Minnesota Department of Human Services

STATEMENT OF NEED AND REASONABLENESS

Proposed Permanent Rules Relating to the Child Care Fund, Minnesota Rules, chapter 3400.

Governor's Tracking No. 375

INTRODUCTION

The Child Care Assistance Program (CCAP) helps to make quality child care affordable for low income families who are working, going to school, or looking for work by giving eligible families money to help pay their child care expenses. There are three CCAP subprograms: Minnesota Family Investment Program (MFIP) Child Care Assistance Program, Transition Year (TY) and Transition Year Extension (TYE) Child Care Assistance Program, and Basic Sliding Fee Child Care Assistance Program (BSF). Generally, MFIP participants are eligible for child care assistance for child care used while they participate in activities authorized by their employment or education plans. People who leave MFIP generally are eligible for TY child care assistance and TYE child care assistance for child care used while they participate in employment or job search activities. Finally, low income families who are not MFIP or Transition Year participants can receive child care assistance under the BSF Program if they meet income and activity eligibility requirements. Participants in all programs must meet the same general eligibility requirements and must contribute toward the cost of their child care according to a sliding fee schedule based on family income.

Counties administer the Child Care Assistance Program with oversight from the Department of Human Services (DHS). The Child Care Assistance Program is funded by money from federal, state, and county governments. Federal funds are paid from Temporary Assistance to Needy Families (TANF) and the Child Care and Development Fund (CCDF); state funds are paid from the general fund but money appropriated for child care assistance often is referred to in statute and rule as the child care fund. The amount of the county's mandatory contribution is determined by a statutory formula. Counties also have the option of contributing additional county dollars toward the Child Care Assistance Program. The MFIP, TY, and TYE Child Care Assistance Programs are fully funded programs. The BSF Program, however, has a capped allocation. Because the BSF Program is not fully funded, some counties do not have enough funds to serve all the families who want and who are eligible for child care assistance. Counties therefore must establish waiting lists and must manage their child care assistance funds carefully to ensure that the county serves as many families as possible yet protects the stability of assistance for participating families by not serving more families than funds allow. Another consequence of this limited allocation is that in counties where the demand for child care assistance exceeds the supply, any policy that helps one family obtain and continue to use child care assistance delays the receipt of child care assistance for another family on the waiting list.

The child care assistance rules were last amended in 2001. Since that time, state oversight of the Program was transferred to DHS from the Department of Children, Families & Learning. DHS also is developing a statewide, electronic system to administer child care assistance, which has been named the Minnesota Electronic Child Care (MEC^2) Integrated system. This system will be implemented in all counties beginning in February, 2008. In addition, the legislature has made numerous changes to the statutes governing child care assistance since 2001. To ensure that the child care assistance rules reflect these developments, DHS began a new rulemaking process in January, 2007. In the summer of 2007, DHS appointed an advisory committee to assist with the rulemaking. The committee had members from a wide range of constituencies including parents, providers, child care resource and referral agencies, advocacy groups, county agencies, other DHS programs, and legislators. The committee members represented rural and metropolitan areas. The advisory committee met twice during the fall of 2007. DHS now is ready to pursue adoption of the proposed rule amendments.

ALTERNATIVE FORMAT

Upon request, this notice can be made available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the DHS Communications Office. TTY/TDD users can call the Minnesota Relay Service at 711 or (800) 627-3529. For the Speech to Speech Relay, call (877) 627-3848.

STATUTORY AUTHORITY

DHS's statutory authority to adopt the rules is set forth in several statutes. Initially, DHS has general rulemaking authority in Minnesota Statutes, section 256.01, subdivision 4, that allows it to make rules necessary to carry out is duties under this section. DHS also has rulemaking authority specific to the Child Care Assistance Program. Minnesota Statutes, section 119B.02, subdivision 1, provides:

> The commissioner shall develop standards for county and human services boards to provide child care services to enable eligible families to participate in employment, training, or education programs. Within the limits of available appropriations, the commissioner shall distribute money to counties to reduce the costs of child care for eligible families. The commissioner shall adopt rules to govern the program in accordance with this section. The rules must establish a sliding schedule of fees for parents receiving child care services. The rules shall provide that funds received as a lump sum payment of child support arrearages shall not be counted as income to a family in the month received but shall be prorated over the 12 months following receipt and added to the family income during those months. . . . The commissioner may adopt rules under chapter 14 to implement and coordinate federal program requirements.

Minnesota Statutes, section 119B.02, subdivision 3, provides:

The commissioner shall adopt rules under chapter 14 that establish minimum administrative standards for the provision of child care services by county boards of commissioners.

Minnesota Statutes, section 119B.04, subdivision 2, provides that "[t]he commissioner may adopt rules under chapter 14 to administer the child care and development fund." Minnesota Statutes, section 119B.06, subdivision 2, provides that "[t]he commissioner may adopt rules under chapter 14 to administer the child care development block grant program."

The statutory authority in Minnesota Statutes, sections 119B.02, subdivision 1; 119B.04, subdivision 2; 119B.06, subdivision 2, and 256.01, subdivision 4, was adopted before January 1, 1996 and therefore is exempt from the 18-month requirement in Minnesota Statutes, section 14.125. The statutory authority in Minnesota Statutes, section 119B.02, subdivision 3, was adopted in 1999 and had an effective date of July 1, 1999. DHS published a notice of intent to adopt rules on December 26, 2000. Because the notice of intent to adopt rules was published within 18 months of the effective date of the new grant of rulemaking authority, DHS met the requirements of Minnesota Statutes, section 14.125, and now can amend the rules enacted in that initial rulemaking.

Finally, in 1997, the legislature amended Minnesota Statutes, section 119B.04, subdivision 2, which gives the commissioner the authority to adopt rules to administer the federal Child Care and Development Fund. 1997 Minn. Laws, ch. 162, art. IV, § 18. These amendments did not affect the commissioner's rulemaking authority in this area because the amendments simply changed the references to this fund to reflect the new name given to the fund in Public Law Number 104-193, Title VI, section 601. *Id., see also* Public Law Number 104-193, Title I, section 103 (c) (repealing fund's former "at-risk" name).

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

REGULATORY ANALYSIS

Factors (1), (2), (5) and (6):

(1) "a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;" (2) "the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;" (5) "the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;" and (6) "the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals."

In general, DHS, county governments, child care providers, and families receiving child care assistance will both bear the costs of and benefit from the proposed rules.

Specifically, DHS, counties, and the employees who administer CCAP will benefit from the proposed rules because the rule amendments bring the rules into conformity with current statutes and allow many administrative tasks to be automated. Since 2001, the legislature has made many changes to the laws governing CCAP. For example, the legislature has required all legal nonlicensed providers to undergo background investigations and to meet other statutory requirements to be authorized to receive payment from child care assistance. The legislature also created the Diversionary Work Program. Because the current rules do not reflect these statutory changes, it can be difficult for DHS and county program staff to determine which provisions of the rule are still valid. Amending the rules to remove obsolete language and clarify the remaining provisions will make it easier for administrators to implement the laws governing CCAP. In addition, adopting rules that standardize administrative procedures makes it easier and less expensive for DHS to automate those procedures. Automating procedures also will ease administration of the program for county administrators.

DHS, the counties, and the employees who administer CCAP also will bear some of the costs of the proposed rules because these employees will need to spend time learning about the new provisions. Because most of the rule provisions, however, simply codify existing policies, the time spent in training should be minimal. In addition, DHS plans to conduct training on MEC^2 in the near future. Training about the new rule provisions can be incorporated into the training for MEC^2. In short, because the rules primarily clarify or codify existing procedures, the rules do not impose new administrative burdens on program staff.

The probable costs of the proposed rule to DHS, other agencies, and county governments should be negligible and there will be no effect on state revenues. Initially, no other state agency is affected by the proposed rules. Although some employee training about the new rules may be necessary, this training should not lead to additional costs for DHS or for counties because it will be minimal and it can be incorporated into training already being planned for MEC^2. In addition, automating some administrative tasks should reduce some administrative costs. Because standardizing administrative rules makes automation of the Program possible, the funds saved due to automation can partially be attributed to the proposed rules. These savings will offset any minimal costs associated with learning about and implementing the new rules. In addition, since 2001, CCAP has become more complex but no additional administrative funds have been made available to the counties. The rule amendments better align administrative responsibilities with the reimbursement currently supported by statute. *See* Minn. Stat. § 119B.15 (discussing administrative funds).

Child care providers will benefit from the proposed rules because the rules clarify their rights and responsibilities, standardize procedures across counties, and make automation of the Program possible. For example, Minnesota law now provides that providers are responsible for overpayments. Minn. Stat. § 119B.11, subd. 2a. Proposed rule part 3400.0187, subpart 6, specifies how overpayments must be collected from providers, thereby standardizing this process

across the state and enabling the collection process to be automated. The proposed rules also standardize procedures across counties by standardizing billing forms, billing procedures, and payment processes, which should increase the accuracy and timeliness of provider payments. Finally, providers would like the opportunity to submit bills electronically because this speeds payment to them. Although electronic billing is not part of the initial rollout of MEC^2, changes are being made in the proposed rules that will allow this feature to be added at a later date.

The proposed rules should not create any probable costs for child care providers because the rules do not impose any new requirements on providers. Instead, the rule provisions simply add detail to requirements already imposed on providers by statute. For example, Minnesota Statutes, section 119B.11, subdivision 2a, requires overpayments to be collected from providers in certain situations. The proposed amendments to Minnesota Rules, part 3400.0187, subpart 6, simply specify how those overpayments should be collected.

Families eligible for or receiving CCAP will benefit from the proposed rules because they clarify child care assistance procedures. For example, Minnesota Statues, section 119B.13, subdivision 7, discusses the statewide policy for payment of absent days and up to ten state or federal holidays. The proposed amendments to part 3400.0110, subpart 9, clarify this statutory provision by specifying what days constitute state or federal holidays under the statute and how a family may substitute other holidays for those specified in rule.

Families also will benefit from the proposed rules because they ensure that similarly-situated families have equal access to benefits by codifying policies that currently are applied differently across the state. For example, some counties did not allow students to receive child care assistance for time spent working during school breaks unless the student met the minimum work requirements for employed people. The rule amendments clarify that the lower minimum work requirements for students continue to apply to students on break as long as the student is expected to return to school full-time after the break. Similarly, the codification of other policies in the proposed rules, such as specifying that the income limits at program entry do not apply when a recipient moves to a new county and continues to receive benefits, ensures that similarly-situated families are treated similarly across the state and therefore have equal access to benefits.

