

RULES AND REGULATIONS

Title 55—PUBLIC WELFARE

DEPARTMENT OF PUBLIC WELFARE

[55 PA. CODE CHS. 165, 168, 183 AND 3040]

Subsidized Child Day Care Eligibility

Statutory Authority

The Department of Public Welfare (Department), by this order adopts amendments to Chapters 165, 168, 183 and 3040, under the authority of Articles II, IV and VII of the Public Welfare Code (62 P. S. §§ 201—211, 401—493 and 701—703), the act of December 16, 1997 (P. L. 549, No. 58 (Act 58) and Title VI of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), Pub. L. No. 104-193, known as the Child Care and Development Block Grant (CCDBG) (42 U.S.C.A. §§ 9858—9858q).

Notice of proposed rulemaking was published at 27 Pa.B. 4615 (September 6, 1997).

Purpose of Amendments

The purpose of these amendments is to establish the eligibility requirements for individuals who are applying for or receiving assistance with the cost of child care through funding authorized by Title VI of PRWORA, known as CCDBG and section 408(b) of the Public Welfare Code (62 P. S. § 408(b)), added by section 8 of the act of May 16, 1996 (P. L. 175, No. 35) (Act 35). The PRWORA was signed into law by President Bill Clinton on August 22, 1996. Act 35 was signed into law by Governor Tom Ridge on May 16, 1996.

The amendments set forth the rules for the Department to determine a family's eligibility for child care assistance for: families receiving Temporary Assistance for Needy Families (TANF) benefits who are involved with job search, training or work activities under the Road to Economic Self-Sufficiency through the Employment and Training Program (RESET); families leaving TANF who are making the transition from welfare to work; families at risk of going on welfare; and low-income working families. The Department has revised the child care regulations because the child care entitlement for cash assistance families and for those transitioning off cash assistance has been repealed. The Federal CCDBG funds are capped, and it is necessary to create a child care program that meets the needs of all of these populations.

In addition, these amendments clarify and strengthen the existing eligibility requirements for the subsidized child care program. The clarification will assist the general population in understanding the eligibility requirements and the benefits associated with eligibility. The regulations have been strengthened to ensure that the most needy children receive the benefits of the subsidized child care program.

The new CCDBG program provides states with a unique opportunity to develop a coordinated child care system that will, with the least amount of disruption, serve families receiving cash assistance, families who leave the cash assistance program, and low-income working families who need help with child care costs.

The CCDBG program allows states to maximize flexibility in developing child care subsidy policies and programs that best meet the needs of parents and children

and in providing child care subsidy to parents who are attempting to achieve independence from welfare. Although the CCDBG does not set a time limit for individuals receiving child care benefits, the Department was presented with the challenge of creating a subsidized child care system that meets the needs of broadly-defined populations within the fiscal constraints of a block grant.

The Department, upon adoption of these final-form regulations, will implement a consolidated child care subsidy system called Child Care Works. Child Care Works will serve families who receive cash assistance, those transitioning off welfare and low-income working families with similar rules and procedures for all families. The final-form regulations are designed to coordinate regulations governing those families receiving cash assistance and those who are not receiving cash assistance. Changes identified in these final-form regulations will provide a continuum of child care benefits to families receiving cash assistance, those transitioning off cash assistance, and assist low-income families in maintaining self-sufficiency and not returning to welfare. In these amendments, there are similar requirements for cash assistance and low-income families, wherever appropriate.

Introduction

The Department has developed Child Care Works to provide an integrated system of child care services to low-income families of this Commonwealth. The regulations which implement Child Care Works reflect new State and Federal welfare laws while helping both welfare and low-income working families find, select and pay for child care services. The new program supports parent choice, increases consumer education, and aligns policies and procedures for consistency. Child Care Works makes child care subsidies available to TANF and non-TANF families, and makes child care subsidies available to a number of families who, under the current system, did not receive the help they needed to support the transition from welfare to work or to otherwise maintain economic independence. The final-form regulations significantly increase child care support to recipients of TANF in three major areas. For the first time, employed TANF recipients will qualify for a child care allowance that begins with the date they start working and incurring child care costs. Under the current program, TANF recipients receive no help with child care costs until after they receive the first pay, by which time the family could be in debt to their child care provider. For the first time, employed TANF recipients will qualify for a child care allowance to help with the cost of care while they work their way off welfare. Under the current program, the help an employed TANF family receives with child care costs is through a TANF cash assistance grant calculation that provides for a disregard of a portion of the family's earnings needed to pay for child care. Federal regulations formerly limited the disregard amount to \$175 per month, per child. This amount fell short of covering the full cost of child care for some families. Some families either found themselves in debt to their child care provider or used the least expensive care they could find. These families had limited parent-choice options.

The new co-payment schedule offers TANF families co-payment levels significantly lower than the current co-payment amount under the disregard system and increased purchasing power, resulting in a much wider range of child care choices for their children. For the first time, employed TANF recipients who earn enough to go

off of cash assistance will qualify for continued help with child care costs, with no time limits or interruptions. Under the current system, these TANF families receive 12 months of Transitional Child Care (TCC) help through the County Assistance Office (CAO), after which many families go on a waiting list to get a subsidy through the Child Care Information Services (CCIS) agency. The CCIS agency is designated to serve part of a county, a county, or several counties.

The CCIS has previously been known as the Local Management Agency (LMA). During State Fiscal Year 1998-99, the Department is in the process of changing the name from LMA to CCIS. For the purposes of these regulations, the LMA and CCIS are the same. In the text of this preamble whenever the commentator used the term LMA, that term is listed in the comment section only. Whenever the Department provides its response, it uses the term CCIS.

In addition to supporting the goals of welfare reform by helping TANF families, the regulations significantly increase the availability of child care subsidy to nonwelfare low-income working families. More children will be served under the new program as a result of the revised family co-payment schedule. Families who currently receive child care subsidy may be required to contribute more toward the cost of care. For example, a typical family receiving subsidized child care is a single parent with two children earning \$17,500 per year and paying a fee of \$20 per week. Under the revised parent co-payment schedule, the family's fee will increase to \$35 per week.

With each family contributing more toward the costs, an additional 4,105 children will be able to receive subsidized child care. For the first time, families who have lingered on the subsidy waiting list have an increased opportunity to move into the subsidized system and get the help they need with child care costs and the opportunity to select care that they could never have afforded when they had to shoulder the full cost of care themselves. The revised parent co-payment schedule in these final regulations reflects a substantial change made by the Department in response to concerns that the proposed parent co-payment schedule, which included consideration of cost of care selected, would eliminate parent choice.

The new program includes requirements for nonwelfare low-income working families to seek child support and other benefits, which reduces the amount of the subsidy for child care and makes the family more self-sufficient. One outcome of the changes in Child Care Works is an assurance that the most needy families receive a child care subsidy.

Child Care Works encompasses more than just the eligibility regulations which govern receipt of child care subsidy dollars. Two major components of Child Care Works are in the area of initiatives for increasing quality in day care settings and making families better consumers of child care services. These initiatives include: the expansion of consumer education; implementation of child care resource and referral services; availability of seed money to increase available child care and an increase in the reimbursement ceilings for payments to child care providers. At the same time, the Department continues to use the current licensing regulations that assure that children are in healthy and safe child care settings. The Department will increase its commitment to upgrade the quality of child care services by increasing its commitment to offer training to child care staff. Child Care

Works introduces changes to the child care system and maintains quality initiatives which benefit the children of this Commonwealth.

Background

The PRWORA replaced the 61-year-old Aid to Families with Dependent Children (AFDC) program with the time-limited cash assistance block grant program known as TANF. The TANF program began in this Commonwealth on March 3, 1997. The PRWORA also repealed the child care portion of the Family Support Act and combined four separate Federal funding sources for child care into one block grant called the CCDBG. The PRWORA also ended any child care entitlements to families on cash assistance who work, who are in training, or who were transitioning off welfare. There were three child care funding streams under the Family Support Act. These included funds for AFDC families who were enrolled in the Job Opportunity and Basic Skills (JOBS) program; for families receiving TCC benefits; and for families at risk of going on welfare. These three funding streams were combined with funds from the former CCDBG. The law under which all of the funds are governed is called the CCDBG.

The Governor's Budget for Fiscal Year 1998-99 includes an unprecedented \$348 million for child care. Together with Child Care Works, this represents a commitment to expanded child care benefits within the realities of a limited block grant. These final-form regulations address not only the need for similar standards for both populations, but the need to contain costs and serve the greatest number of children possible within available resources.

After the adoption of these final-form regulations, the Department will implement the components of Child Care Works. It will also submit an amendment to the State Child Care Plan, which was approved by the Federal Administration for Children and Families (ACF), Health and Human Services Department on September 30, 1997, reflecting the new regulations.

When the Department drafted the proposed amendments, ACF had published proposed regulations regarding requirements for CCDBG. On July 24, 1998, ACF published final regulations at 63 FR 39935-39998 which amends 45 CFR Chapters 98 and 99. Changes made to Chapters 165, 168 and 3040 (relating to employment and training program; transitional child care; and subsidized child day care) are consistent with the Federal regulations.

Under the Federal CCDBG, states must develop an integrated child care system. Although child care subsidy is no longer an entitlement program, states must provide services to the same populations as were served under previous laws. In Fiscal Year 1998-99, once the final-form regulations are implemented, the Department will have an integrated child care system. Regardless of whether a family is receiving cash assistance or not receiving cash assistance, the determination of the family's subsidy level and co-payment responsibilities will be based on the individual family's circumstances.

Under the revised eligibility requirements in Chapter 3040, families who no longer receive cash assistance, those who would have received 12 months of TCC benefits under the current system and families who are working and have low-income, will receive their child care benefits through the CCIS agency in each county. Persons receiving cash assistance will receive child care benefits through the CAO.

Need for Final-Form Regulations

The Department has amended the final-form regulations to comply with the PRWORA, which establishes standards for the receipt of cash assistance under TANF and the receipt of child care assistance in a parent-choice system under the CCDBG. These regulations comply with the Federal law to: assure Federal financial participation; fulfill the Department's goal to achieve a seamless and coordinated child care system for families moving toward self-sufficiency; and continue the network of subsidized child care benefits which are easily understood and accessed by eligible families who need subsidized child care.

In addition, the Department has amended the final-form regulations to address the changes made by the PRWORA and the CCDBG, which eliminate the entitlement to child care subsidy for families who are on cash assistance and families who would have received TCC benefits under the current system. The CCDBG child care funding is capped and regulations must reflect the capped funding.

Affected Groups and Organizations

Groups and individuals affected by these amendments include families who are receiving TANF benefits and parents applying for and receiving subsidized child care. Other groups affected by these final-form regulations include child care providers and eligibility agents.

Accomplishments/Benefits

The anticipated benefits from the improved final-form regulations include the following:

1. An integrated child care system for families receiving cash assistance and low-income families not receiving cash assistance. The integrated child care system reaffirms the Department's objective to offer child care assistance to those parents who are working toward self-sufficiency.
2. Elimination of the 12-month TCC program, and allowing individuals leaving TANF to have uninterrupted services through subsidy.
3. An increase in the maximum amount of funding per child receiving TANF by replacement of the income disregard for working TANF parents with a child care allowance.
4. Implementation of a child care allowance to cover costs incurred up to first pay for employed TANF parents.
5. A revised method of determining the co-payment based on family size and income. The revised co-payment affords families the opportunity to select care from the full range of child care providers.
6. A requirement for increased number of hours of employment for adult family members to meet eligibility requirements to receive subsidy consistent with Federal rules governing other public assistance.
7. Child care benefits to help low-income families attain self-sufficiency through employment. Benefits take into consideration parents' needs to work nontraditional hours and also receive child care assistance.
8. Increased accountability for low-income working families to accurately and completely report circumstances and changes in circumstances.

Public Comments

Written comments, suggestions and objections were solicited within a 30-day period after the publication date

of the proposed amendments on September 6, 1997. A public hearing was held on September 23, 1997, at the State Museum Auditorium, Harrisburg, PA 17120. Seventy-six individuals attended the hearing and 26 individuals presented testimony. This hearing followed an extensive public forum process the Department conducted prior to the initial submission of the proposed amendments, which offered a forecast of the proposed amendments.

Discussion of Comments and Summary of Changes

The Department received more than 850 letters from the general public, providers, advocates and Legislators during the 30-day comment period. The Department heard the testimony of 26 individuals during the public hearing. The Department, in order to hear from as many individuals as possible, distributed more than 7,000 copies of the proposed amendments. The Department also received comments from the Independent Regulatory Review Commission (IRRC) and separate letters from individual Legislators. A majority of comments that the Department received were form letters from parents and organizations representing providers who serve children currently eligible for subsidized child care.

For the purpose of this document, the Department has organized the discussion of comments into two broad groups. The first group describes the most frequently expressed comments and consequent changes to provisions in the regulations. The second group addresses comments on the regulations in the order in which the regulations appeared in the proposed regulations. Where the location of a final-form regulation has been changed from where it appeared in the proposal, reference has been added to identify where the provision appears in these final-form regulations. Changes made in the final-form regulations that were not the result of comments are addressed as issues under the section in which they appear in these final-form regulations.

Major Comments

The greatest number of written comments received was related to the topics listed as follows. These comments are consistent with comments the Department received during the Child Care Works public forums conducted prior to the release of the proposed regulations. The discussion of these comments and the Department's responses are listed beginning with the topics for which the Department received the greatest number of comments.

Issue: Cost Structure

Comment: Weekly family co-payment—Commentators raised objections regarding the amount of the increase of the weekly family co-payment computed in accordance with proposed § 3040.63 (relating to calculating a co-payment). Commentators believed that the proposed increases for families were too high and that families' co-payments should not exceed 10% of a family's gross income.

Response: The Department has determined that the increases in the parent co-payment are reasonable. Parents whose income is below 100% of the Federal Poverty Income Guidelines (FPIG) will not pay more than 10% of their income towards their co-payment. Families whose income exceeds 100% of FPIG up to 185% of FPIG will make a co-payment in an amount varying from 10% to 14.5% of their income. The Department has concluded that a co-payment schedule which reflects up to 14.5% of a parent's income is comparable to other states which have limits up to 18% of a parent's income when total income is below 185% of FPIG.

Here is an example. A parent with one child age 4 has a monthly income of \$1,175 per month, or 130% of the FPIG, and selects child care which costs \$365 per month. His fee will increase from \$15 per week, or 5.5% of his annual income, to \$25 per week, or 9.2% of his annual income.

Under the current system, there are families on the waiting list who are paying the total cost of their child care. For these families, the opportunity to obtain subsidy under the revised co-payment schedule will reflect a significant decrease in costs. Additionally, working families on welfare have historically paid for the full cost of care. After the welfare family provided verification that the family had paid the child care costs, the family would receive an income disregard of the actual costs, but the disregard amount was capped at \$175 per month, per child. While this income disregard reduced the amount of income considered in determining the amount of the cash assistance grant, in many instances, the amount of the cash grant was considerably less than the actual child care costs paid by the client. For working welfare families who are currently receiving the disregard, the revised co-payment schedule reflects a significant decrease in their child care co-payment responsibility. While the revised co-payment schedule reflects an increase in costs for many nonwelfare families who are currently receiving subsidy, it represents a significant decrease in costs for many other families now on the waiting list who will be served for the first time under these final-form regulations.

Comment: Consideration of the cost of care in weekly co-payment schedule—Commentators raised objections to consideration of the cost of care in the determination of the amount of the family co-payment under § 3040.63(c). The commentators did not agree with the proposed co-payment schedule because they asserted it would force families to pick care which was less costly. Commentators raised objections to the proposed co-payment schedule because it did not acknowledge variance in cost for younger children and variance in cost from county to county, in particular, where the cost of child care exceeds the average cost of care.

Response: The Department has reconsidered its position, and has deleted consideration of the cost of care in assessing co-payment obligation. The child care co-payment will be determined based on family size and income.

Issue: Eligibility determination process.

Comment: Six-month redetermination—Commentators raised objections regarding the requirement in § 3040.52(b)(2) (relating to eligibility agent responsibilities) that redeterminations of eligibility occur at least every 6 months, suggesting a requirement would be burdensome for parents and eligibility agents.

Response: The Department has retained the requirement for a 6-month eligibility redetermination for all subsidized child care recipients. A redetermination period of 6 months is not burdensome and is reasonable, given the potential for changes in the family income and demand for service. The final-form regulations have been revised to clarify that at a redetermination the eligibility agent needs to document only factors that are subject to change and which may affect eligibility, such as income information and the need for child care. Also, mail-in applications can be used for redeterminations. The Department will keep the 6-month requirement to assure that funds are directed to eligible families. The demand

for subsidized day care continues to grow, as evidenced by the growing number of children on the waiting list. The waiting list varies between 9,000 and 11,000 children per month depending upon the time of year. Since the demand is greater than the resources available, the Department must assure that only eligible families receive subsidy. The 6-month redetermination will assist in reducing the amount of overpayments incurred by a family if the parent fails to report a change such as an increase in income.

Comment: Limiting the use of a mail-in application—Commentators raised objections regarding § 3040.52(a)(2) which permits eligibility agents to require an initial face-to-face interview. They erroneously believed that the use of mail-in applications would be replaced with a requirement for face-to-face interviews for low-income families who are required to have redeterminations for eligibility.

Response: Under § 3040.52(a)(4), the Department has retained provisions that allow mail-in applications and has not eliminated the use of mail-in applications for a redetermination of eligibility. Also, the Department has not required every redetermination of eligibility to be a face-to-face meeting between the parent and the eligibility agent. The Department supports the use of mail-in applications for parents who have a difficult time traveling to the eligibility agent for their redetermination of eligibility. The Department has retained in these final-form regulations the requirement for a face-to-face interview for the family before the first child in the family is enrolled in service.

Comment: Face-to-face interviews—Commentators raised objections to § 3040.52(a)(2) which permits the eligibility agent to require a face-to-face meeting between the eligibility agent and the parent prior to the receipt of subsidized child care. Commentators believed that face-to-face interviews would disadvantage TANF families.

Response: Under § 3040.52(a)(10), the Department has retained the requirement for one face-to-face interview prior to the enrollment of the first child in the family into subsidized child care. This face-to-face meeting requirement allows the eligibility agent to accomplish a variety of tasks including: 1) providing child care resource and referral information and consumer education; 2) offering a review and explanation of the parent's rights and responsibilities in receiving subsidized day care; and 3) verifying the parent's identity, including witnessing the parent's signature on the application form.

The Department also has clarified that this requirement is modified for former TANF families. Section 3040.53(g) has been revised to allow a 90-day period for the eligibility agent to conduct the face-to-face interview with former TANF families. The required face-to-face meeting for families moving from TANF must occur within the first 90 days of receipt of subsidized child care, but will not cause a delay in the receipt of the families' benefits. A face-to-face meeting requirement is needed for former TANF families because these families, as recipients of subsidized child care, must learn of their benefits under the subsidized program. Language has been added to the final-form regulations to clarify that a parent/caretaker who transfers from TANF shall meet at least once face-to-face with the eligibility agent.

Issue: Benefits for child care.

Comment: Eligibility of school-age children—Commentators raised objections to § 3040.3 (relating to definitions) because they believed that the proposed amend-

ments, which described a unit of care, indicated that school-age children were eligible for either before-school care or after-school care during the school year, but not both before- and after-school care. Also, commentators, including IRRC, pointed out that the definition of a "unit of care" would limit service for school-age children to a single provider.

Response: Under § 3040.3, the Department has eliminated the term "unit of care," which was defined as an enrolled day of care with a single provider in a 24-hour period. The Department has eliminated this term because it is moving from a description of the amount of child care allowed in a 24-hour period to a revised description of the amount of child care a family can receive in a week, which more accurately reflects parents' varying child care needs with varying shift work. Language in the proposed amendments was not intended to limit a school-age child's receipt of before- and after-school care during the school year. The Department has always allowed school-age children to receive both before- and after-school care if the need exists and will continue to allow the parent to choose more than one provider in a 24-hour period.

Comment: Administrative processes—There were requests by some commentators, including IRRC, that the Department provide more detail on the process for former TANF families who are to receive continuing child care benefits through the LMAs.

Response: The Department's practice is to include this type of information in written procedures for workers of the CAOs and the eligibility agents. These procedures for Child Care Works will describe operational requirements and will be subject to revisions depending upon forms and implementation of changes to management information systems. Including these procedures in the final-form regulations is not appropriate.

Issue: Background checks.

Comment: IRRC and other commentators stated that the Department should require background checks for all relative/neighbor caregivers.

Response: The Department has decided not to address background checks in the final-form regulations. At the current time, there is no requirement in 23 Pa.C.S. §§ 6301—6384 (relating to Child Protective Services Law) for background checks for relative/neighbor caregivers and the Department will not require background checks for relative/neighbor caregivers.

The Department has developed an integrated child care system, for cash assistance and low-income families, where parents have a variety of child care choices supported by consumer education which helps parents to choose child care. Parents often choose relative/neighbor care because they are familiar with the caregiver. A parent may request the relative/neighbor caregiver to pursue criminal history and child abuse background checks at any time. It is the parents' vigilance on a daily basis that best assures their children's safety in homes of relative/neighbor caregivers they select. The Department is expanding its training effort for an increased number of relative/neighbor caregivers.

The Department has allowed cash assistance recipients access to, and has been paying for child care provided by, relative/neighbor caregivers for over 25 years without requiring background checks. While there is no requirement for child abuse or criminal background checks, CAOs have been instructed to advise families in writing of the availability of child abuse and criminal background checks, and of their right to request these checks before

making a decision to place their children with relative/neighbor caregivers. At present, nearly 44% of families receiving child care payments through the CAO use relative/neighbor care. The Department will continue to take steps to ensure that these families are aware of the types of choices of child care which are available to them as well as their parental right to ask that a relative/neighbor seek a background check.

Requiring background checks for relative/neighbor care would create an undue burden for cash assistance and low-income families. Many cash assistance families might need child care immediately or on an intermittent basis when they first receive TANF benefits and could not wait for background checks to be processed. Also, requiring background checks would be inconsistent with other practices for families who use relative/neighbor care and do not receive subsidized child care. It is inappropriate to require background checks for families seeking a subsidy, as it would place a burden on low-income families which is not placed on middle-income families.

Chapters 168 and 3040

These two chapters govern eligibility for subsidized child care for cash assistance and low-income families. Public comments are discussed at each section of the chapters, as they appear sequentially.

In general, IRRC suggested that Chapters 168 and 3040 should be consistent whenever possible. In response to these concerns, certain terms used throughout Chapters 168 and 3040 have been changed to be consistent. These terms include: "parent," "child care", "co-payment" and "maximum child care allowance." All of these terms will be further explained at the appropriate section of the chapters.

Chapter 165—Discussion of Comments

Although the intent, as described in proposed rule-making, is to change rules pertaining to child care for TANF recipients, the deletion of child care provisions in Chapter 165 would also have had the effect of deleting child care provisions for General Assistance recipients. To prevent this, the Department has retained in Chapter 165 the child care provisions for General Assistance recipients. Chapter 168 sets forth all the child care provisions for TANF recipients.

§ 165.42. Advance payment of special allowances for supportive services.

Comment: Subsection (a). IRRC and others raised a concern that the provisions for advance payment of supportive services other than child care had been deleted. Child care advanced payment provisions are in § 168.1(b)(3).

Response: Provisions for advanced payment of supportive services other than child care are in § 165.45(f). In the proposed amendments, § 165.42(a) was deleted to avoid duplication and repetition. However, the Department has decided to reinstate subsection (a) to avoid any misunderstanding. The Department has also added a cross reference to § 165.42 in § 168.1(b)(3).

§ 165.81. Fair hearing.

Issue: Paragraph (2). The Department has amended the provision to provide for continued payment of supportive services when a recipient files a timely appeal.

*Chapter 168—Discussion of Comments**§ 168.1. Policy on child care.*

Comment: Subsection (a). The statement that payment for child care “may be made to enable the parent/caretaker to participate in work-related activities” raised questions from IRRC and others about whether the decision on eligibility was left to local CAO discretion.

Response: The language “may be made” was an effort to acknowledge the realities of a block grant from which funds might not be available. The Department has clarified that, to the extent that funds are available, the Department did not and does not intend the CAOs to have discretion in authorizing payment to eligible families. The Department has revised language in § 168.1(a) by changing the word “may” to “will.”

Comment: Subsection (a). IRRC suggested that the term “caretaker/relative” be replaced with the term “parent” as used in Chapter 3040 for consistency between the programs.

Response: The Department agrees that, whenever possible, terminology should be identical to avoid confusion. Language throughout Chapters 168 and 3040 has been revised to replace the terms “caretaker relative” and “parent” with the term “parent/caretaker.”

Issue: Subsection (a). The Department has added language to clarify that eligibility for a child care payment is continued during a month of zero cash payment. Zero cash payment results from receipt of a nonrecurring extra pay in a budget month, such as a vacation pay or a fifth pay in a calendar month.

Issue: Subsections (a) and (b)(3). The Department has added language to clarify that child care payments are considered a reimbursement of past or future child care expenses. As such, child care payments are not considered as income for determining eligibility for food stamps.

Comment: Subsection (b). IRRC and others questioned the wording that “upon request,” families would be informed of the types and location of child care providers and referred to the CCIS for help in locating care. The concern was that families would not know to ask for help for a referral to the CCIS, until they were first made aware that this help exists.

Response: The Department agrees with the concerns raised and has revised subsection (b)(1) and (2) to provide that participants in work-related activities who need child care are routinely informed of the types and locations of child care providers, and the services available from the CCIS for help in finding and selecting a provider, including resource and referral assistance. A referral will be made to the CCIS whenever the client indicates a need for further help. Clients will be provided with the address and the telephone number of the CCIS so that they can contact the CCIS of their own volition at any time.

Comment: Subsection (b). IRRC suggested that the term “local management agency” be defined and that the definition be consistent with any definition used in Chapter 3040.

Response: A definition of “local management agency” has been added in § 168.2 to mirror the definition used in Chapter 3040.

Issue: Subsection (b)(3) (final-form regulations). The Department has added an exception to the provisions which limit advance payment to instances in which the provider requires it, and which restrict advance payment for providers enrolled in the child care vendor payment

system for TANF budget groups determined prospectively ineligible as a result of starting new employment. For these families, advance payment for child care costs will be issued when verification has been obtained through a collateral contact with the child care provider. This change will enable these families to have a smooth transition from receiving subsidy from the CAO to receiving subsidy from the CCIS.

Comment: Subsection (c). IRRC and others suggested that the reference to the Employment Development Plan (EDP) should be replaced with reference to the Agreement of Mutual Responsibility (AMR) and that a definition of the AMR be added to § 168.2.

Response: The Department has replaced all references to an EDP with references to an AMR. The Department will promulgate the definition of “AMR” in the TANF program regulations which are being developed at this time. The term was defined in the TANF Notice of Rule Change published at 27 Pa.B. 1092 (March 1, 1997).

Comment: Subsections (d) and (e). Commentators suggested that the language in subsection (d) be modified to specifically identify a determination of eligibility as an action requiring notice of approval or denial, and that language in subsections (d) and (e) be added to the general text to specifically reference the “time frames” in §§ 165.43 and 165.45.

Response: Since approval or denial of benefits follows a determination of eligibility, the Department does not think the language change is necessary, but has made the suggested change in subsection (d) to avoid any misunderstanding. Reference to the time frames for action in subsections (d) and (e) which refer to §§ 165.43 and 165.45 is already referenced in these final-form regulations.

Comment: Subsection (f). IRRC questioned the provision that the child care co-payment sliding fee scale and maximum child care allowance charts “are available upon request.” Specifically, IRRC criticized the fact that unless families were made aware of availability, they would not know to request copies.

