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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Triptaa Surve, Department of Health and Social Services

FROM: Scott Meriwether, Office of the Lieutenant Governor *SM*

DATE: December 7, 2016

RE: Filed Permanent Regulations: Department of Health and Social Services

Department of Health and Social Services omnibus update to regulations re: child care assistance (7 AAC 41)

Attorney General File:	JU2016200208
Regulation Filed:	December 6, 2016
Effective Date:	January 5, 2017
Print:	221, April 2017

cc with enclosures: Linda Miller, Department of Law
Dianne Blumer, Administrative Regulation Review Committee
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The attached 133 pages of regulations, dealing with the child care assistance program, and the child care assistance program rate schedule, revised October 6, 2016, are adopted and certified to be a correct copy of the regulation changes that the Department of Health & Social Services adopts under the authority of AS 44.29.020, AS 47.05.010, AS 47.05.020, AS 47.05.300, AS 47.05.310, AS 47.05.320, AS 47.05.330, AS 47.05.340, AS 47.25.001, AS 47.25.021, AS 47.25.031, AS 47.25.041, AS 47.25.051, AS 47.25.095, AS 47.32.010, AS 47.32.030, AS 47.32.090, AS 47.32.110, and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Department of Health & Social Services paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: 12-5-16



Jon Sherwood
Deputy Commissioner
Department of Health & Social Services

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that¹ on December 6, 2016, at 6p m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Byron Mallott
Lieutenant Governor

Effective: January 5, 2017

Register: 221, April 2017



THE STATE
of **ALASKA**

GOVERNOR BILL WALKER

Department of
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**DELEGATION OF AUTHORITY
FOR ADOPTING REGULATIONS**

UNDER AS 44.17.010, THE AUTHORITY AND RESPONSIBILITY FOR ADOPTING REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES UNDER THE ALASKA ADMINISTRATIVE PROCEDURE ACT ARE HEREBY DELEGATED TO JON SHERWOOD, DEPUTY COMMISSIONER.

SIGNED:



Commissioner


VALERIE DAVIDSON

(Printed name)

SIGNED AND SWORN TO before me this 31st day of August, 2015.

[NOTARY SEAL]





Notary Public in and for the
State of Alaska
My commission expires: w/office

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The introductory language of 7 AAC 41.010 is amended to read:

(a) This chapter applies to the administration of the child care assistance program under AS 47.25.001 - 47.25.095 by the department, or by a designee described in **7 AAC 41.015** [AAC 41.015]. This chapter does not apply to

...

7 AAC 41.010(b)(1) is amended to read:

(1) means public financing and support for a wide range of child care services, including **services under 7 AAC 41.060 (Alaska Inclusive Child Care Program) and other** program benefits and support to parents and providers;

(Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.012(1) is amended to read:

(1) PASS I provides child care assistance as a self-sufficiency service under AS 47.27, [AND] 7 AAC 45, **and this chapter** to low income eligible families applying for or receiving **Alaska Temporary Assistance Program (ATAP)** benefits;

(Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.013 is amended to read:

7 AAC 41.013. Family. For purposes of this chapter, a family is

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(1) one parent, and that parent's children under 18 years of age, living together in a household;

(2) two parents who are married to each other, and the children under 18 years of age of either **parent** or both parents, living together in a household; or

(3) [THE] two biological **or legally adoptive** parents of a child who are not married to each other, **their children in common** [THAT CHILD], and any other children under 18 years of age of either of those parents, living together in a household. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221.)

Authority: AS 47.25.001

7 AAC 41.015(a) is amended to read:

(a) The department may designate an entity or a municipal government to administer child care assistance program services within a specified geographic area for [PASS II AND PASS III] families and child care providers under this chapter. A municipality will be given preference over other organizations, as required by AS 47.25.001(b)(2).

7 AAC 41.015(b) is repealed and readopted to read:

(b) If the department designates an entity or municipal government to perform certain functions on the department's behalf, those functions may include one or more of the following for providers and for families:

- (1) provide program information;
- (2) obtain completed applications or renewals;

(3) verify and evaluate information supplied by providers and families for participation in the child care assistance program and payment of benefits related to that participation;

(4) verify that the provider's current child care license or approval is in good standing;

(5) request additional information if necessary to evaluate eligibility;

(6) approve or deny participation in the program;

(7) determine the amount of child care to authorize, including determination of the family contribution toward the eligible cost of care, and authorize care;

(8) evaluate and discuss with a parent the parent's schedule of eligible activities and child care needs;

(9) submit applications, evaluations, decisions, or recommendations, and related reports, to the department upon request;

(10) provide ongoing review for compliance with the applicable provisions of this chapter and refer suspected noncompliance to the department;

(11) determine whether a provider or family becomes ineligible for participation in the program, and, if so, discontinue authorization and payment and issue notice in accordance with 7 AAC 41.405;

(12) except as provided in (e) of this section, receive and process complaints;

(13) ensure all actions for family and provider participation is maintained in a state-provided data system, as applicable.

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7 AAC 41.015(d) is amended to read:

(d) A designee shall deny or discontinue a family's or a provider's participation in the program if the family or provider is ineligible under AS 47.25.001 - 47.25.095 or this chapter. Subject to **7 AAC 41.400 - 7 AAC 41.450** [7 AAC 41.405], the designee shall mail to the provider or **the** family, as applicable, a written determination of denial or discontinuance of participation in the program and a [NOTICE OF] request for **an** administrative **hearing** [REVIEW] form. Under **7 AAC 41.400 - 7 AAC 41.450** [7 AAC 41.415 AND 7 AAC 41.430], a designee may submit to the department a recommendation regarding any change in program participation based on noncompliance with AS 47.25.001 - 47.25.095 or this chapter.

7 AAC 41.015(e) is amended to read:

(e) A designee shall immediately report to the department any noncompliance with [AN APPLICABLE HEALTH AND SAFETY REQUIREMENT OF] this chapter. The department will evaluate the report and, if the department determines that an **on-site** investigation is warranted, **will conduct an on-site investigation and make findings based on the investigation**

[(1) CONDUCT THE INVESTIGATION;

(2) DEVELOP A PLAN WITH THE DESIGNEE FOR A COORDINATED INVESTIGATION; OR

(3) AUTHORIZE THE DESIGNEE TO CONDUCT THE INVESTIGATION AND SUBMIT A REPORT AND RECOMMENDATION TO THE DEPARTMENT].

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7 AAC 41.015(h) is amended to read:

(h) A designee shall **only** use forms prescribed by the department to administer the child care assistance program **and may not require additional designee forms as part of a family's or provider's eligibility for program participation** [UNLESS THE DEPARTMENT AUTHORIZES, IN WRITING, THE USE OF ANOTHER FORM THAT PROVIDES THE SAME INFORMATION AS THE PRESCRIBED FORM]. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 1/5/2017, Register 221)

Authority: AS 47.05.300 AS 47.05.340 AS 47.25.001
AS 47.05.310

7 AAC 41.025(a) is amended to read:

(a) For purposes of calculating a family's program benefits under 7 AAC 41.345, the program rate for each category of care authorized for a child is established in the department's *Child Care Assistance Program Rate Schedule*, revised as of **October 5, 2016** [NOVEMBER 23, 2009], and adopted by reference. The rates in the schedule are set out by type of facility licensed under 7 AAC 57 or approved under this chapter, category of care, and [POLITICAL SUBDIVISION OR] geographic area.

7 AAC 41.025(b) is repealed and readopted to read:

(b) The category of care includes the age group of the child and each unit of care authorized, as follows:

(1) age groups include

- (A) infant: birth through 12 months of age;
- (B) toddler: 13 months of age through 35 months of age;
- (C) preschool-age child: 36 months of age through 59 months of age; and
- (D) school-age child: five years of age through 12 years of age;

(2) units of care authorized include

- (A) part month enrollment: fewer than 17 days of care in any combination of part or full days in a month or from 17 to 23 part days of care in a month;
- (B) full month enrollment: from 17 to 23 days of care that includes at least one full day of care in a month;
- (C) part day attendance: care needed for up to and including five hours of care in a day; and
- (D) full day attendance: care needed for more than five hours and up to and including 10 hours of care in a day.

7 AAC 41.025(c) is amended to read:

- (c) The program **payment** rates in the schedule are based on the following standards:
 - (1) to ensure that eligible families have equal access to child care services comparable to child care provided to families that are not eligible to participate in the program; if the full range of providers is available in a community, a choice of the full range of providers is available to eligible families; in this paragraph, "full range of providers" includes **licensed** [A] child care **providers eligible under 7 AAC 41.200(a)(1), providers eligible under 7 AAC 41.200(a)(2) - (4), relative providers exempt from licensure and approved under**

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7 AAC 41.200(a)(5) and 7 AAC 41.201(d), and child care approved under 7 AAC

41.200(a)(6) and 7 AAC 41.370 in the child's own home [CENTER, CHILD CARE HOME, CHILD CARE GROUP HOME, AND IN-HOME CHILD CARE]; and

(2) to ensure that program **payment** rates are adequate, as follows:

(A) rates are based on availability of appropriations and on market conditions, using information obtained by the department through a

(i) market **price study** [RATE SURVEY] of child care providers in the state; **or**

(ii) **cost estimation model or other alternative methodology**;

(B) for a [POLITICAL SUBDIVISION OR] geographic area, rates are a percentile, up to the 75th percentile, of the rates of a representative sample of child care providers in that [POLITICAL SUBDIVISION OR] geographic area or in a similar one; and

(C) for a [POLITICAL SUBDIVISION OR] geographic area, rates may be adjusted by the department to

(i) expand capacity for child care;

(ii) address factors indicating a shortage of available care, such as care for infants, children [WITH DISABILITIES OR] with special needs [AS DESCRIBED IN 7 AAC 57.940], or children of parents who work during nontraditional hours; and

(iii) address market imperfections, including situations in which the market **price** [RATE] is below the actual cost of care.

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7 AAC 41.025(d) is repealed and readopted to read:

(d) The state maximum child care assistance payment for a child during a month is equal to the full month rate plus the part month rate for the category of care, the type of facility, and the geographic area where care is provided. If the child uses two types of facilities, payment is based on each facility type, not to exceed the rate for the licensed facility type.

7 AAC 41.025(e) is repealed and readopted to read:

(e) A provider caring for a child with special needs who is younger than 13 years of age may qualify for a supplemental program rate as referenced in 7 AAC 41.060.

7 AAC 41.025(f) is amended to read:

(f) If child care is provided in the child's own home, the program rate for an approved in-home child care provider is the rate for an approved relative provider shown on the department's schedule set under this section.

7 AAC 41.025(g) is amended to read:

(g) The total eligible cost of care for a family choosing an approved in-home child care caregiver is limited to a monthly maximum that is equal to two times the minimum hourly wage established under AS 23.10.065, multiplied by 170 [210]. (Eff. 6/23/2006, Register 178; am 8/31/2008, Register 187; am 2/31/2010, Register 193; am 1/5/2017, Register 221)

Authority: AS 47.25.001 AS 47.25.041

Editor's note: A copy of the *Child Care Assistance Program Rate Schedule*, adopted by reference in 7 AAC 41.025, is available from the Child Care Program Office, Department of Health and Social Services, **3601 C Street, Suite 140, P.O. Box 241809** [619 E. SHIP CREEK AVENUE, SUITE 230], Anchorage, Alaska **99524-1809** [99501-1677]. **The *Child Care Assistance Program Rate Schedule* also may be viewed through the department's Internet website at <http://dhss.alaska.gov/dpa/pages/ccare>.**

7 AAC 41.035 is repealed and readopted to read:

7 AAC 41.035. Enrollment authorization. (a) For a child whose authorized unit of care is for part or full month enrollment, child care costs are paid based on the program payment rate established in the department's *Child Care Assistance Program Rate Schedule*, adopted by reference in 7 AAC 41.025, except that the department or a designee may pay at the part month rate under that schedule if during the month

- (1) the child is in attendance five or fewer days;
- (2) the child is in attendance five or fewer days, care is ending, and the notice required under 7 AAC 41.345(d) and (e) is mutually waived;
- (3) the child is in attendance at least six days and fewer than 17 days and care is ending with the current provider; or
- (4) the family or provider becomes ineligible for program participation.

(b) For a child whose care is authorized as part or full month enrollment, the department will not make payment to the provider for a month during which the child was not in the provider's care, except for any days included in the notice required under 7 AAC 41.345(d) and

(e).

(c) Care may not be authorized for a child in excess of a full month enrollment plus a part month enrollment. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.040 is repealed and readopted to read:

7 AAC 41.040. Attendance authorization. (a) For a child whose authorized unit of care is part day or full day attendance, child care costs are paid based on the program payment rate established in the department's *Child Care Assistance Program Rate Schedule*, adopted by reference in 7 AAC 41.025, and the child's actual attendance at the facility.

(b) The department will pay an attendance authorization up to the equivalent of the full month rate when a child's actual attendance at the facility is 17 or more days during a month.

(c) An attendance authorization may be used to authorize part or full days of care in addition to an enrollment authorization as specified in the authorization issued under 7 AAC 41.340, not to exceed the equivalent of a full month enrollment plus a part month enrollment. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.050(a)(2) is amended to read:

(2) limit the activities eligible for a program benefit under 7 AAC 41.310(b)(2) - (5) [7 AAC 41.310(2) - (6)];

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The introductory language of 7 AAC 41.050(d)(1) is amended to read:

(1) the highest priority is given to **participating or applying** families in which a single parent is, or both parents are

...

7 AAC 41.050(d)(2) is amended to read:

(2) the next priority is given to families in which a parent is

(A) **searching for** [SEEKING] work **and is in a participating family**; or

(B) attending school, if the department has paid child care assistance for full-time student status for five years or more, **and the parent is in a participating or applying family**.

7 AAC 41.050(e) is amended to read:

(e) A parent is attending school if the parent is participating in an educational or training program. An educational program is a structured learning environment in which an instructor or teacher leads students through a course of study that includes specific learning objectives, goals, and standards, and leads to a certificate of mastery or completion, a state license, a diploma, or a degree. A training program is a structured learning environment, for participants **to gain or enhance job skills**, that has specific learning objectives, identified skills to be mastered, a beginning date, and an ending date.

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7 AAC 41.050(g)(2) is amended to read:

(2) a child with special needs who is determined to be eligible under 7 AAC 41.025(e); benefits will be limited to the specific child with special needs;

7 AAC 41.050(g)(3) is amended to read:

(3) a child with parents who are younger [LESS] than 20 years of age and who are enrolled in a high school completion program;

7 AAC 41.050(g) is amended by adding new paragraphs to read:

(5) a child in protective services;

(6) a child in a family who is homeless.

(Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001 AS 47.25.031

7 AAC 41.055 is amended to read:

7 AAC 41.055. Program participation prohibitions. A provider or family that is otherwise eligible for child care assistance payments or benefits under this chapter is prohibited from participating as a family or a provider in the program if

(1) the owner of a child care business [PROVIDER] or a parent has been debarred or suspended in accordance with 2 C.F.R. Part 376 [45 C.F.R PART 76]; or

(2) [IF] the owner of a child care business or one or more of the parents in a family is determined to be ineligible as [FOR A REASON] set out in 7 AAC 41.400 - 7 AAC

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41.450 [7 AAC 41.450]. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001 AS 47.25.021 AS 47.25.031

Editor's note: A list of persons referred to in 7 AAC 41.055 who are precluded from participation because of debarment or suspension in accordance with **2 C.F.R. Part 376** [45 C.F.R. PART 76] is available at **<http://www.sam.gov>** [HTTP://WWW.EPLS.GOV/],

7 AAC 41 is amended by adding a new section to Article 1 to read:

7 AAC 41.060. Alaska Inclusive Child Care Program. (a) A child care provider caring for an eligible child with special needs who is under 13 years of age may qualify for a supplemental program rate as determined by the department in accordance with the Alaska Inclusive Child Care Program under this section. The family determined eligible for participation in the child care assistance program must submit an application for participation in the Alaska Inclusive Child Care Program. A complete Alaska Inclusive Child Care Program application must contain the following information on a form prescribed by the department:

- (1) the name, mailing address, and telephone number of the family;
- (2) the child's name and date of birth;
- (3) the name of the child care provider;
- (4) documentation that establishes each of the child's special needs; the documentation must be completed by a health care or mental health care professional and include confirmation by the health care or mental health care professional that additional services are needed for the child's care in a child care setting;

(5) a copy of the plan for care developed by the child care provider and family at the time the child was enrolled with the child care provider, or when the special need was identified; and

(6) the child care provider inclusion plan that the child care provider develops, in consultation with the department or designee, on a form prescribed by the department; the plan must include each of the child care provider's additional costs associated with providing the additional services required because of each of the child's special needs and how those services will be provided.

(b) The department will or a designee may authorize a supplement to program payment rates to the child care provider under this subsection only if the information listed in (a) of this section is provided and determined by the department to meet the criteria described in (a) of this section that are necessary for the Alaska Inclusive Child Care Program. The supplemental payment amount is based on the actual cost to the provider for providing additional services divided by the months remaining in the family's current child care assistance eligibility period. The monthly supplemental payment may not exceed 100 percent of the unit of care authorized under 7 AAC 41.025(b) during the remaining months of their certification period and may or may not fully reimburse the child care provider for the costs that the provider incurs. Items identified on the child care provider's inclusion plan, purchased to meet a specific child's need and approved for qualification in the Alaska Inclusive Child Care Program may not also be submitted to the child care grant program, established under 7 AAC 39, for reimbursement.

(c) The family must reapply for participation in the Alaska Inclusive Child Care Program with each application or renewal in the child care assistance program under this chapter. (Eff.

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1 / 5 / 2017, Register 221)

Authority: AS 47.25.001 AS 47.25.041

7 AAC 41.200 is repealed and readopted to read:

7 AAC 41.200. Provider eligibility and qualifications. (a) Unless a provider is precluded from participation under 7 AAC 41.055, the department will or a designee shall authorize a provider to participate in the child care assistance program under this chapter if the provider meets the applicable requirements of this chapter and has

(1) a current child care license issued by the department under AS 47.32 and 7 AAC 57, or by a delegated designee under AS 47.32.030(b) and 7 AAC 57.045, to operate a child care facility; for purposes of this paragraph, "current license" includes a child care facility license extended under AS 47.32.060(c);

(2) a current accreditation or certification from a national accreditation group for a day camp or similar facility or program, as described in 7 AAC 57.015(11);

(3) a current certificate or other approval granted by the United States Department of Defense or the United States Coast Guard;

(4) a current certificate or other approval granted by a tribal entity in accordance with the Child Care and Development Fund requirements under 42 U.S.C. 618 (Title IV, sec. 418, Social Security Act) and 45 C.F.R. Part 98 of the United States Department of Health and Social Services, Administration for Children and Families, with provider standards that meet or exceed the standards of this chapter;

(5) approval of the department or a designee under 7 AAC 41.201(d); or

(6) approval of the department or a designee under 7 AAC 41.370.

(b) A licensed child care provider described in 7 AAC 41.200(a)(1) must meet the applicable qualification requirements of 7 AAC 57. A provider described in 7 AAC 41.200(a)(2), (3), or (4) must meet the applicable qualifications of the accrediting, certifying, or approving agency. A provider described in 7 AAC 41.200(a)(6) must meet the applicable qualifications of 7 AAC 41.370. A provider described in 7 AAC 41.200(a)(5) must

(1) be at least 18 years of age;

(2) have at least a high school diploma, general educational development (GED) diploma, or the equivalent;

(3) have an understanding of the development of children;

(4) have the ability to care for children;

(5) have the skills to work with children, family members, department staff, and community agencies;

(6) have the skills necessary to handle finances and plan and evaluate programs;

and

(7) be able to prevent exposure of children to high-risk situations, including exposure to physical hazards and encounters with individuals or animals posing a possible danger.

