

State of Maine

# Child Care Subsidy Program Rules

10-148 CODE OF MAINE RULES  
CHAPTER 6



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Office of Child and Family Services  
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**10 DEPARTMENT OF HEALTH AND HUMAN SERVICES**  
**148 OFFICE OF CHILD AND FAMILY SERVICES**  
**Chapter 6 CHILD CARE SUBSIDY PROGRAM RULES**

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## INTRODUCTION

The Department of Health and Human Services (DHHS) is designated as the lead agency with primary responsibilities for the planning and administration of child care subsidies funded with the Child Care Development Fund Block Grant.

The Child Care and Development Fund (CCDF) Block Grant Act of 1990, as amended, 42 U.S.C. § 9858b(b)(1)(A), (the Act) requires the Lead Agency to “administer, directly, or through other governmental or non-governmental agencies” the funds received. The regulations at 45 C.F.R. § 98.11 provide that, in addition to retaining “overall responsibilities” for the administration of the program, the Lead Agency must also (among other things) promulgate all rules and regulations governing the overall administration of the CCDF program.

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## SECTION 1: DEFINITIONS

1. **Administration for Children and Families (ACF)** means the division of the United States Department of Health and Human Services. ACF promotes the economic and social wellbeing of families, children, individuals, and communities. Refer to: <https://www.acf.hhs.gov/>.
2. **Administrative Hearing** means a proceeding pursuant to the Administrative Hearings regulations, 10-144 C.M.R. ch. 1. Refer to: <http://www.maine.gov/sos/cec/rules/10/chaps10.htm#144>.
3. **Adverse Action** means situations when the intended action is to terminate or reduce eligibility. Timely and adequate notice must be given to the Parent. Coverage will not be continued beyond the Award Period pending an Administrative Hearing decision.
 

"Timely" means that the notice must be mailed twelve (12) calendar days before the intended change would be effective: ten (10) calendar days for notice, plus two (2) calendar days for mail.

"Adequate" means a written notice which includes a statement of:

  - a. The action the Department intends to take;
  - b. The reason(s) for the intended action;
  - c. The regulation(s) supporting such action; and
  - d. An explanation of the rights to request an Administrative Hearing.
4. **Agency Administrative Errors** means errors caused solely by the Department.

5. **Allowable Net Income** means the net monthly business income with the following deductions added back in: depreciation, depletion, prior year business losses, and State and local taxes.
6. **ASPIRE** means the job preparation program to prepare for, accept, and retain employment.
7. **Assets** means equity in real and personal property.
8. **At-Risk Children** means Children identified by the Department of Health and Human Services' Office of Child and Family Services a Child in Care and Custody.
9. **Award Letter** means the document notifying a Parent and selected Provider of the Child Care Subsidy Award Period, time awarded, and the Parent Fee.
10. **Award Period** means no less than twelve (12) months as required by federal law (45 C.F.R. §98.21), the Department-Approved time-frame, for Child Care Subsidy eligibility.
11. **Care and Custody** means Children in the Care and Custody of the Department or a Federally Recognized Tribe.
12. **Caseworker** means an employee of the Department or Federally Recognized Tribe, authorized to provide specialized case management services to At-Risk Children, Children in Open Child Protective Cases, and Children in the Care and Custody of the Department.
13. **Child** means an individual who is: at minimum, six (6) weeks of age, yet under thirteen (13) years of age, unless within twelve (12) month eligibility period; or a Child with Special Needs.
14. **Child Care and Development Fund (CCDF)** (45 C.F.R. § 98 and 99) and includes CCDF Mandatory, CCDF Discretionary, CCDF Matching, TANF Transfer Funds, and State funds used for State match and maintenance of effort. Refer to: <https://www.acf.hhs.gov/occ/resource/child-care-and-development-fund>.
15. **Child Care Center** means an entity licensed by the Department in which a Child Care Provider maintains or otherwise provides Child Care Services, for any part of a day, for thirteen (13) or more Children.
16. **Child Care Facility** means an entity licensed by the Department in which a Child Care Provider maintains or otherwise provides Child Care Services, for any part of a day, for three (3) but no more than twelve (12) Children.

17. **Child Care Provider** means a Provider who can receive a Child Care Subsidy under this rule, and which is either a Child Care Provider licensed under Maine DHHS Division of Licensing rules, a Child Care Provider Licensed under New Hampshire DHHS Child Care Licensing Unit, or a License-Exempt Child Care Provider as defined in this rule.
18. **Child Care Services** means care provided to an eligible Child by an eligible Child Care Provider.
19. **Child Care Subsidy** means financial support for eligible families with low income(s) and other designated client groups; available dependent upon funding; and which may pay for Child Care Services provided in or by a Child Care Center/Facility licensed by the Department, a Family Child Care licensed by the Department, a Recreational Program, a Child Care Provider Licensed under New Hampshire DHHS Child Care Licensing Unit, a License-Exempt Child Care Provider, a License-Exempt In-Home Child Care Provider, or a License-Exempt Relative Child Care Provider.
20. **Child Care Subsidy Payments** means the amount set by the Department, based on the Market Rate, minus the Parent Fee, that the Department reimburses the Child Care Provider on behalf of the Parent for Child Care Services provided to an eligible Child, once eligibility has been determined for both the Parent and the Child Care Provider.
21. **Child Protective Services (CPS)** means a specialized casework service provided by the Department to neglected or abused Child(ren) and their families. For the purposes of these rules the following families and Children qualify as involved with Child Protective Services (CPS): At-Risk Children, Children involved in Open Child Protective Cases, and Children in Care and Custody.
22. **Child with Special Needs** means a Child up to thirteen (13) years of age who has been determined and documented by a qualified professional to be a “child with a disability” as defined in section 602 of the Individuals with Disabilities Education Act (20 U.S.C. § 1401); is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 U.S.C. §§ 1431, *et seq.*); is eligible for services under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701); meets the definition of disability under the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12102); is considered at-risk for health and/or developmental problems as a result of established biological Risk Factors, and/or as a result of identified environmental Risk Factors including, but not limited to, Homelessness, abuse and/or neglect, lead poisoning, and prenatal drug or alcohol exposure; or is a Child who is between thirteen (13) years of age and eighteen (18) years of age, inclusive, who is physically or mentally incapable of caring for him or herself, or is under court supervision.

23. **Commissioner** means the Commissioner of the Department of Health and Human Services; the powers and duties of the Commissioner are defined in 22-A M.R.S. § 205. Refer to: <http://legislature.maine.gov/statutes/22-A/title22-Asec205.html>.
24. **Department** means the Maine Department of Health and Human Services.
25. **Department-Approved** means consent by the CCDF State Child Care Administrator or his/her designee.
26. **Educational Program** means a program which is required for completion of a secondary diploma, High School Equivalency Test (HISSET), or other Department-Approved high school equivalency test; Department-Approved vocational program; or post-secondary undergraduate program in which the Parent is earning credits toward a degree; or other Department-Approved Educational Program. Parents may be enrolled either in person or online. Parents attending Graduate or Doctorate-level Educational Programs are not eligible to receive Child Care Subsidy.
27. **Emergency Plan** is a document outlining the actions to be taken by a Child Care Provider that is required to maintain an Emergency Plan in the event of an emergency.
28. **Employed** means participation in gainful work that produces earned income from: wages, salaries, commissions, fees, tips, and/or piece-rate payments.
29. **Family** means either a Child and the related and/or non-related adult(s) who are living together and who are in a legally binding relationship to the Child either by blood, marriage, adoption, or registered domestic partnership; or the Child and an adult acting In Loco Parentis or Guardianship.
30. **Family Child Care** means a licensed Child Care Provider's legal residence in which the Child Care Provider provides licensed Child Care Services for any part of a day, for three to twelve (3-12) Children who are not the Children of the Child Care Provider.
31. **Federal Poverty Guidelines** means the measure of income issued every year by the U.S. Department of Health and Human Services (HHS). Federal poverty levels are used to determine income eligibility for certain programs and benefits. Refer to: <https://aspe.hhs.gov/poverty-guidelines>.
32. **Federally Recognized Tribe** means the Penobscot Tribe, Passamaquoddy Tribe, Aroostook Band of Micmacs, Houlton Band of Maliseets, and any other Native American Tribe, band, nation, or other organized group or community that is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans.

33. **Fictive Kinship Care** means services provided to a Child in Care and Custody or services intended to prevent a Child from entering Care and Custody, under a plan with the Department and any person that is unrelated by birth, adoption, or marriage, and who has an emotionally significant relationship with the Child that would take on the characteristics of a familial relationship.
34. **Foster Care** means a temporary living arrangement in which Resource Families provide for the care of Children who are in Care and Custody.
35. **Good Cause** means when any of the following conditions is met: the Parent states the Child was conceived as the result of incest or forcible rape; the Parent states cooperation in establishing paternity or securing support is reasonably anticipated to result in physical or emotional harm to the Parent, Child, or caretaker relative; or documentation indicating legal proceedings for adoption of the Child are pending in court.
36. **Good Standing** means when a Parent has provided the Child Care Provider with a twelve (12) calendar day notice and it has been determined the Parent Fees for those same twelve (12) calendar days have been paid in full.
37. **Gross Income** means the sum of all money, earned and unearned, already received, or reasonably anticipated to be received, by all Family members during the service eligibility period. Gross Income is calculated before deductions (such as income taxes, social security taxes, deferred compensation plans, insurance premiums, union dues, etc.) Gross Income does not include fringe benefits. Gross Income includes any Allowable Net Income realized by any member of the Family.
38. **Guardianship** means when temporary or permanent guardianship has been appointed by probate court.
39. **Health and Safety Standards** means the minimum expectations as set out in these rules required to ensure the safety, health, and welfare of Children.
40. **Hearing Officer** means the person appointed by the Department's Office of Administrative Hearings who considers evidence on the issues presented to him or her at a hearing and, at the Commissioner's discretion, either renders the final agency decision or recommends to the Commissioner what the final agency decision of the Commissioner should be.
41. **Homeless** means Parents or Children who lack a fixed, regular, and adequate night-time residence; who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, or campgrounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; are awaiting Foster Care placement; who have a primary night-time residence that is a public



or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; or who are migratory Children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965, 20 U.S.C. ch.70) as required by federal law (45 C.F.R. § 98.41).