Response: The Department has revised subsection (f) to require the CAO to discuss the co-payment sliding fee scale and maximum child care allowances with clients and to advise clients that copies are available from the CAO.

Issue: Subsection (g) (final-form regulations). The Department has added subsection (g) to clarify that the CAO will refer the client to the CCIS whenever help is needed in finding and selecting a child care provider.

§ 168.2. Definitions.

Issue: The Department has deleted the definition of “average child care costs,” as unnecessary. This term applied to the determination of a co-payment obligation based on the cost of care selected. Cost of care is not a factor in determining the co-payment in the final-form regulations.

Comment: IRRC raised concern about the lack of consistency between the definition of a family unit for families who receive TANF in Chapter 168 and for those who do not in Chapter 3040.

Response: Child care benefits under Chapter 168 are a supportive service available to TANF-eligible families only. The definition of what constitutes a TANF-eligible family is dictated by TANF eligibility criteria, which uses the concept of a “budget group.” The concept of the

“budget group” is based upon a determination of those in the household who have a responsibility for the child. The concept of a family in Chapter 3040 is not inextricably linked to TANF eligibility criteria; and uses a concept of family based upon those in the household who live as an economic unit. In this instance, consistency between the programs is not feasible. However, to facilitate transition between programs, provisions have been incorporated into Chapter 3040 to give TANF families a 6-month period before they are subject to Chapter 3040 eligibility criteria.

Issue: The Department has added a definition of “Child Care Information Services (CCIS) Agency.”

Issue: The Department has eliminated the definition of a “child with a disability” as duplicative of provisions in § 168.17(3) for determining eligibility of a child with a physical or mental disability.

Issue: The Department has added a definition of “co-payment” as the monthly amount the family pays for child care that is subsidized. A co-payment is required only of employed TANF recipients as in § 168.71. The co-payment is established monthly for these TANF recipients because eligibility for TANF is determined on a monthly basis.

Issue: The Department has revised the definition of “co-payment sliding fee scale” to eliminate reference to the average child care costs, and has added a reference to Chapter 3040, Appendix B.

Comment: IRRC suggested that the Department adopt a consistent term for identifying the payment ceiling level for child care payments. Throughout Chapter 168 the term “maximum child care allowance” is used, whereas the term “county ceiling rate” is used throughout Chapter 3040.

Response: The Department has decided to adopt the term “maximum child care allowance” throughout both Chapters 168 and 3040. Language in Chapter 3040 has been amended.

Comment: IRRC suggested that the term “relative/neighbor care” be replaced with “unregulated care” or “exempt care.” Concern was raised that not all care which is exempt from certification is provided by relatives or neighbors.

Response: The Department has decided to retain use of the term “relative/neighbor care.” The Department believes the term is easily understood by families and the child care community to describe care arrangements by persons who are exempt from child care licensure and/or certification. The definition of “relative/neighbor” care has been changed to “care given by a person who is exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes) and cares for three or fewer children unrelated to the caregiver.”

Issue: The Department has revised the definition of “TANF” to clarify that it is a program which provides cash assistance to families that include dependent children.

Issue: The Department has added a definition of “sleep-time” in § 168.2 and made a corresponding addition to § 168.72 to provide for payment of child care for parents/caretakers in third-shift employment when an eligible child is in the home and care is needed to enable the parent/caretaker to sleep following the work shift. Clients with young children at home have raised concerns about taking a third-shift job unless they can get help in paying

for child care during both the hours of employment and the hours they need to sleep. Because work is a condition for the receipt of cash benefits, the Department has provided for payment for care during work hours and hours of sleep for persons who need to accept third-shift employment to make progress toward financial self-sufficiency.

§ 168.11. *General requirements.*

Issue: Subsection (a). The Department has added in-home care as a type of care for which child care allowances are available as required under the CCDBG.

Comment: Subsection (d)(2). IRRC noted that the reference to eligibility for a child with a developmental disability who has reached his 13th birthday was inconsistent with the corresponding reference in § 3040.2. It was suggested that the Department adopt consistent criteria. It was also noted that the criteria for determining a child’s eligibility were duplicated in § 168.17.

Response: As a result of comments suggesting that provisions in § 168.11(d)(2) regarding eligibility for a child age 13 or older with a developmental disability were duplicative of provisions in § 168.17 and resulted in confusion, § 168.11(d) was deleted. Acknowledging the need for eligibility policies to be consistent whenever possible for families who receive TANF and those who do not, the Department has revised language in § 168.17(3) to clarify that a child over the age of 13 years will remain eligible if the child is under age 19 and has a developmental age of less than 13 years. This is consistent with provisions in § 3040.2 of the proposed amendments (relocated to § 3040.11(e) due to format changes).

Comment: Subsection (e). One commentator suggested that the Department include payment of registration fees as an allowable child care cost.

Response: Under the now repealed Family Support Act of 1989, payment of registration fees was a state option. However, the Department never adopted this option. During the past 8 years, there has been no indication that this issue presents a barrier to accessing child care, and it is not something that clients have raised as a concern. Given the wide range of choice of child care for those receiving subsidy, and in the absence of evidence to substantiate a need, the Department has retained the past practice of not allowing payment of registration fees as an allowable child care cost. In addition, reference to allowable child care costs originally proposed in § 168.11(e) has been deleted as duplicative of provisions in § 168.72.

Issue: Subsection (e). The Department has deleted this subsection because it was duplicative of provisions set forth in §§ 168.71(1) and 168.72(2) and (3).

Issue: Subsection (h). The Department has relocated provisions on payment of child care reasonably related to the hours of employment or RESET participation, including travel time, to § 168.72(1) to group similar information together.

Comment: Subsection (i). One commentator misinterpreted the language change regarding providers in the Child Care Vendor Payment System and concluded that relative/neighbor caregivers would be eligible to participate in the vendor system. A commentator noted that this subsection duplicated provisions in § 168.81.

Response: The misunderstanding was caused by eliminating the adjective describing providers as “regulated” which led to the conclusion that relative/neighbor caregivers would be eligible to participate in the vendor payment

system. Since the vendor payment system is open only to those child care providers who have a registration certificate or certificate of compliance, the Department had thought it was redundant to define these providers as "regulated." The Department has reinstated the adjective to avoid further misunderstanding. Section 168.11(i) as proposed has been eliminated. Provisions for vendor payment continue to be found only in § 168.81.

Comment: Subsection (i)(1). IRRC raised questions about identifying and tracking payments to providers who are not enrolled in the Department's Child Care Vendor Payment System and about the Department's plans for safeguarding children and assuring proper use of public funds when direct payment of the child care subsidy is made to persons not in the vendor payment system.

Response: The Department will maintain a list of all providers serving families in the subsidized child care system, including the names and addresses of relative/neighbor caregivers. An automated information system redesign for capturing this information has been developed and is now being used Statewide.

Currently, families using relative/neighbor caregivers who are not in the Child Care Vendor Payment System receive a copy of the minimal health and safety standards for relative/neighbor caregivers and are advised in writing of their right to request child abuse and/or criminal background checks before placing their children in care. Providers are required to certify to compliance with minimal health and safety requirements and submit the certifications to the CAO on a monthly basis. The Department will be expanding child care consumer education efforts and training opportunities for relative/neighbor caregivers.

The provision for payment of child care benefits directly to a client when the caregiver is not in the vendor payment system is not a new provision. The practice of direct checks to clients for child care expenses, previously in § 165.46(a)(11), has been in place for over 25 years. Assurances of proper use of public funds for child care benefits are identical to those in place for use of TANF funds, as in § 168.91.

Comment: Subsections (d), (f) and (j). Comments by IRRC and others noted that provisions in § 168.11 duplicate provisions in subsequent sections: § 168.17 (relating to eligible children); § 168.18 (relating to need for child care); and § 168.19 (relating to child care arrangements).

Response: The Department acknowledges that some of the provisions were duplicative. To avoid confusion, the Department has eliminated those references in § 168.11 which are addressed in §§ 168.17—168.19.

§ 168.17. Eligible children.

Comment: One commentator suggested that the Department include nurse practitioners and physician assistants as sources of verification to document physical or mental incapacities or disabilities.

Response: The Department had considered this issue previously with regard to eligibility under the General Assistance Program and concluded that permitting medical verification by sources other than physicians and licensed psychologists is not authorized under the law. Section 9 of Act 35, amending 62 P. S. § 432(3)(i)(C) narrowed language to permit an assessment of physical or mental disability done only by "a physician or psychologist." While this section of Act 35 applies to general assistance, the Department has adopted a consistent approach for determining eligibility for TANF and TANF-related child care benefits.

Issue: Paragraph (3). The Department has increased the age limit on eligibility for child care, from age 18 to age 19, for a child who is not physically capable of caring for himself or who has a developmental age of less than 13 years. The change was made for consistency with the eligibility provisions for cash assistance, which provide that a person under the age of 19 may be included as a child in the budget group.

Issue: Paragraph (4). The Department has added a requirement that all children who receive child care subsidy have age-appropriate immunizations. This requirement has been added under the requirement in the final Federal CCDBG regulations at 63 FR 39987, to be codified in 45 CFR § 98.41(a)(1)(i).

§ 168.18. Need for child care.

Comment: Subsection (b)(2). One commentator suggested we replace the words "employment-related activities" with the word "RESET."

Response: The Department has replaced the phrase "employment-related activities" with "work-related activities" rather than "RESET." This terminology is consistent with language used throughout Chapter 168, eliminates the need to list examples of allowable activities, and is more general rather than limited to a specific program.

Comment: Subsection (b)(3). IRRC and others suggested that the Department retain the provision which allows for child care to be considered as needed when an unemployed biological or adopted parent, specified relative, or legal guardian is in the home, if the child is at risk because of suspected child abuse.

Response: The Department has reconsidered its position and has reinserted the provision in § 168.18(b)(3) as suggested. The verification process for suspected child abuse and the requirement for reporting suspected child abuse have likewise been reinserted in § 168.45.

Issue: Subsection (c). The Department has deleted this subsection in the final-form regulations. Due to an oversight, proposed amendments failed to reflect this deletion. The provision, which stated that the employed person need not be the specified relative for the family to establish a need for child care, was applicable only in the context of the TCC program. Since the TCC program is being eliminated, the provision is unnecessary. The provision retained in subsection (a) clarifies that child care must be needed to enable a member of the budget group to participate in a work-related activity.

Comment: Subsection (d). Commentators suggested that this subsection duplicates provisions in § 168.11(g) which broadened the opportunity for continued benefits during breaks not only in employment, but in other work-related activities.

Response: Section 168.11(g) has been deleted to eliminate the duplication. The provision for child care benefits during breaks, § 168.18(c) of the final-form regulations (proposed in § 168.18(d) but redesignated due to format changes), has been expanded to include breaks during any "work-related activity."

Comment: Subsection (e). Commentators raised concern about the provision that child care is not considered needed when the parent/caretaker owns or operates a day care service, as it fails to take into consideration the fact that space may not be available, or that the parent/caretaker may still be required to make payment for the care.

Response: The Department acknowledges that, as written, the provision inappropriately assumed that space was available. The phrase "where care is available for the child" has been added in § 168.18(d) of the final-form regulations (proposed in subsection (e) but redesignated due to format changes). The Department has not, however, made a change to accommodate parents/caretakers who, as owners/operators of child care facilities, charge themselves for care of their own children. While employees of day care facilities may be required to pay for care when they place their children in their places of employment, the Department does not accept the notion that owners/operators would be required to impose charges upon themselves.

§ 168.19. *Child care arrangements.*

Comment: Paragraph (1)(i). One commentator suggested that the provision that care be provided in accordance with State and local law be expanded to include "Federal" law.

Response: The Department has made the suggested change.

Comment: Paragraph (1)(ii). One commentator suggested that the provision which requires parental access be expanded to include "without the need for prior notification."

Response: The suggested change has been made in this subparagraph for consistency.

Issue: Paragraph (1)(iii). The Department has added a provision which requires that a child care provider be at least 18 years of age. This provision was inadvertently missed in proposed amendments and is necessary to comply with the Federal requirement under Title VI of the Personal Responsibility and Work Opportunity Act.

§ 168.21. *Reasons for ineligibility.*

Comment: Paragraph (2). Concern was raised about the provision that made a family ineligible for child care when the total cost of care exceeded the family's gross monthly income.

Response: The Department has eliminated the proposed amendment in § 168.21(2) in its entirety.

§ 168.41. *Verification requirements.*

Comment: Paragraph (2). IRRC suggested that the Department eliminate reference to Chapter 133 (relating to redetermining eligibility) and adopt verification, documentation and appeal provisions used in Chapter 3040 to provide consistency between programs.

Response: As set forth in Chapter 168, child care benefits are not a "program" but rather a supportive service delivered to families who are eligible for the TANF program. As such, the basic provisions for verification, documentation, and appeal and fair hearings are in the TANF program. Placing additional or different criteria on a TANF family to receive a child care benefit would be unnecessarily burdensome on TANF families and create confusion and unnecessary paperwork for eligibility staff. For those reasons, the Department has retained the reference to Chapter 133.

Comment: Paragraph (2). One commentator felt that the Department should amend this section which precludes a continuation of child care benefits pending the outcome of an appeal and fair hearing, and allow families to appeal reductions or terminations of child care benefits with continued benefits while the appeal is pending.

Response: Section 168.101 has been amended to provide for continued payment of child care pending a hearing decision.

Issue: Paragraph (2) (final-form regulations). The Department has revised language in § 168.41(2) of the proposed amendments which had specified that a confirming notice would be issued and replaced it with reference to either a confirming notice or an advance notice, as appropriate.

Comment: Paragraphs (3) and (4). One commentator suggested that it would be more clear if the Department reinstated use of the term "collateral contact" in lieu of "contact" when describing verification sources and processes.

Response: The Department has made the suggested change in both paragraphs.

Issue: Paragraph (3). The Department has reordered the methods of verifying child care costs to clarify the client and the Department's responsibility for verifying eligibility information.

Comment: Paragraph (4). One commentator raised concern that the provision in § 165.44(a)(4) for use of collateral contacts when necessary to accommodate advanced payment was not repeated in this section.

Response: Language has been added to § 168.41(4) to clarify that advanced payments will be verified by collateral contact whenever necessary.

§ 168.43. *Verification of a child with a disability.*

Issue: The Department has renamed this section "Verification of the disability of a child" in the final-form regulations.

§ 168.44. *Verification of an adult with a disability.*

Issue: The Department has renamed this section "Verification of the disability of a parent/caretaker" in the final-form regulations.

§ 168.49. *Verification of payment of co-payment for the employed budget group.*

Comment: One commentator questioned the need to verify that co-payments have been made or that satisfactory arrangements have been made to pay overdue fees. The commentator argued that monthly verification created unnecessary red tape, and that this provision should be deleted. The commentator suggested that providers would notify the Department if they were having problems collecting fees.

Response: Personal responsibility is an essential component of welfare reform. Payment of required child care co-payment fees is a condition of eligibility for receipt of child care payments, and is part of the Agreement of Mutual Responsibility for TANF families. Verification of payment is required to ensure compliance. An assumption of compliance in the absence of a provider complaint is not acceptable, and would, in fact, shift the burden of establishing eligibility from the client to the provider. The Department has retained the provision requiring monthly verification that co-payment responsibilities have been met. Given that this verification is done in conjunction with the verification of monthly child care costs, it does not create any additional burden on the parents/caretakers or the CAO, or any additional paperwork requirements.

§ 168.51. *Verification of age-appropriate immunization.*

Issue: The Department has added this provision to specify that a parent/caretaker whose child is receiving

child care subsidy shall sign a self-certification statement that the child has received age-appropriate immunizations.

§ 168.61. Reporting requirements.

Comment: One commentator suggested that the Department eliminate monthly reporting requirements on employed clients for child care and require only that parents report when a change has occurred in either the child care arrangements or costs.

Response: Monthly reporting is a requirement for receipt of TANF benefits by employed clients. Including child care as a component of TANF benefits is useful for the client, the provider, and the Department. Many clients participate in work-related activities with hours of participation which vary on a weekly/monthly basis. This means that the hours of child care vary also. Since the Department determines payment based on actual costs within a month, monthly reporting ensures that the Department knows what costs have been incurred.

Monthly reporting requirements have been in place for a number of years and have proven to be useful in verifying continued eligibility for payment and avoiding unnecessary overpayments. This experience has shown that clients often fail to report a change in circumstance which affects eligibility for child care benefits, such as dropping out of a training program, terminating employment or changing providers. When a client fails to report a change in circumstances, the provider often has no way of knowing that a change has occurred and continues to hold the day care slot and charge accordingly. In these situations, when the provider is enrolled in the vendor payment system, the Department may be obligated to issue payment. This has resulted in unnecessary expenditures for services a client was not entitled to, and unnecessary overpayments. Monthly reporting serves to keep this risk to a minimum.

Lastly, monthly reporting requires that the provider certify that it is operating legally and in compliance with minimal health and safety standards. While certifications are obtained initially, compliance could change over time. Monthly reporting enables the Department to verify compliance on a regular basis. For these reasons, the Department has retained the provision for monthly reporting of child care costs and arrangements.

§ 168.71. Monthly payment determination.

Comment: Paragraph (2). Commentators suggested that the provision that payment “may be made for TANF eligible budget groups in need of child care to participate in RESET” be replaced with “is made . . .,” and that the qualifying statement “to the extent that funds are available” be added.

Response: Language has been changed from “may be made” to “is made” throughout § 168.71 and the statement addressing availability of funds has been added in § 168.1(a). Provisions of paragraph (2) of the proposed amendments have been relocated to paragraph (1) as a result of reformatting of the final-form regulations. The term “reset” has been replaced with “work-related activity” throughout Chapter 168.

Comment: Paragraph (2). One commentator suggested that the term “work activities” be replaced with “work-related activities,” consistent with language in Act 35, and that work be identified separately from work-related activities.

Response: The Department agrees that the term “work-related activities” is appropriate and has made the sug-

gested change. Since work is a component of the broader term “work-related activity” used throughout various chapters, the Department has not used it separately in this chapter.

Comment: Paragraph (2). One commentator requested that the Department expand the provision which waives co-payment responsibility from the date employment begins until income is adjusted against the grant, to ensure that no co-payment is required until the first pay has been received.

Response: The Department has revised language which appeared in paragraph (2) of the proposed amendments and the language has been redesignated to paragraph (1) in final-form regulations. The regulations provide that the child care co-payment is waived from the date employment begins until the date the case is determined prospectively ineligible, provided the client has reported in a timely manner. For cases which remain eligible for TANF, the co-payment is waived for the calendar month in which the first pay is received. Language regarding this provision also has been added in § 168.74 for consistency.

§ 168.72. Determining monthly child care costs.

Issue: Paragraph (1) (final form-regulations). The Department has added the provision previously located in § 168.11(h) of the proposed amendments, regarding payment of child care reasonably related to the hours of the work-related activity, to group similar information together. The Department also has added language to clarify that care during hours of sleep time is an allowable charge for which payment may be made.

§ 168.74. Determining monthly child care co-payment.

Issue: The Department has deleted reference to the cost of care as a factor in calculating co-payment and has added a reference to the co-payment sliding fee scale in Chapter 3040.

Issue: Paragraph (1). The Department has added language to clarify that the co-payment is waived for the calendar month in which the first pay is received. The co-payment is determined prospectively for the next month, excluding the TANF grant as countable income. Thereafter, the co-payment is determined based on actual income as reported on the monthly reporting form.

§ 168.81. Payment methods.

Comment: Commentators suggested that the provision that a child care payment may be issued as a direct check to the client, vendor payment, or restricted endorsement, be replaced with a child care payment is made. It was also pointed out that this section duplicates provisions contained in § 168.11(i).

Response: Language has been revised to provide that the Department “will make” payment as a direct check to the client, vendor payment or restricted endorsement.

Issue: Paragraph (2): Eligibility staff have asked for clarification on the appropriate payment method to be used when the client has already paid a provider who is in the vendor payment system. This situation is most likely to occur as a result of a retroactive determination of eligibility. The Department has added a provision in § 168.81(2) explaining that payment will be made to the client, and a vendor payment to the provider is not used when the client provides verification that the client has already paid the provider for the services.

§ 168.91. Restitution.

Comment: The proposed amendments proposed to not exclude child care overpayments from recoupment. A

commentator raised a concern that this would result in TANF payments being reduced because of overpayments in child care.

Response: The Department has reconsidered its position on the issue of recoupment of child care benefits because the proposed amendments would have been inconsistent with § 165.91 which exempts all other supportive services from recoupment. The Department has reinserted the provision to exempt child care benefits from the cash assistance recoupment process.

§ 168.101. Appeal and fair hearing.

Issue: The Department has added a provision which provides for continued payment of child care benefits pending a hearing decision on a timely appeal unless the action under appeal is the result of a change in State or Federal law or policy, in accordance with 62 P. S. § 423(a).

Chapter 183—Discussion of Comments

§ 183.94. AFDC earned income deduction.

Comment: IRRC noted that the AFDC program is no longer in existence and that references to AFDC should be deleted.

Response: References to AFDC have been replaced with references to TANF.

Issue: Paragraphs (3)(i) and (ii). The Department has reinstated these subparagraphs to retain the provision which allows for a TANF earned income deduction when care is needed for an incapacitated adult.

Chapter 3040—Discussion of Comments

Chapter 3040 sets forth eligibility requirements for low-income families who are not receiving cash assistance benefits. The following discussion includes comments and the Department's responses. Where changes were not made as suggested, the Department has explained why in the discussion of the specific sections which follow. In addition, the Department has revised and reorganized provisions of the regulations, not in response to comments, but to add clarity, to offer consistency and to eliminate duplication of similar provisions. In the discussion that follows, the Department has identified each of these revisions as "issues."

§ 3040.2. Definition of subsidy.

The Department has reserved this section. Provisions previously set forth in this section and proposed changes have been relocated to § 3040.11 in final-form regulations.

Comment: Subsection (c). IRRC commented that the special conditions pertaining to subsidy for a child with a developmental disability who has reached his 13th birthday should be consistent with the provision in Chapter 165.

Response: Provisions for subsidy for a child who has a developmental disability have been relocated to § 3040.11(e). To provide consistency, the Department has modified the language to add a provision that a child continues to be eligible for subsidy until his developmental age reaches 13 years or until his chronological age reaches 19 years, whichever occurs first. The developmental disability must be documented by a licensed psychologist or a physician. In addition, the Department has eliminated the use of verification from other specialists in order to be consistent with cash assistance regulations. Section 9 of Act 35, enacted May 16, 1996, amending 62 P. S. § 432(3)(i)(c) included language requiring that an

assessment of physical or mental disability be completed only by "a physician or psychologist."

The Department has added a provision in § 3040.11(e)(2) to allow a child who has a physical disability to receive subsidy after he reaches his 13th birthday until he is no longer disabled or until his 19th birthday, whichever comes first.

§ 3040.3. Definitions.

Based on comments and need for clarification, the Department has amended § 3040.3 to reflect the following:

"Adjusted monthly gross income"

Issue: The Department has changed the term to "adjusted monthly income" and has modified the definition to simplify and add clarity.

"Advance weekly family fee"

Issue: The Department has deleted the term because it is not used in the final-form regulations.

"Adverse action"

Issue: The Department has deleted the term because the definition was not complete and was not needed.

"Application"

Issue: The Department has changed the reference in the definition from a "form approved by the Department" to a "Departmentally prescribed form" to assure consistency for eligibility determination.

"Caretaker"

Issue: The Department has restored the term and modified it to include a specified relative as defined in § 151.42, or an adult with legal custody, who lives in the family's common dwelling and who has the responsibility for the child for whom subsidy is requested.

"Child Care Information Services (CCIS) agency"

Issue: The Department has added a definition of "child care information services agency."

"Confirming notice"

Issue: The Department has deleted the term because it is not used in the final-form regulations.

"Co-payment"

Comment: IRRC commented that there is a need for consistency between Chapters 168 and 3040.

Response: Consistent with provisions in Chapter 168, the Department has added the term "co-payment," which is the weekly amount the family pays for child care that is subsidized.

"Cost of care"

Issue: The Department has deleted the term. The term caused confusion because the term was used in several different ways. Where the term was previously used, the term has been replaced with either "provider's published daily rate" or "maximum child care allowance," as appropriate to the context of the provision of the regulations.

"County ceiling rate"

Comment: IRRC raised a concern about the lack of consistency between Chapter 3040 and Chapter 168 regarding the term "county ceiling rate" and "maximum child care allowance."

Response: The Department has deleted the term “county ceiling rate” and has used the term “maximum child care allowance,” which is consistent with Chapter 168.

“Disqualification”

Issue: The Department has added this term which is used in the revised sections on overpayment, repayment and disqualification.

“Eligibility agent”

Comment: IRRC commented that the Department did not clarify that the eligibility agent is the employer or representative of the LMA.

Response: The Department has modified the term to include that the eligibility agent, which is known as the LMA or CCIS, is the entity with whom the Department has a contract or subcontract and to whom the Department delegates authority to determine a family’s eligibility for subsidized child care under this chapter.

“Eligibility redetermination”

Comment: IRRC commented that the Department did not clarify what factors the eligibility agent reviews for a redetermination.

Response: The Department has modified the term to clarify that only factors subject to change need to be reviewed at a redetermination.

“Employment”

Issue: The Department has clarified the definition by removing the portions of the definition that discussed the treatment of tips as part of earnings and the treatment of individuals who earn subminimum wage. These provisions were moved to § 3040.34(a)(2) regarding determining nonfinancial eligibility.

“FPIG”

Issue: The Department has added a definition for the term.

“FPL”

Issue: The Department has deleted the term because it is not used in the final-form regulations.

“Family”

Issue: The Department has deleted the term from this section because the individuals who must be included in the family for purposes of eligibility determination are listed in § 3040.28 (relating to composition of a family). The Department’s rationale for using different definitions of a family in Chapters 3040 and 168 is discussed under the comments related to Chapter 168.

“Fraud”

Issue: The Department has modified this term to more accurately reflect the use of the term in the overpayment, repayment and disqualification section.

“Full-day enrollment”

Issue: The Department has deleted the term because it is not used in the final-form regulations.

“Income”

Issue: The Department has revised the term to more clearly identify what types of payments count as income.

“Intentional program violation”

Issue: The Department has added this term which is used in the revised sections on overpayment, repayment and disqualification.

“Legal guardian”

Issue: The Department has deleted the term because an individual does not need to be a legal guardian to be a caretaker, the term used in the final-form regulations.

“Live-in companion”

Comment: IRRC and other commentators had two primary concerns. First, the proposed definition, which required that individuals be free to marry, did not reflect current lifestyles. Second, the proposed amendments did not indicate that a relationship must exist between the parent and the live-in companion.

Response: The Department has modified the term to reflect the Department’s intent to identify an economic unit which includes individuals who live together as a family.

“Local management agency”

Comment: IRRC suggested the Department include a definition of “local management agency.”

Response: The Department has added a definition of “local management agency.”

“Maximum child care allowance”

Comment: IRRC commented that there is a need for consistency between Chapters 168 and 3040 when referring to a child care benefit.

Response: The Department has adopted the term “maximum child care allowance” throughout Chapter 3040 and has defined it to be consistent with Chapter 168.

“Minor”

Issue: The Department has deleted the term from its list of definitions. The Department has used the term “minor” when describing the composition of the family and explaining that the income of a minor does not count for determining eligibility. The description of an individual who is a minor has been added to § 3040.28(1)(i) (relating to composition of a family).

“Overpayment”

Issue: The Department has added this term which is used in the sections on overpayment, repayment and disqualification.

