

CHAPTER 3400
DEPARTMENT OF EDUCATION
CHILD CARE FUND

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3400.0010 PURPOSE AND APPLICABILITY.

Subpart 1. **Purpose.** The purpose of this chapter is to govern the administration of the child care fund, 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, and to provide eligible families with the financial resources to find and afford quality child care for their children. This chapter sets eligibility standards for recipients and administrative requirements for agencies administering child care funds.

Subp. 2. **Applicability.** This chapter applies to all county and human service boards providing child care assistance to eligible families under Minnesota Statutes, sections 119B.011 to 119B.16.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; L 1999 c 205 art 5 s 21; 26 SR 253*

3400.0020 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 3400.0010 to 3400.0230, the terms defined in Minnesota Statutes, section 119B.011, have the meanings given them in that section, and the following terms have the meanings given them in this part.

Subp. 2. [Repealed, 26 SR 253]

Subp. 3. [Repealed, 26 SR 253]

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 direct services 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. [Repealed, 26 SR 253]

Subp. 7. [Repealed, 26 SR 253]

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 an allocation period. A county’s allocation may be raised or lowered during the allocation period when the commissioner redistributes unexpended or unencumbered allocations or when additional funds become available.

Subp. 9. [Repealed, 26 SR 253]

Subp. 9a. **At-risk.** “At-risk” means environmental or familial factors that create barriers to a child’s optimal achievement. Factors include, but are not limited to, a federal or state disaster, limited English proficiency in a family, a history of abuse or neglect, a determination that the children are at risk of abuse or neglect, family violence, homelessness, age of the mother, level of maternal education, mental illness, developmental disability, or parental chemical dependency or history of other substance abuse.

Subp. 10. [Repealed, 26 SR 253]

Subp. 11. [Repealed, 26 SR 253]

Subp. 12. **Child care assistance.** “Child care assistance” means financial assistance for child care that is funded under Minnesota Statutes, sections 119B.011 to 119B.16.

Subp. 13. [Repealed, 26 SR 253]

Subp. 14. [Repealed, 26 SR 253]

Subp. 15. [Repealed, 26 SR 253]

Subp. 16. [Repealed, 26 SR 253]

Subp. 17. [Repealed, 26 SR 253]

Subp. 17a. **Disability.** “Disability” means a functional limitation or health condition that interferes with a child’s ability to walk, talk, see, hear, breathe, or learn.

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

Subp. 19. [Repealed, 26 SR 253]

Subp. 20. **Eligible relative caregiver.** “Eligible relative caregiver” means a person identified under Minnesota Statutes, section 256J.08, subdivision 11, who is a caregiver of a dependent child receiving a MFIP grant but who is not a member of the assistance unit.

Subp. 21. [Repealed, 26 SR 253]

Subp. 22. [Repealed, 26 SR 253]

Subp. 23. [Repealed, 26 SR 253]

Subp. 24. **Family copayment fee.** “Family copayment fee” means the amount the family must contribute as its share of child care costs as determined under part 3400.0100, subparts 3 to 4.

Subp. 25. **Full calendar month.** “Full calendar month” 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. [Repealed, 30 SR 1318]

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. [Repealed, 26 SR 253]

Subp. 29a. **Immunization record.** “Immunization record” means the statement described in Minnesota Statutes, section 121A.15, subdivision 1, 3, paragraph (c) or (d), or 4.

Subp. 30. [Repealed, 26 SR 253]

Subp. 31. [Repealed, 26 SR 253]

Subp. 31a. MR 2001 [Removed, L 2003 1Sp14 art 1 s 106]

Subp. 31b. **Legal guardian.** “Legal guardian” means a person who has been appointed or accepted as a guardian according to Minnesota Statutes, section 260C.325, 524.5–201, 524.5–202, or 524.5–204 under tribal law.

Subp. 32. [Repealed, 26 SR 253]

Subp. 32a. **MFIP caregiver.** “MFIP caregiver” has the meaning given caregiver in Minnesota Statutes, section 256J.08, subdivision 11.

Subp. 32b. **Minimum wage.** “Minimum wage” means the minimum wage applicable under Minnesota Statutes, chapter 177, to the applicant or participant or the premises where the applicant or participant is employed.

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. [Repealed, 26 SR 253]

Subp. 34a. **Participant.** “Participant” means a family receiving child care assistance under the child care fund.

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

Subp. 36. [Repealed, 26 SR 253]

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 provider the information required under part 3400.0120, subpart 2.

Subp. 38a. **Residence.** “Residence” means the primary place where the family lives as identified by the applicant or participant.

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 Minnesota Statutes, section 119B.011, subdivision 11. A non-MFIP 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 non-MFIP student is a part-time student if the student is 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. A MFIP student is a student who is in compliance with the education or training requirements in the student’s employment plan.

Subp. 40a. **Temporarily absent.** “Temporarily absent” means a family member is living away from the family’s residence but intends to return to the residence.

Subp. 41. [Repealed, 26 SR 253]

Subp. 42. [Repealed, 26 SR 253]

Subp. 43. [Repealed, 26 SR 253]

Subp. 44. **Weekly basis.** “Weekly basis” means child care provided by a provider for more than 35 but not more than 50 hours per week.

Statutory Authority: *MS s 14.3895; 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; L 1994 c 483 s 1; L 1995 1Sp3 art 16 s 13; L 1999 c 205 art 5 s 21; 26 SR 253; L 2003 1Sp14 art 1 s 106; L 2005 c 10 art 4 s 29; L 2005 c 56 s 2; 30 SR 1318*

3400.0030 NOTICE OF BASIC SLIDING FEE PROGRAM ALLOCATION.

By July 1 of each year, the commissioner shall notify all county and human services boards of their allocation under the basic sliding fee program, including the amount available for payment of administrative expenses.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253*

3400.0035 APPLICATION PROCEDURE.

Subpart 1. **Response to informational requests.** When a family asks for information about child care assistance, the administering agency must give the family information supplied by the department regarding the availability of federal and state child and dependent care tax credits; federal earned income tax credits; Minnesota working family credits; early childhood family education and Head Start programs; early childhood screening; MinnesotaCare; child care resource and referral services; other programs with services for young children and families; and the postsecondary child care grant program established in Minnesota Statutes, section 136A.125. The administering agency also must inform the family of the following items:

- A. the eligibility requirements under the child care fund;
- B. the documentation necessary to confirm eligibility;
- C. whether a waiting list exists and, if so, the number of families on the waiting list or the estimated time that the applicant will spend on the waiting list before reaching the top of the list;
- D. the procedure for applying for child care assistance;
- E. the family copayment fee schedule and how the fee is computed;
- F. information about how to choose a provider;
- G. the family's rights and responsibilities when choosing a provider;
- H. information about the availability of special needs rates;
- I. the family's responsibility for paying provider charges that exceed county maximum payments in addition to the family copayment fee; and
- J. the importance of prompt reporting of a move to another county to avoid overpayments and to increase the likelihood of continuing benefits, because child care assistance benefits may be affected by moving to another county.

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

- A. If a family requests child care assistance and it appears that the family is eligible for child care assistance and funds are available, or if a family requests an application, the administering agency must mail or hand the family a universal child care assistance application.
- B. If a family requests child care assistance and funds are not available, the administering agency must 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. As child care funds become available, the administering agency must inform the family at the head of the waiting list and ask the family to complete an application.

C. The administering agency must accept signed and dated applications that are submitted by mail or delivered to the agency within 15 calendar days after the date of signature. A county may accept an application from an applicant who does not reside in that county but immediately must forward the application to the county where the applicant resides. The administering agency must 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.

Subp. 3. **Informational release.** When it appears that an applicant may be eligible for child care assistance but is unable to document eligibility for the program, the administering agency must offer an applicant the opportunity to sign an informational release to permit the county to verify whether an applicant qualifies for child care assistance. The administering

agency must also offer an applicant an opportunity to sign an informational release to permit the county to give the family's child care provider the information listed in subpart 6 and in part 3400.0185, subparts 2 and 4, that is not required by Minnesota Statutes, section 119B.13, subdivision 5. The administering agency must give the applicant the information required by Minnesota Statutes, section 13.04, subdivision 2.

Subp. 4. Notice of denial. If the administering agency denies the application, the administering agency must document the reason or reasons for denying the application. The administering agency must provide written notice to the applicant of: the reason for denial; the provision in statute, rule, or county child care fund plan that is the basis for the denial; and the applicant's right to a fair hearing under part 3400.0230 and Minnesota Statutes, section 119B.16.

Subp. 5. Notice of approval. If the administering agency approves the application, the administering agency must send the applicant a notice of approval of the application. The notice of approval must specify the information in items A to I:

- A. the beginning date of eligibility;
- B. the hours of care authorized, the maximum rate that may be paid, and how payments will be made;
- C. the copayment amount including how and when the copayment must be made;
- D. any change in income, residence, family size, family status, or employment, education, or training status must be reported within ten calendar days from the date the change occurs;
- E. except in cases involving alleged child abuse by a provider or a complaint that the health and safety of a child in care is in imminent danger, any change in provider must be reported to the county and the provider at least 15 calendar days before the change occurs;
- F. the overpayment implications for the family if the changes described in items D and E are not reported as required;
- G. when child care assistance is terminated, the participant will be informed of the reason for the termination and the participant's appeal rights and the provider will be informed that, unless the family asks to continue to receive assistance pending an appeal, child care payments will no longer be made;
- H. the importance of prompt reporting of a move to another county to avoid overpayments and increase the likelihood of continuing benefits, because child care assistance benefits may be affected by moving to another county; and
- I. the family's responsibility for paying provider charges that exceed county maximum payments in addition to the family copayment fee.