42. **Infant** means a Child six (6) weeks of age through twelve (12) months of age.
43. **In-Home Child Care Provider** means a License-Exempt Child Care Provider who is eighteen (18) years of age or older, a Maine resident, and provides Child Care Services to no more than two (2) Children in the Child's home.
44. **Job Training Program** means vocational, field, on-the-job, apprenticeship, and other Department-Approved job readiness training programs that focus upon the acquisition of knowledge and skills that prepare the participant for employment.
45. **Kinship Relative Care** means services provided to a Child in Care and Custody or services intended to prevent a Child from entering Care and Custody under a plan with the Department and any person identified in 22 M.R.S. § 4002(9-B) as a relative.
46. **License-Exempt Child Care Provider** means a Child Care Provider who is not required to be licensed to provide Child Care Services for no more than two (2) Children, eighteen (18) years of age or older, a Maine resident, and does not reside in the same household.
47. **Maine Resident** means a Parent who has established Maine as a permanent home or as the place where he/she intends to return after any period of absence. Maine residency, once established, continues until a new, fixed and permanent home is acquired. Documentation of Maine residency includes a Maine home address where the Parent lives and one or more of the following: a Maine individual income tax return for the immediate past tax year that was timely filed with the Maine Revenue Service and that indicates Maine Resident status, valid Maine driver's license, Maine State ID, current Maine motor vehicle registration, current Maine hunting/fishing license, proof of undergraduate Student in-State tuition payment, or other Department-Approved verification.
48. **Market Rate** means the Child Care Subsidy Payment rate paid to Child Care Providers for providing Child Care Services.
49. **Misrepresentation** means an action of an individual with the intention of receiving financial assistance the individual is not eligible to receive.
50. **Night-Time Employment** means employment in which the majority of the hours worked are between 12 a.m. and 6 a.m.

51. **Non-Temporary Change** means any cessation of employment or attendance at a Job Training or Educational Program that has concluded. Child Care Subsidy will continue as documented in the Award Letter, for a period of up to twelve (12) weeks after the cessation of work or attendance at a Job Training or Educational Program. The twelve (12) week period starts the first day the Parent is no longer Employed or attending a Job Training or Educational Program.
52. **Notification of Termination** means the document sent to the Parent and Child Care Provider notifying them of termination of Child Care Subsidy.
53. **Off Hour Care** means Child Care Services rendered between the hours of 6 p.m.- 6 a.m. and weekends.
54. **Office for Family Independence (OFI)** means the State agency within the Department that determines financial eligibility for Child Care Subsidy.
55. **Office of Child and Family Services (OCFS)** means the State agency within the Department that determines program eligibility for Child Care Subsidy.
56. **Open Child Protective Case** means a matter in which the Family is working with the Department in good faith to assure the safety of the Child, has entered into a plan for safety with a Caseworker, or has been granted temporary or permanent custody of the Child under conditions. To receive a Child Care Subsidy, Families with Open Child Protective Cases must have been referred for Child Care Services by the Department or a Federally Recognized Tribe.
57. **Overpayment** means when the amount paid exceeds the amount that would have been paid if the Child Care Subsidy had been calculated correctly based on actual circumstances reported, verified, and acted on in a timely manner. Overpayments may occur as the result of Misrepresentation, Agency Administrative Error, or Parent or Child Care Provider error(s).
58. **Parent means** a Child's parent by blood, marriage, or adoption, or legal guardian or other person standing In Loco Parentis whose rights to the Child have not been terminated.
59. **Parent Fee** means the Department-determined fee that a Parent must pay directly to the Child Care Provider as the Parent's share of responsibility for the Child Care Provider's fee that is the subject of the Child Care Subsidy.
60. **Provider Agreement** means the agreement between a Child Care Provider and the Department that outlines the conditions under which the Child Care Provider may receive a Child Care Subsidy Payment from the Department.

61. **Reasonable Cause** means Department-Approved reasons for a Child's absence from a Child Care Provider's program which may include, without limitation: Federal/State holidays; Parental vacation days; inclement weather defined by a snow day when local schools are closed; illness of the Child or other immediate Family member; appointments; transportation issues that affect the Parent's ability to transport the Child to care; Family visitations: Family emergencies, including, but not limited to, surgery, medical treatments, or accidents; or catastrophic events affecting the Family, including but not limited to fires, storms, or accidents.
62. **Reasonable Study Time** means additional Child Care Service enrollment hours granted at the discretion of the Department and determined based on the Parent's enrollment in classes as a Student, the Parent Student's special needs, the amount of time between such Student's classes, and the ages of the Student's Child(ren).
63. **Recreational Program** means a License-Exempt non-residential provider of Child Care Services as defined by Child Care Licensing rules.
64. **Reimbursement Basis** means the bi-weekly compensation paid to the Child Care Provider for Child Care Services rendered.
65. **Relative Child Care Provider** means a relative who is a License-Exempt Child Care Provider, a grandparent, great-grandparent, aunt, or uncle or siblings of the Child if living in a separate residence, eighteen (18) years of age or older, a Maine resident who provides Child Care Services to no more than two (2) Children.
66. **Repeated Failure** means when the majority of billings for Child Care Services from the Child Care Provider, within a six (6) month period, were not received on time, and/or were incomplete and/or inaccurate, in spite of the Department's efforts to provide technical assistance to the Child Care Provider.
67. **Reside With** means when a Child is living with the Parent who is maintaining a home or principal domicile for the Child.
68. **Resource Families** means a person(s) who provide care to Children in Care and Custody. Resource Families include foster parents, permanency guardians, adoptive parents, and members of the Child's extended birth family. Refer to: <http://legislature.maine.gov/statutes/22/title22sec4002.html>.
69. **Retirement Age** means someone who is at least sixty-five (65) years of age and no longer working. Refer to: <https://www.ssa.gov/agency/glossary/>.
70. **Risk Factors** means a combination of individual, relational, community, and/or societal factors contributing to an increased risk of Child abuse or neglect.

71. **Safe Sleep Practices**, “Safe to Sleep,” means an initiative which encourages Parents and other caregivers to have Infants sleep on their backs to reduce the risk of Sudden Infant Death Syndrome (SIDS) and other sleep-related causes of Infant death.
72. **Self-employment** means operating one’s own business, trade, or profession for profit equal to or greater than Maine’s average hourly minimum wage based on the four (4) weeks prior to eligibility determination.
73. **Shared/Joint Custody** means when two (2) Parents have legal custody of their Child(ren).
74. **State Child Care Administrator** means the Department staff responsible for administering the CCDF grant.
75. **State Median Income (SMI)** means the amount that divides the income distribution within the State into two (2) equal groups, half (1/2) having income above that amount, and half (1/2) having income below that amount.
76. **Student** means a Parent enrolled in and attending an Educational, Job Training Program, or apprenticeship and who is a Maine Resident.
77. **Sudden Infant Death Syndrome** means the unexplained death, usually during sleep, of an Infant.
78. **Teacher** means an individual who is Employed by a Child Care Provider for compensation on a regular basis and whose responsibilities are to organize, guide, and implement activities in a group or individual basis, or to assist a Teacher or lead Teacher in activities to further the cognitive, social, emotional, and physical development of Children.
79. **Temporary Change** means any time-limited absence from work for an Employed Parent due to reasons found acceptable by the Department, including but not limited to: Parent’s medical leave or maternity/paternity leave; need to care for a Family member with an illness; any interruption in work for a seasonal worker who is not working between regular industry work seasons; any Student holiday or break for a Parent participating in a Job Training or Educational Program; any reduction in work, training, or education hours, as long as the Parent is still working or attending Job Training or Educational Program.
80. **Unacceptable Absence** means a lack of attendance by a Child at the Child Care Service for more than two (2) calendar days per month without Reasonable Cause or previous approval from the Department.
81. **Underpayments** means when the Parent or the Child Care Provider does not receive all the benefits to which the Parent or the Child Care Provider is entitled

due to an Agency Administrative Error or an error by the Parent or Child Care Provider.

- 82. Very Low Income** means when the Gross Income or Allowable Net Income, adjusted to Family size, does not exceed one hundred percent (100%) of the Federal Poverty Guidelines.
- 83. Wait List** means a list which prioritizes eligible participants by specific criteria.

## **SECTION 2. THE CHILD CARE SUBSIDY PROGRAM**

- A.** The Maine Child Care Subsidy Program includes the administration of funds from the federal Child Care and Development Block Grant, state funds, and other federal funds. The purpose of the Maine Child Care Subsidy Program is to increase the availability, affordability, and quality of Child Care Services. In order to maximize parental choice for purchasing child care, Maine provides a system of financial support for eligible families with low-incomes and other designated client groups through the use of Child Care Subsidy.
- B.** The administration of the Child Care Subsidy Program in Maine will be performed by the Department.
- C.** Department staff will be required to sign client confidentiality statements provided by the Department.
- D.** The Department will administer funds in a manner that insures continuity of subsidy services for 12-months to the next if Parents remain eligible and funding in subsequent years is not reduced.
- E.** Child Care Subsidy is available depending upon funding and shall not be interpreted to entitle any individual or Family to assistance under this program.
- F.** A Child Care Subsidy is not a grant to or contract with a Provider, but instead is assistance to the Parent.
- G.** No Child Care Subsidy shall be paid to a Parent for Child Care Services or other services provided to the Parent's Child.
- H.** Whenever feasible, Parent shall be afforded a choice of Child Care Providers for their Child.
- I.** Except for court-ordered restricted parental contact or custody, Parents must have unlimited access to their Children and to all Child Care Providers during normal hours of operation or whenever the Children are in the care of the Child Care Provider.

## SECTION 3: ELIGIBILITY

**A. Child Eligibility** To be eligible for a Child Care Subsidy, at the time of eligibility determination or re-determination a Child shall:

1. Reside with a Family whose Gross Income does not exceed eighty-five percent (85%) of the State's Median Income (SMI) when adjusted for Family size. SMI is based on the most recent SMI data that is published by the Bureau of the Census, for a Family of the same size;
2. Reside with a Family whose Family Assets do not exceed \$1,000,000 (as certified by the Parent);
3. Be a U.S. citizen, or a "qualified alien" as defined in 8 U.S.C. §1641 or defined in 8 U.S.C. § 1359. Only the citizenship and immigration status of the Child, who is the primary beneficiary of the Child Care Subsidy, is relevant for eligibility purposes. Parents who cannot provide verification of citizenship of Children receiving Child Care Services are not eligible for Child Care Subsidy;
4. Not Reside with a Parent who has a history of Misrepresentation to obtain any State or Federal benefit;
5. Reside with a Parent who is a Maine Resident;
6. The Child must be, at minimum, six (6) weeks of age; less than thirteen (13) years of age; turn thirteen (13) years of age during a current eligibility period; or is less than nineteen (19) years of age and meets the definition of Child with Special Needs pursuant to these rules; or is under court supervision; and
7. Reside with a Parent(s) who is Employed, attending an Educational or Job Training Program which prevents the Parent(s) from providing care and supervision of the Child(ren) during the time the Parent is participating in the activity.

