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**DHHS  
Office of Child and  
Family Services**

**Chapter 6**

**Child Care Subsidy  
Program Rules**

**Child Care Development Fund**

**April 2015**

**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.

The Child Care and Development Fund (“CCDF”) Block Grant Act of 1990, as amended, 42 USC § 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 CFR 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 1.00 DEFINITION OF TERMS

- 1.01** *Administrative Hearing* means the Department’s review of the decision to deny, reduce or terminate services to the subsidy applicant/client as set forth in Section 13, Administrative Hearing.
- 1.02** *Attending a Job Training or Educational Program* means a person is enrolled and attending at least half time job training or educational program.
- 1.03** *Award Letter* means the document a Parent receives that defines the Child Care Subsidy amount awarded, the Parent fee and the date that the subsidy begins. These authorizations are good for one year provided the parents’ eligibility doesn’t change. The Child Care Provider the Parent has selected also receives a copy of the award letter.
- 1.04** *Care and Custody* means children in the care and custody of the Department of Health and Human Services or a Federally Recognized Tribe.
- 1.05** *Caseworker* means an employee of the Maine Department of Health and Human Services or Federally Recognized Tribe, authorized to provide specialized case management services to neglected, abused or exploited children and their families and to children in care or custody.
- 1.06** *CCDF* means Child Care and Development Fund (45 C.F.R. Parts 98 and 99) and includes CCDF Mandatory, CCDF Discretionary, CCDF Matching, CCDF TANF Transfer Funds and state funds used for state match and maintenance of effort.

- 1.07** *Child Care Facility* means a facility licensed by the Maine Department of Health and Human Services that is a house or other place in which a person maintains or otherwise carries out a regular program, for consideration, for any part of a day providing care and protection for three (3) or more children between the ages of six (6) weeks and thirteen (13) years of age. There are two sizes of child care facilities: (a) child care centers which care for 13 or more children and (b) small child care facilities which care for 3-12 children. Child Care Facility does not include a Family Child Care or a summer camp established solely for recreational and educational purposes or a formal public or private school in the nature of a kindergarten or elementary or secondary school.
- 1.08** *Child Care Provider* means an individual who provides Child Care Services directly to an eligible child on a person-to-person basis. A Child Care Provider includes all those included in 2.02.3 A-G.
- 1.09** *Child Care Services* means the care given to an eligible child by an eligible Child Care Provider.
- 1.10** *Child Care Subsidy* means child care subsidy payments made by the Department to the Child Care Provider on behalf of the Parent for Child Care Services provided to an eligible child.
- 1.11** *Department* means the Maine Department of Health and Human Services (DHHS).
- 1.12** *Department Approved* or *Department Authorized* means approval by the State Child Care Administrator or his or her designee.
- 1.13** *Educational Program* means a program at an elementary or secondary educational institution, a program that provides for completion of a secondary diploma or HiSET (High School Equivalency Test), or any other approved high school equivalency test, vocational education program, or post-secondary undergraduate institution in which the parent is matriculating credits toward a degree. Parents must be enrolled and attend classes either in person or by computer.
- 1.14** *Employed* means gainful work that produces earned incomes from wages, salaries, commissions, fees, tips, piece rate payments, or self-employment in one's own business, professional enterprise, partnership or farm.
- 1.15** *Family* is defined as: (a) a child and the related and/or non-related adults who are living together in a legally binding relationship to the child either

by blood, marriage, adoption, or registered domestic partnership or (b) the child and an adult acting *In-loco Parentis*.

- 1.16** *Family Child Care* is certified by the Maine Department of Health and Human Services and the term *Family Child Care* means care provided in an individual's legal primary residence on a regular basis, for consideration, for three (3) to twelve (12) children between the ages of six (6) weeks and thirteen (13) years of age who are not the children of the provider.
- 1.17** *Federally Recognized Tribe* means the Penobscot Tribe, Passamaquoddy Tribe, Aroostook Band of Micmacs, Houlton Band of Maliseets, and 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.
- 1.18** *Gross Family Income* is 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. Income excluded from Gross Family Income is listed at 5.12.
- 1.19** *Hobby* means an activity done for relaxation, and not for the purpose of meeting the basic daily living expenses of the individual. Activities generating income below \$7740\* (figured on the current minimum wage rate) per year shall be considered a hobby.
- 1.20** *Homeless Children* means children who meet any of the following conditions:
- a. who lack a fixed, regular, and adequate nighttime residence
  - b. 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 camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement
  - c. who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings
  - d. who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings

- e. who are migratory children (as such term is defined in section 1309 of the Elementary and Secondary Education Act of 1965).

- 1.21** *Infant* means a child six (6) weeks through twelve (12) months of age.
- 1.22** *In-home Child Care Provider* means a Child Care Provider who is 18 years of age or older and cares for children within the child's home. The provider may be a relative, but not be a member of the child's Family or live in the child's home. In-home care is provided in a child's home by a Child Care Provider hired by the Parent and cannot provide care for more than two (2) children receiving Child Care Subsidy. This type of care is not regulated by the State; however, for the purposes of Subsidy payment, the Child Care Provider must meet the background check requirements and other health and safety requirements as set forth in 7.03.
- 1.23** *In-loco Parentis* as used in these rules means any relative with custody (whether or not court ordered) or any person with court-ordered custody.
- 1.24** *Job Training Program* means vocational training, field training, on-the-job training and other recognized job readiness training programs focused upon the acquisition of knowledge and skills that prepare the participant for employment.
- 1.25** *Kinship Relative Care* means services provided to a child in care or custody or services intended to prevent removal of a child under a plan by the Department by any person identified by Title 22 M.R.S.A. § 4002 (9-B) as a relative.
- 1.26** *Legal, Unregulated Child Care Provider* means an individual who is not licensed, certified or otherwise regulated to provide Child Care Services. The legal, unregulated Child Care Provider must be 18 years of age and not be living in the child's home or be a member of the child's family. No person or entity can operate a Family Child Care in their own residence for more than two (2) children who are receiving Child Care Subsidy Program without a certificate from the Maine Department of Health and Human Services authorizing such operation. This type of care is not regulated by the State; however, for the purposes of Subsidy payment, the Child Care Provider must meet the background check requirements and other health and safety requirements as set forth in 7.03.
- 1.27** *Maine Resident* means an applicant who has established Maine as a permanent home, the place where s/he 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 applicant lives and one or more of the following items: current Maine individual income tax return

indicating 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 instate tuition payment, and other reasonable verification. Exception: Homeless individuals must provide a self-declaration of residence and have two affidavits signed by two different individuals who are Maine residents.

- 1.28** *Market Rate* means the maximum payment allowed for the Child Care Subsidy program. The Market Rate includes, and is limited to, the total of the Child Care Subsidy payment and the Parent fee. The Department sets the Market Rate based on a survey of Child Care Providers' fees.
- 1.29** *Misrepresentation* means an action taken by a participant with the intention of receiving financial assistance to which the participant is not entitled.
- 1.30** *New Hampshire Regulated Child Care Provider* means a Child Care Provider in New Hampshire who is subject to rules and regulations comparable to the Department's rules for regulation of Child Care Facilities and Family Child Cares. The Parent must be a Maine Resident and the child must reside with the Parent. The maximum Market Rate for subsidy payment for a New Hampshire Regulated Child Care Provider equals the Market Rate set for the Maine County where the Parent resides.
- 1.31** *OFI* means the Office for Family Independence, the State agency that administers the program called TANF.
- 1.32** *Open Child Protective Case* means a case referred by the Department of Health and Human Services or Federally Recognized Tribe.
- 1.33** *Parent* means a parent by blood, marriage, adoption, a legal guardian or other person standing *in loco parentis*. The child receiving Child Care Services must reside with the Parent.
- 1.34** *Parenting Teen* means the Parent is less than 20 years of age, residing with his or her children and attending a secondary school or a HiSET equivalency program. Subsidy eligibility for these parenting teens also continues through the summer should they choose to work or continue in their educational program.
- 1.35** *Physical or Mental Incapacity* means a condition that affects the ability of children to care for themselves. Children who have a physical or mental incapacity are physically or mentally incapable of caring for themselves. Physical or mental incapacity must be diagnosed by a qualified professional or be court determined.

- 1.36** *Post-Child Protective Clients* means clients authorized by the Department of Health and Human Services Caseworker or a Caseworker from a Federally Recognized Tribe to continue services for a maximum of one (1) three-month period following closure of an Open Child Protective Case.
- 1.37** *Preschool Age Child* means a child more than 36 months of age but not yet enrolled in full time kindergarten.
- 1.38** *Provider Agreement* means an agreement between a Child Care Provider and the Department of Health and Human Services that outlines the requirements related to accepting Child Care Subsidy through a Subsidy from DHHS.
- 1.39** *Protective Services* means specialized casework services to neglected, abused, or exploited children and their families. For the purposes of subsidy services, protective services include Open Child Protective Cases and children in Care and Custody.
- 1.40** *Quality for ME, Maine's Quality Rating and Improvement System* means a tiered step based program designed to increase awareness of quality standards of early care and education, to recognize and support providers who are providing care above and beyond those standards, and to give families a simple tool to help recognize and choose child care.
- 1.41** *Reimbursement Basis* means compensation after services are rendered.
- 1.42** *Relative Child Care Provider* means a Child Care Provider who is 18 years of age or older and provides Child Care Services only to eligible children who are, by marriage, blood relationship, or court decree, the grandchild, great grandchild, sibling, niece, or nephew of such provider. Relatives, including siblings, providing care must live in a separate residence. A Relative Child Care Provider must have the same background checks as a non-relative Legal, Unregulated Child Care Provider.
- 1.43** *Recreational Program* means a non-residential program for children between six (6) and twelve (12) years of age or a child 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, inclusive, operated by a community-based program that meets staff-to-child ratio requirements and performs criminal history, motor vehicle, and child abuse/neglect background checks as required of Department regulated Child Care Facilities.

- 1.44** *Residing with* means the child is living with the applicant who is maintaining a home or main domicile for the child.
- 1.45** *Sectarian Child Care* means a licensed Child Care Facility that provides religious activities, including but not limited to religious worship or instruction.
- 1.46** *School-Age Child* means a child between five (5) years of age and twelve (12) years of age or a child 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, inclusive, and who attends school.
- 1.47** *SFPSS* means State Funds for Purchased Social Services.
- 1.48** *Significant Income Change* means a change in the source or amount of income which is greater than \$100 per month and expected to continue into the future for more than one month.
- 1.49** *Sliding Fee Scale* means a system of cost sharing by a family based on income and family size, in accordance with changes in the federal poverty levels.
- 1.50** *Special Needs Child* means a child under the age of 12 with a specific diagnosis/disability which without intervention may impede or impair the attainment of developmental milestones. This includes:
- a. A child who experiences significant developmental delays or who has a diagnosed physical or mental condition which has a high probability of resulting in a significant developmental delay. Significant delay is a 25% delay in one or more areas of development or a six (6) month delay in two (2) or more areas. Areas of development include: cognitive, speech/language, physical/motor, vision, hearing, psycho-social, and self-help skills. Developmental delay is determined and documented by early intervention programs, special education programs, or other multi-disciplinary teams. Documentation must be provided with the application for Child Care Subsidy.
  - b. A child considered being at-risk for health or developmental problems as a result of established biological risk factors, and/or as a result of identified environmental risk factors including homelessness, and who is referred by a third party such as public health agencies, physicians, schools, government agencies, community social service agencies, homeless shelter, early intervention specialists, and/or Federally Recognized Tribes; and

- c. A child 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, can also be provided a Subsidy.

- 1.51** *Student* means a Parent enrolled and attending an Educational Program. The Student must be a Maine Resident.
- 1.52** *Subsidy Payment* means the weekly or biweekly amount that the Department pays the Child Care Provider for Child Care Services provided to an eligible child as set forth in the Child Care Subsidy agreement.
- 1.53** *Substance Abuse Treatment Program* means an appropriately licensed provider of assessment, diagnosis, care and treatment or rehabilitation services for individuals who are suffering physically, emotionally, or psychologically from the abuse of alcohol and/or other drugs.
- 1.54** *TANF* means Temporary Assistance for Needy Families, which is a program administered by the Department of Health and Human Services, Office for Family Independence (OFI).
- 1.55** *Timely Documentation* acknowledges that parents are required to provide documentation for eligibility purposes and that there may be circumstances beyond the reasonable control of the parent that result in an inability or failure to timely or otherwise comply with the requirements of these rules. When this occurs, the Department may provide for a reasonable extension of time or modification of the rules under the particular circumstances.
- 1.56** *Timely Notice* means written notification from the Department that is mailed to the Parent and the Child Care Provider twelve (12) calendar days before change is effective. This allows ten (10) calendar days for notice that services will terminate and two (2) days for mailing. For the sake of this program notice mailed to the last known address and not returned is assumed received. See also Section 11, Termination of Services.
- 1.57** *Toddler* means a child thirteen (13) months through thirty-six (36) months of age, inclusive.
- 1.58** *Very Low Income* means Gross Family Income, adjusted to family size, does not exceed 100% of the Federal Poverty Guidelines.