Subp. 6. Notice to provider. If the administering agency approves an application, the administering agency must send the provider a notice containing only the following information: the family's name; the fact that the family's request for child care assistance has been approved; the hours of care authorized; the maximum rate that may be paid by the child care assistance program; and how payments will be made.

Subp. 7. Selection of provider. An applicant must select a provider before payments can be made from the child care fund.

Subp. 8. Selection of legal nonlicensed provider. An applicant who selects a legal nonlicensed provider must be informed about the following information and must sign an acknowledgment that contains:

- A. a description of the registration process for legal nonlicensed providers;
- B. a description of the parent's rights and responsibilities when choosing a provider;
- C. an acknowledgment that the parent and the legal nonlicensed provider have reviewed the health and safety information provided by the county; and
- D. if the parent has selected a legal nonlicensed family child care provider, an assurance that the parent will provide an immunization record for each child to the legal nonlicensed family child care provider within 90 days of the date that care for the child begins and will give the legal nonlicensed family child care provider the information necessary to update the immunization record.

Subp. 9. **Selection of in-home provider.** An applicant who selects a provider who will provide child care in the applicant's home must be informed that this choice of care may create an employer/employee relationship between the parent and the provider and must be referred to resources available for more information about these legal rights and responsibilities.

Statutory Authority: *MS s 119B.02*

History: 26 SR 253

3400.0040 GENERAL ELIGIBILITY REQUIREMENTS AND ASSISTANCE STANDARDS TO BE MET BY ALL APPLICANTS AND PARTICIPANTS.

Subpart 1. **Applicant requirements and standards.** All applicants for child care assistance and all child care assistance program participants must meet the standards and requirements in this part in addition to the eligibility requirements in part 3400.0060, 3400.0080, or 3400.0090 for the child care program for which the person is applying or in which the person is participating.

Subp. 2. [Repealed, 26 SR 253]

Subp. 3. **Documentation of eligibility information.**

A. An applicant for child care assistance must document the:

(1) citizenship status or participation in a program that makes a child exempt from this documentation requirement for all children for whom child care assistance is being sought;

(2) relationship of the children in the family to the applicant;

(3) date of birth of the children in the family;

(4) date of birth of the applicant if the applicant is under 21 years of age;

(5) identity, income eligibility, and residence for all members of the applicant's family, including members temporarily absent from the household as defined in part 3400.0020, subpart 40a; and

(6) work, education, or training status for all applicants as defined in Minnesota Statutes, section 119B.011, subdivision 2.

B. The county must ask for the applicant's Social Security number, but the applicant is not required to disclose this information. Before asking for the applicant's social security number, the county must tell the applicant that:

(1) the disclosure is voluntary;

(2) the number is being solicited under the Code of Federal Regulations, title 45, section 98.71(a)(13); and

(3) the social security number will be used by county, state, and federal governments and their employees for the purposes of verification, reporting, research, and any other purpose authorized by law.

C. The county must determine an applicant's eligibility for child care assistance at the time of application. The county must redetermine eligibility whenever there is a change in the family's status as specified in subpart 4, and at each redetermination under part 3400.0180.

Subp. 4. **Participant reporting responsibilities.** A participant must meet the reporting requirements in items A and B. A participant may report a change in person, by telephone, by facsimile, or by mail, including electronic mail.

A. When there is a change in the information reported by the participant at application or at the most recent redetermination of eligibility, the participant must report the new information to the county within ten calendar days after the change occurs. This reporting requirement applies to changes in income, residence, employment status, education or training status, family status, or family size. A change in income occurs on the day the participant receives the first payment reflecting the change in income.

B. Except in cases involving alleged child abuse by a provider or a complaint that the health and safety of a child in care is in imminent danger, a participant must notify the

county and the provider of the intent to change providers at least 15 calendar days before changing providers.

Subp. 5. Employment, education, and training requirements. In a family with a single parent, or unmarried legal guardian or eligible relative caregiver, the applicant or participant must meet employment, education, or training requirements and other eligibility requirements in this part and in part 3400.0060, 3400.0080, or 3400.0090 for the child care assistance program for which the family is applying or in which the family is participating.

In a family with two parents, a parent and stepparent, a legal guardian and spouse, or an eligible relative caregiver and spouse, at least one parent, legal guardian, eligible relative caregiver, or spouse must meet employment, education, or training requirements and other eligibility requirements in this part and in part 3400.0060, 3400.0080, or 3400.0090 for the child care assistance program for which the family is applying or participating in. The other parent, legal guardian, eligible relative caregiver, or spouse must:

A. meet employment, education, or training requirements and other eligibility requirements in this part and part 3400.0060, 3400.0080, or 3400.0090 for the child care assistance program for which the family is applying or participating in; or

B. be unable to care for the applicant's child or dependent as determined by a licensed physician, licensed psychologist, or the local social services agency.

Subp. 5a. Child support cooperation. All applicants and participants of the child care assistance program must cooperate with establishment of paternity and enforcement of child support obligations for all minor children in the family with an absent parent. For purposes of this part, a family has met the cooperation requirement when the family complies with Minnesota Statutes, section 256.741, or there is a finding under Minnesota Statutes, section 256.741, subdivision 10, of good cause for failing to cooperate. The child care portion of the child support order for children receiving child care assistance must be assigned to the public authority as provided in Minnesota Statutes, section 256.741.

Subp. 6. [Repealed, 26 SR 253]

Subp. 6a. Ineligibility for failure to pay fees under the child care fund. A family that fails to pay the required family copayment fee under the child care fund is ineligible for child care assistance until the fees are paid or until the family reaches an agreement for payment with the provider and the county and then continues to comply with the payment agreement. When the county pays the parent, a family that fails to pay the provider the amount of the child care assistance payment is ineligible for child care assistance until the payment is made or until the family reaches an agreement for payment with the provider and the county and then continues to comply with the payment agreement.

Subp. 6b. Ineligibility for failure to pay overpayments. A family with an outstanding overpayment is ineligible for child care assistance until the overpayment is paid in full or until the family arranges to repay the overpayment according to part 3400.0187 and then continues to comply with the repayment agreement.

Subp. 6c. Date of eligibility for assistance. The date of eligibility for child care assistance under parts 3400.0060 and 3400.0080 must be determined according to Minnesota Statutes, section 119B.09, subdivision 7. The date of eligibility for child care assistance under part 3400.0090 is the date the family's MFIP case was closed.

Subp. 7. Maximum weekly child care assistance. A family may not receive more than 120 hours of child care assistance per child every two weeks.

Subp. 8. Child care assistance during employment.

A. In addition to meeting other eligibility requirements, employed persons eligible for child care assistance under part 3400.0060, 3400.0080, or 3400.0090 must work at least an average of 20 hours per week and receive at least the minimum wage for all hours worked. Employed persons eligible for child care assistance under part 3400.0080 are exempt from this requirement if they have an approved employment plan that allows fewer work hours or a lower wage.

B. The county and the participant may determine a length of time, not to exceed six months, over which the number of hours worked weekly can be averaged and counted toward

the participant's meeting the average of 20 hours per week requirement. If the number of hours worked during the designated time period actually averages less than 20 hours per week, any child care assistance funds paid by the county on the participant's behalf during the designated time period are subject to recoupment or recovery.

C. When a participant does not work by the hour and is not paid an hourly wage, the participant's gross earned income over a given period must be divided by the minimum wage to determine whether the participant has met the requirement to average at least 20 hours of work per week at minimum wage.

D. Child care assistance during employment shall be granted for the number of hours worked, including break and meal time during the employment, and up to two hours per day for travel time.

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

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

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

Subp. 10. **Child care assistance during education or training.** 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 or employment plans according to items A to C.

A. Counties must 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; or

(2) child care on a weekly basis.

B. Counties must grant part-time students child care as needed 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, including students on work study programs, 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. When full-time students request child care for employment, the employment hours must average at least ten hours per week at minimum wage. Students eligible for child care assistance under part 3400.0080 are exempt from this requirement if they have an approved employment plan that allows fewer work hours or a lower wage. For purposes of determining whether the ten hours at minimum wage requirement in this subpart has been met, work-study hours and income must be counted as employment.

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 approved education or training program described in the MFIP caregiver's employment plan.

Subp. 13. **Satisfactory progress in education or training 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 academic standing in the education or training program as determined by the educational institution and meets the requirements of the student's education plan under part 3400.0060 or employment 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 3400.0185.

Subp. 14. **Maximum education or 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 or training is described in items A to D.

A. A student eligible under part 3400.0060 is eligible for child care assistance according to Minnesota Statutes, section 119B.07.

B. A student eligible under part 3400.0080 is eligible for child care assistance for the length of time necessary to complete activities authorized in the student's employment plan according to the standards in Minnesota Statutes, chapter 256J.

C. A student eligible under part 3400.0060 who has completed or who has participated in but failed to complete 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 student has been unable to find full-time employment;
- (2) at least one year has passed since the student participated in or completed the first program;
- (3) the new education or training program is approved by the county; and
- (4) the county expects that completing the program will lead to full-time employment.