### **B. Parent Homelessness Eligibility**

1. If a Parent of an Eligible Child is Homeless at the time of initial application or at time of redetermination, such Parent will be approved for Child Care Subsidy. A ninety (90) calendar day grace period will be provided to the Parent to allow time for submission of required eligibility documentation as required by federal law (45 C.F.R. § 98.41). During such grace period, the Child shall be deemed to be eligible for a Child Care Subsidy.
2. If a Homeless Parent's eligibility documentation has not been received within the ninety (90) calendar day grace period, or if after review of the eligibility documentation it is found that the Parent is not eligible for Child Care Subsidy,

the Parent will be terminated from Child Care Subsidy. Any Child Care Subsidy Payments and Parent Fees paid to the Child Care Provider will not be considered improper payments under these rules.

3. If after review of the eligibility documentation it is found that the Parent is eligible for Child Care Subsidy, the Parent will continue to receive Child Care Subsidy for the remainder of the Award Period.

### C. Parent Financial/Income Eligibility

#### 1. Income eligibility standards

Income eligibility standards will be based on the Eligibility Income of the Parent(s). Parent fee's will not exceed the ten percent (10%) of the Families' Gross Income.

#### 2. Family Size Chart

The following chart provides examples of the most common forms of Family composition, the resulting Family size, and whose income is countable in determining Eligibility Income:

Family Composition	Family Size	Income Counted
Single Parent with Child(ren)	Parent and Child(ren)	Include all countable income
Unmarried Parents who have at least one (1) mutual Child	Both Parents and all the Child(ren) in the household	Include all countable income
Unmarried Parents with no mutual Child(ren) or multiple Family households	Unmarried Parents and their respective Child(ren) living in the household are counted as separate Families	Include countable income for the unmarried Parent and his/her Child(ren)
Married Parents	Both Parents and all Child(ren) living in the household	Include all countable income
Grandparents with legal guardianship of Child(ren) and Parents; and Parents of said Child(ren) in the household	Child is considered a Family of one (1)	Only Child's income is counted
Family member out of the household on a temporary basis and expected to return	Parent in the home, the absent individual and the Child(ren)	Include all countable income for all Family members
Foster Care Parent and Child	Child considered a Family of one (1)	Include only Child's income

Individuals providing Kinship Relative Care or Fictive Kinship Care to a Child with a Child Protective Services' (CPS) plan	Child considered a Family of one (1)	Include only Child's income
Adult acting " <i>In-loco Parentis</i> " and Child	Child considered a Family of one (1)	Include only Child's income
Legal guardians and Child	Child considered a Family of one (1)	Include only Child's income
Parent and Child with Family member absent due to living in a long-term residential institution or prison	The absent individual is removed from the household. Count remaining household members	Include all countable income except that of the absent individual
Child whose residence changes between custodial Parents	Child and custodial Parent's Family. All other Family rules in this section apply	Include all countable income

### 3. **Earned Income**

Eligibility Income must include earned income from all sources:

a. Types of Self-employment include but are not limited to:

- i. Independent contractors, franchise holders, owners/operators, farmers, people who produce and sell a product, and service-type businesses;
- ii. Seasonal Self-employment such as fishing, clamming, worm digging, logging, harvesting, etc.;
- iii. Income from boarders (not included as Family members);
- iv. Income from roomers (not included as Family members);
- v. Income from ownership of rental property; and
- vi. That portion of training allowances, training stipends, or Student loans which exceed expenses, and represents a gain or benefit to the Family.

### 4. **Unearned Income**

Eligibility Income must include unearned income from all sources:

- a. Pension and retirement benefits such as government employee pensions, military retirement/pensions, railroad retirement, private pensions, annuities, IRA accounts, 401K plans, etc.;
- b. Social Security benefits including pensions, survivor's benefits, and permanent disability insurance payments;
- c. Disability insurance payments from any source;



- d. Assistance program payments such as Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), Parents as Scholars (PAS), Refugee Cash Assistance, and other tested assistance. TANF payments which are diverted to a third party shall be counted as income. Assistance payments from programs which require the performance of work without compensation, other than the assistance payment, shall be considered unearned income;
- e. Veteran's benefits, including money paid periodically by the Veterans Administration to disabled members of the Armed Forces or survivors of deceased veterans, aid and attendance portion of veteran's benefits, subsistence allowances paid to veterans for education, and on-the-job training, as well as so-called refunds of GI insurance premiums;
- f. Military Family allotments or other regular support from an absent Family member or someone not living in the household;
- g. Unemployment insurance and worker's compensation;
- h. Strike benefits from union funds;
- i. Regular cash income received from earned interest, dividends, royalties, estates, and trusts;
- j. The value of any property (real or intangible) in which there is an unrestricted right to immediate use, possession, or enjoyment of the property (or the income from it) even if the right is not exercised;
- k. Interest income received from all loans and notes such as personal loans, secured loans (includes real estate mortgages), installment contracts, and interest-only loans. Loans of this nature usually require periodic payments of constant amounts over the life of the loan. The amount of the loan principal (return of capital) is considered an asset and shall not be included in Gross Income. The recognized gain on sale amount of the loan repayment shall be included in Gross Income. This determination shall be made in accordance with IRS regulations;
- l. Child support and alimony payments made directly to the Family, including the pass through and gap supplements received by TANF clients. Money deducted or diverted from court-ordered support or alimony to pay household expenses is also counted as income;
- m. A child support lump payment is counted as part of income and averaged over the number of weeks that child support is in arrears;

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- n. Income from ownership of rental property, excluding IRS deductible business expenses;
  - o. Income from capital gains as defined and calculated in accordance with IRS regulations. Capital gains are the profit from the sale of real and personal property such as the sale residence, land, income producing property, investment property, capital equipment, stocks, and bonds. Generally, profits resulting from disposal of business inventory of real and personal property are included as income from Self-employment as opposed to being separately classified as capital gains;
  - p. Regular general assistance cash payments from municipalities that are not made directly to vendors such as a landlord;
  - q. Regular money contributions from persons determined not to be Family members;
  - r. The portion of all educational grants, scholarships, and other awards available to pay for living expenses. All fees assessed by the educational institution are not counted as income. If a Student is not enrolled in a recognized institution of post-secondary education, a vocational Educational Program or a program that provides for completion of a secondary school diploma or equivalent, the full amount of educational assistance is counted as income. Income from Student loans shall be counted only if there are no repayment terms as a condition of the loan. This standard does not apply to educational assistance which is totally excluded under Federal statute;
  - s. Regular income received from lottery and sweepstakes winnings. Lump sum lottery and sweepstakes winnings are counted within the eligibility period they are received;
  - t. Net income from gambling;
  - u. Money that is legally due the Family which is diverted to a third party to pay household expenses, such as: diversion of all or part of a TANF grant to a landlord; and that portion of an unemployment insurance benefit check intercepted by the State Division of Support Enforcement and Recovery (DSER) commonly referred to as garnished wages. General Assistance vendor payments are excluded;
  - v. Income that is legally due to a Family member but is received and used for that Family member by a non-Family member;
  - w. Income from sponsors of aliens lawfully admitted for permanent residence in the U.S. A sponsor is a person or organization signing an affidavit or document on behalf of the alien as a condition of entry; and

- x. All other income from government programs not specifically excluded by law.

5. **Income Excluded from Eligibility Income**

The following income is excluded from Eligibility Income:

- a. Energy assistance program payments or allowances made under any federal energy assistance law. Note: Department of Housing and Urban Development (HUD) and Farmer's Home Administration (FmHA) utility payments and reimbursements are considered federal energy assistance;
- b. Job Training Partnership Act (JTPA) payments and JTPA on-the-job training income received by participants (regardless of age) in the Summer Youth Employment and Training Program and comparable summer youth employment and training programs under AmeriCorps. All other payments from JTPA's On-the-job Training Program (OJT) count as income unless they are received by dependents less than nineteen (19) years old;
- c. Payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- d. Women, Infants and Children Program (WIC) vouchers;
- e. Special payments to Native Americans excluded by law, e.g., payments under the Maine Indian Land Claims Settlement Act;
- f. Federal Earned Income Tax Credit (EITC) is excluded whether received as advanced payment in weekly wages or received in one (1) sum after filing annual income tax return;
- g. Educational assistance authorized under Title IV of the Higher Education Act, including:
  - i. Basic Educational Opportunity Grants (GEOG or PELL Grants);
  - ii. Presidential Access Scholarships (Super PELL Grants);
  - iii. Federal Supplemental Educational Opportunity Grants (SEOG);
  - iv. State Student Incentives Grants (SSIG; Maine State Incentive Grant);
  - v. Federal Direct Student Loan Program (FDSLPL), formerly GSL and FFELP;
  - vi. Federal Direct Supplemental Loan Program (provides loans to Students);
  - vii. Federal Direct PLUS Program (provides loans to Parents);
  - viii. Federal Direct Stafford Loan Program;
  - ix. Federal Direct Unsubsidized Stafford Loan Program;
  - x. Federal Consolidated Loan Program;
  - xi. Federal Perkins Loan Program (direct loans to Students in institutions of higher education) (Perkins Loans, formerly NDSL);

- xii. Federal Work Study Funds (Note: Not all Federal work study funds come under Title IV of the Higher Education Act);
  - xiii. TRIO Grants (go to organization or institutions for Students from disadvantaged backgrounds);
  - xiv. Upward Bound (some stipends go to Students);
  - xv. Student Support Services;
  - xvi. Robert E. McNair Post-Baccalaureate Achievement;
  - xvii. Robert C. Byrd Honors Scholarship Program;
  - xviii. College Assistance Migrant Program (CAMP) for Students whose families are engaged in migrant and seasonal farm work;
  - xix. High School Equivalency Program (HEP); and
  - xx. National Early Intervention Scholarship and Partnership Program.
- h. Bureau of Indian Affairs (BIA) Student assistance, education or training assistance, and employment assistance programs. Each Tribe has a BIA agency that may be contacted for more information about education and training assistance. BIA Student assistance is provided by the Tribes, is not denoted by any particular name, and is not usually listed on institutions' financial aid statements;
- i. Value of supplemental food assistance received under the Child Nutrition Act or the National School Lunch Act;
- j. Value of USDA Food Supplement and/or Donated Commodities;
- k. Earned income of a student nineteen (19) years of age or younger who is attending an elementary school or secondary school and resides with the applicant. The exclusion of this income shall not be altered by semester breaks, summer vacations, etc., provided the Student resumes enrollment after the break;
- l. When a parenting teen is the applicant, the income of the teen's Parents, step-parents, other Relatives or non-Relatives who provide a home for the parenting teen(s) shall be excluded. The teen Parent must be working or attending an Educational or Job Training Program;
- m. Foster Care payments from the Department or Federally Recognized Tribe;
- n. Nonrecurring lump sum payments such as income tax refunds; and the portion of retroactive, lump-sum Social Security, SSI, railroad retirement or insurance settlements intended to cover a period prior to the current eligibility period;
- o. State or federal one-time assistance for weatherization or emergency repair or replacement of an unsafe or inoperative heating or cooling device;
- p. All loans, including Student educational loans, bank loans, loans from private individuals, and other types of loans where there exists a written agreement