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## **Section 2.00 SERVICE DEFINITIONS**

### **2.01 The Child Care Subsidy Program**

- 2.01.1** 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 low income families and other designated client groups through the use of Vouchers.
- 2.01.2** The administration of the Child Care Subsidy Program in Maine will be performed by the Department Health and Human Services (DHHS).
- 2.01.3** DHHS staff will be required to sign client confidentiality statements provided by the Department.
- 2.01.4** DHHS will administer funds in a manner that insures continuity of subsidy services from one contract year to the next as long as Parents remain eligible and funding in subsequent years is not reduced.
- ### **2.02 Child Care Subsidy**
- 2.02.1** Child Care Subsidy is available depending upon funding, and shall not be interpreted to entitle any individual or Family to assistance under this program.
- 2.02.2** A Child Care Subsidy is not a grant to or contract with a Provider but instead is assistance to the Parent.
- 2.02.2.1.1** Subsidy may pay for Child Care Services provided in or by:
- a. A Child Care Facility licensed by the Department and enrolled in either Active or Waiver Status in the Maine Child Care Quality Rating and Improvement System (QRIS), *Quality for ME*
  - b. A Family Child Care licensed by the Department and enrolled in either Active or Waiver Status in the Maine Child Care

Quality Rating and Improvement System (QRIS), *Quality for ME*

- c. A Legal, Unregulated Child Care Provider
- d. An In-home Child Care Provider
- e. A Recreational Program
- f. A New Hampshire Regulated Child Care Provider licensed by New Hampshire
- g. A Relative Child Care Provider.

**2.02.3** Subsidy is approved for enrollment hours as specified in Section 9, Enrollment, and cannot exceed fifty (50) hours per week without prior approval of the Department.

**2.03** The subsidy payment is set by the Department based on a biennial Market Rate Survey required by federal law (45 CFR 98.42). The Sliding Fee Scale is determined by the Department adjusted for family size and income. Together the Parent fee and the Subsidy payment may not exceed the Child Care Provider's rate for their other clients for comparable care and may not exceed the Market Rate. Together they constitute payment to the provider for Child Care Services. See Standard 7.07, Special Child Care Provider Fees.

**2.04** Subsidy is only paid and payments are only made once eligibility is determined for both the Parent and the Child Care Provider.

### **Section 3.00 CHILD ELIGIBILITY AND CLIENT GROUPS SERVED**

#### **3.01 Eligibility for Services**

**3.01.1** A child is eligible for Child Care Subsidy services if: (a) the child's gross family income does not exceed an income level set by the Department of Health and Human Services and (b) the child's Parents are Employed, and/or Attending Job Training or Educational Program. The child will receive Child Care Subsidy services to the extent that funding is available.

**3.02 Ages of Children**

**3.02.1** In order to be eligible for Child Care Subsidy, children must be at least 6 weeks of age and not have reached their 13<sup>th</sup> birthday.

**3.02.2** Children with special needs who have not reached their 19<sup>th</sup> birthday may be served if they are physically or mentally incapable of caring for themselves as diagnosed by a qualified professional or court ordered.

**3.02.3** Subsidy may be issued for children less than 6 weeks of age who have approval by the Department of Health and Human Services, Division of Licensing and Regulatory Services to be cared for in a Child Care Facility or a Family Child Care.

**3.03 Children from Very Low Income Families**

**3.03.1** Children from Very Low Income Families and children with special needs will be given equal priority over other children otherwise eligible for Child Care Subsidy services.

**3.04 Children with Special Needs**

**3.04.1** Documentation of the disability and a diagnosis must be provided by a child development specialist, social worker, licensed therapist, physician, psychiatrist, psychologist, or other recognized health care professional.

**3.05 Children in Care and Custody**

**3.05.1** Open Child Protective Cases are eligible for Child Care Subsidy Services to the extent funding is available.

**3.05.2** Post-Child Protective Clients are eligible for Child Care Subsidy Services to the extent funding is available.

**3.05.3** A child placed in Kinship Relative Care is eligible for Child Care Subsidy Services to the extent funding is available.

**3.05.4** A child in Care and Custody is eligible for Child Care Subsidy Services to the extent funding is available.

**3.05.5** Guardians must be Employed or Attending a Job Training or an Educational Program to be eligible.

**3.06 Students Needing Child Care**

- 3.06.1** The eligibility for services will continue uninterrupted for a child of a Student during a normal summer vacation period (about 15 weeks). Student must be enrolled for benefits to continue.
- 3.06.2** Child Care Subsidy Services will continue following a scheduled break in attendance upon receipt of an updated school schedule and documentation of satisfactory progress and attendance by the Student. See Standard 4.05.3.
- 3.06.3** It is the Student's responsibility:
- a. To recruit a Child Care Provider who is willing to forego payment for a summer vacation period when the Student is neither Employed nor looking for work; or
  - b. To recruit a new Child Care Provider upon his or her return to school,
  - c. To contact DHHS thirty (30) calendar days prior to resuming enrollment to re-determine eligibility and rewrite or update the subsidy agreement.

**3.07 Applicants will Not be Eligible for Subsidy if they:**

- 3.07.1** Owe DHHS restitution or owe assessed fees to a Child Care Provider with whom the applicant had a subsidy agreement unless a reasonable payment plan has been set up and the parent is making regular payments on the arrears.
- 3.07.2** Had their Child Care Subsidy services terminated for misrepresentation of their Family income, Family size, or other eligibility criteria in order to be found eligible for services. The Parent may re-apply for Child Care Subsidy one year from the date their Subsidy was terminated because of misrepresentation. If the Parent requests an Administrative Hearing within 10 calendar days of the termination of their Child Care Subsidy and the Hearing Officer rules in favor of the Parent, Child Care Subsidy will be reinstated pending the outcome of the Hearing (see Sec. 13.04.3). The Parent may re-apply for Child Care Subsidy one year from the date their Subsidy was terminated because of misrepresentation and if the Final Decision by the Hearing Officer or Commissioner

is not favorable to the parent, the parent may re-apply one year from the date of the Hearing Officer or Commissioner's Final Decision.

#### **Section 4.00 ELIBILITY DOCUMENTATION AND DETERMINING PROGRAM ELIGIBILITY**

**4.01** To be eligible for Child Care Subsidy, families must demonstrate a need for care. In general, that means that the Parent must be Employed or attending an Educational Program which prevents the Parent from providing care and supervision of the children in the household during the time the Parent is participating in the activity. If there are two (2) Parents in the home, both must be Employed or attending an Educational Program.

**4.01.1 Activity: Employment in the Private or Public Sector**  
Income-eligible Parents who are Employed in the private or public sector (not self-employment) and who have children who need care are considered to need child care.

**4.01.2 Per Diem Employment**  
Income eligible parent who is employed in the public or private sector on a per diem basis and is not self-employed may be eligible for child care subsidy if the following criteria are met:

- a. The Parent is responsible to recruit a Child Care Provider who is willing to forgo payment until pay stubs verifying the hours worked have been submitted to the Department.
- b. The Parent must submit pay stubs to the Department for all hours requesting Child Care Subsidy on a biweekly basis. Failure to do so will result in nonpayment of child care subsidy.

**4.02 Activity: Night Time Employment.**  
Parents who are Employed at night may be approved for a maximum of eight (8) additional hours of sleep time. However, children shall not remain in care longer than eighteen (18) hours within a 24-hour period.

#### **4.03 Self-Employment**

The following definitions shall apply to child care policies regarding self-employment:

- a. **Livelihood:** means of support or survival in which an individual engages to meet daily living expenses.

- c. Activities generating gross income below \$7740 (figured on the current minimum wage rate see 1.19) per year shall be considered a Hobby.

#### **4.03.1**

#### **Criteria for Approval of Self-Employment Activity**

Child Care Subsidy may be approved for Parents who are self-employed if all of the following conditions are met:

- a. The Family depends upon the self-employment activity for their livelihood, and the time and effort put into the activity indicate intent to make a profit. Passive or casual activities that can be more appropriately qualified as “hobbies” or volunteer work do not meet this criterion.
- b. Parents must participate in self-employment activity a minimum average of twenty (20) hours per week and show an income of at least the current state minimum wage per hour. If both Parents are self-employed, jointly or separately, the minimum work hour/minimum wage requirement applies to each. See exceptions in Section 4.04. This proof is determined by tax documents indicated in 4.03.1(c).
- c. Self-employed individuals must provide a complete copy of their current tax return by April 30 of each year, including the 1040 form, 1040 Schedule C (Profit or Loss from Business), 1040 Schedule SE (Self-Employment tax,) and any other tax forms as required per type of self-employment. (Refer to the chart, below)

### Types of Self-Employment and Required Documentation:

Type	Definition	Tax Forms Required	Calculating Income
Sole Proprietorship	Individual owns and operates trade or business alone. All profit and loss belong to the individual.	Form 1040 Schedule C Schedule SE	<ul style="list-style-type: none"> <li>Gross Income</li> <li>Cost of doing business (including depreciation)</li> <li>Depreciation added back in</li> </ul>
Farming		Form 1040 Schedule F	<ul style="list-style-type: none"> <li>Gross Income</li> <li>Cost of doing business (including depreciation)</li> <li>Depreciation added back in</li> </ul>
Partnership	Two or more individuals agree to contribute money and skill/labor to share profits and losses as well as management.	Form 1040 Form 1065 Schedule K-1 Verification of Wages	<ul style="list-style-type: none"> <li>Gross Income</li> <li>Cost of doing business (including depreciation)</li> <li>Depreciation added back in</li> </ul> <p>*Partners may own different percentages of the business.</p>
Corporation	Distinct legal entity formed by individuals but having separate legal status from the individuals. Corporations must file Articles of Incorporation with the Secretary of State.	Form 1040 Form 1120S Form 1120 Schedule K-1 Verification of Wages	<ul style="list-style-type: none"> <li>Gross Income</li> <li>Cost of doing business (including depreciation)</li> <li>Depreciation added back in</li> <li>Compensation of officers and wages earned from the corporation are treated as earnings for the applicant.</li> </ul>
Rental Income		Form 1040 Schedule E	<ul style="list-style-type: none"> <li>Total Rental Income</li> <li>Depreciation added back in</li> </ul>

#### 4.04 Launch Period for New Self-Employment

**4.04.1** Parents who are just beginning self-employment, or whose self-employment endeavor is less than twelve (12) months old, may be granted Child Care Subsidy for six (6) months to launch their business and obtain the necessary licenses and registrations. If the

Parent has an estimate of what his or her monthly income and expenses will be, the estimate can be used for income; otherwise the Department should enter one dollar (\$1.00) for the income.

**4.04.2** In order to continue Child Care Subsidy for the next six (6) months, self-employed Parents must provide a completed federal 1040 Schedule C Tax Form as a profit and loss statement. The Parent fee for the next six (6) months will be re-determined based on income.

**4.04.3** After twelve (12) months, Parents must provide proof that they are employed at least twenty (20) hours per week at or above the state minimum hourly wage as set forth in Section 4.03.1(b). Failure to provide the required documentation will result in case closure. If self-employed Parents wish to continue to receive Child Care Subsidy, they must choose another qualifying activity.

**4.04.4** Each applicant/family is eligible for no more than one (1) launch period, for a total of twelve months of subsidy.

**4.05 Activity: Job Training/Education**

Children of Parents who verify attendance at Job Training and Educational Programs demonstrate a need for child care. Parents shall be considered eligible for care with the following clarifications:

**4.05.1 Attendance at Program or Training**

Parents must be enrolled and required to physically attend classes either in person or by computer offered at a regularly scheduled time (i.e. 11:00 every Monday and Wednesday), and there is not another Parent in the home available to take care of the child(ren), and the Parent is enrolled in at least 6 credits per semester.