The one-year requirement in subitem (2) does not apply when the student's first education or training program was a basic or remedial education program needed to prepare for post-secondary education or employment as described in Minnesota Statutes, section 119B.07.

D. A student eligible under part 3400.0060 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.

Subp. 15. **Changes in education or training programs.** A proposed change in an education or training program is subject to county approval before the change may be made. A county may not deny a request for a change in an education or training program when the student requesting the change can show that changing a course or focus of study is necessary for reasons related to the health and safety of the student.

Subp. 15a. **Child care assistance during job search.**

A. A county shall provide up to 240 hours per calendar year of child care assistance for job search activities to participants:

- (1) eligible under part 3400.0080 who do not have approved job search support plans or whose approved employment plans do not include job search as an authorized activity;
- (2) eligible under part 3400.0090 who are seeking employment; and
- (3) eligible under part 3400.0060 who are seeking employment.

B. The county shall grant child care assistance for job search activities:

- (1) according to the number of hours in the individual's approved job search plan;
- (2) by applying the criteria identified in its child care fund plan; or
- (3) by verifying the actual number of hours spent on job search.

C. 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.

D. Job search includes locating and contacting potential employers, preparing for interviews, interviewing, and up to two hours of travel time per day.

Subp. 16. [Repealed, 26 SR 253]

Subp. 17. **Temporary ineligibility.** Counties must reserve a family's position under the child care assistance fund if a family has been receiving child care assistance but is temporarily ineligible for assistance. A county may reserve a family's position under the child care assistance fund if a family is approved to receive child care assistance and reaches the top of the waiting list but is temporarily ineligible for assistance. In its child care fund plan, a county must specify whether it reserves positions under the child care assistance fund for temporarily ineligible families who reach the top of the waiting list and, if so, the criteria used to make the decision whether to reserve a position. Employed participants may be temporarily ineligible for a maximum of 90 days. Child care assistance participants who are students may be temporarily ineligible for a maximum of one academic quarter or semester as determined by the educational institution.

Subp. 18. **Suspension.** Counties must suspend, and may not terminate, a family's child care assistance for up to one continuous year if there are temporary breaks when child care assistance is not needed but the family remains eligible for child care assistance.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253*

3400.0050 [Repealed, 26 SR 253]

3400.0060 BASIC SLIDING FEE PROGRAM.

Subpart 1. [Repealed, 26 SR 253]

Subp. 2. **Basic sliding fee allocation.** The commissioner shall allocate child care funds for the basic sliding fee program as provided in Minnesota Statutes, sections 119B.03, subdivisions 6 to 9, and 119B.061.

Subp. 3. [Repealed, 26 SR 253]

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 of the allocation period as provided in Minnesota Statutes, section 119B.03, subdivision 5. Following the fourth quarter of the allocation period, the commissioner shall review county expenditures under the basic sliding fee program and shall reallocate unearned allocations to counties that had direct service earnings in excess of their allocation.

B. The amount reallocated to any county shall be based on direct service earnings in excess of its allocation. The amount reallocated shall not be greater than the direct service earnings in excess of allocation minus the county's fixed local match to be calculated as specified in Minnesota Statutes, section 119B.11, subdivision 1.

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

D. If the amount of funds available for reallocation is greater than total county direct service earnings in excess of allocations under the basic sliding fee program, the funds remaining after the basic sliding fee reallocation shall be carried forward and added to the funds available for allocation in the next allocation period.

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 a MFIP caregiver; 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. Students placed on the basic sliding fee waiting list must be identified as students on the list. The county must determine the highest priority group for which a family qualifies and must notify the family of this determination.

Families who inquire or apply while they are temporarily ineligible shall be placed on the waiting list if it appears they will be eligible for child care assistance. When a family advances to the top of the county's waiting list and is temporarily ineligible for child care assistance, the county shall leave the family at the top of the list according to priority group and serve the applicant who is next on the waiting list unless a different procedure is provided in the county's child care fund plan.

Subp. 6a. Transfer of families from waiting list to basic sliding fee program. Families on the basic sliding fee waiting list shall be moved into the basic sliding fee program as funding permits according to the priorities listed in Minnesota Statutes, section 119B.03. After the county has complied with the priority requirement in section 119B.03, the county must comply with any priority requirements adopted under part 3400.0140, subpart 10, to move families on the waiting list into the basic sliding fee program.

Subp. 7. Waiting list; transfer of transition year families to the basic sliding fee program.

A. The county shall place transition year families on the county's basic sliding fee program waiting list effective on the date the family became eligible for transition year child care assistance.

B. If a transition year family moves to a new county, the date the family was placed on the basic sliding fee waiting list in the original county shall transfer with the family.

C. Families who are eligible for, but do not use, transition year child care assistance retain their priority status for the basic sliding fee program. Families lose their priority status at the conclusion of their transition year.

D. The county shall manage its basic sliding fee allocation in a way that allows families to move from transition year to the basic sliding fee program without any interruption in services. The county shall not serve families who are a lower priority on the basic sliding fee waiting list than a transition year family unless the county can ensure basic sliding fee program funding for the transition year family at the end of the transition year.

E. 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.

A. When a family 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 after the move if the family needs child care and remains eligible for the basic sliding fee program. The family is responsible for notifying the new county of residence within 30 days of moving and applying for basic sliding fee assistance in the new county.

B. If there is a waiting list for the basic sliding fee program in the receiving county when it assumes responsibility for the family, the receiving county must fund child care assistance for the family through the portability pool. Portability pool funding must continue for the lesser of six months or until the family is able to receive assistance under the receiving

county's basic sliding fee program. The family must also be added to the basic sliding fee program waiting list according to priority group in the receiving county effective the date of the move. If the family reaches the top of the waiting list and funds become available before the six months have ended, the receiving county must immediately add the family to its basic sliding fee program. If basic sliding fee funds are not available when the six months has ended, services to the family must be terminated. The family must stay on the waiting list effective the date of the move.

C. If there is no waiting list for the basic sliding fee program and funds are available, the receiving county must immediately move the family into its basic sliding fee program when it assumes responsibility for the family according to Minnesota Statutes, section 256G.07.

D. If the participant had an approved educational plan in the original county, the plan transfers with the participant. The plan remains in effect during the two months that the original county continues to pay for the family's child care assistance and during any time the family's child care assistance is paid through the portability pool. When the receiving county pays the family's basic sliding fee assistance from its own allocation, the receiving county may reject, approve, or modify the family's educational plan based on the receiving county's criteria for approving educational plans.

Subp. 10. **Continued eligibility under basic sliding fee program.** 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 provided that the family continues to meet the eligibility requirements in this part and the general eligibility requirements in part 3400.0040. Except for the job search time limit under Minnesota Statutes, section 119B.10, subdivision 1, paragraph (a), and the time limit for the at-home infant care program in Minnesota Statutes, section 119B.061, subdivision 4, paragraph (a), counties may not set a time limit for eligibility under the basic sliding fee program.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253*

3400.0070 [Repealed, 26 SR 253]

3400.0080 MFIP CHILD CARE PROGRAM.

Subpart 1. **Eligibility for MFIP child care program.** The following persons are eligible for the MFIP child care assistance program:

A. MFIP caregivers who are participating in approved activities as required in their job search support or employment plans;

B. MFIP caregivers who do not have approved job search support or employment plans but who meet the requirements of Minnesota Statutes, section 119B.10;

C. MFIP caregivers who are participating in appeals, hearings, assessments, or orientations according to Minnesota Statutes, chapter 256J; and

D. families who are participating in programs as required in tribal contracts under Minnesota Statutes, section 119B.02, subdivision 2, or 256.01, subdivision 2.

Subp. 1a. **Eligibility of sanctioned MFIP caregiver.** A MFIP caregiver eligible for child care assistance who has been sanctioned under the MFIP program may receive child care assistance:

A. for that portion of the caregiver's job search support or employment plan which the caregiver is complying with according to Minnesota Statutes, chapter 256J; or

B. according to Minnesota Statutes, section 119B.05, subdivision 1, clause (1).

Subp. 1b. **Child care assistance for approved job search.** A MFIP caregiver who has an approved job search support plan or whose employment plan includes job search as an authorized activity is not limited to 240 hours of job search child care assistance in a calendar year.

Subp. 2. [Repealed, 26 SR 253]

Subp. 3. [Repealed, 26 SR 253]

Subp. 4. [Repealed, 26 SR 253]

Subp. 5. [Repealed, 26 SR 253]

Subp. 6. [Repealed, 26 SR 253]

Subp. 7. [Repealed, 26 SR 253]

Subp. 8. **County child care responsibility when a family moves to another county.**

When a MFIP caregiver moves to a new county and the new county accepts responsibility for the caregiver's approved job search support or employment plan under Minnesota Statutes, section 256J.55, subdivision 3, the new county is responsible for providing child care assistance to the MFIP caregiver effective on the date that the county accepted responsibility for the plan. In all other cases, child care assistance must be provided according to Minnesota Statutes, section 256G.07, when a MFIP caregiver moves to a new county.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253*

3400.0090 TRANSITION YEAR CHILD CARE.

Subpart 1. **Notice to family of eligibility.** The administering agency must notify a family, in writing, at the time the family's MFIP case closes of the family's potential eligibility for transition year child care. 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 and job search related expenses. A family is eligible for transition year child care if the conditions in items A to D are met.

