

# PROPOSED RULEMAKING

## COMMISSION ON CRIME AND DELINQUENCY

[37 PA. CODE CHS. 191 AND 411]

### Crime Victims Compensation

The Commission on Crime and Delinquency (Commission) proposes to delete Chapter 191 (relating to general provisions) and to add Chapter 411 (relating to crime victims compensation) to read as set forth in Annex A.

#### *Authority*

The rulemaking is proposed under the authority of the Crime Victims Act (act) (18 P. S. §§ 11.101—11.5102). Section 312(3) of act (18 P. S. § 11.312(3)) empowers the Office of Victims' Services (Office) to "adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions and purposes of Chapter 7." Section 312(3) of act also empowers the Office to establish compensation limits and reimbursement rates for the purpose of carrying out the provisions of Chapter 7.

#### *Purpose*

This rulemaking proposes to delete Chapter 191 and to replace it with regulations specific to the Office. The new regulations would be in Chapter 411, adjacent to other regulations pertaining to the Commission or its other offices. The proposed rulemaking reflects the substantial statutory changes that have occurred since 1989 when regulations affecting the program were most recently amended. New regulations are needed to conform to the new requirements of the act. The proposed rulemaking would simplify or clarify many of the Office's claims processing, determination and appeal procedures. In addition, this proposed rulemaking incorporates the Schedule of Compensation Limits and Reimbursement Rates (schedule) for the Crime Victims Compensation Program (program) published as a statement of policy at 32 Pa.B. 4489 (September 14, 2002), thus allowing conservation of limited financial resources.

This proposed rulemaking is necessary because substantial statutory changes have occurred in a benefit program subsequent to the last time the applicable regulations were amended in 1989. The program has an increasing visibility in the Commonwealth's criminal justice system, having awarded a total of \$9.2 million in FY 2002-2003 consisting of initial awards for 3,094 claims and supplemental awards for 1,578 previous claims. In addition, this proposed rulemaking would adopt the schedule as published at 32 Pa.B. 4489, thus allowing conservation of limited financial resources. New regulations are needed to conform the regulatory framework to the needs and priorities of the current program.

#### *Requirements of the Proposed Rulemaking*

The proposed rulemaking enumerates and details the new requirements of the act in the following structure:

#### *§§ 411.1—411.3 (relating to general provisions)*

These sections provide the scope of the proposed rulemaking and the definitions of words and terms used in Chapter 411, as well as the persons eligible for compensation.

#### *§§ 411.11—411.18 (relating to claims)*

These sections provide procedures for filing and review of claims, as well as procedures for closing claims. These

sections also address the role of the Office in making initial determinations on claims. The sections address actions of the direct victim that are considered and affect awards. These sections provide provisions pertaining to awards, including reductions, offsets and limitations, emergency awards and awards in general.

#### *§§ 411.31—411.33 (relating to appeals)*

These sections provide appeal procedures.

#### *§§ 411.41—411.44 (relating to schedule of reimbursement rates and compensation limits)*

These sections set the schedule of reimbursement rates and the compensation limits for awards, out-of-pocket loss, loss of earnings and loss of support payments.

#### *§§ 411.51—411.53 (relating to miscellaneous)*

Section 411.51 (relating to subrogation) provides subrogation authority to the Office regarding award payments.

Section 411.52 (relating to representation by attorney) provides provisions for claimants that are represented by an attorney and factors for the Office to consider when assessing reimbursement of attorney fees.

Section 411.53 (relating to prohibitions) provides prohibitions against reimbursement claims submitted by providers who have already written off bills to the direct victim, funeral directors who have assumed an obligation to pay for the funeral and persons who assumed the obligation for crime scene clean up.

#### *Affected Parties*

Victims of crimes, as defined in the act, benefit by having clear and up-to-date regulations regarding eligibility, compensation and procedures. Additionally, the proposed rulemaking is intended to provide further guidance and direction to healthcare providers and hospitals in regard to their eligibility and reimbursement under the act.

Under the authority of the act of June 28, 2002 (P. L. 496, No. 85) (Act 85), there is now a 70% reimbursement rate for medical expenses set by the Office which may adversely affect a variety of providers, because they will not receive as much reimbursement as previously received, when they were paid in full to the extent of the maximum of \$35,000 under the act. However, paying at 100% was the exception to the rule, and the setting of a percentage reimbursement rate has conformed to the practice of other third-party payors.

#### *Cost and Paperwork Estimates*

The proposed rulemaking provides guidance in implementing a program that is already in effect, for which funding has been appropriated. Therefore, there is no new significant fiscal impact. However, various health providers will incur costs resulting from the percentage reduction of payments. This reduction will save the Crime Victim's Compensation Fund an estimated \$1,453,052. This amount would have been paid to the providers prior to the reduction of payments.

The fiscal impact to the Commission from all the reimbursement rates set by the Office under Act 85 will consist of an estimated annual net savings of \$684,888. This calculation takes into account the savings to the Commission resulting from the Office's setting of a 70% reimbursement rate to providers (\$1,453,052) and the

estimated costs to the Commission from new benefits or increased benefits (\$768,164).

The proposed rulemaking does not affect existing reporting, record keeping, or other paperwork requirements.

*Effective Date*

The proposed rulemaking will become effective upon final-form publication in the *Pennsylvania Bulletin*.

*Sunset Date*

No sunset date has been assigned. The regulations will be reviewed annually.

*Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 26, 2004, the Commission submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Judiciary Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Commission, the General Assembly and the Governor of comments, recommendations or objections raised.

*Public Comment and Contact Person*

Interested persons are invited to submit written comments regarding the proposed rulemaking within 30 days of the publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Comments should be submitted to the Commission on Crime and Delinquency, Office of Victims' Services, P. O. Box 1167, Harrisburg, PA 17108-1167, Attn: Lynn Shiner. Persons with disabilities needing an alternative means of providing public comment may make arrangements by contacting the Commission.

Persons needing additional information regarding the proposed rulemaking should contact Lynn Shiner at the previous address. Alternative formats of the proposed rulemaking (for example, Braille, large print or cassette tape) will be also be made available to members of the public upon request.

CARL J. ANDERSON,  
*Executive Director*

**Fiscal Note:** 35-29. (1) General Fund; (2) Implementing Year 2003-04 is \$768,164; (3) 1st Succeeding Year 2004-05 is \$844,980; 2nd Succeeding Year 2005-06 is \$844,980; 3rd Succeeding Year 2006-07 is \$844,980; 4th Succeeding Year 2007-08 is \$844,980; 5th Succeeding Year 2008-09 is \$844,980; (4) 2002-03 Program—\$9,243,150; 2001-02 Program—\$7,139,690; 2000-01 Program—\$7,844,299; (7) Crime Victims Reimbursements; (8) recommends adoption. Federal reimbursements are expected to cover a portion of the costs of these services (approximately 60%). Savings generated from the decrease in the medical reimbursement rate offset a portion of the additional payments to crime victims.

**Annex A**

**TITLE 37. LAW**

**PART III. AGENCIES AND OFFICES**

**Subpart J. (Reserved)**

**CHAPTER 191. (Reserved)**

*(Editor's Note:* The Department is proposing to delete Chapter 191 in its entirety. The present text of Chapter 191 appears at 37 Pa. Code pages 191-1—191-23, serial pages (290735) to (290736), (261627) to (261628), (237977) to (237978), (261629) to (261630), (237981) to (237982), (261631) to (261632), (237985) to (237986), (261633) to (261635) and (237989) to (237995).)

**§§ 191.1—191.15. (Reserved).**

**PART VI. COMMISSION ON CRIME AND DELINQUENCY**

**CHAPTER 411. CRIME VICTIMS COMPENSATION**

**GENERAL PROVISIONS**

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- 411.2. Definitions.
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**CLAIMS**

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- 411.13. Closing of claims.
- 411.14. Determinations.
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**APPEALS**

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**SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS**

- 411.41. Amount.
- 411.42. Out-of-pocket loss.
- 411.43. Loss of earnings.
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**MISCELLANEOUS**

- 411.51. Subrogation.
- 411.52. Representation by attorney.
- 411.53. Prohibitions.

**GENERAL PROVISIONS**

**§ 411.1. Scope.**

Except as otherwise indicated, this chapter applies to claims for compensation relating to crimes occurring on or after August 27, 2002.

**§ 411.2. Definitions.**

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

*Act*—The Crime Victims Act (18 P. S. §§ 11.101—11.5102).

*Average weekly wage*—The amount designated for persons covered by the Unemployment Compensation Law (43 P. S. §§ 751—771) in this Commonwealth as determined periodically by the Department of Labor and Industry.

*Cash equivalent*—The net amount of a monthly Social Security entitlement, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support, or court-ordered spousal support payments.

*Dependent child*—The child of a direct victim or intervenor on whose behalf regular payments are received for the purpose of whole or partial support and who is one of the following:

(i) Eighteen years of age or younger, including an unborn child for the purposes of this chapter only as defined by 18 Pa.C.S. § 3203 (relating to definitions).

(ii) Nineteen years of age or older but under twenty-three years of age and currently attending secondary school or is a full-time student in a post-secondary educational institution.

(iii) Nineteen years of age or older but unable to provide for his own support due to a physical or mental disability.

*Final decision*—An OVS determination of a claim that may be appealed by the claimant as provided in 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action).

*Guardian*—A person appointed by a court for the care and management of a person or estate of a minor or incapacitated person, or designated by a parent of a minor to perform that role.

*Health care provider*—

(i) An individual authorized by a licensing board or agency of the Commonwealth or equivalent governmental entity to practice the science and skill of diagnosis and treatment of ailments of the human body.

(ii) The term includes medical doctor, osteopathic physician, chiropractor, dentist, registered nurse, optometrist, pharmacist, physical therapist, podiatrist, psychologist, licensed professional counselor and licensed social worker.

*Human services provider*—Social workers, children and youth caseworkers, area agency on aging, victim service providers (system and community based advocates), and other social service professionals, including mental health, substance abuse, and medical social work.

*Immediate need*—Thirty days from the date of the crime or 30 days from the date the victim is threatened by any change of circumstance or indicator of danger and a move or relocation is necessary to become or remain safe.

*Loss of earnings*—Loss of wages or income, or both.

*Medical care*—Diagnostic, treatment or rehabilitative services performed in a health care facility regulated by the Commonwealth or equivalent governmental entity or performed by a health care provider or person under the direct supervision of a health care provider.

*OVS*—The Office of Victims' Services in the Pennsylvania Commission on Crime and Delinquency.

*PFA*—Protection From Abuse Order issued under 23 Pa.C.S. Chapter 61 (relating to protection from abuse).

*Pigeon drop*—The act of approaching a person and asking that person if he would like to share an amount of found money. In order to share the money, the person shows a good faith effort by willingly providing a specified amount of money with the expectation of receiving a part of the "found" money.

*Primary source of income*—Fifty percent of the direct victim's gross annual income.

*Principal support*—Fifty percent or more of a claimant's living expenses.

*Private residence*—Includes a house, apartment, condominium, mobile home or other personal living space.

*Stolen benefit cash*—Includes the loss of the cash equivalent of 1 month's worth of Social Security, railroad retirement, pension plan, retirement plan, disability, veteran's retirement, court-ordered child support or court-ordered spousal support payments if the payments are the primary source of the direct victim's income and the direct victim is deprived of the money as a direct result of a crime.

(b) The definitions in section 103 of the act (18 P. S. § 11.103) are incorporated by reference.

### § 411.3. Persons eligible for compensation.

(a) *General rule.* Except as otherwise provided in the act, the following persons are eligible for compensation:

(1) A direct victim.

(2) An intervenor.

(3) A surviving spouse, parent or child of a deceased direct victim or intervenor.

(4) Other persons dependent for principal support upon a deceased direct victim or intervenor.

(5) A person who assumes the obligation or who pays for the crime scene cleanup, funeral or burial expenses incurred as a direct result of the crime.

(6) Hospitals or other licensed health care providers.

(7) Persons eligible for counseling.

(b) *Exception.* A person who is criminally responsible for the crime upon which a claim is based or an accomplice of the person is not eligible to receive compensation with respect to the claim. A member of the family of the individual who committed the crime is not eligible if the offender is living in the same household as the direct victim and will substantially benefit from the award. The Attorney General may at any time sue the offender or the direct victim, or both, to recover the award if the offender benefits from the award.

## CLAIMS

### § 411.11. Filing procedures.

(a) A claim may be filed by a person eligible under the act.

(b) A claimant may request compensation by completing and submitting OVS's official claim forms to OVS.

(c) A claim may be filed by mail, in person or electronically. If filed by mail, a claim is deemed as filed on the date it is postmarked. If filed by electronic means or in person, it is deemed as filed on the date received by OVS.

(d) When OVS receives a claim, a claim number is assigned and data is entered into OVS's records.

(e) In determining whether the direct victim or intervenor complied with the requirement of the act to have reported the crime to proper authorities within the prescribed time period after the occurrence of the crime, the following apply:

(1) Proper authorities may include a law enforcement officer, district attorney or other applicable prosecutorial authority, district justice, military police, campus police, appropriate hospital security, probation and parole officer, child protective services, adult protective services, or, in the case of a PFA order, the prothonotary or equivalent authority. If the crime occurs in a foreign country, a proper authority includes the United States consulate.

(2) OVS may consider a delay past the prescribed time period to be justified when one of the following circumstances exist:

(i) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(ii) The victim is a minor.

(iii) There is a fear of retaliation.

(iv) The occurrence of the crime is not readily apparent.

(v) Other circumstances deemed appropriate by OVS.

(3) In making the determinations discussed in this section, OVS will not deem the time periods to begin to run until the date and time that the person with the obligation to report the crime or file the claim learns that a crime occurred.

(f) Claimants do not have to wait until a PFA becomes final to file a claim. In the process of verifying a claim, OVS will ask the claimant to submit confirmation of the issuance of a final PFA order.

(g) If a temporary PFA order is issued and the claimant chooses not to pursue a final order, OVS will consider the PFA order withdrawn and deny the claim unless OVS determines the withdrawal to be justified. OVS may consider the withdrawal of a PFA justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) There is a fear of retaliation.

(3) Other circumstances deemed appropriate by OVS.

(h) Subsections (f) and (g) only cover the filing of an initial PFA. If there is a violation of a PFA involving an otherwise eligible crime, the crime must be reported in a timely manner to the proper authorities, which may include filing of a private criminal complaint, to be considered for compensation payments.

(i) When requested by OVS, the claimant shall submit copies of documents that are needed to process the particular type of claim, which include the following:

(1) *Stolen benefit cash.*

(i) Statements for the month of the crime for payments such as Social Security, retirement, pension, disability, court-ordered child support or court-ordered spousal support.

(ii) Federal tax returns as filed, including all schedules if applicable, for the years requested or a signed statement that the claimant is not required to file a tax return.

(iii) Documentation of the homeowner's or renter's insurance coverage.

(2) *Medical treatment expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service, type of service performed, and the amount charged for each service.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a medical provider, or receipts for any medical bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or medical assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, or travel considerations.

(3) *Funeral expenses.*

(i) Certified death certificate.

(ii) Itemized funeral bills in the name of the claimant for which the claimant is responsible.

(iii) Canceled checks, receipts, or verification from a provider for funeral bills relating to the death that were paid by claimant.

(iv) Statements for benefits or payments received by the claimant as a result of the death of the direct victim or intervenor, such as life insurance or Social Security death benefits.

(4) *Loss of earnings.*

(i) Pay stubs or other earnings records for periods immediately prior to the loss. If not obtainable, withholding statements and Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that no Federal tax returns were filed.

(ii) Full name and complete address of claimant's employer.

(iii) Full name and complete address of a physician or psychologist who will certify the existence, duration, and cause of the disability.

(5) *Loss of support.*

(i) Certified death certificate.

(ii) Full name and complete address of employer of the deceased.

(iii) Federal tax returns as filed, including schedules, if applicable, for the years requested, or a written statement that no Federal tax returns were filed. If unavailable, pay stubs, withholding statements, or other earnings records for periods immediately prior to the injury.

(iv) Statements for benefits received as a result of the death of the direct victim or intervenor, such as life insurance, Social Security, veterans' benefits, or survivor benefits.

(v) Documents that demonstrate financial dependency, including birth certificates, support orders, or Federal tax returns as filed.

(vi) Guardianship papers, where applicable.

(6) *Counseling expenses.*

(i) Itemized bills in the name of the claimant showing the name, address and telephone number of the provider, dates of service, and the amount charged.

(ii) Insurance benefit statements indicating payments or rejection.

(iii) Canceled checks, verification from a provider, or receipts for any counseling bills related to the injury that were paid by the direct victim, intervenor or claimant.

(iv) Written justification if the direct victim or intervenor is covered by an insurance plan or medical assistance, but did not utilize the prescribed coverage, such as that the direct victim or intervenor could not obtain the required care, could not maintain ongoing care from a previous provider, or travel considerations.

(v) The following information establishing the claimant's relationship to the direct victim, the claimant witnessing the crime, or the claimant's discovery of the homicide victim:

(A) *Witness.* A police report obtained by OVS. If the witness is not listed in the police report, a written statement provided by someone who could substantiate that the witness was at the scene, preferably written by someone named in the police report.

(B) *Relative of direct victim.* A copy of a birth certificate, if applicable, or other identifiable information acknowledging the relationship to the direct victim.

(C) *Individual engaged to the direct victim.* An engagement announcement or a copy of the application for a marriage license. If either is unavailable, a written statement from the engaged individual plus a written statement from a family member acknowledging the intent of the union.

(D) *Shared household.* A copy of a document, such as a bill or a lease or mortgage agreement that indicates the same address for the direct victim and the victim or claimant filing for counseling expenses.

(E) *Individual who discovers homicide body.* A police report.

(F) *Individual responsible for the direct victim's welfare.* Foster parent documentation, guardianship papers, or other documentation showing that the claimant filing for counseling is an individual responsible for the direct victim's welfare.

(7) *Crime-scene cleanup expenses.*

(i) Itemized bills and receipts in the name of the claimant related to the crime-scene cleanup for which the claimant is responsible.

(ii) Cancelled checks, receipts or verification from a provider for bills related to the crime-scene cleanup.

(iii) Documentation of homeowner's or renter's insurance coverage.

(8) *Relocation expenses.*

(i) Itemized bills and receipts related to the relocation for which the claimant is responsible.

(ii) Cancelled checks, receipts, or verification from a provider for bills related to the relocation.

(iii) A verification letter from a human service agency, law enforcement, or medical provider explaining the immediate need for relocation.

(9) *Miscellaneous expenses.*

(i) Itemized bills and receipts in the name of the claimant for which the claimant is responsible related to the miscellaneous expense.

(ii) Cancelled checks, receipts, or verification from a provider for bills related to the injury.

(j) The claimant shall provide OVS with information pertaining to payments received or to be received by another source as a result of the injury, including restitution payments, workers compensation, insurance benefits or awards or settlements in a civil action.

(k) If a minor or incapacitated person has more than one guardian, OVS will determine the appropriate party for filing a claim on behalf of the minor or incapacitated person.

(l) If the direct victim or intervenor dies while a non-homicide claim relating to that direct victim or

intervenor is being processed, OVS may substitute the executor or administrator of the direct victim or intervenor and complete the processing of the claim. A claim may not be filed by the estate of a direct victim or intervenor.

(m) The claimant may request a supplemental award by submitting additional out-of-pocket expenses or losses at any time after the initial claim, provided that the claimant has not received the maximum award payable by law. OVS will verify out-of-pocket expenses and losses submitted for a supplemental award to determine that they directly relate to the original incident.

#### § 411.12. Review.

(a) OVS will review the claim and supporting documents and investigate the validity of the claim. The investigation must include an examination of police, court and official records and reports concerning the crime and an examination of medical and hospital reports relating to the injury upon which the claim is based.

(b) If additional information is needed to determine the eligibility or validity of a claim, or to substantiate the degree of loss, OVS may ask the claimant for that information or request it directly from outside entities to the extent permitted by law.

(c) OVS may issue subpoenas and subpoenas duces tecum, either on its own instance or upon written application of a party. Subpoenas and subpoenas duces tecum must comply with 231 Pa. Code (relating to rules of civil procedure). Their issuance must depend upon a showing of necessity. OVS, on its own motion or on the application of the claimant, will, whenever necessary, and upon the terms and conditions as OVS may determine, take or cause to be taken affidavits and depositions of witnesses residing within or outside this Commonwealth.

(d) OVS may not request or review counseling notes of mental health service providers. OVS will request an assessment from the mental health service provider as to the extent the service provided is needed as a direct result of the crime.

(e) OVS, at its expense, may direct an examination of the direct victim or intervenor by a health care provider designated by OVS. The direct victim or intervenor's failure to appear for the examination may result in OVS's denial of the applicable portion of the claimant's request for reimbursement.

(f) OVS will investigate and determine claims regardless of whether the alleged criminal has been apprehended, prosecuted or adjudicated for the criminal incident which is the basis for the claim.

#### § 411.13. Closing of claims.

(a) OVS will close a claim when a final determination has been made and written notification has been given to the claimant.

(b) When OVS has requested additional information under § 411.12(b) (relating to review) and the information is not provided within 60 days of the request, OVS will close the claim file until requested information is received.

(c) If sufficient information is not provided to OVS to determine eligibility within 2 years from the date of the filing of the claim, the claim will be closed with no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(d) Eligible claims where no verifiable out-of-pocket expense or loss has been received by OVS within 5 years from the date of the filing of the claim will be closed with

no further right of appeal. OVS will attempt to notify the claimant in writing 6 months prior to the closing of the claim.

(e) OVS may reopen a claim at any time for further investigation.

**§ 411.14. Determinations.**

(a) If OVS is able to make an initial determination that the claim does not meet the basic eligibility requirements or the action of the direct victim, intervenor or claimant affects the award, the claim will be denied in writing as a statutory denial or denial for cause. A claimant may provide to OVS additional information or clarification on the claim post-marked no later than 30 days from the date of OVS's initial determination, at which time OVS may reconsider or reaffirm its initial determination.

(b) OVS will determine whether to grant an award, increase or decrease an award or deny the claim based on the supporting documents, the report of the investigation and staff recommendations.

(c) OVS will promptly notify the claimant of its final decision in writing. OVS may also send a copy of the determination to all appropriate individuals, including the State Treasurer, court personnel, victim advocate or the claimant's attorney of record.