The proposed rules should not create any probable costs for families using child care assistance because the rules do not impose any new requirements on families. Instead, the rule provisions simply add detail to requirements already imposed on families by statute. For example, as discussed above, Minnesota Statutes, section 119B.13, subdivision 7, establishes the requirements for payment of absent days and state or federal holidays. The proposed amendments clarify which holidays constitute state or federal holidays and how a family can exercise its right under the statute to substitute a different cultural holiday for a state or federal holiday but do not add any additional requirements to those already in statute. Other rule amendments simply codify policies that are already being used by child care assistance. For example, the proposed amendment to part 3400.0040, subpart 5, provides that when families have more than two adult parents, stepparents, or other caregivers in the home, all caregivers must be in authorized activities. Because Minnesota Statutes, section 119B.011, subdivision 13, already defined "family" broadly

enough to include all adult caregivers in the home, child care assistance already was requiring all adult caregivers in a home to be in authorized activities to be eligible for child care assistance. The amendments to the rule therefore simply codify this existing policy.

If the proposed rules are not adopted, DHS, counties, and employees will continue to spend time trying to determine which rules have been superceded by statute. In addition, without the proposed rules, many of the policies and procedures on which MEC^2 is based will not be enforceable, which would reduce the utility of the system. Further, if the proposed rules are not adopted, child care providers will not know which rule provisions have been superseded by statute or how overpayments will be collected under MEC^2. Families receiving child care assistance also may be confused about which rules still are valid if the proposed rules are not adopted. Finally, there will be less statewide consistency in requirements for providers and families if the rules are not adopted.

Factors (3) and (4):

(3) "a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule" and (4) "a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule"

The purpose of the proposed rules is to clarify and codify policies for the administration of child care assistance. Although DHS could issue Bulletins describing the policies and procedures that counties should use to administer the Program, publishing these policies and procedures in Bulletins would not give them the force and effect of law. In addition, it would be an unwise use of public resources to develop a statewide automated system to administer child care assistance if the policies and procedures on which the system was based were not enforceable. To ensure that the policies and procedures in the rules can be enforced and to ensure that MEC^2 is based on policies that are enforceable, DHS decided to pursue this rulemaking instead of pursuing less costly or intrusive alternatives to rulemaking.

Few alternatives to the proposed rule amendments were considered because many of the amendments bring the rules into conformance with statute. For these amendments, DHS had no discretion to consider alternative methods or language. Similarly, many other rule amendments clarify or codify procedures that will be automated in MEC^2. During the development process for MEC^2, the system developers discussed alternative procedures with DHS program staff, county users, and child care providers. The group made decisions for the design of the system based on the needs of families, providers, and county staff, the cost of programming particular policy options, and the need for uniformity in program administration. It would be extremely expensive to change the design of the system at this point in its development. Changing the design of the system also would delay its implementation. For these reasons, DHS did not seriously consider any alternatives to a proposed rule that would have required changes to the design of MEC^2.

"(7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference"

There are no differences between the proposed rules and existing federal regulations.

PERFORMANCE-BASED RULES

There were few opportunities for performance-based rules in this proceeding because many of the amendments bring the rules into conformance with statutory changes. For these amendments, DHS had no discretion to consider alternative methods or language that would give flexibility to regulated parties. In addition, as discussed under factors three and four of the regulatory analysis, DHS had to standardize child care assistance policies and procedures to efficiently and cost-effectively automate those administrative functions. Because standardization is necessary to implement MEC^2 and because the proposed rules must codify many of the policies that were standardized for MEC^2, there were few opportunities to give regulated parties flexibility in this rulemaking.

Despite these limitations, DHS was able to propose rules that give counties flexibility in one area. DHS is proposing amendments to part 3400.0040, subpart 14, that will give counties more flexibility to approve second education plans. Currently, counties cannot approve an education plan for someone who has already completed an education plan unless more than one year has passed and the person has not been able to find work. By repealing these two requirements, the proposed rules give counties the flexibility to approve second education plans for participants. This flexibility will be helpful because economic conditions in each county are different and counties now will be able to approve second education plans for people who need additional schooling to reach self-sufficiency. This amendment does not require any changes to the design of MEC^2 because approval of education plans is done outside the MEC^2 system.

ADDITIONAL NOTICE

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a March 25, 2008, letter by Administrative Law Judge Kathleen D. Sheehy.

Our proposed Additional Notice Plan consists of the following actions.

1. Publishing the Dual Notice and the Proposed Rules in the State Register.
2. Mailing the Dual Notice and the Proposed Rules to people on DHS's registered rulemaking list by regular or electronic mail according to each person's stated preference.
3. Posting the Dual Notice and the Proposed Rules on the DHS website.
4. Sending the Dual Notice and the Proposed Rules to the following groups by interoffice or electronic mail:
    a. the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over child care assistance (interoffice mail),
    b. county directors, county child care assistance client access contacts, and county child care assistance administrative contacts (electronic mail),
    c. employment and training services providers (electronic mail), and

d. members of the Child Care Assistance Rule Advisory Committee (electronic mail).

5. Sending the Dual Notice and the Proposed Rules, along with a request that news of the rulemaking be spread to the entity's clients or members, to the following groups by electronic mail:
   a. Child Care Resource and Referral agencies,
   b. Head Start directors,
   c. advocacy group contacts,
   d. child care provider professional associations,
   e. child care provider professional development grantees,
   f. contacts in other agencies, and
   g. tribal contacts.

6. Discussing the Dual Notice and the Proposed Rules at regularly-scheduled meetings with county stakeholders, such as the Minnesota Association of County Social Services Administrators Rules Committee meeting.

We believe our Additional Notice Plan complies with the statute because it is a reasonable effort to notify persons or classes of persons who might be significantly affected by the proposed rules. Specifically, county and tribal administrators affected by the proposed rules will be notified by electronic mail, the posting on the DHS website, the State Register, and discussions at regularly-scheduled meetings with DHS staff. Child care providers will receive notice through the posting on the DHS website, the Child Care Resource and Referral agencies, their professional organizations, and the professional development grantees. Parents will receive notice through the DHS website, the State Register, the advocacy group contacts, and the tribal contacts.

DHS plans to use electronic mail, rather than regular mail, to send the Dual Notice and the Proposed Rules because DHS and CCAP now regularly communicate by electronic mail, rather than regular mail, with county child care assistance contacts, Child Care Resource and Referral agencies, employment service providers, Head Start directors, child care provider professional development grantees, tribal contacts, and contacts in other agencies. Because these entities now expect communications from DHS to come by electronic mail, sending the Dual Notice and the Proposed Rules by regular mail would delay the delivery of this notice and could cause the listed entities to overlook the mailing. DHS also has developed a list of electronic mail addresses for contacts on the advocacy group list. Delivering the Dual Notice and the Proposed Rules by electronic mail to the advocacy group contacts will ensure that these groups receive notice as soon as possible and are able to distribute the notice to their constituents as quickly as possible. The Child Care Assistance Program has created a database that contains the names and electronic mail addresses of people included in each of the groups listed in the notice plan. Printouts of the names and contact information of the larger groups currently in the database are attached to this request for illustrative purposes. Because the information in the database is continuously updated, however, the actual mailing list probably will change before the Dual Notice and the Proposed Rules are mailed.

CONSULT WITH FINANCE ON LOCAL GOVERNMENT IMPACT

As required by Minnesota Statutes, section 14.131, the Department has consulted with the Commissioner of Finance. We did this by sending to the Commissioner of Finance copies of the documents sent to the Governor's Office for review and approval by the Governor's Office prior to the Department publishing the Notice of Intent to Adopt. We sent the copies on January 31, 2008. The documents included: the Governor's Office Proposed Rule and SONAR Form; draft rules; and SONAR. The Department of Finance sent a letter dated March 21, 2008, with its comments.

COST OF COMPLYING FOR SMALL BUSINESS OR CITY

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed $25,000 for any small business or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city.

The Department has made this determination based on the probable costs of complying with the proposed rule, as described in the regulatory analysis section above. Initially, the proposed rules do not apply to small cities. Consequently, these cities cannot incur any costs to comply with the proposed rules. Further, as discussed in the regulatory analysis beginning on page three above, the proposed rules do not impose any new duties on child care providers or any other small businesses. Instead, the proposed amendments simply bring the rules into conformance with existing statutes or add detail to procedures already required by statute. Consequently, any costs incurred by child care providers here are due to statute, not the proposed rules.

LIST OF WITNESSES

If these rules go to a public hearing, the Department anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Cherie Kotilinek, Department of Human Services.
2. Dawn Van Ryn, Department of Human Services.
3. Jodi Pope, Department of Human Services.

RULE-BY-RULE ANALYSIS

Part 3400.0020, subpart 10a, and subpart 38b. Minnesota Statutes, section 119B.09, subdivision 6, provides that 120 hours is the maximum amount of child care assistance that may be authorized for a family in a two-week period. Within this limit, the county authorizes the hours of child care for which the family is eligible based on the number of hours that the parent is

working, going to school, or looking for work. In addition to determining the total number of child care hours for which a family is eligible, the county also must determine how many hours of child care that the family actually needs. For example, for a parent who has a typical Monday through Friday work schedule, the county generally would authorize the number of hours necessary for travel and work time and would schedule the care to be delivered on Monday through Friday. For a parent with a work schedule that varies, however, the parent may not need care on all work days, particularly weekends or evenings, because the other parent may be available to care for the children at those times. Consequently, for a parent with a varied work schedule, the county still would authorize the number of hours necessary for travel and work time but would work with the family to determine how much child care actually was needed and how that care should be scheduled. On some weeks, a parent with a varied schedule may be authorized for full-time child care but may be scheduled for less than full-time child care because care is not needed for all work days.

Currently, the rules do not distinguish between the care authorized for a family and the care scheduled for a family. The failure to define these terms has caused confusion. For example, confusion arose about whether to pay a provider for a day when a child did not attend child care because the family did not need care due to the parent's work schedule but during a week when the child was authorized for full-time care. It is reasonable to remove this confusion by adding definitions of "authorized hours" and "scheduled hours" that explain the difference between these two concepts.