A. The family's MFIP case has closed.

B. At least one caregiver in the family received MFIP in at least three of the six months immediately preceding the month in which the family's MFIP case was closed. The provision requiring receipt of MFIP in at least three of the preceding six months does not apply to caregivers who leave the work first program for the reasons listed in Minnesota Statutes, section 256K.07.

C. The family's annual gross income does not exceed 75 percent of the state median income for a family of four, adjusted for family size.

D. Transition year child care may be paid for the care of a child who would have been eligible to receive a MFIP grant, or for children who would have been eligible for MFIP, except for the child's receipt of SSI or Title IV-E foster care benefits.

Eligibility for transition year child care begins the first month after the family's MFIP case has closed and continues for 12 consecutive months. A family's temporary ineligibility for, suspension of, or failure to use child care assistance during the transition year does not suspend the transition year period. A former MFIP caregiver may apply for transition year child care any time during the transition year and, notwithstanding the application date, shall receive transition year child care assistance retroactive to the applicant's date of eligibility for transition year child care if all other eligibility requirements are met. Eligibility for transition year child care cannot extend beyond 12 months after the initial date of eligibility for that transition year child care. If a family was receiving child care assistance when the family's MFIP case closed, determination of eligibility for transition year child care assistance must be treated as a redetermination rather than a new application.

Subp. 3. **Loss of transition year child care eligibility.** A family in which all caregivers have been disqualified from receiving MFIP due to fraud is not eligible for transition year child care assistance.

Subp. 4. **Reestablishment of MFIP eligibility during transition year period.** If a transition year family reopens its MFIP case 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 MFIP for only one or two of the previous six months, but meets the requirements in subpart 2, items A, C, and D, the family is eligible for the remaining months of the transition year, treating the month or months on MFIP as a suspension of

the child care benefit but not the transition year period. To receive child care assistance while receiving MFIP, the family must meet the MFIP child care requirements under part 3400.0080.

Subp. 5. [Repealed, 26 SR 253]

Subp. 6. [Repealed, 26 SR 253]

Subp. 7. **County child care responsibility when a family moves to another county.** Child care assistance must be provided according to Minnesota Statutes, section 256G.07, when a transition year family moves to a new county.

Subp. 8. [Repealed, 26 SR 253]

Subp. 9. [Repealed, 26 SR 253]

Statutory Authority: *MS s 119B.02; 256H.02; 256H.035; 256H.055*

History: *18 SR 1144; L 1994 c 483 s 1; 26 SR 253*

3400.0100 FAMILY COPAYMENT FEE SCHEDULE.

Subpart 1. [Repealed, 30 SR 1318]

Subp. 2. [Repealed, 26 SR 253]

Subp. 2a. **Copayment fees to be prorated during start-up month.** Counties must prorate all copayment fees during the month when the family first receives service based on the number of calendar days remaining in the month.

Subp. 2b. **Payment of provider charges that exceed the maximum provider rate.** If the provider's charge for child care is greater than the maximum provider rate allowed under part 3400.0130, the family shall pay, in addition to any family copayment fee, the difference between the maximum provider rate and the provider charge.

Subp. 2c. **Payment of registration and activity fees that exceed the maximum rates.** In addition to the family copayment fee, a family must pay any registration fees that exceed the standards established in part 3400.0130, subpart 7, any optional activity fees, and any activity fees that exceed the standards established in part 3400.0130, subpart 8.

Subp. 3. [Repealed, 30 SR 1318]

Subp. 3a. [Repealed, 30 SR 1318]

Subp. 4. [Repealed, 30 SR 1318]

Subp. 5. **Publication of state median income and fee schedule in State Register.** The department shall publish annually 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. This information must be published after the date the state median income is published in the Federal Register by the United States Department of Health and Human Services. The department shall also distribute a copy of the fee schedule and the updated estimate of state median income to each county after the information is published in the Federal Register. Counties shall begin applying the updated fee schedule yearly on July 1 or on the first day of the first full quarter following publication of the state median income in the State Register if publication occurs after July 1.

Statutory Authority: *MS s 14.3895; 119B.02; 119B.12; 256H.01 to 256H.19; L 1999 c 205 art 1 s 63*

History: *14 SR 519; 18 SR 1144; 26 SR 253; 30 SR 1318*

3400.0110 CHILD CARE ASSISTANCE PAYMENTS.

Subpart 1. **Payment options.** Counties must monitor child care payments to ensure that the funds are used for child care. Counties must make payments only for child care costs that are not being paid by any funding source other than the family. Counties may make child care payments either by:

A. paying the provider directly or paying the family when services have already been provided; or

B. making advance payments directly to the provider or, if the family is responsible for paying the provider, to the family when a provider requires payment in advance for all families served.

Subp. 1a. **Date payments must begin.** After approval of an application for child care assistance, payment of child care assistance must be authorized to begin as of the family's date of eligibility as determined under part 3400.0040, subpart 6c.

Subp. 2. **Registration before payment of legal nonlicensed providers.** A legal nonlicensed provider must be registered with the county as provided in part 3400.0120, subpart 2, before the county pays a parent or the provider from the child care fund. After a legal nonlicensed provider registers with the county, the county must pay the provider or parent retroactive to the date in item A, B, or C that occurred most recently:

- A. the date on which child care for the family was authorized to begin;
- B. the date the family signed the application for child care; or
- C. the date the family began using the legal nonlicensed provider.

Subp. 2a. **Provisional payment for legal nonlicensed providers.**

A. When a county's child care fund plan requires an investigation under part 3400.0120, subpart 1b, item B, to be conducted on legal nonlicensed providers, the county may issue provisional authorization and payment after the provider has met the registration requirements in part 3400.0120, subpart 2. Continuing authorization and payment is contingent on the provider receiving final county approval after the results of the investigation have been reviewed by the county. If the legal nonlicensed provider does not receive final county approval after county review of the results of the investigation, the provisional authorization and payment must be terminated following notice to the provider as required under part 3400.0185 and Minnesota Statutes, section 119B.13, subdivision 5. The county must notify the family using the ineligible provider that the family must choose a new provider to continue receiving child care assistance. A provider's failure to receive final county approval after county review of the results of an investigation does not cause payments made during the provisional authorization period to be overpayments.

B. If a family appeals the adverse determination of provider eligibility and, while the appeal is pending, continues to use the provider who failed to receive final county approval, payments made after the notice period are subject to recovery as overpayments.

Subp. 3. **County authorization of child care.** If a provider charges on a half-day, full-day, or weekly basis, a county must authorize child care using the same basis on which the provider charges. If a provider does not charge on a half-day, full-day, or weekly basis, a county still may authorize child care on a half-day, full-day, or weekly basis if the activities authorized for the family justify payment for the block of time. Combinations of hourly, half-day, or full-day child care may be paid when more than ten hours of child care are authorized in a 24-hour period. When more than 50 hours of child care assistance for one child are authorized with one provider in a week, the county may reimburse the provider in an amount that exceeds the county maximum weekly rate, if the provider charges the same amount for more than 50 hours of care for a family not receiving child care assistance. A county must not authorize more than 120 hours of child care assistance per child every two weeks. To convert child care authorized on a half-day, full-day, or weekly basis into hours, counties must follow the standards in items A to C.

- A. A half-day is equal to five hours of child care.
- B. A full-day is equal to ten hours of child care.
- C. A week is equal to 50 hours of child care.

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, except as provided in part 3400.0130. When a provider's rate is less than the 75th percentile, the county shall pay the provider's rate.

Subp. 4a. **Reimbursement from other sources for child care costs.** A county must reduce the amount of a family's child care assistance payment by the amount of reimbursement earmarked for the same child care expenses that the family receives from sources other than the child care assistance fund.

Subp. 5. [Repealed, 26 SR 253]

Subp. 6. [Repealed, 26 SR 253]

Subp. 7. County payment policies and schedule. A county's payment policies must be included in the county's child care fund plan. A county may not require parents to pay providers in advance of receiving payments from the child care fund as a condition for receiving payments from the child care fund. The county shall make payments at least monthly. If a provider sends the county an invoice according to the provisions of Minnesota Statutes, section 119B.13, subdivision 6, the county must make payments within 30 days of receiving the invoice. Counties must mail or give providers the forms necessary to bill for payment on or before the beginning of the billing cycle if the county has received the information necessary for child care to be authorized before this date. If a county requires invoices to be submitted within a specified time period from the date of service on the invoice, the county must give written notice of this time period to participants and providers.

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 must 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 child care fund plan required under part 3400.0150.

Subp. 9. Payment during child absences.

A. If a provider does not charge all families for days on which a child is absent from care, the child care assistance program must not pay that provider for days on which a child is absent from care.

B. If a provider charges all families for days on which a child is absent from care, the child care assistance program must pay that provider for child absent days according to the statewide absent day policy. To establish the statewide absent day policy, the commissioner must ask providers about their absent day policies in the rate survey required under part 3400.0130, subpart 1. The statewide absent day policy must reflect the absent day policies used by a majority of providers statewide.

C. A county may pay for more absent days than the statewide absent day policy established under this subpart requires if current market practice in the county justifies payment for those additional days. County policies for payment of absent days in excess of the statewide absent day policy and justification for these county policies must be included in the county's child care fund plan under part 3400.0150.

D. Provider charges for absent days in excess of the amount established by the commissioner, or by the county if the county's absent day policy exceeds the policy established by the commissioner, are the responsibility of the family receiving child care assistance.

