

**CHAPTER 55-60**

**CHILD CARE AND DEVELOPMENT FUND RULES AND REGULATIONS**

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Chapter History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Amdts Adopted 36 Com. Reg. 34933 (Apr. 28, 2014); Amdts Proposed 36 Com. Reg. 34783 (Feb. 28, 2014); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Chapter Comment: The Department first issued Child Care and Development Fund regulations as emergency regulations in 2009. 31 Com. Reg. 29608 (June 22, 2009).

The Department designated these regulations as Chapter 50 of Title 55. The Commission previously reserved Chapter 50 for regulations regarding the Garapan Street Market, and re-designated this chapter as Chapter 60.

**Part 001 -      General Provisions**

**§ 55-60-001    Purpose**

The purpose of these Administrative Rules 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

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Child Care and Development Fund block grant as authorized part of the Omnibus Reconciliation Act of 1990, Pub. L. No. 101-58, Section 5082 and as amended by PRWORA, Pub. L. No. 104-193, Section 9598.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission changed the phrase “Public Law 104-193 Section 9598” to “Pub. L. No. 104-193, Section 9598.” pursuant to 1 CMC § 3806 (g).

### § 55-60-005 Definitions

- (a) “Activity” means employment, education, job search 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) “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 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.
- (d) “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.
- (e) “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.
- (f) “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.
- (g) “Child” means any person who has not reached the age of thirteen.
- (h) “Child Care” means those situations in which a child care provider has agreed to assume the responsibility for the child’s supervision, development, and guidance, apart from and in the absence of the child’s parent, for any part of a 24-hour day.
- (i) “Child Care Program” means the CNMI Department of Community and Cultural Affairs that shall administer and implement the Child Care Development Fund (CCDF) activities and provide assistance in compliance with the requirements of federal regulations.

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- (j) “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 Licensing Program of the Department of Community and Cultural Affairs to provide child care or are legally exempt from licensure or registration by the same licensing program.
- (k) “Child Care Services” means the care given to an eligible child by an eligible child care provider.
- (l) “Child experiencing homelessness” means a child who is homeless.
- (m) “Director” means a person who has primary responsibility for the daily operations and management for a child care provider, which may include a family child care provider which may serve children from birth to kindergarten entry and children in school-age child care.
- (n) “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.
- (o) “Employed” means the parent or legal guardian is engaged in an activity in exchange for wages or salary for at least 30 hours per week.
- (p) “English as a Second Language” (ESL) means the condition where the child and/or the parent (see definition on “parent”) have limited English proficiency.
- (q) “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.
- (r) “Family” means one or more adults and their minor children, if any, related by blood, marriage, adoption, or judicial decree, who resides in the same household. Related adults other than spouses or unrelated adults residing together shall each be considered a separate family.
- (s) “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 the Health\* and Human Services under the authority of 42 U.S.C. 9902(2), OBRA of 1981. It is a simplification of the U.S. Census Bureau’s poverty threshold, which is issued for administrative purposes.
- (t) “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.
- (u) “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.  
a private residence other than the child’s residence.

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- (v) “Guardian” means a court appointed legal guardian of the person of the minor child.
- (w) “Homelessness” means as it is defined in section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S.C. § 11434(a)).
- (x) “In Home Care Provider” means any individual who provides care in the home of the child.
- (y) “Intersession 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.
- (z) “Job Search” is defined as an-activity that demonstrates an individual is actively seeking potential employment. Qualifying job search activities include (but is not limited to) completing job applications in person; completing on-line computer applications at employment agencies and/or community agencies, engaging in interviews, registration at the CNMI Labor Office, and phone inquiries about possible job openings with potential employers. Job search is not to exceed three months.
- (aa) “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 an occupation.
- (bb) “License-Exempt Care” means child care to less than 5 children which is exempt from licensure pursuant to CNMI law and the current state plan and is registered by the Child Care Program.
- (cc) “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, specifically the Department of Community and Cultural Affairs (DCCA).
- (dd) “Parent” means a birth, foster or adoptive parent, guardian, a person acting in the place of a parent, step-parent, 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. In cases of split custody, it is the parent with whom the child resides with more than 50% of the time. In cases where each parent has custody of the child for an equal amount of time, then both parents must jointly qualify for the program.
- (ee) “Part-Time Care” means child care provided for less than 30 hours per week. This excludes before-school, after-school care and intersession care.
- (ff) “Payment Month” means the calendar month in which the Child Care Program shall issue the child care payment.