**§ 411.15. Actions affecting awards.**

(a) Except as provided in the Act, OVS may deny a claim or reduce the amount awarded if it finds that the conduct of the direct victim or intervenor contributed to the injury. The conduct of the direct victim or intervenor will be deemed to have contributed to the injury if the direct victim or intervenor did one of the following:

(1) Initiated, provoked or prolonged a physical confrontation with the offender.

(2) Participated in an illegal act that was causally related to the injuries sustained.

(3) Used poor judgment resulting in the placement of the direct victim or intervenor into a situation likely to result in injury.

(b) In determining whether the conduct of a direct victim or intervenor warrants a denial or reduction of the award, OVS may consider evidence indicating that the direct victim or intervenor was acting with legal justification as defined in 18 Pa.C.S. (relating to the Crimes Code) or other evidence of mitigation that the claimant asks OVS to consider.

(c) A direct victim or intervenor of a driving under the influence (DUI) crime incident will not be assessed for the lack of a current driver's license at the time of the incident, unless the license was suspended or revoked for a prior DUI. OVS may assess a contribution amount in other auto-related crimes when the victim's driver's license has been revoked or was under suspension at the time of the crime.

(d) OVS will assess a \$5,000 contribution for an award for medical expenses, or the current amount of medical benefits coverage required under Pennsylvania law, if a direct victim or intervenor, who was injured, was driving his own car without insurance.

(e) Stolen cash claims that are received and are eligible for an award will have a minimum 10% contribution assessed if they are classified as theft by deception under 18 Pa.C.S. § 3922 (relating to theft by deception) and fall under the definition of "pigeon drop."

(f) OVS may deny a claim or reduce the amount awarded if it finds that a direct victim, intervenor or claimant has not cooperated fully with law enforcement agencies or OVS. Failure to cooperate includes one or more of the following:

(1) Failure to cooperate fully with a law enforcement agency in the investigation of the crime on which the claim is based.

(2) Failure to cooperate fully in the prosecution of the alleged offender of the crime on which the claim is based.

(3) Failure to provide truthful, complete and accurate information for OVS to determine the eligibility or validity of a claim or amount of an award.

(g) OVS may consider a failure to cooperate with law enforcement and OVS to be justified when one of the following circumstances exist:

(1) The direct victim, intervenor or the claimant is mentally or physically incapacitated.

(2) There is a fear of retaliation.

(3) Other circumstances deemed appropriate by OVS.

(h) If the crime involved is related to domestic violence, the conduct of the direct victim will not be considered unless the direct victim was the primary aggressor. In determining which party was the primary aggressor, OVS will consider the following:

(1) Prior acts of domestic violence.

(2) The relative severity of the injuries inflicted upon the persons involved in those prior acts of domestic violence.

(3) The likelihood of future injury.

(4) Whether, during the prior acts, one of the parties acted in self-defense.

(5) Other factors that OVS deems relevant to the determination.

**§ 411.16. Reductions, offsets and limitations.**

(a) Except as otherwise provided in the act, an award made under the act and this chapter shall be reduced by the amount of any payments received or to be received as follows by the claimant as a result of the injury:

(1) From or on behalf of the individual who committed the crime.

(2) Under insurance or health and welfare programs, including those mandated by law.

(3) Under a contract of insurance wherein the claimant is the beneficiary.

(4) From public funds.

(5) As an emergency award under section 706 of the act (18 P. S. § 11.706).

(6) Under pension programs, including those providing for disability or survivor's benefits.

(7) Under a settlement or award made by or on behalf of a party alleged to be responsible in whole or in part for the injury, without regard to the party's criminal culpability.

(b) Charitable donations specifically designated for a funeral expense or which appear on a funeral bill as a direct payment and charitable donations specifically designated for an eligible expense or which appear on any bill as a direct payment will be used as an offset.

(c) In claims involving death or burial, OVS will reimburse travel expenses for the transport of a body or making funeral arrangements for no more than two persons, including a person designated by the family or person who pays for the funeral.

(d) In claims involving death or burial, reimbursement will not be made for alcoholic beverages, postage, thank you gifts and newspaper articles or paid advertisements or notices relating to the death or burial, other than the obituary.

(e) When an injury is the result of a motor vehicle incident and the injury is covered by liability or first party benefits, including Under/Insured and Uninsured Motorist coverages, a provider may not request payment in excess of reimbursement allowances applicable in the Commonwealth under the Medicare Program or their usual and customary charge, whichever is less.

(f) Medical, rehabilitation, or other devices, including wheel chairs, chair lifts, ramps, van conversion equipment, therapy spas, or special needs home remodeling that exceeds \$5000 will need to have two bids unless good cause is shown. OVS will pay the lowest amount unless good cause is shown justifying the higher amount.

(g) If the direct victim or intervenor has no financial means to order the needed services or equipment that exceed \$10,000 listed in subsection (f), OVS will assist the claimant by evaluating the claim prior to purchase and make information available to the potential providers.

(h) In claims involving stolen benefit cash or crime scene clean-up, if a claimant chooses not to access any of his homeowner's or renter's insurance, OVS will apply as an offset any amount that the claimant would have been paid by the insurance company.

#### § 411.17. Emergency awards.

(a) If it appears to OVS that the claimant has an urgent financial need, OVS may make an emergency award to the claimant pending a final decision on the claim.

(b) An emergency award is solely for a claimant who incurs an undue hardship by paying medical expenses or funeral expenses out of his own pocket, or who incurred loss of earnings or support as a result of the crime incident.

(c) The total amount of an emergency award will not exceed \$1,500 per claim.

(d) OVS will expeditiously determine that the eligibility requirements have been met, review submitted documentation, and process the request.

(e) OVS may reconsider an emergency award at any time prior to the final decision and may increase previous orders for emergency compensation up to \$1,500 per claim.

#### § 411.18. Awards.

(a) If the losses payable by OVS for out-of-pocket loss and loss of support or loss of earnings exceed the overall monetary limitation in the act, or the overall limitation as reduced by a contribution assessed by OVS under § 411.16 (a) (relating to reductions, offsets and limitations), OVS will allocate the award as follows:

(1) Out-of-pocket losses will be paid in full, followed by as much of the loss of support or loss of earnings as resources allow.

(2) If the total out-of-pocket losses exceed the overall limitation in the act, OVS will attempt to pay unpaid

providers in full, followed by reimbursements to claimants for expenses already paid. OVS will attempt to satisfy the expenses of as many unpaid providers as feasible, in order to minimize the number of creditors seeking payment from the claimant.

(3) If more than one claimant files a claim for allowable expenses relating to the death of the victim or the intervenor, the award will be divided proportionately among the claimants when filed within the same time frame. In all other cases, awards are considered in the order that they are received.

(b) A claimant may not accept a portion of OVS's determination and reject another portion of the same determination. If a claimant desires to contest a portion of OVS's determination, the claimant must contest the entire determination.

(c) OVS will reduce an award of compensation by the amount of any other payments received or to be received by the claimant as a result of the injury, as set forth in the act and under § 411.16.

(d) After OVS has made an award relating to an injury, a person who receives any amounts paid by another source as a result of the injury shall notify OVS about the payments.

(e) If a court has ordered an offender to pay restitution for the injury, but the order is not specific as to which components of the claimant's loss are to be reimbursed by the restitution payments, OVS will deem the restitution payments as being applied first to property losses that cannot be compensated under the act. Only after the property losses are fully paid will OVS use the restitution payments to offset for losses for which OVS has awarded or may award compensation.

(f) OVS may make a supplemental award to a claimant who previously received an award from OVS and who subsequently incurs an additional loss that is attributable to the original injury when the maximum award under the law has not been exceeded.

(g) If a claimant is liable for a bill incurred for out-of-pocket losses as a result of the crime injury but has not paid the balance, OVS will order payment to be made directly to the provider of the service.

(h) OVS may reimburse all medical copays and deductibles.

(i) If OVS makes an error in the amount of an award, OVS may seek repayment of the award.

(j) OVS retains the discretion to determine the priority of awards.

(k) In determining whether an injury is a direct result of a crime, OVS may consider a certification by a service provider.

### APPEALS

#### § 411.31. Reconsideration

(a) A claimant may contest OVS's determination by submitting a written request for reconsideration post-marked no later than 30 days from the date of the determination. If a request for reconsideration is not filed within the time required, the determination becomes a final decision of OVS.

(b) If requesting reconsideration, the claimant shall provide additional information or clarification that would assist OVS in conducting its reconsideration.

(c) Based on further review and additional information or clarification that OVS receives, OVS will issue a reconsidered determination that either reaffirms or modifies its initial determination.

(d) OVS may issue the reconsidered determination as a final decision of the agency if it determines that the facts developed in the claims determination process establish that a particular determination is warranted as a matter of law.

**§ 411.32. Hearing.**

(a) If OVS is unable to determine if a claim is justified based upon supporting documents, it may direct a hearing before a hearing examiner designated by the OVS.

(b) Except for request for reconsideration falling under § 411.31(d) (relating to reconsideration), a claimant may appeal the reconsidered determination by OVS by requesting a hearing under 2 Pa.C.S. Chapter 7, Subchapter A (relating to judicial review of Commonwealth agency action.)

(c) A claimant may submit a written request for a hearing post-marked no later than 30 days after OVS issues its reconsidered determination. If a claimant fails to file the request for hearing within this time, the reconsideration determination becomes a final decision of OVS.

(d) If requesting a hearing, the claimant shall provide a specific reason why the claimant asserts that OVS's determination is not correct.

(e) A hearing officer who has no previous involvement in any aspect of the claim will be assigned by the OVS.

(f) The provisions of 1 Pa. Code, Part II (relating to general rules of administrative practice and procedures) govern a hearing to the extent they are not inconsistent with this chapter.

(g) At least 30 days before the date of hearing, the claimant, the claimant's attorney, and the victim's advocate will be provided written notice of the time, place and purpose of the hearing.

(h) The claimant shall provide written confirmation to OVS of the claimant's intent to attend the hearing, including a list of witnesses and documentary exhibits to be presented, which must be received by OVS at least 10 days prior to the hearing date. The claimant shall also provide a list of witnesses and documentary exhibits to OVS counsel and the hearing examiner.

(i) Failure to comply with the confirmation requirements in subsection (f) may result in cancellation of the hearing.

(j) A cancelled hearing may be rescheduled if the claimant shows good cause for failure to comply with subsection (f). A hearing will not be rescheduled more than once.

(k) The attorney representing OVS may submit a prehearing memorandum to the hearing officer, with a copy to the claimant, outlining the legal and factual positions of OVS with respect to the claim, and listing witnesses and documentary exhibits to be presented at the hearing. The attorney representing OVS may also issue subpoenas for attendance of witnesses or for production of documentary evidence.

(l) Upon a showing of relevancy and materiality, the hearing officer may issue subpoenas for attendance of witnesses or for the production of documentary evidence.

(m) In conducting the hearing, the hearing officer will liberally allow the admission of evidence that may not conform to the strict rules of evidence under common law or court rules. A stenographer or court reporter shall record the proceedings. Witnesses shall testify under oath.

(n) The claimant shall have the burden of proving entitlement to compensation by a preponderance of the evidence.

(o) Both OVS and the claimant may present testimony in support of their respective positions and cross-examine the opposing party's witnesses.

(p) Hearings generally will be open to the public except that the hearing may be held in camera in any of the following instances:

(1) Prosecution against the alleged perpetrator of the crime is pending.

(2) The welfare and safety of the direct victim, intervenor, or his family or community may be adversely affected by a public hearing.

(3) To protect the rights and interests of a minor.

(q) A claimant may have support persons or victim advocates, or both, accompany him. The number of advocates and support persons may be limited by the hearing officer.

(r) Upon adjourning the hearing, the hearing officer will offer the claimant and OVS's attorney an opportunity to file posthearing briefs, to be filed after the transcript is issued, on a schedule to be determined by the hearing officer.

(s) Upon receipt of the transcript from the stenographer, notification will be sent by certified mail to the claimant that the transcript is available and can be purchased at the claimant's own expense.

(t) OVS will reimburse claimants \$20 per day for attendance at a hearing directed by OVS in connection with the claim. Additional expenses will be reimbursed as follows:

(1) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.

(2) Common carrier fares when preapproved by OVS.

(3) Lodging the night before or the night after a hearing session, to a daily maximum of \$75, if the claimant must travel at least 50 miles from home for the hearing.

**§ 411.33. Final decision after hearing.**

(a) The hearing officer will issue a report and recommendation which will be delivered to a designated Commission official who has no previous involvement in the claim.

(b) The designated Commission official will review the report and recommendation, the hearing transcript and the documentary exhibits. The designated Commission official may not have access to information not in the hearing record.

(c) The designated Commission official may not be advised in the hearing process by an attorney or any OVS staff member who has previous involvement with any aspect of the claim that is being heard. The designated Commission official may request the General Counsel of the Commonwealth to appoint an attorney who has no prior involvement to provide advice on the matter.



(d) Upon completing the review of the hearing officer's report and recommendation, the designated Commission official will do one of the following:

- (1) Adopt the hearing officer's report and recommendation as written as a final decision.
- (2) Modify the report and recommendation and issue the modified document as the final decision.
- (3) Reject the report and recommendation in its entirety and prepare and issue a final decision.
- (e) The designated Commission official will distribute the final decision to the claimant, the claimant's attorney, the victim's advocate, and to OVS.
- (f) The claimant shall have the right of further appeal as set forth in the act or other applicable law.

#### SCHEDULE OF REIMBURSEMENT RATES AND COMPENSATION LIMITS

##### § 411.41. Amount.

An award made under the act and this chapter shall be in an amount not exceeding out-of-pocket loss, together with loss of past, present or future earnings or support resulting from the injury. The total amount of an award may not exceed \$35,000 except for payment of the following:

- (1) Counseling, the maximum amount of which shall be in accordance with section 707(b)(4.1) of the act (18 P. S. § 11.707(b)(4.1)).
- (2) Forensic rape examination and medications directly related to the exam or for the purpose of the exam, the amount of which shall not exceed \$1,000.
- (3) Reasonable and necessary costs of cleaning the crime scene of a private residence, the amount of which shall not exceed \$500.

##### § 411.42. Out-of-pocket loss.

(a) *General.* The following general provisions apply to reimbursement for out-of-pocket loss.

- (1) OVS may make a monetary award for an out-of-pocket loss as it is defined in the act.
- (2) OVS may pay the service provider directly or reimburse the claimant for amounts paid, as applicable.

(b) *Medical expenses.* The following provisions for payment of medical expenses apply:

- (1) OVS will pay a hospital or other licensed health care provider at the rate of 70% of the usual and customary charge for the service rendered.
- (2) Forensic rape examinations.
  - (i) OVS will reimburse a maximum of \$1,000 to a hospital or other licensed health care provider or both for a forensic rape examination and medications directly related to the sexual assault or rape.
  - (ii) The reimbursement will not include expenses for analyzing collected evidence for DNA or presence of Rohypnol or other similar drugs.
  - (iii) Claims shall be filed with OVS no later than 1 year after the date of the crime.

(c) *Funeral expenses.* Except as otherwise set forth in this subsection, OVS will reimburse for expenses relating to a funeral of a direct victim or intervenor. The total reimbursement amount for funeral expenses will not exceed \$5,000. Additionally, within that \$5,000 monetary limitation, reimbursement will be subject to the following limitations:

(1) Four thousand eight hundred dollars for funeral services, including the following:

- (i) Cremation.
- (ii) Interment.
- (iii) Body preparation including embalming.
- (iv) Grave opening and closing.
- (v) Cemetery plot, tent and chairs.
- (vi) Mausoleum.
- (vii) Viewing services and facilities.
- (viii) Automotive equipment, such as the hearse, limousine and flower car.
- (ix) Death announcements, prayer cards, register book and thank you cards.
- (x) Casket.
- (xi) Minister, pastor, rabbi or other member of the clergy.
- (xii) Other miscellaneous expenses, including organist, programs, death certificates, and the obituary notice.
- (2) Nine hundred dollars for a monument.
- (3) Three hundred dollars for floral arrangements.
- (4) Three hundred dollars for funeral or memorial meal.
- (5) One hundred and seventy-five dollars for clothing purchased for the deceased for the funeral or interment.

(d) *Replacement of personal health-related items damaged or stolen as a result of a crime.* Except as otherwise set forth in this subsection, OVS will reimburse a claimant for costs for the replacement of each prosthetic device, wheelchair, cane, walker, hearing aid, eyeglasses or other corrective lenses, dental device or prescription medications. Reimbursement will not exceed \$1,000 and will be subject to the following limitations:

- (1) Two hundred dollars for eyeglass frames.
- (2) One thousand dollars for replacement of all combined prescription medications stolen or damaged in a single crime incident.
- (3) One hundred dollars for replacement of canes.
- (4) Two hundred fifty dollars for replacement for walkers.

(e) *Counseling.* OVS will pay expenses of counseling performed by or under the supervision of a psychiatrist, psychologist, licensed professional counselor or licensed social worker to claimants as follows:

- (1) A maximum of \$10,000 in total expenses of a direct victim who was under 18 years of age upon the occurrence of the crime.
- (2) A maximum of \$5,000 in total expenses of a direct victim who was 18 years of age or older upon the occurrence of the crime.
- (3) A maximum of \$5,000 in total expenses of any of the following individuals affected by the homicide of a direct victim:

- (i) An individual responsible for the welfare of the direct victim, which includes legal guardians and foster parents.
- (ii) An individual related in the second degree of consanguinity or affinity to the direct victim.

(iii) An individual residing in the same household with the direct victim.

(iv) An individual engaged to be married to the direct victim.

(4) A maximum of \$2,500 in total expenses of any of the individuals described in paragraph (3) affected by a crime against a direct victim that is not a homicide.

(5) A maximum of \$1,500 in total expenses of an individual who:

(i) Is physically present at a crime scene and witnesses a violent crime.

(ii) Discovers the body in a homicide.

(6) For counseling expenses relating to a homicide, OVS may not reduce the amount of the award or deny the reimbursement due to the conduct of the direct victim.

(f) *Relocation expenses.* OVS will reimburse for expenses incurred by the temporary or permanent relocation of a direct victim and individuals residing in the direct victim's household when immediate relocation is necessary to protect their health and safety. This reimbursement will not exceed \$1,000 per household for each crime incident for the following:

(1) Relocation expenses to be reimbursed are as follows:

(i) Lodging to a daily maximum of \$75.

(ii) Rental of substitute living quarters.

(iii) Utility connection fees, which do not include cable.

(iv) Rental of a passenger vehicle for a total daily maximum of \$30.

(v) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees for travel.

(vi) Common carrier fares.

(vii) Moving company charges or van rental.

(viii) Tolls and parking expenses.

(ix) Rental of post office box.

(x) Charges for storage of personal belongings.

(xi) Child care expenses.

(2) Reimbursement will be made only when a medical provider, human services provider, or law enforcement representative, which may include a district attorney or other prosecutorial agency, verifies the immediate need for relocation.

(3) OVS may consider a delay past the prescribed immediate need time period to be justified when the direct victim, intervenor, or claimant is mentally or physically incapacitated, there is a fear of retaliation, or other circumstances deemed appropriate by OVS.

(g) *Travel expenses.* OVS will reimburse expenses associated with travel to obtain medical care or counseling and, in the case of an injury that results in death, for travel in connection with making the funeral arrangements and transport of the body.

(1) Meals totaling no more than \$28 per day, with no more than \$6 for breakfast, \$6 for lunch and \$16 for dinner.

(2) Lodging to a daily maximum of \$75.

(3) Private vehicle usage at mileage rate currently paid by the Commonwealth to its own employees.

(4) Vehicle rental to a daily maximum of \$30.

(5) Payment of a driver other than common carriers needed as result of a crime at maximum hourly rate of \$8.

(6) Common carrier fares in full.

(7) Tolls and parking expenses.

(8) Meals and lodging reimbursement is limited to trips of 50 miles or more from the eligible person's home.

(9) Containers or other necessary requirements to transport the body.

(10) In the case of an injury that results in death, for travel in connection with the transport of the body and making funeral arrangements not to exceed 5 days.

(h) *Crime scene clean up.* The cost of cleaning the crime scene of a private residence up to a maximum of \$500.

(i) Reimbursement will be limited to the cost of cleaning supplies purchased for the purpose of cleaning the scene, the cost of any necessary equipment purchased or rented and the cost of professional labor for the purpose of cleaning the crime-scene.

(ii) Multiple private residences may each be considered for crime-scene cleanup if the sites are identified in the police report. The maximum award amount for each crime-scene cleanup is \$500.

(i) *Miscellaneous expenses.* OVS may reimburse a claimant for other services reasonably necessary, including the following:

(1) The purchase or rental of nonmedical remedial care or products that are needed to assist in normal, daily life functions and are prescribed or recommended by a health care provider, such as a wheel chair ramp, lifts or other special accommodations, including equipment or robotic devices needed to assist in normal, daily life functions.

(2) The cost of obtaining services needed as a result of the crime such as laundering, cleaning, child care, administration of medication, food shopping and meal preparation.

(i) Members of the family of the direct victim or intervenor engaged to perform the services will be paid their net loss of earnings not to exceed the average weekly wage and if not otherwise reimbursed for the loss of earnings.

(ii) Individuals engaged to perform services who are not family members who are engaged to perform services will be paid a maximum hourly rate of \$8.

(3) At the discretion of OVS, telephone and television expenses incurred in connection with inpatient care of the direct victim or intervenor due to the injury.

(4) At the discretion of OVS, charges incurred for records, products, or services including those for rehabilitation, rehabilitative occupational training, other remedial treatment and care, tutors, and interpreters.

#### § 411.43. Loss of earnings.

(a) *Stolen benefit cash.* An award for stolen cash will not exceed the average weekly wage as determined annually by the Department of Labor and Industry or the actual amount stolen, whichever is less. The actual amount stolen must be indicated in the police report. Changes or amendments to the amount stolen must be made to the police within 2 weeks of the crime and subsequently documented by the police.

(b) *Loss of earnings.* OVS may make an award within the monetary limitations of the act to compensate a direct

victim, intervenor or claimant for loss of earnings attributable to the injury. A loss of earnings must be definitely ascertainable at the time of the injury and may not include a loss that is conditioned upon future events.

