

TITLE 60: BOARD OF EDUCATION

**CHAPTER 60-10
CHILD CARE PROGRAM ADMINISTRATIVE RULES AND
REGULATIONS**

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Chapter Authority: CNMI Const., art. XV; 1 CMC §§ 2251-2273; 3 CMC §§ 1101-1192.

Chapter History: Amdts Emergency, 31 Com. Reg. 29608 (June 2009) (effective for 120 days from June 18, 2009);* Amdts Adopted 26 Com. Reg. 23026** (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

* The Department of Community and Cultural Affairs (DCCA) promulgated emergency regulations proposing to repeal this chapter and create a new chapter under Title 55 (DCCA). As of the current date, a notice of adoption had not been published.

**Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: Title 3, division 1 of the Commonwealth Code contains the education laws of the Commonwealth. PL 6-10, the "Education Act of 1988," codified as amended at 1 CMC §§ 2251-2273 and 3 CMC §§ 1101-1192, took effect on October 25, 1988. PL 6-10 § 1 created the Public School System as a nonprofit corporation within the Commonwealth government, headed by the Board of Education. See 1 CMC §§ 2251 and 2261. The Board of Education is empowered to formulate policy and exercise control over the Public School System and to establish rules, regulations and policies for the operation of the Public School System. See 1 CMC § 2268(b).

PL 6-10 repealed and reenacted PL 3-43 (effective Jan. 19, 1983), a comprehensive revision of the Commonwealth's education laws. See the commission comment to 3 CMC § 1101.

Prior to October 25, 1988, the Commonwealth government included a Department of Education and Board of Education, which are the predecessors of the current Public School System and Board of Education. See PL 1-8

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(effective August 10, 1978) and PL 3-43. Throughout the development of education law in the Commonwealth, the Board of Education has been the entity with the authority to promulgate rules and regulations.

On October 16, 2007, Governor Benigno R. Fitial ordered that the Department of Community and Cultural Affairs, Child Care Licensing Division shall control federal grants provided under the Child Care Development Fund. Executive Order No. 2007-10, 29 Com. Reg. 27156 (Oct. 2007). The order provides: “All program regulations shall remain the same except with regards to the designation of the lead agency.”

In June 2009, the Department of Community and Cultural Affairs (DCCA) temporarily repealed this chapter and promulgated emergency regulations governing the administration of the Child Care Development Fund. 31 Com. Reg. 29608 (June 2009). Emergency regulations are effective for 120 days. 1 CMC § 9104(b). As of October 30, 2017, a notice of adoption repealing this chapter and adopting the emergency regulations promulgated by DCCA had not been published.

Part 001 - General Provisions

§ 60-10-001 Purpose

The purpose of the administrative rules in this chapter is to provide guidance for determining eligibility requirements, benefit amounts, and method of determining child care payments for the child care program in compliance with the rules governing the administration and implementation of the child care and development fund block grant authorized as part of the Omnibus Reconciliation Act of 1990, Pub. L. No. 101-58 § 5082* and as amended by PRWORA, Public Law 104-193 § 9598.

* So in original. See Commission Comment.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

The reference to Pub. L. No. 101-58 appears to be in error. Pub. L. No. 101-58 is a joint resolution designating the 1990s as the “Decade of the Brain.” Public Law 104-193 does not contain a section 9598.

§ 60-10-005 Definitions

(a) “Activity” means employment, education, or job training, vocational or employment training.

(b) “After school care” means a child care program provided after the close of the regular school day during the academic year for children who are enrolled in public or private elementary schools.

(c) “Applicant” means parent who applies to the child care program for child care benefits.

(d) “Application” means the written action by which an individual applies on behalf of his/her family to receive child care services on a form prescribed by the child care program. The

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application requests information on the total monthly family income, size of the family, ages of family members, employment status or education or training or a combination thereof of the parent applicant or applicants and requires attachments that evidence monthly family income, education or training status, employment status, and proof, usually birth certificates or passports, of age and citizenship of the applicants.

(e) “Before school care” means a child care program provided before the opening of the regular school day during the academic year for children who are enrolled in public or private elementary schools.

(f) “Budget month” means the calendar month from which the child care program shall use the child care payment form to calculate the reimbursable payment for the month.

(g) “Center-based child care provider” means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting.

(h) “Child” means any person who has not reached the age of thirteen.

(i) “Child care” means those situations in which a child care provider has agreed to assume the responsibility for the child’s supervision and development/guidance, apart from and in the absence of the child’s parent, for any part of a 24-hour day.