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- (gg) “Physician” means an individual licensed by the CNMI for the practice of medicine.
- (hh) “Registered” means children, parent, parents, and service providers who are registered with the DCCA Child Care Program and who benefit from the DCCA Child Care Program.
- (ii) “Relative” means related by blood, marriage, or adoption.
- (jj) “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.
- (kk) “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.
- (ll) “School Age” means the chronological age of children enrolled in elementary and junior high school below the age of 13.
- (mm) “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 or a Public School System certified psychologist.
- (nn) “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 and Development Fund.
- (oo) “Very Low Income” means income that is at or below the 85% of State Median Income Guideline.

\* So in original.

Modified, 1 CMC § 3806(a), (g).

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission corrected the capitalization of “child care” in subsections (h) and (j), “federal” in subsection (q), “court” and “legal guardian” in subsection (u), “law” in subsection (z), and “government” in subsection (aa) pursuant to 1 CMC § 3806(f). The Commission inserted commas after the words “agency” in subsection (l), “adoption” in subsection (p), and “agency” in subsection (y) pursuant to 1 CMC § 3806(g). The Commission inserted a close parenthesis after the word “parent” in subsection (n) pursuant to 1 CMC § 3806(g). The Commission corrected “provide’s” to “provides” in subsection (v) pursuant to 1 CMC § 3806(g). The Commission corrected the phrase “but is” to “but are” in subsection (x) pursuant to 1 CMC § 3806(g). The Commission corrected “parent’s” to “parents” in subsection (bb) pursuant to 1 CMC § 3806(g). The Commission corrected the spelling of the word “government” in subsection (aa) pursuant to 1 CMC § 3806(g).

In codifying 39 Com. Reg. 39910, the Commission renumbered (hh) to (gg), and renumbered all subsequent subsections accordingly pursuant to 1 CMC § 3806(g).

**§ 55-60-010 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.)

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a comma after the word “records” pursuant to 1 CMC § 3806(g). The Commission inserted a period after the word “files” and moved the final period inside the parentheses pursuant to 1 CMC § 3806(g).

**§ 55-60-015 Geographical Location**

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

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

**§ 55-60-020 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.

**Part 100 - Application to Child Care Program**

**§ 55-60-101 Application Process**

- (a) Requests 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 documents, 1040 tax return, notarized affidavit of living arrangement, employment contract (if applicable) 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) 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(g).

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

### **§ 55-60-105 Priority Applications**

The following sets forth the priorities for serving eligible children:

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

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

### **§ 55-60-110 Notice of Application Disposition**

- (a) The Child Care Program shall notify applicants about the applicant's eligibility for child care service within fifteen days after submission of a complete application with all required attachments.
- (b) Applicants determined not eligible shall be sent a written notice that contains a statement of the action taken, the reason 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.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission struck the figure “15” in subsection (a) pursuant to 1 CMC § 3806(e).

**Part 200 - Eligibility**

**§ 55-60-201 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 a job training or an educational program and who has a monthly CNMI gross income that does not exceed Federal Poverty Income Guideline (FPIG) or 85% of the State Median Income for a family of the same size; and
- (b) Be under the age of 13; and
- (c) All parents shall be eligible for child care under this subchapter provided the parents meet the following conditions:
  - (1) Have a monthly gross income that does not exceed the Federal Poverty Income Guideline (FPIG) or 85% of the State Median Income for a family of the same size; and
  - (2) 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.
  - (3) 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 childcare assistance. Acceptable documentation includes, but is not limited to, birth certificate or passport.
  - (4) Gainfully employed 30 hours per week or scheduled to start work in 2 weeks; or
  - (5) Need child care for up to 90 calendar days during a break in employment, if employment is scheduled to resume within 90 calendar days; or
  - (6) Job Search: Need child care for up to 90 calendar days during a break in employment and is actively seeking employment;
  - (7) Are enrolled in a job training and educational program (for at least 20 hours per week) or attending an education program on a full time bases (12 hours per semester for the college and five classes per day for the PSS); or
  - (8) For parents who are in the final semester of a program and who need less than 12 credits to graduate, they will be considered to be attending full-time for that final semester if in fact they are taking all the credits needed to graduate.
  - (9) 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



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physician, psychologist, psychiatrist, or a territory-licensed care provider. The written report shall be reviewed every two months, and is valid when one parent is participating in an approved activity.