- with repayment terms as a condition of the loan;
- q. The value of non-cash benefits or gains from an employer, such as: shelter including military base housing, food, and clothing provided by an employer. This exclusion shall not include money that is legally due the Family which is diverted to pay for household expenses;
  - r. The value of non-cash benefits such as: public subsidized housing, general assistance voucher payments, medical and dental services, donated commodities, and food;
  - s. Certain vendor payments made on behalf of the applicant, including:
    - i. Money payments by a non-Family member which are not legally due the household and are paid directly to a third party for a household's expense, such as a Relative paying the rent or an employer paying the rent in addition to wages;
    - ii. Vended assistance from State or local programs which provide no cash assistance. This includes General Assistance vendor payments made to a third party; and
    - iii. Monies withheld or returned from an assistance payment, earnings or other source to repay a prior Overpayment. Count the gross amount as income when the Overpayment is the result of a violation as determined by TANF, SSI, or other means-tested program.
  - t. Child support payments received by TANF recipients that are turned over to the Department;
  - u. Reimbursements and allowances which do not exceed the actual costs for job-related or training-related expenses, medical expenses, or dependent care expenses. This includes allowances from ASPIRE;
  - v. Third-party payments received and used for the care of a third-party beneficiary who is not a Family member;
  - w. Withdrawals from bank deposits and credit union deposits;
  - x. Lump sum cash inheritances or gifts;
  - y. The portion of loan or note repayments which is determined to be the loan principal (return of capital) in accordance with IRS regulations;
  - z. Losses from a farming enterprise shall be deducted from any other countable household income. This special consideration applies only to farms with annual gross sales of \$1,000 or more;

- aa. Certain cash donations, based on need, received from one (1) or more private, nonprofit charitable organizations; and
- bb. Housing allotment for military families who have one (1) or both Parents deployed to a foreign country.

6. **Verification, Documentation and Treatment of Eligibility Income**

- a. The Parent shall have the primary responsibility to provide verification of Eligibility Income.
- b. Eligibility Income verification must be requested from all CCSP applicants.
- c. Eligibility Income cannot be determined prior to income verification, and Child Care Subsidy services shall not be provided prior to verification.
- d. Eligibility income verification must be documented in the Parent's case file.
- e. If Eligibility income verification has not been provided within ten (10) calendar days of the application date, the application will be denied.
- f. Acceptable verification of earned income includes one (1) or more of the following:
  - i. Four (4) weeks of current (within sixty (60) calendar days of application) and complete pay stubs;
  - ii. W-2 Form (if representative of current and future earnings);
  - iii. State and/or Federal Income Tax Return;
  - iv. Self-employment bookkeeping records, including but not limited to, profit and loss statements);
  - v. Sales and expenditure records;
  - vi. Employment information sheet provided by CCSP;
  - vii. Statement of employment and expected gross earnings, signed and dated by the employer on company letterhead;
  - viii. Employer's wage record;
  - ix. Employment Security Office records;
  - x. Verbal verification from Caseworker for Care and Custody/Department/Tribal referrals; or
  - xi. A signed release of information from the applicant which authorizes the Department to pursue verification or further clarification; and
  - xii. Documentary evidence is the primary source of verification of unearned income. Whenever attempts to verify income have failed for reasons other than Parent's non-cooperation, an amount to be used shall be determined based on the best available information. If verification (other than documentary evidence) is used, the reason why shall be explained in the Parent's record. Acceptable verification of unearned income includes, but is not limited to, the following:
    - 1) Benefit check (viewed and photocopied by the Department);

- 2) All types of Award Letters;
- 3) Signed income tax records (interest income, dividends, royalties, estates, trusts, deferred compensation plans, capital gains, etc.)
- 4) Support and alimony payments evidenced by court order, divorce or separation papers, or check copies;
- 5) Social Security Query Card Response;
- 6) Social Security District Office verification;
- 7) Bank statement;
- 8) Worker's Compensation verification;
- 9) Insurance company verification;
- 10) Verbal verification from Caseworker for Care and Custody Department/Tribal referrals;
- 11) A signed release of information from the applicant which authorizes the Department to pursue verification or further clarification; or
- 12) A Parent is found to be eligible for the Child Care Subsidy Program if his/her monthly Eligibility Income is at or below eight-five percent (85%) of the current SMI; and
- 13) Income is figured by averaging weekly or bi-weekly pay and multiplying by 4.3 to get a monthly average.

#### **D. Program Eligibility**

The Office of Child and Family Services (OCFS) is responsible for approving Child Care Subsidy eligibility through review of the completed program application.

1. The Parent must be determined financially eligible for Child Care Subsidy no more than sixty (60) calendar days prior to the date of the OCFS' receipt of the completed program application or the program application will be denied.
2. Parents enrolled in a Job Training, Educational Program, or apprenticeship must verify enrollment upon initial application and re-determination and are required to attend classes either in-person or online.
3. If a Parent is income eligible and provides documentation from the SSA or MaineCare's Medical Review Team (MRT) indicating he/she has a disability and supplies a doctor's note which renders him/her unable to care for the Child(ren) and unable to work and the other Parent is working, attending an Educational, Job Training Program, or apprenticeship the Family may be eligible for Child Care Subsidy.
4. If a Child is home-schooled, the Parent is not eligible to receive Child Care Subsidy during regular school hours, as defined within their school district.
5. To the extent funding is available, the Department may waive Employment, Job Training, Educational Program, or apprenticeship requirements and authorize Child Care Subsidy for the following:

- a. A Child in Care and Custody; and a Child placed under the legal guardianship of an individual who has reached Retirement Age as defined by Social Security.

#### **E. Adverse Action on Parent's Eligibility**

1. When any Adverse Action is called for on an initial eligibility determination and re-determination and is based on wage and/or employment information, the Department shall provide the Parent with written notice of the Adverse Action, at minimum, twelve (12) calendar days prior to the Department taking Adverse Action. The notice shall advise the Parent that the Department has received information regarding his/her financial eligibility. The Parent has twelve (12) calendar days from the date that the written notice was mailed, to contest the Department's decision. The notice shall state that unless the Department is notified otherwise by the Parent in writing within twelve (12) calendar days from the date that the notice was mailed, the Department will assume that the data provided by the match or obtained through independent verification is correct and the change to the Parent's financial eligibility determination may be made.
2. When any Adverse Action is called for on an initial eligibility determination and re-determination and is based on federal record matches (SSA or IRS), the Parent shall be sent a written notice, at minimum, thirty (30) calendar days prior to the Department taking Adverse Action. The Parent has thirty (30) calendar days from the date that the notice was mailed to contest, in writing, the Department's decision. The notice shall state that unless the Department is notified otherwise by the Parent in writing within thirty (30) calendar days from the date that the notice was mailed, the Department will assume that the data provided by the match or obtained through independent verification is correct and the change to the Parent's financial eligibility determination may be made.

#### **F. Parent(s) Ineligible or Disqualified for Child Care Subsidy**

A Parent will be determined to be ineligible for Child Care Subsidy if:

1. A Child Care Provider reports to the Department that a Child had twenty-five (25) or more Unacceptable Absences within the previous twelve (12) months;
2. The Parent owes the Department restitution related to Child Care Subsidy or owes Parent Fees to a Child Care Provider with whom the Parent had an agreement (unless a reasonable payment plan has been set up and the Parent is making regular payments on the arrears);
3. The Parent had his/her Child Care Subsidy or other State benefits terminated for Misrepresentation of their Family income or Family size;
  - a. The Department shall impose a disqualification penalty of up to twelve (12) months after issuance of an Administrative Hearing decision which



determines that a Misrepresentation occurred or the Parent waives an Administrative Hearing;

4. Parents convicted of theft as a Class B or Class C crime by a court of competent jurisdiction, regarding the funds administered by the Department through the Child Care Subsidy, shall be permanently disqualified from participation in Child Care Subsidy.

#### **SECTION 4: WAIT LIST**

- A. The Department must maintain a Wait List if funding is not available at the time the Department receives a Parent's complete program application for Child Care Subsidy.
- B. Parents on the Wait List shall receive written notification annually from the Department, informing them they have thirty (30) calendar days to provide updated program application information if they wish to remain on the Wait List.
- C. The Wait List shall be updated, at minimum, annually, and include the identification of all Parents by:
  1. Name of Parent;
  2. The Department's Parent "A" number;
  3. Date of receipt of completed program application for Child Care Subsidy;
  4. County of Parent's residence;
  5. Priority group(s) (see section 3.4, below); and
  6. Age of Child(ren).

#### **D. Priorities for Wait List**

1. Children from Families with Very Low Income, Children who are Homeless, and Children with Special Needs will be given first-priority over other Children otherwise eligible for Child Care Subsidy.
2. All other Parents are selected from the Wait List on a first-come, first-served basis, based on the date the Department received the completed program application.
3. Exceptions to the above may be granted by the State Child Care Administrator for the following:
  - a. In cases of catastrophic events including, but not limited to: fires; storms; accidents; or Family emergencies, including, but not limited to, surgery and other medical procedures; or

- b. For siblings of Children accepted from the Wait List, when funding is not available to serve all siblings, the remaining siblings will continue in their position on the Wait List for Child Care Services.

## **SECTION 5: CHILD CARE SUBSIDY**

- A. The Department will pay a Child Care Subsidy to the Eligible Child's Child Care Provider in the amount of the lesser of the maximum Market Rate set forth by the Department or the Child Care Provider's rate set forth in the Child Care Provider's Provider Agreement, less the Parent Fee and adjusted as otherwise provided in this Chapter.
- B. The Department will establish Market Rates for Child Care Providers in each county. The Department is the only entity authorized to establish the Child Care Subsidy Market Rates for each county.
- C. If a Parent with whom an Eligible Child resides has a court order indicating that another person shares the responsibility for the Childcare, the Department will decrease the amount of the Child Care Subsidy Payment in accordance with such court order.
- D. Child Care Services to be funded, in whole or in part, by a Child Care Subsidy may be provided only by a Child Care Provider that has entered into and is in compliance with the Provider Agreement with the Department that describes the responsibilities of both parties, using the forms provided by the Department.

## **SECTION 6: PARENT FEE & COSTS**

- A. All Parents will be assessed, and a Parent Fee will be determined by the number of individuals in the Family, the Gross Income or Allowable Net Income, and QRIS level of program. The Parent Fee does not vary with the number of Children receiving Child Care Services, the amount of Child Care Services they need, or the type of Child Care Services the Parent chooses to use.
  - 1. All Parents will be notified by the Department of the amount of the Parent Fee and associated payment terms. All Parent Fees will be paid directly to the Child Care Provider by the Parent or another party acting on behalf of the Parent, for the full period his/her Child(ren) is/are enrolled and receiving Child Care Subsidy.
  - 2. Parents choosing a Provider at a Step 3 QRIS will receive a ten percent (10%) reduction in their Parent Fee determination or at a Step 4 QRIS will receive a twenty percent (20%) reduction in their Parent Fee determination.
  - 3. Under no circumstances will the Department use State or federal funds to pay the Parent Fee.