“Parent”

Comment: IRRC commented that the term was not consistent in Chapters 168 and 3040.

Response: The Department has determined that the term “parent/caretaker” can be used in both chapters and has defined parent separately from caretaker. As defined in the final-form regulations, a parent can be a caretaker, but a caretaker may be someone other than the parent of the child who is eligible for service.

“Part-day enrollment”

Issue: The Department has deleted the term because it is not used in the final-form regulations.

“Profit from self-employment”

Issue: The Department has deleted the definition as it is unnecessary.

“Recoupment”

Issue: The Department has added this term which is used in several sections dealing with overpayment, repayment and disqualification.

“Reimbursable daily rate”

Issue: The Department has deleted the term because it is no longer used.

“Reimbursement rate”

Issue: The Department has added the term and defined it to be the provider’s verified published daily rate not to exceed the maximum child care allowance established by the Department.

“School-age child”

Issue: The Department has deleted the term because it is not used in the final-form regulations. School-age children are covered for subsidized child care benefits and are included under the general eligibility requirements for the family.

“Service type”

Issue: The Department has deleted the term because it is not used in the final-form regulations.

“Specified relative”

Issue: The Department has deleted this definition. The term is referenced in the definition of “caretaker” which refers to § 151.42.

“Training program”

Comment: Commentators suggested that the Department should reconsider providing subsidized child care while adult family members participate in training programs.

Response: The Department has reinstated the term, but modified the definition because the regulations permit subsidy while an adult family member who is employed participates in a training program. The Department has not reinstated the policy that allowed a family in which the parent is not employed to be eligible for subsidy while the parent is enrolled in a training program.

“Unit of care”

Comment: IRRC and other commentators raised a concern that the unit of care definition limited to one the number of providers who could care for an eligible child per day.

Response: The Department has deleted the term because it is not used in the final-form regulations. Final-form regulations do not prohibit parents from selecting more than one provider per day for a child.

“Weekly family fee”

Issue: The Department has deleted the term because it is not used in the final-form regulations.

“Wrap-around day care program”

Issue: The Department has deleted the term because it is not used in the final-form regulations.

§ 3040.11. Provision of subsidy.

Issue: Subsection (c). The Department has deleted this subsection regarding subsidized child care not being an entitlement program because it was duplicative of § 3040.1. Subsections (d) and (e) in proposed amendments have been redesignated subsections (c) and (d) in final-form regulations.

Issue: Subsection (d) (final-form regulations). The Department has clarified that a child may receive subsidy if there is no other adult family member available to care for the child during the hours of need.

Issue: Subsection (e) (final-form regulations). The Department has restructured and relocated provisions on age limitations for eligible children proposed in § 3040.2(a) and (c) to § 3040.11(e) to group similar information together.

Issue: Subsection (f). The Department has deleted this subsection as proposed because it was unclear.

Issue: Subsection (f) (final-form regulations). The Department has added a requirement that all children who receive subsidy must have age-appropriate immunizations. This requirement has been added under the requirement in the final Federal CCDBG regulations at 63 FR 39987, to be codified in 45 CFR 98.41(a)(1)(i).

Issue: Subsection (g) (final-form regulations). The Department has added a new subsection which provides that a family must meet both financial and nonfinancial criteria to be eligible for subsidized child care. This provision was in § 3040.2(b) and has been relocated to group similar information and general requirements together.

Issue: Subsection (h) (final-form regulations). The Department has restructured information found under § 3040.2(b) of the proposed amendments and has relocated it to this subsection. This subsection provides that a family in which a parent is receiving TANF is not eligible for subsidized child care under Chapter 3040.

Issue: Subsection (i) (final-form regulations). The Department has restructured information previously found in § 3040.2(b) and has relocated it to this subsection. This subsection provides that subsidized child care may not be used as a substitute for a publicly funded educational program or a specialized treatment program.

Issue: Subsection (j) (final-form regulations). The Department has restructured information previously found in § 3040.2(b) and has relocated it to this subsection to group similar information together. This subsection includes information on the types of child care that are available.

Issue: Subsection (k) (final-form regulations). The Department has restructured information previously found in § 3040.2(a) and has relocated it to this subsection to group similar information together.

§ 3040.13. Notification on designated forms.

Issue: The Department has deleted and reserved this section because the information is included in other sections.

§ 3040.16. Confidentiality.

Issue: Subsection (a). The Department has added a provision that eligibility agents and their employees are required to keep confidential the information in the family file and use that information only for purposes directly connected to the administration of their duties.

Issue: Subsection (c) (final-form regulations). The Department has added this subsection to specify that information contained in the family file related to obtaining child support may be disclosed to the appropriate Domestic Relations Section to ensure that applicants and recipients secure all available child support. This disclosure may be necessary because the eligibility agent and the Domestic Relations Section may need to engage in dialogue to assist the parent in the process of establishing paternity and obtaining a child support order.

Issue: Subsection (d) (final-form regulations). The Department has added this subsection to require that the

eligibility agent assure the confidentiality of an individual who makes a complaint about a family's eligibility for subsidy for a child.

§ 3040.17. Additional conditions or additional charges.

Issue: The Department has renamed this section "Additional conditions and additional charges" in the final-form regulations.

Issue: Subsection (b). The Department has clarified that prior to the provider's implementation of additional charges, the parent must be notified of the additional charges to be collected. Additional charges are not the same as the parent co-payment, but extra charges required by the provider for items such as snacks or field trips. Subsidy is not provided to the parent to help in paying these additional expenses.

Comment: Subsection (b). Several commentators questioned the Department's deletion of the provision prohibiting providers from charging extra for food services because many providers participate in the Child and Adult Care Food Program which does not allow the providers to charge extra for food.

Response: The Department has not revised this section. The provision in proposed amendments and final-form regulations which permits providers to charge for additional services does not limit the provider's responsibility to follow the rules of other programs. The Department of Education manages the Child and Adult Care Food Program and advises that the providers who participate in the Child and Adult Care Food Program are not permitted to charge the parent for food unless there is a special meal planned in which the child may choose to participate. As a result, providers who participate in the Child and Adult Care Food Program are not permitted to routinely charge subsidy-eligible parents for meals reimbursed to the provider by the Child and Adult Care Food Program.

§ 3040.18. Citizenship.

Comment: IRRC commented that the Department included citizenship requirements in more than one section in the regulations and suggested that the requirement be placed in only one section.

Response: The Department has deleted and reserved this section. Citizenship applies to all family members and therefore the Department has included and clarified the citizenship requirement in final-form regulations in § 3040.34(b)(1) (relating to nonfinancial eligibility).

Comment: IRRC and several other commentators questioned the use of the term "permanently residing under color of law" because it is not defined in Black's Law Dictionary.

Response: The term "permanently residing under color of law" in § 3040.34(b)(1) is a term of art which was developed in case law and regulations describing noncitizens who are eligible for a variety of benefits. This term encompasses individuals who are refugees, parents granted asylum and other individuals who have implicit, not explicit, permission of the Immigration and Naturalization Service (INS) to remain in the United States for an indefinite period, but have not formally been granted permanent residence as defined in 8 U.S.C.A. § 1101(20). The term does not include persons here for a temporary purpose such as students and tourists. The use of the term "permanently residing under color of law" in subsidized child care regulations makes this provision consistent with those applicable to cash assistance recipients, found in § 149.23.

§ 3040.19. Subsidy disruption.

Issue: Subsection (b). The Department has modified the language regarding what happens if a child's subsidy is disrupted and has clarified that if funding is not available, the subsidy is suspended until another provider has been selected and subsidy is available.

Comment: Subsection (d). IRRC and several other commentators stated that the Department should consider using the same methodology for reinstating subsidized child care benefits when funding is again available regardless of the reason for the disruption in the family's subsidy.

Response: The Department has modified the language regarding a family's placement on the waiting list. A child is placed on the waiting list according to the date of the family's initial eligibility determination if a child loses subsidized child care benefits because of a shortfall in State or Federal funding or management of funding by the eligibility agent.

§ 3040.20. Limitations and benefits.

Issue: The Department has renamed this section "Benefits and limitations" in final-form regulations.

Comment: Subsection (a). IRRC and other commentators questioned the Department's intent to limit access to child care based on the proposed requirement that the parent's cost of child care may not exceed a certain percentage of the gross income of the family.

Response: The Department has deleted this requirement. Because of this deletion, subsequent subsections were redesignated.

Comment: Subsection (b)(1). IRRC and other commentators questioned the provision of allowing a child only one unit of care with one provider in a 24-hour period. They indicated that the provision may prevent a school-age child from receiving before- and after-school subsidy for care from more than one provider.

Response: The Department has redesignated subsection (b) to (a) in the final-form regulations and deleted the provision allowing a child only one unit of care in a 24-hour period. The Department has modified the language to indicate that the benefit for an eligible child is up to 50 hours of child care in a 7-day period. The provision of the 50-hour benefit of child care recognizes the varying types of work shifts of parents. Many employers are lengthening the work day and shortening the work week. The 50 hours of child care in a 7-day period allows for flexibility for the parent's work week and still allows a reasonable limit to the benefit for subsidy.

Issue: Subsection (a)(2) (final-form regulations). The Department has deleted the limitation in subsection (b)(2) of proposed regulations that a subsidy-eligible child may receive a maximum of 262 units of care in a fiscal year.

Issue: Subsection (a)(2) (final-form regulations). The Department has added a new paragraph to include provisions for a child to receive care during the hours when the adult family member needs to sleep.

Comment: Subsection (a)(4) (final-form regulations). IRRC and other commentators advised that the Department should consider allowing the parent's participation in a training program as a basis for determining eligibility. Commentators pointed out that one intent of Act 35 is to encourage individuals to pursue training to enhance job skills.

Response: The Department recognizes that child care may be needed to allow a parent to participate in a

training program that may enhance the parent's job skills. Therefore, the Department has added a provision in subsection (a)(4) of final-form regulations for 12 hours of additional child care to allow working parents time to attend training. The 12 hours of child care is in addition to the 50-hour benefit of child care in a 7-day period.

Issue: Subsection (b) (final-form regulations). The Department has modified the language in subsection (c) of proposed amendments to indicate that if space is not available to enroll the child at the child care facility operated by the child's parent, the child can receive subsidy at another child care facility. In registered family day care homes and homes exempt from regulation, space is always available because the operator's own children are not included in the maximum number of children permitted to be cared for by the operator under licensing requirements.

Issue: Subsection (c) (final-form regulations). The Department has added a provision to address the retroactive payment of child care benefits to a family who formerly received TANF and does not apply for child care benefits at the eligibility agent immediately after the TANF benefits end. The Department has allowed a retroactive payment of child care costs incurred to the first day of the month preceding the month that the parent who formerly received TANF benefits applied for service with the eligibility agent.

§ 3040.20a. Grandfathering provisions.

Issue: The Department has renumbered proposed §§ 3040.20a—3040.27 to conform to the *Pennsylvania Code* and *Bulletin* style requirements.

Comment: Paragraph (1). IRRC and commentators suggested that the Department allow a family eligible under this section to remain eligible for one year following the implementation date of the final-form regulations.

Response: The Department has revised the section to include the 1-year period.

Comment: Paragraph (1). Several commentators suggested that the Department maintain the current income limit of 235% of the FPIGs for any family who is receiving subsidy at the time the final-form regulations are implemented. The commentators also suggested that the family remain eligible for subsidy until the family income exceeds 235% of FPIG, suggesting that a family may be grandfathered for a longer time than the proposed 1-year limit of the grandfathering provision.

Response: The Department has not incorporated these suggestions because subsidized child care must be limited to those families who are most needy. The grandfathering provision is meant to offer a transition to those families whose income exceeds 185% of FPIG but is no greater than 235% of FPIG.

Comment: Paragraph (1). Commentators suggested extending the grandfathering provision to families on the waiting list whose income is between 185% and 235% of FPIG. This would allow those families currently on the waiting list to receive subsidized child care benefits for 1 year from the point the child begins receiving subsidy.

Response: The Department has not incorporated this suggestion because subsidized child care must be limited to those families who are the most needy. The grandfathering provision is meant to be a transition for families who are in the subsidized system and not for families on the waiting list.

§ 3040.28. Composition of a family.

Issue: The Department has redesignated subsections (a)—(d) to paragraphs (1)—(4) in the final-form regulations.

Issue: Paragraph (1)(i) (final-form regulations). The Department has added a provision to include in the family siblings who are 18 to 21 years of age, attending college and dependent on the income of the parent or the spouse or live-in companion of the parent.

Issue: Paragraph (1)(ii) (final-form regulations). The Department has added a provision to specify that siblings of the child in need of child care and the child's other parent, if living in the household, are included in the family composition.

Comment: Paragraph (1)(ii) (final-form regulations). Commentators recommended in subsection (a) of proposed amendments that teen parents who are residing in the home of their parents should be considered a separate family and not included in the family unit with the teen parent's parent.

Response: The Department has not incorporated the suggestions because it is the Department's position that parents have financial responsibility for their children. Recognizing the financial stress on these families, the Department had proposed adding a monthly income deduction of \$300 for each family member for whom the grandparent is responsible under Chapter 3040, Appendix A, Part II(D) (relating to income deductions). The Department has retained this provision in final-form regulations.

Comment: Paragraph (3) (final-form regulations). Several commentators raised the concern that the Department's intent was not clear in subsection (c) of proposed amendments regarding which individuals the Department intends to exempt from including in the family in cases where the parent formerly received TANF.

Response: The Department has clarified that families who formerly received TANF will be exempt for 6 months after TANF ends from the provision that the live-in companion be counted as a part of the family.

Comment: Paragraph (4) (final-form regulations). Commentators questioned the requirement in subsection (d) of the proposed amendments that an individual may be included in only one family. In some circumstances, a judge may grant joint custody to the parents of the child and each parent is in need of subsidized child care.

Response: The Department has modified the section to allow a child whose parents are granted joint custody to be included in two families which are both seeking subsidized child care for the purposes of eligibility determination.

§ 3040.31. General requirements regarding family eligibility.

Issue: The Department has renumbered the proposed § 3040.31(5)—(7) and has relocated the substance of those paragraphs to § 3040.34(b)(2), (6) and (7). Section 3040.31(8) has been deleted. The substance of paragraph (4) has been relocated to §§ 3040.51(e) and 3040.53(g).

Comment: Paragraph (7). IRRC and several commentators requested that the Department include provisions for a parent to claim an exemption for good cause from the eligibility requirement of establishing paternity and establishing a child support order.

Response: The substance of paragraph (7) has been relocated to § 3040.34(b)(7) in final-form regulations. The

Department has added a provision for a parent to be exempt from the requirements of establishing paternity and establishing a child support order if the parent can show good cause for failing to do so. The good cause exemptions are in § 187.23(a)(3) (relating to waiver of cooperation for good cause). For the purposes of subsidized child care, the CAO responsibilities listed in § 187.23(a)(3) will be completed by the eligibility agent and the requirements pertaining to cash assistance will be applied to subsidized child care.

§ 3040.32. *Financial eligibility.*

Comment: Subsection (a). IRRC and several other commentators questioned the replacement of the term "paystub" with the more general term "income documentation." The commentators suggested that the Department restore the term "paystub" because it is a specific type of documentation for income from employment.

Response: The Department has restored the use of the term "paystub" when discussing income documentation because it specifically indicates income from employment.

Issue: Subsection (b). The Department has restructured and added an introductory statement to address situations in which the family member does not have paystubs to document earned income.

Comment: Subsection (d). IRRC commented that it appeared that the Department eliminated the exemption of earned income of unemancipated minors as a result of proposing to delete subsection (d) as it appears in current regulations.

Response: The Department has not eliminated the exemption of earned income of a minor. Earnings of a minor child are excluded under Income Exclusions listed in Appendix A, Part III.

Comment: Subsection (f). IRRC and other commentators recommended that the Department reconsider returning to the current income limit for eligibility for the subsidized child care program of 235% of FPIG rather than the proposed 185% of FPIG.

Response: The Department has retained the income limit of 185% of FPIG in final-form regulations. The subsidized child care program operates under a capped block grant and the Department must direct resources to the most needy families. Under the current system, approximately 90% of the children enrolled in care are from families whose income is less than 185% of FPIG. In addition, 185% of FPIG is in the higher range of income limits set by other states.

§ 3040.33. *Documentation of self-employment income.*

Issue: The Department has renamed this section "Self-employment" in final-form regulations.

Issue: Subsection (a). The Department has deleted the reference to the percentage of Social Security paid by the self-employed family member.

Comment: Subsection (b)(1). Commentators suggested that the Department expand the requirements and not limit the eligibility agent's review of the Federal Income Tax return document to Schedule C for an individual who has income from self-employment, but rather include all schedules related to self-employment.

Response: The Department has modified the provision to require that acceptable documentation of income from self-employment includes a copy of the family's Federal Income Tax Return including all schedules related to self-employment.

Comment: Subsection (b)(3). Several commentators raised the issue that the requirement for quarterly eligibility reviews for a family in which an adult member is self-employed is unreasonable as the income information typically does not change and the self-employed individual may not need to file quarterly tax statements if they are not paying estimated taxes.

Response: The Department has removed the requirement regarding quarterly tax statements. An annual Federal Income Tax Return is acceptable income documentation when the family member has been self-employed in the same business for more than 1 year.

§ 3040.34. *Nonfinancial eligibility.*

Issue: Subsection (a). The Department has deleted this subsection as proposed as duplicative of provisions in § 3040.31. Based on the deletion, subsequent subsections were redesignated.

Issue: Subsections (a) and (b) (final-form regulations). The Department has reorganized these subsections in the final-form regulations. Subsection (a) contains nonfinancial eligibility conditions which must be met at each determination and redetermination of eligibility. Subsection (b) contains those eligibility conditions which must be met or verified only at the initial eligibility determination. In addition, some requirements listed in proposed regulations in § 3040.31 were moved to § 3040.34.

Issue: Subsection (a)(1) (final-form regulations). The Department has clarified that the child's need for care must coincide with the hours of the adult family members' hours of employment or the minor parents' educational program.

Issue: Subsection (a)(2) (final-form regulations). The Department has added a provision that employed family members must be earning minimum wage, with exceptions for those individuals who are employed as laborers on a farm or are granted a subminimum wage exception by the Department of Labor and Industry.

Issue: Subsection (a)(3) (final-form regulations). The Department has specified the number of hours that an adult family member must work. In addition, the Department has replaced the specific dates in subsection (b)(4) of proposed amendments and indicated certain hours of employment required during the first 180 days (until July 31, 1999), and after 181 days from the effective date of the final-form regulations (August 1, 1999).

Issue: Subsection (a)(3)(iv) (final-form regulations). The Department has clarified that the parent of a family transferring to the subsidized child care program from the TANF program must be employed, and has 6 months from the date TANF ends to meet the number of hours of employment required under § 3040.34(a)(3)(i)—(ii) in the final-form regulations.

Issue: Subsection (a)(4). The Department has clarified that a minor parent who has not graduated from high school or has not completed the GED must be enrolled in an educational program and attend on a full-time basis. In addition, the Department has clarified that the verification of attendance at an educational program must be on a form prescribed by the Department.

Issue: Subsection (a)(5) (final-form regulations). The Department has made editorial corrections to the language in subsection (b)(8) of proposed amendments describing eligibility for subsidized care for a child during the parent's sleep time.

Issue: Subsection (a)(6) (final-form regulations). The Department has added a paragraph to address the employment and earning requirements of a minor parent who has graduated from high school or has a GED.

Issue: Subsection (a)(7) (final-form regulations). The Department has added provisions to specify that a parent whose child is receiving child care subsidy shall sign a self-certification statement that the child has received age-appropriate immunizations.

Issue: The Department has relocated the following subsections: (b)(4) has been relocated to (a)(3); (b)(5) has been relocated to (b)(1); (b)(6) has been relocated to subsection (c); (b)(7) has been relocated to (b)(2); (b)(8) has been relocated to (a)(5); and (b)(9) has been relocated to (b)(3).

Comment: Subsection (b)(4). Commentators suggested that the Department eliminate the requirement for a parent to be employed a minimum of 3 days per week and retain the requirement that a parent needs to be employed a minimum of 20 hours per week.

Response: The Department has eliminated the requirement that the parent must be employed for a minimum of 3 days per week. Under proposed amendments, a parent would have been required to work a minimum of 30 hours per week effective 1 year following the implementation of the final-form regulations. In response to the commentators concerns, the Department has revised the number of hours per week work requirement. Under the new requirement, a parent must be employed a minimum of 20 hours per week for a period of 180 days following the effective date of the regulations (until July 31, 1999), and a minimum of 25 hours per week effective 181 days following the effective date of the regulations (August 1, 1999). This change provides a transition for parents as they move toward self-sufficiency.

Comment: Subsection (b)(5). IRRC commented that the citizenship requirements should be listed in only one section rather than in the previously proposed §§ 3040.18 and 3040.34(b)(5).

Response: The Department has included the requirement that all family members must be citizens or aliens lawfully admitted for permanent residence or otherwise permanently residing under color of law, and has placed it in subsection (b)(1) of final-form regulations. Section 3040.18 has been deleted and reserved in the final-form regulations.

Issue: Subsection (b)(6) (final-form regulations). The Department has expanded the group of individuals who are permitted to use the release of information form in § 3040.31(5) of the proposed amendments to include staff from the Office of Inspector General (OIG).

Comment: Subsection (b)(6). Commentators suggested that the Department require photoidentification at a face-to-face interview.

Response: The Department has revised the requirement to include photo-identification and has modified the list of acceptable forms of identification in subsection (c) of the final-form regulations to include: a driver's license, a passport, a military identification card; an employment identification card; or other verifiable photo-identification.

Issue: Subsection (d). The Department has deleted this subsection as duplicative of provisions in subsection (b)(5) of final-form regulations.

§ 3040.35. *Factors affecting eligibility status.*

Issue: The Department has renamed this section "Reporting changes" in the final-form regulations.

Issue: Paragraphs (2) and (11). The Department also has modified this section to include in the factors that must be reported a change in training status and a change in custody or foster care arrangements.

§ 3040.36. *Inability to be employed or continue participation in an education program.*

Issue: Subsection (a)(1). The Department has modified this paragraph for consistency with regulations which require a medical assessment which verifies the inability of the adult family member to be employed or enrolled in an educational program and inability to care for the child. The Department has revised this paragraph to provide that a medical assessment form for a parent who is unable to participate in employment or educational activities and unable to care for the child must be completed by a licensed psychologist or physician.

§ 3040.37. *Attendance requirements.*

Comment: Subsection (b). Commentators expressed concern that the proposed requirement to discontinue subsidy for a child whose absence exceeds the proposed 10 consecutive enrollment days would not allow sufficient time for the child's parent to be notified prior to the subsidy discontinuance.

Response: The Department has not modified the language because it is not necessary. The eligibility agent must provide the parent with a written notice in accordance with § 3040.72 (relating to content of a written notice of adverse action). Section 3040.71(d) requires that this notice be sent at least 10 days before the date the action is proposed to be taken. If the parent appeals within 10 days, subsidy continues until a hearing decision is made.

Comment: Subsection (b). IRRC raised a concern that when the Department reduced the number of consecutive enrollment days during which a child may be absent from 20 days to 10 days without exceptions that the child may be determined ineligible for reasons beyond the parent's control, thereby disadvantaging the family. IRRC recommended that the subsection be amended to include absences for reasons such as hospitalization or illness.

Response: The Department has retained the 10-day limit on absences under this subsection. The Department recognizes that there are several valid reasons for absence which would exceed 10 days. These absences are not counted under this subsection. These reasons are listed in § 3040.52(d) (relating to eligibility agent responsibilities).

Issue: Subsection (c). The Department has revised this subsection to clarify that days of suspension, including those days when a child is absent for more than 10 days because of illness or hospitalization, are not counted toward the 30 allowable days of absence in a fiscal year. In addition, a parent may request a waiver of the 30-days-of-absence limitation for children who have a chronic disease.

§ 3040.38. *Prospective employment or a prospective education program for new parent applicants.*

Issue: The Department has renamed this section "Prospective employment or a prospective education program for new applicants" in the final-form regulations.

Issue: Subsection (a)(1). The Department has modified the language to state that employment or education must begin within 30 days from the date of application rather than the date of determination of eligibility.

Issue: Subsection (a)(2). The Department has modified the language to clarify that written verification of prospective employment or prospective education must be on a form prescribed by the Department.

Comment: Subsection (e). Commentators suggested that it is unclear as to how many 30-day periods of subsidized child care a parent who has exhausted all available TANF benefits could receive while looking for employment.

Response: For a parent who has exhausted his TANF benefits, there is only one 30-day period of subsidized child care to seek employment. The Department has revised this subsection to specify that the parent must apply for the 30 days of subsidized child care within 90 days of the date TANF benefits end.

§ 3040.40. Child care subsidy available to attend training.

Issue: The Department has added this section in the final-form regulations.

Comment: IRRC and other commentators suggested that the Department recognize that parents, especially those leaving TANF, should have the opportunity to attend training classes to enhance their job skills.

Response: The Department has provided for parents who meet the hourly work requirements to receive up to an additional 12 hours of child care per week. The training program must be accredited by a state or National board of examiners or recognized by the Department and must be designed to lead to a specific job.

§ 3040.51. General requirements in the eligibility determination process.

Issue: Subsection (d) (final-form regulations). The Department has added a provision for a family that transfers from TANF to subsidy within 90 days of the date TANF ends to begin receiving subsidy for the child on the date that the parent notifies the eligibility agent.

Issue: Subsection (e) (final-form regulations). The Department has added language to clarify that the initial determination of eligibility shall be completed within 90 days of the family's transfer from TANF and that the redetermination is set for 6 months from the date that TANF ends.

§ 3040.52. Eligibility agent responsibilities.

Issue: Subsection (a)(2). The Department has modified this paragraph to state that when a face-to-face interview is conducted, the eligibility agent shall document the identity of the parent who signs the application by noting in the family file the type of photo-identification used to verify the parent's identification.

Issue: Subsection (a)(6). The Department has modified this paragraph to include the eligibility agent's responsibility for advising the parent who formerly received TANF of the conditions to qualify for a retroactive child care benefit if the transfer from TANF did not take place the day after the date TANF benefits ended.

Comment: Subsection (a)(7). IRRC commented that the requirement for an eligibility agent to determine a family's eligibility for subsidized child care within 30 days should match § 165.43, in which eligibility for TANF individuals is determined within 15 days.

Response: The Department has not revised subsection (a)(7) because it wants to allow parents, who may never have applied for a public benefit such as TANF, adequate time to obtain all appropriate documentation to establish eligibility. The family is determined eligible on the day all

verification is received by the eligibility agent regardless of when the eligibility agent processes the application, therefore, the family is not disadvantaged by the eligibility agent's workload.

Comment: Subsection (a)(7). Commentators requested that the Department clarify the section regarding the date of determination of eligibility.

Response: The Department has clarified that the date of initial eligibility for all families is the date that the eligibility agent has complete information to determine the family's eligibility.

Comment: Subsection (a)(10). Commentators requested clarification about how many face-to-face interviews were necessary.

Response: The Department has clarified that a face-to-face interview is required prior to the enrollment of the first child into the subsidized child care program. The eligibility agent may require other face-to-face interviews as needed.

Issue: Subsection (a)(10). The Department has modified the paragraph to state that the parent who completes the application shall acknowledge, in writing, his receipt and understanding of the rights and responsibility information.

Comment: Subsection (b)(1). IRRC and other commentators suggested that the provision for a complete redetermination of eligibility every 6 months is burdensome.

Response: The Department's position is that a redetermination every 6 months is reasonable given the potential for changes in the family income and the number of children on the waiting list. Under changes in § 3040.34(a) of the final-form regulations, the Department has clarified that not all information must be reviewed at each redetermination of eligibility. In light of this change, and the opportunity to use a mail-in redetermination, the Department has retained the provision as proposed.