(c) A provider exempt from licensure under 7 AAC 57.015(a)(7) and who was approved by the department for program participation before January 5, 2017 {effective date of regulations} may continue through the provider's identified approval period, not to exceed 12 consecutive months. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.300 AS 47.05.340 AS 47.25.001
AS 47.05.310

7 AAC 41 is amended by adding new sections to read:

7 AAC 41.201. Provider application requirements. (a) A provider listed under 7 AAC 41.200 who wishes to participate in the child care assistance program under this chapter must submit an acceptable and complete application on a form prescribed by the department, participate in an in-person or telephonic interview, complete the program orientation, and complete all required pre-service trainings. An acceptable application for program participation must contain at least the applicant's legibly written name, mailing address, and signature, and date on the certification and statement of truth.

(b) An application for program participation is submitted to the department or designee serving the community where the provider will operate, and the department or designee shall determine if an application is acceptable and complete. Following submission of the acceptable application, the department will review for completeness and notify the applicant within 10 days of any omissions or additional information required. A complete application must be received by the department or a designee within 30 days after an acceptable application submission, unless a due date after the 30th day of the acceptable application submission is identified in a notice from the department or a designee.

(c) An application for program participation for providers eligible under 7 AAC 41.200(a)(1) - (4) must contain the following information on a form prescribed by the department:

- (1) the name of the facility;
- (2) the first name, middle name if applicable, and last name of the facility owner;
- (3) a completed and signed child care provider rates and responsibilities form, prescribed by the department, that includes the applicant's current rates and if applicable, registration fee, and certifies compliance with 7 AAC 41.210; and

- (4) the federal taxpayer identification number of the facility.

(d) A provider under 7 AAC 41.200(a)(5), who is exempt from licensure under 7 AAC 57.015(8), may apply for approval to participate in the child care assistance program under this chapter if the provider will regularly provide care for children, each of whom is a qualifying relative of the provider. A child in the provider's care must be the grandchild, great-grandchild, niece, nephew, or sibling of the provider. Care may only be provided to a maximum of five children who are listed on the application. The five-children maximum includes all children younger than 13 years of age residing in the provider's household. Child care services must be provided by the provider as the sole caregiver, in the provider's private residence that is outside of the child's own home, and for less than 24 hours per day. A provider described in this subsection will be approved for participation in the program biennially. A parent will not be approved for participation in the program if that parent is providing care only for that parent's own children.

(e) An application for approval under (d) of this section must contain the following information on a form prescribed by the department:

- (1) the name of the child care business if different from the applicant's name;
- (2) the first name, middle name if applicable, and last name of the applicant;

- (3) the federal taxpayer identification number of the business;
- (4) the applicant's mailing address;
- (5) the applicant's physical address;
- (6) the applicant's telephone number;
- (7) the applicant's facsimile number, if any;
- (8) the applicant's electronic mail address;
- (9) a copy of a government-issued photo identification of the applicant;
- (10) verification that the applicant is the only individual providing child care;
- (11) the name, date of birth, and qualifying relationship for each child to be in the applicant's care;
- (12) verification of the qualifying relationship of each child in care and the applicant;
- (13) the name and date of birth of each person who resides in the residence where child care is provided and that person's relationship to the applicant;
- (14) a completed and signed child care provider rates and responsibilities form, prescribed by the department, that includes the applicant's current rates, and certifies compliance with 7 AAC 41.210;
- (15) verification of compliance with 7 AAC 41.205 - 7 AAC 41.240;
- (16) a completed child care provider disaster preparedness and emergency evacuation plan, on a form prescribed by the department;
- (17) copies of valid pediatric first aid and cardiopulmonary resuscitation certifications;

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(18) a copy of a business license under AS 43.70 to operate a child care business, and any other license, permit, or certificate necessary to perform that work as required by this state or a municipality;

(19) written acknowledgment and approval, on a form prescribed by the department, from the property owner or manager for the applicant to operate a child care business in the rental property, if the location of the business is a rental property;

(20) other information required by the department to determine whether the applicant meets the applicable requirements of this chapter; and

(21) a typical daily schedule and plan as described in 7 AAC 41.211(c)(12).

(f) A provider under 7 AAC 41.200(a)(6), who is exempt from licensure under 7 AAC 57.015(9), may apply for approval for in-home child care under 7 AAC 41.370. (Eff.

1/5/2017, Register 221)

Authority:	AS 47.05.300	AS 47.05.320	AS 47.05.340
	AS 47.05.310	AS 47.05.330	AS 47.25.001

7 AAC 41.202. Provider authorization and participation. (a) If the department or designee determines that the applicant meets the applicable requirements of this chapter, the department will or designee shall approve the provider to participate in the child care assistance program. The department will or designee shall provide written notice to a provider regarding eligibility to participate in the program. Program participation is effective the first day of the month following the applicant meeting all applicable requirements of this chapter. Once determined to be eligible for program participation, the provider's program participation end

date, except as provided in (c) of this section,

(1) coincides with the provider's licensure, certification, or approval as determined by that issuing entity for a provider described in 7 AAC 41.200(a)(1) - (4); reapplication for program participation is not required unless there is a lapse in the provider's licensure, certification, or approval;

(2) is the last day of the 24th month following the beginning of approved program participation for a provider described in 7 AAC 41.201(d); the provider must reapply for program participation; or

(3) is the last day of the family's program participation for a provider described in 7 AAC 41.370; the provider must reapply for program participation in conjunction with the family's reapplication for program participation.

(b) If an applicant fails to meet any applicable eligibility requirements of this chapter, the provider's program participation will be denied and written notice issued unless a variance is requested under 7 AAC 10.930 or 7 AAC 41.270 and approved under 7 AAC 10.935 or 7 AAC 41.270. If the department or designee denies participation in the program, the applicant may request a hearing under 7 AAC 41.443.

(c) If a provider fails to maintain eligibility status under this chapter, the department will or designee shall issue a written notice of termination from the program and advise the provider of the right to request a hearing under 7 AAC 41.443.

(d) The department will not and a designee may not grant approval for participation in the child care assistance program for applicants under 7 AAC 41.201(d) or 7 AAC 41.370, for more than one individual to operate as a child care provider during the same hours at the same

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location, including different levels or floors of the same home or separate rooms in a large building. This subsection does not apply to separate units in a multi-family dwelling, including a duplex, triplex, apartment building, or condominium complex.

(e) An additional business, including one operated by the governing body or owner of a child care business, may not operate on the premises during the hours the business provides child care services, if customers of the additional business would have access to the child care premises or would interrupt the supervision of children in care. (Eff. 1 / 5 / 2017, Register 221)

Authority:	AS 47.05.300	AS 47.05.320	AS 47.05.340
	AS 47.05.310	AS 47.05.330	AS 47.25.001

7 AAC 41.205 is repealed and readopted to read:

7 AAC 41.205. Child protection and criminal history check requirements. (a) An individual in a child care business may not abuse a child or engage in any exploitive or sexual act with a child. The department or designee may require an individual who is subject to a background review under this section to provide an evaluation from a probation officer, health professional, or mental health professional affirming that the individual is free from problems that might pose a significant risk to the health, safety, or welfare of a child in care.

(b) Except as provided in (c) and (d) of this section, to participate in the child care assistance program, a child care provider identified in 7 AAC 41.200(a)(1) - (6) must meet the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (barrier crimes, criminal history checks, and centralized registry) for that provider and for each

individual associated with that provider in a manner described in 7 AAC 10.900(b). If the provider requests and receives a provisional valid criminal history check under 7 AAC 10.920 for that provider or another individual, the department office responsible for approvals under this chapter will, or the designee shall, issue a provisional approval if the department or designee determines that the provider or other individual is otherwise eligible to provide care for children under this section. If the department determines under 7 AAC 10.915 that the provider or other individual did not pass the criminal history check, or if the provisional valid criminal history check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the approval unless the provider requests a variance under 7 AAC 10.930, and the department grants that request under 7 AAC 10.935.

(c) To participate in the child care assistance program under this chapter, an individual seeking approval as a relative provider under 7 AAC 41.201(d) must

(1) submit to the department or designee, for that provider, and for each individual in contact with children in care who is 16 years of age or older, a signed release of information authorization to review criminal history information including

(A) criminal justice information at the level available to an interested person under AS 12.62.160(b)(9);

(B) information regarding adjudication as a delinquent for each individual who is 16 to 20 years of age, in accordance with AS 47.12.310(e);

(C) protective records developed under AS 47.17; and

(D) child care licensing records; and

(2) ensure and demonstrate to the department that each individual who resides in

the provider's residence or is in contact with children in the residence

(A) is a responsible individual who exercises sound judgment;

(B) does not abuse a child or engage in an exploitive or sexual act with a child; and

(C) is free of any physical health problem, behavioral health problem, or domestic violence problem that would pose a significant risk to the health, safety, or welfare of children in care; in this subparagraph,

(i) "behavioral health problem" has the meaning given in 7 AAC 57.990(a);

(ii) "domestic violence problem" has the meaning given in 7 AAC 57.990(a).

(d) Unless the department has granted a variance under 7 AAC 10.935, the department will not approve an individual seeking approval as a relative provider under 7 AAC 41.201(d) if the department or designee finds that the provider or any individual in contact with children in care for whom information was required to be submitted under (c) of this section

(1) is named on the centralized registry established under 7 AAC 10.955;

(2) was the subject of a prior adverse licensing action of the kind described in AS 47.32.140(d)(5) - (7); or

(3) was charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, an offense that is a barrier crime under 7 AAC 10.905.

(e) For purposes of (c) - (d) of this section, an individual in contact with children in care is an individual who has the opportunity to gain access to any area where child care is provided,

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a member of the provider's household, or an individual who resides in a part of the premises where child care is provided. However, an individual in contact with children in care does not include an individual described under 7 AAC 10.900(d). (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 1/5/2017, Register 221)

Authority: AS 47.05.300 AS 47.05.320 AS 47.05.340
AS 47.05.310 AS 47.05.330 AS 47.25.001

7 AAC 41 is amended by adding a new section to read:

7 AAC 41.207. Admission and planning for care. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall comply with the requirements of 7 AAC 57.400(a). A child care provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable requirements of the accrediting, certifying, or approving agency. A provider described in 7 AAC 41.200(a)(5) shall

(1) at or before a child's admission for care, obtain emergency information about the child from the child's parent, including

- (A) information about any drug or other allergies;
- (B) information about any medication the child is taking or medical or other treatment the child requires;
- (C) information on how to contact the child's parent and at least one other local emergency contact individual;
- (D) permission slips on a form prescribed by the department, signed by the parent, for emergency transport to a health care facility and for the provision of

emergency care and treatment; and

(E) the name of a hospital and physician of choice as designated by the parent;

(2) maintain the information obtained under (1) of this subsection on a form prescribed by the department; and

(3) review and update information obtained under (1) of this subsection at least semi-annually, and more often if a parent provides changed or additional information.

(b) A provider may not admit a child if that child's admission would place the provider beyond the conditions of approval to participate in the child care assistance program under this chapter.

(c) The provider shall collaborate with the child's parent in developing and implementing a plan of care for the child at or before admission when a child is identified as having special needs or when a special need is identified. The plan of care

(1) must be approved by the parent and the provider responsible for the care of the child and must be signed and dated by the parent, the provider, and as applicable by provider type, the administrator and the facility coordinator for special needs children, if any;

(2) must be based on the following information, to the extent that the parent consents in writing to disclose the information:

(A) results of medical and developmental examinations;

(B) assessments of the child's cognitive functioning or current overall functioning;

(C) evaluations of the family's needs, concerns, and priorities;

(D) the child's individualized family service plan (IFSP) developed under 4 AAC 52.142 or individualized education program (IEP) developed under 4 AAC 52.140, if any;

(E) other evaluations as needed;

(3) must address any specific services the child care provider will provide in functional outcome objectives, designated responsibility for provision, and financing;

(4) must list any additional services, including educational or therapeutic services, the child is receiving from other service providers, and must identify the providers of those services; and

(5) may contain permission from the parent for the child care provider to contact additional service providers and the child's individualized family service plan (IFSP) coordinator, if any.

(d) A child care provider shall review information submitted about a child under (c) of this section in order to determine whether the provider can meet the child's needs. If, after reviewing that information, the provider determines it can satisfy the child's needs, the provider may admit the child. If the provider has reason to believe that, even with reasonable accommodation, the provider cannot meet the child's needs, the provider may deny admission to the child. (Eff. 1/15/2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.210 is repealed and readopted to read:

7 AAC 41.210. Provider responsibilities. Except for a provider subject to 7 AAC

41.370, a participating provider

(1) shall, within 10 business days after a change to information provided on the application, provide to the department or designee complete, accurate, and current information regarding any factor that would affect eligibility to participate in the child care assistance program under this chapter;

(2) shall remain in compliance with the applicable requirements of this chapter; in addition, a provider subject to the licensing requirements of 7 AAC 57 shall remain in compliance with the applicable requirements of that chapter; a provider described in 7 AAC 41.200(a)(2), (3), or (4) shall remain in compliance with the applicable requirements of the accrediting, certifying, or approving agency;

(3) may not exclude a participating family from any discount rate offered by the provider;

(4) shall provide written notice of any rate increase to the department or designee and to participating families at least 30 days before the first day of the month that the increase will take effect;

(5) must have a valid authorization issued by the department or designee before requesting payment from the department for services under this chapter;

(6) shall immediately notify the department or designee regarding any circumstance that involves abuse, harm, or serious risk of harm to children in care;

(7) shall give written notice to a participating family at least 10 business days before child care services are discontinued, specifying the last date care is to be provided;

(8) shall cooperate with the department by allowing announced or unannounced

access by the department to all areas of the child care premises, records, and children in care for purposes of health and safety inspections, investigations, or other program compliance reviews;

(9) shall contact the child's parent in case of illness or injury;

(10) shall allow a parent of a child in care unlimited access to the parent's child and all areas of the child care premises;

(11) shall maintain daily attendance records reflecting dates and time children are in care;

(12) shall, before program participation or within the first three months after receiving approval for program participation, obtain training on health and safety topics consisting of

(A) the prevention and control of infectious diseases; training under this subparagraph must include training on immunizations;

(B) prevention of sudden infant death syndrome and use of safe sleeping practices;

(C) the administration of medication, consistent with standards for parental consent;

(D) the prevention of and response to emergencies because of food and allergic reactions;

(E) building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(F) prevention of shaken baby syndrome, abusive head trauma, and child maltreatment;

(G) emergency preparedness and response planning for emergencies resulting from a hazard or natural disaster within the meaning of those terms under 42 U.S.C. 5195a(a) (sec. 602(a), Robert T. Stafford Disaster Relief and Emergency Assistance Act);

(H) handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(I) appropriate precautions in transporting children;

(J) recognition and reporting of child abuse and neglect; and

(K) minimum health and safety training; and

(13) shall obtain annually at least 12 hours of ongoing training pertaining to health and safety, early childhood and development, or both. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.300 AS 47.05.310 AS 47.25.001

7 AAC 41 is amended by adding new sections to read:

7 AAC 41.211. Ratios and program requirements. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the ratio requirements of 7 AAC 57. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the ratio requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(a)(5) shall ensure that the number of children does not exceed the maximum of five children, younger than 13 years of age, and that no more than two children are younger than 30 months of age. Each child younger than 13 years of age

receiving care, regardless of the hours in care, must be counted in the maximum number of children allowed, including the provider's own children or other children residing in the provider's home.

(c) A provider described in 7 AAC 41.200(a)(5) shall provide structure and daily activities designed to promote a child's individual physical, social, intellectual, and emotional development. To satisfactorily comply with this subsection the provider shall

- (1) provide direct care and supervision of children at all times;
- (2) ensure that each child receives responsible supervision that is appropriate to the child's age and developmental needs and that is adequate to prevent injury;
- (3) demonstrate respect for each child in care and the child's family;
- (4) support behavior of children with positive guidance and set clear and consistent limits to promote the children's ability for self-discipline;
- (5) provide children with a variety of age-appropriate learning and social experiences;
- (6) demonstrate a positive attitude toward bottle weaning, diapering, toilet learning, and individual needs of children;
- (7) respond appropriately to a child's needs, including responding to a baby's cry as promptly and effectively as possible;
- (8) prevent exposure of children to high-risk situations, including exposure to physical hazards and encounters with individuals or animals posing a possible danger;
- (9) use strategies to prevent a child's aggressive behavior and to de-escalate volatile situations;

(10) act as a positive role model for children, especially with regard to respecting the feelings and rights of others;

(11) provide an environment that respects the gender, culture, ethnicity, family composition, and special emotional, cognitive, and developmental needs of each child;

(12) have a schedule and daily plan of activities for each age group; the schedule and plan must provide a balance of quiet and active activities and group and individual activities and must include time for meals, snacks, sleep, toileting according to individual needs, and indoor and outdoor play; for purposes of this paragraph the schedule and plan need not be written, except that a typical daily schedule and plan must be presented with the application for approval;

(13) provide opportunities for

(A) individual self-expression and imaginative play;

(B) at least 20 minutes of vigorous physical activity for every three hours the provider is open between the hours of 7:00 a.m. and 7:00 p.m., and daily supervised outdoor activity when weather and the individual child's tolerance permit;

(C) each child to foster independence;

(D) intellectual and social development through use of a variety of activities and materials such as games, toys, books, crafts, puzzles, and blocks; and

(E) language development, including encouraging children to talk and read books; and

(14) limit screen viewing time, including television, computer, and hand-held devices as follows:

(A) prohibit screen-viewing time for children under two years of age; and

(B) for children over two years of age, only allow up to one hour of screen-viewing time in a 24-hour period, except for special occasions, and ensure that

(i) any screen-viewing time is for physical or educational use that is specifically designed for the interest and benefit of the child; and

(ii) children not be required to participate in screen-viewing activities; alternative activities shall be offered as an option for children during those times.

(d) In addition to meeting the requirements in (c) of this section, an approved provider caring for infants or toddlers as described in 7 AAC 41.025(b) may not routinely leave a child awake in a crib, swing, or similar device for more than 15 minutes without direct adult contact.

The provider shall

(1) provide opportunities for a child to develop a caring and nurturing relationship with and attachment to one caregiver whose care for and responsiveness to the child ensures relief of distress, experiences of stimulation and comfort, and satisfaction of the need for a connection with the child's caregiver;

(2) provide frequent verbal communication during feeding, changing, and cuddle times;

(3) provide physical contact through holding, rocking, and play, as well as bathing, dressing, and carrying a child;

(4) allow infants and toddlers ample supervised opportunity during the day to explore and learn on their own outside of a play yard or other restraining device; and

(5) ensure that infants are placed on their backs to sleep, unless otherwise ordered by a physician.

(e) In addition to meeting the requirements in (c) of this section, an approved provider caring for school-age children as described in 7 AAC 41.025(b) shall provide

(1) a program that supplements rather than duplicates the child's school activities, providing a change of pace and interest between school and the child care program;

(2) freedom appropriate to the child's age and developmental level, and opportunities for self-reliance and social responsibility; and

(3) opportunities for school-age children to participate in the selection and planning of their own activities.

(f) The approved provider shall treat children in care equitably with the caregiver's own children.

(g) The approved provider shall encourage parental involvement and allow parents unlimited access to their children, to the provider, and to all areas of the child care premises, to observe or participate.

(h) In addition to meeting the requirements in (c) of this section, an approved provider caring for a child identified as having special needs shall

(1) ensure that the child is afforded opportunities to participate in any scheduled activities, as possible;

(2) develop a plan of care under 7 AAC 41.207(c) for that child, unless the provider has reason to believe that, even with reasonable accommodation, the provider cannot meet the child's needs and discharges the child;

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(3) implement the plan of care developed under 7 AAC 41.207(c) for each child with special needs to enhance the child's health and developmental status; and

(4) conduct regularly scheduled reassessments of each child's plan of care to monitor effectiveness. (Eff. 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.213. Behavior guidance. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the applicable requirements of 7 AAC 57.535. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable behavior guidance of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(a)(5) and (6) shall

(1) help a child to develop age-appropriate patterns of behavior that foster constructive relationships and increasing ability to deal with everyday life;

(2) provide for positive reinforcement, redirection, and the setting of realistic expectations and clear and consistent limits; and

(3) ensure that discipline or a behavior management technique used is not cruel, humiliating, or otherwise damaging to the child.

