

## Article 1. Administrative Provisions.

### Section

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**7 AAC 41.010. Applicability.** (a) This chapter applies to the administration of the child care assistance program under AS 47.25.001 - 47.25.095 by the department, or by a designee described in AAC 41.015. This chapter does not apply to

(1) child care grant money administered under 7 AAC 39; or

(2) child care assistance paid under AS 47.27 and 7 AAC 45 as described in 7 AAC 41.012(1), except to the extent that provisions of this chapter are made applicable under 7 AAC 45.

(b) A child care assistance program

(1) means public financing and support for a wide range of child care services, including program benefits and support to parents and providers;

(2) includes day care assistance under AS 47.25.001 and child care assistance under this chapter; and

(3) does not include child care licensing under 7 AAC 57, or child care assistance under AS 47.27 and 7 AAC 45, except to the extent that one or more provisions of this chapter have been made applicable under 7 AAC 45.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.012. Parents achieving self-sufficiency (PASS).** The department has designated its child care assistance program as the Parents Achieving Self-Sufficiency (PASS) program, and has created three categories of assistance:

(1) PASS I provides child care assistance as a self-sufficiency service under AS 47.27 and 7 AAC 45 to low income eligible families applying for or receiving ATAP benefits;

(2) PASS II provides child care assistance under AS 47.25 and this chapter to low to moderate income eligible families for the first year after ATAP benefits cease, for purposes of transitioning from ATAP;

(3) PASS III provides child care assistance under AS 47.25 and this

chapter to low to moderate income eligible families, regardless of whether the family has received assistance under PASS I or PASS II. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.013. Family.** For purposes of this chapter, a family is

- (1) one parent, and that parent's children under 18 years of age, living together in a household;
- (2) two parents who are married to each other, and the children under 18 years of age of either or both parents, living together in a household; or
- (3) the two biological parents of a child who are not married to each other, that child, and any other children under 18 years of age of either of those parents, living together in a household. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.015. Responsibilities of designees.** (a) The department may designate an entity or a municipal government to administer child care assistance program services within a specified geographic area for PASS II and PASS III families and child care providers under this chapter. A municipality will be given preference over other organizations, as required by AS 47.25.001(b)(2).

(b) If the department designates an entity or municipal government to perform certain functions on the department's behalf, those functions may include one or more of the following:

- (1) for providers and for PASS II and PASS III families:
  - (A) provide program information;
  - (B) obtain completed applications or renewals;
  - (C) verify and evaluate information supplied by providers and families for participation in the child care assistance program and payment of benefits related to that participation;
  - (D) verify that the provider's license or approval is in good standing;
  - (E) request additional information if necessary to evaluate eligibility;
  - (F) approve or deny participation in the program;
  - (G) determine the amount of child care to authorize, including determination of the family contribution toward the eligible cost of care; for a two-parent family, evaluate and discuss with the parents work schedule options, and determine the necessity for more than full-time care;
  - (H) submit applications, evaluations, decisions, or recommendations, and related reports, to the department upon request;
  - (I) provide ongoing review for compliance with the applicable provisions of this chapter and refer suspected noncompliance to the department;
  - (J) determine whether a provider or family becomes ineligible for

participation in the program, and, if so, discontinue authorization and payment and issue notice in accordance with 7 AAC 41.405;

(K) except as provided in (e) of this section, receive and process complaints;

(2) in addition to (1) of this subsection

(A) for a nonrelative provider approved under 7 AAC 41.200(d), monitor providers for compliance with the applicable health and safety standards of this chapter; the provisions of this subparagraph do not apply to the requirement dealing with criminal history checks under 7 AAC 41.205(b); and

(B) for a relative provider approved under 7 AAC 41.200(e),

(i) obtain documents and review information related to background checks in accordance with 7 AAC 41.205(c) and (d);

(ii) as necessary, request the department to review information obtained under 7 AAC 41.205(c) and (d); and

(iii) monitor providers for compliance with the applicable health and safety standards of this chapter.

(c) A designee shall refer a provider subject to licensure under AS 47.32 and 7 AAC 57 to the department.

(d) A designee shall deny or discontinue a family's or a provider's participation in the program if the family or provider is ineligible under AS 47.25.001 - 47.25.095 or this chapter. Subject to 7 AAC 41.405, the designee shall mail to the provider or family, as applicable, a written determination of denial or discontinuance of participation in the program and a notice of request for administrative review form. Under 7 AAC 41.415 and 7 AAC 41.430, a designee may submit to the department a recommendation regarding any change in program participation based on noncompliance with AS 47.25.001 - 47.25.095 or this chapter.

(e) A designee shall immediately report to the department any noncompliance with an applicable health and safety requirement of this chapter. The department will evaluate the report and, if the department determines that an investigation is warranted,

(1) conduct the investigation;

(2) develop a plan with the designee for a coordinated investigation; or

(3) authorize the designee to conduct the investigation and submit a report and recommendation to the department.

(f) The department may separately approve, deny, monitor, and investigate providers and families, regardless of whether a designation has been made under this section.

(g) If the designation under this section is accomplished through a grant or contract, the designee shall administer its grant or contract in compliance with this chapter, other applicable state or federal law, and the grant or contract, regardless of whether the designee has subcontracted administrative duties to a subcontractor. Any subcontract must require the subcontractor to administer the subcontract in compliance with this chapter, and other applicable state or federal law.

(h) A designee shall use forms prescribed by the department to administer the child care assistance program unless the department authorizes, in writing, the use of another form that provides the same information as the prescribed form.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.300 AS 47.05.340 AS 47.25.001  
AS 47.05.310

**7 AAC 41.025. Program rates.** (a) For purposes of calculating a family's program benefits under 7 AAC 41.345, the program rate for each category of care authorized for a child is established in the department's *Child Care Assistance Program Rate Schedule*, revised as of November 23, 2009, and adopted by reference. The rates in the schedule are set out by type of facility licensed under 7 AAC 57 or approved under this chapter, category of care, and political subdivision or geographic area.

(b) The categories of care differentiate by age group of the child and by whether the care is provided on an enrollment or an attendance basis. The categories of care include

(1) preschool age child, school age child, infant, and toddler, as those terms are defined in the schedule for purposes of the schedule;

(2) full-time and part-time monthly enrollment; and

(3) full-day, partial-day, and hourly attendance.

(c) The program rates in the schedule are based on the following standards:

(1) to ensure that eligible families have equal access to child care services comparable to child care provided to families that are not eligible to participate in the program; if the full range of providers is available in a community, a choice of the full range of providers is available to eligible families; in this paragraph, "full range of providers" includes a child care center, child care home, child care group home, and in-home child care; and

(2) to ensure that program rates are adequate, as follows:

(A) rates are based on availability of appropriations and on market conditions, using information obtained by the department through a market rate survey of child care providers in the state;

(B) for a political subdivision or geographic area, rates are a percentile, up to the 75th percentile, of the rates of a representative sample of child care providers in that political subdivision or geographic area or in a similar one; and

(C) for a political subdivision or geographic area, rates may be adjusted by the department to

(i) expand capacity for child care;

(ii) address factors indicating a shortage of available care, such as care for infants, children with disabilities or with special needs as described in 7 AAC 57.940, or children of parents who work during nontraditional hours; and

(iii) address market imperfections, including situations in which the market rate is below the actual cost of care.

(d) The maximum payment for a child during a month is equal to the full-time monthly enrollment rate plus the part-time monthly enrollment rate for the category of

care and the type of facility where care is provided. If the child uses two types of facilities, the rate for the facility the child is in for the most time applies.