Issue: Subsection (b)(2)(iii). The Department has deleted the provision that families with self-employed members be redetermined on a quarterly basis.

Issue: Subsection (b)(3). The Department has clarified that the eligibility agent shall notify the parent in writing, at each redetermination, of the documents needed to complete the redetermination of eligibility.

Issue: Subsection (b)(6). The Department has added a provision that the eligibility agent shall provide an application form prescribed by the Department to each parent to complete a redetermination. The parent may mail in or hand deliver the signed, dated form to the eligibility agent.

Issue: Subsection (c)(1). The Department has added language to clarify that the method of reporting changes agreed to by the parent and the eligibility agent must be noted in the family file.

Issue: Subsection (c)(3). The Department has clarified that when a parent reports changes in circumstances which do not affect the parent's co-payment, a full redetermination is not needed, a partial redetermination shall be completed, and the original period of eligibility is not changed as a result of a partial redetermination.

Issue: Subsection (e) (final-form regulations). The Department has added a provision to the eligibility agent's responsibilities that the eligibility agent must review a parent's circumstances for eligibility for subsidized child

care up to the time of a request for closure when a parent voluntarily requests discontinuance of subsidized child care.

Issue: Subsection (f) (final-form regulations). The Department has added a provision which allows the Department to direct the eligibility agents on standards for designating the funding for different populations based on the eligibility criteria under this chapter.

§ 3040.53. *Parents rights and responsibilities.*

Issue: The Department has renamed this section "Parent/caretaker rights and responsibilities" in the final-form regulations.

Issue: Subsection (b). The Department has added a provision that both parents must sign the application in a two-parent household.

Issue: Subsection (d). The Department has clarified that the parent has the right to receive written notification regarding a change in the family's eligibility following a determination or redetermination of eligibility.

Comment: Subsection (g). IRRC and other commentators suggested that the requirement for a face-to-face interview is too burdensome for parents.

Response: The Department had not proposed to require a face-to-face interview at every redetermination of eligibility. The parent shall meet at least once face-to-face with the eligibility agent prior to enrollment of the first child in the family for subsidized child care. It is the Department's position that this is reasonable and not too burdensome for parents.

Comment: Subsection (g). Commentators questioned if there may be occasions when the parent would need to engage in more than one face-to-face meeting with the eligibility agent.

Response: The Department has not modified the language, as there are times when the eligibility agent may find it necessary to request additional face-to-face meetings if there are questions on the parent's ongoing eligibility for subsidized child care, or if there is new information on eligibility which can be conveniently reviewed in a face-to-face interview.

Issue: Subsection (g). The Department has added a provision to clarify that a family transferring from TANF shall meet at least once face-to-face with the eligibility agent within 90 days after transferring to the subsidized child care program.

§ 3040.54. *Waiting list.*

Issue: The Department has made revisions to this section. Provisions in § 3040.55(b) and (c) of the proposed amendments regarding subsidized care for additional children in the family and time limits for enrolling into subsidized care once funding becomes available have been relocated to subsections (b) and (c). These additions to § 3040.54 consolidate all information regarding waiting lists.

§ 3040.55. *Maintaining a waiting list.*

Issue: The Department has deleted and reserved this section. Subsections (b) and (c) have been relocated to § 3040.54(b) and (c) in the final-form regulations.

Comment: Subsection (a). IRRC and other commentators questioned the requirement that the eligibility agent redetermine the eligibility status for families on the waiting list every 6 months.

Response: The Department has eliminated the need for families on the waiting list to be redetermined every 6 months.

Comment: Subsection (c). IRRC and other commentators suggested that the Department consider allowing siblings of children already enrolled in service to be enrolled according to the date of the family's initial eligibility.

Response: The Department has maintained this subsection as proposed and relocated it to § 3040.54(b) in the final-form regulations. A child added to the family after the date the family was initially determined eligible is placed on the waiting list as of the date the parent requests care for the child. The Department has decided to maintain this position because these parents already have children in service and are receiving a benefit, while other parents with children on the waiting list are not receiving any subsidy benefits. Because the subsidized child care program is capped, it may not be possible to provide all the benefits needed for every child in every family. The eligibility agent will discuss this with each parent at the time of initial determination.

§ 3040.61. *General requirements regarding fee payment.*

Issue: The Department has renamed this section "General requirements regarding co-payment" in the final-form regulations.

Issue: The Department has replaced the term "weekly family fee" with "co-payment" to be consistent with Chapter 168 and to clarify that it is the parent's responsibility to contribute to the cost of subsidized child care.

Issue: Subsection (b). The Department has added an exception to the rule requiring payment of an advance co-payment prior to enrollment of a child. A family who transfers from TANF has until the first redetermination to pay an advance co-payment.

Comment: Subsection (h)(4). Commentators questioned the Department's proposal to remove the penalty for parents who are habitually delinquent in payment of the assessed co-payment.

Response: The Department has added a penalty clause that states that a family whose eligibility for subsidized child care is discontinued because of habitual delinquency of payment of the co-payment will not be permitted to reapply for subsidized child care for 90 days following the date the delinquent co-payments have been paid.

§ 3040.62. *Availability and use of the FPIG.*

Issue: Subsection (b). The Department has deleted the proposed subsection regarding the use of FPIG and the calculation of the family fee because it is not necessary in this section. Subsection (c) in the proposed amendments has been redesignated subsection (b) in the final-form regulations.

Issue: Subsection (d) (final-form regulations). Subsection (d) in the proposed amendments has been redesignated subsection (c) in the final-form regulations.

§ 3040.63. *Determining a weekly family fee.*

Issue: The Department has renamed this section "Calculating a co-payment" in the final-form regulations.

Issue: Subsection (a). The Department has added a new provision to identify factors the Department considers in determining co-payments. As a result of this addition, subsequent subsections have been redesignated. In sub-

section (a)(3), the Department has added a provision that a family's annual co-payment cannot exceed 14.5% of the family's annual income.

Issue: Subsection (a). The Department has revised the methodology in subsection (a) of the proposed amendments, which has been redesignated subsection (b) in the final-form regulations, describing the determination of a family's annual income.

Issue: Subsection (c). The Department has revised the formula in subsection (c) of the proposed amendments which has been redesignated as subsection (d)(1) and (2) in the final-form regulations. The Department has created this formula to establish the process used to derive a family co-payment. To determine the co-payment, the eligibility agent or the parents do not need to use this formula because the results of the calculations are set forth on a chart in Appendix B, Co-Payment Schedule. The formula is used by the Department as the basis to develop Appendix B. The eligibility agent or the parent can easily locate, in Appendix B of these final-form regulations, the appropriate co-payment if they know the amount of the family's annual income and family size. In § 3040.63(d)(1) of the final-form regulations, the Department added a description of how the eligibility agent uses Appendix B to calculate the parent co-payment.

Comment: Subsection (c). IRRC and other commentators expressed concern that the amounts of the proposed increases in the co-payment were too high and that the cost of care should not be included as a factor in determining co-payment levels. Commentators generally felt that the cost of care should not be a consideration in determining the co-payment calculation because the cost of care as indicated in the proposed regulations did not take into account variances in costs in different geographic areas across the State nor did it take into account varying cost of care for children of different ages. Families in areas with higher child care costs and those with young children may be able to find only care more expensive than the average cost range for the State.

Response: The proposed § 3040.63(c) has been redesignated § 3040.63(d) in the final-form regulations. The Department has revised the methodology for determining the family co-payment in these final-form regulations by removing the factor for cost of care. After consideration of comments, the Department has determined that it will use family size and income to determine the co-payment.

In § 3040.63 of the final-form regulations, the Department has set forth the methodology used for determining the co-payment by either using the charts in Appendix B as described in § 3040.63(d)(1) or by using a formula as described in § 3040.63(d)(2). The charts in Appendix B include the family income as a percentage of FPIG and family size. In future years, the charts in Appendix B will be adjusted annually based on annual changes to the FPIG.

The Department has adopted the new co-payment amounts in Appendix B, which is the first revision in co-payments since 1992. The Department's methodology in creating the co-payment charts is reasonable and in line with what other states are using. In fact, some states are setting maximum annual parent co-payments as high as 16% to 18% of the parent's annual income, while the Department has capped the co-payment at 14.5% of the parent's annual income for those receiving subsidy whose income does not exceed 185% of FPIG. Families whose annual income is at or below 100% of FPIG will not pay more than 10% of their annual income for a co-payment.

The parent's co-payment for subsidized child care will always be lower than that of the family on the waiting list who is paying the full cost of care and that of the TANF family who was receiving the child care disregard of a maximum of \$175 per month per child for a child age two or older and \$200 per child for a child under 2 years of age. In some counties, parents came forward in public forums to indicate that they would not mind paying more each week if it were to help serve additional families on the waiting list.

Even with the changes in these final-form regulations, the demand for child care by families with incomes below 185% of FPIG will grow. The Department believes that the current waiting lists reflect only a portion of the eligible families. The current waiting lists reflect only those families who are willing to wait for a child care subsidy. Because of the long waiting lists, many individuals have not continued the eligibility process necessary to keep their position on the waiting list. The Department expects that as more potentially eligible families learn that families are being enrolled into service from the waiting list, more families will come onto the waiting list.

The family weekly co-payment calculation has been designed to support the most needy families. Overall, the family co-payment calculation provides increases in family weekly co-payment as family income increases to help ease the transition from subsidized day care to nonsubsidized care. The increase also will result in more funds being made available to serve additional children who are on the waiting list.

Comment: IRRC and other commentators commented that the Department's proposed amendments on parent co-payments did not correspond with some of the areas of the CCDBG statute, proposed Federal CCDBG regulations and preamble. Final regulations have now been published. IRRC and other commentators suggested that the preamble and proposed Federal regulations indicated that a parent co-payment should not exceed 10% of the parent's income and states should avoid using the cost of care as a factor when designing the parent co-payment level as these factors may conflict with equal access or parental choice. Also IRRC questioned if the Department is violating Executive Order 1996-1 because the proposed co-payment exceeded a Federal standard.

Response: The Department has reviewed the CCDBG statute and final Federal regulations and has concluded that the Department's final-form regulations do not conflict with the Federal regulations or the CCDBG statute. The Department notes that the preamble to the final Federal regulations at 63 FR 39960 merely recommends that a family co-payment be capped at no more than 10% of the parent's income and cost of care should not be considered as a single factor in determining a co-payment. The Federal regulations are silent on these issues.

The final Federal regulations do not specify a cap of 10% or any other amount for the parent co-payment and do not prohibit states from using cost of care in determining the parent co-payment. However, the Department has decided not to use the cost of care in these final-form regulations. The Department has not violated Executive Order 1996-1, as the Department's regulations do not exceed a Federal standard. The Department continues to maintain that its final co-payment calculation, which includes parent co-payments up to 14.5% of a parent's annual income, is reasonable. The Department's co-payment does not exceed 10% of the parent's annual income when the annual income is less than or equal to

100% of FPIG. It is reasonable that, as families move toward self-sufficiency, they should pay an increasing amount towards child care costs.

The Department has a State plan that has been approved by ACF. The approval confirms that ACF has found the Commonwealth's plan to be in compliance with Federal law. In the State plan, the Department informed ACF officials that it was proposing a regulation that included an increase in the co-payment calculation and that it would send ACF the final co-payment calculation upon the adoption of the final-form regulations. When ACF receives the Commonwealth's amended child care plan, based on the final-form regulations, ACF will review the amended plan to determine the Commonwealth's compliance with the CCDBG.

It has not been demonstrated that up to 14.5% of the parent's income is too high an amount for parents to pay. For example, a single mother who has two children and earns \$25,500 per year is not eligible for subsidy, as her income is slightly above 185% of FPIG. She needs child care which costs \$325 per month for one child. Her annual child care costs are \$3,900 per year or 15% of her income. Parents who exceed the income limit for subsidized child care frequently select care which exceeds 14.5% of their annual income. TANF families who now pay the disregard already pay a higher percentage of their income than what is required under Child Care Works and many families on the waiting list for subsidized child care pay more than 14.5% of their annual income for child care now.

§ 3040.71. General requirements regarding notification.

Issue: Subsection (a). The Department has added a statement that the eligibility agent will determine the family ineligible if the parent does not provide all verification required within 30-calendar days.

Issue: Subsection (g) (final-form regulations). The Department has added the subsection to describe the eligibility agent's responsibilities to issue written notices of overpayments.

§ 3040.72. Content of a written notice of adverse action.

Issue: Subsection (a)(4)(iii). The Department has clarified that subsidy may not be continued at the prior level if the request for a hearing was postmarked or hand delivered after 10-calendar days from the date the written notice was postmarked or hand delivered to the parent/caretaker.

Issue: Subsection (a)(4)(iv). The Department has deleted this subparagraph as proposed because the information was not clear and not correct. As a result of this deletion, subparagraph (v) has been redesignated (iv) and (vi) has been renumbered paragraph (5).

Issue: Subsection (a)(6) (final-form regulations). The Department has added clarification that if subsidy continues at the level prior to the appeal and Bureau of Hearings and Appeals finds in favor of the eligibility agent or the Department, the parent/caretaker must repay subsidy for which he was not eligible.

Comment: Subsection (b)(3) (final-form regulations). Commentators requested that providers receive a copy of all written notices which affect a child's receipt of subsidized child care.

Response: The Department has added a provision that requires that the eligibility agent send a copy of all written notices to the child care provider within 1 working day of preparation.

§ 3040.73. Grounds for appeal.

Issue: The Department has renamed this section "Actions that can be appealed" in the final-form regulations.

§ 3040.74. Appeal: continuation of subsidy denied.

Issue: The Department has renamed this section "Appeal: when subsidy is not continued during the appeal process" in the final-form regulations.

Comment: Subsection (a). Commentators questioned the Department's intent regarding the parent's ability to appeal adverse eligibility decisions and continue to receive subsidy when the parent is questioning the regulation.

Response: The Department has added language indicating that a parent may appeal a decision which discontinues or reduces a child care subsidy; however, if the parent is disputing Federal or State law, regulations or policy, subsidy will not be continued at the prior level pending a decision on the appeal.

Issue: Subsection (c). The Department has deleted this subsection because the issue is addressed in subsection (a).

§ 3040.76. Filing an appeal: eligibility agent responsibilities.

The Department has added a provision that if the eligibility agent assists the parent in preparing a written appeal, the parent shall sign the appeal request.

§ 3040.77. Departmental actions.

Issue: The Department has renamed this section "Appeal and hearing procedures" in the final-form regulations.

Issue: Subsection (a). The Department has added a provision that if the parent fails to appear for a hearing, the appeal is considered abandoned and the decision of the eligibility agent or the Department will be sustained by the Bureau of Hearings and Appeals.

Issue: The Department has reversed the sequence of subsections (b) and (c) to present the subsections in a more logical way. In addition, editorial corrections were made to subsection (b).

Comment: Subsection (b). IRRC and other commentators suggested that a parent who incurs an overpayment because he appealed an eligibility decision should be given the opportunity to reapply for subsidy and establish a repayment plan if the hearing decision is in favor of the eligibility agent.

Response: The Department has included a provision in subsection (c) of the final-form regulations, consistent with provisions in § 3040.93(b), which allows the parent different repayment options. A parent who appeals an eligibility decision may reapply for subsidy if the parent makes a repayment or establishes a payment plan.

Issue: Subsection (e) (final-form regulations). The Department has added this subsection to clarify that appellants who are found eligible at the time of the hearing, but were ineligible at the time the notice was issued, will have eligibility for subsidy resumed on the date eligibility is established.

§ 3040.78. Continuing subsidy and fee payment during an appeal.

Issue: The Department has renamed this section "Continuing subsidy and co-payment during an appeal" in the final-form regulations.

Issue: Subsection (a). The Department has added a provision that if a parent files an appeal within 10 days of the notice of adverse action, subsidy continues at the prior level subject to § 3040.74 until a final decision is made by the Bureau of Hearings and Appeals.

Issue: Subsection (c). The subsection has been deleted because it is not consistent with a parent's rights to appeal an adverse action.

Overpayment, repayment and disqualification.

Comment: IRRC and other commentators requested clarification on the eligibility agent's responsibilities for identifying overpayments, overseeing repayment and disqualifying an individual from receiving subsidized child care.

Response: The Department has reformatted and revised §§ 3040.91—3040.94 to clarify the Department's, the eligibility agent's and the family's responsibilities when a family was erroneously determined eligible for a child care subsidy.

§ 3040.91. Overpayment.

Issue: Subsection (b). The Department has revised this subsection to describe the events or actions that can lead to an overpayment. This provision is in accordance with 62 P. S. § 481(a) and is consistent with the definition of "overpayment" in § 255.2.

§ 3040.92. Repayment requirements.

Issue: The Department has renamed this section "Eligibility agent responsibilities" and added paragraphs (1)—(10) to list all of the eligibility agent responsibilities.

§ 3040.93. Procedures for the parent to repay an overpayment.

Issue: The Department has renamed this section "Repayment" in the final-form regulations.

Comment: Subsection (a)(2). IRRC asked that the Department provide direction to the eligibility agents as to what constitutes a complaint.

Response: The Department has deleted this paragraph and has relocated the requirement for eligibility agents to investigate complaints to § 3040.92(3). The Department will clarify in the procedures manual used by the eligibility agents what constitutes a complaint and how to handle it.

§ 3040.94. Disqualification.

Comment: Subsection (c). IRRC questioned that the proposed amendments included disqualification periods which differed from those found in § 255.1(c). IRRC also questioned the date that the disqualification period would begin, and who in the family would be disqualified from the subsidized child care program.

Response: The Department has deleted subsection (b) and has redesignated subsection (c) to subsection (b) in the final-form regulations. The Department has clarified that the disqualification applies only to the parent and children of the parent whose actions led to the disqualification. The Department has listed the periods of time that a family may be disqualified. This provision is in accordance with 62 P. S. § 481(a) and (f) and is consistent with the restitution and disqualification provision for cash assistance, § 255.1.

Appendix A, Part I—Income inclusions

Comment: Commentators questioned the Department's intent to include income from capital gains and profit from S-Corporations.

Response: The Department has added capital gains and profit from S-Corporations to Appendix A, Part I, N.

Issue: The Department has modified the language pertaining to veteran's payments to more accurately reflect the Department's intent to include payment made to veterans or survivors of veterans in Appendix A, Part I, M.

Appendix A, Part III—Income Exclusions

Issue: The Department has included a new exclusion for adoption assistance payments in Appendix A, Part III, S. This exclusion now parallels how other offices within the Department treat adoption assistance.

Appendix B—Co-payments

The Department's charts, including county groupings for the co-payment schedule, are current for Fiscal Year 1998-99.

Some commentators included comments on the subsidized day care program which are not addressed in the final-form regulations. A summary of the comments reflected and the Department's rationale for not integrating suggested changes into the final-form regulations follows:

Minimum health and safety standards—IRRC commented that relative/neighbor providers should be required to comply with minimal health and safety requirements. The Department has a process in place for assuring that relative/neighbor caregivers who provide care in the subsidized system meet minimal health and safety standards. The CAOs and CCIS agencies must give parents information detailing health and safety standards which the parent must share with the chosen caregiver. The information must include a certification document which must be signed by the caregiver attesting to compliance, and informs the caregivers that they are subject to State inspection if complaints are received. The standards which are based on the Federal CCDBG statute include:

1. Prevention of infectious diseases (handwashing requirements for the provider and child).
2. Building and physical premises safety requirement (including smoke detectors, properly storing toxics, and locked storage of any weapons and ammunition).
3. Minimum health and safety training (including training materials provided by the Department on health and safety topics).

Reimbursement rates—IRRC and other commentators suggested that the Department review current maximum reimbursement rate ceilings used for payment to child care providers. The Department has reviewed the current maximum ceilings and determined that it needs to adjust the ceilings. The Governor's Budget for Fiscal Year 1998-99 includes a 3% increase to raise the maximum reimbursement ceiling rates effective January 1, 1999. The 3% increase to the maximum ceilings reimbursement rates will be an interim step until the Department assesses the process of establishing reimbursement ceilings and identifies factors to be used to determine ceiling rate increases in the future. The Department will conduct a market rate survey in accordance with final Federal regulations.

Procedures on transfer of former cash assistance families to the LMA—IRRC and others expressed concern about the fact that regulations do not address the process by which the transition from TANF support services to the low-income subsidized child care program will occur. Commentators requested information on the expectations

for coordination between the CAO and the CCIS. Commentators raised particular concern that any inconsistencies between the programs might present barriers to families making a smooth transition.

Transition from the supportive services associated with cash assistance to the low-income child care subsidy system is not new. Since 1990, employed AFDC recipients and TCC recipients whose 12 months of TCC eligibility had expired have been transitioning from the CAO to the CCIS-administered program on a daily basis. Regulations have established AFDC/TCC priority access to the CCIS system, but regulations have not dictated the processes used to transfer individuals from the CAO to the CCIS. Processes and procedural instructions, which are subject to change, have historically been contained in the Cash Assistance Handbook used by CAOs and the Procedures Manual used by the CCIS agencies.

In response to concern that families could face barriers in transitioning from TANF-related child care benefits under Chapter 168 to low-income child care subsidy under Chapter 3040, the Department has taken steps to eliminate or minimize potential barriers by eliminating the disregard, eliminating time-limited TCC benefits and implementing pay up to first pay for TANF families. Where possible, inconsistencies in regulations or differences in definitions have been eliminated in the final regulations. When differences do exist between programs, provisions have been included in Chapter 3040 to give ex-TANF families 6 months after the date that TANF benefits end before the appropriate regulations in Chapter 3040 apply. The Department has already implemented changes to minimize barriers. This includes staff from CCIS agencies going to the CAOs to offer TANF families information on selection of good child care, and exchange of pertinent information on TANF families and former TANF families to assure that payments to their child care providers are not disrupted.

The Department is now working on developing the processes and procedures which will be utilized to accomplish the transition of families from the CAO to the CCIS under Child Care Works. A number of work groups are dealing with the development and testing aspects of things such as: system identification of TANF case closings with child care needs; automated notices of eligibility regarding services to ex-TANF families and their providers; nightly downloading of cases identified for transfer; electronic transmission of case information to negate the need for duplicate verification; system matches of case and provider data between the two programs; automated calculations of benefit levels; and headquarters transmission of information to CCIS agencies, which do not currently have an electronically connected Statewide communication system. Each of these components is, by itself, a major system redesign. Not all the desired system components will be in place on the first day of implementation, so that staff initially will be required to perform functions manually that later will be automated. Processes and procedures will be subject to numerous revisions at least in the first year of operation.

Other areas—The Department received comments on other child care areas not related to these eligibility regulations.

Comment: Commentators suggested that the Department should conduct more unannounced inspections of child care facilities.

Response: The Department does complete unannounced inspections for facilities when there are complaints of

regulatory violations and to follow up with facilities that have a history of noncompliance. At this time the Department is required by regulation to make announced annual inspections to day care facilities.

Comment: Commentators suggested that the Department not pay the parent for child care costs but pay the providers.

Response: Regulated providers who are selected by TANF families have the option of whether they want to participate in the Department's vendor payment system. This option is available to assure that the greatest number of providers is available to provide services. At this time, relative/neighbor caregivers of TANF children do not have the option to participate in the Department's vendor payment system.

Comment: Commentators indicated that employers should be given incentives to offer child care.

Response: The Department is coordinating efforts with other Commonwealth agencies to develop incentive packages to offer to employers.

Comment: Commentators urged the Department to offer training to child care providers.

Response: At the present time, the Department offers training to staff in child care facilities through Statewide contractors. In 1998-99, the Department will offer training to nearly 50,000 child care staff persons Statewide. The Governor's Budget for 1998-99 included additional funds to improve quality through training.

Comment: Commentators asked about the Department's plans to expand child care capacity.

Response: The Department is implementing a system to distribute capacity-building funds. The Department has awarded four contracts to assess the child care needs in each county. Based on the assessment, the four contractors will develop plans to expand the capacity of available child care in individual counties. The Department will review the recommended plans and authorize the contractors to distribute seed money to expand child care capacity in the counties.

Fiscal Impact

Public Sector

Commonwealth—The Department will serve, at a minimum, 4,105 additional children on an annual basis because the increase in co-payments will result in more funds being available in the subsidized child care program to serve more individuals. The additional revenue from the increased co-payments will make \$12.8 million available in State and Federal funds to serve additional children because the increase in the parent co-payment will extend the use of State and Federal funds to serve these additional children. The Department will incur additional costs to pay actual child care allowances for TANF families when the disregard is eliminated; and to pay child care costs until the TANF parent receives his first pay.

Political Subdivisions—Local governments will not have increased costs due to these final-form regulations.

Private Sector

These final-form regulations may increase administrative costs for child care providers who choose to participate in the subsidized program.

General Public

Family fees for those already in the subsidized child care program will generally increase. Because the family contribution toward the cost of care will increase, child care subsidy funds that would have been used for one family will be available to support additional families who would otherwise go on the waiting list. Thousands of families will receive increased amounts of subsidy because of the elimination of the disregard.

Paperwork Requirements

When the regulations become final, there will be changes in the paperwork requirements for the Department, the eligibility agent and the parent. The Department's paperwork requirements will increase as it must revise current eligibility forms, design new forms for child support and fraud requirements, and design forms to meet Federal reporting requirements under PRWORA to include the number of hours of service a child receives.

The eligibility agents' and parents' paperwork will increase as they must complete redeterminations at 6-month intervals rather than 12-month intervals. Additionally, the eligibility agent will need to complete paperwork and follow-up activities related to child support actions and identification and verification of suspected fraud. These amendments are necessary because the revised eligibility regulations intended to assure that families receive the appropriate level of child care subsidy and that only eligible families receive service. The eligibility agent will experience a decrease in the paperwork as it will no longer have to maintain a waiting list for those individuals whose income is between 186% and 235% of FPIG and will no longer need to complete redeterminations for families on the waiting list.

Effective Date

These final-form regulations will take effect on February 1, 1999.

Sunset Date

No sunset date applies to these final-form regulations.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), the Department submitted a copy of the notice of proposed rulemaking to IRRC and to the Chairpersons of the House Aging and Youth Committee and the Senate Committee on Public Health and Welfare for review and comment.

In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of all comments received, as well as other documentation. In preparing these final-form regulations, the Department has considered all comments received from IRRC, the Committees and the public.

Under section 5.1(d) of the Regulatory Review Act, these final-form regulations were deemed approved by the House Aging and Youth Committee and the Senate Public Health and Welfare Committees on November 18, 1998. Under section 5.1(e) of the Regulatory Review Act, these final-form regulations were approved by IRRC on November 19, 1998.

Contact Person

The contact person for these final-form regulations is Kathryn J. Holod, Director, Bureau of Child Day Services, Bertolino Building, 4th Floor, Harrisburg, PA 17012, (717) 787-8691.

Findings

The Department finds that:

(1) Public notice of intention to adopt the administrative regulations amended by this order has been given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) The adoption of these amendments in the manner provided in this order is necessary and appropriate for the administration and enforcement of the Public Welfare Code.

