documentation procedures to ensure that funds are used for child care.

Subp. 2. **Registration of legal nonlicensed caregivers.** Before a county makes a child care payment to a legal nonlicensed caregiver, the legal nonlicensed caregiver must be registered with the county. After the registration requirement for a legal nonlicensed caregiver is satisfied, payment shall be made retroactive to the beginning date of authorized child care for employment, education, or training; the date the child care application was signed; or the date the family began using the legal nonlicensed caregiver, whichever is later.

Subp. 3. **County authorization of child care.** A county may authorize child care on an hourly, half-day, full-day, or weekly basis. Combinations of hourly, half-day, or full-day child care may be paid when 11 hours or more of child care are authorized in a 24-hour period. If a family selects a child care provider who charges for child care on a basis greater than the amount of child care authorized by a county, the family is responsible for the cost of child care that exceeds the amount authorized by the county.

Subp. 4. **Maximum child care payments.** Child care assistance payments under the child care fund may not exceed the 75th percentile rate for like care arrangements in the county. Payment for child care rates that exceed the 75th percentile is the responsibility of the family. When a provider's rate is less than the 75th percentile, the county shall pay the provider's rate.

Subp. 5. **Standard for converting authorized care into hours used.** Under part 3400.0040, subpart 7, a family may not receive more than 60 hours of child care assistance per child per week. For the purpose of converting child care authorized on a half-day, full-day, or weekly basis into hours, the counties shall use the standards in items A to C.

A. When a county authorizes child care on a half-day basis, a half day is equal to five hours of child care.

B. When a county authorizes child care on a full-day basis, a full day is equal to ten hours of child care.

C. When a county authorizes child care on a weekly basis, a week is equal to 50 hours of child care.

Subp. 6. **Notification of vendor payment procedures.** If the method of payment is vendor payment, the county shall inform both the family and child care provider of the payment amount and how and when payment shall be received. When a county sends a family a notice that child care assistance will be terminated, the county shall inform the vendor that unless the family requests to continue to receive assistance pending an appeal, child care payments will no longer be made. The notice to a vendor shall not contain any private data on the family or information on why payments will no longer be made.

Subp. 7. **County payment schedule.** The county shall make payments at least monthly.

Subp. 8. **Sick child care.** Sick child care means child care services provided to children who as a result of illness cannot attend the family's regular provider. In addition to making payments for regular child care, the county may make payments for sick child care. If the county chooses to pay sick child care, payment for sick child care shall be at a rate comparable to like care arrangements in the county. The county's sick child care policy and rate shall be included in the county's biennial allocation plan required under part 3400.0150.

Subp. 9. **Payment during child absences.** Under Minnesota Statutes, section 119B.02, counties are authorized to establish policies for payment of child care spaces for absent children when the payment is required by the child's regular provider. If the county establishes policies for the payment of child care spaces for absent children, the county shall set limits and pay for the absences according to the prevailing market practice in the county. County policies for payment of absences shall be included in the county's allocation plan required under part 3400.0150. Provider charges for absent days in excess of the amount established by the county are the responsibility of the family receiving child care assistance.

Subp. 10. **Payment during medical leaves of absence.** Counties may establish policies for child care assistance during a parent's medical leave of absence from education or employment if the parent is incapable of providing child care during the medical leave of absence. Child care assistance provided under this subpart shall only be granted if:

A. the parent is expected to return to the parent's current employment or education or training program within 90 calendar days;

B. the necessity of the medical leave and the inability to provide child care is documented by a physician; and

C. the amount of child care during the leave of absence does not exceed the equivalent of one month of full-time child care.

The county's policy on medical leaves of absence shall be included in the allocation plan required under part 3400.0150.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0120 ELIGIBLE PROVIDERS AND PROVIDER REQUIREMENTS.

Subpart 1. **Eligible providers.** Providers eligible for payments under the child care fund are providers as defined in Minnesota Statutes, section 119B.01, subdivision 13. Parents may choose child care providers that best meet the needs of their family subject to the limitation in Minnesota Statutes, section 119B.09, subdivision 5.

Subp. 2. **Registration before payment.** A legal nonlicensed caregiver must be registered with the county before the caregiver may receive a provider payment under the child care fund.

Subp. 3. **Parental access to children in care.** Providers must permit parents unlimited access to their children and to the provider caring for their children during normal hours of provider operation and when the children are in the care of the provider.