(e) A child with special needs as described in 7 AAC 57.940 who is under 13 years of age may qualify for a supplemental program rate as determined by the department. In a child care authorization, the department will or a designee may authorize a supplement to program rates under this subsection only if

(1) the child's special needs are documented by a health professional; and  
(2) the provider establishes, in consultation with the child care resource and referral agency assisting the family, on a form prescribed by the department, that the child requires additional services due to the child's special needs, and that those services have an additional cost; in this paragraph, "child care resource and referral agency" means an entity that

(A) assists families in finding child care;

(B) works to

(i) improve the quality of child care; and

(ii) increase the availability of child care; and

(C) assists in child care planning for the agency's service area.

(f) If child care is provided in the child's own home, the program rate for an approved in-home child care provider is the rate for an approved provider shown on the department's schedule set under this section.

(g) The total eligible cost of care for a family choosing in-home child care is limited to a monthly maximum that is equal to two times the minimum hourly wage established under AS 23.10.065, multiplied by 210.

(Eff. 6/23/2006, Register 178; am 8/31/2008, Register 187; am 2/31/2010, Register 193; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001 AS 47.25.041

**Editor's note:** A copy of the *Child Care Assistance Program Rate Schedule*, adopted by reference in 7 AAC 41.025, is available from the Child Care Program Office, Department of Health and Social Services, 619 E. Ship Creek Avenue, Suite 230, Anchorage, Alaska 99501-1677.

**7 AAC 41.030. Enhanced program rate for qualified providers.** (a) To promote access by families participating in the child care assistance program to the highest quality of child care, and subject to the availability of appropriations, the department will increase the program rate paid to a facility described in 7 AAC 41.200(a) (1) - (3), if the department determines the facility is qualified under this section. Unless available appropriations require a smaller increase, the department will increase the program rate by 10 percent above the program rate established in the schedule under 7 AAC 41.025 if the facility's current rate charged for child care is equal to or exceeds the enhanced rate.

(b) A facility may apply to be eligible for the enhanced program rate under this section using a form prescribed by the department. For a facility to be eligible under this section,

(1) the facility must

(A) be currently accredited by the National Association for the Education of Young Children, the National Association of Family Child Care, or the National Afterschool Alliance; or

(B) provide documentation showing that at least 40 percent of the staff who work with children in the facility have been employed in the facility for at least one year; those staff members must also

(i) meet or exceed level one requirements of the System for Early Education Development (SEED) program administered through the University of Alaska; and

(ii) complete at least five hours of training each year over and above the annual licensing training requirements for each individual;

(2) the facility may not have been the subject of a licensing enforcement action under AS 47.32 within the previous 12 months;

(3) the facility may not have three or more violations of a single requirement within 12 months of the first violation, or continued violations of two or more requirements in the previous 12 months;

(4) the facility may not be on a first year or provisional license; and

(5) all staff who work with children in the facility must participate in the SEED registry if available.

(c) If the department determines that a facility is not qualified under (b) of this section, the facility may reapply every six months.

(d) The department will annually evaluate each facility receiving an enhanced program rate under this section to determine whether the facility continues to be qualified under (b) of this section.

(e) Within 30 days after issuing a written notice to the facility, the department will discontinue an enhanced program rate under this section if appropriations are no longer available or if the facility ceases to meet the standards of (b) of this section. If the discontinuance is for failure to meet the standards of (b) of this section, the notice will advise the facility of the right to request an administrative review under 7 AAC 41.435.

(f) In this section, "SEED" means System for Early Education Development. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001 AS 47.25.041

**Editor's note:** Information regarding requirements of the System for Early Education Development (SEED) program referred to in 7 AAC 41.030 is available from the University of Alaska Southeast, Bill Ray Center, Professional Education Center, 1108 F Street, Juneau, AK 99801. Additional information is available at the following website: <http://seed.alaska.edu/aboutseed.html>.

**7 AAC 41.035. Enrollment authorization.** (a) For a child whose authorized category of care is for monthly enrollment, child care costs are paid based on the monthly enrollment rate established in the program rate schedule under 7 AAC 41.025, except that the department will or a designee may apply an attendance rate under that schedule if the family

(1) becomes ineligible for program participation during the month; or  
(2) leaves the participating provider during the month and a written 14-day notice was given or received or was mutually waived.

(b) For a child whose authorized category of care is for monthly enrollment, the department will not make payment to the provider for a month during which the child was not ever in the provider's care. If the child was in care for five or fewer days during a month, the following month's authorization will revert to an attendance basis.

Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.040. Attendance authorization.** (a) For a child whose authorized category of care is for daily or hourly attendance, the department will pay child care costs based on the

(1) attendance rate established in the department's *Child Care Assistance Program Rate Schedule*, adopted by reference in 7 AAC 41.025;

(2) child's actual attendance at the facility; and

(3) schedule of eligible activities of the parents of the family under 7 AAC 41.310.

(b) The department will pay an attendance authorization based on the monthly enrollment rate when a child's actual attendance at the facility, based on a five-day-a-week schedule, is 17 or more days during a month. Care provided beyond the five-day-a-week schedule will be paid at the daily rate in addition to the enrollment rate.

(c) An attendance authorization may be used to authorize care in addition to an enrollment rate as specified in the authorization issued under 7 AAC 41.340.

Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.050. Insufficient appropriations.** (a) If the department determines that available appropriations are insufficient to provide full program benefits for participating families or to add new eligible families, the department may take one or more of the following actions:

(1) terminate, or require a designee to terminate, program benefits for one or more participating families;

(2) limit the activities eligible for a program benefit under 7 AAC 41.310(2) - (6);

(3) establish a wait list under (d) of this section;

(4) reduce, or require a designee to reduce, program benefits for all participating families, by a percentage that is based on any shortfall in available appropriations.

(b) In complying with (a)(1) of this section, the highest priority for retention in the child care assistance program will be given to a participating family lowest on the department's *Family Income and Contribution Schedule*, adopted by reference in

7 AAC 41.335, prioritize by lowest income by family size within each of the two categories described in (d)(1) and (2) of this section.

(c) If a designee develops a plan as an alternative to (a) and (b) of this section, the designee may submit that plan to the department for approval. If the department approves the plan, the approval constitutes a waiver of the requirements of (a) and (b) of this section for affected participants for the duration of the approved plan.

(d) Subject to (f) of this section, if the department establishes a wait list under (a)(3) of this section, the wait list must prioritize eligible families for participation in the program, as follows:

(1) the highest priority is given to families in which a single parent is, or both parents are

(A) working; or

(B) attending school, if the department has paid child care assistance for full-time student status for less than five years;

(2) the next priority is given to families in which a parent is

(A) seeking work; or

(B) attending school, if the department has paid child care assistance for full-time student status for five years or more.

(e) A parent is attending school if the parent is participating in an educational or training program. An educational program is a structured learning environment in which an instructor or teacher leads students through a course of study that includes specific learning objectives, goals, and standards, and leads to a certificate of mastery or completion, a state license, a diploma, or a degree. A training program is a structured learning environment for participants that has specific learning objectives, identified skills to be mastered, a beginning date, and an ending date.

(f) Within each of the categories set out in (d) of this section, families will be prioritized by the lowest percentage of state median income for family size, calculated under 7 AAC 41.325, using the department's *Family Income and Contribution Schedule*, adopted by reference in 7 AAC 41.335. If all other priorities are equal, families will be prioritized by date of program application, with the longest standing application receiving highest priority.

(g) A family that includes one or more of the following individuals will not be placed on a wait list, but will immediately receive benefits upon a determination of eligibility:

(1) a new child of a participating family;

(2) a child with special needs who is determined to be eligible under 7 AAC 41.025(e); benefits will be limited to the child with special needs;

(3) a child with parents who are less than 20 years of age and who are enrolled in a high school completion program;

(4) a child of a family that has left a temporary assistance program within the last 12 months because of employment.