(j) “Child care program” means the CNMI public school program that shall administer and implement child care development fund (CCDF) activities and provide assistance in compliance with the requirements of federal regulations.

(k) “Child care provider” means any person, 18 years and older, or an agency, or organization and their employees who provide direct care, supervision, and guidance to children apart from and in the absence of the child’s parent(s). Child care providers are regulated by the child care program of the Department of Community and Cultural Affairs to provide child care or are legally exempt from licensure or registration by the child care program of Community and Cultural Affairs under Public Law 4-67 and Public Law 4-69.

(l) “Child care services” means the care given to an eligible child by an eligible child care provider.

(m) “Educational program” means a curriculum-based education program established by a school, agency or business for the purpose of the development of skills and/or academic study necessary for an occupation.

(n) “Employed” means the parent is engaged in an activity in exchange for wages or salary for at least 30 hours per week.

(o) “English as a second language (ESL)” means the condition where the child and/or parent (see definition on “parent”) have limited English proficiency.

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- (p) “Family child care provider” means an individual who provides child care services to 5 or more children for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child’s residence.
- (q) “Family” means one or more adults and their minor children, if any, related by blood, marriage, adoption or judicial decree, who reside in the same household. Related adults other than spouses or unrelated adults residing together shall each be considered a separate family.
- (r) “Federal poverty index (FPI) guidelines” means the official federal statistical definition of poverty which is issued yearly in the Federal Register by the Secretary of the child care program of Health and Human Services under the authority of 42 U.S.C. 8621*, OBRA of 1981. It is a simplification of the U.S. Census Bureau’s poverty threshold, which is issued for administrative purposes.
- (s) “Full-time care” means child care provided for 30 hours or more per week. This does not apply to before-school care, after-school care and intercession care.
- (t) “Gross income” means any benefit in cash which is received by the individual as a result of current or past labor or services, business activities, interest in real or personal property or as a contribution from persons, organizations, or assistance agencies.
- (u) “Group home child care provider” means two or more individuals who provide child care services to 5 or more children for fewer than 24 hours per day per child, in a private residence other than the child’s residence.
- (v) “In home care provider” means any individual who is not employed and is providing assistance in the home of the child(ren).
- (w) “Intercession care” means child care provided at breaks during the academic year for children who are enrolled in public or private elementary schools, including summer care and holidays
- (x) “Job training,” “vocational or employment training” means an organized training program (including community college and university education) established by an institution, agency or business for the purpose of the development of occupation.
- (y) “License-exempt care” means child care to less than 5 children which is exempt from licensure pursuant to CNMI law & the current state plan and is registered by the child care program.
- (z) “Licensing agency” means the department within the CNMI government that approves or disapproves child care licensing in accordance with CNMI law and the Day Care Rules and Regulations [NMIAC, title 55, subchapter 40.1], specifically the Department of Community and Cultural Affairs (DCCA).

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- (aa) “Parent” means a birth, foster or adoptive parent, guardian, a person acting in the place of a parent, stepparent, or relative who is related to the child by blood, marriage, or adoption, who resides with and is legally responsible for the care, education, and financial support of a child. That designation may remain even when the child or parent is temporarily absent from the home as long as the parent continues to maintain responsibility for the care, education, and financial support of the child.
- (bb) “Part-time care” means child care provided for less than 30 hours per week. This excludes before-school, after-school care and intersession care.
- (cc) “Payment month” means the calendar month in which the child care program shall issue the child care payment.
- (dd) “Physician” means an individual licensed by the CNMI for the practice of medicine.
- (ee) “Registered” means children, parents, and service providers who are registered with the PSS child care program and who benefit from the PSS child care program.
- (ff) “Relative” means related by blood, marriage, or adoption.
- (gg) “Relative care” means child care provided by legal grandparents, great-grandparents, great aunts, 1st and 2nd cousins, aunts, uncles, and siblings living in a separate residence who are at least 18 years old. Relative child care providers caring for 5 or more children must be licensed.
- (hh) “Sliding fee scale” means a system of cost sharing by a family based on income and size of the family in accordance with 45 CFR subpart 98.42.
- (ii) “School age” means the chronological age of children enrolled in elementary & junior high school below the age of 13.
- (jj) “Special needs child” means a child who is physically or mentally incapable of caring for himself or herself as determined by a health care provider and a Public School System certified psychologist.
- (kk) “State plan” means the official document submitted to the federal government by the child care program describing the administration of child care services in the CNMI under the child care development fund.
- (ll) “Very low income” means income that is at or below the 85% of state median income guideline as referenced on attachment #1 of the state plan effective up to 2005.

