STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota Rules, Chapter 3400; Revisor ID No. 4560

Child Care Assistance Program

April, 2022
General information:

1) Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency’s Public Notices website: https://mn.gov/dhs/partners-and-providers/policies-procedures/rulemaking/

2) View older rule records at: Minnesota Rule Statutes https://www.revisor.mn.gov/rules/status/

3) Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Cindy Schneider, Information Management Specialist, Minnesota Department of Human Services, PO Box 64962, St. Paul, MN 55164-0962; telephone 651-431-3864; email Cindy.Schneider@state.mn.us; or use your preferred telecommunications relay service.

4) How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.079, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).

5) How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).
# Acronyms

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Introduction and overview

Introduction

The Child Care Assistance Program (CCAP) provides financial assistance to help families with low incomes pay for child care so that parents may pursue employment or education leading to employment, and to ensure that children are well-cared for and prepared to enter school ready to learn. CCAP is comprised of subprograms based on a family’s participation with other assistance programs. These subprograms include: (1) Minnesota Family Investment Program (MFIP)/Diversionary Work Program (DWP) Child Care Assistance Program, (2) Transition Year (TY) and Transition Year Extension (TYE) Child Care Assistance Program, and (3) Basic Sliding Fee (BSF) Child Care Assistance Program. Generally, families participating in MFIP or DWP are eligible for child care assistance for child care used while they are working or participating in activities included in their Employment Plans.1 People who transition off of cash assistance programs may be eligible for child care assistance through TY or TYE to ensure on-going funding. Finally, families who have not recently received cash assistance may receive child care assistance under the BSF subprogram if they meet income limits, activity participation requirements, and other eligibility factors. Participants in all programs must meet general eligibility requirements and contribute towards the cost of their child care expenses according to a sliding fee copayment schedule based on their family income.

Local agencies, including county human services agencies and some tribal agencies and multi-county collaboratives, administer CCAP with supervision from the Minnesota Department of Human Services (DHS or Department). CCAP is funded by money from federal, state, and local governments. Federal funds are paid from Temporary Assistance to Needy Families (TANF) and the Child Care and Development Fund (CCDF). State funds are paid from the general fund; money appropriated for child care assistance often is referred to in statute and rule as the child care fund. The amount of the county or tribe’s mandatory contribution is determined by a statutory formula2. Local agencies also have the option of contributing additional county or tribal dollars toward CCAP. Subprograms related to receipt of cash assistance benefits, MFIP/DWP, TY, and TYE, are fully funded programs. This means all families who are eligible for these subprograms and meet child care assistance eligibility requirements can receive child care assistance. The BSF subprogram, however, has a capped allocation. Because the BSF subprogram is not fully funded, some local agencies do not have enough funds to serve all the families who want and who are eligible for child care assistance. These agencies must establish waiting lists and manage their child care assistance funds carefully to ensure they serve as many families as possible while also protecting the stability of the program for participating families by not serving more families than funds allow.

The rules governing CCAP were last amended in 2008. Since that time the Department has fully implemented a statewide, electronic system to administer child care assistance, the Minnesota Electronic Child Care (MEC²) Integrated system. In addition, the state legislature has made changes to Minn. Stat. § 119B several times since the last rule revision resulting in outdated and inadequate rules. Finally, in November of 2014, the Child Care and Development Block Grant Act of 2014 was signed into law. The act reauthorized CCDF for the first time since 1996 and represented a dramatic re-envisioning of how federal CCDF funding must be spent. In September of 2016, the Office of Child Care published new federal rules to provide clarity to states on how to implement the law. In response to these federal

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1 An Employment Plan is a plan developed by a job counselor and the participant receiving MFIP that includes the participant’s overall employment goal, activities necessary to reach that goal, and a timeline for each activity.
2 See Minn. Stat. § 119B.11.
changes, the Minnesota legislature made substantial program changes to CCAP in the 2017 and 2019 legislative sessions to bring Minnesota into substantial compliance with new federal laws. The new federal regulations established robust health and safety requirements for child care providers, increased transparency in consumer and provider education information, promoted family-friendly eligibility policies, and provided additional investments for activities to improve the quality of child care. States are required to establish a child care subsidy program under the Child Care Development Block Grant (CCDBG) and must commit at least 70 percent of CCDF funds to providing child care subsidies. In Minnesota, the CCDF-funded child care subsidy program is the Child Care Assistance Program.

Statement of general need

The Department needs these amendments to make sure that the rules governing CCAP align with and implement recent federal and state statutory changes, and to replace or remove outdated guidance. The amendments are necessary to clarify procedures and policies applicable to the program, and revise rule language to be more inclusive or more responsive to potential changes in statute. In doing so, the amendments benefit all those who are significantly affected by the rules: the Department; the county agencies, tribal agencies, and workers that administer CCAP; and child care providers and families.

Scope of the proposed amendments

The proposed changes affect Minnesota Rules, parts 3400.0010 through 3400.0235, which govern the administration of the child care fund through CCAP in Minnesota. During the 2017 legislative session, many changes were made to CCAP. Most of the changes were required under the federal Child Care and Development Block Grant Act of 2014. The Department is amending the rules to align with these federal and state statutory changes, adding clarity and consistency. The proposed amendments focus on providing equal access to stable child care for low-income children and strengthening requirements to protect the health and safety of children in child care and receiving CCAP funding. The amendments address determination of income for eligibility, frequency of redetermination, determination of copayments, maintaining consistent child care authorizations for children, reporting responsibilities for participants, provider requirements, and payment policies.

Public participation and stakeholder involvement

In developing the statutory changes to Minnesota law, primarily in response to the federal law changes, the Department engaged with representatives from local agencies, family advocacy groups, and child care providers to draft policies that balanced burdens of compliance and conformed to federal law. The Department conducted broader stakeholder engagement that was not specifically related to these rule revisions, but still informed the rule revisions. This engagement is noted elsewhere in the SONAR when related to specific proposed changes. Throughout this rulemaking process the Department further engaged with stakeholders in the following ways:

- The Notice of Request for Comments was posted in the State Register (https://mn.gov/admin/assets/SR43_13%20-%20Accessible_tcm36-352433.pdf) on September 24, 2018.
- In conjunction with the publication of the Notice of Request for Comments, the Department emailed an invitation on September 24, 2018 to identified contacts at over 30 community and state agencies requesting participation in the CCAP Rule Revision Advisory Committee, and to all administrative and client access contacts (lead staff that have contact with families receiving CCAP) across the 80 county, tribal and subcontracted agencies that administer CCAP. The
Department also emailed an invitation to participate on September 26, 2018 to all licensed child care centers, licensed family child care providers and licensed exempt centers statewide, for a total of 10,556 individuals. Additionally, the Department sent a mailing via U.S. mail on September 26, 2018 to all legal nonlicensed child care providers registered to receive child care assistance, for a total of 474 providers.

- Due to the large response and initial interest in serving on the CCAP Rule Revision Advisory Committee, all interested persons were invited to attend the rule revision kick-off meeting held on October 30, 2018. This meeting, held in person at the Minnesota Department of Human Services in St. Paul and via virtual option, provided participants with:
  - An overview of the rule revision process;
  - Details on the child care assistance rule amendment topics and
  - Options on how to give input on the rule.

- Following the October 30, 2018 meeting, stakeholders were asked to indicate their interest in serving as a member of the CCAP Rule Revision Advisory Committee. A total of 60 stakeholders, representing a variety of sectors from different geographic areas of the state, expressed interest in continuing to serve as a committee member. Committee members represented the following entities:
  - 32 child care providers (26 licensed centers, 5 certified license exempt centers, and 1 licensed family);
  - 6 community agencies;
  - 10 CCAP agencies;
  - 11 state agencies; and
  - 1 parent.

- The Department established a specific rule revision email address (dhs.CCAPrule@state.mn.us) for stakeholders to submit questions and comments on proposed changes. The Department also established a CCAP rule revision website (https://mn.gov/dhs/partners-and-providers/news-initiatives-reports-workgroups/child-care-and-early-education/ccap-rule-rev.jsp) to post resources, meeting agendas and materials, and draft rule language.

- The Department engaged with families who either currently or previously had experience with CCAP to gather feedback on how proposed rules may impact families and to learn more about families’ experiences with the program. The Department convened two sessions with families in the following locations:
  - March 25, 2019 with the Rochester Head Start Policy Council

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3 This email went out via a listserv maintained by the Department that includes all child care centers, family child care providers, and exempt centers that are licensed or certified by the Department. This listserv, which reached 10,556 individuals, was used early on in the rulemaking in an effort to connect with providers. The intent of this listserv is to reach all licensed and certified providers; however, the Department has received feedback from providers requesting this listserv only be used in matters specifically related to licensing and certification. In response, the Department built a separate listserv in January 2019 to specifically inform child care providers registered to receive child care assistance about issues and policy changes related to CCAP. Other interested parties, such as county and tribal staff, and child care provider professional organizations, can also sign up for the listserv. Therefore, the Department is now using the listserv of child care providers to inform them of rulemaking efforts.
October 9, 2019 with Think Small (Ramsey County)

All CCAP Rule Revision Advisory Committee members were invited to a full-day, in person meeting on December 4, 2019 to review drafted rule language and have small group discussion. Draft rule language was provided to participants prior to the meeting. The 29 attendees participated in four break-out sessions and provided feedback on revisions. All proposed rule revisions were grouped into one of four topic areas:

- Family policies
- Provider policies
- Notices, termination, overpayments and appeals
- Subprograms and CCAP agency responsibilities

Draft language and all advisory committee meeting materials were posted on the Department’s rule revision website on December 9, 2019, and an email was sent to approximately 160 stakeholders regarding the posting. Stakeholders were invited to submit feedback and comments on the draft to the Department’s rule revision email address.

A revised draft, considering stakeholder feedback and depicting the changes from the December 4, 2019 draft, was posted on the Department’s rule revision website on November 25, 2020 and an email was sent to approximately 160 stakeholders regarding the posting. Stakeholders were invited to submit feedback and comments on the draft to the Department’s rule revision email address. Stakeholders were also informed that they will be notified when the Notice of Hearing/Intent to Adopt Rules is published, which will allow another opportunity of at least a 30 day time period to provide comments.

The Department used the good cause exempt rulemaking process under Minnesota Statutes, section 14.388, subdivision 1, clause (2) to comply with the federal requirement to establish capacity limits and ratios on the number of children cared for by a legal nonlicensed provider who receives CCAP payments. Notice of the good cause rulemaking was sent electronically to all stakeholders who are members of the Legal Nonlicensed Child Care Provider Workgroup on June 16, 2021 and via US Mail to all legal nonlicensed child care providers registered to receive CCAP (177 total providers) on June 15, 2021. No comments were submitted to the Office of Administrative Hearings (OAH) on the rulemaking effort. On July 1, 2021, the OAH determined the Department has the statutory authority to adopt these proposed rules under the exempt rulemaking process and the adopted rules are approved. The exempt rules were posted in the State Register (https://mn.gov/admin/assets/SR46_13%20-%20Accessible_tcm36-500455.pdf) on September 27, 2021.

The proposed rule revisions take into consideration the feedback received from the advisory committee and other stakeholders, while being mindful of federal law, statutory requirements and program implementation.

**Statutory authority**

The Department’s authority to adopt rules related to CCAP is stated in several Minnesota statutes. Minnesota Statutes, section 256.01, subdivision 4 generally requires the Department to “supervise the administration of assistance to dependent children,” and allows the Department to make rules “necessary or desirable” to carry out related duties.

Additionally, “[a]ll rules made by the state agency shall be binding on the counties and shall be complied
Minnesota Statutes, section 119B.02, subdivision 1 requires the Department to make rules to govern CCAP specifically:

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 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.

Minnesota Statutes, section 119B.02, subdivision 3 also requires the commissioner to adopt rules “that establish minimum administrative standards for the provision of child care services by county boards of commissioners.”

Minnesota Statutes, section 119B.04, subdivision 2 allows the commissioner to adopt rules to administer the child care and development fund. Minnesota Statutes, section 119B.06, subdivision 2 allows the commissioner to adopt rules “to administer the child care development block grant program.”

The statutory authority in Minnesota Statutes, sections 119B.02, subdivision 1; 119B.04, subdivision 2; 119B.06, subdivision 2, and 256.01, subdivision 4, was adopted before January 1, 1996 and therefore is exempt from the 18-month requirement in Minnesota Statutes, section 14.125. The statutory authority in Minnesota Statutes, section 119B.02, subdivision 3, was adopted in 1999 and had an effective date of July 1, 1999. The Department of Human Services published a notice of intent to adopt Minnesota Rules, chapter 3400, governing CCAP, on December 26, 2000. Because the notice of intent to adopt rules was published within 18 months of the effective date of the new grant of rulemaking authority, the Department may amend the rules enacted in that initial rulemaking at any time.

Under these statutes, the Department has the necessary statutory authority to adopt the proposed rules.

**Reasonableness of the amendments**

**General Reasonableness**

1) Changing references to “county” to “CCAP agency” or “county or tribe.”

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4 Minn. Stat. § 256.01, subd. 4(a)(1) and (b)(1).
In the proposed amendments, the Department has substituted the term “CCAP agency” throughout rule in place of “county” (see proposed Minn. R. part 3400.0020, subpart 12f). This terminology is more plain language and more inclusive than the previous terminology of “Administering agency” (see existing Minn. R. part 3400.0020, subpart 4). “CCAP agency” is generally used when referencing the agency administering the child care assistance program and reflects the diverse agencies currently administering the program through subcontracting (see existing Minn. R. 3400.0140, subp. 7), human services agency mergers, and tribal contracts. In the last decade, more county social services agencies have entered into agreements with other county social services agencies to offer a shared social services model (e.g., Southwest Health and Human Services and MN Prairie). Under Minn. Stat. § 119B.02, subdivision 2, the commissioner of the Department of Human Services “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.” Two tribal nations, White Earth Nation and Red Lake Nation, have opted to contract with the Department of Human Services to carry out the responsibilities of county human services agencies to operate child care assistance for their members. The new term and definition of “CCAP agency” is more inclusive of the different allowable administrative structures. This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance.

Because there are duties related to the administration of the child care assistance program that are specific to counties and tribes only, and not subcontracted agencies, there are instances in rule where replacing “county” with the term “CCAP agency” is not appropriate. The addition of the language “or tribe” recognizes that a tribe may fulfill the same function as a county in administering child care assistance and therefore must conform to the same responsibilities and requirements as the county in performance of those contractual obligations. The terminology “county or tribe” is being used throughout the proposed rule when referencing allocations (see proposed Minn. R. 3400.0020, subp. 8; Minn. R. 3400.0060, subp. 4; Minn. R. 3400.0183, subp. 1), fiscal matches (see proposed Minn. R. 3400.0140, subp. 9), geographical boundaries in which a family resides (see proposed Minn. R. 3400.0035, subp. 2; Minn. R. 3400.0060, subp. 9; Minn. R. 3400.0080, subp. 8), waiting lists (see proposed Minn. R. 3400.0065), tribal entities (see proposed Minn. R. 3400.0140, subp. 6), child care fund plans (see proposed Minn. R. 3400.0150), and contracting (see proposed Minn. R. 3400.0140, subp. 7).

2) Changing references to “parent” to “parentally responsible individual.”

Throughout chapter 3400, the word “parent” is used. The Department recognizes that parent does not accurately encompass all family structures eligible for the child care assistance program. The proposed changes include replacing parent throughout chapter 3400 with the term “parentally responsible individual” to reflect family structures that include parents, stepparents, legal guardians, and eligible relative caregivers and their spouses who are members of the child care assistance family and reside in the household that applies for child care assistance (see proposed Minn. R. 3400.0020, subp. 34b).

3) Grammatical, punctuation, and drafting changes.

Throughout chapter 3400, there are instances where readability of the language is overly complicated, compromising understanding and subsequent implementation. The proposed changes reflect efforts to simplify language throughout the chapter. This includes updating terminology to be more inclusive, plain language, and consistent throughout rule, as well as correcting grammatical, punctuation, and drafting errors. For example, for purposes of
readability and plain language, the word “must” has been used in place of the word “shall.” These simplification efforts are necessary and reasonable because they result in no substantive changes to rule, reduce read confusion, and improve overall usability of the rule.

4) **Reorganization of chapter 3400.**

The current organization of chapter 3400 can make it difficult to use and understand its provisions. Several parts in chapter 3400 include material that does not fall under the part’s title. There are also subparts that do not flow chronologically as one would expect when detailing child care assistance program processes. The proposed changes reorganize the chapter to group related provisions together and put content into chronological order and are necessary and reasonable because it will make the entire chapter easier to use and to understand.

5) **Changing references to “provider” and “care.”**

Throughout chapter 3400, the proposed changes replace “provider” with “child care provider” and “care” with “child care.” The use of consistent terms throughout the chapter provides clarity to the user and helps remove ambiguity from the language.

Each part and subpart of the rule for which the Department is proposing changes is addressed below. The changes are explained, and the need for and reasonableness of the changes is considered. Any time another part of the rule is mentioned, the reference is to the rule as proposed, unless otherwise noted.

**Rule-by-Rule Analysis**

Proposed change to Minnesota Rules 3400:

**Part 3400.0010 PURPOSE AND APPLICABILITY.**

Part 3400.0010, subpart 1. The proposed change to this subpart updates the purpose statement of the program. The change is necessary and reasonable because it reflects the recent change in purpose in the federal Child Care and Development Block Grant Act of 2014, which balances family self-sufficiency and healthy child development.

Part 3400.0010, subpart 2. The primary change proposed to this subpart adds “registered providers” to recognize that Minnesota Rules, chapter 3400, not only applies to families eligible for child care assistance but also to child care providers eligible to receive payment from the child care fund and child care providers requesting to receive payment. The proposed change to the statutory reference for applicability of the rules chapter to encompass all of Minnesota Statutes, chapter 119B rather than a specified range of sections is necessary and reasonable to ensure that if other sections are added to chapter 119B the rules will apply without further revisions to the rule. For example, section 119B.161, which governs a child care provider’s right to administrative review, was added during the 2019 legislative session and went into effect on February 26, 2021. These proposed changes clarify the applicability of the rule and include the statutory changes related to applicability. Additional changes are discussed under general amendment one.

**Part 3400.0020 DEFINITIONS.**

Part 3400.0020, subpart 1. This subpart is discussed under general amendment three.

Part 3400.0020, subpart 1a. “12-month eligibility period.” This proposed definition sets parameters to the time period in which limited factors can negatively impact a family’s child care assistance case. This change is necessary because it reflects the 12 month eligibility period that was established federally under the Child Care and Development Block Grant Act of 2014, Public Law Number 113 – 186, and the
Federal Child Care and Development Fund, 45 C.F.R. § 98.21. The change is reasonable because it supports a family’s continuous eligibility and provide for stable, consistent child care arrangements for children. During this time frame between eligibility determinations, a family has limited reporting and verification requirements and fluctuations in a family’s earnings and activity participation are taken into account. This definition is used throughout rule when describing the responsibilities of the family and the CCAP agency between a family’s initial application and redetermination, and between subsequent redeterminations.

Part 3400.0020, subpart 1b. “12-month reporter.” This proposed definition is necessary and reasonable to differentiate between families’ reporting statuses and align with recent changes made in statute. Minn. Stat. § 119B.095, subd. 1 outlines the parameters in which care must be authorized and scheduled with a provider based on the applicant’s or participant’s verified activity schedule or child care choices. Any family not meeting the criteria outlined in Minn. Stat. § 119B.095, subd. 1 are considered to be a “12 month reporter.”

Part 3400.0020, subpart 1c. “15-day adverse action.” This proposed definition is necessary to accurately reflect the terminology used by the Child Care Assistance Program. When a family or a provider receives written notification of changes negatively impacting eligibility or authorization, notice is provided 15 days before the negative action takes effect. The proposed definition is reasonable because it accurately reflects program policy and clarifies the time frame that begins once the provider or family receives the notice until the adverse consequence is effective.

Part 3400.0020, subpart 1d. “A setting subject to public education standards.” The Federal Child Care and Development Fund, 45 C.F.R. § 98.20(c) states that the citizenship and immigration status of the child is relevant for eligibility determination. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) specifically provides that its provisions do not apply to Head Start and non-postsecondary educational programs and that it does not have any effect on the right of non-citizen children to participate in these programs. Consequently, the federal government has determined that when child care assistance funds are used to pay for child care in settings subject to public educational standards, such as a Head Start or a pre-kindergarten or a school-age care program operated under public education standards, PRWORA does not require verification of the child’s citizenship or immigration status because the child is participating in a non-postsecondary educational program rather than receiving federal public benefits. The proposed addition of this definition is necessary and reasonable to accurately reflect what programs meet these standards and allow more accurate implementation across CCAP agencies.

Part 3400.0020, subpart 1e. “Activity schedule.” In order to authorize child care, one of the factors the CCAP agency must consider under Minn. Stat. § 119B.095, subd. 1 is the amount of time, including the days and times, the parentally responsible individual participates in an authorized activity. The proposed addition of this subpart is necessary and reasonable to accurately reflect the terminology commonly used to describe the amount of time the parentally responsible individual participates in the activity.

Part 3400.0020, subpart 4. The proposed removal of the definition of “administering agency” is necessary and reasonable because the terminology is outdated and more accurately reflected in the new definition proposed for Minn. R. 3400.0020, subp. 12f. This subpart is discussed under general amendment one.

Part 3400.0020, subpart 5. “Administrative expense.” The need and reasonableness of the proposed changes in the definition of this term is discussed under general amendments one and three.

Part 3400.0020, subpart 8. “Allocation.” The proposed change to this definition replaces “be reimbursed for” with “use.” Funds are allocated on a calendar year basis to counties and tribes based on the formula...
in Minn. Stat. § 119B.03, subd. 6. The change in terminology more accurately reflects current child care assistance payment practices. The current use of “reimburse” implies inaccurately that counties and tribes first make payments to child care providers with county and tribal dollars and are later repaid by the state. The need and reasonableness of the other amendments to this part are discussed under general amendment one.

Part 3400.0020, subpart 9a. “Authorized activity.” In order to be eligible for child care assistance, a parentally responsible individual must be engaged in a work, education, or training program, searching for employment, or participating in activities allowed for families receiving MFIP under Minn. Stat. § 119B.05, subd. 1. The proposed addition of this subpart is necessary to accurately reflect the terminology commonly used when describing these activities, and is reasonable because it is a term easily understood and commonly used by the entities governed by the rules.

Part 3400.0020, subpart 10a. “Authorized hours.” The need and reasonableness of proposed changes to this subpart is discussed under general amendment three.

Part 3400.0020, subpart 10b. “Back-up child care provider.” This proposed definition was added to support proposed changes to Minn. R. 3400.0110, subp. 3b. Extensive content has been added to part 3400.0110 about authorizing care for children, including authorizing care during provider switches and when care is not available with a child’s usual provider. Families commonly use what is known as a backup provider when their usual provider is not available to care for the child. The backup provider must be registered to receive child care assistance and the limitations contained in Minn. R. 3400.0120, subp. 1 apply. This definition is necessary and reasonable because it adds clarity and supports rule content.

Part 3400.0020, subpart 10c. “Certified license-exempt child care center.” In the 2017 legislative session, changes were enacted to bring Minnesota into compliance with the federal Child Care and Development Block Grant (CCDBG) Act. As part of this effort, license-exempt centers participating in CCAP are required to become certified under Minn. Stat. § 245H in order to be eligible for payment from the child care fund. This proposed definition is necessary and reasonable to mirror language currently defined in Minn. Stat. § 245H.01 and reflect updated terminology.

Part 3400.0020, subpart 11a. “Child in an at-risk population.” The proposed change of adding “child” and “population” to the term being defined in this subpart creates specificity and more accurately reflects terminology used by the Child Care Assistance Program. The proposed change to this definition also removes the language “but are not limited to” and adds the words “such as.” This change is necessary and reasonable because it provides context for what may contribute to at-risk factors, rather than leaving the interpretation open-ended.

Part 3400.0020, subpart 12a. “Child care assistance household.” The proposed addition of this subpart is necessary and reasonable because it clarifies who is included in the definition of family under Minn. Stat. § 119B.011, subd. 13.

Part 3400.0020, subpart 12b. “Child care assistance program.” Minnesota Statutes, chapter 119B and Minnesota Rules, chapter 3400 govern the administration of the child care fund to reduce the cost of child care to eligible families. The proposed addition of this subpart is necessary and reasonable to accurately reflect the terminology commonly used by families, child care providers, CCAP agencies, and other stakeholders when referencing this financial support.

Part 3400.0020, subpart 12c. “Child care center employee.” Under Minn. Stat. § 119B.09, subd. 9, a child care center is limited to receiving 25 or fewer authorizations for children who are dependents of the center’s employees. This section of statute was developed and passed into law with the intent of (1)
ensuring that the payment of child care funds is limited when parents are working in the same child care setting that their children are attending and may be caring for their own children, and (2) to align with a prohibition in Minn. Stat. § 119B.09, subd. 9 that disallows payments to a family child care provider or their employee(s) for their own children. In a child care center, due to the varied roles and positions that are needed to operate a licensed or certified license exempt center, a definition of center employee is necessary to provide clarity to agencies administering the child care assistance program on who is counted as an employee. This proposed definition in rule is reasonable because it is supported by federal regulations, which similarly define a child care provider under Federal Child Care and Development Fund, 45 C.F.R. § 98.43(a)[2](ii). These federal regulations also dictate how the state child care licensing program determines which individuals, including contractors, require a background study under Minn. Stat. § 245C, which is referenced in this definition.

**Part 3400.0020, subpart 12d.** “Commissioner.” The term “commissioner” is used throughout the current rule. Therefore, it is necessary and reasonable to include a definition that specifies which commissioner has the authority and responsibilities identified in rule. Rather than adopting the specific terminology from statute that identifies the Commissioner of the Department of Human Services, this proposed definition for rule has a more generic terminology that recognizes the potential for structural oversight changes and prevents the need for future rule revision.

**Part 3400.0020, subpart 12e.** “Copayment.” The term “copayment” or its equivalent is used throughout the current rule. Minn. Stat. § 119B.12 identifies the co-payment within the family fee schedule but does not define the term. The proposed changes to rule move this term from part 3400.0020, subp. 24 to subp. 12e and revise the definition to simplify the language. The revised definition is necessary and reasonable because it removes the use of “parent fee” as there may be instances where the family does not pay the copayment directly and instead it is paid by a third party, which still meets the family’s obligation and is allowed under Minn. Stat. § 119B.09, subd. 11 and Minn. Stat. § 119B.12, subd. 2. The proposed definition also clarifies the use of “copayment” in program materials, and creates singular terminology that will reduce confusion for families, child care providers, and administrative program staff. This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance.

**Part 3400.0020, subpart 12f.** “Child care assistance program agency or CCAP agency.” The need and reasonableness for this proposed definition is discussed under general amendment one.

**Part 3400.0020, subpart 12g.** “Department.” The term “department” is used throughout the current rule. Therefore, it is necessary and reasonable to include a definition that specifies which department has the authority and responsibilities identified in rule. Rather than adopting the specific terminology from statute that identifies the Department of Human Services, a more generic terminology that recognizes the potential for structural oversight changes prevents the need for future rule revisions.

**Part 3400.0020, subpart 18.** “Documentation.” The need and reasonableness for the proposed change to this subpart is discussed under general amendment one.

