

3300.6040 CONTRACT ADJUSTMENTS.

Subpart 1. **Voluntary shifts.** After the extended employment contract has been executed, a provider may request voluntary shifts in the distribution of the total allocation amount among the subprograms. Voluntary shifts may be made according to the parameters in part 3300.6035, subpart 3, item C. A shift in the distribution of the allocation requires a renegotiated provider contract.

Subp. 2. **Underproduction penalty.**

A. After the compliance audit reconciliation process under part 3300.6060 for a previous fiscal year is complete, the commissioner must determine if a provider is subject to an underproduction penalty for a particular subprogram.

B. A provider is subject to an underproduction penalty for a particular subprogram when the provider's audited production for a particular subprogram in a fiscal year is less than 95 percent of the provider's allocation for that subprogram in the fiscal year.

C. An underproduction penalty means the commissioner must adjust a provider's subprogram allocation for that subprogram in the subsequent fiscal year's contract downward, except as provided by subpart 3.

D. The downward adjustment for that subprogram's allocation must be the audited subprogram production in the audited fiscal year plus five percent of the audited fiscal year's subprogram contract allocation.

Subp. 3. **Waiver from underproduction penalty.** If a provider is subject to an underproduction penalty in a particular subprogram as described in subpart 2, the provider is eligible for either a one-year waiver or a catastrophic waiver from the underproduction penalty.

A. If a provider earns 90 percent to 95 percent of a subprogram allocation, the provider is eligible for a one-year waiver from the underproduction penalty for a particular subprogram. The commissioner must provide the waiver without a request process. A provider is ineligible to receive the one-year waiver for a particular subprogram in any two consecutive fiscal years. A provider is eligible for the one-year waiver in each particular subprogram.

B. If a provider earns less than 90 percent of a subprogram allocation and demonstrates it is experiencing an extraordinary and catastrophic circumstance under this item, the commissioner may issue a catastrophic waiver from the underproduction penalty.

(1) For purposes of this subpart, an "extraordinary and catastrophic circumstance" means a fire or other natural disaster that is beyond the control of the provider that has adversely affected or completely halted operations such that extended employment individuals have been unable to work or extended employment provider staff have been unable to provide extended employment services.

(2) A provider seeking a catastrophic waiver to the contract starting point must request this variance in a manner prescribed by the commissioner and shall:

(a) state the reasons for the request;

(b) submit independent documentation of the extraordinary and catastrophic circumstances;

(c) demonstrate how the extraordinary and catastrophic circumstances resulted in the loss of work hours of extended employment individuals; and

(d) submit a measurable work plan for corrective action to meet contracted hours during the next contract period.

(3) A provider is eligible for the catastrophic waiver in each particular subprogram. A provider is ineligible for the catastrophic waiver for a particular subprogram in any two consecutive fiscal years.

Statutory Authority: *MS s 268A.15*

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