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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. **145**

01/19/2021

Authored by Mortensen

The bill was read for the first time and referred to the Committee on Early Childhood Finance and Policy

1.1 A bill for an act

1.2 relating to children; repealing child care assistance program, basic sliding fee child

1.3 care and Minnesota Family Investment Program child care provisions; repealing

1.4 Minnesota Statutes 2020, sections 119B.011, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9,

1.5 10, 10a, 11, 12, 13, 13a, 14, 15, 16, 17, 18, 19, 19a, 19b, 20, 20a, 21, 22; 119B.02;

1.6 119B.025, subdivisions 1, 2, 3, 4; 119B.03, subdivisions 1, 2, 3, 4, 5, 6, 6a, 6b, 8,

1.7 9, 10; 119B.035; 119B.04; 119B.05, subdivisions 1, 4, 5; 119B.06, subdivisions

1.8 1, 2, 3; 119B.08, subdivisions 1, 2, 3; 119B.09, subdivisions 1, 3, 4, 4a, 5, 6, 7, 8,

1.9 9, 9a, 10, 11, 12, 13; 119B.095; 119B.097; 119B.10, subdivisions 1, 2, 3; 119B.105;

1.10 119B.11, subdivisions 1, 2a, 3, 4; 119B.12, subdivisions 1, 2; 119B.125,

1.11 subdivisions 1, 1a, 1b, 2, 3, 4, 5, 6, 7, 9; 119B.13, subdivisions 1, 1a, 3, 3a, 3b,

1.12 3c, 4, 5, 6, 7; 119B.14; 119B.15; 119B.16; 119B.161; 245E.01; 245E.02; 245E.03;

1.13 245E.04; 245E.05; 245E.06; 245E.07, subdivisions 1, 2; 245E.08; 245E.09;

1.14 245H.01; 245H.02; 245H.03; 245H.04; 245H.05; 245H.06; 245H.07; 245H.08;

1.15 245H.10, subdivision 1; 245H.11; 245H.12; 245H.13; 245H.14; 245H.15; 245H.16;

1.16 245H.17; 245H.18; Minnesota Rules, parts 3400.0010; 3400.0020, subparts 1, 4,

1.17 5, 8, 9a, 10a, 12, 17a, 18, 18a, 20, 24, 25, 26, 28, 29a, 31b, 32b, 33, 34a, 35, 37,

1.18 38, 38a, 38b, 39, 40, 40a, 44; 3400.0030; 3400.0035; 3400.0040, subparts 1, 3, 4,

1.19 5, 5a, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12, 13, 14, 15, 15a, 17, 18; 3400.0060, subparts

1.20 2, 4, 5, 6, 6a, 7, 8, 9, 10; 3400.0080, subparts 1, 1a, 1b, 8; 3400.0090, subparts 1,

1.21 2, 3, 4; 3400.0100, subparts 2a, 2b, 2c, 5; 3400.0110, subparts 1, 1a, 2, 2a, 3, 4a,

1.22 7, 8, 9, 10, 11; 3400.0120, subparts 1, 1a, 2, 2a, 3, 5; 3400.0130, subparts 1, 1a,

1.23 2, 3, 3a, 3b, 5, 5a, 7; 3400.0140, subparts 1, 2, 4, 5, 6, 7, 8, 9, 9a, 10, 14; 3400.0150;

1.24 3400.0170, subparts 1, 3, 4, 6a, 7, 8, 9, 10, 11; 3400.0180; 3400.0183, subparts 1,

1.25 2, 5; 3400.0185; 3400.0187, subparts 1, 2, 3, 4, 6; 3400.0200; 3400.0220;

1.26 3400.0230, subpart 3; 3400.0235, subparts 1, 2, 3, 4, 5, 6.

1.27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.28 Section 1. REVISOR INSTRUCTION.

1.29 The revisor of statutes shall work with House Research, Senate Counsel, and the

1.30 Department of Human Services to propose legislation in the 2022 legislative session that

1.31 removes the terms "child care assistance program," "basic sliding fee child care," "MFIP

1.32 child care," and similar terms wherever the terms appear in Minnesota Statutes.

2.1 Sec. 2. **REPEALER.**

2.2 (a) Minnesota Statutes 2020, sections 119B.011, subdivisions 1, 2, 3, 4, 5, 6, 7, 8, 9, 10,
2.3 10a, 11, 12, 13, 13a, 14, 15, 16, 17, 18, 19, 19a, 19b, 20, 20a, 21, and 22; 119B.02; 119B.025,
2.4 subdivisions 1, 2, 3, and 4; 119B.03, subdivisions 1, 2, 3, 4, 5, 6, 6a, 6b, 8, 9, and 10;
2.5 119B.035; 119B.04; 119B.05, subdivisions 1, 4, and 5; 119B.06, subdivisions 1, 2, and 3;
2.6 119B.08, subdivisions 1, 2, and 3; 119B.09, subdivisions 1, 3, 4, 4a, 5, 6, 7, 8, 9, 9a, 10,
2.7 11, 12, and 13; 119B.095; 119B.097; 119B.10, subdivisions 1, 2, and 3; 119B.105; 119B.11,
2.8 subdivisions 1, 2a, 3, and 4; 119B.12, subdivisions 1 and 2; 119B.125, subdivisions 1, 1a,
2.9 1b, 2, 3, 4, 5, 6, 7, and 9; 119B.13, subdivisions 1, 1a, 3, 3a, 3b, 3c, 4, 5, 6, and 7; 119B.14;
2.10 119B.15; 119B.16; and 119B.161, are repealed.

2.11 (b) Minnesota Rules, parts 3400.0010; 3400.0020, subparts 1, 4, 5, 8, 9a, 10a, 12, 17a,
2.12 18, 18a, 20, 24, 25, 26, 28, 29a, 31b, 32b, 33, 34a, 35, 37, 38, 38a, 38b, 39, 40, 40a, and
2.13 44; 3400.0030; 3400.0035; 3400.0040, subparts 1, 3, 4, 5, 5a, 6a, 6b, 6c, 7, 8, 9, 10, 11, 12,
2.14 13, 14, 15, 15a, 17, and 18; 3400.0060, subparts 2, 4, 5, 6, 6a, 7, 8, 9, and 10; 3400.0080,
2.15 subparts 1, 1a, 1b, and 8; 3400.0090, subparts 1, 2, 3, and 4; 3400.0100, subparts 2a, 2b,
2.16 2c, and 5; 3400.0110, subparts 1, 1a, 2, 2a, 3, 4a, 7, 8, 9, 10, and 11; 3400.0120, subparts
2.17 1, 1a, 2, 2a, 3, and 5; 3400.0130, subparts 1, 1a, 2, 3, 3a, 3b, 5, 5a, and 7; 3400.0140, subparts
2.18 1, 2, 4, 5, 6, 7, 8, 9, 9a, 10, and 14; 3400.0150; 3400.0170, subparts 1, 3, 4, 6a, 7, 8, 9, 10,
2.19 and 11; 3400.0180; 3400.0183, subparts 1, 2, and 5; 3400.0185; 3400.0187, subparts 1, 2,
2.20 3, 4, and 6; 3400.0200; 3400.0220; 3400.0230, subpart 3; and 3400.0235, subparts 1, 2, 3,
2.21 4, 5, and 6, are repealed.

2.22 (c) Minnesota Statutes 2020, sections 245E.01; 245E.02; 245E.03; 245E.04; 245E.05;
2.23 245E.06; 245E.07, subdivisions 1 and 2; 245E.08; and 245E.09, are repealed.

2.24 (d) Minnesota Statutes 2020, sections 245H.01; 245H.02; 245H.03; 245H.04; 245H.05;
2.25 245H.06; 245H.07; 245H.08; 245H.10, subdivision 1; 245H.11; 245H.12; 245H.13; 245H.14;
2.26 245H.15; 245H.16; 245H.17; and 245H.18, are repealed.

119B.011 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this chapter, the following terms have the meanings given.

Subd. 2. **Applicant.** "Child care fund applicants" means all parents, stepparents, legal guardians, or eligible relative caregivers who are members of the family and reside in the household that applies for child care assistance under the child care fund.

Subd. 3. **Application.** "Application" means the submission to a county agency, by or on behalf of a family, of a completed, signed, and dated:

- (1) child care assistance universal application form; or
- (2) child care addendum form in combination with a combined application form for MFIP, DWP, or Supplemental Nutrition Assistance Program (SNAP) benefits.

Subd. 4. **Child.** "Child" means a person 12 years old or younger, or a person age 13 or 14 who is disabled, as defined in section 125A.02.

Subd. 5. **Child care.** "Child care" means the care of a child by someone other than a parent, stepparent, legal guardian, eligible relative caregiver, or the spouses of any of the foregoing in or outside the child's own home for gain or otherwise, on a regular basis, for any part of a 24-hour day.

Subd. 6. **Child care fund.** "Child care fund" means a program under this chapter providing:

- (1) financial assistance for child care to parents engaged in employment, job search, or education and training leading to employment, or an at-home infant child care subsidy; and
- (2) grants to develop, expand, and improve the access and availability of child care services statewide.

Subd. 7. **Child care services.** "Child care services" means the provision of child care as defined in subdivision 5.

Subd. 8. **Commissioner.** "Commissioner" means the commissioner of human services.

Subd. 9. **County board.** "County board" means the board of county commissioners in each county.

Subd. 10. **Department.** "Department" means the Department of Human Services.

Subd. 10a. **Diversionsary work program.** "Diversionsary work program" means the program established under section 256J.95.

Subd. 11. **Education program.** "Education program" means remedial or basic education or English as a second language instruction, a program leading to a commissioner of education-selected high school equivalency certification or high school diploma, postsecondary programs excluding postbaccalaureate programs, and other education and training needs as documented in an employment plan, as defined in subdivision 12. The employment plan must outline education and training needs of a recipient, meet state requirements for employment plans, meet the requirements of this chapter, and Minnesota Rules, parts 3400.0010 to 3400.0230, and meet the requirements of programs that provide federal reimbursement for child care services.

Subd. 12. **Employment plan.** "Employment plan" means employment of recipients financially eligible for child care assistance, or other work activities defined under section 256J.49, approved in an employability development, job search support plan, or employment plan that is developed by the county agency, if it is acting as an employment and training service provider, or by an employment and training service provider certified by the commissioner of employment and economic development or an individual designated by the county to provide employment and training services. The plans and designation of a service provider must meet the requirements of this chapter and chapter 256J or 256K, Minnesota Rules, parts 3400.0010 to 3400.0230, and other programs that provide federal reimbursement for child care services.

Subd. 13. **Family.** "Family" means parents, stepparents, guardians and their spouses, or other eligible relative caregivers and their spouses, and their blood related dependent children and adoptive siblings under the age of 18 years living in the same home including children temporarily absent from the household in settings such as schools, foster care, and residential treatment facilities or parents, stepparents, guardians and their spouses, or other relative caregivers and their spouses temporarily absent from the household in settings such as schools, military service, or rehabilitation

programs. An adult family member who is not in an authorized activity under this chapter may be temporarily absent for up to 60 days. When a minor parent or parents and his, her, or their child or children are living with other relatives, and the minor parent or parents apply for a child care subsidy, "family" means only the minor parent or parents and their child or children. An adult age 18 or older who meets this definition of family and is a full-time high school or postsecondary student may be considered a dependent member of the family unit if 50 percent or more of the adult's support is provided by the parents, stepparents, guardians, and their spouses or eligible relative caregivers and their spouses residing in the same household.

Subd. 13a. **Family stabilization services.** "Family stabilization services" means the services under section 256J.575.

Subd. 14. **Human services board.** "Human services board" means a board established under section 402.02, Laws 1974, chapter 293, or Laws 1976, chapter 340.

Subd. 15. **Income.** "Income" means earned income as defined under section 256P.01, subdivision 3, unearned income as defined under section 256P.01, subdivision 8, and public assistance cash benefits, including the Minnesota family investment program, diversionary work program, work benefit, Minnesota supplemental aid, general assistance, refugee cash assistance, at-home infant child care subsidy payments, and child support and maintenance distributed to the family under section 256.741, subdivision 2a. The following are deducted from income: funds used to pay for health insurance premiums for family members, and child or spousal support paid to or on behalf of a person or persons who live outside of the household. Income sources not included in this subdivision and section 256P.06, subdivision 3, are not counted.

Subd. 16. **Legal nonlicensed child care provider.** "Legal nonlicensed child care provider" means: (1) a child care provider who is excluded from licensing requirements under section 245A.03, subdivision 2; or (2) a child care provider authorized to provide care in a child's home under section 119B.09, subdivision 13, provided the provider only cares for related children, children from a single, unrelated family, or both related children and children from a single, unrelated family.

Subd. 17. **MFIP.** "MFIP" means the Minnesota family investment program, the state's TANF program under Public Law 104-193, Title I, and includes the MFIP program under chapter 256J and tribal contracts under section 119B.02, subdivision 2, or 256.01, subdivision 2.

Subd. 18. **Postsecondary educational systems.** "Postsecondary educational systems" means the University of Minnesota Board of Regents and the Board of Trustees of the Minnesota State Colleges and Universities.

Subd. 19. **Provider.** "Provider" means:

(1) an individual or child care center or facility licensed to provide child care under chapter 245A when operating within the terms of the license;

(2) a license-exempt center required to be certified under chapter 245H;

(3) an individual or child care center or facility that: (i) holds a valid child care license issued by another state or a tribe; (ii) provides child care services in the licensing state or in the area under the licensing tribe's jurisdiction; and (iii) is in compliance with federal health and safety requirements as certified by the licensing state or tribe, or as determined by receipt of child care development block grant funds in the licensing state;

(4) a legal nonlicensed child care provider as defined under section 119B.011, subdivision 16, providing legal child care services. A legal nonlicensed child care provider must be at least 18 years of age, and not a member of the MFIP assistance unit or a member of the family receiving child care assistance to be authorized under this chapter; or

(5) an individual or child care center or facility that is operated under the jurisdiction of the federal government.

Subd. 19a. **Registration.** "Registration" means the process used by a county to determine whether the provider selected by a family applying for or receiving child care assistance to care for that family's children meets the requirements necessary for payment of child care assistance for care provided by that provider.

Subd. 19b. **Student parent.** "Student parent" means a person who is:

(1) under 21 years of age and has a child;

(2) pursuing a high school diploma or commissioner of education-selected high school equivalency certification;

(3) residing within a county that has a basic sliding fee waiting list under section 119B.03, subdivision 4; and

(4) not an MFIP participant.

Subd. 20. **Transition year families.** "Transition year families" means families who have received MFIP assistance, or who were eligible to receive MFIP assistance after choosing to discontinue receipt of the cash portion of MFIP assistance under section 256J.31, subdivision 12, or families who have received DWP assistance under section 256J.95 for at least one of the last six months before losing eligibility for MFIP or DWP. Notwithstanding Minnesota Rules, parts 3400.0040, subpart 10, and 3400.0090, subpart 2, transition year child care may be used to support employment, approved education or training programs, or job search that meets the requirements of section 119B.10. Transition year child care is not available to families who have been disqualified from MFIP or DWP due to fraud.

Subd. 20a. **Transition year extension families.** "Transition year extension families" means families who have completed their transition year of child care assistance under this subdivision and who are eligible for, but on a waiting list for, services under section 119B.03. For purposes of sections 119B.03, subdivision 3, and 119B.05, subdivision 1, clause (2), families participating in extended transition year shall not be considered transition year families. Notwithstanding Minnesota Rules, parts 3400.0040, subpart 10, and 3400.0090, subpart 2, transition year extension child care may be used to support employment, approved education or training programs, or a job search that meets the requirements of section 119B.10 for the length of time necessary for families to be moved from the basic sliding fee waiting list into the basic sliding fee program.

Subd. 21. **Recoupment of overpayments.** "Recoupment of overpayments" means the reduction of child care assistance payments to an eligible family or a child care provider in order to correct an overpayment of child care assistance.

Subd. 22. **Service period.** "Service period" means the biweekly period used by the child care assistance program for billing and payment purposes.

119B.02 DUTIES OF COMMISSIONER.

Subdivision 1. **Child care services.** The commissioner shall develop standards for county and human services boards to provide child care services to enable eligible families to participate in employment, training, or education programs. Within the limits of available appropriations, the commissioner shall distribute money to counties to reduce the costs of child care for eligible families. The commissioner shall adopt rules to govern the program in accordance with this section. The rules must establish a sliding schedule of fees for parents receiving child care services. The rules shall provide that funds received as a lump-sum payment of child support arrearages shall not be counted as income to a family in the month received but shall be prorated over the 12 months following receipt and added to the family income during those months. The commissioner shall maximize the use of federal money under title I and title IV of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and other programs that provide federal or state reimbursement for child care services for low-income families who are in education, training, job search, or other activities allowed under those programs. Money appropriated under this section must be coordinated with the programs that provide federal reimbursement for child care services to accomplish this purpose. Federal reimbursement obtained must be allocated to the county that spent money for child care that is federally reimbursable under programs that provide federal reimbursement for child care services. The counties shall use the federal money to expand child care services. The commissioner may adopt rules under chapter 14 to implement and coordinate federal program requirements.

Subd. 2. **Contractual agreements with tribes.** The commissioner may enter into contractual agreements with a federally recognized Indian tribe with a reservation in Minnesota to carry out the responsibilities of county human service agencies to the extent necessary for the tribe to operate child care assistance programs under sections 119B.03 and 119B.05. An agreement may allow the state to make payments for child care assistance services provided under section 119B.05. The commissioner shall consult with the affected county or counties in the contractual agreement negotiations, if the county or counties wish to be included, in order to avoid the duplication of county and tribal child care services. Funding to support services under section 119B.03 may be transferred to the federally recognized Indian tribe with a reservation in Minnesota from allocations available to counties in which reservation boundaries lie. When funding is transferred under section

119B.03, the amount shall be commensurate to estimates of the proportion of reservation residents with characteristics identified in section 119B.03, subdivision 6, to the total population of county residents with those same characteristics.

Subd. 3. **Supervision of counties.** The commissioner shall supervise child care programs administered by the counties through standard-setting, technical assistance to the counties, approval of county child care fund plans, and distribution of public money for services. The commissioner shall provide training and other support services to assist counties in planning for and implementing child care assistance programs. The commissioner shall adopt rules under chapter 14 that establish minimum administrative standards for the provision of child care services by county boards of commissioners.