(h) If the department establishes a wait list under (a)(3) of this section, a designee shall add eligible families to the list in accordance with (f) and (g) of this section. On the date the department notifies designees statewide that the wait list is to be processed, each designee shall begin to process, and the department will close, the wait list. Designees shall place families determined to be eligible for participation in the program on or after

that date on a secondary list. The department may add families placed on the secondary list within the past 12 months to the wait list in accordance with (f) and (g) of this section.

(i) When a wait list is processed, the department will or the designee shall determine whether a family continues to meet all program eligibility requirements, and whether the family's placement on the wait list is correct with regard to current family income. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001 AS 47.25.031

**7 AAC 41.055. Program participation prohibitions.** A provider or family that is otherwise eligible for child care assistance payments or benefits under this chapter is prohibited from participating in the program if

(1) the provider or a parent has been debarred or suspended in accordance with 45 C.F.R. Part 76; or

(2) if one or more of the parents in a family is determined to be ineligible for a reason set out in 7 AAC 41.450. Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001 AS 47.25.021 AS 47.25.031

**Editor's note:** A list of persons referred to in 7 AAC 41.055 who are precluded from participation because of debarment or suspension in accordance with 45 C.F.R. Part 76 is available at <http://www.epls.gov/>.

## Article 2. Provisions for Providers.

### Section

- 200. Provider eligibility; application requirements
- 205. Child protection and criminal history check requirements
- 210. Provider responsibilities
- 215. General health and safety requirements
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- 225. Diapering
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- 250. Billing statements; payment
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**7 AAC 41.200. Provider eligibility; application requirements.** (a) Unless a provider is precluded from participation under 7 AAC 41.055, the department will or a

designee shall authorize a provider to participate in the child care assistance program under this chapter if the provider meets the applicable requirements of this chapter and has

(1) a current license issued by the department under AS 47.32 and 7 AAC 57 to operate a child care facility; for purposes of this paragraph, "current license" includes a child care facility license extended under AS 47.32.060(c);

(2) a current accreditation or certification from a national accreditation group for a day camp or similar facility or program, as described in 7 AAC 57.015(11);

(3) a current certificate or other approval granted by the United States Department of Defense or the United States Coast Guard;

(4) a current certificate or other approval granted by a tribal entity with provider standards that meet or exceed the standards of this chapter;

(5) approval of the department or a designee under (d) or (e) of this section; or

(6) approval of the department or a designee under 7 AAC 41.370.

(b) A provider who wishes to participate in the child care assistance program under this chapter must submit to the department or designee a child care provider rates and responsibilities form described in (g)(4) of this section.

(c) A provider exempt from licensure under 7 AAC 57.015(7), (8), or (9) may apply to the department as described in (d), (e), or (f) of this section, as applicable, for approval to participate in the child care assistance program under this chapter. The department may forward the application to a designee for review.

(d) A provider exempt from licensure under 7 AAC 57.015(7) may apply for approval to participate in the child care assistance program under this chapter if the provider regularly provides care outside of the child's own home for no more than four children who are not a relative of the provider. If the provider is also caring for one or more children who are a relative of the provider, including the provider's own children, the provider may care for no more than a total of five children. A provider described in this subsection may be approved for participation in the program for up to one year. The department may extend the approval for the purpose of processing an application for voluntary licensure. At least 90 days before an approval expires, the provider must submit to the department a complete application for licensure under 7 AAC 57 if the provider intends to continue providing care for children who are not a relative of the provider, regardless of whether the provider is caring for those children at that time.

(e) A provider exempt from licensure under 7 AAC 57.015(8) may apply for approval to participate in the child care assistance program under this chapter if the provider regularly provides care outside of the child's own home for no more than five children, all of whom are a relative of the provider. If the provider is also providing care for the provider's own children, those children must be counted toward the maximum allowed. A provider described in this subsection will be approved for participation in the program biennially. A parent will not be approved for participation in the program if that parent is providing care only for that parent's children.

(f) A provider exempt from licensure under 7 AAC 57.015(9) may apply for approval as an in-home child care provider under 7 AAC 41.370(d).

(g) An application for approval under (d) or (e) of this section must contain the following information on a form prescribed by the department:

(1) the name, social security number, mailing address, physical address, if different from the mailing address, telephone number, facsimile number, if any, electronic mail address, if any, and a copy of a government-issued photo identification of the applicant;

(2) verification that the applicant is the only individual providing child care;

(3) the name of each person who resides in the facility where child care is provided and that person's relationship to the applicant, including whether that person will be a child in the applicant's care;

(4) a completed and signed child care provider rates and responsibilities form, prescribed by the department, that includes the applicant's current rates, and other routine child care charges, and that certifies compliance with 7 AAC 41.210;

(5) verification of compliance with 7 AAC 41.205 and 7 AAC 41.215;

(6) proof that the provider has met the requirements of 7 AAC 10.910(b) or 7 AAC 41.205(c), as applicable;

(7) other information required by the department to determine whether the applicant meets the applicable requirements of this chapter.

(h) If the department or designee determines that the applicant meets the applicable requirements of this chapter, the department will or the designee shall authorize the provider to participate in the child care assistance program.

(i) If an applicant fails to meet any applicable eligibility requirement of this chapter, the department will or a designee shall issue a written denial of participation in the program. If the department or designee denies participation in the program, the applicant may request an administrative review under 7 AAC 41.435.

(j) If a provider fails to maintain eligibility status under this chapter, the department will issue a written notice of termination from the program and advise the provider of the right to request an administrative review under 7 AAC 41.435.

Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.300 AS 47.05.340 AS 47.25.001  
AS 47.05.310

**7 AAC 41.205. Child protection and criminal history check requirements.**

(a) An individual in a child care facility may not abuse a child or engage in any exploitive or sexual act with a child. The department or designee may require an individual who is subject to a background review under this section to provide an evaluation from a probation officer, health professional, or mental health professional affirming that the individual is free from problems that might pose a significant risk to the health, safety, or welfare of a child in care.

(b) Except as provided in (c) and (d) of this section, to participate in the child care assistance program, a child care provider identified in 7 AAC 41.200(a)(1) - (6) must meet the applicable requirements of AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990 (Barrier Crimes, Criminal History Checks, and Centralized Registry) for that provider and for each individual associated with that provider in a manner described

in 7 AAC 10.900(b). If the provider requests and receives a provisional valid criminal history check under 7 AAC 10.920 for that provider or another individual, the department office responsible for approvals under this chapter will, or the designee shall, issue a provisional approval if the department or designee determines that the provider or other individual is otherwise eligible to provide care for children under this section. If the department determines under 7 AAC 10.915 that the provider or other individual did not pass the criminal history check, or if the provisional valid criminal history check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the provisional approval unless the provider requests a variance under 7 AAC 10.930, and the department grants that request under 7 AAC 10.935.

(c) To participate in the child care assistance program under this chapter, an individual seeking approval as a relative provider under 7 AAC 41.200(e) must submit to the department or designee, for that provider, and for each individual in contact with children in care who is

(1) 16 years of age or older, a signed release of information authorization to review criminal history information including

- (A) criminal justice information;
- (B) information regarding adjudication as a delinquent for each individual who is 16 to 20 years of age, in accordance with AS 47.12.310(e);
- (C) protective records developed under AS 47.17; and
- (D) child care licensing records; and

(2) 18 years of age or older, criminal justice information at the level available to an interested person under AS 12.62.160(b)(9); if the provider is in a community that does not have an Alaska State Trooper's office, and does not have another means of obtaining the report, the department will obtain the report, based on information supplied on each signed release submitted under (1) of this subsection.

(d) The department will not approve an individual seeking approval as a relative provider under 7 AAC 41.200(e) if the department or designee finds that the provider or any individual in contact with children in care for whom information was required to be submitted under (c) of this section

- (1) is named on the centralized registry established under 7 AAC 10.955;
- (2) was the subject of a prior adverse licensing action of the kind described in AS 47.32.140(d)(5) - (7); or
- (3) was charged with, convicted of, found not guilty by reason of insanity for, or adjudicated as a delinquent for, an offense that is a barrier crime under 7 AAC 10.905.