* So in original. See Commission Comment.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

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*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: In subsection (x), the Commission moved the comma after “training” inside of the closing quotation mark.

The reference to 42 U.S.C. 8621 in subsection (r) appears to be incorrect. This section describes home energy grants.

§ 60-10-010 Confidentiality

Family income data, employment records and other family and child records and monthly data reported to the federal government on families receiving subsidized child care services shall remain confidential and saved in locked data files. (This applies to both computerized and paper files).

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: The Commission inserted a period after “files” to correct a manifest error.

§ 60-10-015 Geographical Location

All child care is made available to eligible clients on a CNMI-wide basis.

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

§ 60-10-020 Scope

Child care services, irrespective of setting, must include

- (a) Supervision to assure the child’s safety, comfort, and health;
- (b) Personal care as appropriate to the child’s age and developmental maturity;
- (c) Educational and recreational activities appropriate to the child’s age, developmental stage, and degree of physical or mental ability;
- (d) Health and nutritional services which may include breakfast, lunch, dinner, and snacks; health and nutritional education to the child, as well as to the parents or parents; monitoring of health problems; and where appropriate, arranging for medical or psychological screening and consultation.

Modified, 1 CMC § 3806(g).

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History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: In subsection (d), the Commission changed the final semi-colon to a period and deleted the word "and."

Part 100 - Applications to Child Care Program

§ 60-10-101 Application Process

- (a) Request for child care services shall be submitted in writing on a form prescribed by the child care program.
- (b) The form shall be dated and signed under penalty of perjury that all the information requested by the child care program to establish eligibility for child care services, as stated on the form, is accurate.
- (c) The form shall be signed by the parent. Applicants are required to submit copies of documents (including, but not limited to an employment verification stating hours and hourly rate, paycheck stubs with business name, hours worked and hourly rate, birth certificates, school and/or training) for verification. It is the responsibility of the applicant to provide the necessary documentation for verification.
- (d) Applicants shall provide verification of the cost of the selected child care arrangement.
- (e) The date of application shall be the date the signed form and all supporting documents are received by the child care program.
- (f) The date of eligibility shall be determined by the child care program once all required documentation is received and verified and the child care program determines that the family is eligible for subsidized care.
- (g) It is the responsibility of the applicant to provide necessary documentation for the eligibility determination.
- (h) For applicants determined eligible, child care subsidized payments shall be initiated or arranged as soon as possible, but not later than 30 days from receipt of the payment invoice from the service provider; which is signed by the parent and the provider. Child care services shall be denied when the applicant does not complete the process of application/determination of eligibility, including but not limited to verification, or withdraws the application or is otherwise ineligible.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

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*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: The Commission created the title for part 100.

§ 60-10-105 Priority Applications

The following sets forth the priorities for serving eligible children:

- (a) Families with very low income
- (b) Low income families with special needs children
- (c) Homeless families with children.

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

§ 60-10-110 Notice of Application Disposition

- (a) The child care program shall notify applicants in a letter about the applicants' eligibility for child care service within fifteen days after submission of a complete application with all required attachments. The letter will indicate the period of eligibility, level of benefits, reporting requirements and the date of the review.
- (b) Applicants determined not eligible shall be sent a written notice that contains a statement of the action taken, the reasons for the action, the specific rules supporting the action, and the right to appeal the action of the child care program through established administrative appeal procedures.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Part 200 - Eligibility

§ 60-10-201 Eligibility Requirements for Child Care Services

Depending upon availability of funds, children who qualify for child care payments shall meet the following requirements:

- (a) Reside with the parent who is working, attending job training or an educational program and who has a monthly CNMI gross income that does not exceed federal poverty income guidelines (FPIG) for a family of the same size; and