(c) *Claims involving death.* In claims involving the death of a direct victim or intervenor, OVS may pay up to 1 week's net loss of earnings in connection with the death not to exceed the average weekly wage if the claimant was not otherwise reimbursed for the loss. The loss is limited to that suffered by a claimant who incurred a loss of earnings as a result of one of the following:

- (1) Trauma as certified by a physician or psychologist.
- (2) Making funeral arrangements.
- (3) Accompanying the deceased to the place of interment.
- (d) The following formula will be used to calculate loss-of-earnings:

$$\text{Loss of Earnings} = \text{Gross Earnings} - \text{Estimated Tax Obligations} - \text{Other Benefits Received}$$

(e) For purposes of the formula in subsection (d), the following apply:

(1) "Gross earnings" include taxable and nontaxable income that was terminated or reduced as a result of injury. Overtime may be included if the claimant demonstrates a history of regular overtime pay or provides verification that overtime is a condition of employment.

(2) Estimated tax obligations include Federal, State and local taxes.

(3) "Other benefits received" include disability payments, bereavement pay, cash assistance, food stamps, workers' compensation, restitution or awards or settlements from a civil action or insurance payment.

(f) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year in which the crime occurred, or the most recent tax year that ended prior to the year of the crime.

(g) As a condition for continuing receipt of loss of earnings benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled and which could be an offset to the loss of earnings award.

(h) For a claimant who is self-employed and who continues to operate his business during the period of disability, OVS may compensate the claimant for the amount paid to other persons hired to perform the services usually performed by the claimant.

(i) For a claimant whose unemployment compensation benefits are suspended as a result of the injury, OVS may make an award to replace the suspended benefits.

(j) If the claimant was unemployed at the time of the injury and provides OVS with an affidavit from the employer on company letterhead stating the beginning date of employment, the hours per week to be worked, and the pay rate along with the employer's Federal identification number (FID#) certifying that the claimant was unable to begin because of the injury, OVS may measure loss of earnings based on anticipated earnings that would have been received in the new position.

(k) If the claimant was self-employed for less than a year prior to the injury and the tax records consequently provide a questionable measure of the claimant's earning potential, OVS may measure gross earnings by using the

claimant's earnings as an employee for the period immediately prior to the start of the claimant's business.

(l) If a claimant is self-employed and is unable to fulfill a contract negotiated and signed prior to the crime due to the injury, OVS may consider the lost net income.

#### § 411.44. Loss of support.

(a) OVS may make an award within the monetary limitations of the act to compensate an eligible person or persons who, as a consequence of the injury causing the death of a direct victim or intervenor, is deprived of the financial support that the direct victim or intervenor had been required by court order to provide or had actually been providing at the time of the injury that caused the death. When a court-ordered support obligation is in effect at the time of an injury causing the death, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(b) For purposes of the formula in subsection (a), the following apply:

(1) "Support" includes annual support based on obligation specified in the order plus any amount in arrears due to the claimant at time of death.

(2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(c) When no court-ordered support obligation is in effect at the time of an injury causing the death of a direct victim or intervenor, the following formula will be used to calculate loss of support:

$$\text{Loss of Support} = \text{Support} - \text{Other Benefits Received}$$

(d) For purposes of the formula in subsection (c), the following apply:

(1) "Support" includes the gross earnings less estimated tax obligations multiplied by 80%. Gross earnings include all taxable and nontaxable income that terminated at time of death such as wages, business income, retirement payments, Social Security payments and other benefits.

(2) "Other benefits received" include restitution, insurance benefits, Social Security or pension benefits and awards from civil actions.

(3) Loss of support must be definitely ascertainable at the time of the injury that caused the death and may not include a loss that is conditioned upon future events.

(e) In applying the formula in subsection (c), the following conditions apply:

(1) A surviving spouse or dependent child will be allocated up to 80% of the net annual earnings of the victim or intervenor.

(2) A surviving parent will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(3) Any other person dependent upon the direct victim or intervenor for principal support will be allocated the actual amount of support provided by the direct victim or intervenor, not to exceed 80% of the net annual earnings.

(f) When calculating loss of support, OVS may consider as applicable, the life expectancy or labor force participation expectancy of the direct victim or intervenor, or the age of the dependent.

(g) In calculating gross earnings, OVS may use either a time period immediately preceding the crime, the tax year

in which the crime occurred, or the most recent tax year that ended prior to the year of the crime.

(h) If the direct victim or intervenor was not employed at the time of the crime, OVS may use employment history up to the 3 years immediately preceding the crime to estimate potential support that would have been provided to an eligible person.

(i) If more than one person is eligible for a loss of support award, OVS will allocate each a share of the total annual amount based on OVS's determination of fairness and equity under the circumstances of the claim.

(j) If the total uncompensated loss of support for two or more eligible persons exceeds the monetary limitations set forth in the act, the limited resources will be distributed at the discretion of OVS proportionately among the eligible persons.

(k) OVS may provide lump sum or accelerated payments for loss of support. The calculated maximum can be dispersed in one lump sum if extenuating circumstances necessitate, or under lesser conditions, paid out in a 3 year or 5 year payment plan. Also, if the total projected award is of a lesser amount, and extended yearly payments are impractical, the award will be paid in total in a single sum. In claims in which OVS makes protracted payments into the future, the claimant is subject to a continuing obligation to provide information that OVS requests. Failure to provide this information when requested may result in the suspension of future, payments or may require repayment of prior accelerated payments.

(l) The claimant or the recipient of a loss of support award has a continuing obligation to report to OVS any change in circumstances, such as if the recipient obtains a new source of support. In these circumstances, OVS may terminate or reduce protracted payments made under the original award.

(m) When an award for loss of support is paid to a person for the benefit of another person, OVS may require the payee to file a periodic accounting of OVS's payments or take other action as OVS may determine necessary and appropriate for the benefit of the beneficiary.

(n) As a condition for continuing receipt of loss of support benefits, OVS may require the claimant to file a claim for and pursue other benefits to which the claimant may be entitled to offset the loss of support benefits.

(o) At any time, OVS may reconsider and modify a future loss of support award previously issued or a protracted payment if another eligible person qualifies for a loss of support award.

(p) Gifts of property or money bestowed upon the dependent on special occasions may not be considered in making a determination of dependency.

#### MISCELLANEOUS

##### § 411.51. Subrogation.

(a) Payment of an award made under the act shall subrogate the Commonwealth, to the extent of any payment, to any right of action against any person according to the claimant, the direct victim, or the intervenor to recover losses resulting from the crime with respect to which the award is made. In such a case, the Commonwealth shall be entitled to bring an action against the person causing or otherwise liable for the personal injuries or death for which the payment was made. Money

recovered under this section shall be deposited in the Crime Victim's Compensation Fund established under the act.

(b) If an amount greater than that paid under the act is recovered and collected in such an action, the Commonwealth will pay the balance to the claimant. The Attorney General will enforce any subrogation. A claimant who failed to notify OVS of the receipt of funds from another claim or award arising out of the crime shall forfeit and pay to the Commonwealth an amount equal to all awards paid by OVS to the claimant or on the claimant's behalf.

(c) The OVS Director has the discretion to settle subrogation claims for an amount less than the award. Under no circumstances will OVS settle subrogation claims for an amount that is less than 75% of the original award to the claimant. OVS reserves the right to assert further subrogation on additional recovery by the claimant. If the direct victim or intervenor incurs additional expenses related to the injury, the claimant must exhaust the actual insurance or civil recovery as well as the amount OVS reduced prior to receiving further payments from OVS.

##### § 411.52. Representation by attorney.

(a) The rules in 1 Pa. Code, Part II (relating to general rules of administrative practice and procedures) apply to the representation of a claimant by an attorney before OVS or in a hearing related to a claim submitted to OVS.

(b) If an attorney has filed a notice of appearance on behalf of the claimant, the notice shall remain in effect until one of the following occurs:

(1) The claimant files with OVS a written revocation of the authority of the attorney.

(2) The attorney files with OVS a written statement of withdrawal from the case.

(3) The attorney makes a statement of withdrawal from the case on the record at a hearing.

(4) OVS receives notice of the license suspension or revocation or the death of the attorney.

(c) During the period in which a notice of appearance filed under this section remains in effect, OVS may communicate with the attorney instead of the claimant. Service upon the attorney shall be deemed effective service upon the claimant.

(d) An attorney who represents a claimant before OVS may receive a fee for that representation only under the provisions of the act. After OVS makes an award, the attorney may request that OVS pay attorney's fees and costs by filing with OVS an affidavit of services, listing the nature of each service rendered and the amount of time spent in rendering the service, plus an itemized list of costs incurred in the preparation, procuring, and filing of record papers regarding the claim.

(e) In evaluating applications for attorney's fees, OVS will consider the following factors:

(1) The time and labor required.

(2) The novelty and difficulty of the questions.

(3) The skill needed to perform the legal service properly.

(4) Awards and similar claims.

(f) A payment for attorney's fees shall be in addition to the award made to the direct victim, claimant or interve-

nor, but may not exceed 15% of that award. OVS may not reduce an award to a direct victim on account of payment of attorney's fees.

(g) OVS may award no more than \$75 per hour to an attorney in the preparation and presentation of a claim that is awarded.

(h) It is unlawful for an attorney to contract for or receive a sum larger than the amount allowed.

(i) OVS may deny or reduce an award for attorney's fees if an attorney asserts a false claim as to the time spent on a matter concerning OVS or asserts a false claim as to the services rendered to a claimant. OVS may refer the matter to the Disciplinary Board of the Pennsylvania Supreme Court, the Attorney General, or other appropriate authorities.

#### § 411.53. Prohibitions.

(a) Providers who write off bills to a direct victim or intervenor may not at any point following the write off seek reimbursement from OVS, direct victim or intervenor.

(b) A funeral director who assumes the obligation to pay for funeral expenses may not seek reimbursement from the direct victim or intervenor's family.

(c) A person who assumes the obligation for crime scene clean up may not seek reimbursement from the direct victim or intervenor's family.

[Pa.B. Doc. No. 04-1686. Filed for public inspection September 10, 2004, 9:00 a.m.]

## DEPARTMENT OF PUBLIC WELFARE

### [55 PA. CODE CHS. 3040 AND 3041] Subsidized Child Care Eligibility

The Department of Public Welfare (Department), under the authority of the Public Welfare Code (62 P. S. §§ 201—211, 401—493 and 701—703), proposes to delete Chapter 3040 (relating to subsidized child day care eligibility) and to add Chapter 3041 (relating to subsidized child care eligibility) to read as set forth in Annex A.

#### *Purpose of the Proposed Rulemaking*

The purpose of the proposed rulemaking is to help families of low income more easily obtain affordable, accessible and quality child care. The Department intends to create a fairer and more equitable child care system that supports families in their efforts to achieve and maintain financial self-sufficiency. The proposed rulemaking provides families with increased and easier access to this Commonwealth's child care system and allows more families to qualify for subsidized child care benefits.

The Department's goal is to develop a "user-friendly" child care system that is accessible to eligible families who need help finding and paying for quality child care that is responsive to their needs.

The proposed rulemaking supports families and children by promoting the following goals:

(1) Healthy child development by increasing access to high quality child care for infants, toddlers, preschool and

school-aged children and by reducing administrative processes that may cause interruption in services or frequent change of provider.

(2) Family self-sufficiency by giving parents reliable child care so they can work or improve their skills and earning potential through education or training, while working.

(3) Parent choice by providing parents with a broad range of child care options and empowering them to make their own decisions on the child care that best meets the needs of the child and the family.

Chapter 3041 replaces Chapter 3040 in its entirety.

#### *Background*

The Department has worked closely with families who access the child care subsidy program, child development and community service advocates, child care providers, child care eligibility agencies and other interested stakeholders to listen and respond to the needs, concerns and suggestions of these groups. The proposed rulemaking is the result of an inclusive and collaborative process and partnership between the child care community and the Department.

#### *Requirements*

The proposed rulemaking substantially reorganizes the existing child care subsidy chapter. Therefore, a new chapter is proposed to replace the existing regulations. Major changes to the existing regulations include: simplification of the verification requirements to make it easier for families to apply and qualify for child care; recognition that participation in education and training is an effective way to support job advancement and financial self-sufficiency; and removing the requirement that parents pursue child support. A new provision supports continuity of quality child care for children in school-district-sponsored prekindergarten programs. This supports families who need extended hours of care. Finally, simplification of regulatory language makes the eligibility process easier to understand. Following is a summary of the major proposed amendments:

#### *§§ 3041.11—3041.22 (relating to general requirements and benefits)*

The proposed rulemaking expands the hours of uninterrupted sleep time during which a parent or caretaker (parent) is eligible for subsidized child care. Currently, if parents need uninterrupted sleep time because their work shift ends between 12 a.m. and 9 a.m., they could not receive subsidy; the proposed rulemaking would permit payment of subsidized child care for sleep time, making the policy consistent with the regulations in place for child care benefits under the Temporary Assistance for Needy Families (TANF) program. The proposed rulemaking supports the needs of the child whose parent works at night and must sleep after their work shift ends to be a productive parent and worker on the following day.

The proposed rulemaking permits a family of two parents with one working parent to be eligible for subsidized child care if the other parent has a permanent physical or mental disability that results not only in the inability to work or participate in education or training but also results in the inability to care for the child. The proposed rulemaking supports a child with a parent who has a disability by enabling the family to receive necessary child care.

The proposed rulemaking includes a provision to permit child care to resume following a parent's summer break

from education or training. The change is proposed so that a child can be at home with the parent over the summer, but continue in the child care subsidy program in the fall of the year. The proposed rulemaking promotes continuous care for the child at a familiar setting.

*§§ 3041.41—3041.47 (relating to eligibility requirements)*

The proposed rulemaking reduces the number of hours a parent must work to be eligible to receive subsidized child care from 25 to 20 hours a week. The proposed rulemaking will benefit parents who work part-time and allow more children to be eligible for subsidized child care. The proposed rulemaking eliminates a current gap in eligibility for subsidized child care for some working parents moving from welfare to work, who are ineligible for TANF child care because of income from employment, but who cannot receive subsidized child care because they do not work 25 hours per week or do not apply for child care benefits within 183 days after TANF ends.

The proposed rulemaking also would make child care subsidy available to parents who work a minimum of 10 hours a week if the parent attends education or training for at least 10 hours a week. The proposed rulemaking would support parents who pursue education or training to qualify for a better paying job in the future.

*§§ 3041.51 and 3041.52 (relating to special eligibility programs)*

The proposed rulemaking includes a new provision that supports children from families of low income attending prekindergarten programs provided by a school entity or a certified or licensed facility operating under contract with a school entity. Otherwise eligible children who need extended hours or days of care provided through the prekindergarten program while their parents work will remain eligible for subsidized child care to pay for extended days or hours as long as they are participating in the prekindergarten program. The proposed rulemaking promotes continuous, uninterrupted care that helps a child maintain stable relationships with a caregiver and promotes sequenced cognitive, social and emotional development. Stable relationships and continuity of care in a quality environment are two of the essential foundations for school readiness and success in life. The proposed rulemaking makes it easier for children from families of low income with working parents to participate in a prekindergarten program that provides an educational program to preschool children from families of low income. Research indicates that high quality child care in an educational setting for children from families of low income is beneficial to prepare a child for school. For related Pennsylvania research data see "Early Care and Education: The Keystone of Pennsylvania's Future," Commonwealth of Pennsylvania, Governor's Task Force on Early Childhood Care and Education, November 2002, and the accompanying research reports by the Universities Children's Policy Collaborative (Pennsylvania State University, Temple University and the University of Pittsburgh) at [www.prevention.psu.edu/ece/index.html](http://www.prevention.psu.edu/ece/index.html).

While this proposed prekindergarten program applies to children from families of low-income, the Department supports quality child care and early educational programs for all children, including those who do not receive assistance through the subsidized child care program. In tandem with this proposed rulemaking for subsidized child care, the Department is: (1) encouraging quality child care through the enhancement of Keystone Stars Quality Initiative, a program developed to recognize and

reward quality care providers; and (2) developing a parent education campaign to support parents in their selection and self-monitoring of their child care setting.

*§§ 3041.61—3041.71 (relating to verification)*

The proposed rulemaking simplifies the verification requirements to make it easier for families to apply for and qualify for subsidized child care. The proposed rulemaking establishes more verification options, allows self-declarations by the parent in some instances, requires the eligibility agency to help the parent obtain verification documents and eliminates some of the reverification requirements. The proposed rulemaking makes it easier for parents to document eligibility and will mean families can receive child care subsidy more rapidly.

The proposed rulemaking allows families to make their own child support arrangements, rather than requiring pursuit of court-ordered child support as a prerequisite for receiving child care subsidy. The proposed rulemaking provides more flexibility for the family to accommodate its own needs and circumstances.

*§§ 3041.91—3041.94 (relating to domestic violence waivers)*

The proposed rulemaking allows parents who are the victims of domestic violence to request a waiver of certain eligibility and verification requirements if compliance would increase the difficulty of a family or household member to escape domestic violence or place a family or household member at risk of domestic violence. The term "domestic and other violence" is defined broadly to include any incident of physical, mental or sexual abuse, including incidents by perpetrators who are nonfamily members and that occur outside of the home.

The intent of the proposed rulemaking is to ensure that the special circumstances of families dealing with domestic violence are accommodated, such as the need for extra time to acquire documents that prove eligibility and need for child care to continue if work is interrupted as a result of domestic violence. The Department is sympathetic and sensitive to the extra assistance and support that may be necessary to help domestic violence victims stabilize their living situations. By permitting a waiver of eligibility requirements due to domestic violence, a parent may be better able to achieve or maintain financial self-sufficiency.

*§§ 3041.141—3041.150 (relating to TANF and former TANF families)*

The proposed rulemaking provides for a window of opportunity and priority status for individuals who formerly received TANF. Under the proposed rulemaking, a parent who is not making use of subsidized child care when TANF ends has 183 days to request and receive subsidized child care if the parent needs it for work or a combination of work or training. A parent who formerly received TANF receives priority status and cannot be put on a waiting list for subsidized child care during this 183-day period.

*Affected Individuals and Organizations*

The proposed rulemaking affects children who receive subsidized child care, parents who apply for or receive subsidized child care, child care providers and child care eligibility agencies.

Children and parents are affected by the requirements in the proposed rulemaking that specify the eligibility conditions and verification requirements that they must meet to access subsidized child care. Child care providers

are affected since the proposed rulemaking affects the eligibility conditions for families currently served or who may be served in the future. Waiting lists may be increased since more children will be eligible for subsidized child care services.

#### *Accomplishments and Benefits*

The proposed rulemaking benefits the children and families of low-income by allowing easier access to affordable, quality child care. The proposed rulemaking allows more families to be eligible for subsidized child care benefits.

#### *Fiscal Impact*

The proposed rulemaking will result in no additional costs to the parents receiving subsidized child care, the child care providers, the child care eligibility agencies or local government.

The proposed rulemaking will result in additional costs for the Department to serve an estimated 3,388 additional children annually. The Department's budget for FY 2004-05 includes an additional \$5.5 million of Federal Child Care and Development Block Grant funds to provide subsidized child care to these additional eligible children. The benefit of providing subsidized child care to additional children from families of low-income outweighs the increased costs.

#### *Paperwork Requirements*

The proposed rulemaking will result in reduced paperwork and recordkeeping for both parents and eligibility agencies. By providing additional options for verification, such as self-declaration, the paperwork required for verification will be reduced.

#### *Effective Date*

This proposed rulemaking is effective 30 calendar days after final-form publication in the *Pennsylvania Bulletin*.

#### *Public Comment*

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to Susan Miller, Bureau of Child Day Care, P. O. Box 2675, Harrisburg, PA 17105 within 30 calendar days after the date of publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference Regulation No. 14-489 when submitting comments.

Persons with a disability who require an auxiliary aid or service may submit comments by using the AT&T Relay Service at (800) 654-5984 (TDD users) or (800) 654-5988 (voice users).

#### *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 31, 2004, 2003, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House Children and Youth Committee and the Senate Committee on Public Health and Welfare. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Depart-

ment, the General Assembly and the Governor of comments, recommendations or objections raised.

ESTELLE B. RICHMAN,  
*Secretary*

**Fiscal Note:** 14-489. No fiscal impact; (8) recommends adoption. This regulatory action expands the eligibility for child care subsidies for children whose parents/caretakers need child care to work. Costs are estimated at \$5.5 million for the remainder of Fiscal Year 2004-2005 to provide for 3,388 children and \$7.5 million annually thereafter. The 2004-05 costs are included in the Federal Child Care and Development Block Grant appropriation in Act 7A of 2004.

### Annex A

## TITLE 55. PUBLIC WELFARE

### PART V. CHILDREN, YOUTH AND FAMILIES MANUAL

#### Subpart B. ELIGIBILITY FOR SERVICES

#### CHAPTER 3040. (Reserved).

*(Editor's Note:* The Department is proposing to delete Chapter 3040 in its entirety. The present text of Chapter 3040 appears in 55 Pa. Code pages 3040-1—3040-55, serial pages (303411) to (303412), (265401) to (265402), (252653) to (252654), (265403) to (265404), (252657) to (252658), (303413) to (303418), (265407) to (265408), (303419) to (303420), (265411) to (265416), (252673) to (252674), (265417) to (265418), (303421) to (303424), (265423) to (265426), (252685) to (252692), (265427) to (265430), (252697) to (252698) and (304727) to (304739).)

#### §§ 3040.1—3040.4. (Reserved).

#### §§ 3040.11—3040.29. (Reserved).

#### §§ 3040.31—3040.49. (Reserved).

#### §§ 3040.51—3040.55. (Reserved).

#### §§ 3040.61—3040.64. (Reserved).

#### §§ 3040.71—3040.78. (Reserved).

#### §§ 3040.91—3040.94. (Reserved).

### CHAPTER 3041. SUBSIDIZED CHILD CARE ELIGIBILITY

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#### GENERAL PROVISIONS

##### § 3041.1. Purpose.

This chapter establishes the requirements for a family to receive subsidized child care. Subsidized child care is a nonentitlement benefit made available through limited Federal and State funds.

##### § 3041.2. Scope.

This chapter applies to child care eligibility agencies, child care providers and parents and caretakers requesting or receiving subsidized child care.