Part 3400.0020, subpart 18a; and part 3400.0060, subpart 5, item B; part 3400.0080, subpart 8; part 3400.0090, subparts 1, 2, 3, 4; part 3400.0170, subpart 12 - In 2003, the legislature created the Diversionary Work Program (DWP.) 2003 Minn. Laws 1st Spec. Sess., ch. 14, art. 1, § 102 (codified at Minn. Stat. § 256J.95). Child care assistance is available for DWP participants. Minn. Stat. § 119B.05, subd. 1. Consequently, a definition of DWP must be added to the definition section of the rule and references to DWP must be added to several other rule parts to ensure that these parts continue to conform to statute.

Part 3400.0020, subpart 20 and 32a, and also part 3400.0040, subpart 12, and part 3400.0060, subpart 5, item B; part 3400.0080, subparts 1a, 1b, and 8 – MFIP no longer uses the term "eligible relative caregiver" to refer to the adult who cares for a child receiving a child-only MFIP grant. Similarly, MFIP no longer uses the term "MFIP caregiver" to refer to a parent who is receiving MFIP. Instead, MFIP now broadly defines the term "caregiver" when determining eligibility for MFIP. Minn. Stat. § 256J.08, subd. 11. The child care assistance definition of "applicant" and "family," however, still use the term "eligible relative caregiver" to specify who is eligible for child care assistance. Minn. Stat. § 119B.011, subds. 2; 13. The amendments to the definition of "eligible relative caregiver" in chapter 3400 are necessary to bring this definition into conformity with the new MFIP terminology while ensuring that no one loses eligibility for child care assistance.

In addition, only parents, stepparents, legal guardians, eligible relative caregivers, and their spouses are eligible for child care assistance. Minn. Stat. § 119B.011, subd. 2 (definition of applicant). Under a strict interpretation of this language, a grandparent or other adult could enter

the Child Care Assistance Program as an eligible relative caregiver but would no longer be eligible for CCAP once the family left MFIP and the person no longer was an eligible relative caregiver. Other statutory language, however, specifies that as long as they remain eligible, families leaving MFIP must receive transition year child care assistance and then move into BSF child care assistance. *See* Minn. Stat. §§ 119B.03, subd. 4 (discussing priority in BSF for transition year families); 119B.05, subd. 1 (specifying that transition year families are eligible for child care assistance). To clarify that a person who enters CCAP as an eligible relative caregiver remains eligible for CCAP after the family leaves MFIP, a sentence is being added to this subpart to specify that the person's status as an eligible relative caregiver continues for child care assistance purposes until there is a break in the family's eligibility. It is reasonable to end the person's status as an eligible relative caregiver when there is a break in eligibility because the person then will have to reapply for CCAP and the person's status should be re-established as part of the application process.

Because the term "MFIP caregiver" is being repealed, the references to this term must be repealed or replaced with the more accurate term "MFIP participant" in the other subparts listed above.

Part 3400.0020, subpart 24 – The copayment fee schedule in rule has been repealed because it was replaced by a statutory fee schedule. 2005 Minn. Laws 1st Spec. Sess. ch. 4, art. 3, § 19. The amendment to the definition of copayment fee is necessary to remove the reference to the repealed rule provisions. In addition, the statutes use the term "parent fee" to refer to the contribution that parents must make to their child care expenses. *See e.g.* Minn. Stat. § 119B.12. Parents and providers participating in CCAP, however, use the term "copayment" or "copay" to refer to this contribution. To tie the term commonly used in the community with the term used in statute, the definition of "family copayment fee" is being amended to refer to the term "parent fee" and its statutory location.

Part 3400.0020, subpart 33 - In 2003, the legislature determined that providers also could be responsible for child care overpayments in some situations. *See* Minn. Stat. § 119B.11, subd. 2a (c) (directing counties to recover overpayments from providers in some situations). To reflect this new legislation, a reference to provider overpayments must be added to the definition of overpayment in part 3400.0020, subpart 33.

Part 3400.0020, subpart 39 – Until July 1, 2003, copayment fees were calculated using the state median income for a family of four, adjusted for family size. Minn. Stat. § 119B.12, subd. 2 (2002). On July 1, 2003, the federal poverty guidelines became the basis for calculating copayment fees. 2003 Minn. Laws 1st Spec. Sess, ch. 14, art. 9, § 20 (codified at Minn. Stat. § 119B.12, subd. 2). Beginning July 1, 2008, copayment fees will again be calculated using state median income but based on the income for a family of three, adjusted for family size. 2007 Minn. Laws, ch. 147, art. 2, § 8. To bring the rules into conformity with the new requirements for calculating copayment fees, the definition of state median income must be amended.

Part 3400.0020, subpart 40 – The current definition of student lists a minimum number of credits or hours that a student must attend to have full-time or part-time student status. Since the rule was

last amended, however, the number and type of schools has grown and many of these institutions do not use credits or hours of classroom training as a measure. Additionally, schools that do use credits or hours of classroom training as a measure of full-time or part-time student status do not always use the same number of hours or credits to confer the same status. To reflect changes in the way education is delivered, the minimum attendance requirements in subpart 40 must be replaced with language that ties the status of the student to the criteria used by the student's school.

Part 3400.0035, subpart 1 – Informing child care assistance families about the other child-related programs listed in part 3400.0035, subpart 1, helps those families to take advantage of the benefits of the listed programs. School Readiness is a program that could help many families using child care assistance. Consequently, School Readiness must be added to the list of programs about which counties must tell child care assistance families.

Part 3400.0035, subpart 2 – Minnesota Statutes, section 119B.03, subdivision 4, creates funding priorities for families on the Basic Sliding Fee waiting list. For example, the highest priority for funding is given to minor parents who do not have high school or general equivalency diplomas or who need other remedial or basic courses. *Id.* When a family calls to ask about child care assistance in a county with a waiting list, the county should put the family on the highest priority waiting list for which the family is eligible because the family then receives child care assistance according to the statutory priorities. The amendment to part 3400.0035, subpart 2, is necessary to specify this requirement.

Part 3400.0035, subpart 5, item E, and part 3400.0040, subpart 4, and part 3400.0185, subpart 2 – Most child care providers require private-pay parents to provide notice before the parent leaves the provider. Most providers also require private-pay parents to pay for those notice days regardless of whether the child is in care during those days. Part 3400.0040, subpart 4, requires a family receiving child care assistance to give the county and the family's provider 15 days' notice before changing providers unless there is alleged child abuse by the provider or a complaint that the health and safety of a child in care is in danger. Part 3400.0035, subpart 5, item E, requires the family to be alerted of this reporting obligation in the approval notice. Part 3400.0185, subpart 2, requires the county to give a provider 15 days' notice before ending a provider's child care assistance payments unless there is alleged child abuse by the provider or a complaint that the health and safety of a child in care is in danger.

If the provider requires all parents to pay for notice days, the county continues to make child care assistance payments to the provider during the 15 notice days. If the county did not make these payments, the parent would be responsible for this obligation. When child care assistance is paid to a provider for notice days, child care assistance cannot be paid to any other provider being used by the family during those days because child care assistance can only pay one provider for a time period. In cases involving alleged abuse or complaints that the health and safety of a child is in danger, the family can immediately remove a child from care without giving notice before the removal and the county can immediately stop payments to the provider.

The rule language regarding alleged abuse and complaints of danger has proven to be difficult to administer because this language does not require a finding of abuse or danger nor

specify who must make the abuse or danger determination. Consequently, under the current rule language, a simple allegation of abuse or a complaint of danger is sufficient to justify the immediate removal of a child from care without notice to the provider or to the county. Allowing a family to remove a child from care, thereby depriving a provider of payment for the 15 notice days, based solely on unsubstantiated allegations or complaints is not fair to providers.

In addition, each county has a licensing division that is responsible for overseeing licensed family child care in the county. In some situations, a parent would claim that a provider abused or endangered a child but the county licensing entity would find no basis for those claims. In these situations, the child care assistance rule authorizes the parents to immediately remove the child from care without providing notice to the provider. The rule then requires the county to deny payment to the provider immediately on the grounds of alleged abuse or endangerment even though another unit in the same county has already determined that the parent's allegations were groundless. The current rule language therefore forces a county to take inconsistent actions in response to the same set of facts.

To avoid these problems, it is necessary to amend the rules to require more than an allegation of abuse or a complaint of danger to justify the immediate termination of payment to a provider. The standard proposed for immediate termination of payment to a provider licensed by the State of Minnesota is whether the licensed provider's license has been temporarily immediately suspended by licensing. The standard proposed for immediate termination of payment to a legal nonlicensed provider, license exempt center, or provider licensed by an entity other than the state of Minnesota is whether conditions in the unlicensed setting meet the criteria used by licensing to determine whether to issue a temporary immediate suspension of a licensed provider's license. Under the temporary immediate suspension criteria, a license holder's business is immediately closed when the actions of the license holder or an individual in the program or the conditions of the program "pose an imminent risk of harm to the health, safety, or rights of persons served by the program." Minn. Stat. § 245A.07. subd. 2. The criteria for issuing a temporary immediate suspension therefore constitute the licensing standards for when children should be immediately removed from a provider's care.

Applying the licensing standard for temporary immediate suspensions to child care assistance providers is reasonable because it protects children in care while ensuring that the same criteria for immediate removal from care applies to providers for both licensing and child care assistance. Applying the licensing standard to a legal nonlicensed provider, license exempt center, or provider licensed by an entity other than the state of Minnesota ensures that all child care assistance providers are subject to the same safety standard. Also, because licensing already determines whether a child in the care of a Minnesota-licensed provider is in imminent danger, it is reasonable to rely on the licensing decision regarding temporary immediate suspension for terminating child care assistance. Relying on the licensing determination for child care assistance also avoids any potential for conflicting determinations within one county. Because legal nonlicensed providers, license exempt centers, and providers licensed by an entity other than the state of Minnesota are not regulated as child care providers by the county, it is reasonable to assign the responsibility for the imminent danger decision to the county child care assistance unit that authorized these providers for child care assistance purposes.