Subp. 10. Payment during medical leaves of absence. Counties must grant child care assistance during a parent's medical leave of absence from education or employment if:

A. the parent is incapable of providing child care during the medical leave or absence;

B. the parent is expected to return to employment or an approved education or training program within 90 calendar days after leaving the job, education, or training program; and

C. the necessity of the medical leave and the inability to provide child care are documented by a physician or licensed psychologist.

The amount of child care authorized during the medical leave of absence must not exceed the equivalent of one month of full-time child care.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253*

3400.0120 ELIGIBLE PROVIDERS AND PROVIDER REQUIREMENTS.

Subpart 1. Eligible providers. Providers who meet the definition of provider in Minnesota Statutes, section 119B.011, subdivision 19, are eligible for payment from the child care

fund. Within the limitations specified in Minnesota Statutes, section 119B.09, subdivision 5, parents may choose child care providers that best meet the needs of their family. Parents may choose more than one provider. A county may not deny a parent eligible for child care assistance the use of a provider holding a valid child care license.

Subp. 1a. Provider acknowledgment. A provider must sign a provider acknowledgment and the county must have a signed provider acknowledgment before the provider or parent may receive payment under the child care fund. The provider acknowledgment must include the following information:

A. the provider's rate, charges for child absences and holidays, any notice days required before a child discontinues care, and any required registration or activity fees;

B. documentation of the provider's license status and, if the provider is seeking the provider accreditation rate bonus, any accreditation or credential held by the provider;

C. a statement acknowledging that charging child care assistance participants more than families not receiving child care assistance for like services or wrongfully obtaining child care assistance may be a crime;

D. a statement acknowledging that parents must be given unlimited access to their children and to the provider caring for the children during all hours that the children are in the provider's care;

E. a statement acknowledging that the provider is responsible for notifying the county as provided in subpart 5 of child absence days and the end of care;

F. a statement acknowledging that the provider is responsible for immediately notifying the county of any changes to the information supplied by the provider in the provider's acknowledgment;

G. a statement acknowledging that the provider is a mandated reporter of maltreatment of minors under Minnesota Statutes, section 626.556; and

H. a statement acknowledging that when the county knows that a particular provider or child care arrangement is unsafe, the county may deny child care assistance payments to that provider.

Subp. 1b. Eligible legal nonlicensed providers.

A. Legal nonlicensed providers must meet the following conditions to be eligible for payment from the child care fund. A legal nonlicensed provider must:

(1) satisfy the registration requirements in subpart 2; and

(2) provide the county with an assurance that the provider is in compliance with state and local health ordinances and building and fire codes applicable to the premises where child care is provided.

B. A county may conduct criminal history background, county record, and district court record investigations on legal nonlicensed providers and other persons with access to children during the hours that care is provided. A county may deny payment of child care assistance to that provider pursuant to Minnesota Statutes, section 119B.09, subdivision 5, if a county knows a particular provider is unsafe or that the circumstances of the child care arrangement are unsafe.

C. During the time necessary to complete the investigation in item B, a county may issue provisional payment according to part 3400.0110, subpart 2a, to a legal nonlicensed provider who has met the registration requirements in subpart 2.

Subp. 2. Registration of legal nonlicensed providers.

A. A legal nonlicensed provider must be registered with the county before the provider or parent may receive a payment under the child care fund. To be registered with the county, a provider must provide the county with the following information:

(1) the provider's name, age, and address;

(2) the provider acknowledgment required by subpart 1a;

(3) an assurance that the provider is eligible to provide unlicensed care under Minnesota Statutes, section 245A.03, subdivision 2b; and

(4) a release to permit information on substantiated parental complaints concerning the health and safety of children in the provider's care to be disclosed to the public according to Minnesota Statutes, chapter 13.

B. Legal nonlicensed providers who will receive payment from the county must provide the county with the provider's Social Security or tax identification number. The county may ask legal nonlicensed providers who will not receive payment from the county for their Social Security numbers; but legal nonlicensed providers who will not receive payment from the county are not required to disclose this information. Before asking for a legal nonlicensed provider's Social Security number, the county must tell the legal nonlicensed provider whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and how the number will be used.

C. Legal nonlicensed family child care providers also must provide the county with an assurance that the provider will obtain an immunization record for each child in the provider's care within 90 days of starting to care for the child.

D. A registered legal nonlicensed provider who has not provided care to children receiving assistance from the child care fund for over two years must reregister under this subpart before receiving 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 all hours the children are in the care of the provider.

Subp. 4. [Repealed, 26 SR 253]

Subp. 5. **Notice to county required when care has terminated.** When a provider knows that a family has ended care with the provider, the provider must notify the county that care has been terminated. When a provider believes that a family will be ending care with the provider, the provider must immediately notify the county of the date on which the provider believes the family will end care. A provider must also notify the county if a child or children have been absent for more than seven consecutive days.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; L 1999 c 205 art 5 s 21; 26 SR 253*

3400.0130 CHILD CARE PROVIDER RATE DETERMINATION.

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 child care centers and family child 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. The rates surveyed shall include a survey of mandatory activity fees. When the number of providers in a county or in a provider category is too small to determine the 75th percentile provider rate, the commissioner may establish child care provider rates based on like care arrangements in similar areas or categories.

Subp. 1a. **Maximum county child care assistance rate.** Except as provided in this part, the maximum rate that a county may pay for child care assistance is the provider's rate or the 75th percentile maximum county rate determined by the commissioner under subpart 1, whichever is less. Except as provided in this part, if the provider's rate is more than the maximum county rate, the county may not pay more than the difference between the maximum county rate and the family's copayment fee.

Subp. 2. **Rate determination for registered legal nonlicensed providers.** Rates paid to legal nonlicensed family child care providers must be 90 percent of the county maximum rate for licensed family child care or the provider rate, whichever is less. Rates paid to all other license-exempt facilities as defined in Minnesota Statutes, section 245A.03, subdivision 2, must be the county maximum rate for licensed child care centers or the provider rate, whichever is less.

Subp. 2a. [Repealed, 30 SR 1318]

Subp. 3. **Rate determination; children with special needs.** A county must submit a request to pay a special needs rate to the commissioner. The request must be submitted with or as an amendment to the county child care fund plan. Upon written approval by the commissioner, the approved special needs rate must be paid retroactive to the date of the provider or parent request for the special needs rate.

Subp. 3a. **Rate determination; children with special needs due to disability.** When a parent or a provider asks the county for a special needs rate for an individual child with disabilities that exceeds the county maximum rate, the county must use the following process to determine whether a special needs rate is necessary and, if so, to establish the requested special needs rate. The county must:

- A. obtain documentary evidence of the child's disability;
- B. obtain the following documentation from the child care provider:
 - (1) a description of the specialized training, services, or environmental adaptations that the provider will furnish to meet the individual needs of the child;
 - (2) the provider's assurance of compliance with applicable provisions of the Americans with Disabilities Act;
 - (3) the provider's assurance that the rate being sought is the same as the rate that would be charged for similar services provided to a child with a disability in a family not receiving child care assistance; and
 - (4) if applicable, a statement from the provider explaining that the rate the provider charges for all children in care should be adopted as the special needs rate for the child with disabilities because the provider has chosen to spread the cost of caring for children with special needs across all families in care; and
- C. seek the commissioner's approval of the special needs rate as provided in subpart 3.

Subp. 3b. **Rate determination; children with special needs due to inclusion in at-risk population.** To determine a special needs rate for a child who is included in an at-risk population defined in the county's child care fund plan, the county must use the following procedures. The county must:

- A. obtain documentary evidence showing that the child is included in the at-risk population defined in the county's child care fund plan;
- B. obtain the following documentation from the child care provider:
 - (1) a description of the specialized training, services, or environmental adaptations that the provider will furnish to meet the individual needs of the child or the at-risk population;
 - (2) the provider's assurance that the rate being sought is the same as the rate that would be charged for similar services provided to a child in the at-risk population in a family not receiving child care assistance; and
 - (3) if applicable, a statement from the provider explaining that the rate the provider charges for all children in care should be adopted as the special needs rate for the child in the at-risk population because the provider has chosen to spread the cost of caring for children with special needs across all families in care;
- C. determine how many providers in the county offer child care for children in the at-risk population;
- D. identify the 75th percentile rate if the county finds that four or more providers offer child care for children in the at-risk population and pay the 75th percentile rate, the rate negotiated with the provider by the county, or the provider's rate, whichever is less;
- E. pay the lesser of the rate negotiated with the provider by the county or the provider's rate if the county finds that fewer than four providers offer child care for children in the at-risk population; and
- F. seek the commissioner's approval of the special rate as provided in subpart 3.

Subp. 4. [Repealed, 26 SR 253]

Subp. 5. **Child care rate.** Child care payments shall be based on the allowable rates in the county where care is provided when the care is provided in Minnesota. When child care is provided outside the state of Minnesota, the maximum rate must be based on the allowable rate in the participant's county of residence.

Subp. 5a. **Rates for in-home care.** When care is provided in the child's home, the maximum rate must be based on the allowable rate for legal nonlicensed family child care.

Subp. 6. [Repealed, 26 SR 253]

Subp. 7. Payment of registration fees. If a provider 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.

Subp. 8. Payment of activity fees. If, in addition to a provider's base rate, a provider charges activity fees that are not optional, the activity fees shall be incorporated into the base rate and the provider may be paid up to the county maximum provider rate from the child care fund.