##### § 3041.3. Definitions.

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

*Adjusted family income*—Gross countable family income, minus allowable deductions.

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

*Appeal*—A written or oral request by a parent, caretaker or individual acting on behalf of a parent or caretaker for a hearing under Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings), indicating disagreement with a Departmental or eligibility agency action or failure to act that affects the family's eligibility for subsidized child care.

*Application*—A signed, dated request by a parent, caretaker or individual acting on behalf of a parent or caretaker for subsidized child care.

*CAO—County Assistance Office*—The local office of the Department responsible for the determination of eligibility and service delivery in the Cash Assistance, Food Stamp and Medical Assistance Programs.

*Caretaker*—

(i) An adult other than the child's biological or adoptive parent or stepparent, who lives with and exercises care and control of a child for whom subsidized child care is requested.

(ii) The term includes a foster parent, formal and informal kinship caregiver and other relative or nonrelative caring for the child.

*Child care*—Care in lieu of parental care for part of a 24-hour day.

*Collateral contact*—A form of verification in which the eligibility agency obtains information from a third party.

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

*Department*—The Department of Public Welfare of the Commonwealth.

*Disqualification*—The prohibition against receipt of subsidized child care that results from fraud or an intentional program violation.



*Domestic and other violence (domestic violence)*—Includes, but is not limited to:

- (i) A physical act that results in, or threatens to result in, physical injury to the individual.
- (ii) Mental abuse, including but not limited to stalking, threats to kidnap, kill or otherwise harm people or property, threats to commit suicide, repeated use of degrading or coercive language, controlling access to food or sleep and controlling or withholding access to economic and social resources.
- (iii) Sexual abuse.
- (iv) Sexual activity involving a dependent child.
- (v) Being forced as the caretaker or relative of a dependent child to engage in nonconsensual sexual acts or activities.
- (vi) A threat of, or attempt at, physical or sexual abuse.
- (vii) Neglect or deprivation of medical care.

*Education*—An elementary school, middle school, junior high or high school program including a general educational development program.

*Eligibility agency*—The entity designated by the Department with authority to purchase subsidized child care and determine a family's eligibility and co-payment.

*Eligibility determination*—A decision regarding whether a family qualifies for the subsidized child care program and a determination of the co-payment.

*Eligibility redetermination*—A semiannual review by the eligibility agency to determine if a family continues to qualify for subsidized child care, including a review of the co-payment.

*Employment*—Working for another individual or entity for income.

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

*Family*—The child or children for whom subsidized child care is requested and the following individuals who live with that child or children in the same household:

- (i) A biological, adoptive, foster or stepparent of the child for whom subsidized child care is requested.
- (ii) A caretaker and a caretaker's spouse.
- (iii) A biological, adoptive or foster child or stepchild of the parent or caretaker who is under 18 years of age and not emancipated by marriage or by the court.
- (iv) An unrelated child under the care and control of the parent or caretaker, who is under 18 years of age and not emancipated by marriage or by the court.
- (v) A child who is 18 years of age or older but under 22 years of age who is enrolled in a high school, a general educational development program or a post-secondary program leading to a degree, diploma or certificate and who is wholly or partially dependent upon the income of the parent or caretaker or spouse of the parent or caretaker.

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

*Fraud*—The intentional act of a parent or caretaker that results in obtaining, continuing or increasing child

care subsidy for which the family is not eligible and that involves any of the following:

- (i) A false or misleading statement.
- (ii) The failure to disclose information.

*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 the individual does not provide a service.
- (iv) Unearned benefits received periodically by an individual, such as unemployment compensation, worker's compensation or retirement benefits.

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

*Net profit from self-employment*—Gross earnings from self-employment, minus the cost of doing business as specified in Appendix A (relating to income to be included, deducted and excluded in determining gross monthly income).

*Overpayment*—The receipt of subsidy for a child for which the family is or was not eligible or an amount in excess of the amount for which the family was eligible.

*Parent*—The biological or adoptive mother or father, stepmother or stepfather who exercises care and control of the child for whom subsidy is requested.

*Partial redetermination*—A review of eligibility that does not include a review of each eligibility factor.

*Payment rate*—The daily rate that is paid to the child care provider for services delivered to a child who is eligible for subsidized child care.

*Prospective employment or prospective education or training*—Employment, education or training verified by the employer, school official or training official to begin no later than 30 calendar days following the date the parent or caretaker signs and dates the application for subsidized child care or no later than 30 calendar days following the loss of current employment.

*Provider*—An organization or individual that directly delivers child care services.

*Published rate*—A provider's daily charge for a child who does not receive subsidized child care.

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

*Self-certification*—A written statement provided by a parent or caretaker for the purpose of establishing selected factors of nonfinancial eligibility.

*Self-declaration*—A written statement provided by the parent or caretaker for the purpose of establishing financial or nonfinancial eligibility for a period of time not to exceed 30 calendar days.

*Self-employment*—Operating one's own business, trade or profession for profit.

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

*Subsidy suspension*—A temporary lapse of subsidized child care that 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) that provides cash assistance to families including dependent children and an adult.

*Training program*—A course of instruction that provides the skills or qualifications necessary for a specific vocation or field of employment. It may include adult basic education, English as a second language, a 2-year or 4-year post-secondary degree program, an internship, clinical placement, apprenticeship, lab work and field work required by the training institution.

*Verification*—

(i) The process of confirming information needed to determine eligibility for subsidized child care.

(ii) The term includes documentary evidence or information obtained through collateral contacts, self-certification and self-declaration.

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

*Work*—Employment or self-employment.

#### GENERAL REQUIREMENTS AND BENEFITS

##### § 3041.11. Nondiscrimination.

(a) An eligibility agency 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 physical or mental disability.

(b) An eligibility agency shall offer child care subsidy within the provisions of applicable civil rights laws and regulations, 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—12210).

##### § 3041.12. Provision of subsidized child care.

(a) Subsidized child care is provided for a child whose family meets financial and nonfinancial eligibility requirements.

(b) Subsidized child care is available to an otherwise eligible child who is under 13 years of age.

(c) Subsidized child care is available to an otherwise eligible child who is 13 years of age or older but under 19 years of age and is physically or mentally incapable of caring for himself. The physical or mental incapacity shall be documented by a physician or psychologist.

(d) A former TANF family is eligible for a child care subsidy under this chapter as specified in §§ 3041.141—150 (relating to TANF and former TANF families).

(e) The Department, through the Department's contracts with the eligibility agency, will direct funding for various populations, including individuals who formerly received TANF benefits.

##### § 3041.13. Parent choice.

(a) A family who is eligible for subsidized child care shall have the right to choose care from a provider who agrees to comply with the Department's standards for provider participation. Providers eligible to participate include:

(1) A child day care center certified under Chapter 3270 (relating to child day care centers).

(2) A group child day care home certified under Chapter 3280 (relating to group day care homes).

(3) A family child day care home registered under Chapter 3290 (relating to family day care homes).

(4) A provider specifically 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), including in-home care if specifically exempt.

(b) A family eligible for Head Start expansion shall choose a child care provider as specified in § 3041.51 (relating to Head Start expansion program).

##### § 3041.14. Subsidy benefits.

(a) A subsidy-eligible family may receive payment for child care needed during:

(1) The hours that the child needs care while the parent or caretaker is employed or attending an education or training program, including travel between the parent's or caretaker's work, education or training and the child care facility.

(2) The hours that the child needs care when the parent or caretaker requires uninterrupted sleep time because the work shift ends between the hours of 12 a.m. and 9 a.m.

(b) Child care is considered unnecessary when a biological or adoptive parent or stepparent living in the household is available to care for the child during the hours of the day for which subsidized child care is requested, unless either of the following occur:

(1) The parent or caretaker or both parents or caretakers, who are otherwise available and expected to care for the child, are physically or mentally incapable of providing child care or cannot provide child care because of the need to attend treatment for a physical or mental illness or disability.

(2) The child is at risk because of suspected abuse by a parent or caretaker who is available to provide care.

##### § 3041.15. Payment of provider charges.

(a) A provider participating in the subsidized child care program is eligible to receive payment from the eligibility agency for services provided to a subsidy-eligible child.

(b) The eligibility agency may not pay child care costs that exceed the maximum child care allowance less the family co-payment for the type of care the child received from the provider.

(c) If a parent or caretaker selects a provider whose published rate exceeds the Department's payment rate, the provider may charge the parent or caretaker the difference between these two amounts.

(d) The eligibility agency may not pay for any additional charge assessed by the provider, beyond the cost of child care.

(e) A change in a parent's or caretaker's need for child care and the resulting adjustment in the amount of payment to the provider shall begin on the date the parent or caretaker reports the change or on the date the change begins, whichever is later.

**§ 3041.16. Subsidy limitations.**

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

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

(c) If a parent or caretaker is the operator of a child day care center, group child day care home or family child day care home as specified in Chapter 3270, Chapter 3280 or Chapter 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 that is exempt from certification or registration under section 1070 of the Public Welfare Code (62 P.S. § 1070), and if space is available to enroll the parent's or caretaker's child at the facility operated by the parent or caretaker, that child is not eligible to receive subsidized child care.

(d) A family consisting of two parents or caretakers may be eligible for subsidized child care when one parent or caretaker has a permanent physical or mental disability that results in the inability to work or participate in an education or training program. The disability must prevent the parent or caretaker from caring for the child for whom subsidy is requested.

(e) Subsidized child care is provided for a child whose family is determined eligible, up to the limits of available subsidized child care funds.

(f) The parent or caretaker shall select an eligible child care provider no later than 30 calendar days following the date the eligibility agency notifies the parent or caretaker that funding is available or that the family's current child care provider is ineligible to participate in the subsidized child care program.

**§ 3041.17. Prohibition of additional conditions and charges.**

The eligibility agency may not:

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

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

**§ 3041.18. Attendance.**

(a) The days for which the parent or caretaker establishes a need for child care shall be specified in writing by the parent to the eligibility agency at the time the child is enrolled in subsidized child care.

(b) A child is expected to attend child care at the provider on all days for which the parent or caretaker established a need for child care as specified in § 3041.14 (relating to subsidy benefits), unless the provisions specified in § 3041.21 (relating to subsidy suspension) apply.

**§ 3041.19. Absence.**

(a) Upon notification from the provider that a child has been absent more than 10 consecutive days for which the

child is scheduled to attend child care, not including days of a child's illness, developmental or physical disability or other reason as specified in § 3041.21 (relating to subsidy suspension), the eligibility agency shall send the parent or caretaker an adverse action notice terminating the child's eligibility and payment to the provider.

(b) The notice shall inform the parent or caretaker of the following:

(1) The parent or caretaker shall report to the eligibility agency the date of the child's return to care.

(2) Payment may resume if the child returns to care no later than the 10th calendar day following the date the written notice of adverse action is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(3) If the child does not return to care by the 10th calendar day following the date the written notice of adverse action is postmarked or hand-delivered to the parent or caretaker by the eligibility agency and there are no grounds for subsidy suspension, the child's subsidy will be terminated effective the 11th calendar day from the date of the notice.

**§ 3041.20. Subsidy continuation during breaks in work.**

A family's eligibility for subsidized child care continues for and during the following:

(1) Sixty calendar days from the date of an involuntary loss of work, the date a strike begins or the date the parent graduates from or completes an education or training program.

(2) A total of 84 calendar days from the first day of family leave, other than maternity leave, as defined under the Family and Medical Leave Act of 1993 (29 U.S.C.A. §§ 2601—2654), provided there is a need for child care.

(3) Regularly scheduled breaks in work or breaks in an education or training program, if the regularly scheduled break is less than 31 calendar days.

**§ 3041.21. Subsidy suspension.**

(a) If a child is unable to attend child care for more than 10 consecutive days for which the child is scheduled to attend care, subsidy shall be suspended for up to 90 calendar days in the following circumstances:

(1) The child is visiting the noncustodial parent or caretaker.

(2) The child is ill or hospitalized, preventing the child from participating in child care.

(3) The child is absent because of family illness or emergency.

(4) The child remains at home with his parent or caretaker during family leave.

(5) The provider is closed because of failure to meet certification or registration requirements.

(6) The child's needs cannot be met by the provider.

(7) The parent or caretaker is on maternity or family leave, as defined under the Family and Medical Leave Act of 1993 (29 U.S.C.A. §§ 2601—2654).

(b) If the parent or caretaker is attending an education or training program that dismisses for a summer break, the eligibility agency shall suspend subsidy for the duration of the summer break.

(c) The child is no longer eligible for subsidy if the child continues to be absent following 90 calendar days of suspension or following the end of the child's parent's summer break.

**§ 3041.22. Subsidy disruption.**

(a) If child care is disrupted due to the provider's loss of the Department's certification or registration or another reason that prevents the child's continued care at that provider, 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 the parent or caretaker selects another provider and funding is available.

(c) Subsidy to a child may be disrupted if the eligibility agency cannot continue to subsidize the number of children enrolled in subsidized child care due to insufficient State or Federal funding.

(1) Subsidy for children whose families have the highest income is disrupted first.

(2) A child whose subsidy is disrupted under this subsection shall be placed on the waiting list according to the date of the initial eligibility for subsidized child care.

**DETERMINING FAMILY SIZE AND INCOME**

**§ 3041.31. Family size.**

(a) Individuals included in the definition of family shall be included in determining family size.

(b) An individual applying as a parent and a caretaker may only be counted once.

(c) An individual may not be included in more than one family unless the individual is a child who is in a shared custody arrangement between two families and both families are seeking subsidized child care.

(d) A foster child may be counted as a family of one or may be included in a family as defined in this chapter.

**§ 3041.32. Income counted.**

Income from the following family members is counted to determine financial eligibility:

(1) The biological or adoptive parents or stepparents of the child for whom subsidy is sought.

(2) A caretaker and the caretaker's spouse.

(3) The child for whom subsidy is sought, excluding the child's earned income.

**§ 3041.33. Income adjustment.**

To determine adjusted family income the eligibility agency shall:

(1) Determine gross income as specified in Appendix A, Part I (relating to income to be included, deducted and excluded in determining gross monthly income) for each family member listed in § 3041.32 (relating to income counted).

(2) Estimate monthly income from each income source in accordance with § 3041.34 (relating to estimating income).

(3) Convert weekly, biweekly, semimonthly and other pay periods to gross monthly amounts using the Conversion Table in Appendix A, Part I.

(4) Calculate the total gross monthly income.

(5) Determine the basic living need allowance deduction for a stepparent and deduct that amount from the stepparent's income using the Basic Living Need Allowance Deduction specified in Appendix A, Part II.

(6) Determine other allowable deductions listed in Appendix A, Part II for each source of income.

(7) Determine adjusted family income by subtracting the total monthly deductions specified in paragraphs (5) and (6) from the total gross monthly income specified in paragraph (4).

(8) Multiply adjusted family income by 12 to determine annual family income.

**§ 3041.34. Estimating income.**

(a) For the purpose of determining adjusted family income, the eligibility agency shall use its best estimate of monthly income based upon circumstances at the time of application or redetermination as specified in Appendix A, Part I (relating to income to be included, deducted and excluded in determining gross monthly income) for the table used to convert weekly, biweekly, and semi-monthly and other pay periods to monthly amounts.

(b) For parents or caretakers who are working and have received pay at the time they apply for subsidized child care, income shall be estimated based upon verified, actual amounts already received by the family prior to application or redetermination or verification of anticipated income.

(c) When estimating income, the eligibility agency shall use the past 30 calendar days as an indicator of future amounts, unless:

(1) A change has occurred.

(2) A change is anticipated.

(3) An unusual circumstance existed that is not expected to recur, such as overtime not likely to continue.

(d) The eligibility agency shall adjust its estimate of monthly income to take into account recent or anticipated changes and unusual circumstances.

(e) When an applicant anticipates starting work within the next 30 days or has not yet received a first paycheck, income eligibility is established based on verified anticipated income.

**ELIGIBILITY REQUIREMENTS**

**§ 3041.41. Financial eligibility.**

To be eligible to receive subsidized child care, a family shall meet the following financial conditions:

(1) At initial application, annual family income shall not exceed 200% of the FPIG.

(2) Following an initial determination of eligibility, a family shall remain financially eligible for subsidized child care as long as the annual income does not exceed 235% of the FPIG.

(3) The eligibility agency shall inform the parent or caretaker of the annual family income that will exceed 235% of the FPIG and cause the family to be ineligible for subsidized child care.

**§ 3041.42. Residence.**

A family that is financially eligible shall meet the following nonfinancial eligibility conditions to receive subsidized child care:

(1) Family members shall be residents of this Commonwealth.

(2) The parent or caretaker shall apply in his county of residence. In counties where there is more than one eligibility agency for the county, the parent or caretaker shall apply to the eligibility agency that is responsible for the geographic area that includes the zip code of the family's residence.

**§ 3041.43. Work, education and training.**

(a) The parent or caretaker shall work at least 20 hours per week. The eligibility agency may average a parent's or caretaker's work hours over a 4-week period in cases where hours of work vary from week to week.

(b) In the following circumstances, the parent or caretaker is exempt from the work and work-hour requirement specified in subsection (a):

(1) A parent or caretaker under 22 years of age and attending high school.

(2) A parent or caretaker under 18 years of age, does not have a high school or general educational development diploma, but is enrolled in and attending an education program on a full-time basis.

(c) When a parent or caretaker attends a training program and works at least 10 hours per week, the eligibility agency shall count the time spent in the training program toward the 20 hour per week work requirement. The eligibility agency will count other parent or caretaker activities required to complete the training program toward the 20 hour per week work requirement. Activities include an internship, a clinical placement, a practicum, student teaching, field work or lab work.

(d) A parent or caretaker who misses work due to illness, injury, employer closings, holidays, temporary work slow-downs, emergencies or domestic violence shall remain eligible for subsidy if the parent or caretaker is normally scheduled to work an average of 20 hours per week.

**§ 3041.44. Prospective work, education and training.**

(a) A family in which a parent or caretaker has prospective employment or prospective enrollment in an education or training program may be eligible for subsidized child care if the following requirements are met:

(1) The employment or education program will begin no later than 30 calendar days following the date of application or no later than 60 calendar days following the loss of work for a parent or caretaker who is receiving subsidized child care.

(2) Verification of prospective employment or enrollment in an education or training program is provided as specified in § 3041.66 (relating to verification of work, education and training).

(b) Subsidy may not begin until the parent or caretaker begins employment or participation in an education or training program.

**§ 3041.45. Anticipating income.**

(a) For applicants who report prospective work, a co-payment is not required until payment for employment is received.

(b) For recipients of subsidized child care who report prospective work, the family is assessed the minimum co-payment for a family of its size until payment for work is received.

(c) The parent or caretaker shall notify the eligibility agency of the actual amount of payment no later than 10 calendar days after receiving the first payment for work.

**§ 3041.46. Immunization.**

(a) A child receiving subsidized child care shall have received age-appropriate immunizations. Exemption from the immunization requirement shall be granted by the eligibility agency if:

(1) A child's parent or caretaker objects to immunizations on religious grounds.

(2) A child's medical condition contraindicates immunization as documented by a physician.

(b) If an otherwise eligible child does not have age-appropriate immunizations and is not exempt from immunization, the family shall be authorized for subsidy and the parent or caretaker shall be given 90 calendar days to obtain immunizations for the child and self-certify that the child has age-appropriate immunizations or that the child is exempt from the immunization requirement.

(c) The parent's or caretaker's self-certification on the application or on another form provided by the Department is verification of immunization or exemption from immunization requirements.

**§ 3041.47. Citizenship.**

A child receiving subsidized child care shall be a United States citizen or an alien lawfully admitted for permanent residence or otherwise lawfully and permanently residing in the United States.

**SPECIAL ELIGIBILITY PROGRAMS**

**§ 3041.51. Head Start expansion program.**

(a) A Head Start expansion program is a program that combines the Head Start program with the subsidized child care program.

(b) A child who is enrolled in a Head Start program, whose parent or caretaker needs extended hours or days of child care to work, is eligible for subsidized child care under this section, if the parent or caretaker meets the eligibility requirements for subsidized child care as specified in subsection (f).

(c) The parent or caretaker shall obtain from the Head Start program and provide to the eligibility agency verification that the Head Start expansion program meets the Federal Head Start standards.

(d) If a child in the family as specified in § 3041.31 (relating to family size) is enrolled in the Head Start expansion program, the family eligibility provisions of this section also apply to other children in the family who need child care.

(e) If extended hours or days of care are provided beyond the Head Start program hours or days, the extended hours and days of care shall be provided by a facility that has a certificate of compliance or registration by the Department as a child day care facility.

(f) A parent or caretaker whose child participates in the Head Start expansion program shall be required to meet only the following conditions:

(1) Verification of, at the time of application, a minimum of 20 hours of work per week as specified in § 3041.43 (relating to work, education and training).

(2) Verification that extended hours and days of child care are needed to work.

(3) Compliance with the waiting list conditions specified in § 3041.133 (relating to waiting list).

(4) Payment of the minimum co-payment for a family of one as specified in Appendix B (relating to co-payment chart family co-payment scale (based on the 2004 Federal Poverty Income Guidelines)).

(5) Payment of the co-payment as specified in § 3041.101(a)—(e) (relating to general co-payment requirements).

(g) Subsidy for a child receiving care under this section may be suspended during summer school breaks.

(h) A parent or caretaker whose child receives subsidized child care and is enrolled in a Head Start program is not required to report changes in circumstances during the period of the child's Head Start enrollment. The family shall remain eligible for subsidy for the duration of the child's enrollment in a Head Start program, regardless of a change in family income or circumstances.

(i) The eligibility agency may not require a parent or caretaker whose child receives subsidized child care and is enrolled in a Head Start program to complete a partial redetermination or redetermination until the child's Head Start program reports to the eligibility agency that the child is no longer enrolled in the Head Start program.

#### § 3041.52. Prekindergarten program.

(a) A child who is 3 or 4 years of age and who is enrolled in a prekindergarten program operated by a school entity or a certified child day care center or licensed private academic school serving children 3 or 4 years of age operating under contract with a school entity, whose parent or caretaker needs extended hours or days of child care to work, is eligible for subsidized child care under this section, if the parent or caretaker meets the eligibility requirements for subsidized child care as specified in this section.

(b) The eligibility agency shall verify that the prekindergarten program is operated by a school entity or by a certified child day care center or licensed private academic school operating under contract with a school entity.