Subd. 4. **Universal application form.** The commissioner must develop and make available to all counties a universal application form for child care assistance under this chapter. The commissioner may develop and make available to all counties a child care addendum form to be used to supplement the combined application form for MFIP, DWP, or Supplemental Nutrition Assistance Program (SNAP) benefits or to supplement other statewide application forms for public assistance programs for families applying for one of these programs in addition to child care assistance. The application must provide notice of eligibility requirements for assistance and penalties for wrongfully obtaining assistance.

Subd. 5. **Program integrity.** For child care assistance programs under this chapter, the commissioner shall enforce the requirements for program integrity and fraud prevention investigations under sections 256.046, 256.98, and 256.983.

Subd. 6. **Data.** (a) Data collected, maintained, used, or disseminated by the welfare system pertaining to persons selected as legal nonlicensed child care providers by families receiving child care assistance shall be treated as licensing data as provided in section 13.46, subdivision 4.

(b) For purposes of this paragraph, "child care assistance program payment data" means data for a specified time period showing (1) that a child care assistance program payment under this chapter was made, and (2) the amount of child care assistance payments made to a child care center. Child care assistance program payment data may include the number of families and children on whose behalf payments were made for the specified time period. Any child care assistance program payment data that may identify a specific child care assistance recipient or benefit paid on behalf of a specific child care assistance recipient, as determined by the commissioner, is private data on individuals as defined in section 13.02, subdivision 12. Data related to a child care assistance payment is public if the data relates to a child care assistance payment made to a licensed child care center or a child care center exempt from licensure and:

(1) the child care center receives payment of more than \$100,000 from the child care assistance program under this chapter in a period of one year or less; or

(2) when the commissioner or county agency either:

(i) disqualified the center from receipt of a payment from the child care assistance program under this chapter for wrongfully obtaining child care assistance under section 256.98, subdivision 8, paragraph (c);

(ii) refused a child care authorization, revoked a child care authorization, stopped payment, or denied payment for a bill for the center under section 119B.13, subdivision 6, paragraph (d); or

(iii) made a finding of financial misconduct under section 245E.02.

Subd. 7. **Child care market rate survey.** The commissioner shall conduct the next survey of prices charged by child care providers in Minnesota in state fiscal year 2021 and every three years thereafter to determine the 75th percentile for like-care arrangements in county price clusters.

119B.025 DUTIES OF COUNTIES.

Subdivision 1. **Applications.** (a) Except as provided in paragraph (c), clause (4), the county shall verify the following at all initial child care applications using the universal application:

(1) identity of adults;

(2) presence of the minor child in the home, if questionable;

(3) relationship of minor child to the parent, stepparent, legal guardian, eligible relative caretaker, or the spouses of any of the foregoing;

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- (4) age;
- (5) immigration status, if related to eligibility;
- (6) Social Security number, if given;
- (7) counted income;
- (8) spousal support and child support payments made to persons outside the household;
- (9) residence; and
- (10) inconsistent information, if related to eligibility.

(b) The county must mail a notice of approval or denial of assistance to the applicant within 30 calendar days after receiving the application. The county may extend the response time by 15 calendar days if the applicant is informed of the extension.

(c) For an applicant who declares that the applicant is homeless and who meets the definition of homeless in section 119B.011, subdivision 13b, the county must:

(1) if information is needed to determine eligibility, send a request for information to the applicant within five working days after receiving the application;

(2) if the applicant is eligible, send a notice of approval of assistance within five working days after receiving the application;

(3) if the applicant is ineligible, send a notice of denial of assistance within 30 days after receiving the application. The county may extend the response time by 15 calendar days if the applicant is informed of the extension;

(4) not require verifications required by paragraph (a) before issuing the notice of approval or denial; and

(5) follow limits set by the commissioner for how frequently expedited application processing may be used for an applicant under this paragraph.

(d) An applicant who declares that the applicant is homeless must submit proof of eligibility within three months of the date the application was received. If proof of eligibility is not submitted within three months, eligibility ends. A 15-day adverse action notice is required to end eligibility.

Subd. 2. Social Security numbers. The county must request Social Security numbers from all applicants for child care assistance under this chapter. A county may not deny child care assistance solely on the basis of failure of an applicant to report a Social Security number.

Subd. 3. Redeterminations. (a) Notwithstanding Minnesota Rules, part 3400.0180, item A, the county shall conduct a redetermination according to paragraphs (b) and (c).

(b) The county shall use the redetermination form developed by the commissioner. The county must verify the factors listed in subdivision 1, paragraph (a), as part of the redetermination.

(c) An applicant's eligibility must be redetermined no more frequently than every 12 months. The following criteria apply:

(1) a family meets the eligibility redetermination requirements if a complete redetermination form and all required verifications are received within 30 days after the date the form was due;

(2) if the 30th day after the date the form was due falls on a Saturday, Sunday, or holiday, the 30-day time period is extended to include the next day that is not a Saturday, Sunday, or holiday. Assistance shall be payable retroactively from the redetermination due date;

(3) for a family where at least one parent is younger than 21 years of age, does not have a high school degree or commissioner of education-selected high school equivalency certification, and is a student in a school district or another similar program that provides or arranges for child care, parenting, social services, career and employment supports, and academic support to achieve high school graduation, the redetermination of eligibility may be deferred beyond 12 months, to the end of the student's school year; and

(4) a family and the family's providers must be notified that the family's redetermination is due at least 45 days before the end of the family's 12-month eligibility period.

Subd. 4. Changes in eligibility. (a) The county shall process a change in eligibility factors according to paragraphs (b) to (g).

(b) A family is subject to the reporting requirements in section 256P.07.

(c) If a family reports a change or a change is known to the agency before the family's regularly scheduled redetermination, the county must act on the change. The commissioner shall establish standards for verifying a change.

(d) A change in income occurs on the day the participant received the first payment reflecting the change in income.

(e) During a family's 12-month eligibility period, if the family's income increases and remains at or below 85 percent of the state median income, adjusted for family size, there is no change to the family's eligibility. The county shall not request verification of the change. The co-payment fee shall not increase during the remaining portion of the family's 12-month eligibility period.

(f) During a family's 12-month eligibility period, if the family's income increases and exceeds 85 percent of the state median income, adjusted for family size, the family is not eligible for child care assistance. The family must be given 15 calendar days to provide verification of the change. If the required verification is not returned or confirms ineligibility, the family's eligibility ends following a subsequent 15-day adverse action notice.

(g) Notwithstanding Minnesota Rules, parts 3400.0040, subpart 3, and 3400.0170, subpart 1, if an applicant or participant reports that employment ended, the agency may accept a signed statement from the applicant or participant as verification that employment ended.

119B.03 BASIC SLIDING FEE PROGRAM.

Subdivision 1. **Notice of allocation.** By October 1 of each year, the commissioner shall notify all counties of their final child care fund program allocation.

Subd. 2. **Waiting list.** Each county that receives funds under this section must keep a written record and report to the commissioner the number of eligible families who have applied for a child care subsidy or have requested child care assistance. Counties shall perform a preliminary determination of eligibility when a family requests child care assistance. At a minimum, a county must make a preliminary determination of eligibility based on family size, income, and authorized activity. A family seeking child care assistance must provide the required information to the county. A family that appears to be eligible must be put on a waiting list if funds are not immediately available. The waiting list must identify students in need of child care. Counties must review and update their waiting list at least every six months.

Subd. 3. **Eligible participants.** Families that meet the eligibility requirements under sections 119B.09 and 119B.10, except MFIP participants, diversionary work program, and transition year families are eligible for child care assistance under the basic sliding fee program. Families enrolled in the basic sliding fee program shall be continued until they are no longer eligible. Child care assistance provided through the child care fund is considered assistance to the parent.

Subd. 4. **Funding priority.** (a) First priority for child care assistance under the basic sliding fee program must be given to eligible non-MFIP families who do not have a high school diploma or commissioner of education-selected high school equivalency certification or who need remedial and basic skill courses in order to pursue employment or to pursue education leading to employment and who need child care assistance to participate in the education program. This includes student parents as defined under section 119B.011, subdivision 19b. Within this priority, the following subpriorities must be used:

- (1) child care needs of minor parents;
- (2) child care needs of parents under 21 years of age; and
- (3) child care needs of other parents within the priority group described in this paragraph.

(b) Second priority must be given to parents who have completed their MFIP or DWP transition year, or parents who are no longer receiving or eligible for diversionary work program supports.

(c) Third priority must be given to families who are eligible for portable basic sliding fee assistance through the portability pool under subdivision 9.

(d) Fourth priority must be given to families in which at least one parent is a veteran as defined under section 197.447.

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(e) Families under paragraph (b) must be added to the basic sliding fee waiting list on the date they begin the transition year under section 119B.011, subdivision 20, and must be moved into the basic sliding fee program as soon as possible after they complete their transition year.

Subd. 5. **Review of use of funds; reallocation.** (a) After each quarter, the commissioner shall review the use of basic sliding fee program allocations by county. The commissioner may reallocate unexpended or unencumbered money among those counties who have expended their full allocation or may allow a county to expend up to ten percent of its allocation in the subsequent allocation period.

(b) Any unexpended state and federal appropriations from the first year of the biennium may be carried forward to the second year of the biennium.

Subd. 6. **Allocation formula.** The basic sliding fee state and federal funds shall be allocated on a calendar year basis. Funds shall be allocated first in amounts equal to each county's guaranteed floor according to subdivision 8, with any remaining available funds allocated according to the following formula:

(a) One-fourth of the funds shall be allocated in proportion to each county's total expenditures for the basic sliding fee child care program reported during the most recent fiscal year completed at the time of the notice of allocation.

(b) Up to one-fourth of the funds shall be allocated in proportion to the number of families participating in the transition year child care program as reported during and averaged over the most recent six months completed at the time of the notice of allocation. Funds in excess of the amount necessary to serve all families in this category shall be allocated according to paragraph (f).

(c) Up to one-fourth of the funds shall be allocated in proportion to the average of each county's most recent six months of reported first, second, and third priority waiting list as defined in subdivision 2 and the reinstatement list of those families whose assistance was terminated with the approval of the commissioner under Minnesota Rules, part 3400.0183, subpart 1. Funds in excess of the amount necessary to serve all families in this category shall be allocated according to paragraph (f).

(d) Up to one-fourth of the funds shall be allocated in proportion to the average of each county's most recent six months of reported waiting list as defined in subdivision 2 and the reinstatement list of those families whose assistance was terminated with the approval of the commissioner under Minnesota Rules, part 3400.0183, subpart 1. Funds in excess of the amount necessary to serve all families in this category shall be allocated according to paragraph (f).

(e) The amount necessary to serve all families in paragraphs (b), (c), and (d) shall be calculated based on the basic sliding fee average cost of care per family in the county with the highest cost in the most recently completed calendar year.

(f) Funds in excess of the amount necessary to serve all families in paragraphs (b), (c), and (d) shall be allocated in proportion to each county's total expenditures for the basic sliding fee child care program reported during the most recent fiscal year completed at the time of the notice of allocation.

Subd. 6a. **Allocation due to increased funding.** When funding increases are implemented within a calendar year, every county must receive an allocation at least equal to its original allocation for the same time period. The remainder of the allocation must be recalculated to reflect the funding increase, according to formulas identified in subdivision 6.

Subd. 6b. **Allocation due to decreased funding.** When funding decreases are implemented within a calendar year, county allocations must be reduced in an amount proportionate to the reduction in the total allocation for the same time period. This applies when a funding decrease necessitates the revision of an existing calendar year allocation.

Subd. 8. **Guaranteed floor.** (a) Beginning January 1, 1996, each county's guaranteed floor shall equal 90 percent of the allocation received in the preceding calendar year. For the period January 1, 1999, to December 31, 1999, each county's guaranteed floor must be equal to its original calendar year 1998 allocation or its actual earnings for calendar year 1998, whichever is less.

(b) When the amount of funds available for allocation is less than the amount available in the previous year, each county's previous year allocation shall be reduced in proportion to the reduction in the statewide funding, for the purpose of establishing the guaranteed floor.

Subd. 9. **Portability pool.** (a) The commissioner shall establish a pool of up to five percent of the annual appropriation for the basic sliding fee program to provide continuous child care assistance for eligible families who move between Minnesota counties. At the end of each allocation period, any unspent funds in the portability pool must be used for assistance under the basic sliding fee program. If expenditures from the portability pool exceed the amount of money available, the reallocation pool must be reduced to cover these shortages.

(b) A family that has moved from a county in which it was receiving basic sliding fee assistance to a county with a waiting list for the basic sliding fee program must:

- (1) meet the income and eligibility guidelines for the basic sliding fee program; and
- (2) notify the family's previous county of residence of the family's move to a new county of residence.

(c) The receiving county must:

- (1) accept administrative responsibility for applicants for portable basic sliding fee assistance at the end of the two months of assistance under the Unitary Residency Act;
- (2) continue portability pool basic sliding fee assistance until the family is able to receive assistance under the county's regular basic sliding program; and
- (3) notify the commissioner through the quarterly reporting process of any family that meets the criteria of the portable basic sliding fee assistance pool.

Subd. 10. **Application; entry points.** Two or more methods of applying for the basic sliding fee program must be available to applicants in each county. To meet the requirements of this subdivision, a county may provide alternative methods of applying for assistance, including, but not limited to, a mail application, or application sites that are located outside of government offices.

119B.035 AT-HOME INFANT CHILD CARE PROGRAM.

Subdivision 1. **Establishment.** A family in which a parent provides care for the family's infant child may receive a subsidy in lieu of assistance if the family is eligible for or is receiving assistance under the basic sliding fee program. An eligible family must meet the eligibility factors under section 119B.09, except as provided in subdivision 4, and the requirements of this section. Subject to federal match and maintenance of effort requirements for the child care and development fund, and up to available appropriations, the commissioner shall provide assistance under the at-home infant child care program and for administrative costs associated with the program. At the end of a fiscal year, the commissioner may carry forward any unspent funds under this section to the next fiscal year within the same biennium for assistance under the basic sliding fee program.

Subd. 2. **Eligible families.** A family with an infant under the age of one year is eligible for assistance if:

- (1) the family is not receiving MFIP, other cash assistance, or other child care assistance;
- (2) the family has not previously received a lifelong total of 12 months of assistance under this section; and
- (3) the family is participating in the basic sliding fee program or provides verification of participating in an authorized activity at the time of application and meets the program requirements.

Subd. 3. **Eligible parent.** A family is eligible for assistance under this section if one parent cares for the family's infant child. The eligible parent must:

- (1) be over the age of 18;
- (2) care for the infant full time in the infant's home; and
- (3) care for any other children in the family who are eligible for child care assistance under this chapter.

For purposes of this section, "parent" means birth parent, adoptive parent, or stepparent.

Subd. 4. **Assistance.** (a) A family is limited to a lifetime total of 12 months of assistance under subdivision 2. The maximum rate of assistance is equal to 68 percent of the rate established under section 119B.13 for care of infants in licensed family child care in the applicant's county of residence.

(b) A participating family must report income and other family changes as specified in sections 256P.06 and 256P.07, and the county's plan under section 119B.08, subdivision 3.

(c) Persons who are admitted to the at-home infant child care program retain their position in any basic sliding fee program. Persons leaving the at-home infant child care program reenter the basic sliding fee program at the position they would have occupied.

(d) Assistance under this section does not establish an employer-employee relationship between any member of the assisted family and the county or state.

Subd. 5. **Implementation.** The commissioner shall implement the at-home infant child care program under this section through counties that administer the basic sliding fee program under section 119B.03. The commissioner must develop and distribute consumer information on the at-home infant child care program to assist parents of infants or expectant parents in making informed child care decisions.

119B.04 FEDERAL CHILD CARE AND DEVELOPMENT FUND.

Subdivision 1. **Commissioner to administer program.** The commissioner is authorized and directed to receive, administer, and expend funds available under the child care and development fund under Public Law 104-193, Title VI.

Subd. 2. **Rulemaking authority.** The commissioner may adopt rules under chapter 14 to administer the child care and development fund.

119B.05 MFIP CHILD CARE ASSISTANCE PROGRAM.

Subdivision 1. **Eligible participants.** Families eligible for child care assistance under the MFIP child care program are:

(1) MFIP participants who are employed or in job search and meet the requirements of section 119B.10;

(2) persons who are members of transition year families under section 119B.011, subdivision 20, and meet the requirements of section 119B.10;

(3) families who are participating in employment orientation or job search, or other employment or training activities that are included in an approved employability development plan under section 256J.95;

(4) MFIP families who are participating in work job search, job support, employment, or training activities as required in their employment plan, or in appeals, hearings, assessments, or orientations according to chapter 256J;

(5) MFIP families who are participating in social services activities under chapter 256J as required in their employment plan approved according to chapter 256J;

(6) families who are participating in services or activities that are included in an approved family stabilization plan under section 256J.575;

(7) families who are participating in programs as required in tribal contracts under section 119B.02, subdivision 2, or 256.01, subdivision 2;

(8) families who are participating in the transition year extension under section 119B.011, subdivision 20a;

(9) student parents as defined under section 119B.011, subdivision 19b; and

(10) student parents who turn 21 years of age and who continue to meet the other requirements under section 119B.011, subdivision 19b. A student parent continues to be eligible until the student parent is approved for basic sliding fee child care assistance or until the student parent's redetermination, whichever comes first. At the student parent's redetermination, if the student parent was not approved for basic sliding fee child care assistance, a student parent's eligibility ends following a 15-day adverse action notice.

Subd. 4. **Contracts; other uses allowed.** Counties may contract for administration of the program or may arrange for or contract for child care funds to be used by other appropriate programs, in accordance with this section and as permitted by federal law and regulations.

Subd. 5. **Federal reimbursement.** Counties shall maximize their federal reimbursement under federal reimbursement programs for money spent for persons eligible under this chapter. The commissioner shall allocate any federal earnings to the county to be used to expand child care services under this chapter.

119B.06 FEDERAL CHILD CARE AND DEVELOPMENT BLOCK GRANT.

Subdivision 1. **Commissioner to administer block grant.** The commissioner is authorized and directed to receive, administer, and expend child care funds available under the child care and development block grant authorized under the Child Care and Development Block Grant Act of 2014, Public Law 113-186.