Order

The Department, acting under the Public Welfare Code, orders that:

(a) The regulations of the Department, 55 Pa. Code Chapters 165, 168, 183 and 3040, are amended by amending §§ 165.2, 165.42, 165.44, 165.46, 165.81, 168.1, 168.2, 168.11, 168.17—168.21, 168.41, 168.43—168.45, 168.49, 168.61, 168.71, 168.72, 168.74, 168.81, 168.91, 168.101, 183.94, 3040.1, 3040.3, 3040.4, 3040.11, 3040.12, 3040.14—3040.17, 3040.19, 3040.31—3040.38, 3040.51—3040.54, 3040.61—3040.64 and 3040.71—3040.78; by deleting §§ 168.12—168.16, 168.42, 168.46, 168.47, 168.50, 168.73, 168.75, 168.76, 3040.2, 3040.13, 3040.18, 3040.39 and 3040.55; and by adding §§ 168.51, 3040.20, 3040.27, 3040.28, 3040.40 and 3040.91—3040.94 to read as set forth in Annex A.

(*Editor's Note:* The following statements of policy have been deleted in this rulemaking §§ 3040.31a, 3040.34a and 3040.54a.)

(b) The Secretary of the Department shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as to legality and form as required by law.

(c) The Secretary of the Department shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect on February 1, 1999.

FEATHER O. HOUSTON,
Secretary

(*Editor's Note:* For the text of the order of the Independent Regulatory Review Commission relating to this document, see 28 Pa.B. 5920 (December 5, 1998).)

Fiscal Note: 14-438. No fiscal impact; (8) recommends adoption. While these regulations will not increase General Fund costs, Federal funds from the Child Care and Development Fund Block Grant will be used to pay for increased program costs. Fiscal Year 1998-99—\$10 million; Fiscal Year 1999-00—\$17 million.

Annex A**TITLE 55. PUBLIC WELFARE****PART II. PUBLIC ASSISTANCE MANUAL****Subpart C. ELIGIBILITY REQUIREMENTS****CHAPTER 165. EMPLOYMENT AND TRAINING PROGRAM****GENERAL PROVISIONS****§ 165.2. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

EDP—Employment Development Plan—A noncontractual agreement completed by the client and the employment and training worker which establishes an employment goal with specific time frames and activities to achieve the goal and describes services to be provided by the Department and the activities to be undertaken by the recipient.

ETP—Employment and Training Program—A program operated by the Department consisting of one or more work, training, education, work experience or job search activities.

Enrollment—The process used to designate that an individual is eligible to become a participant in the ETP.

Exempt—Individuals who are not required to be enrolled in the ETP.

Full-time child care—Child care of at least 5 hours per day.

Noncompliance—The willful failure or refusal without good cause to comply with this chapter.

Nonexempt volunteer—A recipient who is not exempt from ETP enrollment and volunteers to participate in an ETP activity before being required to do so.

Participant—An individual who is actively engaged in a mutually agreed upon and approved education, employment or training related activity.

Part-time child care—Child care of less than 5 hours per day.

Preexpenditure approval—Approval by a person specified by the Department prior to the recipient's incurring an expense for an item or service.

Special allowances for supportive services—Payments for items and services as determined by the Department to be necessary to enable a participant to prepare for, seek, accept or maintain education, employment or training.

SPECIAL ALLOWANCES FOR SUPPORTIVE SERVICES

§ 165.42. Advance payment of special allowances for supportive services.

(a) Special allowances for supportive services, including child care, shall be paid in advance of the date that payment is required by the provider, consistent with the requirements and time frames in §§ 165.45 and 168.1(b)(3) (relating to time frames for authorization of payment of special allowances for supportive services; and policy on payment of child care).

(b) The advance payment requirement applies to initial and recurring payments of special allowances for supportive services in accordance with § 165.45.

(c) This section does not apply to vendor payments for child care under § 165.46(a)(11)(ii) (relating to types of special allowances for supportive services).

§ 165.44. Verification for special allowances for supportive services.

(a) *Verification needed to authorize payment.*

(1) Before authorizing the initial payment, the CAO shall determine the following:

(i) Whether the supportive service requested is necessary to enable the participant to engage in an approved education or training activity or to apply for employment.

(ii) The expected charge for the service or item requested.

(iii) The date the service or item is needed by the participant.

(iv) The date that payment for the service or item is required under the provider's usual payment policy or practice.

(2) Verification of the need for special allowances for supportive services is required only when it is not readily apparent.

(3) Acceptable verification of the information needed for initial authorization consists of collateral contracts, written statements or completed Departmental forms, obtained from sources such as employers, prospective employers, school officials, training providers or providers of supportive services.

(4) The CAO shall use collateral contacts whenever necessary to ensure that payment is made in advance of the date that payment is required by the provider.

(b) *Verification needed to review continued eligibility.*

(1) The participant's continued eligibility for a special allowance for a supportive service is reviewed monthly, or more often if costs are likely to change, at each reapplication, whenever a change in employment or training is reported by the participant or the training provider, and whenever the EDP is revised.

(2) To review the participant's continued eligibility, the CAO shall require verification of the actual costs incurred by the participant for the supportive service and verification of the participant's attendance at an education or training activity or at employment.

(3) When verification provided to the CAO indicates a change in eligibility, payment of the special allowance to the participant shall be reduced, terminated or increased, as appropriate, upon issuance of a confirming notice to the participant, in accordance with § 133.4(c) (relating to procedures).

(c) *Special requirements related to child care for GA recipients.*

(1) Child care costs shall be verified through a collateral contact by the CAO with the child care provider, by a written statement signed by the provider or on a form specified by the Department.

(2) When a special allowance for child care is authorized based on a collateral contact or a written statement from the provider, verification of the charge for child care on a form specified by the Department shall be submitted to the CAO within 30 days of the first day child care costs were incurred. The CAO shall assist the client, as needed, to obtain a completed verification form from the provider.

(3) Verification of factors other than cost relating to the need for child care shall consist of collateral contacts with, or written statement from, employers, prospective employers, physicians, licensed psychologists, school officials, or training providers or copies of court orders or pay stubs. The client's statement regarding suspected child abuse is acceptable evidence. Information previously verified need not be repeated unless it is subject to change.

§ 165.46. Types of special allowances for supportive services.

(a) *Child care for GA recipients.*

(1) Payment for child care is made to enable the caretaker/relative or custodial parent to participate in an approved education or training activity or to apply for employment.

(2) The CAO shall promptly inform an ETP participant who is in need of child care about the following:

(i) The types and locations of child care providers reasonably accessible to the participant.

(ii) The assistance available to help the participant select an appropriate child care provider.

(iii) The assistance available on request to help the participant obtain a child care provider.

(iv) That child care payments shall be paid in advance of the date that payment is required by the provider, consistent with the requirements and time frames in § 165.45 (relating to time frames for authorization of payment of special allowances for supportive services), to ensure that the participant will have access to the child care provider of the participant's choice.

(3) Special allowances for child care are available for the following types of providers, including the following:

(i) Center-based care.

(ii) Group family day care.

(iii) Family day care.

(iv) Department of Education administered day care.

(v) Unregulated care.

(4) Child care payments may be made only to a person or business entity who allows parental access to the child while a child is in care without the need for prior notification and who provides care in accordance with applicable Federal, State and local law.

(5) The caretaker/relative shall have the right to choose from any type of child care that is available under this chapter and the right to choose any child care provider who meets the requirements of this chapter.

(6) Payments are made for care of a child who is one of the following:

(i) Twelve years of age or younger, living in the home of the parent or caretaker/relative and receiving cash assistance, or who would be eligible to receive cash assistance except for the receipt of SSI or foster care under Title IV-E of the Social Security Act (42 U.S.C.A. §§ 670—677).

(ii) Thirteen years of age or older if it has been verified by a physician or licensed psychologist that the child is not physically or mentally capable of caring for himself or it is verified that the child is under a court order requiring adult supervision, the child is living in the home of the parent or caretaker/relative and is receiving cash assistance, or who would be eligible to receive cash assistance except for the receipt of SSI or foster care under Title IV-E of the Social Security Act.

(7) Payment is made for the eligible cost of child care up to the maximum allowance established by the Department in § 168.1 (relating to policy on payment of child care) or the rate charged the general public, whichever is less, per child. Recipients receiving special allowances for child care before implementation of the maximum allowances continue to receive payment for actual reasonable costs incurred for child care. Eligible costs include charges for days on which the child does not attend due to illness, vacation, or the like. Charges for transporting the child to or from care are included if not levied as a separate charge by the provider.

(8) Payment for providing care of children will not be made to the following persons or business entities owned by:

(i) A biological or adoptive parent of the child.

(ii) A legal guardian of the child.

(iii) A stepparent of the child living in the home.

(iv) Persons receiving TANF as essential persons.

(v) Other members of the budget group of which the child is a member.

(9) Payment for child care shall be made for persons awaiting entry into, or during breaks in, approved education training or employment for one of the following:

(i) Up to 2 weeks.

(ii) Up to 30 days when it is verified that the arrangements would otherwise be lost in the interim period.

(10) Payment of child care shall be reasonably related to the hours of employment or ETP participation, including travel time.

(11) Payment for child care may be made by one of the following:

(i) Direct payment to the recipient when the provider is unregulated or is regulated but is not enrolled in the Department's child care vendor payment system.

(ii) Vendor payment to a regulated provider who has signed the Department's vendor payment agreement and who is enrolled in the Department's child care vendor payment system.

(iii) Restricted endorsement check to the recipient and provider.

(iv) The earned income deductions in §§ 183.94(3) and 183.95(2) (relating to TANF earned income deductions; and GA earned income deductions) for employed clients, except that clients earning wages in a work experience training activity may receive payment for the difference between the child care deduction and the maximum child care allowance established by the Department in § 168.1 when the cost of child care exceeds the deductions in §§ 183.94(3) and 183.95(2).

(12) Child care services are not considered as needed when an unemployed biological or adoptive parent, specified relative or legal guardian is in the home unless that person is physically or mentally incapable of providing care or is involved in education, training, job search or employment related activities, or the child is at risk due to suspected child abuse or the custodial parent is participating in a Single Point of Contact or Department or Department of Education Pregnant and Parenting Youth Program.

(13) Preexpenditure approval is required unless the child care is for a job interview and the client is unable to contact the worker prior to the scheduled interview.

(b) *Care of incapacitated adults.* Payments are made for the eligible costs of nonmedical care up to the maximum rates established for infant care of an incapacitated adult living in the same home if care is required to enable a recipient to participate in an approved education or training activity or to apply for employment and no other sound plan can be made for care of the incapacitated adult. Costs for care of incapacitated adults for maintaining employment are met by the earned income deductions in §§ 183.94(3) and 183.95(2) except that clients earning wages in a training activity, such as work experience, may receive payment for the difference between the deduction for care of an incapacitated adult found in §§ 183.94(3) and 183.95(2) and the actual nonmedical costs incurred.

(1) There shall be verification of the person's incapacity and the need for the care.

(2) Payment will be made for the actual cost of care.

(3) Payment for providing care will not be made to the following:

(i) The spouse of an incapacitated person.

(ii) An essential person.

(iii) Other members of the budget group of which the recipient or incapacitated adult is a member.

(4) Preexpenditure approval is required.

(c) *Transportation and related expenses.* Payments are made for eligible transportation costs incurred due to participation in ETP activities or for accepting employment. Transportation costs under paragraph (1) or (2) for maintaining employment are met by the earned income deductions in §§ 183.94(1) and 183.95(2). Payment is made for the least costly type of transportation which is available and practical considering the location and hours of scheduled employment or training, the client's physical condition and the need to transport children to a child care provider. Payment for transportation-related costs is not made if the activity is secondary education or an equivalent level of vocational or technical training unless the person is a pregnant female or a custodial parent.

(1) *Public transportation.* Payment is made for costs incurred for transportation provided by bus, subway, commuter or long distance rail, taxi, air, paratransit or other recognized modes of transportation.

(i) Payment for public transportation is the actual cost to the client up to the maximum monthly amount established by the Department in Appendix A (relating to employment and training special allowances).

(ii) Except for air or long distance rail travel, pre-expenditure approval is not required. Verification of the need and the cost of transportation is required within 30 days of the date the transportation expense was incurred.

(2) *Private transportation.* Payment is made for costs incurred for transportation provided by privately owned vehicles, ride sharing and car or van pools.

(i) Payment for transportation by a vehicle owned by the client is the mileage rate established by the Department in Appendix A and the actual cost of parking and highway or bridge tolls up to the maximum monthly amount established by the Department in Appendix A.

(ii) For an allowance provided for the client to ride with a volunteer car and driver, the volunteer driver is paid at the mileage rate established by the Department in Appendix A, and the actual cost of the parking and highway or bridge tolls up to the maximum monthly amount established by the Department in Appendix A.

(iii) For an allowance provided for transportation by a car or van pool, the client receives a proportionate share of the cost up to the maximum monthly amount established by the Department in Appendix A. If the client's share is a flat fee, the actual fee is used up to the maximum monthly amount established by the Department in Appendix A.

(3) *Motor vehicle purchase or repair.* When there is no other type of practical transportation available or other available transportation is more expensive, a special allowance may be authorized toward the purchase, down payment to purchase or repair of a motor vehicle for an individual to accept a firm job offer, to prevent the loss of current employment, to attend an approved education or

training activity or to transport children to day care while the client is employed or participates in an approved education or training activity.

(i) The maximum total allowance toward a motor vehicle purchase, down payment and repair is limited to a rate established by the Department in Appendix A.

(ii) Preexpenditure approval is required.

(4) *Motor vehicle related expenses.* The cost of a driver's license, State inspection fee, emission control inspection fee, license plates and vehicle registration fee may be authorized if they are needed for an individual to accept a firm job offer, to attend an approved education or training activity, or to transport children to day care while the client participates in an approved education or training activity.

(i) Payment is made for actual cost up to the maximum allowance established by the Department in Appendix A.

(ii) Preexpenditure approval is required.

(5) *Moving/relocation costs.* A special allowance may be granted if an individual is relocating to accept a verified offer of gainful, permanent employment and if the individual has not received a moving allowance for any reason within the previous 12 months.

(i) Payment is not made for moves by unlicensed moving companies except as provided for in § 175.23(b)(3) (i)(C) (relating to requirements).

(ii) The maximum allowance toward moving/relocation costs is limited to the rate established by the Department in Appendix A, in a 12-month period. The 12-month period begins with the first authorization of this allowance.

(iii) Preexpenditure approval is required.

(6) *Lodging and food.* A special allowance toward lodging and food may be granted if an individual has to be away from home one or more nights to apply for employment or an approved education or training activity or to attend training.

(i) Payment for lodging will be made for actual costs up to the rates established for Commonwealth employees by the Office of Administration. These rates will be available upon request at the CAO. When lodging cannot be located with a reasonable effort within these rates, the rates may be exceeded. The rate may also be exceeded if the client is required to stay in a specific hotel or motel. A complete explanation of lodging costs in excess of the rate shall be documented in the CAO record.

(ii) Payment for food will be made for each 24-hour period the individual has to be away from home in accordance with the rates established for Commonwealth employees by the Office of Administration and the Office of the Budget. These rates will be available upon request at the CAO. Overnight travel of less than 24 hours will be divided into 6-hour periods and reimbursed at the fractional day allowance rates. An allowance will not be provided for less than 3 hours. Payment will not be made for meals provided by a prospective employer or included as part of registration fees.

(iii) Preexpenditure approval is required.

(d) *Other expenses related to employment and training.* Special allowances may be authorized for other items related to applying for or accepting employment or for participating in approved education or training activities.

Preexpenditure approval is required. The maximum allowances for these items are the rates established by the Department in Appendix A.

(1) *Clothing.* A special allowance may be authorized for street or business clothing and grooming items needed to make a client presentable to accept a job or to enter an approved education or training activity or specialized clothing, such as uniforms or safety shoes verified by the employer or training provider as needed for the client to work at a job or to participate in an approved education or training activity.

(2) *Tools and other equipment.* A special allowance may be authorized for tools and other equipment, such as goggles, helmets and wrenches which an employer or training provider specifies are necessary for employment or participation but which are not provided by the employer or training provider and are not available under Federal, State or other educational grants.

(3) *Books and supplies.* A special allowance may be authorized for books and supplies, such as pens, pencils, wristwatches or thermometers for a client to attend an approved education or training activity if these items are not available under Federal, State or other educational grants.

(4) *Fees.* A special allowance may be authorized for a fee for taking a test such as a high school equivalency test, a test that is a prerequisite for employment, or for registration or enrollment fees required for a client to enter an approved education or training course. Tuition is not construed to be a fee.

(5) *Union dues and professional fees.* If payment of union dues or professional fees is a condition of employment, a special allowance may be granted for the initial fee and for the period up to the date of the client's first pay.

FAIR HEARING

§ 165.81. Fair hearing.

Every person has a right to appeal a Departmental action or failure to act regarding these employment requirements and to have a hearing in accordance with Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings), if the individual is dissatisfied with a decision refusing or discontinuing assistance in whole or in part with the following exceptions:

(1) The requirement for notice does not apply to a change in the method of payment of a special allowance for supportive services unless the change results in a discontinuance, suspension, reduction or termination of the allowance or would force a change in child care or adult care arrangements.

(2) Section 275.4(a)(3)(v)(C)(I) (relating to procedures regarding continued benefits pending a hearing decision does apply to a reduction or discontinuance of a special allowance for supportive services.

CHAPTER 168. CHILD CARE

GENERAL PROVISIONS

§ 168.1. Policy on payment of child care.

(a) To the extent funds are available, payment for child care will be made to enable the parent/caretaker to participate in work-related activities. To qualify for a child care payment the individual must be eligible to receive cash assistance, including persons who do not receive a cash payment due to the minimum monthly

check requirement or due to a month of zero cash payment. Child care payments are considered a reimbursement for past or future child care expenses for food stamp eligibility purposes.

(b) The CAO will promptly inform a recipient who is in need of child care about the following:

(1) The types and locations of child care providers.

(2) The services available from the Local Management Agency (LMA), also known as the Child-Care Information Services (CCIS) Agency, for help in finding and selecting a child care provider.

(3) Child care payments will be paid in advance of the date that payment is required by the provider, consistent with the requirements and time frames in § 165.42 (relating to advance payment of special allowances for supportive services), to ensure that the participant will have access to the child care provider of the participant's choice. The advance payment requirement does not apply to vendor payments for child care. Advance payments are considered a reimbursement of future child care expenses for food stamp eligibility purposes.

(i) The Department will make an exception to the provisions which limit advance payment to instances in which the provider requires it, and which restrict advance payment for providers enrolled in the child care vendor payment system for a TANF budget group determined prospectively ineligible as a result of starting new employment under § 168.71(1)(ii) (relating to monthly payment determination).

(ii) The CAO will make an advance payment from the first day of employment until the date of TANF discontinuance if the information is verified through a collateral contact consistent with § 168.41(4) (relating to verification requirements).

(c) At application, reapplication and whenever the agreement of mutual responsibility is developed or revised, the CAO will inform applicants and recipients in writing and orally of the availability of child care allowances.

(d) Determination of eligibility and notification of approval or denial of child care payments will be done in accordance with § 165.43 (relating to special allowances for supportive services and time frames for eligibility determinations).

(e) Authorization of payment for child care will be done based on time frames consistent with § 165.45 (relating to time frames for authorization of special allowances for supportive services).

(f) The CAO will discuss the maximum child care allowances and the co-payment sliding fee scale in Chapter 3040, Appendix B (relating to family co-payment scale), whenever the Agreement of Mutual Responsibility (AMR) is developed or revised and reflects a need for child care. The CAO will advise clients that copies of the maximum child care allowances and the co-payment sliding fee scale are available upon request at the CAO.

(g) The CAO will refer the client to the LMA/CCIS whenever help is needed in finding and selecting a child care provider.

§ 168.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Budget group—A group of persons receiving TANF. A child receiving SSI benefits and for whom child care payments are requested is included in the budget group.

CCIS—Child Care Information Services Agency—A public or private agency with which the Department has a contract to manage the subsidized child care program in part of a county, a county or several counties. The subsidized child care program is for families not receiving TANF. This agency is also known as an LMA.

Child care vendor file—A listing of regulated child care providers who have signed the required agreement to receive a vendor payment from the Department.

Co-Payment—The monthly amount the family pays for child care that is subsidized.

Co-payment sliding fee scale—A scale based on family sizes and income from which a determination of the child care co-payment is made as set forth in Chapter 3040, Appendix B.

Full-time care—Child care of at least 5 hours per day.

Full-time employment—Employment which averages at least 30 hours per week in a calendar month.

LMA—Local Management Agency—A public or private agency with which the Department has a contract to manage the subsidized child care program for families who are not receiving TANF. This agency may be known as a CCIS agency of part of a county, a county or several counties.

Maximum child care allowance—The ceiling set by the Department for payment of child care services to budget groups eligible for child care payment.

Nontraditional hours—Hours of child care which include evening, night, early morning, holiday or weekend hours.

Parental access—Access by the parent to the child at any time while the child is in care without the need for prior notification.

Part-time care—Child care of less than 5 hours per day.

Pre-expenditure approval—Approval by a person specified by the Department prior to the recipient's incurring an expense for child care.

Regulated care—Child care given by a person or entity which is licensed by or registered with the Department or approved by the Department of Education.

Relative/neighbor care—Care given by a person who is exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes) and cares for three or fewer children unrelated to the caregiver.

Restricted endorsement—A check made payable to two parties which requires the signature endorsement of both parties to cash the check.

Satisfactory arrangement—The plan made by the budget group to pay overdue fees which are acceptable to the child care provider.

Specified relative—The term as defined in Chapter 151 (relating to specified relatives).

Sleep-time—Hours of care following third shift employment when the parent/caretaker has an eligible child in the home and needs care for the child in order to sleep.

TANF—Temporary Assistance for Needy Families Program—A Federal nonentitlement program under sections

401—419 of the Social Security Act (42 U.S.C.A. §§ 601—619) which provides cash assistance to families that include dependent children and an adult who is working toward self-sufficiency. Eligibility for TANF is determined by the local CAO.

Vendor payment—A child care payment made by the Department directly to a regulated child care provider who has signed the Child Care Vendor Program Enrollment Request Agreement and is enrolled in the child care vendor payment system.

ELIGIBILITY REQUIREMENTS

§ 168.11. General requirements.

(a) Special allowances for child care are available for the following types of child care:

- (1) Center-based day care.
- (2) Group home day care.
- (3) Family day care.
- (4) Relative/neighbor care.
- (5) In-home care.

(b) The parent/caretaker shall have the right to choose from any type of child care that is available under this chapter and the right to choose any child care provider who meets the requirements of this chapter.

(c) Preexpenditure approval is required unless the child care is for a job interview and the client documents that he was unable to contact the worker prior to the scheduled interview.

§ 168.12. (Reserved).

§ 168.13. (Reserved).

§ 168.14. (Reserved).

§ 168.15. (Reserved).

§ 168.16. (Reserved).

§ 168.17. Eligible children.

To be eligible for a child care payment, the budget group shall include a child who meets the following criteria. The child meets the following conditions:

(1) Is a TANF dependent child under Chapter 153 (relating to deprivation of support or care) and § 145.43(a)(1) (relating to requirements) would qualify as a TANF dependent child under Chapter 153 and § 145.43(a)(1) except for receipt of SSI or foster care benefits.

(2) Meets one of the following conditions:

(i) Is under 13 years of age.

(ii) Is 13 years of age or older and meets one of the following conditions:

(A) Is under 19 years of age and not physically capable of caring for himself as verified by a physician

(B) Is under 19 years of age with a developmental age of less than 13 years of age as verified by a physician or licensed psychologist.

(3) Is age appropriately immunized. If the child does not have age-appropriate immunizations, the parent/caretaker has 90 days to obtain and document immunizations for the child unless one of the following applies:

(i) The parent/caretaker objects to immunizations on religious grounds.

(ii) The child's medical condition contraindicates immunizations as verified by a physician.

§ 168.18. Need for child care.

(a) Child care must be needed to enable a member of the budget group to participate in a work-related activity.

(b) Child care services will not be considered as needed when an unemployed parent/caretaker of the child is in the home, unless one of the following applies:

(1) The parent/caretaker is physically or mentally incapable of providing child care, as verified by a physician or licensed psychologist.

(2) The parent/caretaker is involved in work-related activities, or the custodial parent is participating in a Department of Education Pregnant and Parenting Youth Program.

(3) The child is at risk because of suspected child abuse.

(c) Child care will be considered as needed for entry into or during breaks in approved work-related activities for one of the following:

(1) Up to 2 weeks.

(2) Up to 30 days when it is verified that the child care arrangements would otherwise be lost in the interim.

(d) Child care will not be considered as needed when the biological or adoptive parent, specified relative or legal guardian of the child is the owner/operator of a child care business where care is available for the child.

§ 168.19. Child care arrangements.

Payment for child care will be made when the child care arrangements are as follows:

(1) The person or entity providing child care meets the following conditions:

(i) Provides care in accordance with applicable standards of Federal, State and local law.

(ii) Allows parental access to the child while the child is in care without the need for prior notification.

(iii) Is a person who is at least 18 years of age.

(2) The person or entity providing child care may not be one of the following:

(i) The biological or adoptive parent or legal guardian of the child.

(ii) A member of the TANF budget group.

(iii) The stepparent of the child living in the home.

§ 168.20. Child care co-payment.

The employed budget group shall pay the required co-payment toward the cost of child care.

§ 168.21. Ineligibility for failure to pay co-payment.

Ineligibility for child care payment results when the budget group is employed and fails to pay the required co-payment toward the cost of child care. The budget group is ineligible until overdue co-payments are paid or satisfactory arrangements to pay overdue co-payments are made with the provider.

VERIFICATION

§ 168.41. Verification requirements.

The applicant or recipient is required, as a condition of eligibility, to cooperate in providing necessary information and verification to establish eligibility.

(1) Before authorizing the initial child care payment, the CAO will determine the following:

(i) Whether the child care is necessary to participate in a work-related activity.

(ii) The expected charge.

(iii) The date the service is needed by the participant.

(iv) The date that payment for the service is required under the provider's usual payment policy or practice.

(2) When the parent/caretaker provides verification to the CAO that indicates a change in eligibility, payment will be reduced, terminated or increased, as appropriate, upon issuance of appropriate notice to the parent/caretaker, in accordance with §§ 133.4 and 168.101 (relating to procedures; and appeal and fair hearing).

(3) Child care costs shall be verified monthly by the parent/caretaker on a form specified by the Department or by a written statement signed by the provider or by a collateral contact by the CAO with the child care provider.

(4) A collateral contact will be used whenever necessary to ensure that payment is made in advance of the date that payment is required by the child care provider consistent with § 168.1(b)(3) (relating to policy on payment of child care). When a child care allowance is authorized based on a collateral contact with or by a written statement from the provider, verification of the charge for child care on a form specified by the Department shall be submitted to the CAO within 30 days of the first day child care costs were incurred. The CAO will assist the client, as needed, to obtain a completed verification form from the provider. Failure to provide verification within the specified time period could result in nonauthorization of the child care payment.

(5) Verification of factors other than cost relating to the need for child care shall consist of collateral contacts with, or written statements from, employers, prospective employers, physicians, licensed psychologists, school officials, training providers; or pay stubs. Information previously verified need not be reverified unless it is subject to change.

§ 168.42. (Reserved).

§ 168.43. Verification of the disability of a child.

A written statement from a physician or licensed psychologist which confirms that the child has a physical or mental handicap which prevents the child from caring for himself is required.

§ 168.44. Verification of the disability of a parent/caretaker.

A written statement from a physician or licensed psychologist which confirms that the biological or adoptive parent, specified relative or legal guardian has a physical or mental handicap which prevents the person from providing child care is required.

§ 168.45. Verification of suspected child abuse.

The statement of the parent/caretaker, caseworker or other professional is acceptable evidence to verify suspected child abuse. Suspected child abuse will be reported in accordance with 23 Pa.C.S. Chapter 63 (relating to the Child Protective Services Law) as defined in Chapter 3490 (relating to child protective services—child abuse).

§ 168.46. (Reserved).