**4.05.2 Reasonable Study Time**

Generally, two (2) hours of study time per credit hour of any approved program is covered. When possible, study periods or study groups shall be arranged between classes or immediately following the last class of the day in order to provide a consistent and uninterrupted routine for the child(ren) in care.

When granting study time, the subsidy manager should consider the credits earned of the client's classes, the client's special needs, the amount of time between classes, and the ages of the client's children.

**4.05.3 Satisfactory Progress and Attendance**

Parents who attend educational activities or job training must provide documentation of satisfactory progress and attendance. For college Students, this is demonstrated by maintaining a 2.0 grade point average per semester. A copy of the Student's grades will document compliance. If the Student fails to meet the 2.0 requirement the case shall be closed. Other Students will need to submit statements from the educational or job training facility which documents that attendance and progress are satisfactory.

**4.06 Seasonal Employment**

Parents whose employment status has changed because of seasonal employment or a planned lay-off shall not be required to re-apply for their child care subsidy when they return to work, if the following action and criteria are met:

- a. The Parent must provide the Department a written notice two (2) weeks prior to the end of seasonal employment or the planned lay off.
- b. The written notice must include a statement from the Parent's employer stating the date employment will commence again, the number of hours to be worked, and the hourly rate of pay.
- c. The starting date of employment may not exceed ninety (90) calendar days from the last date of employment.

**4.07 One Parent with a Disability**

In a two-parent home, if one parent has a documented (medical documentation) incapacity or disability which renders him/her unable to care for the child(ren) and unable to work, and the other parent is working, attending an educational program or job training/education, the child(ren) will be eligible for subsidy, provided the family meets the financial eligibility requirements if the following actions and criteria are met:

- a. If the documentation does not include information from the Social Security Administration (SSA) or MaineCare's Medical Review Team (MRT) indicating a disability, the parent will have twelve (12) months to obtain verification of the incapacity or disability through SSA or MRT.
- b. Parents shall be given 90 days to initiate procedures to establish approval of incapacity or disability through Social Security Administration (SSA) or MaineCare's Medical

Review Team (MRT). Written documentation from one of these organizations is needed to document the action.

- c. Parents who fail to provide this documentation upon the completion of 90 days shall be ineligible for subsidy.
- d. Parents who fail to provide formal documentation of incapacity or disability within one year shall be ineligible for subsidy.
- e. Parents who were previously granted twelve (12) months to seek verification shall not be granted another twelve (12) months to seek verification for any subsequent application.

If the impairment is believed to be temporary (less than twelve months) the parent must provide medical information that provides a diagnosis and a prognosis, including the length of time the parent cannot be involved in work activities.

Temporary disabilities are intended to cover those incapacities such as broken limb, recovery from surgery and short-term disability.

#### **4.08 Parents on Maternity/Paternity Leave, Short-Term Medical Leave or Job Search for Active Recipients**

A family is eligible for one of the following three breaks in eligibility within a six month period. Only one covered break in eligibility as defined below shall be granted within a six month period:

- 4.08.1** The Department will pay for up to twelve (12) weeks of child care in accordance with the current award letter for a child whose parent is on maternity or paternity leave, regardless of whether or not the child attends child care. This leave starts from the time of the birth of the new sibling. This leave is separate time and is not counted against excused absences (Section 9.05.4).

Two (2) weeks prior to the end of the leave, the parent must provide verification of returning to work to the Department by the end of the 12<sup>th</sup> week. Subsidy will not be paid beyond the 12<sup>th</sup> week if the verification is not submitted or if the parent does not return to work at that point.

- 4.08.2** The Department will pay for up to twelve (12) weeks of child care in accordance with the current award letter for a child whose parent is on short-term medical leave, regardless of whether or not

the child attends child care. This leave coincides with the date of leave from employment. This leave is separate time and is not counted against excused absences (Section 9.05.4)

Two (2) weeks prior to the end of the leave, the parent must provide verification of returning to work to the Department by the end of the 12<sup>th</sup> week. Subsidy will not be paid beyond the 12<sup>th</sup> week if the verification is not submitted or if the parent does not return to work at that point.

- 4.08.3** The Department will pay for up to twelve (12) weeks of child care for current recipients who have lost work or who have completed school and are looking for work. This coverage starts at the time of the first day of unemployment. Parents must contact the Department and complete a Job Search Request Form and request job search time. The Parent shall be granted up to 20 hours a week of subsidized child care. This leave is separate time and is not counted against excused absences (Section 9.05.4).

## **Section 5.00 ELIGIBILITY DOCUMENTATION AND DETERMINING FINANCIAL ELIGIBILITY**

### **5.01 Child's Citizenship Requirement**

The child must be a U. S. citizen or a "qualified alien" as defined by the Immigration and Nationality Act, 8 USC §§ 1101 *et seq.* Only the citizenship and immigration status of the child, who is the primary beneficiary of the child care benefit, is relevant for eligibility purposes. Applicants who cannot provide verification of citizenship of children receiving Child Care Services are not eligible for subsidy.

- 5.01.1** A U.S. Citizen is either:
- a. A person born in the territory of the United States; OR
  - b. An individual born of a parent who is a U.S. citizen or who otherwise qualifies for U.S. citizenship under §301 *et seq.* of the Immigration and Nationality Act; [8 U.S.C. §§ 1401-1409], OR
  - c. A person who has undergone naturalization. Naturalization is the process by which a citizen of a foreign country becomes a United States citizen, OR
  - d. A national (both citizen and non-citizen national)

1. Citizen National. A citizen national is an individual who otherwise qualified as a U.S. citizen under §301 *et seq.* of the Immigration and nationality Act [8 U.S.C. §§ 1401-1409]
2. Non-Citizen National. A non-citizen national is an individual of the United States, including American Samoa and Swain's Island, to a parent who is a non-citizen national.

**5.01.2**

As defined by the Immigration and Naturalization Act, a qualified alien is:

- a. Lawfully admitted for permanent residence
- b. Granted asylum
- c. A refugee admitted to the United States
- d. An alien paroled into the United States for a period of at least one year
- e. An alien whose deportation or removal is being withheld
- f. An alien granted conditional entry
- g. An alien who is a Cuban Haitian entrant under the Refugee Education Assistance Act of 1980
- h. An alien who (or whose child or Parent) has been battered or subjected to extreme cruelty in the U. S.
- i. Native American who is a member of a federally-recognized Indian Tribe
- j. American Indian born in Canada
- k. Iraqi Special Immigrant
- l. Afghani Special Immigrant
- m. Americasian admitted to the U.S. pursuant to 584 of the Foreign Operations,Export Financing,and related Programs Appropriations Act.
- n. Aliens certified as trafficking victims

- 5.01.3** Acceptable Proofs of Citizenship: Citizenship can be verified by submission of any document that proves a U.S. place of birth or documents showing that the person is a U.S. citizen. All documents must be either an original or a copy certified by the issuing agency. Verification of citizenship is required only once, unless later evidence makes it questionable.
- 5.01.4** Child Born in Maine and Verification of Citizenship Lost or Destroyed: When applicants cannot provide proof of citizenship for a child born in Maine, the application should be processed as usual and the Parent given a thirty (30) day Award Letter. The Parent must supply verification of citizenship within thirty (30) calendar days or the case will be closed.
- 5.01.5** Child Born Out-of-State and Verification of Citizenship Lost or Destroyed: When applicants cannot provide proof of citizenship for a child born out-of-state, the application should be processed as usual and the Parent given a ninety (90) day Award Letter. The Parent must supply verification of citizenship within ninety (90) calendar days or the case will be closed. Caseworkers should set a tickler as a reminder to follow up on the requirement. If verification is supplied, the worker should issue an Award Letter for the remaining nine months. If verification is not supplied and the parent can provide a copy of the original dated document requesting verification of citizenship and a copy of a second dated document following-up on the status of the request, an additional ninety (90) day Award Letter shall be granted.
- 5.01.6** The Jay Treaty of 1794 recognizes the aboriginal right of Native Americans to pass the border of the U.S. and Canada. When a Native American with Canadian citizenship moves to Maine, they are recognized as lawfully admitted for permanent residence.
- 5.01.7** U.S. born children of illegal immigrants shall not be denied services based upon the citizenship status of their Parent(s).
- 5.02** **Maine Residency Requirement and Proof of Identity**
- Child Care Subsidy applicants must be a resident of the state of Maine. Proof of identity and residency is required, and shall be established by showing a valid photo ID and proof of residency, selected from the following list. If applicants do not have proof of identity, they shall be given ten (10) calendar days to provide it.

**5.02.1 Acceptable Forms of Proof of Identity:**

- a. An original, valid, current Maine driver's license, permit, Maine State ID, or ID card with photograph
- b. An original, valid, current, unexpired Certificate of U. S. Citizenship (INS Form N-560) with photograph
- c. An original, valid, current, unexpired Certificate of Naturalization (INS Form 550 or INS Form 570) with photograph
- d. An original, valid, current, unexpired U. S. Military ID Card
- e. U. S. Military Retiree Card or Uniform Service Identification Privilege Card (DD 1173) with current photograph
- f. An original, valid, current, unexpired or legally extended United States passport with current photograph.

**5.02.2 Acceptable Proofs of Residence:**

Proofs of residence must show the Parent's current physical address. Post Office Box addresses are not accepted as proof of Maine residency.

- a. Current Maine driver's license showing a Maine residence address
- b. Maine utility bills with service at a Maine residence address
- c. Maine property tax bill or receipt indicating a Maine residence address
- d. Maine mortgage documents or homeowner insurance documents for a Maine residence or proof of Maine home ownership with a Maine residence address
- e. Maine W-2 Form not more than eighteen (18) months old with the applicant's name and Maine residence address
- f. Current Maine individual income tax return indicating Maine Resident status
- g. Maine Voter's registration card with a Maine residence address

- h. Maine school enrollment form if applicant is under age 18 with the applicant's Maine residence address
- i. Residential rental and/or lease agreement with a Maine address
- j. Current Maine hunting/fishing license with a Maine residence address
- k. Proof of undergraduate Student in-state tuition payment
- l. Two (2) signed affidavits by two (2) different individuals who can prove the applicant's Maine residency.

### **5.03 Financial Eligibility**

To determine the financial eligibility of applicants for or recipients of Child Care Subsidy, it is necessary to determine the amount and source of monthly gross income and the members included in Family size. For excluded income, see 5.12.

### **5.04 Income Guideline Standards**

The following criteria will be used to determine income guidelines:

- a. Income eligibility guidelines will be based on Gross Family Income, adjusted to Family size
- b. Income eligibility guidelines will be annually updated by the Department
- c. Income eligibility may not exceed 85% of the State Median Income. The Department will use the US Census Bureau American Community Survey as the data source for State Median Income.

### **5.05 Family Size**

The following chart provides examples of Family composition, the resulting Family size and income included. Detailed rules follow.

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 mutual child	Both Parents and all their children in the household	Include all countable income
Unmarried Parents with no mutual children or	Unmarried Parents and their respective	Include countable income for the unmarried

multiple Family households	child(ren) living in the household are counted as separate Families	Parent and his/her child(ren)
Married Parents	Both Parents and all children living in the household	Include all countable income
Parenting Teens (under 20 years of age) attending school and living with other adults	Parenting Teen and his or her child(ren)	Count income of Parenting Teen and child(ren)'s income only
Grandparents with legal guardianship of child(ren) and biological Parents in the household	Child is considered a Family of one	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	Include only child's income
Kinship/relative caretaker and child with child protective plan	Child considered a Family of one	Include only child's income
Adult acting " <i>In- Loco Parentis</i> " and child	Child considered a Family of one	Include only child's income
Legal guardians with child	Child considered a Family of one	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

- 5.05.1** Biological children, step-children, adopted children and all other children under eighteen (18) years of age **legally related** and Residing with the applicant who is maintaining a home for them and assuming parental responsibility, will be considered to be Family members.
- 5.05.2** Multiple Family Households. In situations where adults, who are not spouses, reside together, any children in the household will be considered part of the Family of their Parent(s). **Example:** Mr. and Mrs. X and their two children live in a household with Mrs. X's sister (Y) and her one child. Mr. and Mrs. X and their two children constitute one Family while Mrs. Y and her child constitute a second Family.
- 5.05.3** Unmarried Parents. A man and woman living together will be considered members of the same Family if they are both the biological Parents of a child or children living in the household. However, if a man and a woman or two adults of the same sex reside together and each have a child of their own and share no children in common, they are two separate Families.
- 5.05.4** Parenting Teens (under twenty (20) years of age) attending a secondary school or a HiSET equivalency program and living with their children and their Parents, step-parents, relatives or non-relatives, are considered a separate Family unit consisting of the teen parent(s) and their child(ren). In cases where the legal custody of the child rests with the grandparents, and the biological Parent is in the household, the child is considered a Family of one. Subsidy eligibility for these parenting teens also continues through the summer should they choose to work or attend classes.
- 5.05.5** In cases where the child physically changes residence between Parents, the child is a member of each Parent's Family for the period of time that the child resides with each Parent.
- Example: The mother applies for Child Care Subsidy for a child who resides with her every other week. The child will be included as a member of the mother's Family every other week. If the mother is eligible, the child will receive Child Care Subsidy every other week. If the father also needs child care, then he may apply for subsidy for the weeks that the child resides with him and, if eligible, will receive a subsidy or be placed on a waiting list, if funds are not available.