(c) If extended hours or days of care are provided beyond the prekindergarten program's hours or days, the extended hours and days of care shall be provided by a facility that has a certificate of compliance or registration by the Department as a child day care facility.

(d) A parent or caretaker whose child participates in a pre-kindergarten program shall be required to meet the conditions specified in this chapter, except as specified in subsections (e), (f) and (g).

(e) Subsidy for a child receiving care under this section may be suspended during summer school breaks.

(f) A parent or caretaker whose child receives subsidized child care and is enrolled in a prekindergarten program will not be required to report changes in circumstances during the period of the child's prekindergarten enrollment. The family shall remain eligible for subsidy for the duration of the child's enrollment in a prekindergarten program, regardless of a change in family income or circumstances.

(g) The eligibility agency may not require a parent or caretaker whose child receives subsidized child care and is enrolled in a prekindergarten program to complete a partial redetermination or redetermination until the

child's prekindergarten program reports to the eligibility agency that the child is no longer enrolled in the pre-kindergarten program.

(h) A school entity is a public school, school district, intermediate unit or area vocational-technical school as defined in 22 Pa. Code § 49.1 (relating to definitions).

#### VERIFICATION

#### § 3041.61. General verification requirements.

(a) The parent or caretaker shall be the primary source of verification in establishing and maintaining eligibility for subsidized child care.

(b) The eligibility agency shall inform each parent and caretaker that the eligibility agency is available to assist in obtaining verification that the parent or caretaker is unable to obtain.

(c) The eligibility agency shall assist parents and caretakers who request assistance in obtaining verification.

(d) Verification that establishes a fact related to the determination of eligibility shall be accepted by the eligibility agency. Requirements for a specific type of verification may not be imposed by the eligibility agency.

(e) The parent or caretaker may report a change in circumstances at any time.

(f) The eligibility agency may not require a parent or caretaker to verify again information that is unlikely to have changed since application or the last eligibility redetermination. If the eligibility agency suspects or knows that the information provided by a parent or caretaker has changed, the eligibility agency may require the parent or caretaker to verify the information again.

(g) The eligibility agency may not deny or terminate subsidy to a family when the parent or caretaker has cooperated in the verification process and needed verification is pending or cannot be obtained due to circumstances beyond the parent's or caretaker's control.

(h) The eligibility agency shall require the parent or caretaker to provide documentary evidence of eligibility, as specified in §§ 3041.41—3041.47 (relating to eligibility requirements) and shall permit self-certification of other eligibility requirements.

(i) Self-certification shall be made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

#### § 3041.62. Collateral contact.

(a) The eligibility agency shall make a collateral contact on behalf of the parent or caretaker if any of the following occurs:

(1) The parent or caretaker has made a reasonable effort to obtain documentary evidence without success.

(2) Documentary evidence is unavailable.

(3) The eligibility determination process must be expedited to avoid unnecessary hardship to the parent or caretaker or to ensure that the time frame for an eligibility determination is met.

(4) The verification provided by the parent or caretaker requires additional clarification.

(5) The eligibility agency suspects that the parent or caretaker is withholding information or has falsified the information given.

(b) The eligibility agency shall make a collateral contact in person, by consulting public records, by mail or by telephone with a source of reliable information.

(c) Sources of reliable collateral contact information include the following:

(1) Public records, such as domestic relations or other courthouse records.

(2) An employer, a friend, a neighbor, a relative, a landlord, a government agency, a community social service agency or a child care provider.

(d) When making a collateral contact, the eligibility agency shall obtain from the parent or caretaker a list of reliable sources of information who would serve as collateral contacts.

(e) The eligibility agency shall obtain consent from the parent or caretaker and spouse at the time of application for subsidy permitting the eligibility agency to obtain verification of eligibility information.

(f) The eligibility agency shall retain in the family's file the signed consent. The consent shall remain in effect for as long as the family receives subsidy.

(g) The eligibility agency shall cooperate with a source who acts as a collateral contact.

(h) The eligibility agency may not contact an alleged abuser or former abuser in a domestic violence situation.

**§ 3041.63. Self-declaration.**

(a) If a parent's or caretaker's attempts to verify eligibility by documentary evidence or collateral contact are unsuccessful, the eligibility agency shall proceed without delay to determine the family's eligibility based upon a written self-declaration by the parent or caretaker.

(b) The eligibility agency shall instruct the parent or caretaker that a written self-declaration shall be made subject to 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

(c) The eligibility agency shall accept a parent's or caretaker's self-declaration statement, unless evidence contradicts the statement.

(d) The eligibility agency shall require the parent or caretaker to provide another form of acceptable verification no later than 30 calendar days following the date the written self-declaration is accepted as verification by the eligibility agency unless otherwise specified in this chapter.

**§ 3041.64. Verification of income.**

(a) Acceptable verification of earned income from employment includes one of the following:

(1) Pay stubs reflecting earnings for 3 weeks in the most recent 6-week period, the Department's Employment Verification form reflecting actual or anticipated earnings, the IRS form used for reporting tips, an employer statement of anticipated earnings and hours or other document that establishes the parent's or caretaker's earnings from employment.

(2) A collateral contact, as specified in § 3041.62 (relating to collateral contact).

(3) A written self-declaration by the parent or caretaker as specified in § 3041.63 (relating to self-declaration).

(b) Acceptable verification of income from self-employment includes one of the following:

(1) Tax returns, business records or other documents establishing profit from self-employment.

(2) A collateral contact, as specified in § 3041.62.

(3) A written self-declaration by a parent or caretaker of net profit from self-employment, reflecting gross earnings, less the cost of doing business, as specified in § 3041.63.

(c) Acceptable verification of unearned income includes one of the following:

(1) A copy of a current benefit check, an award letter that designates the amount of a grant or benefit, such as a letter from the Social Security Administration stating the amount of the Social Security benefit, a bank statement or other document or database report that establishes the amount of unearned income.

(2) A collateral contact, as specified in § 3041.62.

(3) A written self-declaration by the parent or caretaker, as specified in § 3041.63.

(d) For any case in which a family receives or pays child support through Pennsylvania's Child Support Enforcement System, the eligibility agency shall verify the amount of support received or paid by the family by requesting this information from the Department.

**§ 3041.65. Verification of residence.**

Acceptable verification of the parent's or caretaker's residence shall be the parent's or caretaker's self-certification of his address provided on the application or eligibility redetermination form.

**§ 3041.66. Verification of work, education and training.**

Acceptable verification of hours of work, education, training or enrollment in an education or training program includes one of the following:

(1) A document provided by the parent or caretaker as verification of earned income, provided this verification indicates or can be used to compute the number of hours the parent or caretaker worked, is normally scheduled to work or in cases where hours vary, the average number of hours worked.

(2) A copy of a work schedule signed by the employer.

(3) A copy of the class or training schedule from the school or training program.

(4) Another document that establishes hours of work, education or training.

(5) A collateral contact, as specified in § 3041.62 (relating to collateral contact).

(6) A written self-declaration by the parent or caretaker that indicates the parent or caretaker works at least 20 hours per week, as specified in § 3041.63 (relating to self-declaration).

**§ 3041.67. Verification of immunization.**

Acceptable verification of immunization shall be the parent's or caretaker's self-certification of age-appropriate immunizations, as provided on the application or eligibility redetermination form.

**§ 3041.68. Verification of citizenship.**

The eligibility agency shall accept as verification the parent's or caretaker's self-certification on the application regarding the citizenship of a child for whom subsidized child care is sought.

**§ 3041.69. Verification of identity.**

Acceptable verification of identity includes one of the following:

(1) Employer identification card.

- (2) Military photo-identification card.
- (3) Passport.
- (4) Other verifiable photo-identification.
- (5) Driver's license with or without a photograph.
- (6) State-issued birth certificate.
- (7) Certificate of naturalization.
- (8) Certificate of United States citizenship.
- (9) Registration receipt card.
- (10) Valid or expired Pennsylvania learner's permit.
- (11) Social Security card.
- (12) Marriage license, divorce decree or court order for a name change.
- (13) Marriage record that contains the date of birth.
- (14) Voter's registration card.
- (15) Collateral contact as specified in § 3041.62 (relating to collateral contact).
- (16) Written self-declaration by the parent or caretaker, as specified in § 3041.63 (relating to self-declaration).

**§ 3041.70. Verification of temporary inability to work.**

(a) Verification of the parent's or caretaker's physical or mental disability must include an assessment by a physician, psychologist or other licensed health care professional that includes the following:

- (1) The physical or mental condition causing the inability to work or to participate in an education or training program.
- (2) How the condition causing the physical or mental disability prevents the parent or caretaker from providing care for the child.
- (3) The date the parent or caretaker is expected to return to work or resume participation in an education or training program or the date the parent or caretaker will be able to care for the child.

(b) Subsidized child care eligibility shall continue for a maximum of 6 months if the conditions specified in subsection (a) are met.

**§ 3041.71. Verification of permanent inability to work.**

(a) The conditions specified in § 3041.70(a) (relating to verification of temporary inability to work) shall be met.

(b) The parent or caretaker with a physical or mental disability shall provide verification of disability payments from Social Security, Supplemental Security Income (SSI), Worker's Compensation, 100% of Veterans Disability or 100% of another type of work-related disability.

(c) If the parent or caretaker with the physical or mental disability does not receive income as specified in subsection (b), the parent or caretaker shall verify application for disability benefits for which he may be eligible.

**ELIGIBILITY AGENCY RESPONSIBILITIES**

**§ 3041.81. Eligibility agency.**

(a) The eligibility agency shall manage the subsidized child care program in part of a county, a single county or several counties.

(b) The eligibility agency may be either a prime contractor or a subcontractor designated in a prime contract.

**§ 3041.82. Eligibility determination.**

(a) The eligibility agency shall determine eligibility for subsidized child care as specified in this chapter.

(b) The eligibility agency may not impose eligibility conditions other than the conditions listed in this chapter.

(c) The eligibility agency may not require the parent or caretaker to select a particular provider or combination of providers as a condition of eligibility.

**§ 3041.83. Confidentiality.**

(a) The eligibility agency and its 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.

(b) Agents of the United States, the Commonwealth and the Department who are responsible for eligibility review, evaluation or audit functions shall 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.

(c) Disclosure of information beyond the scope of review, evaluation or audit functions performed by the agents requires the parent's or caretaker's informed and written consent.

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

(e) The eligibility agency shall assure the confidentiality of an individual who files an appeal or complaint about a family's receipt of subsidized child care for a child.

**§ 3041.84. Family file.**

(a) An eligibility agency shall establish and maintain a separate file for the family of each parent or caretaker who applies for subsidized child care.

(b) The family file shall contain documents pertaining to eligibility determination, redetermination, subsidized child care authorization, co-payment agreements and copies of written notices required by this chapter.

(c) A parent or caretaker or his authorized representative has a right to examine the family file.

**§ 3041.85. Record retention.**

(a) An eligibility agency shall retain family files, completed application forms, written notices, books, records and other fiscal and administrative documents pertaining to subsidized child care.

(b) Records shall be maintained for at least 7 years from the end of the fiscal year in which subsidized child care has been provided or until an audit or litigation is resolved.

**§ 3041.86. Child abuse reporting.**

The eligibility agency shall immediately report suspected child abuse in accordance with 23 Pa.C.S. §§ 6301—6385 (relating to the Child Protective Services Law) and Chapter 3490 (relating to protective services).

**DOMESTIC VIOLENCE WAIVERS**

**§ 3041.91. General requirements.**

(a) The eligibility agency shall grant a domestic violence waiver to a parent or caretaker who is the victim of past or present domestic violence or the threat of domestic violence.



(b) A domestic violence waiver shall be granted if compliance with a requirement of this chapter would either make it more difficult for a family or household member to escape domestic violence or place a family or household member at risk of domestic violence.

(c) The following requirements of this chapter may not be waived:

(1) Age of the child as specified in § 3041.12(b) and (c) (relating to provision of subsidized child care).

(2) Income limits as specified in § 3041.41 (relating to financial eligibility).

(3) Pennsylvania residency as specified in § 3041.42 (relating to residence).

(4) Citizenship as specified in § 3041.47 (relating to citizenship).

(5) The minimum number of hours of work, education or training as specified in § 3041.43 (relating to work, education and training), except for a parent or caretaker who meets the hours of work, education or training at the time of application. The parent or caretaker shall continue to participate in some but not all hours of work, education or training.

(d) If a parent or caretaker has been receiving subsidized child care and is unable to participate in work, education or training as a result of domestic violence or the threat of domestic violence, a waiver shall be granted and subsidized child care shall continue for as long as the parent or caretaker is unable to participate in work, education or training, subject to a maximum of 183 days.

(e) A waiver of the verification of the amount of income as specified in § 3041.64 (relating to verification of income) may not exceed 60 days.

(f) Except as specified in subsection (c), the eligibility agency may grant a domestic violence waiver for a maximum of 183 days.

(g) The eligibility agency shall review a domestic violence waiver every 183 days. If circumstances have not changed since the waiver was granted, a waiver granted under subsections (b) and (c) shall be renewed. A waiver granted under subsection (d) may not be renewed.

(h) The eligibility agency shall document the reasons for granting or denying the waiver on a form provided by the Department.

**§ 3041.92. Alternate address or telephone number.**

A parent or caretaker who is a victim of domestic violence may use an alternate address for receipt of mail or telephone number for receipt of telephone calls.

**§ 3041.93. Time frame for waiver determinations.**

The eligibility agency shall act on a parent's or caretaker's waiver request no later than 15 calendar days following the date the parent or caretaker requests the waiver.

**§ 3041.94. Notice of waiver determination.**

(a) The eligibility agency shall provide written notice to the parent or caretaker regarding the eligibility agency's determination to grant or deny a waiver request.

(b) If the waiver is granted, the notice shall include the following:

(1) The basis for granting the waiver.

(2) A statement that the eligibility agency will review the waiver circumstances every 183 days.

(c) If the waiver is denied, the notice shall include the following:

(1) The basis for the denial.

(2) The right to appeal the decision and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

(3) The verification the parent or caretaker shall submit for the eligibility agency to grant the waiver and the time frames in which the parent or caretaker must submit the verification.

(4) The evidence or information needed to substantiate the waiver request and the time frames in which the parent or caretaker shall provide the information.

**CO-PAYMENTS AND PAYMENT BY THE DEPARTMENT**

**§ 3041.101. General co-payment requirements.**

(a) The eligibility agency shall determine the amount of the parent's or caretaker's co-payment during the eligibility process based on the parent's or caretaker's actual or verified anticipated income and family size.

(b) A co-payment is established at an initial determination of eligibility for subsidized child care and reestablished at each successive redetermination of eligibility.

(c) The co-payment covers each child in the family who is receiving subsidized child care.

(d) The co-payment includes each day of the week for which the family establishes a need for child care.

(e) The co-payment is due on the first day of the family's first full service week and each week thereafter.

**§ 3041.102. Department's payment.**

(a) If the co-payment does not exceed the payment rate for care, the difference between the payment rate and the weekly co-payment is the Department's payment for subsidized child care.

(b) If the Department's weekly payment to the provider is less than \$5, the family is not eligible for subsidized child care with that provider.

**§ 3041.103. Adjusted co-payment for prospective work, education and training.**

(a) Upon notification by the parent or caretaker of receipt of payment for employment, the eligibility agency shall:

(1) Complete a partial redetermination no later than 10 calendar days following notification.

(2) Adjust the family co-payment, if applicable, no later than 20 calendar days following the date the parent or caretaker reports the receipt of payment from employment.

(3) Provide notice to the parent or caretaker of the planned change in the co-payment.

(b) The parent or caretaker shall begin paying the adjusted co-payment starting the first day of the first full service week following the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

**§ 3041.104. Parent or caretaker co-payment requirements.**

(a) Except as provided in subsection (b), a parent or caretaker whose child is authorized for subsidy is required to pay a co-payment and an equivalent advance

co-payment to the provider prior to enrollment in the subsidized child care program. Only the co-payment is due thereafter.

(b) A parent or caretaker who transfers from TANF shall pay a co-payment and an equivalent advance co-payment to the provider. The advance co-payment must be paid by the time of the first redetermination.

(c) If the co-payment is decreased as the result of a redetermination or partial redetermination, the parent or caretaker will begin paying the reduced co-payment on the first day of the service week following the date of the redetermination or partial redetermination.

(d) If the co-payment is decreased as the result of a redetermination or partial redetermination, the provider will refund to the parent or caretaker the difference between the current advance co-payment and the decreased co-payment on the first day of the service week following the redetermination or partial redetermination.

(e) If the co-payment is increased as the result of a redetermination or partial redetermination, the parent or caretaker shall begin paying the increased co-payment on the first service day of the week following the 10-day advance notice specified in § 3041.161(a) (relating to general notification requirements) advising the parent or caretaker of the co-payment increase. The parent or caretaker shall also pay an increased advance co-payment, which is the difference between the current and the increased co-payment.

(f) The co-payment is due on the first day of the service week.

(g) The advance co-payment is refunded upon termination of subsidy if the parent or caretaker has met applicable requirements in this chapter.

**§ 3041.105. Delinquent co-payment.**

(a) A co-payment is delinquent if it is not paid by the last day of the service week.

(b) On the day the provider reports the co-payment is delinquent, the eligibility agency shall notify the parent or caretaker in writing that action will be taken to terminate subsidy for the child.

(c) If a co-payment is delinquent, the first payment paid during a week is applied to the current week's co-payment. Subsequent payments during a week are applied to the delinquent co-payment.

**§ 3041.106. Eligibility agency responsibilities.**

(a) The eligibility agency shall generate notices based on delinquent co-payments.

(b) The eligibility agency shall send the provider a copy of each notice issued to a parent or caretaker whose child is enrolled with the provider.

(c) When a co-payment is reported to the eligibility agency as delinquent, the eligibility agency shall mail to the parent or caretaker, on a form provided by the Department, a written notice stating that service will be terminated 10 calendar days following the date of the written notice unless the delinquent co-payment is paid.

(1) If the parent or caretaker pays the delinquent co-payment within the 10-day adverse action period, subsidized child care will begin again on the date the delinquent co-payment is paid.

(2) If the parent or caretaker does not pay the delinquent co-payment within the 10-day adverse action pe-

riod, subsidized child care will be terminated on the 11th day following the adverse action period.

(d) A family whose subsidy is terminated for failure to make required co-payments may not be reauthorized for subsidy until all outstanding co-payments have been paid in full.

(e) The eligibility agency shall retain a copy of the termination notice.

**§ 3041.107. Availability and use of the Federal Poverty Income Guidelines.**

(a) The FPIG are used to determine the income limits and co-payments for subsidized child care.

(b) Following annual publication of the FPIG, the Department will publish an updated co-payment chart in Appendix B (relating to co-payment chart family co-payment scale based on the 2004 Federal poverty income guidelines) through a notice in the *Pennsylvania Bulletin*.

(c) Except for child care provided under § 3041.51 (relating to Head Start expansion program), the eligibility agency shall inform each parent or caretaker of the dollar amount that is equivalent to 235% of FPIG as specified in Appendix B and shall explain that 235% and the specific dollar figure are the highest annual income amount permitted to receive subsidized child care.

**§ 3041.108. Co-payment for families headed by a parent.**

(a) For families headed by a parent, the family co-payment shall be determined based on the following:

(1) The family size and family income, as specified in §§ 3041.31—3041.34.

(2) The co-payment shall be at least \$5, unless waived as specified in §§ 3041.44(a) and 3041.91(c) (relating to prospective work, education and training; and general requirements).

(3) The family's annual co-payment may not exceed 11% of the family's annual income.

(4) If the family's annual income is 100% of FPIG or less, the annual co-payment may not exceed 8% of the family's annual income.

(b) The eligibility agency shall determine the co-payment by using the co-payment chart in Appendix B (relating to co-payment chart family co-payment scale based on the 2004 Federal poverty income guidelines). The co-payment is calculated in \$5 increments for each \$2,000 of annual income.

(c) If a family has only one child who is enrolled in school and who receives a total of fewer than 5 hours daily of before or after-school care, the family shall pay one-half the weekly co-payment specified in Appendix B.

(d) If the co-payments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider.

**§ 3041.109. Co-payment for families headed by a caretaker.**

(a) A family headed by a caretaker shall be charged the minimum co-pay for a family of its size under the co-payment chart in Appendix B (relating to co-payment chart family co-payment scale based on the 2004 Federal poverty income guidelines) regardless of the family's income.

(b) When a family is headed by a parent who is also the caretaker for another child for whom subsidy is

requested, the eligibility agency shall determine the family co-payment as specified in § 3041.108(a) (relating to co-payment for families headed by a parent).

(c) If the co-payments for 1 month are equal to or exceed the monthly payment for care, the family is not eligible for subsidized child care with that provider.

#### **ELIGIBILITY DETERMINATION AND REDETERMINATION**

##### **§ 3041.121. Application.**

(a) The eligibility agency shall make applications for subsidized child care available to any person upon request.

(b) A signed application for subsidized child care under this chapter may be filed by a parent or caretaker on any day and at any time that the eligibility agency is open for business.

(c) A parent or caretaker may submit an application by mail, hand-delivery, facsimile or electronically.

##### **§ 3041.122. Initial determination of eligibility.**

(a) The eligibility agency shall stamp the date of receipt on the signed application on the same day the eligibility agency receives the application by mail, hand-delivery, facsimile or electronically.

(b) The eligibility agency shall determine a family's eligibility and authorize payment for subsidized child care no later than 10 calendar days following verification of all factors of eligibility. The eligibility agency may not delay a determination of eligibility beyond 30 calendar days following receipt of a signed application from the parent or caretaker.

(c) The eligibility agency shall determine a family eligible retroactive to the date the family submitted a signed application if the verification provided by the parent or caretaker establishes eligibility.

##### **§ 3041.123. Effective date of coverage.**

(a) If the eligibility agency determines a family eligible for subsidized child care and if funding is available, coverage of child care costs is retroactive to the date the family submitted a signed application.

(b) If the eligibility agency places a child on a waiting list following the determination of eligibility, coverage of child care costs must begin on the date funding is available.

##### **§ 3041.124. Notification of parent, caretaker and child care provider.**

(a) The eligibility agency shall notify the parent or caretaker of the family's eligibility status within 30 calendar days of receiving a signed application.