§ 168.47. (Reserved).

§ 168.49. Verification of payment of co-payment for the employed budget group.

A signed, written statement from the child care provider on a Department form which confirms that the child care co-payment has been paid for a specified month is required. If co-payments are owed, a signed, written statement by the child care provider that the overdue co-payments have been paid or that satisfactory arrangements for payment have been made is acceptable.

§ 168.50. (Reserved).

§ 168.51. Verification of age-appropriate immunizations.

The parent/caretaker shall provide a signed, written statement on a form specified by the Department to verify that the child has received age-appropriate immunizations, or that the parent/caretaker objects to immunizations on the basis of religious grounds, or documentation from a physician to verify that the child's medical condition contraindicates immunizations.

REPORTING REQUIREMENTS

§ 168.61. Reporting requirements.

The budget group shall report child care arrangements and child care costs monthly consistent with Chapter 142 (relating to monthly reporting) and § 125.24(d) (relating to responsibility for reporting changes). Documentation will be retained in the case record to support the determination of the payment, including child care costs. These documents are retained in accordance with cash assistance case record retention policies.

PAYMENT DETERMINATION

§ 168.71. Monthly payment determination.

The amount of the child care payment is determined for each month.

(1) The allowable child care payment is the lowest of the actual child care costs, the rate charged the general public or the maximum allowance established by the Department.

(i) For participants in unpaid work-related activities, payment is made for the actual costs of child care up to the maximum allowance established by the Department or the rate charged the general public, whichever is less.

(ii) For participants in paid work-related activities, payment is made for the actual costs of child care up to the maximum allowance established by the Department or the rate charged the general public, whichever is less, minus the family co-payment as determined in § 168.74 (relating to determining monthly child-care co-payments).

(A) A TANF budget group determined prospectively ineligible as a result of starting employment will have the co-payment waived from the first day of employment until the date of discontinuance in accordance with § 183.105 (relating to increases in income), if the budget group has reported timely in accordance with § 125.24(d) (relating to responsibility for reporting changes).

(B) A TANF budget group determined prospectively eligible as a result of starting employment will have the co-payment waived from the first day of employment until the last day of the calendar month in which the first pay is received, provided the budget group has reported timely in accordance with § 125.24(d).

(2) When the month of eligibility is not a full calendar month, the child care payment is prorated for the number of calendar days for which the budget group is eligible.

(3) Corrective or delayed payments are issued consistent with the requirements in Chapters 175 and 227 (relating to allowances and benefits; and central office disbursement).

§ 168.72. Determining monthly child care costs.

The actual child care costs reported and verified as paid or incurred in the month are considered. Actual child care costs include the following:

(1) A charge for child care reasonably related to the hours of the work-related activity, including travel time and sleep-time for third shift employment.

(2) A charge levied for days on which the child was not in attendance due to illness, vacation, and the like.

(3) A charge for transporting the child to or from care if the charge is included as part of the normal child care charge and not levied as a separate charge.

§ 168.73. (Reserved).

§ 168.74. Determining monthly child care co-payment.

The co-payment is determined for a month, based upon gross monthly income and budget group size, using the co-payment sliding fee scale in Chapter 3040, Appendix B. Gross monthly income is determined based on anticipated or actual amounts as determined in accordance with Chapter 183 (relating to income).

(1) The co-payment is waived for the calendar month in which the first pay is received or until the date of discontinuance due to a prospective determination of ineligibility, in accordance with § 168.71 (relating to monthly payment determination). The co-payment is prospectively determined using anticipated income for the next months excluding the TANF grant as countable income. Thereafter, the co-payment is determined using actual income as reported on the monthly reporting form in accordance with Chapter 142 (relating to monthly reporting). The actual income reported on the monthly reporting form for the prior month is used to establish the co-payment for the following month.

(2) If retroactive benefits are requested, the co-payment for each retroactive month will be determined using the actual income received in each month.

§ 168.75. (Reserved).

§ 168.76. (Reserved).

CHILD CARE PAYMENT METHODS

§ 168.81. Payment methods.

The Department will make a child care payment for child care expenses paid or incurred in a month as one of the following:

(1) A direct check to the client when the child care provider is not enrolled in the Department's child care vendor payment system.

(2) A vendor payment to the child care provider when the provider is regulated and enrolled in the Department's child care vendor payment system except when it is verified that the client has paid the enrolled provider directly. Payment will then be issued directly to the client.

(3) A restricted endorsement check made payable to the client and the child care provider when it has been demonstrated that the client failed to use a prior child care payment for its intended purpose.

RESTITUTION**§ 168.91. Restitution.**

The cash assistance provisions of Chapter 255 (relating to restitution) apply to a recipient of a child care payment except that the provision for recoupment of an overpayment does not apply.

APPEAL AND FAIR HEARING**§ 168.101. Appeal and fair hearing.**

The cash assistance provisions of Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) apply to an applicant or recipient of a child care payment with one exception; the requirement for an advance notice of adverse action will not apply to a change in the method of payment, unless the change would result in a discontinuance, suspension, reduction or termination of benefits or would force a change in child care arrangements. If the parent/caretaker files an appeal within 10 days of the notice of adverse action, subsidy continues at the prior level until a final decision is made by the Bureau of Hearings and Appeals except when the adverse action is based solely on Federal or State law, regulations or policy or changes in Federal or State law, regulations or policy, or the Department lacks funding to continue subsidy.

Subpart D. DETERMINATION OF NEED AND AMOUNT OF ASSISTANCE**CHAPTER 183. INCOME****INCOME DEDUCTIONS****§ 183.94. TANF earned income deductions.**

For expenses related to employment of each individual in the TANF budget group, subject to the limitations in § 183.97 (relating to ineligibility for disregards from earned income for TANF and GA), disregard in the following order:

(1) *Work expenses.* The first \$90 per month from the earned income of each client who is employed.

(2) *Earned income incentive deduction.* As an incentive to eligible AFDC clients to obtain and retain employment, earned income incentive deductions, subject to the limitations in § 183.96 (relating to interruptions in the 4 consecutive months of the earned income incentive deduction for AFDC and GA) and § 183.97, are made as follows:

(i) After the deduction allowed in paragraph (1) has been made, each employed client is eligible for a deduction of \$30 plus 1/3 of the remaining net earned income during 4 consecutive calendar months of employment.

(ii) After the deduction allowed in paragraph (1) has been made, each employed client is eligible for a deduction of \$30 during the next 8 consecutive months of employment. An applicant or recipient is entitled to the \$30 income incentive deduction during any calendar month of this 8-month period for which the income of the applicant or recipient is sufficient to qualify. The 8 months of eligibility are counted consecutively, beginning with the calendar month following the end of the 4 consecutive calendar months in which the \$30 and 1/3 income incentive deduction was allowed, whether or not assistance is interrupted or income is sufficient to qualify for it.

(iii) An applicant who has been a recipient of AFDC in 1 of the 4 calendar months prior to this application is eligible to receive the full \$30 and 1/3 income incentive

deduction for 4 consecutive calendar months subject to the limitations in subparagraph (v).

(iv) An applicant who has not been an AFDC recipient in 1 of the 4 calendar months prior to this application is eligible to receive the full \$30 and 1/3 income incentive deduction for 4 consecutive calendar months only if the applicant's income, after deductions in paragraphs (1) and (3) and § 183.98 (relating to unearned income and lump sum income deductions) is less than the standard of need for the budget group, and subject to the limitations in subparagraph (v).

(v) An applicant or recipient who has received the \$30 and 1/3 income incentive deduction for 4 consecutive calendar months is not eligible to receive the deduction again until 12 consecutive calendar months have elapsed in which he has not been a recipient of an AFDC cash grant. When assistance is terminated during the 8 consecutive calendar month period of the \$30 income incentive deduction, the 12 consecutive months begin in the first month following the month of termination.

(3) *Personal expenses.* The actual cost of care of incapacitated adults living in the same home and receiving TANF, if no other sound plan can be made for their care, up to a maximum of:

(i) One hundred seventy-five dollars per incapacitated adult when the client is employed full-time.

(ii) One hundred fifty dollars per month per incapacitated adult when the client is employed part-time.

PART V. CHILDREN, YOUTH AND FAMILIES MANUAL**Subpart B. ELIGIBILITY FOR SERVICES****CHAPTER 3040. SUBSIDIZED CHILD DAY CARE ELIGIBILITY****INTRODUCTION****§ 3040.1. Purpose.**

This chapter establishes the requirements for an eligible family to receive subsidy to meet the cost of child care. The subsidy is a nonentitlement benefit made available through limited Federal and State funds.

§ 3040.2. (Reserved).**§ 3040.3. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Adjusted monthly income—Weekly family income multiplied by 4.3 to reflect months that are longer than 4 weeks, minus allowable deductions in Appendix A, Part II (relating to income deductions).

Annual income—The family's adjusted monthly income multiplied by 12 months.

Appeal—A written request by a parent/caretaker or a person acting on behalf of the parent/caretaker indicating disagreement with a Departmental decision affecting the family's eligibility for subsidized child care and requesting a hearing under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) and this chapter.

Application—A parent's/caretaker's signed, dated request for subsidized child care completed on a Departmentally prescribed form.

CAO—County Assistance Office—The local office of the Department responsible for the determination of eligibil-

ity and service delivery in the Cash, Food Stamp and Medical Assistance Programs.

Caretaker—An adult who has legal custody and who lives in the family's common dwelling and who has responsibility for the child for whom subsidy is requested or a specified relative as defined in § 151.42 (relating to definitions).

CCIS—Child Care Information Services Agency—A public or private agency with which the Department has a contract to manage the subsidized child care program in part of a county, a county or several counties. The subsidized child care program is for families not receiving TANF. This agency is also known as an LMA.

Co-payment—The weekly amount the family pays for child care that is subsidized.

Disqualification—The prohibition against receipt of subsidized child care which results from fraud, an intentional program violation or consent to be disqualified.

Department—The Department of Public Welfare of the Commonwealth.

Education—An elementary school, middle school or high school program including a general equivalency diploma (GED) program.

Eligibility agent—The entity, prime contractor or subcontractor designated in the prime contract, with authority delegated by the Department to purchase subsidized child care and determine a family's eligibility and co-payment. The eligibility agent may be known as the LMA or the CCIS.

Eligibility determination—A decision regarding whether a family meets the requirements of the subsidized child care program.

Eligibility redetermination—A review by the eligibility agent of all eligibility factors which are subject to change, to determine if a family remains eligible for the subsidized child care program.

Employment—The condition of working for another person or an entity for income equal to or greater than the Federal or State minimum hourly wage standards, whichever applicable wage is higher.

FPIG—Federal Poverty Income Guidelines—The income levels published annually in the *Federal Register* by the Department of Health and Human Services.

Fiscal year—A period of time beginning July 1 of any calendar year and ending June 30 of the following calendar year.

Fraud—A willful false statement, misrepresentation or failure to disclose information by a parent/caretaker which results in obtaining or continuing receipt of child care subsidy for which the family is not eligible.

Income—Includes:

- (i) Gross wages from employment.
- (ii) Cash or in-kind payments received by an individual in exchange for services, including income from self-employment.
- (iii) Cash or contributions received by an individual for which he does not provide a service.
- (iv) Unearned benefits received periodically by an individual, for example, unemployment compensation, worker's compensation or retirement benefits.

Intentional program violation—An action by a parent/caretaker applying for or receiving subsidized child care

for the purpose of establishing or maintaining his family's or his children's eligibility for the subsidized child care program or for the purpose of increasing or preventing a reduction in the amount of the child care subsidy, which involves one of the following:

- (i) An intentionally made false or misleading statement or misrepresentation or concealment or withholding of a fact.
- (ii) An act intended to mislead, misrepresent, conceal or withhold a fact.

LMA—Local Management Agency—A public or private agency with which the Department has a contract to manage the subsidized child care program for families who are not receiving TANF. This agency may be known as a CCIS of a county, part of a county or several counties.

Live-in companion—An individual who resides with the parent/caretaker and a child for whom subsidy is requested, and who is the life companion or unmarried partner of the parent/caretaker.

Maximum child care allowance—The payment ceilings set by the Department for child care services provided to families eligible for child care subsidy.

Overpayment—The receipt of subsidy for a child for which the family is not eligible.

Parent—A biological, adoptive, step or foster mother or father, who lives in the family's common dwelling and is responsible for the child for whom the subsidy is requested.

Partial redetermination—A face-to-face or telephone review of eligibility that does not include a review of all eligibility factors.

Prospective employment or prospective education—Employment or education verified by the employer or school official to begin within 30-calendar days of the day that the parent/caretaker signs and dates the application for subsidized child care. The term does not include job-seeking except as specified by this chapter.

Provider—An organization or individual who directly delivers the child care.

Recoupment—Recovery of an overpayment by increasing the co-payment or other payment arrangement.

Reimbursement rate—The provider's verified published daily rate or the maximum child care allowance, whichever is less.

Self-employment—Operating one's own business, trade or profession for profit equal to or greater than the hourly Federal or State minimum wage, whichever is higher.

Subsidized child care—Child care service paid for in part with State or Federal funds.

Suspended subsidy—A temporary lapse of subsidized funding for a child which does not affect the family's eligibility status.

TANF—Temporary Assistance for Needy Families Program—A Federal nonentitlement program under sections 401—419 of the Social Security Act (42 U.S.C.A. §§ 601—619) which provides cash assistance to families that include dependent children and an adult who is working toward self-sufficiency. Eligibility for TANF is determined by the local CAO.

Training program—An instructional program which enables the employed adult family member to attain skills which qualify him for a specific job.

Waiting list—A list maintained by the eligibility agent of the names of families and their children determined eligible to receive subsidized child care, but for whom subsidy is not currently available.

§ 3040.4. Subsidy goal.

The goal of subsidized child care is to enable a parent/caretaker of a family eligible for subsidy under this chapter to maintain employment or to attend an education program.

GENERAL REQUIREMENTS

§ 3040.11. Provision of subsidy.

(a) A parent/caretaker has the right to apply for subsidized child care.

(b) Subsidized child care is provided only for a child whose family is determined eligible by the eligibility agent and only up to the limits of available subsidized child care funds.

(c) The Department has the responsibility to assure that subsidized child care is authorized to fund only a child of an eligible family.

(d) Subsidized child care is available only to provide care for a child if no adult family member is available to care for the child during the hours of the day for which the parent/caretaker requests subsidized child care.

(e) Subsidized child care is available to an otherwise eligible child from birth to the date the child is 13 years of age, with the following limited exceptions for a child with a disability:

(1) A child who is developmentally disabled and is 13 years of age or older is eligible for subsidy until his developmental age is 13 years or until his chronological age is 19 years, whichever occurs first, if the developmental disability is documented by a licensed psychologist or a physician.

(2) A child who is physically disabled and is 13 years of age is eligible for subsidy until he is no longer physically disabled or until he is 19 years of age, whichever occurs first.

(f) Subsidized child care is available only to a child who has received age-appropriate immunizations in accordance with § 3040.34(a)(7) (relating to nonfinancial eligibility) with one of the following exceptions:

(1) A child whose parent/caretaker objects to immunizations on religious grounds.

(2) A child whose medical condition contraindicates immunization as documented by a licensed physician.

(g) A family shall meet both financial and nonfinancial criteria to be eligible for subsidized child care.

(h) A family in which a parent/caretaker is receiving TANF is not eligible for subsidized child care under this chapter.

(i) Subsidized child care may not be used as a substitute for a publicly funded educational program, such as kindergarten, or a specialized treatment program.

(j) Subsidized child care may be provided in certified child day care centers and group child day care homes, registered family child day care homes and those exempt from certification or registration under Chapters 3270, 3280 and 3290 (relating to child day care centers; group child day care homes; and family child day care homes).

(k) Child care is care provided in lieu of parent/caretaker care for part of the 24-hour day.

§ 3040.12. Notice of nondiscrimination; civil rights compliance.

(a) An eligibility agent may not discriminate against applicants for or recipients of Federal or State subsidized funds on the basis of age, race, sex, color, religious creed, National or ethnic origin, ancestry, sexual preference or handicap.

(b) An eligibility agent shall offer child care subsidy within the provisions of applicable civil rights laws and regulations, and amendments or revisions made thereto, including the following:

(1) The Pennsylvania Human Relations Act (43 P. S. §§ 951—963).

(2) The Age Discrimination Act of 1975 (42 U.S.C.A. §§ 6101—6107).

(3) Title VI of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000d—2000d-4a).

(4) Title VII of the Civil Rights Act of 1964 (42 U.S.C.A. §§ 2000e—2000e-15).

(5) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C.A. § 794).

(6) The Americans With Disabilities Act of 1990 (42 U.S.C.A. §§ 12101—12213).

§ 3040.13. (Reserved).

§ 3040.14. Family file.

An eligibility agent shall establish and maintain a separate file for the family of each parent/caretaker who applies for subsidized child care.

(1) The family file shall contain documents pertaining to eligibility determination, redetermination, subsidy authorization, co-payment agreements and written notices required by this chapter.

(2) A parent/caretaker has a right to examine his own family file.

§ 3040.15. Record retention and disposition.

An eligibility agent shall retain family files, completed application forms and written notices, and books, records and other fiscal and administrative documents pertaining to subsidized child care. Records shall be retained as follows:

(1) For 4 years from the end of the fiscal year in which child care subsidy has been provided.

(2) Until the completion of an audit which is in progress and which remains incomplete at the end of the 4-year period specified in paragraph (1).

§ 3040.16. Confidentiality.

(a) The Department safeguards the use and disclosure of information on applicants for and recipients of subsidized child care. Eligibility agents and their employees shall keep confidential the information in the family file and use that information only for purposes directly connected to the administration of their duties. Agents of the United States, the Commonwealth and the Department who are responsible for eligibility review, evaluation or audit functions will have access to, and the right to the use and disclosure of, information on applicants or recipients of subsidized child care. This use and disclosure is confined to the agent's responsibility to carry out review, evaluation or audit functions. Disclosure of information beyond the scope of review, evaluation or audit functions performed by the agents requires the parent's/caretaker's informed and written consent.

(b) Information in the family file may be disclosed to the local CAO to ensure that funds are authorized appropriately.

(c) Information in the family file related to establishing paternity and obtaining a child support order may be disclosed to the Department or the domestic relations section to ensure child support enforcement services are secured unless the family has good cause for not seeking support or establishing paternity in accordance with § 3040.34(b)(7) (relating to nonfinancial eligibility).

(d) The eligibility agent shall assure the confidentiality of an individual who files a complaint about a family's receipt of subsidy for a child.

§ 3040.17. Additional conditions and additional charges.

(a) Additional eligibility conditions are prohibited unless specifically authorized in this section. The eligibility agent may not:

(1) Impose eligibility conditions other than conditions listed in this chapter.

(2) Require the parent/caretaker to select a particular provider or combination of providers as a condition of eligibility.

(b) A family is not eligible to receive subsidy for any additional charge assessed by a provider. The provider may assess additional charges to a subsidy eligible family for services provided in excess of the provider's reimbursement rate, if the same additional charges are assessed to nonsubsidy-eligible families, and the subsidy-eligible family is informed of the additional charges prior to implementation of the additional charges.

(c) If an eligible parent/caretaker chooses a provider whose verified published daily rate exceeds the Department's maximum child care allowance, the provider may assess a fee for an amount that represents the difference between the Department's maximum child care allowance and the provider's verified published daily rate for the type of care being requested.

(d) If a child's absences exceed 30 total enrollment days in any fiscal year, the parent/caretaker is responsible to pay the provider's verified published daily rate for each day of absence starting with the 31st absent day. Suspended days of service as described in § 3040.52(d) (relating to eligibility agent responsibilities) are not considered days of absence.

§ 3040.18. (Reserved).

§ 3040.19. Subsidy disruption.

(a) If a child's care at a provider is disrupted due to the provider's loss of the Department's certification or any other reason which prevents the child's continued care, the child is eligible for subsidy at another provider.

(b) If a child loses care as a result of circumstances referenced in subsection (a), and if funding for subsidized child care is not immediately available for another provider, the child's subsidy is suspended until another provider has been selected and subsidy is available.

(c) If the eligibility agent cannot continue to subsidize the number of children enrolled in subsidized child care due to a shortfall in State or Federal funding or management of funding by the eligibility agent, subsidy to a child is disrupted. Children whose families have the highest income are suspended first.

(d) A child whose subsidy is disrupted under this section will be placed on the waiting list according to the date of the initial eligibility for subsidized child care program.

§ 3040.20. Benefits and limitations.

(a) A subsidy-eligible child may receive the following benefits:

(1) Up to 50 hours of child care in a 7-day period.

(2) Care during the hours that the adult family members are employed or need uninterrupted sleep time when the work shift ends between the hours of 2 a.m. and 9 a.m.

(3) Care from provider who is eligible to participate in the subsidized child care program, and who agrees to comply with the Department's standards for provider participation as listed in the contract between the Department and the eligibility agent.

(4) Up to an additional 12 hours of subsidized child care per week, beyond the parent's/caretaker's hours of employment, for the hours that the parent/caretaker participates in a training program in accordance with § 3040.40 (relating to child care subsidy available to attend training).

(5) Payment to the provider for up to a maximum of 15 days of care in a fiscal year for provider closures.

(6) Payment to the provider for up to a maximum of 30 days of care in a fiscal year for absence from the provider.

(b) A child is not eligible to receive subsidy if the child's parent/caretaker is the operator of a registered family day care home, a certified group day care home or day care center (See Chapter 3270, 3280 or 3290 (relating to child day care centers; group child day care homes; and family child day care homes)) or is the operator of a home which is exempt from certification or registration under Chapters 3270, 3280 and 3290 and space is available to enroll the child at the facility operated by the parent/caretaker.

(c) A parent/caretaker who formerly received TANF may be reimbursed for child care cost incurred prior to the date of the initial application up to the first day of the month preceding the initial application.

§ 3040.27. Grandfathering provisions.

A child who is enrolled in the subsidized child care program prior to February 1, 1999, continues to receive subsidized child care until February 1, 2000, without regard to the eligibility conditions in this chapter if all other eligibility conditions are met:

(1) The family income exceeds 185% and is not greater than 235% of the FPIG. If the family income during this period exceeds 235% of FPIG, the child is ineligible for subsidy. The parent/caretaker of a child grandfathered under this section is required to pay the co-payment established for a family of its size at 185% of FPIG.

(2) The family eligibility is established based on the parent's/caretaker's participation in an approved training program and annual family income does not exceed 235% of the FPIG. If the training program is completed prior to February 1, 2000, and, if at that time the parent/caretaker does not meet the employment requirements, the family is ineligible for subsidy.

§ 3040.28. Composition of a family.

For the purpose of determining eligibility for child care subsidy, the following apply:

(1) A family includes the following individuals who live together:

(i) The child for whom subsidized child care is requested; the child's parent/caretaker; the parent's/caretaker's spouse or live-in companion; biological, step or adoptive minor siblings of the child who are under 18 years of age, are not emancipated by marriage or by the court, or 18 years of age or older but under 22 years of age who is enrolled in a postsecondary program leading to a degree or diploma and who are wholly or partially dependent upon the income of the parent/caretaker and spouse or live-in companion of the parent/caretaker; and biological, step or adoptive minor children of the parent/caretaker or live-in companion, or both.

(ii) The child for whom subsidized child care is requested, the child's parent who is a minor; the siblings or other parent of the child; the child's grandparent; the grandparent's spouse or live-in companion and other minor children of the grandparent or live-in companion.

(2) A foster child may be counted as either a separate family or as part of the foster family.

(3) A family whose parent/caretaker transfers from TANF is exempt from including the parent's/caretaker's live-in companion in the family for 6 months starting the day after the date TANF benefits end.

(4) An individual may not be included in more than one family unless the individual is a child who is in a shared custody arrangement and both families are seeking subsidized child care.

ELIGIBILITY REQUIREMENTS

§ 3040.31. General requirements regarding family eligibility.

For a child to receive subsidized child care, the family shall:

(1) Reside in this Commonwealth. The parent/caretaker shall apply in his county of residence. In counties where there is more than one eligibility agent for the county, the parent/caretaker shall apply to the eligibility agent that is responsible for the geographic area which includes the zip code of the family's residence.

(2) Be financially eligible as required by § 3040.32 or § 3040.33 (relating to financial eligibility; and self-employment).

(3) Be nonfinancially eligible as required by § 3040.34 (relating to nonfinancial eligibility).

§ 3040.31a. (Reserved).

§ 3040.32. Financial eligibility.

(a) The parent/caretaker shall provide paystubs indicating gross earned income for any 4 consecutive weeks within the most recent 6-week period for employed family members.

(b) Family members unable to provide paystubs because of exceptional employment circumstances shall provide documentation of earned income as follows:

(1) If paystubs are not available at the time of application because the employed family member has not been employed for 4 weeks, written documentation of anticipated gross earned income from the employer is sufficient evidence of earnings. The documentation is satisfactory until, but not after, the family member is employed for 8 consecutive weeks, at which time the family member shall present the paystubs.

(2) If income is received in cash, written employer documentation of gross earned income for 4 consecutive weeks within the most recent 6-week period is sufficient documentation.

(c) The eligibility agent shall require, and the parent/caretaker shall provide, documentation of all unearned family income unless specifically excluded in Appendix A, Part III (relating to income exclusions). See Appendix A, Part I (relating to income inclusions) which lists the unearned income included when computing the adjusted monthly income.

(d) The parent/caretaker shall seek all available income listed in Appendix A, Part I, except cash assistance.

(e) The parent/caretaker shall document all income deductions listed in Appendix A, Part II (relating to income deductions).

(f) The family is ineligible for child care subsidy if the annual family income exceeds the Department's maximum gross income limit of 185% of FPIG with the exception of those families listed in § 3040.27 (relating to grandfathering provisions).

§ 3040.33. Self-employment.

(a) To be considered self-employed, the family member alone shall assume the responsibility for deductions related to withholding taxes, income taxes and Social Security payments. If another person or entity has that responsibility, the family member is not considered self-employed.

(b) Acceptable documentation of income from self-employment is as follows:

(1) Acceptable documentation of income from self-employment is a copy of the family member's Federal Income Tax return (including all schedules related to self-employment) filed for the preceding Federal tax year and which documents profit for that year. The family member's profit from Schedule C, or any other forms or schedules related to self-employment income, is used as income for purposes of determining eligibility for subsidized child care.

(2) If the family member cannot provide a Federal Income Tax return which documents profit from self-employment, a notarized statement of gross earnings, minus allowable cost of doing business which shows a profit equal to or more than minimum wage, for the preceding Federal tax quarter is acceptable and is valid until the next Federal tax return is filed. At that filing of the Federal tax return, a redetermination of eligibility shall be completed.

(3) An annual Federal Income Tax return shall be used as income documentation when the family member has been self-employed for more than 1 year in the same business, and is valid only until the next Federal Income Tax return is filed.

§ 3040.34. Nonfinancial eligibility.

(a) A family shall meet the following nonfinancial eligibility conditions at each determination and redetermination of eligibility:

(1) The child shall need child care which coincides with the hours of the adult family members' employment or minor parents' education program.