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- (b) Be under the age of 13; and
- (c) All parents in family shall be eligible for child care under this chapter provided the parents meet the following conditions:
 - (1) Have a monthly gross income that does not exceed FPIG (federal poverty income guideline) for a family of the same size; and
 - (2)(i) Residency: The family must be living in the CNMI with the intention of making the CNMI their home permanently. Acceptable documentation includes, but is not limited to, utility payment receipts, house rental/ mortgage receipts, etc.
 - (ii) Citizenship: Only the citizenship and immigration status of the child, who is the primary beneficiary of the child care service, is required for eligibility purposes. The child must be a U.S. citizen or a qualified alien, as defined in Personal Responsibility Work Opportunity Act (PRWORA), to be eligible for child care assistance. Acceptable documentation includes, but is not limited to, birth certificate or passport.
 - (3) Gainfully employed 30 hours per week or scheduled to start work in 2 weeks; or
 - (4) Need child care for up to 30 calendar days during a break in employment, if employment is scheduled to resume within 30 calendar days; or
 - (5) Are enrolled in a job training and educational program (for at least 30 hours per week) sanctioned by the PSS or WIA or attending an education program on a full time basis (12 hours per semester for the college and five classes per day for the PSS); or
 - (6) Are a two-parent family household where one parent is in an approved activity (working, attending job training or an educational-program) and the other parent is determined to have a disability which prevents the parents from providing care for their own children. In such cases, proof of disability and inability to provide child care shall be verified by the written report of a physician, psychologist, psychiatrist, or a territory-licensed health care provider. The written report shall be reviewed every two months, and is valid when one parent is participating in an approved activity.
 - (7) Eligibility may be re-established for periods not to exceed 6 months.
- (d) Child care providers shall meet the following conditions in order that child care payments may be authorized:
 - (1) Is 18 years old or older;
 - (2) Afford parents unlimited access to their children, including written records concerning their children, during normal hours of provider operation and whenever the children are in the care of the provider;
 - (3) Is a licensed or license-exempt child care provider, including in-home care providers;
 - (4) License-exempt providers shall be registered with the child care program and shall submit a written statement to the child care program that shall attest to their:
 - (i) Willingness to provide care;
 - (ii) Rate that will be charged and assurance that the provider premises are safe from hazards;
 - (iii) Address and telephone number;
 - (iv) Completed health and safety check list;
 - (v) Police clearance;
 - (5) Have no known history of child abuse or neglect, physical or psychological/psychiatric problems or criminal convictions that may adversely affect or interfere with the care of children;

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(6) Provide consent to conduct a child abuse record check and criminal history record check. A child care provider must not have criminal history that poses a risk to children; these include, but are not limited to:

- (i) Violent felonies in which an individual threatens to cause, attempts to cause or causes serious bodily injury;
- (ii) Sexually violent offenses as defined by CNMI law or other similar offenses in other jurisdictions;
- (iii) Criminal sex offense against a minor as defined by CNMI law or other similar offenses in other jurisdictions;
- (iv) Child abuse or neglect as defined by CNMI law or similar offenses in other jurisdictions;
- (v) Violations of the CNMI Minor Children Firearms Control Act or similar offenses in other jurisdictions;
- (vi) Distribution of a controlled substance to persons under 18 as defined by CNMI law or similar offenses in other jurisdictions; and
- (vii) All other criminal histories will be evaluated based on the nature and severity of the incident; the identity of the victim; the length of time since the incident; whether any specific pattern of criminal behavior exists; and specific efforts the individual has made towards rehabilitation;

(7) Is free of tuberculosis as indicated by a skin test or chest x-ray completed within the last 24 months;

(8) Have a child care facility or home with an installed smoke detector, unobstructed emergency exits, and an emergency exit plan; and

(9) Shall attend training and technical assistance activities as a condition of receipt of funds to enhance their personal growth and professional development in order to improve the quality of child care services. Effective January 1, 2005 all day care center service providers must annually participate in at least 15 hours of training and technical assistance as approved by the child care program. This may include workshops, seminars, conference, etc. on health and safety, nutrition, first aid, child abuse and detection, and caring for children with special needs as scheduled and approved by the child care program.

(e) Child care providers shall not be one of the following:

- (1) Parents, biological or legal;
- (2) Step-parent living in the household;
- (3) Legal guardians;
- (4) Providers who are not in compliance with territory regulatory requirements;
- (5) Individuals under the age of 18 years; and
- (6) Other individuals determined by the licensing agency and/or the child care program to pose a risk to the health and safety of a child.

(f) The child care program shall:

- (1) Verify that the children and parents meet the eligibility requirements as described in the regulations in this chapter;
- (2) Determine that the provider selected by the parent is appropriate following the regulations of the licensing agency and the child care program; and
- (3) Review eligibility no less frequently than every 6 months.

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Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: The original paragraphs of subsection (c)(2) were not designated. The Commission designated subsections (c)(2)(i) and (ii).

In subsections (d)(3) and (d)(4), the Commission inserted semi-colons where necessary to maintain consistent punctuation. In subsection (d)(6)(vii), the Commission inserted the final semi-colon.