Subp. 9. [Repealed, 26 SR 253]

Subp. 10. [Repealed, 26 SR 253]

Statutory Authority: *MS s 14.3895; 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253; 30 SR 1318*

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 child care fund 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.

Subp. 3. [Repealed, 26 SR 253]

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, the date the child care provider is selected by the applicant, or, in counties that require investigations under part 3400.0120, subpart 1b, item B, the date the county received the results of the investigation, whichever is later. Reimbursement for child care expenses must be made according to the date of eligibility established in part 3400.0040, subpart 6c. 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 providers. Before the county issues payment for child care provided by a legal nonlicensed provider, the provider must be registered with the county as provided in part 3400.0120, subpart 2. The county shall provide each registered provider health and safety material supplied by the department and shall refer the registered provider to the child care resources and referral agency. The county must tell the registered provider that the county is required to keep a record of substantiated parental complaints concerning the health and safety of children in the care of legal nonlicensed providers and that, upon request, information governing substantiated complaints shall be released to the public as authorized under Minnesota Statutes, chapter 13.

Subp. 5a. Provisional payment of registered providers. This subpart applies to counties that require investigations under part 3400.0120, subpart 1b, item B, for legal nonlicensed providers. After a legal nonlicensed provider meets the registration requirements in part 3400.0120, subpart 2, a county may issue provisional authorization and payment to the legal nonlicensed provider as provided in part 3400.0110, subpart 2a, during the time necessary to receive and review the results of the investigation and determine whether to give final approval to the provider. Whether a county will issue provisional authorization and payment under this subpart and any conditions applicable to provisional authorization and payment must be described in the county's child care fund plan.

Subp. 6. Duties upon receipt of parental complaints against legal nonlicensed providers. Within 24 hours of receiving a parental complaint concerning the health or safety of children under the care of a legal nonlicensed provider, 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 for child care services provided by that provider unless the conditions underlying the substantiated complaint have been corrected.

Subp. 7. County contracts and designation of administering agency. Counties may contract for the administration of all or part of the child care fund. The county shall designate the agency authorized to administer the child care fund in the county's child care fund plan.

Subp. 8. Agreement with employment and training services providers. Cooperative agreements with employment and training services providers must specify that MFIP families participating in employment services and meeting the requirements of part 3400.0080 are eligible for child care assistance from the county responsible for the MFIP participant's approved job search support or employment plan or according to Minnesota Statutes, section 256G.07.

Subp. 9. Local match. The county shall provide a local match according to Minnesota Statutes, section 119B.11, subdivision 1.

Subp. 9a. Child care assistance funding. In the manner prescribed by the commissioner, counties shall claim funding for child care expenditures for all eligible recipients who are in employment, education, training, or other preemployment activities allowed under the federal and state reimbursement programs. The commissioner shall allocate any federal or state earnings to the county that claimed the funding and the county shall use the earnings to expand funding for child care services.

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 may 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 child care fund plan. To the extent of available allocations, no eligible family may be excluded from receiving child care assistance.

Subp. 11. [Repealed, 26 SR 253]

Subp. 12. [Repealed, 26 SR 253]

Subp. 13. [Repealed, 26 SR 253]

Subp. 14. Child care fund reports. Counties must submit financial and program activity reports according to instructions and schedules that the commissioner establishes after considering such factors as the department's need to receive county data in a manner and on a schedule that meets federal reporting deadlines and the counties' need for lead time when changes in reporting requirements occur.

Subp. 15. [Repealed, 26 SR 253]

Subp. 16. [Repealed, 26 SR 253]

Subp. 17. [Repealed, 26 SR 253]

Subp. 18. [Repealed, 26 SR 253]

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Subp. 19. **Recoupment of overpayments.** Overpayments must be recovered or recouped as identified in part 3400.0187.

Subp. 20. [Repealed, 26 SR 253]

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253*

3400.0150 CHILD CARE FUND 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 plan. The commissioner may require updates of information in the plan as necessary to comply with this chapter, Minnesota Statutes, sections 119B.011 to 119B.16, and federal law.

Subp. 2. **Plan content.** The plan must contain a complete description of the county's child care assistance program for applicants and participants eligible for assistance under Minnesota Statutes, chapter 119B. The plan must include the information required by Minnesota Statutes, section 119B.08, subdivision 3; the information required by this chapter; and all written forms, policies, and procedures used to administer the child care funds. The plan must describe how it serves persons with limited English proficiency, as required by title VI of the Civil Rights Act of 1964, United States Code, title 42, sections 2000, et seq. The information in the plan must be in the form prescribed by the commissioner and must include a description of the process used to assure that the information, forms, and notices about child care assistance are accurate, clearly written, and understandable to the intended recipient.

Subp. 3. **Plan amendments.** A county may amend its child care fund plan at any time but the amendment must be approved by the commissioner before it becomes effective. 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 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; L 1999 c 205 art 5 s 21; 26 SR 253*

3400.0160 [Repealed, 26 SR 253]

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 calculated by the method 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, the administering agency must offer the applicant the opportunity to sign an informational release to permit the administering agency to verify whether the applicant qualifies for child care assistance.

Subp. 2. [Repealed, 26 SR 253]

Subp. 3. **Evaluation of income.** The administering agency shall determine income received or available to a 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, which must be treated according to subpart 13. Negative self-employment income must be included in the determination of annual gross income, resulting in a reduction

in total annual gross income. 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, payment for jury duty, and profits from other activity earned by an individual's effort or labor. Gross earned income includes uniform, mileage, 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 H from annual gross income:

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

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

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

D. earned income of full-time or part-time students up to the age of 19 who have not earned a high school diploma or GED high school equivalency diploma, including earnings from summer employment;

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;

G. supplemental security income; and

H. income assigned to the public authority under Minnesota Statutes, section 256.741.

Subp. 6a. Deductions from income. The following items must be deducted from annual gross income:

A. child or spousal support paid to or on behalf of a person or persons who live outside of the household; and

B. funds used to pay for health and dental insurance premiums for family members.

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 records must be kept separate from the family's personal records. 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. For purposes of this subpart, the document in items I to K is incorporated by reference. It is available through the Minitex interlibrary loan system. It is subject to frequent change. If the document in items I to K is amended, and if the amendments are incorporated by reference or otherwise made a part of state or federal law applicable to self-employment deductions, then the amendments to the document are also incorporated by reference into this subpart. However, the expenses listed in items A to P 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 costs of building an inventory, until the time of sale;
- 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. wages and salaries paid to 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 for each roomer greater than the flat rate deduction listed in the current Combined Program Manual issued by the Department of Human Services, 2000;
- J. monthly expenses for each boarder greater than the flat rate deduction listed in the current Combined Program Manual issued by the Department of Human Services, 2000;
- K. monthly expenses for each roomer-boarder greater than the flat rate deduction listed in the current Combined Program Manual issued by the Department of Human Services, 2000;
- L. annual expenses greater than two percent of the estimated market value on a county tax assessment form as a deduction for upkeep and repair against rental income;
- M. expenses not allowed by the United States Internal Revenue Code for self-employment income, unless specifically authorized in this chapter;
- N. federal, state, and local income taxes;
- O. employer's own share of FICA; and
- P. money set aside for the self-employed person's own retirement.

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, business 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.**

A. 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.

B. 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.

C. 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.

D. 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, the cash portion of MFIP; adoption assistance received under Minnesota Statutes, section 259.67; relative custody assistance received under Minnesota Statutes, section 257.85; 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 including child support and maintenance distributed to the family under Minnesota Statutes, section 256.741, subdivision 15; insurance payments or settlements; retirement; survivor's and disability insurance (RSDI) payment; 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. Nonrecurring lump sums that are earmarked and used for the purpose for which they are paid are not to be included in the determination of income. All other lump sums are to be annualized over 12 months.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253; L 2003 1Sp14 art 1 s 106*

3400.0180 REDETERMINATION OF ELIGIBILITY.

A. The county must redetermine each participating family's eligibility at least every six months. The county must redetermine the eligibility of families in the start-up phase of self-employment without an approved employment plan more frequently than once every six months if existing documentation is insufficient to accurately predict self-employment income. The county must also redetermine eligibility immediately when a family reports the information required by part 3400.0040, subpart 4.

B. The county must not treat a redetermination of eligibility as a new application for child care assistance. The participant is responsible for providing documentary evidence of continued eligibility.

C. If redetermination establishes that a family is ineligible for further child care assistance, the county shall terminate the child care assistance as provided in part 3400.0185. If redetermination establishes the need for a change in the family's copayment, revisions shall be calculated according to part 3400.0100. When a change in income affects the amount of a participant's copayment, the new copayment amount is effective on the first day of the first month following the 15-day notice period.

D. If a family timely reports the information required by part 3400.0040, subpart 4, and redetermination establishes a need for a change in the amount of the family's child care assistance, the amount of child care assistance paid to the family between the date the change was reported and the effective date of the new child care assistance payment does not constitute an overpayment.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253*

3400.0183 TERMINATION OF CHILD CARE ASSISTANCE.

Subpart 1. **Conditions under which termination of child care assistance is allowed.**

A. A county may terminate child care assistance for families already receiving assistance when the county receives: (1) a revised allocation from the child care fund that is

smaller than the allocation stated in the notice sent to the county under part 3400.0030; and (2) such short notice of a change in its allocation that the county could not have absorbed the difference in the allocation. The county must consult with the commissioner before terminating assistance under this subpart.