(b) If the eligibility agency determines a family eligible for subsidized child care, the eligibility agency shall notify the family's child care provider of the family's eligibility status.

##### **§ 3041.125. Period of eligibility.**

A family receiving subsidy remains eligible until determined ineligible, providing the parent or caretaker meets the reporting requirements as specified in § 3041.127 (relating to parent and caretaker report of change).

##### **§ 3041.126. Face-to-face interview.**

(a) If the eligibility agency determines a family eligible for subsidized child care and if funding is available, the parent or caretaker shall attend a face-to-face interview with the eligibility agency no later than 30 calendar days

following the date the eligibility agency reviews the family's application for subsidized child care.

(b) If the eligibility agency determines a family eligible for subsidized child care and if funding is not available at the time of the eligibility determination, the parent or caretaker shall attend a face-to-face interview with the eligibility agency no later than 30 calendar days following the date the first child from a family is enrolled in subsidized child care.

(c) The eligibility agency shall accommodate the parent's or caretaker's work hours in scheduling the interview.

(d) The eligibility agency may extend the 30-day time frame for the face-to-face interview based upon hardship, such as conflicts with the parent's or caretaker's working hours, transportation problems or illness of the parent or caretaker or another family member.

##### **§ 3041.127. Parent and caretaker report of change.**

(a) A parent or caretaker may report a change in circumstances whenever a change occurs.

(b) A parent or caretaker shall report the following changes to the eligibility agency no later than 10 calendar days following the date of the change:

(1) Loss of employment or self-employment, including layoffs or strikes.

(2) Decrease in the hours of work, education or training below an average of 20 hours per week.

(3) For a parent, an increase in monthly gross family income of \$300 or more or an increase that causes the family's annual income to exceed 235% of the FPIG. For a caretaker, an annual gross family income increase to 235% or more of the FPIG.

(4) Onset of maternity, paternity or adoption leaves and return to work following leave.

(5) Onset of a physical or mental disability and return to work following disability.

(6) Change of address.

(7) Change in family composition.

##### **§ 3041.128. Review of changes.**

If the parent or caretaker reports either of the following changes, the eligibility agency shall review the change and may complete a partial redetermination as specified in § 3041.129 (relating to partial redetermination based on reported changes):

(1) A decrease in family income, including earned income from employment or self-employment.

(2) The start, resumption or end of an education or training program.

##### **§ 3041.129. Partial redetermination based on reported changes.**

(a) The eligibility agency shall complete a partial redetermination of eligibility if the parent or caretaker reports a change as specified in § 3041.127 (relating to parent and caretaker report of change).

(b) The partial redetermination shall be completed by the eligibility agency no later than 10 calendar days from the date the parent or caretaker reports and verifies a change.

(c) The eligibility agency shall establish a new redetermination date to review eligibility if the information obtained during a partial redetermination indicates one of the following:

(1) The family's financial or nonfinancial status is expected to change in a manner that affects eligibility or co-payment.

(2) A parent or caretaker is physically or mentally disabled and the disability is anticipated to end prior to the family's redetermination date.

(3) A parent's or caretaker's employment is seasonal or temporary.

(4) A parent's or caretaker's education program ends prior to the family's redetermination date.

(5) A parent or caretaker begins maternity, paternity or adoption leave or a parent's or caretaker's maternity, paternity or adoption leave changes or ends prior to the family's redetermination date.

(6) A waiver of eligibility or verification requirement is granted due to domestic violence as specified in § 3041.91 (relating to general requirements).

(d) If a parent or caretaker reports a change in the factors affecting financial or nonfinancial eligibility that does not cause a change in the co-payment or in the eligibility determination, the eligibility agency is not required to complete a partial redetermination.

(e) The eligibility agency shall retain in the family file the information used in the partial redetermination.

(f) If the parent or caretaker reports a change that results in the family or a child in the family becoming ineligible for subsidy, the eligibility agency shall take the necessary steps to terminate the subsidy with proper notification to the family, under § 3041.165 (relating to notice of adverse action).

#### **§ 3041.130. Redetermination of eligibility.**

(a) The eligibility agency shall complete a redetermination of eligibility every 6 months and establish the family's next redetermination date.

(b) Prior to the redetermination, the eligibility agency shall do the following:

(1) Provide the parent or caretaker with the Department's form listing the following information last reported for each parent, stepparent, caretaker or child in the family:

- (i) Earned income.
- (ii) Unearned income.
- (iii) Hours of work, education and training.
- (iv) Family composition.
- (v) Address.

(vi) Reasons for granting a domestic violence waiver by the eligibility agency as specified in § 3041.91 (relating to general requirements).

(2) Request that the parent or caretaker verify the family's current earned income.

(3) Verify the following factors only if the parent or caretaker reports a change:

- (i) Unearned income.
- (ii) A decrease in hours of work, education or training to fewer than 20 hours per week.
- (iii) Family composition.

(iv) Address.

#### **§ 3041.131. Procedures for redetermination.**

(a) No earlier than 6 weeks prior to redetermination, the eligibility agency shall send the family a form that lists the factors that will be reviewed for the redetermination of eligibility and explain the verification that will be needed to complete the redetermination.

(b) If the parent or caretaker submits only some of the required verification elements prior to the redetermination, the eligibility agency shall request in writing that the parent or caretaker submit the additional verification no later than the family's redetermination date.

(c) The eligibility agency shall retain a copy of the notification in the family file.

(d) The eligibility agency shall send a written notice to the parent or caretaker regarding failure to provide required verification only after the family's redetermination date.

(e) The eligibility agency shall require the parent or caretaker to complete, sign, and either mail, hand-deliver or fax the applicable form at each redetermination.

#### **§ 3041.132. Voluntary request to terminate subsidized child care.**

(a) A parent or caretaker may request the eligibility agency to terminate subsidy.

(b) Upon receipt of a request to terminate subsidy, the eligibility agency shall take steps to terminate the family's eligibility.

(c) The eligibility agency shall notify the parent or caretaker as specified in § 3041.166 (relating to notice confirming voluntary withdrawal).

#### **§ 3041.133. Waiting list.**

(a) If funds are not available to enroll a child following determination of the family's eligibility for subsidy, the eligibility agency shall place an eligible child on a waiting list on a first-come, first-served basis. Placement on the waiting list must be determined by the date and time eligibility for the child was determined.

(b) If a parent or 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 shall be placed on the waiting list according to the date and time that the parent or caretaker requests care for the additional child.

(c) If a parent or caretaker does not select an eligible provider and enroll the child for child care no later than 30 calendar days following the date funding is available, the child will not be eligible for subsidy and will be removed from the waiting list.

(d) If a family was determined eligible and placed on the waiting list more than 6 months prior to the date that funding became available to enroll the child in subsidized child care, the eligibility agency shall complete a redetermination prior to enrollment and confirm that the family is eligible for subsidized child care.

### **TANF AND FORMER TANF FAMILIES**

#### **§ 3041.141. General provisions.**

(a) Families who are no longer eligible for TANF and meet the eligibility requirements specified in this chapter may qualify for subsidized child care.

(b) The eligibility agency shall review the information received from the CAO about a parent or caretaker who formerly received TANF benefits.

(c) The eligibility agency shall determine the date TANF benefits ended and establish the 183-day period, after eligibility for TANF ends, within which the parent or caretaker may receive child care benefits.

(d) Eligibility shall begin the day following the date TANF benefits ended and shall continue for 183 consecutive days.

(e) The parent or caretaker may request child care benefits at any time during the 183-day period after eligibility for TANF ended.

**§ 3041.142. General requirements for former TANF families.**

(a) During the 183-day period after eligibility for TANF ended, a parent or caretaker shall meet only the following conditions:

- (1) The parent or caretaker shall be working.
- (2) The parent's or caretaker's annual income may not exceed 235% of the FPIG.
- (3) The parent or caretaker shall establish a need for child care to work.
- (4) The parent or caretaker shall select an eligible child care provider as specified in § 3041.13(a) (relating to parent choice).
- (5) The parent or caretaker shall make timely payment of the co-payment as specified in § 3041.101 (relating to general co-payment requirements).

(b) A former TANF parent or caretaker who is transferred to the eligibility agency by the CAO or who applies for subsidized child care during the 183-day period after eligibility for TANF ended as specified in subsection (a), may not be placed on a waiting list.

(c) On the 184th day after eligibility for TANF ended, the period of former TANF eligibility ends and the parent or caretaker shall meet the requirements of this chapter.

(d) On the 184th day after eligibility for TANF ended, the eligibility agency shall complete a redetermination of eligibility and establish the family's next redetermination date.

**§ 3041.143. Notification.**

(a) If the eligibility agency determines that a parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall notify the parent or caretaker by letter of the following:

(1) The parent or caretaker is eligible for subsidized child care benefits for the 183-day period after eligibility for TANF ends, but will be subject to a redetermination of eligibility on the 184th day after eligibility for TANF ended.

(2) The parent or caretaker shall contact the eligibility agency to establish that the parent or caretaker continues to need child care.

(b) If the eligibility agency determines that a parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall notify the parent or caretaker by letter of the following:

(1) The parent or caretaker may be eligible for child care benefits.

(2) The parent or caretaker may contact the eligibility agency if child care is needed during the 183-day period after eligibility for TANF ended.

(3) Eligibility for subsidized child care is assured if the minimum requirements specified in § 3041.142 (a) (relating to general requirements for former TANF families) are met.

**§ 3041.144. Face-to-face interview for former TANF families.**

(a) When the parent or caretaker contacts the eligibility agency in response to the letter specified in § 3041.143(a) (relating to notification), the eligibility agency shall inform the parent or caretaker of the requirement to attend a face-to-face interview with the eligibility agency. The face-to-face interview shall occur no later than 30 calendar days following the date of the letter.

(b) When the parent or caretaker contacts the eligibility agency in response to the letter specified in § 3041.143(b), the eligibility agency shall schedule a face-to-face interview with the parent or caretaker. The eligibility agency may substitute a telephone contact for a face-to-face interview if a face-to-face interview cannot be scheduled without the parent or caretaker losing work time.

(c) To maintain continuous child care payment from the day following the date TANF benefits ended, the parent or caretaker shall attend a face-to-face interview or participate in a telephone contact with the eligibility agency as specified in § 3041.145 (relating to self-declaration and reporting).

**§ 3041.145. Self-declaration and reporting.**

At the time of the parent's or caretaker's face-to-face interview with the eligibility agency or at the time of telephone contact by the eligibility agency with the parent or caretaker, the eligibility agency shall:

(1) Require the parent or caretaker to self-declare the following:

(i) The parent or caretaker needs child care to work, the employer's name and the hours worked.

(ii) Facts in the TANF transfer information regarding family address, family size and income are accurate.

(iii) The family is financially eligible as specified in § 3041.142(a) (relating to general requirements for former TANF families).

(2) Advise the parent or caretaker of the requirement to report the following:

(i) Loss of employment or self-employment.

(ii) Change in family composition.

(iii) Increase in monthly gross family income of \$300 or more or an increase that causes the family's annual income to exceed 235% of the FPIG for a parent.

(iv) Increase in annual gross family income to exceed 235% or more of the FPIG for a caretaker.

(3) Advise the parent or caretaker that an eligibility determination shall be completed by the eligibility agency as specified in § 3041.142(b).

(4) Collect information regarding the parent's or caretaker's choice of child care provider or help the parent or caretaker to locate an eligible child care provider.

**§ 3041.146. Failure to contact the eligibility agency.**

(a) If a parent or caretaker who was receiving child care on the date TANF benefits ended fails to contact the eligibility agency in response to the letter specified in § 3041.143(a) (relating to notification), the eligibility agency shall contact the parent or caretaker by telephone no later than 31 calendar days following the date of the letter.

(b) When the eligibility agency contacts the parent or caretaker as specified in subsection (a), the eligibility agency shall determine the following:

(1) The parent's or caretaker's choice to meet the contact requirement using a telephone contact or participating in a face-to-face interview.

(2) The parent's or caretaker's continuing need for child care.

(c) If the eligibility agency determines that the parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency may not authorize payment for child care benefits until the date the parent or caretaker contacts the eligibility agency and requests benefits.

(d) If a parent or caretaker who was receiving child care on the date TANF benefits ended does not attend a face-to-face interview as specified in § 3041.144(a) (relating to face-to-face interview for former TANF families), the eligibility agency shall contact the parent or caretaker by telephone no later than the day following the date the parent or caretaker failed to attend the face-to-face interview to determine the information specified in subsection (b).

**§ 3041.147. Payment authorization.**

(a) The eligibility agency shall review a request from a parent or caretaker to authorize child care payment at any time during the 183-day period after eligibility for TANF benefits ended.

(b) The eligibility agency shall authorize child care payment at any time during the 183-day period after eligibility for TANF ended.

(c) The eligibility agency may not pay child care costs that exceed the maximum child care allowance less the family co-payment for the type of care the child received from the provider.

**§ 3041.148. Retroactive payment.**

(a) If the eligibility agency authorizes payment for a parent or caretaker who was receiving child care on the date TANF benefits ended, the authorization shall be retroactive to the day following the date TANF benefits ended.

(b) If the eligibility agency determines that the parent or caretaker was not receiving child care or cannot determine whether the parent or caretaker was receiving child care on the date TANF benefits ended, the eligibility agency shall require the parent or caretaker to submit verification of child care costs incurred during the 183-day period after eligibility for TANF ended.

(c) The eligibility agency shall authorize payment for the parent or caretaker specified in section (b) retroactive to the day following the date the parent or caretaker first incurred child care expenses.

(d) The eligibility agency shall inform the parent or caretaker that the parent or caretaker shall select an eligible provider within 30 calendar days as specified in

§ 3041.13 (relating to parent choice), if the parent or caretaker had selected an ineligible provider.

**§ 3041.149. Transfer from other states.**

(a) A parent or caretaker who received TANF benefits in another state and applies for subsidized child care is eligible if the parent or caretaker meets the following conditions:

(1) The parent or caretaker applies within 183 days after TANF benefits ended.

(2) The parent or caretaker meets the requirements specified in § 3041.142 (relating to general requirements for former TANF families).

(b) The eligibility agency shall determine the date TANF benefits ended in the other state and establish eligibility for the 183-day period after eligibility for TANF ended as specified in § 3041.141 (relating to general provisions).

**§ 3041.150. Expiration of TANF benefits.**

(a) A parent or caretaker who reaches the 5-year TANF expiration date and is no longer eligible for TANF is eligible for 60 calendar days of subsidized child care to seek employment.

(b) The eligibility agency shall determine the date TANF benefits ended and establish the period of former TANF eligibility as specified in § 3041.141 (relating to general provisions).

(c) The parent or caretaker may apply at any time during the 183-day period after eligibility for TANF ended.

(d) Notwithstanding subsection (a), the maximum period of eligibility under this section is 183 days.

**NOTIFICATION AND RIGHT TO APPEAL****§ 3041.161. General notification requirements.**

(a) The eligibility agency shall notify the parent or caretaker in writing no later than 10 calendar days prior to taking an action that affects the family's eligibility status for subsidized child care or a change in the amount of the family's subsidized child care benefit.

(b) Following the preparation of a written notice, the eligibility agency shall:

(1) Mail or hand-deliver within 1 working day of preparation, the original and one copy of the notice to the parent or caretaker.

(2) Notify the family's child care provider as soon as the family is determined eligible or ineligible for subsidized child care.

(3) Retain a copy of the notice in the family file as specified in § 3041.84 (relating to family file).

**§ 3041.162. Notice of right to appeal.**

The following information shall be included in the notice of the right to appeal:

(1) The statement regarding the parent's or caretaker's right to appeal.

(2) The time frame associated with filing a timely appeal as specified in §§ 3041.174(d) and 3041.176(b) (relating to parent or caretaker rights and responsibilities; and hearing procedures).

(3) The time frame associated with subsidy continuation as specified in § 3041.173 (relating to subsidy continuation during the appeal process).

(4) The consequence of filing an appeal untimely.

(5) The responsibility to repay if subsidy continues and the parent or caretaker does not win the appeal.

**§ 3041.163. Notice of eligibility.**

(a) The notice of eligibility shall be on a form provided by the Department.

(b) If the eligibility agency determines a family eligible for subsidy upon initial application, at the time of redetermination or at a review of a reported change, the written notification shall include the following:

(1) The amount of the co-payment.

(2) The parent's or caretaker's responsibility to pay the co-payment as specified in § 3041.101(e) (relating to general co-payment requirements).

(3) The parent's or caretaker's responsibility to pay an equivalent advance co-payment.

(4) The parent's or caretaker's responsibility to report changes as specified in § 3041.127 (relating to parent and caretaker report of change).

(5) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(6) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

**§ 3041.164. Notice of ineligibility.**

(a) The notice of ineligibility must be on a form provided by the Department.

(b) If the eligibility agency determines a family ineligible for subsidy upon initial application, at the time of redetermination or at a review of a reported change, the written notification shall include the following:

(1) The decision.

(2) The reason for the decision.

(3) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that was the basis for the decision.

(4) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(5) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

**§ 3041.165. Notice of adverse action.**

(a) The eligibility agency shall send a notice to a parent or caretaker currently receiving subsidy when the eligibility agency proposes to terminate, suspend or disrupt subsidy payment or to increase the family co-payment.

(b) The eligibility agency shall prepare a notice of adverse action on a form provided by the Department.

(c) The notice of adverse action must include:

(1) The decision or proposed action.

(2) The date the action will occur.

(3) The reason for the decision or proposed action and information about how to become eligible.

(4) A citation, and brief explanation in simple, nontechnical language, of the applicable section of this chapter or other applicable law that is the basis for the decision or proposed action.

(5) The name, address and telephone number of the local legal services office where the parent or caretaker may obtain free legal representation.

(6) The right of the parent or caretaker to appeal the decision and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

**§ 3041.166. Notice confirming voluntary withdrawal.**

The eligibility agency shall, by written notice to the parent or caretaker, confirm the parent's or caretaker's voluntary withdrawal of a child from subsidized child care.

**§ 3040.167. Notice of overpayment.**

(a) The eligibility agency shall notify the parent or caretaker in writing of an overpayment.

(b) 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.

(c) The notice of overpayment must include the following:

(1) The reason for the overpayment as specified in § 3041.181 (relating to overpayment).

(2) The period of the overpayment.

(3) The amount of the overpayment.

(4) An explanation of how the overpayment was calculated.

(5) The repayment methods as specified in § 3040.186 (relating to collection).

(6) The right of the parent or caretaker to appeal the decision on the overpayment amount and how to appeal as specified in §§ 3041.162 and 3041.171 (relating to notice of right to appeal; and appealable actions).

**APPEAL AND HEARING PROCEDURES**

**§ 3041.171. Appealable actions.**

A parent or caretaker has the right to appeal a Departmental or eligibility agency action or failure to act, including the following:

(1) Denial of subsidy.

(2) Termination of subsidy.

(3) Computation of the co-payment.

(4) Denial of a request for waiver of a requirement of this chapter based on domestic violence as specified in § 3041.91 (relating to general requirements).

(5) Failure of the eligibility agency to act upon a request for subsidy within the time limits specified in this chapter.

(6) Subsidy suspension, as specified in § 3040.21 (relating to subsidy suspension).

(7) Subsidy disruption, as specified in § 3040.22 (relating to subsidy disruption)

**§ 3041.172. Discontinuation of subsidy.**

Subsidy is not continued pending a hearing decision if the parent or caretaker appeals the disruption of subsidy

when the eligibility agency lacks funding to continue subsidy to a child as specified in § 3041.22 (relating to subsidy disruption).

**§ 3041.173. Subsidy continuation during the appeal process.**

(a) Subsidy continues at the prior level until the appeal is heard and a final decision is made by the Department, if the parent or caretaker meets the following conditions:

(1) Appeals no later than 10 calendar days after the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(2) Appeals for a reason other than disruption of subsidy or a lack of funding.

(b) If subsidy continues as specified in subsection (a), the parent or caretaker shall continue to make timely payment of the co-payment that was in effect prior to issuance of the notice of adverse action until a final decision is made by the Department, as specified in § 3041.101 (relating to general co-payment requirements).

(c) If subsidy continues during the appeal process and the hearing officer finds in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the Department for the amount of the subsidy or increase in subsidy paid for child care from the proposed effective date of the adverse action until the date subsidy is terminated or decreased, based on the final administrative action order.

**§ 3041.174. Parent or caretaker rights and responsibilities.**

(a) A parent or caretaker appealing an adverse action shall submit a written request to the eligibility agency in accordance with Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings). The parent or caretaker shall specify the reason for the appeal, the current address and a telephone number, if possible, where the parent or caretaker can be reached during the day.

(b) A parent or caretaker may orally appeal. The eligibility agency shall document the date of the oral appeal in the case file. The parent or caretaker shall confirm the oral appeal in writing to the eligibility agency no later than 7 calendar days following the date the parent or caretaker orally requested an appeal.

(c) A parent or caretaker may authorize an adult to represent him at the hearing.

(d) If the parent or caretaker wants subsidy to continue pending a hearing decision, subject to § 3041.173 (relating to subsidy continuation during the appeal process), the parent or caretaker shall submit a written appeal no later than 10 calendar days following the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

(e) If the parent or caretaker requests that subsidy continue pending a hearing decision, the parent or caretaker shall make timely payment of the co-payment that was in effect prior to issuance of the notice of adverse action until a final decision is made by the Department, as specified in § 3041.101 (relating to general co-payment requirements).

**§ 3041.175. Eligibility agency responsibilities.**

(a) If the parent or caretaker is unable to prepare a written appeal, the eligibility agency shall assist the

parent or caretaker in preparing a written appeal. The parent or caretaker shall sign the appeal request.

(b) Upon receipt of the appeal, the eligibility agency shall date-stamp the appeal, the envelope and the attachments with the date of receipt and retain copies of all original appeal information.

(c) The eligibility agency shall keep a copy and forward the original appeal along with the postmarked envelope to the Department's Bureau of Hearings and Appeals no later than 3 working days following the date the appeal is received by the eligibility agency.

(d) The eligibility agency may not take the proposed adverse action until 10 calendar days following the date the written notice is postmarked or hand-delivered to the parent or caretaker and then only if the parent or caretaker has not filed an appeal. Subsidy may be continued at the prior level only if the parent or caretaker meets the requirements in § 3041.173 (relating to subsidy continuation during the appeal process).