Part 3400.0035, subpart 6 – In 2006, the legislature limited the number of absent days that child care assistance can pay to a provider in a year. Minn. Stat. § 119B.13, subd. 7. An absent day is a day when a child is scheduled to be in care but is absent. In 2007, the legislature amended Minnesota Statutes, section 119B.13, subdivision 7, to require a provider to be notified of the number of absent days that a child has used in the year. 2007 Minn. Laws, ch. 147, art. 2, § 13. The amendment to part 3400.0035, subpart 6, adds this requirement to the list of information that must be given to a provider when the family's child care assistance application has been approved.

A reference to the family's authorized provider is being added to part 3400.0035, subpart 6, to clarify that the approval notice cannot be sent to the provider until the provider has been authorized as the family's provider.

Part 3400.0040, subpart 3, item A, subitem (6) – The word "activity" is being added to this part to clarify that a person's status as a working person or a student, by itself, does not make the person eligible for child care assistance. Many times, a person may be employed or going to school but the person does not need child care because the person is doing those activities when the child is in school or being cared for by the other parent. To determine how much child care the person needs, the person must document the work or educational activities that the person is participating in each day. The rule must be amended to clarify this requirement.

Part 3400.0040, subpart 3, item C, and part 3400.0180, item A – In the past, when a family reported a change in an eligibility factor, many counties conducted a complete review of the family's eligibility, which required the family to document anew every eligibility factor. Minnesota Statutes, section 119B.025, subdivision 1 (b), now provides that when a family reports a change in an eligibility factor, the county must recalculate eligibility without requiring verification of any eligibility factor that did not change. To reflect this new provision, the language in part 3400.0040, subpart 3, item C, requiring a complete redetermination whenever there is a change in one eligibility factor is being repealed. In part 3400.0180, item A, language repeating the new statutory requirement is replacing the obsolete provisions in this part.

Part 3400.0040, subpart 5 – This subpart provides that when a family has two of the caregivers listed in the rule who are living in the family home, the family is eligible for child care assistance only if (1) both caregivers are working, going to school, or looking for work or (2) one caregiver is engaged in those activities and the other is unable to care for the child due to a medical reason.

Family situations, however, can be very complicated. Since the rule was written, child care workers have come across several families where more than two of the caregivers listed in the rule were living in the home. Because Minnesota Statutes, section 119B.011, subdivision 13, defines "family" as including parents, stepparents, guardians and their spouses, or eligible relative caregivers and their spouses living in the same home, child care assistance has interpreted the rule to mean that all caregivers in a home must be participating in authorized activities or be medically unable to care for the children in order for the family to be eligible for assistance. At least one administrative appeal, however, has held that part 3400.0040, subpart 5, does not apply to all caregivers in a multi-caregiver family because this subpart only refers to "two" caregivers. The

rule therefore must be amended to clarify that a family is not eligible for child care assistance unless all of the caregivers listed in the rule who are in the home are participating in authorized activities or are medically unable to care for the children.

Part 3400.0040, subpart 7 – The maximum amount of child care that can be authorized is 120 hours in a two-week period. The title of this subpart therefore is being changed from "weekly" to "biweekly."

Part 3400.0040, subpart 8, item C; and part 3400.0170 - Minnesota Statutes, section 119B.011, subdivision 15, defines income for child care assistance purposes as earned or unearned income received by family members. The statute then goes on to list several things that are excluded from income. *Id.* Despite this statutory definition, several rule parts refer to "gross" income. Because the definition of income created in statute for child care assistance is not gross income, the word "gross" must be repealed in the rules where it modifies the word "income."

Part 3400.0040, subpart 8, item D – This subpart is being amended to clarify that child care assistance will pay for child care provided during the time when a parent is scheduled to work. As discussed above, child care assistance is authorized based on a parent's work schedule. *See* Minn. Stat. § 119B.10, subd. 1 (b) (employed persons who work an average of 20 hours per week are eligible for continued child care assistance). Occasionally, a parent may be scheduled to work on a certain day but may be sent home early or may be told not to report at all shortly before that day's shift. Under current policy, child care assistance would pay for the child care authorized for that day because the parent was scheduled and ready to work but could not actually work due to a last-minute employer decision. This policy, however, is not applied consistently across the state. To ensure that all counties authorize care on a consistent basis according to the parent's work schedule, the rule must be amended to specifically state that child care must be authorized for the number of hours that the parent is scheduled to work.

Part 3400.0040, subpart 9 - This subpart must be amended to incorporate the correct terminology used by the Child Care Assistance Program. In the Program, child care assistance is authorized, not granted.

Part 3400.0040, subpart 10 – This part is discussed under part 3400.0110, subpart 3.

Part 3400.0040, subpart 11 – Full-time students who work at least ten hours per week and who receive at least the minimum wage for all hours worked can receive child care assistance for child care provided during their working hours. Minn. Stat. § 119B.10, subd. 1 (b). Many full-time students, however, have breaks during the year when school is not in session. Some counties believed that because school was not in session, the person was no longer a student and could not receive child care assistance for employment unless the student met the 20-hour per week threshold required for employed participants. To clarify this misconception, it is necessary to specify in the rule that full-time students retain their full-time status for purposes of the ten-hour minimum employment requirement during school breaks if the student is expected to return to school after the break.

Part 3400.0040, subpart 12, is discussed under part 3400.0020, subpart 20.

Part 3400.0040, subpart 14, item C – Currently, a student can change an education program any time before the program is completed by obtaining the county's approval of the change. Minn. R. 3400.0040, subpart. 15. But if the student waits until even one day after the program is over, the student must meet the more stringent requirements in part 3400.0040, subpart 14, item C. In addition, some students initially work towards an associate degree in an area and later want to work towards a bachelor's degree in the same area that will give them more opportunities to move toward self-sufficiency. To give students more flexibility to pursue education that will help them move toward self-sufficiency and to remove the unfairness that can occur when a person does not know that she must request a change in an education program before the program is completed, part 3400.0040, subpart 14, item C, must be amended. To ensure that child care assistance, however, does not create an incentive for a person to become a long-time student instead of working, the language limiting a person to only two education plans must be retained. In addition, counties have the authority to define the criteria that an education plan must meet before the county will approve that plan. Minn. Stat. § 119B.07. These county criteria apply to second education plans. *Id.* Finally, although the rule is being amended to allow counties to approve a second education plan immediately after the completion of a first education plan, the rule does not require counties to take this step. Counties still may require students who have completed one education plan to wait one year and to be unsuccessful at obtaining employment before pursuing a second education plan as long as the county includes these criteria in its county child care fund plan.

Part 3400.0040, subpart 14, item D – Child care assistance may be used so that a person can complete an education program. Minn. Stat. § 119B.07. Minnesota Statutes, section 119B.011, subdivision 11, however, specifies that an "education program" excludes post-baccalaureate programs. Post-baccalaureate means education obtained after the person has obtained a baccalaureate degree. *See* Merriam Webster OnLine Dictionary (defining baccalaureate as a bachelor's degree conferred by a college or university). Consequently, by law, CCAP cannot be used to pay for education for someone who already has a baccalaureate degree. Part 3400.0040, subpart 14, item D, however, provides that CCAP can pay for classes necessary for a person to update their baccalaureate degree to keep or obtain employment. For example, if a person has a teaching degree, CCAP cannot pay for the person to obtain another degree but could pay for the classes necessary for the person to obtain or retain a teaching license. Many people, however, have misunderstood part 3400.0040, subpart 14, item D, to mean that CCAP could pay for any college classes necessary to obtain any job even if those classes would lead to another baccalaureate degree. To clarify the true meaning of the rule and to ensure that the rule does not exceed the statutory prohibition against post-baccalaureate programs, part 3400.0040, subpart 14, item D, must be amended to clarify that the specified coursework must be related to the person's first baccalaureate degree or the person's current employment.

Part 3400.0040, subpart 18 – Part 3400.0040, subpart 18, provides that a family's child care assistance case should be suspended when a family remains eligible for child care assistance but does not need child care at the present time. Suspension typically occurs when a family has school-age children who do not need care during the school year but who do need care during the summer months. Putting the family's case into suspended status in the county's electronic child

care assistance management system ensures that the family will not be lost in that system.

There are other times, however, when a family is eligible for child care assistance but the family is not actually receiving any benefits because their provider has not yet been authorized. *See* Minn. Stat. § 119B.125, subd. 1. When the delay in authorization is due to the provider's failure to return the required authorization forms within 30 days, the county puts the family in suspended status. The word "suspended" is used because this is another situation where the family remains eligible for CCAP but benefits are not currently being paid on the family's behalf. The county puts the family in suspended status to ensure that the family will not be lost in the system.

Under MEC^2, counties will continue to put families in suspended status when benefits are not being paid due to the provider's failure to return authorization forms within 30 days. To ensure that the rule reference to suspension includes this current practice, the discussion of suspension in part 3400.0040, subpart 18, is being amended to include a situation where the family does not have an authorized provider.

Part 3400.0060, subpart 5, item B, is discussed under part 3400.0020, subpart 18a.

Part 3400.0060, subpart 5, item C – The legislature has changed the income eligibility requirements for child care assistance. *See* Minn. Stat. § 119B.09, subd. 1 (listing income eligibility requirements). The income limit in part 3400.0060, subpart 5, item C, now is obsolete and must be amended to conform to the new statutory limit.

Part 3400.0060, subpart 6 – In the past, DHS tracked the total number of students on the waiting list. DHS no longer tracks this figure. Instead, DHS only tracks the people who need remedial education and who therefore are placed in the first priority category on the waiting list. *See* Minn. Stat. § 119B.03, subd. 4 (first priority for child care assistance is given to those who need remedial education to pursue employment). Because the requirement to identify students is obsolete, it must be repealed.

Part 3400.0060, subpart 7 – Transition year child care assistance pays for child care during the first year after a family leaves MFIP. During this transition year, the family is placed on the county's waiting list for BSF child care assistance. Many times, however, the transition year family did not reach the top of the county's BSF waiting list by the end of the transition year and, consequently, the family lost its child care assistance. To address this problem, the legislature created transition year extension child care assistance. Minn. Stat. § 119B.011, subd. 20. Transition year extension child care assistance is used to fund a family's child care during the time after the family's transition year has ended until basic sliding fee funds are available for the family. Part 3400.0060, subpart 7, must be amended to incorporate the statutory language defining transition year extension child care assistance.