- 5.05.6** Children living with a court-appointed, legal guardian may be considered a Family of one. Only the income received on behalf of the children shall be included as Family income (e.g., TANF, Social Security). Guardians must verify employment or attendance in an education or Job Training Program.
- 5.05.7** For children in Care and Custody referrals for foster children, the foster child will be considered a Family of one. The foster care payment shall not be included as Family income. Foster parents must verify employment or attendance in an education or Job Training Program in determining eligibility.
- 5.05.8** For Kinship/Relative Caretakers of children in State custody or children at risk of being removed from their home who need child care because the caretakers are participating in education or employment, the following forms are needed to verify official Kinship/Relative Caretaker status: the applicant must supply the subsidy worker with a copy of the Child Protective Form signed by the caretaker(s) and the placement worker, and a signed copy of the Child Placement Agreement or Family Plan.
- 5.05.9** The Kinship/Relative Caretaker's income is not counted to determine eligibility. Kinship/Relative Caretakers must verify employment or attendance in an education or Job Training Program.
- 5.05.10** Children of the applicant, who are temporarily away at school and expected to return (e.g., attending a boarding school, technical school or college) are considered to be Family members.
- 5.05.11** Family members living apart on a temporary basis are considered Family members. Temporary means the absent Family member's permanent home is with the applicant's Family, where they intend to return after any period of absence.
- 5.05.12** Residents of a Substance Abuse Treatment Program which is time-limited (usually 28 calendar days or less), where the participant is expected to be returning home to live with their Family, will be included as Family members.
- 5.05.13** Individuals who are long-term residents of institutions such as hospitals, skilled nursing facilities, intermediate care facilities and prisons, shall not be counted as Family members.
- 5.06** **Child Support Requirement.**

All biological Parents applying for Child Care Subsidy for children of an absent Parent must submit a copy of child support order and show proof of child support received or pursued from each absent Parent of all children within the household regardless of request for subsidy or not.

#### **5.06.1 Shared/Joint Custody**

In cases of shared/joint custody in which neither Parent owes the other support due to shared parenting, a copy of the court-ordered child support plan or divorce decree showing no child support owed shall be placed in the paper file and noted in the notes section of the computer database record.

#### **5.06.2 Good Cause**

If the applicant has good cause not to establish child support, the supervisor shall approve the waiver of this requirement and note the action in the notes section of the computer database record.

Good cause is granted when any of the conditions below are met:

- a. The child was conceived as the result of incest or forcible rape. The Parent's statement to this fact will be accepted unless the worker reasonably believes the statement is not truthful in which case documentation (police reports, verification of residence at domestic violence shelter) may be requested and required.
- b. Cooperation in establishing paternity or securing support is reasonably anticipated to result in physical or emotional harm to the Parent seeking support; physical or emotional harm to the child; or physical or emotional harm to the caretaker relative which would hinder the ability to care for the child. The Parent's statement to this fact will be accepted unless the worker reasonably believes that statement is not truthful, in which case documentation (police reports, verification of residence at domestic violence shelter) may be requested and required.
- c. Paternity is unable to be established after a reasonable effort to do so. The Parent should detail steps taken to identify paternity.
- d. Legal proceedings for adoption of the child are pending in court.
- e. The individual is being assisted by a licensed social service agency to decide whether to place the child for adoption and

discussions have ceased for more than three (3) consecutive months.

**5.06.3 Child Support Court Order to Pay for Child Care**

When the child support court order requires the absent Parent to pay for child care, it will be the responsibility of the Parent receiving the support for child care to pay the provider directly the amount required in the order. The provider payment from the subsidy program will be reduced by the amount in the court order.

**5.06.4 *In Loco Parentis* or Foster Care Placements**

No documentation of child support is required when children reside with an adult acting *In Loco Parentis* or foster parents.

**5.06.5 No Child Support Court Order Established**

Parents shall be given 90 days to seek child support or initiate procedures to establish a court order if there has never been a child support court order in place, a new child is born, or if child support has not been received in twelve (12) months without good cause. Parents must work out arrangements with the Maine Child Support: Division of Support Enforcement and Recovery (DSER). Parents who fail to provide any of the following documentation of effort to secure child support without good cause shall be ineligible for services. Parents who were previously granted 90 days to seek support but whose cases were closed for failure to cooperate with this requirement shall not be granted another 90 days to seek support for any subsequent application.

Acceptable documentation shall consist of one of the following:

- a. Documentation from the Maine Child Support: Division of Support Enforcement and Recovery (DSER)
- b. Documentation showing filing with Family Court
- c. Documentation that child support is being pursued through a private attorney
- d. Letter from the payee and copies of one (1) month's worth of checks received.
- e. If the payee cannot provide copies of the payer's child support checks which indicate an address and a signature, the parties must sign a notarized document, which must include the following information:
  - Name and physical address of both parties

- Amount of payment
- Date or how the payment is made
- Signatures of both parties

#### **5.06.6 Non-Custodial Parent is Under the Age of 18**

No documentation of child support is required when the non-custodial parents are under the age of 18. An order will be required when the non-custodial parent turns 18.

#### **5.07 Incarcerated Absent Parent**

If the absent Parent is incarcerated and expected to remain so throughout the certificate period, the child support requirement may be waived. Upon the absent Parent's discharge, Parents shall have 90 days to seek support through the options outlined in 5.06.5, in order to maintain Child Care Subsidy eligibility.

#### **5.08 Deceased Absent Parent**

If the absent Parent is deceased, the requirement shall be waived. The Parent's statement to this fact will be accepted unless the worker reasonably believes the statement is not truthful.

#### **5.09 Income Included in Gross Family Income**

**5.09.1** Gross Family Income is calculated before deductions such as income taxes, employee's social security taxes, employee pension contributions, employee deferred compensation plans (IRA accounts, 401K plans, etc.), insurance premiums (including Medicare), bonds, union dues and other employee payroll reductions and benefit deductions.

**5.09.2** Gross income does not include the employer's fringe benefit contribution/obligation.

**5.09.3** Gross Family Income is received or available or earned on a recurring basis. Negative income from business losses or investment/gambling losses shall not be deducted from other sources of earned/unearned income in calculating Gross Family Income, except for a farm enterprise which shall have zero value in computing Gross Family Income. This special consideration applies only to farms with annual gross sales of \$1,000 or more.

**5.09.4**

Gross Family Income must include **Earned Income** from all sources except those listed at 5.12. Earned income includes:

- a. Wages, salaries, commissions or fees, tips, piece-rate payment and cash bonuses before any payroll deductions
- b. Gross income from self-employment, excluding most IRS deductible business expenses. 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
- c. That portion of training allowances or training stipends which exceeds expenses, and represents a gain or benefit to the Family.

**5.10**

Gross Family Income must include **Unearned Income** from all sources, except excluded income listed at 5.12. Unearned income includes:

- 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. Assistance program payments such as SSI (Supplemental Security Income), TANF (Temporary Assistance for Needy Families), PaS (Parents as Scholars), Refugee Cash Assistance, and other means 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

- d. 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
- e. Military Family allotments or other regular support from an absent Family member or someone not living in the household
- f. Unemployment insurance and worker's compensation
- g. Strike benefits from union funds
- h. Regular cash income received from earned interest, dividends, royalties, estates and trusts
- i. 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
- j. 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
- k. A child support lump payment is counted as part of income and averaged over the number of weeks that child support is in arrears.
- l. Income from ownership of rental property, excluding most IRS deductible business expenses.
- m. Income from capital gains as defined and calculated in accordance with IRS regulations. Capital gains is the profit

from the sale of real and personal property such as the sale of a 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

- n. Regular general assistance cash payments from municipalities that are not made directly to vendors such as a landlord
- o. Regular money contributions from persons determined not to be Family members
- p. The portion of all educational grants, scholarships, and other awards available to pay for living expenses unless excluded in 5.12.1. 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 as set forth in 5.12.1(h) and (q).
- q. Regular income received from lottery and sweepstakes winnings. Lump sum lottery and sweepstakes winnings are counted within the eligibility period they are received
- r. Net income from gambling
- s. 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. See 5.06 for applicable adjustments for court ordered child support payments. General Assistance vendor payments are excluded
- t. Income that is legally due a Family member but is received and used for that Family member by a non-Family member

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

## 5.11 Adjustments to Gross Family Income

Defined in Section 5.12.

## 5.12 Income Excluded from Gross Family Income

**5.12.1** Certain income must be **excluded** from Gross Family Income as follows:

- a. The actual amount of court-ordered child support payments made to another Family. The deduction can not include payments in arrears or other court-ordered payments
- b. 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
- c. 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 19 years old
- d. Payments under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970
- e. Women, Infants and Children Program (WIC) vouchers
- f. Special payments to Native Americans excluded by law, e.g., payments under the Maine Indian Land Claims Settlement Act
- g. Federal Earned Income Tax Credit (EITC) is excluded whether received as advanced payment in weekly wages or received in

one sum after filing annual income tax return. Note: State and local EITC is not excluded from income

- h. Excluded educational assistance authorized under Title IV of the Higher Education Act, including:
  - 1. Basic Educational Opportunity Grants (GEOG or PELL Grants)
  - 2. Presidential Access Scholarships (Super PELL Grants)
  - 3. Federal Supplemental Educational Opportunity Grants (SEOG)
  - 4. State Student Incentives Grants (SSIG; Maine State Incentive Grant)
  - 5. Federal Direct Student Loan Program (FDSLPL), formerly GSL and FFELP
  - 6. Federal Direct Supplemental Loan Program (provides loans to Students)
  - 7. Federal Direct PLUS Program (provides loans to Parents)
  - 8. Federal Direct Stafford Loan Program
  - 9. Federal Direct Unsubsidized Stafford Loan Program
  - 10. Federal Consolidated Loan Program
  - 11. Federal Perkins Loan Program (direct loans to Students in institutions of higher education) (Perkins Loans, formerly NDSL)
  - 12. Federal Work Study Funds (Note: Not all Federal work study funds come under Title IV of the Higher Education Act)
  - 13. TRIO Grants (go to organization or institutions for Students from disadvantaged backgrounds)
  - 14. Upward Bound (some stipends go to Students)
  - 15. Student Support Services
  - 16. Robert E. McNair Post-Baccalaureate Achievement
  - 17. Robert C. Byrd Honors Scholarship Program

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18. College Assistance Migrant Program (CAMP) for Students whose families are engaged in migrant and seasonal farm work
  19. High School Equivalency Program (HEP)
  20. National Early Intervention Scholarship and Partnership Program
    - i. 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
    - j. Value of supplemental food assistance received under the Child Nutrition Act or the National School Lunch Act
    - k. Value of USDA Food Supplement and/or Donated Commodities
    - l. Earned income of a Student 19 years of age or younger who is attending an elementary school or secondary school and resides with the applicant. An elementary or secondary school Student is someone who attends elementary or secondary school enough time for that person's state or local school district to consider the person a "Student". This includes a Student who attends HiSET or home-school classes recognized, operated, or supervised by the Student's state or local school district. The exclusion of this income shall not be altered by semester breaks, summer vacations, etc., provided the Student resumes enrollment after the break
    - m. 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 attending elementary school, high school, or a HiSET program
    - n. Foster care payments from the Department of Health and Human Services or Federally Recognized Tribe
    - o. 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

- p. State or federal one-time assistance for weatherization or emergency repair or replacement of an unsafe or inoperative heating or cooling device
- q. 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
- r. 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
- s. The value of non-cash benefits such as: public subsidized housing, general assistance voucher payments, medical and dental services, donated commodities, and food
- t. Certain vendor payments made on behalf of the applicant, including:
  - 1. 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;
  - 2. Vendored assistance from state or local programs which provide no cash assistance. This includes General Assistance vendor payments made to a third party
- u. 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
- v. Child support payments received by TANF recipients that are turned over to the Department of Health and Human Services
- w. 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.