Subd. 2. **Rulemaking authority.** The commissioner may adopt rules under chapter 14 to administer the child care development block grant program.

Subd. 3. **Child care development fund plan development; review.** In an effort to improve state legislative involvement in the development of the Minnesota child care and development fund plan, the commissioner must present a draft copy of the plan to the legislative finance committees that oversee child care assistance funding no less than 30 days prior to the required deadline for submission of the plan to the federal government. The legislature must submit any adjustments to the plan to the commissioner for consideration within ten business days of receiving the draft plan. The commissioner must present a copy of the final plan to the chairs of the legislative finance committees that oversee child care assistance funding no less than four days prior to the deadline for submission of the plan to the federal government.

119B.08 REPORTING AND PAYMENTS.

Subdivision 1. **Reports.** The commissioner shall specify requirements for reports under the authority provided in section 256.01, subdivision 2, paragraph (p).

Subd. 2. **Monthly payments.** The commissioner shall make monthly payments on a reimbursement basis for expenditures reported outside of the electronic system used to administer child care assistance. Payments may be withheld if monthly reports are incomplete or untimely.

Subd. 3. **Child care fund plan.** The county and designated administering agency shall submit a biennial child care fund plan to the commissioner. The commissioner shall establish the dates by which the county must submit the plans. The plan shall include:

(1) a description of strategies to coordinate and maximize public and private community resources, including school districts, health care facilities, government agencies, neighborhood organizations, and other resources knowledgeable in early childhood development, in particular to coordinate child care assistance with existing community-based programs and service providers including child care resource and referral programs, early childhood family education, school readiness, Head Start, local interagency early intervention committees, special education services, early childhood screening, and other early childhood care and education services and programs to the extent possible, to foster collaboration among agencies and other community-based programs that provide flexible, family-focused services to families with young children and to facilitate transition into kindergarten. The county must describe a method by which to share information, responsibility, and accountability among service and program providers;

(2) a description of procedures and methods to be used to make copies of the proposed state plan reasonably available to the public, including members of the public particularly interested in child care policies such as parents, child care providers, culturally specific service organizations, child care resource and referral programs, interagency early intervention committees, potential collaborative partners and agencies involved in the provision of care and education to young children, and allowing sufficient time for public review and comment; and

(3) information as requested by the department to ensure compliance with the child care fund statutes and rules promulgated by the commissioner.

The commissioner shall notify counties within 90 days of the date the plan is submitted whether the plan is approved or the corrections or information needed to approve the plan. The commissioner shall withhold a county's allocation until it has an approved plan. Plans not approved by the end of the second quarter after the plan is due may result in a 25 percent reduction in allocation. Plans not approved by the end of the third quarter after the plan is due may result in a 100 percent reduction in the allocation to the county. Counties are to maintain services despite any reduction in their allocation due to plans not being approved.

119B.09 FINANCIAL ELIGIBILITY.

Subdivision 1. **General eligibility requirements.** (a) Child care services must be available to families who need child care to find or keep employment or to obtain the training or education necessary to find employment and who:

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(1) have household income less than or equal to 67 percent of the state median income, adjusted for family size, at application and redetermination, and meet the requirements of section 119B.05; receive MFIP assistance; and are participating in employment and training services under chapter 256J; or

(2) have household income less than or equal to 47 percent of the state median income, adjusted for family size, at application and less than or equal to 67 percent of the state median income, adjusted for family size, at redetermination.

(b) Child care services must be made available as in-kind services.

(c) All applicants for child care assistance and families currently receiving child care assistance must be assisted and required to cooperate in establishment of paternity and enforcement of child support obligations for all children in the family at application and redetermination as a condition of program eligibility. For purposes of this section, a family is considered to meet the requirement for cooperation when the family complies with the requirements of section 256.741.

(d) All applicants for child care assistance and families currently receiving child care assistance must pay the co-payment fee under section 119B.12, subdivision 2, as a condition of eligibility. The co-payment fee may include additional recoupment fees due to a child care assistance program overpayment.

(e) If a family has one child with a child care authorization and the child reaches 13 years of age or the child has a disability and reaches 15 years of age, the family remains eligible until the redetermination.

Subd. 3. **Priorities; allocations.** If a county projects that its child care allocation is insufficient to meet the needs of all eligible families, it may prioritize among the families that remain to be served after the county has complied with the priority requirements of section 119B.03. Counties that have established a priority for families who are not MFIP participants beyond those established under section 119B.03 must submit the policy in the annual child care fund plan.

Subd. 4. **Eligibility; annual income; calculation.** (a) Annual income of the applicant family is the current monthly income of the family multiplied by 12 or the income for the 12-month period immediately preceding the date of application, or income calculated by the method which provides the most accurate assessment of income available to the family.

(b) Self-employment income must be calculated based on gross receipts less operating expenses.

(c) Income changes are processed under section 119B.025, subdivision 4. Included lump sums counted as income under section 256P.06, subdivision 3, must be annualized over 12 months. Income must be verified with documentary evidence. If the applicant does not have sufficient evidence of income, verification must be obtained from the source of the income.

Subd. 4a. **Temporary ineligibility of military personnel.** 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 due to increased income from active military service. Activated military personnel may be temporarily ineligible until deactivation. A county must reserve a military family's position on the basic sliding fee waiting list 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.

Subd. 5. **Provider choice.** Parents may choose child care providers as defined under section 119B.011, subdivision 19, that best meet the needs of their family. Counties shall make resources available to parents in choosing quality child care services. Counties may require a parent to sign a release stating their knowledge and responsibilities in choosing a legal provider described under section 119B.011, subdivision 19. When a county knows that a particular provider is unsafe, or that the circumstances of the child care arrangement chosen by the parent are unsafe, the county may deny a child care subsidy. A county may not restrict access to a general category of provider allowed under section 119B.011, subdivision 19.

Subd. 6. **Maximum child care assistance.** The maximum amount of child care assistance a local agency may pay for in a two-week period is 120 hours per child.

Subd. 7. **Date of eligibility for assistance.** (a) The date of eligibility for child care assistance under this chapter is the later of the date the application was received by the county; the beginning date of employment, education, or training; the date the infant is born for applicants to the at-home infant care program; or the date a determination has been made that the applicant is a participant in employment and training services under Minnesota Rules, part 3400.0080, or chapter 256J.

(b) Payment ceases for a family under the at-home infant child care program when a family has used a total of 12 months of assistance as specified under section 119B.035. Payment of child care assistance for employed persons on MFIP is effective the date of employment or the date of MFIP eligibility, whichever is later. Payment of child care assistance for MFIP or DWP participants in employment and training services is effective the date of commencement of the services or the date of MFIP or DWP eligibility, whichever is later. Payment of child care assistance for transition year child care must be made retroactive to the date of eligibility for transition year child care.

(c) Notwithstanding paragraph (b), payment of child care assistance for participants eligible under section 119B.05 may only be made retroactive for a maximum of three months from the date of application for child care assistance.

Subd. 8. **No employee-employer relationships.** Receipt of federal, state, or local funds by a child care provider either directly or through a parent who is a child care assistance recipient does not establish an employee-employer relationship between the child care provider and the county or state.

Subd. 9. **Licensed and legal nonlicensed family child care providers; assistance.** This subdivision applies to any provider providing care in a setting other than a child care center. Licensed and legal nonlicensed family child care providers and their employees are not eligible to receive child care assistance subsidies under this chapter for their own children or children in their family during the hours they are providing child care or being paid to provide child care. Child care providers and their employees are eligible to receive child care assistance subsidies for their children when they are engaged in other activities that meet the requirements of this chapter and for which child care assistance can be paid. The hours for which the provider or their employee receives a child care subsidy for their own children must not overlap with the hours the provider provides child care services.

Subd. 9a. **Child care centers; assistance.** (a) A child care center may receive authorizations for 25 or fewer children who are dependents of the center's employees. If a child care center is authorized for more than 25 children who are dependents of center employees, the county cannot authorize additional dependents of an employee until the number of children falls below 25.

(b) Funds paid to providers during the period of time when a center is authorized for more than 25 children who are dependents of center employees must not be treated as overpayments under section 119B.11, subdivision 2a, due to noncompliance with this subdivision.

(c) Nothing in this subdivision precludes the commissioner from conducting fraud investigations relating to child care assistance, imposing sanctions, and obtaining monetary recovery as otherwise provided by law.

Subd. 10. **Payment of funds.** All federal, state, and local child care funds must be paid directly to the parent when a provider cares for children in the children's own home. In all other cases, all federal, state, and local child care funds must be paid directly to the child care provider, either licensed or legal nonlicensed, on behalf of the eligible family. Funds distributed under this chapter must not be used for child care services that are provided for a child by a child care provider who resides in the same household or occupies the same residence as the child.

Subd. 11. **Payment of other child care expenses.** Payment by a source other than the family, of part or all of a family's child care expenses not payable under this chapter, does not affect the family's eligibility for child care assistance, and the amount paid is excluded from the family's income, if the funds are paid directly to the family's child care provider on behalf of the family. Child care providers who accept third-party payments must maintain family-specific documentation of payment source, amount, type of expenses, and time period covered by the payment.

Subd. 12. **Sliding fee.** Child care services to families must be made available on a sliding fee basis. The commissioner shall convert eligibility requirements in this section and parent fee schedules in section 119B.12 to state median income, based on a family size of three, adjusted for family size, by July 1, 2008. The commissioner shall report to the 2008 legislature with the necessary statutory changes to codify this conversion to state median income.

Subd. 13. **Child care in the child's home.** (a) Child care assistance must only be authorized in the child's home if:

- (1) the child's parents have authorized activities outside of the home; or

(2) one parent in a two-parent family is in an authorized activity outside of the home and one parent is unable to care for the child and meets the requirements in Minnesota Rules, part 3400.0040, subpart 5.

(b) In order for child care assistance to be authorized under paragraph (a), clause (1) or (2), one or more of the following circumstances must be met:

(1) the authorized activity occurs during times when out-of-home care is not available or when out-of-home care would result in disruption of the child's nighttime sleep schedule. If child care is needed during any period when out-of-home care is not available, in-home care can be approved for the entire time care is needed;

(2) the family lives in an area where out-of-home care is not available; or

(3) a child has a verified illness or disability that would place the child or other children in an out-of-home facility at risk or creates a hardship for the child and the family to take the child out of the home to a child care home or center.

119B.095 CHILD CARE AUTHORIZATIONS.

Subdivision 1. **General authorization requirements.** (a) When authorizing the amount of child care, the county agency must consider the amount of time the parent reports on the application or redetermination form that the child attends preschool, a Head Start program, or school while the parent is participating in an authorized activity.

(b) Care must be authorized and scheduled with a provider based on the applicant's or participant's verified activity schedule when:

(1) the family requests care from more than one provider per child;

(2) the family requests care from a legal nonlicensed provider; or

(3) an applicant or participant is employed by any child care center that is licensed by the Department of Human Services or has been identified as a high-risk Medicaid-enrolled provider.

(c) If the family remains eligible at redetermination, a new authorization with fewer hours, the same hours, or increased hours may be determined.

Subd. 2. **Maintain steady child care authorizations.** (a) Notwithstanding Minnesota Rules, chapter 3400, the amount of child care authorized under section 119B.10 for employment, education, or an MFIP or DWP employment plan shall continue at the same number of hours or more hours until redetermination, including:

(1) when the other parent moves in and is employed or has an education plan under section 119B.10, subdivision 3, or has an MFIP or DWP employment plan; or

(2) when the participant's work hours are reduced or a participant temporarily stops working or attending an approved education program. Temporary changes include, but are not limited to, a medical leave, seasonal employment fluctuations, or a school break between semesters.

(b) The county may increase the amount of child care authorized at any time if the participant verifies the need for increased hours for authorized activities.

(c) The county may reduce the amount of child care authorized if a parent requests a reduction or because of a change in:

(1) the child's school schedule;

(2) the custody schedule; or

(3) the provider's availability.

(d) The amount of child care authorized for a family subject to subdivision 1, paragraph (b), must change when the participant's activity schedule changes. Paragraph (a) does not apply to a family subject to subdivision 1, paragraph (b).

(e) When a child reaches 13 years of age or a child with a disability reaches 15 years of age, the amount of child care authorized shall continue at the same number of hours or more hours until redetermination.

Subd. 3. **Assistance for persons who are homeless.** An applicant who is homeless and eligible for child care assistance is exempt from the activity participation requirements under this chapter

for three months. The applicant under this subdivision is eligible for 60 hours of child care assistance per service period for three months from the date the county receives the application. Additional hours may be authorized as needed based on the applicant's participation in employment, education, or MFIP or DWP employment plan. To continue receiving child care assistance after the initial three months, the applicant must verify that the applicant meets eligibility and activity requirements for child care assistance under this chapter.

119B.097 AUTHORIZATION WITH A SECONDARY PROVIDER.

(a) If a child uses any combination of the following providers paid by child care assistance, a parent must choose one primary provider and one secondary provider per child that can be paid by child care assistance:

- (1) an individual or child care center licensed under chapter 245A;
- (2) an individual or child care center or facility holding a valid child care license issued by another state or tribe; or
- (3) a child care center exempt from licensing under section 245A.03.

(b) The amount of child care authorized with the secondary provider cannot exceed 20 hours per two-week service period, per child, and the amount of care paid to a child's secondary provider is limited under section 119B.13, subdivision 1. The total amount of child care authorized with both the primary and secondary provider cannot exceed the amount of child care allowed based on the parents' eligible activity schedule, the child's school schedule, and any other factors relevant to the family's child care needs.

119B.10 EMPLOYMENT, EDUCATION, OR TRAINING ELIGIBILITY.

Subdivision 1. **Assistance for persons seeking and retaining employment.** (a) Persons who are seeking employment and who are eligible for assistance under this section are eligible to receive up to 240 hours of child care assistance per calendar year.

(b) At application and redetermination, employed persons who work at least an average of 20 hours and full-time students who work at least an average of ten hours a week and receive at least a minimum wage for all hours worked are eligible for child care assistance for employment. For purposes of this section, work-study programs must be counted as employment. An employed person with an MFIP or DWP employment plan shall receive child care assistance as specified in the person's employment plan. Child care assistance during employment must be authorized as provided in paragraphs (c) and (d).

(c) When the person works for an hourly wage and the hourly wage is equal to or greater than the applicable minimum wage, child care assistance shall be provided for the hours of employment, break, and mealtime during the employment and travel time up to two hours per day.

(d) When the person does not work for an hourly wage, child care assistance must be provided for the lesser of:

- (1) the amount of child care determined by dividing gross earned income by the applicable minimum wage, up to one hour every eight hours for meals and break time, plus up to two hours per day for travel time; or
- (2) the amount of child care equal to the actual amount of child care used during employment, including break and mealtime during employment, and travel time up to two hours per day.

Subd. 2. **Financial eligibility required.** Persons participating in employment programs, training programs, or education programs are eligible for continued assistance from the child care fund, if they are financially eligible under the sliding fee scale set by the commissioner in section 119B.12.

Subd. 3. **Assistance for persons attending an approved education or training program.** (a) Money for an eligible person according to sections 119B.03, subdivision 3, and 119B.05, subdivision 1, shall be used to reduce child care costs for a student. The county shall not limit the duration of child care subsidies for a person in an employment or educational program unless the person is ineligible for child care funds. Any other limitation must be based on county policies included in the approved child care fund plan.

(b) To be eligible, the student must be in good standing and be making satisfactory progress toward the degree. The maximum length of time a student is eligible for child care assistance under the child care fund for education and training is no more than the time necessary to complete the credit requirements for an associate's or baccalaureate degree as determined by the educational

institution. Time limitations for child care assistance do not apply to basic or remedial educational programs needed for postsecondary education or employment. Basic or remedial educational programs include high school, commissioner of education-selected high school equivalency, and English as a second language programs. A program exempt from this time limit must not run concurrently with a postsecondary program.

(c) If a student meets the conditions of paragraphs (a) and (b), child care assistance must be authorized for all hours of class time and credit hours, including independent study and internships, and up to two hours of travel time per day. A postsecondary student shall receive four hours of child care assistance per credit hour for study time and academic appointments per service period.

(d) For an MFIP or DWP participant, child care assistance must be authorized according to the person's approved employment plan. If an MFIP or DWP participant receiving MFIP or DWP child care assistance under this chapter moves to another county, continues to participate in an authorized educational or training program, and remains eligible for MFIP or DWP child care assistance, the participant must receive continued child care assistance from the county responsible for the person's current employment plan under section 256G.07.

(e) If a person with an approved education program under section 119B.03, subdivision 3, or 119B.05, subdivision 1, begins receiving MFIP or DWP assistance, the person continues to receive child care assistance for the approved education program until the person's education is included in an approved MFIP or DWP employment plan or until redetermination, whichever occurs first.

(f) If a person's MFIP or DWP assistance ends and the approved MFIP or DWP employment plan included education, the person continues to be eligible for child care assistance for education under transition year child care assistance until the person's education is included in an approved education plan or until redetermination.

119B.105 EXTENDED ELIGIBILITY AND AUTHORIZATION.

Subdivision 1. **Three-month extended eligibility period.** (a) A family in a situation under paragraph (b) continues to be eligible for up to three months or until the family's redetermination, whichever occurs first, rather than losing eligibility or having the family's eligibility suspended. During extended eligibility, the amount of child care authorized shall continue at the same number or more hours. The family must continue to meet all other eligibility requirements under this chapter.

(b) The family's three-month extended eligibility period applies when:

(1) a participant's employment or education program ends permanently;

(2) the other parent moves in and does not participate in an authorized activity;

(3) a participant's MFIP assistance ends and the participant is not participating in an authorized activity or the participant's participation in an authorized activity is unknown;

(4) a student parent under section 119B.011, subdivision 19b, stops attending school; or

(5) a participant receiving basic sliding fee child care assistance or transition year child care assistance applied for MFIP assistance and is not participating in an authorized activity or the participant's participation in an authorized activity is unknown.

Subd. 2. **Extended eligibility and redetermination.** (a) If the family received three months of extended eligibility and redetermination is not due, to continue receiving child care assistance the participant must be employed or have an education plan that meets the requirements of section 119B.10, subdivision 3, or have an MFIP or DWP employment plan. If child care assistance continues, the amount of child care authorized shall continue at the same number or more hours until redetermination, unless a condition in section 119B.095, subdivision 2, paragraph (c), applies. A family subject to section 119B.095, subdivision 1, paragraph (b), shall have child care authorized based on a verified activity schedule.