(e) For purposes of (c) - (d) of this section, an individual in contact with children in care is an individual who has the opportunity to gain access to any area where child care is provided, a member of the provider's household, or an individual who resides in a part of the premises where child care is provided. However, an individual in contact with children in care does not include

- (1) a parent of a child in care, unless the parent is a caregiver or a member of the provider's household;
- (2) a parent's designee to drop off and pick up a child in care, unless the designee is a caregiver;
- (3) a personal physician, an infant learning teacher, an attendant for a

child with special needs as described in 7 AAC 57.940, a licensor, a fire marshal, a food services sponsor, or another similar individual who occasionally provides support services to the child care facility or to a child in care;

(4) an individual who is a vendor or an industry representative, or who provides delivery, installation, maintenance, or repair services, if the provider provides supervised access while that individual is present in the child care facility while children are in care;

(5) an occasional guest of the provider or of a child in care, if the provider provides supervised access while that guest is present in the child care facility;

(6) an individual who resides in a part of the premises that house a child care facility, if the

(A) individual is not a caregiver;

(B) individual remains or intends to remain in the child care facility for less than 45 days, in total, in any 12-month period; and

(C) provider provides supervised access if the individual is present in the child care facility while children are in care; or

(7) an individual coming into incidental contact with children during an outing away from the child care facility.

(f) For purposes of (e) of this section,

(1) an individual who resides in a part of the premises that house the child care facility is an individual who dwells continuously in, or legally occupies, the premises housing the child care facility as evidenced by

(A) the individual's address on the individual's permanent fund dividend received under AS 43.23, driver's license, fishing or hunting license, or other official record; or

(B) observation by another individual of the individual occupying the premises that house the child care facility; and

(2) an individual who has the opportunity to gain access to any area where child care is provided is an individual who has the ability, right, or permission to enter, exit, or make use of that area during the hours of operation.

(g) An individual described in (f) of this section who has direct access from the individual's residence to the premises that house the child care facility and remains or intends to remain in the residence for 45 days or more, in total, in any 12-month period, is a member of the provider's household.

(h) For the purpose of (e) of this section, "supervised access" means that the provider maintains a prudent level of awareness of the whereabouts of an individual for whom supervised access is required, to ensure the protection of children in care.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.300                      AS 47.05.320                      AS 47.05.340  
AS 47.05.310                      AS 47.05.330                      AS 47.25.001

**7 AAC 41.210. Provider responsibilities.** (a) Except for a provider subject to 7 AAC 41.370, a participating provider shall

- (1) at or before a child's admission for care, obtain emergency information about the child from the child's parent, including
    - (A) information about any drug or other allergies;
    - (B) information about any medication the child is taking or medical or other treatment the child requires;
    - (C) information on how to contact the child's parent and at least one other local emergency contact individual;
    - (D) permission slips on a form prescribed by the department, signed by the parent, for emergency transport to a health care facility and for the provision of emergency care and treatment; and
    - (E) the name of a hospital and physician of choice as designated by the parent;
  - (2) maintain the information obtained under (1) of this subsection on a form prescribed by the department; and
  - (3) review and update information obtained under (1) of this subsection at least semi-annually, and more often if a parent provides changed or additional information.
- (b) A provider may not admit a child if that child's admission would place the provider beyond the conditions of approval to participate in the child care assistance program under this chapter.
- (c) Except for a provider subject to 7 AAC 41.370, a participating provider
- (1) shall provide complete, accurate, and current information regarding any factor that would affect eligibility to participate in the child care assistance program under this chapter;
  - (2) shall remain in compliance with the applicable requirements of this chapter; in addition, a provider subject to the licensing requirements of 7 AAC 57 shall remain in compliance with the applicable requirements of that chapter; a provider described in 7 AAC 41.200(a)(2), (3), or (4) shall remain in compliance with the applicable requirements of the accrediting, certifying, or approving agency;
  - (3) may not exclude a participating family from any discount rate offered by the provider;
  - (4) shall provide written notice of any rate increase to the department or designee and to participating families at least 30 days before the increase will take effect;
  - (5) must have a valid authorization before billing the department for services under this chapter;
  - (6) shall immediately notify the department regarding any circumstance that involves abuse, harm, or serious risk of harm to children in care;
  - (7) shall give written notice to the department or designee and to a participating family at least 14 days before child care services are discontinued;
  - (8) shall ensure that a substitute caregiver whose services are used by the provider, except during an unplanned, unexpected circumstance that must be addressed immediately,
    - (A) has a valid criminal history check as required under 7 AAC 41.205;
    - (B) has been determined by the department or designee to be otherwise eligible to provide care for children under the applicable standards of

7 AAC 41.205; and

(C) has signed a verification that the substitute caregiver has read and understands the provider's responsibilities under this chapter, and is capable of fulfilling those responsibilities in the provider's absence; and

(9) shall ensure that a substitute caregiver does not provide care for more than 30 days in any 12-month period unless prior approval has been received from the department or designee; a provider seeking prior approval must submit a written request that sets out the reasons for the substitute caregiver providing care for more than 30 days; the department will or the designee shall approve the request if a determination is made that the health, welfare, and safety of children in care will be protected.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.300                      AS 47.05.310                      AS 47.25.001

**7 AAC 41.215. General health and safety requirements.** (a) A licensed provider must meet the applicable health and safety requirements of 7 AAC 10.1000 – 7 AAC 10.1095 and 7 AAC 57. A provider described in 7 AAC 41.200(a)(2), (3), or (4) must meet the applicable general health and safety requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(d) or (e) must meet the health and safety requirements of (c) - (e) of this section to be approved for participation in the program.

(c) A provider described in (b) of this section shall ensure that the total number of children under 13 years of age, including the provider's children under 12 years of age, for whom the provider regularly provides care, does not exceed five, and that no more than two children, including the provider's children, are under the age of 30 months. Each child receiving full-time or part-time care must be counted toward the maximum allowed until that child no longer receives care from the provider, regardless of whether that child is present. For a provider approved under 7 AAC 41.200(d), at least one, and no more than four, of the children must be children who are relatives of the provider.

(d) A provider described in (b) of this section must be at least 18 years of age and must be able to prevent exposure of children to high-risk situations, including exposure to physical hazards and encounters with individuals or animals posing a possible danger.

(e) A provider described in (b) of this section shall

(1) certify that the provider and each person who resides or works in the provider's facility is not prohibited from providing care for children under the standards of 7 AAC 41.205;

(2) provide satisfactory evidence of compliance with the requirements of this section;

(3) ensure that each individual who is in contact with children in the facility

(A) is a responsible individual who exercises sound judgment;

(B) does not abuse a child or engage in an exploitive or sexual act with a child; and