§ 60-10-205 Income Considered in Eligibility Determination

- (a) Monthly gross income shall be used to determine eligibility.
- (b) Monthly gross income means non-excluded monthly sums of income received from sources such as but not limited to:
 - (1) “Gross income” means any benefit in cash which is received by the individual as a result of current or past labor or services (before deductions), business activities, interest in real or personal property or as a contribution from persons, organizations, or assistance agencies, such as:
 - (i) Wages; and
 - (ii) Salary.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: In subsection (b)(1)(ii), the Commission changed the final semi-colon to a period.

§ 60-10-210 Excluded Monthly Income

The following types of income received in any given month shall be excluded from consideration in determining income eligibility for child care payments:

- (a) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which case, the net proceeds would be counted as self-employed income;
- (b) Withdrawals of bank deposits;
- (c) Loans;

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- (d) Gifts, including in-kind gifts such as free room and board, when the gift is not a form of compensation in lieu of wages or salary;
- (e) Monies received in the form of a nonrecurring lump sum payment including, but not limited to, the following:
 - (1) Income tax refunds, rebates, or credits;
 - (2) Retroactive lump sum social security, SSI, or unemployment compensation benefits;
 - (3) Retroactive annual adjustment payments in the veteran administration's (VA) disability pensions;
 - (4) Lump sum inheritances or insurance payments;
- (f) Refunds of security deposits on rental property or utilities;
- (g) Earnings of minor children who are members of the household and are students at least half-time shall be excluded even during temporary interruptions in school attendance due to semester vacation breaks, provided the minors' enrollment will resume following the break;
- (h) Capital gains;
- (i) Loans, grants, and scholarships obtained and used under conditions that prohibit use for current living expenses;
- (j) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education;
- (k) Home produce utilized for home consumption;
- (l) The value of coupon allotment under the Food Stamp Act of 1977, as amended.
- (m) The value of USDA donated or surplus food;
- (n) The value of supplemental food assistance under the Child Nutrition Act of 1966 (42 U.S.C. §§ 1771-1789) and the special food service program for children under the National School Lunch Act, as amended.
- (o) Benefits received from the special supplemental food program for women, infants, and children (WIC) (Pub. L. No. 92-443*);
- (p) Allowances and payments to participants in programs, other than on-the-job training, under the Work Investment Act (WIA) of 1998 (20 U.S.C. § 9201);
- (q) The earned income of individuals participating in on-the-job training programs under the Job Training Partnership Act (JTPA) of 1982 (25 U.S.C. § 640d-640d-28*) who are between 18 and 19 years of age and under the parental control of another household member;

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- (r) Earned income tax credit (EITC) payments received either as a lump sum or recurring payments under section 3507 of the Internal Revenue Code of 1986;
- (s) Financial assistance provided by a program funded in whole or in part under title IV of the Higher Education Act in accordance with Pub. L. No. 99-498;
- (t) Payments or allowances made under any federal or local laws for the purpose of energy assistance;
- (u) Assistance payments received as a result of a declared federal major disaster or emergency from the Federal Emergency Management Agency (FEMA), and other comparable disaster assistance provided by any state or local government agency, and disaster assistance organizations;
- (v) Payments made from the agent orange settlement fund or any other fund established in connection with settling liability claims concerning the chemical agent orange (Pub. L. No. 101-201);
- (w) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4636);
- (x) Payments received under the Radiation Exposure Compensation Act (Pub. L. No. 101-426) to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing or uranium mining;
- (y) Payments to individuals participating in the Senior Community Service Employment Program (SCSEP) funded under title V of the Older Americans Act of 1965 (Pub. L. No. 100-175);
- (z) Payments to volunteers derived from the volunteer's participation in the following programs authorized by the Domestic Volunteer Service Act of 1973 (42 U.S.C. §§ 5011, 4951-4958):
 - (1) Foster grandparent program;
 - (2) Senior companion program;
 - (3) Volunteers in service to America (VISTA) and AmeriCorps programs.
- (aa) Military re-enlistment bonus;
- (bb) Any other payments made in accordance with territory and federal laws that preclude the payments from being counted as income; and
- (cc) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which case the net proceeds would be counted as self employment income.

* So in original. See Commission Comment.

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Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: In subsection (h), the Commission inserted the final semi-colon to ensure consistent punctuation.

The reference to Pub. L. No. 92-443 in subsection (o) appears to be in error. That public law concerns the National Society of the Daughters of the American Revolution. The reference to 25 U.S.C. 640d in subsection (q) appears to be in error. That code section concerns Navajo and Hopi land rights.