Part 3400.0060, subpart 9 – Portability pool funding is funding for families receiving child care assistance who move to counties that have waiting lists. Portability pool funding is intended to pay for the family's child care expenses until the family is able to reach the top of the new county's waiting list and move into that county's BSF program. If BSF funding is not available by the time

that the six–month portability pool period is over, however, the family's child care assistance must be terminated. Minn. Stat. § 119B.03, subd. 9.

The legislature changed the deadline for applying for portability pool basic sliding fee funding from 30 days to 60 days. Minn. Stat. § 119B.03, subd. 9. Part 3400.0060, subpart 9, item A, must be amended to reflect this new time period. In addition, because child care assistance is a seamless program for participants moving between counties, the statutory income limits for program entry do not apply when a family receiving child care assistance moves to a new county and submits a child care assistance application to the new county within 60 days. There has been some confusion, however, about how the statutory income limits for program entry apply to families moving between counties. To clarify this confusion, part 3400.0090, subpart 9, item A, must be amended to specify that the income limits do not apply to current participants who move between counties and who apply before the 60-day deadline in the new county.

Item B must be amended to clarify that when the family's child care assistance was terminated because basic sliding fee funds were not available for the family at the end of the six-month portability pool period, the family must be treated like a new applicant when it does reach the top of the waiting list and basic sliding fee funds are available. Item B also must be amended to clarify that the family has to be placed on the waiting list according to portability pool priority group and not according to any other priority group status that the family may have.

Part 3400.0060, subpart 10 – Part 3400.0060, subpart 10, lists the time limits for receiving child care assistance that are specified in statute. This subpart, however, does not include one of the applicable statutory time limits. It also no longer correctly references another applicable statutory time limit. To ensure that all the applicable statutory time limits are correctly included in this list, the education program limit must be added to the subpart and the citation for the at-home infant program must be corrected.

Part 3400.0080, subpart 1 – Part 3400.0080, subpart 1, simply repeats the statutory language explaining which families were eligible for Minnesota Family Investment Program (MFIP) child care assistance in 2001 when the rules were last amended. *See* Minn. Stat. § 119B.05 (2000). Minnesota Statutes, section 119B.05, subdivision 1, however, has been amended since 2001. *See* 2003 Minn. Laws 1st Spec. Sess., ch. 14, art. 9, § 12. To ensure that the rules do not become outdated again due to statutory changes, part 3400.0080, subpart 1, is repealed.

Part 3400.0080, subparts 1a, 1b, and 8 are discussed under part 3400.0020, subpart 20, and part 3400.0060, subpart 5, item B.

Part 3400.0090 – The addition of "DWP" to subparts 1 through 4 is discussed under part 3400.0060, subpart 5, item B. Because Minnesota Statutes, section 256K.07 has been repealed, the sentence referring to this statute in part 3400.0090, subpart 2, item B, also must be repealed. As discussed above, the legislature changed the income eligibility requirements for child care assistance. Consequently, part 3400.0090, subpart 2, item C, must be amended to refer to the statutory location of the new income limits. Finally, part 3400.0090, subpart 2, must be amended to ensure that retroactive transition year child care is granted according to the statute governing this

eligibility date.

Part 3400.0090, subpart 7, must be repealed because it is unnecessary. Minnesota Statutes, chapter 256G, governs a county's financial responsibility for an individual or a family who is participating in a program administered by the commissioner of human services when that individual or family moves to a new county. Before 1995, child care assistance was administered by the commissioner of human services. In 1995, however, child care assistance was moved from DHS to the Department of Children, Families & Learning. Programs administered by the commissioner of children, families & learning are not subject to the provisions of Minnesota Statutes, chapter 256G. Consequently, to ensure that the provisions of chapter 256G continued to apply to child care assistance, the rule was amended in 2001 to add a reference to chapter 256G. In 2003, however, child care assistance was moved back to DHS. Because child care assistance again is a program administered by the commissioner of human services, Minnesota Statutes, chapter 256G, again applies to the program and the references to that chapter that were added to the rule in 2001 now are unnecessary.

Part 3400.0100, subpart 2a, and part 3400.0180, item C; part 3400.0187, subpart 4 – As discussed above, DHS is in the process of creating a statewide electronic child care system called MEC^2. To facilitate the implementation of MEC^2 and to speed payment to providers, the legislature determined that copayment fees should be collected on a two-week service period basis instead of on a monthly basis. *See* Minn. Stat. §§ 119B.011, subd. 22 (definition of service period); 119B.12, subd. 2 (assessing fee on service period basis). The legislature also determined that overpayments must be recouped on a service-period basis and providers must bill on a service period basis. Minn. Stat. § 119B.11, subd. 2a (over payments); Minn. Stat. § 119B.13, subd. 6 (b) (provider billing). In accordance with these statutes, MEC^2 has been designed to determine copayment fees, to recoup overpayments, to accept provider billings, and to issue payments to providers on a service period basis. To reflect the fact that CCAP now uses service periods instead of months, the term "monthly" must be replaced with the phrase "service period" in part 3400.0100, subpart 2a, and part 3400.0180, item C; and repealed in part 3400.0187, subpart 4. A reference to the service period also must be added to part 3400.0187, subpart 4.

Part 3400.0100, subpart 5 – As discussed under part 3400.0020, subpart 39, the legislature has changed the basis on which copayment fees are calculated from the federal poverty guidelines to the state median income for a family of three. *See* 2003 Minn. Laws 1st Spec. Sess, ch. 14, art. 9, § 20 (codified at Minn. Stat. § 119B.12, subd. 2) (adopting federal poverty guidelines as basis for copayment fee schedule); 2007 Minn. Laws, ch. 147, art. 2, § 8 (changing basis for copayment fee schedule to state median income for family of three). The legislature also codified the percentages of state median income that must be paid as the family's copayment fee. *See* Minn. Stat. § 119B.12, subd. 1. Consequently, the reference to the copayment fee formula that was in part 3400.0100, subpart 4, must be repealed. In the past, there has been confusion about whether the rule language requiring counties to start applying the fee schedule on July 1st meant that the county should apply the schedule immediately or at the family's next redetermination. To eliminate this confusion, the rule is being amended to state that the copayment fee schedule goes into effect for all families on July 1st or, if publication of the fee schedule occurs after July 1st, on the first day of the first quarter following publication in the State Register.

Part 3400.0110, subpart 1, and part 3400.0187, subpart 1 – When the rule was last amended, families could receive money for child care from other sources. To prevent families from receiving double payment for the same child care, language was added to part 3400.0110, subpart 1, specifying that child care assistance could only be used to pay for child care expenses that were not being paid by another source. Since 2001, the legislature has specified that a source other than the child care assistance family can pay the family's copayment fee and any child care expenses not payable by child care assistance provided that payment is made directly to the provider. Minn. Stat. §§ 119B.09, subd. 11; 119B.12, subd. 2. To reflect these new statutes, the broad prohibition in part 3400.0110, subpart 1, must be removed.

Many child care providers require private-pay families to pay for care before that care is delivered. To provide an incentive for CCAP payments to mimic the private-pay market, the rule was amended in 2001 to give counties specific authority to make advance payments to providers. A county, however, must repay CCAP funds that it paid for care that was not actually provided regardless of whether the county is able to recover those funds from the provider or the family. *See* Minn. Stat. § 119B.11, subd. 3 (commissioner shall recover from county any money spent for persons found to be ineligible); Minn. R. 3400.0187, subpt. 1 (county must repay funds paid in advance). Being liable for CCAP funds that were not used for care has proven to be a significant financial disincentive for making advance payments for care. Since 2001, no county has made advance payment to a provider for care. Because the rule has been in effect for six years without any county using it to make advance payments, this rule provision has proven to be ineffective and should be repealed. When the advance payment language in part 3400.0110, subpart 1, is repealed, the language in part 3400.0187, subpart 1, referring to the county's obligation to repay funds paid in advance is unnecessary and should be repealed.

Part 3400.0110, subpart 2, and also part 3400.0120, subparts 1, 1b, and 2; part 3400.0140, subparts 4, 5, and 5a – Before 2003, each county had the discretion to determine whether to require legal nonlicensed family child care providers to undergo background investigations. During the time necessary to complete the background check, the county could make provisional payment to the provider. In 2003, however, the legislature required all providers to be authorized by the county before they could receive payment from CCAP. *See* Minn. Stat. § 119B.125, subd. 1. Registration is the process by which legal nonlicensed providers become authorized. Minn. R. 3400.0020, subpart 38. As part of the authorization process, the legislature required all legal nonlicensed family child care providers to undergo background investigations. *Id.*, subd. 2. The legislature also authorized provisional payment during the background check process. *Id.*, subd. 5. Finally, the legislature specified when providers must be reauthorized. *Id.*, subd. 1. Given these new statutory provisions, the following rule provisions must be amended or repealed.

1. Part 3400.0110, subpart 2 – The first sentence in this subpart is obsolete because the statute now requires all legal nonlicensed providers to be authorized before receiving payment. The references to registration also must be replaced with references to authorization.

2. Part 3400.0110, subpart 2a – The language in this subpart authorizing provisional payment has been superseded by statute. The remaining language in the subpart, however, still is necessary to specify the procedure that must be followed when a provisionally authorized provider does not receive final authorization. Finally, the references to "approval" must be replaced with

Despite the legislative changes and the issue of the family's child care needs, the current rule still gives the county the discretion to choose to authorize care on an hourly, daily, or weekly basis for licensed providers and on an hourly basis for legal nonlicensed family providers. This discretion has led to disparities in the amount of care actually paid for by child care assistance for families across the state. For example, if a family needs 38 hours of care in a week, that care could be authorized and paid by the hour or by the week. *See* Minn. R. 3400.0020, subpt. 44 (weekly basis means child care provided for more than 35 but not more than 50 hours per week). Assuming that the provider charges three dollars per hour for care and that the applicable maximum rate is two dollars for hourly care and $100 for weekly care, the county's decision to authorize by the hour would mean that child care assistance would pay only $76, less the family's copayment fee, of the total $114 charge for care instead of $100, less the family's copayment fee. Because the family is responsible for paying any expenses above the maximum rate, the county's choice to authorize hourly in this situation also would increase the family's out-of-pocket child care expenses by $24. *See* Minn. Stat. § 119B.13, subd. 1 (f) (when provider charge is greater than maximum rate, family is responsible for the difference).