Subp. 4. **Complaints, record, and disclosure.** Legal nonlicensed caregivers must permit counties to maintain a record of substantiated parental complaints concerning the health

and safety of children in the legal nonlicensed caregiver's care and to allow the disclosure to the public on request of that information subject to Minnesota Statutes, chapter 13. Information governing maltreatment of minors shall be maintained and disclosed according to Minnesota Statutes, section 626.556.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0130 CHILD CARE PROVIDER RATES.

Subpart 1. Rate determination. Not less than once every two years, the commissioner shall determine the 75th percentile provider rate for infants, toddlers, preschool children, and school age children in day care centers and family day care homes in each county. The rates surveyed shall include a survey of registration fees when it is usual and customary for a category of provider to charge registration fees. When the sample size for determining provider rates is too small to provide a valid statistical sample, the commissioner may establish child care provider rates based on like care arrangements in similar areas.

Subp. 2. Rate determination for registered legal nonlicensed caregivers. Beginning in 1994 and every two years thereafter, the counties shall conduct a survey of registered nonlicensed caregivers to determine the 75th percentile rate for infants, toddlers, preschool, and school age children. The survey shall be conducted in a manner prescribed by the commissioner.

Subp. 3. Rate determination; handicapped or special needs. The county shall set the maximum child care rate for a provider providing child care to a handicapped or special needs child based on like care arrangements in the county. When four or more providers offer child care for children with a handicap or special needs, the county shall identify the 75th percentile rate. A rate established under this subpart must be included in the child care allocation plan.

Subp. 4. Payment rate differential, same category. The differential between maximum payment rates for child care assistance in the same category of care may not exceed ten percent.

Subp. 5. Child care rate, provider's county of residence. Child care payments shall be based on the allowable rates in the provider's county of residence when the provider resides in Minnesota.

Subp. 6. Provider rates under child care fund. Providers may not charge families receiving assistance under Minnesota Statutes, chapter 119B, a provider rate that is higher than the private, full-paying client rate.

Subp. 7. Payment of registration fees. If a licensed provider or license-exempt center charges families a registration fee to enroll children in the program and the registration fee is not included in the provider rate, the county shall pay the provider registration fee or the 75th percentile of the registration fees surveyed in subpart 1, whichever is less. The county may not pay for more than two registrations per child in a 12-month period. Registration fees greater than the standard set forth in this subpart are the responsibility of the family.

Subp. 8. Payment of activity fees. If, in addition to a provider's base rate, a provider charges optional activity fees, the family is responsible for payment of the optional activity fees. If the provider's activity fees are not optional, the activity fees shall be incorporated into the base rate and the provider may be paid up to the 75th percentile provider rate from the child care fund. When the combined base rate and the activity fees exceed the 75th percentile provider rate for like care arrangements, the family is responsible for the amount in excess of the 75th percentile provider rate.

Subp. 9. Maximum county child care assistance rate. Counties shall pay the provider's rate to cover all authorized hours of child care up to the maximum of 60 hours per child per week. The maximum rate that a county shall pay for child care assistance is the provider rate or the 75th percentile rate determined by the commissioner under subpart 1, whichever is less.

Subp. 10. Maximum state participation. The state payment is limited to the difference between the family copayment fee and the provider's rate up to a maximum of the 75th percentile rate determined by the department for like care arrangements in the county. When

the provider's rate for each child in care is more than the 75th percentile rate for like care arrangements in the county, the state's payment is limited to the difference between the 75th percentile rate for like care arrangements in the county and the family's copayment fee.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0140 COUNTY RESPONSIBILITIES.

Subpart 1. County child care assistance policies and procedures. Counties shall adopt policies and procedures for providing child care assistance to enable eligible applicants to seek or retain employment or to participate in education or training programs. All county policies that apply to child care assistance must be in writing and must be included in the county's biennial allocation plan required under part 3400.0150.

Subp. 2. Child care assistance information. The county shall provide information on child care assistance to child care service providers, social service agencies, and the local news media as it deems necessary to ensure the full use of its child care fund allocation. The county shall inform individuals who inquire about child care of the availability of child care assistance and child care resource and referral services.

Subp. 3. County termination of application approval for failure to select a provider. A county may terminate approval of the child care assistance application for a family that fails to select a provider within 30 calendar days from the date the application is approved. The county must provide notice to a family under subpart 20 when terminating approval of the child care assistance application.