- (C) is free of any physical health problem, behavioral health problem, or domestic violence problem that would pose a significant risk to the health, safety, or welfare of children in care; in this subparagraph,
- (i) "behavioral health problem" has the meaning given in 7 AAC 57.990(a);
  - (ii) "domestic violence problem" has the meaning given in 7 AAC 57.990(a).
- (4) provide a parent with access to the parent's child when the child is in care;
- (5) directly provide care and supervision of children, except that a substitute caregiver for whom the requirements of 7 AAC 41.210(c)(8) are met may provide care, subject to the limits set out in 7 AAC 41.210(c)(9);
- (6) provide a level of supervision of each child in care that is appropriate to the child's age and developmental needs and that is adequate to prevent injury;
- (7) maintain child attendance records that reflect the dates and time children are in care;
- (8) provide daily activities to promote a child's individual physical, social, intellectual, and emotional development, including time for meals, snacks, sleep, toileting, and indoor or outdoor exercise, according to individual needs;
- (9) ensure that children in care are not subjected to corporal punishment; in this paragraph, "corporal punishment"
- (A) means the infliction of bodily pain as a penalty for a disapproved behavior; and
  - (B) includes shaking, spanking, delivering a blow with a part of the body or an object, slapping, punching, pulling, and any other action that seeks to induce pain;
- (10) administer medication to a child only with permission from the child's parent;
- (11) keep emergency information on each child and
- (A) contact the child's parent in case of illness or injury; and
  - (B) immediately report to the department or the designee
    - (i) the death of a child while in care;
    - (ii) a serious injury or illness of a child while in care that requires attention by medical personnel outside of the facility; or
    - (iii) a fire or other emergency situation that affects the facility;
- (12) take precautions against the spread of infectious disease by
- (A) ensuring that each person in contact with children washes that person's hands for at least 10 seconds with soap and water and rinses them with water
    - (i) before food handling, preparation, serving, eating, or table setting;
    - (ii) after toileting or assisting a child with toileting or diapering;
    - (iii) after handling an animal, animal waste, or an animal cage;

- (iv) before and after giving medication;
- (v) before and after participation in moist play, including painting, cooking, or molding clay; and
- (vi) if hands are contaminated with a body fluid, including from nose wiping;

(B) encouraging children to wash their hands at similar times described in (A) of this paragraph, as applicable; and

(C) ensuring that children in care have been immunized as required by 7 AAC 57.550(a) - (e);

(13) provide sufficient nutrient so that

(A) a child is fed nutritious meals and snacks according to individual need;

(B) an infant is fed on demand; and

(C) except for medical reasons, a child is not denied a meal or snack, force fed, or otherwise coerced to eat against the child's will; however, mere encouragement to eat, without an element of compulsion, is not prohibited;

(14) meet the environmental health and safety requirements of

7 AAC 41.220;

(15) meet the requirements of 7 AAC 41.225 dealing with diapering if providing care for infants or toddlers;

(16) meet the requirements of 7 AAC 41.230 dealing with first aid kits and instructions;

(17) meet the requirements of 7 AAC 41.235 dealing with certification for first aid and CPR; and

(18) meet the requirements of 7 AAC 41.240 dealing with animals.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.300 AS 47.05.310 AS 47.25.001

**7 AAC 41.220. Environmental health and safety requirements.** (a) A licensed provider must meet the applicable requirements of 7 AAC 10.1000 – 7 AAC 10.1095. A provider described in 7 AAC 41.200(a)(2), (3), or (4) must meet the applicable environmental health and safety requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(d) or (e) must meet the health and safety requirements of (c) and (d) of this section to be approved for participation in the program.

(c) In addition to the other health and safety requirements of this chapter, a provider described in (b) of this section shall ensure basic environmental health and safety by meeting the requirements of this section. The provider shall

(1) submit to the department or designee a copy of the provider's disaster preparedness and emergency evacuation plan that ensures the complete evacuation of children, including children with limited mobility, within 150 seconds during an emergency; for the purpose of this paragraph, the emergency evacuation plan must be on

a form prescribed by the department, and must include procedures for fire and other emergency situations or natural disasters that may affect the facility including tsunamis, earthquakes, and flooding emergencies;

(2) conduct and document emergency evacuation drills at least once a month, unless postponed due to severe weather;

(3) have at least two means of emergency escape that are remote from each other and that provide unobstructed access to the outside of the building; at least one means of emergency escape must be an exterior door; if a window is used as one means of emergency escape, the window must be fully opening and allow easy egress from the building;

(4) have at least one working smoke detection device that is less than 10 years old, or newer if necessary to comply with the manufacturer's recommended replacement date, and that is

(A) an AC primary power smoke detection device, with battery backup; in this subparagraph, "AC" means alternating current; or

(B) a monitored battery powered smoke detection device;

(5) have at least one fully charged 2A:10BC dry chemical fire extinguisher strategically located on each level of the facility and ensure that each fire extinguisher is inspected, tested, and serviced according to the requirements of 13 AAC 50.025(47);

(6) if the facility uses oil, wood, natural gas, or propane as a heating or cooking fuel, ensure that an operating carbon monoxide detector is installed in each hallway outside of, or within, each sleeping area, and ensure that each device is regularly inspected, tested, and serviced; in addition, for a multi-level facility, at least one operating carbon monoxide detector must be installed on each level;

(7) maintain an ample supply of potable water;

(8) provide and maintain clean and sanitary toilet facilities and ensure that in each toilet room

(A) at least one easily cleanable waste receptacle is provided; if soiled diapers are kept in a waste receptacle until disposed of, that waste receptacle must be covered;

(B) toilet tissue is provided from a wall-hung or protected container at each toilet;

(C) if partitions are used between toilets, each partition is raised at least 12 inches from the floor and is smooth and easily cleanable;

(D) each step stool, if provided, has a nonslip tread made of a water-impervious, durable material;

(E) each floor and wall is covered with smooth, durable, nonabsorbent, easily cleanable material; and

(F) each toilet lid, seat, and handle and each handsink is kept clean and sanitary;

(9) take necessary precautions to keep the facility free of hazards that can cause injury or disease to children inside or outside of the building; the provider shall

(A) maintain the facility premises and the grounds surrounding the facility in a clean, sanitary, and safe condition;

(B) maintain sanitary facilities for proper care, storage,

- refrigeration, and preparation of food;
- (C) ensure that
    - (i) for purposes of AS 17.20.020, food served is not adulterated; and
    - (ii) fruits and vegetables are thoroughly washed with potable water before use;
  - (D) install and maintain hot water temperature controls to plumbing fixtures accessible to children to ensure that the maximum temperature is no less than 100 degrees Fahrenheit, and no more than 120 degrees of Fahrenheit;
  - (E) store cleaners, medicines, and other harmful substances in a place inaccessible to children;
  - (F) provide furniture and play equipment that is durable, safe, easily cleanable, and kept clean and in good repair;
  - (G) ensure that solid waste is conveyed, stored, and disposed of in a manner that minimizes the development of odor, and prevents waste from attracting and harboring pests;
  - (H) install and use safety gates to prevent access to stairs if infants or toddlers are in care;
  - (I) install outlet covers in electrical outlets that are not in use and that are accessible to children under age five; and
  - (J) ensure that the facility is free of hazards, including splintered surfaces, sharp edges, protruding corners, broken or hazardous toys, steep stairways, ice on walkways, and unsafe play areas;
- (10) maintain a functional telephone or other identified means of communication;
- (11) if child care is provided in a residence,
    - (A) maintain an environment that is free of smoke; however, nothing in this subparagraph prohibits the operation of a fireplace, woodstove, pellet stove, or other source of heat in a manner that does not threaten the health or safety of children in care;
    - (B) ensure that medications and alcohol are not accessible to children in care; and
    - (C) ensure that alcohol and illegal controlled substances are not used during the hours that children are in care; in this subparagraph, "controlled substance" means a drug, substance, or immediate precursor included in the schedules set out in AS 11.71.140 - 11.71.190;
  - (12) transport children in safe, smoke-free vehicles and use appropriate child restraints in each vehicle as follows:
    - (A) each individual must be restrained with an individual seat belt or age-appropriate child safety device as required by AS 28.05.095;
    - (B) only one individual may occupy each seat belt or child safety device; and
    - (C) children may not occupy the front seat if the vehicle is equipped with an operational airbag on the passenger side.

(d) A provider described in (b) of this section shall ensure that any firearms are unloaded and stored in a locked gun safe or other locked place that is not visible or accessible to children. The provider shall also ensure that ammunition is stored separately from the firearms in a place that is inaccessible to children. The provider shall inform each parent that firearms are present in the facility. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.225. Diapering.** (a) A licensed provider must meet the requirements of 7 AAC 10.1060(d) and (e) and 7 AAC 57. A provider described in 7 AAC 41.200(a)(2), (3), or (4) must meet the applicable diapering requirements of the accrediting, certifying, or approving agency.