**Part 3400.0020, subpart 20.** “Eligible relative caregiver.” The term “eligible relative caregiver” is used in Minn. Stat. § 119B.011, subd. 13 but a definition of the term is not included in statute. Therefore, it is necessary and reasonable to define this term in rule. The proposed revisions to the definition are necessary and reasonable to better align with practice and how other programs operationalize eligibility of non-parent caregivers for assistance. These are clarifying changes that do not create new burdens or administrative costs for parties administering or receiving child care assistance.

**Part 3400.0020, subpart 20a.** “Extended eligibility.” The proposed addition of this subpart is necessary and reasonable to align with recent changes made to statute. Minn. Stat. § 119B.105, which was created
in the 2017 legislative session, creates a three-month extended eligibility period. This time period is referred to as “extended eligibility.” The definition is necessary to accurately reflect the terminology used by the Child Care Assistance Program.

**Part 3400.0020, subpart 24.** “Family copayment fee.” The need and reasonableness for the repeal of this subpart is discussed under Minn. R. 3400.0020, subp. 12e.

**Part 3400.0020, subpart 25.** “Full calendar month.” The proposed change of adding “means” to this subpart is necessary and reasonable because it corrects a drafting error and results in no substantive changes to rule. Additionally, the proposed change to replace “to” with “through” provides a more accurate and inclusive depiction of the days that are considered to be within a given month.

**Part 3400.0020, subpart 26.** “Full-day basis.” Under Minn. R. 3400.0110, a CCAP agency 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. The current use of the word “provided” implies a provider is paid based on a child’s attended hours, rather than the child’s scheduled and authorized hours. The proposed language is necessary and reasonable because it clarifies how a provider is paid, and does not create any new burdens or administrative costs for parties administering or receiving child care assistance.

**Part 3400.0020, subpart 28a.** “Imminent risk.” The proposed addition of this definition is necessary and reasonable to ensure that CCAP agencies, counties, tribes, and child care providers understand what imminent risk for the health and safety of a child in a child care setting means. The term “imminent risk” is used in other parts of rule, including Minn. R. 3400.0150, subp. 2, which requires counties and tribes to include in their child care fund plan the conditions they recognize as presenting imminent risk of harm to a child; and Minn. R. 3400.0185, subp. 13, item (D), which contains notice requirements for CCAP agencies when terminating payment to a child care provider because there is imminent risk to a child in care.

**Part 3400.0020, subpart 29a.** “Immunization record.” The need and reasonableness for the changes to this subpart is discussed under general amendment three.

**Part 3400.0020, subpart 31c.** “Legal nonlicensed child care setting.” The Consolidated Appropriations Act of 2018 (Public Law 115-141) prohibits states from expending federal CCDF funds on providers at which a serious injury or death occurred due to substantiated health or safety violations. This is reflected in the proposed language for part 3400.0140, subp. 6. When substantiated maltreatment occurs while a child is in the care of a legal nonlicensed child care provider, it is necessary and reasonable to define what is considered the setting in which the substantiated maltreatment occurred, as this subsequently results in a legal nonlicensed child care provider being unable to receive payment from the child care fund.

**Part 3400.0020, subpart 31d.** “Licensed child care center.” Minn. Stat. § 119B.011, subd. 19 provides a definition of provider but does not have a definition specific to a licensed child care center. The proposed definition is necessary and reasonable to accurately reflect the terminology used by the Child Care Assistance Program and adds clarity to policies that pertain to this provider type.

**Part 3400.0020, subpart 31e.** “Licensed family child care provider.” Minn. Stat. § 119B.011, subd. 19 provides a definition of provider but does not have a definition specific to licensed family child care provider. The proposed definition is necessary and reasonable to accurately reflect the terminology used by the Child Care Assistance Program and add clarity to policies that pertain to this provider type.

**Part 3400.0020, subpart 31f.** “Lump sum.” Changes made in 2015 to Minn. Stat. § 119B.011, subd. 15 updated the definition of income to align with other public assistance programs in Minnesota Statutes, chapter 256P. Under Minn. Stat. § 119B.09, subd. 4(c), lump sums counted as income under Minn. Stat.
§ 256P, subd. 3 must be included in the annual income calculation to determine a family’s child care assistance eligibility. This proposed definition is necessary and reasonable to provide clarity about what is considered a lump sum and ensure consistent application of policy.

Part 3400.0020, subpart 32b. “Minimum wage.” The current rule definition only cites Minnesota state minimum wage and omits a citation to federal minimum wage. Minn. Stat. § 119B.10 requires that child care assistance applicants and participants at redetermination must be receiving applicable minimum wage. The minimum wage amount is used to determine if a parentally responsible individual is meeting minimum activity requirements, which impacts a family’s eligibility for child care assistance. Due to ongoing changes in both state and federal minimum wages, the proposed change is reasonable because it includes citations to both federal and state minimum wages, which is necessary for determining the applicable minimum wage as required by statute.

Part 3400.0020, subpart 33. “Overpayment.” The need and reasonableness for the proposed changes to this subpart is discussed under general amendment five.

Part 3400.0020, subpart 34b. “Parentally responsible individual.” The need and reasonableness for this subpart is discussed under general amendment three.

Part 3400.0020, subpart 34c. “Permanent end of an authorized activity.” Under Minn. Stat. § 119B.105, a family’s three-month extended eligibility period applies when a participant’s employment or education program ends permanently. Under Minn. Stat. § 256P.07, subd. 6, a family must report a permanent end in a parentally responsible individual’s authorized activity. The proposed addition of this subpart is necessary and reasonable to align with statute and reflect what constitutes a permanent end to an authorized activity to ensure consistent application of policy.

Part 3400.0020, subpart 34d. “Portability pool child care assistance.” CCAP is comprised of different subprograms based on a family’s participation with other assistance programs. Each subprogram is either fully funded or has a capped allocation. Under Minn. Stat. § 119B.03, subd. 9, portability pool child care assistance has funds appropriated under the capped basic sliding fee program. The proposed addition of this subpart is necessary and reasonable to align with statute and accurately reflect the terminology used by the Child Care Assistance Program when referencing this subprogram.

Part 3400.0020, subpart 35. “Provider rate.” The need and reasonableness for this subpart is discussed under general amendments three and five.

Part 3400.0020, subpart 37. “Redetermination.” The proposed changes to this definition include removing the term “periodically” because it is not necessary, as the time frames for collection are specified by Minn. R. 3400.0180. These changes are reasonable because they clarify policies and do not create new burdens or administrative costs for parties administering or receiving child care assistance. The need and reasonableness for the other edits to this subpart is discussed under general amendment one.

Part 3400.0020, subpart 37a. “Related to the child care provider.” The Federal Child Care and Development Fund, 45 C.F.R. § 98.41(a)(1)(i)(B)(1) defines what family members are considered related. The relationship of a child care provider to a child they are caring for impacts a legal nonlicensed provider’s training requirements (see Minn. R. 3400.0120, subp. 6), the capacity of children they are able to care for (see Minn. R. 3400.0120, subp. 7), and annual monitoring requirements (see Minn. R. 3400.0120, subp. 9). Adding this definition to rule is necessary and reasonable to support other proposed content changes and align with federal law.

Part 3400.0020, subpart 38. “Registration.” The current rule only defines registration of legal nonlicensed child care providers. All provider types must register to be authorized for payment from the
child care fund under Minn. Stat. § 119B.125, subd. 1. The definition of “registration” is currently in Minn. Stat. § 119B.011, subd. 19a and is more encompassing of all provider types. The proposed removal of this duplicative and inadequate definition is necessary and reasonable to align the rule with statute.

**Part 3400.0020, subpart 38b.** “Scheduled hours.” This proposed change to this definition replaces “eligible activities schedules” with “authorized activity schedule,” which is necessary and reasonable to reflect terminology commonly used by the Child Care Assistance Program, and is further discussed under Minn. R. 3400.0020, subp. 9a. The need and reasonableness for additional edits to this subpart are discussed under general amendments one and two.

**Part 3400.0020, subpart 38c.** “Schedule reporter.” This proposed definition is necessary and reasonable because it clarifies and differentiates between families’ reporting statuses, and aligns with statute. Minn. Stat. § 119B.095, subd. 1, states the parameters in which care must be authorized and scheduled with a provider based on the applicant’s or participant’s verified activity schedule or child care choices. Any family meeting the criteria in Minn. Stat. § 119B.095, subd. 1, is considered to be a “schedule reporter.”

**Part 3400.0020, subpart 38d.** “Service period.” The Child Care Assistance Program uses two week blocks of time for billing and payment purposes, commonly referred to as a “biweekly period.” In some instances, the term “two week period” is used in the current rule. Using the proposed term “service period” rather than “two week period” is necessary and reasonable to provide consistent language throughout rule, mirror language currently used in Minn. Stat. § 119B, and more clearly define the two week period.

**Part 3400.0020, subpart 39.** “State median income.” The Federal Child Care and Development Fund, 45 C.F.R. § 98.20(a)(2)(i) requires that states use the most recent state median income data that is published by the Bureau of the Census. At present, federal Department of Health and Human Services no longer publishes the state median income in the Federal Register. Changes proposed to this subpart are necessary and reasonable to ensure that information related to CCAP is not tied to one particular source, yet continues to comply with federal laws.

**Part 3400.0020, subpart 39a.** “Student parent.” Under Minn. Stat. § 119B.011, subd. 20, student parent families that meet transition year child care requirements must receive transition year child care. This ensures student parent families continue receiving child care assistance through extended eligibility, or for the remainder of the 12 month eligibility period if their authorized activity ends, changes, or they turn 21 years of age. This also ensures the family continues receiving child care assistance at redetermination if other eligibility requirements are met. Minn. Stat. § 119B.011, subd. 19 lists the criteria a person must meet in order to be considered a “student parent.” There may be student parent families who are not eligible for transition year child care. These families are allowed to continue receiving child care assistance under Minn. Stat. § 119B.05, subd. 1, further benefitting the family. Addition this definition of “student parent” is necessary and reasonable to ensure alignment with statute.

**Part 3400.0020, subpart 40.** “Student.” Proposed changes to this subpart are necessary and reasonable to mirror language currently defined in Minn. Stat. § 119B.011, subd. 11. This proposed definition removes language stating a MFIP student is one who is in compliance with their education or training program as stated in their employment plan. There may be instances in which a student is not fully in compliance with their education plan (e.g., not attending the required amount of hours) and their MFIP benefits may be sanctioned for non-compliance; however, they would still be considered a student if they continue to attend the education or training program. The cross reference to the definition of
education plan in Minn. Stat. § 119B.011, subd. 11, and that definition’s cross reference to the definition of employment plan in Minn. Stat. § 119B.011, subd. 12, are sufficient to describe policies related to a student receiving MFIP, so no additional content is needed in rule. Other edits pertaining to a student’s full or part time status were made to reflect plain language.

**Part 3400.0020, subpart 40a.** “Temporarily absent.” Proposed changes to this subpart are necessary and reasonable to align the definition of temporarily absent with Minn. Stat. § 119B.011, subd. 13, which establishes a time limit of sixty days for adult family members included in the child care assistance household who are not in an authorized activity under the chapter. The proposed changes to rule further support and clarify that family members in an authorized activity are not subject to the sixty day limit. Additional edits provide types of commonly occurring temporary absences for both adult and child members of the child care assistance household.

**Part 3400.0020, subpart 40b.** “Transition year child care.” CCAP is comprised of different subprograms based on a family’s participation with other assistance programs. Minn. Stat. § 119B.011, subd. 20 defines which families are eligible to receive child care assistance under the transition year subprogram. The proposed addition of this subpart is necessary and reasonable to accurately reflect the terminology used by the Child Care Assistance Program when referencing this subprogram.

**Part 3400.0020, subpart 40c.** “Unable to care.” Under Minn. R. 3400.0040, subp. 5, parentally responsible individuals applying for or participating in CCAP must meet employment, education, and training requirements. In households with more than one parentally responsible individual, the parents other than the applicant or participant must meet the same employment, education or training requirements, or be unable to care for the child. Therefore, a definition for “unable to care” is necessary and reasonable because it gives a uniform meaning to the term and context to the parentally responsible individual’s status, and promotes consistent application of policy.

**Part 3400.0020, subpart 40d.** “Unsafe care.” This proposed definition is reasonable because it mirrors language used in Minn. Stat. § 119B.125, subd. 4, and is necessary to provide clarity, and create consistency between statute and rule.

**Part 3400.0020, subpart 40e.** “Verification.” This definition, while similar to the definition in Minn. R. 3400.0020, subp. 18, is necessary because it adds detail that any format of proof is acceptable, and prevents a CCAP agency from requesting a specific document or form of proof. This clarification is reasonable because it will assist families by expanding what is considered a required form of proof and by expanding the ways in which a family can submit the forms of proof at application, redetermination, or during the 12 month eligibility period. Additionally, because verification is used to support an assertion, the definition further specifies that reporting information on an application, redetermination, or on a reporting form is not recognized as verification.

**Part 3400.0020, subpart 40f.** “Verified activity schedule.” In order to authorize child care, one of the factors the CCAP agency must consider under Minn. Stat. § 119B.095, subd. 1 is the amount of time the parentally responsible individual participates in an authorized activity. A parentally responsible individual confirms this amount of time by submitting verification of the days and times they are engaged in the activity. The proposed addition of a definition for “verified activity schedule” is necessary and reasonable to accurately reflect the terminology commonly used to describe this verification when the parentally responsible individual participates in the activity.

**Part 3400.0020, subpart 44.** “Weekly basis.” This proposed changes to this subpart are necessary and reasonable to accurately reflect the terminology used by the Child Care Assistance Program. Child care assistance is paid based on a child’s scheduled and authorized hours, and is not based on the actual hours of attendance or hours of care provided. The current definition implies that a provider cannot
provide care for more than 50 hours per week. Proposed rule part 3400.0110, subp. 3d(E) contains the
standards for converting child care paid on a weekly basis to hours and states that payment at the
weekly maximum rate is equal to 50 hours of care. The proposed changes to this definition align with
proposed Minn. R. part 3400.0110, subp. 3d(E) and Minn. Stat. § 119B.13, subd. 1(d). The proposed
changes clarify that care authorized for 35 hours a week or more results in the application of the weekly
maximum rate and do not tie the weekly maximum rate to actual care provided.

Part 3400.0030 NOTICE OF BASIC SLIDING FEE PROGRAM ALLOCATION.

Deleting this rule part and moving some of the content to part 3400.0060 where other criteria related to
the Basic Sliding Fee subprogram are identified is necessary and reasonable to make the rule more clear
and concise. This part is further discussed under general amendment four.

Part 3400.0035 APPLICATION PROCEDURE.

Part 3400.0035, subpart 1. Proposed changes to this subpart are necessary and reasonable to provide
clarity and reflect current program practices. The proposed changes reduce the specificity of
information the CCAP agency must provide to families requesting information about the Child Care
Assistance Program, but expand the scope of information to encompass federal consumer education
requirements. The proposed changes break current subpart 1 into informational requests and assistance
requests (see Minn. R. 3400.0035, subp. 1a) which clarifies responsibilities of CCAP agencies.
Additionally, current materials produced by the Department that local CCAP agencies supply to families
and the Department posts publicly its public website meet the requirements of the proposed rule so
adoption of new rule language does not create new burdens or administrative costs for parties
administering or receiving child care assistance.

Part 3400.0035, subpart 1a. Proposed changes to this subpart are necessary and reasonable to provide
clarity and reflect current program practices. As in subpart 1, the proposed changes to this subpart
reduce the specificity of information the administering agency must provide to families requesting
information about the Child Care Assistance Program. Current materials produced by the Department
that local CCAP agencies supply to families and the Department posts on its public website meet the
requirements of the proposed rule so adoption of new rule language does not create new burdens or
administrative costs for parties administering or receiving child care assistance.

The proposed changes revise item E and remove the requirement to provide families detail on how the
copayment is determined. Minn. Stat. § 119B.12 provides guidance on how the copayment fee is
determined. The Department’s rationale for revising this language is to focus on providing families
practical information on their financial responsibility when receiving child care assistance, rather than
providing detail on the actual computation of the copayment amount. Families are informed of their
requirement to pay a copayment in numerous Department-created communications, which families
receive both when inquiring about and when applying for child care assistance. The copayment
schedule, which details copayment amounts based on annual gross income and family size, is regularly
updated, made publicly available on the Department’s public website and provided to each CCAP
agency, as outlined in Minn. R. 3400.0100, subp. 5. Additionally, families receive specific information on
their copayment amount when receiving a notice of eligibility approval (see Minn. R. 3400.0185, subp.
6) and a notice of authorization (see Minn. R. 3400.0185, subp. 8).

The proposed changes to item J reflect all current reporting requirements under Minn. R. 3400.0040,
subp. 4. Due to changes to Minn. Stat. § 119B.03, subd. 9, which require a family to notify their previous
county of residence when moving to a new county and to Minn. Stat. § 119B.09, which removes time
limits for portability pool funding for families who move between counties with basic sliding fee waiting
lists, the proposed changes to item J remove specific language on the reporting of moves between counties, continuation of benefits, and overpayments.

**Part 3400.0035, subpart 1b.** The proposed addition of this subpart incorporates content that is currently in Minn. R. 3400.0060, subp. 8, as the requirements in this subpart apply to families on all subprograms, not just basic sliding fee as discussed in part 3400.0060. This reorganization of rule is necessary and reasonable because it groups related provisions together and provides clarity, and is further discussed under general amendment four.

**Part 3400.0035, subpart 2.** Proposed changes to this subpart are necessary and reasonable to improve the readability and consistent application of the rule. The changes include moving content that addresses how a CCAP agency handles a family’s request for application from item A and incorporating it into Minn. R. 3400.0035, subd. 1. Item B has also been removed as this content is now covered in Minn. R. 3400.0065. This reorganization is further discussed under general amendment four.

Proposed changes to item C clarify what actions a CCAP agency must take if a family submits an application to a CCAP agency in a county that is different from the family’s county of residence or to a tribal CCAP agency with criteria for serving families that the family applying does not meet. Under Minn. Stat. § 119B.02, subd. 2, 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.” When entering into these agreements, the tribe designates criteria for families they plan to serve. The proposed language is necessary to clarify that a tribal CCAP agency will only process applications from families who meet the tribal CCAP agency’s criteria for families served. For those families not meeting the tribal CCAP agency’s criteria for families served, the family’s application is forwarded to the family’s county of residence. The absence of previous guidance has led to inconsistent policy application and families receiving disparate treatment based on the CCAP agency they submit an application to in error. Proposed changes also remove language addressing application processing timeframes. This content is currently included in Minn. Stat. § 119B.925, subdivision 1(b). The proposed removal of this duplicative provision better aligns the rule with statute.

The need and reasonableness for additional edits are discussed under general amendment one.

**Part 3400.0035, subpart 2a.** The proposed addition of this subpart is necessary and reasonable to align the rule with related statutes. Minn. Stat. § 119B.025, subd. 1(c)(5) allows the commissioner to determine how frequently expedited application processing may be used for an applicant who is experiencing homelessness. Families eligible for child care assistance under Minn. Stat. § 119B.025, subd. 1(c) are able to receive care for a minimum of three months. If, after those three months, the family has not submitted all required verifications, the family must be placed into temporary ineligibility for a maximum of 90 days as stated in the proposed changes to Minn. R. 3400.0040, subp. 17. During this 90 day temporary ineligibility period, the family may submit required verifications to again become eligible for child care assistance. By limiting expedited application processing to every six months, this coincides with the timeframe of three months of eligibility and up to 90 days of temporary ineligibility. Additionally, because families self-report their status as experiencing homelessness, county and tribal agencies have expressed concerns to the Department about potential misuse of the policy and the need to impose a limit. While advocates for the homeless have been less supportive of imposing a limit as families experiencing homelessness have multiple barriers to meeting child care assistance program requirements, the Department concluded that limiting expedited application processing to every six months while allowing for 90 days of temporary ineligibility was the most balanced approach.

**Part 3400.0035, subpart 3.** Under Minn. Stat. § 119.13, subd. 5 and Minn. R. 3400.0185, a CCAP agency
is only able to share certain information about a family with the family’s child care provider; no private
data can be shared. However, some families prefer to have the CCAP agency communicate directly with
their child care provider about their child care assistance benefits and case status to help coordinate
benefits. Proposed changes to item B are necessary and reasonable to clarify that CCAP agencies are
able to communicate additional information with the family’s child care provider with an information
release. Other proposed changes reflect plain language edits resulting in no substantive changes to rule
and other edits are discussed under general amendment one.

Part 3400.0035, subpart 4. Proposed changes include repealing this subpart and moving the content to
Minn. R. 3400.0185, subp. 7. The proposed changes are necessary and reasonable to improve readability
and application of the rule: all notice requirements have been moved to part 3400.0185 and all content
in part 3400.0185 has been organized in the chronological order of typical child care assistance program
processes.

Part 3400.0035, subpart 5. Proposed changes include repealing this subpart and moving the content to
Minn. R. 3400.0185, subp. 6. The proposed changes are necessary and reasonable to improve readability
and application of the rule: all notice requirements have been moved to part 3400.0185 and all content
in part 3400.0185 has been organized in the chronological order of typical child care assistance program
processes.

Part 3400.0035, subpart 6. Proposed changes include repealing this subpart and moving the content to
Minn. R. 3400.0185, subp. 9. The proposed changes are necessary and reasonable to improve readability
and application of the rule: all notice requirements have been moved to part 3400.0185 and all content
in part 3400.0185 has been organized in the chronological order of typical child care assistance program
processes.

Part 3400.0035, subpart 7. Proposed changes to this subpart are necessary and reasonable to better
align with statute and improve readability and application of the rule. Minn. R. 3400.0120, subp. 1,
reference statutes that give CCAP agencies and the Department authority to deny payment to child care
providers holding valid child care licenses. Adding a cross reference to part 3400.0120 to this subpart
clarifies that a family is able to select a provider that best meets their needs within the limitations
identified in part 3400.0120, subp. 1. Additional proposed changes to this subpart clarify that a provider
must first be authorized to care for a child before payments can be issued, which better reflects how the
child care assistance program is operationalized. Additional proposed content clarify that a family’s
selection of a child care provider does not only happen at application but also applies to current
program participants; a family is able to select a provider or change their provider at any time while
receiving child care assistance and the same criteria apply.

Part 3400.0035, subpart 8. Proposed changes clarify that a family’s selection of a legal nonlicensed child
care provider does not only happen at application but also applies to current program participants; a
family is able to select a provider or change their provider at any time while receiving child care
assistance and the same criteria apply. Other proposed changes to this subpart that require an applicant
or participant to sign an acknowledgement before the CCAP agency can authorize care is both necessary
logistically and for risk management purposes. The most direct way to systematically ensure that an
acknowledgement is signed before a CCAP agency pays any child care expenses to a legal nonlicensed
provider is to prevent a service authorization from being issued until a signed acknowledgment is
received. This proposed change is reasonable because it reflects how the program currently operates
and clarifies on-going implementation of the program. It is necessary to include this detail in rule to
create a procedural barrier to issuing a service authorization. Preventing a CCAP agency from issuing a
service authorization until the form is signed manages the risk of care being provided or paid to an
unlicensed provider before the parent has had an opportunity to review and understand the
implications of choosing an unregulated child care provider. This is a clarifying change that doesn’t create new burdens or administrative costs for parties administering or receiving child care assistance.

Proposed changes to item D reduce the length of time in which a legal nonlicensed provider must obtain a copy of a child’s immunization records from 90 to 30 days. The Federal Child Care and Development Fund, 45 C.F.R. § 98.41(a)(1)(i)(C) requires states to establish a grace period that allows children experiencing homelessness to receive child care assistance while their families take necessary action to submit immunization materials and allows states to establish a grace period for other families not experiencing homelessness. The Minnesota Department of Human Services and the Minnesota Department of Health collaborated to develop a 30 day grace period for families experiencing homelessness to submit immunization materials to licensed programs, and this requirement has been approved in Minnesota’s CCDF plan for the fiscal year 2019-2021. Reducing the length of time in which a legal nonlicensed provider must obtain a copy of a child’s immunization records from 90 days to 30 days is reasonable because it creates consistency with the 30 day grace period for families of children experiencing homelessness to submit immunization materials. The proposed changes to this subpart are necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed by statute.

Proposed language in Item E reflects a change in 2011 to Minn. Stat. § 119B.09, subd. 10 which mandates that funds paid under Minnesota Statutes, chapter 119B must not be paid to a provider who lives in the same household or residence as the child. Further proposed language to include program participants is necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statute change.

The Child Care and Development Block Grant Act of 2014 included substantial new requirements related to provider training under Federal Child Care and Development Fund, 45 C.F.R. § 98.44 and parental notification of consumer education standards under 45 C.F.R. § 98.33. Additional provider training requirements are incorporated into the proposed changes to Minn. R. 3400.0120, subp. 6. The proposed language in Item F adds consumer education by including information about the provider’s training requirements in the legal nonlicensed provider acknowledgment that an applicant for participation must sign. This proposed change is reasonable because it provides important information to parentally responsible individuals about the qualifications of the child care provider and can be easily incorporated into the standard acknowledgment form managed by the Department. This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance.

Proposed language to include an acknowledgement of the implications for a child care provider if their care is determined to be unsafe is reasonable because it establishes a regulatory mechanism for ending care and denying payment under Minn. Stat. § 119B.125, subd. 4 and Minn. Stat. § 119B.09, subd. 5 and provides parents with notice that care may be terminated due to safety concerns. This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance.

Additional edits are discussed under general amendments one and two.

**Part 3400.0035, subpart 9.** Proposed changes to this subpart are necessary and reasonable to clarify that a family’s selection of an in-home child care provider does not only happen at application but also

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6 These changes do not conflict with state laws governing immunization compliance or exemptions in Minn. Stat. § 121A.15, but merely reduce the timeline in which a parentally responsible individual must share documentation of their child’s immunization status with their child’s legal nonlicensed child care provider.
applies to participants; a family is able to select a provider or change their provider at any time while receiving child care assistance and the same criteria apply.

**Part 3400.0040  ELIGIBILITY REQUIREMENTS AND STANDARDS.**

**Part 3400.0040, subpart 3.** Proposed changes to this subpart are necessary and reasonable because they reflect changes to Minn. Stat. § 119B.025 that redefine verification requirements and timelines to establish twelve month continuous eligibility for families. Changes are necessary to differentiate when verification is required to determine eligibility (item A) versus to authorize child care (item C). In addition, proposed changes to item B differentiate optional verifications, without which a family may still be determined eligible but may result in a different amount of benefits if verified. These differentiations will make it easier for CCAP agencies to administer the program and are more family-friendly for participants. The proposed changes do not create new burdens or administrative costs for parties administering or receiving child care assistance.

Under item A, proposed changes remove the requirement to verify the relationship of the children in the family to the applicant, as this requirement is listed in Minn. Stat. § 119B.025, subd. 1, clause 3. Further proposed changes move income eligibility from subitem (5) to subitem (4). This revision reflects changes in 2015 to Minn. Stat. § 119B.011, subd. 15 to update the definition of income to align with other public assistance programs in Minn. Stat. § 256P. Proposed changes also remove the statutory reference from subitem (6) to align with the proposed changes throughout the rule to use the term “parentally responsible individual” (see general amendment two). The proposed addition of subitem (7) is addressed later in the SONAR along with the proposed addition of Minn. R. 3400.0040, subpart 5b.