(c) A provider described in 7 AAC 41.200(a)(5) or (6) may not

(1) remove a child in care from the other children for more than 10 minutes, except as provided in (d) of this section;

(2) discipline a child in care in association with food or rest;

(3) punish a child in care for bedwetting or actions in regard to toileting or toilet

training;

(4) subject a child in care to discipline administered by another child;

(5) subject a child in care to verbal abuse, to derogatory remarks about the child or members of the child's family, or to threats to expel the child from the child care;

(6) place a child in care in a locked room;

(7) physically restrain a child in care, except when necessary to protect a child from accident, to protect persons on the premises from physical injury, or to protect property from serious damage; for purposes of an exemption under this paragraph, only passive physical restraint may be used;

(8) mechanically restrain a child in care, except for a protective device such as a seatbelt; or

(9) chemically restrain a child in care, except on the order of a physician and subject to the provisions of 7 AAC 10.1070.

(d) When a child has a pattern of out-of-control behavior, a provider described in 7 AAC 41.200(a)(5) or (6) may remove the child from the company of other children until the child's behavior has stabilized. In addition, the child care provider shall develop a plan with the child's parent to address the behavior issues.

(e) Corporal punishment of children in care is prohibited. For purposes of this subsection, "corporal punishment"

(1) means the infliction of bodily pain as a penalty for a disapproved behavior;
and

(2) includes shaking, spanking, delivering a blow with a part of the body or an

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object, slapping, punching, pulling, and any other action that seeks to induce pain. (Eff.

1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.215 is repealed and readopted to read:

7 AAC 41.215. General health, safety, medication, and nutrition requirements. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the applicable health and safety requirements of 7 AAC 10.1000 - 7 AAC 10.1095 and 7 AAC 57. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable general health and safety requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(a)(5) shall meet the health and safety requirements of this chapter and the general health, medication, and nutrition requirements of this section.

(c) A provider described in 7 AAC 41.200(a)(5) shall

(1) take precautions against the spread of infectious disease by ensuring that each person in contact with children washes that person's hands for at least 10 seconds with soap and water and rinses them with water

- (A) before food handling, preparation, serving, eating, or table setting;
- (B) after toileting or assisting a child with toileting or diapering;
- (C) after handling an animal, animal waste, or an animal cage;
- (D) before and after giving medication;
- (E) before and after participation in moist play, including painting,

cooking, or molding clay; and

(F) if hands are contaminated with a body fluid, including from nose wiping;

(2) encourage children to wash their hands at similar times described in (1) of this subsection;

(3) ensure that children in care have been immunized as required under 7 AAC 57.550(a) - (e), except that children identified as homeless or in protective services or foster care may be enrolled for up to 30 days without a valid immunization record;

(4) ensure that care of other children is not compromised by admitting or allowing a mildly ill child to be in attendance;

(5) ensure that a provider caring for a mildly ill child arranges a plan of care with the parent and provides a place where, under supervision, the child may rest or play quietly, apart from other children, if warranted;

(6) ensure that a child who shows definite signs of a serious illness or of a highly communicable disease is not admitted or allowed to remain in attendance unless a medical provider approves the child's attendance; and

(7) ensure that an opportunity for a supervised rest or sleep period is provided for each child under five years of age who is in care more than five hours, and for any other child, if desired by the child; for a child who is unable to sleep, the provider shall provide supervised time and space for quiet play; the provider may place in a crib only

(A) an infant described in 7 AAC 41.025(b);

(B) a nonclimbing toddler described in 7 AAC 41.025(b); or

(C) a child identified as having special needs, if appropriate.

(d) A provider described in 7 AAC 41.200(a)(5) shall meet the following requirements for the administration and storage of medication:

(1) a provider may administer medication only as follows:

(A) upon admission or when a new medication is prescribed, the provider shall obtain from the parent of a child in care written permission for the administration of prescription medication;

(B) the provider shall administer prescription medication and special medical procedures only in the dosage, at the intervals, or in the manner prescribed by a physician or other person legally authorized to prescribe medication or medical procedures, and shall document in a medication log the date and time each dose is administered and the provider's initials;

(C) if written permission has not been obtained from the child's parent for the administration of a commonly used nonprescription medication or medication contained in the first-aid kit required under 7 AAC 10.1075 and 7 AAC 41.230(b), the provider shall document telephone permission to administer that medication;

(D) the provider shall document in a medication log, including the date and time each dose is administered and the provider's initials, the use of any commonly used nonprescription medication for oral or topical use kept on hand by the provider for the communal use of any child;

(E) the provider shall ensure that prescription medicine is kept in

(i) the original container showing the date filled, the expiration date,

instructions, and the physician's or other medical professional's name; or

(ii) medicine sets filled by a pharmacist or a licensed medical professional; the prescription date filled, the expiration date, instructions, and the physician's or other medical professional's name must be affixed to or stored with each medicine set;

(F) the provider shall ensure that all unused medication is returned to the parent of a child in care when the medication is no longer needed.

(2) a provider shall ensure that

(A) each stored medication, including each nonprescription medication, is in its original container and properly labeled with the name of the child for whom it is intended, the name of the medication, the dosage, the expiration date, and directions for administration;

(B) medications are stored in a manner that prevents access by unauthorized persons;

(C) medications, including controlled substances, are stored in accordance with the manufacturer's recommendations; in this subparagraph, "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;

(D) nonprescription medications and health products, including nonaspirin fever reducers, naturopathic remedies, vitamin and mineral supplements, diaper ointments and powders, sunscreen, and insect repellent, are used only at the dose, duration, or method of administration specified on the manufacturer's label; and

(E) medication requiring refrigeration is grouped together, stored in a manner to prevent contamination of food, and labeled as required by this section.

(e) A provider described in 7 AAC 41.200(a)(5) shall meet the following nutrition requirements:

(1) the provider shall ensure that snacks and meals meet the child care food program requirements of 7 C.F.R. 226.20;

(2) the provider shall allow food for a child's meals and snacks to be provided by the child's parent if they are labeled with the child's name and the date;

(3) the provider shall maintain sanitary facilities for the proper care, storage, refrigeration, and preparation of food; the provider shall ensure that

(A) food served is not altered to contain harmful substances; and

(B) fruits and vegetables are thoroughly washed with potable water before use;

(4) the provider shall observe the following requirements for bottle feedings if caring for infants as described in 7 AAC 41.025(b):

(A) bottle feedings may be prepared by the parent or the provider; if the provider prepares the bottle feedings, the provider shall consult with the parent to ensure consistency with the bottle feedings given at home;

(B) an infant shall be fed on demand;

(C) a child on bottle feedings

(i) shall either be held or fed sitting up or, if unable to sit up, always be held by a caregiver during the feeding; bottles may not be propped for a

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child; and

(ii) may not be permitted to hold or carry its bottle at times other than the feeding;

(5) the provider shall obtain information concerning any food allergies or special dietary needs of each child and shall plan that child's meals accordingly; and

(6) except for medical reasons, the provider may not deny a meal or snack to a child, force-feed a child, or otherwise coerce a child to eat against the child's will; mere encouragement without any element of compulsion is not prohibited. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.300 AS 47.05.310 AS 47.25.001

Editor's note: A copy of the child care food program referred to in 7 AAC 41.215(e)(1) may be obtained from the Department of Health and Social Services, Division of Public Health, P.O. Box 110610, 350 Main Street, Room 503, Juneau, Alaska 99811-0610 or any other office of that division in the state.

7 AAC 41.220 is repealed and readopted to read:

7 AAC 41.220. Environmental health and safety requirements. A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the applicable health and safety requirements of 7 AAC 10.1000 - 7 AAC 10.1095. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable environmental health and safety requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(a)(5) must meet the environmental health and safety requirements of (c) of this section before approval to participate in the child care assistance program under this chapter.

(c) In addition to the meeting other health and safety requirements of this chapter, a provider described in (b) of this section shall ensure basic environmental health and safety by meeting the requirements of this subsection. The provider shall

- (1) maintain a functional telephone or other identified means of communication;
- (2) maintain an ample supply of potable water;
- (3) provide and maintain clean and sanitary toilet facilities and ensure that in each toilet room

(A) at least one easily cleanable waste receptacle is provided; if soiled diapers are kept in a waste receptacle until disposed of, that waste receptacle must be covered;

(B) toilet tissue is provided from a wall-hung or protected container at each toilet;

(C) each step stool, if provided, has a nonslip tread made of a water-impervious, durable material;

(D) each floor and wall is covered with smooth, durable, nonabsorbent, easily cleanable material;

(E) each toilet lid, seat, and handle and each handsink is kept clean and sanitary;

(F) each handsink is used only for its designated purpose and is equipped

with accessible soap and a single-use towel dispenser or cloth towels; the provider must ensure single-use towels are discarded after each use and cloth towels are laundered after each use; and

(G) each potty-chair is emptied into a toilet and cleaned and sanitized after each use in a utility sink or another place approved by the department; the provider shall ensure that the utility sink or other area is cleaned and sanitized after each use;

(4) ensure that the child care premises and surrounding grounds are kept clean, sanitary, safe, and in good repair; the provider shall ensure that

(A) the premises are free of hazards, including splintered surfaces, sharp edges, protruding corners, broken or hazardous toys or play equipment, steep stairways, ice on walkways, unsecured play equipment, and unsafe play areas;

(B) insects, rodents, and other pests are controlled and that the premises are kept free of conditions that are likely to attract or harbor pests; any pesticide use is subject to the notice and other applicable requirements of 7 AAC 10.1093; if the department determines that the provider is not adequately controlling pests, the department may require the provider to hire a commercial pest control applicator certified under 18 AAC 90, or to take other appropriate action if a commercial pest control applicator is not available in the community;

(C) outdoor areas are well drained and free from deep depressions that may collect standing water; if necessary to ensure the safety of children in care, the department will require that an outdoor recreation area be enclosed with landscaping, a fence, or another effective barrier that prevents or deters access to a busy roadway or

other potential hazard;

(D) ventilation by natural or mechanical means is provided to keep air fresh and to prevent the accumulation of heat, steam, condensation, vapors, smoke, or fumes; openings to the outside must prevent the entrance of rodents, insects, and other pests;

(E) walls and ceilings have smooth, durable, nonabsorbent, easily cleanable surfaces, except that rough-textured and acoustical tile ceilings are permitted in bedrooms and living rooms;

(F) lead-based paint is not used, and any painted surface is free from flaking;

(G) stairways and steps have handrails and nonslip treads or covering;

(H) at any faucet that is accessible to children, hot water temperature is no less than 100 degrees Fahrenheit, and no more than 120 degrees Fahrenheit;

(I) an artificial light source is provided in each area of the premises; the light must be sufficient and appropriate for the activities performed in each area by children in care;

(J) cleaners, medicines, and other harmful substances are stored in a place that is inaccessible to children; and

(K) furniture and equipment is durable, safe, and easily cleanable, and is kept clean and in good repair;

(5) ensure that smoking is prohibited on the child care premises while children are in care; the provider shall ensure that

- (A) tobacco, cigarettes, or other smoking products, and ashtrays, lighters, or other smoking accessories are not visible or accessible to children;
 - (B) the premises do not smell of smoke from cigarettes or other smoking products; and
 - (C) any vehicle used to transport children is smoke-free;
- (6) ensure that alcohol, marijuana, legal controlled substances, and illegal controlled substances are not accessible to children or used during the hours that children are in care; in this paragraph, "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;
- (7) transport children in safe vehicles and use appropriate child restraints in each vehicle in accordance with 7 AAC 57.565;
- (8) ensure that any firearms are unloaded and stored in a locked gun safe or other locked place that is not visible or accessible to children; the provider shall also ensure that ammunition is stored separately from the firearms in a place that is inaccessible to children; if firearms are present on the premises, the provider shall inform each parent that firearms are present on the premises;
- (9) ensure that safety gates are installed and used to prevent access to stairs if infants or toddlers as described in 7 AAC 41.025(b) are in care;
- (10) ensure that outlet covers are installed in all electrical outlets that are not in use and that are accessible to children under five years of age;
- (11) ensure that items brought by a parent for a child's personal use, including towels for bathing, toothbrushes, and combs, are stored separately to prevent contamination;

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(12) ensure that toys used by children are kept clean and sanitary and if a toy has been mouthed or is otherwise contaminated, that toy is cleaned and sanitized before use by another child;

(13) ensure that each crib, crib mattress, cot, mat, and playpen is cleaned and sanitized

(A) at least weekly;

(B) before assignment to another child in care; and

(C) whenever soiled; and

(14) ensure that children are not allowed to participate in a high-risk activity including playing near or jumping on any type of trampoline. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 22/)

Authority: AS 47.25.001

7 AAC 41 is amended by adding a new section to read:

7 AAC 41.222. Life and fire safety. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the applicable health and safety requirements of 7 AAC 10.1000 - 7 AAC 10.1095. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable life and fire safety requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(a)(5) must meet the life and fire safety requirements of (d) of this section before approval to participate in the child care assistance program under this chapter.

(c) The department will inspect a provider described in (b) of this section to determine if the provider meets the applicable requirements of this section. Based on the inspection, or if the department determines that it is necessary for purposes of public health, safety, or welfare, the department will request an advisory inspection report from one or more state or municipal building or fire safety authorities. The provider is responsible for any fee charged by the authority for each inspection.

(d) In addition to meeting the other health and safety requirements of this chapter, a provider described in (b) of this section shall ensure basic life and fire safety by meeting the requirements of this section. The provider shall have a disaster preparedness and emergency evacuation plan that

(1) includes evacuation procedures that will ensure the complete evacuation of children in care, including children with limited mobility, within 150 seconds during an emergency;

(2) describes in detail the procedures that will be followed for the complete evacuation of the child care premises, including specific procedures, as applicable, for

(A) children younger than 30 months of age;

(B) children with limited mobility; and

(C) children who otherwise may need assistance in an emergency,

including a child who is mentally, visually, or hearing impaired;

(3) includes procedures for other emergency situations or natural disasters that may affect the child care premises, including, as appropriate, tsunamis, flooding, and earthquake emergencies;

(4) includes procedures for reunifying the child and family when the child care premises are inaccessible; and

(5) provides for emergency evacuation drills to be conducted and documented once each month unless postponed due to severe weather; the provider shall document the reason for any postponement.

(e) A provider described in 7 AAC 41.200(a)(5) shall make and retain a record of each required evacuation drill and make the record available to the department upon request. The record must include

(1) the date and time of the drill;

(2) the name of each child in care who was present at the time of the drill, but did not participate in the drill, and the reason for nonparticipation;

(3) the amount of time used to complete the drill; and

(4) a critique of the drill including a brief evaluation of the evacuation.

(f) The critique under (e)(4) of this section must include

(1) a review of actions taken by the provider;

(2) a review of responses by children in care during the drill;

(3) an evaluation of whether existing policies were followed and, if not, an explanation of why a policy was not followed;

(4) an evaluation of whether the policies followed were effective and, if not, a description of how any policy will be revised for future drills;

(5) for any critique that indicates a drill was ineffective in any way, an identification of factors contributing to an ineffective drill; and

(6) any suggestions for improving future drills.

(g) If an emergency affects the child care business, a provider described in 7 AAC 41.200(a)(5) shall notify the department by telephone, facsimile, or electronic mail no later than the following business day and shall, no later than five of the provider's working days after the date of the emergency, submit to the department a detailed written report that includes

(1) the date and time of the emergency;

(2) a description of the nature of the emergency;

(3) a description of how the evacuation was achieved, including the amount of time used to achieve evacuation; and

(4) a critique of the evacuation that includes the information required under (f) of this section.

(h) A provider described in 7 AAC 41.200(a)(5) shall have at least two means of emergency escape that are remote from each other and that provide unobstructed access to the outside of the building. At least one means of emergency escape must be an exterior door. If one of the means of emergency escape is a window, the window must comply with the requirements of (2) of this subsection. In addition,

(1) the building occupied by children in care must have at least one means of escape from any basement directly to the outside at or near ground level, if children in care occupy the basement for any part of the day;

(2) unless prohibited by the state fire marshal for a window 20 feet or more above ground level, each bedroom must have at least one fully-opening window that provides escape directly to the outside and that meets the following requirements:

(A) the finished sill height may not exceed 44 inches above the floor; the department will allow a child care provider to meet the requirement of this subparagraph through the provision of a permanently installed step, the top of which is no more than 44 inches from the sill, if the step does not create a tripping hazard, block wheelchair access in the bedroom, or block a heating element; any request for a variance of the sill height requirement must be accompanied by written approval from the state fire marshal;

(B) the net clear openable area must be a minimum of 5.7 square feet; for purposes of this subparagraph,

(i) the net clear openable height may not be less than 24 inches; if the height is 24 inches, the width may not be less than 34.25 inches; and

(ii) the net clear openable width may not be less than 20 inches; if the width is 20 inches, the height may not be less than 41.25 inches;

(3) a window screen may not be used if it permanently prevents exit or if it cannot be easily removed for exit.

(i) A provider described in 7 AAC 200(a)(5) shall ensure that

(1) the child care premises are free of any accumulation of combustible waste material and other fire hazards in or around the premises;

(2) at least one AC primary powered smoke detection device with battery backup, or at least one monitored battery powered smoke detection device, is located in each bedroom; in addition, if the child care premises are in a multi-level structure, at least one smoke detection device must be installed on each level; each device required under this paragraph must be less than 10 years old, or newer if necessary to comply with the manufacturer's recommended

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replacement date; in this paragraph, "AC" means alternating current;

(3) at least one fully charged 2A:10BC dry chemical fire extinguisher is strategically located on each level of the child care building, and is installed, inspected, tested, and serviced according to the requirements of 13 AAC 50.025(29);

(4) any flammable or combustible liquid is stored in a container with a tight-fitting lid specifically designed for holding flammable or combustible liquids, and ensure that these liquids are kept out of the reach of children;

(5) each heating device meets the applicable requirements of 7 AAC 10.1015; and

(6) if the child care premises use oil, wood, natural gas, or propane as a heating or cooking fuel, an operating carbon monoxide detector is installed in each hallway outside of, or within, each sleeping area, and ensure that each device is regularly inspected, tested, and serviced; in addition, for a multi-level building, at least one operating carbon monoxide detector must be installed on each level. (Eff. 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.225 is repealed and readopted to read:

7 AAC 41.225. Diapering. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the requirements of 7 AAC 10.1060(d) and (e) and 7 AAC 57. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable diapering requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(a)(5) who provides care for children requiring

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diapers shall use safe and sanitary equipment and supplies for diapering that minimize the risk of disease and the risk of contamination to hands and surfaces. A provider must wash the provider's hands each time after changing a diaper. The provider shall ensure that diapering is conducted in accordance with 7 AAC 10.1060(e). (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.230 is repealed and readopted to read:

7 AAC 41.230. First aid kit and procedures. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the requirements of 7 AAC 10.1075 and 7 AAC 57. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable requirements of the accrediting, certifying, or approving agency regarding first aid kits and procedures.

(b) A provider described in 7 AAC 41.200(a)(5) or (6) shall review and either post or make readily available first aid and cardiopulmonary resuscitation (CPR) instructions. The provider shall post emergency telephone numbers, including the number for the poison control center, near the telephone. The provider shall maintain first aid kits in accordance with 7 AAC 10.1075, except that activated charcoal is not required. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.235 is repealed and readopted to read:

7 AAC 41.235. Certification for first aid and CPR. (a) A licensed child care provider

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described in 7 AAC 41.200(a)(1) shall meet the requirements of 7 AAC 57.350(e). A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable requirements of the accrediting, certifying, or approving agency regarding certification for first aid and cardiopulmonary resuscitation (CPR).

(b) A provider under 7 AAC 41.200(a)(5) shall obtain before approval and maintain throughout the provider's approval period a valid certification for pediatric first aid and CPR obtained through in-person instruction. A currently certified emergency medical or trauma technician on duty on the child care premises satisfies the requirements of this subsection. If certification courses are not available in the community where the provider is located, the provider may

(1) receive instruction in pediatric first aid and CPR procedures through distance learning, training videos, and other materials approved by the department; and

(2) complete and pass the first available in-person pediatric first aid and CPR certification courses offered within 60 miles by road of the provider. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.240 is repealed and readopted to read:

7 AAC 41.240. Animals, toxic substances, and poisonous plants. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the requirements of 7 AAC 10.1090. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable requirements of the accrediting, certifying, or approving agency regarding the presence of animals in the child

care facility. A provider described in 7 AAC 41.200(a)(1) - (5) shall meet the requirements for toxic substances and poisonous plants under 7 AAC 10.1095.