Subp. 4. Determination of providers eligible for payments. The county's process for approving providers eligible for payments under the child care fund may not exceed 30 calendar days, or 45 calendar days with the approval of the applicant, from the date the child care application is approved or the date the child care provider is selected by the applicant, whichever is later. Reimbursement for child care expenses must begin retroactive to the date of the signed application for eligible services, the beginning date of participation in an authorized education or employment activity, or the date the applicant selected the eligible provider, whichever is later. If the county determines that a provider chosen by an applicant is not eligible to receive child care payments under the child care fund, the applicant may appeal the county's determination under part 3400.0230.

Subp. 5. Registration of legal nonlicensed caregivers. Before the county issues a provider payment to a legal nonlicensed caregiver, the caregiver must be registered with the county. To be registered with the county, the provider is required to supply the county with the provider's name, social security number, age, and address of the caregiver, the provider rate, and a release to permit information on substantiated parental complaints concerning the health and safety of children in their care to be disclosed to the public subject to Minnesota Statutes, chapter 13. In addition to other registration requirements, legal nonlicensed caregivers must comply with state and local health ordinances and building and fire codes applicable to the premise where child care is provided. The county shall provide each registered caregiver health and safety material supplied by the department and shall refer the registered caregiver to the child care resources and referral agency. A county shall not authorize the payment of child care assistance to a legal nonlicensed caregiver who is not registered.

Subp. 6. Parental complaints against legal nonlicensed caregivers. Within 24 hours of receiving a parental complaint concerning the health or safety of children under the care of a legal nonlicensed caregiver, a county must relay the complaint to:

A. the county's child protection agency if the parental complaint alleges child maltreatment as defined in Minnesota Statutes, section 626.556, subdivision 10e;

B. the county's public health agency if the parental complaint alleges a danger to public health due to communicable disease, unsafe water supply, sewage or waste disposal, or building structures;

C. local law enforcement if the parental complaint alleges criminal activity that may endanger the health or safety of children under care; or

D. other agencies with jurisdiction to investigate complaints relating to the health and safety of a child.

If a complaint is substantiated under item A, the county must keep a record of the substantiated complaint as provided in Minnesota Statutes, section 626.556. If a complaint is substantiated under items B to D, the county must keep a record of the substantiated complaint for three years. Upon request, information governing substantiated complaints shall be released to the public as authorized under Minnesota Statutes, chapter 13. Upon receiving notice of a substantiated complaint under items A to D, the county shall not make subsequent payments to that provider from the child care fund.

Subp. 7. **County contracts and designation of administering agency.** Counties may contract for the administration of the child care fund or may arrange for child care funds to be used by other designated programs. The county shall designate the agency authorized to administer the child care fund.

Subp. 8. **Agreement with employment and training service providers.** The county shall develop cooperative agreements with employment and training service providers to coordinate child care funding with employment, training, and education programs for all AFDC Project STRIDE caretakers. The cooperative agreement shall specify that AFDC caretakers eligible for Project STRIDE who are receiving employment, training, and education services under an EDP shall be guaranteed child care assistance from the county responsible for the AFDC caretaker's EDP.

Subp. 9. **Local match.** The county shall provide a local match equal to 15 percent of the basic sliding fee program allocation during the grant year. The local match may include in kind materials and services furnished by the county and required for the administration of the program. The local match may not include the family copayment fee.

Subp. 10. **Eligibility priorities for beginning assistance.** If a county's basic sliding fee program allocation for child care is insufficient to fund all applications for child care assistance, the county shall prioritize eligibility among the groups that remain to be served after the county has complied with the priority requirements set forth in Minnesota Statutes, section 119B.03, subdivision 4. The county shall include its rationale for the prioritization of eligibility for beginning assistance in its biennial allocation plan. To the extent of available allocations, no eligible family may be excluded from receiving child care assistance.

Subp. 11. **Funding waiting list for basic sliding fee.** If it appears that a family is or will be eligible for child care assistance and funds are not immediately available, the county shall place the family on a basic sliding fee waiting list. Families on the waiting list shall be moved into the basic sliding fee program as funding permits based on the county priorities adopted under subpart 10. Transition year child care families must be put on the basic sliding fee program waiting list as provided in part 3400.0060, subpart 7.