Proposed item D provides details about citizenship and immigration status for children. To meet CCAP eligibility requirements, the citizenship or immigration status must be verified for at least one child in the family, unless the child is receiving care in a setting subject to public education standards. A family having at least one child with verified citizenship or immigration status meets the citizenship or immigration eligibility requirement. Federal Child Care and Development Fund, 45 C.F.R. § 98.20(c) states that only the citizenship and immigration status of the child is relevant, and no eligibility for services under § 98.50 is based on the citizenship or immigration status of the child’s parent. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) specifically provides that its provisions do not apply to Head Start and non-postsecondary educational programs and that it does not have any effect on the right of non-citizen children to participate in these programs. Consequently, the federal government has determined that when child care assistance funds are used to pay for child care in settings subject to public educational standards, such as a Head Start or a pre-kindergarten or a school-age care program operated under public education standards, PRWORA does not require verification of the child’s citizenship or immigration status because the child is participating in a non-postsecondary educational program rather than receiving federal public benefits.7

Proposed changes remove content related to redetermining eligibility from item E because Minn. R. 3400.0175 as proposed addresses the redetermination process in its entirety. This reorganization is further discussed under general amendment four.

**Part 3400.0040, subpart 4.** Proposed language in this subpart are necessary and reasonable to address changes in statute and program policy relating to a family’s reporting requirements based on a family’s reporting type. Clarification of reporting requirements supports consistent application of statute, which in turn can protect families from being assessed overpayments when reporting requirements are followed. Item A reflects changes to reporting policy for families during their twelve-month eligibility

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7 See “Clarification of Interpretation of ‘Federal Public Benefit’ Regarding CCDF Services.”
period. Under Minn. Stat. § 256P.07, families are no longer required to report all of the identified items within 10 days, making the proposed changes to the identified items in rule necessary to align with statute. Additionally, families must report within 10 days if a parentally responsible individual begins providing child care or working in a child care setting. Under Minn. Stat. § 119B.09, subd. 9, licensed and legal nonlicensed child care providers and their employees are not eligible to receive child care assistance subsidies for their own children or children in their family during the hours they are providing care or being paid to provide child care. Requiring a family to report this employment ensures that care is authorized appropriately. This reporting requirement also ensures that if a parentally responsible individual begins working for a licensed child care center where their children are authorized to receive child care assistance, the children count towards the limit of 25 center employees children under Minn. Stat. § 119B.09, subd. 9a.

Proposed language in item B is necessary to reflect changes to Minn. Stat. § 119B.095. Section 119B.095 establishes two different reporting requirements for families receiving child care assistance based on employment status or child care provider choices. Because care must be authorized and scheduled with a child care provider based on a schedule reporter’s verified activity schedule, providing in rule the additional items a schedule reporter family must report adds clarity and details to a schedule reporter’s reporting responsibilities.

Moving content from the current item B to a new item C and reformatting makes the item easier to read and presents requirements in a chronological format. Proposed language in item C also addresses additional reasons for closure of a provider’s registration that are based on a statutory change made during the 2019 legislative session. Minn. Stat. § 119B.161, subd. 2(c) states that when a CCAP agency or commissioner (1) suspends a provider’s payment, or (2) revokes or denies a provider’s authorization, the CCAP agency or commissioner must provide notice to a family, and the notice is effective on the date the notice is created. In these two situations, a family is not required to give 15 calendar days’ notice of an intent to change their provider.

Moving existing language to a new item D makes the content easier to understand. Proposed revisions to language reflect changing technology and opportunities to expand electronic communication methods and channels of verification. These changes do not create new burdens or administrative costs for parties administering child care assistance and lessens burdens on those receiving child care assistance by identifying expanded reporting options.

The proposed language in new item E identifies potential consequences for a family when reporting requirements are not met. Assessing an overpayment, and disqualifying or terminating a family from receiving child care assistance benefits are situational and are addressed separately in other parts of law.

**Part 3400.0040, subpart 4a.** In addition to language in Minn. Stat. § 119B.025, subd. 4, the proposed language in this new subpart is necessary and reasonable to address what changes a family must verify during the 12 month eligibility period and how the change may impact a family’s child care assistance benefits, based on the family’s reporting type and the reported change. Because families are not required to report some changes adding this subpart clarifies when a family needs to provide verification of a change. This proposed subpart will also clarify when a CCAP agency needs to request verification of a change, and any subsequent required action, as not all changes in a family’s circumstances result in a family’s ineligibility for child care assistance or change in a child’s authorization. Additionally, the proposed content in item D mandates what is currently permissible under Minn. Stat. § 119B.095, subd. 2(b), and requires a CCAP agency to increase the amount of child care authorized when a reported and verified change results in an increase of authorized hours, regardless of a family’s reporting type.
Part 3400.0040, subpart 5. Proposed changes to this subpart align with proposed changes to Minn. R. 3400.0110, subp. 10. Aligning these parts of rule is necessary and reasonable to reduce verification and documentation burdens of parentally responsible individuals who are either determined medically unable to care or have child care assistance granted during a medical leave of absence, as well as reduce administrative burdens for CCAP agencies. The proposed changes also preserve high standards for professionals who have authorization to make a determination. The proposed addition of a licensed psychiatrist is reasonable as this a medical professional trained to diagnose and treat people with mental health conditions and is a professional capable of determining a parentally responsible individual’s unable to care status, similar to that of a licensed psychologist. Additionally, the proposed change from local social services agency to licensed social worker is beneficial to the family. Typically, the local social services agency’s determination of a parentally responsible individual’s unable to care status is made by a licensed social worker at the agency. This proposed change allows other licensed social workers to make the determination, aside from only those associated with the local social services agency and includes those the family may already have an existing relationship with.

Further proposed changes clarify that a parentally responsible individual may be either temporarily or permanently unable to care for their child to encompass the types of determinations the CCAP agency may receive from the allowed professionals. The addition of the word “participant” reflects that unable to care policy also applies to parentally responsible individuals currently receiving child care assistance who meet the criteria under this subpart. Other edits are discussed under general amendment two.

Part 3400.0040, subpart 5a. Proposed changes to this subpart are necessary and reasonable reflect changes to Minn. Stat. § 119B.09 that require cooperation with child support at application and redetermination only. This statutory change was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law. Proposed changes also remove language from item A because the same language currently exists in Minn. Stat. § 119B.09, subd. 1(c). The proposed removal of this duplicative language better aligns the rule with statute.

Proposed items B, C and D govern eligibility for CCAP in relation to cooperation with child support. Establishing rule language for this policy ensures consistent application of policy across families and CCAP agencies. Further proposed language to include program participants is necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statute change.

Part 3400.0040, subpart 5b. This proposed subpart is necessary and reasonable to ensure compliance with a federal requirement in the Child Care and Development Block Grant Act of 2014, Public Law 113-186, 42 U.S.C. § 9858n(4) and the Federal Child Care and Development Fund, 45 C.F.R. § 98.20, that requires families applying for and receiving CCDF funding child care subsidies to declare their assets are one million dollars or less. Minnesota law does not address asset limits for the child care assistance program; therefore, it is necessary to codify this requirement in rule. Additionally, to ensure this federal requirement is met, Minnesota has stated in its approved CCDF plan for fiscal year 2019-2021 that it “will require family members to certify that family assets do not exceed $1,000,000 by checking off a certification box on their application and annually thereafter on their redetermination form.”

The asset evaluation policies under proposed item A closely align with personal property limitations under Minn. Stat. § 256P.02, which apply to families receiving benefits from the Minnesota Family Investment Program (MFIP). Aligning asset evaluation policies among programs will reduce verification and documentation burdens for families as well as administrative oversight for CCAP agencies.

Part 3400.0040, subpart 6a. Proposed updates to this subpart are necessary and reasonable to reflect proposed updates to the term “copayment” under Minn. R. 3400.0020, subp. 12e. The proposed
language also clarifies that a CCAP agency only pays a parent when care is provided in the child’s home as required by Minn. Stat. § 119B.09, subd. 10. This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance. Additional edits are discussed under general amendment one.

**Part 3400.0040, subpart 6c.** Proposed changes to this subpart are necessary and reasonable to clarify the beginning date of eligibility for Transition Year child care and updates terminology for consistency (see Minn. R. 3400.0090, subp. 2). When a family loses eligibility for MFIP or DWP, the family remains eligible on the last day of a month (for example September 30) and is considered ineligible for MFIP/DWP on the first day of the subsequent month (for example October 1). A family’s move from the MFIP/DWP child care subprogram to Transition Year child care subprogram is intended to be a seamless transition, resulting in no interruption in child care assistance for eligible families. This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance.

**Part 3400.0040, subpart 7.** The proposed repeal of this subpart is necessary and reasonable because there is similar and clearer language in Minn. Stat. § 119B.09, subd. 6. The current subpart could create confusion because there are instances in which a child may be authorized for more than 120 hours biweekly (see Minn. R. 3400.0110, subps. 3a and 3b). Additional language in rule is not necessary to implement the law as written in statute and therefore it is reasonable to repeal this language.

**Part 3400.0040, subpart 8.** The proposed removal of language in item B and addition of item E to this subpart are necessary and reasonable to reflect changes to Minn. Stat. § 119B.10 that require parents to meet minimum activity requirements at application and redetermination only. For families whose eligibility is determined based on participation in job search, they have until the end of their job search period to meet the activity participation requirements. These statutory changes were made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law.

Proposed changes to item C clarify that a CCAP agency must apply the minimum wage to determine if a parent’s work activity meets minimum participation requirements whenever the parent receives compensation other than an hourly wage. This is a clarifying change that doesn’t create new burdens or administrative costs for parties administering or receiving child care assistance.

Other edits are discussed under general amendments one and three.

**Part 3400.0040, subpart 9.** Under Minn. Stat. § 119B.10, subd. 1(b), an employed person with an employment plan must receive child care assistance as specified in that plan. Proposed changes to this subpart are necessary and reasonable to align with statute and add details about who is considered to be an employed person, which includes all employed persons except those eligible under part 3400.0080 with an approved employment plan. Other edits are discussed under general amendment one.

**Part 3400.0040, subpart 10.** Proposed changes to this section are necessary and reasonable to reflect changes to Minn. Stat. § 119B.10 that expanded eligibility for child care to families eligible for Transition Year and attending approved education or training programs. This change was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law. As a result, CCAP agencies must approve education programs for families receiving transition year child care by following the criteria in CCAP agency’s approved child care fund plan.

Proposed changes to items A and B clarify and align the process for authorizing child care when a parent is engaged in education activities. Using the same methodology to authorize care regardless of the parent’s full- or part-time enrollment status is reasonable because it is simpler to implement.
consistently across CCAP agencies. This proposed change is necessary to resolve conflicts between current rule language and Minn. Stat. § 119B.10, subd. 3, which provides authorization guidance that doesn’t differentiate authorization processes based on the parentally responsible individual’s enrollment status. The proposed addition of “online course” to item A reflects the way education is currently delivered.

Proposed item B requires CCAP agencies to authorize care for students receiving benefits from the Minnesota Family Investment Program who have education written into the employment plan. CCAP agencies are required to authorize care based on the employment plan, which in some instances may include hours beyond those specified in item A. Because employment counselors work closely with families in developing an employment plan, the employment counselor may be aware of additional supports needed by the family to be successful.

Proposed item D consists of revised content from current Minn. R. 3400.0060, subp. 9(D). The proposed revisions reflect language in 1) Minn. Stat. § 119B.10, which does not allow CCAP agencies to limit the duration of child subsidies for parents in an educational program unless the parent is otherwise ineligible for child care assistance, and 2) Minn. Stat. § 119B.095, which requires the amount of care authorized to continue at the same number of hours or more until the family’s next redetermination. As a result, CCAP agencies are not allowed to terminate approval for a family’s education plan during the 12 month eligibility period when the family moves and any changes to the previously approved education plan must wait until redetermination, unless requested by the family.

Proposed item E reflects changes to Minn. Stat. § 119B.095 that establishes two different reporting requirements for families receiving child care assistance based on their employment status or child care provider choices. While a schedule reporter family has care authorized based on their activity schedule, due to the duration of some school breaks and the amount of time required before an adverse action takes effect under Minn. R 3400.0185, there are times it is not appropriate to reduce or terminate authorizations. However, it situations where a schedule reporter family has a school break which is longer than the amount of time required before an adverse action takes effect, it is appropriate to suspend the family’s eligibility if they have no other activity or reduce their authorization for remaining activities until their school activity resumes.

Additional edits are discussed under general amendments one and three. Plain language edits were also made and result in no substantive changes to rule.

Part 3400.0040, subpart 11. Proposed changes to this subpart reflect changes to Minn. Stat. § 119B.10 that require parentally responsible individuals to meet minimum activity requirements at application and redetermination only. This statute was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law. Further proposed restructuring of this rule into several items improves clarity and readability to allow more accurate implementation across CCAP agencies. Revising language referring to activity requirements is necessary to reflect new policies and is reasonable because it does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statutory change. Additional edits are discussed under general amendments one and three.

Part 3400.0040, subpart 12. Proposed changes to this subpart reflect changes to Minn. Stat. § 119B.10 that expanded eligibility for child care to families eligible for transition year and attending approved education or training programs. This change was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law. As a result, CCAP agencies must approve education activities for families receiving transition year child care following the criteria in a CCAP agency’s approved child care fund plan. Revising language referring to program participants is necessary.
and reasonable to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statute change.

**Part 3400.0040, subpart 13.** Proposed changes to this subpart are necessary and reasonable to reflect changes to Minn. Stat. § 119B.10 that expand eligibility for child care to families eligible for transition year and attending approved education or training programs. This change was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law. While Minn. Stat. § 119B.10, subd. 3(b) requires a student to be in good standing in their approved education or training program and making satisfactory progress towards the degree, Minn. Stat. § 119B.095, subd. 2 requires families to maintain steady child care authorizations during the 12 month eligibility period. Proposed language to this subpart clarifies that although care cannot end during the 12 month eligibility period, the CCAP agency must terminate the approval of the education plan at redetermination if the student is not in good academic standing.

**Part 3400.0040, subpart 14.** Proposed changes to this subpart are necessary and reasonable to reflect the repeal of Minn. Stat. § 119B.07 and align with changes to Minn. Stat. § 119B.10 that expand eligibility for child care to families eligible for transition year and attending approved education or training programs. This change was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law. Additional edits are discussed under general amendment one and also update a statutory reference.

**Part 3400.0040, subpart 15.** Proposed changes to this subpart establish that CCAP agencies must document in their child care fund plan their policy for approving changes to education plans. This is necessary to create authority for a CCAP agency to deny an education plan that does not meet their standards. Proposed language specifying that this authority only applies to education plans under parts 3400.0060 and 3400.0090 is necessary and reasonable because education activities for families eligible under part 3400.0080 are included in an employment plan. Additional proposed edits reasonably limit agency discretion by requiring a CCAP agency to approve a requested change when a student’s health and safety is at risk; under the current language, approval of such a request is at the CCAP agency’s discretion.

**Part 3400.0040, subpart 15a.** Federal law establishes additional requirements around parents who are determined eligible for child care subsidy to look for work. Care must be provided for no fewer than three months when eligibility is determined based on job search. State law limits job search outside of an employment plan to 240 hours per calendar year. Proposed changes to this subpart are necessary to comply with both state and federal law, and require CCAP agencies to authorize no more than 20 hours of child care per week when a family’s basis of eligibility is job search. These changes are reasonable because they ensure that eligibility will continue for at least 12 weeks to comply with federal law but also ensure that no more than 240 hours will be used in a calendar year to comply with state law. Proposed changes to item A removes mention of the job search timeframe limit of 240 hours per calendar year and instead cross reference the timeframe as stated in Minn. Stat. § 119B.10, subd. 1. Referencing statute helps to keep the rule current if the number of hours of job search allowed are revised in statute.

Proposed language in item C aligns with federal law, which does not allow a decrease in authorized hours during the 12 month eligibility period for the majority of families. Because the job search timeline is limited to 240 hours in a calendar year, authorizing job search in combination with other activities would result in a reduction of the family’s hours at the end of job search. Therefore, not allowing authorization of job search in combination with other activities is necessary to comply with federal guidance.
Part 3400.0040, subpart 17. Proposed changes to this subpart are necessary and reasonable because they (1) more clearly state the timeframe of temporary ineligibility status and (2) add items A, B, and C, which identify the situations in which a CCAP agency must place a family into temporary ineligibility status, as required by statute. The proposed item C is in response to an addition to statute made in the 2019 legislative session for families eligible for child care assistance under Minn. Stat. § 119B.025, subd. 1(c) who are able to receive care for a minimum of three months without requiring all typically required eligibility verifications. If, after those three months, the family has not submitted all required verifications, the family must be placed into temporary ineligibility for a maximum of 90 days. This period of temporary ineligibility allows a family an additional 90 days to submit required verifications without the family needing to reapply for child care assistance. The burden on the family is lessened because the family is not required to submit a new application nor is the family subjected to a possible waiting list during those additional 90 days. This also reduced administrative burden on the CCAP agency. These are clarifying changes that do not create new burdens or administrative costs for parties administering or receiving child care assistance. Additional edits are discussed under general amendment one.

Part 3400.0040, subparts 17a and 17b. Proposed changes to these subparts are necessary and reasonable to clarify differences in how temporarily ineligible policies are applied to families (1) already determined eligible and (2) on a waiting list. Separating these two scenarios provides clearer policy guidance for CCAP agencies and more understandable expectations for families.

Proposed changes to subpart 17a reflect changes to Minn. Stat. § 119B.025, subd. 1(c) that establish eligibility for a family who meets the definition of homeless, and changes to Minn. Stat. § 119B.095 that establish two different reporting requirements for families receiving child care assistance based on their employment status or child care provider choices. Families eligible for child care assistance under Minn. Stat. § 119B.025, subd. 1(c) are able to receive care for a minimum of three months. After those three months, if the family has not submitted all required verifications, the family must be placed into temporary ineligibility for a maximum of 90 days as stated in Minn. R. 3400.0040, subp. 17. During this 90 day temporary ineligibility period, the family may submit required verifications to become eligible for child care assistance again. Providing clarity on the date eligibility must begin ensures that policies are applied consistently across CCAP agencies, while still requiring families to participate in an authorized activity to move out of temporary ineligibility and have care authorized.

The proposed language in subpart 17b clarifies the 90 day timeframe in which a family must be held at the top of the basic sliding fee waiting list, in accordance with the typical 90 day temporary ineligibility timeframe. Depending on a family’s situation, the family’s position may be reserved for less than 90 days. Examples of situations in which a family’s position may be held at the top of the basic sliding fee waiting list include: a parentally responsible individual is pregnant and child care is not yet needed; a parentally responsible individual is on a temporary break from employment and plans to return in the near future; or a child is in foster care and will soon be reunited with their family. Proposed changes also remove language from this subpart regarding a family’s approval to receive child care assistance once the family reaches the top of the waiting list. CCAP agencies may only conduct a preliminary determination of eligibility when placing a family on the waiting list (see Minn. R. 3400.0065, subp. 1) and must not determine eligibility until the family applies for child care assistance. Additional edits are discussed under general amendment one.

Part 3400.0040, subpart 18. Proposed changes to this subpart are reasonable and necessary to reflect changes to Minn. Stat. § 119B.095, which establishes steady child care authorizations for most families on child care assistance. This statutory change was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law.
Part 3400.0040, subpart 18a. The proposed addition of this subpart is necessary and reasonable to clarify how a CCAP agency must authorize child care when a family documents a continued need for child care assistance after a period suspension. Differences reflect statute changes to Minn. Stat. § 119B.095 that establishes two different reporting requirements for families receiving child care assistance based on their employment status or child care provider choices.

Part 3400.0060  BASIC SLIDING FEE PROGRAM.

Part 3400.0060, subpart 2. Proposed language in this subpart is necessary and reasonable because it incorporates information currently found in Minn. R. 3400.0030. The need and reasonableness of this reorganization is further discussed under general amendment four.

Part 3400.0060, subpart 4. The need and reasonableness of the proposed changes to this subpart are discussed under general amendments one and three.

Part 3400.0060, subpart 5. The proposed changes to this subpart are necessary and reasonable because they replace the term “family” with “applicant” which provides clarity and consistency with items A and B.

Part 3400.0060, subpart 6. The proposed repeal of this subpart is necessary and reasonable because related content is proposed for Minn. R. 3400.0065, subp. 1 and 3. This reorganization is further discussed under general amendment four.

Part 3400.0060, subpart 6a. The proposed repeal of this subpart is necessary and reasonable because related content is proposed for Minn. R. 3400.0065, subp. 4. This reorganization is further discussed under general amendment four.

Part 3400.0060, subpart 7. The proposed repeal of this subpart is necessary and reasonable because related content is proposed for Minn. R. 3400.0065, subp. 5. This reorganization is further discussed under general amendment four.

Part 3400.0060, subpart 8. Proposed repeal of this subpart is necessary and reasonable because applying for child care assistance applies to families on all subprograms, not just basic sliding fee as currently discussed in part 3400.0060. Proposed changes also add related content to Minn. R. 3400.0035, subp. 1a. Moving this content is reasonable and results in better organization of rule because part 3400.0035 discusses application procedures for all families requesting child care assistance benefits.

Part 3400.0060, subpart 9. In item A of this subpart, proposed removal of the requirement that a family notify their new county of residence if they move is reasonable and necessary because the requirement conflicts with statute. Minn. Stat. § 119B.03, subd. 9 requires a family to notify their previous (not their new) county of residence if they move.

Proposed language has been added to item A regarding the transfer of a family’s child care assistance case to a tribal agency. Under Minn. Stat. § 119B.02, subd. 2, 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.” When entering into these agreements, the tribe designates criteria for families they plan to serve. The proposed language is necessary to clarify that only families who meet the tribal agency’s criteria will be transferred to the tribal nation for service of their child care assistance case.

Proposed changes to item B reflect changes to Minn. Stat. § 119B.09 that removed time limits for portability pool funding for families who move between counties with Basic Sliding Fee waiting lists. This
change was made in the 2019 legislative session to ensure twelve-month continuous eligibility and to comply with federal law.

Proposed changes also move content from this subpart to other places in rule. In item B, content that addresses a family’s waiting list date under portability pool has been moved to Minn. R. 3400.0065, subp. 2, item C. Content that requires a family to be treated as a new applicant and to have a household income that meets program entry limits has been moved to Minn. R. 3400.0170. Item D has been removed in its entirety and related content has been added to Minn. R. 3400.0040, subp. 10, item D. The need and reasonableness for this reorganization is further discussed under general amendment four. Other edits throughout subpart 9 are discussed in general amendment one.

Part 3400.0060, subpart 10. Proposed revisions to this subpart change “may not” to “must not” and are necessary and reasonable to eliminate confusion and align with current plain language principles. Additional proposed changes to this subpart reflect the repeal of Minn. Stat. § 119B.07, changes to Minn. Stat. § 119B.10, and the additions of Minn. Stat. § 119B.105, created in the 2017 legislative session, and Minn. Stat. § 119B.025, subd. 1(d), created in the 2019 legislative session. Revising language referring to outdated statutory references is necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statutory changes. Other edits are discussed in general amendment one.

Part 3400.0065  BASIC SLIDING FEE WAITING LIST.

Part 3400.0065, subpart 1. Proposed changes to this subpart are reasonable and necessary to reduce duplication of language already in Minn. Stat. § 119B.03 and clarify CCAP agency responsibilities and procedures related to waiting list management under § 119B.03, subd. 2. Specifically, proposed changes clarify that 1) a family’s responsibility to provide information in order to be added to the waiting list does not include a responsibility to provide verification; 2) a CCAP agency must keep record of families who have been placed on the waiting list; and 3) a CCAP agency is not required to keep a written record of a family’s request for child care assistance when the CCAP agency has basic sliding fee funds available to serve a family and the family is determined eligible. Additional edits are discussed under general amendments one and three.

Part 3400.0065, subpart 2. Minn. Stat. § 119B.03, subd. 4 creates funding priorities for families on the basic sliding fee waiting list. As stated in subpart 1, families are placed in the highest priority group for which they qualify. Once basic sliding fee funds become available, families are served in order based on 1) their waiting list priority and 2) their waiting list date. Proposed addition of this subpart is reasonable and necessary to clarify the date used when a family is placed on the basic sliding fee waiting list.

Part 3400.0065, subpart 3. The proposed addition of this subpart is necessary and reasonable because it includes the reorganization of content from Minn. R. 3400.0060, subp. 1. Additional proposed changes replace certain language with reference Minn. R. 3400.0040, subp. 17b to avoid duplicate provisions within chapter 3400. Plain language edits were also made and result in no substantive changes to rule. Other edits are discussed under general amendments one and three.

Part 3400.0065, subpart 4. The proposed addition of this subpart is necessary and reasonable because it includes the reorganization of content from Minn. R. 3400.0060, subp. 6a and more specific statutory citations. Additional edits are discussed under general amendments one and three.

Part 3400.0065, subpart 5. The proposed addition of this subpart is necessary and reasonable because it includes the reorganization of content from Minn. R. 3400.0060, subp. 7. Proposed changes remove language regarding a family’s waiting list date from this subpart and add similar language to Minn. R. 3400.0065, subp. 2. Other proposed changes to this subpart reflect changes to Minn. Stat. § 119B.10
that expand eligibility for child care to families eligible for Transition Year and attending approved education or training programs. This change was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law. Additional edits are discussed under general amendments one and three.

**Part 3400.0065, subpart 6.** Some families on the basic sliding fee waiting list continue to receive child care assistance under other funding sources while waiting for basic sliding fee funding to become available. This includes families receiving child care assistance under transition year extension, portability pool, and MFIP child care as a student parent defined under Minn. R. 3400.0020, subp. 39a. The proposed addition of this subpart clarifies situations in which a family must be removed from the waiting list, including when a family’s eligibility under these other funding sources ends. This language is reasonable and necessary to ensure that families with a later waiting list date will be served prior to families that have lost eligibility and are now subject to a new waiting list date. Additionally, because the basic sliding fee allocation formula in Minn. Stat. § 119B.03, subd. 6 is partially dependent on waiting list averages, it is essential that families be removed from the waiting list when appropriate so waiting list data is as accurate as possible.

**Part 3400.0080  MFIP CHILD CARE PROGRAM.**

**Part 3400.0080, subpart 1a.** Participants receiving benefits from MFIP are subject to financial sanctions if they are not complying with program requirements. A family remains eligible to receive child care assistance under Minn. Stat. § 119B.05 as long as the family remains eligible to receive MFIP benefits; however, the family’s child care assistance authorization may be affected by a sanction. A sanction may mean a parentally responsible individual is not complying with some or all of their employment plan, with child support enforcement, or with financial services orientation. This non-compliance may happen at when the family is applying for child care assistance, when redetermining their eligibility for child care assistance, or during the 12 month eligibility period. The proposed revisions to this subpart are necessary to reflect changes to Minn. Stat. § 119B.095, subd. 1(b) and Minn. Stat. § 119B.105. The changes are reasonable because they take into account the family’s reporting type (see Minn. R. 3400.0020, subps. 1b and 38c), their level of participation in an authorized activity, including a lack thereof, and the point in time at which the family is either applying for or receiving child care assistance to determine the amount of care that may be authorized while sanctioned.

**Part 3400.0080, subpart 1b.** Proposed changes to this subpart are necessary and reasonable because they replace language referring to the job search timeframe limit of 240 hours per calendar year with a cross reference to the timeframe as stated in Minn. Stat. § 119B.10, subd. 1. Referencing statute helps to keep the rule current if the number of hours of job search allowed are revised in statute. Additional plain language edits result in no substantive changes to rule.