The current discretion given to counties to choose the basis of authorization also would greatly increase the complexity and cost associated with automating this process for MEC^2 because several authorization methods would have to be programmed for the system. To increase statewide consistency in authorization and to minimize the cost of automating this process, DHS decided to create one method of authorizing care. Under the uniform system, all care will be authorized on an hourly basis. The system then will determine whether the total number of hours authorized for the family meets the level necessary to pay for care on a daily or weekly basis. The system then will look at the maximum rates for the applicable blocks of time (i.e., hourly, daily, and weekly) and determine which block of time would result in the highest amount that child care assistance could pay for the authorized care. The system then will compare the highest allowable payment to the provider's actual charge and will pay the lesser of these two figures. To allow automation of this process to go forward, the language in the rule giving the counties discretion in authorizing care must be repealed. This language is being replaced with language that directs the county to authorize the amount of care that reflects the family's child care needs, including work and school schedules, while minimizing the family's out-of-pocket child care expenses. The language also repeats the directive in Minnesota Statutes, section 119B.13, subdivision 1 (e), to pay the provider's full charges up to the maximum rate. This language will ensure that the county authorizes the number of child care hours that the family needs and that the provider will be fully paid for those hours up to the maximum rate.

Similarly, the language in part 3400.0040, subpart 10, governing authorization of child care for students is being amended to remove the directive to authorize care on a weekly or daily basis and to add language that simply directs the county to authorize care as needed for the parent to participate in the listed activities.

The language in part 3400.0110, subpart 3, is also being amended to reflect the fact that care can no longer be authorized on a half-day basis and to clarify that the conversion standards in the subpart are to be used to determine whether child care assistance is paying for more than 120 hours of care every two weeks. The addition of the word "applicable" before the phrase

"maximum rate" is discussed under part 3400.0130, subpart 1.

Part 3400.0110, subpart 4 – In the past, the maximum rate that child care assistance could pay was the 75th percentile rate for similar care. Minn. Stat. § 119B.13, subd. 1 (2003). Minnesota Statutes, section 119B.13, subdivision 1, now provides that the maximum rate is the rate in effect on January 1, 2006 increased by six percent. The commissioner still is required to survey to determine the 75th percentile rate. Minn. Stat. § 119B.13, subd. 1 (c). But the maximum rate no longer is tied to the 75th percentile. Consequently, the language in subpart 4 limiting child care assistance payments to the 75th percentile rate is obsolete and must be repealed.

Part 3400.0110, subpart 7 – Minnesota Statutes, section 119B.08, subdivision 3, requires counties to submit a biennial child care fund plan to the commissioner of human services. Minnesota Rules, part 3400.0150, requires the plan to contain a complete description of the county's child care assistance program including all written policies and procedures used to administer child care funds. Given these requirements, the first sentence in part 3400.0110, subpart 7, is unnecessary and must be repealed.

In addition, Minnesota Statutes, section 119B.13, subdivision 6, clauses (b) and (c), now specify when providers must bill the county for their services and when counties must pay those bills. Given these statutory provisions, the language in part 3400.0110, subpart 7, regarding these topics is obsolete and must be repealed. Finally, the reference to counties mailing or giving providers billing forms is obsolete because under MEC^2, billing forms will be mailed from DHS and providers eventually will have the ability to bill on-line. The language proposed for the rule is broad enough to cover the future provision of on-line billing forms and the current provision of paper forms.

Part 3400.0110, subpart 9 – In 2006, the legislature enacted provisions governing the payment of absent days and holidays by child care assistance. *See* Minn. Stat. § 119B.13, subd. 7. Absent days are days when a child is authorized to be in care but the child is absent. A holiday is a day when a child is authorized to be in care but the provider is closed that day due to a holiday. The amendments to part 3400.0110, subpart 9, items A through E, reflect the creation of this statutory absent day policy.

The new language in part 3400.0110, subpart 9, item D, clarifies how child care assistance pays for holidays and how to differentiate between an absent day and a holiday. Item D also clarifies that federal and state holidays are defined in Minnesota Statutes, section 645.44, subdivision 5. Finally, item D clarifies how a parent can exercise the right under Minnesota Statutes, section 119B.13, subdivision 7, to substitute other cultural or religious holidays for the federal or state holidays identified in Minnesota Statutes, section 645.44, subdivision 5.

The new language in part 3400.0110, subpart 9, item E, clarifies how the statutory limit on absent days applies to notice requirements. Minnesota Statutes, section 119B.13, subdivision 7, states that each year, CCAP can pay for only ten consecutive absent days; 25 cumulative absent days; and ten holidays. As discussed above, unless the health or safety of a child is in danger, a parent must give a provider 15 days' notice before leaving that provider and the county must pay the provider

for 15 notice days. Minn. R. 3400.0040, subpt. 4; 3400.0185, subpt. 2. Many times, however, a child will not be in care for all of the 15 notice days. For example, a parent may lose a job and decide to keep the child at home during the notice days even though the child was still authorized to be in care for those days. Because Minnesota Statutes, section 119B.13, subdivision 7, limits the number of absent days for which CCAP can pay, it is probable that either the 10-consecutive-day limit or the 25-day-cumulative limit could be reached during a 15-day notice period. The language in item E clarifies that the statutory limit on payment for absent days takes precedence over the rule requiring payment for 15 notice days.

Part 3400.0110, subpart 11 – As discussed under part 3400.0110,subpart 9, item E, parents must give the county and the provider 15 days' notice when they change providers. Confusion has arisen about whether the typical child care assistance rules are suspended when the day in question is a notice day. For example, as discussed above, questions have arisen about whether the statutory limit on payment for absent days applies when the limit is reached during a notice period. Questions also have arisen as to whether child care assistance should pay for all 15 consecutive notice days or should pay only for the days when the child was scheduled to be in care. Subpart 11 clarifies that the payment rules and limits that ordinarily would apply to the family continue to apply to the family during notice days.

Part 3400.0120, subparts 1, 1b, and 2, are discussed under part 3400.0110, subpart 2.

Part 3400.0120, subpart 2a – Minnesota Statutes, section 119B.09, subdivision 10, requires child care assistance to be paid directly to the parent when the parent uses a provider who takes care of the children in the children's own home. Payments to child care providers, however, can be subject to many types of withholdings, such as recoupment for past child care assistance overpayments, garnishment, tax levies, and backup withholding. Information concerning provider recoupments, garnishments, tax levies, and backup withholding generally is private information that cannot be revealed without the provider's consent. The parent employing the provider, however, cannot correctly withhold employment taxes, pay the copayment fee, or pay the provider for services rendered if the parent does not know the initial amount of the child care assistance payment and whether any amount has been withheld. To ensure that parents can meet their legal obligations when paying an in-home provider, it is necessary to require in-home providers to provide a release allowing the county to tell the parent how much money has been withheld from the provider's payment and the reason for that withholding.

Part 3400.0120, subpart 5 – As discussed above, a parent occasionally will stop using a provider without giving the provider the required 15 days' notice. Requiring providers to notify the county when a child has been absent for several days gives the county the opportunity to investigate and to start the provider's 15 notice days as soon as possible. This reduces the amount of child care assistance paid for a child care slot that a child is no longer using. A child's absence, however, is not indicative of a change in provider unless the child has missed several consecutive days on which the child was actually scheduled to be in care. Consequently, part 3400.0120, subpart 5, is being amended to clarify that a provider must notify the county when a child has been absent for seven consecutive days that the child was scheduled to be in care.

Part 3400.0130, subparts 1, 1a, 3a, 5, and 5a; and part 3400.0110, subpart 3 - As discussed under part 3400.0110, subpart 4, the maximum rate that child care assistance can pay providers is no longer tied to the 75th percentile rate as surveyed by the commissioner. Minn. Stat. § 119B.13, subd. 1. Although maximum rates are no longer automatically tied to the rates surveyed by the commissioner, the legislature has directed the commissioner to begin surveying rates each year. *See* 2007 Minn. Laws, ch. 147, art. 2, § 11 (to be codified at Minn. Stat. § 119B.13, subd. 1 (c)). To reflect these changes and to incorporate any future legislative changes, part 3400.0130, subpart 1, is being amended to specify that maximum rates are calculated according to Minnesota Statutes, section 119B.13, subdivision 1. Subpart 1a is being amended to refer generally to Minnesota Statutes, section 119B.13, however, because this section also includes rate differentials for accredited providers and special needs care that effectively increase the maximum rate that can be paid to a provider. The phrases "county" and "allowable" are being replaced with "applicable" because the commissioner now has authority to set maximum rates for a region or for a type of care. Minn. Stat. § 119B.13, subd. 1 (c). The requirement to survey activity fees is being repealed because this has never been a statutory requirement. And although DHS has collected this data in the past, DHS has never done anything with this data. To eliminate the cost of collecting unused data, part 3400.0130, subpart 1, is being amended to repeal this requirement. Finally, the language in the last sentence in subpart 1 is being repealed because Minnesota Statutes, section 119B.13, subdivision 1 (c), now specifies what the commissioner should do when the number of providers responding to the rate survey is too small to determine a 75th percentile.

Part 3400.0130, subpart 2 – Minnesota Statutes, section 119B.13, subdivision 1a, now specifies the rate that can be paid to legal nonlicensed family child care providers. The language establishing a rate for these providers in part 3400.0130, subpart 2, and the language differentiating legal nonlicensed family child care providers from license-exempt facilities in this part therefore is obsolete and must be repealed.

Part 3400.0130, subpart 5 – Under the licensing laws, child care centers can move a child from the infant to the toddler room at any time when the child is 16 to18 months. Minn. R. 9503.0040, subpt. 4. Toddlers can move to the pre-school room anytime between 31 and 35 months. *Id.* A center also can receive a variance from licensing that allows it to keep a child in a room beyond the licensing deadline. Minn. Stat. § 245A.04, subd. 9 (discussing variances). Typically, rates charged by providers for infant care are higher than rates charged for toddler care and toddler rates are higher than rates for preschool care. Consequently, the maximum rate that child care assistance can pay for infant care typically is higher than the maximum that can be paid for toddler care and the maximum rate for toddler care is higher than the maximum rate for pre-school care.