Subp. 12. **Waiting list, non-STRIDE AFDC caretakers.** Counties must keep a written list of AFDC caretakers not eligible for Project STRIDE who request ACCESS child care assistance.

Subp. 13. **Intermittent assistance.** For no more than 90 days for employed recipients and one academic quarter for recipients in an education or training program, the county may reserve a family's position under the child care fund if the family has been receiving or is approved to receive child care assistance but is temporarily ineligible for assistance due to income, education, or family status. The county's policy for reserving the position of families temporarily ineligible for child care assistance must be in writing and must be included in the biennial allocation plan required in part 3400.0150. If there are temporary breaks during the year when child care is not needed but the family remains eligible for child care assistance, there is a suspension of the child care benefit but not child care eligibility.

Subp. 14. **Child care fund reports.** The county shall complete a child care fund program fiscal report each quarter on forms approved by the commissioner. The county must submit the child care fund program report to the commissioner no later than 20 calendar days following the end of a quarter.

Subp. 15. **Just cause for terminating child care assistance.** Items A to C constitute just cause for terminating child care assistance.

A. The failure of a recipient to:

(1) select a provider within the time limit under part 3400.0040, subpart 6;

(2) provide the administering agency required information or documentation;

(3) report changes required under part 3400.0040, subpart 4; or

(4) pay the provider charge if the state share of the child care assistance is paid directly to the family or to pay the family copayment fee if the state share of the child care assistance is vendor paid.

B. The recipient wrongfully obtains child care assistance due to fraud.

C. A county may terminate child care assistance if the county's child care allocation is insufficient to fund the child care needs of families currently receiving child care assistance. When available child care funds are insufficient to permit continued child care assistance to all families currently receiving assistance, the county may terminate assistance to families in the order of last on, first off. The county must consult with the commissioner before terminating assistance under this item. When funds become available, counties must reinstate families that remain eligible for child care assistance and whose child care assistance was terminated due to insufficient funds before the county accepts new applications. Those families whose child care assistance was most recently terminated due to insufficient funds shall be reinstated first.

Subp. 16. Notice of termination of child care assistance to recipients. The county shall notify a recipient, in writing, of termination of child care assistance. The notice shall state the reason or reasons the assistance is being terminated. The notice shall inform the recipient of the right to appeal the adverse action and the procedure for doing so. The notice shall inform the recipient that if the recipient appeals the proposed action before the effective date of termination, the action shall not be taken until the appeal has had a fair hearing and that benefits paid during the appeal process will be subject to recovery if the termination is upheld. Except for cases of suspected fraud, the notice must be mailed to the recipient's last known address at least 15 calendar days before terminating assistance. In cases of suspected fraud, the termination notice must be mailed at least five working days before the effective date of the termination.

Subp. 17. Notice of termination of child care assistance to vendors. If the child care assistance is made by vendor payment, the county shall inform the child care provider that unless the family requests to continue to receive assistance pending an appeal, child care payments will no longer be made. The notice to a vendor shall not contain any private data on the family or information on why payments will no longer be made.

Subp. 18. Child care payments when termination is appealed. If the recipient appeals the proposed action before the effective date of termination, the action shall not be taken until the appeal has had a fair hearing as provided under part 3400.0230, subpart 1. Child care assistance paid pending a fair hearing is subject to recovery to the extent that the commissioner finds on appeal that the recipient was not eligible for the amount of child care assistance paid. The county shall seek voluntary repayment or initiate civil court proceedings to recover child care assistance payments under this subpart. A recipient may appeal the termination of child care assistance and choose not to receive child care assistance pending the appeal. If the commissioner finds on appeal that child care assistance should not have been terminated, the county shall reimburse the recipient for documented child care payments made pending the appeal.

Subp. 19. Recoupment of overpayments. When a county discovers that a family has received an overpayment for one or more months, the county shall recoup the overpayment even when the overpayment is due to agency error or to other circumstances outside the responsibility or control of the family. The county shall recoup overpayments that occurred up to 12 months before the month the overpayment is discovered according to items A to C. A county may pursue recovery of an overpayment that extends beyond the 12-month period through means of collection other than recoupment.

A. The county shall notify the family of the overpayment in writing. A notice of overpayment must specify the reason for the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and the family's right to appeal the county's recoupment of the overpayment.