(2) Each adult family member shall work for wages equal to or more than minimum wage. When calculating

minimum wage, tips are included with hourly wages. The following groups of employes are exempt from the minimum wage requirement:

- (i) Laborers on a farm.
- (ii) Individuals granted a subminimum wage exception by the Department of Labor and Industry.
- (3) Each adult family member shall have had at least 4 weeks of employment within the most recent 6-week period and shall work the number of hours required as follows. The eligibility agent may average the hours of employment in the 4-week period.
 - (i) Until July 31, 1999, the adult family members shall work at least 20 hours per week.
 - (ii) Beginning August 1, 1999, the adult family members shall work at least 25 hours per week.
 - (iii) A parent/caretaker who transfers to the subsidized child care program from the TANF program shall be employed. The parent/caretaker has 6 months from the date his TANF benefits end to meet the requirements in subparagraphs (i) and (ii), whichever is applicable.
- (4) A minor parent who has not graduated from high school or does not have a GED shall be enrolled in an education program and attend on a full-time basis. Documentation shall be on a form prescribed by the Department.
- (5) The child shall need subsidized child care to permit uninterrupted sleep time necessary for the parent/caretaker to continue employment. The parent/caretaker shall document that the work shift ends between the hours of 2 a.m. and 9 a.m.
- (6) A minor parent who has graduated from high school or who has a GED shall meet the same employment and earning requirements as an adult family member.
- (7) A parent/caretaker shall certify that each child receiving subsidized child care has received age-appropriate immunizations or that each child is exempt from the immunization requirement based on the exceptions in § 3040.11(f) (relating to provision of subsidy). If the child does not have age-appropriate immunizations and is not exempt from immunization, the parent/caretaker has 90 days to obtain immunizations for the child and certify that the child has age-appropriate immunizations.
 - (b) A parent/caretaker shall provide the following documentation of nonfinancial eligibility for family members at the initial determination of eligibility:
 - (1) Proof that all family members are citizens of the United States, or aliens lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law. Proof may include a birth certificate, voter's registration card or a document provided by the immigration and naturalization service.
 - (2) A Social Security number, or evidence of application for a Social Security number, for each family member.
 - (3) Written approval by the county children and youth agency who has responsibility for the foster child that the foster child may receive subsidized child care.
 - (4) Proof of employment for all employed family members, which shall be submitted on a form prescribed by the Department.
 - (5) Proof of self-employment may include a notarized statement of self-employment, or a statement signed by the self-employed family member in the presence of the

eligibility agent, for all self-employed family members. The statement shall list the hours and days of self-employment and how often income is received.

- (6) Consent for release of information, signed by each family member 18 years of age or older, which permits the eligibility agent and the Department or the Office of the Inspector General to obtain verification of eligibility information provided by the parent/caretaker.
- (7) Proof that action has been taken to establish paternity and a child support order against any absent parent on behalf of a child for whom subsidized child care is sought, unless there is good cause for failing to do so as set forth in § 187.23 (relating to requirements). Proof of cooperation may include a court order or documentation from the domestic relations office. For the purpose of determining eligibility for subsidized child care under this chapter, the eligibility agent shall complete the responsibilities of the CAO as described in § 187.23. The requirements for applicants and recipients of cash, under § 187.23, apply to applicants and recipients of subsidized child care.
 - (c) A parent/caretaker shall provide identification which contains a photograph of himself to the eligibility agent at any face-to-face interview. Acceptable documents include:
 - (1) An employer identification card.
 - (2) A driver's license.
 - (3) A military photoidentification card.
 - (4) A passport.
 - (5) Other verifiable photoidentification.

§ 3040.34a. (Reserved).

§ 3040.35. Reporting changes.

The parent/caretaker shall report financial or nonfinancial changes in the family to the eligibility agent within 10-calendar days following the date of the change. The parent/caretaker shall report all changes including the following:

- (1) Employment or self-employment status, including changes in the amount of pay or days and hours worked.
- (2) Training status.
- (3) Family income.
- (4) Continuation or completion of an education program.
- (5) Marital status.
- (6) Family composition.
- (7) Maternity leave.
- (8) Temporary disability status.
- (9) Layoffs or strikes.
- (10) Change of address.
- (11) Custody arrangement or foster care placement under a court order.

§ 3040.36. Inability to be employed or continue participation in an education program.

(a) During a period of subsidized child care, a parent/caretaker, or spouse or live-in companion of the parent/caretaker, may become unable to continue employment, self-employment or education and be unable to care for the child, for whom subsidy is requested. The disability which causes the individual's inability to be employed,

self-employed or in an education program and the inability to care for the child shall be documented with the eligibility agent as follows:

(1) A medical assessment form shall be completed by a licensed psychologist or a physician.

(2) The assessment shall describe the condition causing the inability to be employed, self-employed or in an education program.

(3) The assessment shall describe how the condition causing the inability to be employed, self-employed or in an education program prohibits the individual from providing care for the child.

(4) The assessment shall include the date the individual is expected to return to work or become able to care for the child.

(b) Subsidized child care may continue up to 6 months if the conditions stated in subsection (a) are met.

(c) A two-parent/caretaker family may be eligible for subsidized child care if one parent/caretaker is permanently disabled and the disability results in the parent's/caretaker's inability to be employed or self-employed and unable to provide child care while the parent/caretaker without a disability is working. The inability to be employed or self-employed, and provide child care shall be documented as stated in subsection (a).

(1) The parent/caretaker with a disability is receiving income from one of these sources:

(i) Social Security disability.

(ii) Supplemental Security Income (SSI).

(iii) Worker's Compensation.

(iv) One hundred percent of Veterans Disability.

(v) One hundred percent of any other type of work-related disability.

(2) If the parent/caretaker with a disability is not receiving income related to the disability, the parent/caretaker with a disability shall apply for disability benefits for which they may be eligible. The family shall be determined eligible for subsidized child care until a final decision is made regarding the eligibility of the parent/caretaker with a disability for disability benefits, or for no more than 2 years from the date of the onset of the disability, or application for subsidized child care, whichever occurs first.

§ 3040.37. Attendance requirements.

(a) The child is expected to attend day care at the provider on all days for which the parent/caretaker established a need for child care as described in § 3040.34 (relating to nonfinancial eligibility). The days are specified in writing at the time the child is enrolled in subsidized child care.

(b) A child whose absence exceeds 10 consecutive enrollment days shall be determined ineligible for child care subsidy. *Exception:* A child whose absence exceeds 10 consecutive enrollment days for the reasons in § 3040.52(d) (relating to eligibility agent responsibilities).

(c) The Department will not subsidize absences of more than 30 days of care in a fiscal year for an eligible child. The 30 days of care do not include absences incurred during time of subsidy suspensions listed in § 3040.52(d). The Department will consider waivers of the 30-day attendance requirements for a child with intermittent absences due to a chronic disease.

§ 3040.38. Prospective employment or a prospective education program for new applicants.

(a) A family in which an adult member has prospective employment or whose minor parent has prospective enrollment in an education program as defined in § 3040.3 (relating to definitions) may be eligible for subsidized child care if the following requirements are met:

(1) The employment or education program begins within 30-calendar days following the date of application.

(2) Written verification of prospective employment or a prospective education program is provided on a form as prescribed by the Department.

(b) Subsidy may not begin until the parent/caretaker or his spouse or live-in companion begins employment or an education program.

(c) Eight weeks following enrollment of a child whose family was determined eligible based on the parent's/caretaker's or his spouse's or live-in companion's prospective employment or enrollment in an education program, the parent/caretaker shall provide verification of employment or participation in the education program for that 8-week period. Verification shall be on a form prescribed by the Department.

(d) If the parent/caretaker will not receive a payment from employment for more than 30 days from the starting date of employment, eligibility is established based on the anticipated income as estimated by the employer. Until payment for employment is received, the family is assessed the minimum co-payment for a family of its size. When payment for employment is received, the parent/caretaker shall notify the eligibility agent. Upon receipt of the payment notice from the parent/caretaker, the eligibility agent shall:

(1) Complete a partial redetermination of eligibility within 10 days.

(2) Adjust the family co-payment, if applicable, within 20 days.

(e) A parent/caretaker who has exhausted all available TANF benefits and who has not yet obtained employment may have 30 consecutive calendar days of subsidized child care to seek employment. The parent/caretaker shall request subsidized child care within 90 days following the date that TANF benefits ended.

§ 3040.39. (Reserved).

§ 3040.40 Child care subsidy available to attend training.

(a) A family may qualify for subsidized child care for the hours the adult family member, or the minor parent who has graduated from high school or has a GED, is participating in a training program, if the following conditions are met:

(1) The adult family member or the minor parent meets the employment or education requirements in §§ 3040.32—3040.34 (relating to financial eligibility; self-employment; and nonfinancial eligibility).

(2) The training program is accredited by a State or National board of examiners or recognized by the Department.

(3) The training program provides skills that improve the employability of the individual for a particular job.

(b) A child may receive up to 12 additional hours of subsidized child care to coincide with the instructional hours that the adult family member, or minor parent who

has graduated from high school or who has a GED, participates in a recognized training program.

ELIGIBILITY DETERMINATION PROCESS

§ 3040.51. General requirements in the eligibility determination process.

(a) An initial determination of eligibility must be completed before subsidy is authorized.

(b) A full redetermination of eligibility must be completed at least once every 6 months and prior to the expiration of the current period of eligibility.

(c) A redetermination is required when the family's circumstances change and eligibility or the amount of co-payment is affected. See § 3040.35 (relating to reporting changes). The eligibility agent shall conduct a partial redetermination for each reported change within 20-calendar days of notification of the change. The eligibility agent may conduct a full redetermination if the information obtained during the partial redetermination gives indication of a change in the family's eligibility.

(d) Subsidy is authorized beginning on the date that the need for child care is established for a child whose parent/caretaker received TANF benefits in the past 90 days and meets the following conditions:

(1) The parent/caretaker was employed on the day that TANF benefits ended.

(2) TANF benefits were discontinued for a reason other than a sanction for noncompliance with eligibility conditions.

(3) The parent/caretaker is currently employed and is financially eligible.

(e) Subsidy is authorized on the date following the date that TANF ends for a family who is transferred from TANF to subsidized child care through an automated transfer initiated by the CAO. The eligibility agent shall set a redetermination date 6 months from the date following the date TANF ends.

§ 3040.52. Eligibility agent responsibilities.

(a) *Initial determination of eligibility.*

(1) The eligibility agent shall provide the parent/caretaker with written instructions regarding documents which the parent/caretaker shall provide to establish eligibility for subsidized child care.

(2) The eligibility agent may require a face-to-face interview with the parent/caretaker or shall arrange to have necessary documents and information mailed by the parent/caretaker to the eligibility agent. When a face-to-face interview is conducted, the eligibility agent shall verify the identity of the parent/caretaker who has signed the application and shall note in the family file the type of photoidentification used to verify the parent's/caretaker's identity.

(3) If the eligibility interview is face-to-face, the eligibility agent shall require the parent/caretaker to sign and date an application provided by the Department, at the time of the interview.

(4) If the parent/caretaker mails or delivers the application without a face-to-face interview, the eligibility agent shall stamp the date of receipt on the signed, dated application.

(5) The eligibility agent shall make a determination of eligibility when the required financial and nonfinancial documentation is provided.

(6) The eligibility agent shall obtain verification of the family's TANF eligibility status from the local CAO. The eligibility agent shall explore the family's eligibility for retroactive child care payments if the transfer to subsidized child care does not take place the day following the date TANF benefits ended and the parent/caretaker documents incurred child care costs.

(7) The eligibility agent shall determine eligibility within 30-calendar days of the date the application, signed and dated by the parent/caretaker, is received by the eligibility agent. When information is needed to complete the eligibility determination, the date that the information is received by the eligibility agent is the first day of the family's eligibility for subsidized child care.

(8) The eligibility agent shall sign and date the completed application when the eligibility agent has determined eligibility.

(9) The eligibility agent shall notify the parent/caretaker of the family's eligibility status according to the Department's notification requirements in §§ 3040.71 and 3040.72 (relating to general requirements regarding notification; and content of a written notice of adverse action).

(10) The eligibility agent shall conduct a face-to-face interview prior to authorization of subsidized care for the first child in the family to receive subsidy. At the time of the interview, the eligibility agent shall inform the parent/caretaker of his rights and responsibilities, as detailed in §§ 3040.35 and 3040.53 (relating to reporting changes; and parent/caretaker rights and responsibilities). The parent/caretaker shall acknowledge, in writing, his understanding and receipt of the rights and responsibilities information.

(11) The eligibility agent shall provide this chapter to the parent/caretaker upon request.

(b) *Subsequent redeterminations of eligibility.*

(1) The eligibility agent shall set a redetermination due date which does not exceed 6 months following the most recent date that the family was determined eligible. During redetermination, the eligibility agent assesses the financial eligibility factors in § 3040.32 (relating to financial eligibility) and the nonfinancial eligibility factors in § 3040.34 (relating to nonfinancial eligibility).

(2) The eligibility agent shall schedule a redetermination, or partial redetermination, to occur in less than 6 months if one or more of the following conditions exist or come to the attention of the eligibility agent:

(i) The family's financial status fluctuates in a manner which affects eligibility or the co-payment.

(ii) The family's financial or nonfinancial status is expected to change in a manner which affects eligibility or co-payment.

(iii) A family member is disabled and the disability is anticipated to end prior to 6 months.

(iv) A family member's employment is seasonal or temporary.

(v) A parent's/caretaker's education program ends prior to 6 months.

(3) At each redetermination, the eligibility agent shall notify the parent/caretaker in writing of the documents and information required to complete a redetermination of the family's eligibility for subsidized child care. A copy of that notification will remain in the family file.

(4) The eligibility agent shall notify the parent/caretaker of the family's eligibility status according to the Department's notification requirements in § 3040.71.

(5) The eligibility agent shall verify the Social Security number for any family member who did not have a Social Security number at the time of application.

(6) The eligibility agent shall provide an application form, prescribed by the Department, to the parent/caretaker for completion at each redetermination. The parent/caretaker may mail or hand deliver the signed dated form to the eligibility agent.

(c) *Continuing eligibility.*

(1) The eligibility agent shall supply the parent/caretaker with a written statement regarding the parent's/caretaker's responsibility to report financial or nonfinancial changes to the eligibility agent as detailed in § 3040.35. The eligibility agent shall discuss with the parent/caretaker the specific changes which shall be reported and are listed in § 3040.35 and the method by which the parent/caretaker will report changes. The eligibility agent shall note in the family's file the method agreed on for reporting changes.

(2) The eligibility agent shall evaluate a financial or nonfinancial change reported by the parent/caretaker and make a redetermination as necessary within 20-calendar days from the date the parent/caretaker reports and documents a change.

(3) If, during a period of eligibility, a parent/caretaker reports a change in the factors affecting financial or nonfinancial eligibility which does not cause a change in the co-payment or in the eligibility determination, the eligibility agent is required to complete a partial redetermination. The eligibility agent retains, in the family file, the information used in the evaluation, but the eligibility agent and parent/caretaker are not required to complete an eligibility determination form. The date a complete redetermination is due will not be changed as a result of a partial redetermination.

(4) If a reported change results in the family, or a child in the family, becoming ineligible for subsidy, the eligibility agent shall take the necessary steps to discontinue the subsidy under §§ 3040.71 and 3040.72.

(5) Eligibility continues for 30-calendar days from the date of involuntary termination from employment, the date a strike begins or the date of graduation from high school or completion of the GED program.

(6) Eligibility continues for 56-calendar days (8 weeks) from the first day of maternity leave.

(7) Eligibility for subsidy continues during regularly scheduled breaks in an education program, if the regularly scheduled break is less than 31 days.

(d) *Suspended subsidy.* Child care subsidy may be suspended if a child is unable to attend the provider's child care program for more than 10 consecutive enrollment days and will be absent for no more than 90 consecutive calendar days. On the 91st day of consecutive absence, the child is no longer eligible for subsidy. Subsidy may be suspended for any of the following situations:

(1) The child is visiting the noncustodial parent/caretaker.

(2) The child is ill or hospitalized for 5 or more service days.

(3) The child accompanies the parent/caretaker on a trip because of family illness or emergency, and the illness or emergency is documented.

(4) The child remains at home with his parent/caretaker during family leave.

(5) The child care provider is closed because of licensing requirements.

(6) The child's needs cannot be met by the child care provider.

(7) The child's needs cannot be met by the child care provider, and subsidized child care funds are not available for the child to receive service at an alternative provider.

(8) The child's parent is a minor parent on break from attendance at elementary school, middle school or high school.

(e) *Voluntary request to discontinue subsidized child care benefits.* If a parent/caretaker requests that the eligibility agent discontinue his child's subsidy, the eligibility agent shall:

(1) Determine the reason for the request to discontinue benefits.

(2) Determine if the family continued to be eligible up to the time of the request to discontinue benefits.

(3) Explore the possibility of an overpayment under § 3040.92(2) (relating to eligibility agent responsibilities).

(f) *Funding of different populations.* The Department will direct the eligibility agent on the standards for funding different populations. The Department, through the Department's contracts with the eligibility agent, may direct funding for various populations, including individuals who formerly received TANF.

§ 3040.53. Parent/caretaker rights and responsibilities.

(a) A parent/caretaker shall provide all documentation required by the eligibility agent prior to an eligibility determination for subsidized child care.

(b) A parent/caretaker shall sign and date the application for subsidized child care at the time of application and at subsequent redeterminations. The parent/caretaker may mail in or hand deliver the application to the eligibility agent. In a family that has two parents/caretakers, both parents/caretakers shall sign and date the application.

(c) A parent/caretaker has the right to have the eligibility determination completed within 30-calendar days after the eligibility agent receives the signed and dated subsidized child care application.

(d) A parent/caretaker has the right to receive written notification regarding any change in the family's eligibility following a determination or redetermination of eligibility.

(e) A parent/caretaker has the right to appeal the eligibility agent's determination of eligibility as provided in § 3040.73 (relating to actions that can be appealed).

(f) A parent/caretaker shall report financial or nonfinancial changes in the family's circumstances which affect eligibility for subsidy, as required in § 3040.35 (relating to reporting changes) and provide documentation as required by the eligibility agent to verify changes.

(g) A parent/caretaker shall meet at least once face-to-face with the eligibility agent prior to enrollment of the

first child in the family for subsidized child care. A parent/caretaker who transfers from TANF shall meet at least once face-to-face with the eligibility agent within the first 90 days of transferring to the subsidy program.

(h) A parent/caretaker shall supply accurate and complete financial and nonfinancial information to determine eligibility for subsidized child care.

§ 3040.54. Waiting list.

(a) After completion of an application and determination of the family's eligibility for subsidy, if the funds are not available, an eligible child is placed on a waiting list on a first come, first served basis. Placement on the waiting list is determined by the date and time eligibility for the child was determined.

(b) If a parent/caretaker requests subsidized child care for an additional child following the date the family was initially determined eligible for subsidized child care, the additional child is placed on the waiting list according to the date and time that the parent/caretaker requests care for the additional child.

(c) If a parent/caretaker does not select a provider for child care within 30 days from the date subsidy is available, the child is ineligible for subsidy and will be removed from the waiting list.

§ 3040.54a. (Reserved).

§ 3040.55. (Reserved).

CO-PAYMENTS

§ 3040.61. General requirements regarding co-payment.

(a) The eligibility agent shall determine the co-payment during the eligibility process. The parent/caretaker is responsible for paying the co-payment to the provider when a child is receiving subsidy. A co-payment is established at an initial determination of eligibility for subsidized child care and reestablished at each successive redetermination of eligibility. The co-payment covers all children in the family who are receiving subsidized child care. The co-payment includes all days of the week for which the family establishes a need for child care as described in § 3040.34 (relating to nonfinancial eligibility).

(b) A parent/caretaker whose child is authorized for subsidy is required to pay a co-payment and an equivalent advance co-payment prior to enrollment in the subsidized child care program. Only the co-payment is due thereafter. *Exception:* A parent/caretaker who transfers from TANF has until the first redetermination to pay the advance co-payment.

(c) If the co-payment is increased, the parent/caretaker shall begin paying the increased co-payment 10-calendar days after the advance notice advising the parent/caretaker of the co-payment increase. The parent/caretaker shall pay an increased advance co-payment. The increased advance co-payment is the amount of the difference between the current co-payment and the increased co-payment.

(d) If the co-payment is decreased as the result of a redetermination, the reduced co-payment is effective on the first day of the service week following the date of the redetermination. The difference between the current advance co-payment and the decreased co-payment is refunded to the parent/caretaker on the first day of the service week following the redetermination.

(e) The advance co-payment is refunded at the discontinuance of subsidy if the parent/caretaker has met applicable requirements in this chapter.

(f) The co-payment is due on the first day of the service week.

(g) A co-payment is delinquent if it is not paid by the last day of the service week. On the day that the co-payment becomes delinquent, the eligibility agent shall notify the parent/caretaker in writing that action will be taken to discontinue subsidy for the child. When a co-payment is delinquent, the first co-payment paid during any week is applied to the current week's co-payment. Subsequent co-payments paid during that week are applied to the delinquent co-payment. To remain current, a parent/caretaker shall pay the current week's co-payment and the delinquent co-payment.

(h) The following are the responsibilities of the eligibility agent:

(1) The eligibility agent shall assure that required notices of adverse action based on delinquent co-payments are generated in a timely manner. The eligibility agent shall retain a copy of the termination notice.

(2) The eligibility agent shall send the provider a copy of each notice of eligibility or adverse action issued to a parent/caretaker whose child is enrolled with the provider.

(3) If a co-payment is delinquent, the eligibility agent shall mail to the parent/caretaker, on a form prescribed by the Department, a written notice of discontinuance of subsidy at the end of the last service day of the service week in which the co-payment delinquency occurred. The written notice shall state that service will discontinue in 10-calendar days unless the delinquent co-payment is paid.

(4) If, during 1 year of eligibility, the parent/caretaker has been sent two written notices of discontinuance of subsidy due to overdue co-payments and has paid the overdue co-payments to avoid the discontinuance of subsidy at the time of the third delinquent co-payment, the eligibility agent shall initiate action to discontinue child care subsidy on the basis of habitual delinquency in paying co-payments. See § 3040.74 (relating to appeal: when subsidy is not continued during the appeal process). The parent/caretaker is ineligible for subsidy for 90 days after the discontinuance of subsidy for habitual delinquency.

(i) If subsidy to a child is discontinued and co-payments are owed to the provider, the parent/caretaker is ineligible for subsidized child care for 90-calendar days after the delinquent co-payments are paid.

§ 3040.62. Availability and use of the FPIG.

(a) The FPIG are published annually in the *Federal Register* and may be obtained from the Department's Office of Children, Youth and Families.

(b) Following annual publication of the FPIG, the Department will revise the co-payment chart in Appendix B and notify the eligibility agent of changes. The Department's Office of Children, Youth and Families will publish an updated co-payment chart as a notice in the *Pennsylvania Bulletin* to be recommended for codification in Appendix B.

(c) Applications and redeterminations processed after notification referenced in subsection (b) shall be completed in accordance with updated co-payment charts.

§ 3040.63. Calculating a co-payment.

(a) The determination of a family co-payment considers the following:

- (1) The family size and income.
- (2) The co-payment may not be less than \$5.
- (3) The family's annual co-payment may not exceed 14.5% of the family's annual income.

(b) The eligibility agent shall determine a family's adjusted monthly income as follows:

(1) Determine the gross monthly income by using documentation of 4 consecutive weeks of income from employment within the most recent 6-week period. Include other sources of income in Appendix A, Part I (relating to sources of earned or unearned income to be included). Following is the conversion method to determine gross monthly income:

<i>Frequency of income</i>	<i>Conversion method</i>
Daily	Multiply the daily income by the number of workdays in a week, then multiply by 4.3
Weekly	Multiply by 4.3
Biweekly (every 2 weeks)	Divide by 2, then multiply by 4.3
Semimonthly (twice a month)	Multiply by 2 for monthly gross income.
Monthly	Use the figure given.
Quarterly	Divide by 3.
Annually	Divide by 12.
Lump sum income	Divide by 12.

(2) Determine the amount of the monthly income deductions listed in Appendix A, Part II.

(3) Determine the adjusted monthly income by subtracting the total monthly deductions from the total gross monthly income.

(4) Convert the adjusted monthly income to annual income by multiplying the adjusted monthly income by 12.

(c) If the annual income for the family exceeds 185% of the FPIG, the family is not eligible for subsidized child care.

(d) If the annual income for the family does not exceed 185% of the FPIG, the eligibility agent shall determine the family co-payment by using the co-payment chart in Appendix B.

(1) In Appendix B, the co-payment is determined by family size and the annual income calculated in accordance with subsection (b)(4). If the family's annual income falls between two FPIG percentages, use the higher FPIG percentage.

(2) The co-payment as set forth in Appendix B is calculated as follows:

- (i) Determine the family size.
- (ii) Determine the family's annual income.
- (iii) Identify the annual income amount which is 100% FPIG for the family size.
- (iv) Divide subparagraph (ii) by subparagraph (iii).

(v) Multiply subparagraph (iv) by 100 and round to the nearest thousandth, which is the percentage of FPIG for that family.

(vi) Reduce the result of subparagraph (v) to the next lower whole number divisible by 10.

(vii) Multiply subparagraph (iii) by subparagraph (vi) and add \$1.

(viii) Locate the result of subparagraph (v) in the following chart under the column labeled "% FPIG." If the result of (v) is not a multiple of 10, round up to the next multiple of 10 and locate in the chart under the column labeled "% FPIG." Locate the corresponding "N" factor in the following chart:

<i>% FPIG</i>	<i>N</i>
10%	5.5%
20%	6%
30%	6.5%
40%	7%
50%	7.5%
60%	8%
70%	8.5%
80%	9%
90%	9.5%
100%	10%
110%	10.5%
120%	11%
130%	11.5%
140%	12%
150%	12.5%
160%	13%
170%	13.5%
180%	14%
185%	14.5%

(ix) Multiply the result of subparagraph (vii) by the "N" factor established in subparagraph (viii) to establish the annual co-payment amount and round to nearest hundredth.

(x) Divide the result of subparagraph (ix) by 52 to determine the weekly co-payment amount. Round down to the nearest whole dollar divisible by \$5. The result is the weekly co-payment.

(e) If the co-payment is equal to or exceeds the weekly reimbursement rate for care, the family is not eligible for child care subsidy with the provider selected by the family.

§ 3040.64. Department's payment.

If the co-payment does not exceed the reimbursement rate for care, the difference between the reimbursement rate and the weekly co-payment represents the Department's payment for subsidized child care.

NOTIFICATION REQUIREMENTS**§ 3040.71. General requirements regarding notification.**

(a) The eligibility agent shall notify the parent/caretaker in writing of the results of the eligibility determination. Notification shall occur within 30-calendar days following the date the eligibility agent receives a signed and dated application from the parent/caretaker. The eligibility agent shall determine the family ineligible if the parent/caretaker does not provide all verification required to determine eligibility within 30-calendar days.

(b) The eligibility agent shall notify the parent/caretaker in writing of an eligibility determination which renders the family eligible for subsidy. The notification shall include the following:

(1) The amount of the assessed co-payment.

(2) The parent/caretaker responsibility to report changes in eligibility requirements cited in §§ 3040.32—3040.34 (relating to financial eligibility; documentation of self-employed income self-employment; and nonfinancial eligibility).

(3) The parent's/caretaker's right to appeal the decision and information about how to appeal.

(c) On a written notice form prescribed by the Department, the eligibility agent shall notify each parent/caretaker of a determination or redetermination resulting in ineligibility for subsidized child care.

(d) At least 10-calendar days before the action that adversely affects eligibility or the amount of the co-payment is effective, the eligibility agent shall hand deliver or mail the adverse action notice to the parent/caretaker. The 10-day period begins on the day following the day the written notice is postmarked or hand delivered to the parent/caretaker. The adverse action requirements relating to an overpayment are found in subsection (g).

(e) If the 10-day period ends on a holiday or a day when the eligibility agent is not open for business, the next business day is considered the 10th day.

(f) The eligibility agent shall, by written notice to the parent/caretaker, confirm the parent's/caretaker's voluntary withdrawal of a child from subsidized child care.