(b) A provider described in 7 AAC 41.200(a)(5) shall inform parents of children in care if any animal is present on the premises.

(c) A provider described in 7 AAC 41.200(a)(5) shall ensure that any animal kept on the child care premises has no communicable disease, has immunizations required under state and federal law, and is free of internal and external parasites. The provider shall show proof of compliance with required immunizations to the department upon request.

(d) A parakeet, pigeon, or other similarly small-sized psittacine bird may be kept on the premises of a provider described in 7 AAC 41.200(a)(5) only if the bird

(1) receives prophylactic antibiotics before introduction onto the child care premises; and

(2) is isolated at least 45 days in a room separate from a room occupied by any other birds in the entity.

(e) On the premises of a provider described in 7 AAC 41.200(a)(5), ducklings and chicks may be incubated or hatched, except in a room where infants or toddlers as described in 7 AAC 41.025(b) are present, if

(1) children do not handle the ducklings or chicks; and

(2) the ducklings and chicks are removed from the child care premises when hatched;

(f) Amphibians, ferrets, reptiles, and wild, poisonous, or predatory animals may not be kept on the premises of a provider described in 7 AAC 41.200(a)(5). This subsection does not

apply to domestic dogs and domestic cats.

(g) A provider described in 7 AAC 41.200(a)(5) shall ensure that

(1) any birds, fish, and other animals allowed by this section are kept in appropriately designed cages or aquariums; this paragraph does not apply to domestic dogs and domestic cats;

(2) the area around a cage or aquarium is smooth, nonabsorbent, impervious to water, and easily cleanable, and is cleaned and sanitized at a frequency to keep the area clean and sanitary;

(3) animal waste is removed daily, or at a frequency to prevent odor or contact with children in care;

(4) each cage is lined with an impervious material and is cleaned at a frequency necessary to prevent a health risk to children in care;

(5) bowls used for providing food and water for animals are cleaned at a frequency necessary to prevent a health risk to children in care; and

(6) cleaning of animal waste

(A) is conducted when children in care are not present; and

(B) is not conducted in an area used for food preparation or service.

(h) A provider described in 7 AAC 41.200(a)(5) shall

(1) disclose to the department information regarding any animal on the child care premises, if that animal has

(A) been the subject of a past contact with an animal control official because of aggressive behavior or biting; or

(B) a history of aggressive behavior or biting, regardless of whether the animal has been the subject of a past contact with an animal control official;

(2) notify the department within 24 hours of any occurrence of aggressive behavior or biting by an animal on the child care premises, including whether the occurrence resulted in a contact with an animal control official;

(3) immediately remove from contact with children in care an animal described in (1) or (2) of this subsection; and

(4) permanently remove from the child care premises an animal described in (1) or (2) of this subsection, if the department determines that the animal is a threat to the life or safety of children in care.

(i) In this section, "psittacine bird" means a bird classified as part of the family Psittaciadae, including parrots, macaws, and parakeets. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.245 is amended to read:

7 AAC 41.245. Provider charges. (a) Except for a provider subject to 7 AAC 41.370, a participating provider shall ensure that a rate charged by a provider to a family participating in the program is not higher than the rate charged to other families for the same service. A rate charged by a provider to a participating family must be a rate submitted under 7 AAC 41.201(c)(3) or (e)(14), or as amended under 7 AAC 41.210(4) [7 AAC 41.200(g)(4)].

(b) If a participating provider has a discounted rate for families that meet the provider's

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requirements for that rate, the provider shall offer the discounted rate to all participating families meeting those requirements.

(c) A provider approved under 7 AAC 41.200(a)(5) [7 AAC 41.200(d) OR (e)] may not charge a registration fee to a participating family. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.250 is repealed and readopted to read:

7 AAC 41.250. Request for payment. (a) A participating provider shall submit a request for payment and any corrections to that request to the department or to the designee, on a form prescribed by the department. A request for payment must be submitted on or before the last day of the month immediately following the month in which child care services were provided. If the department determines that a request for payment includes information that is incorrect or incomplete, the department may obtain the correct or missing information or will return the request to the provider. The department will not make payment for a request for payment that has been returned as incorrect or incomplete unless the department receives the correct or missing information on or before the last day of the month following the month in which the department returned the request. Exceptions to this subsection are as follows:

(1) PASS II payments may be made outside the time frames in this subsection for a parent transitioning from PASS I to PASS II, if necessary to avoid a break in service;

(2) a provider may submit a request for payment if a family's program approval and authorization for care are issued after the child begins to receive care from the provider; if an

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authorization is issued beyond the time described in this subsection, the provider shall submit a request for payment within 30 days after issuance of the family authorization for care to be considered timely for payment processing.

(b) Payment will be based on the lesser of the rate the provider charges under 7 AAC 41.245 or the program rate established under 7 AAC 41.025.

(c) A registration fee may only be paid to a licensed child care provider described in 7 AAC 41.200(a)(1) in a month in which a child attends at least one day.

(d) Care will be paid on a full month or part month enrollment basis, based on the program rate established under 7 AAC 41.025, except when additional attendance days are authorized, not to exceed the state maximum child care assistance payment under 7 AAC 41.025(d). (Eff. 6/23/2006, Register 178; am 115/2017, Register 221)

Authority: AS 47.25.001 AS 47.25.051

7 AAC 41.255 is repealed and readopted to read:

7 AAC 41.255. Records. A participating provider shall retain records required for participation and compliance with the child care assistance program under this chapter for at least three years from the date of the record's creation. The provider shall make available for inspection during normal business hours, upon request of the department or designee, records including

- (1) each license or permit and each approval required for operation;
- (2) copies of rates and responsibilities forms;
- (3) provider's requests for payment;

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(4) daily attendance records that reflect the date and time children are in care, on a form provided or in a manner approved by the department;

(5) children's records including emergency information for each child on a form prescribed by the department;

(6) caregiver employment records; and

(7) documentation of emergency evacuation drills. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

7 AAC 41 is amended by adding new sections to Article 2 to read:

7 AAC 41.260. Reports. (a) A licensed child care provider described in 7 AAC 41.200(a)(1) shall meet the applicable reporting requirements of the licensing agency. A provider described in 7 AAC 41.200(a)(2), (3), or (4) shall meet the applicable reporting requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(a)(5) shall immediately report the following incidents involving a child in care to the child's parent:

(1) the death of a child while in care;

(2) an injury or illness of a child in care that requires attention by medical personnel outside of the child care premises; and

(3) the exposure of a child to a contagious condition such as lice or scabies or to a communicable disease other than a cold.

(c) A provider described in 7 AAC 41.200(a)(5) shall immediately report to the

department

- (1) the death of a child while in care;
- (2) a serious injury or illness of a child while in care that requires attention by medical personnel outside of the premises; and
- (3) a fire or other emergency situation that affects the child care premises, reported as described in 7 AAC 10.1010(i).

(d) Within 10 days after the date the change occurs, a provider described in 7 AAC 41.200(a)(5) shall report to the department or designee a change in

- (1) a member of the provider's household;
- (2) the name of the person operating the business;
- (3) the name of the business;
- (4) the children in care; and
- (5) the hours of operation. (Eff. 1/5/2017, Register 221)

Authority: AS 47.25.001

7 AAC 41.265. Compliance and other reviews. (a) For purposes of determining compliance with this chapter, ongoing monitoring, and assisting the department in its review of a provider, the department may conduct inspections, including announced or unannounced onsite inspections and investigations.

(b) In addition to compliance and monitoring reviews described in (a) of this section, the department will inspect and investigate the provider for purposes of health and safety compliance within 90 days after receiving a complete application or participation approval.

(c) The department may extend the time specified in (b) of this section, if the department determines a longer period is needed to obtain additional information or evaluate the effect of a change. (Eff. 1 / 5 / 2017, Register 22())

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.270. General variances. (a) The purpose of this section is to provide a process for determining whether a general variance for a provider described in 7 AAC 41.200(a)(5) or (6), if requested, should be granted for a requirement of 7 AAC 41.200 - 7 AAC 41.260 or 7 AAC 41.370.

(b) A provider described in 7 AAC 41.200(a)(5) or (6) shall meet the requirements of this section. The department may grant a general variance if

(1) an alternative means, acceptable to the department, satisfies the purpose of the requirement for which the variance is sought; and

(2) the health, safety, and welfare of recipients of services are protected.

(c) A provider described in 7 AAC 41.200(a)(5) or (6) seeking a general variance under this section must submit to the department or designee, on a form supplied by the department, a request for a general variance as required by this section. A request must contain the following:

(1) the requirement from which the variance is sought;

(2) the reasons why the provider is unable to comply with the requirement, a description of how the provider is not in compliance, and the extent to which compliance with the requirement will impose any substantial economic, technological, programmatic, legal, or medical hardship on the provider or recipients of services;

- (3) the period of time for which the variance is requested;
 - (4) the proposed alternative means of satisfying the purpose of the requirement for which the variance is sought;
 - (5) a statement as to how the health, safety, and welfare of recipients of services will be protected during the period of the variance;
 - (6) the plan for achieving compliance before the variance expires;
 - (7) assurance that the conditions at the child care premises do not present an imminent danger to the health, safety, or welfare of recipients of services;
 - (8) if the request for a variance involves fire safety or another state or municipal requirement, evidence that the request has been reviewed by the appropriate authority; and
 - (9) any additional information requested by the department or designee to determine the effect of a variance on the health, safety, and welfare of recipients of services.
- (d) The department will or designee shall evaluate a request for a general variance by
- (1) investigating the statements in the request form;
 - (2) a department inspection of, or the designee requesting the department to inspect, the child care premises, if appropriate;
 - (3) taking one or both of the following actions:
 - (A) conferring with the applicant regarding the request;
 - (B) discussing the request with the parents of affected recipients of services, as appropriate, to determine whether the parents support granting the variance.
- (e) If a designee does the evaluation under (d) of this section, the designee shall submit a recommendation to the department for the department's review. The department's decision to

grant or deny a request for a general variance will be issued in writing and will be delivered to the provider who made the request. The department may grant a general variance for

(1) a period that does not exceed one year, if the department determines that the provider

(A) is unable to comply with the requirement from which the variance is sought;

(B) has an effective plan for achieving compliance during the term of the variance; and

(C) is able to adequately provide for the health, safety, and welfare of recipients of services during the term of the variance; or

(2) a longer period than allowed under (1) of this subsection if the department determines

(A) that

(i) strict compliance with the requirement from which the variance is sought cannot be accomplished without a substantial economic, technological, programmatic, legal, or medical hardship; or

(ii) the variance will maintain or improve the quality of services for recipients of services; and

(B) that the provider has an effective plan for meeting the goal of the requirement from which the variance is sought, and that the plan adequately protects the health, safety, and welfare of recipients of services and otherwise meets all applicable statutory or regulatory standards.

(f) A decision to grant a request for a general variance will identify the statutory or regulatory requirement involved by section number and subject matter and state the duration, terms, and conditions of the variance, including the steps the provider must take to achieve compliance before the variance expires.

(g) A decision to deny a request for a general variance will be in writing and will state the reasons for the denial. The provider may reapply for a variance, addressing the department's stated reasons for the denial or may request reconsideration under (k) of this section.

(h) If a provider violates a condition of a general variance granted under this section, the department will send written notice to the provider that the variance is revoked. The notice will advise that the provider may request reconsideration under (k) of this section.

(i) If the department grants a request for a general variance, the provider shall maintain a copy with their records, notify parents of children in care, and make it available to any person who wishes to review it. A general variance remains in effect for the duration stated, unless the department revokes the variance under (j) of this section.

(j) The department will revoke a general variance if the department finds that the provider is not following its plan for achieving compliance, or is no longer able to adequately provide for the health, safety, and welfare of recipients of services during the term of the variance. If the department decides to revoke a variance, it will provide written notice of revocation to the provider, setting out the reasons for the department's decision. The department will advise the provider of its right to request reconsideration under (k) of this section. A notice of revocation issued under this subsection is effective 30 days after the department issues the notice unless a request for reconsideration is submitted. Nothing in this subsection precludes the

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department from issuing a notice of immediate revocation if the department finds that the life, health, safety, or welfare of recipients of services is threatened.

(k) If the department denies or revokes a variance the provider may submit a written request to the department for reconsideration of that decision. A request under this subsection must be submitted within 30 days after the department issues the denial or notice of revocation, and must include

(1) the requestor's name, mailing address, telephone number, and, if available, electronic mail address and facsimile number;

(2) a summary of the department's decision to be reviewed; and

(3) a clear and concise statement of the reason for the request, including

(A) a statement of the nature and scope of the requestor's interests, and an explanation of how and to what extent those interests would be directly and adversely affected by the decision;

(B) the contested terms and conditions of the department's decision, and proposed alternatives; and

(C) copies of any documents or data that would assist the department in its review.

(l) After reviewing a request for reconsideration, the department will notify the provider in writing within 30 days after receiving the request, and will state the reasons for the department's final decision. (Eff. 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001

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7 AAC 41.300(a) is amended to read:

7 AAC 41.300. Eligible family [FAMILY PROGRAM ELIGIBILITY]. (a) **At the time of application, unless** [UNLESS] one or more of the parents in a family is determined to be ineligible for a reason set out in **7 AAC 41.055 or** 7 AAC 41.450, and except as provided in (b) of this section, a family is eligible to participate in the child care assistance program if

(1) each parent in the family, except as specified in **7 AAC 41.360(b)** [7 AAC 41.365], is participating in an eligible activity under 7 AAC 41.310;

(2) [, AND] the family's monthly income is at or below the maximum allowed under **7 AAC 41.335(b); and**

(3) **the family has at least one eligible child as specified in 7 AAC 41.350** [7 AAC 41.335].

7 AAC 41.300(b) is amended to read:

(b) **A** [THE] family [OF] **that includes a parent who is** an owner of a child care **business** [FACILITY] may not receive program benefits **for care of the owner's child provided by any provider** during the hours of operation of any facility owned by that **parent** [PERSON].

7 AAC 41.300 is amended by adding a new subsection to read:

(c) A family determined to be eligible to participate in the child care assistance program may continue participating if during the family's eligibility period the parent of the family is determined under 7 AAC 41.360 to be temporarily incapacitated or temporarily away from the

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child or children due to participating in an eligible activity as specified in 7 AAC 41.310. Each parent in the family must meet the requirements of (a) of this section to be considered eligible for renewing participation in the child care assistance program. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221)

Authority: AS 47.05.010 AS 47.25.021 AS 47.25.031
AS 47.25.001

7 AAC 41.305(a) is amended to read:

(a) The department will or a designee shall determine family eligibility to participate in the child care assistance program under AS 47.25.021, 47.25.031, and this chapter. **After a determination of eligibility, the department will not and a designee may not re-determine family eligibility for 12 months, if the family's average monthly income as described in 7 AAC 41.325(b) does not exceed 85 percent of the state median income as described in 7 AAC 41.335(b) for a family of the same size.** [THE DEPARTMENT WILL OR A DESIGNEE SHALL DETERMINE FAMILY ELIGIBILITY AT LEAST ONCE EVERY SIX MONTHS, ON THE BASIS OF A FAMILY'S DOCUMENTED ELIGIBILITY UNDER AS 47.25.021, 47.25.031, AND THIS CHAPTER.] The department will or the designee shall provide written notice to a family regarding eligibility to participate in the program.

7 AAC 41.305(c) is repealed:

(c) Repealed 1 / 5 /2017. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221)

Authority: AS 47.05.010 AS 47.25.021 AS 47.25.031
AS 47.25.001

7 AAC 41.310 is repealed and readopted to read:

7 AAC 41.310. Eligible activities. (a) At the time of application, the time of care eligible for a program benefit, as specified in the child care authorization issued under 7 AAC 41.340, is based on the schedule of eligible activities of each parent, the care need of the child, and the child care provider's hours of operation.

(b) Eligible activities are

(1) working;

(2) attending school;

(3) doing library or laboratory activities, attending workshops or tutoring sessions, or participating in a similar activity required for satisfactory completion of a school course or class; time eligible for a program benefit under this paragraph is limited to one hour for each credit hour per week;

(4) sleeping up to eight hours before or after the parent works a night shift; and

(5) traveling between an eligible activity and the participating provider, up to a maximum travel time of

(A) one hour before and one hour after the eligible activity, in increments of not less than one-half hour; or

(B) one and one-half hours before and one and one-half hours after the eligible activity, in increments of not less than one-half hour, if the parent travels more

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than 30 miles from the provider or uses public transportation.

(c) During the family's eligibility period, if a parent experiences a non-temporary job loss or ends participation in a job training or educational program, the family will continue to receive program benefits at the same level for a period of three months for the parent to engage in job search activities. The family's program benefits will end after the three-month period of job search activities, unless the parent has resumed work or is attending a job training or educational program. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001 AS 47.25.021

7 AAC 41.312 is amended to read:

7 AAC 41.312. Work. For purposes of this chapter, work is

- (1) an activity for which a wage or salary is paid at or above minimum wage established in AS 23.10.065; or
- (2) being engaged in a business
 - (A) operated with the intention of making a profit;
 - (B) for which a business license under AS 43.70 has been obtained; and
 - (C) that generates to the person engaged in that business net income that, when converted to an hourly rate, based on the number of hours worked or for full-time work based on a 40-hour work week, is equal to or exceeds the minimum wage established in AS 23.10.065 [REVENUE DURING ANY CONSECUTIVE THREE-MONTH PERIOD]. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221)

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Authority: AS 47.05.010 AS 47.25.001 AS 47.25.021

7 AAC 41 is amended by adding a new section to read:

7 AAC 41.313. School. For the purposes of this chapter, school is an educational or training program that includes classroom or online settings. An educational program is a structured learning environment in which an instructor or teacher leads students through a course of study that includes specific learning objectives, goals, and standards, and leads to a certificate of mastery or completion, a state license, a diploma, or a degree. A training program is a structured learning environment for a participant to gain or enhance job skills that has specific learning objectives, identified skills to be mastered, a beginning date, and an ending date. (Eff.

1 / 5 / 2017, Register 22)

Authority: AS 47.05.010 AS 47.25.001 AS 47.25.021

7 AAC 41.315(a) is amended to read:

(a) A family seeking to participate, or to continue participation, in the PASS [II OR PASS III] program **and receive child care assistance** must **submit an application** [APPLY] to **the** [ANY] designee serving the community where the family resides or participates in an eligible activity **and participate in an in-person or telephonic interview**. If no designee serves that community, the family may apply to the department.

7 AAC 41.315(b) is amended to read:

(b) Application **for program participation** [, INCLUDING A RENEWAL

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APPLICATION,] must be made on a form prescribed by the department and must be submitted to the department or a designee, as appropriate, for review and **an eligibility determination.**

The application must be determined to be acceptable and complete by the department or designee. Following submission of the application, the department will review the application for completeness and, within 10 days after the department or designee receives the application, notify the applicant of any omissions or additional information required. A complete application must be received by the department or a designee within 30 days after the application submission, unless a later due date is identified in a notice from the department or a designee [APPROVAL].