(b) If the family's redetermination occurs before the end of the three-month extended eligibility period to continue receiving child care assistance, the participant must verify that the participant meets eligibility and activity requirements for child care assistance under this chapter. If child care assistance continues, the amount of child care authorized is based on section 119B.10. A family subject to section 119B.095, subdivision 1, paragraph (b), shall have child care authorized based on a verified activity schedule.

119B.11 COUNTY CONTRIBUTION.

Subdivision 1. **County contributions required.** (a) In addition to payments from basic sliding fee child care program participants, each county shall contribute from county tax or other sources a fixed local match equal to its calendar year 1996 required county contribution reduced by the administrative funding loss that would have occurred in state fiscal year 1996 under section 119B.15. The commissioner shall recover funds from the county as necessary to bring county expenditures into compliance with this subdivision. The commissioner may accept county contributions, including contributions above the fixed local match, in order to make state payments.

(b) The commissioner may accept payments from counties to:

(1) fulfill the county contribution as required under subdivision 1;

(2) pay for services authorized under this chapter beyond those paid for with federal or state funds or with the required county contributions; or

(3) pay for child care services in addition to those authorized under this chapter, as authorized under other federal, state, or local statutes or regulations.

(c) The county payments must be deposited in an account in the special revenue fund. Money in this account is appropriated to the commissioner for child care assistance under this chapter and other applicable statutes and regulations and is in addition to other state and federal appropriations.

Subd. 2a. **Recovery of overpayments.** (a) An amount of child care assistance paid to a recipient in excess of the payment due is recoverable by the county agency under paragraphs (b) and (c), even when the overpayment was caused by agency error or circumstances outside the responsibility and control of the family or provider.

(b) An overpayment must be recouped or recovered from the family if the overpayment benefited the family by causing the family to pay less for child care expenses than the family otherwise would have been required to pay under child care assistance program requirements. If the family remains eligible for child care assistance, the overpayment must be recovered through recoupment as identified in Minnesota Rules, part 3400.0187, except that the overpayments must be calculated and collected on a service period basis. If the family no longer remains eligible for child care assistance, the county may choose to initiate efforts to recover overpayments from the family for overpayment less than \$50. If the overpayment is greater than or equal to \$50, the county shall seek voluntary repayment of the overpayment from the family. If the county is unable to recoup the overpayment through voluntary repayment, the county shall initiate civil court proceedings to recover the overpayment unless the county's costs to recover the overpayment will exceed the amount of the overpayment. A family with an outstanding debt under this subdivision is not eligible for child care assistance until: (1) the debt is paid in full; or (2) satisfactory arrangements are made with the county to retire the debt consistent with the requirements of this chapter and Minnesota Rules, chapter 3400, and the family is in compliance with the arrangements.

(c) The county must recover an overpayment from a provider if the overpayment did not benefit the family by causing it to receive more child care assistance or to pay less for child care expenses than the family otherwise would have been eligible to receive or required to pay under child care assistance program requirements, and benefited the provider by causing the provider to receive more child care assistance than otherwise would have been paid on the family's behalf under child care assistance program requirements. If the provider continues to care for children receiving child care assistance, the overpayment must be recovered through reductions in child care assistance payments for services as described in an agreement with the county. The provider may not charge families using that provider more to cover the cost of recouping the overpayment. If the provider no longer cares for children receiving child care assistance, the county may choose to initiate efforts to recover overpayments of less than \$50 from the provider. If the overpayment is greater than or equal to \$50, the county shall seek voluntary repayment of the overpayment from the provider. If the county is unable to recoup the overpayment through voluntary repayment, the county shall initiate civil court proceedings to recover the overpayment unless the county's costs to recover the overpayment will exceed the amount of the overpayment. A provider with an outstanding debt under this subdivision is not eligible to care for children receiving child care assistance until:

(1) the debt is paid in full; or

(2) satisfactory arrangements are made with the county to retire the debt consistent with the requirements of this chapter and Minnesota Rules, chapter 3400, and the provider is in compliance with the arrangements.

(d) When both the family and the provider acted together to intentionally cause the overpayment, both the family and the provider are jointly liable for the overpayment regardless of who benefited from the overpayment. The county must recover the overpayment as provided in paragraphs (b) and (c). When the family or the provider is in compliance with a repayment agreement, the party in compliance is eligible to receive child care assistance or to care for children receiving child care assistance despite the other party's noncompliance with repayment arrangements.

Subd. 3. **Federal money; state recovery.** The commissioner shall recover from counties any state or federal money that was spent for persons found to be ineligible, except if the recovery is made by a county agency using any method other than recoupment, the county may keep 25 percent of the recovery. 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.

Subd. 4. **Maintenance of funding effort.** To receive money through this program, each county shall certify, in its annual plan to the commissioner, that the county has not reduced allocations from other federal and state sources, which, in the absence of the child care fund, would have been available for child care assistance. However, the county must continue contributions, as necessary, to maintain on the basic sliding fee program, families who are receiving assistance on July 1, 1995, until the family loses eligibility for the program or until a family voluntarily withdraws from the program. This subdivision does not affect the local match required for this program under other sections of the law.

119B.12 SLIDING FEE SCALE.

Subdivision 1. **Fee schedule.** All changes to parent fees must be implemented on the first Monday of the service period following the effective date of the change.

PARENT FEE SCHEDULE. The parent fee schedule is as follows, except as noted in subdivision 2:

| Income Range (as a percent of the state median income, except at the start of the first tier) | Co-payment (as a percentage of adjusted gross income) |
|---|---|
| 0-74.99% of federal poverty guidelines | \$0/biweekly |
| 75.00-99.99% of federal poverty guidelines | \$2/biweekly |
| 100.00% of federal poverty guidelines-27.72% | 2.61% |
| 27.73-29.04% | 2.61% |
| 29.05-30.36% | 2.61% |
| 30.37-31.68% | 2.61% |
| 31.69-33.00% | 2.91% |
| 33.01-34.32% | 2.91% |
| 34.33-35.65% | 2.91% |
| 35.66-36.96% | 2.91% |
| 36.97-38.29% | 3.21% |
| 38.30-39.61% | 3.21% |
| 39.62-40.93% | 3.21% |
| 40.94-42.25% | 3.84% |
| 42.26-43.57% | 3.84% |
| 43.58-44.89% | 4.46% |
| 44.90-46.21% | 4.76% |
| 46.22-47.53% | 5.05% |
| 47.54-48.85% | 5.65% |
| 48.86-50.17% | 5.95% |

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| | |
|---------------------|------------|
| 50.18-51.49% | 6.24% |
| 51.50-52.81% | 6.84% |
| 52.82-54.13% | 7.58% |
| 54.14-55.45% | 8.33% |
| 55.46-56.77% | 9.20% |
| 56.78-58.09% | 10.07% |
| 58.10-59.41% | 10.94% |
| 59.42-60.73% | 11.55% |
| 60.74-62.06% | 12.16% |
| 62.07-63.38% | 12.77% |
| 63.39-64.70% | 13.38% |
| 64.71-67.00% | 14.00% |
| Greater than 67.00% | ineligible |

A family's biweekly co-payment fee is the fixed percentage established for the income range multiplied by the highest possible income within that income range.

Subd. 2. **Parent fee.** A family must be assessed a parent fee for each service period. A family's parent fee must be a fixed percentage of its annual gross income. Parent fees must apply to families eligible for child care assistance under sections 119B.03 and 119B.05. Income must be as defined in section 119B.011, subdivision 15. The fixed percentage is based on the relationship of the family's annual gross income to 100 percent of the annual state median income. Parent fees must begin at 75 percent of the poverty level. The minimum parent fees for families between 75 percent and 100 percent of poverty level must be \$2 per biweekly period. Parent fees must provide for graduated movement to full payment. At initial application, the parent fee is established for the family's 12-month eligibility period. At redetermination, if the family remains eligible, the parent fee is recalculated and is established for the next 12-month eligibility period. A parent fee shall not increase during the 12-month eligibility period. Payment of part or all of a family's parent fee directly to the family's child care provider on behalf of the family by a source other than the family shall not affect the family's eligibility for child care assistance, and the amount paid shall be excluded from the family's income. Child care providers who accept third-party payments must maintain family specific documentation of payment source, amount, and time period covered by the payment.

119B.125 PROVIDER REQUIREMENTS.

Subdivision 1. **Authorization.** Except as provided in subdivision 5, a county or the commissioner must authorize the provider chosen by an applicant or a participant before the county can authorize payment for care provided by that provider. The commissioner must establish the requirements necessary for authorization of providers. A provider must be reauthorized every two years. A legal, nonlicensed family child care provider also must be reauthorized when another person over the age of 13 joins the household, a current household member turns 13, or there is reason to believe that a household member has a factor that prevents authorization. The provider is required to report all family changes that would require reauthorization. When a provider has been authorized for payment for providing care for families in more than one county, the county responsible for reauthorization of that provider is the county of the family with a current authorization for that provider and who has used the provider for the longest length of time.

Subd. 1a. **Background study required.** This subdivision only applies to legal, nonlicensed family child care providers. Prior to authorization, and as part of each reauthorization required in subdivision 1, the county shall perform a background study on every member of the provider's household who is age 13 and older. The county shall also perform a background study on an individual who has reached age ten but is not yet age 13 and is living in the household where the nonlicensed child care will be provided when the county has reasonable cause as defined under section 245C.02, subdivision 15.

Subd. 1b. **Training required.** (a) Effective November 1, 2011, prior to initial authorization as required in subdivision 1, a legal nonlicensed family child care provider must complete first aid and CPR training and provide the verification of first aid and CPR training to the county. The

training documentation must have valid effective dates as of the date the registration request is submitted to the county. The training must have been provided by an individual approved to provide first aid and CPR instruction and have included CPR techniques for infants and children.

(b) Legal nonlicensed family child care providers with an authorization effective before November 1, 2011, must be notified of the requirements before October 1, 2011, or at authorization, and must meet the requirements upon renewal of an authorization that occurs on or after January 1, 2012.

(c) Upon each reauthorization after the authorization period when the initial first aid and CPR training requirements are met, a legal nonlicensed family child care provider must provide verification of at least eight hours of additional training listed in the Minnesota Center for Professional Development Registry.

(d) This subdivision only applies to legal nonlicensed family child care providers.

Subd. 2. **Persons who cannot be authorized.** (a) The provider seeking authorization under this section shall collect the information required under section 245C.05, subdivision 1, and forward the information to the county agency. The background study must include a review of the information required under section 245C.08, subdivisions 2, 3, and 4, paragraph (b). A nonlicensed family child care provider is not authorized under this section if any household member who is the subject of a background study is determined to have a disqualifying characteristic under paragraphs (b) to (e) or under section 245C.14 or 245C.15. If a county has determined that a provider is able to be authorized in that county, and a family in another county later selects that provider, the provider is able to be authorized in the second county without undergoing a new background investigation unless one of the following conditions exists:

- (1) two years have passed since the first authorization;
- (2) another person age 13 or older has joined the provider's household since the last authorization;
- (3) a current household member has turned 13 since the last authorization; or
- (4) there is reason to believe that a household member has a factor that prevents authorization.

(b) The person has refused to give written consent for disclosure of criminal history records.

(c) The person has been denied a family child care license or has received a fine or a sanction as a licensed child care provider that has not been reversed on appeal.

(d) The person has a family child care licensing disqualification that has not been set aside.

(e) The person has admitted or a county has found that there is a preponderance of evidence that fraudulent information was given to the county for child care assistance application purposes or was used in submitting child care assistance bills for payment.

Subd. 3. **Authorization exception.** When a county denies a person authorization as a legal nonlicensed family child care provider under subdivision 2, the county later may authorize that person as a provider if the following conditions are met:

(1) after receiving notice of the denial of the authorization, the person applies for and obtains a valid child care license issued under chapter 245A, issued by a tribe, or issued by another state;

(2) the person maintains the valid child care license; and

(3) the person is providing child care in the state of licensure or in the area under the jurisdiction of the licensing tribe.

Subd. 4. **Unsafe care.** A county may deny authorization as a child care provider to any applicant or rescind authorization of any provider when the county knows or has reason to believe that the provider is unsafe or that the circumstances of the chosen child care arrangement are unsafe. The county must include the conditions under which a provider or care arrangement will be determined to be unsafe in the county's child care fund plan under section 119B.08, subdivision 3.

Subd. 5. **Provisional payment.** After a county receives a completed application from a provider, the county may issue provisional authorization and payment to the provider during the time needed to determine whether to give final authorization to the provider.

Subd. 6. **Record-keeping requirement.** (a) As a condition of payment, all providers receiving child care assistance payments must:

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(1) keep accurate and legible daily attendance records at the site where services are delivered for children receiving child care assistance; and

(2) make those records available immediately to the county or the commissioner upon request. Any records not provided to a county or the commissioner at the date and time of the request are deemed inadmissible if offered as evidence by the provider in any proceeding to contest an overpayment or disqualification of the provider.

(b) As a condition of payment, attendance records must be completed daily and include the date, the first and last name of each child in attendance, and the times when each child is dropped off and picked up. To the extent possible, the times that the child was dropped off to and picked up from the child care provider must be entered by the person dropping off or picking up the child. The daily attendance records must be retained at the site where services are delivered for six years after the date of service.

(c) A county or the commissioner may deny or revoke a provider's authorization to receive child care assistance payments under section 119B.13, subdivision 6, paragraph (d), pursue a fraud disqualification under section 256.98, take an action against the provider under chapter 245E, or establish an attendance record overpayment under paragraph (d) against a current or former provider, when the county or the commissioner knows or has reason to believe that the provider has not complied with the record-keeping requirement in this subdivision.

(d) To calculate an attendance record overpayment under this subdivision, the commissioner or county agency shall subtract the maximum daily rate from the total amount paid to a provider for each day that a child's attendance record is missing, unavailable, incomplete, inaccurate, or otherwise inadequate.

(e) The commissioner shall develop criteria for a county to determine an attendance record overpayment under this subdivision.

Subd. 7. Failure to comply with attendance record requirements. (a) In establishing an overpayment claim for failure to provide attendance records in compliance with subdivision 6, the county or commissioner is limited to the six years prior to the date the county or the commissioner requested the attendance records.

(b) The commissioner may periodically audit child care providers to determine compliance with subdivision 6.

(c) When the commissioner or county establishes an overpayment claim against a current or former provider, the commissioner or county must provide notice of the claim to the provider. A notice of overpayment claim must specify the reason for the overpayment, the authority for making the overpayment claim, the time period in which the overpayment occurred, the amount of the overpayment, and the provider's right to appeal.

(d) The commissioner or county shall seek to recoup or recover overpayments paid to a current or former provider.

(e) When a provider has been disqualified or convicted of fraud under section 256.98, theft under section 609.52, or a federal crime relating to theft of state funds or fraudulent billing for a program administered by the commissioner or a county, recoupment or recovery must be sought regardless of the amount of overpayment.

Subd. 9. Reporting required for child's part-time attendance. A provider must report to the county and report on the billing form as required when a child's attendance in child care falls to less than half of the child's authorized hours or days for a four-week period. If requested by the county or the commissioner, the provider must provide additional information to the county or commissioner on the attendance of specific children.

119B.13 CHILD CARE RATES.

Subdivision 1. Subsidy restrictions. (a) The maximum rate paid for child care assistance in any county or county price cluster under the child care fund shall be the greater of the 25th percentile of the 2018 child care provider rate survey or the rates in effect at the time of the update. For a child care provider located within the boundaries of a city located in two or more of the counties of Benton, Sherburne, and Stearns, the maximum rate paid for child care assistance shall be equal to the maximum rate paid in the county with the highest maximum reimbursement rates or the provider's charge, whichever is less. The commissioner may: (1) assign a county with no reported provider prices to a similar price cluster; and (2) consider county level access when determining final price clusters.

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(b) A rate which includes a special needs rate paid under subdivision 3 may be in excess of the maximum rate allowed under this subdivision.

(c) The department shall monitor the effect of this paragraph on provider rates. The county shall pay the provider's full charges for every child in care up to the maximum established. The commissioner shall determine the maximum rate for each type of care on an hourly, full-day, and weekly basis, including special needs and disability care.

(d) If a child uses one provider, the maximum payment for one day of care must not exceed the daily rate. The maximum payment for one week of care must not exceed the weekly rate.

(e) If a child uses two providers under section 119B.097, the maximum payment must not exceed:

- (1) the daily rate for one day of care;
- (2) the weekly rate for one week of care by the child's primary provider; and
- (3) two daily rates during two weeks of care by a child's secondary provider.

(f) Child care providers receiving reimbursement under this chapter must not be paid activity fees or an additional amount above the maximum rates for care provided during nonstandard hours for families receiving assistance.

(g) If the provider charge is greater than the maximum provider rate allowed, the parent is responsible for payment of the difference in the rates in addition to any family co-payment fee.

(h) All maximum provider rates changes shall be implemented on the Monday following the effective date of the maximum provider rate.

(i) Beginning September 21, 2020, the maximum registration fee paid for child care assistance in any county or county price cluster under the child care fund shall be the greater of the 25th percentile of the 2018 child care provider rate survey or the registration fee in effect at the time of the update. Maximum registration fees must be set for licensed family child care and for child care centers. For a child care provider located in the boundaries of a city located in two or more of the counties of Benton, Sherburne, and Stearns, the maximum registration fee paid for child care assistance shall be equal to the maximum registration fee paid in the county with the highest maximum registration fee or the provider's charge, whichever is less.

Subd. 1a. Legal nonlicensed family child care provider rates. (a) Legal nonlicensed family child care providers receiving reimbursement under this chapter must be paid on an hourly basis for care provided to families receiving assistance.

(b) The maximum rate paid to legal nonlicensed family child care providers must be 68 percent of the county maximum hourly rate for licensed family child care providers. In counties or county price clusters where the maximum hourly rate for licensed family child care providers is higher than the maximum weekly rate for those providers divided by 50, the maximum hourly rate that may be paid to legal nonlicensed family child care providers is the rate equal to the maximum weekly rate for licensed family child care providers divided by 50 and then multiplied by 0.68. The maximum payment to a provider for one day of care must not exceed the maximum hourly rate times ten. The maximum payment to a provider for one week of care must not exceed the maximum hourly rate times 50.