- (10) Eligibility may be re-established for periods not less than 12 months.
- (11) Participation in a mandatory orientation.

(d) Child care providers shall meet the following conditions in order that child care payments may be authorized:

(1) For licensed center based and family child care providers:

- (i) Is 18 years old or older;
- (ii) Afford parents unlimited access to their children during normal hours of provider operation and whenever the children are in the care of the provider;
- (iii) Completes an application packet (and renewed annually) and submits the following documents:

(A) W-9.

(B) Current Business License.

(C) DCCA Child Care License Certificate.

(D) Center Rate.

(E) Center Program Policy/Parent Handbook which includes at a minimum the following areas with further guidance as specified by DCCA's Child Care Program using the Caring for our Children: Basics and/or Caring for our Children 3rd edition or latest edition.

(I) Admission and Enrollment;

(II) Supervision;

(III) Emergency Evacuation Plan, Drills, and Closing;

(IV) Sanitation and Hygiene;

(V) Sleeping Position;

(VI) Food Handling, Feeding and Nutrition;

(VII) Staff Schedule and supervision;

(VIII) Smoking Policy;

(IX) Evening and Night Care Plan (as applicable).

(F) First Aid/CPR Certificate,

(iv) Submits to an initial and annual inspection and approval;

(v) Must meet at a minimum 35 square footage of indoor learning space per child;

(vi) Must meet at a minimum 33% of facility capacity at 75 square footage of outdoor playground space per child.

(vii) Subject to DCCA Child Care Program Staff announced and unannounced monitoring visits at least once annually.

(2) For licensed-exempt family home providers, including in-home providers:

(i) Is 18 years or older;

(ii) 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;

(iii) Completes an application packet (and renewed annually) and submits the following documents:

(A) W-9;

(B) Rate that will be charged parents;

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- (C) Current Business License;
  - (D) Police Clearance;
  - (E) Health Clearance;
  - (F) First Aid/CPR Certificate.
  - (iv) Submits to an initial and annual inspection and approval;
  - (v) Subject to DCCA Child Care Program staff announced and unannounced visits;
  - (vi) Complete a self-certified checklist which is available from DCCA Child Care Program. Said checklist will then be verified by DCCA Child Care Program staff member.
- (e) All types of providers will:
- (1) 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.
  - (2) Provide consent to conduct an FBI Finger Print Check, National and Local Sex Offender Registry, 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 convictions for:
    - (i) Murder, as defined under CNMI or similar offenses as defined in other jurisdictions or as described in Section 1111 of Title 18, United States Code;
    - (ii) Crimes against children as defined under CNMI or similar offenses as defined in other jurisdictions including criminal sex offenses against a minor child and child abuse or neglect;
    - (iii) Violent felonies in which an individual threatens to cause, attempts to cause, or causes serious bodily injury, such as physical assault or battery, including spousal abuse;
    - (iv) Sexually violent offenses, such as, rape or sexual assault, as defined by CNMI law or other similar offenses in other jurisdictions;
    - (v) Kidnapping;
    - (vi) Arson;
    - (vii) Violations of the CNMI Minor Children Firearms Control Act, or the CNMI Special Act for Firearms Enforcement (SAFE), or similar offenses in other jurisdictions;
    - (viii) Distribution of a controlled substance to persons under 18 as defined by CNMI law or similar offenses in other jurisdictions;
    - (ix) Any drug related offense committed during the preceding five years or has been convicted of a misdemeanor involving child pornography;
    - (x) 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.
  - (3) Is free of tuberculosis as indicated by a skin test or chest x-ray completed within the last 24 months;
  - (4) Have a child care facility or home with an installed smoke detector, unobstructed emergency exits, and an emergency preparedness and evacuation plan.
  - (5) 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. All child care service providers must annually participate in at least 30 hours of annual 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

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### Child Care Program.