Currently, several counties change the maximum rate applicable to a child at the first month that the child could move to a less-expensive room even if the child has not actually changed rooms. To ensure that a provider is paid the rate for age category of care actually being provided to a child, the rule is being amended to specifically discuss these situations. In addition, to be admitted to elementary school, a child must be at least five years old on September 1 of the year that the child wants to enter school. Minn. Stat. § 120A.20, subd. 1. Children, however, do not have to begin attending an elementary school until age seven. Minn. Stat. § 120A.22, subd. 6. Given these laws, there has been confusion as to when child care assistance should begin applying

the term "authorization" to reflect the statutory terminology.

3. Part 3400.0120, subpart 1 – A reference to Minnesota Statutes, section 119B.125, must be added to this part because this statute also limits parental choice of providers.

4. Part 3400.0120, subpart 1b – All provisions in this subpart, other than those in item A, clause 2, have been superceded by the statutory requirements in Minnesota Statutes, section 119B.125. The required assurances in item A, clause (2), are being moved to part 3400.0120, subpart 2, because these assurances are required to comply with federal law and, consequently, must remain part of the authorization process. *See* 45 C.F.R. § 98.41 (each state must certify that procedures are in effect to ensure that child care providers comply with all applicable state and local health and safety requirements including building an physical premises safety).

5. Part 3400.0120, subpart 2 – The assurances required by part 3400.0120, subpart 1b, are being moved to this subpart because, as discussed in the preceding paragraph, those assurances are required to comply with federal law and, consequently, must remain part of the authorization process. Moving the assurance requirement to subpart 2, however, consolidates the authorization requirements in one place in rule, thereby making the rule easier for providers to follow and use. The word "registration" in part 3400.0120, subpart 2, must be replaced with the word "authorization" because "authorization" is the term used by the legislature for this process in Minnesota Statutes, section 119B.125. Finally, item D in this subpart must be repealed because Minnesota Statutes, section 119B.125, subdivision 1, now specifies when providers must be reauthorized.

6. Part 3400.0140, subpart 4 – This part must be amended to reflect the statutory background investigation requirement.

7 Part 3400.0140, subpart 5 – This part must be amended to remove the redundant language regarding the authorization before payment requirement and to use the new terminology regarding "authorization."

8. Part 3400.0140, subpart 5a – This part must be repealed because provisional payment is now authorized by statute.

Part 3400.0110, subpart 3, and part 3400.0040, subpart 10 – As discussed under part 3400.0020, subpart 10a, Minnesota Statutes, section 119B.09, subdivision 6, provides that 120 hours is the maximum amount of child care assistance that may be authorized for a family in a two-week period. Within this limit, the county authorizes the amount of child care for which the family is eligible based on the number of hours that the parent is working, going to school, or looking for work. Although the rule directs the county to authorize care using the basis charged by the provider, the county no longer can follow this directive because the legislature has limited the blocks of time in which providers can be paid. *See* Minn. Stat. § 119B.13, subds. 1 (e) (commissioner must determine maximum rate on hourly, full-day, and weekly basis for licensed providers but not on half-day basis); 2 (legal nonlicensed providers must be paid on hourly basis); Minn. R. 3400.0110, subpart 3 (directing counties to authorize care on full-day or weekly basis). In addition, even when a provider charged on a particular basis, the county could not actually authorize care on that basis when the basis did not meet the family's needs. For example, a provider could charge on a weekly basis but the county could not authorize care on a weekly basis when the family only needed two days of care per week. Given these changes and limitations, the first sentence in part 3400.0110, subpart 3, must be repealed.

the maximum rate for a school-age child, which generally is less than the maximum rate for a pre-school child. Part 3400.0130, subpart 5, is being amended to specify when counties should consider a child to be in the school-age rate category.

Providers are free to increase their rates at any time. Under the MEC2 system, however, providers will be paid on the basis of a two-week service period that starts on a Monday. To simplify program administration and to ensure that MEC^2 can implement rate changes consistently, language is being added to part 3400.0130, subpart 5, to specify when provider rate changes will be implemented by the MEC2 system.

Part 3400.0140, subparts 4, 5, and 5a, are discussed under part 3400.0110, subpart 2.

Part 3400.0140, subpart 6 - This subpart is being amended to reflect the fact that people other than parents can make complaints about providers and to clarify that the county should respond to these complaints as it would to a complaint from a parent.

Part 3400.0140, subpart 7 – This subpart allows a county to contract with another entity to administer CCAP on the county's behalf. In recent years, some contractors have not administered CCAP correctly. These administrative errors have led to overpayments that had to be recovered from families. *See* Minn. Stat. § 119B.11, subd. 2a (overpayment must be recovered even when it was caused by agency error). To help to minimize future administrative errors by contractors, part 3400.0140, subpart 7, is being amended to require any county hiring an outside entity to administer CCAP to explain in its child care fund plan how it intends to oversee that contractor.

Part 3400.0140, subpart 19 – When the rule was amended in 2001, many rule parts were moved to new locations. To ensure that users could find the recoupment schedule for overpayments, a sentence was added to the old location of this information that directed users to the new location. The rule now has been in effect for six years and users are familiar with the new location of the recoupment schedule. Consequently, the language in the former recoupment schedule subpart that directs users to the new location of this information no longer is necessary and should be repealed.

Part 3400.0170 – The repeal of the word "gross" is discussed under part 3400.0040, subpart 8, item C. The reference to the specific year 2000 is being repealed from subpart 8 to ensure that this part refers to the most current version of the Combined Manual. Subpart 12 is being amended to include a reference to the Diversionary Work Program. Language is being added to part 3400.0170, subpart 13, to clarify that when property is sold, only the part of the proceeds that actually are profit to the family can be considered to be a lump sum payment.

Part 3400.0180, item A, is discussed under part 3400.0040, subpart 3, item C.

Part 3400.0180, item C, is discussed under 3400.0100, subpart 2a.

Part 3400.0180, item D – Part 3400.0180, item D, was enacted to ensure that a family that timely reported a change in an eligibility factor would not be assigned an overpayment for the time necessary to adjust the family's child care assistance to the correct amount. In some situations,

however, a family timely reported a change in an eligibility factor but the county did not timely adjust the family's assistance. When this occurred, families attempted to argue that the incorrect payments made during the time between their reporting and the actual adjustment were not actually overpayments due to the language in part 3400.0180, item D. Minnesota Statutes, section 119B.11, subdivision 2, however, provides that an amount of child care assistance paid to a family in excess of the payment due is recoverable by the county even when this overpayment was caused by county error. Interpreting part 3400.0180, item D, to prevent an erroneous payment caused by a county's delayed implementation of a reported change from being seen as an overpayment would violate Minnesota Statutes, section 119B.11, subdivision 2. Consequently, the language in part 3400.0180, item D, is being amended to clarify that it applies only to the time that should have been necessary to adjust the family's assistance to the correct amount and not to any additional delay caused by county error.

Part 3400.0183, subpart 1, item A – Families who are enrolled in the basic sliding fee child care assistance program must be continued on that program until they are no longer eligible. Minn. Stat. § 119B.03, subd. 3. On rare occasions, however, state budget problems have required the legislature to reduce funds previously allocated to counties for the basic sliding fee program. When the reduction in a county's allocation occurs so suddenly that the county cannot absorb the reduction in its allocation, the county is authorized to terminate child care assistance to some participants. Minn. R. 3400.0183, subdivision 1. The county, however, must consult with the commissioner of human services to ensure that assistance is terminated for the minimum number of families possible. The commissioner has the authority to approve the county's plan for terminating assistance to participants in this situation. *See* Minn. Stat. §§ 119B.03, subd. 3 (commissioner must supervise counties through approval of child care fund plans) 119B.08, subd. 3 (commissioner must approve child care fund plans); 256.01 (commissioner is authorized to require counties to comply with statutes, rules, and policies governing human services); Minn. R. 3400.0150, subpt. 3 (child care fund plan must contain all policies and procedures that county uses to administer child care assistance). Part 3400.0183, subpart 1, item A, however, is misleading and when read in isolation suggests that counties must only consult the commissioner about the plan to terminate assistance to families. Consequently, part 3400.0180, subpart 1, item A, is being amended to reflect the fact that the commissioner must approve the county's plan.

Part 3400.0183, subparts 3, 4, and 5 –Minnesota Statutes, section 256.98, subdivision 8 (c), provides that a family can be disqualified from receiving child care assistance due to fraud. When the rule was last amended in 2001, the statutory disqualification provisions were relatively new. DHS therefore believed that it would be helpful to those using the rule to repeat the statutory disqualification provisions in the rule. During the six years since the rules were last amended, however, counties, participants, and providers have become familiar with the statutory disqualification provisions. It therefore is no longer necessary to repeat these provisions in rule. In addition, removing these duplicative provisions ensures that the rules do not become obsolete if the statutory provisions are revised.

Part 3400.0185, subpart 1, item B – Minnesota Statutes, section 119B.03, subdivision 9, has been amended to give participants who move to new counties up to 60 days to apply to continue assistance in the new county. The amendment to part 3400.0185, subpart 1, item B, brings the rule

into conformance with this new statutory time limit.

Part 3400.0185, subpart 2, item B – Minnesota Rules, part 3400.0185, subpart 2, item A, currently requires child care assistance to send notice to a provider when a family using that provider stops receiving assistance. The notice is intended to inform the provider that the provider no longer will receive child care assistance payments on behalf of the family. But many times, a provider stops receiving child care assistance payments on behalf of a family because the family has decided to change providers. To ensure that providers are given notice when a family changes providers but does not stop receiving assistance, part 3400.0185, subpart 2, is being amended to require notice of this change to be given to providers. Items C and D are discussed under part 3400.0035, subpart 5.

Part 3400.0185, subparts 4 and 5 – To determine how much of the provider's charge must be paid by the family receiving child care assistance, the provider must know the amount of the family's copayment fee and how much care has been authorized for the family. Consequently, in 2001, the rule was amended to specify that providers must be given notice of changes in the family's copayment fee and authorized hours of care as well as notice of any adverse determination of provider eligibility. Since 2001, more actions adverse to providers have been created, such as assignment of an overpayment and provider authorization decisions. *See* Minn. Stat. §§ 119B.11 (overpayments); 119B.125 (authorization). To clarify when providers must be given notice of actions adverse to the family and actions adverse to the provider, part 3400.0185 is being amended to create separate subparts for these notices.