- B.** The total amount of the Parent Fee assessed cannot exceed ten percent (10%) of the Family's Gross Income or Allowable Net Income.
- C.** The Department will use the Federal Poverty Guidelines to establish incremental ranges of income within the maximum allowed by CCDF rules and update annually in accordance with changes in the Federal Poverty Guidelines.
- D.** A graduated fee percentage of Gross Income or Allowable Net Income will be applied to each of the income ranges as follows:

Federal Poverty Guidelines	Fee Percentage of Gross Income or Allowable Net Income
Up to 25%	2%
26% - 50%	4%
51% - 75%	5%
76% - 100%	6%
101% - 125%	8%
126% - 150%	9%
151% - Maximum Allowed	10%

- E.** A Parent Fee can be adjusted between re-determinations only:
1. If the Gross Income or Allowable Net Income decreases;
  2. To correct an error in the prior calculation; or
  3. To reinstate a Parent Fee that has been lowered (cannot be increased to more than the initial Parent Fee).
- F.** When the Parent Fee is adjusted, an updated Award Letter will be sent to the Parent and Child Care Provider.
- G.** Neither the Department nor the Child Care Provider has the authority to waive the Parent Fee.
- H.** The Child Care Provider will collect the Parent Fee portion of the payment from the Parent on a weekly basis, as agreed to in the Provider Agreement.
- I.** If the Parent owes a Child Care Provider a Parent Fee(s) for any of the twelve (12) days of required notification, the Department may rescind the Award Letter until paid in full or

a payment schedule is agreed upon by the Child Care Provider and the Parent. If the Parent defaults on said payment arrangements, the Department shall terminate the Parent's Child Care Subsidy.

- J. The Parent is solely responsible for transportation fees, late pickup fees, and other fees incurred by the Child to access Child Care Services.

## SECTION 7: ENROLLMENT

### A. Enrollment Hours

1. Total enrollment hours will be awarded in one (1) hour increments and cannot exceed fifty (50) hours per Child, per week. Exceptions are approved by the Department on a case-by-case basis.
2. For Parents who are Employed, enrollment hours per week will be determined based on work hours, related transportation time, and unpaid work breaks.
  - a. **Night-time Employment**  
Parents with Night-Time Employment may seek Department-approval for a maximum of eight (8) additional hours of sleep time. However, Children shall not remain in Child Care Services longer than eighteen (18) hours within a twenty-four (24) hour period.
  - b. **Self-employment**  
For Parents who are Self-Employed, the weekly enrollment hours will be determined by the monthly Allowable Net Income being divided by the Maine hourly minimum wage at the time of determination and re-determination; this total is then divided by four-point-three (4.3) (travel time is not figured into Self-employment).
  - c. **Per Diem Employment**  
For Parents who are Employed on a per diem basis, enrollment hours will be determined at the time of initial application and re-determination and will be based upon the Parent's work schedule.
3. For Parents who are attending an Educational or Job Training Program, enrollment hours per week will be determined based upon:
  - a. Actual class hours;
  - b. Related transportation time; and
  - c. Reasonable Study Time, as determined by the Department.
4. Parents who have shared/joint custody must provide a copy of a court-order or notarized visitation schedule. Enrollment hours will be determined by the

hours/days the Child(ren) are in care of the Parent receiving the Child Care Subsidy.

### **B. Enrollment Period**

1. The enrollment period begins on the initial date that Child Care Services are provided and ends on the last day the Child received Child Care Services and must be within the beginning and ending dates of the Award Letter.
2. The enrollment period also includes a two (2) week period after Notification of Termination is received by the Parent and the Child Care Provider unless the Child Care Provider's Provider Agreement is being terminated by the Department, in which case the two (2) week period does not apply.

### **C. Child Protective Services Case Managed Clients**

1. Enrollment hours must correspond to the Caseworker's case plan for a Child in the Care and Custody of the Department or Federally Recognized Tribe.

### **D. Child Absences**

1. When a Child Care Provider reports to the Department that a Child had more than twenty hours (20) Unacceptable Absences in a month, the Parent will be sent a letter explaining the policy pertaining to Unacceptable Absences.
2. When a Child is absent from the program beyond two (2) consecutive weeks for the same Reasonable Cause, the Child Care Provider must obtain prior written approval from the Department to continue Child Care Subsidy Payment.
3. Child Care Subsidy will be terminated if the Parent has not requested, and the Department has not approved, an extension beyond two (2) consecutive weeks of being absent for Reasonable Cause.
4. When a Child Care Provider reports to the Department that a Child had two hundred and fifty (250) hours or twenty-five days (25) or more Unacceptable Absences within the previous twelve (12) months, unless approved by the Department, Child Care Subsidy will be terminated.

## **SECTION 8: MAINTAINING PARENT ELIGIBILITY**

### **A. Reporting Requirements**

1. Within ten (10) calendar days of its occurrence, Parents receiving Child Care Subsidy must report any of the following to the Department:
  - a. Any Non-Temporary Change; and

- b. Change of Child Care Provider.
2. If Parents fail to provide the requested information to support a reported change within ten (10) calendar days of the change, the Parent's Child Care Subsidy will be terminated.
3. It is the responsibility of the Parent to ensure that the Department has his/her current address. All notices sent to the last documented address provided by the Parent(s) and not returned will be considered to have been received, and as such the Department will consider the Parent(s) notified.

#### **B. Continued Eligibility**

1. Child Care Subsidy will continue in accordance with the current Award Letter for a Child whose Parent is experiencing any Temporary Change.
2. Child Care Subsidy will continue for a period of up to twelve (12) weeks for a Child whose Parent is experiencing any Non-Temporary Change.

#### **C. Re-determining Eligibility**

1. The Department will re-determine eligibility of all Parents receiving Child Care Subsidy no sooner than every twelve (12) months as required by federal law (45 CFR Part 98.16). When possible, re-determinations for Child Care Subsidy will be aligned with the re-determination(s) of other State assistance benefit program(s) the Parent is receiving.
2. The Department will send the Parent written notification at least thirty (30) calendar days before the re-determination is due.
3. The written notification of re-determination will include the exact date that Child Care Subsidy will be terminated if the Parent fails to complete and return the program application and required documentation.
4. When a Parent has completed the required eligibility re-determination forms, but failed to provide the requested documentation, or is found to be no longer eligible for Child Care Subsidy, Child Care Subsidy Payment will not be made beyond the date of the current Award Letter.

### **SECTION 9: CHILD CARE PROVIDER ELIGIBILITY AND REQUIREMENTS**

- A. Child Care Providers who can receive reimbursement from the Child Care Subsidy Program under this rule must either be a Child Care Provider licensed under DHHS Division of Licensing rules, a Child Care Provider Licensed under New Hampshire DHHS Child Care Licensing Unit, or a License-Exempt Child Care Provider as defined in the rule and must meet the requirements of the provision.

**B.** All Licensed Child Care Providers, except for Child Care Providers Licensed under New Hampshire DHHS Child Care Licensing Unit, must maintain at least minimal level on Maine Quality Rating System.

**C.** All Licensed Child Care Providers, except for Child Care Providers Licensed under New Hampshire DHHS Child Care Licensing Unit, must comply with all applicable DHHS Licensing rules.

**D. Provider Agreement**

1. Before Subsidy can be approved, the Department and the Child Care Provider will execute a Provider Agreement.
2. The Provider Agreement will set forth the responsibilities of both parties and shall include:
  - a. Operations, Referrals, Parent Fee Collection, Reimbursement, Reporting, Record Keeping, Site Visits in conformance with 42 U.S.C. § 9858c(c)(2)(K), Health and Safety Requirements, Department's Responsibilities, Child Care Market Rates, and Child Care Hours of Operations.
3. The Provider Agreement will be executed on forms authorized by the Department.
4. The agreed upon maximum payment to the Child Care Provider for Child Care Subsidy will:
  - a. Be the total of the Subsidy payment and the Parent fee;
  - b. Will not exceed the Department established Market Rate or the Child Care Provider's rate, whichever is less; and
  - c. Will not exceed the rate charged to the Child Care Provider's other Parents for equivalent Child Care Services as defined in the Child Care Provider's public rate schedule.
5. The Department will pay the Child Care Provider the agreed upon weekly rate.
6. The Child Care Provider will collect the Parent Fee portion of the payment from the Parent on a weekly basis as agreed to in the Provider Agreement.
7. Enrollment standards must be followed.
8. All Subsidy payments to Child Care Providers will be for services provided between the beginning date and the ending date of the Award Letter.
9. Payments outside of the Provider Agreement dates are not allowed.

10. No payments to Child Care Providers will be made when the Child Care Provider is a member of the Subsidy Parent's Family or to a Child Care Provider who lives in the same household.

### **E. Background Checks**

1. Licensed and License-Exempt Child Care Provider (excluding Relative Child Care Providers) are required to submit a request for a criminal background check for all current and prospective staff members, all adults residing in the location where Child Care Services are being provided, any individuals whose activities involve the care or supervision of Children or who have unsupervised access to Children, and the Child Care Provider him/herself as required by federal law (45 C.F.R. § 98.43).

2. The following background checks are required:

In the State where the individual resides includes all the following checks: Child Protective Services (CPS), State Bureau of Identification (SBI) with fingerprints, Department of Motor Vehicles (DMV), State Sex Offender Registry, National Crime Information Center (NCIC) National Sex Offender Registry, and FBI fingerprint check using Next Generation Identification.

In each state where the individual has resided for the previous five (5) years) includes all the following checks: Child Protective Services (CPS), State Bureau of Identification (SBI) with or without fingerprints, Department of Motor Vehicles (DMV), State Sex Offender Registry, NCIC National Sex Offender Registry, and FBI fingerprint check using Next Generation Identification as required by federal law (45 C.F.R. § 98.43).