**Part 3400.0080, subpart 8.** Under Minn. Stat. § 119B.02, subd. 2, 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.” When entering into these agreements, the tribe designates criteria for families they plan to serve. The proposed language is reasonable and necessary to clarify that only families who meet the tribal agency’s criteria will be transferred to the tribal nation for service of their child care assistance case.

Proposed language also identifies specific subdivisions of Minn. Stat. § 256G.07 which is reasonable and necessary because it helps clarify that the eligibility review requirements in subdivision 2 do not apply to the child care assistance program. Minn. Stat. § 119B.025, subd. 3(c) states that eligibility must not be redetermined more frequently than every 12 months, making the current broad use of Minn. Stat. §
Additional edits are discussed under general amendment one.

**Part 3400.0090 TRANSITION YEAR CHILD CARE.**

**Part 3400.0090, subpart 1.** Proposed changes to this subpart are reasonable and necessary to reflect updates to program administration as a result of the establishment of a statewide electronic eligibility system and changes to federal law. Families now experience relatively seamless transitions from one subprogram to another based on systematic eligibility determinations. If a family is eligible for transition year child care when their MFIP/DWP case closes, an approval notice is generated and the family’s child care assistance case continues uninterrupted; the family is not required to establish eligibility under transition year child care until their next redetermination. Rights and responsibilities for child care assistance are the same between subprograms; new documentation is only sent if there is a break in eligibility for assistance. Although sending a notice of eligibility is no longer federally required, it is a best practice to inform the family about their child care assistance case. Notices are generated for MFIP/DWP participants by county and tribal staff who administer those programs, not the Child Care Assistance Program, and revising this rule language codifies current practice and places no additional burden on CCAP agencies. This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance.

**Part 3400.0090, subpart 2.** Proposed changes to this subpart are reasonable and necessary to reflect changes to Minn. Stat. § 119B.10 that expanded eligibility for child care to families eligible for transition year and attending approved education or training programs. This change was made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law.

Proposed changes to item A reflect changes to Minn. Stat. § 119B.101 that reduce the period of time for which a family must receive MFIP or DWP to qualify for transition year child care assistance. Revising language referring to eligibility timelines is necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statute change. Proposed plain language edits to subitem (4) explain which children are eligible for transition year child care. The edits reflect current practices and do not introduce any new situations in which a child is eligible for transition year child care assistance.

Proposed changes to item B are consistent with proposed changes to Minn. R. 3400.0040, subp. 6c. Using consistent language throughout rule improves clarity and allows for more accurate implementation of policy across CCAP agencies.

Proposed changes to item D ensure that redeterminations do not occur during the family’s twelve-month eligibility period. This is necessary due to changes to Minn. Stat. § 119B.025, subd. 3(c) which states that eligibility must not be redetermined more frequently than every 12 months. Revising language referring to redetermination timelines is necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statutory change.

Additional edits are discussed under general amendment three.

**Part 3400.0090, subpart 3.** Proposed language added to item B is necessary to clarify the reasons why a family’s eligibility under transition year must end. Families who lose eligibility under transition year may be required to meet income entrance levels under Minn. R. 3400.0170, subp. 1a upon reapplying; therefore, adding a cross reference to this subpart is reasonable.
Part 3400.0090, subpart 4. Proposed changes to this subpart are reasonable and necessary to reflect changes to Minn. Stat. § 119B.011 that reduce the period of time for which a family must receive MFIP or DWP to qualify for transition year child care assistance. Revising language referring to eligibility timelines is necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statutory change.

Part 3400.0090, subpart 10. The proposed addition of this subpart is necessary to provide more expansive information about how to operationalize the transition year extension program established in 2003. Although chapter 3400 was revised in 2008 after the establishment of the transition year extension program, current rule only makes one reference to the transition year extension program. The proposed language is reasonable because it aligns with the operationalization of other subprograms, including the movement of families between subprograms, and is for the benefit of families. Item D provides necessary detail on when a family’s eligibility for receiving child care assistance under this subprogram ends, and specifically states that a family is required to reapply for child care assistance if they lose their eligibility while on transition year extension. These are clarifying changes that do not create new burdens or administrative costs for parties administering or receiving child care assistance.

Part 3400.0100 COPAYMENTS AND COPAYMENT SCHEDULES.

Part 3400.0100, subpart 2a. Proposed plain language edits to this subpart are reasonable because they result in no substantive changes to rule. Proposed updates to terminology are necessary to make the language more inclusive and consistent throughout chapter 3400. Additional edits are discussed under general amendment one.

Part 3400.0100, subpart 2b. The proposed repeal of this subpart is necessary because relevant language is proposed in Minn. R. 3400.0130, subp. 1b. Information about payment of provider charges that exceed the maximum child care payment is reasonably placed in part 3400.0130, as this part specifically provides guidance on the maximum rates the child care assistance program is able to pay, and subsequently what expenses a family is responsible for outside of their child care assistance benefits. This reorganization is further discussed under general amendment four.

Part 3400.0100, subpart 2c. The reasonableness and need for the repeal of this subpart is discussed under part 3400.0100, subp. 2b.

Part 3400.0100, subpart 5. The Federal Child Care and Development Fund, 45 C.F.R. § 98.20(a)(2)(i) requires that states use the most recent state median income data that is published by the Bureau of the Census. At present, the federal Department of Health and Human Services no longer publishes the state’s annual median income in the Federal Register. Instead, the most recent data is published in an information memorandum. Therefore, the current rule language in this subpart is obsolete. Current federal poverty guidelines are also necessary for calculating the copayment schedules under Minn. Stat. § 119B.12, subd. 1. At present, the federal Department of Health and Human Services publishes the most recent federal poverty guidelines on an annual basis in the Federal Register, but the Department recognizes this current practice may change and is reluctant to include rule language that specifies the availability and source of this data. Changes proposed to this subpart are reasonable and necessary to ensure that information related to CCAP is not tied to one particular source, yet continues to comply with federal laws.

Proposed changes remove the requirement to publish state median income for a family of three and a fee schedule annually in the State Register. This information is not content that would typically need to be published in the State Register but for the existing rule requirement. The state median income information and associated copayment schedule are currently electronically published in the
Department’s public document repository and continue to be publicly available. This information is also announced via email and provided to all CCAP agencies electronically when updated. Existing language was written before information was publicly available and accessible through widely used electronic means. This change is reasonable because it reduces administrative burden and program costs without creating additional burdens or barriers to accessing the information.

Proposed changes modify the effective date of updated copayment schedules. The Department updates the copayment schedule in accordance with Minn. Stat. § 119B.12 based on the most recently available state median income and federal poverty guidelines as described above. Because the availability date of these two data sets varies, tying the effective date of the updated copayment schedule strictly to a publication of data is problematic. Requiring the Department to make the copayment schedule available three months after the state median income and federal poverty guidelines are available is reasonable because it still holds the Department responsible for timely creation of the schedule while also allowing the Department adequate time to implement copayments in the statewide electronic eligibility system.

**Part 3400.0110  CHILD CARE ASSISTANCE AUTHORIZATION AND PAYMENTS.**

**Part 3400.0110, subpart 1.** Proposed changes to this subpart are reasonable and necessary to reflect the implementation of a statewide electronic payment system. Payment monitoring occurs electronically and happens at both the state and local agency level. The proposed revisions redirect the focus of the subpart to ensuring appropriate payments. This is a clarifying change that doesn’t create new burdens or administrative costs for parties administering or receiving child care assistance. Further changes include the addition of a cross reference to Minn. R. 3400.0120, which details what constitutes an eligible provider. Statutes referenced in part 3400.0120 set authorization limitations, and give authority to both the Department and CCAP agencies to deny payment from the child care fund to child care providers holding valid child care licenses in certain situations.

**Part 3400.0110, subpart 1a.** Proposed changes to this subpart include the addition of a cross reference to Minn. R. 3400.0120, which is necessary and reasonable because part 3400.0120 details what constitutes an eligible provider. Statutes referenced in part 3400.0120 set authorization limitations, and give authority to both the Department and CCAP agencies to deny payment from the child care fund to child care providers holding valid child care licenses in certain situations.

**Part 3400.0110, subpart 2.** Proposed changes to this subpart are necessary and reasonable because they clarify when legal nonlicensed providers can be paid and includes a cross reference to Minn. R. 3400.0120, which details what constitutes an eligible provider. Statutes referenced in part 3400.0120 set authorization limitations, and give authority to both the Department and CCAP agencies to deny payment from the child care fund to child care providers holding valid child care licenses in certain situations. Further proposed changes reflect training requirements under Minn. Stat. § 119B.025, subd. 1b, and training in health and safety topics required under the Federal Child Care and Development Fund, 45 C.F.R. § 98.41. Additional proposed changes update terminology to be more inclusive, plain language, and consistent with other rule revisions, and result in no substantive changes.

Proposed changes that remove language about paying a parent are necessary and reasonable because relevant information is already in Minn. Stat. § 119B.09, subd. 10, which details when child care funds must be paid directly to a parent. Items A through D contain the criteria for determining when payment can start for care provided by a legal nonlicensed provider.

**Part 3400.0110, subpart 2a.** The Federal Child Care and Development Fund, 45 C.F.R. § 98.43 no longer permits states to issue payments to a child care provider before they have cleared a federally-compliant background study. CCAP agencies have discontinued issuing provisional payments to child care providers.
since 2016. The proposed repeal of this subpart is necessary to reflect the repeal of Minn. Stat. § 119B.125, subd. 5 in the 2021 legislative session, current federal policies, and CCAP agency practices to ensure the health and safety of children. Repealing this language in rule is reasonable because it does not create any additional financial or administrative burdens on child care providers, families, or CCAP agencies.

Part 3400.0110, subpart 2b. This proposed subpart is reasonable and necessary because it specifies that license exempt centers must be certified in order to receive payments from the child care fund. The proposed language in this subpart regarding retroactive payment of a certified center language aligns with proposed language in subpart 2 regarding a family’s authorization and eligibility date.

Part 3400.0110, subpart 3. Proposed changes to this subpart are reasonable and necessary to reflect changes to Minn. Stat. § 119B.095 that establish steady child care authorizations for most families on child care assistance, with the amount of care authorized for the 12 month eligibility period typically being set at application and redetermination. These statutory changes were made in the 2017 legislative session to ensure twelve-month continuous eligibility and comply with federal law. When authorizing care and determining the number of to authorize, a CCAP agency considers verifications submitted by the family, including activity schedules, school schedules for children needing care, and child custody schedules, as well as times the provider is able to provide care. The Department conducts monthly case reviews on a statewide sample of CCAP cases to ensure that care is being authorized for families appropriately. CCAP agencies also conduct case management reviews to determine causes of errors and identify specific policies needing review. These practices exist to help ensure CCAP agencies consider the factors in item A when authorizing and determining the amount of care. The proposed deletion of language from item A that allows a county to reimburse a provider in an amount that exceeds the applicable maximum weekly rates is necessary because this practice is no longer permitted by Minn. Stat. § 119B.13.

Child care authorizations are limited to 120 hours per child per service period. Proposed changes to item B add the two exceptions when authorizing hours over 120 hours per service period is allowed. The payment limit of 120 hours per child per service period still applies in these two situations (see Minn. R. part 3400.0110, subp. 3d, item B). Additional proposed changes remove language on limiting CCAP payments to 120 hours per service period and converting care paid on a full-day or weekly basis from item B to a new subpart 3d, as this new subpart is specific to payment of child care. This reorganization of rule is reasonable and necessary because it groups related provisions together and provides clarity.

Minn. Stat. § 119B.095 also establishes two different reporting requirements for families receiving child care assistance based on their employment status or child care provider choices, which has an impact on authorization. Care must be authorized and scheduled with a child care provider based on a schedule reporter’s verified activity schedule, which can result in fluctuation in authorization during the family’s 12 month eligibility period. The additions to this subpart, particularly items C and D, are reasonable and necessary to reflect how a family’s authorization during the 12 month period is based on their reporting status. Items C and D also provide examples of when a parentally responsible individual might experience a temporary break or change from their activity during the 12 month eligibility period. Families who are schedule reporters must report a change in employment, education, or training status, which includes a temporary break. A temporary break will not impact a family’s eligibility for child care assistance but may impact their child care authorization, specifically for schedule reporters.

Proposed items E through H provide additional authorization guidance and cross references to applicable statutes based on specific situations. Because the referenced statutes have a direct impact on the amount of care that a CCAP agency may authorize, the Department proposes adding these additional items as a way to organize authorization content and support CCAP agencies in applying
policy accurately and consistently.

Proposed item F details implementation of changes to Minn. Stat. § 119B.09, subd. 1(e) made in the 2019 legislative session. When a child who is currently authorized for CCAP reaches age 13, or when a child who is currently authorized for CCAP with a documented disability reaches age 15, the child’s Service Authorization must end on the child’s birthdate, but the child remains eligible for CCAP until the family’s next redetermination. If care is still needed after the child reaches age 13 or the child with a disability reaches age 15, the parentally responsible individual must contact their CCAP worker and request authorization of care. Requiring the family to request care when the child reaches age 13 or the child with a disability reaches the age of 15 helps to ensure the child is still attending care with their provider. If the child is attending a licensed center, it helps to ensure that the provider has received a licensing variance to care for the child. The amount of care that may be authorized for the child at age 13 or the child with a disability at age 15 is based on the family’s reporting status under Minn. Stat. § 119B.095.

Proposed item G specifically states that the CCAP agency must authorize 100 hours of care biweekly for a child eligible to receive a weekly authorization for high-quality care under Minn. Stat. § 119B.13, subd. 3c. This policy is designed to support consistent care schedules for young children attending a high-quality care provider and allow higher CCAP payments. Children ages 0-5 that qualify for 30 to 49 hours of care per week (60 to 99 hours biweekly) with a high-quality care provider are issued authorizations for 50 hours of care per week (100 hours biweekly). However, there may instances where the parentally responsible individual and the provider determine a schedule of care that is less than 50 hours of care per week (100 hours biweekly), resulting in fewer hours of care being authorized (for example, the provider does not have space for the child to attend more days or hours or the parentally responsible individual requests less care be authorized).

Part 3400.0110, subpart 3a. Minn. Stat. § 119B.09, subd. 6 sets the maximum amount of child care assistance that can be paid in a service period at 120 hours per child. However, there may be situations when a child requires more than 120 hours of care authorized in a service period. The addition of this subpart is reasonable and necessary because it identifies situations for which additional hours of authorized care are appropriate, while still maintaining the maximum payment requirement (see proposed changes to Minn. R. 3400.0110, subp. 3d, item B).

Part 3400.0110, subpart 3b. In order for a provider to bill and receive payment from the child care fund, the provider’s care must be available to the family, unless the criteria in Minn. R. 3400.0120, subp. 9 are met. The proposed addition of this subpart is necessary and reasonable because it supports CCAP agencies in authorizing care with a back-up provider, and is beneficial to families so they can continue to receive care when their usual provider is not available without unnecessary delay. Not all families request care with a back-up provider when their usual provider is unavailable, as some families choose to use informal care arrangements in these situations and do not access their child care assistance benefit. For this reason, the proposed language in rule is permissive, stating that families may request that a CCAP agency authorize care with a backup provider.

Part 3400.0110, subpart 3c. Minn. Stat. § 119B.09, subd. 9 specifies that a CCAP agency may not authorize care for more than 25 children who are dependents of the center’s employees. The proposed addition of this subpart allows a CCAP agency to terminate any authorization granted in excess of the limit, which may occur due to CCAP agency error, and is necessary to ensure a child care center remains within the limit outlined in statute. Requiring the termination to occur in order of last one authorized, first one terminated, is a reasonable approach to ensure consistent application of the policy across CCAP agencies and is the most equitable approach for families. Further proposed language in this subpart allows a CCAP agency to terminate an authorization if the parentally responsible individual later
becomes an employee at the center where their child(ren) are authorized if this authorization results in the center exceeding the limit. The proposed language also ensures that a child care center remains within the 25 employee child limit required by statute.

**Part 3400.0110, subpart 3d.** The proposed addition of this subpart restructures and expands on information previously included in subpart 3 and is specific to payment of child care. Restructuring these sections is reasonable and necessary because it separates and clarifies differences between authorization and payment of child care hours, groups related provisions together, and provides clarity.

Proposed new language in item C reflects the importance of not paying more than one provider for the same period of time, which aligns with authorization policy in subpart 3. Proposed new language also reflects changes from 2017 in Minn. Stat. § 119B.097, which limits payment when a child has multiple providers.

Because item E is specific to licensed and certified license exempt providers, proposed item D reflects legal nonlicensed child care payment policies under Minn. Stat. § 119B.13, subd. 1a. This proposed language clarifies how hours are counted for all provider types.

**Part 3400.0110, subpart 4a.** The proposed language in this subpart is reasonable and necessary to clarify existing policy that has been applied inconsistently due to the absence of explicit language differentiating between same and different child care expenses. The proposed language aligns with Minn. R. 3400.0110, subp. 3 which indicates authorization should minimize a family’s out-of-pocket child care costs. This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance. Additional edits are discussed under general amendment one.

**Part 3400.0110, subpart 7.** Proposed changes to this subpart simplify language about advance payments from parents and sending billing forms. The proposed changes also reflect new requirements in Minn. Stat. §119B.13, subd. 6(a), which require providers to be paid within 21 days of submitting a completed bill, and improve program integrity by establishing a provider’s signature as an essential element of completed billing forms. These changes are necessary to clarify current language and reflect statutory changes. The changes are reasonable because they do not create any additional financial or administrative burdens on providers and families beyond what is imposed in statute. Additional edits are discussed under general amendments one and two.

**Part 3400.0110, subpart 8.** Proposed changes to this subpart include breaking it up into two items to improve clarity and readability and promote consistent implementation across CCAP agencies. Removing the cross reference aligns with other language in rule and simplifies the rule without changing its meaning. Other edits update terminology to be more inclusive, consistent and plain language, which result in no substantive changes to rule, and coincide with language used in the child care fund plan. These changes are necessary and reasonable because they do not create any new burdens or administrative costs for parties administering or receiving child care assistance. Additional edits are discussed under general amendment one.

**Part 3400.0110, subpart 9.** Proposed changes to item D, subitem (2) allow a provider to choose which days the provider may take as paid cultural or religious holidays, and remove the requirement that the days be only state or federal holidays. This is in response to feedback from providers about wanting more flexibility to use the ten paid holidays in ways that are more in line with their cultural and religious beliefs. The proposed changes are necessary and reasonable because they give more flexibility to providers, but do not change the maximum of ten days in a calendar year for which the provider is paid but not providing care. The provider is still responsible for timely reporting these days to the CCAP agency.
Providers are required to give notice to the CCAP agency of the cultural or religious holiday either prior to the day or within 10 calendar days after the day occurs. Notice is required even when the holiday is a designated state or federal holiday, since a CCAP agency cannot assume all providers will use one of the designated state or federal holidays. Most providers indicate the holiday information when registering to receive child care assistance. Providers also typically share this information with the families they serve as part of their standard policies to assist families in planning for days when care is not available. Allowing a provider to inform the CCAP agency within 10 days after the day occurs is beneficial to the provider, particularly if one of the days is unplanned or if the provider neglected to notify the CCAP agency prior to the day. This 10 day notification timeline after the day occurs aligns with the 10 day timeframe a family has to notify the CCAP agency of a holiday substitution under proposed item F. The notification of holidays also aids the CCAP agency in knowing which days a provider is closed and eligible for payment as a holiday. The addition of subitem (5) proposes language clarifying that in order for a provider to receive payment for a holiday, the provider must correctly bill that day as a holiday. Proposed changes to item F provide additional clarity on a family’s ability to substitute holidays under Minn. Stat. § 119B.13, subd. 7(d). Parents are allowed to substitute other cultural and religious holidays for the ten recognized state and federal holidays. However, if care is available for the day the parent is substituting, the provider is unable to bill this day as a holiday as the criteria for billing states the provider must not be providing care. Proposed revisions to this item stating that the provider must be closed and not providing care on a day substituted by the parent are necessary to correct a conflict between rule and statute. Proposed language in item G about holidays that fall on weekends codifies current practice into rule, reflects general business practices for child care providers, and aligns with Minn. Stat. § 645.44, subd. 5. This change also aligns with the Federal Child Care and Development Fund, 45 C.F.R. § 98.45(l), which requires states to establish payment policies that reflect generally accepted payment practices for child care providers. Further proposed changes, including the addition of item H, detail implementation of changes to Minn. Stat. § 119B.13, subd. 7 that were made in the 2013 legislative session to increase the number of paid child absent days and allow for reasonable medical exemptions. Proposed changes clarify that the child care center director and lead teacher in Minn. Stat. § 119B.13, subd. 7 include those who work in licensed child care centers and certified license-exempt child care centers. The proposed changes are necessary and reasonable to align with the definition of provider in Minn. Stat. § 119B.011, subd. 19, which references both of these provider types as a center. These changes also support federal goals to establish payment policies that reflect generally accepted payment practices. The proposed changes reflect current practices and do not result in any additional program costs. Revising language in rule related to absent days and holidays is necessary to reflect new state and federal policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed by the statute.

Part 3400.0110, subpart 10. Proposed changes are necessary and reasonable to clarify that the medical leave policy described in this subpart only applies to families designated as schedule reporters because authorization for child care depends on their activity schedule, whereas for 12 month reporter families there are no limits to the amount of child care that can be paid for medical leaves during the twelve-month eligibility period. These proposed changes reflect changes to Minn. Stat. § 119B.095 related to maintaining consistent child care arrangements for most families.

Proposed changes to this subpart align with proposed changes to Minn. R. 3400.0040, subp. 5. Aligning these parts of rule will reduce verification and documentation burdens of parentally responsible individuals who are either determined medically unable to care, or have child care assistance granted
during a medical leave of absence, as well as reduce administrative burdens for CCAP agencies. The proposed changes also preserve high standards for professionals who have authorization to make a determination. The proposed addition of a licensed psychiatrist is reasonable as this a medical professional trained to diagnose and treat people with mental health conditions and is a professional capable of determining a parentally responsible individual’s necessity for a medical leave of absence, similar to that of a licensed psychologist. In addition to aligning policies, the proposed addition of licensed social worker is beneficial to the family as this is a professional knowledgeable of a family’s situation and capable of making a medical leave of absence determination.

Proposed changes to item C that indicate the number of hours of child care that can be authorized during a medical leave of absence provide clarity and create consistency. Current language that uses the term “one month of full time care” is less precise and may be interpreted differently by CCAP agencies and families. Standardizing the amount of hours to 215 is necessary to promote consistent application of policy, and reasonable because 215 hours is the equivalent of 50 hours per week, which is considered full time care under Minn. R. 3400.0110, subp. 3d, item E, for one month.

Proposed updates to terminology have been made consistently throughout rule and additional edits are discussed under general amendments one and two.

**Part 3400.0110, subpart 12.** The proposed addition of subpart 12 is necessary and reasonable to allow payment for care provided at short-term alternative locations, and is in response to certified licensed exempt providers concerns and challenges about their programs’ existing business practices and compliance with child care assistance policies. It is common for certified license exempt providers to care for a child at a different certified license exempt location on days when the child’s primary child care site is not open, particularly on school release days. These are typically short-term arrangements and involved children being cared for by the same provider entity, just at a different physical location. Under current child care assistance program policies, caring for children at a different site involves changing each individual child’s authorization to the new site for very limited periods of time, which is burdensome for the provider, the family, and the CCAP agency.

**Part 3400.0120 ELIGIBLE CHILD CARE PROVIDERS AND CHILD CARE PROVIDER REQUIREMENTS.**

**Part 3400.0120, subpart 1.** Proposed changes to this subpart are reasonable and necessary to clarify that child care providers must be registered in order to receive child care assistance payments. The proposed changes also support and reference statutes that give CCAP agencies and the Department of Human Services authority to deny payment to child care providers holding valid child care licenses in certain situations.

Proposed language in this subpart reflects Minn. Stat. § 119B.09, which describes situations for which child care providers may not receive child care assistance payments for their own children, children in their families, or children of child care center employees, regardless of the child care provider’s license and child care assistance registration status. Further changes to this subpart reflect changes to Minn. Stat. § 119B.097 which limits the number of child care providers the program can pay for a family’s child care needs.

Minn. Stat. § 119B.13, subd. 6(d) describes the seven circumstances under which CCAP agencies and the commissioner may refuse to issue an authorization, revoke an existing authorization, stop payment or refuse to pay a bill. This is an optional policy that local CCAP agencies must indicate and have approved in their biennial county and tribal child care fund plan prior to implementation. The statute allows the option to withhold the provider’s authorization or payment for a period of time not to exceed three
months beyond when the condition has been corrected. This optional policy is implemented in various ways across CCAP agencies, and often includes escalating consequences to the provider within the three month time period. Many CCAP agencies have viewed escalating consequences, such as giving a warning or a sanction shorter than three months, as a way to educate a child care provider on proper policies. Because a provider may be registered to receive child care assistance payments from more than one CCAP agency, each incident is recorded on a statewide basis to assist CCAP agencies in tracking occurrences in an effort to standardize policy. During rule development, CCAP agency stakeholders expressed support for standardization of tracking statewide occurrences. The standardization also aligns with statewide disqualification of a provider for fraud under Minn. Stat. § 256.98, subd. 8. Proposed language in rule clarifies that if a provider’s registration is terminated prior to the condition being corrected, the provider must re-register after serving the penalty period in order to again receive child care assistance payments. This is consistent with Minn. Stat. § 119B.125, subd. 1 which requires a provider to be authorized before the CCAP agency can authorize payments for care provided. The proposed revisions in this subpart are reasonable and necessary to reflect new policies and do not create any additional financial or administrative burdens on providers and families beyond what is imposed by statute.

Part 3400.0120, subpart 1a. Under current child care assistance program policies, individual CCAP agencies register child care providers to receive payment from the child care fund. However, state statute does not require a CCAP agency to be responsible for registration, and the Department is considering taking on that role. Proposed changes to this subpart that remove specific reference to the CCAP agency for purposes of registration are necessary and reasonable so that rule language will not prevent the Department from conducting the provider registration process should it take on that role in the future.

The proposed revisions include moving content currently found in Minn. R. 3400.0140, subp. 4 to this subpart. It is necessary and reasonable to move this content because part 3400.0140, subp. 4 governs the responsibilities of a CCAP agency in registering a child care provider, whereas part 3400.0120, subp. 1a governs the responsibilities of the provider for registration. The moved content related to the responsibilities of the provider so it makes sense to present it under part 3400.0120, subp. 1a instead of part 3400.0140. Further proposed changes base the processing of a provider’s registration based on the receipt of the provider’s registration and acknowledgement form, or the receipt of a background study determination for a legal nonlicensed provider. All providers must complete the registration and acknowledgement form to register to receive CCAP; therefore, it is reasonable to base processing of the registration to receipt of that form. Additionally, the process of completing a fully compliant background study and receiving study results for legal nonlicensed child care providers often takes longer than 30 days. Defining the provider registration processing timeframe provides consistency and gives clear expectations to providers. Additional proposed revisions update the name of the form used by child care providers to register to receive child care assistance to the “registration and acknowledgment form.” This change is proposed both in this subpart and throughout rule to promote the use of consistent terminology.