(e) The eligibility agency may take the proposed adverse action before 10 calendar days following the date a provider closes for financial difficulties or loss of certification or registration or if funding is not available to continue subsidized care to the child.

**§ 3041.176. Hearing procedures.**

(a) Chapter 275 (relating to appeal and fair hearing and administrative disqualification hearings) applies to hearings that are held under this chapter, except as specifically superseded by this chapter.

(b) An appeal postmarked or received after 30 calendar days from the date the written notice is postmarked or hand-delivered to the parent or caretaker will be dismissed as untimely without a hearing, unless one of the provisions allowing for appeals after 30 calendar days applies as specified in § 275.3(b)(2) and (3) (relating to time limitations on right to appeal).

(c) The hearing may be conducted by a telephone conference call with the parties to the appeal, including the parent or caretaker, the authorized representative of the parent or caretaker, the eligibility agency, the Department and the hearing officer.

(d) The parent or 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.

(e) If a parent or caretaker does not withdraw an appeal the eligibility agency, or the Department if appropriate, will take part in the scheduled hearing to justify the action to which the parent or caretaker objects.

(f) If the eligibility agency or the Department fails to appear at the hearing and the parent or caretaker appear, the parent's or caretaker's appeal will be sustained.

(g) If the parent or caretaker fails to appear for the hearing, regardless of whether the eligibility agency or the Department appears, the appeal is considered abandoned and the decision of the eligibility agency or the Department will be sustained.

(h) The Department will notify the eligibility agency and the parent or caretaker, in writing, when disposition of the appeal is made.

(i) The eligibility agency shall implement the final administrative action within the time limit ordered by the



Department or on the first day child care is needed in the week following receipt of the final administrative action order.

#### **OVERPAYMENT AND DISQUALIFICATION**

##### **§ 3041.181. Overpayment.**

The parent or caretaker may not be required to repay an overpayment except for an overpayment resulting from one of the following:

- (1) Fraud.
- (2) Failure to comply with this chapter.
- (3) Subsidy continuation pending an appeal when the parent or caretaker did not win the appeal.

##### **§ 3041.182. Eligibility agency responsibilities.**

(a) The eligibility agency shall inform a parent or caretaker who files an appeal and requests subsidy continuation pending appeal, that if the hearing decision is in favor of the eligibility agency or the Department, the parent or caretaker shall reimburse the amount of the overpayment unless the hearing officer determines a hardship.

(b) The eligibility agency shall pursue possible overpayments in active and closed cases, including those that were voluntarily closed.

(c) The following are the responsibilities of the eligibility agency when exploring possible overpayments:

- (1) Determination of whether the overpayment is the result of one of the conditions specified in § 3041.181 (relating to overpayment).
- (2) Written assurance that the methods of exploring overpayments are appropriate to the particular situation and to the different eligibility factors.
- (3) Assurance that the methods of exploring overpayments do not infringe on the civil liberties of individuals or interfere with the due process of law.
- (4) Investigation of a credible complaint that a parent or caretaker is erroneously receiving subsidized child care.
- (5) Identification and documentation of the causes of the overpayment.
- (6) Computation of the amount of the overpayment.
- (7) Referral of suspected fraud cases to the Office of Inspector General.
- (8) Submission of an overpayment notice to the parent or caretaker as specified in § 3041.167 (relating to notice of overpayment).

##### **§ 3041.183. Delaying recoupment.**

Recoupment shall be delayed until after a hearing decision, if the family appeals the overpayment decision no later than 10 calendar days after the date the written notice is postmarked or hand-delivered to the parent or caretaker by the eligibility agency.

##### **§ 3041.184. Notifying the Department.**

The eligibility agency shall notify the Department when recoupment stops before the overpayment is fully recouped.

##### **§ 3041.185. Repayment.**

The parent or caretaker shall repay the eligibility agency or Department the full amount of the overpayment.

##### **§ 3041.186. Collection.**

(a) The eligibility agency shall collect the total amount of the overpayment from a family whose child continues to receive subsidized child care when the eligibility agency identifies an overpayment.

(b) If the Department, eligibility agency or other entity identifies an overpayment subject to repayment as specified in § 3041.181 (relating to overpayment) related to a family whose child continues to receive subsidized child care, the eligibility agency shall:

(1) Notify the parent or caretaker by a letter that a repayment is required, the amount of the repayment and the following repayment options:

- (i) A one-time payment of the full amount owed.
- (ii) A one-time partial payment and an increase in the co-payment to be paid until repayment is complete.
- (iii) An increase in the co-payment until the repayment is complete.

(2) Automatically implement an increase to the co-payment until the repayment is complete when the parent or caretaker does not select an option as specified in paragraph (1) no later than 10 calendar days following the date of the letter.

(3) Notify the parent or caretaker by a second letter of failure to choose a repayment option as specified in paragraph (1), the amount of the increased co-payment and the number of weeks the increased co-payment will continue.

##### **§ 3041.187. Co-payment increase.**

(a) A co-payment increase for the purpose of collecting an overpayment may not exceed an amount greater than 5% of the family's gross monthly income. If the parent or caretaker indicates to the eligibility agency that an increase to 5% would cause hardship to the family, the family and the eligibility agency may agree to a lesser amount.

(b) A parent or caretaker may choose to increase the co-payment beyond the amount specified in subsection (a) to repay an overpayment in a shorter period of time.

(c) The eligibility agency shall issue a written notice of adverse action as specified in §§ 3041.161 and 3041.165 (relating to general notification requirements; and notice of adverse action) before implementation of an increase in the co-payment.

##### **§ 3041.188. Collection for a family whose child is no longer in care.**

(a) The eligibility agency shall collect the total amount of the overpayment from a family whose child is no longer receiving subsidized child care if the eligibility agency identifies an overpayment.

(b) If the Department, eligibility agency or other entity identifies an overpayment for a family whose child is no longer receiving subsidized child care, the eligibility agency shall:

(1) Notify the Department of the subsidy termination date, the amount of the overpayment recouped and the amount outstanding. The Department will notify the parent or caretaker by letter of the overpayment, the amount of the outstanding overpayment and that full repayment is required. The letter must state that the parent or caretaker has 10 calendar days to respond to the Department indicating agreement or disagreement and indicating the choice of a repayment method.

(2) Send a second letter that repeats the information contained in the letter specified in paragraph (1) when the Department notifies the eligibility agency that the parent or caretaker failed to respond. The second letter must also request a response from the parent or caretaker no later than 10 calendar days following the date of the letter.

(c) The Department may institute civil legal proceedings when the parent or caretaker fails to respond to the second letter.

**§ 3041.189. Disqualification.**

(a) The parent or 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 or caretaker guilty of fraud in applying for or receiving subsidized child care.

(2) A hearing officer determines that the parent or caretaker committed fraud, pursuant to the procedures and standards in Chapter 275 (relating to administrative disqualification hearings).

(3) The parent or caretaker signs a disqualification consent agreement as part of a court's deferred adjudication process.

(b) Upon disqualification under subsection (a), a parent or caretaker and eligible children in the parent's or caretaker's family shall 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 or caretaker may not be granted a hearing on a court conviction or administrative disqualification hearing decision that led to the disqualification.

**APPENDIX A**

**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 a parent or caretaker before deductions for taxes, Social Security, savings 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.

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 employee pensions paid by Federal, State, county or other governmental agencies to former employees, 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 costs of doing business. The costs of doing business include:

(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) Employee labor costs, such as wage, salaries, taxes, benefits, 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.

(9) Depreciation.

(10) Other deductions allowed by the Internal Revenue Service (IRS).

U. Net income from room rent or room and board: Gross income received minus \$10 per month for each room rented. Divide the remainder by 2. That number is the income inclusion.

#### CONVERSION TABLE

Convert weekly, biweekly, semi-monthly and other pay periods to gross monthly amounts using the following Conversion Table:

<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.

#### PART II. INCOME DEDUCTIONS.

The following are deducted when determining adjusted monthly income:

A. Voluntary or court-ordered support paid by the parent or 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 or caretaker or family member to a person not residing in the same household.

C. A medical expense not reimbursed through medical insurance that 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 or caretaker notifies the eligibility agency 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. The Basic Living Need Allowance Deduction for stepparents is the pro-rata share of the stepparent's income attributed to support of the stepparent and any child under the care and control of the stepparent for whom subsidy is not sought, but who are considered part of the family as defined in this chapter. To compute this deduction, divide the stepparent's total gross monthly income, less other allowable deductions listed in this section, by the total number of persons in the family. This amount is then multiplied by the number of persons in the family who may be included in the Basic Living Need Allowance Deduction.

#### 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 amounts under \$100 per person per year) given as a gift, from any source.

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), which include Americorps income.

O. Earnings received by any youth under the Workforce Investment Act of 1998, as amended; Pub. L. 105—220, Aug. 7, 1998, 112 Stat. 939. (29 U.S.C. 2801 et seq.).

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.

T. Income received from Federal student aid or participation in a Federal work-study program.

U. Payments made by the Veterans Administration to children of Vietnam veterans under The Benefits for Children of Vietnam Veterans Act (38 U.S.C. § 1823c).

**APPENDIX B**

**CO-PAYMENT CHART FAMILY CO-PAYMENT SCALE (BASED ON THE 2004 FEDERAL POVERTY INCOME GUIDELINES)**

Weekly Co-pay	Family Size: 1 Annual Income		Family Size: 2 Annual Income		Family Size: 3 Annual Income	
	Less than:		Less than:		Less than:	
\$5.00		\$7,310		\$10,490		\$11,670
\$10.00	\$7,310.01	\$9,310	\$10,490.01	\$12,490	\$11,670.01	\$13,670
\$15.00	\$9,310.01	\$11,310	\$12,490.01	\$14,490	\$13,670.01	\$15,670
\$20.00	\$11,310.01	\$13,310	\$14,490.01	\$16,490	\$15,670.01	\$17,670
\$25.00	\$13,310.01	\$15,310	\$16,490.01	\$18,490	\$17,670.01	\$19,670
\$30.00	\$15,310.01	\$17,310	\$18,490.01	\$20,490	\$19,670.01	\$21,670
\$35.00	\$17,310.01	\$19,310	\$20,490.01	\$22,490	\$21,670.01	\$23,670
\$40.00	\$19,310.01	\$21,310	\$22,490.01	\$24,490	\$23,670.01	\$25,670
\$45.00	\$21,310.01	\$21,879	\$24,490.01	\$26,490	\$25,670.01	\$27,670
\$50.00			\$26,490.01	\$28,490	\$27,670.01	\$29,670
\$55.00			\$28,490.01	\$29,352	\$29,670.01	\$31,670
\$60.00					\$31,670.01	\$33,670
\$65.00					\$33,670.01	\$35,670
\$70.00					\$35,670.01	\$36,825
	200% FPIG	\$18,620	200% FPIG	\$24,980	200% FPIG	\$31,340

Weekly Co-pay	Family Size: 4 Annual Income		Family Size: 5 Annual Income		Family Size: 6 Annual Income	
	Less than:		Less than:		Less than:	
\$5.00		\$12,850		\$14,030		\$15,210
\$10.00	\$12,850.01	\$14,850	\$14,030.01	\$16,030	\$15,210.01	\$17,210
\$15.00	\$14,850.01	\$16,850	\$16,030.01	\$18,030	\$17,210.01	\$19,210
\$20.00	\$16,850.01	\$18,850	\$18,030.01	\$20,030	\$19,210.01	\$21,210
\$25.00	\$18,850.01	\$20,850	\$20,030.01	\$22,030	\$21,210.01	\$23,210
\$30.00	\$20,850.01	\$22,850	\$22,030.01	\$24,030	\$23,210.01	\$25,210
\$35.00	\$22,850.01	\$24,850	\$24,030.01	\$26,030	\$25,210.01	\$27,210
\$40.00	\$24,850.01	\$26,850	\$26,030.01	\$28,030	\$27,210.01	\$29,210
\$45.00	\$26,850.01	\$28,850	\$28,030.01	\$30,030	\$29,210.01	\$31,210
\$50.00	\$28,850.01	\$30,850	\$30,030.01	\$32,030	\$31,210.01	\$33,210
\$55.00	\$30,850.01	\$32,850	\$32,030.01	\$34,030	\$33,210.01	\$35,210
\$60.00	\$32,850.01	\$34,850	\$34,030.01	\$36,030	\$35,210.01	\$37,210
\$65.00	\$34,850.01	\$36,850	\$36,030.01	\$38,030	\$37,210.01	\$39,210
\$70.00	\$36,850.01	\$38,850	\$38,030.01	\$40,030	\$39,210.01	\$41,210
\$75.00	\$38,850.01	\$40,850	\$40,030.01	\$42,030	\$41,210.01	\$43,210
\$80.00	\$40,850.01	\$42,850	\$42,030.01	\$44,030	\$43,210.01	\$45,210
\$85.00	\$42,850.01	\$44,298	\$44,030.01	\$46,030	\$45,210.01	\$47,210
\$90.00			\$46,030.01	\$48,030	\$47,210.01	\$49,210
\$95.00			\$48,030.01	\$50,030	\$49,210.01	\$51,210

PROPOSED RULEMAKING

<i>Weekly Co-pay</i>	<i>Family Size: 4 Annual Income</i>	
\$100.00		
\$105.00		
\$110.00		
\$115.00		
\$120.00		
	200% FPIG	\$37,700

<i>Family Size: 5 Annual Income</i>	
\$50,030.01	\$51,771
200% FPIG	\$44,060

<i>Family Size: 6 Annual Income</i>	
\$51,210.01	\$53,210
\$53,210.01	\$55,210
\$55,210.01	\$57,210
\$57,210.01	\$59,210
\$59,210.01	\$59,244
200% FPIG	\$50,420

<i>Weekly Co-pay</i>	<i>Family Size: 7 Annual Income</i>	
\$5.00	Less than:	\$16,390
\$10.00	\$16,390.01	\$18,390
\$15.00	\$18,390.01	\$20,390
\$20.00	\$20,390.01	\$22,390
\$25.00	\$22,390.01	\$24,390
\$30.00	\$24,390.01	\$26,390
\$35.00	\$26,390.01	\$28,390
\$40.00	\$28,390.01	\$30,390
\$45.00	\$30,390.01	\$32,390
\$50.00	\$32,390.01	\$34,390
\$55.00	\$34,390.01	\$36,390
\$60.00	\$36,390.01	\$38,390
\$65.00	\$38,390.01	\$40,390
\$70.00	\$40,390.01	\$42,390
\$75.00	\$42,390.01	\$44,390
\$80.00	\$44,390.01	\$46,390
\$85.00	\$46,390.01	\$48,390
\$90.00	\$48,390.01	\$50,390
\$95.00	\$50,390.01	\$52,390
\$100.00	\$52,390.01	\$54,390
\$105.00	\$54,390.01	\$56,390
\$110.00	\$56,390.01	\$58,390
\$115.00	\$58,390.01	\$60,390
\$120.00	\$60,390.01	\$62,390
\$125.00	\$62,390.01	\$64,390
\$130.00	\$64,390.01	\$66,390
\$135.00	\$66,390.01	\$66,717
\$140.00		
\$145.00		
\$150.00		
\$155.00		
\$160.00		
\$165.00		
	200% FPIG	\$56,780

<i>Family Size: 8 Annual Income</i>	
Less than:	\$17,570
\$17,570.01	\$19,570
\$19,570.01	\$21,570
\$21,570.01	\$23,570
\$23,570.01	\$25,570
\$25,570.01	\$27,570
\$27,570.01	\$29,570
\$29,570.01	\$31,570
\$31,570.01	\$33,570
\$33,570.01	\$35,570
\$35,570.01	\$37,570
\$37,570.01	\$39,570
\$39,570.01	\$41,570
\$41,570.01	\$43,570
\$43,570.01	\$45,570
\$45,570.01	\$47,570
\$47,570.01	\$49,570
\$49,570.01	\$51,570
\$51,570.01	\$53,570
\$53,570.01	\$55,570
\$55,570.01	\$57,570
\$57,570.01	\$59,570
\$59,570.01	\$61,570
\$61,570.01	\$63,570
\$63,570.01	\$65,570
\$65,570.01	\$67,570
\$67,570.01	\$69,570
\$69,570.01	\$71,570
\$71,570.01	\$73,570
\$73,570.01	\$74,190
200% FPIG	\$63,140

<i>Family Size: 9 Annual Income</i>	
Less than:	\$18,750
\$18,750.01	\$20,750
\$20,750.01	\$22,750
\$22,750.01	\$24,750
\$24,750.01	\$26,750
\$26,750.01	\$28,750
\$28,750.01	\$30,750
\$30,750.01	\$32,750
\$32,750.01	\$34,750
\$34,750.01	\$36,750
\$36,750.01	\$38,750
\$38,750.01	\$40,750
\$40,750.01	\$42,750
\$42,750.01	\$44,750
\$44,750.01	\$46,750
\$46,750.01	\$48,750
\$48,750.01	\$50,750
\$50,750.01	\$52,750
\$52,750.01	\$54,750
\$54,750.01	\$56,750
\$56,750.01	\$58,750
\$58,750.01	\$60,750
\$60,750.01	\$62,750
\$62,750.01	\$64,750
\$64,750.01	\$66,750
\$66,750.01	\$68,750
\$68,750.01	\$70,750
\$70,750.01	\$72,750
\$72,750.01	\$74,750
\$74,750.01	\$76,750
\$76,750.01	\$78,750
\$78,750.01	\$80,750
\$80,750.01	\$81,663
200% FPIG	\$69,500

<i>Weekly Co-pay</i>	<i>Family Size: 10 Annual Income</i>		<i>Family Size: 11 Annual Income</i>		<i>Family Size: 12 Annual Income</i>	
	Less than:		Less than:		Less than:	
\$5.00	\$19,930.01	\$19,930	\$21,110.01	\$21,110	\$22,290.01	\$22,290
\$10.00	\$21,930.01	\$21,930	\$23,110.01	\$23,110	\$24,290.01	\$24,290
\$15.00	\$23,930.01	\$23,930	\$25,110.01	\$25,110	\$26,290.01	\$26,290
\$20.00	\$25,930.01	\$25,930	\$27,110.01	\$27,110	\$28,290.01	\$28,290
\$25.00	\$27,930.01	\$27,930	\$29,110.01	\$29,110	\$30,290.01	\$30,290
\$30.00	\$29,930.01	\$29,930	\$31,110.01	\$31,110	\$32,290.01	\$32,290
\$35.00	\$31,930.01	\$31,930	\$33,110.01	\$33,110	\$34,290.01	\$34,290
\$40.00	\$33,930.01	\$33,930	\$35,110.01	\$35,110	\$36,290.01	\$36,290
\$45.00	\$35,930.01	\$35,930	\$37,110.01	\$37,110	\$38,290.01	\$38,290
\$50.00	\$37,930.01	\$37,930	\$39,110.01	\$39,110	\$40,290.01	\$40,290
\$55.00	\$39,930.01	\$39,930	\$41,110.01	\$41,110	\$42,290.01	\$42,290
\$60.00	\$41,930.01	\$41,930	\$43,110.01	\$43,110	\$44,290.01	\$44,290
\$65.00	\$43,930.01	\$43,930	\$45,110.01	\$45,110	\$46,290.01	\$46,290
\$70.00	\$45,930.01	\$45,930	\$47,110.01	\$47,110	\$48,290.01	\$48,290
\$75.00	\$47,930.01	\$47,930	\$49,110.01	\$49,110	\$50,290.01	\$50,290
\$80.00	\$49,930.01	\$49,930	\$51,110.01	\$51,110	\$52,290.01	\$52,290
\$85.00	\$51,930.01	\$51,930	\$53,110.01	\$53,110	\$54,290.01	\$54,290
\$90.00	\$53,930.01	\$53,930	\$55,110.01	\$55,110	\$56,290.01	\$56,290
\$95.00	\$55,930.01	\$55,930	\$57,110.01	\$57,110	\$58,290.01	\$58,290
\$100.00	\$57,930.01	\$57,930	\$59,110.01	\$59,110	\$60,290.01	\$60,290
\$105.00	\$59,930.01	\$59,930	\$61,110.01	\$61,110	\$62,290.01	\$62,290
\$110.00	\$61,930.01	\$61,930	\$63,110.01	\$63,110	\$64,290.01	\$64,290
\$115.00	\$63,930.01	\$63,930	\$65,110.01	\$65,110	\$66,290.01	\$66,290
\$120.00	\$65,930.01	\$65,930	\$67,110.01	\$67,110	\$68,290.01	\$68,290
\$125.00	\$67,930.01	\$67,930	\$69,110.01	\$69,110	\$70,290.01	\$70,290
\$130.00	\$69,930.01	\$69,930	\$71,110.01	\$71,110	\$72,290.01	\$72,290
\$135.00	\$71,930.01	\$71,930	\$73,110.01	\$73,110	\$74,290.01	\$74,290
\$140.00	\$73,930.01	\$73,930	\$75,110.01	\$75,110	\$76,290.01	\$76,290
\$145.00	\$75,930.01	\$75,930	\$77,110.01	\$77,110	\$78,290.01	\$78,290
\$150.00	\$77,930.01	\$77,930	\$79,110.01	\$79,110	\$80,290.01	\$80,290
\$155.00	\$79,930.01	\$79,930	\$81,110.01	\$81,110	\$82,290.01	\$82,290
\$160.00	\$81,930.01	\$81,930	\$83,110.01	\$83,110	\$84,290.01	\$84,290
\$165.00	\$83,930.01	\$83,930	\$85,110.01	\$85,110	\$86,290.01	\$86,290
\$170.00	\$85,930.01	\$85,930	\$87,110.01	\$87,110	\$88,290.01	\$88,290
\$175.00	\$87,930.01	\$87,930	\$89,110.01	\$89,110	\$90,290.01	\$90,290
\$180.00		\$89,136	\$91,110.01	\$91,110	\$92,290.01	\$92,290
\$185.00			\$93,110.01	\$93,110	\$94,290.01	\$94,290
\$190.00			\$95,110.01	\$95,110	\$96,290.01	\$96,290
\$195.00					\$98,290.01	\$98,290
\$200.00					\$100,290.01	\$100,290
\$205.00					\$102,290.01	\$102,290
\$210.00					\$104,082	\$104,082
	200% FPIG	\$75,860	200% FPIG	\$82,220	200% FPIG	\$88,580