7 AAC 41.315 is amended by adding new subsections to read:

(c) A complete application for child care assistance under this chapter must include the following information, as applicable:

(1) for each parent of the family, the name, mailing address, telephone number, electronic mail address, if any, marital status, and aliases;

(2) for each individual in the family, the name, date of birth, and relationship of the individual to the parent of the family;

(3) for each parent in the family, a copy of the parent's current government-issued photo identification;

(4) for each working parent in the family receiving wages or a salary, the name and address of the parent's employer, start date of the parent's employment, the parent's work schedule, the parent's hourly wage or hourly wage equivalent, the parent's frequency of pay, and

verification of the parent's gross earnings;

(5) for each working parent in the family engaged in a business as described in 7 AAC 41.312(2),

(A) a copy of each current business license under AS 43.70 possessed by the parent; and

(B) verification of the parent's profits and net income from the business;

(6) for each parent in the family attending school, the name of the program in which the parent is enrolled, the parent's date of enrollment in the program, the date on which the parent anticipates completing the program, verification of the parent's enrollment in the program, and verification of the amounts and terms of financial aid, if any, that the parent has received or anticipates receiving to participate in the program;

(7) for each member of the family, all sources and amounts of unearned income, the frequency with which that income is received, and documentation verifying all amounts of unearned income;

(8) for each child of the family for which child care assistance is requested, proof of the child's age and citizenship or alien status;

(9) for each child in the family subject to a child custody arrangement, the terms of the custody arrangement;

(10) for each child in the family attending an elementary school, pre-elementary school under 4 AAC 60, or Early Head Start or Head Start program under 42 U.S.C. 9831 - 9852c, the name of the elementary school, pre-elementary school, or Early Head Start or Head Start program that the child attends, and the days and hours of the day during which the child

attends the elementary school, pre-elementary school, or Early Head Start or Head Start program;

(11) the name of the eligible child care provider the family has selected;

(12) the signature of each parent in the family declaring that the information provided is true, accurate, and complete, and authorizing release of information by other state agencies or private organizations or individuals for purposes of obtaining verification of program eligibility; and

(13) a certification that the family's assets do not exceed \$1,000,000.

(d) In an application submitted to continue participation, a family may meet the requirements of (c)(3), (8), and (9) of this section by confirming that documents previously submitted in connection with an approved application remain true and correct. An application to continue participation received from a family in which a parent has been determined temporarily incapacitated or away from the child or children due to participating in an eligible activity must meet the criteria specified in 7 AAC 41.360.

(e) A family may delay submitting documentation required under (c)(3), (8), and (9) of this section by a period of an additional 30 days from the initial application submission if verification is provided to the department that the family is homeless, is displaced from the family's normal residence due to a state or federally declared disaster, or experiences fire, flooding, or other damage or destruction to the family's home that renders the home uninhabitable. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001 AS 47.25.051

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7 AAC 41.320(a) is amended to read:

(a) A family applying for child care assistance under this chapter shall provide complete, accurate and current information **and required verification** regarding children, family income, hours of employment or training, work activities, and other factors that would affect eligibility for program benefits. At the time of application, a parent of the family shall read and sign a family responsibilities form prescribed by the department that includes the requirements of this section and contains a statement that the person signing the form has read those requirements, understands them, and agrees to abide by them. **The family shall participate in an in-person or telephonic interview.**

7 AAC 41.320(c) is amended to read:

(c) A family participating in the child care assistance program under this chapter shall

(1) select an eligible provider;

(2) **during the family's eligibility period**, notify the department or designee

within **10 business** [SEVEN] days

(A) before changing providers;

(B) after a change affecting the level of child care;

(C) after a non-temporary loss of employment, or ending attendance at a job training or educational program; or

(D) after an increase in income to a level that exceeds 85 percent of the state median income as described in 7 AAC 41.335(b) [AFTER AN INCOME CHANGE IN EXCESS OF \$200 A MONTH, A CHANGE IN A WORK ACTIVITY,

OR ANY OTHER CHANGE THAT WOULD AFFECT THE FAMILY'S BENEFITS OR ELIGIBILITY UNDER THIS CHAPTER; FAILURE TO GIVE NOTICE AS REQUIRED UNDER THIS PARAGRAPH MAY RESULT IN A DETERMINATION OF OVERPAYMENT OF PROGRAM BENEFITS AND SUBSEQUENT ACTION BY THE DEPARTMENT UNDER 7 AAC 41.420];

(3) pay the portion of the family's eligible cost of care that is not paid on the family's behalf under this chapter;

(4) notify the provider in writing at least **10 business** [14] days before the family intends to terminate child care services with that provider, **specifying the last date care is to be provided**, except

(A) in the case of sudden program ineligibility;

(B) in the case of **a licensing or law-enforcement investigation of an** allegation of abuse, harm, or serious risk of harm to a child in the provider's care; [OR]

(C) upon mutual **written** agreement between the provider and the family, **specifying the last date of care to be provided; or**

(D) in the event of a death of a child;

(5) **upon receipt of notification from the department or designee to renew eligibility, submit a complete application and participate in an interview** [THE CHILD CARE AUTHORIZATION IN A MANNER] timely enough to provide for continuity of care; [AND]

(6) if requested by the department or a designee, review the provider's attendance records and monthly **requests for payment** [BILLING STATEMENT] to verify that care was

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billed only for hours of eligible activity;

(7) within 24 hours, report abuse, harm, or serious risk of harm to a child in the provider's care to local police and

(A) the department, or to the municipality if the department has delegated licensing authority under AS 47.32.030(b), for a provider described in 7 AAC 41.200(a)(1);

(B) the department or designee, for a provider described in 7 AAC 41.200(a)(2) - (6); and

(8) repay the department any overpayment of program benefits, as described in 7 AAC 41.420.

7 AAC 41.320 is amended by adding new subsections to read:

(d) Failure to give notice as required under (c)(2) of this section may result in a determination of overpayment of program benefits and subsequent action by the department under 7 AAC 41.420.

(e) If a participating family does not give notice as required in (c)(4) of this section, and obtains care with a new provider, the participating family is solely responsible for payment of the new provider, unless the extenuating circumstances described in (c)(4)(B) or (C) of this section exist. In the case of a mutual written agreement between the parent and provider as described in (c)(4)(C) of this section, the original provider will be paid only through the agreed-upon last date of care. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41 is amended by adding a new section to read:

7 AAC 41.322. Family rights. A family applying for or participating in the child care assistance program has the right to

(1) unlimited access to the family's children and the providers caring for the family's children, during the providers' normal hours of operation and whenever children are in the providers' care;

(2) request and access information from the department regarding a child care provider's compliance with licensing or approval requirements, public reports of inspections or investigations, and any quality measures;

(3) discuss any action taken on its application or case with a caseworker or the caseworker's supervisor; and

(4) request a hearing under 7 AAC 49 if the family disagrees with a decision made by the department or designee that denies, reduces, suspends, or terminates the family's benefits. (Eff. 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.325(a) is repealed and readopted to read:

(a) For the purposes of this chapter, the department will or a designee shall determine a family's monthly income by

(1) totaling

(A) the monthly gross earned income of each parent including wages, salary, tips, bonuses, or commissions;

(B) the self-employment income of each parent, determined in accordance with 7 AAC 45.445 and 7 AAC 45.450; and

(C) the monthly unearned income of the family, unless that income is excluded under (2) of this subsection; for purposes of this subparagraph, "unearned income" includes

- (i) unemployment benefits;
- (ii) alimony;
- (iii) child support payments;
- (iv) child support arrearage payments;
- (v) foster care payments;
- (vi) retirement benefits;
- (vii) regular insurance or annuity payments;
- (viii) veteran's payments;
- (ix) pensions;
- (x) workers' compensation cash benefits;
- (xi) Social Security payments;
- (xii) investment income;
- (xiii) public assistance;
- (xiv) military cash allowances;
- (xv) federal cost-of-living allowances (COLA);
- (xvi) scholarships for other than tuition and books;
- (xvii) education grants for other than tuition and books;

- (xviii) fellowships and assistantships;
 - (xix) capital gains;
 - (xx) employer contributions for child care costs;
 - (xxi) strike benefits from a union fund;
 - (xxii) housing allowances or fair market value of employer-provided housing;
 - (xxiii) stipends;
 - (xxiv) room and board paid by others in the household;
 - (xxv) dividends;
 - (xxvi) interest;
 - (xxvii) net rental income;
 - (xxviii) net royalties;
 - (xxix) periodic receipts from an estate or trust;
 - (xxx) the portion of Native corporation dividend payments distributed under 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act) that exceeds \$2,000 annually for each shareholder; and
 - (xxxi) one-time, lump-sum payments in excess of \$500, such as insurance proceeds, disability and death benefits, awards and cash gifts, inheritance, terminal leave and severance pay, and net gambling or lottery winnings;
- (2) excluding
- (A) income that is a documented loan evidenced by an executed contract

or a document signed by the lender and establishing a time frame for repayment of the loan;

(B) payments under AS 43.23 (permanent fund dividends);

(C) federal income tax refunds;

(D) earned income tax credits under 26 U.S.C. 32 (Internal Revenue Code);

(E) federal noncash benefits, including Medicare, Medicaid, assistance under 7 U.S.C. 2011 - 2036c (Supplemental Nutrition Assistance Program (SNAP)), and supplements under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children (WIC)); and

(F) any federal major disaster and emergency assistance or any comparable disaster assistance provided by states, local governments, or disaster assistance organizations; and

(3) deducting payments made for

(A) legally obligated child support; and

(B) catastrophic medical or dental costs.

7 AAC 41.325(b) is repealed and readopted to read:

(b) The department will or a designee shall determine a family's eligibility by using the family's monthly income, calculated under (a) of this section. The department will or the designee shall make a best estimate of the average monthly income a family receives or is expected to receive for the period during which the family's eligibility is being determined.

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Either or both of the following methods may be used to calculate prospective average monthly income:

(1) projecting the monthly income a family receives or is expected to receive on a monthly basis for the period which eligibility is being determined based on employer verification or income information provided by the family;

(2) averaging seasonal, commission, or other irregular income and irregular deductions, such as catastrophic medical or dental payments, for a period not to exceed 12 months.

The introductory language of 7 AAC 41.325(c) is amended to read:

(c) In this section, catastrophic medical or dental payments may be considered only for that portion of the medical or dental payments that exceed 10 percent of the family's monthly income, if the payments are made for more than 60 days, and are projected to be an ongoing expense for more than six months. **The following medical** [MEDICAL] and dental payments [TO BE] considered under this section are for **services provided to parents and children in the child care assistance family:**

...

(Eff. 6/23/2006, Register 178; am 115 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001 AS 47.25.031

7 AAC 41.330(b) is amended to read:

(b) In addition to the family contribution paid under (a) of this section, if the provider's

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charges are higher than the relevant program rate under 7 AAC 41.025, the participating family is responsible for paying the provider the difference within a time period agreed to between the family and the provider. The provider is responsible for obtaining, or recovering, that difference.

If the provider has established to the department's satisfaction that a participating family has not fully paid the family's contribution or the difference, the department will or designee shall require the family to enter into a payment plan with the provider, and the department will take debarment action under 7 AAC 41.450 against the family for failing to enter into a payment plan. Nothing in this subsection precludes a provider from requiring

payment **from a family** in advance of the services to be provided. (Eff. 6/23/2006, Register 178; am 1/5/2017, Register 221)

Authority: AS 47.05.010 AS 47.25.031 AS 47.25.041
AS 47.25.001

7 AAC 41.335(a) is amended to read:

(a) To determine the amount the family must contribute toward the eligible cost of care, the department will or a designee shall use the department's *Family Income and Contribution Schedule*, revised as of November 2010 and adopted by reference. This amount will be based on family size and income level, and [BASED] on a sliding fee scale.

7 AAC 41.335(b) is amended to read:

(b) The maximum family monthly income allowed for **initial** participation in the program appears in the *Family Income and Contribution Schedule*, adopted by reference in (a) of

this section. The maximum family monthly income

(1) is based on a percentage **and may not exceed 85 percent** of the **state's** median income **(SMI)** level developed by the federal government for this state, as periodically published in the federal register, and adjusted by family size; and

(2) is adjusted by deducting the estimated amount of the permanent fund dividend calculated under AS 43.23.025 for the year during which the schedule was prepared, multiplied by the number of family members.

7 AAC 41.335(c)(2) is amended to read:

(2) the **state's** median income **(SMI)** level **as described in (b)(1) of this section** [DEVELOPED BY THE FEDERAL GOVERNMENT FOR THIS STATE, AS PERIODICALLY PUBLISHED IN THE FEDERAL REGISTER,] and adjusted by amounts payable to a family under AS 43.23 **(permanent fund dividends)** [(PERMANENT FUND DIVIDENDS)] for the current year;

7 AAC 41.335 is amended by adding a new subsection to read:

(d) A family renewing participation, whose income exceeds the maximum family monthly income in (a) of this section and who is otherwise eligible, will be determined eligible for phased-out program benefits, for a period of 12 months, if the family's maximum family monthly income does not exceed 85 percent of the state's median income (SMI) level as described in (b)(1) of this section at the time of renewal. A family participating in the phase-out period is not eligible for participation after the 12-month period unless the family's income is at

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or below the family monthly income in (a) of this section. A family that is eligible for phased-out benefits under this subsection is responsible for a family contribution of 10 percent of the family's monthly income at the time of the renewal. (Eff. 6/23/2006, Register 178; am 11/1/2010, Register 196; am 1 / 5 /2017, Register 221)

Authority: AS 47.05.010 AS 47.25.041 AS 47.25.051
AS 47.25.001

Editor's note: The *Family Income and Contribution Schedule*, adopted by reference in 7 AAC 41.335, is available from the Department of Health and Social Services, **Child Care Program Office, 3601 C Street, Suite 140, P.O. Box 241809, Anchorage, Alaska 99524-1809.** **The schedule is also available on the department's Internet website at** **<http://dhss.alaska.gov/dpa/pages/ccare>** [619 E. SHIP CREEK AVENUE, SUITE 230, ANCHORAGE, ALASKA 99501-1677].

7 AAC 41.340 is amended by adding a new subsection to read:

(c) When the family notifies a provider in writing of the family's intent to discontinue services, care authorized to the provider is canceled for any time beyond the identified last date of care. The department will or a designee shall issue a new child care authorization stating that care delivered by the current provider is authorized for a period of time ending no later than the end of the identified last date of care. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001 AS 47.25.051

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7 AAC 41.345(a)(2) is amended to read:

(2) a **participating** family **when the family** [THAT] hires an approved in-home child care **caregiver** [PROVIDER] under 7 AAC 41.370.

7 AAC 41.345(b) is amended to read:

(b) The department will or a designee shall prorate a family's contribution required under 7 AAC 41.330 during the **month the family applies and is determined eligible to receive** [MONTHS THE FAMILY FIRST RECEIVES AND LAST RECEIVES] child care **if less than a full month**, based on the number of days in the month in which child care is authorized.

7 AAC 41.345(c) is amended to read:

(c) In addition to the program benefits paid under (a) of this section, the department will pay to a licensed provider, on behalf of a child, any registration fee **not to exceed \$50** charged by the provider and billed to the department. [THE DEPARTMENT WILL NOT PAY MORE THAN \$50 UNDER THIS SUBSECTION.] The department will pay only one registration fee per child, per licensed provider, in a calendar year.

7 AAC 41.345 is amended by adding new subsections to read:

(d) If an enrollment authorization is currently in place and the family provides written notice of not less than 10 business days that the family intends to discontinue services, the department will or its designee shall pay benefits through the last date of care identified in the notice, even if the child did not attend.

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(e) If a provider requires a child to leave without providing the family written notice at least 10 business days before the date the child is to leave, payments will be made only through the last day the child was in attendance.

(f) In addition to the program benefits authorized for a participating family, the provider may request payment from the program and be paid for up to 10 hours of care each day, not to exceed 50 hours of care in a month, if a school-age child as described in 7 AAC 41.025(b) was in care because of being too ill to attend school. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.021 AS 47.25.051
AS 47.25.001 AS 47.25.041

7 AAC 41.350 is repealed and readopted to read:

7 AAC 41.350. Eligible child. (a) Subject to (b) of this section, a child eligible to participate in the child care assistance program under this chapter is an individual

(1) who is younger than 13 years of age;

(2) whose family's income does not exceed 85 percent of the state median income as described in 7 AAC 41.335(b) for a family of the same size, and whose family's assets do not exceed \$1,000,000, as certified by a member of that family under 7 AAC 41.315(c);

(3) who

(A) resides with a parent or parents who are working or attending a job training or educational program; or

(B) is receiving, or needs to receive, protective services and resides with a

parent or parents not described in (A) of this paragraph; and

(4) who is

(A) a United States citizen;

(B) a United States national; or

(C) a qualified alien under 8 U.S.C. 1613 and 1641.

(b) A child described in (a) of this section is not eligible to participate in the program during the time school is in session and the child is enrolled in grades 1 - 12 of an academic program, of any public, private, or home school, or other school described in 4 AAC 60.010, according to the schedule of the school. However, a child may receive services for up to 50 hours in a month if the child is in child care because of being too ill to attend school. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001 AS 47.25.095

7 AAC 41.355 is repealed:

7 AAC 41.355. Inactive status. Repealed. (Eff. 6/23/2006, Register 178; repealed 1 / 5 / 2017, Register 221)

7 AAC 41.360 is repealed and readopted to read:

7 AAC 41.360. Allowable absence; incapacitation. (a) If a participating family or family applying to continue participation consists of only one parent and that parent is temporarily incapacitated or temporarily away from the child or children because of participating in an eligible activity under 7 AAC 41.310, the family may continue to receive program benefits

for up to a 12-month period if the parent is

(1) temporarily incapacitated, and

(A) verification is provided confirming the parent's incapacitation and anticipated date the parent will be able to return to work;

(B) the parent's employer is holding the parent's job; and

(C) the parent returns to the job within the current or new 12-month period; or

(2) temporarily away from the child or children; verification must be provided from the parent's employer confirming the parent is continuing to participate in the parent's eligible activity away from the child or children.

(b) A two-parent family who otherwise meets eligibility requirements under this chapter may receive program benefits if one parent is participating in an eligible activity under 7 AAC 41.310, and is not away from the child or children, and the second parent is incapacitated or temporarily away from the child or children because of participating in an eligible activity under 7 AAC 41.310.

(c) In a participating two-parent family, if one parent is incapacitated or temporarily away from the child or children because of participating in an eligible activity under 7 AAC 41.310, and the second parent becomes temporarily incapacitated or is temporarily away from the child or children because of participating in an eligible activity under 7 AAC 41.310, the family may continue to receive program benefits through the remaining certification period if (a)(1) or (2) of this section is met for the second parent.

(d) In this section, "incapacitated" means physically incapable of caring for children in

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the family, or temporarily unable to participate in an eligible activity, as determined by a health care or mental health care professional. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017

Register 22)

Authority: AS 47.05.010 AS 47.25.001 AS 47.25.021

7 AAC 41.365 is repealed:

7 AAC 41.365. Allowable absence or incapacity: two-parent family. Repealed. (Eff. 6/23/2006, Register 178; repealed 1 / 5 / 2017, Register 22)

7 AAC 41.370 is repealed and readopted to read:

7 AAC 41.370. Child care in the child's own home. (a) To participate in the child care assistance program under this chapter, an eligible family may hire an in-home child care caregiver to care for the family's children in the family's home only if the caregiver does not reside in the family home, has a valid criminal history check under AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990, and is approved under (j) of this section. A parent will not be approved for participation in the program as an in-home caregiver for the care of the parent's own children. A family eligible to hire an in-home caregiver for the children of the family residing in the family's home must be participating in an eligible activity outside the family's home, except as described in 7 AAC 41.310(b)(4), and require care for

(1) at least four children who

(A) are not in school at any time during the day;

(B) require care;

(C) are otherwise eligible as specified in 7 AAC 41.350; and

(D) are not the children of the in-home child care caregiver;

(2) at least one child with special needs;

(3) at least one child who is younger than 12 months of age; or

(4) at least one child of a family in which all parents are working a night shift.