(c) A rate which includes a special needs rate paid under subdivision 3 may be in excess of the maximum rate allowed under this subdivision.

(d) Legal nonlicensed family child care providers receiving reimbursement under this chapter may not be paid registration fees for families receiving assistance.

Subd. 3. Provider rate for care of children with disabilities or special needs. Counties shall reimburse providers for the care of children with disabilities or special needs, at a special rate to be approved by the county for care of these children, subject to the approval of the commissioner.

Subd. 3a. Provider rate differential for accreditation. A family child care provider or child care center shall be paid a 15 percent differential above the maximum rate established in subdivision 1, up to the actual provider rate, if the provider or center holds a current early childhood development credential or is accredited. For a family child care provider, early childhood development credential and accreditation includes an individual who has earned a child development associate degree, a child development associate credential, a diploma in child development from a Minnesota state technical college, or a bachelor's or post baccalaureate degree in early childhood education from

an accredited college or university, or who is accredited by the National Association for Family Child Care or the Competency Based Training and Assessment Program. For a child care center, accreditation includes accreditation that meets the following criteria: the accrediting organization must demonstrate the use of standards that promote the physical, social, emotional, and cognitive development of children. The accreditation standards shall include, but are not limited to, positive interactions between adults and children, age-appropriate learning activities, a system of tracking children's learning, use of assessment to meet children's needs, specific qualifications for staff, a learning environment that supports developmentally appropriate experiences for children, health and safety requirements, and family engagement strategies. Based on an application process developed by the commissioner in conjunction with the commissioners of education and health, the Department of Human Services must accept applications from accrediting organizations beginning on July 1, 2013, and on an annual basis thereafter. The provider rate differential shall be paid to centers holding an accreditation from an approved accrediting organization beginning on a billing cycle to be determined by the commissioner, no later than the last Monday in February of a calendar year. The commissioner shall annually publish a list of approved accrediting organizations. An approved accreditation must be reassessed by the commissioner every two years. If an approved accrediting organization is determined to no longer meet the approval criteria, the organization and centers being paid the differential under that accreditation must be given a 90-day notice by the commissioner and the differential payment must end after a 15-day notice to affected families and centers as directed in Minnesota Rules, part 3400.0185, subparts 3 and 4. The following accreditations shall be recognized for the provider rate differential until an approval process is implemented: the National Association for the Education of Young Children, the Council on Accreditation, the National Early Childhood Program Accreditation, the National School-Age Care Association, or the National Head Start Association Program of Excellence. For Montessori programs, accreditation includes the American Montessori Society, Association of Montessori International-USA, or the National Center for Montessori Education.

Subd. 3b. Provider rate differential for Parent Aware. A family child care provider or child care center shall be paid a 15 percent differential if they hold a three-star Parent Aware rating or a 20 percent differential if they hold a four-star Parent Aware rating. A 15 percent or 20 percent rate differential must be paid above the maximum rate established in subdivision 1, up to the actual provider rate.

Subd. 3c. Weekly rate paid for children attending high-quality care. A licensed child care provider or license-exempt center may be paid up to the applicable weekly maximum rate, not to exceed the provider's actual charge, when the following conditions are met:

- (1) the child is age birth to five years, but not yet in kindergarten;
- (2) the child attends a child care provider that qualifies for the rate differential identified in subdivision 3a or 3b; and
- (3) the applicant's activities qualify for at least 30 hours of care per week under sections 119B.03, 119B.05, and 119B.10, and Minnesota Rules, chapter 3400.

Subd. 4. Rates charged to publicly subsidized families. Child care providers receiving reimbursement under this chapter may not charge a rate to clients receiving assistance under this chapter that is higher than the private, full-paying client rate.

Subd. 5. Provider notice. The county shall inform both the family receiving assistance under this chapter and the child care provider of the payment amount and how and when payment will be received. If the county sends a family a notice that child care assistance will be terminated, the county shall inform the provider that unless the family requests to continue to receive assistance pending an appeal, child care payments will no longer be made. The notice to the provider must not contain any private data on the family or information on why payment will no longer be made.

Subd. 6. Provider payments. (a) A provider shall bill only for services documented according to section 119B.125, subdivision 6. The provider shall bill for services provided within ten days of the end of the service period. Payments under the child care fund shall be made within 21 days of receiving a complete bill from the provider. Counties or the state may establish policies that make payments on a more frequent basis.

(b) If a provider has received an authorization of care and been issued a billing form for an eligible family, the bill must be submitted within 60 days of the last date of service on the bill. A bill submitted more than 60 days after the last date of service must be paid if the county determines that the provider has shown good cause why the bill was not submitted within 60 days. Good cause must be defined in the county's child care fund plan under section 119B.08, subdivision 3, and the

definition of good cause must include county error. Any bill submitted more than a year after the last date of service on the bill must not be paid.

(c) If a provider provided care for a time period without receiving an authorization of care and a billing form for an eligible family, payment of child care assistance may only be made retroactively for a maximum of six months from the date the provider is issued an authorization of care and billing form.

(d) A county or the commissioner may refuse to issue a child care authorization to a licensed or legal nonlicensed provider, revoke an existing child care authorization to a licensed or legal nonlicensed provider, stop payment issued to a licensed or legal nonlicensed provider, or refuse to pay a bill submitted by a licensed or legal nonlicensed provider if:

(1) the provider admits to intentionally giving the county materially false information on the provider's billing forms;

(2) a county or the commissioner finds by a preponderance of the evidence that the provider intentionally gave the county materially false information on the provider's billing forms, or provided false attendance records to a county or the commissioner;

(3) the provider is in violation of child care assistance program rules, until the agency determines those violations have been corrected;

(4) the provider is operating after:

(i) an order of suspension of the provider's license issued by the commissioner;

(ii) an order of revocation of the provider's license; or

(iii) a final order of conditional license issued by the commissioner for as long as the conditional license is in effect;

(5) the provider submits false attendance reports or refuses to provide documentation of the child's attendance upon request;

(6) the provider gives false child care price information; or

(7) the provider fails to report decreases in a child's attendance as required under section 119B.125, subdivision 9.

(e) For purposes of paragraph (d), clauses (3), (5), (6), and (7), the county or the commissioner may withhold the provider's authorization or payment for a period of time not to exceed three months beyond the time the condition has been corrected.

(f) A county's payment policies must be included in the county's child care plan under section 119B.08, subdivision 3. If payments are made by the state, in addition to being in compliance with this subdivision, the payments must be made in compliance with section 16A.124.

Subd. 7. **Absent days.** (a) Licensed child care providers and license-exempt centers must not be reimbursed for more than 25 full-day absent days per child, excluding holidays, in a calendar year, or for more than ten consecutive full-day absent days. "Absent day" means any day that the child is authorized and scheduled to be in care with a licensed provider or license-exempt center, and the child is absent from the care for the entire day. Legal nonlicensed family child care providers must not be reimbursed for absent days. If a child attends for part of the time authorized to be in care in a day, but is absent for part of the time authorized to be in care in that same day, the absent time must be reimbursed but the time must not count toward the absent days limit. Child care providers must only be reimbursed for absent days if the provider has a written policy for child absences and charges all other families in care for similar absences.

(b) Notwithstanding paragraph (a), children with documented medical conditions that cause more frequent absences may exceed the 25 absent days limit, or ten consecutive full-day absent days limit. Absences due to a documented medical condition of a parent or sibling who lives in the same residence as the child receiving child care assistance do not count against the absent days limit in a calendar year. Documentation of medical conditions must be on the forms and submitted according to the timelines established by the commissioner. A public health nurse or school nurse may verify the illness in lieu of a medical practitioner. If a provider sends a child home early due to a medical reason, including, but not limited to, fever or contagious illness, the child care center director or lead teacher may verify the illness in lieu of a medical practitioner.

(c) Notwithstanding paragraph (a), children in families may exceed the absent days limit if at least one parent: (1) is under the age of 21; (2) does not have a high school diploma or commissioner of education-selected high school equivalency certification; and (3) is a student in a school district or another similar program that provides or arranges for child care, parenting support, social services, career and employment supports, and academic support to achieve high school graduation, upon request of the program and approval of the county. If a child attends part of an authorized day, payment to the provider must be for the full amount of care authorized for that day.

(d) Child care providers must be reimbursed for up to ten federal or state holidays or designated holidays per year when the provider charges all families for these days and the holiday or designated holiday falls on a day when the child is authorized to be in attendance. Parents may substitute other cultural or religious holidays for the ten recognized state and federal holidays. Holidays do not count toward the absent days limit.

(e) A family or child care provider must not be assessed an overpayment for an absent day payment unless (1) there was an error in the amount of care authorized for the family, (2) all of the allowed full-day absent payments for the child have been paid, or (3) the family or provider did not timely report a change as required under law.

(f) The provider and family shall receive notification of the number of absent days used upon initial provider authorization for a family and ongoing notification of the number of absent days used as of the date of the notification.

(g) For purposes of this subdivision, "absent days limit" means 25 full-day absent days per child, excluding holidays, in a calendar year; and ten consecutive full-day absent days.

(h) For purposes of this subdivision, "holidays limit" means ten full-day holidays per child, excluding absent days, in a calendar year.

(i) If a day meets the criteria of an absent day or a holiday under this subdivision, the provider must bill that day as an absent day or holiday. A provider's failure to properly bill an absent day or a holiday results in an overpayment, regardless of whether the child reached, or is exempt from, the absent days limit or holidays limit for the calendar year.

119B.14 EXTENSION OF EMPLOYMENT OPPORTUNITIES.

The county board shall ensure that child care services available to eligible residents are well advertised and that everyone who receives or applies for MFIP assistance is informed of training and employment opportunities and programs, including child care assistance and child care resource and referral services.

119B.15 ADMINISTRATIVE EXPENSES.

The commissioner shall use up to 1/21 of the state and federal funds available for the basic sliding fee program and 1/21 of the state and federal funds available for the MFIP child care program for payments to counties for administrative expenses. The commissioner shall make monthly payments to each county based on direct service expenditures. Payments may be withheld if monthly reports are incomplete or untimely.

119B.16 FAIR HEARING PROCESS.

Subdivision 1. **Fair hearing allowed for applicants and recipients.** (a) An applicant or recipient adversely affected by an action of a county agency or the commissioner, for an action taken directly against the applicant or recipient, may request and receive a fair hearing in accordance with this subdivision and section 256.045. An applicant or recipient does not have a right to a fair hearing if a county agency or the commissioner takes action against a provider.

(b) A county agency must offer an informal conference to an applicant or recipient who is entitled to a fair hearing under this section. A county agency must advise an applicant or recipient that a request for a conference is optional and does not delay or replace the right to a fair hearing.

(c) If a provider's authorization is suspended, denied, or revoked, a county agency or the commissioner must mail notice to each child care assistance program recipient receiving care from the provider.

Subd. 1a. **Fair hearing allowed for providers.** (a) This subdivision applies to providers caring for children receiving child care assistance.

(b) A provider may request a fair hearing according to sections 256.045 and 256.046 only if a county agency or the commissioner:

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(1) denies or revokes a provider's authorization, unless the action entitles the provider to an administrative review under section 119B.161;

(2) assigns responsibility for an overpayment to a provider under section 119B.11, subdivision 2a;

(3) establishes an overpayment for failure to comply with section 119B.125, subdivision 6;

(4) seeks monetary recovery or recoupment under section 245E.02, subdivision 4, paragraph (c), clause (2);

(5) initiates an administrative fraud disqualification hearing; or

(6) issues a payment and the provider disagrees with the amount of the payment.

(c) A provider may request a fair hearing by submitting a written request to the Department of Human Services, Appeals Division. A provider's request must be received by the Appeals Division no later than 30 days after the date a county or the commissioner mails the notice.

(d) The provider's appeal request must contain the following:

(1) each disputed item, the reason for the dispute, and, if applicable, an estimate of the dollar amount involved for each disputed item;

(2) the computation the provider believes to be correct, if applicable;

(3) the statute or rule relied on for each disputed item; and

(4) the name, address, and telephone number of the person at the provider's place of business with whom contact may be made regarding the appeal.

Subd. 1b. Joint fair hearings. The human services judge assigned to a fair hearing may join a family or a provider as a party to the fair hearing whenever joinder of that party is necessary to fully and fairly resolve issues raised in the appeal.

Subd. 1c. Notice to providers. (a) Before taking an action appealable under subdivision 1a, paragraph (b), a county agency or the commissioner must mail written notice to the provider against whom the action is being taken. Unless otherwise specified under this chapter, chapter 245E, or Minnesota Rules, chapter 3400, a county agency or the commissioner must mail the written notice at least 15 calendar days before the adverse action's effective date.

(b) The notice shall state (1) the factual basis for the department's determination, (2) the action the department intends to take, (3) the dollar amount of the monetary recovery or recoupment, if known, and (4) the provider's right to appeal the department's proposed action.

Subd. 2. Informal conference. The county agency shall offer an informal conference to applicants and recipients adversely affected by an agency action to attempt to resolve the dispute. The county agency shall offer an informal conference to providers to whom the county agency has assigned responsibility for an overpayment in an attempt to resolve the dispute. The county agency or the provider may ask the family in whose case the overpayment arose to participate in the informal conference, but the family may refuse to do so. The county agency shall advise adversely affected applicants, recipients, and providers that a request for a conference with the agency is optional and does not delay or replace the right to a fair hearing.

Subd. 3. Fair hearing stayed. (a) If a county agency or the commissioner denies or revokes a provider's authorization based on a licensing action under section 245A.07, and the provider appeals, the provider's fair hearing must be stayed until the commissioner issues an order as required under section 245A.08, subdivision 5.

(b) If the commissioner denies or revokes a provider's authorization based on decertification under section 245H.07, and the provider appeals, the provider's fair hearing must be stayed until the commissioner issues a final order as required under section 245H.07.

Subd. 4. Final department action. Unless the commissioner receives a timely and proper request for an appeal, a county agency's or the commissioner's action shall be considered a final department action.

119B.161 ADMINISTRATIVE REVIEW.

Subdivision 1. **Applicability.** A provider has the right to an administrative review under this section if (1) a payment was suspended under chapter 245E, or (2) the provider's authorization was denied or revoked under section 119B.13, subdivision 6, paragraph (d), clause (1) or (2).

Subd. 2. **Notice.** (a) A county agency or the commissioner must mail written notice to a provider within five days of suspending payment or denying or revoking the provider's authorization under subdivision 1.

(b) The notice must:

(1) state the provision under which a county agency or the commissioner is denying, revoking, or suspending the provider's authorization or suspending payment to the provider;

(2) set forth the general allegations leading to the denial, revocation, or suspension of the provider's authorization. The notice need not disclose any specific information concerning an ongoing investigation;

(3) state that the denial, revocation, or suspension of the provider's authorization is for a temporary period and explain the circumstances under which the action expires; and

(4) inform the provider of the right to submit written evidence and argument for consideration by the commissioner.

(c) Notwithstanding Minnesota Rules, part 3400.0185, if a county agency or the commissioner suspends payment to a provider under chapter 245E or denies or revokes a provider's authorization under section 119B.13, subdivision 6, paragraph (d), clause (1) or (2), a county agency or the commissioner must send notice of service authorization closure to each affected family. The notice sent to an affected family is effective on the date the notice is created.

Subd. 3. **Duration.** If a provider's payment is suspended under chapter 245E or a provider's authorization is denied or revoked under section 119B.13, subdivision 6, paragraph (d), clause (1) or (2), the provider's denial, revocation, temporary suspension, or payment suspension remains in effect until:

(1) the commissioner or a law enforcement authority determines that there is insufficient evidence warranting the action and a county agency or the commissioner does not pursue an additional administrative remedy under chapter 245E or section 256.98; or

(2) all criminal, civil, and administrative proceedings related to the provider's alleged misconduct conclude and any appeal rights are exhausted.

Subd. 4. **Good cause exception.** The commissioner may find that good cause exists not to deny, revoke, or suspend a provider's authorization, or not to continue a denial, revocation, or suspension of a provider's authorization if any of the following are applicable:

(1) a law enforcement authority specifically requested that a provider's authorization not be denied, revoked, or suspended because that action may compromise an ongoing investigation;

(2) the commissioner determines that the denial, revocation, or suspension should be removed based on the provider's written submission; or

(3) the commissioner determines that the denial, revocation, or suspension is not in the best interests of the program.

245E.01 DEFINITIONS.

Subdivision 1. **Application.** For purposes of this chapter, the terms defined in this section have the meanings given them.

Subd. 2. **Applicant.** "Applicant" has the meaning given in section 119B.011, subdivision 2.

Subd. 3. **Child care assistance program.** "Child care assistance program" means any of the assistance programs under chapter 119B.

Subd. 4. **Commissioner.** "Commissioner" means the commissioner of human services.

Subd. 5. **Controlling individual.** "Controlling individual" has the meaning given in section 245A.02, subdivision 5a.

Subd. 6. **County.** "County" means a local county child care assistance program staff or subcontracted staff, or a county investigator acting on behalf of the commissioner.

Subd. 7. **Department.** "Department" means the Department of Human Services.

Subd. 8. **Financial misconduct or misconduct.** "Financial misconduct" or "misconduct" means an entity's or individual's acts or omissions that result in fraud and abuse or error against the Department of Human Services. Financial misconduct includes acting as a recruiter offering conditional employment on behalf of a provider that has received funds from the child care assistance program.

Subd. 9. **Identify.** "Identify" means to furnish the full name, current or last known address, phone number, and e-mail address of the individual or business entity.

Subd. 10. **License holder.** "License holder" has the meaning given in section 245A.02, subdivision 9.

Subd. 11. **Mail.** "Mail" means the use of any mail service with proof of delivery and receipt.

Subd. 12. **Provider.** "Provider" means either a provider as defined in section 119B.011, subdivision 19, or a legal unlicensed provider as defined in section 119B.011, subdivision 16.

Subd. 13. **Recipient.** "Recipient" means a family receiving assistance as defined under section 119B.011, subdivision 13.

Subd. 13a. **Recruiter offering conditional employment.** "Recruiter offering conditional employment" means a child care provider, center owner, director, manager, license holder, or other controlling individual or agent who, for pecuniary gain, directly procures or solicits an applicant or a prospective employee and requires as a condition of employment that the applicant or prospective employee has one or more children who are eligible for or receive child care assistance.