Proposed changes to this subpart also reflect state statutory changes related to provider obligations and federal law changes that impose additional health and safety requirements on child care providers who are paid using federal CCDF funds. The proposed additional acknowledgements in this subpart would be incorporated into the standard acknowledgment form managed by the Department and do not create any additional financial or administrative burdens for providers, families, and CCAP agencies beyond what is imposed by statute. The proposed revisions to each item are as follows:

Revisions to item B incorporate current language used by the Department, making this language
consistent across child care assistance materials. These edits result in no substantive changes to rule.

Additional language in item C is based on the program integrity requirements in Minn. Stat. § 119B.02, subd. 5 which allow for investigations into program integrity and fraud if concerns become known.

Item D is discussed under general amendment two.

Additions to item E accommodate provider reporting requirements under Minn. Stat. § 119B.125, subd. 9.

Changes to item F include removing the term “immediately.” Rule does not have a definition of “immediately,” making this reporting requirement difficult to enforce, and it may not always be practical for a provider to report changes immediately to the CCAP agency. Removing “immediately” does not change the provider’s reporting requirement. Additional edits are discussed under general amendment one.

Proposed changes to item G reflect the repeal of Minn. Stat. § 626.556 and the recodification of the Maltreatment of Minors Act to Minn. Stat. Ch. 260E, changes made during the 2020 legislative session. The Department used the good cause exemption process under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to update this reference while simultaneously using the good cause exemption process to comply with the federal requirement to establish capacity limits and ratios on the number of children cared for by a legal nonlicensed provider who receives CCAP payments (see Minn. R. 3400.0120, subp. 7). On July 1, 2021, the Office of Administrative Hearings determined the Department has the statutory authority to adopt these proposed rules under the exempt rulemaking process and the adopted rules are approved. The exempt rules were posted in the State Register on September 27, 2021.  

Edits to item H include requiring documentation that a child care provider acknowledges the consequences of a determination that the provider’s care is unsafe under Minn. Stat. § 119B.125, subd. 4 and Minn. Stat. § 119B.09, subd. 5, and a cross reference to part 3400.0185, subp. 13 because the typical 15-day termination notice requirements are not applicable in unsafe care arrangements. Additional edits are discussed under general amendment one.

Additional items I and J reflect the statutory requirement that providers acknowledge record keeping requirements and ensure adherence to child care assistance policy.

The addition of item K reflects Minn. Stat. § 119B.11, subd. 2a(e), which requires a provider’s overpayment to be recovered through reductions in child care assistance payments when the provider continues to care for children receiving child care assistance. Having all providers acknowledge this requirement during the registration process provides clear expectations of recoupment for providers.

The addition of item L reflects the statutory requirement that providers acknowledge holiday billing requirements currently required under Minn. Stat. § 119B.13, subd. 7(i) and to ensure adherence to child care assistance policy.

Part 3400.0120, subpart 1c. The proposed addition of this subpart is reasonable and necessary to identify the specific registration requirements that a licensed center, licensed family and certified license exempt center must meet before receiving payments from the child care fund. For example, these providers must provide a taxpayer identification number and certification so that the Department can file an information return with the Internal Revenue Service. Providers are also required to acknowledge

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8 The State Register posting is available here: https://mn.gov/admin/assets/SR46_13%20-%20Accessible_tcm36-500455.pdf.
absent policies under Minn. Stat. § 119B.13, subd. 7 to ensure adherence to child care assistance policy. These policies are specific to licensed centers, licensed family and certified license exempt centers as legal nonlicensed providers are (1) not eligible to receive absent day payments under Minn. Stat. § 119B.13, subd. 7(a) and (2) required to submit verification as specified in part 3400.0120, subp. 2, item B to receive payment from the child care fund.

Part 3400.0120, subpart 1d. The Department has the authority to certify license exempt centers under Minn. Stat. § 245H. Once a license exempt center is certified, the center meets the federal health and safety requirements under the Federal Child Care and Development Fund, 45 C.F.R. § 98.41.

The proposed addition of this subpart is reasonable and necessary to clarify that a program that is exempt from licensure under Minn. Stat. § 245A.03, subd. 2(a), clauses (5), (11) to (13), (15), (18), or (26) must be certified in order to receive payment from the child care fund.

Part 3400.0120, subpart 2. Under current child care assistance program policies, individual CCAP agencies register child care providers to receive payment from the child care fund. However, state statute does not require a CCAP agency to be responsible for registration, and the Department is considering taking on that role. Proposed changes to this subpart that remove specific reference to the CCAP agency for purposes of registration are necessary and reasonable so that rule language will not prevent the Department from conducting the provider registration process should it take on that role in the future.

Further proposed changes are reasonable and necessary to reflect federal law changes under the Federal Child Care and Development Fund, 45 C.F.R. § 98.41 that impose additional health and safety requirements on child care providers who are paid using federal CCDF funds. Minn. Stat. § 119B.125, subd. 1, generally requires that: “the commissioner must establish the requirements necessary for the authorization of providers.” The more expansive requirements for legal nonlicensed providers as proposed in this subpart ensure Minnesota’s compliance with federal law and the health and safety of young children in unlicensed environments. Additional training requirements may impose costs on legal nonlicensed providers. However, since the establishment of additional federal requirements, the Department has funded required training with federal funds and intends to continue covering the costs for the foreseeable future to prevent imposing these costs on providers. The acknowledgements and releases as proposed will be incorporated into the standard acknowledgment form managed by the Department and does not create any additional financial or administrative burdens on providers, families, and CCAP agencies beyond what is imposed in statute. The proposed revisions to each item are as follows.

Deleting language from item A avoids duplicate provisions within chapter 3400, as this same requirement is included in subpart 1a. The addition of subitem (7) is in response to the Federal Child Care and Development Fund, 45 C.F.R. § 98.42(b)(4) which requires providers to report serious injuries or death of children occurring in their care. Subitem (8) addresses the requirement in Minn. Stat. § 245.095 that the Department must prevent a provider who has been disqualified in one Department program from being a provider in any other Department program. Under subitem (9), providers are required to submit verification that all required trainings have been completed in accordance with state and federal law.

Revisions to item B remove the option to ask for a Social Security number from providers not requesting payment from the child care fund. There is no business need to obtain this information; only the Social Security number or tax identification number are needed of providers who are receiving payment from the child care fund. Other revisions clarify that the provider must either provide their Social Security number or their tax identification number, as the Internal Revenue Service requires one of these identifiers to report what is paid to a child care provider. Informing the provider about the number’s use...
and the legal authority is accomplished through language on the W-9 form, which all providers receive, and within the Minnesota Child Care Assistance Program (CCAP) Child Care Provider Guide (DHS-5260), a guide produced by the Department of Human Services that is publically available on the Department of Human Services’ public website. When registering to receive child care assistance, all providers attest on the provider registration and acknowledgement form they have received a copy of the provider guide, and have read and understand the information.

Revisions in item C reduces the length of time by which a legal nonlicensed provider must obtain a copy of a child’s immunization records from 90 to 30 days. The Child Care and Development Block Grant Act of 2014, 42 U.S.C. § 9858c(c)(2)(I)(i)(I), requires states to establish a grace period for children experiencing homelessness to submit immunization materials. In response to this federal requirement, the Minnesota Department of Human Services and the Minnesota Department of Health collaborated to develop a 30-day grace period for these families to submit immunization information in licensed programs. This timeline is reasonable because it aligns with the timeline for families to submit immunization information to their legal nonlicensed provider. Note that these changes do not change state laws around immunization compliance or exemptions in Minn. Stat. § 121A.15, but merely reduce the timeline in which a parent must share documentation of their child’s immunization status with their child’s legal nonlicensed provider.

Proposed additions of items D and E move content from current Minn. R. 3400.0140, subp. 5 to this subpart to group provisions related to the registration of legal nonlicensed child care providers together.

**Part 3400.0120, subpart 2a.** Proposed changes to this subpart are reasonable and necessary to clarify the need for child care providers to be registered in order to receive child care assistance payments. Further changes also recognize that while an in-home child care provider is typically a legal nonlicensed child care provider, a child care provider may also become licensed to provide care in the child’s home. These are the only two provider types that would provide in-home care; the other two provider types, licensed center or certified license exempt center, would not provide care in an in-home care setting. Although a provider rarely becomes licensed to provide care in a child’s home, the Department finds it helpful to clarify.

**Part 3400.0120, subpart 3.** The reasonableness and need for proposed changes to this subpart are discussed under general amendment two. Further proposed plain language edits result in no substantive changes to rule.

**Part 3400.0120, subpart 5.** Proposed revisions to this subpart are reasonable and necessary to address all provider reporting requirements and methods, so that the subpart encompasses more than just reporting requirements when care for a child has been terminated.

The proposed revisions remove the word “immediately” from the reporting requirement for when a provider believes a family will end care. Rule does not have a definition of “immediately,” making this reporting requirement difficult to enforce and it may not always be practical for a provider to report immediately to the CCAP agency once they believe a family will end care. Removing “immediately” does not change the provider’s reporting requirement. Additionally, under Minn. R. 3400.0040, subp. 4, item B, families are responsible for reporting changes in their provider 15 calendar days in advance, allowing the CCAP agency to act accordingly on the change in a timely manner.

Minn. Stat. § 119B.125, subd. 9 specifies how a provider must report a child’s part time attendance. Proposed language in this subpart clarifies that other reporting requirements do not require a specific method of reporting to the CCAP agency, and that there are multiple reporting options.

The Federal Child Care and Development Fund, 45 C.F.R. § 98.33(a)(5), requires that aggregate number
of deaths and serious injuries and instances of substantiated child abuse that occur in child care setting each year are disseminated to the public yearly via a consumer education website. Legal nonlicensed providers must submit reports of serious injuries and deaths of children occurring in child care to their CCAP agency, which are then required to report aggregate numbers to the Department of Human Services (see Minn. R. 3400.0140, subp. 14). Minnesota has defined “serious injury” in its approved CCDF federal fiscal year (FFY) 2019-2021 plan as “an injury that requires treatment by a physician or dentist.”

Other revisions to this subpart are discussed under general amendment one.

**Part 3400.0120, subpart 6.** The Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R. § 98.41 require states ensure all providers who receive payments from the Child Care and Development Fund are trained in twelve health and safety topics. These requirements include additional training based on the ages of children served and the relationship of the provider to the children. Minnesota statutes do not prohibit or mandate this training. However, Minn. Stat. § 119B.125, subd. 1 requires the Department to establish requirements necessary to authorize providers, and under this directive the Department began requiring legal nonlicensed providers to participate in federally-mandated training beginning September 30, 2017.

The Department is proposing in item A that a legal nonlicensed child care provider must complete training specifically in pediatric first aid (Minn. Stat. § 119B.125, subd. 1b only mentions general first aid) to ensure that providers are trained to render care specific to the infants and children they care for. Proposed changes are reasonable because they align with the pediatric first aid requirement for licensed family child care providers under Minn. Stat. § 245A.50, subd. 3 and with who is able to provide training to legal nonlicensed child care providers under Minn. Stat. § 119B.125, subd. 1b. Further proposed changes identify what training is required at registration.

Proposed changes in item B specify training that is required to be current at each subsequent registration renewal and who must provide the training. Proposed changes are reasonable because they align with the pediatric first aid requirement under Minn. Stat. § 245A.50, subd. 3 and pediatric cardiopulmonary resuscitation training requirement for licensed family child care providers under Minn. Stat. § 245A.50, subd. 4, and with who is able to provide training to legal nonlicensed child care providers under Minn. Stat. § 119B.125, subd. 1b. These proposed edits provide clearer policy guidance and more understandable expectations for providers. It is necessary to codify these requirements in rule in order to comply with federal law.

Further proposed changes to this subpart reflect language in the Federal Child Care and Development Fund, 45 C.F.R. § 98.41, which exempts individuals who are considered related from some training requirements. The Department has been using federal funds to cover the costs of training legal nonlicensed providers and intends to continue covering the costs of training for the foreseeable future.

**Part 3400.0120, subpart 7.** The Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R. § 98.41 requires states to establish capacity and ratios for all child care providers who receive payments from the Child Care and Development Fund. For licensed and certified license-exempt programs, ratio and capacity requirements are codified into Minn. Stat. 245A and Minn. R. 9502 and 9503. Currently, legal nonlicensed providers reimbursed for child care expenses by the Child Care Assistance Program are limited to serving only related children, or the children from one unrelated family, or both. Minnesota received notice from the federal Office of Child Care on April 12, 2019 that Minnesota is non-compliant with federal law because a numerical ratio for the number of children a legal nonlicensed provider can serve was not established. The proposed revisions are necessary to establish a numerical limit to overlay existing policy and ensure
federal compliance.

The proposed limit of eight children age 11 and younger is reasonable to ensure that children remain well-cared for and safe. Less than one percent of legal nonlicensed providers authorized to care for children receiving child care assistance served more than eight children in state fiscal year 2019; these data support that implementing a limit of eight children will not impact the majority of legal nonlicensed providers or families receiving child care assistance funds.

The Department engaged multiple stakeholders on this topic. The topic was discussed during the Department’s Rule Revision Advisory Committee Meeting in December 2019. Stakeholders expressed concerns about the number of young children allowed to be in care at the same time, and were in support of age limits due to the more strenuous demands of caring for infants and toddlers. There was some concern from CCAP agencies about how best to implement and track the number of children authorized with a provider at any given time. The Department intends to address this concern through technical assistance to CCAP agencies, particularly since this impacts a small number of providers statewide (in state fiscal year 2020, a monthly average of 122 legal nonlicensed child care providers received payment from the child care fund).

Department of Human Services Child Care Assistance Program staff also met with the Legal Nonlicensed Child Care Provider Workgroup in February 2020. This workgroup, comprised of child care assistance workers from local CCAP agencies and county family child care licensors, expressed support for legal nonlicensed provider age limits mirroring licensed family age limits and for ratio requirements to be a point in time rather than a total limit.

In response to stakeholder feedback, using available data on current legal nonlicensed care arrangements, and the overall health and safety of children in care, the Department is proposing the limit of eight children age 11 and younger, with further limits for certain ages. Including the provider’s own children within these limits if the children are present while care is being provided is necessary to help ensure a provider can adequately care for all children.

The Department used the good cause exempt rulemaking process under Minnesota Statutes, section 14.388, subdivision 1, clause (2) to comply with the federal requirement to establish capacity limits and ratios on the number of children cared for by a legal nonlicensed provider who receives CCAP payments. Notice of the good cause rulemaking was sent electronically to all stakeholders who are members of the Legal Nonlicensed Child Care Provider Workgroup on June 16, 2021 and via US Mail to all legal nonlicensed child care providers registered to receive CCAP (177 total providers) on June 15, 2021. No comments were submitted to the Office of Administrative Hearings (OAH) on the rule making effort. On July 1, 2021, the OAH determined the Department has the statutory authority to adopt these proposed rules under the exempt rulemaking process and the adopted rules are approved. The exempt rules were posted in the State Register on September 27, 2021.9

Following the adoption of the exempt rules, the federal Office of Child Care (OCC) reviewed Minnesota’s CCDF plan for the fiscal year 2022-2024 and found that Minnesota did not meet the health and safety requirements for ratio and group size because Minnesota did not report group sizes for children 12 years old and over in licensed exempt homes. In response, the Department reviewed data and as of February 3, 2022, none of the current 66 legal nonlicensed child care providers were authorized to care for more than six children, and none were authorized to care for children ages 12-14. The Department also notified the OCC that as part of rule revision currently underway, Minnesota will add language to

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9 The State Register posting is available here: https://mn.gov/admin/assets/SR46_13%20-%20Accessible_tcm36-500455.pdf.
meet the ratio and group size requirement. The proposed language applies the current group size of eight children to include all children age 12 and under and children age 13-14 with special needs due to disability who are or who become authorized by CCAP, aligning with the definition of “child” under Minn. Stat. § 119B.011, subd. 4.

To ensure stakeholders are informed of this change required by federal directive, the Department will specifically reach out to members of the Legal Nonlicensed Child Care Provider Workgroup electronically to alert them to this language when the Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received is posted in the state register. Additionally, the Department will notify all legal nonlicensed child care providers registered to receive child care assistance via U.S. Mail of this specific language when the Dual Notice is posted.

Part 3400.0120, subpart 8. The Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R. § 98.41 require child care providers who receive payments from the Child Care and Development Fund to 1) be trained in twelve health and safety topics and 2) develop an emergency preparedness plan. Minnesota Statutes do not prohibit or mandate an emergency plan. However, Minn. Stat. § 119B.125, subd. 1 authorizes the Department to establish requirements necessary to authorize providers, and under this directive the Department began requiring legal nonlicensed providers to develop an emergency plan beginning October 1, 2018. Under the proposed rule revisions, legal nonlicensed providers must attest on their provider registration and acknowledgement form that they will complete and maintain a plan, and CCAP agencies may request a copy of the plan as part of broader annual monitoring requirements (see Minn. R. 3400.0120, subp. 9). Including this requirement in rule is necessary so that a consequence can be imposed on a provider who has failed or refused to comply with the emergency preparedness plan. Because federal experts have found that developing an emergency preparedness plan is necessary to ensure the safety of children in care during an emergency, it is reasonable to impose a consequence on a child care provider who does not comply with this requirement.

Part 3400.0120, subpart 9. The Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R. § 98.41 require that child care providers who receive payments from the Child Care and Development Fund and are not related to all of the children they care for are monitored annually to ensure compliance with health and safety requirements. Minnesota statutes do not prohibit or mandate annual monitoring for legal nonlicensed providers. However, Minn. Stat. § 119B.125, subd. 1 authorizes the Department to establish requirements necessary to authorize providers, and under this directive the Department began requiring legal nonlicensed providers to comply with an annual monitoring visit beginning October 1, 2018.

To develop this policy and establish the monitored health and safety requirements, Minnesota relied on federal guidance as a baseline for health and safety policies. In addition, starting in July 2015, the Department began meeting with a group of stakeholders from CCAP agencies who work in family child care licensing or Child Care Assistance Program delivery to develop health and safety standards for legal

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10 Specifically, the Department reviewed “Caring for Our Children Basics: Health and Safety Foundations for Early Care and Education,” a resource developed by the U.S. Department of Health and Human Services’ Office of the Administration for Children and Families that represents the minimum health and safety standards experts believe should be in place in settings where children are cared for outside their homes. This resource is available in pdf format at: https://www.acf.hhs.gov/sites/default/files/documents/ecd/caring_for_our_children_basics.pdf (last visited March 15, 2021).
nonlicensed providers. In early 2018, the Department published an optional health and safety checklist\(^{11}\) for legal nonlicensed providers to begin self-assessing their care environment. The Department made slight adjustments to the standards in May 2019 following additional engagement with CCAP agencies that would be implementing the policy and with the consultants hired by the Department to develop a standardized implementation guide and training for CCAP agency workers to perform annual monitoring visits. In short, the Department leveraged substantial outside feedback and expertise to ensure that the health and safety requirements the Department proposes and the procedures with which monitoring visits are implemented are reasonable.

The proposed language in item C is in response to the requirement in the Federal Child Care and Development Fund, 45 C.F.R. § 98.15(b)(5) to publish monitoring and inspection reports online. Legal nonlicensed provider annual monitoring visit summaries are currently posted on the Department’s public website.\(^{12}\) Parent Aware also provides a link to these publically posted results on their website.\(^{13}\)

During the annual monitoring visit, a CCAP agency may discover that a provider has failed certain requirements. Items D and E are proposed to establish the situations in which a legal nonlicensed provider may submit additional written information to establish compliance. Under item D, if a CCAP agency determines during the annual monitoring visit that a provider failed certain requirement(s), there is an option for the provider to submit written information to the agency to establish compliance and have the provider’s registration and child care authorizations remain open. Under item E, if a CCAP agency determines during the annual monitoring visit that a provider failed any requirements that have no written correction option, the provider’s registration and all open authorizations must close after being given proper notice.

The Department has developed and made available to CCAP agencies the Child Care Assistance Program Legal Nonlicensed Provider Monitoring Checklist (DHS-7867).\(^{14}\) This checklist assists CCAP agency staff in evaluating each of the required health and safety standards to ensure consistent implementation of health and safety standards across CCAP agencies. This checklist indicates which requirements have a written correction option to meet a failed requirement (for example, clean towels and washcloths are provided daily or are disposable after use), and which requirements do not have a written correction option. The requirements that do not have a written correction option are more serious health and safety concerns (for example, exit doors or windows are unable to be opened from the inside).

The proposed addition of item F addresses the policies for how annual monitoring is conducted that counties and tribes must include in their biennial child care fund plans. Item F specifically requires a county or tribe to include the conditions under which a provider who does not show compliance with an annual monitoring visit can again register to receive child care assistance in the future. These conditions may include only if the provider becomes licensed, or if the provider shows compliance when the CCAP agency conducts another monitoring visit and any conditions placed on that visit (for example, the time limit that the provider must wait before another monitoring visit can be performed or a limit on the number of re-inspections). Identifying these conditions in the child care fund plan are reasonable and

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\(^{11}\) This checklist is available on the Department’s publicly-accessible document library: https://edocs.dhs.state.mn.us/lfserver/Public/DHS-51928-ENG.


\(^{13}\) Parent Aware is Minnesota’s Quality Rating and Improvement System for early childhood care and education programs. The Parent Aware webpage that links to the annual monitoring visit summaries is available here: https://www.parentaware.org/learn/types-of-child-care/.

\(^{14}\) This document is available on the Department’s publicly-accessible document library: https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7867-ENG.
necessary to ensure that children being cared for by the provider are in safe care environment and that all legal nonlicensed providers registered to receive child care assistance through the same CCAP agency are treated consistently.

Proposed item G addresses what action the CCAP agency must take if the legal nonlicensed child care provider is unavailable for the scheduled monitoring visit. Allowing the provider 15 days to reschedule the visit is consistent with other child care assistance notification timelines, as is closing the provider’s authorizations for any unrelated children with a 15 day adverse action if the provider is not available for the rescheduled visit. In the event the monitoring visit is completed later, specifying the authorization effective date ensures unrelated children are treated consistently across all CCAP agencies while remaining within existing retro-authorization policies.

Proposed items H and I address the policies counties and tribes include in their biennial child care fund plan. Counties and tribes must identify 1) conditions of unsafe care that apply to legal nonlicensed providers beyond those contained in Minn. Stat. § 245C.14 and Minn. Stat. §245C.15 and 2) conditions that present an imminent risk to the health, safety or rights of a child in care with a legal nonlicensed provider. Termination notice requirements depend upon the conditions identified during the annual monitoring visit.

**Part 3400.0130 CHILD CARE ASSISTANCE PROGRAM MAXIMUM RATES.**

**Part 3400.0130, subpart 1.** Proposed changes to this subpart include the addition of a cross reference to statute under which the child care market rate survey is described. Adding this cross reference is necessary and reasonable for clarity and consistency with statute. Additional edits are described under general amendment three.

**Part 3400.0130, subpart 1a.** Proposed changes to this subpart reorganize content from subpart 5, which specifies (1) the location of where care is provided determines the maximum rate that may be paid and (2) the applicable maximum rate that applies to legal child care providers located outside the state of Minnesota. The location of where care is provided usually refers to the Minnesota county in which care is provided, but proposed language also includes rates within certain cities, which reflects a change made to Minn. Stat. § 119B.13, subd. 1 during the 2017 legislative session. This statutory change created a separate rate determination for child care providers located within the boundaries of a city located in two or more counties of Benton, Sherburne, and Stearns. This reorganization of rule is necessary and reasonable because it groups related provisions together and provides clarity to the user, and is further discussed under general amendment four.

Additional proposed changes include removing language and reorganizing the content under new subpart 1b, which is specific to provider charges exceeding the maximum child care assistance payment. This reorganization of rule is necessary and reasonable because it groups related provisions together and provides clarity to the user, and is further discussed under general amendment four. Other edits are discussed under general amendment one.

**Part 3400.0130, subpart 1b.** The proposed addition of this subpart reorganizes content from Minn. R. 3400.0130, subp. 1a and Minn. R. 3400.0100, subps. 2b and 2c. In addition to language in Minn. Stat. § 119B.13, subd. 1, this proposed subpart is necessary and reasonable because it provides further clarity on the charges and expenses a family is responsible for outside of what child care assistance is allowed to pay. This subpart also recognizes that a third party may make these payments on behalf of the family as allowed under Minn. Stat. § 119B.12, subd. 2, which satisfies the family’s obligation.

**Part 3400.0130, subpart 2.** In the 2017 legislative session, changes were enacted to bring Minnesota into compliance with the federal Child Care and Development Block Grant (CCDBG) Act. As part of this
effort, license-exempt centers participating in the Child Care Assistance Program are required to become certified under Minn. Stat. § 245H in order to be eligible for payment from the child care fund. Proposed changes to this subpart are necessary and reasonable because they add the word “certified” to reflect updated terminology and be consistent with other rule revisions, and add the appropriate legal authority to recognize the statutory change.

**Part 3400.0130, subpart 3.** Minn. Stat. § 119B.13, subd. 3 allows providers who care for children with disabilities or special needs to be reimbursed at a higher rate. Proposed changes to this subpart are necessary and reasonable to clarify that the rate determination process differs for individual children (see subpart 3a) and at-risk populations (see subpart 3b). Separating these two scenarios provides clearer policy guidance for CCAP agencies and more understandable expectations for families. Additionally, proposed deletion of language is necessary because special needs rates for individual children are not approved as an amendment to a county or tribe’s child care fund plan; these are public documents and do not contain information on individual children or families.

Based on the processes described below (see subpart 3a and subpart 3b), there may be situations where the rate requested is more than the rate approved.

**Part 3400.0130, subpart 3a.** For individual special needs rates, the rate is based on the needs of the child and the provider’s description of services. The Department has developed a process to pay a rate in relation to the standard maximum rates paid for all other children. A consistent rating tool is used for all special needs requests and assesses a child’s needs across six categories: special medical needs and health; behavioral issues; mobility; receptive and expressive communication skills; self-sufficiency; and extra supervision for safety. Documentation of the child’s special needs submitted by the family and the provider is reviewed and the rating tool is completed by multiple Department staff persons. The results following the use of the rating tool drives the approved rate. There are three tiers of special needs rates tied to the maximum rates, recognizing there are increased costs associated with including a child with special needs in a typical child care setting. The first tier results in special needs rates 75 percent higher than the maximum rates, the second tier results in special needs rates 150 percent higher than the maximum rates, and the third tier results in special needs rates 200 percent higher than the maximum rates.

Proposed additions to this subpart are necessary and reasonable because they specifically describe special needs approval dates, and allow retroactive approval under Minn. Stat. § 119B.13, subd. 7 and Minn. Stat. § 119B.09, subd. 7. The approval of special needs are typically granted for a full 12 month period before requiring renewal, but may be granted for less time if requested by the family or provider. While many CCAP processes and timeframes are tied to the family’s 12 month eligibility period, special needs approvals are tied to the individual needs of the child and are not aligned with the family’s redetermination date. Proposed changes that require the Department to notify both the family and the provider in writing of the commissioner’s decision codify a long-standing and current practice.

Additional edits are discussed under general amendments one and two.

**Part 3400.0130, subpart 3b.** Proposed new language in this subpart is reasonable and necessary to reflect the predominance of children a provider serves who meet the at-risk population criteria, replacing language that is specific to individual children. To receive commissioner’s approval, counties and tribes submit the request for higher rates to be paid as part of their child care fund plan or as an amendment to the fund plan. Information required includes the documentation in item B that supports specialized services by the provider to the at-risk population, and is not specific to needs of an individual child. Requests are submitted by providers only and not by parents as in individual special needs approvals. Approval of the special rate are retroactive as allowed by statute.
Additional edits are discussed under general amendment one.