B. The county shall redetermine the family's eligibility for child care assistance. If the family remains eligible for child care assistance, the county shall recoup the overpayment under subitem (1), (2), or (3).

(1) Except as provided in subitem (3), when the family's income is less than or equal to the federal poverty level, the county shall reduce child care assistance by \$20 per month until the debt is retired.

(2) Except as provided in subitem (3), if a family's income is greater than the federal poverty level the county shall reduce monthly child care assistance by the larger of eight percent of the overpayment or \$20, not to exceed two times the family copayment fee under part 3400.0100, subpart 4, until the debt is retired.

(3) A county shall reduce child care assistance by an amount equal to 16 percent of the overpayment until the debt is retired when an overpayment is due to a family's failure to provide accurate information on household status, income, or employment or education status; a family's failure to report a change under part 3400.0040, subpart 4, on two or more occasions and the failure to report caused the overpayment; or the amount of the overpayment is greater than \$1,000.

C. If the family no longer remains eligible for child care assistance, the county may choose to initiate efforts to recover overpayments from the family for overpayment less than \$50. When the amount of the overpayment is greater than or equal to \$50, the county shall seek voluntary repayment of the overpayment from the family. If the county is unable to recoup the overpayment through voluntary repayment, the county shall initiate civil court proceedings to recover the overpayment unless the county's costs to recover the overpayment will exceed the amount of the overpayment. A family with an outstanding debt under this item is not eligible for child care assistance until the debt is paid in full or satisfactory arrangements are made with the county to retire the debt.

Subp. 20. **Notice to recipients of adverse actions.** In addition to providing recipients notice of termination under subpart 16, the county must give recipients notice of any adverse actions affecting the recipient. Actions requiring notice include:

- A. termination of an application for failure to select a provider;
- B. a reduction in hours of service;
- C. an increase in copayment;
- D. a denial of an education plan;
- E. an adverse determination of provider eligibility; and
- F. county intent to recoup an overpayment.

The notice shall describe the action and the reason the action is being taken. The notice shall be in writing and shall inform the recipient of the effective date of the change, the right to appeal any adverse action, and the procedure for doing so.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0150 CHILD CARE FUND ALLOCATION PLAN.

Subpart 1. **Submittal of plan.** By the date established by the commissioner, the county shall submit to the commissioner a biennial child care fund allocation plan. The commissioner may require updates of information in the allocation plan as necessary to comply with parts 3400.0010 to 3400.0230, Minnesota Statutes, sections 119B.01 to 119B.16, and federal law.

Subp. 2. **Plan content.** The allocation plan shall contain:

A. a narrative of the county's total program for child care services for job search, employment, and education or training purposes, including the amount and sources of all other funds used to provide child care services;

B. information regarding the number of families that requested child care assistance in the year immediately preceding the period covered by the allocation plan, the number of eligible families the county is able to serve in each program, the county's procedure for prioritizing child care assistance, and the number of families on a waiting list for child care assistance;

C. methods the county uses to inform families of the availability of child care assistance and copies of county policies regarding child care services;

D. information, as requested, on provider rates paid by provider type;

E. the county's policy for approving and extending child care assistance for parents whose education programs change;

F. the county's policy for providing child care assistance to families needing intermittent child care assistance under part 3400.0140, subpart 11;

G. a statement that the county has not reduced child care funding as required under Minnesota Statutes, section 119B.11, subdivision 4;

H. copies of all subcontracts governing program administration if the administering agency is not the county;

I. the county's eligibility priority for ACCESS child care; and

J. other information, as requested by the commissioner, that describes the county's policies and procedures used to administer the child care fund.

Subp. 3. **Plan approval and amendments.** The commissioner shall inform each county of the approval of its allocation plan within 60 calendar days after the submission deadline. If the plan is not approved, the commissioner shall inform the county why the plan was not approved. No child fund allocations shall be made to a county until it has an approved allocation plan. The county may request approval to amend its child care allocation plan at any time. If approved by the commissioner, the amendment is effective on the date requested by the county unless a different effective date is set by the commissioner. Plan amendments must be approved or disapproved by the commissioner within 60 days after receipt of the amendment request.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0160 DUTIES OF ADMINISTERING AGENCY.