(b) A provider described in 7 AAC 41.200(d) or (e) who provides care for infants or toddlers shall use safe and sanitary equipment and supplies for diapering where infants and toddlers are in care, including easy accessibility for the caregiver to wash the caregiver's hands each time after changing a diaper. The provider shall ensure that

(1) the diaper changing area

(A) is not located in a food preparation area and is not used for temporary placement or serving of food;

(B) has one accessible handsink located in, or immediately adjacent to, that area;

(2) each surface used for changing diapers is smooth, durable, nonabsorbent, and easily cleanable;

(3) sufficient quantities of clean diapers are available and are neatly stored;

(4) nonlatex gloves and handwashing supplies are available to prevent contamination, and are used in conjunction with the precautions described in 7 AAC 41.215(e)(12);

(5) for soiled clothing or cloth diapers, solid waste contents are disposed of by dumping the contents into a toilet and placing the diapers, without rinsing, in

(A) an impervious bag to be given to the parent for laundering, if applicable; or

(B) an easily cleanable, covered container that is

(i) lined with plastic;

(ii) designed to prevent the caregiver from contaminating the exterior surface of the container or the caregiver when inserting the soiled diaper;

(iii) designed with a firm-fitting cover;

(iv) provided within the caregiver's reach of the diaper changing area; and

(v) emptied, cleaned, and sanitized daily;

(6) each diaper changing surface is cleaned and sanitized after each use; if a single-use, disposable cover is placed on the diapering surface before diapering, that cover must be disposed of immediately after diapering; the use of a cover does not

preclude or substitute for cleaning and sanitizing the surface or area after each use even if the surface or area is not visibly contaminated;

(7) after a soiled disposable diaper is removed, it is folded inward and resealed before disposal into a container described in (5)(B) of this subsection;

(8) if single-use, disposable wipes are used during diapering, the disposable wipes are discarded after use; if a nondisposable cloth is used, that cloth must be placed immediately, without rinsing, in

(A) an impervious bag to be given to the parent for laundering, if applicable; or

(B) a container described in (5)(B) of this subsection;

(9) diaper changing supplies, including containers of cream and lotion, are kept clean and sanitary; and

(10) children do not handle diaper changing supplies.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.230. First aid kit and procedures.** (a) A licensed provider must meet the requirements of 7 AAC 10.1075 and 7 AAC 57. A provider described in 7 AAC 41.200(a)(2), (3), or (4) must meet the applicable requirements of the accrediting, certifying, or approving agency with respect to first aid kits and procedures.

(b) A provider described in 7 AAC 41.200(d) or (e) shall review and either post or make readily available first aid and CPR instructions. The provider shall post emergency telephone numbers, including the number for the poison control center, near the telephone. The provider shall maintain

(1) at least one first aid kit as described in (d) of this section that is kept at the facility;

(2) at least one additional first aid kit as described in (d) of this section for field trips or outings away from the facility; for a field trip or outing away from the facility, and for each child participating in the trip or outing, the kit must include

(A) emergency child record information as required by 7 AAC 41.210(a); and

(B) written parental permission for use of medication; only medication that is or may be needed during a field trip or outing may be included in first aid kit, and only for the length of the field trip or outing; and

(3) an abbreviated first aid kit for a neighborhood walk of 30 minutes or less; a provider may use the kit described in (2) of this subsection for a neighborhood walk if the kit is not needed for a field trip or outing, and if a kit described in (d) of this section will be kept at the facility; for purposes of this paragraph, an abbreviated kit must contain, at a minimum, the following items:

(A) disposable nonporous, nonlatex gloves;

(B) tweezers;

(C) adhesive bandages;

(D) bandage tape;

(E) sterile gauze pads;

- (F) a cold pack;
- (G) a CPR barrier device or mask;
- (H) potable water;
- (I) emergency child record information as required by 7 AAC 41.210(a);
- (J) medication that may be needed on the walk.

(c) The provider shall restock each first aid kit after use to ensure that the kit complies with this section.

(d) Except for an abbreviated kit allowed under (b)(3) of this section, each first aid kit must include the following items, checked regularly to ensure that any expiration date is not exceeded, and kept within a container that will hold all of the items:

- (1) disposable nonporous, nonlatex gloves;
- (2) sealed packages of alcohol wipes or antiseptic for thermometer cleaning only;
- (3) scissors;
- (4) tweezers;
- (5) a thermometer;
- (6) adhesive bandages;
- (7) bandage tape;
- (8) sterile gauze pads;
- (9) flexible roller gauze;
- (10) triangular bandages;
- (11) safety pins;
- (12) an eye dressing;
- (13) a note pad with a pen or pencil;
- (14) activated charcoal, for use only under the direction of a poison control center or another medical professional;
- (15) a cold pack;
- (16) a current American Academy of Pediatrics or American Red Cross standard first aid text or equivalent first aid guide;
- (17) a CPR barrier device or mask;
- (18) the telephone number for the poison control center;
- (19) potable water;
- (20) child-size splints;
- (21) soap;
- (22) a working flashlight.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.235. Certification for first aid and CPR.** (a) A provider licensed under 7 AAC 57 shall meet the requirements of 7 AAC 57.350(e). A provider described in 7 AAC 41.200(a)(2), (3), or (4) must meet the applicable requirements of the accrediting, certifying, or approving agency with respect to certification for first aid and CPR.

(b) Except when a substitute caregiver is providing care in a child care home for a period of 30 days or less, a provider approved under 7 AAC 41.200(d) or (e) shall, within six months after being approved, obtain a valid certification for first aid and age-appropriate CPR, unless the courses for these certifications are not available within 60 miles by road of the provider. A current certification as a certified emergency medical or trauma technician satisfies the requirements of this subsection. If certification courses are not available, the provider shall

(1) receive instruction in first aid and age-appropriate CPR procedures through distance learning training videos and other materials approved by the department; and

(2) complete and pass the first available first aid and CPR certification course offered within 60 miles by road of the provider. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.240. Animals.** (a) A provider licensed under 7 AAC 57 shall meet the requirements of 7 AAC 10.1090. A provider described in 7 AAC 41.200(a)(2), (3), or (4) must meet the applicable requirements of the accrediting, certifying, or approving agency with respect to the presence of animals in the facility.

(b) A provider described in 7 AAC 41.200(d) or (e) shall

(1) ensure that any animal kept in the facility has no communicable disease, has all immunizations required under state and federal law, and is free of internal and external parasites; if immunizations are required, the provider must show proof of compliance to the department or a designee upon request;

(2) inform parents of children in care of any animal present in the facility;

(3) disclose to the department information regarding any animal in the facility, if that animal has

(A) been the subject of a past contact with an animal control official because of aggressive behavior or biting; or

(B) a history of aggressive behavior or biting, regardless of whether the animal has been the subject of a past contact with an animal control official;

(4) notify the department within 24 hours of any occurrence of aggressive behavior or biting by an animal in the facility, including whether the occurrence resulted in a contact with an animal control official;

(5) immediately remove from contact with children in care, an animal described in (3) or (4) of this subsection; and

(6) permanently remove from the facility an animal described in (3) or (4) of this subsection, if the department determines that the animal is a threat to the life or safety of children in care. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.245. Provider charges.** (a) Except for a provider subject to 7 AAC 41.370, a participating provider shall ensure that a rate charged by a provider to a family participating in the program is not higher than the rate charged to other families for the same service. A rate charged by a provider to a participating family must be a rate submitted under 7 AAC 41.200(g)(4).

(b) If a participating provider has a discounted rate for families that meet the provider's requirements for that rate, the provider shall offer the discounted rate to all participating families meeting those requirements.