**Part 3400.0130, subpart 5.** Proposed changes to this subpart are necessary and reasonable to reflect a shift in CCAP’s focus from child care rates to age categories. Content regarding the the maximum rate that may be paid as determined by location and the maximum rate for legal child care providers located outside the state of Minnesota has been moved to subpart 1a. This reorganization of rule groups related provisions together, provides clarity to the user, and is further discussed under general amendment four.

Minn. Stat. § 119B.13, subd. 1(h) addresses the implementation dates of changes to maximum rates. Proposed changes to this subpart remove duplicative language to help ensure the rules do not become obsolete if statutory provisions are revised.

Under Minn. Stat. § 119B.13, subd. 1(c), maximum rates for each type of care are determined on an hourly, daily, and weekly basis. These maximum rates also vary based on the age of the child. The proposed additional language in items A through D clarifies the maximum rate that a CCAP agency is allowed to pay based on the age of the child and provider type. There are some instances where licensing allows for exceptions to standard age categories. The licensing provision for age flexibility under Minn. R. 9503.0040, subp. 4 allows children attending licensed child care centers to receive care in a different age category classroom for a short period of time without a licensing variance. Licensing may also grant a variance to a licensed family child care provider or a licensed child care center, allowing the provider to consider the child a different age category (see Minn. Stat. § 245A) or care for the child within a different age category classroom (see Minn. R. 9503.0005, subp. 26). Proposed language is reasonable and necessary to address these statutory requirements and exceptions.

Other edits are discussed under general amendment one.

**Part 3400.0130, subpart 5a.** Proposed changes to this subpart are necessary and reasonable to align with statute and provide clarity, adding a cross reference to statute which establishes limits on the use of in-home child care. Further additions recognize that while an in-home child care provider is typically a legal nonlicensed provider, a child care provider may also become licensed to provide care in the child’s home. Although this is a care situation that has been encountered very few times by the Department, it is still necessary to clarify the applicable maximum rate that applies. Proposed removal of certain language reflects plain language and is consistent with other rule revisions, resulting in no substantive changes in rule.

**Part 3400.0130, subpart 7.** Proposed changes to this section are necessary and reasonable to align with statute and provide clarity, adding a cross reference to Minn. Stat. § 119B.13, which sets the reimbursement rate for registration fees. Additional edits are discussed under general amendments one and three.

**Part 3400.0140 RESPONSIBILITIES OF A CCAP AGENCY.**

**Part 3400.0140, subpart 1.** Proposed language in this subpart is reasonable and necessary to clarify that all adopted CCAP agency policies applicable to child care assistance must be approved by the commissioner under Minn. Stat. § 119B.08, subd. 3. Additional edits are discussed under general amendment one.

**Part 3400.0140, subpart 2.** The primary change proposed to this section adds “families” to the list of entities a CCAP agency must provide information to as needed to fully use its fund allocation. As families are the recipients of child care assistance, it is necessary to specify that families should be included in outreach efforts the CCAP agency undertakes. Because there is no specific action or burden required to
comply with this new provision, it is reasonable to expand the list of entities to include families. Additional edits are discussed under general amendments one and three.

**Part 3400.0140, subpart 4.** Under current child care assistance program policies, individual CCAP agencies register child care providers to receive payment from the child care fund. However, state statute does not require a CCAP agency to be responsible for registration, and the Department is considering taking on that role. Proposed changes to this subpart 1) move content related to the time frame for provider registration to Minn. R. part 3400.0120, subp. 1a and 2) remove specific reference to the CCAP agency for purposes of registration. These proposed changes are necessary and reasonable so that rule language will not prevent the Department from conducting the provider registration process should it take on that role in the future, and reorganizes the chapter to group related provisions together as discussed under general amendment four.

Child care providers are responsible for submitting appropriate materials to register to receive child care assistance under Minn. R. 3400.0120; therefore, basing the provider’s registration on actions related to the family, such as eligibility determination or provider selection, is not appropriate and the proposed removal of this language from rule is reasonable. Providers must be allowed to register to receive child care assistance even if they are not currently caring for a child receiving child care assistance benefits. Basing the provider’s registration approval on the receipt of background study results is also problematic as not all providers require a background study at the time of registration. Proposed changes to Minn. R. 3400.0120, subp. 1a specify the circumstances under which it is appropriate to use background study determinations when a provider is registering to receive child care assistance.

The proposed removal of language from this subpart reflects changes to Minn. Stat. § 119B.16 and Minn. Stat. § 119B.161 that establish due process rights for child care providers for negative actions a CCAP agency takes against a child care provider, including denial of a provider’s registration. Effective February 26, 2021, a family, either as an applicant or recipient, does not have the right to a fair hearing if a CCAP agency or the commissioner takes action against a provider.

**Part 3400.0140, subpart 5.** Under current child care assistance program policies, individual CCAP agencies register child care providers to receive payment from the child care fund. However, state statute does not require a CCAP agency to be responsible for registration, and the Department is considering taking on that role. Proposed changes to this subpart 1) move content on the registration of a legal nonlicensed provider to Minn. R. 3400.0120, subp. 2, items D and E, and 2) remove specific reference to the CCAP agency for purposes of registration. This proposed change is necessary and reasonable so that rule language will not prevent the Department from conducting the provider registration process should it take on that role in the future, and reorganizes the chapter to group related provisions together as discussed under general amendment four.

**Part 3400.0140, subpart 6.** Minn. Stat. § 119B.125, subd. 4, allows a CCAP agency to identify the conditions under which a child care arrangement is considered unsafe and when unsafe care conditions present an imminent risk for children in care. Proposed language in this subpart is reasonable and necessary to clarify that CCAP agencies must determine if a substantiated complaint meets either of these criteria, as termination notices to a provider under Minn. R. 3400.0185, subp. 13 depend on the determination.

Additional proposed language further clarifies that if a provider’s registration is terminated prior to the correction of conditions underlying a substantiated complaint, the provider will need to re-register in order to again receive child care assistance payments. This is consistent with Minn. Stat. § 119B.125, subd. 1 which requires a provider to be authorized before the CCAP agency can authorize payments for care provided.
The Consolidated Appropriations Act of 2018 (Public Law 115-141) prohibits states from expending federal CCDF funds on providers where a serious injury or death occurred due to substantiated health or safety violations. Minnesota has defined “serious injury” in its approved CCDF FFY 2019-2021 plan as “an injury that requires treatment by a physician or dentist.” Proposed language in this subpart clarifies that if a child dies or has a serious injury while in a nonlicensed care setting, the provider must not receive payment from the child care fund in accordance with federal law.

References to Minn. Stat. § 626.556 have been removed and updated to reflect the recodification of the Maltreatment of Minors Acts to Minnesota Statutes, chapter 260E. Additional edits are discussed under general amendments one and three.

**Part 3400.0140, subpart 7.** Proposed changes in this subpart are necessary and reasonable because they reduce administrative burden for CCAP agencies without compromising state oversight of CCAP administration. Rather than having to develop an explanation of the contract between the CCAP agency and the subcontracted agency in its child care fund plan, under the proposed changes the CCAP agency need only submit the contract to the Department. The Department can then assess the contract directly. Additional edits are discussed under general amendments one and three.

**Part 3400.0140, subpart 8.** The need and reasonableness of the proposed changes to this subpart are discussed under general amendment one. Proposed changes also include plain language edits and result in no substantive changes.

**Part 3400.0140, subpart 9.** The need and reasonableness of the proposed changes to this subpart are discussed under general amendments one and three.

**Part 3400.0140, subpart 9a.** The need and reasonableness of the proposed changes to this subpart are discussed under general amendments one and three. Proposed changes also include plain language edits and result in no substantive changes.

**Part 3400.0140, subpart 10.** Proposed revisions to this subpart are necessary and reasonable to prevent a CCAP agency from excluding an eligible family under Minn Stat. § 119B.03, subd. 3 if the agency has funding and the family has submitted a complete application and verifications as required under part 3400.0040. Further proposed changes are discussed under general amendments one and three. Proposed changes also include plain language edits and result in no substantive changes.

**Part 3400.0140, subpart 14.** Proposed removal of the word “federal” from this subpart clarifies that the scope of the CCAP agency’s reporting requirements include reporting required not just by the federal government but also by the state or other entities. For example, the Department currently requires CCAP agencies to report certain information to the state, such as waiting lists under Minn. Stat. § 119B.03, subd. 2 and child fatalities, substantiated maltreatment, and serious injury incidents that occur in the child care setting under 45 C.F.R. § 98.33(a)(5). Because Minn. Stat. § 119B.02, subd. 3 requires the Commissioner of the Department to supervise child care programs administered by the county, it is both necessary and reasonable to “federal” to ensure CCAP agencies report all required information to the Commissioner as requested. Additional edits are discussed under general amendment one.

**Part 3400.0140, subpart 21.** Under Minn. Stat. § 256P.07, subd. 3, families are required to report changes within ten days of the date they occur. Under Minn. Stat. § 119B.025, subd. 1, CCAP agencies are given a time frame in which to approve or deny assistance; however, no time limit currently exists in statute or rule for when a CCAP agency must act on a reported change. Adding a time frame in which CCAP agencies must act on reported changes as proposed in this subpart is necessary and reasonable as other CCAP agency processes have defined timelines and it will help prevent families from experiencing unneeded delays in case action.
Part 3400.0150 CHILD CARE FUND PLAN.

Part 3400.0150, subpart 1. Minn. Stat. § 119B.08, subd. 3 currently establishes that the county and designated administering agency must submit biennial child care fund plans to the Department every two years. Under the Child Care and Development Block Grant Act of 2014, the requirement for states to submit a CCDF plan was changed from biennially to every three years. It is possible that in the future the Minnesota legislature will decide to align the time frame in which county and tribal agencies must submit plans to the state with the time frame in which states must submit plans to the federal government. To help ensure that state rule and statute remain aligned in this time frame, the Department’s proposal to remove the “biennial” qualifier for the child care fund plan and instead referencing the statute in which the time frame is set is necessary and reasonable. This language change does not make any modifications to the current biennial submission timeframe required by statute.

The proposed changes to this subpart also replace the specific reference to Minn. Stat. § 119B.011 to 119B.16 with more general language that includes all applicable Minnesota statutes and federal regulations. This proposed change is reasonable and necessary to better reflect the original intent of the subpart which is to ensure compliance with any new mandates that apply to the child care assistance program. Additional proposed edits are discussed under general amendments one and three.

Part 3400.0150, subpart 2. Proposed deletion of language in this subpart that requires “a description of the process used to assure that information in forms and notices about child care assistance are accurate, clearly written, and understandable” is necessary and reasonable because the rule already requires that a county or tribe submit all county and tribal developed forms, policies, and procedures for Departmental approval. The Department ensures that forms and notices developed locally meet the requirements for plain language and readability and therefore a description of the local agency process used to assure the documents meet those standards is unnecessary and irrelevant. Removing the language alleviates administrative burden for local agencies. Additional proposed edits are discussed under general amendment one.

Part 3400.0150, subpart 2a. Language in this proposed new subpart codifies current Department practices established to carry out Minn. Stat. § 119B.08, subd. 3. Although the statute states that the commissioner must approve the child care fund plan and must notify local agencies of the plan approval, the statute does not explicitly indicate that the plan must comply with state and federal laws, nor that the plan must be complete. Although the statute does explicitly state that the plan must include “a description of the procedures and methods to be used to make copies of the proposed state plan reasonably available to the public,” it does not explicitly state that plans continue to be a matter of public information once approved and should therefore be readily available to the public. Requiring local agencies to provide information about how they make the approved plan available to the public within the plan is necessary and reasonable because it: (1) makes clear to the county or tribe that this information must be publicly available even after approval, (2) ensures the Department is able to supervise this local agency responsibility effectively, and (3) informs the members of the public who review the proposed plan how to access the approved plan.

Part 3400.0150, subpart 3. Proposed language in this subpart indicating the county or tribe may submit a written request to amend its child care fund plan is necessary to codify current agency practice related to child care fund plan amendments. Requiring the request to be written is reasonable because it also provides a documentable time stamp for when the commissioner’s 60 day timeline to approve or disapprove must be met.

Further additional proposed language that requires the county or tribe to include the approved amendment when making the approved plan available to the public reaffirms the need for transparency...
and ease of public access to approved child care fund plans. If the county or tribe amends their plan during the period that the child care fund plan covers but does not share the amendment, the public will not receive full and accurate information for how the county or tribe is administering child care assistance.

**Part 3400.0170 INCOME ELIGIBILITY FOR CHILD CARE ASSISTANCE.**

**Part 3400.0170, subpart 1.** Income, as defined under Minn. Stat. § 119B.011, subd. 15 is the family’s gross income after allowable deductions. The proposed addition to this subpart of the term “gross” prior to mentions of income is necessary and reasonable to best reflect statute and assist CCAP agencies in properly determining a family’s annual income and subsequent eligibility for child care assistance (see proposed edits to Minn. R. 3400.0170, subps. 4, 6a and 7). Under Minn. Stat. § 256P, not all income received by the family is considered countable income; therefore, the proposed addition of the modifier “countable” to income in this subpart is necessary to clarify that only counted income must be verified by the CCAP agency.

Additional proposed edits are discussed under general amendment one.

**Part 3400.0170, subpart 1a.** The proposed addition of this subpart is reasonable and necessary to clarify income limits for applicants and participants. Under Minn. Stat. § 119B.09, subd. 1, income limits vary based on the family’s participation in MFIP while income limits at redetermination are consistent for families. Additionally, the Federal Child Care and Development Fund, 45 C.F.R. § 98.21 requires that a family’s fluctuation in income during the 12 month period is taken into account and requires a graduated phase out for families who income exceeds the entrance level, but does not exceed 85 percent of state median income (see Minn. Stat. § 119B.025, subd. 4(e) and (f)). This proposed subpart also clarifies when families are subject to income limits after a time of suspension or ineligibility. Adding this subpart provides clarity by organizing all income limits in one subpart and helps to ensure families are treated consistently across CCAP agencies.

**Part 3400.0170, subpart 3.** Proposed changes to this subpart reflect changes made in 2015 to Minn. Stat. § 119B.011, subd. 15 that updated the definition of income to align with other public assistance programs in Minn. Stat. § 256P. Under state statute, when determining income for program eligibility, the concept of “excluded income” is no longer used. Therefore, the proposed deletion of the language referencing “excluded income” is necessary and reasonable. Other proposed edits are discussed under general amendments one and three.

**Part 3400.0170, subpart 4.** Proposed changes to this subpart are reasonable and necessary to reflect changes made in 2015 to Minn. Stat. § 119B.011, subd. 15 that updated the definition of income to align with other public assistance programs in Minn. Stat. § 256P. Under Minn. Stat. § 119B.09, subd. 4(c), lump sums counted as income under Minn. Stat. § 256P, subd. 3 must be annualized over 12 months. Lump sums received prior to the family participating in the Child Care Assistance Program are not counted; however, if a family receiving child care assistance receives a lump sum and the family’s eligibility ends, the lump sum must be counted through the end of the original annualization period if the family later reapplies. This ensures that receipt of lump sum income that previously made a family income ineligible to receive child care assistance continues to be counted in the event the family later reapplies and becomes eligible.

Other proposed changes to this subpart are reasonable and necessary to reflect changes made in 2015 and 2017 to Minn. Stat. § 256P.06 that address identification of family members with counted income and family members with income that is not counted. This proposed change clarifies that each family member’s income is evaluated, and updates how the income is evaluated so that it aligns with other
Part 3400.0170, subpart 4a. The addition of this subpart revises rule to reflect 2015 state statute changes to Minn. Stat. § 119B.011, subdivision 15 which change the definition of income to align with other public assistance programs in Minn. Stat. § 256P. Income received by members of the child care assistance family must be counted in the annualization of income; however, income earned by family members under Minn. Stat. § 256P.06, subdivision 2(a) are exempt. Additionally, due 2017 state statute changes to Minn. Stat. § § 256P.06, subdivision 2(c) about how to count the income of newly married members of assistance units, income of designated new spouses of MFIP or DWP applicants or participants are also exempt. The addition of this subpart is necessary to reflect new policies and is reasonable because it does not create any additional financial or administrative burdens beyond what was imposed in the statute changes.

Part 3400.0170, subpart 6a. Under Minn. Stat. § 119B.011, subdivision 15, the funds used by a family to pay for health insurance premiums for family members are allowed to be deducted. Proposed changes to this subpart are necessary to clarify that these deductions may be verified at any point, either while eligibility is being determined or during the 12 month eligibility period, allowing families to maximize their child care assistance benefit. It is reasonable to expand the rule language to include vision as a health insurance premium expense as this further benefits families. This does not create any additional financial or administrative burdens as it reflects the Department’s current application of state statute. It is also reasonable to include in rule that if a family is reimbursed for any portion of these premiums by medical assistance, those amounts may not be deducted because they are no longer expenses. When expenditures are necessary to secure payment of unearned income, such as legal fees, these expenses are allowed as a deduction.

Part 3400.0170, subpart 7. Minn. Stat. § 119B.09, subd. 4 requires self-employment income to be calculated with the use of gross receipts and operating expenses. It is reasonable for a self-employed person to have business records and be able to provide these records to the CCAP agency to determine the family’s annual income and subsequent eligibility for child care assistance. Proposed language in this subpart provides an alternative way for families in the start-up phase of self-employment who may not yet have sufficient documentation to predict their income. Permitting self-attestation is a necessary and reasonable approach to allow eligible families without long-term, established self-employment to receive child care assistance, while still allowing the CCAP agency or the Department, as allowed under Minn. Stat. § 245E.02, to assess an overpayment if business records later provided do not support the family’s eligibility or the amount of care authorized.

Part 3400.0170, subpart 8. The Department proposes deleting language in this subpart that describes how information in the subpart is made available. The document referenced by the subpart is known as the Combined Manual, and is currently located on the Department’s public website. The Combined Manual contains the policies and procedures for public assistance programs in Minnesota, including cash, food, and housing support, to assist financial workers in correctly applying policies to determine eligibility. Previously this document was accessible to the public through the Minitex interlibrary loan system. Deleting the language describing the Mininet interlibrary loan system is necessary and reasonable because the Combined Manual is now available through the Department’s public website.

Proposed deletion of items I through L in this subpart regarding expenses is necessary in order to simplify and align with changes that have been made to other programs since this rule was last updated. For the Supplemental Nutrition Assistance Program (SNAP), in the policies related to expenses for roomers and boarders, the flat rate deduction no longer exists and all reasonable expenses are allowed. Similarly, both the Minnesota Family Investment Program (MFIP) and SNAP no longer limit the amount
of expenses allowed for upkeep and repair of rental property. Therefore, it is necessary and reasonable to remove the items from this subpart that reference the flat rate deduction or a limit on expenses.

**Part 3400.0170, subpart 9.** Proposed deletion of language in this subpart that identifies specific expenses is necessary and reasonable. There are very few families receiving CCAP for self-employment, and even fewer cases in the start-up phase or first year of operations where documents other than a tax schedule are needed. Removing this language simplifies and clarifies application of the policy without changing the policy.

**Part 3400.0170, subpart 10.** The proposed addition of farm insurance payments to gross receipts for determining income creates a more comprehensive list of the types of farming income a family may receive. This addition is necessary and reasonable because insurance proceeds are included on IRS form 4835, Farm Rental Income and Expenses.

**Part 3400.0170, subpart 11.** Proposed changes to this subpart move language from items A and B to the subitems under item D and are necessary and reasonable for purposes of clarity and better organization of the information. All subitems under D are allowed expenses, regardless of whether the rental income is considered earned or unearned income. The allowed expenses align with expenses allowed under SNAP.

**Part 3400.0175 EXTENDED ELIGIBILITY.**

The proposed addition of part 3400.0175 establishes requirements for implementing Minn. Stat. § 119B.105, which was created in the 2017 legislative session. Adding this part is necessary to provide clarity and reflect new policies, and is reasonable because it does not create any additional administrative burdens on CCAP agencies or families beyond what is imposed by the statute.

**Part 3400.0175, subpart 1.** Minn. Stat. § 119B.105, subd. 1(b) identifies situations in which a family continues to be eligible for child care assistance for up to three months or until the family’s redetermination, whichever happens first, after having a permanent end to their only authorized activity. This proposed subpart is necessary and reasonable as it includes additional situations that signify a permanent end to an activity when a family is eligible to receive extended eligibility.

**Part 3400.0175, subpart 2.** While all families are required to report a permanent end in activity to the CCAP agency under Minn. Stat. § 256P.07, subd. 6, there may be situations in which the family or the CCAP agency do not know whether the activity end is temporary or permanent, or a temporary activity loss later becomes permanent. This proposed subpart is necessary and reasonable as it addresses these situations by providing guidance of when the extended eligibility period starts based on varying situations, and clarifies that extended eligibility is only available after all activities have permanently ended.

**Part 3400.0175, subpart 3.** Minn. Stat. § 110B.105, subd. 2 contains requirements for a family to continue receiving child care assistance after the family has received three months of extended eligibility or if the family’s redetermination of eligibility occurs prior to the end of the three month extended eligibility period. The proposed addition of this subpart is necessary and reasonable as it provides guidance on the requirements at the end of the extended eligibility period based on varying situations.

Proposed item A expands on these requirements and provides further details about the activities that would result in continued eligibility. Proposed item B supports a CCAP agency in terminating a family’s eligibility if the parentally responsible individual is not participating in an authorized activity at the end of the extended eligibility period. Proposed item C clarifies when a CCAP agency must end a family’s
eligibility related to parentally responsible individuals who have been deemed unable to care. Proposed changes to Minn. R. 3400.0040, subp. 5 state that the unable to care status of a parentally responsible individual may be permanent or temporary. If the CCAP agency does not have either verification of an ongoing unable to care status or knowledge of the parentally responsible individual’s activity participation, the family’s eligibility must end at the end of the extended eligibility period.

**Part 3400.0175, subpart 4.** To be eligible to receive child care assistance, a family must have a qualifying activity under Minn. Stat. § 119B.10 at application and redetermination. The proposed addition of this subpart is necessary and reasonable as it clarifies that extended eligibility is not available at application or redetermination: a family must be participating in a qualifying activity at the time of the application date or redetermination due date.

**Part 3400.0175, subpart 5.** During the extended eligibility period, children in the household who do not currently have child care authorized may need care. Examples of this may include a new child joining the household or a school aged child needing care for the summer months. The proposed addition of this subpart is necessary and reasonable as it provides guidance on how a CCAP agency authorizes care for a child when a parentally responsible individual is not participating in an authorized activity.

**Part 3400.0175, subpart 6.** Minn. Stat. § 110B.105, subd. 2 contains requirements for a family to continue receiving child care assistance after the family has received three months of extended eligibility or if the family’s redetermination of eligibility occurs prior to the end of the three month extended eligibility period. The addition of this subpart is necessary and reasonable as it allows care to be paid retroactively to the end of extended eligibility period through the end of the family’s 12 month eligibility period, benefitting both the family and the child care provider, and allowing for consistent care for a child when a parentally responsible individual is participating in an authorized activity.

Proposed item A expands on these requirements and provides further details about the new activities that would result in continued eligibility if the parentally responsible individual reports such an activity prior to the end of the extended eligibility period. Proposed language in item A, subitem (2) is specifically permissive and states that care can be authorized back as allowed under retroactive authorization policies. This language is permissive because there may be situations in which a child was not using receiving during that retroactive time period, and while the family would remain eligible, it may not be appropriate to authorize care.

Proposed item B clarifies that in the event a parentally responsible individual fails to report they are participating in a new authorized activity during the extended eligibility period, care can be authorized back to the end of the extended eligibility period if the parentally responsible individual remains eligible and reports within 90 days that the new activity started before extended eligibility ended.

**Part 3400.0180 REDETERMINATION OF ELIGIBILITY.**

Proposed changes to part 3400.0180 are reasonable and necessary to reflect changes to Minn. Stat. § 119B.025, subd. 3, which redefined redetermination timelines to establish twelve month continuous eligibility for families, as required under the Federal Child Care and Development Fund, 45 C.F.R. § 98.21.

**Part 3400.0180, subpart 1.** Proposed changes to this subpart and reasonable and necessary to reflect that eligibility redeterminations must occur no more frequently than every twelve months as required under Minn. Stat. § 119B.025, subd. 3. Generally, the time for redeterminations is every twelve months and is implemented systematically based on dates are in the statewide eligibility and payment system. Proposed language establishes circumstances in which a CCAP agency may extend the redetermination timeline beyond twelve months allowed under statute. This is currently being operationalized by
counties and tribes amending their biennial child care fund plan to include criteria under which redetermination timelines are extended.

Proposed language also incorporates a specific scenario in state statute in which the redetermination timeline may be extended for caregivers who are students. Under Minn. Stat. 119B.025, subd. 3, if a parent is younger than 21 years of age and attending a certain education program, the redetermination of eligibility may be deferred beyond 12 months “to the end of the student’s school year.” The statute does not identify a specific date for the end of the school year which has resulted in inconsistent application of policy among CCAP agencies. For example, CCAP agencies may determine that the end of the school year is the student’s graduation date, the end of the school district’s regular session, or the end of the school district’s summer school session. Extension of the redetermination due date beyond 12 months to August 31 as the end of the student parent’s school year is beneficial to the family. It gives most student parents who graduated with a high school diploma or general equivalency diploma a limited amount of time following graduation to remain on CCAP and enroll in another authorized activity, which is particularly beneficial if the student’s only activity was education. This proposed change is necessary and reasonable because it provides further support to this vulnerable population and helps to ensure consistent care arrangements. Per statute and rule this extension remains optional; CCAP agencies can either keep student parent redeterminations at 12 months or extend beyond 12 months to August 31. Revising language in this section is necessary to reflect new policies and provide consistent application of policies, and is reasonable because it does not create any additional financial or administrative burdens on providers and families beyond what is imposed by statute.

**Part 3400.0180, subpart 2.** Under Minn. Stat. § 119B.025, subd. 1, CCAP agencies are provided a timeframe in which to approve or deny assistance; however, no time limit currently exists in statute or rule for when a CCAP agency must act on a submitted redetermination. The proposed addition to this subpart of a timeframe in which CCAP agencies must act on submitted redeterminations is necessary and reasonable as it helps prevent families experience unneeded delays in case action, particularly when families only have a certain amount of time to submit all needed verifications in order for a redetermination to be considered complete under Minn. Stat. § 119B.025, subd. 3.

Further changes clarify that the term “documentary evidence” in the current item B means a completed, signed redetermination form and accompanying verification. These are clarifying changes that do not create new burdens or administrative costs for parties administering or receiving child care assistance.

**Part 3400.0180, subpart 3.** The proposed addition of this subpart is reasonable and necessary because it clarifies the requirements from Minn. Stat. § 119B.025, subd. 1(a) that must be verified at redetermination as indicated in Minn. Stat. § 119B.025, subd. 3(b). Because some of the factors verified at application are unchanging, such as identity, age, and relationship, it is not necessary to re-verify them at redetermination if there is no indication that the information has changed.

These changes align with the restructuring proposed in Minn. R., part 3400.0040, subpart 3. Changes are necessary to differentiate when verification is required to determine eligibility (i.e. item A) versus to authorize child care (i.e. item C). In addition, content added to item B differentiates optional verifications, the absence of which would not prevent a family from being determined eligible but may result in a different amount of benefits if verified. These clarifications will make it easier for CCAP agencies to administer the program and are more family-friendly for participants. These changes do not create new burdens or administrative costs for parties administering or receiving child care assistance.