3. Background checks must be completed at least once every five (5) years.
4. A Child Care Provider shall not be required to submit a request if the individual received a qualifying background check within the last five (5) years.
5. The State may charge the Child Care Provider for the actual cost of the processing and administration of background checks.
6. The State shall provide results of the background check to the Child Care Provider and the current or prospective staff member indicating eligibility or ineligibility within forty-five (45) calendar days of the Child Care Provider's submitted request.
7. If a current or prospective staff member is ineligible due to the results of the background check:



- a. The results must be provided to the Child Care Provider without revealing any disqualifying crime or other related information regarding the individual; and
  - b. The results must be provided to the individual and include information related to each disqualifying crime, along with information and the opportunity to appeal.
8. The results of individual background checks shall not be publicly released or shared, unless the data is unidentifiable and/or aggregated.
9. A prospective staff member may begin work for a Child Care Provider after receiving qualifying results of either the Federal Bureau of Investigation fingerprint check using Next Generation Identification, or State Bureau of Identification (SBI) with fingerprints. This staff member must always be supervised, by an individual who received a qualifying result on a background check within the past five (5) years, until the results of all aspects of the background check have been received.
10. Unsatisfactory results of any component of a background check for any individual described in section 7.1 (above) will disqualify the Provider that employs, proposes to employ, houses, or otherwise provides such individual access to children from receiving payment for Child Care Services provided under this chapter. Unsatisfactory result is defined by one (1) or more of the following:
  - a. A conviction for any Class A crime (as defined by State statute) or its equivalent;
  - b. A conviction within the last ten (10) years for any Class B or C crime or its equivalent that involved the use of force;
  - c. A conviction for any crime within the last ten (10) years that resulted in time served in a correctional facility;
  - d. A conviction for any crime in the last ten (10) years that jeopardized the health and safety of a minor;
  - e. More than one (1) conviction within the last three (3) years based on an action which would be deemed, by the Department, as detrimental to the welfare of a Child;
  - f. A drug-related offense committed during the preceding five (5) years, unless the Department determines the individual is eligible pursuant to a review of the conviction or convictions;
  - g. A conviction for an OUI or Driving to Endanger within the last three (3) years. The Department may approve Child Care Subsidy if another adult in the household (not the Child Care Provider) is found to have this

conviction and he or she signs a written agreement not to transport Children receiving Child Care Services;

- h. More than one (1) operating under the influence (OUI) conviction, with the latest conviction in the last five (5) years;
- i. Three (3) or more convictions in the last five (5) years for speeding in excess of twenty (20) miles per hour over the speed limit by the Child Care Provider. The Department may approve Child Care Subsidy if the Child Care Provider signs a written agreement not to transport Children while providing Child Care Services;
- j. A suspended driver's license at the time of application by the Child Care Provider. The Department may approve Child Care Subsidy if the Child Care Provider signs a written agreement not to drive the Children while providing Child Care Services;
- k. A substantiated finding of Child abuse or neglect by the Department;
- l. A refusal to consent to participation in a background check;
- m. Materially false statements made relating to a background check;
- n. A registration or requirement to register on a State or National Sex Offender Registry; and/or
- o. A conviction of murder.

## 11. Appeals

If the Child Care provider or individual do not agree with the interpretation of the information in the background check, the Child Care Provider or individual have the right to request an administrative hearing to appeal. Appeals are limited to only the interpretation of information contained in its background check.

The Child Care Provider or individual's request for an appeal must be made within ten (10) days of notice that ability to be employed as a Child Care Provider has been impacted as a result of information contained in your background check.

To appeal, the Child Care Provider or individual can write a letter requesting a hearing. That letter should contain any information you think will help your claim that the Department incorrectly interpreted information in your background check. Letters should be sent to the Office of Administrative Hearings.

Except as otherwise provided here, the administrative hearings shall be conducted pursuant to procedures for Orders of Reference in the Department's Division of

Administrative Hearings Regulations, as amended from time to time. The Order of Reference shall state as the issue for hearing, “Whether the Department was correct when interpreting the background check information for [name of the appellant] and determining that [name of the appellant] was ineligible to provide care as a Child Care Provider that receives Child Care Subsidy.”

The Division of Administrative Hearings will schedule a hearing pursuant to its rules. If the bureau, division, or office that issued the substantiation decision believes that the request for hearing was not timely or that there is another reason why the appellant is not entitled to a hearing, it may request that the Chief Administrative Hearing Officer dismiss the matter or that a hearing not be held. The Division of Administrative Hearings regulations shall govern the admission and exclusion of evidence at the Administrative Hearing.

#### **F. Emergency Plan:**

All Child Care Providers (excluding Relative Child Care Providers) must have an Emergency Plan that is updated annually as required by federal law (45 C.F.R. § 98.16) that includes:

1. Procedures for evacuation, relocation, shelter-in-place and lock down, staff and volunteer emergency preparedness training and practice drills, communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions; and
2. Procedures for staff and volunteer emergency preparedness training and practice drills, including training requirements for Child Care Providers of services for which assistance is provided under CCDF at § 98.41(a)(1)(vii).

#### **G. Health and Safety Standards**

All Child Care Providers, Teachers, and directors associated with Child Care Providers (excluding Relative Child Care Providers) must have attained a minimum of a Step One (1) quality rating from Maine Roads to Quality and successfully completed the Department-Approved orientation training that includes, at a minimum, the Health and Safety Standards below, within ninety (90) calendar days of beginning his/her work with Children as required by federal law (45 C.F.R. § 98.41):

1. Prevention and Control of Infectious Diseases is defined by following proper methods of handwashing cleaning and sanitizing, and disinfecting surface areas, bedding, and toys/objects, by not attending Child Care Services when ill, and to have Children stay current on vaccinations which are nationally recommended;
2. Prevention of Sudden Infant Death Syndrome (SIDS) and use of Safe Sleep Practices is defined as following practices to reduce the risk of SIDS; such as placing a baby to sleep on his or her back on a firm mattress using a safety-

approved crib, removal of any loose bedding, and while sleeping making sure the baby's head stays uncovered, and the baby does not get overheated;

3. Administration of medication, consistent with parental consent is defined as Child Care Providers and staff must be aware of and follow state regulations, laws, and program policies and procedures. Directors, supervisors, and owner/operators are responsible to prepare and enforce policies for accurate medication administration procedures. They must also make sure that identified staff are well trained to administer medication to Children by following State-approved medication administration training guidelines. Medicines administered in Child Care Centers, family group homes, and Family Child Care programs should be limited to prescription or nonprescription (over-the-counter or OTC) medications. All medication administration must include parental/guardian written, documented permission, and medication logs. Medications must be ordered by a prescribing health professional for a specific Child. Orders from the prescribing health professional should specify the medical need, medication, dosage, and length of time to give medication;
4. Prevention of and response to emergencies due to food and allergic reactions is defined by having classroom procedures for policies, food preparation and food label reading, food services, cleaning and sanitizing, field trips, and recognizing symptoms. By also having a food allergy action plan or emergency care plan in place for a Child with severe food allergies;
5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic is defined as a safe space where age appropriate planning and checks take place inside and outside for toys, furniture, materials, and equipment. Proper supervision takes place even during naptime. Prepare and prevent to ensure Children in care can move around the space and explore;
6. Prevention of Shaken Baby Syndrome, Abusive Head Trauma, and Child maltreatment is defined as all caregivers/teachers who are in direct contact with Children including substitute caregivers/Teachers and volunteers, should receive training on how to prevent shaken baby syndrome/abusive head trauma, recognize the potential signs and symptoms of shaken baby syndrome/abusive head trauma, learn strategies for coping with a crying, fussing or distraught Child, and learn the development and vulnerabilities of the brain in infancy and early childhood;
7. Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event must also include procedures for evacuation; relocation; shelter-in-place and lockdown; staff and volunteer training and practice drills; communications and reunification with families; continuity of operations; and accommodations for infants and toddlers, Children with disabilities, and children with chronic medical conditions: standard is defined as every Child Care Facility needs a written plan for emergencies. Every person

who works in a Child Care Facility, every early care and education (ECE) professional, should know his or her role in emergency situations, and how to follow the plan to keep Children and adults safe if an emergency occurs. A written emergency preparedness plan should include step-by-step procedures for evacuation, relocation, shelter-in-place, lockdown, communication and reunification with families, and planning for vulnerable Children;

8. Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants is defined as any material that either contains poison or is poisonous, and possibly can cause serious problems or even death. Exposure can take place through inhalation, skin contact, or ingestion. When not in use, all hazardous materials should be stored in the original container in a locked cabinet or room that has a child-resistant lock and is not accessible to children. Chemicals should be stored separately from food and medications. All hazardous materials should be used per the manufacturer's instructions on the label. Pesticides and other chemicals should not be used when children are present. Chemicals used to treat lawns should be restricted to chemicals that are approved for use in areas where Children will be present;
  9. Appropriate precautions in transporting Children (if applicable) is defined as all providers and staff follow state laws and regulations, program policies, liability, and insurance. Written transportation policies should be in place and should address the safe transport of Children by vehicle to and from the facility, home pickups and deliveries, and special outings such as field trips. Policies should also address the safe care of Children around vehicles, such as during drop-off and pickup times, in parking lots, or anywhere that children may be exposed to moving vehicles;
  10. Pediatric first-aid and cardiopulmonary resuscitation (CPR) is defined as Providers have learned the priorities, roles, and responsibilities of a rescuer providing first aid or CPR to a Child or an Infant. Included is how to help when a child or infant is choking. Proper certification is gained through training; and
  11. Recognition and reporting of Child abuse and neglect is defined as a threat to a Child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the Child. Any provider suspecting abuse and/or neglect must report this information to Child Protective Intake Services, which is staffed twenty-four (24) hours a day, seven (7) days a week. The provider must maintain documentation that a report has been made.
- H.** All Child Care Providers, Teachers, and directors associated with Child Care Providers (excluding Relative Child Care Providers) must successfully complete the Department-Approved annual training, that includes, at a minimum, inclusion of Children with Special Needs, Homelessness, and the minimum Health and Safety Standards listed below as required by federal law (45 C.F.R. § 98.41):

1. Prevention and Control of Infectious Diseases;
  2. Prevention of Sudden Infant Death Syndrome and use of Safe Sleep Practices;
  3. Administration of medication, consistent with standards for parental consent;
  4. Prevention of and response to emergencies due to food and allergic reactions;
  5. Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic;
  6. Prevention of Shaken Baby Syndrome, Abusive Head Trauma, and Child maltreatment;
  7. Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event;
  8. Handling and storage of hazardous materials and the appropriate disposal of bio contaminants;
  9. Appropriate precautions in transporting Children (if applicable);
  10. Pediatric first-aid and cardiopulmonary resuscitation (CPR); and
  11. Recognition and reporting of Child abuse and neglect.
- I.** Only Parents or those persons authorized in writing by the Parents are allowed to remove the Child(ren) from the Child Care Provider's care.
- J.** All persons authorized to remove Children from the Child Care Providers care must be identified in the Child Care Provider's records.
- K.** Additional rules specific to License-Exempt Child Care Providers (excluding Relative Child Care Providers) as required by federal law (45 C.F.R. § 98.42).
1. Allow the Department to perform at least annual health and safety monitoring visit. The Department may also inspect License-Exempt Child Care Providers' facilities upon receipt of a report or complaint, and to conduct random health and safety inspections, all with or without notice at the Department's sole discretion.
  2. Upon request, provide documentation that the Children receiving Child Care Subsidy are age-appropriately immunized and meet the latest recommendation for childhood immunizations in Maine, as recommended by the Department's Center for Disease Control (CDC). A ninety (90) calendar day grace period shall be

granted while Parents are taking the necessary actions to comply with the immunization requirement. Children who receive care in his/her own home may be exempted from the immunization requirement

**L. Additional rules specific to License-Exempt In-Home Child Care Provider (excluding Relative Child Care Providers)**

1. During the initial application process with the In-Home Child Care Provider, the Department must inform the In-Home Child Care Provider that by federal law, they may be considered an employee of the Parent with the requirement that they be paid minimum wage, as well as being subject to withholding taxes. The In-Home Child Care Provider is classified as a domestic service worker under the Fair Labor Standards Act (FLSA) and, as such, may be subject to requirements of the FLSA. The In-Home Child Care Provider will sign a Provider Agreement Form indicating that he or she has received this information.
2. During the initial program application process with the Parent, the Department must inform the Parent in writing that as the employer of the In-Home Child Care Provider:
  - a. They are responsible for compliance with the requirements of the FLSA;
  - b. The assessed Parent Fee may be insufficient to constitute compliance; and
  - c. To comply with State and Federal Labor laws they may be responsible for the balance of any payment for an In-Home Child Care Provider that may exceed the Market Rate.
3. The Department will require a signed receipt from the Parent indicating that the Parent has received and understands the information outlined above.