§ 60-10-215 Treatment of Income

- (a) All non-excluded income available to the family within a given month shall be considered.
- (b) Eligibility determination based on income status shall be supported by documentation.
- (c) Failure to provide necessary information to verify amount or source of income shall disqualify the family.

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Part 300 - Child Care Payment

§ 60-10-301 Method of Computing Child Care Payment

- (a) The family shall provide verification of the child care provider and the child care to the program.
- (b) The child care program will compute the monthly projected cost of the care based on:
 - (1) Need for child care;
 - (2) The type of care provided;
 - (3) The child's age;
 - (4) Whether the care is full day or partial day care service;
 - (5) The child's attendance; and
 - (6) The parent's work attendance; and
 - (7) The parent's share of the cost of child care in accordance with the sliding fee scale as set forth in the current state plan.
- (c) The projected child care payment rate shall be calculated by:
 - (1) Counting the number of employment, education or job, or vocational or employment training hours to be engaged in by the parent the month;

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- (2) Comparing the parent's employment, education or job, or vocational or employment training hours including commuting time with the need for child care hours; and
 - (3) Using the child care rate table to identify the type of child care for each qualifying child and the payment rate for that type of child care (see attachments 1 and 3);
 - (4) The child care amount to be paid each month of eligibility shall be the child care rate on the child care rate table as referenced in attachment # 1, minus the co-payment amount or as identified in attachment # 3.
- (d) Eligibility for child care subsidized payment shall be suspended for any month the total monthly income exceeds the income criteria for the size of the family (see attachment 3).

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: In subsections (c)(2) and (c)(3), the Commission inserted the semi-colons.

§ 60-10-305 Child Care Payments

- (a) The payment rate shall be established by the current state plan. As an example see attached "payment rate" which is effective until 2005.
- (b) Child care payments shall be an expense that is reimbursed to the child care provider.
- (c) The parent's co-payment shall be established by the current sliding fee scale as set forth in the current state plan. As an example see attached "sliding fee scale" which is effective until 2005.
- (d) When computing the reimbursement amount, the child care program shall establish a reasonable relationship between the need for part-time or full-time care and the conditions for which child care is required.
- (e) The child care program shall issue a payment invoice and an attendance form for parent and provider to sign and submit for a reimbursable payment for child care services rendered the previous month. The attendance form must show the number of hours the child is in the care of the service provider. Failure to submit a completed and signed payment invoice and/or an attendance form shall result in no payment.
- (f) A completed signed payment invoice and/or attendance form must be received by the child care program on the first working day of the month or payment may be delayed.
- (g) The family shall pay its portion of the child care cost.
- (1) If the child is enrolled in a child care center the family shall pay directly to the child care center.

(2) If the child is in relative or group home or in home care, the co-payment is paid directly to the child care program through payment at the PSS Treasury.

(h) The family shall be responsible for any child care costs in excess of the maximum child care rates as set forth in the current CNMI plan.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Part 400 - Other Requirements

§ 60-10-401 Reporting Changes

A parent who is a recipient of subsidized child care services shall be responsible to report to the child care program within 10 calendar days of the occurrence any changes in:

- (a) Monthly gross income and the source of the income;
- (b) Address, including:
 - (1) Place of residence; and
 - (2) Mailing address;
- (c) Family member size;
- (d) Marital status;
- (e) Providers from whom the parent is receiving child care services;
- (f) Circumstances which may affect the recipient's eligibility for continuing services, including, but not limited to:
 - (1) Changes in number of hours of child care required and cost of child care;
 - (2) Changes in hours of employment, educational program, or job, vocational or employment training;
 - (3) Anticipated changes in the individual's situation that may affect the individual's eligibility for continued child care assistance;
- (g) Attendance: Parent shall report any more than 2 absences in a month.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

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Commission Comment: In subsection (e), the Commission deleted the word “of” before “from” and changed the final period to a semi-colon to correct manifest errors. In the opening paragraph of subsection (f), the Commission changed the final semi-colon to a colon.

§ 60-10-405 Re-determination of Eligibility

(a) The child care program shall re-determine income and program eligibility for continued child care payments:

(1) When information is obtained that there are anticipated changes in the individual’s or family’s situation;

(2) Promptly, not to exceed 30 days, after information is received that changes have occurred in the individual’s or family’s circumstances which may result in ineligibility;

(3) When a payment invoice for services rendered within 60 days is not submitted to the child care program; and

(4) Not less frequently than every 6 months from the month eligibility was determined.