Subd. 14. **Terminate.** "Terminate" means revocation of participation in the child care assistance program.

245E.02 INVESTIGATIONS OF FINANCIAL MISCONDUCT.

Subdivision 1. **Investigating provider or recipient financial misconduct.** The department shall investigate alleged or suspected financial misconduct by providers and errors related to payments issued by the child care assistance program under this chapter. Recipients, employees, and staff may be investigated when the evidence shows that their conduct is related to the financial misconduct of a provider, license holder, or controlling individual. When the alleged or suspected financial misconduct relates to acting as a recruiter offering conditional employment on behalf of a provider that has received funds from the child care assistance program, the department may investigate the provider, center owner, director, manager, license holder, or other controlling individual or agent, who is alleged to have acted as a recruiter offering conditional employment.

Subd. 1a. **Provider definitions.** For the purposes of this section, "provider" includes:

(1) individuals or entities meeting the definition of provider in section 245E.01, subdivision 12; and

(2) owners and controlling individuals of entities identified in clause (1).

Subd. 2. **Scope of investigations.** (a) The department may contact any person, agency, organization, or other entity that is necessary to an investigation.

(b) The department may examine or interview any individual, document, or piece of evidence that may lead to information that is relevant to child care assistance program benefits, payments, and child care provider authorizations. This includes, but is not limited to:

(1) child care assistance program payments;

(2) services provided by the program or related to child care assistance program recipients;

(3) services provided to a provider;

(4) provider financial records of any type;

(5) daily attendance records of the children receiving services from the provider;

(6) billings; and

(7) verification of the credentials of a license holder, controlling individual, employee, staff person, contractor, subcontractor, and entities under contract with the provider to provide services or maintain service and the provider's financial records related to those services.

Subd. 3. **Determination of investigation.** After completing its investigation, the department shall issue one of the following determinations:

- (1) no violation of child care assistance requirements occurred;
- (2) there is insufficient evidence to show that a violation of child care assistance requirements occurred;
- (3) a preponderance of evidence shows a violation of child care assistance program law, rule, or policy; or
- (4) there exists a credible allegation of fraud.

Subd. 3a. **Prohibited hiring practice.** It is prohibited to hire a child care center employee when, as a condition of employment, the employee is required to have one or more children who are eligible for or receive child care assistance, if:

- (1) the individual hiring the employee is, or is acting at the direction of or in cooperation with, a child care center provider, center owner, director, manager, license holder, or other controlling individual; and
- (2) the individual hiring the employee knows or has reason to know the purpose in hiring the employee is to obtain child care assistance program funds.

Subd. 4. **Actions or administrative sanctions.** (a) After completing the determination under subdivision 3, the department may take one or more of the actions or sanctions specified in this subdivision.

(b) The department may take the following actions:

- (1) refer the investigation to law enforcement or a county attorney for possible criminal prosecution;
- (2) refer relevant information to the department's licensing division, the child care assistance program, the Department of Education, the federal Child and Adult Care Food Program, or appropriate child or adult protection agency;
- (3) enter into a settlement agreement with a provider, license holder, controlling individual, or recipient; or
- (4) refer the matter for review by a prosecutorial agency with appropriate jurisdiction for possible civil action under the Minnesota False Claims Act, chapter 15C.

(c) In addition to section 256.98, the department may impose sanctions by:

- (1) pursuing administrative disqualification through hearings or waivers;
- (2) establishing and seeking monetary recovery or recoupment;
- (3) issuing an order of corrective action that states the practices that are violations of child care assistance program policies, laws, or regulations, and that they must be corrected; or
- (4) suspending, denying, or terminating payments to a provider.

(d) Upon a finding by the commissioner that any child care provider, center owner, director, manager, license holder, or other controlling individual of a child care center has employed, used, or acted as a recruiter offering conditional employment for a child care center that has received child care assistance program funding, the commissioner shall:

- (1) immediately suspend all program payments to all child care centers in which the person employing, using, or acting as a recruiter offering conditional employment is an owner, director, manager, license holder, or other controlling individual. The commissioner shall suspend program payments under this clause even if services have already been provided; and
- (2) immediately and permanently revoke the licenses of all child care centers of which the person employing, using, or acting as a recruiter offering conditional employment is an owner, director, manager, license holder, or other controlling individual.

245E.03 DUTY TO PROVIDE ACCESS.

Subdivision 1. **Affirmative duty.** A provider, license holder, controlling individual, employee, staff person, or recipient has an affirmative duty to provide access upon request to information specified under section 245E.05 or the program facility.

Subd. 2. **Failure to provide access.** Failure to provide access may result in denial or termination of authorizations for or payments to a recipient, provider, license holder, or controlling individual in the child care assistance program.

Subd. 3. **Notice of denial or termination.** When a provider fails to provide access, a 15-day notice of denial or termination must be issued to the provider, which prohibits the provider from participating in the child care assistance program. Notice must be sent to recipients whose children are under the provider's care pursuant to Minnesota Rules, part 3400.0185.

Subd. 4. **Continued or repeated failure to provide access.** If the provider continues to fail to provide access at the expiration of the 15-day notice period, child care assistance program payments to the provider must be denied beginning the 16th day following notice of the initial failure or refusal to provide access. The department may rescind the denial based upon good cause if the provider submits in writing a good cause basis for having failed or refused to provide access. The writing must be postmarked no later than the 15th day following the provider's notice of initial failure to provide access. Additionally, the provider, license holder, or controlling individual must immediately provide complete, ongoing access to the department. Repeated failures to provide access must, after the initial failure or for any subsequent failure, result in termination from participation in the child care assistance program.

Subd. 5. **Duplication of records.** The department, at its own expense, may photocopy or otherwise duplicate records referenced in section 245E.05. Photocopying must be done on the provider's premises on the day of the request or other mutually agreeable time, unless removal of records is specifically permitted by the provider. If requested, a provider, license holder, or controlling individual, or a designee, must assist the investigator in duplicating any record, including a hard copy or electronically stored data, on the day of the request.

Subd. 6. **Department access to program or records.** A provider, license holder, controlling individual, employee, or staff person must grant the department access during the department's normal business hours, and any hours that the program is operated, to examine the provider's program or the records listed in section 245E.05. A provider shall make records available at the provider's place of business on the day for which access is requested, unless the provider and the department both agree otherwise. The department's normal business hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays as defined in section 645.44, subdivision 5.

245E.04 HONEST AND TRUTHFUL STATEMENTS.

It shall be unlawful for a provider, license holder, controlling individual, or recipient to:

- (1) falsify, conceal, or cover up by any trick, scheme, or device a material fact;
- (2) make any materially false, fictitious, or fraudulent statement or representation; or
- (3) make or use any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry related to any child care assistance program services that the provider, license holder, or controlling individual supplies or in relation to any child care assistance payments received by a provider, license holder, or controlling individual or to any fraud investigator or law enforcement officer conducting a financial misconduct investigation.

245E.05 RECORD RETENTION.

Subdivision 1. **Records required to be retained.** The following records must be maintained, controlled, and made immediately accessible to license holders, providers, and controlling individuals. The records must be organized and labeled to correspond to categories that make them easy to identify so that they can be made available immediately upon request to an investigator acting on behalf of the commissioner at the provider's place of business:

- (1) payroll ledgers, canceled checks, bank deposit slips, and any other accounting records;
- (2) daily attendance records required by and that comply with section 119B.125, subdivision 6;
- (3) billing transmittal forms requesting payments from the child care assistance program and billing adjustments related to child care assistance program payments;

(4) records identifying all persons, corporations, partnerships, and entities with an ownership or controlling interest in the provider's child care business;

(5) employee records identifying those persons currently employed by the provider's child care business or who have been employed by the business at any time within the previous five years. The records must include each employee's name, hourly and annual salary, qualifications, position description, job title, and dates of employment. In addition, employee records that must be made available include the employee's time sheets, current home address of the employee or last known address of any former employee, and documentation of background studies required under chapter 119B or 245C;

(6) records related to transportation of children in care, including but not limited to:

(i) the dates and times that transportation is provided to children for transportation to and from the provider's business location for any purpose. For transportation related to field trips or locations away from the provider's business location, the names and addresses of those field trips and locations must also be provided;

(ii) the name, business address, phone number, and website address, if any, of the transportation service utilized; and

(iii) all billing or transportation records related to the transportation.

Subd. 2. Time period for record retention. (a) A provider, license holder, or controlling individual must retain all records in subdivision 1 for at least six years after the last date of service. Microfilm or electronically stored records satisfy the record-keeping requirements of this subdivision.

(b) In the event of an appealed case, the provider must retain all records required in subdivision 1 for the duration of the appeal or six years, whichever is longer.

Subd. 3. Withdrawal or termination from program. A provider, license holder, or controlling individual who withdraws or is terminated from the child care assistance program must retain the records required under subdivision 1 and make them available to the department on demand.

Subd. 4. Provider change of ownership. If the ownership of a provider changes, the transferor, unless otherwise provided by law or by written agreement with the transferee, is responsible for maintaining, preserving, and upon request from the department, making available the records related to the provider that were generated before the date of the transfer. Any written agreement affecting this provision must be held in the possession of the transferor and transferee. The written agreement must be provided to the department or county immediately upon request, and the written agreement must be retained by the transferor and transferee for six years after the agreement is fully executed.

Subd. 5. Electronic record keeping or signatures. A provider's use of electronic record keeping or electronic signatures is governed by chapter 325L.

245E.06 ADMINISTRATIVE SANCTIONS.

Subdivision 1. Factors regarding imposition of administrative sanctions. (a) The department shall consider the following factors in determining the administrative sanctions to be imposed:

(1) nature and extent of financial misconduct;

(2) history of financial misconduct;

(3) actions taken or recommended by other state agencies, other divisions of the department, and court and administrative decisions;

(4) prior imposition of sanctions;

(5) size and type of provider;

(6) information obtained through an investigation from any source;

(7) convictions or pending criminal charges; and

(8) any other information relevant to the acts or omissions related to the financial misconduct.

(b) Any single factor under paragraph (a) may be determinative of the department's decision of whether and what sanctions are imposed.

Subd. 2. Written notice of department sanction; sanction effective date; informal meeting. (a) The department shall give notice in writing to a person of an administrative sanction

that is to be imposed. The notice shall be sent by mail as defined in section 245E.01, subdivision 11.

(b) The notice shall state:

- (1) the factual basis for the department's determination;
- (2) the sanction the department intends to take;
- (3) the dollar amount of the monetary recovery or recoupment, if any;
- (4) how the dollar amount was computed;
- (5) the right to dispute the department's determination and to provide evidence;
- (6) the right to appeal the department's proposed sanction; and
- (7) the option to meet informally with department staff, and to bring additional documentation or information, to resolve the issues.

(c) In cases of determinations resulting in denial or termination of payments, in addition to the requirements of paragraph (b), the notice must state:

- (1) the length of the denial or termination;
- (2) the requirements and procedures for reinstatement; and
- (3) the provider's right to submit documents and written arguments against the denial or termination of payments for review by the department before the effective date of denial or termination.

(d) The submission of documents and written argument for review by the department under paragraph (b), clause (5) or (7), or paragraph (c), clause (3), does not stay the deadline for filing an appeal.

(e) Notwithstanding section 245E.03, subdivision 4, the effective date of the proposed sanction shall be 30 days after the license holder's, provider's, controlling individual's, or recipient's receipt of the notice, unless timely appealed. If a timely appeal is made, the proposed sanction shall be delayed pending the final outcome of the appeal. Implementation of a proposed sanction following the resolution of a timely appeal may be postponed if, in the opinion of the department, the delay of sanction is necessary to protect the health or safety of children in care. The department may consider the economic hardship of a person in implementing the proposed sanction, but economic hardship shall not be a determinative factor in implementing the proposed sanction.

(f) Requests for an informal meeting to attempt to resolve issues and requests for appeals must be sent or delivered to the department's Office of Inspector General, Financial Fraud and Abuse Division.

Subd. 3. **Appeal of department action.** A provider's rights related to the department's action taken under this chapter against a provider are established in sections 119B.16 and 119B.161.

Subd. 4. **Consolidated hearings with licensing sanction.** If a financial misconduct sanction has an appeal hearing right and it is timely appealed, and a licensing sanction exists for which there is an appeal hearing right and the sanction is timely appealed, and the overpayment recovery action and licensing sanction involve the same set of facts, the overpayment recovery action and licensing sanction must be consolidated in the contested case hearing related to the licensing sanction.

Subd. 5. **Effect of department's administrative determination or sanction.** Unless a timely and proper appeal is received by the department, the department's administrative determination or sanction shall be considered a final department determination.

245E.07 MONETARY RECOVERY.

Subdivision 1. **Grounds for and methods of monetary recovery.** (a) The department may obtain monetary recovery from a provider who has been improperly paid by the child care assistance program, regardless of whether the error was intentional or county error. The department does not need to establish a pattern as a precondition of monetary recovery of erroneous or false billing claims, duplicate billing claims, or billing claims based on false statements or financial misconduct.

(b) The department shall obtain monetary recovery from providers by the following means:

(1) permitting voluntary repayment of money, either in lump-sum payment or installment payments;

(2) using any legal collection process;

(3) deducting or withholding program payments; or

(4) utilizing the means set forth in chapter 16D.

Subd. 2. **Monetary recovery; random sample extrapolation.** The department is authorized to calculate the amount of monetary recovery from a provider, license holder, or controlling individual based upon extrapolation from a statistical random sample of claims submitted by the provider, license holder, or controlling individual and paid by the child care assistance program. The department's random sample extrapolation shall constitute a rebuttable presumption of the accuracy of the calculation of monetary recovery. If the presumption is not rebutted by the provider, license holder, or controlling individual in the appeal process, the department shall use the extrapolation as the monetary recovery figure. The department may use sampling and extrapolation to calculate the amount of monetary recovery if the claims to be reviewed represent services to 50 or more children in care.

245E.08 REPORTING OF SUSPECTED FRAUDULENT ACTIVITY.

(a) A person who, in good faith, makes a report of or testifies in any action or proceeding in which financial misconduct is alleged, and who is not involved in, has not participated in, or has not aided and abetted, conspired, or colluded in the financial misconduct, shall have immunity from any liability, civil or criminal, that results by reason of the person's report or testimony. For the purpose of any proceeding, the good faith of any person reporting or testifying under this provision shall be presumed.

(b) If a person that is or has been involved in, participated in, aided and abetted, conspired, or colluded in the financial misconduct reports the financial misconduct, the department may consider that person's report and assistance in investigating the misconduct as a mitigating factor in the department's pursuit of civil, criminal, or administrative remedies.

245E.09 DATA PRIVACY.

Data of any kind obtained or created in relation to a provider or recipient investigation under this chapter is defined, classified, and protected the same as all other data under section 13.46, and this data has the same classification as licensing data.

245H.01 DEFINITIONS.

Subdivision 1. **Scope.** The terms used in this chapter have the meanings given in this section.

Subd. 2. **Applicant.** "Applicant" means an individual or organization that is subject to certification under this chapter and that applied for but is not yet granted certification under this chapter.

Subd. 3. **Center operator or program operator.** "Center operator" or "program operator" means the person exercising supervision or control over the center's or program's operations, planning, and functioning. There may be more than one designated center operator or program operator.

Subd. 4. **Certification holder.** "Certification holder" means the individual or organization that is legally responsible for the operation of the center, and granted certification by the commissioner under this chapter.

Subd. 5. **Certified license-exempt child care center.** "Certified license-exempt child care center" means the commissioner's written authorization for a child care center excluded from licensure under section 245A.03, subdivision 2, paragraph (a), clause (5), (11) to (13), (15), (18), or (26), to register to receive child care assistance payments under chapter 119B.

Subd. 6. **Disinfecting.** "Disinfecting" means the use of a product capable of destroying or inactivating harmful germs, except bacterial spores, consistent with label directions on environmental surfaces including bathroom toilets and floors, diaper-changing surfaces, and surfaces exposed to blood or other bodily fluids.

Subd. 7. **Substitute.** "Substitute" means an adult who is temporarily filling a position as a staff person for less than 240 hours total in a calendar year due to the absence of a regularly employed staff person who provides direct contact services to a child.

Subd. 8. **Staff person.** "Staff person" means an employee of a certified center who provides direct contact services to children.

Subd. 9. **Unsupervised volunteer.** "Unsupervised volunteer" means an individual who: (1) assists in the care of a child in care; (2) is not under the continuous direct supervision of a staff person; and (3) is not employed by the certified center.

245H.02 WHO MUST BE CERTIFIED.

A program that is exempt from licensure under section 245A.03, subdivision 2, paragraph (a), clause (5), (11) to (13), (15), (18), or (26), and is authorized to receive child care assistance payments under chapter 119B, must be a certified license-exempt child care center according to this section.

245H.03 APPLICATION PROCEDURES.

Subdivision 1. **Schedule.** The certification of license-exempt child care centers shall be implemented by September 30, 2017. Certification applications shall be received and processed on a phased-in schedule as determined by the commissioner.

Subd. 2. **Application submission.** The commissioner shall provide application instructions and information about the rules and requirements of other state agencies that affect the applicant. The certification application must be submitted in a manner prescribed by the commissioner. The commissioner shall act on the application within 90 working days of receiving a completed application.

Subd. 3. **Incomplete applications.** When the commissioner receives an application for initial certification that is incomplete because the applicant failed to submit required documents or is deficient because the documents submitted do not meet certification requirements, the commissioner shall provide the applicant written notice that the application is incomplete or deficient. In the notice, the commissioner shall identify documents that are missing or deficient and give the applicant 45 days to resubmit a second application that is complete. An applicant's failure to submit a complete application after receiving notice from the commissioner is basis for certification denial.

Subd. 4. **Reconsideration of certification denial.** (a) The applicant may request reconsideration of the denial by notifying the commissioner by certified mail or personal service. The request must be made in writing. If sent by certified mail, the request must be postmarked and sent to the commissioner within 20 calendar days after the applicant received the order. If a request is made by personal service, it must be received by the commissioner within 20 calendar days after the applicant received the order. The applicant may submit with the request for reconsideration a written argument or evidence in support of the request for reconsideration.