**M. Child Care Provider Ineligible or Disqualified to receive Child Care Subsidy Payments**

1. Child Care Providers who previously had agreements with the Department and who meet any of the following conditions are not eligible to receive Child Care Subsidy Payments on behalf of Parents receiving Child Care Subsidy and the Parent must select a new Child Care Provider in order to continue to receive Child Care Subsidy twelve (12)-calendar day advance notification is not required). If the Child Care Provider owes money to the Department; including Overpayments in other programs;
  - a. The Child Care Provider was found to be engaged in Misrepresentation in connection with Child Care Subsidy or other State benefit assistance program;
  - b. The Child Care Provider has been sanctioned the Department; or

- c. The Child Care Provider had a previous Provider Agreement terminated by the Department for any of the following:
  - i. Notification by the Department that the Child Care Provider's license or certification has been revoked, voided, or suspended;
  - ii. Misrepresentation of Child Care Services provided in the Child Care Provider's billing;
  - iii. Discrimination against a Parent receiving Child Care Subsidy, in the provision of service and/or fee assessment;
  - iv. Repeated Failure of the Child Care Provider to submit timely, complete and accurate billings, despite the Department's efforts to provide technical assistance to the Child Care Provider;
  - v. Any violation of the Provider Agreement which constitutes a breach of contract;
  - vi. Non-compliance of any policy set forth in the Provider Agreement;
  - vii. If the provider does not return a completed and signed Provider Agreement within thirty (30) calendar days of the Department's request for this information;
  - viii. An individual providing Child Care Services as a License-Exempt Child Care Provider but whose child care license or certification has been revoked, suspended, voided, or denied by the Department or if to avoid revocation, suspension, or denial has surrendered his or her license or certification; or
  - ix. An individual providing care as a License-Exempt Child Care Provider but whose child care conditional license or conditional certification has been voided by the Department or who has surrendered his or her conditional license or conditional certification to avoid the Department voiding said license or certification; and
  - x. An individual providing care as a Non-relative License-Exempt Child Care Provider that does comply with attempts being made to schedule health and safety monitoring. Non-compliance means two (2) phone calls or two (2) scheduled visits that the Child Care Provider does not respond to.
2. Child Care Providers who are found to have committed a Misrepresentation must be referred to the DHHS Fraud Investigation Unit pursuant to 22 M.R.S. § 13.

## **SECTION 10: TERMINATION OF SERVICES**

### **A. Termination of Child Care Services by a Parent**

1. The Parent may immediately terminate the Child Care Services with his/her Child Care Provider for failure of the Child Care Provider to allow Parents unlimited access to his/her Child(ren), unless access has been limited by a court order. Child Care Services may be terminated by the Parent due to an allegation of child care license/certification violation or child abuse and neglect investigated by



the Department. Substantiated parental complaints regarding child care providers will be provided to the public upon request by the Department. All inspection and monitoring reports are available to the Child Care Choices website <https://childcarechoices.me/>.

## **B. Termination of Child Care Subsidy to the Parent by the Department**

1. The Department will terminate Child Care Subsidy when:
  - a. The Parent has Misrepresented his/her eligibility information;
  - b. The Parent receiving Child Care Subsidy is no longer a Maine Resident;
  - c. The available Child Care Subsidy funding is reduced;
  - d. The State program changes which have been implemented through a rulemaking procedure, in accordance with the Administrative Procedure Act;
  - e. There are changes in the CCDF State plan or other policies, when those decisions have provided for adequate public notice; and
  - f. A Child Care Provider has given adequate notice to all Parents that Child Care Service(s) are to be terminated at the end of a specified period due to discontinuance of the Child Care Provider's Child Care Service.
2. The Department must:
  - a. Give written notice to the Parent(s) at least twelve (12) calendar days prior to the effective date of the termination;
  - b. Retain copies of all notices to terminate Child Care Services in the Parent's file;
  - c. The written notice to terminate shall contain the following:
    - i. The date of the termination;
    - ii. The reason(s) for the termination;
    - iii. Reference to the specific rules or regulations supporting the termination;
    - iv. Explanation of the Parent's right to request (in writing) a conference with the Department and/or an Administrative Hearing; and,
    - v. The time frame within which the conference and/or Administrative Hearing request must be submitted, for Child Care Services to continue.
  - d. Furnish the Child Care Provider a copy of the Notification of Termination issued to the Parent;

- e. Use an alternative form of notification when sensitive information should not be shared with the Child Care Provider; and
- f. Furnish the Caseworker with a copy of the Notification of Termination if the Child was referred by a Caseworker.

### **C. Notification of Termination**

A Parent, Child Care Provider, Caseworker on behalf of a Child that is in the Care and Custody of the Department, referred by a Caseworker who chooses to terminate Child Care Services will be required to submit to the Department, a twelve (12) calendar day written Notification of Termination. Notice may additionally be made in person, or by direct telephone contact.

1. Parents must give the Child Care Provider a written twelve (12) calendar day notice when they are going to terminate Child Care Services. The Department must receive a copy of this notice.
2. Parents who fail to give the Child Care Provider a written twelve (12) calendar day notification that Child Care Services are being terminated will pay the Child Care Provider the assessed Parent Fee for each day of Child Care Services during the twelve (12) calendar day notification period that his/her child care spot remains vacant.
3. If the Parent fails to give the required notice, the Department will pay the Child Care Provider for each service day short of the notification period and only for the days that the Parent's child care spot is vacant. The Department will not pay the Parent Fee.
4. If the Department pays the Child Care Provider when the Parent fails to give the required notice, the Department will not pay a second Child Care Provider on behalf of the Parent for the same Child and for the same period of time.
5. Other than situations otherwise noted under, "Termination of Child Care Services by a Parent," the Parent must leave the Child Care Provider in Good Standing or the Child Care Subsidy may not continue with a new Child Care Provider.
6. A twelve (12) calendar day Notification of Termination may be waived when mutually-agreed upon between Parent and Child Care Provider.
7. Notification of Termination by the Department by phone, mail, or email, will constitute the beginning of the twelve (12) calendar day Notification of Termination.

## **SECTION 11: BILLING AND PAYMENTS**

The Market Rate is set by the Department based on a survey of Child Care Providers or a statistically valid and reliable alternative methodology approved by the Administration for Children and Families (ACF) and is evaluated every three (3) years to ensure adequacy of rates for the purpose of demonstrating equal access to Child Care Services for families with low-income. Child Care Providers shall bill and the Department shall pay Child Care Subsidies as follows:

- A.** Children will be considered school age if they become five (5) years of age on or prior to October 15<sup>th</sup>, unless the Department is notified the Child will not be attending school the school age rate will be applied to billing;
- B.** To maintain continuity of Child Care Services, in a twelve (12) month period (January to January), the Department will pay the Child Care Provider for: state holidays, up to forty (40) training hours, and up to fifty (50) hours of Child Care Provider vacation time as required by federal law (45 C.F.R. §98.45);
- C.** All Child Care Subsidy Payments to Child Care Providers will be for only those Child Care Services provided between the beginning date and the ending date for Child Care Services authorized in the Award Letter;
- D.** Child Care Subsidy Payments will be made to all eligible Child Care Providers on a Reimbursement Basis and will be based on the number of hours of Child Care Services provided;
- E.** If a Child Care Provider has a policy of requiring a one-time deposit, registration fee, or application fee, the Parent will be responsible for these fees.
- F.** Child Care Providers having attained a Maine Roads to Quality Step Level of two (2) or higher may qualify for an additional monetary stipend; and
- G.** Child Care Providers providing Child Care Services Monday through Friday between the hours of 6 p.m. and 6 a.m. and anytime during the weekends, may receive an additional monetary stipend to be determined by the Department.

### **H. Billing Process**

1. The Child Care Provider must utilize the Department's standard billing form.
2. The Department will not pay a Child Care Provider who does not submit a bill within sixty (60) calendar days of the Department established submission deadline.

3. The Child Care Provider will maintain, retain, and provide to the Department upon request, daily attendance records; records must be retained for a minimum of three (3) years.
4. The Child Care Provider must issue a receipt upon payment of the Parent Fee and retain copies of all receipts in agency files and keep fiscal records on all fee transactions for a minimum of three (3) years.
5. Parents and Child Care Providers are required to sign attendance sheets weekly, at a minimum.
6. The Child Care Provider's attendance records must align with the submitted billing forms.

**I. Payment for Open Child Protective Cases, Child Protective Cases involving At-Risk Children, and Care and Custody Referrals**

If the Department or Federal Tribal Caseworker requests that the Child Care Provider hold a spot for his/her client who has been accepted for Child Care Subsidy, but the Parent fails to appear on the scheduled enrollment date, the Department will pay the Child Care Provider for up to two (2) weeks of Child Care Services per the Award Letter.

**J. Payment Timing**

When the Child Care Provider's billing form is free of errors and submitted to the Department within the time frame stipulated in the Provider Agreement, the Department will pay the Child Care Provider within twenty-one (21) calendar days of receipt.

**K. Payment Discontinued**

1. When the Parent's Child Care Subsidy is terminated, the Department will not pay the Child Care Provider beyond the termination date unless the Parent has requested an Administrative Hearing within ten (10) days of notice of termination.
2. When the Child Care Provider terminates Child Care Services to a Child, the Department will not pay the Child Care Provider for Child Care Services provided to the Child after the termination date by the Child Care Provider.
3. When the Provider Agreement between the Department and the Child Care Provider is terminated, no payment to the Child Care Provider will be made for any service provided or charge incurred after the termination date.
4. When a Licensed Child Care Provider's license or Maines Quality Certificate expires, no Child Care Subsidy Payment shall be made to such Provider for Services provided to a Child after the Provider's license expires and before the

effective date of the Provider's new or renewed license or certificate if one is obtained.