## PROPOSED RULEMAKING

<i>Weekly Co-pay</i>	<i>Family Size: 13 Annual Income</i>		<i>Family Size: 14 Annual Income</i>		<i>Family Size: 15 Annual Income</i>	
	<i>Less than:</i>		<i>Less than:</i>		<i>Less than:</i>	
\$5.00	Less than:	\$23,470	Less than:	\$24,650	Less than:	\$25,830
\$10.00	\$23,470.01	\$25,470	\$24,650.01	\$26,650	\$25,830.01	\$27,830
\$15.00	\$25,470.01	\$27,470	\$26,650.01	\$28,650	\$27,830.01	\$29,830
\$20.00	\$27,470.01	\$29,470	\$28,650.01	\$30,650	\$29,830.01	\$31,830
\$25.00	\$29,470.01	\$31,470	\$30,650.01	\$32,650	\$31,830.01	\$33,830
\$30.00	\$31,470.01	\$33,470	\$32,650.01	\$34,650	\$33,830.01	\$35,830
\$35.00	\$33,470.01	\$35,470	\$34,650.01	\$36,650	\$35,830.01	\$37,830
\$40.00	\$35,470.01	\$37,470	\$36,650.01	\$38,650	\$37,830.01	\$39,830
\$45.00	\$37,470.01	\$39,470	\$38,650.01	\$40,650	\$39,830.01	\$41,830
\$50.00	\$39,470.01	\$41,470	\$40,650.01	\$42,650	\$41,830.01	\$43,830
\$55.00	\$41,470.01	\$43,470	\$42,650.01	\$44,650	\$43,830.01	\$45,830
\$60.00	\$43,470.01	\$45,470	\$44,650.01	\$46,650	\$45,830.01	\$47,830
\$65.00	\$45,470.01	\$47,470	\$46,650.01	\$48,650	\$47,830.01	\$49,830
\$70.00	\$47,470.01	\$49,470	\$48,650.01	\$50,650	\$49,830.01	\$51,830
\$75.00	\$49,470.01	\$51,470	\$50,650.01	\$52,650	\$51,830.01	\$53,830
\$80.00	\$51,470.01	\$53,470	\$52,650.01	\$54,650	\$53,830.01	\$55,830
\$85.00	\$53,470.01	\$55,470	\$54,650.01	\$56,650	\$55,830.01	\$57,830
\$90.00	\$55,470.01	\$57,470	\$56,650.01	\$58,650	\$57,830.01	\$59,830
\$95.00	\$57,470.01	\$59,470	\$58,650.01	\$60,650	\$59,830.01	\$61,830
\$100.00	\$59,470.01	\$61,470	\$60,650.01	\$62,650	\$61,830.01	\$63,830
\$105.00	\$61,470.01	\$63,470	\$62,650.01	\$64,650	\$63,830.01	\$65,830
\$110.00	\$63,470.01	\$65,470	\$64,650.01	\$66,650	\$65,830.01	\$67,830
\$115.00	\$65,470.01	\$67,470	\$66,650.01	\$68,650	\$67,830.01	\$69,830
\$120.00	\$67,470.01	\$69,470	\$68,650.01	\$70,650	\$69,830.01	\$71,830
\$125.00	\$69,470.01	\$71,470	\$70,650.01	\$72,650	\$71,830.01	\$73,830
\$130.00	\$71,470.01	\$73,470	\$72,650.01	\$74,650	\$73,830.01	\$75,830
\$135.00	\$73,470.01	\$75,470	\$74,650.01	\$76,650	\$75,830.01	\$77,830
\$140.00	\$75,470.01	\$77,470	\$76,650.01	\$78,650	\$77,830.01	\$79,830
\$145.00	\$77,470.01	\$79,470	\$78,650.01	\$80,650	\$79,830.01	\$81,830
\$150.00	\$79,470.01	\$81,470	\$80,650.01	\$82,650	\$81,830.01	\$83,830
\$155.00	\$81,470.01	\$83,470	\$82,650.01	\$84,650	\$83,830.01	\$85,830
\$160.00	\$83,470.01	\$85,470	\$84,650.01	\$86,650	\$85,830.01	\$87,830
\$165.00	\$85,470.01	\$87,470	\$86,650.01	\$88,650	\$87,830.01	\$89,830
\$170.00	\$87,470.01	\$89,470	\$88,650.01	\$90,650	\$89,830.01	\$91,830
\$175.00	\$89,470.01	\$91,470	\$90,650.01	\$92,650	\$91,830.01	\$93,830
\$180.00	\$91,470.01	\$93,470	\$92,650.01	\$94,650	\$93,830.01	\$95,830
\$185.00	\$93,470.01	\$95,470	\$94,650.01	\$96,650	\$95,830.01	\$97,830
\$190.00	\$95,470.01	\$97,470	\$96,650.01	\$98,650	\$97,830.01	\$99,830
\$195.00	\$97,470.01	\$99,470	\$98,650.01	\$100,650	\$99,830.01	\$101,830
\$200.00	\$99,470.01	\$101,470	\$100,650.01	\$102,650	\$101,830.01	\$103,830
\$205.00	\$101,470.01	\$103,470	\$102,650.01	\$104,650	\$103,830.01	\$105,830
\$210.00	\$103,470.01	\$105,470	\$104,650.01	\$106,650	\$105,830.01	\$107,830
\$215.00	\$105,470.01	\$107,470	\$106,650.01	\$108,650	\$107,830.01	\$109,830
\$220.00	\$107,470.01	\$109,470	\$108,650.01	\$110,650	\$109,830.01	\$111,830
\$225.00	\$109,470.01	\$111,470	\$110,650.01	\$112,650	\$111,830.01	\$113,830
\$230.00	\$111,470.01	\$111,555	\$112,650.01	\$114,650	\$113,830.01	\$115,830

<i>Weekly Co-pay</i>	<i>Family Size: 13 Annual Income</i>	
\$235.00		
\$240.00		
\$245.00		
\$250.00		
\$255.00		
\$260.00		
	200% FPIG	\$94,940

<i>Family Size: 14 Annual Income</i>	
\$114,650.01	\$116,650
\$116,650.01	\$118,650
\$118,650.01	\$119,028
200% FPIG	\$101,300

<i>Family Size: 15 Annual Income</i>	
\$115,830.01	\$117,830
\$117,830.01	\$119,830
\$119,830.01	\$121,830
\$121,830.01	\$123,830
\$123,830.01	\$125,830
\$125,830.01	\$126,501
200% FPIG	\$107,660

<i>Weekly Co-pay</i>	<i>Family Size: 16 Annual Income</i>	
\$5.00	Less than:	\$29,010
\$10.00	\$29,010.01	\$31,010
\$15.00	\$31,010.01	\$33,010
\$20.00	\$33,010.01	\$35,010
\$25.00	\$35,010.01	\$37,010
\$30.00	\$37,010.01	\$39,010
\$35.00	\$39,010.01	\$41,010
\$40.00	\$41,010.01	\$43,010
\$45.00	\$43,010.01	\$45,010
\$50.00	\$45,010.01	\$47,010
\$55.00	\$47,010.01	\$49,010
\$60.00	\$49,010.01	\$51,010
\$65.00	\$51,010.01	\$53,010
\$70.00	\$53,010.01	\$55,010
\$75.00	\$55,010.01	\$57,010
\$80.00	\$57,010.01	\$59,010
\$85.00	\$59,010.01	\$61,010
\$90.00	\$61,010.01	\$63,010
\$95.00	\$63,010.01	\$65,010
\$100.00	\$65,010.01	\$67,010
\$105.00	\$67,010.01	\$69,010
\$110.00	\$69,010.01	\$71,010
\$115.00	\$71,010.01	\$73,010
\$120.00	\$73,010.01	\$75,010
\$125.00	\$75,010.01	\$77,010
\$130.00	\$77,010.01	\$79,010
\$135.00	\$79,010.01	\$81,010
\$140.00	\$81,010.01	\$83,010
\$145.00	\$83,010.01	\$85,010
\$150.00	\$85,010.01	\$87,010
\$155.00	\$87,010.01	\$89,010
\$160.00	\$89,010.01	\$91,010
\$165.00	\$91,010.01	\$93,010
\$170.00	\$93,010.01	\$95,010
\$175.00	\$95,010.01	\$97,010
\$180.00	\$97,010.01	\$99,010

<i>Family Size: 17 Annual Income</i>	
Less than:	\$30,190
\$30,190.01	\$32,190
\$32,190.01	\$34,190
\$34,190.01	\$36,190
\$36,190.01	\$38,190
\$38,190.01	\$40,190
\$40,190.01	\$42,190
\$42,190.01	\$44,190
\$44,190.01	\$46,190
\$46,190.01	\$48,190
\$48,190.01	\$50,190
\$50,190.01	\$52,190
\$52,190.01	\$54,190
\$54,190.01	\$56,190
\$56,190.01	\$58,190
\$58,190.01	\$60,190
\$60,190.01	\$62,190
\$62,190.01	\$64,190
\$64,190.01	\$66,190
\$66,190.01	\$68,190
\$68,190.01	\$70,190
\$70,190.01	\$72,190
\$72,190.01	\$74,190
\$74,190.01	\$76,190
\$76,190.01	\$78,190
\$78,190.01	\$80,190
\$80,190.01	\$82,190
\$82,190.01	\$84,190
\$84,190.01	\$86,190
\$86,190.01	\$88,190
\$88,190.01	\$90,190
\$90,190.01	\$92,190
\$92,190.01	\$94,190
\$94,190.01	\$96,190
\$96,190.01	\$98,190
\$98,190.01	\$100,190

<i>Family Size: 18 Annual Income</i>	
Less than:	\$31,370
\$31,370.01	\$33,370
\$33,370.01	\$35,370
\$35,370.01	\$37,370
\$37,370.01	\$39,370
\$39,370.01	\$41,370
\$41,370.01	\$43,370
\$43,370.01	\$45,370
\$45,370.01	\$47,370
\$47,370.01	\$49,370
\$49,370.01	\$51,370
\$51,370.01	\$53,370
\$53,370.01	\$55,370
\$55,370.01	\$57,370
\$57,370.01	\$59,370
\$59,370.01	\$61,370
\$61,370.01	\$63,370
\$63,370.01	\$65,370
\$65,370.01	\$67,370
\$67,370.01	\$69,370
\$69,370.01	\$71,370
\$71,370.01	\$73,370
\$73,370.01	\$75,370
\$75,370.01	\$77,370
\$77,370.01	\$79,370
\$79,370.01	\$81,370
\$81,370.01	\$83,370
\$83,370.01	\$85,370
\$85,370.01	\$87,370
\$87,370.01	\$89,370
\$89,370.01	\$91,370
\$91,370.01	\$93,370
\$93,370.01	\$95,370
\$95,370.01	\$97,370
\$97,370.01	\$99,370
\$99,370.01	\$101,370



PROPOSED RULEMAKING

<i>Weekly Co-pay</i>	<i>Family Size: 16 Annual Income</i>	
\$185.00	\$99,010.01	\$101,010
\$190.00	\$101,010.01	\$103,010
\$195.00	\$103,010.01	\$105,010
\$200.00	\$105,010.01	\$107,010
\$205.00	\$107,010.01	\$109,010
\$210.00	\$109,010.01	\$111,010
\$215.00	\$111,010.01	\$113,010
\$220.00	\$113,010.01	\$115,010
\$225.00	\$115,010.01	\$117,010
\$230.00	\$117,010.01	\$119,010
\$235.00	\$119,010.01	\$121,010
\$240.00	\$121,010.01	\$123,010
\$245.00	\$123,010.01	\$125,010
\$250.00	\$125,010.01	\$127,010
\$255.00	\$127,010.01	\$129,010
\$260.00	\$129,010.01	\$131,010
\$265.00	\$131,010.01	\$133,010
\$270.00	\$133,010.01	\$133,974
\$275.00		
\$280.00		
\$285.00		
\$290.00		
\$295.00		
\$300.00		
	200% FPIG	\$114,020

<i>Family Size: 17 Annual Income</i>	
\$100,190.01	\$102,190
\$102,190.01	\$104,190
\$104,190.01	\$106,190
\$106,190.01	\$108,190
\$108,190.01	\$110,190
\$110,190.01	\$112,190
\$112,190.01	\$114,190
\$114,190.01	\$116,190
\$116,190.01	\$118,190
\$118,190.01	\$120,190
\$120,190.01	\$122,190
\$122,190.01	\$124,190
\$124,190.01	\$126,190
\$126,190.01	\$128,190
\$128,190.01	\$130,190
\$130,190.01	\$132,190
\$132,190.01	\$134,190
\$134,190.01	\$136,190
\$136,190.01	\$138,190
\$138,190.01	\$140,190
\$140,190.01	\$141,447
	200% FPIG \$120,380

<i>Family Size: 18 Annual Income</i>	
\$101,370.01	\$103,370
\$103,370.01	\$105,370
\$105,370.01	\$107,370
\$107,370.01	\$109,370
\$109,370.01	\$111,370
\$111,370.01	\$113,370
\$113,370.01	\$115,370
\$115,370.01	\$117,370
\$117,370.01	\$119,370
\$119,370.01	\$121,370
\$121,370.01	\$123,370
\$123,370.01	\$125,370
\$125,370.01	\$127,370
\$127,370.01	\$129,370
\$129,370.01	\$131,370
\$131,370.01	\$133,370
\$133,370.01	\$135,370
\$135,370.01	\$137,370
\$137,370.01	\$139,370
\$139,370.01	\$141,370
\$141,370.01	\$143,370
\$143,370.01	\$145,370
\$145,370.01	\$147,370
\$147,370.01	\$148,920
	200% FPIG \$126,740

<i>Weekly Co-pay</i>	<i>Family Size: 19 Annual Income</i>	
\$5.00	Less than:	\$32,550
\$10.00	\$32,550.01	\$34,550
\$15.00	\$34,550.01	\$36,550
\$20.00	\$36,550.01	\$38,550
\$25.00	\$38,550.01	\$40,550
\$30.00	\$40,550.01	\$42,550
\$35.00	\$42,550.01	\$44,550
\$40.00	\$44,550.01	\$46,550
\$45.00	\$46,550.01	\$48,550
\$50.00	\$48,550.01	\$50,550
\$55.00	\$50,550.01	\$52,550
\$60.00	\$52,550.01	\$54,550
\$65.00	\$54,550.01	\$56,550
\$70.00	\$56,550.01	\$58,550
\$75.00	\$58,550.01	\$60,550
\$80.00	\$60,550.01	\$62,550
\$85.00	\$62,550.01	\$64,550
\$90.00	\$64,550.01	\$66,550

<i>Family Size: 20 Annual Income</i>	
Less than:	\$33,730
\$33,730.01	\$35,730
\$35,730.01	\$37,730
\$37,730.01	\$39,730
\$39,730.01	\$41,730
\$41,730.01	\$43,730
\$43,730.01	\$45,730
\$45,730.01	\$47,730
\$47,730.01	\$49,730
\$49,730.01	\$51,730
\$51,730.01	\$53,730
\$53,730.01	\$55,730
\$55,730.01	\$57,730
\$57,730.01	\$59,730
\$59,730.01	\$61,730
\$61,730.01	\$63,730
\$63,730.01	\$65,730
\$65,730.01	\$67,730

<i>Family Size: 21 Annual Income</i>	
Less than:	\$34,910
\$34,910.01	\$36,910
\$36,910.01	\$38,910
\$38,910.01	\$40,910
\$40,910.01	\$42,910
\$42,910.01	\$44,910
\$44,910.01	\$46,910
\$46,910.01	\$48,910
\$48,910.01	\$50,910
\$50,910.01	\$52,910
\$52,910.01	\$54,910
\$54,910.01	\$56,910
\$56,910.01	\$58,910
\$58,910.01	\$60,910
\$60,910.01	\$62,910
\$62,910.01	\$64,910
\$64,910.01	\$66,910
\$66,910.01	\$68,910

<i>Weekly Co-pay</i>	<i>Family Size: 19 Annual Income</i>		<i>Family Size: 20 Annual Income</i>		<i>Family Size: 21 Annual Income</i>	
\$95.00	\$66,550.01	\$68,550	\$67,730.01	\$69,730	\$68,910.01	\$70,910
\$100.00	\$68,550.01	\$70,550	\$69,730.01	\$71,730	\$70,910.01	\$72,910
\$105.00	\$70,550.01	\$72,550	\$71,730.01	\$73,730	\$72,910.01	\$74,910
\$110.00	\$72,550.01	\$74,550	\$73,730.01	\$75,730	\$74,910.01	\$76,910
\$115.00	\$74,550.01	\$76,550	\$75,730.01	\$77,730	\$76,910.01	\$78,910
\$120.00	\$76,550.01	\$78,550	\$77,730.01	\$79,730	\$78,910.01	\$80,910
\$125.00	\$78,550.01	\$80,550	\$79,730.01	\$81,730	\$80,910.01	\$82,910
\$130.00	\$80,550.01	\$82,550	\$81,730.01	\$83,730	\$82,910.01	\$84,910
\$135.00	\$82,550.01	\$84,550	\$83,730.01	\$85,730	\$84,910.01	\$86,910
\$140.00	\$84,550.01	\$86,550	\$85,730.01	\$87,730	\$86,910.01	\$88,910
\$145.00	\$86,550.01	\$88,550	\$87,730.01	\$89,730	\$88,910.01	\$90,910
\$150.00	\$88,550.01	\$90,550	\$89,730.01	\$91,730	\$90,910.01	\$92,910
\$155.00	\$90,550.01	\$92,550	\$91,730.01	\$93,730	\$92,910.01	\$94,910
\$160.00	\$92,550.01	\$94,550	\$93,730.01	\$95,730	\$94,910.01	\$96,910
\$165.00	\$94,550.01	\$96,550	\$95,730.01	\$97,730	\$96,910.01	\$98,910
\$170.00	\$96,550.01	\$98,550	\$97,730.01	\$99,730	\$98,910.01	\$100,910
\$175.00	\$98,550.01	\$100,550	\$99,730.01	\$101,730	\$100,910.01	\$102,910
\$180.00	\$100,550.01	\$102,550	\$101,730.01	\$103,730	\$102,910.01	\$104,910
\$185.00	\$102,550.01	\$104,550	\$103,730.01	\$105,730	\$104,910.01	\$106,910
\$190.00	\$104,550.01	\$106,550	\$105,730.01	\$107,730	\$106,910.01	\$108,910
\$195.00	\$106,550.01	\$108,550	\$107,730.01	\$109,730	\$108,910.01	\$110,910
\$200.00	\$108,550.01	\$110,550	\$109,730.01	\$111,730	\$110,910.01	\$112,910
205.00	\$110,550.01	\$112,550	\$111,730.01	\$113,730	\$112,910.01	\$114,910
\$210.00	\$112,550.01	\$114,550	\$113,730.01	\$115,730	\$114,910.01	\$116,910
\$215.00	\$114,550.01	\$116,550	\$115,730.01	\$117,730	\$116,910.01	\$118,910
\$220.00	\$116,550.01	\$118,550	\$117,730.01	\$119,730	\$118,910.01	\$120,910
\$225.00	\$118,550.01	\$120,550	\$119,730.01	\$121,730	\$120,910.01	\$122,910
\$230.00	\$120,550.01	\$122,550	\$121,730.01	\$123,730	\$122,910.01	\$124,910
\$235.00	\$122,550.01	\$124,550	\$123,730.01	\$125,730	\$124,910.01	\$126,910
\$240.00	\$124,550.01	\$126,550	\$125,730.01	\$127,730	\$126,910.01	\$128,910
\$245.00	\$126,550.01	\$128,550	\$127,730.01	\$129,730	\$128,910.01	\$130,910
\$250.00	\$128,550.01	\$130,550	\$129,730.01	\$131,730	\$130,910.01	\$132,910
\$255.00	\$130,550.01	\$132,550	\$131,730.01	\$133,730	\$132,910.01	\$134,910
\$260.00	\$132,550.01	\$134,550	\$133,730.01	\$135,730	\$134,910.01	\$136,910
\$265.00	\$134,550.01	\$136,550	\$135,730.01	\$137,730	\$136,910.01	\$138,910
\$270.00	\$136,550.01	\$138,550	\$137,730.01	\$139,730	\$138,910.01	\$140,910
\$275.00	\$138,550.01	\$140,550	\$139,730.01	\$141,730	\$140,910.01	\$142,910
\$280.00	\$140,550.01	\$142,550	\$141,730.01	\$143,730	\$142,910.01	\$144,910
\$285.00	\$142,550.01	\$144,550	\$143,730.01	145,730	\$144,910.01	\$146,910
\$290.00	\$144,550.01	\$146,550	\$145,730.01	\$147,730	\$146,910.01	\$148,910
\$295.00	\$146,550.01	\$148,550	\$147,730.01	\$149,730	\$148,910.01	\$150,910
\$300.00	\$148,550.01	\$150,550	\$149,730.01	\$151,730	\$150,910.01	\$152,910
\$305.00	\$150,550.01	\$152,550	\$151,730.01	\$153,730	\$152,910.01	\$154,910
\$310.00	\$152,550.01	\$154,550	\$153,730.01	\$155,730	\$154,910.01	\$156,910
\$315.00	\$154,550.01	\$156,393	\$155,730.01	\$157,730	\$156,910.01	\$158,910
\$320.00			\$157,730.01	\$159,730	\$158,910.01	\$160,910

PROPOSED RULEMAKING

<i>Weekly Co-pay</i>	<i>Family Size: 19 Annual Income</i>		<i>Family Size: 20 Annual Income</i>		<i>Family Size: 21 Annual Income</i>	
\$325.00			\$159,730.01	\$161,730	\$160,910.01	\$162,910
\$330.00			\$161,730.01	\$163,730	\$162,910.01	\$164,910
\$335.00			\$163,730.01	\$163,866	\$164,910.01	\$166,910
\$340.00					\$166,910.01	\$168,910
\$345.00					\$168,910.01	\$170,910
\$350.00					\$170,910.01	\$171,339
	200% FPIG	\$133,100	200% FPIG	\$139,460	200% FPIG	\$145,820

[Pa.B. Doc. No. 04-1687. Filed for public inspection September 10, 2004, 9:00 a.m.]

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