B. If the conditions described in this subpart occur, the county may terminate assistance to families in the order of last on, first off. 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. 2. Conditions under which termination of child care assistance is required. A county must terminate a family's child care assistance under the following conditions:

- A. when the family asks the county to do so;
- B. when the family is no longer eligible to receive child care assistance under this chapter and Minnesota Statutes, chapter 119B; or
- C. when a member of the family has been disqualified from the child care assistance program.

Subp. 3. Disqualification from child care assistance program. A family must be disqualified from receiving child care assistance when a member of the family has been found guilty of wrongfully obtaining or attempting to obtain child care assistance by a federal court, state court, or an administrative hearing determination or waiver; through a disqualification consent agreement; as part of an approved diversion plan under Minnesota Statutes, section 401.065; or as part of a court-ordered stay with probationary or other conditions.

Subp. 4. Disqualification period. This subpart applies to the offenses listed in subpart 3. The disqualification period for the first offense is three months. The disqualification period for the second offense is six months. The disqualification period for the third offense is two years. Subsequent violations result in permanent disqualification.

Subp. 5. Effective date of disqualification period. During the disqualification period, disqualification from any child care program must extend to all child care programs and must be immediately applied. The effective date of the disqualification period is the later of:

- A. the date the family member was found guilty of wrongfully obtaining or attempting to obtain child care assistance by federal court, state court, or an administrative hearing determination or waiver, through a disqualification consent agreement, as part of an approved diversion plan under Minnesota Statutes, section 401.065, or as part of a court-ordered stay with probationary or other conditions; or
- B. the effective date of the child care assistance program termination notice.

Statutory Authority: *MS s 119B.02*

History: *26 SR 253*

3400.0185 NOTICE REQUIREMENTS FOR TERMINATION AND ADVERSE ACTIONS.

Subpart 1. Notice of termination of child care assistance to participants.

A. The county must notify a participant in writing of the termination of child care assistance. The notice must include the following information:

- (1) the date the termination is effective;
- (2) the reason or reasons why assistance is being terminated;
- (3) the statute, rule, or county child care fund plan provision that supports termination of assistance;
- (4) the participant's right to appeal the termination and the procedure for doing so; and
- (5) when the participant appeals the proposed action before the effective date of termination, the participant may choose:
 - (a) to receive benefits while the appeal is pending, subject to recovery if the termination is upheld; or

(b) to not receive benefits while the appeal is pending and to receive reimbursement for documented eligible child care expenditures made or incurred pending appeal if the termination is reversed.

B. If child care assistance under part 3400.0060 is being terminated because a participant has moved to another county, the notice also must state that to continue receiving child care assistance under part 3400.0060 from the new county, the participant must apply for child care assistance in the new county within 30 days of the move.

C. The notice must be mailed to the participant's last known address at least 15 calendar days before terminating assistance.

D. If the participant's child care assistance is terminated under part 3400.0183, subpart 2, item A, and, before the effective date of termination, the participant asks the county to continue child care assistance, the termination must not take effect. If the participant's child care assistance is terminated under part 3400.0183, subpart 2, item B, and, before the effective date of termination, the participant reestablishes eligibility for child care assistance, the termination must not take effect.

Subp. 2. Notice of termination of child care assistance to providers.

A. When a family's child care assistance is terminated, the county must send the family's child care provider a notice containing only the following information:

- (1) the family's name;
- (2) that child care assistance for the family has been terminated;
- (3) the effective date of the termination; and

(4) that child care payments will no longer be made effective on the date of termination, unless the family asks to continue receiving assistance pending an appeal. The notice to a provider must not contain information on why payments will no longer be made.

B. Except for cases involving alleged child abuse by a provider or a complaint that the health and safety of a child in care is in imminent danger, the notice must be mailed to the provider at least 15 calendar days before terminating benefits to the family.

C. In cases involving alleged child abuse by a provider or a complaint that the health and safety of a child in care is in imminent danger, the county must send a notice of termination to the provider that is effective immediately.

Subp. 3. Notice to participants of adverse actions.

A. The county must give a participant written notice of any action adversely affecting the participant.

B. The notice must include the following information:

- (1) a description of the adverse action;
- (2) the effective date of the adverse action;
- (3) the reason or reasons why the adverse action is being taken;
- (4) the statute, rule, or county child care fund plan provision that supports the adverse action;

(5) that the participant has the right to appeal the adverse action and the procedure for doing so; and

(6) that if the participant appeals the adverse action before the effective date of the action, the participant may choose:

(a) to continue receiving the same level of benefits while the appeal is pending, subject to recoupment or recovery if the adverse action is upheld; or

(b) to receive the level of benefits indicated by the adverse action while the appeal is pending and to receive reimbursement for documented eligible child care expenditures made or incurred pending appeal if the adverse action is reversed.

C. The notice must be mailed to the participant's last known address at least 15 calendar days before the effective date of the adverse action.

D. If the participant corrects the condition requiring an adverse action before the effective date of the adverse action, the adverse action must not take effect.

Subp. 4. Notice to providers of adverse actions. The county must give a provider written notice of the following adverse actions: a reduction in the hours of authorized care; an

increase in the family's copayment; and an adverse determination of provider eligibility. The notice must include only the following information:

- A. the family's name;
- B. a description of the adverse action that does not contain any information about why the action was taken;
- C. the effective date of the adverse action; and
- D. a statement that unless the family appeals the adverse action before the effective date, the adverse action will occur on the effective date. The notice must be mailed to the provider at least 15 calendar days before the effective date of the adverse action.

Statutory Authority: *MS s 119B.02*

History: *26 SR 253*

3400.0187 RECOUPMENT AND RECOVERY OF OVERPAYMENTS.

Subpart 1. **State recovery of overpayments.** The commissioner must recover from counties any state or federal money that was spent for persons found to be ineligible for child care assistance, except as provided in Minnesota Statutes, section 119B.11, subdivision 3. The county's inability to recover an advance payment made to a provider or a family does not affect the commissioner's right to recover the advance payment from the county under Minnesota Statutes, section 119B.11, subdivision 3.

Subp. 1a. **County recovery of overpayments.** When a county discovers that an amount of child care assistance in excess of the payment due to a family was paid to or on behalf of the family, the county must recoup or recover the overpayment according to this part.

Subp. 2. **Notice of overpayment.** The county must 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 overpayment determination.

Subp. 3. **Redetermination of eligibility.** When a county discovers that a family has received an overpayment, the county must immediately redetermine the family's eligibility for child care assistance.

Subp. 4. **Recoupment of overpayments from participants.** If the redetermination of eligibility indicates the family remains eligible for child care assistance, the county must recoup the overpayment by reducing the amount of assistance paid to or on behalf of the family at the rates in item A, B, C, or D until the overpayment debt is retired.

A. When a family has an overpayment due to agency or provider error, the monthly recoupment amount is one-fourth the family's copayment or \$20, whichever is greater.

B. When the family has an overpayment due to the family's first failure to report changes as required by part 3400.0040, subpart 4, the monthly recoupment amount is one-half the family's copayment or \$20, whichever is greater.

C. When a family has an overpayment due to the family's failure to provide accurate information at the time of application or redetermination or the family's second or subsequent failure to report changes as required by part 3400.0040, subpart 4, the monthly recoupment amount is one-half the family's copayment or \$100, whichever is greater.

D. When a family has an overpayment due to a violation of Minnesota Statutes, section 256.98, subdivision 1, as established by a court conviction, a court-ordered stay of conviction with probationary or other terms, a disqualification agreement, a pretrial diversion, or an administrative disqualification hearing or waiver, the monthly recoupment amount equals the greater of:

- (1) the family's copayment;
- (2) ten percent of the overpayment; or
- (3) \$200.

E. This item applies to families who have been disqualified or found to be ineligible for the child care assistance program and who have outstanding overpayments. If a dis-

qualified or previously ineligible family returns to the child care assistance program, the county must begin recouping the family's outstanding overpayment using the recoupment schedule in items A to D unless another repayment schedule has been specified in a court order.

Subp. 5. Recovering overpayment from former participants. If the redetermination of eligibility shows a family is no longer eligible for child care assistance, the county may choose to initiate efforts to recover overpayments from the family for overpayments 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 recover 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.

Statutory Authority: *MS s 119B.02*

History: *26 SR 253*

3400.0190 [Repealed, 26 SR 253]

3400.0200 PAYMENTS TO COUNTIES.

The commissioner shall make payments to the counties at least once per quarter. The commissioner may certify an advance to the counties for the first quarter of the fiscal year or the first quarter of the allocation period. Subsequent payments made to the counties shall be based on actual expenditures as reported by the counties in the financial and program activity report required under part 3400.0140, subpart 14.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 26 SR 253*

3400.0210 NOTICE OF NONCOMPLIANCE; FUNDING SANCTIONS.

If the commissioner finds that a county is not complying with this chapter, 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 119B.03, subdivision 5.

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

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 26 SR 253*

3400.0220 AUDIT EXCEPTIONS.

The commissioner shall recover from counties state or federal money spent for child care that is ineligible under this chapter. 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 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 26 SR 253*

3400.0230 RIGHT TO FAIR HEARING.

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

Subp. 2. **Informal conference; administering agency requirements.** The administering agency must offer an informal conference as an option to applicants or participants adversely affected by an agency action to attempt to resolve the dispute. The offer of a conference must clearly state that participation is voluntary and does not delay or replace the right to a fair hearing under subpart 1.