(b) The family must participate in an in-person or telephonic interview and program orientation and must submit to

(1) the department office responsible for conducting criminal history checks all items required under 7 AAC 10.910(b) for the selected in-home child care caregiver; and

(2) the designee or to the department office responsible for approvals under this chapter, on or before the date on which the family submits the application required under 7 AAC 41.315, a complete application for in-home care; an application for approval under (d) of this section must contain the following information on a form prescribed by the department:

(A) for the hiring parent of the family, the parent's first name, middle name if applicable, last name, mailing address, physical address, telephone number, electronic mail address, if any, and aliases;

(B) for the hiring parent of the family, the parent's federal taxpayer identification number or social security number;

(C) for each child in the family, the child's first name, middle name if applicable, last name, and date of birth;

(D) the caregiver's

(i) first name, middle name if applicable, and last name;

- (ii) aliases;
- (iii) federal taxpayer identification number or social security number;
- (iv) date of birth;
- (v) mailing address;
- (vi) physical address;
- (vii) telephone number; and
- (viii) electronic mail address, if any;
- (E) a copy of a government-issued photo identification of the hiring parent;
- (F) a copy of a government-issued photo identification of the selected in-home child care caregiver;
- (G) a copy the caregiver's qualifying education of a high school diploma, general educational development (GED) diploma, or the equivalent;
- (H) a verification signed by the family and the selected in-home child care caregiver, on a form prescribed by the department, that the selected caregiver, if approved under (c) or (d) of this section, will be employed by the family, and will care only for children of the family who reside in the family's home; if fewer than five children are in the family, the caregiver may also care for the caregiver's own children if the total number of all children in care does not exceed five;
- (I) a copy of the caregiver's pediatric first aid and cardiopulmonary resuscitation (CPR) certifications;

(J) a completed child care provider disaster preparedness and emergency evacuation plan, on a form prescribed by the department;

(K) verification of compliance with the health and safety requirements of this section; and

(L) copies of completed required state employment information submitted to the Department of Labor and Workforce Development and the Department of Revenue.

(c) If the department determines under 7 AAC 10.915 that the selected in-home child care caregiver did not pass the criminal history check, or if the valid criminal history check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the approval, and the family shall terminate association with the selected caregiver, unless the family requests a variance under 7 AAC 10.930, and the department grants the request under 7 AAC 10.935.

(d) If the selected in-home child care caregiver passed the criminal history check conducted under 7 AAC 10.915, the department will, or the designee shall, determine whether the caregiver has met the applicable requirements of this section and 7 AAC 41.205(a). If the department or designee determines that the caregiver

(1) has met the applicable requirements of this section and 7 AAC 41.205(a), the department will, or the designee shall, approve that caregiver in accordance with the applicable provisions of this chapter; or

(2) has not met the applicable requirements of this section and 7 AAC 41.205(a), the department will not, and the designee may not, approve that caregiver; the department will,

or the designee shall, notify the family and

(A) specify the reasons for that determination; and

(B) advise the family of the right to request a hearing under 7 AAC 49.

(e) If the selected in-home child care caregiver did not pass the criminal history check, the department office responsible for conducting criminal history checks shall notify

(1) the caregiver of the right to request reconsideration under 7 AAC 10.950; and

(2) the family of the right to request a variance under 7 AAC 10.930.

(f) The department will not, and the designee may not, approve under this chapter a selected in-home child care caregiver who did not pass a background check unless

(1) the selected caregiver makes a request for reconsideration under 7 AAC 10.950 and the department grants the request under 7 AAC 10.950(b); or

(2) the family requests a variance under 7 AAC 10.930, and the department grants the request under 7 AAC 10.935.

(g) The department will, or a designee shall, provide written notice to the family of the family's obligation to pay the approved in-home child care caregiver the greater of at least

(1) the minimum wage established under AS 23.10.065; or

(2) the amount of the family's program benefits established under 7 AAC 41.345, including the family's contribution established under 7 AAC 41.330.

(h) The department will, or a designee shall, provide to the family choosing in-home child care

(1) United States Internal Revenue Service Form W-2 and a wage and tax statement for the family to complete; and

(2) United States Department of Homeland Security, United States Citizenship and Immigration Services (USCIS) Form I-9 for the family to complete.

(i) The family shall ensure that the family's home meets and the family's caregiver follows the general health and safety requirements to

(1) take precautions against the spread of infectious disease by ensuring that each person in contact with children washes that person's hands for at least 10 seconds with soap and water and rinses them with water

(A) before food handling, preparation, serving, eating, or table setting;

(B) after toileting or assisting a child with toileting or diapering;

(C) after handling an animal, animal waste, or an animal cage;

(D) before and after giving medication;

(E) before and after participation in moist play, including painting, cooking, or molding clay; and

(F) if hands are contaminated with a body fluid, including from nose wiping;

(2) encourage children to wash their hands at similar times described in (1) of this subsection;

(3) ensure that children in care have been immunized as required by 7 AAC 57.550(a) - (e), except that children in protective services or foster care may be enrolled for up to 30 days without a valid immunization record;

(4) ensure that an opportunity for a supervised rest or sleep period is provided for each child under five years of age who is in care more than five hours, and for any other child, if

desired by the child; for a child who is unable to sleep, the caregiver shall provide supervised time and space for quiet play; the caregiver may place in a crib only

(A) an infant described in 7 AAC 41.025(b);

(B) a nonclimbing toddler described in 7 AAC 41.025(b); or

(C) a child identified as having special needs, if appropriate;

(5) administer medication only as follows:

(A) upon admission or when a new medication is prescribed, the caregiver shall obtain from the parent of a child in care written permission for the administration of prescription medication;

(B) the caregiver shall administer prescription medication and special medical procedures only in the dosage, at the intervals, or in the manner prescribed by a physician or other person legally authorized to prescribe medication or medical procedures, and shall document in a medication log the date and time each dose is administered and the caregiver's initials;

(C) if written permission has not been obtained from the child's parent for the administration of a commonly used nonprescription medication or medication contained in the first aid kit required under 7 AAC 10.1075 and (I) of this section, the caregiver shall document telephone permission to administer that medication;

(D) the caregiver shall document in a medication log, including the date and time each dose is administered and caregiver's initials, the use of any commonly used nonprescription medication for oral or topical use kept on hand by the caregiver for the communal use of any child;

(6) ensure that prescription medicine is kept in

(A) the original container showing the date filled, the expiration date, instructions, and the physician's or other medical professional's name; or

(B) medicine sets filled by a pharmacist or a licensed medical professional; the prescription date filled, the expiration date, instructions, and the physician's or other medical professional's name must be affixed to or stored with each medicine set;

(7) ensure that each stored medication, including each nonprescription medication, is in its original container and properly labeled with the name of the child for whom it is intended, the name of the medication, the dosage, the expiration date, and directions for administration;

(8) ensure that medications are stored in a manner that prevents access by unauthorized persons;

(9) ensure that medications, including controlled substances, are stored in accordance with the manufacturer's recommendations; in this paragraph, "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;

(10) ensure that nonprescription medications and health products, including nonaspirin fever reducers, naturopathic remedies, vitamin and mineral supplements, diaper ointments and powders, sunscreen, and insect repellent, are used only at the dose, duration, or method of administration specified on the manufacturer's label;

(11) ensure that medication requiring refrigeration is grouped together, stored in

a manner to prevent contamination of food, and labeled as required by this section;

(12) ensure that snacks and meals are nutritious and meet the child's daily dietary needs;

(13) maintain sanitary facilities for the proper care, storage, refrigeration, and preparation of food; the caregiver shall ensure that

(A) food served is not altered to contain harmful substances; and

(B) fruits and vegetables are thoroughly washed with potable water before use;

(14) observe the following requirements for bottle feedings if caring for infants as described in 7 AAC 41.025(b):

(A) an infant shall be fed on demand;

(B) a child on bottle feedings

(i) shall either be held or fed sitting up or, if unable to sit up, always be held by a caregiver during the feeding; bottles may not be propped for a child; and

(ii) may not be permitted to hold or carry its bottle at times other than the feeding;

(15) obtain information concerning any food allergies or special dietary needs of each child and plan that child's meals accordingly; and

(16) except for medical reasons, not deny a meal or snack to a child, force-feed a child, or otherwise coerce a child to eat against the child's will; mere encouragement without any element of compulsion is not prohibited.

(j) The family shall ensure that the family's home meets and the family's caregiver follows the environmental health and safety requirements described in 7 AAC 41.220(c)(1) - (10) and (12) - (14).

(k) The family shall ensure that the family's home meets and the family's caregiver follows the life and fire safety requirements described in 7 AAC 41.222(d) - (i).

(l) The family shall ensure that the family's home meets and the family's caregiver follows the first aid kit requirements and procedures described in 7 AAC 41.230(b).

(m) The family shall ensure that the family's selected caregiver obtains and provides verification to the department or designee completion of required training, before program participation or within the first three months after receiving approval for program participation, on health and safety topics consisting of

(1) the prevention and control of infectious diseases; training under this paragraph must include training on immunizations;

(2) prevention of sudden infant death syndrome and use of safe sleeping practices;

(3) the administration of medication, consistent with standards for parental consent;

(4) the prevention of and response to emergencies because of food and allergic reactions;

(5) building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic;

(6) prevention of shaken baby syndrome, abusive head trauma, and child

maltreatment;

(7) emergency preparedness and response planning for emergencies resulting from a hazard or natural disaster within the meaning of those terms under 42 U.S.C. 5195a(a) (sec. 602(a), Robert T. Stafford Disaster Relief and Emergency Assistance Act);

(8) handling and storage of hazardous materials and the appropriate disposal of biocontaminants;

(9) appropriate precautions in transporting children;

(10) recognition and reporting of child abuse and neglect; and

(11) minimum health and safety training.

(n) The family shall ensure that the family's caregiver obtains annually at least 12 hours of ongoing training pertaining to health and safety, early childhood and development, or both.

(o) Upon approval of the family's in-home child care caregiver and subject to the monthly maximum set in 7 AAC 41.025(g) and the amount of the family contribution under 7 AAC 41.330, the department will, or a designee shall, issue an authorization for in-home child care and program benefit payments to the family. The family shall submit a request for payment and any corrections to that request to the department or designee on a form prescribed by the department. A request for payment must be submitted on or before the last day of the month immediately following the month in which child care services were provided. If the department determines information in a request for payment is incorrect or incomplete, the department will return the request to the family. Unless the request is corrected and resubmitted to the department no later than the last day of the month following the month in which it was returned by the department, the department will not make payment for that request for payment.

(p) The department will not pay program benefits included on a request for payment or a correction to a request for payment submitted later than the applicable deadline set in (o) of this section.

(q) The family shall retain for at least three years all records related to attendance of children in care, requests for payment under this chapter, and in-home child care caregiver employment.

(r) The family and the approved in-home child care caregiver shall cooperate with the department or a designee for purposes of monitoring reviews or investigations to determine compliance with this section. In this subsection, "cooperate" includes providing access to

- (1) the site where care is provided;
- (2) records; and
- (3) children for purposes of conducting interviews.

(s) Benefits will not be paid for care rendered by an in-home child care caregiver before the effective date of the department's approval of the caregiver.

(t) The family shall provide notice of at least 10 business days, except in the circumstances described in 7 AAC 41.320(c)(4)(A) and (B), to the department or designee when discontinuing employment of the family's in-home child care caregiver. The notice must include the last date care is to be provided. If an enrollment authorization is currently in place and the family provides written notice of at least 10 business days to discontinue services, the department will, or the designee shall, pay for authorized care only through the indicated last date of care. The department will pay for care provided by a subsequent in-home child care caregiver only after the family submits the information required under (b) of this section and the

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department issues an approval under (d) of this section for the subsequent caregiver.

(u) In addition to the program benefits authorized for a participating family, the family may request payment from the program and be paid for up to 10 hours of care each day, not to exceed 50 hours of care in a month, when a school-age child as described in 7 AAC 41.025(b) was in care because of being too ill to attend school. (Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.05.310 AS 47.25.051
AS 47.05.300 AS 47.25.001

7 AAC 41 is amended by adding a new section to Article 3 to read:

7 AAC 41.375. Compliance and other reviews. (a) For purposes of determining compliance with this chapter, the department or designee may monitor, investigate, and conduct file reviews of information regarding a family's eligibility.

(b) A family shall cooperate with the department or a designee for the purpose of a monitoring review, investigation, or file review to determine compliance with this chapter, by providing additional information regarding the family's eligibility as requested by the department or designee.

(c) If a family refuses to comply with (b) of this section, the noncompliance is an intentional program violation under 7 AAC 41.410. (Eff. 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

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7 AAC 41.400 is repealed and readopted to read:

7 AAC 41.400. Confidentiality. (a) Information relating to a family's participation in the child care assistance program is confidential under AS 47.05.020 and to the extent provided under law.

(b) A child care provider may only communicate with the department or designee regarding a parent's application for program participation, the status of the parent's eligibility, and the care authorized, if the parent has signed and submitted to the department or designee a written release of information. A provider may not require a release of information to be signed by the parent as a condition for enrolling the family's children into child care. (Eff. 6/23/2006, Register 178; am 115/2017, Register 221)

Authority: AS 47.05.010 AS 47.05.020 AS 47.25.001

7 AAC 41.405 is repealed and readopted to read:

7 AAC 41.405. Notice of proposed action. (a) The department will or designee shall give at least 10 days' written notice to a participating family before taking an action to reduce or terminate program benefits. The 10-day notice period begins the date the notice is sent and advises the family of the right to request a hearing under 7 AAC 49, unless

(1) the family indicates in writing that the family no longer desires program benefits;

(2) the family's whereabouts are unknown and mail directed to the family's last known address was returned by the post office indicating no known forwarding address; or

(3) the department has information evidencing that the only participating child of

the family is no longer part of the family unit or is deceased.

(b) In a circumstance described in (a)(1) - (3) of this section, the department will or the designee shall terminate program benefits without prior notice.

(c) The department will or designee shall give at least 10 days' written notice to a participating provider before taking an action to terminate program participation. The 10-day notice period begins the date the notice is sent and advises the provider of the right to request a hearing under 7 AAC 41.443 unless

(1) the provider indicates in writing that the provider no longer wants to participate in the program;

(2) the department has information evidencing that the provider is deceased; or

(3) the provider's whereabouts are unknown and mail directed to the provider's last known address was returned by the post office indicating no known forwarding address or that the forwarding address is an out-of-state address.

(d) In a circumstance described in (c)(1) - (3) of this section, the department will or the designee shall terminate program participation without prior notice.

(e) A family or provider aggrieved by a written determination made under this chapter to deny, suspend, or terminate program participation or the amount of payment under the program, except for intentional program violation determinations under 7 AAC 41.410 and 7 AAC 41.423, may request a hearing. A hearing for a family will be held under 7 AAC 49 and a hearing for a provider will be held under 7 AAC 41.443. (Eff. 6/23/2006, Register 178; am 115 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.407 is repealed and readopted to read:

7 AAC 41.407. Noncompliance and plans of correction. (a) A participating provider or a participating family using an in-home child care caregiver shall cooperate with the department or a designee for purposes of file reviews, monitoring reviews, inspections, or investigations to determine compliance with this chapter, including allowing access to the premises where child care is provided, relevant records, and children and staff for purposes of conducting interviews.

(b) If, after a compliance review under this section, the department or designee determines that a provider or family described in (a) of this section has failed to comply with one or more applicable requirements of AS 47.25.001 - 47.25.095 or this chapter, the provider or family described in (a) of this section shall submit to the department a plan of correction, stating a date on or before which compliance will be achieved.

(c) The department may conduct a follow-up inspection to determine compliance with the plan of correction required under (b) of this section. Refusing to comply with a plan of correction is an intentional program violation.

(d) The plan of correction required under (b) of this section must set out, for each violation identified,

- (1) each action that will be taken to cure the violation;
- (2) each measure that will be taken or change that will be made to ensure that the violation does not recur;
- (3) how the provider or family described in (a) of this section will monitor each corrective action to ensure that the violation is cured and will not recur; and
- (4) the date on or before which the violation will be cured.

(e) The plan of correction must be signed by the provider as described in (a) of this section or the hiring parent for the family as described in (a) of this section, for a violation.

(f) If the department determines that any recipients of services were affected by a violation, the department may also require the provider or family described in (a) of this section to describe

(1) each corrective action that will be taken with regard to those recipients; and

(2) how the provider or family described in (a) of this section will identify other recipients of services who might be affected by the violation, and what corrective action will be taken.

(g) The department will review a plan of correction submitted under this section to determine whether the plan is acceptable. If the department determines that the plan is unacceptable, the department may

(1) request additional information regarding one or more corrective actions described in the plan;

(2) require the provider or family described in (a) of this section to amend the plan as directed by the department;

(3) require the provider or family described in (a) of this section to comply with a plan of correction developed by the department under (i) of this section.

(h) If the department finds that the provider or family described in (a) of this section has failed to correct a violation of AS 47.25.001 - 47.25.095 or this chapter, has failed to submit a plan of correction for department approval, or has submitted an unacceptable plan, the department may require the family or the provider to participate in a plan of correction developed

by the department under (i) of this section.

(i) In a plan of correction developed by the department, the department will describe each violation, specify each corrective action that the provider or family described in (a) of this section must take to correct the violation, and specify the date on or before which the provider or family must cure the violation. The department will notify the provider or family in writing of a decision to require compliance with a plan of correction developed under this subsection, and will provide a copy of the plan of correction with the notice. In the notice, the department will describe any penalties under 7 AAC 41.425 the department intends to take, regardless of whether the violation is cured.

(j) The department may conduct a follow-up inspection to determine compliance with the plan of correction developed under (i) of this section. Refusing to comply with a plan of correction is an intentional program violation. (Eff. 6/23/2006, Register 178; am 1 / 5 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.410 is repealed and readopted to read:

7 AAC 41.410. Intentional program violations. (a) An intentional program violation is an action, inaction, or statement made by a family or provider to deliberately misrepresent, conceal, or withhold a material fact, resulting in establishing a benefit or payment to the family or the provider under this chapter, for which the family or the provider is not entitled. Refusing to comply with a required action under 7 AAC 41.375 or 7 AAC 41.407(c) or (j) also constitutes an intentional program violation. The department may impose a penalty upon the family or the

provider under 7 AAC 41.425 for an intentional program violation set out in (b) or (c) of this section. The department will impose a level of penalty necessary to ensure benefits are being paid in accordance with AS 47.25.001 - 47.25.095 and this chapter.

(b) A family is subject to penalty under the program for

(1) reporting incomplete or inaccurate information regarding the family's income or eligibility for benefits;

(2) providing false or misleading information, or withholding information, in order to receive benefits under the program.

(c) A provider or a family using an in-home child caregiver is subject to penalty for

(1) providing false or misleading information or withholding necessary information that results in an erroneous determination of eligibility or an erroneous payment of program benefits;

(2) failing to comply with requirements related to rates charged in accordance with 7 AAC 41.245;

(3) falsifying attendance records to reflect a higher amount of time a child was in care than actually occurred.

(d) If, after a compliance review or an investigation, a participating family or provider is believed by the department to have committed an intentional program violation, as defined in (a) of this section, the department may

(1) proceed against the accused family or provider through an intentional program violation hearing in accordance with 7 AAC 41.423; or

(2) refer the matter to the appropriate authorities for civil or criminal action in a

state or federal court.

(e) The department will, to the extent reasonably possible and within the periods allowed, coordinate action against a family or provider accused of an intentional program violation under (b) or (c) of this section with any known corresponding action being taken in other assistance programs administered by this state.

(f) An individual is disqualified from receiving child care assistance benefits or payment for benefits for the time period specified in (g) of this section if the individual

(1) is found, through an intentional program violation hearing under 7 AAC 41.423, to have committed an intentional program violation;

(2) has waived the individual's right to an intentional program violation hearing under 7 AAC 41.423;

(3) is found by a state or federal court to have committed an intentional program violation; or

(4) has signed an intentional program penalty consent agreement, confirmed by a court, in which the individual admits committing an intentional program violation.

(g) A family or a provider who is disqualified from child care assistance for an intentional program violation is ineligible to receive child care assistance benefits or payment for benefits as identified in (h) of this section or under 7 AAC 41.425(c) or (d).

(h) If a family or a provider receives a penalty or is disqualified under this section to receive child care assistance benefits or payment for benefits, by a hearing officer, by consent, or by a court under this section, the disqualification or penalty period begins on the date specified in the court order or relevant document. If that family or provider receives a penalty or is

disqualified by a hearing officer, by consent, or by a court that has not specified the date for initiating the penalty or disqualification period, the penalty or disqualification period begins on the first day of the second calendar month following the earliest of the date

(1) of the decision or document establishing the disqualification or penalty resulting from a hearing or a court action;

(2) that the family or provider waived the family's or provider's right to an intentional program violation hearing under 7 AAC 41.423;

(3) that the family or provider signed an intentional program violation consent agreement under (f)(4) of this section; or

(4) that a court rules that the family or provider has committed a crime involving an intentional program violation.