Subpart 1. **Child care assistance information.** The administering agency shall provide families with information supplied by the department regarding the availability of federal and state child care tax credits and federal earned income tax credits. At the time of the request for child care assistance, the administering agency shall inform the family of the following:

A. eligibility requirements under the child care fund and documentation necessary to confirm eligibility;

B. the existence of a child care assistance waiting list and the number of families on the waiting list;

C. the procedure for applying for child care assistance;

D. the family copayment fee schedule and how the fee is computed; and

E. the family's rights and responsibilities when choosing a provider.

Subp. 2. **Application procedure.** An administering agency must follow the application procedures in items A to D.

A. If it appears that a family is eligible for child care assistance and funds are available or if a family requests an application, the administering agency shall mail or hand the family a child care assistance application.

B. If a family requests child care assistance and funds are not available, the administering agency shall inform the family of a waiting list, screen the family for potential eligibility, and place the family on the waiting list if they appear eligible.

C. If child care funds become available, the administering agency shall inform the family at the head of the waiting list and ask the family to complete an application. The administering agency shall accept signed and dated applications that are submitted by mail or delivered to the agency within 15 calendar days after the date of signature. The administering agency shall mail a notice of approval or denial of assistance to the applicant within 30 calendar days after receiving the application. With the consent of the applicant, the administering agency may extend the response time by 15 calendar days.

D. The administering agency shall document the reason or reasons for denying an application for child care assistance, shall inform the applicant of the reason for denial, and shall inform the applicant of the right to a fair hearing under part 3400.0230.

Subp. 3. **Date of eligibility for assistance.** The date of eligibility for child care assistance under parts 3400.0060 and 3400.0080 is the later of the date the application was signed; the beginning date of employment, education, or training; or the date a determination has been made that the applicant is a participant in employment and training programs under part 3400.0080, subpart 2, or Minnesota Statutes, section 256.736. The date of eligibility for child care assistance under part 3400.0090 is the date the family ceased to be eligible for AFDC as a result of increased hours of employment, increased income from employment, or the loss of disregards due to time limitations. Upon approval of the application for assistance under part 3400.0090, child care assistance shall be made retroactive to the date the family ceased to be eligible for AFDC if all other provisions of parts 3400.0010 to 3400.0230 are met.

The notice of approval of the application must state the following:

- A. the beginning date of eligibility;
- B. that any change in income, address, family size, marital status, provider, or employment, education, or training status must be reported within ten calendar days from the date the change occurs; and
- C. that, if child care assistance is terminated, the recipient will be informed of the reason for the termination and providers who receive vendor payments will be informed that, unless the family requests to continue to receive assistance pending an appeal, child care payments will no longer be made.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0170 DETERMINATION OF INCOME ELIGIBILITY FOR CHILD CARE ASSISTANCE.

Subpart 1. **Proof of income eligibility.** An applicant requesting child care assistance must provide proof of income eligibility. For the purpose of determining income eligibility, annual income is the income of the family for the current month multiplied by 12, the income for the 12-month period immediately preceding the date of application, or the income for the time period that provides the most accurate assessment of annual income available to the family. The administering agency must use the method that provides the most accurate assessment of annual income currently available to the family. Income must be verified with documentary evidence. If the applicant does not have sufficient evidence of income, verification must be obtained from the source of income.

Subp. 2. **Evaluation of income of AFDC families.** The administering agency shall determine the income of AFDC families based on AFDC requirements under parts 9500.2000 to 9500.2880.

Subp. 3. **Evaluation of income of non-AFDC families.** The administering agency shall determine income received or available to a non-AFDC family according to subparts 4 to 13. All income, unless specifically excluded in subpart 6, must be counted as income.

Subp. 4. **Determination of annual gross income.** The income standard for determining eligibility for child care assistance is annual gross income. Annual gross income is the sum of gross earned income, self-employment income, unearned income, and lump sum payments. Gross earned income, self-employment income, unearned income, and lump sum payments must be calculated separately.

Subp. 5. **Gross earned income of wage and salary employees.** Gross earned income means earned income from employment before mandatory and voluntary payroll deductions. Gross earned income includes, but is not limited to, salaries, wages, tips, gratuities, commissions, incentive payments from work or training programs, payments made by an employer for regularly accrued vacation or sick leave, and profits from other activity earned by an individual's effort or labor. Gross earned income includes uniform and meal allowances if federal income tax is deducted from the allowance. Gross earned income includes flexible work benefits received from an employer if the employee has the option of receiving the benefit or benefits in cash. Gross earned income received by persons employed on a contractual basis must be prorated over the period covered by the contract even when payments are received over a lesser period of time. When housing is provided as part of the total work compensation, the fair market value of such housing shall be considered as if it were paid in cash.