(6) All new providers must complete within 90 days a minimum of 10 hours of Pre-Service Trainings in at least five of the following topics, and not less than one hour of training per topic: Prevention and control of infectious diseases (including immunization); Prevention of sudden infant death syndrome and use of safe sleeping practices; Administration of medication, consistent with standards for parental consent; Prevention of and response to emergencies due to food and allergic reactions; Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic; Prevention of shaken baby syndrome and abusive head trauma; Emergency Preparedness; Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants; Pre-cautions in transporting children; First Aid and Infant/child Cardiopulmonary Resuscitation; Child Development; and Child Abuse and Neglect. Pre-service trainings of at least one hour in each of the aforementioned topics should be completed within the first 180 days of employment and while the provider is completing their training, they may not be left alone with the children without a Child Care Program certified care provider present.

(7) All providers including family members living in the provider's home 18 years and older shall be checked against the Sex Offenders Registry and Notification Act (SORNA) with the Department of Public Safety (DPS). In the event that a family member living in the prospective provider's home is identified as included in the registry, that provider's application is disapproved.

(8) All providers must have a working telephone land line within the building.

(f) 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.

(g) The Child Care Program shall:

- (1) Verify that the children and parents meet the eligibility requirements as described in these regulations;
- (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 12 months.
- (4) Require a family member to certify that the family assets do not exceed \$1,000,000.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Amdts Adopted 36 Com. Reg. 34933 (Apr. 28, 2014); Amdts Proposed 36 Com. Reg. 34783 (Feb. 28, 2014); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: This section was largely unpunctuated in the original regulation. The Commission inserted punctuation as appropriate pursuant to 1 CMC § 3806(g). The original regulation skips from subsection (c) to subsection (e). The Commission re-designated subsection (e) as subsection (d) and re-designated subsection (f) as

subsection (e) pursuant to 1 CMC § 3806(a). The 2014 amendments purported to amend sections (7) and (10). The only subsections numbered (7) and (10) were subsections (c)(7) and (c)(10). The Commission codified the amendments at subsections (c)(7) and (c)(10).

**§ 55-60-205 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.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a period at the end of subsection (a) and at the end of subsection (b)(1)(ii), and a semicolon in subsection (b)(1)(i) pursuant to 1 CMC § 3806(g).

**§ 55-60-210 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;
- (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, credits;
  - (2) Retroactive lump sum Social Security, SSI, or unemployment compensation benefits;
  - (3) Retroactive annual adjustment payments in the Veterans’ Administration’s (VA) disability pensions;
  - (4) Lump sum inheritance or insurance payments;
- (f) Refunds of security deposits on rental property or utilities;

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- (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 or 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 foods;
- (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) (42 U.S.C. 1786);
- (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 program under the Job Training Partnership Act (JTPA) of 1982 (25 U.S.C. § 1501 et seq.) who are between 18 and 19 years of age and under the parental control of another household member;
- (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 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;

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- (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 American Act of 1965 (Pub. L. No. 100-175);
- (z) Payments to volunteers derived from the volunteer's participation in the following program authorized by the Domestic Volunteer Service Act of 1973 (42 U.S.C. § 5011, 4951-4958):
  - (1) Foster grandparent program;
  - (2) Senior companion program; and
  - (3) Volunteers in service to America (VISTA) and AmeriCorps program.
- (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.

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a semicolon after the word "payments" and inserted semicolons at the ends of subsections (g), (h), and (s) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of "Social Security" in subsection (e)(2) and of "Federal Emergency Management Agency" in subsection (u) pursuant to 1 CMC § 3806(f). The Commission corrected the phrase "veteran administration's" in subsection (e)(3) to "Veteran's Administration's" pursuant to 1 CMC § 3806(f) and (g).

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.