Subp. 3. Child care payments when fair hearing is requested.

A. If the applicant or participant requests a fair hearing before the effective date of termination or adverse action or within ten days after the date of mailing the notice, whichever is later, the termination or adverse action shall not be taken until the conclusion of the fair hearing. Child care assistance paid pending a fair hearing is subject to recovery under part 3400.0187 to the extent the commissioner finds on appeal that the participant was not eligible for the amount of child care assistance paid.

B. If the commissioner finds on appeal that child care assistance should have been terminated or the amount of benefits reduced, the county must send a notice of termination or reduction in benefits effective immediately to the family and the child care provider.

C. A participant 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 must reimburse the participant for documented eligible child care expenditures made or incurred pending the appeal.

Statutory Authority: *MS s 119B.02; 256H.01 to 256H.19*

History: *14 SR 519; 18 SR 1144; 26 SR 253*

3400.0235 AT-HOME INFANT CHILD CARE PROGRAM.

Subpart 1. **Purpose and applicability.** This part governs the administration of the at-home infant child care program. A family in which a parent provides care for the family's infant child may receive a subsidy under this program in lieu of child care assistance if the family is eligible for, or is receiving assistance under, the basic sliding fee program governed by this chapter. All provisions in parts 3400.0010 to 3400.0230 apply to the at-home infant child care program unless otherwise specified in this part or in Minnesota Statutes, section 119B.061.

Subp. 2. **Administration of at-home infant child care program.** The commissioner shall establish a funding pool of up to seven percent of the annual appropriation for the basic sliding fee program to provide assistance under the at-home infant child care program. Within the limits of available funding and subject to federal match and maintenance of effort requirements for the child care and development fund in United States Code, title 42, sections 9858 to 9858q, the commissioner shall make payments to counties for expenditures under the at-home infant child care program. Participation in the statewide pool shall be determined based on the order in which requests are received from counties. Following the birth or arrival of an infant, counties shall submit family requests for participation in the at-home infant child care program on forms provided by the commissioner. The commissioner shall respond within seven days to county inquiries about the availability of funds. The commissioner shall monitor the use of the pool and if the available funding is obligated, the commissioner shall create a waiting list of at-home infant child care referrals from the counties. As funds become available to the pool, the commissioner shall notify counties in which eligible families on the waiting list reside.

Subp. 3. **General eligibility requirements.** Items A to E govern eligibility for the at-home infant child care program.

A. Eligible families must meet the requirements of Minnesota Statutes, section 119B.061, subdivision 2. For purposes of this part, "other cash assistance" under Minnesota Statutes, section 119B.061, subdivision 2, means other public cash assistance and includes

the work first program under Minnesota Statutes, chapter 256K. "Other child care assistance" under Minnesota Statutes, section 119B.061, subdivision 2, means MFIP child care assistance, transition year child care assistance, subsidized adoption payments designated to cover child care costs associated with participating in job search, employment, or education, and the postsecondary child care grant program administered by the Minnesota Office of Higher Education under Minnesota Statutes, section 136A.125.

B. A family is eligible to receive assistance under the at-home infant child care program if one parent provides full-time care for the infant. The eligible parent must meet the requirements of Minnesota Statutes, section 119B.061, subdivision 3. The requirements of caring for the infant full-time may be met by one or both parents. For purposes of this part, eligible parents include birth parents, adoptive parents, and stepparents. Nonfamily members may provide regular care for the child but are limited to a maximum of ten hours of care per week.

C. A family may apply for the at-home infant child care program before the child is born or anytime during the infant's first year. The family must apply before the end of the infant's first year to receive an at-home infant child care subsidy. Following the birth of a child, a family is eligible to receive a subsidy under the at-home infant child care program according to the date of eligibility in Minnesota Statutes, section 119B.09, subdivision 7, and when funding is available. A family shall only receive subsidy payments through the infant's twelfth month. "Infant" means a child from birth through 12 months of age and includes adopted infants.

D. A family is limited to a lifetime total of 12 months of at-home infant child care assistance. At the time of application to the program, the parent or parents must declare whether they have previously participated in the at-home infant child care program or used all of the MFIP one-year infant exemption under Minnesota Statutes, chapter 256J. If the parent or parents declare that they have participated in the at-home infant child care program, the commissioner shall, at the request of the county, inform the county of the remaining months of eligibility for the at-home infant child care program.

E. At the time of application to the at-home infant child care program, the family must meet the eligibility requirements in Minnesota Statutes, section 119B.061, subdivision 2, and be income-eligible based on these activities. At the time of application to the at-home infant child care program, a family who is not currently participating in the basic sliding fee program must provide verification of participation in an authorized activity within the nine months before the birth or expected arrival of the child.

F. During the period a family receives a subsidy under the at-home infant child care program, the family is not eligible to receive basic sliding fee child care assistance for the infant or any other child in the family.

Subp. 4. Continued eligibility under basic sliding fee program. If families exiting the at-home infant child care program request continued child care assistance and meet all eligibility factors for the basic sliding fee program, the provisions in Minnesota Statutes, section 119B.061, subdivision 4, paragraph (c), apply.

Subp. 5. Assistance payments. Items A to C govern assistance payments under the at-home infant child care program.

A. The number of months of at-home infant child care participation used shall be credited to the eligible parent. If the eligible parent later forms a new family, the number of months of at-home infant child care subsidy received shall be subtracted from the maximum assistance available under this part.

B. The maximum subsidy must be at 75 percent of the rate established under Minnesota Statutes, section 119B.13, for full-time care of infants in licensed family child care in the applicant's county of residence. There is no additional subsidy for infants with special needs or for multiple births. The maximum subsidy for full-time care shall be converted to a monthly amount. From that monthly amount, the county must subtract the family's monthly copayment required by part 3400.0100 to determine the final at-home infant child care monthly subsidy for the family.

C. Family income shall be determined or redetermined at the time a family applies for the at-home infant child care program. Family income shall be annualized from the be-

ginning of the month in which the family would first participate in the at-home infant child care program. Family income includes:

- (1) subsidy payments received as part of the at-home infant child care program;
- (2) income from vacation leave;
- (3) sick or temporary disability benefit payments; and
- (4) other income the family may receive as determined under part 3400.0170 and Minnesota Statutes, section 119B.011, subdivision 16.

Excluded income is defined in part 3400.0170, subpart 6, and Minnesota Statutes, section 119B.011, subdivision 16. The calculation of the family copayment fee is described in part 3400.0100.

D. For purposes of counting the number of months that a family has participated in the at-home infant child care program, any portion of a month in which a family receives a subsidy under the at-home infant child care program is considered a full month of participation in the at-home infant child care program.

For purposes of calculating the at-home infant child care program copayment and subsidy in the first month, the county shall use the method described in part 3400.0100. In addition, the county shall prorate the subsidy received in the first and last month of participation according to subitems (1) to (4).

(1) If the family participates in the at-home infant child care program during the month in which the infant is born or arrives in the home, the subsidy must be prorated to cover the number of calendar days from the date of birth or arrival until the end of the month.

(2) If the family participates in the at-home infant child care program during the month of the infant's first birthday, the subsidy must be prorated to cover the number of calendar days from the beginning of the month to the date of the infant's first birthday.

(3) If the eligible parent leaves employment or another authorized activity in order to participate in the at-home infant child care program, the subsidy must be prorated to cover the number of calendar days from the date the eligible parent leaves the authorized activity to the end of the month.

(4) If the eligible parent returns to an authorized activity and will no longer be participating in the at-home infant child care program, the subsidy must be prorated to cover the number of calendar days from the beginning of the month to the date the parent returns to the authorized activity. If all other eligibility conditions are met, the family shall be eligible to receive basic sliding fee child care assistance beginning on the day the eligible parent returns to the authorized activity.

Subp. 6. **County responsibilities.** Items A to C govern county responsibilities for the program.

A. In addition to duties required under parts 3400.0140 and 3400.0160, counties shall perform the following functions to administer the at-home infant child care program:

- (1) establish the subsidy amount;
- (2) determine an estimated length of time the family will participate;
- (3) determine availability of and encumber ongoing basic sliding fee funding if the family was participating in the basic sliding fee program before participating in the at-home infant child care program or has reached the top of the county's waiting list for the basic sliding fee program;
- (4) consult with the commissioner on the availability of funds;
- (5) forward applicant information as designated to the commissioner;
- (6) issue payments under the at-home infant child care program; and
- (7) notify the commissioner when a family's participation in the at-home infant child care program ends.

B. During program participation, the county shall apply billing procedures established under Minnesota Statutes, chapter 119B, to issue the monthly at-home infant child care subsidy to families.

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C. When a family's participation in the at-home infant child care program ends, the county shall send the family and the commissioner a notice indicating the number of months the family participated in the at-home infant child care program in that county.

Subp. 7. **Data collection.** The commissioner shall develop and implement an evaluation plan for the at-home infant child care program. Counties must participate in data collection for the evaluation and must adjust their data collection to reflect changes in the evaluation plan.

Statutory Authority: *MS s 119B.02; 119B.061*

History: *23 SR 1625; L 1999 c 205 art 5 s 21; 26 SR 253; L 2005 c 107 art 2 s 60*