Subp. 6. Excluded income. The administering agency shall exclude items A to G from annual gross income:

A. scholarships, work-study income, and grants that cover costs for tuition, fees, books, and educational supplies;

B. student loans for tuition, fees, books, supplies, and living expenses;

C. earned income tax credits, in-kind noncash public assistance income such as food stamps, energy assistance, child care assistance, medical assistance, and housing subsidies;

D. income from summer or part-time employment of 16, 17, and 18-year-old full-time secondary school students;

E. grant awards under the family subsidy program;

F. nonrecurring lump sum income that is earmarked and used for the purpose for which it is paid; and

G. child or spouse support paid to a person or persons who live outside of the household.

Subp. 7. Earned income from self-employment. In determining annual gross income for purposes of eligibility under this part, the administering agency shall determine earned income from self-employment. Earned income from self-employment is the difference between gross receipts and authorized self-employment expenses which may not include expenses under subpart 8. Self-employment business accounts must be kept separate from the family's personal checking and savings accounts. If the person's business is a partnership or a corporation and that person is drawing a salary, the salary shall be treated as gross earned income under subpart 5.

Subp. 8. Self-employment deductions which are not allowed. In determining eligibility under this part, self-employment expenses must be subtracted from gross receipts. However, the expenses listed in items A to M shall not be subtracted from gross receipts:

A. purchases of capital assets;

B. payments on the principal of loans for capital assets;

C. depreciation;

D. amortization;

E. the wholesale costs of items purchased, processed, or manufactured that are unsold inventory with a deduction for the costs of those items allowed at the time they are sold;

F. transportation costs that exceed the amount allowed for use of a personal car in the United States Internal Revenue Code;

G. the cost of transportation between the individual's home and his or her place of employment;

H. salaries and other employment deductions made for members of a family for whom an employer is legally responsible, provided family income is only counted once;

I. monthly expenses greater than \$71 for each roomer;

J. monthly expenses greater than \$86 for each boarder;

K. monthly expenses greater than \$157 for each roomer-boarder;

L. annual expenses greater than \$103 or two percent of the estimated market value on a county tax assessment form, whichever is greater, as a deduction for upkeep and repair against rental income; and

M. expenses not allowed by the United States Internal Revenue Code for self-employment income.

Subp. 9. Self-employment budget period. Gross receipts from self-employment must be budgeted in the month in which they are received. Expenses must be budgeted against gross receipts in the month the expenses are paid except for items A to C.

A. The purchase cost of inventory items, including materials that are processed or manufactured, must be deducted as an expense at the time payment is received for the sale of those inventory items, processed materials, or manufactured items, regardless of when those costs are incurred or paid.

B. Expenses to cover employee FICA, employee tax withholding, sales tax withholding, employee worker's compensation, employee unemployment compensation, busi-

ness insurance, property rental, property taxes, and other costs that are commonly paid at least annually, but less often than monthly, must be prorated forward as deductions from gross receipts over the period they are intended to cover, beginning with the month in which the payment for these items is made.

C. Gross receipts from self-employment may be prorated forward to equal the period of time over which the expenses were incurred. However, gross receipts must not be prorated over a period that exceeds 12 months. This provision applies only when gross receipts are not received monthly but expenses are incurred on an ongoing monthly basis.

Subp. 10. **Determination of farm income.** Farm income must be determined for a one-year period. Farm income is gross receipts minus operating expenses, except for expenses listed in subpart 8. Gross receipts include sales, rents, subsidies, soil conservation payments, production derived from livestock, and income from the sale of home-produced foods.

Subp. 11. **Determination of rental income.** Income from rental property is considered self-employment earnings when the owner spends an average of 20 or more hours per week on maintenance or management of the property. The administering agency shall deduct an amount for upkeep and repairs according to subpart 8, item L, for real estate taxes, insurance, utilities, and interest on principal payments. When a family lives on the rental property, the administering agency shall divide the expenses for upkeep, taxes, insurance, utilities, and interest by the number of units to determine the expense per unit. The administering agency shall deduct expenses from rental income only for the number of units rented, not for units occupied by family members. When an owner does not spend an average of 20 or more hours per week on maintenance or management of the property, income from rental property is considered unearned income. The deductions described in this subpart are subtracted from gross rental receipts.