(b) Re-determination of eligibility shall be made in the same manner as the disposition of an application including signing and dating a form prescribed by the child care program.

(c) Child care shall be terminated for recipients when they do not complete the process of re-determination of eligibility.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Part 500 - Adverse Actions

§ 60-10-501 Denial, Suspension or Termination of Child Care

Child care payments shall be denied, suspended, or terminated when:

(a) The parent does not submit the signed payment invoice; or

(b) The payment invoice prescribed by the child care program is not signed and dated; or

(c) The child no longer meets the eligibility requirements; or

(d) The parent no longer meets the eligibility requirements; or

(e) The provider no longer meets the licensing requirements; or

(f) Conditions initially present in the family situation have changed and child care is no longer needed or any listing/registration requirements for exempt care; or

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- (g) The parent(s) voluntarily requests discontinuance of child care services; or
- (h) The parent(s) and the child are unable to use child care;
- (i) The parent(s) is no longer eligible for child care; or
- (j) The parent(s) cannot be located; or
- (k) The family fails to provide the required verification for re-determination or to support the reported changes; or
- (l) When recipients do not complete the process of re-determination of eligibility; or
- (m) When the child care program determines that there are insufficient funds to maintain all children receiving care. Priorities for eligibility will be determined pursuant to § 60-10-105;
- (n) When the parent does not pay their contribution to the cost of child care at the minimum percentage fee (co-payment).

Modified, 1 CMC § 3806(c), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: In subsections (h) and (m), the Commission inserted the final semi-colons.

§ 60-10-505 Notice of Adverse Action

- (a) Prior to an action to reduce, deny, suspend, or terminate any child care service specified in this chapter, the child care program shall provide the parent with timely and adequate notice before the adverse action is taken.
- (b) The notice of adverse action shall be considered timely when the child care program provides the notice at least 10 calendar days prior to the effective date of action.
- (c) In order to be adequate, the notice shall contain the following information:
 - (1) The proposed action and the reason for the proposed action; and
 - (2) The child care program rules supporting the proposed action;
 - (3) The name and telephone number of the person to contact for additional information;
 - (4) The family's right to appeal the child care program's decision to the Commissioner's office.

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: In subsection (c)(3), the Commission changed the final period to a semi-colon to ensure consistent punctuation.

§ 60-10-510 Administrative Appeal Requests

(a) A parent may file a written request for an administrative appeal when the family is dissatisfied with the child care program's adverse action of denying, reducing, terminating, suspending, assistance. The family shall have an opportunity to:

- (1) Examine the case record as well as all documents and records to be used at the appeal hearing at a reasonable time before the date of the hearing as well as during the hearing;
- (2) Present the case independently or with the aid of legal counsel;
- (3) Bring witnesses, including an interpreter if non-English speaking;
- (4) Establish all pertinent facts and circumstances;
- (5) Advance any arguments appropriate to the issue being heard without undue interference; and
- (6) Question or refute any testimony or evidence, and to confront and cross-examine any witness.

(b) The appeal request shall be in writing delivered to the CNMI Public School System Commissioner of Education's office within 10 calendar days of the date on which the notice informing the family of a child care program's decision was delivered to the family and shall refer to the following:

- (1) The request is for an administrative appeal;
- (2) The specific action identified in the notice that is being appealed; and
- (3) Whether continuation of benefits at the current level are being requested with the understanding that the family will be required to pay back the total value of benefits (received pending the decision) if the PSS decision is upheld.

(c) If the request is not filed within 10 calendar days of the date the notice was provided to the family, the request shall be denied and the Commissioner's office shall provide a notice of denial to the family.

(d) The Commissioner or designee shall preside over a hearing within 30 days of timely appeal request.

- (1) The hearing shall be informal where strict rules such as the exclusion of hearsay evidence do not apply. However, the evidence presented must be relevant.
- (2) The family and the child care program shall have an opportunity to present evidence, including witness testimony and documents. Each party shall also have the right of cross-examination.
- (3) The hearing shall be audio-recorded.
- (4) The Commissioner or designee shall issue a written decision to the child care program and the family within 30 days after the hearing.

(e) In the event that an appeal decision is rendered in favor of the family, benefits shall be restored as appropriate.

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Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

§ 60-10-515 Overpayment and Recoupment

(a) Failure to provide the child care program notice of a change in circumstances could result in an overpayment. An overpayment may occur when a child care provider receives payments to which the provider is not entitled, including but not limited to:

- (1) Administrative errors, such as a parent is not charged the appropriate payment amount;
- (2) Parent errors, such as unintentional errors on payment invoices or fraud; and
- (3) Provider errors, such as failure to immediately inform of a child's absences; or fraud.