## **SECTION 12: IMPROPER PAYMENTS**

When a Parent or Child Care Provider receives more or less benefits than they should have received, an improper payment is deemed to have occurred.

### **A. Underpayments and Overpayments**

1. If the improper payment results in less benefits than should have been granted, the result is an Underpayment.
2. If the improper payment results in more benefits than should have been granted, the result is an Overpayment.
3. The Department shall take prompt action in accordance with the requirements of this section whenever an improper payment occurs.

### **B. Underpayments**

1. Agency Administrative Error will be addressed by the Department on a case-by-case basis. The Department must receive written notification of any administrative errors by the Parent or Child Care Provider within thirty (30) calendar days of the date payment is issued to the Child Care Provider.

### **C. Overpayments**

No Overpayment shall be established if the difference between the benefits paid on behalf of the Parent and the correct benefit amount is less than ten dollars (\$10).

### **D. Errors Caused by Parents and Providers**

1. Overpayments that are not caused by Agency Administrative Errors shall be classified as caused by the Parent or Child Care Provider.
2. Overpayments caused by the Parent shall include, but not be limited to:
  - a. Errors caused by reporting false information; and
  - b. Errors caused by reporting inaccurate information.
3. Overpayments caused by the Child Care Provider shall include, but not be limited to errors caused by:
  - a. Inaccurate reporting of licensing status, age of the Child, or other Child Care Provider eligibility requirements;

- b. Inaccurate reporting of the Child Care Provider's relationship to the Child or the location at which Child Care Services are provided;
  - c. Inaccurate reporting of household circumstances;
  - d. Committing an illegal act, such as cashing a replacement check after falsely claiming that the original check was lost, stolen or destroyed;
  - e. Inaccurate reporting of actual charges or a Child's attendance; and
  - f. Any other false claim for Child Care Services provided.
4. The Overpayment shall be considered as both Parent and Child Care Provider caused if the Parent and the Child Care Provider both participated in the action that caused the Overpayment to occur.
  5. The Department shall make a preliminary determination of whether the Overpayment was caused by a Misrepresentation based on the information and evidence and pursuant to these rules. Overpayments shall be considered and pursued if the Parent or Child Care Provider withheld or provided false information on matters affecting eligibility, benefits or a claim for services.
  6. Where the Department makes a preliminary determination that a Parent or Child Care Provider may have committed a Misrepresentation, the case may be referred to the DHHS Fraud Investigation Unit pursuant to 22 M.R.S. § 13 and the Department may pursue establishment of a Misrepresentation against the Parent and/or Child Care Provider administratively.
  7. A final determination that a Misrepresentation occurred shall be made only as the result of a decision by an Administrative Hearing, a court, or waiver of the Administrative Hearing by the Parent and/or Child Care Provider. Failure to request an Administrative Hearing constitutes a waiver.

#### **E. Calculating the Improper Payment**

1. Improper Child Care Subsidy Payments shall be calculated by comparing the Child Care Subsidy Payment during the applicable benefit month to the Child Care Subsidy Payment that would have been payable if eligibility and Child Care Subsidy Payment had been calculated correctly. The difference between the correct Child Care Subsidy Payment and the amount of the Child Care Subsidy Payment paid shall be the amount of the monthly improper Child Care Subsidy Payment.
2. The monthly calculation is applied on a month-to-month basis for the improper payment period. The aggregate sum of the monthly improper Child Care Subsidy Payments within the improper Child Care Subsidy Payment period is the net

amount of the improper Child Care Subsidy Payment or the Overpayment/Underpayment amount.

3. If Child Care Subsidy benefits are underpaid, the amount owed shall be paid within sixty (60) calendar days of the date the error was discovered, unless information needed to calculate the improper Child Care Subsidy Payment is inadequate or has not been received. If the Parent or Child Care Provider has an outstanding Overpayment, the amount of the Underpayment shall be used to offset the outstanding Overpayment and any remaining balance of the Underpayment shall then be payable to the Parent or Child Care Provider.
4. Improper Child Care Subsidy Payments shall be corrected regardless of whether the Parent's case is active or closed. The Parent and Child Care Provider shall be notified of the determination.
5. Repayment of Overpayments shall begin on the first day of the month following the month in which the circumstances that caused the Overpayment occurred.
6. Repayment of Agency Administrative Overpayments shall begin on the first day of the month following the month in which the circumstances that caused the Overpayment occurred, unless a notice of Adverse Action is required.
7. If the Department fails to take timely action following discovery of the issue to correct the issue causing the Overpayment to accrue any subsequent subsidy benefits overpaid as the result of the delay, this shall be considered an Agency Administrative Error.

#### **F. Responsibility for Repayment**

If the Parent is responsible for the error, the Parent shall repay the Overpayment. If the Parent is responsible for the Overpayment, the Department shall require restitution by billing when the Overpayment is due and again on the 30<sup>th</sup> and 60<sup>th</sup> day if the Parent fails to pay. Thereafter, the Department may pursue collection in the appropriate venue. If the Child Care Provider is responsible for the error, the Child Care Provider shall repay the Overpayment. If the Child Care Provider is responsible for the Overpayment and recovery is initiated by reducing the monthly Child Care Subsidy Payments, the Child Care Provider shall not require the Parent to pay the difference by increasing charges to compensate for the loss of income due to the recovery of an Overpayment.

#### **G. Notice of Overpayment**

1. The individuals responsible for the repayment of the Overpayment shall be provided with written notice of Overpayment.

2. The written notice of Overpayment shall be sent to the Department's last known address of the Parent and/or Child Care Provider, by U.S. Postal Service first class mail.
3. The written notice of Overpayment shall contain:
  - a. Name(s) of the individual(s) responsible for repayment;
  - b. Last known address of the individual;
  - c. Amount of the Overpayment;
  - d. Period of the Overpayment;
  - e. A statement that the Overpayment will be considered payable in full thirty (30) calendar days from the date of the notice;
  - f. Explanation of why the Overpayment occurred;
  - g. Responsibility for repayment by recovery through Child Care Provider payment reduction (if applicable);
  - h. Responsibility for repayment when billed (if applicable);
  - i. Responsibility for repayment through Maine Revenue Services Tax Setoff (if applicable);
  - j. Administrative Hearing Rights and Appeal Rights; and
  - k. Selection of repayment method.
4. If the Child Care Provider is solely responsible for repaying the Overpayment, the Parent shall be notified in advance of the proposed change in Subsidy amount to the Child Care Provider and that the Child Care Provider cannot hold the Parent responsible for paying the difference.

#### **H. Methods of Repayment**

1. The Department shall attempt to recover Overpayments by a lump sum repayment or the quickest means possible.
2. If the Child Care Provider does not agree to a lump sum repayment and continues to receive Child Care Subsidy Payments, the Department shall then reduce the Child Care Provider's Child Care Subsidy Payments by twenty percent (20%) of the Child Care Provider's monthly Child Care Subsidy Payment until the Overpayment has been fully recovered.



3. Recovery by benefit reduction shall be initiated if the Child Care Provider does not respond to the advanced notice or request an Administrative Hearing.
4. Written request for an Administrative Hearing on establishment of the Overpayment must be received by the Department within thirty (30) calendar days of the notice. Such written requests shall stay recovery actions until issuance of a decision as a result of the Administrative Hearing.
5. If the Child Care Provider does not actively receive Child Care Subsidy Payments, the Department shall attempt to recover the Overpayment through the quickest means possible and through those mechanisms available by law as with other program Overpayments.
6. If the Parent or Child Care Provider does not comply with any repayment plan, the Department may, to the extent allowed by law, take any action deemed appropriate to recover such Overpayment.
7. If the Parent does not agree to a lump sum repayment and continues to be eligible for Child Care Subsidy, the Department may approve a repayment plan with the Parent of up to twenty percent (20%) of the amount owed paid weekly until the Parent has repaid the Overpayment.

### **SECTION 13: ADMINISTRATIVE HEARINGS**

- A. Any person who is denied service, has services reduced or terminated or is denied participation in the program by the Department has the right to a state agency hearing. The Commissioner has delegated to the Division of Administrative Hearings the responsibility to conduct state agency hearings. The state agency hearing shall be conducted in accordance with the current Administrative Procedure Act promulgated rules for state agency hearings.
- B. The Department shall give written notice within thirty (30) calendar days of request for service to all persons who are denied services, using a form approved by the Department.
- C. In all instances, notices of denial of service shall contain the Parent's or Provider's hearing rights.
- D. The following actions shall not be subject to a state agency hearing on denial of service:
  1. The service(s) requested are not within the Department's service or program description;
  2. Department funds are depleted; and
  3. The request for service originates from a person who is not authorized or appointed to act on behalf of a Parent.

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- E. If a request for services is denied, the person denied may submit another request at any time a change in circumstances occurs.
- F. The Department shall retain copies of all notices of denial issued.
- G. In cases of proposed action to discontinue, terminate, suspend, or reduce services, the Department shall give written notice to the Parent(s) at least twelve (12) calendar days prior to the effective date of the action.
- H. The written notice to discontinue, terminate, suspend or reduce services shall contain the following:
1. The date of the intended action;
  2. The action the Department or the agency is proposing to take;
  3. The reason(s) for the proposed action;
  4. Reference to the specific rules or regulations supporting such action; and
  5. Explanation of the individual's right to request in writing a conference with the provider and/or a state agency hearing.
- I. The time frame within which the conference and/or hearing request must be submitted for services to continue.
- J. The following actions to discontinue, terminate, suspend or reduce services shall not be subject to a state agency hearing:
1. Reduction, change, or termination of service(s) resulting from State program changes which have been implemented through a rulemaking procedure, in accordance with the Administrative Procedure Act;
  2. Reduction or termination of service resulting from a change in an annual or other services plan of the Child Care and Development Fund program or other state program or policy when those decisions have provided for adequate public notice;
  3. A provider organization has given adequate notice to all clients that service(s) are to be terminated at the end of a specified period due to discontinuance of the program, lack of funding, etc.
- K. The Department shall retain copies of all notices to discontinue terminate, suspend or reduce services in the Parent's files.

- L. Parents must request an Administrative Hearing in writing within ten (10) calendar days of the Parent's receipt of notification.
- M. Service shall be continued throughout the entire hearing process when the written request for a state Administrative Hearing are received within ten (10) calendar days of the Parent's receipt of notification.
- N. In cases where the Hearing decision rules in favor of the Department, the Department may seek recoupment for the subsidy provided from the time of initial termination until final termination notice (provided after the Administrative Hearing decision).
- O. When a state Administrative Hearing request is received within the time frame stated above, the Department shall notify the Child Care Provider immediately of their responsibility to continue service until the State's Administrative Hearing decision is rendered.

EFFECTIVE DATE: November 26, 2019