(b) The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

245H.04 COMMISSIONER'S RIGHT OF ACCESS.

(a) When the commissioner is exercising the powers conferred by this chapter, whenever the center is in operation and the information is relevant to the commissioner's inspection or investigation, the commissioner must be given access to:

- (1) the physical facility and grounds where the program is provided;
- (2) documentation and records, including electronically maintained records;
- (3) children served by the center; and
- (4) staff and personnel records of current and former staff.

(b) The commissioner must be given access without prior notice and as often as the commissioner considers necessary if the commissioner is investigating alleged maltreatment or a violation of a law or rule, or conducting an inspection. When conducting an inspection, the commissioner may request and shall receive assistance from other state, county, and municipal governmental agencies and departments. The applicant or certification holder shall allow the commissioner, at the commissioner's expense, to photocopy, photograph, and make audio and video recordings during an inspection.

245H.05 MONITORING AND INSPECTIONS.

(a) The commissioner must conduct an on-site inspection of a certified license-exempt child care center at least annually to determine compliance with the health, safety, and fire standards specific to a certified license-exempt child care center.

(b) No later than November 19, 2017, the commissioner shall make publicly available on the department's website the results of inspection reports for all certified centers including the number of deaths, serious injuries, and instances of substantiated child maltreatment that occurred in certified centers each year.

245H.06 CORRECTION ORDER.

Subdivision 1. **Correction order requirements.** If the applicant or certification holder failed to comply with a law or rule, the commissioner may issue a correction order. The correction order must state:

- (1) the condition that constitutes a violation of the law or rule;
- (2) the specific law or rule violated; and
- (3) the time allowed to correct each violation.

Subd. 2. **Reconsideration request.** (a) If the applicant or certification holder believes that the commissioner's correction order is erroneous, the applicant or certification holder may ask the commissioner to reconsider the part of the correction order that is allegedly erroneous. A request for reconsideration must be made in writing, postmarked, and sent to the commissioner within 20 calendar days after the applicant or certification holder received the correction order, and must:

- (1) specify the part of the correction order that is allegedly erroneous;
- (2) explain why the specified part is erroneous; and
- (3) include documentation to support the allegation of error.

(b) A request for reconsideration does not stay any provision or requirement of the correction order. The commissioner's disposition of a request for reconsideration is final and not subject to appeal.

Subd. 3. **Decertification following a correction order.** (a) If the commissioner finds that the applicant or certification holder failed to correct the violation specified in the correction order, the commissioner may decertify the license-exempt center pursuant to section 245H.07.

(b) Nothing in this section prohibits the commissioner from decertifying a center according to section 245H.07.

245H.07 DECERTIFICATION.

Subdivision 1. **Generally.** (a) The commissioner may decertify a center if a certification holder:

- (1) failed to comply with an applicable law or rule;
- (2) knowingly withheld relevant information from or gave false or misleading information to the commissioner in connection with an application for certification, in connection with the background study status of an individual, during an investigation, or regarding compliance with applicable laws or rules; or

(3) has authorization to receive child care assistance payments revoked pursuant to chapter 119B.

(b) When considering decertification, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule.

(c) When a center is decertified, the center is ineligible to receive a child care assistance payment under chapter 119B.

Subd. 2. **Reconsideration of decertification.** (a) The certification holder may request reconsideration of the decertification by notifying the commissioner by certified mail or personal service. The request must be made in writing. If sent by certified mail, the request must be postmarked and sent to the commissioner within 20 calendar days after the certification holder received the order. If a request is made by personal service, it must be received by the commissioner within 20 calendar days after the certification holder received the order. With the request for reconsideration, the certification holder may submit a written argument or evidence in support of the request for reconsideration.

(b) The commissioner's disposition of a request for reconsideration is final and not subject to appeal under chapter 14.

Subd. 3. **Decertification due to maltreatment.** If the commissioner decertifies a center pursuant to subdivision 1, paragraph (a), clause (1), based on a determination that the center was responsible for maltreatment, and if the center requests reconsideration of the decertification according to subdivision 2, paragraph (a), and appeals the maltreatment determination under section 260E.33, the final decertification determination is stayed until the commissioner issues a final decision regarding the maltreatment appeal.

Subd. 4. **Decertification due to revocation of child care assistance.** If the commissioner decertifies a center that had payments revoked pursuant to chapter 119B, and if the center appeals the revocation of the center's authorization to receive child care assistance payments, the final decertification determination is stayed until the appeal of the center's authorization under chapter 119B is resolved. If the center also requests reconsideration of the decertification, the center must do so according to subdivision 2, paragraph (a). The final decision on reconsideration is stayed until the appeal of the center's authorization under chapter 119B is resolved.

245H.08 STAFFING REQUIREMENTS.

Subdivision 1. **Staffing requirements.** During hours of operation, a certified center must have a director or designee on site who is responsible for overseeing implementation of written policies relating to the management and control of the daily activities of the program, ensuring the health and safety of program participants, and supervising staff and volunteers.

Subd. 2. **Director qualifications.** The director must be 18 years of age or older and have completed at least 16 hours of training in any of the following topic areas: child development and learning; developmentally appropriate learning experiences; relationships with families; assessment, evaluation, and individualization; historical and contemporary development of early childhood education; professionalism; and health, safety, and nutrition.

Subd. 3. **Staff qualifications.** A staff person must be 16 years of age or older before providing direct, unsupervised care to a child.

Subd. 4. **Maximum group size.** (a) For a child six weeks old through 16 months old, the maximum group size shall be no more than eight children.

(b) For a child 16 months old through 33 months old, the maximum group size shall be no more than 14 children.

(c) For a child 33 months old through prekindergarten, a maximum group size shall be no more than 20 children.

(d) For a child in kindergarten through 13 years old, a maximum group size shall be no more than 30 children.

(e) The maximum group size applies at all times except during group activity coordination time not exceeding 15 minutes, during a meal, outdoor activity, field trip, nap and rest, and special activity including a film, guest speaker, indoor large muscle activity, or holiday program.

Subd. 5. **Ratios.** (a) The minimally acceptable staff-to-child ratios are:

| | |
|---------------------------------------|------|
| six weeks old through 16 months old | 1:4 |
| 16 months old through 33 months old | 1:7 |
| 33 months old through prekindergarten | 1:10 |
| kindergarten through 13 years old | 1:15 |

(b) Kindergarten includes a child of sufficient age to have attended the first day of kindergarten or who is eligible to enter kindergarten within the next four months.

(c) For mixed groups, the ratio for the age group of the youngest child applies.

245H.10 BACKGROUND STUDIES.

Subdivision 1. **Individuals to be studied.** (a) The applicant or certification holder must submit a completed background study for each child care background study subject as defined in section 245C.02, subdivision 6a.

(b) To be accepted for certification, a background study on every individual applying for certification must be completed under chapter 245C and result in a not disqualified determination under section 245C.14 or a disqualification that was set aside under section 245C.22.

245H.11 REPORTING.

(a) The certification holder must comply and must have written policies for staff to comply with the reporting requirements for abuse and neglect specified in chapter 260E. A person mandated to report physical or sexual child abuse or neglect occurring within a certified center shall report the information to the commissioner.

(b) The certification holder must inform the commissioner within 24 hours of:

(1) the death of a child in the program; and

(2) any injury to a child in the program that required treatment by a physician or advanced practice registered nurse.

245H.12 FEES.

The commissioner shall consult with stakeholders to develop an administrative fee to implement this chapter. By February 15, 2019, the commissioner shall provide recommendations on the amount of an administrative fee to the legislative committees with jurisdiction over health and human services policy and finance.

245H.13 HEALTH AND SAFETY REQUIREMENTS.

Subdivision 1. **Exclusion of sick children and infectious disease outbreak control.** (a) A certified center must supervise and isolate a child from other children in the program when a child becomes sick and immediately notify the sick child's parent or legal guardian.

(b) A certified center must post or give notice to the parent or legal guardian of an exposed child the same day the program is notified of a child's contagious reportable disease specified in Minnesota Rules, part 4605.7040, or scabies, impetigo, ringworm, or chicken pox.

Subd. 2. **Immunizations.** By a child's date of attendance, the certified center must maintain or have access to a record detailing the child's current immunizations or applicable exemption.

Subd. 3. **Administration of medication.** (a) A certified center that chooses to administer medicine must meet the requirements in this subdivision.

(b) The certified center must obtain written permission from the child's parent or legal guardian before administering prescription medicine, diapering product, sunscreen lotion, and insect repellent.

(c) The certified center must administer nonprescription medicine, diapering product, sunscreen lotion, and insect repellent according to the manufacturer's instructions unless provided written instructions by a licensed health professional to use a product differently.

(d) The certified center must obtain and follow written instructions from the prescribing health professional before administering prescription medicine. Medicine with the child's first and last name and current prescription information on the label is considered written instructions.

(e) The certified center must ensure all medicine is:

(1) kept in the medicine's original container with a legible label stating the child's first and last name;

(2) given only to the child whose name is on the label;

(3) not given after an expiration date on the label; and

(4) returned to the child's parent or legal guardian or destroyed, if unused.

(f) The certified center must document in the child's record the administration of medication, including the child's first and last name; the name of the medication or prescription number; the date, time, and dosage; and the name and signature of the person who administered the medicine. This documentation must be available to the child's parent or legal guardian.

(g) The certified center must store medicines, insect repellents, and diapering products according to directions on the original container.

Subd. 4. **Preventing and responding to allergies.** (a) Before admitting a child for care, the certified center must obtain documentation of any known allergies from the child's parent or legal guardian. The certified center must maintain current allergy information in each child's record. The allergy information must include:

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(1) a description of the allergy, specific triggers, avoidance techniques, and symptoms of an allergic reaction; and

(2) procedures for responding to an allergic reaction, including medication, dosages, and a doctor's contact information.

(b) The certified center must inform staff of each child's current allergy information. At least annually and when a change is made to allergy-related information in a child's record, the certified center must inform staff of any change. Documentation that staff were informed of the child's current allergy information must be kept on site.

(c) A child's allergy information must be available at all times including on site, when on field trips, or during transportation. Food allergy information must be readily available to staff in the area where food is prepared and served to the child.

Subd. 5. Building and physical premises; free of hazards. (a) To be accepted for certification, the applicant must demonstrate compliance with the State Fire Code, section 299F.011, by either:

(1) providing documentation of a fire marshal inspection completed within the previous three years by a state fire marshal or a local fire code inspector trained by the state fire marshal; or

(2) complying with the fire marshal inspection requirements according to section 245A.151.

(b) The certified center must designate a primary indoor and outdoor space used for child care on a facility site floor plan.

(c) The certified center must ensure the areas used by a child are clean and in good repair, with structurally sound and functional furniture and equipment that is appropriate to the age and size of a child who uses the area.

(d) The certified center must ensure hazardous items including but not limited to sharp objects, medicines, cleaning supplies, poisonous plants, and chemicals are out of reach of a child.

(e) The certified center must safely handle and dispose of bodily fluids and other potentially infectious fluids by using gloves, disinfecting surfaces that come in contact with potentially infectious bodily fluids, and disposing of bodily fluid in a securely sealed plastic bag.

Subd. 6. Transporting children. (a) If a certified center chooses to transport a child, the certified center must ensure that the driver of the vehicle holds a valid driver's license, appropriate to the vehicle driven.

(b) If a certified center chooses to transport a child, the center must comply with all seat belt and child passenger restraint system requirements under sections 169.685 and 169.686.

Subd. 7. Risk reduction plan. (a) The certified center must develop a risk reduction plan that identifies risks to children served by the child care center. The assessment of risk must include risks presented by (1) the physical plant where the certified services are provided, including electrical hazards; and (2) the environment, including the proximity to busy roads and bodies of water.

(b) The certification holder must establish policies and procedures to minimize identified risks. After any change to the risk reduction plan, the certification holder must inform staff of the change in the risk reduction plan and document that staff were informed of the change.

Subd. 8. Required policies. A certified center must have written policies for health and safety items in subdivisions 1 to 6.

Subd. 9. Behavior guidance. The certified center must ensure that staff and volunteers use positive behavior guidance and do not subject children to:

(1) corporal punishment, including but not limited to rough handling, shoving, hair pulling, ear pulling, shaking, slapping, kicking, biting, pinching, hitting, and spanking;

(2) humiliation;

(3) abusive language;

(4) the use of mechanical restraints, including tying;

(5) the use of physical restraints other than to physically hold a child when containment is necessary to protect a child or others from harm; or

(6) the withholding or forcing of food and other basic needs.

Subd. 10. **Supervision.** Staff must supervise each child at all times. Staff are responsible for the ongoing activity of each child, appropriate visual or auditory awareness, physical proximity, and knowledge of activity requirements and each child's needs. Staff must intervene when necessary to ensure a child's safety. In determining the appropriate level of supervision of a child, staff must consider: (1) the age of a child; (2) individual differences and abilities; (3) indoor and outdoor layout of the child care program; and (4) environmental circumstances, hazards, and risks.

245H.14 TRAINING REQUIREMENTS.

Subdivision 1. **First aid and cardiopulmonary resuscitation.** (a) Before having unsupervised direct contact with a child, but within the first 90 days of employment for the director and all staff persons, and within 90 days after the first date of direct contact with a child for substitutes and unsupervised volunteers, each person must successfully complete pediatric first aid and pediatric cardiopulmonary resuscitation (CPR) training, unless the training has been completed within the previous two calendar years. Staff must complete the pediatric first aid and pediatric CPR training at least every other calendar year and the center must document the training in the staff person's personnel record.

(b) Training completed under this subdivision may be used to meet the in-service training requirements under subdivision 6.

Subd. 2. **Sudden unexpected infant death.** A certified center that cares for an infant who is younger than one year of age must ensure that the director, all staff persons, including substitutes, unsupervised volunteers, and any other volunteers receive training according to section 245A.1435 on reducing the risk of sudden unexpected infant death before assisting in the care of an infant.

Subd. 3. **Abusive head trauma.** A certified center that cares for a child under school age must ensure that the director and all staff persons, including substitutes and unsupervised volunteers, receive training on abusive head trauma before assisting in the care of a child under school age.

Subd. 4. **Child development.** The certified center must ensure that the director and all staff persons complete child development and learning training within 90 days of employment and every second calendar year thereafter. Substitutes and unsupervised volunteers must complete child development and learning training within 90 days after the first date of direct contact with a child and every second calendar year thereafter. The director and staff persons not including substitutes must complete at least two hours of training on child development. The training for substitutes and unsupervised volunteers is not required to be of a minimum length. For purposes of this subdivision, "child development and learning training" means how a child develops physically, cognitively, emotionally, and socially and learns as part of the child's family, culture, and community.

Subd. 5. **Orientation.** The certified center must ensure the director and all staff persons, substitutes, and unsupervised volunteers are trained at orientation on health and safety requirements in sections 245H.11, 245H.13, 245H.14, and 245H.15. The certified center must provide orientation within 14 days after the first date of direct contact with a child. Before the completion of orientation, these individuals must be supervised while providing direct care to a child.

Subd. 6. **In-service training.** (a) The certified center must ensure that the director and all staff persons, including substitutes and unsupervised volunteers, are trained at least once each calendar year on health and safety requirements in sections 245H.11, 245H.13, 245H.14, and 245H.15.

(b) The director and each staff person, not including substitutes, must complete at least six hours of training each calendar year. Training required under paragraph (a) may be used toward the hourly training requirements of this subdivision.

Subd. 7. **Documentation.** A certified center must document the date of a completed training required by this section in the personnel record of each staff person.

245H.15 EMERGENCY PREPAREDNESS.

Subdivision 1. **Written emergency plan.** (a) A certified center must have a written emergency plan for emergencies that require evacuation, sheltering, or other protection of children, such as fire, natural disaster, intruder, or other threatening situation that may pose a health or safety hazard to children. The plan must be written on a form developed by the commissioner and reviewed and updated at least once each calendar year. The annual review of the emergency plan must be documented.

(b) The plan must include:

(1) procedures for an evacuation, relocation, shelter-in-place, or lockdown;

- (2) a designated relocation site and evacuation route;
 - (3) procedures for notifying a child's parent or legal guardian of the relocation and reunification with families;
 - (4) accommodations for a child with a disability or a chronic medical condition;
 - (5) procedures for storing a child's medically necessary medicine that facilitates easy removal during an evacuation or relocation;
 - (6) procedures for continuing operations in the period during and after a crisis;
 - (7) procedures for communicating with local emergency management officials, law enforcement officials, or other appropriate state or local authorities; and
 - (8) accommodations for infants and toddlers.
- (c) The certification holder must have an emergency plan available for review upon request by the child's parent or legal guardian.

Subd. 2. **Staff person training.** The certification holder must train a staff person at orientation and at least once each calendar year on the emergency plan and document training in each personnel file. The certified center must conduct at least quarterly one evacuation drill and one shelter-in-place drill. The date and time of the drills must be documented.

245H.16 PERSONNEL RECORD.

The certification holder must maintain a personnel record for each staff person at the program that must contain:

- (1) the staff person's name, home address, telephone number, and date of birth;
- (2) documentation that the staff person completed training required by section 245H.14;
- (3) documentation of the date the program initiated a background study for the staff person; and
- (4) documentation of the date the staff person first had direct contact and access to a child while supervised, and the date the staff person first had direct contact and access to a child while unsupervised.

245H.17 CERTIFICATION STANDARDS.

The commissioner shall regularly consult with stakeholders for input related to implementing the standards in this chapter.

245H.18 PARENTAL ACCESS.

An enrolled child's parent or legal guardian must be allowed access to the parent's or legal guardian's child at any time while the child is in care.

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.

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. 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. 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. 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. 10a. **Authorized hours.** "Authorized hours" means the number of hours in a service period, not to exceed the maximum hour limit established in Minnesota Statutes, section 119B.09, subdivision 6, that may be paid for child care for a child.

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. 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. 18a. **DWP.** "DWP" means the diversionary work program established in Minnesota Statutes, section 256J.95.

Subp. 20. **Eligible relative caregiver.** "Eligible relative caregiver" means a person identified under Minnesota Statutes, section 256J.08, subdivision 11, (1) who is a caregiver of a child receiving a MFIP grant or (2) who is an MFIP participant and the caregiver of a child. After an eligible relative caregiver begins receiving child care assistance, status as an eligible relative caregiver continues through all child care assistance programs until there is a break in the eligible relative caregiver's eligibility for child care assistance.