(b) An overpayment made to a provider shall be recovered through:

- (1) A reduction of the amount payable to the provider in subsequent months until the entire amount of overpayment is recovered. The parent is responsible for the difference and must pay the difference to the provider.
- (2) Repayment in full or in part, by the provider to the child care program.

(c) Parents subject to recovery of overpayment shall be provided written notice by the child care program stating:

- (1) Reasons, dates and the amount of the overpayment;
- (2) The proposed method by which the overpayment shall be recovered; and
- (3) The parent's right to request an administrative appeal if the individual disagrees with the child care program's proposed action.

(d) When there is both an overpayment and an underpayment to the parent, the overpayment and underpayment shall be offset one against the other in correcting the payment.

(e) Overpayment to parents may be recovered from the family that was overpaid, from individuals who were members of the family when overpaid, or from families which include members of a previously overpaid family.

(f) When recouping child care overpayments, overpayment may be recovered only from child care benefits, provided the parent continues to receive such benefits.

(g) Recovery of child care overpayments to parents who formerly received child care benefits shall be referred to the child care program's investigation office for collection action.

(h) If a parent for whom a collection action has been initiated fails to make payment for any month in the calendar tax year, the child care program may refer debts exceeding twenty-five dollars to the comptroller of the state for tax set off.

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(i) If the PSS underpays a provider, the PSS will reimburse the provider by paying back the underpaid amount.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: In subsection (b)(2), the Commission replaced the final semi-colon with a period and deleted the word “or.” In subsection (c)(1), the Commission replaced the final period with a semi-colon.

§ 60-10-520 Termination for Insufficient Funds

(a) The child care program may suspend or terminate benefits, reduce benefits, or refuse to take new applications for certain or all classes of beneficiaries set forth in § 60-10-105, if the child care program determines, at its discretion, that insufficient funds will be available to pay for child care services at current amounts through the end of the fiscal year.

(b) The budget will be managed by reviewing monthly expenditures, and evaluating whether the cumulative expenditures at the end of any given month is less then or equal to the number of months that have expired in the fiscal year times 1/12 of the budget appropriation for child care payments.

(c) When the child care program determines that the budget appropriation has or soon will be exceeded, notices of adverse action may be issued to limit the number of children receiving subsidies in any given month. This determination is entirely within the child care program’s discretion.

(d) Case termination, suspension or reduction of benefits, or refusal to take applications will be prioritized as set forth in § 60-10-105.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

**State Plan for Child Care & Development Fund Services
(for the Period 10/1/03 - 9/30/05)**

**Attachment
Payment Schedule**

#

1

Age Child	of	In-home	Family Home	Group Home	Center
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Birth - 2	U.S. Min. Wage	250.00	250.00	300.00
3 - 4	U.S. Min Wage	250.00	250.00	300.00
5 - 6	U.S. Min Wage	250.00	250.00	250.00
4 -5 -6	U.S. Min Wage	125 - 1/2 time	125 - 1/2 time	125 - 1/2 time
7 - 13	U.S. Min Wage	250.00	250.00	250.00
7 - 13	U.S. Min Wage	60 - after school	60 - after school	60 - after school

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: The original regulations did not include an attachment # 2. See 26 Com. Reg. at 23116-23117 (Aug. 26, 2004).

**Attachment
Sliding Fee Scale**

#

3

Family Income	Family Size		
	1- 3	4 - 6	7 or more
0-\$500	10%	10%	5%
\$501-750	15%	10%	5%
\$751-1000	20%	15%	10%
\$1001-1250	25%	20%	10%
1251-1500	30%	25%	15%
1501-1750	30%	25%	15%
1751-2000	N/A	25%	20%
2001-2250	N/A	25%	20%

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2251-2430	N/A	25%	20%
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The sliding fee scale percentage is a percent of the monthly cost of the child care service that the family pays and the child care program pays the balance. (Example: The monthly cost of child care for a toddler is \$300. The sliding fee scale co-payment is 15%. The parent’s co-payment is \$45. The child care program pays the balance of \$255.00.)

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 23026* (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23063 (Aug. 26, 2004); Proposed 25 Com. Reg. 21476 (Dec. 15, 2003).

*Due to a pagination error, page numbers 22819 through 23098 repeat in the 2004 Commonwealth Register.

Commission Comment: The Commission changed “parent pays co-payment is” to “parent’s co-payment is” to correct a manifest error.