Part 3400.0187, subpart 1, is discussed under part 3400.0110, subpart 1.

Part 3400.0187, subpart 1a – Minnesota Statutes, section 119B.11, subdivision 2a, requires counties to recoup or recover overpayments as identified in Minnesota Rules, part 3400.0187. Given this statutory directive, the language in Minnesota Rules, part 3400.0187, subpart 1a, is unnecessary and should be repealed.

Part 3400.0187, subparts 2 and 6 – Since 2003, counties can recover overpayments from providers as well as families. Minn. Stat. § 119B.11, subd. 2a (c). If the provider continues to care for children receiving assistance, the overpayment must be recouped through reductions in the child care assistance payments as described in an agreement with the county. *Id.* To reflect the fact that providers now can be responsible for overpayments, terminology must be changed in part 3400.0187, subparts 2 and 6.

The proposed rules also set specific recoupment rates. Setting specific recoupment rates will ensure that provider overpayments are recovered from providers in different counties at consistent rates. Setting specific recoupment rates for providers also will enable this process to be automated as part of MEC^2. Setting recoupment rates for providers also ensures that the recoupment rates reflect the provider's level of culpability in creating the overpayment. In other words, an overpayment caused by family or county error should be recouped at a lower rate than an overpayment intentionally caused by the provider.

To set the recoupment rates for providers, DHS started with the recoupment rates that apply to parents. DHS then adjusted the percentage rates downward to reflect two factors. First, a child care assistance payment to a provider represents a source of income to that provider. In some situations, the child care assistance payment may be the provider's only source of income. Consequently, the recoupment rate must be set at a level that allows CCAP to promptly recover overpayments but does not force the provider out of business, particularly when the provider did not cause the overpayment or caused the overpayment through an unintentional mistake. Second, because most providers receiving child care assistance payments serve more than one family, a child care assistance payment to a provider generally is significantly larger than a child care assistance payment made on behalf of a single family. Because payments to providers are so much larger than payments made on behalf of a family, reducing the recoupment rate applicable to those payments will still result in a significant recoupment amount. Because payments to providers are so much larger than payments made on behalf of single families and because payments to providers generally occur less frequently than family recoupments which occur every two weeks, the $20 recoupment amount in item A that applies to overpayments caused by family or county error was not reduced to match the new $10 family recoupment amount for overpayments caused by provider or county error.

Finally, language similar to the provisions that apply to parent overpayments is also being added to subpart 6 to specify how to recoup when a provider has more than one overpayment or when a provider returns to CCAP after a break in care.

Part 3400.0187, subpart 4 – As discussed above, the legislature has replaced monthly copayment fees with fees calculated on a two-week service period basis. Language must be added to part 3400.0187, subpart 4, to reflect the new use of service periods. In addition, because overpayments now will be recouped every two weeks instead of on a monthly basis, the dollar amounts in subpart 4 must be reduced to ensure that the current recoupment rates do not double under the new service period scheme. Simply dividing the recoupment amounts in half may slightly increase the speed with which an overpayment is recouped because a recipient will pay the current recoupment amount every 28 days (two service periods) instead of every 30 to 31 days (one month). DHS nonetheless decided to divide the recoupment amounts in half to implement the new service period scheme because this was a simple way to transform the current monthly recoupment schedule into a service-period recoupment schedule that did not greatly change the current recoupment rates.

Part 3400.0187, subpart 4, item F – Child care assistance funds for the BSF Program are allocated to counties according to a statutory formula that considers the use of child care assistance in the county. Minn. Stat. § 119B.03, subd. 6. Counties also contribute county funds to their own county BSF Programs. Minn. Stat. § 119B.11, subd. 1. Consequently, when a family has an overpayment in a county, it is important that the recouped or recovered funds are credited to the correct county. Occasionally, a family will owe overpayments to more than one county. In these situations, it is important to specify how the recouped or recovered funds will be applied to those overpayments. The schedule in item F is reasonable because it is based on the age of the claim as well as the family's culpability for the claim. In other words, it is reasonable to require a family to first repay the oldest overpayment caused by their own wrongful conduct before requiring repayment of more recent claims that may not have been the family's fault.

Part 3400.0187, subpart 5 – Part 3400.0187, subpart 5, quotes Minnesota Statutes, section 119B.11, subdivision 2a. It is not necessary to repeat the statutory language in the rules. Consequently, the repetitive language in part 3400.0187, subpart 5, is being repealed.

Part 3400.0200 – Currently, counties initially pay out the funds required for child care assistance expenditures. DHS then reimburses the counties for these expenditures and also pays the county the administrative funds allowed by statute. *See* Minn. Stat. § 119B.15 (authorizing payment of funds to counties for administrative expenses). Under the MEC^2 system, DHS will initially pay out the funds required for child care assistance expenditures and no longer will need to reimburse the counties for these expenditures. DHS, however, still will pay administrative funds to the counties. To reflect this change in the way funds are transferred between DHS and the counties, part 3400.0200 is being amended to refer only to administrative funds. Because DHS currently pays administrative funds to counties on a monthly basis and because DHS plans to continue using this payment schedule in the future, part 3400.0200 is being amended to require monthly payments to counties.

Part 3400.0210 – Part 3400.0210 governs how the commissioner can impose funding sanctions on a county that has not complied with child care assistance statutes or rules. Minnesota Statutes, section 256.017, also establishes a compliance system under which the commissioner of human services can impose funding sanctions on a county that is not complying with applicable program statutes or rules. In 2007, the legislature added child care assistance to the list of programs governed by Minnesota Statutes, section 256.017. 2007 Minn. Laws ch. 147, art. 2, § 18. Because child care assistance now can use the compliance system in Minnesota Statutes, section 256.017, to withhold funds from counties that are not complying with child care assistance laws, the compliance measures in part 3400.0210 are obsolete and should be repealed.

Part 3400.0230, subparts 1 and 2 – Part 3400.0230, subparts 1 and 2, reiterate the provisions of Minnesota Statutes, section 119B.16, subdivisions 1 and 2, that were in effect in 2001. In 2003, Minnesota Statutes, section 119B.16, was amended to give a provider a right to a fair hearing in certain situations. Because the language in part 3400.0230, subparts 1 and 2, now is obsolete, and was repetitive in any event, these two subparts are being repealed.

Part 3400.0230, subpart 3, item B – When an administrative appeal determines that benefits should have been reduced or terminated, part 3400.0230, subpart 3, item B, provides that a notice of termination or reduction must be sent to the family that is effective immediately. Counties and families, however, had questions about the meaning of the phrase "effective immediately." To clarify when the reduction or termination of benefits takes effect, the rule is being amended to state that the change is effective on the date on the notice.

Part 3400.0235 – Part 3400.0235 governs the at-home infant care (AHIC) program. This program provides funding for a parent who would be eligible for basic sliding fee child care assistance but who decides to remain at home to care for an infant after the birth or adoption of the child. The legislature did not fund AHIC for the current biennium. 2007 Minn. Laws ch. 147, art. 2, § 4. But the legislature also did not repeal AHIC. The legislature has repealed and reenacted AHIC in the

past. *See* 2003 Minn. Laws 1st Spec. Sess. ch. 14, art. 9, § 38 (repealing AHIC); 2004 Minn. Laws ch. 288, art. 4, § 12 (reenacting AHIC). Given this history, DHS is pursing rule amendments that bring the AHIC rule into conformity with the current statute governing this program.

Part 3400.0235, subpart 1 - Minnesota Statutes, section 119B.035, subdivision 1, now contains the general eligibility requirements for AHIC. Consequently, the general eligibility provision in subpart 1 is obsolete. The statutory reference to section 119B.061 also must be replaced by a reference to the current location of the AHIC provision in section 119B.035.

Part 3400.0235, subpart 2 – The funding language in subpart 2 is obsolete given the new statutory language governing this topic in Minnesota Statutes, section 119B.035, subdivision 1.

Part 3400.0235, subpart 3 – Minnesota Statutes, section 119B.035, subdivision 2, now contains the eligibility requirements for families. Consequently, the obsolete language governing this topic in subpart 3, item A, must be repealed. The reference to the old statutory location of the AHIC Program in this subpart must be replaced by a reference to the new statutory location of this program. Finally, the clause requiring a family to declare whether it has used all of the MFIP one-year infant exemption must be repealed. Under both the prior version of AHIC and the current version of the program, a family is limited to a lifetime total of 12 months of AHIC payments. Under the prior version of AHIC, any months that the family claimed the MFIP infant exemption also counted toward the 12-month limit for AHIC. *See* Minn. Stat. § 119B.061 (2002). The current version of AHIC, however, no longer counts the months during which a family claimed the MFIP infant exemption toward the family's 12-month limit for AHIC. *See* Minn. Stat. § 119B.035, subd. 2. Consequently, the number of months that a family has claimed the MFIP infant exemption no longer is relevant for AHIC purposes and this reporting requirement must be repealed.

Part 3400.0235, subpart 4 – The reference to the old statutory location of the AHIC Program must be replaced by a reference to the new statutory location of this program.

Part 3400.0235, subpart 5 – Minnesota Statutes, section 119B.035, subdivision 4, now establishes the rate that can be paid to parents under AHIC. Consequently, the obsolete language governing this topic in subpart 5, item B, must be repealed. Changes also must be made to subpart 5 to reflect the calculation of copayment fees on a service period basis.

Part 3400.0235, subpart 6 – Under the old AHIC program, counties issued AHIC payments to participating parents. Under the new AHIC program, DHS issues payments to the parents. Given the change in the method of payment, the references to the county issuance of payments in subpart 6 must be repealed.

Part 3400.0235, subpart 7 - When AHIC was first enacted, data was collected so that the program could be evaluated. After a time, DHS no longer collected data on AHIC because the program had been evaluated. Currently, DHS does not collect any data on the AHIC program. Consequently, the provisions in part 3400.0235, subpart 7, are obsolete and should be repealed.

LIST OF EXHIBITS

DHS does not anticipate that it will enter any exhibits into the hearing record other than the documents necessary to show that the agency has complied with the necessary rulemaking requirements. A list of these documents will be available at the hearing.

CONCLUSION

Based on the foregoing, the proposed rules are both needed and reasonable.

4-3-08
Date

Cal R. Ludeman
Commissioner of Human Services