### § 55-60-215 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: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

**Part 300 - Child Care Payment**

**§ 55-60-301 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;
  - (6) The parent's work attendance;
  - (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 the engaged in by the parent for the month\* (full or part time).
  - (2) Using the current 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.
  - (3) The child care amount to be paid each month of eligibility shall be the child care rate on the child care rate table for full time or part time.

\* So in original.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: As the intended punctuation for subsections (c)(1) through (c)(4) is unclear, the Commission let the original punctuation stand.

**§ 55-60-305 Child Care Payments**

- (a) The payment rate shall be established by the current State Plan.
- (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.
- (d) When computing the reimbursement amount, the Child Care Program shall establish a

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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 within the first work day of the month. Invoices received after the first work day of the month will be considered late and will not be processed until the following month.

(g) The family shall pay its portion of the child care cost.

(h) Effective Oct. 1, 2009, all parents will pay their co-payments directly to the CNMI Treasury.

(i) 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(g).

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

### **Part 400 - Other Requirements**

#### **§ 55-60-401 Reporting Changes**

A parent who is a recipient of subsidized child care services shall be responsible to report in writing in a prescribed form to the Child Care Program within 10 calendar days of the occurrence of any changes in:

(a) Monthly gross income and the source of the income;

(b) Circumstances which may affect the recipient's eligibility for continuing services, including, but not limited to;

(1) Changes in employment, educational program, or job, vocational or employment training;

(2) Anticipated changes in the individual's situation that may affect the individual's eligibility for continued child care assistance;

(c) Attendance: Parent shall report in writing to the Child Care Program when their child has more than five absences in a month.

Modified, 1 CMC § 3806(a), (g).

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28,



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2017); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission capitalized the word “Contact” and inserted a period at the end of subsection (b)(3) pursuant to 1 CMC § 3806(f) and (g). The Commission inserted a semicolon at the end of subsection (c) pursuant to 1 CMC § 3806(g). The Commission corrected the word “individuals” to “individual’s” in subsection (f)(3) pursuant to 1 CMC § 3806(g).

### **§ 55-60-405 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) Not less frequently than every 12 months from the month eligibility was determined.
- (b) Redetermination 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 which include attending a mandatory orientation.

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Amdts Adopted 36 Com. Reg. 34933 (Apr. 28, 2014); Amdts Proposed 36 Com. Reg. 34783 (Feb. 28, 2014); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a semicolon after the word “ineligibility” in subsection (a)(2) pursuant to 1 CMC § 3806(g). The 2014 amendments purported to amend § 55-50-405(a)(4). As no such section exists, the Commission codified the amendment at § 55-60-405(a)(4).

### **Part 500 - Adverse Actions**

#### **§ 55-60-501 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;

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- (g) When the child care provider is no longer meeting licensing and/or subsidy requirements as applicable;
- (h) The parent(s) voluntarily requests in writing discontinuance of child care services; or
- (i) The parent(s) and the child are unable to use child care; or
- (j) The parent (s) cannot be located; or
- (k) The family fails to provide the required verification for redetermination or to support the reported changes; or
- (l) When recipients do not complete the process of redetermination or 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 section 55-60-105 of these regulations.
- (n) When the parent does not pay their contribution to the cost of child care at the minimum percentage fee (co-payment).

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission inserted a semicolon after the word “care” in subsection (f), after the word “applicable” in subsection (g), and after the word “care” in subsection (i) pursuant to 1 CMC § 3806(g). The Commission changed the cite to “section 55-50-105” in subsection (m) to “section 55-60-105” pursuant to 1 CMC § 3806(d).

### **§ 55-60-505 Notice of Adverse Action**

- (a) Prior to any action to reduce, deny, suspend, or terminate any childcare service specified in these regulations, 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) A citation to 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 Secretary, Department of Community and Cultural Affairs.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The subsections were originally designated as subsections (a), (c), and (c). The

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Commission changed them to (a), (b), and (c) pursuant to 1 CMC § 3806(a). The Commission inserted semicolons at the ends of subsections (c)(1) and (c)(2) and converted the period at the end of subsection (c)(3) to a semicolon pursuant to 1 CMC § 3806(g).