The proposed addition of item D provides detail about the citizenship and immigration status for children. To meet eligibility requirements at redetermination, the citizenship or immigration status must be verified for at least one child in the family in order to be eligible, unless the child is receiving care in a
setting subject to public education standards. A family having at least one child with verified citizenship or immigration status meets the citizenship or immigration eligibility requirement. Federal Child Care and Development Fund, 45 C.F.R. § 98.20(c) states that only the citizenship and immigration status of the child is relevant, and eligibility for services under § 98.50 may not be based on the citizenship or immigration status of a parent. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) specifically provides that its provisions do not apply to Head Start and non-postsecondary educational programs and that it does not have any effect on the participation of non-citizen children in these programs. Consequently, the federal government has determined that when child care assistance funds are used to pay for child care in settings subject to public educational standards, such as a Head Start or a pre-kindergarten or a school-age care program operated under public education standards, PRWORA does not require verification of the child’s citizenship or immigration status because the child is participating in a non-postsecondary educational program.

Part 3400.0180, subpart 4. This proposed new subpart specifies what is needed for a CCAP agency to approve eligibility at a redetermination. This change is necessary and reasonable because it provides clarity and does not create new burdens or administrative costs for parties administering or receiving child care assistance. Plain language edits result in no substantive changes to rule.

Part 3400.0180, subpart 5. This proposed new subpart implements changes to reporting requirements in Minn. Stat. § 256P.07 made in the 2017 legislative session. Further changes to Minn. Stat. § 119B.025 and Minn. Stat. § 119B.095 in the 2017 legislative session significantly limit the circumstances under which a family’s benefit level would change during their twelve month eligibility period. With a longer redetermination period and reduced reporting requirements, it is more likely that a CCAP agency will not know about changes the family experiences until redetermination. At that time, it may be necessary for the CCAP agency to determine if care was paid for which the family was ineligible. To ensure continuity of care for the children in the household, the CCAP agency should not delay determining the family’s current eligibility. The proposed standards in this subpart are necessary to provide guidance to the CCAP agency for how to address information received at redetermination that should have been reported earlier to ensure consistent application of policy across CCAP agencies. These requirements ensure families retain the benefits they are eligible for but are not dis-incentivized from complying with reporting timelines.

Changes to Minn. Stat. § 119B.11, subd. 2a(c) made in the 2021 legislative session gives the commissioner authority to assess an overpayment to a family if the overpayment is part of an investigation conducted under Minn. Stat. § 245E. The proposed addition of item B addresses the recoupment or recovery of overpayments due to unreported changes, by either the CCAP agency or the commissioner, according to the rates specified in Minn. R. 3400.0187. Adding language about unreported changes and potential overpayments are necessary to reflect new policies and are reasonable because they do not create any additional financial or administrative burdens on providers and families beyond what is imposed by statute.

Part 3400.0180, subpart 6. This proposed new subpart is reasonable and necessary because it implements changes to reporting requirements in Minn. Stat. § 256P.07 made in the 2017 legislative session. Further changes to Minn. Stat. § 119B.025 and Minn. Stat. § 119B.095 in the 2017 legislative session significantly limit the circumstances under which a family’s benefit level would change during their twelve month eligibility period. Differences in reporting requirements between different public assistance programs means that sometimes a CCAP agency will have information about a change in

15 The specific PRWORA citation is 8 U.S.C. § 1611(c)(1)(B), which includes specifically postsecondary education in the definition of federal public benefit.
family circumstances but it may be a change that the family is not required to report to the CCAP agency and therefore the CCAP agency is prohibited from acting on it. At redetermination, as long as the family’s current income is verified and the CCAP agency is able to annualize income with the information on hand, it is not necessary to verify past income increases that are no longer relevant. Doing so would be contrary to federal direction to reduce burdens on families and only verify information necessary to determine eligibility.

Establishing twelve month eligibility was a significant change to the implementation of CCAP, necessitating explicit guidance about how existing policies, such as overpayments, interact with the new policies. Guidance in item B of this subpart addresses this issue and identifies when overpayments are not appropriate. Adding language about the interaction of changes and reporting is necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what was imposed in the statute change.

**Part 3400.0180, subpart 7.** This proposed new subpart establishes timelines and procedures for making changes to a family’s authorized hours. These rules are necessary to implement Minn. Stat. § 119B.095, which was added in the 2017 legislative session. This proposed subpart aligns with procedures for copayment changes in part 3400.0180, subpart 8. The subpart also aligns with adverse action notice requirements under part 3400.0185. Adding language about authorization changes and timelines is necessary to reflect new policies and is reasonable because it does not create any additional financial or administrative burdens on providers and families beyond what is imposed by the statute.

**Part 3400.0180, subpart 8.** This proposed new subpart updates the reference for how copayments are calculated to Minn. Stat. § 119B.12 which contains the relevant information. This update is necessary because current language references Minn. R. 3400.0100 which does not include any information on calculating copayments. It is reasonable to reference statute because it includes the applicable information to calculate copayments.

Proposed language also includes the process for implementing copayment increases and implementing changes to copayments that are not an adverse action (in other words, changes that decrease the amount of the copayment). These are clarifying changes that do not create new burdens or administrative costs for parties administering or receiving child care assistance.

**Part 3400.0180, subpart 9.** The Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R. § 98.41 requires that families who are otherwise eligible for assistance receive continued eligibility while on temporary leave from their authorized activity. During a family’s twelve month eligibility period, if the family does not fall under a condition identified in Minn. Stat. § 119B.095, subd. 1(b) and is therefore a twelve-month reporter under Minn. R. 3400.0020, subp. 1b, the family must have care continue uninterrupted until the family’s redetermination. A family who does fall under a condition identified in Minn. Stat. § 119B.095, subd. 1(b) and is therefore a schedule reporter under Minn. R. 3400.0020, subp. 38c, must have care reduced or suspended based on their verified activity schedule but may maintain eligibility until their redetermination. At redetermination, to maintain eligibility a family must verify their participation in an authorized activity. To have care authorized, they must verify their current activity schedule. Families who still have an authorized activity but who are not currently scheduled in that activity must be determined eligible but must not have care authorized for an activity they are not participating in. The proposed language in this subpart clarifies how families on a temporary leave should be handled at redetermination. Minnesota’s approach balances federal direction and program integrity to reasonably support continuity of care for children while ensuring that funds are being used to support parental authorized activities. Adding language about temporary breaks in activity at redetermination is necessary to reflect new policies and is reasonable because it does not create any
additional financial or administrative burdens on providers and families beyond what is imposed by statute.

**Part 3400.0183 TERMINATION OF CHILD CARE ASSISTANCE.**

**Part 3400.0183, subpart 1.** Proposed edits to item B are reasonable and necessary to clarify that a county or tribe must give a family notice as described under the proposed changes to Minn. R. 3400.0185, subp. 12 when child care assistance is being terminated due to a revised allocation from the child care fund. The addition of this language ensure families are given proper notice of their assistance ending.

Further proposed revisions are reasonable and necessary to provide clarity around the process and order of removing families from the basic sliding fee program, specifically surrounding the previous language of “last on, first off.” The intent of the language is to specify that the last family who had their CCAP eligibility approved is the first family to be removed from child care assistance due to a change in allocation and lack of funding. The proposed language clarifies that this includes a family receiving child care assistance for the first time, and also includes families who may have a history of child care assistance participation, but had a break in service, and were later reapproved with a new application. The language also specifies that the date used for this process is the date of the latest eligibility approval at application for all families; this specification is necessary to ensure the family’s latest eligibility approval date at redetermination is not used.

Other proposed changes remove language referencing reinstatement. For child care assistance processes, reinstatement typically means the family’s child care case is opened back to the date of closure. The process in item B is not the same as this programmatic understanding of reinstatement. Under item B, once funds become available, those families who were removed due to reduced funding are the first families to have their eligibility determined. If the family is eligible, they may be placed back on the basic sliding fee program prior to other families on the waiting list; however, once funds are available, the family is only able to receive basic sliding fee child care starting from the point they are determined eligible, and their eligibility is not reinstated back to when their case closed. Removing references to reinstatement in item B is necessary to create clarity.

Further proposed edits to item B are reasonable and necessary to clarify that eligibility for new applicants cannot be approved when families previously receiving assistance were terminated, replacing the current language which states that new applications cannot be accepted by the county or tribe. This change aligns with Minn. R. 3400.0035, subp. 2, which states that CCAP agencies must accept all signed and dated applications. This clarifying change ensures rule language is in alignment across chapter 3400.

Additional edits are discussed under general amendments one and three.

**Part 3400.0183, subpart 2.** Under the Child Care and Development Block Grant Act of 2014, Public Law Number 113 –186, and the Federal Child Care and Development Fund, 45 C.F.R. § 98.21, the 12 month eligibility period was established to support a family’s continuous eligibility and provide for stable, consistent child care arrangements for children. Proposed changes in this subpart are reasonable and necessary to reflect these changes to federal law. During the time between eligibility determinations, there are limited reasons for terminating a family’s eligibility for child care assistance. Reasons for eligibility termination are noted in item B. When the family’s eligibility is redetermined, the family must meet the eligibility requirements in Minn. R. 3400.0180. If the family fails to meet eligibility requirements, the family’s eligibility must be terminated for the reasons in item C.

**Part 3400.0183, subpart 5.** Minn. Stat. § 256.98, subd. 8(b) provides that a family can be disqualified from receiving child care assistance due to fraud. The proposed addition of the word “family” to this
subpart is reasonable and necessary to clarify that this language is specific to families. The proposed addition of subpart 6 to part 3400.0183 sets the disqualification effective dates and is specific to child care providers.

**Part 3400.0183, subpart 6.** Minn. Stat. § 256.98, subd. 8(c) provides that a provider can be disqualified from receiving child care assistance due to fraud. This proposed subpart is reasonable and necessary to clarify the effective date of the provider disqualification. Similar language pertaining specifically to families exists in Minn. R. 3400.0183, subp. 5. The addition of this subpart clarifies similar provisions that exist for providers, and provides necessary guidance to CCAP agencies for determining a provider’s disqualification effective date.

**Part 3400.0185 NOTICE REQUIREMENTS.**

Proposed changes revise part 3400.0195 to include all notice requirements, and reorganize the rule part so that it flows in more of a chronological order for child care assistance program processes. The changes and reorganization group related provisions together, making the entire chapter easier to use and understand. Due to numerous statutory changes enacted in response to the passage of the Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R., the Department reviewed all notices received by families and child care providers. As a result of this review, the Department made updates to ensure that language in the notices accurately reflected policy, and that the notices include all elements required by statute and are written in plain language. Proposed changes to this rule part are reasonable and necessary to align with the recent changes to federal and state statutes, and reflect changes the Department has made to the notices themselves.

**Part 3400.0185, subpart 1.** Proposed changes repeal this subpart and move the content to Minn. R. 3400.0185, subp. 12.

**Part 3400.0185, subpart 2.** Proposed changes repeal this subpart and move the content to Minn. R. 3400.0185, subp. 13.

**Part 3400.0185, subpart 3.** Proposed changes repeal this subpart and move the content to Minn. R. 3400.0185, subp. 10.

**Part 3400.0185, subpart 4.** Proposed changes repeal this subpart and move the content to Minn. R. 3400.0185, subp. 11.

**Part 3400.0185, subpart 6.** This proposed subpart reflects content related to eligibility approval of the family that is currently found in Minn. R. 3400.0035, subp. 5. Current content in part 3400.0035, subp. 5 includes both eligibility approval and authorization of care, which is not an accurate reflection of what a family receives. A family’s eligibility and authorization are often not a simultaneous process and are treated separately. A family may be determined eligible before a provider is selected and the type of provider selected, the provider’s location, and the provider’s availability determines much of the information that is included in an authorization. A family receives a separate notice for each function, so content in this subpart focuses specifically on the notice requirements for eligibility approval. While a CCAP agency must notify families of the hours of care authorized and the maximum rates that may be paid, it is not necessary for this information to be included in an approval notice. Notice of authorization is detailed in part 3400.0185, subp. 8. The content changes reflected in this proposed subpart are necessary and reasonable to reflect how the program is currently operationalized.

Other proposed changes to this subpart from the current language in part 3400.0035, subp. 5 are needed and reasonable to better align with related statutes. The revised language reflects the reporting
requirements for families during their 12-month eligibility period. Under Minn. Stat. § 256P.07, families are no longer required to report within 10 days all of the items currently identified in part 3400.0035, subp. 5. Due to changes to Minn. Stat. § 119B.03, subd. 9 in the 2019 legislative session, there is no longer a limit on how long a family may receive portability pool funding. Therefore, the proposed language for subpart 5 reasonably removes language referencing these two items.

Further restructuring of this subpart into several items improves clarity and readability and promotes more accurate implementation across CCAP agencies.

**Part 3400.0185, subpart 7.** This proposed subpart reflects content related to eligibility denial to the family that is currently found in Minn. R. 3400.0035, subp. 4. This subpart is necessary and reasonable because the content remains relatively unchanged, and restructuring this subpart into several items improves clarity and readability.

**Part 3400.0185, subpart 8.** This proposed subpart reflects content related to authorization of the family that is currently found in Minn. R. 3400.0035, subp. 5. Current content in part 3400.0035, subp. 5 includes both eligibility approval and authorization of care, which is not an accurate reflection of what a family receives. A family’s eligibility and authorization are often not a simultaneous process and are treated separately. Previous content that was specific to authorization has also been expanded to include the number of absent days used in the calendar year and the family’s copayment. These factors are reasonable as they assist a family in tracking the amount of paid absent days already used and the copayment amount they are responsible for, both of which have an impact on their overall benefit from the program. The addition of this subpart is reasonable and necessary because it reflects current practice and is the most efficient and timely way to notify families of their authorization. The proposed content also closely mirrors language in part 3400.0185, subp. 9, which addresses the authorization notice received by the provider.

**Part 3400.0185, subpart 9.** This proposed subpart reflects content related to giving notice to a provider that is currently found in Minn. R. 3400.0035, subp. 6. Content remains relatively unchanged with the exception of restructuring this subpart into several items to improve clarity and readability. Proposed new content also includes the addition of the amount of the family’s copayment. Inclusion of the family’s copayment is reasonable as the provider needs to know how much to collect from the family, as required under Minn. Stat. § 119B.12, subd. 2. This subpart as proposed is reasonable and necessary because it reflects current practice and is the most efficient and timely way to notify providers of their authorization.

**Part 3400.0185, subpart 10.** This proposed subpart reflects content related to giving notice to a family of an adverse action that is currently found in Minn. R. 3400.0185, subp. 3. Proposed new language is reasonable and necessary because it clarifies that an eligible provider, as defined under proposed Minn. R. 3400.0120, subp. 1, may receive reimbursement for documented eligible expenses if the family’s adverse action is reversed and the eligible provider meets the billing requirements under Minn. Stat. § 119B.13, subd. 6, paragraphs (a) through (c). CCAP may only pay for care that has been authorized and may not reimburse families directly for incurred expenses. All payments must be made directly to the child care provider, with the exception of payments made to a parentally responsible individual when a provider cares for a child in the child’s home under Minn. Stat. § 119B.09, subd. 10. Plain language edits result in no substantive changes to rule. Other edits are discussed under general amendment one.

**Part 3400.0185, subpart 11.** This proposed subpart reflects content related to notice to a child care provider of an adverse action to a family that is currently found in Minn. R. 3400.0185, subp. 4. This subpart is necessary and reasonable because the content remains relatively unchanged with the exception of a slight restructuring to improve clarity and readability. Other edits are discussed under
general amendment one.

**Part 3400.0185, subpart 12.** The proposed subpart reflects content related to giving notice to a family of termination of child care assistance that is currently found in Minn. R. 3400.0185, subp. 1. Proposed new language is necessary and reasonable because it clarifies that an eligible provider as defined under proposed Minn. R. 3400.0120, subp. 1 may receive reimbursement for documented eligible expenses if a family’s termination is reversed and the eligible provider meets the billing requirements under Minn. Stat. § 119B.13, subd. 6, paragraphs (a) through (c). CCAP may only pay for care that has been authorized and may not reimburse families directly for incurred expenses. All payments must be made directly to the child care provider, with the exception of payments made to a parentally responsible individual when a provider cares for a child in the child’s home under Minn. Stat. § 119B.09, subd. 10. Due to changes to Minn. Stat. § 119B.03, subd. 9 in the 2019 legislative session, there is no longer a limit on how long a family may receive portability pool funding. Therefore, this subpart as proposed removes specific language requiring a family to apply for benefits in a new county within 60 days. Plain language edits result in no substantive changes to rule. Other edits are discussed under general amendment one.

**Part 3400.0185, subpart 13.** This proposed subpart reflects content related to giving notice to a child care provider of termination of child care assistance that is currently found in Minn. R. 3400.0185, subp. 2. The proposed changes are reasonable and necessary to provide clarity and consistency. The proposed addition of notification time frames ensures that providers are given proper termination notice and aligns with other 15 day notice requirements used by CCAP. Item A specifies what information must be included in the termination notice. Proposed removal of language from item A, subitem (4) that addresses what cannot be included in a termination notice helps simplify the language and removes confusion. Proposed changes to items A, subitem (4) and item B, subitem (4) provide clarity. Current language indicates payments will no longer be made effective on the date of termination. Under Minn. Stat. § 119B.13, subd. 6, if a provider has received an authorization, the provider may submit a bill within 60 days of the last date of service on the bill, or more than 60 days but less than one year if the provider shows good cause for the delay. While a CCAP agency must not pay for care provided after the termination date, proposed language clarifies that the CCAP agency may pay for care authorized and provided before the termination date. This is the same justification for proposing replacement of the term “payments” with “authorization” in item B, subitem (3). Proposed changes to item D clarify that “imminent risk” is defined by each CCAP agency in their child care fund plan. Plain language edits result in no substantive changes to rule. The proposed addition of item E reflects a statutory change made during the 2019 legislative session. Minn. Stat. § 119B.161, subd. 2(c) governs the notice requirements to a family when a provider’s payment is suspended or a provider’s authorization is denied or revoked, and states that the notice sent to a family is effective on the date the notice is created. While it can be implied that this same notice requirement applies to providers, this is not explicitly stated in statute. To provide additional context and clarity, proposed item E specifies that the termination notice sent to the provider is also effective on the date the notice is created. Other edits are discussed under general amendment one.

**Part 3400.0187 RECOUPMENT AND RECOVERY OF OVERPAYMENTS.**

**Part 3400.0187, subpart 1.** The current language in this subpart is fully incorporated into Minn. Stat. § 119B.11, subd. 3, rendering this subpart duplicative and unnecessary, and therefore reasonable to repeal.

**Part 3400.0187, subpart 1b.** While current language in part 3400.0187 discusses recoupment and
recovery, it does not address the establishment of the overpayment. The proposed addition of this subpart is reasonable and necessary because it clarifies that overpayments apply to both providers and families and may be assessed by the Department or the CCAP agency. The establishment of an overpayment must include any amount that the family or provider was not eligible to receive, and must consider the dates over which those payments were received. The proposed language also reflects changes made during the 2021 legislative session to Minn. Stat. § 119B.11, subd. 2a(a) which prohibits the establishment or collection of overpayments designated solely as agency error and to Minn. Stat. § 119B.11, subd. 2a(h), which addresses the time period after which overpaid funds should not be collected (lookback period). This is a clarifying change that does not create new burdens or administrative costs for parties administering or receiving child care assistance.

**Part 3400.0187, subpart 2.** Proposed changes to this subpart are reasonable and necessary to align with statute. The Department proposes adding the term “commissioner” to this subpart because Minn. Stat. § 119B.125 also gives the commissioner authority to establish an overpayment claim and recoup or recover overpayments from child care providers. Proposed edits also include adding “entity” as a party who must be notified of an overpayment, as there are instances of provider overpayments for which the licensed or certified business under Minn. Stat. § 119B.011, subd. 19 is responsible for the overpayment. Additional edits are discussed under general amendment one.

**Part 3400.0187, subpart 3.** The proposed repeal of this subpart reflects changes to Minn. Stat. § 119B.025, subd. 3 that redefined redetermination timelines to establish twelve month continuous eligibility for families. CCAP agencies cannot redetermine a family’s eligibility when an overpayment has occurred because redeterminations cannot occur more frequently than every 12 months so it is necessary and reasonable to repeal the existing language. Revising language in this section is reasonable and necessary to reflect new policies and does not create any additional financial or administrative burdens on providers and families beyond what is imposed by statute.

**Part 3400.0187, subpart 4.** Proposed changes to this subpart are reasonable and necessary to align with statute. The Department proposes adding the term “commissioner” to this subpart because Minn. Stat. § 119B.11, subd. 2a(c) also gives the commissioner authority to establish an overpayment claim and recoup or recover overpayments from a family if part of an investigation conducted under Minn. Stat. § 245E.

Proposed language in items A, B, and C reflects changes made during the 2021 legislative session to Minn. Stat. § 119B.11, subd. 2a(a) which prohibit the establishment or collection of overpayments designated solely as agency error.

The proposed deletion of “subdivision 1” under item D is necessary so that all of Minn. Stat. § 256.98 is referenced. Currently, in addition to subdivision 1, subdivision 8 of § 256.98 also applies to item D. Referencing all of § 256.98 is reasonable to ensure that if other violations are added to the statute they will apply to item D without necessitating further revisions to the rule.

The proposed removal of language in this subpart is discussed under Minn. R. 3400.0187, subp. 3. Additional edits are discussed under general amendment one.

**Part 3400.0187, subpart 6.** Proposed changes to this subpart are reasonable and necessary to align with statute. The Department proposed adding the term “commissioner” to this subpart because Minn. Stat. § 119B.125 also gives the commissioner authority to establish an overpayment claim and recoup or recover overpayments from child care providers. Additional edits are discussed under general amendment one.

Proposed language in items A and B reflects changes made during the 2021 legislative session to Minn.
Stat. § 119B.11, subd. 2a(a) which prohibit the establishment or collection of overpayments designated solely as agency error.

The proposed deletion of “subdivision 1” under item C is necessary so that all of Minn. Stat. § 256.98 is referenced. Currently, in addition to subdivision 1, subdivision 8 of § 256.98 also applies to item C. Referencing all of § 256.98 is reasonable to ensure that if other violations are added to the statute they will apply to item C without necessitating further revisions to the rule.

Proposed language in items E and item F addresses what happens when CCAP agencies or the commissioner assess multiple overpayments against a provider. The CCAP agency that issued the payment to a provider is responsible for establishing and assessing any related overpayments. This is reasonable and necessary because it helps to ensure that recovered funds will go back to the specific county or tribe that initially paid the funds in the manner required by Minn. Stat. § 119B.11, subd. 3. Many child care providers receive child care assistance payments from multiple CCAP agencies. When multiple CCAP agencies assess an overpayment against a provider or the Department assesses overpayments for multiple counties and tribes for the same incident (for example, payment at the wrong rate), each payment the provider receives is recouped at the amount specified in items A to C. However, if a provider is assessed an overpayment across multiple CCAP agencies, the overpayment is recouped on all open overpayments at once, resulting in a higher recoupment amount than is specified in items A to C. For example, if three CCAP agencies assess three separate overpayments against the same provider for agency error of paying incorrect rates, under current rule language, the recoupment amount would be 30 percent (10 percent for each claim). The proposed addition of item F clarifies that the recoupment amount for the same incident should be ten percent, which is reasonable because it benefits the provider, and prevents recoupment of more than the allowed amount. Proposed language in item E further clarifies that if a provider is assessed overpayments for different incidents (for example, payment at the wrong rate at one point in time and failure to provide accurate information at a different point in time), the recoupment would be the amounts in items A to C simultaneously.

Part 3400.0200. Current language in rule is fully incorporated into Minn. Stat. § 119B.15 and Minn. Stat. § 119B.08, subdivision 2, rendering this rule language unnecessary and reasonable to repeal to avoid duplicate provisions.

Part 3400.0220. Current language in rule is fully incorporated into Minn. Stat. § 119B.11, subdivision 3 rendering this rule language unnecessary and reasonable to repeal to avoid duplicate provisions.

Part 3400.0230 RIGHT TO FAIR HEARING.

Part 3400.0230, subpart 3. Proposed updates to this subpart are reasonable and necessary to align with notice requirements to families and providers in part 3400.0185. If the outcome of an appeal necessitates an adverse action, the CCAP agency must sent notice to the family and the provider 15 days before the adverse action takes effect. The adverse action would not necessarily occur on the date of the notice as this subpart currently states. Additionally, depending upon the appeal decision, the CCAP agency must determine if any overpayments should be assessed during the adverse action period.

Proposed language clarifies that an eligible provider as defined in proposed part 3400.0120, subp. 1 may receive reimbursement for documented eligible expenses if a family’s adverse action or termination is reversed and the eligible provider meets the billing requirements under Minn. Stat. § 119B.13, subd. 6, paragraphs (a) through (c). CCAP only pays for care that has been authorized and does not reimburse families directly for incurred expenses. All payments must be made directly to the child care provider, with the exception of payments made to a parentally responsible individual when a provider cares for a child in the child’s home under Minn. Stat. § 119B.09, subd. 10.
Additional edits are discussed under general amendments one and three.

**Part 3400.0230, subpart 4.** The proposed addition of this subpart is reasonable and necessary to reflect changes to Minn. Stat. § 119B.16 made in the 2019 legislative session that expand a provider’s ability to request a fair hearing. Current language in part 3400.0230 only allows families to continue receiving child care assistance pending an appeal. Proposed subpart 4 would also allow a provider to continue receiving child care assistance payments during the appeal, but results in their payments being reduced.

On or after February 26, 2021, a provider who requests a hearing prior to the effective date of the adverse action may continue receiving child care assistance pending appeal, except when: (1) the provider is appealing the assignment or responsibility, amount, or recovery of an overpayment because recoupment cannot be stopped pending an appeal; (2) the fair hearing is stayed pending the outcomes of a licensing appeal; or (3) the adverse action entitles the provider to an administrative review. In these situations, the provider’s ability to continue receiving benefits pending appeal is addressed in proposed subpart 5 of this part.

Proposed subpart 4 also clarifies that if on appeal the commissioner determined that care should not have been terminated or reduced, the provider must re-register as required under Minn. R. 3400.0120 in order to receive child care assistance again. This is consistent with Minn. Stat. § 119B.125, subd. 1, which requires a provider to be registered before the CCAP agency can authorize payments for care provided.

**Part 3400.0230, subpart 5.** The proposed addition of this subpart is reasonable and necessary to reflect changes to Minn. Stat. § 119B.16 made in the 2019 legislative session that allow a provider to request an administrative review effective on or after February 26, 2021. Proposed language clarifies that a provider cannot receive payment pending an administrative review when payments are stopped for suspected fraud. Proposed language also clarifies that if the Department determines there is good cause under Minn. Stat. § 119B.161, subd. 4 to lift the payment hold, the provider must re-register as required under Minn. R. 3400.0120 in order to receive child care assistance again. This is consistent with Minn. Stat. § 119B.125, subd. 1, which requires a provider to be registered before the CCAP agency can authorize payments for care provided.