(i) When an action to impose an intentional program violation penalty against a family or provider is taken, the department will notify the penalized individual in writing. In the notice of intentional program violation penalty, the department will state the penalty and date that any penalty period begins and ends.

(j) A program violation penalty remains in effect, without possibility of an administrative stay, unless the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction.

(k) If an individual penalized or disqualified in another state for a child care assistance intentional program violation moves to this state, the department may

(1) impose the remaining period of any child care assistance penalty or disqualification originally imposed by the other state; and

(2) for any subsequent child care assistance intentional program violation committed in this state, consider all prior violations committed in another state when determining the penalty under 7 AAC 41.425 and this section.

(l) If the department imposes a penalty described in 7 AAC 41.425(a)(4) against a family or as described in 7 AAC 41.425(b)(2) or (3) against a provider, and after opportunity for a hearing under 7 AAC 41.423, the

(1) department will place the individual's name on the list maintained under 7 AAC 41.450 of ineligible individuals; and

(2) family or provider may not participate in or receive payments from PASS I, PASS II, or PASS III child care assistance until the name is removed from that list or the prohibited individual is no longer residing in the household. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.415 is repealed and readopted to read:

7 AAC 41.415. Determination of incorrect payment of program benefits. (a) If the department or designee determines there is reasonable evidence of an incorrect payment of program benefits for a participating family or to a participating provider, the department will or designee shall conduct one or more of the following methods of investigation:

(1) review and audit records in the files of the family, provider, designee, or department;

(2) make announced or unannounced inspections of the premises where child

care is provided;

- (3) interview family members, the provider, the provider's staff, and others;
- (4) review any other information available to the department;
- (5) take other actions necessary to determine whether an incorrect payment

occurred.

(b) The family or provider shall cooperate with the department or designee, provide any information requested during an investigation conducted under this section, and provide any information necessary to assist the department or designee in completing the investigation.

(c) Based on any investigation conducted under this section, the department will determine whether an incorrect payment of program benefits or an intentional program violation has occurred and will take action under 7 AAC 41.420 or 7 AAC 41.425 as appropriate. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.420 is repealed and readopted to read:

7 AAC 41.420. Incorrect payment of program benefits. (a) An incorrect payment of program benefits occurs if a family or provider receives a benefit or payment to which the family or provider is not entitled or does not receive a benefit or payment to which the family or provider is entitled under AS 47.25.001 - 47.25.095 and this chapter.

(b) If the department determines under 7 AAC 41.415(c) that an underpayment of program benefits for a participating family or to a provider has occurred, the department will provide written notice to the family or provider that includes

- (1) the determination and basis of that determination;
- (2) the dollar amount of the underpayment; and
- (3) how the department will correct the underpayment of program benefits.

(c) If the department determines under 7 AAC 41.415(c) that an overpayment of program benefits of \$100 or more to a family or provider has occurred, regardless of the cause, the department will provide written notice to the family or provider that

- (1) includes the determination, and the basis for that determination;
- (2) the dollar amount of the overpayment and the period over which the overpayment occurred; the department will not seek repayment of any overpayment that occurred earlier than 12 months before the discovery of the error;

(3) advises the family or provider of the requirement to develop a repayment plan;

(4) advises that if the family or provider refuses to cooperate in the development of a repayment plan within 30 days after receiving notice under this subsection, the department will take action to recover the overpayment through collection procedures or deduction from any future amounts paid under AS 47.25.001 - 47.25.095 and this chapter; and

(5) advises the family or provider of the right to request a hearing under 7 AAC 49 for families or 7 AAC 41.443 for providers.

(d) The department will consult with the family or provider to develop a repayment plan. Any repayment plan developed under this subsection must be approved by the department.

(e) If the department determines that a family or provider, or former family or provider, will suffer extreme hardship if required to repay the monthly amount agreed upon in the

repayment plan under (d) of this section, the department may

(1) allow the family or provider, or former family or provider, to make lower monthly payments; or

(2) temporarily suspend repayment for up to three months upon receipt of evidence of extreme economic hardship.

(f) The department may suspend efforts to collect an overpayment if collection activities are no longer cost-effective.

(g) If the family or provider fails to develop or comply with a repayment plan developed under (c) of this section, the department will

(1) take action to recover the overpayment through collection procedures or deduction from any future amounts paid under AS 47.25.001 - 47.25.095 and this chapter;

(2) in the case of a provider, remove the name of the provider from the list of eligible providers maintained by the department; the provider may not receive child care assistance benefits or payments until satisfaction of the repayment plan;

(3) in the case of a family, place the name of the family on the list maintained under 7 AAC 41.450 of ineligible individuals; a family including an ineligible individual may not receive PASS I, PASS II, or PASS III child care assistance or payments until the name is removed from the list; and

(4) provide a written notice to the family or provider that

(A) describes the action the department intends to take, and the effective date of that action; and

(B) advises the family of the right to request a hearing under 7 AAC 49 or

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provider of the right to request a hearing under 7 AAC 41.443.

(h) The department may discontinue collection efforts if the department has been unable to establish contact with a former family or provider for 10 consecutive years to develop a repayment plan, or obtain compliance with an established plan, under (c) of this section. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41 is amended by adding a new section to read:

7 AAC 41.423. Intentional program violation hearings. (a) If the department believes that a family or provider has committed an intentional program violation under 7 AAC 41.410 the department will refer the matter to the office of administrative hearings (AS 44.64.010) for scheduling of an intentional program violation hearing. After the office of administrative hearings sets a date and time for the hearing, the department will provide the family or provider with a written notice at least 30 calendar days before the scheduled date of the intentional program violation hearing. In the notice the department will include

- (1) the date, time, and location of the hearing;
- (2) the accusations against the family or provider;
- (3) a summary of the evidence to be presented by the department, and how and where the evidence can be examined;
- (4) a description of the availability of a hearing postponement, as specified in (b) of this section;
- (5) an explanation of the consequences of failure to appear at the hearing, as

provided in (c) of this section;

(6) instructions on how to claim good cause for failure to appear at the hearing, as provided in (d) of this section;

(7) an explanation of the intentional program violation and penalties as provided in 7 AAC 41.425 as applicable to the case scheduled for hearing;

(8) a statement that the hearing does not preclude the state or federal government from prosecuting the family or provider for an intentional program violation in a civil or criminal court action, or from recovery of an overpayment;

(9) an explanation of the public resources available that may provide free legal representation, and that the department is not responsible for providing legal representation;

(10) an explanation that the hearing may be held face-to-face or by telephone, at the administrative law judge's discretion;

(11) a statement that the accused family or provider has the right to remain silent and that anything said or signed by the family or provider concerning the accusations can be used against the accused family or provider in the hearing or a court of law; and

(12) a statement that the accused family or provider may waive the right to the intentional program violation hearing; in the statement the department will inform the family or provider

(A) of the date by which a signed waiver-of-rights form must be received by the department;

(B) that a waiver of rights will result in penalties up to and including disqualification, benefit reduction, and repayment obligations, even if the accused does

not admit to the facts as represented by the department; and

(C) that the family or provider may specify on the waiver-of-rights form whether the family or provider admits to the facts as represented by the department.

(b) An accused family or provider may request one hearing postponement of no more than 30 calendar days after the date of the first scheduled intentional program violation hearing if the request for postponement is received by the department at least 10 calendar days before the first scheduled hearing.

(c) If an accused family or provider fails to appear at an intentional program violation hearing, the administrative law judge shall

(1) hold the hearing without the accused family or provider;

(2) consider the evidence based on the information provided by the department;

and

(3) determine if an intentional program violation was committed.

(d) An accused family or provider who fails to appear, or have a representative appear, for a scheduled intentional program violation hearing has 10 calendar days after the date of the scheduled hearing to contact the office of administrative hearings, provide evidence of good cause for failure to appear, and request that a new hearing be scheduled. If the administrative law judge determines that the family or provider had good cause for not appearing, the administrative law judge shall schedule a new hearing and reopen the hearing record.

(e) An administrative law judge with the office of administrative hearings shall conduct a hearing under this section. After hearing the facts of the case and examining the evidence, the administrative law judge shall decide whether a family or provider has committed an intentional

program violation. The administrative law judge shall base a determination of intentional program violation on clear and convincing evidence that the family or provider committed, and intended to commit, an intentional program violation.

(f) At a hearing, the accused family or provider may choose self-representation, or to be represented by an attorney or any other person who may be helpful in defense of the accusation. If the accused family or provider chooses to be represented at the hearing by an attorney or any other person, the representative of the accused family or provider shall submit a completed permission form provided by the department, that is signed by the accused family or provider and the family's or provider's representative. For purposes of this subsection, the signature of an accused family is the signature of the accused individual within the family.

(g) The accused family or provider or the accused family's or provider's representative may

(1) examine the contents of the family's or provider's file, and all documents and records to be used at the intentional program violation hearing, at a reasonable time before the date of the hearing, and during the hearing;

(2) at the family's or provider's own expense, present at the hearing witnesses and documents pertinent to the case;

(3) establish relevant facts and circumstances;

(4) present oral and written arguments pertinent to the case; and

(5) question or refute any testimony or evidence, including the opportunity to cross-examine witnesses.

(h) If the accused family or provider is notified in advance, a hearing under 7 AAC 49

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for a family or a hearing for a provider under 7 AAC 41.443 that is based on the same or related circumstances as an intentional program violation hearing under this section may be combined by the administrative law judge into a single hearing.

(i) The administrative law judge shall render a decision within 90 calendar days after the date the accused family or provider received the notice of the hearing in accordance with (a) of this section. However, if the accused family or provider or the family's or provider's representative is granted a postponement, the 90-day time limit is extended for the same number of days that the hearing is postponed.

(j) If the administrative law judge determines that a family or provider has committed an intentional program violation, no further administrative remedy exists. However, the family or provider is entitled to seek relief in a court having appropriate jurisdiction. (Eff. 1/5/2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.425 is repealed and readopted to read:

7 AAC 41.425. Penalties for an intentional program violation. (a) A family found to have committed a child care assistance intentional program violation is subject to the following penalties:

(1) for the first child care assistance intentional program violation resulting in no dollar loss to the department, the department will impose a requirement limiting the family to a specific provider type appropriate to help ensure compliance for six months;

(2) for the first child care assistance intentional program violation resulting in a

dollar loss to the department, the department will impose

(A) a requirement limiting the family to a specific provider type appropriate to help ensure compliance for six months;

(B) a 10 percent reduction in child care assistance benefits for six months; and

(C) an obligation to repay the child care assistance program loss attributable to the intentional program violation regardless of the family's continued participation;

(3) for the second child care assistance intentional program violation regardless of dollar loss, the department will impose one or more of the following:

(A) a requirement limiting the family to a specific provider type appropriate to help ensure compliance for 12 months;

(B) a 20 percent reduction in child care assistance benefits for 12 months;

(C) an obligation to repay the child care assistance program loss attributable to the intentional program violation regardless of the family's continued participation;

(4) for the third child care assistance intentional program violation regardless of dollar loss, the department will impose an obligation to repay the child care assistance program loss attributable to the intentional program violation and permanently terminate a family from the program, including terminating authorizations.

(b) A provider found to have committed a child care assistance intentional program violation resulting in a loss of over \$100 is subject to the following penalties:

(1) for the first child care assistance intentional program violation, the department will impose the following requirements on the provider for continued participation in the child care assistance program:

(A) timely compliance with any corrective action plan issued by the department;

(B) repayment of the child care assistance program loss attributable to the intentional program violation in accordance with the department's established repayment plan and deadline; and

(C) cooperation with heightened and more frequent departmental reviews;

(2) for the second child care assistance intentional program violation, the department will impose a suspension from participation in the child care assistance program for six months, after which the department will require the following before the provider may again participate:

(A) timely compliance with any corrective action plan issued by the department;

(B) repayment of the child care assistance program loss attributable to the intentional program violation in accordance with the department's established repayment plan and deadline; and

(C) cooperation with heightened and more frequent departmental reviews;

(3) for the third child care assistance intentional program violation, the department will

(A) permanently disqualify the provider from participation in the child

care assistance program;

(B) remove the name of the provider from the list of eligible providers that is maintained under 7 AAC 41.445; and

(C) impose on the provider an obligation to repay the child care assistance program loss attributable to the intentional program violation.

(c) The department will or designee shall notify families participating in the program upon a provider's suspension or termination from the program. Care authorized for the month when the suspension or termination occurred remains effective but will be cancelled for any future months.

(d) A provider may request payment from the department for services provided under this chapter during the month the suspension or termination is determined. A provider may not request payment from the department for services provided under this chapter during the remaining period of suspension, or for services provided after termination from the program.

(e) The department will remove a suspended provider from the list of eligible providers that is maintained under 7 AAC 41.445, effective the date the department issues its final decision. If the provider continues to meet the applicable requirements of this chapter, the department will reinstate a provider to the list of eligible providers after the end of the provider's period of suspension.

(f) If termination from the program is imposed, the department will remove a provider from the list of eligible providers that is maintained under 7 AAC 41.445, effective the date the department issues its final decision. A termination imposed by a final department decision is permanent and the family or provider may not be approved to participate in the program as either

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a family or provider. (Eff. 6/23/2006, Register 178; am 115 /2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.430 is repealed and readopted to read:

7 AAC 41.430. Emergency suspension. (a) If the department determines that a provider's continued participation in the program will result in an imminent potential threat to the health, safety, or welfare of a child in care, the department may

- (1) immediately suspend program participation;
- (2) provide the provider a notice of an emergency suspension; initial notification may be oral; and
- (3) provide formal written notification of the final decision within 14 business days after the determination, and advise the provider of the right to request a hearing under 7 AAC 41.443.

(b) The emergency suspension is effective immediately, for a period necessary to allow the department to conduct an investigation and reach a final decision.

(c) A provider may not request payment from the department or the designee for services provided under this chapter during a period of an emergency suspension.

(d) The department will remove a suspended provider from the list of eligible providers that is maintained under 7 AAC 41.445. The department will reinstate a provider to the list of eligible providers after the end of a period of emergency suspension if the provider meets the applicable requirements of this chapter.

(e) A provider may request an expedited hearing on an emergency suspension. The

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request may be granted upon a showing of good cause. An expedited hearing shall be held within 60 days after the department's receipt of a request for a hearing. (Eff. 6/23/2006, Register 178; am 1 / 5 /2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.435 is repealed:

7 AAC 41.435. Request for administrative review. Repealed. (Eff. 6/23/2006, Register 178; repealed 1 / 5 /2017, Register 221)

7 AAC 41.440 is repealed:

7 AAC 41.440. Administrative review. Repealed. (Eff. 6/23/2006, Register 178; repealed 1 / 5 /2017, Register 221)

7 AAC 41 is amended by adding a new section to read:

7 AAC 41.443. Administrative hearing. (a) A provider who is not satisfied with a written determination under this chapter with regard to denying, suspending, or terminating the provider's ability to be a child care provider approved to participate or to the amount of payment received for services provided under the child care assistance program may request an administrative hearing under this section, except that the provider may not request an administrative hearing under this section regarding a determination under 7 AAC 41.423 of an intentional program violation.

(b) A request for an administrative hearing under this section must be submitted in

writing no later than 30 days after the date of the department's original decision.

(c) A request for an administrative hearing under this section must

(1) describe the issue or decision being appealed;

(2) specify the basis upon which the decision is challenged;

(3) include all information and materials that the provider requests the

department to consider in resolving the matter; and

(4) be submitted to the department at the address set out for requesting a hearing in the department's original decision.

(d) At any time during the hearing, the provider may be represented by an attorney or may be self-represented. A self-represented party may be assisted by a person who is not an attorney as provided in 2 AAC 64.160.

(e) Within 10 days after receipt of a timely request under this section, the department will either

(1) request that the chief administrative law judge appointed under AS 44.64.020 appoint an administrative law judge employed or retained by the office of administrative hearings to preside over a hearing requested under this section in accordance with AS 44.64.060 and 2 AAC 64; or

(2) deny the request in writing for reasons allowed by law, stating the reasons as required under AS 44.64.060(b) and 2 AAC 64.130, and forward notice of the denial to the party who requested the hearing and the office of administrative hearings.

(f) If a provider fails to submit a request under this section no later than 30 days after a department decision described in (b) of this section, the hearing request will be denied and the

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decision described in (b) of the section is the department's final administrative action.

(g) The provisions of this section do not apply to licensing-related actions conducted under AS 47.05, AS 47.32, or 7 AAC 10. (Eff. 1 / 5 / 2017, Register 221)

Authority: AS 47.25.001 AS 47.25.041

7 AAC 41.445 is amended by adding a new subsection to read:

(b) The department will remove a provider found to be ineligible under this chapter from the list of eligible providers and bar the provider from program participation until the period of ineligibility ends and the provider complies with the requirements of all applicable corrective action and repayment plans. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

Editor's note: A copy of the list of eligible providers referred to in 7 AAC 41.445 may be obtained from the Department of Health and Social Services, Child Care Program Office, **3601 C Street, Suite 140, P.O. Box 241809** [619 E. SHIP CREEK AVENUE, SUITE 230], Anchorage, Alaska **99524-1809** [99501-1677]. The list is also available on the department's **Internet** website at **<http://dhss.alaska.gov/dpa/pages/ccare>**. [HTTP://HEALTH.HSS.STATE.AK.US/DPA/PROGRAMS/CCARE/]

7 AAC 41.450 is repealed and readopted to read:

7 AAC 41.450. Department debarment of ineligible individuals. (a) The department will debar from program participation a family found to be ineligible under this chapter because

of

- (1) a penalty described in 7 AAC 41.425(c) for an intentional program violation;
- (2) failing to comply with a repayment plan developed under 7 AAC 41.420; or
- (3) failing to cooperate with the development of a repayment plan.