(c) A provider approved under 7 AAC 41.200(d) or (e) may not charge a registration fee to a participating family. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

**7 AAC 41.250. Billing statements; payment.** (a) Except for a provider subject to 7 AAC 41.370, a participating provider shall submit billing statements and any corrections to those statements to the department or to the designee, as determined by the department, as follows:

(1) for the first 10 months of a state fiscal year, no later than the last day of the third month following the month in which the charges were incurred;

(2) for the last two months of a state fiscal year, no later than 31 days after the end of the fiscal year.

(b) Payment will not be made for a billing statement or a correction to a billing statement that is submitted later than the applicable deadline set in (a)(1) or (2) of this section.

(c) PASS II payments may be made outside the timeframes in (a) of this section for a parent transitioning from PASS I to PASS II, if necessary to avoid a break in service. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001 AS 47.25.051

**7 AAC 41.255. Records.** Except for a provider subject to 7 AAC 41.370, a participating provider shall retain for at least three years, and shall make available for inspection during normal business hours upon request of the department or designee,

(1) each license or permit required for operation;

(2) copies of rates and responsibilities forms;

(3) facility monthly billing statements; and

(4) daily attendance records that reflect the time children are in care.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.25.001

### **Article 3. Provisions for Families.**

**Section**

- 300. Family program eligibility
- 305. Family eligibility determination
- 310. Eligible activities
- 312. Work
- 315. Family application
- 320. Family responsibilities
- 325. Family income determination
- 330. Family contribution
- 335. Family income and contribution schedule
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- 345. Payment of program benefits
- 350. Eligible child
- 355. Inactive status
- 360. Allowable absence: single-parent family
- 365. Allowable absence or incapacity: two-parent family
- 370. Child care in the child's own home

**7 AAC 41.300. Family program eligibility.** (a) Unless one or more of the parents in a family is determined to be ineligible for a reason set out in 7 AAC 41.450, and except as provided in (b) of this section, a family is eligible to participate in the child care assistance program if each parent in the family, except as specified in 7 AAC 41.365, is participating in an eligible activity under 7 AAC 41.310, and the family's monthly income is at or below the maximum allowed under 7 AAC 41.335.

(b) The family of an owner of a child care facility may not receive program benefits during the hours of operation of any facility owned by that person.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.021 AS 47.25.031  
AS 47.25.001

**7 AAC 41.305. Family eligibility determination.** (a) The department will or a designee shall determine family eligibility to participate in the child care assistance program under AS 47.25.021, 47.25.031, and this chapter. The department will or a designee shall determine family eligibility at least once every six months, on the basis of a family's documented eligibility under AS 47.25.021, 47.25.031, and this chapter. The department will or the designee shall provide written notice to a family regarding eligibility to participate in the program.

(b) A determination of eligibility under this section will not result in payment of benefits if the amount of the family contribution under 7 AAC 41.335 is greater than the eligible cost of care.

(c) Notwithstanding (a) of this section, if a family's income determination was calculated under 7 AAC 41.325(b)(1) or (4), the department will, or a designee shall, determine family eligibility at least once every three months. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.021 AS 47.25.031  
AS 47.25.001

**7 AAC 41.310. Eligible activities.** The time of care eligible for a program benefit as specified in the child care authorization issued under 7 AAC 41.340 is based on the schedule of eligible activities of each parent. Eligible activities are as follows:

- (1) working;
- (2) attending school;
- (3) doing library or laboratory activities, attending workshops or tutoring sessions, or participating in a similar activity required for satisfactory completion of a school course or class; time eligible for a program benefit under this paragraph is limited to one hour for each credit hour per week;
- (4) seeking work; time eligible for a program benefit under this paragraph is limited to 80 hours of care in a 12-month period;
- (5) if necessary for a parent to participate in a work activity, resting up to eight hours before or after the parent works a night shift; for purposes of this paragraph, "night shift" means employment requiring a minimum of six work and travel hours between 8:00 p.m. and 6:00 a.m.;
- (6) traveling between an eligible activity and the participating provider, up to a maximum travel time of
  - (A) one-half hour before and one-half hour after the eligible activity; or
  - (B) one hour before and one hour after the eligible activity if
    - (i) written authorization is obtained from the department or a designee; and
    - (ii) the parent travels more than 30 miles from the provider or uses public transportation.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.021

**7 AAC 41.312. Work.** For purposes of this chapter, work is

- (1) an activity for which a wage or salary is paid; or
- (2) being engaged in a business
  - (A) operated with the intention of making a profit;
  - (B) for which a business license under AS 43.70 has been obtained; and
  - (C) that generates revenue during any consecutive three-month period.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_)  
**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.021

**7 AAC 41.315. Family application.** (a) A family seeking to participate, or to continue participation, in the PASS II or PASS III program must apply to any designee serving the community where the family resides or participates in an eligible activity. If no designee serves that community, the family may apply to the department.

(b) Application, including a renewal application, must be made on a form prescribed by the department and must be submitted to the department or a designee, as appropriate, for review and approval. (Eff. 6/23/2006, Register 178;

am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.051

**7 AAC 41.320. Family responsibilities.** (a) A family applying for child care assistance under this chapter shall provide complete, accurate, and current information regarding children, family income, hours of employment or training, work activities, and other factors that would affect eligibility for program benefits. At the time of application, a parent of the family shall read and sign a family responsibilities form prescribed by the department that includes the requirements of this section and contains a statement that the person signing the form has read those requirements, understands them, and agrees to abide by them.

(b) If requested by the department or a designee, a family shall provide documentation to support information provided on the application or family responsibilities form.

(c) A family participating in the child care assistance program under this chapter shall

(1) select an eligible provider;

(2) notify the department or designee within seven days after an income change in excess of \$200 a month, a change in a work activity, or any other change that would affect the family's benefits or eligibility under this chapter; failure to give notice as required under this paragraph may result in a determination of overpayment of program benefits and subsequent action by the department under 7 AAC 41.420;

(3) pay the portion of the family's eligible cost of care that is not paid on the family's behalf under this chapter;

(4) notify the provider in writing at least 14 days before the family intends to terminate child care services with that provider, except

(A) in the case of sudden program ineligibility;

(B) in the case of an allegation of abuse, harm, or serious risk of harm to a child in the provider's care; or

(C) upon mutual agreement between the provider and the family;

(5) renew the child care authorization in a manner timely enough to provide for continuity of care; and

(6) if requested by the department or a designee, review the provider's

attendance records and monthly billing statement to verify that care was billed only for hours of eligible activity. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.325. Family income determination.** (a) For the purposes of this chapter, a family's monthly income is determined by

(1) totaling

(A) the monthly gross earned income of each parent paid in cash or in kind as wages, salary, tips, bonuses, or commissions, and earned in exchange for the performance of services as an employee;

(B) the greater of

(i) the self-employment income of each parent, determined in accordance with 7 AAC 45.445 and 7 AAC 45.450; or

(ii) if the time engaged in a self-employment activity exceeds three months, the amount equal to the number of hours in the parent's proposed work schedule attributable to the self-employment activity, multiplied by the minimum wage established under AS 23.10.065; if the parent engages in a self-employment activity that is substantially different from the original activity, an additional three-month period is allowed before minimum wage is calculated; and

(C) the monthly unearned income of the family, unless that income is excluded under (2) of this subsection, for purposes of this subparagraph, "unearned income" includes

(i) regular support payments from an absent family member or another person who does not live in the household;

(ii) unemployment benefits;

(iii) alimony;

(iv) child support payments;

(v) child support arrearage payments;

(vi) foster care payments;

(vii) retirement benefits;

(viii) regular insurance or annuity payments;

(ix) veteran's payments;

(x) pensions;

(xi) workers' compensation cash benefits;

(xii) Social Security payments;

(xiii) investment income;