- x. Third-party payments received and used for the care of a third-party beneficiary who is not a Family member
- y. Withdrawals from bank deposits and credit union deposits
- z. Lump sum cash inheritances or gifts
- aa. The portion of loan or note repayments which is determined to be the loan principal (return of capital) in accordance with IRS regulations
- bb. 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
- cc. Certain cash donations, based on need, received from one or more private, nonprofit charitable organizations
- dd. Housing allotment for military families who have one or both Parents deployed to a foreign country

### **5.13 Verification, Documentation and Treatment of Gross Family Income**

- 5.13.1** The Parent shall have the primary responsibility to provide verification of Family income.
- 5.13.2** Income verification must be requested from all program applicants. Eligibility cannot be determined prior to income verification; and Child Care Subsidy services shall not be provided prior to verification.
- 5.13.3** Income verification must be documented in the computer data base at the Department.
- 5.13.4** If income verification has not been provided within ten (10) calendar days of the application date, the application will be denied.
- 5.13.5** Acceptable verification of **earned income** includes one or more of the following:
  - a. Four (4) weeks of current, consecutive and complete pay stubs
  - b. Four (4) weeks of current, consecutive and complete pay envelopes

- c. W-2 Form (if representative of current and future earnings)
- d. State and/or Federal Income Tax Return
- e. Self-employment bookkeeping records
- f. Sales and expenditure records
- g. Statement of employment and expected gross earnings, signed and dated by the employer on company letterhead to be followed up by paystubs once they are available
- h. Employer's wage record
- i. Employment Security Office records
- j. Verbal verification from Caseworker for Care and Custody Department/Tribal referrals
- k. A signed release of information from the applicant which authorizes the Department to pursue verification or further clarification

#### 5.13.6

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:

- a. Benefit check (viewed and photocopied by the Department)
- b. All types of Award Letters
- c. Signed income tax records (interest income, dividends, royalties, estates, trusts, deferred compensation plans, capital gains, etc.)
- d. Support and alimony payments evidenced by court order, divorce or separation papers, or check copies
- e. Social Security Query Card Response
- f. Social Security District Office verification

- g. Bank statement
- h. Maine Employment Security Commission verification
- i. Worker's Compensation verification
- j. Insurance company verification
- k. Verbal verification from Caseworker for Care and Custody Department/Tribal referrals
- l. A signed release of information from the applicant which authorizes the Department to pursue verification or further clarification

**5.13.7** The calculation of Gross Family Income is based on the Family's income and other circumstances expected to exist until the next eligibility period. The calculation is based on the Parent's and the Department's reasonable expectations and knowledge of current, past and future circumstances.

**5.13.8** The calculation is determined by the following steps:

- a. Income received within four (4) or more weeks immediately preceding application or re-determination must be verified
- b. Determine, through a careful review of the income documentation and a discussion with the Parent, if there has been any Significant Income Changes during this period
- c. If there have been changes, and the changes are of a continuous nature, the changes must be taken into consideration when determining the calculation.

**5.13.9** The calculation for **self-employment income** must be the average income over a twelve-month period when it represents the Family's major source of support.

- a. This applies even when it is received in a shorter period of time
- b. If the twelve-month average is not an accurate reflection of circumstances or a business has been in operation only a part of a year, income will be averaged for the months in operation or the Department or contracted agency may calculate the self-employment income based on anticipated earnings

- c. Seasonal self-employment income which supplements other income shall be averaged over the season
- d. Income from self-employment shall be calculated as follows:
  1. Add all gross self-employment income together including the full amount of capital gains. This means that a Family with more than one self-employment enterprise shall have all self-employment gross income added together
  2. Add all costs of producing income together
  3. **Costs not allowed** as costs of producing income are:
    - i. Payments on the principal of the purchase price of income producing real estate, capital assets, equipment, machinery or other durable goods
    - ii. Net losses from previous periods
    - iii. Depreciation expense Note: The employer's share of FICA tax is an allowable deduction
  4. Subtract the total costs of producing the income from the total gross income of the self-employment enterprise(s).
  5. Divide net earnings by number of months over which income has been averaged, when appropriate.
  6. Add self-employment income to any other income received by the household. Losses from a farm enterprise shall be deducted from any other countable Family income. This special consideration applies only to farms with annual gross sales of \$1,000 or more. Otherwise, losses from self-employment shall not be subtracted from any other countable Family income.
  7. After the self-employment business has been in operation for one year, self employed child care recipients must make at least the current state minimum wage for each hour of work performed, to be eligible for Child Care Subsidy.

**5.13.10** Determine if any Significant Income Changes are expected in the future.

- a. If yes and the exact nature of the Significant Income Change is known, the Department shall use that information in determining the best estimate of income
- b. If the exact nature of the anticipated change is not known, a re-determination shall be scheduled to coincide with the expected date
- c. Determine if any of the income received is not expected to be representative of the future. Sporadic fluctuations in income are not used in the calculation. (Example: Christmas bonus or a one-week plant shutdown)
- d. The Parent's file must explain how the calculation was figured and, if applicable, why any income was not used.

**5.13.11** If income fluctuates to the extent that a four week period does not provide accurate information to calculate income for the future eligibility period, the Department can use information covering a longer period of time.

**5.13.12** Similarly, if income fluctuates seasonally, it may be more appropriate to use the most recent season comparable to the upcoming eligibility period as a basis for a calculation taking into account any anticipated changes.

- 5.14** Calculate the average monthly income as follows:
- a. Weekly income is converted to monthly income by multiplying the weekly amount by 4.3.
  - b. Biweekly income is converted to monthly income by multiplying the biweekly amount by 2.15.
  - c. Average monthly income from self-employment is added to all other earned and unearned income.

**5.15** **Income and Eligibility Verification System**  
Income and eligibility will be verified through an income and eligibility verification system (IEVS).

**5.15.1** Type of Information and Source Agencies

- a. Wage information maintained by the Maine Employment Security Commission (MESC)

- b. Information about net earnings from self-employment, wages, and payments of retirement income maintained by the Social Security Administration (SSA)
- c. Federal retirements and survivors, disability, SSI and related benefit information available from Social Security Administration (SSA)
- d. Unearned income information from the Internal Revenue Service (IRS)
- e. Unemployment Insurance Benefits (UIB) claim information from the Maine Employment Security Commission (MESC).

**5.15.2**

The information noted in 5.15.1. shall be requested from the appropriate agencies on the following time schedule:

- a. Quarterly from Maine Employment Security Commission (MESC) on wages
- b. Monthly from Social Security Administration data bases and not later than the second month of the eligibility period
- c. Annually from IRS for all current recipients
- d. Weekly, from Maine Employment Security Commission (MESC) on Unemployment Insurance Benefits.

**5.15.3****Action on Parents Eligibility****5.15.3.1**

Action based on Maine Employment Security Commission (MESC) matches. When any adverse action is called for and is based on information on MESC match, the Parent shall be sent a written notice at least twelve (12) calendar days prior to taking adverse action.

**5.15.3.2**

The notice shall advise the Parent that the Department has received information which indicates the need for a change in their Child Care Subsidy and the Parent has twelve (12) 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 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 will be made.

- 5.15.3.3** When any adverse action is called for and is based on federal record matches, the Parent shall be sent a written notice at least thirty (30) calendar days prior to adverse action.

## **Section 6.00 THE PARENT FEE**

### **6.01 Fee Assessment to Parents**

- 6.01.1** The Department will establish and periodically revise a Sliding Fee Scale that provides for cost sharing by families that receive Child Care Development Fund (CCDF) Child Care Subsidy. The Department will use this fee scale to determine the Parent's contribution to the cost of their child care.
- 6.01.2** All fee-paying Parents will be notified by the Department of the amount of the assessed Parent fee and payment terms.
- 6.01.3** All assessed Parent fees will be paid directly to the Child Care Provider by the Parent. The Child Care Provider must: (a) retain copies of all fee computation forms in Parent files, (b) issue a receipt upon payment of an assessed fee and retain copies of all receipts in agency files, and (c) keep fiscal records on all fee transactions.
- 6.01.4** The Parent or another party acting on behalf of the Parent must pay the assessed Parent fee directly to the Child Care Provider by the pre-determined due dates.
- 6.01.5** Under no circumstances will the Department use state or federal funds to pay the Parent fee.
- 6.01.6** The unauthorized assessment of fees by a Child Care Provider may constitute a breach of the Provider Agreement, enabling the Department to terminate the Provider Agreement.
- 6.01.7** All fee-paying Parents will pay the Child Care Provider the assessed fee for the full period that their child is enrolled.
- ### **6.02 Determining the Parent Fee**
- 6.02.1** The Parent fee will be based on Gross Family Income as calculated in accordance with Section 5.
- 6.02.2** All eligible Parents will be assessed a sliding fee based on Family size and Gross Family Income. The Parent fee does not vary with

the number of children in care, the amount of care they need, or the type of care they choose to use.

**6.02.3** The Department will use the Federal Poverty Guidelines provided by the U.S. Department of Health and Human Services (USDHHS), Office of the Secretary, to establish incremental ranges of income within the maximum allowed by CCDF rules.

**6.02.4** The Department will update the fee scale annually in accordance with changes in the Federal Poverty Guidelines and develop an Action Transmittal. (see <http://aspe.hhs.gov/poverty/>)

**6.02.5** A graduated fee percentage of Gross Family Income will be applied to each of the income ranges as follows:

Poverty Guideline Range	Fee Percentage of Gross Family Income
Up to 25%	2%
26% - 50%	4%
51% - 75%	5%
76% - 100%	6%
101% - 125%	8%
126% - 150%	9%
151% - 200%	10%
201% to Maximum Allowed	10%

**6.02.6** The total amount of Parent fees assessed to a Family cannot exceed ten percent (10%) of the Family's gross income for all of their children enrolled in the subsidy program.

**6.02.7** All Parent fees will be rounded down to the nearest dollar.

**6.02.8** The fee shall be allocated to the youngest child first or in a manner that will avoid the need to allocate a portion of the fee across multiple children. If the fee exceeds the approved cost for a child, the remaining amount shall be allocated to the next oldest child until the full Parent share has been allocated.

**6.02.9** The Family shall be ineligible to receive subsidy if the monthly fee exceeds the approved subsidy for all of the eligible children.

**6.02.10** The Parent fee shall be determined at the time of application, and when the annual redetermination is conducted. The fee shall

remain the same until the next annual redetermination, unless an ongoing decrease in income occurs that is expected to last for at least two (2) or more months. The fee shall not be increased between redeterminations if the Family's income increases, except to correct an error in the prior calculation. Families shall be subject to the gross income limit for eligibility and shall report increases in income exceeding one hundred (\$100) dollars per month even if the change does not immediately affect the Parent fee. The Department can terminate if documentation is not supplied within the time frame required.

**6.02.11** Decreases in the Parent fee shall be implemented in the month following the month in which the change is reported and verified.

**6.03 Parent Fee Waivers**

**6.03.1** Neither the Department nor the Child Care Provider has the authority to categorically waive the Parent fee.

**Section 7.00 CHILD CARE PROVIDER AGREEMENT**

**7.01 Child Care Providers who are eligible to receive payments**

Child Care Providers who are eligible to receive payments on behalf of Parents receiving Subsidy are listed in Section 2.02.3. (See 1.00 Definitions for more details).

**7.01.1** Child Care Providers are responsible for notifying the Department immediately if they learn of potential changes in a parent's eligibility.

**7.02 Child Care Providers who are not eligible to receive payments**

**7.02.1** Child Care Providers who previously had agreements with the Department and who meet any of the following conditions are not eligible to receive payments on behalf of Parents receiving Subsidy:

- a. Owe money to the Department; including overpayments in other programs
- b. Were found to be engaged in fraud or a program violation in connection with the Child Care Subsidy program or have been sanctioned according to the rules in Section 12

- c. Had a Provider Agreement terminated based on Section 11.02.  
Note: This standard does not apply to terminations that are overturned through the appeal process.

**7.02.2** An individual providing care as a Legal, Unregulated Provider but who was formerly a licensed or certified Child Care Provider and whose child care license or certification has been revoked, suspended or denied by the Department or who has surrendered his or her license or certification to avoid revocation, suspension or denial. Note: This standard does not apply to terminations that are overturned through the appeal process.

**7.02.3** An individual providing care as a Legal, Unregulated Provider but who was formerly a licensed or certified Child Care Provider and 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. Note: This standard does not apply to terminations that are overturned through the appeal process.