Subp. 12. **Determination of unearned income.** Unearned income includes, but is not limited to, interest, dividends, unemployment compensation, disability insurance payments, veteran benefits, pension payments, child support and spousal support received or anticipated to be received by a family, insurance payments or settlements, and severance payments. Expenditures necessary to secure payment of unearned income are deducted from unearned income. Payments for illness or disability, except for those payments described as earned income in subpart 5, are considered unearned income whether the premium payments are made wholly or in part by an employer or by a recipient.

Subp. 13. **Treatment of lump sum payments.** Lump sum payments received by a family must be considered earned income under subparts 7 to 11 or unearned income according to subpart 12.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0180 REDETERMINATION OF ELIGIBILITY.

The county shall redetermine a family's eligibility for child care assistance and the family's copayment fee when notified by the family of a change in the information required to be reported in part 3400.0040, subpart 4, or at least every six months, whichever occurs first.

A redetermination of eligibility shall not be treated as a new application for child care assistance. If, as a result of redetermination of eligibility, a family is found to be ineligible for further child care assistance, the county shall terminate the child care assistance as provided in part 9565.5110, subpart 10.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0190 QUARTERLY FINANCIAL AND PROGRAM ACTIVITY REPORTS.

Counties shall submit, in the manner prescribed by the commissioner, a quarterly financial and program activity report. The report is due within 20 calendar days after the end of each quarter. The financial and program activity report must include:

A. a detailed accounting of the expenditures and revenues for the child care fund during the preceding quarter by funding source and eligibility group;

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B. a description of child care activities and expenditures that are reimbursable under state and federal reimbursement programs; and

C. other information concerning financial or program activity as requested by the department.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*

3400.0200 QUARTERLY PAYMENTS.

The commissioner shall make payments to the counties in quarterly installments. The commissioner may certify an advance to the counties for the first quarter of the fiscal year. Payments made to the counties after the first quarter shall be based on actual expenditures as reported by the counties in the quarterly financial and program activity report required under part 3400.0190.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519*

3400.0210 NOTICE OF NONCOMPLIANCE; FUNDING SANCTIONS.

If the commissioner finds that a county is not complying with parts 3400.0010 to 3400.0230, the procedures in items A to F apply.

A. The commissioner shall notify the county, by certified mail, of the rule part that the county has not complied with.

B. Within 30 days after receiving the notice, the county must demonstrate to the commissioner that it is in compliance with the rule or must develop a correction plan to address the noncompliance. If the county can demonstrate compliance, the commissioner shall not take any further action.

C. If the county submits a correction plan, the commissioner shall approve or disapprove the correction plan within 30 days after the date that it is received. If the commissioner approves the correction plan submitted by the county, the county shall have 90 days after the date of approval to implement the correction plan.

D. If the county fails to demonstrate compliance or fails to implement the correction plan approved by the commissioner, the commissioner may withhold the county's child care fund allocations until the county is in compliance with the statute or rule.

E. Funds withheld from a county under this part may be reallocated to other counties based on the formula in Minnesota Statutes, section 256H.03, subdivision 2.

F. Counties may appeal the sanction in accordance with Minnesota Statutes, chapter 14, for contested cases.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519*

3400.0220 AUDIT EXCEPTIONS.

The commissioner shall recover from counties state or federal money spent for child care that is ineligible under parts 3400.0010 to 3400.0230. If a federal audit exception is taken based on a percentage of federal earnings, all counties shall pay a share proportional to their respective federal earnings during the period in question.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519*

3400.0230 FAIR HEARING PROCESS.

Subpart 1. **Hearing request.** An applicant or recipient of child care assistance adversely affected by an administering agency's action may request a fair hearing according to Minnesota Statutes, section 256.045, subdivision 3.

Subp. 2. **Informal conference.** The administering agency shall offer an informal conference to applicants or recipients adversely affected by an agency action to attempt to resolve the dispute. The administering agency shall advise adversely affected applicants and

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recipients that a request for a conference with the agency is optional and does not delay or replace the right to a fair hearing under subpart 1.

Statutory Authority: *MS s 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144*