Subp. 24. **Family copayment fee.** "Family copayment fee" means the parent fee the family must contribute as its share of child care costs as determined under Minnesota Statutes, section 119B.12.

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

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. 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. 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 or greater than the amount a provider should have received.

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. 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. 38b. **Scheduled hours.** "Scheduled hours" means the specific days and hours during a service period that a child will attend child care as determined by the child care worker, the parent, and the provider based on the parents' verified eligible activities schedules, the child's school schedule, and any other factors relevant to the family's child care needs.

Subp. 39. **State median income.** "State median income" means the state's annual median income for a family of three, 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 defined by the student's educational institution as a full-time student. A non-MFIP student is a part-time student if the student is defined by the student's educational institution as a part-time student. 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. 44. **Weekly basis.** "Weekly basis" means child care provided by a provider for more than 35 but not more than 50 hours per week.

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.

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, school readiness, 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.

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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. The administering agency must place the family on the waiting list in the highest priority for which the family is 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 where the license of a provider licensed by the state of Minnesota has been temporarily immediately suspended or where there is an imminent risk of harm to the health, safety, or rights of a child in care with a legal nonlicensed provider, license exempt center, or a provider licensed by an entity other than the state of Minnesota, 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 family's authorized 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; the number of absent days that have been paid for the child for the year as of the date of the notice; 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.

3400.0040 ELIGIBILITY REQUIREMENTS AND STANDARDS.

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. 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 activity 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 according to 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 where the license of a provider licensed by the state of Minnesota has been temporarily immediately suspended or where there is an imminent risk of harm to the health, safety, or rights of a child in care with a legal, nonlicensed provider, license exempt center, or provider licensed by an entity other than the state of Minnesota, 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 more than one parent or any combination of parents, stepparents, legal guardians and spouses, and eligible relative caregivers and spouses, 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 parents, legal guardians, eligible relative caregivers, or spouses 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. 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 or DWP case was closed.

Subp. 7. **Maximum biweekly 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 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 authorized for the number of hours scheduled to be 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 authorize 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 authorize child care for full-time students for the days of class and on nonclass days, if needed for study, as determined by the county, not to exceed the maximum biweekly child care allowed.

B. Counties must authorize child care for part-time students 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. For purposes of determining whether the ten hours at minimum wage requirement in this subpart applies to a student, a full-time student retains full-time status during school breaks, including summers, if the student is expected to return to school full time after the break. Students eligible for child care assistance under part 3400.0080 are exempt from the ten hours per week at minimum wage 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 participant'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 new education or training program is approved by the county; and
- (2) the county expects that completing the program will lead to full-time employment.

D. A student eligible under part 3400.0060 with a baccalaureate degree may only obtain child care assistance for education or training if the education or training is for continuing education units, certification, or coursework that is related to the baccalaureate degree or current employment and that is 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. 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 or the family does not have an authorized provider but the family remains eligible for child care assistance.

3400.0060 BASIC SLIDING FEE PROGRAM.

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

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 or DWP participant; and

C. the family meets the income eligibility requirements specified in Minnesota Statutes, section 119B.09.

Subp. 6. **Basic sliding fee program waiting lists.** Counties must keep a written record of families who have requested child care assistance. When a family requests information about child care assistance, the county shall perform a preliminary determination of eligibility.

If it appears that a family is or will be eligible for child care assistance and funds are not immediately available, the family shall be placed on a child care waiting list. The county 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. Transition year extension child care may be used to support employment or a job search that meets the requirements of Minnesota Statutes, section 119B.10, for the time necessary for the family to be moved from the basic sliding fee waiting list into the basic sliding fee program.

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 60 days of moving and applying for basic sliding fee assistance in the new county. The limitation in Minnesota Statutes, section 119B.09, subdivision 1, paragraph (a), clause (2), regarding the family's household income at program

entry does not apply when a family receiving assistance moves to another county and timely applies under this item to continue receiving 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 portability pool 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. If funds become available after the family's child care assistance has been terminated due to the end of the portability pool period, the family must be treated as a new applicant and must have a household income that meets the income requirements in Minnesota Statutes, section 119B.09, subdivision 1, for program entry.

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), the education time limit in Minnesota Statutes, section 119B.07; and the time limit for the at-home infant care program in Minnesota Statutes, section 119B.035, subdivision 4, counties may not set a time limit for eligibility under the basic sliding fee program.

3400.0080 MFIP CHILD CARE PROGRAM.

Subpart 1. **Eligibility for MFIP child care program.** Persons listed in Minnesota Statutes, section 119B.05, subdivision 1, are eligible for the MFIP child care assistance program.

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

A. for that portion of the participant's job search support or employment plan which the participant 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 participant 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. 8. **County responsibility when a family moves to another county.** When a MFIP or DWP participant moves to a new county and the new county accepts responsibility for the participant'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 or DWP participant 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 or DWP participant moves to a new county.

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 or DWP 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 or DWP case has closed.

B. At least one caregiver in the family received MFIP or DWP in at least three of the six months immediately preceding the month in which the family's MFIP or DWP case was closed.

C. The family meets the income eligibility requirements specified in Minnesota Statutes, section 119B.09, subdivision 1.

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 or DWP 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 or DWP participant may apply for transition year child care any time during the transition year and, notwithstanding the application date, shall receive retroactive transition year child care assistance according to Minnesota Statutes, section 119B.09, subdivision 7. If a family was receiving child care assistance when the family's MFIP or DWP 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 or DWP due to fraud is not eligible for transition year child care assistance.

Subp. 4. **Reestablishment of MFIP or DWP eligibility during transition year period.** If a transition year family reopens its MFIP or DWP 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 or DWP 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 or DWP as a suspension of the child care benefit but not the transition year period. To receive child care assistance while receiving MFIP or DWP, the family must meet the MFIP child care requirements under part 3400.0080.

3400.0100 FAMILY COPAYMENT FEE SCHEDULE.

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

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. 5. **Publication of fee schedule in State Register.** The department shall publish annually in the State Register the state median income for a family of three, adjusted for family size, and a fee schedule. 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. The updated fee schedule shall take effect 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.

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.

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. **Authorization before payment of legal nonlicensed providers.** After a legal nonlicensed provider is authorized by 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 legal nonlicensed provider who has been provisionally authorized under Minnesota Statutes, section 119B.125, subdivision 5, does not receive final authorization by the county, 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 authorization 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 authorization, payments made after the notice period are subject to recovery as overpayments.

Subp. 3. **County authorization of child care.** Within the limits set by this chapter and Minnesota Statutes, chapter 119B, the amount of child care authorized must reflect the child care needs of the family and minimize out-of-pocket child care costs to the family. The amount of child care authorized must be based on the parents' schedule of participation

in authorized activities, the child's school schedule, the provider's availability, and any other factors that would affect the amount of care that the child needs. The county must pay the provider's full charge up to the applicable maximum rate for all hours of child care authorized and scheduled for the family. 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 applicable 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 or pay for more than 120 hours of child care assistance per child every two weeks. To convert child care paid on a full-day or weekly basis into hours to determine if payment exceeds 120 hours of child care assistance, counties must follow the standards in items A and B.

A. A full-day is equal to ten hours of child care.

B. A week is equal to 50 hours of child care.

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. 7. **County payment policies and schedule.** 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. Providers must be sent 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.

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 and holidays.**

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 Minnesota Statutes, section 119B.13, subdivision 7.

C. Provider charges for absent days in excess of the amount established by Minnesota Statutes, section 119B.13, subdivision 7, are the responsibility of the family receiving child care assistance.

D. A provider must be paid for holiday days according to Minnesota Statutes, section 119B.13, subdivision 7, paragraph (b). State or federal holidays are determined according to Minnesota Statutes, section 645.44, subdivision 5. A provider can be paid for a holiday day only if the provider meets the requirements in Minnesota Statutes, section 119B.13, subdivision 7, paragraph (b), the provider does not provide care on the holiday, and it is in the provider's policies to charge all families for the holiday. If care is available on the holiday, but the child is absent on that day, the day is an absent day. If a provider is closed on a cultural or religious holiday not identified in Minnesota Statutes, section 645.44, subdivision 5, a parent may substitute that holiday for one of the ten state and federal holidays identified in Minnesota Statutes, section 645.44, subdivision 5, if the parent gives notice of the substitution to the county before the holiday occurs or within ten days after the holiday.

E. The absent day provisions in this subpart and in Minnesota Statutes, section 119B.13, subdivision 7, including the limits on paid absent days and holidays, apply to child care assistance payments for child care provided during notice periods.

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.

Subp. 11. **Payment during notice periods.** Child care assistance payments for child care provided during notice periods are subject to all payment rules and limits identified under this part.

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, sections 119B.09, subdivision 5, and 119B.25, 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. 2. Authorization of legal nonlicensed providers.

A. A legal nonlicensed provider must be authorized by the county before the provider or parent may receive a payment under the child care fund. To be authorized by 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 2, paragraph (a);
- (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;
- (5) 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; and
- (6) an acknowledgment that the parent and the legal nonlicensed provider have reviewed the health and safety information provided by the county.

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.

Subp. 2a. Release for in-home providers. To be authorized, an in-home provider must sign a release allowing the parent employing that provider to see information on the remittance advice about the amount of any funds being withheld from the payment for the provider and the reason for those withholdings.

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. 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 scheduled days.

3400.0130 CHILD CARE PROVIDER RATES.

Subpart 1. Rate determination. The commissioner shall determine the applicable maximum rate as described in Minnesota Statutes, section 119B.13. Any rate survey conducted by the commissioner shall include a survey of registration fees when it is usual and customary for a category of provider to charge registration fees.

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 applicable maximum rate determined by the commissioner under Minnesota Statutes, section 119B.13, whichever is less. Except as provided in this part, if the provider's rate is more than the applicable maximum rate, the county may not pay more than the difference between the applicable maximum rate and the family's copayment fee.

Subp. 2. **Rate determination for license-exempt centers.** Rates paid to license-exempt centers as defined in Minnesota Statutes, section 245A.03, subdivision 2, must be the applicable maximum rate for licensed child care centers or the provider rate, whichever is less.

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 applicable 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. 5. Child care rate. Child care payments shall be based on the applicable maximum 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 applicable maximum rate in the participant's county of residence. If a child remains in an age-based child care setting beyond the age at which the licensing laws would allow that child to move to a different age-based child care setting and (1) the child's age is within the range allowed by the licensing laws for that age-based child care setting, or (2) the child is in that age-based child care setting due to a licensing variance, the maximum rate paid for that child's care must be the rate for the age-based child care setting in which the child is located. A child is considered to be in the school-age rate category on the September 1 following the child's fifth birthday unless the parent informs the county that the child will not be starting school. All changes to provider rates shall be implemented on the Monday following the effective date of the rate change.

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

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.

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. 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, the date the county received the results of the background investigation required by Minnesota Statutes, section 119B.125, subdivision 2, 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. **Additional information for legal nonlicensed providers.** The county shall provide each authorized legal nonlicensed family child care provider health and safety material supplied by the department and shall refer the provider to the child care resources and referral agency. The county must tell the 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. 6. **Duties upon receipt of complaints against legal nonlicensed providers.** Within 24 hours of receiving a 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 complaint alleges child maltreatment as defined in Minnesota Statutes, section 626.556, subdivision 10e;

B. the county's public health agency if the 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 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. The county must describe in its child care fund plan how it will oversee the contractor's performance.

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. 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.

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.

3400.0170 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. 3. **Evaluation of income.** The administering agency shall determine income received or available to a family according to subparts 4 to 11. All income, unless specifically excluded in subpart 6, must be counted as income.

Subp. 4. **Determination of annual income.** The income standard for determining eligibility for child care assistance is annual income. Annual income is the sum of 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 income, resulting in a reduction in total annual income. Earned income, self-employment income, unearned income, and lump sum payments must be calculated separately.

Subp. 6a. **Deductions from income.** The following items must be deducted from annual 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 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 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;

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;

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;

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.

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. If a family reports a change in an eligibility factor before the

family's next regularly scheduled redetermination, the county must recalculate eligibility without requiring verification of any eligibility factor that did not change.

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 service period 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 first date that the new child care assistance payment would be effective if the county properly implemented the change does not constitute an overpayment.

3400.0183 TERMINATION OF CHILD CARE ASSISTANCE.

Subpart 1. Conditions for termination of child care assistance.

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 and obtain approval from 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. 5. Effective date of disqualification period. The effective date of a 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.

3400.0185 TERMINATION AND ADVERSE ACTIONS; NOTICE REQUIRED.

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 60 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. When a family stops using a provider but continues to receive assistance, the county must send the provider a notice containing the following information:

- (1) the family's name;
- (2) that the family has decided to stop using that provider;
- (3) the effective date that child care assistance payments will end; and
- (4) that child care payments will no longer be made effective on the date of termination.

C. This item applies to participants using a provider licensed by the state of Minnesota. Except in cases where the provider's license has been temporarily immediately suspended under Minnesota Statutes, section 245A.07, the county must mail the notice to the participant at least 15 calendar days before terminating payment to the provider. When the provider's license has been temporarily immediately suspended under Minnesota Statutes, section 245A.07, the county must send a notice of termination to the provider that is effective on the date of the temporary immediate suspension.

D. This item applies to participants using a legal nonlicensed provider, license exempt center, or provider licensed by an entity other than the state of Minnesota. Except in cases where there is an imminent risk of harm to the health, safety, or rights of a child in care, the county must mail the notice to the provider at least 15 calendar days before terminating payment to the provider. In cases where there is an imminent risk of harm to the health, safety, or rights of a child in care, the county must send a notice of termination that is effective on the date of the notice. Whether there is an imminent risk of harm is determined by the county that authorized the provider for the family.

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 actions adverse to families. The county must give a provider written notice of the following actions adverse to families: a reduction in the hours of authorized care and an increase in the family's copayment. 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.

Subp. 5. **Notice to providers of actions adverse to the provider.** The county must give a provider written notice of the following actions adverse to the provider: a denial of authorization, a termination of authorization, a reduction in the number of hours of care with that provider, and a determination that the provider has an overpayment. The notice must include the following information:

A. a description of the adverse action;

B. the effective date of the adverse action; and

C. a statement that unless a family appeals the adverse action before the effective date or the provider appeals the overpayment determination, 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.

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.

Subp. 2. **Notice of overpayment.** The county must notify the person or persons assigned responsibility for the overpayment 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 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 for every service period 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 recoupment amount is one-fourth the family's copayment or \$10, 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 recoupment amount is one-half the family's copayment or \$10, 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 recoupment amount is one-half the family's copayment or \$50, 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 recoupment amount equals the greater of:

(1) the family's copayment;

(2) ten percent of the overpayment; or

(3) \$100.

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 disqualified 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.

F. If a family has more than one overpayment, the overpayments must not be consolidated into one overpayment. Instead, each overpayment must be recouped according to the schedule specified in this subpart from the child care benefit paid for the service period. If the amount to be recouped in a service period exceeds the child care benefit paid for that service period, the amount recouped must be applied to overpayments in the following order:

(1) payment must first be applied to the oldest overpayment being recouped under item D and then to any other overpayments to be recouped under this item according to the age of the claim;

(2) payment then must be applied to the oldest overpayment being recouped under item C and then to any other overpayments to be recouped under this item according to the age of the claim;

(3) payment then must be applied to the oldest overpayment being recouped under item B and then to any other overpayments to be recouped under this item according to the age of the claim; and

(4) payment then must be applied to the oldest overpayment being recouped under item A and then to any other overpayments to be recouped under this item according to the age of the claim.

Subp. 6. **Recoupment of overpayments from providers.** If the provider continues to receive child care assistance payments, the county must recoup the overpayment by reducing the amount of assistance paid to the provider for every payment at the rates in item A, B, or C until the overpayment debt is retired.

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

B. When a provider has an overpayment due to the provider's failure to provide accurate information, the recoupment amount is one-fourth the provider's payment or \$50, whichever is greater.

C. When a provider 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 recoupment amount equals the greater of:

(1) one-half the provider's payment;

(2) ten percent of the overpayment; or

(3) \$100.

D. This item applies to providers who have been disqualified from or are no longer able to be authorized by the child care assistance program and who have outstanding overpayments. If a provider returns to the child care assistance program as a provider or a participant, the county must begin recouping the provider's outstanding overpayment using the recoupment schedule in items A to D unless another repayment schedule has been specified in a court order.

E. If a provider has more than one overpayment, the overpayments must not be consolidated into one overpayment. Instead, each overpayment must be recouped according to the schedule specified in this subpart from the payment made to the provider for the service period. If the amount to be recouped in a service period exceeds the payment to the provider for that service period, the amount recouped must be applied to overpayments in the following order:

(1) payment must first be applied to the oldest overpayment being recouped under item C and then to any other overpayments to be recouped under this item according to the age of the claim;

(2) payment then must be applied to the oldest overpayment being recouped under item B and then to any other overpayments to be recouped under this item according to the age of the claim; and

(3) payment then must be applied to the oldest overpayment being recouped under item A and then to any other overpayments to be recouped under this item according to the age of the claim.

3400.0200 PAYMENTS TO COUNTIES OF ADMINISTRATIVE FUNDS.

The commissioner shall make administrative funds payments to the counties on a monthly basis. 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 for administrative expenses 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.

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.

3400.0230 RIGHT TO FAIR HEARING.

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 the date of the notice 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.

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. 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.035.

Subp. 2. **Administration of at-home infant child care program.** Within the limits of available funding the commissioner shall make payments 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. 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.035, 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.

B. 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.

C. 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. 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.

D. 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.035, 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.

E. 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.035, 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 parents. If an 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. There is no additional subsidy for infants with special needs or for multiple births. The county must subtract the family's copayment required by Minnesota Statutes, section 119B.12, to determine the final at-home infant child care 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 beginning 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 15.

Excluded income is defined in part 3400.0170, subpart 6, and Minnesota Statutes, section 119B.011, subdivision 15. 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 service period, 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 service period of participation according to subitems (1) to (4).

(1) If the family participates in the at-home infant child care program during the service period 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 service period.

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

(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 service period 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.

APPENDIX
Repealed Minnesota Rules: 21-01522

A. In addition to duties required under part 3400.0140, 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) 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 at-home infant child care subsidy to families.

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.