### **7.03 Agreements with Legal, Unregulated Child Care Providers**

**7.03.1** A Legal, Unregulated Child Care Provider will sign and submit to the Department a health and safety agreement provided by the Department.

**7.03.2** A Legal, Unregulated Child Care Provider will assure in writing that the children receiving Child Care Subsidy are age-appropriately immunized and meet the latest recommendation for childhood immunizations in Maine. A ninety (90) day grace period shall be granted while Parents are taking the necessary actions to comply with the immunization requirement. The following may be exempted from the immunization requirement:

- a. Children who are cared for by relatives
- b. Children who receive care in their own home
- c. Children whose parents object to immunizations on religious grounds
- d. Children whose medical condition contraindicates immunization

- 7.03.3** A Legal, Unregulated Child Care Provider who cares for children in the Child Care Provider's home and if the home's water, used for drinking and cooking purposes, is from any source other than an approved public water supply, the Child Care Provider shall submit a satisfactory water analysis report completed by the Department of Health and Human Services, Division of Health Engineering, or by another approved laboratory. Water shall be tested for, at least, the following: coliform bacteria, nitrate and nitrite nitrogen, fluoride, chloride, hardness, copper, iron, pH, manganese, uranium, and arsenic. If a satisfactory supply cannot be provided, an agreement with the Child Care Provider cannot be issued.
- 7.03.4** The Legal, Unregulated Child Care Provider and all adults residing in the home will be required to sign release forms permitting the Department to obtain annual background checks from Child Protective Services (CPS), State Bureau of Identification (SBI), and Department of Motor Vehicles (DMV).
- 7.03.5** Child Care Subsidy payments will not be initiated until satisfactory background checks are completed on all adults residing in the household. Payments are not made retroactively.
- 7.03.6** Unsatisfactory results of a CPS, DMV and/or SBI background check or clearance will disqualify a Child Care Provider for eligibility in the Subsidy program. *Unsatisfactory* is defined by one or more of the following actions.
- 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 conviction within the last three (3) years based on an action which would be deemed detrimental to the welfare of a child.
  - f. A conviction of drug trafficking.

- 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 drive the children receiving a Child Care Subsidy.
- h. More than one 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 or anyone designated to drive the children in care. The Department may approve Child Care Subsidy if the Child Care Provider signs a written agreement not to drive the children in his or her care.
- j. A suspended driver's license at the time of application by the Child Care Provider or anyone designated to drive the children in care. The Department may approve child care if the Child Care Provider signs a written agreement not to drive the children in his or her care.
- k. A substantiated finding of child abuse or neglect by the Department.

**7.03.7** Although the State Bureau of Identification record check should reveal criminal history, the Department may log onto the state sex offender list to ensure that a Child Care Provider or a household member is not registered as a sexual offender.

**7.03.8** Payments to Legal, Unregulated Child Care Providers will be issued to the Child Care Provider.

**7.03.9** The Legal, Unregulated Child Care Provider must have lived in the State of Maine for at least six (6) months prior to applying to be a provider.

**7.03.10** If the Legal, Unregulated Child Care Applicant and any adults residing in the home have lived in another State within the last 5 years, the applicant is required to indicate what States they have lived in so that a background check can be done in those States as required by Section 7.03.4.

**7.04** **Agreements with In-home Child Care Providers**

- 7.04.1** An In-home Child Care Provider is a Child Care Provider as defined at 1.22.
- 7.04.2** Annually, the In-home Child Care Provider must sign the Department's health and safety agreement provided by the Department.
- 7.04.3** The In-home Child Care Provider will be required to sign a release form permitting the Department to obtain an annual background checks from Child Protective Services (CPS), from State Bureau of Identification (SBI), and from Department of Motor Vehicles (DMV). Unsatisfactory results of a CPS, DMV and/or SBI background check or clearance will disqualify a Child Care Provider from eligibility in the subsidy program. Unsatisfactory as defined in Section 7.03.6 above.
- 7.04.4** 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, be paid minimum wage, and 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.
- 7.04.5** During the initial 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,
  - c. to comply with State and Federal Labor laws they may be responsible for the balance of any payment for in-home care that may exceed the Market Rate.
- 7.04.6** The Department will require a signed receipt from the Parent that the Parent has received and understands the information outlined in 7.04.5.
- 7.04.7** Payment for In-Home Care will be at the same rate as the Market Rate for Legal, Unregulated Child Care Providers.

**7.05 Agreements with Recreational Programs**

**7.05.1** A Recreational Program is defined at 1.42.

**7.05.2** A Recreation Program will sign and submit to the Department a health and safety agreement provided by the Department.

**7.05.3** The Recreational Program must be located in a building that has been inspected and approved by a fire marshal.

**7.05.4** All staff in a Recreation Program will be required to sign release forms permitting the Department to obtain annual background checks from Child Protective Services (CPS), State Bureau of Identification (SBI), and Department of Motor Vehicles (DMV).

**7.05.5** Child Care Subsidy payments will not be initiated until satisfactory background checks are completed on all staff.

**7.06 Child Care Provider Payment**

**7.06.1** The Department is the only authority which can set the maximum Child Care Subsidy rate for each county.

**7.06.2** The Department will establish area Market Rates which set the maximum child care payments (subsidy payment plus Parent fee) payable to Child Care Providers in each county. The biennial Market Rate Survey is required by federal law (45 CFR Part 98.30).

**7.06.3** Before Subsidy can be approved, the Department and the Child Care Provider will execute a Provider Agreement.

**7.06.4** The agreement will set forth the responsibilities of both parties.

**7.06.5** The agreement will be executed on forms authorized by the Department.

**7.06.6** 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.

- 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.

**7.06.7** The Department will pay the Child Care Provider the agreed upon weekly rate.

**7.06.8** 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.

**7.06.9** Enrollment standards must be followed as described in Section 9.

**7.06.10** All Subsidy payments to Child Care Providers will be for services provided between the beginning date and the ending date of the Award Letter.

**7.06.11** Payments outside of the agreement dates are not allowed.

**7.06.12** 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.

## **7.07 Special Child Care Provider Fees**

**7.07.1** If a Child Care Provider has a policy of requiring a one-time deposit, registration fee, application fee for all Parents, the Parent will be responsible for these fees.

**7.07.2** Special activity fees are the responsibility of the Parent. If the Parent elects not to pay, then the Child Care Provider will be responsible for providing alternative child care for children who do not participate in the activity.

**7.07.3** Transportation fees, late pickup fees and other fees of this nature will be the responsibility of the Parent.

## **7.08 Assuring Parent Rights**

**7.08.1** 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.

**7.08.2** Only Parents or those persons authorized by the Parent are allowed to remove their child(ren) from the Child Care Facility or Family Child Care.

**7.08.3** All persons authorized to remove children from the Child Care Facility or Family Child Care must be identified in the Child Care Provider's records.

## **Section 8.00 MAINTAINING ELIGIBILITY**

### **8.01 Reporting Requirements**

**8.01.1** Within ten (10) calendar days of its occurrence, Parents receiving a Child Care Subsidy must report to the Department any of the following:

- a. Change in employment including changes in hours, wages, employer or loss of job
- b. Change in income that results in an increase of \$100 per month or greater
- c. Change in Family size
- d. Change of Child Care Provider
- e. Change in the number of child care hours needed due to change in work schedule, school schedule or change in time required to travel to and from employment

**8.01.2** Program and payment eligibility will be reviewed by the Department based on the information reported in Section 8.01.1. The Parent and the Child Care Provider will receive a new Award Letter if the subsidy payment and/or the Parent fee changes.

### **8.02 Re-determining Eligibility**

Responsibilities for the Department related to re-determining eligibility of all clients receiving subsidy and on the waiting list for subsidy are as follows:

**8.02.1** The Department will re-determine eligibility of all Parents receiving subsidy with verified documentation at least once per year. Periodic spot checks for accuracy and eligibility will be done. When possible, re-determinations for Subsidy will be aligned with Food Supplement or MaineCare re-determination when a Subsidy recipient receives one of these programs.

**8.02.2** The Department will send the Parent written notification at least thirty (30) calendar days before the re-determination is due that they must reapply for subsidy services. The Child Care Provider will also be notified.

**8.02.3** The written notification of re-determination will include the exact month/day/year that Child Care Subsidy will be terminated if the Parent fails to complete and return the application and required verification.

**8.03** **Responsibilities of the Parents**

All Parents receiving Child Care Subsidy being re-determined for eligibility must provide the following information to the Department at least twelve (12) calendar days prior to the end date on their current Award Letter:

- a. Information necessary to re-determine eligibility, calculate and assess fees, and issue Subsidy payments
- b. Verification of income (See Section 5.13)
- c. If the Parent is a Student who is enrolled and attending an educational or Job Training Program, provide verification of enrollment status, documentation of satisfactory progress and attendance. Class hours and/or training hours must be verified through a class schedule or letter from the instructor.

**8.04** **When Re-determination Affects Child Care Provider Payment**

**8.04.1** When the Parent reports a change in circumstances affecting a change in the Parent fee, the change will become effective:

- a. Following re-determination of eligibility
- b. After a new Award Letter has been sent to both Parent and Child Care Provider

**8.04.2** **Requested Documentation Not Received**

In the event that a Parent 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, payment will not be made beyond the date of the current Award Letter.

## **8.05 Payment for Child Protective, Post Child Protective, and Care and Custody Referrals**

If the Department/Tribal Caseworker requests that the child care slot remain open for their client who has been accepted for Child Care Subsidy but the client fails to appear on the scheduled enrollment date, the Department will pay the Child Care Provider for up to two weeks of service availability.

## **8.06 Billing and Payment**

### **8.06.1 Reimbursement Basis**

Payment will be made on a Reimbursement Basis.

### **8.06.2 Billing Period**

Child Care Providers will bill the Department on a biweekly basis as agreed upon by the Department and the Child Care Provider. The billing period will be stipulated in the Provider Agreement.

### **8.06.3 Payment Timing**

When the Child Care Provider's bill is correctly completed and submitted to the Department within the time frame stipulated in the Provider Agreement, the Department will pay the Child Care Provider within ten (10) working days of receiving the Child Care Provider's request for payment.

### **8.06.4 Child Care Provider Bill.** The Department will not to pay a Child Care Provider who does not submit a bill within sixty (60) calendar days of the agreed upon submission date. This policy will be included in the Provider Agreement.

### **8.06.5 Billing Form.** The billing form used by the Child Care Provider must be authorized by the Department.

## **Section 9.00 ENROLLMENT**

### **9.01. Enrollment Basics**

#### **9.01.1** The Provider Agreement (between the Department and the Child Care Provider) and the Parent's Award Letter will set forth the enrollment standards for specific enrollment circumstances and acceptable and unacceptable absences.

#### **9.01.2** The Department will reimburse providers for Child Care Services based on the number of hours the Parent qualifies for subsidy and the number of hours the child is in care.

- 9.01.3** The Department will maintain documentation of enrollment for all children receiving Child Care Subsidy.
- 9.01.4** The Child Care Provider will maintain daily attendance records and retain these records for three (3) years.
- 9.01.5** Parents and Child Care Providers are required to sign attendance sheets weekly, at a minimum.
- 9.01.6** The Child Care Provider's records must support the weekly service reports submitted to the Department and the payments made.
- 9.02** **Enrollment Hours**
- 9.02.1** Total enrollment hours cannot exceed 50 hours per child per week. Exceptions are approved by the Department's Child Care Subsidy Program Supervisor on a case-by-case basis. The exceptions include but are not limited to:
- a. a Parent's work schedule
  - b. education/job training schedule
- 9.02.2** For Parents who are Employed, enrollment hours per week will be determined based on work hours and related transportation time.
- 9.02.3** For Parents who are Attending an Educational or Job Training Program, enrollment hours will include:
- a. Actual class hours
  - b. Meal time (if in between classes)
  - c. Related travel time
  - d. A reasonable amount of study time needed to successfully meet course requirements. (See Section 4.05.2)
- 9.02.4** Enrollment hours may be adjusted without amending the subsidy agreement for circumstances such as nonscheduled school closings and teacher in-service days.
- 9.02.5** In order to maintain continuity of Child Care Services, and if it is the established practice of a **licensed or certified** Child Care Provider to charge the general public for such periods of time, the Department will pay the provider for holidays, and up to one week of provider vacation time.