(b) A family including a debarred individual may not participate in the child care assistance program. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001

7 AAC 41.990 is repealed and readopted to read:

7 AAC 41.990. Definitions. (a) In this chapter, unless the context requires otherwise,

- (1) "adult" means an individual who is 18 years of age or older;
- (2) "age group" means an age group described in 7 AAC 41.025(b);
- (3) "approved provider" means a provider described in 7 AAC 41.201(d) who has been found eligible to participate in the child care assistance program;
- (4) "approved in-home child care caregiver" means an in-home child care caregiver who is approved under 7 AAC 41.370(d);
- (5) "ATAP" means the Alaska Temporary Assistance Program under AS 47.27;
- (6) "attendance" means the time during which a child is actually in the care of a provider;
- (7) "attendance rate" means a full or part day rate for the actual time that a child is in care;
- (8) "authorized" means contained in a child care authorization;

(9) "business day" means a day other than Saturday, Sunday, or a federal holiday;

(10) "category of care" means a classification of child care described in 7 AAC

41.025(b) and specified in a child care authorization;

(11) "child," when that term is used to refer to

(A) a child receiving child care services under this chapter, has the meaning given that term in AS 47.25.095;

(B) the children of a family, for purposes of determining family eligibility, means an individual younger than 18 years of age;

(12) "child care" has the meaning given "day care" in AS 47.25.095;

(13) "child care assistance program" means the program described in 7 AAC

41.010;

(14) "child care authorization" means the written authorization regarding program assistance issued under 7 AAC 41.340;

(15) "clean" has the meaning given in 7 AAC 10.9990;

(16) "contaminate" or "contamination" has the meaning given in 7 AAC 10.9990;

(17) "contract" means an agreement between the department and a designee, under which the department provides money to the designee to carry out the program under AS 47.25.001 - 47.25.095 and this chapter;

(18) "CPR" means cardiopulmonary resuscitation;

(19) "day" means calendar day;

(20) "department" means the Department of Health and Social Services;

(21) "designee" means a municipality or other entity that has been designated by

the department to assume one or more of the department's duties under this chapter;

(22) "easily cleanable" has the meaning given in 7 AAC 10.9990;

(23) "eligible cost of care" means the program rate set under 7 AAC 41.025 or the provider's charge for services, whichever is less;

(24) "eligible family" means a family that meets the requirements of this chapter for receiving program benefits;

(25) "eligible provider" means a licensed provider or an approved provider determined by the department or a designee to be eligible to participate in the program;

(26) "enrollment rate" means a rate based on a schedule of an estimated number of units of a care per month, regardless of the actual time a child is in care;

(27) "family" means a group described in 7 AAC 41.013;

(28) "food" has the meaning given in 7 AAC 10.9990;

(29) "grant" has the meaning given "contract" in this section;

(30) "handsink" means a lavatory

(A) equipped to provide hot and cold running water in a manner that meets the requirements of 7 AAC 41.220(c)(4)(H); and

(B) used solely for washing hands, face, arms, or other portions of the body;

(31) "homeless," with respect to a child or a family with one or more children, has the meaning given "homeless" with respect to a child under 42 U.S.C. 11434a(2) (McKinney-Vento Homeless Assistance Act), revised as of December 10, 2015 and adopted by reference;

(32) "impervious bag" has the meaning given in 7 AAC 10.9990;

(33) "in care" means receiving care in a provider's facility;

(34) "in-home child care" means child care services provided in the child's own home by an approved in-home child care caregiver;

(35) "in-home child care caregiver" means an individual who provides child care services in the child's own home;

(36) "in loco parentis" means a person acting in place of a parent, such as a relative or friend who assumes parental duties and responsibilities, but without the formalities of legal guardianship or adoption;

(37) "licensed provider" means a provider licensed under AS 47.32 and 7 AAC 57;

(38) "month" means a calendar month;

(39) "monthly enrollment rate" means a rate based on a schedule of an estimated number of units of care per month;

(40) "municipality" has the meaning given in AS 01.10.060;

(41) "night shift" means employment requiring a minimum of six work and travel hours between 8:00 p.m. and 6:00 a.m.;

(42) "non-temporary," with respect to a period of time, means

(A) not having a limit specified; or

(B) having a limit that exceeds three months;

(43) "parent" means a

(A) parent by blood, marriage, or adoption;

(B) legal guardian of a child; or

(C) person standing in loco parentis;

(44) "participating family" means a family that the department has determined to be eligible to participate in the program and to whom the department has issued a current child care authorization;

(45) "participating provider" means a provider that the department has determined to be eligible to participate in the program and that is providing child care services under a child care authorization;

(46) "PASS" means Parents Achieving Self-Sufficiency;

(47) "pest" has the meaning given in 7 AAC 10.9990;

(48) "potable water" has the meaning given in 7 AAC 10.9990;

(49) "program" means the child care assistance program under AS 47.25.001 - 47.25.095 and this chapter;

(50) "provider" means

(A) a provider licensed under 7 AAC 57; for purposes of this subparagraph, "provider" has the meaning given "day care facility" under AS 47.25.095;

(B) a provider described in 7 AAC 41.200(a)(2), (3), and (4);

(C) an approved provider; and

(D) a family who has been approved to hire an in-home child care caregiver under 7 AAC 41.370;

(51) "registration fee" means a charge associated with the initial or annual enrollment of a child by a provider;

(52) "regularly provides care" means that a child is enrolled for regular care with a provider, regardless of whether that child receives full-time or part-time care;

(53) "relative" means a child who, by marriage, blood, or court decree, is the

(A) grandchild or great-grandchild of the provider;

(B) niece or nephew of the provider; or

(C) sibling of the provider if the provider lives in a separate residence;

(54) "sanitize" has the meaning given in 7 AAC 10.9990;

(55) "single-use" has the meaning given in 7 AAC 10.9990;

(56) "special needs," with respect to a child, means a child

(A) within the meaning of "child with a disability" under 20 U.S.C. 1401 (sec. 602, Individuals with Disabilities Education Act);

(B) who is eligible for early intervention services under 20 U.S.C. 1431 - 1444 (part C, Individuals with Disabilities Education Act); or

(C) who is younger than 13 years of age and who is eligible for services under 29 U.S.C. 794 (sec. 504, Rehabilitation Act of 1973);

(57) "subcontract" means a binding legal agreement that provides for an organization or an individual other than the designee to carry out the administrative duties required by a grant or contract under this chapter;

(58) "toilet" has the meaning given in 7 AAC 10.9990;

(59) "unit of care" means a fixed duration of child care time in relation to a rate, such as part or full day rate, or part or full month enrollment rate;

(60) "work" means an activity described in 7 AAC 41.312;

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(61) "work activities" has the meaning given in AS 47.27.900.

(b) In the definition of "developmental disability" in AS 47.25.095, "disability" means a condition attributable to one or more mental or physical impairments that are severe, chronic, and likely to continue indefinitely. (Eff. 6/23/2006, Register 178; am 1 / 5 / 2017, Register 221)

Authority: AS 47.05.010 AS 47.25.001 AS 47.25.095

MEMORANDUM


State of Alaska
Department of Law

To: Hon. Byron Mallott
Lieutenant Governor

Date: December 6, 2016

File No.: JU2016200208

Tel. No.: 465-3600

From: Steven C. Weaver 
Sr. Assistant Attorney General
and Assistant Regulations Attorney
Legislation and Regulations Section

Re: Department of Health and Social
Services omnibus update to
regulations re: child care assistance
(7 AAC 41)

We have reviewed the attached regulations from the Department of Health and Social Services against the statutory standards of the Administrative Procedure Act. I have reviewed this project under a specific delegation dated December 1, 2016 from the Regulations Attorney. The regulations are an omnibus update of procedures and requirements for the child care assistance program, in particular addressing families seeking financial assistance for child care services from qualifying relative providers or seeking financial assistance to hire in-home child care caregivers.

We find no legal problems. This memorandum constitutes the written statement of approval under AS 44.62.060(b) and (c) that authorizes your office to file the attached regulations.

The April 29, 2016 public notice and the December 5, 2016 adoption order both state that this action is not expected to require an increased appropriation. Therefore, a fiscal note under AS 44.62.195 is not required.

Hon. Byron Mallott, Lieutenant Governor
Our file: JU2016200208

December 6, 2016
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Please note that 7 AAC 41.200(c), on page 16 of the attached regulations, contains a placeholder for a date that is timed to the effective date of the regulations. Once the regulations are filed and the effective date thus established under AS 44.62.180, we request that your office make handwritten edits to substitute the correct date for the placeholder text.

SCW

cc w/enc: (via email)

Hon. Valerie "Nurr'araaluk" Davidson, Commissioner
Department of Health and Social Services

Triptaa Surve, Regulations Contact
Department of Health and Social Services

Jon Sherwood, Deputy Commissioner
Department of Health and Social Services

Monica Windom, Acting Director
Division of Public Assistance
Department of Health and Social Services

Janice Braden
Division of Public Assistance
Department of Health and Social Services

Alex J. Hildebrand, Assistant Attorney General
Human Services Section

MEMORANDUM

State of Alaska Department of Law

TO: Hon. Byron Mallott
Lieutenant Governor

DATE: December 1, 2016

FILE NO.: JU2016200208

TELEPHONE NO.: 465-3600

FROM: Susan R. Pollard *SRP*
Chief Assistant Attorney General
& Regulations Attorney
Legislation/Regulations Section

SUBJECT: Specific delegation of authority
regarding regulations review on
Department of Health and Social
Services omnibus update to
regulations re: child care
assistance (7 AAC 41)

By this memorandum, I am delegating my authority as Regulations Attorney under AS 44.62 to Assistant Attorney General Steven C. Weaver for the above-referenced regulations project. Under this delegation of authority, Steven Weaver has my full authority under AS 44.62 to conduct the legal review under AS 44.62 and take necessary actions on this regulations project.

If you have questions, please let me know.

SCW

cc w/enc: Scott C. Meriwether, AAC Coordinator
Office of the Lieutenant Governor

Steven C. Weaver
Sr. Assistant Attorney General
Legislation/Regulations Section

AFFIDAVIT OF NOTICE OF PROPOSED REGULATION
AND FURNISHING OF ADDITIONAL INFORMATION

I, Triptaa Surve, Project Coordinator, of Department of Health & Social Services, being sworn, state the following:

As required by AS 44.62.190, notice of the proposed adoption of changes to 7 AAC 41, dealing with the Child Care Assistance Program, has been given by being

- (1) published in a newspaper or trade publication;
- (2) furnished to interested persons;
- (3) furnished to appropriate state officials;
- (4) furnished to the Department of Law, along with a copy of the proposed regulation;
- (5) furnished electronically to incumbent State of Alaska legislators;
- (6) furnished to the Legislative Affairs Agency, Division of Legal and Research Services;
- (7) posted on the Alaska Online Public Notice System as required by AS 44.62.175(a)(1) and (b) and 44.62.190(a)(1);
- (8) furnished electronically, along with a copy of the proposed regulation, to the Legislative Affairs Agency, the chair of the Health & Social Services and Finance Committees of the Alaska Senate and House of Representatives, the Administrative Regulation Review Committee, and the legislative council.

As required by AS 44.62.190, additional regulation notice information regarding the proposed adoption of the regulation changes described above has been furnished to interested persons and those in (5) and (6) of the list above. The additional regulation notice information also has been posted on the Alaska Online Public Notice System.

Date: July 21, 2016 4




Triptaa Surve, Project Coordinator

Subscribed and sworn to before me at Commissioner's Office, Anchorage on
7/20/16

(date)





Notary Public in and for the State of Alaska

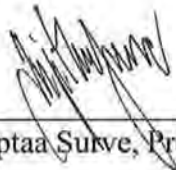
AFFIDAVIT OF AGENCY RECORD OF PUBLIC COMMENT

I, Triptaa Surve, for the Department of Health & Social Services, being duly sworn, state the following:

In compliance with AS 44.62.215, the Department of Health & Social Services has kept a record of its use or rejection of factual or other substantive information that was submitted in writing as public comment and that was relevant to the accuracy, coverage, or other aspect of the Department of Health & Social Services regulation on Child Care Assistance Program.

Date:


July 20, 2016


Triptaa Surve, Project Coordinator

Subscribed and sworn to before me at

Commissioner's Office, Anchorage on

7/20/16
(date)

 w/ office
Notary Public in and for the State of Alaska

[NOTARY SEAL]



NOTICE OF PROPOSED OMNIBUS CHANGES TO THE CHILD CARE ASSISTANCE PROGRAM IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

The Department of Health & Social Services proposes to adopt regulation changes in Title 7 of the Alaska Administrative Code, dealing with the child care assistance program, including: reorganization of sections; clarification, description and addition of program provisions and requirements; repeal of sections as no longer applicable; and addition, removal and amendment of definitions. These proposed changes to 7 AAC 41 will include the following articles:

Article 1. Administrative Provisions (7 AAC 41.010 – 7 AAC 41.060). Proposed changes to this article include: reorganizing and clarifying how the Department administers the program; making clarifications to what is meant by licensed, family, day, and participation of a debarred family or provider; eliminating a type of unlicensed provider; adding and amending inspection and investigation requirements; changing the payment amount for in-home caregivers; clarifying criteria for a provider to be eligible for an enhanced rate; amending how payment will be made when payment for a month is authorized, but complete attendance does not occur; changing the method of payment calculation for less than full time attendance; amending to allow payment to a provider for the required notice timeframe; eliminating a unit of care option; amending waitlist priorities for families; and clarifying the eligibility criteria and application process for the Alaska Inclusive Child Care Program.

Article 2. Provisions for Providers (7 AAC 41.200 – 7 AAC 41.270). Proposed changes to this article include: reorganizing its contents for clarification purposes; clarifying and amending the requirements and descriptions for providers; amending where providers may provide care; amending and clarifying requirements for providing care as relative provider; eliminating a type of unlicensed provider; expanding the eligibility and qualification descriptions and requirements for each provider type; amending the training and documentation requirements for approved relative providers and in-home caregivers; amending the age requirement for providing a safety report; amending the notice requirements for discontinuing care for a child; adding requirements for working with a child with special needs; adding requirements for cooperating with investigations and inspections; amending requirements for relative providers to provide developmentally appropriate activities; adding a section regarding behavior guidance; reorganizing and amending requirements related to health, medication and nutrition, including for providers to meet established health, hygiene, immunization, medicine storage and food requirements; changing the use of substitute caregivers; adding new health and safety requirements for relative providers including requirements related to water temperature, toilet facilities, safety gates on stairs, outlet covers, animals, toxic substances, and poisonous plants; adding a time requirement for providers to submit billings for payment; and adding a section to allow approved relative providers to apply for general variances.

Article 3. Provisions for Families (7 AAC 41.300 – 7 AAC 41.375). Proposed changes to this article include: clarifying and amending the requirements and program descriptions for families; changing the certification period for families; amending allowable family activities; amending the financial eligibility requirements; amending time allowances for travel and job searching; amending the reporting requirements for families; amending allowable work requirements; clarifying when a parent may be unable to provide child care; adding asset limit requirements for families to be eligible; allowing for provisional approval of high need families while information is verified; amending notice requirements to providers; amending eligibility for payments for families engaged in the business of child care; amending

how families pay providers; requiring the recovery of benefit overpayments; amending how income is determined for eligibility; amending the definition of an eligible child; amending payment requirements for in-home caregivers; amending when a family may use an in-home caregiver; amending billing requirements; and addressing compliance reviews for families.

Article 4. General Provisions (7 AAC 41.400 – 7 AAC 41.450). Proposed changes to this article include: clarifying and amending provisions generally applicable to the child care assistance program; clarifying and amending the administrative disqualification and hearing process; amending the process for communication between providers and program designees; changing the requirements regarding releases of information from a family; amending the notice requirements for adverse action by the Department; changing requirements for addressing a regulation non-compliance; amending and further defining the process of establishing intentional violations, incorrect payments, recoupment of overpayments, administrative disqualification, sanctions, and penalties; and amending how review of an agency decision can be sought including the appeal process.

Article 5 Definitions (7 AAC 41.990). Proposed changes to this article include revisions, additions and removal of the definitions of terms found elsewhere in 7 AAC 41, including definitions for: age groups; approved provider; attendance rate; hand sink; homeless; inactive status; in-home child care; in-home child care caregiver; in loco-parentis; night shift; non-temporary; participating provider; regularly provides care; relative; special needs; and units of care.

You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments to Department of Health & Social Services, Child Care Program Office, Amanda Manning at P.O. Box 241809, Anchorage AK 99524. Additionally, the Department of Health & Social Services will accept comments by facsimile at (907) 269-4536 or toll free at 1-888-224-4536 and by electronic mail at amanda.manning@alaska.gov. The comments must be received not later than 5 p.m., on June 13, 2016.

You may submit written questions relevant to the proposed action to Amanda Manning by email at amanda.manning@alaska.gov or at 3601 C Street, Suite 140, Anchorage, AK 99503. The questions must be received at least 10 days before the end of the public comment period. The Department of Health & Social Services will aggregate its response to substantially similar questions and make the questions and responses available on the Alaska Online Public Notice System at <https://aws.state.ak.us/OnlinePublicNotices/default.aspx> and agency website at <http://dhss.alaska.gov/dpa/Pages/ccare/default.aspx>.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Amanda Manning at amanda.manning@alaska.gov or (907) 269-4516 not later than May 31, 2016, to ensure that any necessary accommodations can be provided.

A copy of the proposed regulation changes is available on the Alaska Online Public Notice System and by contacting Amanda Manning at amanda.manning@alaska.gov or (907) 269-4516.

A copy of material proposed for adoption by reference may be viewed at the agency's office at 3601 C Street, Suite 140, Anchorage AK, 99524.

After the public comment period ends, the Department of Health & Social Services will either adopt the

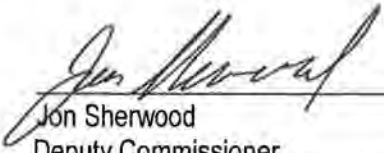
proposed regulation changes or other provisions dealing with the same subject, without further notice, or decide to take no action. The language of the final regulation may be different from that of the proposed regulation. **You should comment during the time allowed if your interests could be affected.**

Statutory authority: AS 44.29.020; AS 47.05.010; AS 47.05.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.25.001; AS 47.25.021; AS 47.25.031; AS 47.25.041; AS 47.25.051; AS 47.25.095; AS 47.32.010; AS 47.32.030; AS 47.32.090; AS 47.32.110.

Statutes being implemented, interpreted, or made specific: AS 44.29.020; AS 47.05.010; AS 47.05.020; AS 47.05.300; AS 47.05.310; AS 47.05.320; AS 47.05.330; AS 47.05.340; AS 47.25.001; AS 47.25.021; AS 47.25.031; AS 47.25.041; AS 47.25.051; AS 47.25.095; AS 47.32.010; AS 47.32.030; AS 47.32.090; AS 47.32.110.

Fiscal information: The proposed regulation changes are not expected to require an increased appropriation.

DATE: 4-21-16


Jon Sherwood
Deputy Commissioner
Department of Health & Social Services

ADDITIONAL REGULATION NOTICE INFORMATION
(AS 44.62.190(d))¹

1. Adopting agency: Department of Health and Social Services, Division of Public Assistance, Child Care Program Office
2. General subject of regulation: Child Care Assistance Program
3. Citation of regulation (may be grouped): 7 AAC 41.010 – 7 AAC 41.990
4. Department of Law file number, if any: JU2016200208
5. Reason for the proposed action:
 - (X) Compliance with federal law or action (identify): Child Care and Development Block Grant Act of November 2014
 - () Compliance with new or changed state statute
 - () Compliance with federal or state court decision (identify): _____
 - (X) Development of program standards
 - () Other (identify): _____
6. Appropriation/Allocation: N/A
7. Estimated annual cost to comply with the proposed action to:
A private person:
Child Care Providers may be affected as follows based on the child care provider type:
 - **Approved Relative Child Care Providers:**
 - Pre-service (orientation) training costs. Currently, this is estimated to be \$247.50 per person through Alaska's statewide Child Care Resource and Referral Network (CCR&R). The Child Care Program Office is working with CCR&R to further develop this training at the most reasonable cost.
 - Proposed regulation revisions to 7 AAC 41.205(c)(1), background check requirements for any individual in the household, will be lowered from at least 18 years of age to at least 16 years of age. This cost is \$20 per person.
 - Total potential cost for Approved Relative Child Care Providers: \$247.50 for training and \$20 for household members at least 16 years of age (lowered from 18 years of age).
 - **Approved In-home Providers:**
 - In-home caregivers will have pre-service (orientation) training costs. Currently, this is estimated to be \$247.50 per person through Alaska's statewide Child Care Resource and Referral Network (CCR&R). The Child Care Program Office is working with CCR&R to further develop this training at the most reasonable cost.
 - Proposed revisions to 7 AAC 41.370(b)(2)(D) requires that to be approved, the family must submit verification that their in-home caregiver has received age appropriate CPR and first aid certifications for the children in care. This will cost on average \$93.00 per person.

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AFFIDAVIT OF PUBLICATION

STATE OF ALASKA
THIRD JUDICIAL DISTRICT

Emma Dunlap
being first duly sworn on oath deposes and
says that he/she is a representative of the
Alaska Dispatch News, a daily newspaper.
That said newspaper has been approved
by the Third Judicial Court, Anchorage,
Alaska, and it now and has been published
in the English language continually as a
daily newspaper in Anchorage, Alaska, and
it is now and during all said time was
printed in an office maintained at the
aforesaid place of publication of said
newspaper. That the annexed is a copy of
an advertisement as it was published in
regular issues (and not in supplemental
form) of said newspaper on

April 29, 2016

and that such newspaper was regularly
distributed to its subscribers during all of
said period. That the full amount of the fee
charged for the foregoing publication is not
in excess of the rate charged private
individuals.

Signed

Emma Dunlap

Subscribed and sworn to before me
this 29th day of April, 2016

Bethney Thompson

Notary Public in and for
The State of Alaska.
Third Division
Anchorage, Alaska
MY COMMISSION EXPIRES



NOTICE OF PROPOSED OMNIBUS CHANGES TO THE CHILD CARE ASSISTANCE PROGRAM IN THE REGULATIONS OF THE DEPARTMENT OF HEALTH & SOCIAL SERVICES

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