### § 55-60-510 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, and 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 Department of Community and Cultural Affairs Office of the Secretary 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 DCCA 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 Office of the Secretary shall provide notice of denial to the family.

(d) A hearing officer appointed by the Secretary 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 hearing officer shall issue a written decision to the Child Care Program and the family within 30 days after the hearing.

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission corrected the phrase "and interpreter" in subsection (a)(3) to "an

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interpreter” pursuant to 1 CMC § 3806(g). The Commission corrected the period at the end of subsection (b)(1) to a semicolon pursuant to 1 CMC § 3806(g).

### § 55-60-515 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 in 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 a 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.

(i) If the DCCA Child Care Program underpays a provider, the DCCA Child Care Program will reimburse the provider by paying back the underpaid amount.

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: The Commission corrected the semicolon at the end of subsection (b) to a colon, the period at the end of subsection (b)(1) to a semicolon, and the semicolon at the end of subsection (b)(2) to a period pursuant to 1 CMC § 3806(g). The Commission inserted a semicolon after the word “overpayment” in subsection (c)(1) pursuant to 1 CMC § 3806(g). The Commission corrected the phrase “and overpayment” in subsection (d) to “an overpayment” pursuant to 1 CMC § 3806(g).

**§ 55-60-520 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 as set forth in Section 1006, 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 than 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 application will be prioritized as set forth in section 60-10-105.

History: Adopted 33 Com. Reg. 32152 (Dec. 29, 2011); Proposed 33 Com. Reg. 31993 (Oct. 26, 2011).

Commission Comment: “Section 1006,” referenced in subsection (a), is not defined in the original regulation.

**Part 600 - Adverse Actions against Providers**

**§ 55-60-601 Denial, Suspension, Revocation of CCDF Provider’s Certificate, and Hearings**

- (a) The conditions for denial, suspension, or revocation of a child care provider’s eligibility to participate in the Child Care Development Fund (CCDF) program and the action to be taken by the CCDF are as follows:
  - (1) CCDF may deny, suspend, or revoke the provider’s eligibility to participate in the program if the provider does not comply with the rules of the CCDF for the providers and their facilities;
  - (2) CCDF may revoke the provider’s CCDF certificate if the provider has a violation and has been suspended at least once previously;
  - (3) An application by a provider for renewal of a CCDF certificate must be made at least 30 calendar days prior to its expiration and not earlier than 120 days before its expiration.
  - (4) A provider whose CCDF certificate is about to be denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the CCDF

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application or CCDF certificate.

(5) The notice shall contain a statement of the reasons for the proposed action and shall inform the provider of the right to appeal the decision to the Office of the Secretary of the Department of Community and Cultural Affairs, no later than 20 days after receipt of the notice of proposed action.

(6) The provider has twenty days from receipt of the notice of proposed action to make a written request for a hearing. Upon receipt of appeal the Secretary of DCCA shall give written notice to the provider of a time and place for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision as to whether the provider's certificate shall be denied, suspended, or revoked; and

(7) If no timely written request for a hearing is made, processing of the application shall end or the certificate shall be suspended or revoked as of the termination of the twenty day period.

(8) The CCDF program will notify the parents or legal guardians of each child who is provided care in the provider's home or facility of the suspension or revocation.

(9) At any hearing provided for by this section, the provider may be represented by counsel and has the right to call, examine, and cross examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and conclusions of law, and shall be mailed to the parties by certified or registered mail to the last known address as is shown on the application or CCDF certificate. The Administrative Procedure Act (1 CMC §§ 9101 *et seq.*) shall also be applicable at any hearing.

History: Amdts Adopted 39 Com. Reg. 39910 (Sept. 28, 2017); Amdts Proposed 39 Com. Reg. 39851 (Aug. 28, 2017); Adopted 36 Com. Reg. 34933 (Apr. 28, 2014); Proposed 36 Com. Reg. 34783 (Feb. 28, 2014).

Commission Comment: The Commission corrected the capitalization of the word "certificate" in subsections (a)(2), (a)(3), and (a)(8) pursuant to 1 CMC § 3806(f). The Commission corrected the spelling of the word "and" in subsection (a)(4) pursuant to 1 CMC § 3806(g).