**9.03 Enrollment Period**

**9.03.1** The enrollment period begins on the initial date that services are provided and ends on the child's last day of service and must be within the beginning and ending dates of the Award Letter. The enrollment period also includes the following:

- a. A two-week period after Notification of Termination is received by the Parent and Provider unless the Child Care Provider is being terminated by the Department in which case the two-week period does not apply.
- b. Up to twelve (12) weeks for children who are enrolled while their Parent(s) are on maternity/paternity leave, short term disability leave, or job search.
- c. No more than twelve (12) weeks for a scheduled semester break for children of Students.
- d. School vacation periods for School-Age Children such as summer vacation, Christmas vacation, February vacation and April vacation.

**9.04 Child Protective Case Managed Clients**

**9.04.1** Enrollment hours must correspond to the referral source's case plan for a Care and Custody child referred by the Department or Federally Recognized Tribe.

**9.04.2** The Department will notify the Caseworker when their clients have more than two (2) days per month of unacceptable absences.

**9.05 Reasonable Causes for Child Absence**

**9.05.1** Reasonable causes for child absence from the child care program include:

- a. Federal/State holidays
- b. Parental vacation days
- c. Inclement weather defined by a snow day when local schools are closed
- d. Illness of the child or other immediate Family member

- e. Transportation problems that affect the Parent's ability to transport the child to care
- f. Family emergencies, including but not limited to surgery, chemo treatments or accidents
- g. Catastrophic events affecting the Family, including but not limited to fires, storms or accidents.

**9.05.2** Reasonable causes for extended child absence from the program but for no more than two (2) consecutive weeks include:

- a. Parental vacations
- b. Parental visitations
- c. Illness of the child or Family member
- d. Catastrophic events affecting the Family, including but not limited to fires, storms or accidents.

**9.05.3** When a child is absent from the program beyond two (2) consecutive weeks for the same reasonable causes, the provider must obtain prior written approval from the Department to extend enrollment for a specified period of time.

**9.05.4** The amount of hours allowed for excused absences is based on the amount of time in the award. Children with full-time awards are allowed 200 hours of excused absences within an award year, children with part-time awards are allowed 150 hours of excused absences within an award year, children with half-time awards are allowed 100 hours of excused absences within an award year, and children with quarter-time awards are allowed 50 hours of excused absences within an award year. For children who have split awards between two or three categories, the average between the categories will be allowed for excused absences within an award year. Leaves indicated in Section 4.08 are not counted against excused absences. The provider must obtain prior written approval from the State Child Care Administrator for any additional excused absence time.

**9.06 Unacceptable Absences**

Unacceptable absenteeism from the child care program is defined as absence from the child care program for more than two (2) days per month without reasonable cause.

- 9.07 Non-compliance**  
Non-compliance with enrollment policies will result in termination of Child Care Subsidy and end enrollment.

**Section 10.00 WAITING LISTS**

**10.01 The Department Maintains Waiting Lists**

- 10.01.1** The Department must maintain a waiting list if funding is not available at the time of a Parent's application.
- 10.01.2** The Department waiting list shall include the identification of all applicants by:
- a. Name
  - b. Social Security Number
  - c. DHHS "A" number
  - d. Date of application
  - e. County of residence
  - f. Parent and child priority group(s) (Very Low Income, Special Needs)
  - g. Child's age
  - h. Amount of care requested (Fulltime,  $\frac{3}{4}$  time,  $\frac{1}{2}$  time or  $\frac{1}{4}$  time)
  - i. A list of all other related children needing care by age and type of care requested

**10.02 The Department Updates the Waiting List**

- 10.02.1** The waiting list must be updated by the Department no less frequently than annually.
- 10.02.2** Parents must receive written notification that they have thirty (30) calendar days to respond to the request for updated information.

**10.03 Enrolling Parents from the Waiting List**

- 10.03.1** **Priorities for Waiting List** Special Needs and Very Low Income children must be given equal priority over all other children.

Among these two priority groups, children are selected for services on a first-come, first-served basis by county based on the date of application.

- 10.03.2 First-Come, First-Served Basis** All other children are selected for service on a first-come, first-served basis based on the date of a completed application.
- 10.03.3 Specific Target Groups** Funding reserved for specific target groups, such as at-risk child care, must be used only for those Parents.
- 10.03.4 Catastrophic Events** Exceptions to providing services on a first-come, first-served basis may be made in cases of catastrophic events including but not limited to fires, storms or accidents, Family emergencies, including but not limited surgery and other medical procedures or children without a home by the State Child Care Administrator.
- 10.03.5 Siblings** As children are accepted for service from the waiting list, subsidies will be provided for all siblings residing with the Parent and needing child care, if funds are available. When funding is not available to serve all siblings, the remaining siblings will continue in their position on the waiting list for services.
- 10.04 Unborn Children** For all unborn children, the Department will not accept an application for service prior to the Parent's sixth month of pregnancy.
- 10.04.1 Newborn Children** No preference is given to current Subsidy recipients for subsidy for newborn children.

## **Section 11.00 TERMINATION OF SERVICES**

- 11.01 Termination of Child Care Subsidy Services to the Parent by the Department**
- 11.01.1** The Child Care Subsidy Award Letter to the Parent defines the length of the availability of Child Care Subsidy to the Parent. The subsidy availability will be terminated upon any of the following:
- a. When the Department terminates Child Care Subsidy to a Parent
  - b. When the Parent receiving subsidy withdraws from the Child Care Subsidy program

c. When the available funding is reduced.

- 11.01.2** The Child Care Subsidy Award Letter defining subsidy cannot be terminated in order to accommodate service needs of new applicants except as directed by the Department.
- 11.01.3** Parents who fail to respond to a notification of eligibility re-determination by the end of their current eligibility period will have services terminated. Note: Parents must have been given a thirty-day (30) advance notification of eligibility re-determination by the Department. It is the responsibility of the Parents to ensure that the Department has a current address for the Parents. All notices sent to the last documented address for the Parents and not returned will be considered received, and as such the Department will consider the Parents notified.
- 11.01.4** Parents who fail to provide the requested documentation of eligibility re-determination prior to the end of their current eligibility period, even if they completed the required forms, will have services terminated. Payment to providers will not be made beyond the date of the current Award Letter. Note: Parents must be given a thirty-day advance notification of eligibility re-determination. It is the responsibility of the Parents to ensure that the Department has a current address for the Parents. All notices sent to the last documented address for the Parents and not returned will be considered received, and as such the Department will consider the Parents notified.
- 11.01.5** If upon re-determination of eligibility, the Parent is no longer eligible for Child Care Subsidy, the subsidy will be terminated. Note: Parents must be given a thirty-day advance notification of eligibility re-determination. It is the responsibility of the Parents to ensure that the Department has a current address for the Parents. All notices sent to the last documented address for the Parents and not returned will be considered received, and as such the Department will consider the Parents notified.
- 11.01.6** If the Parent becomes ineligible prior to the end of their current eligibility period due to a change in Family income, Family size, or other eligibility criteria, the Child Care Subsidy will be terminated.
- 11.01.7** If the Parent fails to comply with the following enrollment standards for acceptable absenteeism, the Child Care Subsidy will be terminated:

- a. When a Child Care Provider reports a child had more than two (2) unexcused absences in a month, the Parent will be sent a warning letter defining unacceptable absenteeism.
- b. When a Child Care Provider reports a child had twenty-five (25) unexcused absences within one (1) year, a Notification of Termination of the Parent will be sent to the Parent and the Child Care Provider. All notices sent to the last documented address for the Parents and not returned will be considered received, and as such the Department will consider the Parents notified.
- c. Child Care Subsidy will be terminated if the Parent has not requested and/or the Department has not approved an extension beyond two (2) consecutive weeks of being absent for reasonable causes.

**11.01.8****Non-Payment of Assessment Fees to Child Care Providers**

Upon notification by the Child Care Provider that the Parent failed to pay the assessed Parent fee, the Department will take the following action to terminate services:

- a. Parents will be notified by the Department that immediate payment of both past due fees and all fees that have accumulated during the notification period must be paid within twelve (12) calendar days.
- b. Child Care Subsidy shall not be terminated if, within the twelve (12) calendar day notification period, the Child Care Provider and the Parent agree to a payment schedule for the fees in arrears in addition to the regular weekly assessed fee.
- c. If the Parent fails to comply with the negotiated payment schedule, Child Care Subsidy shall be terminated twelve (12) calendar days from the date that the Department sets up the payment schedule with the client.
- d. If the Parent leaves a Child Care Provider and owes the Provider past parent fees, the Department may rescind the award until the fees are all paid in full or until a payment schedule is agreed upon by the Provider and the Parent. If the Parent defaults on said payment arrangements, the Department shall terminate the Parent's subsidy award.

**11.01.9**

If the client is a Child in Care and Custody, Post-Child Protective referred by a Caseworker:

- a. The Department must provide a copy of the twelve-day notification of termination to the client's Caseworker.
- b. Services will not be terminated for nonpayment of fees unless written approval to terminate services is given by the Caseworker.

**11.01.10 Failure to Report Change** When the Department has sufficient documentary evidence that the Parent has failed to report a change in Family income, Family size or other eligibility criteria within ten (10) calendar days of the change, Child Care Subsidy services to the Parent will be terminated.

**11.01.11 Failure to Provide Requested Documentation** If Parents fail to provide the requested documentation/information to support a reported change in Family income, Family size or other eligibility criteria, Child Care Subsidy to the Parent will be terminated. It is the responsibility of the Parents to ensure that the Department has a current address for the Parents. All notices sent to the last documented address for the Parents and not returned will be considered received, and as such the Department will consider the Parents notified.

**11.01.12 Misrepresentation** Where the Department makes a preliminary determination that an action has taken by a parent with the intention of receiving financial assistance to which that parent is not entitled, the case may be terminated. This case may also be referred to the DHHS Fraud Investigation Unit pursuant to Title 22 M.R.S. § 13 and the Department may pursue establishment of a program violation against the Parent and /or Child Care Provider administratively.

**11.02 Immediate Termination of Child Care Provider by the Department**

**11.02.1** The Provider Agreement between the Child Care Provider and the Department will be immediately terminated by the Department for any of the following reasons:

- a. Upon notification of a finding by the Department's Division of Licensing and Regulatory Services that child abuse or neglect occurred while children were in the care of the Child Care Provider.
- b. Loss of the Child Care Provider's license or certification, if the

- provider is required to be licensed or certified (having conditions or any other provisions on the license are included).
- c. When a Parent is denied access to his/her child when the child is in the care of the Child Care Provider, unless access has been limited by a court order.
  - d. When a Child Care Provider assaults, uses threatening language, threatening gestures, or other abusive behavior which cause the Parent to reasonably fear for their safety and/or the safety of their child(ren).
  - e. An immediate threat to the health and safety of the child in the care of the Child Care Provider. A report must be made to the Department's Division of Licensing and Regulatory Services Child Care Licensing Authority for investigation. Where appropriate, the Parent should make a report to the police and/or seek other appropriate relief from the court.
  - f. Misrepresentation or fraudulent reporting of services provided in the Child Care Provider's request for payment.
  - g. Discrimination against a Parent with Subsidy in the provision of service and/or fee assessment.
  - h. Fee collections in excess of the assessed Parent fees as stipulated in the Parent's Award Letter. An exception is made for one-time deposit/registration/application fees and special activity fees.
  - i. Repeated failure of the Child Care Provider to submit timely, complete and accurate billings, in spite of the Department's efforts to provide technical assistance to the Child Care Provider. Repeated failure means the majority of billings within a six-month period were not received on time, and/or were incomplete and/or inaccurate.
  - j. Failure of the Child Care Provider to notify the Department in writing when the Parent has been absent from the program for more than two days per month without reasonable cause. Prior to entering into a Provider Agreement, the Child Care Provider must be provided with a copy of the enrollment standards by the Department.
  - k. Any other violation of the Provider Agreement which constitutes a breach of contract.

1. Child Care Providers who have been debarred or suspended by the Federal government in accordance with the provision in the contract with the Department.

**11.02.2** If the provider does not return a new or renewal agreement completed and signed within 30 calendar days of the Department's request for this information, the Department may withdraw its approval of this provider due to not having an active agreement with said provider. Consent agreements are not included.

**11.03 Termination of Child Care Provider by Parent for Alleged Licensing Violations**

**11.03.1** The Parent may immediately terminate the Subsidy agreement for failure of the Child Care Provider to allow Parents unlimited access to their children during normal hours of operation or whenever the children are in the care of the Child Care Provider, unless access has been limited by a court order.