(g) The eligibility agent shall notify the parent/caretaker in writing of an overpayment. The notification may also include a notice of adverse action if the overpayment affects the amount of the co-payment or results in suspension or termination. The notice shall include the following:

- (1) The reason for the overpayment.
- (2) The period of the overpayment.
- (3) The amount of the overpayment.
- (4) The repayment methods as listed in § 3040.93 (relating to repayment).
- (5) The right to request a Departmental fair hearing on the overpayment amount.

§ 3040.72. Content of a written notice of adverse action.

(a) A written notice to a parent/caretaker regarding the family's eligibility for subsidy is prepared on a form prescribed by the Department and includes the following:

- (1) A statement of the decision or proposed action and the effective date the action will occur.
- (2) A statement of the reason for the decision or proposed action.
- (3) A citation and brief explanation, stated in simple, nontechnical language, of the applicable section of this chapter or another applicable chapter used as the basis for the decision or proposed action.
- (4) A statement explaining the right of the parent/caretaker to appeal the adverse action and to receive a Departmental hearing. The following information is included in the statement:

(i) An appeal shall be submitted to the eligibility agent. The appeal shall be in writing and postmarked or hand delivered within 30-calendar days of the date the written notice was postmarked or hand delivered to the parent/caretaker.

(ii) Subsidy is continued pending a Departmental hearing decision when a written request for a Departmental hearing is postmarked or hand delivered within 10-calendar days following the date the written notice is postmarked or hand delivered to the parent/caretaker by the eligibility agent. Exceptions to the continuation of subsidy pending appeal are contained in § 3040.74 (relating to appeal: when subsidy is not continued during the appeal process).

(iii) The specific postmark date or hand delivery date of the notice by the eligibility agent and the specific date by which the appeal and request for a hearing shall be postmarked or hand delivered to the eligibility agent in order to be timely. Subsidy at the prior level is not continued pending the hearing decision if the request for a hearing was postmarked or hand delivered after the 10th calendar day from the date the written notice is postmarked or hand delivered to the parent/caretaker.

(iv) A request for a Departmental appeal hearing postmarked or hand delivered after 30 days from the date the written notice is postmarked or hand delivered to the parent/caretaker will be dismissed by the Bureau of Hearings and Appeals as untimely, under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings), without a hearing.

(5) The provisions specified in § 3040.78 (relating to continuing subsidy and co-payment during an appeal) which become effective if a parent/caretaker appeals an adverse action within 10 days of the notice.

(6) A statement that if the parent/caretaker appeals within 10 days, and has subsidy continued at the prior level but does not win the appeal, the parent/caretaker is obligated to repay the subsidy for which he was ineligible or the difference between what he received and for which he was eligible for.

(b) Following the preparation of a written notice of adverse action, the eligibility agent shall:

- (1) Mail or hand deliver, within 1 working day of preparation, the original and one copy of the notice to the parent/caretaker.
- (2) Retain a copy of the notice in the family file.
- (3) Mail a copy of the notice to the child care provider within 1 working day of preparation.

§ 3040.73. Actions that can be appealed.

A parent/caretaker has the right to request a Departmental hearing to appeal the following:

- (1) The denial of subsidy.
- (2) The discontinuance of subsidy.
- (3) The computation of the co-payment.
- (4) The eligibility agent's failure to act upon a request for subsidy within the time limits specified in § 3040.52(a)(7) (relating to eligibility agent responsibilities).
- (5) Subsidy disruption, as detailed in § 3040.19 (relating to subsidy disruption).
- (6) Subsidy suspension, as detailed in § 3040.52(d).

§ 3040.74. Appeal when subsidy is not continued during the appeal process.

(a) The parent/caretaker has the right to appeal a decision which is based solely on changes in Federal or State law, regulations or policy but subsidy does not continue at the prior level pending a hearing decision.

(b) The parent/caretaker has the right to appeal the disruption of subsidy when the eligibility agent lacks funding to continue subsidy to a child as indicated in § 3040.19(c) (relating to subsidy disruption). Subsidy is not continued pending a hearing decision.

§ 3040.75. Filing an appeal: parent/caretaker responsibilities.

(a) A parent/caretaker appealing an adverse action shall submit a written request and the original notice of adverse action to the eligibility agent in accordance with Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). The parent/caretaker shall specify the reason for the appeal, the current address, and a telephone number where the parent/caretaker can be reached during the day.

(b) A parent/caretaker may have anyone represent him at the hearing, whether or not the representative is an attorney.

(c) If the parent/caretaker desires that subsidy continue pending a hearing decision, subject to § 3040.74 (relating to appeal when subsidy is not continued during the appeal process), the parent/caretaker shall submit a written appeal within the 10 days specified in § 3040.72(a)(4)(ii) (relating to content of a written notice of adverse action). The parent/caretaker is responsible for timely payment of the co-payment which was in effect prior to issuance of the adverse action, subject to § 3040.74 until a decision is made in the appeal hearing.

§ 3040.76. Filing an appeal: eligibility agent responsibilities.

(a) If the parent/caretaker is unable to prepare a written appeal, the eligibility agent shall assist the parent/caretaker in preparing a written appeal. The parent/caretaker shall sign the appeal request.

(b) The eligibility agent shall retain a copy of the original envelope and the original appeal. If the appeal is hand-delivered, the eligibility agent shall stamp the appeal and the envelope with the date of receipt.

(c) The eligibility agent shall forward the original request for appeal and the postmarked envelope to the Department's Bureau of Hearings and Appeals within 3 working days from the date the appeal is received.

(d) The eligibility agent may not take the proposed adverse action until 10-calendar days have elapsed from the date of the delivery or mailing of the adverse action and then only if the parent/caretaker has not filed a timely appeal. Subsidy may be continued at the prior level only if the parent/caretaker meets the requirements in § 3040.78 (relating to continuing subsidy and co-payment during an appeal).

(e) The eligibility agent may take the proposed adverse action before 10-calendar days have elapsed when a provider closes for financial difficulties or loss of certification, or funding is not available to continue subsidized care to the child.

§ 3040.77. Appeal and hearing procedures.

(a) If a parent/caretaker does not officially withdraw an appeal, the eligibility agent or the Department, if appropriate, will take part in the scheduled hearing to justify the action to which the parent/caretaker objects. If the eligibility agent or the Department fails to appear at the hearing, the parent's/caretaker's appeal will be sustained by the Department's Bureau of Hearings and Appeals. See Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). If the parent/

caretaker fails to appear for the hearing, regardless of whether the eligibility agent or the Department appears, the appeal is considered abandoned and the decision of the eligibility agent or the Department will be sustained by the Bureau of Hearings and Appeals.

(b) The Department's Bureau of Hearings and Appeals may conduct a hearing by way of a telephone conference call with the parties to the appeal, including the parent/caretaker, the parent's/caretaker's authorized representative, the eligibility agent, the Department and the hearing officer. The parent/caretaker has the right to request a face-to-face hearing instead of a telephone hearing. Face-to-face hearings will be held in locations specified by the Department's Bureau of Hearings and Appeals.

(c) The Department's Bureau of Hearings and Appeals will notify the eligibility agent and the parent/caretaker, in writing, when disposition of the appeal is made. The eligibility agent will implement the final administrative action within the time limit ordered by the Department's Bureau of Hearings and Appeals, or on the first day child care is needed in the week following receipt of the final administrative action order. If the Bureau of Hearings and Appeals finds in favor of the eligibility agent/Department, and subsidy was continued at the level received prior to the notice of adverse action pending the hearing, the family is not eligible for subsidized care in this Commonwealth until repayment is received or a payment plan is established under § 3040.93 (relating to repayment) for the amount of the subsidy received for which the family was not eligible during the appeal period.

(d) Except as otherwise provided by this chapter, Chapter 275 applies to hearing requests made under this chapter.

(e) When it is established at a hearing that the family is eligible for subsidy at the time of the hearing but the action of the eligibility agent or the Department which is the subject of the appeal was correct when taken, the action will be sustained, and the date that eligibility for subsidy will resume is determined in accordance with § 3040.54 (relating to waiting list).

§ 3040.78. Continuing subsidy and co-payment during an appeal.

(a) If the parent/caretaker files an appeal within 10 days of the notice of adverse action, subsidy continues at the prior level, subject to § 3040.74 (relating to appeal when subsidy is not continued during the appeal process), until the appeal is heard and a final decision is made by the Bureau of Hearings and Appeals. The parent/caretaker shall continue to make timely payment of the co-payment in effect prior to the adverse action, as referenced in §§ 3040.61 and 3040.75 (relating to general requirements regarding co-payment; and filing an appeal: parent/caretaker responsibilities).

(b) If subsidy continues during the appeal process and the Bureau of Hearings and Appeals finds in favor of the eligibility agent or the Department, the parent/caretaker shall reimburse the Department for the subsidy, or the increase in subsidy, paid for the child in care from the initial proposed effective date of the adverse action until the date subsidy is discontinued or decreased based on the final administrative action order of the Bureau of Hearings and Appeals.

OVERPAYMENT, REPAYMENT AND DISQUALIFICATION

§ 3040.91. Overpayment.

- (a) An overpayment exists when a child receives subsidized child care for which the family is not eligible.
- (b) The overpayment may result from:
 - (1) Fraud by the parent/caretaker.
 - (2) Inadvertent error by an eligibility agent or parent/caretaker.
 - (3) Subsidy continued pending an appeal and the family did not win the appeal.

§ 3040.92. Eligibility agent responsibilities.

The eligibility agent shall:

- (1) Inform the parents/caretakers who request that subsidy continues until an appeal decision is made that if the hearing decision is in favor of the eligibility agent or the Department, the parent/caretakers are responsible for restitution of the overpayment.
- (2) Explore possible overpayments in active and closed cases, including those that were voluntarily closed.
 - (i) Ensure that the methods of exploring overpayments are appropriate to the particular situation and to the different eligibility factors.
 - (ii) Ensure that the methods of exploring overpayments do not infringe on the civil liberties of individuals nor interfere with the due process of law.
- (3) Investigate any credible complaint that a parent/caretaker is erroneously receiving subsidized child care.
- (4) Identify and document the causes of the overpayment.
- (5) Compute the amount of the overpayment.
- (6) Determine if the overpayment is the result of suspected fraud or nonfraud.
- (7) Proceed with recoupment procedures for nonfraud cases, as directed in § 3040.93(b)(1) (relating to repayment).
- (8) Send the family an overpayment notice as described in § 3040.71(g) (relating to general requirements regarding notification).
- (9) Refer suspected fraud cases to the Office of Inspector General in accordance with § 255.1 (relating to restitution and disqualification policy).
- (10) Notify the Department when recoupment stops before the overpayment is fully recouped.

§ 3040.93. Repayment.

- (a) The parent/caretaker shall repay the eligibility agent/Department the full amount of the overpayment when subsidized child care is provided for which the family was not eligible.
- (b) Upon identification of an overpayment, the eligibility agent shall take the following action:
 - (1) To collect from a family whose child continues to receive subsidized care:
 - (i) The eligibility agent shall notify the parent/caretaker by a letter that a repayment is required, the amount of the repayment and the options for repayment as follows:
 - (A) A one-time payment in full of the amount owed.

(B) A one-time partial payment and an increase in the co-payment to be paid until the repayment is complete.

(C) An increase in the co-payment until the repayment is complete.

(ii) If the parent/caretaker does not select an option identified in paragraph (1) within 10-calendar days, the eligibility agent shall automatically implement an increase to the co-payment until the repayment is complete. The parent/caretaker will be notified by a second letter of failure to choose a repayment option, the amount of the increased co-payment and the number of weeks the increased co-payment will continue. Co-payment increases assessed under this subsection will be subject to the following conditions:

(A) Co-payment increases implemented to collect overpayments may not exceed an amount greater than 5% of the family's gross monthly income.

(B) A parent/caretaker may choose to increase the co-payment to repay an overpayment in a shorter period of time.

(C) The eligibility agent shall issue an advance notice according to § 3040.71 (relating to general requirements regarding notification) before implementation of an increase in the co-payment.

(2) To collect from a family whose child is no longer receiving subsidized child care:

(i) The eligibility agent shall notify the Department of the discontinuance date, the amount of the overpayment recouped and the amount outstanding.

(ii) The Department will notify the parent/caretaker by letter of the overpayment, the amount of the outstanding overpayment and that full repayment is required. This notice requires a response within 10-calendar days.

(iii) If the parent/caretaker fails to respond, the eligibility agent shall send a second letter which reiterates the information contained in the letter required in subparagraph (i) and requests a response within 10-calendar days.

(iv) If the parent/caretaker fails to respond to the second letter, the Department may institute civil legal proceedings.

§ 3040.94. Disqualification.

(a) The parent/caretaker is disqualified from participating in the subsidized child care program if one of the following applies:

(1) A Federal or State court finds the parent/caretaker guilty of fraud in applying for or receiving subsidized child care.

(2) A Departmental hearing officer determines that the parent/caretaker committed an intentional program violation.

(3) The parent/caretaker signs a disqualification consent agreement as part of a court's deferred adjudication process.

(4) The parent/caretaker agrees to be disqualified by signing an administrative disqualification hearing waiver.

(b) Upon disqualification under subsection (a), a parent/caretaker and all eligible children in the parent's/caretaker's family will be prohibited from participation in the subsidized child care program:

(1) For 6 months from the date of the first conviction, hearing decision or determination.

(2) For 12 months from the second conviction, hearing decision or determination.

(3) Permanently from the date of the third conviction, hearing decision or determination.

(c) A parent/caretaker may not be granted a Departmental hearing on a court conviction or administrative disqualification hearing decision that led to the disqualification.

APPENDIX A

EARNED OR UNEARNED INCOME TO BE INCLUDED, DEDUCTED AND EXCLUDED IN DETERMINING GROSS MONTHLY INCOME

PART I. INCOME INCLUSIONS.

Income from the following sources is included when determining total gross monthly income:

A. Money, wages or salary earned by an individual before zero deductions for taxes, Social Security, bonds, pensions, union dues, health insurance and similar purposes, for work performed as an employee. This includes commissions, tips, piece-rate payments and cash bonuses. Income earned by an unemancipated minor is not included.

B. Armed forces pay which includes base pay plus cash, but does not include housing subsistence, allowances or the value of rent-free quarters.

C. Voluntary and court-ordered support received for any person in the family.

D. Net income from nonresident and real property, defined as gross receipts minus the expenses for continuing the income, such as depreciation charges, business taxes (not personal income taxes), interest on mortgages, repairs and similar expenses.

E. Social Security benefits, Supplemental Security Income, survivors' benefits and permanent disability insurance payments made by the Social Security Administration before deductions of health insurance premiums.

F. Railroad retirement, disability or survivors' benefit payments made by the United States Government under the Railroad Retirement Act, before deductions of health insurance premiums.

G. State blind pension payments made by the Department of Public Welfare.

H. Public assistance or welfare benefits or retirement benefits.

I. Private pensions and annuities, including retirement benefits paid to a retired person or his survivors by a former employer or a union, either directly or through an insurance company.

J. Government employe pensions paid by Federal, State, county, or other governmental agencies to former employes, including members of the armed forces, or their survivors.

K. Unemployment compensation received from government unemployment insurance agencies or private companies during periods of unemployment, and strike benefits received from union funds.

L. Workers' compensation received from private or public insurance companies.

M. Veterans' payments, defined as money paid periodically by the Veterans Administration (VA) to disabled members of the armed forces or to the survivors or dependents of deceased or disabled veterans, subsistence

allowances paid to the survivors of deceased veterans, and subsistence allowances paid to veterans for education and on-the-job training, as well as so-called "refunds" paid to ex-service persons as GI insurance premiums. For the disabled veteran in the Vocational Rehabilitation Program, the subsistence allowance and the veteran's disability allowance are counted as income.

N. Capital gains, profit from S-corporations and dividends, including dividends from stocks, bonds, mutual funds, or from membership in an association.

O. Interest on savings and bonds.

P. Income from estates and trust funds.

Q. Net income from royalties.

R. Lump sum cash of more than \$100: inheritances, life insurance benefits; personal injury and other damage awards and settlements; retroactive benefits such as Retirement, Survivor's or Disability Insurance; and delayed Unemployment, divorce settlements, gifts or Worker's Compensation.

S. Lump sum cash lottery winnings or cash prizes of more than \$100.

T. Profit from self-employment; total gross receipts minus allowable costs of doing business. The allowable costs of doing business are as follows:

(1) Costs of maintaining a place of business such as rent, utilities, insurance on the business and its property, and property taxes.

Note: If a business is operated in a home, the costs of maintaining a place of business are only those costs identified for the part of the home used exclusively for the business.

(2) Interest on the purchase of income-producing equipment and property.

(3) Employe labor costs, such as wage, salaries, taxes, unemployment compensation or worker's compensation.

(4) Cost of goods sold, supplies and materials.

(5) Advertising costs.

(6) Accounting and legal fees.

(7) Professional licensing fees and union dues, if necessary to practice a profession or trade.

(8) Transportation costs necessary to produce income.

U. Net income from room rent or room and board, defined as gross income received minus \$10 per month for each room rented and one-half the remainder.

PART II. INCOME DEDUCTIONS.

The following are deducted when determining adjusted monthly income:

A. Voluntary or court-ordered support paid by the parent/caretaker or a family member to a present or former spouse not residing in the same household.

B. Voluntary or court-ordered child support paid by the parent/caretaker or family member to a person not residing in the same household.

C. A medical expense not reimbursed through medical insurance which exceeds 10% of the family gross monthly income. The medical expense must have been incurred within the 90-day period prior to the date the parent/caretaker notifies the eligibility agent of that expense and there must be an expectation that the expense will continue to be incurred for the 6 months following the outset of the expense. Medical expenses are based on the

monthly expenses or monthly payment plan, or both. Medical expenses include bills for doctors, hospital costs, dental services, health care premiums, institutional care, medications, prosthetic devices, durable medical equipment or mental health services.

D. In those households where a parent who is a minor is requesting a subsidy, an amount of \$300 per month for each person for whom the grandparent is responsible. This deduction does not apply to the minor parent and the child in need of subsidized child care.

PART III. INCOME EXCLUSIONS.

Income from the following sources is excluded in determining gross monthly income:

A. Employment earnings of an individual who is an unemancipated minor.

B. Tax refunds, including earned income tax credits.

C. Withdrawals of bank, credit union or brokerage deposits.

D. Money borrowed.

E. Nonrecurring money in small amounts given as a gift, from any source, on an occasional and irregular basis.

F. The value of benefits under the Food Stamp Act of 1977 (7 U.S.C.A. §§ 2011—2036).

G. The value of foods donated from the United States Department of Agriculture.

H. The value of supplemental foods assistance under the Child Nutrition Act of 1966 (42 U.S.C.A §§ 1771—1791) and the special food service programs for children under that act.

I. Loans and grants, such as scholarships, obtained and used for conditions that preclude their use for living costs.

J. Any grant or loan to an undergraduate student for educational purposes, made or insured under any program administered under the Higher Education Act of 1965 (20 U.S.C.A. §§ 1001—1145-q).

K. Any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C.A. §§ 4601—4655).

L. Any home produce used for household consumption.

M. Any payment made on behalf of an individual for household expenses, such as rent, food and utilities.

N. Payments to Volunteers in Service to America under the Domestic Volunteer Service Act of 1973 (42 U.S.C.A. §§ 4951—5085).

O. Earnings received by any youth under the Job Training Partnership Act (29 U.S.C.A. §§ 1501—1792b).

P. Any foster care payments by a foster care placement agency.

Q. Stipends derived from the Foster Grandparent Programs under sections 211 and 212 of the Domestic Violence Service Act of 1973 (42 U.S.C.A. §§ 5011 and 5012).

R. Low Income Home Energy Assistance Program (LIHEAP) benefits and cash in-kind energy assistance provided by private agencies and utility companies.

S. Any adoption assistance payments by a county children and youth agency.

CO-PAYMENT CHART

FAMILY CO-PAYMENT SCALE

(BASED ON THE 1998 FEDERAL POVERTY INCOME GUIDELINES)

PERCENT FPIG	FAMILY SIZE = 1		FAMILY SIZE = 2		FAMILY SIZE = 3	
	INCOME	FEE	INCOME	FEE	INCOME	FEE
30%	\$2,415	\$5.00	\$3,255	\$5.00	\$4,095	\$5.00
40%	\$3,220	\$5.00	\$4,340	\$5.00	\$5,460	\$5.00
50%	\$4,025	\$5.00	\$5,425	\$5.00	\$6,825	\$5.00
60%	\$4,830	\$5.00	\$6,510	\$5.00	\$8,190	\$10.00
70%	\$5,635	\$5.00	\$7,595	\$10.00	\$9,555	\$10.00
80%	\$6,440	\$5.00	\$8,680	\$10.00	\$10,920	\$15.00
90%	\$7,245	\$10.00	\$9,765	\$15.00	\$12,285	\$15.00
100%	\$8,050	\$10.00	\$10,850	\$15.00	\$13,650	\$20.00
110%	\$8,855	\$15.00	\$11,935	\$20.00	\$15,015	\$25.00
120%	\$9,660	\$15.00	\$13,020	\$25.00	\$16,380	\$30.00
130%	\$10,465	\$20.00	\$14,105	\$25.00	\$17,745	\$35.00
140%	\$11,270	\$20.00	\$15,190	\$30.00	\$19,110	\$40.00
150%	\$12,075	\$25.00	\$16,275	\$35.00	\$20,475	\$45.00
160%	\$12,880	\$30.00	\$17,360	\$40.00	\$21,840	\$50.00
170%	\$13,685	\$30.00	\$18,445	\$45.00	\$23,205	\$55.00

RULES AND REGULATIONS

PERCENT FPIG	FAMILY SIZE = 1		FAMILY SIZE = 2		FAMILY SIZE = 3	
	INCOME	FEE	INCOME	FEE	INCOME	FEE
180%	\$14,490	\$35.00	\$19,530	\$45.00	\$24,570	\$60.00
185%	\$14,893	\$40.00	\$20,073	\$50.00	\$25,253	\$65.00

PERCENT FPIG	FAMILY SIZE = 4		FAMILY SIZE = 5		FAMILY SIZE = 6	
	INCOME	FEE	INCOME	FEE	INCOME	FEE
30%	\$4,935	\$5.00	\$5,775	\$5.00	\$6,615	\$5.00
40%	\$6,580	\$5.00	\$7,700	\$5.00	\$8,820	\$5.00
50%	\$8,225	\$5.00	\$9,625	\$10.00	\$11,025	\$10.00
60%	\$9,870	\$10.00	\$11,550	\$10.00	\$13,230	\$15.00
70%	\$11,515	\$15.00	\$13,475	\$15.00	\$15,435	\$20.00
80%	\$13,160	\$15.00	\$15,400	\$20.00	\$17,640	\$25.00
90%	\$14,805	\$20.00	\$17,325	\$25.00	\$19,845	\$30.00
100%	\$16,450	\$25.00	\$19,250	\$30.00	\$22,050	\$35.00
110%	\$18,095	\$30.00	\$21,175	\$35.00	\$24,255	\$40.00
120%	\$19,740	\$35.00	\$23,100	\$40.00	\$26,460	\$50.00
130%	\$21,385	\$40.00	\$25,025	\$50.00	\$28,665	\$55.00
140%	\$23,030	\$45.00	\$26,950	\$55.00	\$30,870	\$65.00
150%	\$24,675	\$55.00	\$28,875	\$60.00	\$33,075	\$70.00
160%	\$26,320	\$60.00	\$30,800	\$70.00	\$35,280	\$80.00
170%	\$27,965	\$65.00	\$32,725	\$75.00	\$37,485	\$90.00
180%	\$29,610	\$75.00	\$34,650	\$85.00	\$39,690	\$100.00
185%	\$30,433	\$80.00	\$35,613	\$95.00	\$40,793	\$110.00

PERCENT FPIG	FAMILY SIZE = 7		FAMILY SIZE = 8		FAMILY SIZE = 9	
	INCOME	FEE	INCOME	FEE	INCOME	FEE
30%	\$7,455	\$5.00	\$8,295	\$5.00	\$9,135	\$5.00
40%	\$9,940	\$10.00	\$11,060	\$10.00	\$12,180	\$10.00
50%	\$12,425	\$10.00	\$13,825	\$15.00	\$15,225	\$15.00
60%	\$14,910	\$15.00	\$16,590	\$20.00	\$18,270	\$20.00
70%	\$17,395	\$20.00	\$19,355	\$25.00	\$21,315	\$25.00
80%	\$19,880	\$30.00	\$22,120	\$30.00	\$24,360	\$35.00
90%	\$22,365	\$35.00	\$24,885	\$40.00	\$27,405	\$40.00
100%	\$24,850	\$40.00	\$27,650	\$45.00	\$30,450	\$50.00
110%	\$27,335	\$50.00	\$30,415	\$55.00	\$33,495	\$60.00
120%	\$29,820	\$55.00	\$33,180	\$60.00	\$36,540	\$70.00
130%	\$32,305	\$65.00	\$35,945	\$70.00	\$39,585	\$80.00
140%	\$34,790	\$70.00	\$38,710	\$80.00	\$42,630	\$90.00
150%	\$37,275	\$80.00	\$41,475	\$90.00	\$45,675	\$100.00
160%	\$39,760	\$90.00	\$44,240	\$100.00	\$48,720	\$110.00

PERCENT FPIG	FAMILY SIZE = 7		FAMILY SIZE = 8		FAMILY SIZE = 9	
	INCOME	FEE	INCOME	FEE	INCOME	FEE
170%	\$42,245	\$100.00	\$47,005	\$110.00	\$51,765	\$125.00
180%	\$44,730	\$110.00	\$49,770	\$125.00	\$54,810	\$135.00
185%	\$45,973	\$120.00	\$51,153	\$135.00	\$56,333	\$150.00

PERCENT FPIG	FAMILY SIZE = 10		FAMILY SIZE = 11		FAMILY SIZE = 12	
	INCOME	FEE	INCOME	FEE	INCOME	FEE
30%	\$9,975	\$5.00	\$10,815	\$5.00	\$11,655	\$5.00
40%	\$13,300	\$10.00	\$14,420	\$10.00	\$15,540	\$15.00
50%	\$16,625	\$15.00	\$18,025	\$20.00	\$19,425	\$20.00
60%	\$19,950	\$25.00	\$21,630	\$25.00	\$23,310	\$25.00
70%	\$23,275	\$30.00	\$25,235	\$35.00	\$27,195	\$35.00
80%	\$26,600	\$40.00	\$28,840	\$40.00	\$31,080	\$45.00
90%	\$29,925	\$45.00	\$32,445	\$50.00	\$34,965	\$55.00
100%	\$33,250	\$55.00	\$36,050	\$60.00	\$38,850	\$65.00
110%	\$36,575	\$65.00	\$39,655	\$70.00	\$42,735	\$75.00
120%	\$39,900	\$75.00	\$43,260	\$80.00	\$46,620	\$90.00
130%	\$43,225	\$85.00	\$46,865	\$95.00	\$50,505	\$100.00
140%	\$46,550	\$95.00	\$50,470	\$105.00	\$54,390	\$115.00
150%	\$49,875	\$110.00	\$54,075	\$120.00	\$58,275	\$130.00
160%	\$53,200	\$120.00	\$57,680	\$135.00	\$62,160	\$145.00
170%	\$56,525	\$135.00	\$61,285	\$145.00	\$66,045	\$160.00
180%	\$59,850	\$150.00	\$64,890	\$165.00	\$69,930	\$175.00
185%	\$61,513	\$165.00	\$66,693	\$180.00	\$71,873	\$190.00

[Pa.B. Doc. No. 99-75. Filed for public inspection January 8, 1999, 9:00 a.m.]