**Part 3400.0235 AT-HOME INFANT CHILD CARE PROGRAM.**

The Department proposes the repeal of part 3400.0235 in its entirety. Minn. Stat. § 119B.035 includes the At-Home Infant Child Care (AHIC) program, but funding for the program ended July 1, 2007 and it has not been funded since. Due to other statutory and overall procedural and system changes to CCAP, the current rule language regarding AHIC is no longer relevant and cannot be implemented. Therefore, it is reasonable and necessary to repeal this rule part at this time. In the event AHIC is funded in the future, the Department will consider revised guidance and rule language as necessary to operationalize the program.

**Regulatory analysis**

A. **Description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

   Local governments, families receiving child care assistance, and child care providers will overall benefit from the proposed rules.

   The proposed rules will benefit the Department, and county agencies, tribal agencies and workers
that administer the Child Care Assistance Program by aligning Minnesota Rules, chapter 3400 with changes in statute, clarifying procedures and policies applicable to the program, and revising rule language to be more inclusive or more responsive to potential changes in statute. The current rules do not reflect changes over the last ten years which have:

- Aligned income definitions across public assistance programs,
- Rebalanced program priorities between work support and child development,
- Required states to establish health and safety requirements and monitoring structures for any child care provider receiving payments from the Child Care Assistance Program, and
- Incorporated additional program integrity measures.

Because current rules do not reflect these programmatic changes in state and federal law, it is difficult for CCAP agencies to determine which provisions of rule are still valid and how they align with new laws. Amending the rules to remove obsolete language and clarify existing provisions will make it easier for CCAP agencies to administer the laws governing CCAP. For example, proposed rules reflect changes to Minn. Stat. § 119B.09, which removed time limits for portability pool funding for families who move between counties with basic sliding fee waiting list (see proposed rule parts 3400.0035, subp. 1a and 3400.0060, subp. 9). The proposed rules also add content previously absent from rule on transition year extension (see proposed rule part 3400.0090, subp. 10) and reflect changes to Minn. Stat. § 119B.011 that shortened the period of time in which a family must receive MFIP or DWP to qualify for transition year child care assistance (see proposed rule part 3400.0090, subp. 2). Clarifying policy will ensure more consistent program administration for families across the state.

Families eligible for or using the Child Care Assistance Program will benefit from the proposed rules. The proposed rule changes reflect statutory changes that significantly reduce the circumstances under which a family’s benefit level is able to change during their twelve month eligibility period. Other specific examples of how families will benefit from the proposed rule include:

- Expanding allowable deducted health insurance expenses to include vision insurance premiums (see proposed rule part 3400.0170, subp. 6a);
- Consistent authorization of care for students, regardless of the student’s part-time or full-time status (see proposed rule part 3400.0040, subp. 10);
- Allowing authorizations for students receiving benefits from MFIP to be based on the student’s employment plan, which may include additional hours that differ from authorization standards (see proposed rule part 3400.0040, subp. 10); and
- Differentiating between what verifications are needed to determine eligibility versus authorize care, and outlining which optional verifications a family is able to submit that may result in a greater CCAP benefit (see proposed rule parts 3400.0040, subp. 3 and 3400.0180, subp. 3).

Child care providers will also benefit from the proposed rule. In addition to bringing rules into alignment with statute, a notable benefit in the proposed rules allow a child care provider to choose which days the provider may take as a paid cultural and religious holiday, and removes the requirement that the days be only state or federal holidays. This proposed change provides more flexibility for providers to use the ten paid holidays in ways that are more in line with their cultural and religious beliefs (see proposed rule part 3400.0110, subp. 9). Additionally, proposed rules pertaining to certified license exempt centers allow payment to an alternative location operated by the same entity on a short-term basis when a child’s primary certified license exempt site is not open, most commonly on school release days. The proposed rules avoid complicated, short-term
B. **The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.**

As a result of the proposed rules, the Department plans to update needed forms and the CCAP policy manual which are posted on the Department’s public website. The work necessary to publish these documents will be performed during normal work hours and will not produce any additional staff expense. Additionally, any needed training for workers who administer CCAP to support implementation of the proposed rule will be folded into existing worker training conducted yearly by the Department throughout the state, and would not be a specific expense attributed to the proposed rules. Most of the rule provisions simplify and codify existing policies that were funded by statutory allocations and overall, the rules do not impose new administrative burdens on program staff.

Some changes, such as the proposed clarification to not require families to submit verifications during a preliminary determination of eligibility prior to being added to the Basic Sliding Fee waiting list (see proposed rule part 3400.0065, subp. 1), could reduce costs for local agencies related to case processing and waiting list management, in addition to being a more family-friendly reform. Additionally, aligning medical professionals qualified to determine when a parent is unable to care with the professionals who are able to determine a schedule reporter’s medical leave of absence reduces verification and documentation burdens, as well as administrative oversight (see proposed rule parts 3400.0040, subp. 5 and 3400.0110, subp. 10).

Costs for other policies, such as the changes to authorization methodology for part-time students (see proposed rules part 3400.0040, subp. 10) are harder to gauge because there may be an increased cost to state revenues due to families receiving more service, but simplifying the program may reduce administrative costs for local agencies. Further, the proposed rule adds a processing timeframe of ten calendar days from when the CCAP agency receives a family’s redetermination (see proposed rules part 3400.0180, subp. 2). In addition to benefiting families by preventing unnecessary delays in case actions, this timeframe would also help CCAP agencies to ensure timely case action, which lessens administrative burden and aids CCAP agencies in managing and prioritizing workload.

Local agencies will incur costs related to new federal provisions enacted through rule primarily in proposed rule part 3400.0120. Specifically, local agencies have had the responsibility of performing annual monitoring visits using the protocol developed by the department under the advisement of local agency staff since October 1, 2018 (see proposed rule part 3400.0120, subp. 9). The cost involved varies by agency based on internal policies and the number of legal nonlicensed child care providers that care for unrelated children in their area. However, because annual monitoring visits are a federal requirement, any costs incurred by local agencies are not attributed to the proposed rules. In addition, a greater regulatory burden on legal nonlicensed providers may result in fewer legal nonlicensed providers being willing to serve families whose child care expenses are reimbursed by child care assistance. These new federal provisions could result in more families selecting higher-cost licensed providers and higher program costs which will impact state revenues.

The primary group who will be financially impacted by new federal provisions enacted through rules are legal nonlicensed child care providers who are reimbursed by the Child Care Assistance Program. The Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R. § 98.41 requires states to ensure all providers
who receive payments from the Child Care and Development Fund are providing healthy and safe child care environments by establishing health and safety standards in twelve topic areas, training child care providers and staff in the topic areas, and annually monitoring any program that serves unrelated children for compliance with established standards. Minnesota statutes do not prohibit or mandate the imposition of these federal requirements on legal nonlicensed providers. However, Minn. Stat. § 119B.125, subd. 1 requires the Department to establish requirements necessary to authorize providers, and under this directive the Department began requiring legal nonlicensed providers to comply with the federal standards before or on October 1, 2018. To offset costs, the Department has invested federal CCDF grant funds to offer free training to these providers. Again, because these requirements are necessitated by federal regulations, any costs incurred by legal nonlicensed child care providers are not attributed to the proposed rules.

C. **A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.**

The Department has not determined any less costly or intrusive methods. Changes must be made to rule to align with federal and state statutory changes. Not revising rule is not a viable option for cost savings and there was little discretion for the Department to consider alternative methods or language. Because rule must be revised, and the proposed revisions align with federal regulations, state statutes, and current practice without imposing additional costs on affected parties, there is not a less costly or intrusive method to achieve the purpose of the proposed rule.

Several provisions could have been incorporated into state statute at the option of the legislature including health and safety requirements for legal nonlicensed providers primarily in part 3400.0120 and establishing an asset limit declaration for families in part 3400.0040, subp. 5b. However, because the legislature failed to act and the Department has authority to (1) establish authorization requirements for providers under Minn. Stat. § 119B.125, subd. 1 and (2) administer the Child Care and Development Block Grant under Minn. Stat. § 119B.06, subd. 1, codifying these requirements in rule is both reasonable and necessary.

In considering options to implement required federal health and safety provisions, the Department opted to move forward with the least amount of additional requirements to comply with the new federal law. Overall, this approach was the least costly and intrusive method of compliance. For example, in the proposed rules the Department exempted legal nonlicensed providers who serve only related children from most of the health and safety provisions and added minimal new pre-service training requirements for all legal nonlicensed providers beyond those already required by state law.

However, in the proposed rules the Department opted to require training in preventing abusive head trauma for any legal nonlicensed provider serving children under five years old and training in preventing sudden unexpected infant death for any legal nonlicensed provider serving children under one year old. Although the federal law does not require the completion of any specific training pre-service, these trainings, in addition to already required training in Cardiopulmonary Resuscitation (CPR) and First Aid, seemed essential to child safety, and reasonable to require before a legal nonlicensed provider could be paid from the child care fund. It would be somewhat less costly and intrusive to only require legal nonlicensed providers who serve only unrelated children to take these trainings within ninety days of the start of care, but the Department did not believe that the reduction in cost and intrusion was justified when weighed against the health and safety of young children.
D. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Agency and the reasons why they were rejected in favor of the proposed rule.

See response to C.

E. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

See response to B.

F. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The most substantial probable cost of not adopting the proposed rules, particularly the provisions to comply with the Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R. § 98.41, is a federal penalty of up to four percent of the CCDF Discretionary funds under 45 C.F.R. § 98.62(b)(2)(i) and up to five percent of the CCDF Discretionary funds under 45 C.F.R. § 98.92(b)(4)(i). The federal Office of Child Care notified the Department’s Commissioner in April 2019 that failure to fully comply with all federal requirements would result in a financial penalty.

Changes proposed to align with changes in state statute and procedural clarifications may not have specific monetary costs, but will continue to result in confusion for CCAP agency staff administering the program and inconsistently applied policy statewide. Further, when language is unclear or conflicting, it can result in inconsistent appeal decisions leading to higher administrative and legal costs both for CCAP agencies and the state appeals system. Families receiving child care assistance and providers reimbursed by the program also may be confused about which rules are still valid if the proposed rules are not adopted.

G. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

One of the motivating factors in proposing the rule revisions is to align Child Care Assistance Program rules and existing federal regulations. Should the proposed rule be adopted, it will be substantially more aligned with existing federal regulations, and any differences between the current rule and existing federal regulations will be eliminated.

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Other state and federal regulations related to the specific purpose of these amendment are:

1. Child Care and Development Block Grant Act of 2014, Public Law Number 113-186, which reauthorized the law governing the Child Care and Development Fund program.

2. Federal Child Care and Development Fund, 45 C.F.R. § 98, which provides clarity to states on how to implement the Child Care and Development Fund program and administer the program in a way that best meets the needs of children, child care providers, and families.

3. Minnesota Statutes, chapter 119B, which sets out the standards for the administration and implementation of the Child Care Assistance Program

4. Minnesota Statutes, chapter 256P, which aligns income policies across multiple public
assistance programs, including the Child Care Assistance Program.

5. Minnesota Statutes, chapter 245E, which sets out the standards for Child Care Assistance Program fraud investigations.

6. Minnesota Statutes, chapters 245A and 245H, and Minnesota Rules, parts 9502 and 9503, which set out the standards for licensing and certifying child care providers operating in Minnesota.

7. Minnesota Statutes, sections 256.045 – 245.046, which set out the standards for Child Care Assistance Program appeals.

8. Minnesota Statutes, section 256.98, which describes the acts or omissions that result in wrongfully obtaining child care assistance and subsequent program disqualification.

The cumulative effect of the proposed amendments with these state and federal regulations will be to ensure that the Department is administering CCAP in an efficient, uniform, and clear manner. As noted in other parts of this SONAR and explored in depth in the Rule Analysis, the purpose of amending the CCAP rules is to better align them with these federal and state regulations, and to ensure that federal and state requirements are carried out in a uniform manner. The Department intends for the cumulative effect of the amendments with other federal and state regulations to be positive and manageable for the people and organizations that are regulated by or carry out these rules.

Equity Review

The Department completed an equity review of the proposed revisions to chapter 3400. Overall, the proposed rule amendments have a positive impact on families, providers and CCAP agencies. The proposed amendments:

- Reduce negative impacts on all families and children who receive CCAP, who are predominately children of color, specifically African-American, Asian/Pacific Islander, Hispanic/Latino, multiple races, and American Indian children.
- Add clarification to policy to support more consistent program administration for all families and child care providers across the state.

Those items that may be viewed as having a negative impact are either currently federally or statutorily required or are intended to strengthen and support the intent of current statutory requirements. These items include program integrity measures. Generally, program integrity measures increase accountability and ensure funds are spent with financial and administrative integrity. This benefits all families and children on the program, specifically those children that are most vulnerable, and child care providers who receive CCAP.

Additional Notice Plan

Minnesota Statutes, section 14.131, requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

Our Additional Notice Plan consists of:

- Sending notice to people registered with the Department to receive notices of rulemaking;
- Notifying electronically via the Department of Human Services Child Care Assistance Program
provider listserv that includes licensed child care centers, licensed family child care providers and licensed exempt centers across the state;

- Notifying via email all administrative and client access contacts (lead staff that have contact with families receiving CCAP) across the 80 county, tribal, and subcontracted agencies who administer CCAP;

- Notifying via U.S. Mail all legal nonlicensed child care providers registered to receive child care assistance;

- Notifying via email identified stakeholders consisting of state agencies, child care provider professional associations, non-profits, and those who expressed interest in the rule revision process;

- Notifying via email the CCAP Rule Revision Advisory Committee members;

- Notifying via email stakeholders who are connected with families and providers, and ask them to help give the information to families;

- Posting draft versions of rule and all advisory committee meeting materials on the Department’s rule revision webpage; and

- Posting notice and other supporting documents on the Department’s rulemaking docket webpage.

Minnesota Rules, part 1400.2060, subpart 2, item B, also requires an explanation of why we believe our Additional Notice Plan complies with Minnesota Statutes, section 14.22, i.e., why our Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules. We believe our Additional Notice Plan complies with the statute because our notification efforts are tailored to those who will be significantly affected by the rules: families receiving child care assistance and child care providers, as well as the county agencies, tribal agencies, and workers that administer CCAP. We will reach the identified people and organizations by communicating the rule changes to them via the communication channels that the Department uses regularly to communicate with these groups. The Department has also already successfully connected and engaged with the people and groups significantly affected by the rule using these same efforts earlier in rulemaking process, while developing the rules and SONAR.

**Child care providers registered to receive CCAP**

The Department maintains an electronic listserv of child care providers registered to receive child care assistance. The purpose of the listserv is to keep child care providers informed about issues and policies changes related to CCAP. Child care providers supply their email address when they register or renew their registration to receive CCAP payments, and are subsequently added to the listserv. Additionally, other parties interested in CCAP policies that impact child care providers are able to sign up for the listserv, such as county and tribal staff or child care provider professional organizations. The listserv debuted in January 2019 and currently has 7,790 subscribers.¹⁶

¹⁶ Prior to the existence of the child care provider listserv, the Department utilized an electronic listserv of all child care centers, family child care providers, and exempt centers that are licensed or certified by the Department. This listserv, which reached 10,556 individuals, was used in earlier efforts to connect with providers to inform them of rulemaking efforts. The intent of this listserv is to reach all licensed and certified providers; however, the Department has received feedback from providers requesting this listserv only be used in matters specifically related to licensing and certification. Therefore, the Department will be using the listserv of child care providers to inform them of rulemaking efforts.
Legal nonlicensed child care providers

The Department maintains U.S. Mail contact information for legal nonlicensed child care providers registered with the Department to receive child care assistance. Some legal nonlicensed child care providers may be signed up for the child care provider listserv; however, legal nonlicensed child care providers are often grandparents, neighbors, or others who are not connected electronically. Therefore, the Department typically reaches out to this group via U.S. Mail. The Department has already used this channel of communication to reach legal nonlicensed child care providers in its earlier efforts to connect with them through the course of the rulemaking process. The Department has contact information for all 161\(^{17}\) legal nonlicensed child care providers who are registered to receive child care assistance.

State agencies, child care provider professional associations, non-profits, and those who expressed interest in the rule revision process

The Department will contact the following organizations and agencies electronically:

- Center for Inclusive Child Care
- Child Care Aware of Minnesota
- Children's Defense Fund
- Elders for Infants
- DHS Child Care Licensing
- DHS Child Development Services (CDS)
- DHS Cultural and Ethnic Communities Leadership Council (CECLC)
- DHS Early Childhood Mental Health
- DHS Early Childhood Systems Reform
- DHS Economic Assistance and Employment Supports Division (EAESD)
- DHS Instructional Design Training Team (IDTT)
- DHS MEC\(^2\) Help Desk
- DHS Office of Inspector General (OIG)
- First Children’s Finance
- Isaiah: Kids Count on Us
- Minnesota Association for Child Care Professionals (MACCP)
- Minnesota Association of County Social Service Administrators (MACSSA)
- Minnesota Association for the Education of Young Children (MNAEYC)/Minnesota School-Age Care Alliance (MNSACA)
- Minnesota Child Care Association (MCCA)
- Minnesota Child Care Provider Information Network (MCPINN)
- Minnesota’s Children’s Cabinet
- Minnesota Department of Education (MDE) Early Learning Services
- Minnesota Department of Health (MDH) Community and Family Health Division
- Minnesota Head Start Association (MHSA)
- Minnesota Interagency Council on Homelessness
- Minnesota Tribal Resources for Early Childhood Care (MNTRECC)
- Northside Achievement Zone (NAZ)
- Prevent Child Abuse Minnesota (PCAM)
- State Advisory Council on Early Childhood Education and Care

\(^{17}\) This number is current as of March 1, 2022.
• Think Small
• University of Minnesota’s Center for Early Education and Development (CEED)
• Voices and Choices
• Way to Grow

**Stakeholders who are connected with families and providers**

The Department will contact the following stakeholders electronically and ask them to help give the notice and rulemaking information to families:

- Children's Defense Fund
- Isaiah: Kids Count on Us
- Minnesota Child Care Association (MCCA)
- Minnesota Head Start Association (MHSA)
- Voices and Choices

**CCAP Rule Revision Advisory Committee**

In conjunction with the publication of the Notice of Request for Comments, the Department emailed an invitation on September 24, 2018 to identified contacts at over 30 community and state agencies requesting participation in the CCAP Rule Revision Advisory Committee. The Department also emailed an invitation to participate on September 26, 2018 to all licensed child care centers, licensed family child care providers and licensed exempt centers statewide, for a total of 10,556 individuals. Additionally, the Department sent a mailing via U.S. Mail on September 26, 2018 to all 47418 legal nonlicensed child care providers who were registered to receive child care assistance at that time. Due to the large response and initial interest in serving on the CCAP Rule Revision Advisory Committee, all interested persons were invited to attend the rule revision kick-off meeting held on October 30, 2018. This meeting, held in person at the Minnesota Department of Human Services in St. Paul and with a virtual option, provided participants with:

- An overview of the rule revision process;
- Details on the child care assistance rule amendment topics; and
- Options on how to give input on the rule.

Following the October 30, 2018 meeting, stakeholders were asked to indicate their interest in serving as a member of the CCAP Rule Revision Advisory Committee. A total of 60 stakeholders, representing a variety of sectors from different geographic areas of the state, expressed interest in continuing to serve as a committee member. Committee members represented the following entities:

- 32 child care providers (26 licensed centers, 5 certified license exempt centers, and 1 licensed family);
- 6 community agencies;
- 10 CCAP agencies;
- 11 state agencies; and
- 1 parent.

The Department has been communicating with the Rule Revision Advisory Committee via email throughout the course of this rulemaking project. Accordingly, the Department will email notice to the

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18 This was the number of legal nonlicensed child care providers who were registered on September 26, 2018.
Committee members, as well as post to the Department’s webpage specifically dedicated to the CCAP rule revision and the Department’s general Rulemaking Docket webpage.

With the above information the Department believes that it has demonstrated compliance with Minnesota Statutes, section 14.22, and Minnesota Rules, part 1400.2060, subpart 2, item B.

**Performance-based rules**

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the Department’s regulatory objectives while allowing maximum flexibility to regulated parties and to the Department in meeting those objectives.

There were few opportunities for performance-based rules in this proceeding because many of the proposed amendments to the rules were to bring rule into conformance with statutory changes at the state and federal level. For these changes, the Department had little discretion to consider alternative methods or language that would give flexibility to regulated parties. When there was opportunity to choose between options, the Department typically opted for greater flexibility for families to comport with the family-friendly focus of the Child Care and Development Block Grant Act of 2014, Public Law Number 113-186 and the Federal Child Care and Development Fund, 45 C.F.R. § 98.41. For example:

- In proposed rule part 3400.0180, subp. 1 the Department establishes a uniform definition for the end of the school year. This definition would provide consistency to CCAP agencies in determining when the end of the school year is and increase the flexibility for student parent families to continue eligibility.
- In proposed rule part 3400.0040, subp. 17, a CCAP agency must place a family eligible under Minn. Stat. § 119B.025, subd. 1(c) in temporarily ineligibility if the family does not submit all required verifications after three months, rather than terminating the family’s eligibility. This period of temporary ineligibility allows a family an additional 90 days to submit required verifications, instead of placing additional burden on the family by requiring a new application for CCAP.
- In proposed rule part 3400.0040, subp. 15a, the Department allows job search activities at application and redetermination, which is not required under the Federal Child Care and Development Fund, 45 C.F.R. § 98.21(a)(2)(iii), but done at the Department’s option to further support families eligible for CCAP.

**Consult with MMB on local government impact**

As required by Minnesota Statutes, section 14.131, the Department will consult with Minnesota Management and Budget (MMB).

We will do this by sending MMB copies of the documents that we send to the Governor’s Office for review and approval on the same day we send them to the Governor’s office. We will do this before the Department publishes the Notice of Intent to Adopt. The documents will include: the Governor’s Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

The Department considered the cost to local governments in section (B) of the Regulatory Analysis.
Impact on local government ordinances and rules

Minnesota Statutes, section 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Department has determined that the proposed amendments will not have any effect on local ordinances or regulations.

Proposed rules are needed to implement federal regulations, including federal health and safety provisions for child care providers, bring Minnesota Rules, chapter 3400 into alignment with changes in Minnesota statute, and clarify Child Care Assistance Program procedures and policies. Overall, the proposed rules do not impose any burden on local government to adopt or amend any new ordinance or regulation.

Costs of complying for small business or city

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees.” The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city.

The Department has made this determination based on the probable cost of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR beginning on page 68. The proposed rules do not apply to small cities; therefore, these cities cannot incur any costs to comply with the proposed rules.

Further, the Department believes the proposed rules do not impose any new costs on small businesses. The Department considers child care centers, including licensed and certified license exempt centers, and family child care providers, to be small businesses and believes these provider types will not incur cost to comply with the proposed rules. Instead, the proposed amendments simply bring the rules into conformance with existing statutes and federal regulations, or add detail to procedures already required by statute. Consequently, any costs incurred by these child care providers are due to state statute and federal regulations, not the proposed rules.

As discussed on pages 70-71, the Department does recognize potential costs incurred by legal nonlicensed child care providers to comply with federal regulations; however, these costs are not due to the proposed rule. Further, the Department does not consider a legal nonlicensed child care provider to be a small business. A legal nonlicensed provider is a family member, friend or neighbor who is excluded from licensing requirements, is limited in the children they are able to care for, does not employ staff, and is not organized for profit.

While the Department does not consider there to be a cost to small businesses to comply with proposed rules, the Department does recognize that the proposed rules may result in a financial impact on some licensed and licensed exempt centers in the form of reduced child care assistance payments. This impact stems from language in Minn. Stat. § 119B.09, subd. 9, which limits a child care center to receiving 25 or fewer authorizations for children who are dependent on the center’s employees.

Minn. Stat. § 119B.09, subd. 9 went into effect on April 23, 2018. On that date, if a child care center had open authorizations for more than 25 employees’ children, those authorizations remained open, as long as the families remained eligible and the children remained authorized. Additionally, after
implementation, if children were authorized in error above the 25 child limit, CCAP agencies were
instructed to not close any authorizations above the limit. These policies have resulted in some child
care centers having more than 25 employees’ children authorized, and in some instances, child care
centers remaining over the 25 child limit well past the implementation date.

Proposed part 3400.0110, subp. 3c strengthens the statutory requirement by allowing a CCAP agency to
terminate authorizations in excess of the 25 child limit, and to allow authorizations to close if a parent
later becomes employed at the center where their child is authorized if this employment results in the
center being over the 25 child limit. Child care centers have been subject to the statutory 25 child limit
for over three years and at present, the vast majority of all child care centers are below the limit. There
are no additional costs for a center to comply with this proposed rule. However, for those few child care
centers over the 25 child limit at the time the rule is promulgated and for any authorizations approved
over 25 at centers moving forward, there will be an impact on the provider’s child care assistance
payments when authorizations for any center employees’ children over the 25 child limit are
terminated.

Further, because Minn. Stat. § 119B.09, subd. 9 uses the term “center employee” but none of the
relevant statutes contain a definition of the term, the Department provides a definition in proposed rule
part 3400.0020, subp. 12c. The proposed definition is supported by federal regulations and aligns with
which individuals require a background study for licensing purposes under Minn. Stat. ch. 245C. The
proposed definition provides clarity and also aligns with the intent of the statutory requirement. There
are no additional costs for a center to comply with this proposed rule part. However, the Department
recognizes that there may be a financial impact on some child care providers in the form of reduced
child care assistance payments if additional parents are considered employees under the proposed
definition.

It is difficult to quantify the dollar amount of the potential financial impact of reduced child care
assistance payments based on proposed language. The financial impact depends on several factors: the
number of center employees’ children a provider is currently authorized for over 25 that will no longer
be reimbursed by the child care fund, how many parents the child care provider employs and in what
capacity, and the provider’s general business practices. Additionally, if a provider is unable to receive
payment from the child care fund for some employees’ children, the provider is still able to charge those
families for the cost of care, resulting in the provider continuing to receive payment. Despite the
difficulty to anticipate a dollar amount, the Department has determined that the financial impact to any
provider to comply with the proposed rules will not exceed $25,000.

Differences with federal and other state standards
As noted previously, one of the motivating factors in proposing the rule revisions was to align Child Care
Assistance Program rules with existing federal regulations and with other state standards. As explained
throughout the rule-by-rule analysis, should the proposed rules be adopted, they will be substantially
more aligned with existing federal regulations and other state standards.

Authors, witnesses and SONAR exhibits
Witnesses
If these rules go to a public hearing, the Department anticipates having the following witnesses testify in
support of the need for and reasonableness of the rules:
1) Members of the advisory committee and rule workgroups to testify about the development of the proposed rules.

2) Staff from counties, tribes, and subcontracted agencies who administer CCAP to testify about the implementation of proposed rules.

3) Laurie Possin, Manager, Child Care Assistance Program, Department of Human Services, to testify about other substantive issues proposed in the rules.

4) Vanessa Vogl, Rulemaking Attorney, Department of Human Services, to introduce the required jurisdictional documents into the record and testify on any Minnesota Administrative Procedure Act process questions. Vanessa also assisted with writing this SONAR.

Authors

1) Andrea Lentini, Policy Analyst, Child Care Assistance Program, Department of Human Services. Andrea is the subject matter expert and author of this SONAR.

SONAR exhibits

1) This SONAR does not contain any exhibits.

Conclusion

In this SONAR, the Department has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapter 3400. The Department has provided the necessary notice and in this SONAR documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

Amy Akbay, Chief General Counsel
Department of Human Services

March 28, 2022