**11.03.2** Services may be terminated by the Parent due to an alleged child care license/certification violation or an allegation of child abuse and neglect. Fee payments may be withheld by the Parent.

**11.03.3** If the DHHS Division of Licensing and Regulatory Services determines that a violation occurred, then no payment is due for each day of service.

**11.03.4** If the investigation reveals that no violation occurred, then the Parent will pay the Child Care Provider for each day of service within the two-week notification period that their child care slot remains vacant.

**11.03.5** If the Parent fails to give the required two week termination notice because of an alleged licensing violation, the Department will not pay the Child Care Provider if the Parent or another party files a complaint with the Department's Child Care Licensing Authority within two weeks of their knowledge of the alleged incident, and the Child Care Provider is found to be in violation of licensing rules. Example: The Parent has evidence that the Child Care Provider spanked her child, she makes a report to the Department, and the Department determines that the violation occurred.

**11.03.6** If the Parent fails to file a complaint with the Department's Child Care Licensing Authority within two weeks of their knowledge of the alleged incident or no violation is found, then the Department will pay the Child Care Provider for the required notification period.

**11.04 Twelve Calendar Day Advance Notification of Termination**

**11.04.1** No twelve (12) calendar day advance notification is required if there is immediate termination by any party: the Parent, the Department pursuant to Section 11.02, or the Child Care Provider.

**11.04.2** For all other Parent and/or Child Care Provider terminations, a minimum twelve (12) calendar day advance Notification of Termination is required of the party seeking termination - the Department, the Parent or the Child Care Provider. This notice must be provided in writing.

**11.04.3** Notification of Termination from the Department must be made in writing. Notice may additionally be made in person, or by direct telephone contact with the appropriate Child Care Provider.

**11.04.4** When the Department terminates the Child Care Provider as listed in 11.02, the Parent may select a new Child Care Provider.

**11.04.5** When the Department terminates Child Care Subsidy to the Parent as listed in 11.01 the Department must:

- i. Furnish the Child Care Provider with a copy of the Notification of Termination issued to the Parent
- ii. Use an alternative form of notification when sensitive information should not be shared with the Child Care Provider
- iii. Furnish the Caseworker with a copy of the notification of termination if the client was referred by a Caseworker.

**11.05 Failure to Give Twelve (12) Day Notification of Termination**

Parents must give the Child Care Provider a written twelve (12) day notice when they are going to terminate their Child Care Subsidy services. The Department must receive a copy of this notice.

**11.05.1** Parents who fail to give the Child Care Provider a twelve (12) day advance notification that Child Care Services are being terminated will pay the Child Care Provider the assessed Parent fee for each day of service during the twelve day notification period that their child care slot remains vacant.

**11.05.2** 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 slot is vacant. The Department will not pay the Parent fee.

- 11.05.3** 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.
- 11.05.4** Other than situations otherwise noted in 11.03.1 and 11.03.2, the parent must leave the Child Care Provider in good standing in order for the subsidy award to continue to a new provider. Good standing includes twelve day written notice and payment of all parent fees to the former Child Care Provider. If the parent does not leave in good standing, the Department may rescind the award until payments are made to the former Child Care Provider or the parent is making regular payments on the arrears in accordance with a reasonable payment plan to the former Child Care Provider.
- 11.06**        **When Termination Affects Child Care Provider Payment**
- 11.06.1** 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 a State Administrative Hearing in accordance with the standards set forth in the Section 13 other than terminations under Section 11.03.
- 11.06.2** When the Child Care Provider terminates child care service to a Parent, the Department will not pay the Child Care Provider beyond the termination date provided by the Child Care Provider.
- 11.06.3** 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 period beyond the termination date.

## **Section 12.00 IMPROPER PAYMENTS**

- 12.01** 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.
- 12.02**        **Underpayments and Overpayments** If the improper payment results in less benefits than should have been granted, the result is an Underpayment. If the improper payment results in more benefits than should have been granted, the result is an Overpayment.
- a. The Department shall take prompt action in accordance with the requirements of this section whenever an improper payment occurs that causes benefits to be underpaid or overpaid.

- b. **Underpayments** occur 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 administrative error or mistake made by the Department. Evidence shall clearly demonstrate that an agency administrative error occurred. Errors caused by the Parent or the Child Care Provider shall not be considered underpayments, except when a Child Care Provider makes a billing error and the Department receives written notification of the error within thirty (30) calendar days of the date payment is issued to the provider.
- c. **Overpayments** occur when the amount paid exceeds the amount that would have been paid if the benefit had been calculated correctly on actual circumstances reported, verified and acted on in a timely manner. Overpayments occur as the result of agency administrative, Parent or Child Care Provider errors.
- d. Overpayments are calculated on a month-to-month basis for the period of the overpayment. 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 (10) dollars.

### **12.03 Agency Administrative Errors**

An overpayment shall be classified as an agency administrative error if the error was caused solely by actions of the Department. Agency administrative errors shall include, but not be limited to:

- a. Errors caused by delays in processing applications or acting upon changes that were reported in a timely fashion
- b. Errors in determining eligibility, calculating the benefit amount or the payment authorization period
- c. Data entry errors
- d. Errors caused by the incorrect application of state regulations, policy or procedures
- e. Fraud committed by an individual who works for the Department

### **12.04 Errors Caused by Parents and Providers**

**12.04.1** Overpayments that are not caused by agency administrative errors shall be classified as caused by the Parent or Child Care Provider.

**12.04.2** Overpayments caused by the Parent shall include, but not be limited to:

- a. Errors caused by reporting false information
- b. Errors caused by reporting inaccurate information

- c. Delays in reporting changes in household circumstances, work or school schedules, or provider arrangements

**12.04.3** Overpayments caused by the Child Care Provider shall include, but not be limited to errors caused by:

- a. Inaccurate reporting of licensing status, age 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 care is given
- 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, attendance or dates of service
- f. Any other false claim for goods or services provided

**12.04.4** 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.

**12.04.5** The Department shall make a preliminary determination of whether the overpayment was caused by a program violation 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.

**12.04.6** Where the Department makes a preliminary determination that a Parent or Child Care Provider may have committed a program violation, the case may be referred to the DHHS Fraud Investigation Unit pursuant to Title 22 M.R.S. §13 and the Department may pursue establishment of a program violation against the Parent and/or Child Care Provider administratively.

**12.04.7** A final determination that a program violation was made 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.

**12.05 Calculating the Improper Payment**

- 12.05.1** Improper Subsidy payments shall be calculated by comparing the subsidy paid during the applicable benefit month to the payment that would have been payable if eligibility and payment had been calculated correctly. The difference between the correct subsidy and the amount actually paid shall be the amount of the monthly improper payment.
- 12.05.2** The monthly calculation is applied on a month-to-month basis for the improper payment period. The aggregate sum of the monthly improper payments within the improper payment period is the net amount of the improper payment or the overpayment/underpayment amount.
- 12.05.3** If 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 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.
- 12.05.4** Improper 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.
- 12.05.5** Repayment of overpayments shall begin on the first day of the month following the month in which the circumstances that caused the overpayment occurred.
- 12.05.6** 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.
- 12.05.7** 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 shall be considered agency administrative error.

**12.06 Responsibility for Repayment**

- 12.06.1** The Parent shall be responsible for repaying the overpayment unless the overpayment was caused solely by the Child Care Provider. If the Parent is responsible for the overpayment, the Department shall require restitution by billing when the overpayment is due and again on the thirtieth and sixtieth day if the Parent fails to pay. Thereafter, the Department may pursue collection in the appropriate venue.

**12.06.2** If the Child Care Provider is responsible for the error, the Child Care Provider shall repay the overpayment.

**12.06.3** If the Child Care Provider is responsible for the overpayment and recovery is initiated by reducing the monthly Child Care Subsidy benefits, the Child Care Provider shall not require the household to pay the difference by increasing charges for children subsidized by the Department to compensate for the loss of income due to the recovery of an overpayment.

**12.07 Notice of Overpayment**

**12.07.1** The individuals responsible for the repayment of the overpayment shall be provided with written notice of overpayment upon establishment.

**12.07.2** The written notice of overpayment shall be sent to the Department's last known address of the individuals, by U.S. Postal Service first class mail and be considered as received upon being sent.

**12.07.3** 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. The overpayment will be considered payable in full thirty (30) 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
- h. Responsibility for repayment when billed
- i. Responsibility for repayment through Maine Revenue Services Tax Setoff
- j. Hearing Rights and Appeal Rights
- k. Selection of repayment method as outlined in 12.08.

**12.07.4** If the Child Care Provider is solely responsible for repaying the overpayment, the Parent shall be notified in advance of the proposed change in benefits and that the Child Care Provider cannot hold the Parent responsible for paying the difference.

**12.08 Methods of Repayment**

**12.08.1** The Department shall attempt to recover overpayments by a lump sum repayment or the quickest means possible.

- 12.08.2** If the Parent or Child Care Provider does not agree to a lump sum repayment, the Department shall then reduce the Child Care Provider's and/or Parent's ongoing payments by twenty percent (20%) of the Child Care Provider's monthly payment until the overpayment has been fully recovered.
- 12.08.3** Recovery by benefit reduction shall be initiated if the Child Care Provider does not respond to the advance notice or request an Administrative Hearing.
- 12.08.4** Written request for an Administrative Hearing on establishment of the overpayment delivered to the Department within thirty (30) calendar days of the Notice shall stay recovery actions until issuance of a decision which upholds the Department's establishment of the overpayment.
- 12.08.5** 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.
- 12.08.6** If the Parent or Child Care Provider does not comply with any repayment plan, the Department may, to the extent allowed by law, take whatever action deemed appropriate to recover such overpayment.
- 12.09** **Disqualification Penalties for Program Violations**
- 12.09.1** Parents or Child Care Providers who are found to have committed a program violation must be referred to the DHHS Fraud Investigation Unit pursuant to Title 22 M.R.S.A. § 13.
- 12.09.2** The Department shall impose a disqualification penalty of up to one year if the Parent is found to have committed a program violation in connection with obtaining Child Care Subsidy benefits. A penalty shall be imposed after issuance of an Administrative Decision which determines that a Program Violation occurred or the Parent waives an Administrative Hearing.
- 12.09.3** Parents are disqualified for up to a year for a Child Care Subsidy if they had their Child Care Subsidy services terminated for a Program Violation related to Family income, Family size, or other eligibility criteria in order to be found eligible for services.
- 12.09.4** Parents and/or Child Care Providers 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 program, TANF or other cash program shall be permanently disqualified from participation in the Child Care Subsidy program.

## **SECTION 13.00 ADMINISTRATIVE HEARINGS**

- 13.01** 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.
- 13.02 Action on Requests for Service**
- 13.02.1** 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.
- 13.02.2** In all instances, notices of denial of service shall contain the Parent's or Provider's hearing rights.
- 13.02.3** The following actions shall not be subject to a state agency hearing on denial of service:
- a. The service(s) requested are not within the Department's service or program description
  - b. Department funds are depleted
  - c. The request for service originates from a person who is not authorized or appointed to act on behalf of a Parent
- 13.02.4** If a request for services is denied, the person denied may submit another request at any time a change in circumstances occurs.
- 13.02.5** The Department shall retain copies of all notices of denial issued.
- 13.03 Action to Terminate or Reduce Services**
- 13.03.1** In cases of proposed action to discontinue, terminate, suspend, or reduce services, the Department shall give written notice to the Parent(s) at least 12 calendar days prior to the effective date of the action.
- 13.03.2** The written notice to discontinue, terminate, suspend or reduce services shall contain the following:
- a. The date of the intended action

- b. The action the Department or the agency is proposing to take
- c. The reason(s) for the proposed action
- d. Reference to the specific rules or regulations supporting such action
- e. Explanation of the individual's right to request in writing a conference with the provider and/or a state agency hearing
- f. The time frame within which the conference and/or hearing request must be submitted in order for services to continue

**13.03.3** The following actions to discontinue, terminate, suspend or reduce services shall **not** be subject to a state agency hearing:

- a. 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
- b. 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
- c. 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.

**13.03.4** The Department shall retain copies of all notices to discontinue terminate, suspend or reduce services in the Parent's files.

#### **13.04 State Administrative Hearing**

**13.04.1** Parents must request an Administrative Hearing in writing within ten (10) calendar days of the Parent's receipt of notification.

**13.04.2** 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.

**13.04.3** 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 Hearing decision.)

- 13.04.4** 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 Administrative Hearing decision is rendered.
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EFFECTIVE DATE: April 21, 2015