(xiv) public assistance;

(xv) military cash allowances;

(xvi) federal cost-of-living allowances (COLA);

(xvii) scholarships for other than tuition and books;

(xviii) education grants for other than tuition and books;

- (xix) fellowships and assistantships;
- (xx) capital gains;
- (xxi) employer contributions for child care costs;
- (xxii) strike benefits from a union fund;
- (xxiii) housing allowances or fair market value of employer-provided housing;
- (xxiv) stipends;
- (xxv) room and board paid by others in the household;
- (xxvi) dividends;
- (xxvii) interest;
- (xxviii) net rental income;
- (xxix) net royalties;
- (xxx) periodic receipts from an estate or trust;
- (xxxi) the portion of Native corporation dividend payments distributed under 43 U.S.C. 1601 - 1629h (Alaska Native Claims Settlement Act) that exceeds \$2,000 annually for each shareholder; and
- (xxxii) one-time, lump-sum payments in excess of \$500, such as insurance proceeds, disability and death benefits, awards and cash gifts, inheritance, terminal leave and severance pay, and net gambling or lottery winnings;

(2) excluding

- (A) income that is a loan;
- (B) payments under AS 43.23 (Alaska Permanent Fund

Dividends);

- (C) federal income tax refunds;
- (D) earned income tax credits under 26 U.S.C. 32 (Internal

Revenue Code); and

- (E) federal noncash benefits, including Medicare, Medicaid, food stamps, and supplements under 42 U.S.C. 1786 (Special Supplemental Food Program for Women, Infants, and Children (WIC)); and

(3) deducting payments made for child support and catastrophic medical or dental costs.

(b) The department will or a designee shall determine a family's eligibility by using the family's monthly income, calculated under (a) of this section. The department will or the designee shall make a best estimate of the average monthly income a family receives or is expected to receive during each month for which eligibility is being determined. Any one of the following methods may be used to calculate prospective average monthly income:

- (1) averaging the income for the two months preceding the month in which the family submits an application under 7 AAC 41.315;
- (2) projecting the income for the current month;
- (3) a projected average for two months forward following the month in which the family submits an application or requests a re-determination and new authorization;
- (4) averaging seasonal, commission, or other irregular income and

irregular deductions, such as catastrophic medical or dental payments, for a period not to exceed 12 months.

(d) In this section, catastrophic medical or dental payments may be considered only for that portion of the medical or dental payments that exceed 10 percent of the family's monthly income, if the payments are made for more than 60 days, and are projected to be an ongoing expense for more than six months. Medical and dental payments to be considered under this section are for

(1) procedures and treatments allowable for payment under AS 47.07, regardless of the family member's eligibility for Medicaid coverage under AS 47.07;

(2) adult dental care and treatment for

(A) preventative dental care;

(B) treatment of cavities, pain, and infection; and

(C) dentures and orthodontia in extreme cases of malformation meeting criteria under AS 47.07 for payment for care and treatment for children under the Medicaid program; and

(3) medical and dental insurance premiums for services described in (1) or (2) of this subsection. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.031

**7 AAC 41.330. Family contribution.** (a) As the contribution toward child care costs required under AS 47.25.041, a participating family shall pay to the provider a percentage of its income as determined in the department's *Family Income and Contribution Schedule*, adopted by reference in 7 AAC 41.335. If the family has more than one child care provider, the department will or the designee shall specify the amount of the family's income to be paid to each provider.

(b) In addition to the family contribution paid under (a) of this section, if the provider's charges are higher than the relevant program rate under 7 AAC 41.025, the participating family is responsible for paying the provider the difference within a time period agreed to between the family and the provider. The provider is responsible for obtaining, or recovering, that difference. Nothing in this subsection precludes a provider from requiring payment in advance of the services to be provided.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.031 AS 47.25.041  
AS 47.25.001

**7 AAC 41.335. Family income and contribution schedule.** (a) To determine the amount the family must contribute toward the eligible cost of care, the department will or a designee shall use the department's *Family Income and Contribution Schedule*, revised as of November 2010 and adopted by reference. This amount will be based on family size and income level, and based on a sliding fee scale.

(b) The maximum family monthly income allowed for participation in the program appears in the *Family Income and Contribution Schedule*, adopted by reference in (a) of this section. The maximum family monthly income

(1) is based on a percentage of the median income level developed by the federal government for this state, as periodically published in the federal register, and adjusted by family size; and

(2) is adjusted by deducting the estimated amount of the permanent fund dividend calculated under AS 43.23.025 for the year during which the schedule was prepared, multiplied by the number of family members.

(c) The department will review and revise the family income and contribution schedule, based on one or more of the following factors:

(1) implementation experience may demonstrate unintended results or irregularities that require a schedule adjustment, including

(A) when increases in earned income are entirely consumed by an increased contribution under the schedule; and

(B) when contributions compete with the provision of basic necessities for a family, including reasonable expenses for the provision of food, shelter, or transportation;

(2) the median income level developed by the federal government for this state, as periodically published in the federal register, and adjusted by amounts payable to a family under AS 43.23 (Permanent Fund Dividends) for the current year;

(3) the level of appropriations for the program changes, and the department must redetermine the maximum number of families that may receive child care assistance;

(4) the number of children in care and needing care under the program;

(5) the number of children in care in a family under the program;

(6) other factors that the department determines are necessary to administer a fair and equitable program consistent with the law and available appropriations. (Eff. 6/23/2006, Register 178; am 11/1/2010, Register 196; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010                      AS 47.25.041                      AS 47.25.051  
AS 47.25.001

**Editor's note:** The *Family Income and Contribution Schedule*, adopted by reference in 7 AAC 41.335, is available from the Department of Health and Social Services, 619 E. Ship Creek Avenue, Suite 230, Anchorage, Alaska 99501-1677.

**7 AAC 41.340. Child care authorization.** (a) After the department or a designee determines a family is eligible to participate in the program, and that the provider selected by the family is an eligible provider, the department will or the designee shall issue to the family and the provider, a child care authorization that

(1) identifies the children for whom child care is authorized;

(2) identifies the provider selected by the family;

(3) describes the child care authorized, including each category of care, based on the expected participation by each parent in an eligible activity under 7 AAC 41.310;

- (4) states the anticipated eligible cost of care, including
- (A) the family contribution amount calculated under 7 AAC 41.335; and
  - (B) the anticipated benefit amount to be paid under 7 AAC 41.345; and

(5) states the period of time for which the authorization is effective.

(b) If necessary to address a change in a participating family's circumstances, the department will or a designee shall issue to the family and the provider a new child care authorization under (a) of this section. In the new authorization, the department will or the designee shall state the period of time for which the authorization is in effect, but the department will not, and the designee may not extend the authorization beyond the last day of the family's current eligibility period. (Eff. 6/23/2006, Register 178;

am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.051

**7 AAC 41.345. Payment of program benefits.** (a) After subtracting a family's contribution calculated under 7 AAC 41.335, the department will pay the remainder of the eligible cost of care during the time the family is eligible, to

(1) a participating provider on behalf of the participating family for child care provided; or

(2) a family that hires an approved in-home child care provider under 7 AAC 41.370.

(b) The department will or a designee shall prorate a family's contribution required under 7 AAC 41.330 during the months the family first receives and last receives child care, based on the number of days in the month in which child care is authorized.

(c) In addition to the program benefits paid under (a) of this section, the department will pay to a licensed provider, on behalf of a child, any registration fee charged by the provider and billed to the department. The department will not pay more than \$50 under this subsection. The department will pay only one registration fee per child, per licensed provider, in a calendar year. (Eff. 6/23/2006, Register 178;

am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.021 AS 47.25.051  
AS 47.25.001 AS 47.25.041

**7 AAC 41.350. Eligible child.** (a) Subject to (b) of this section, a child in an eligible family may participate in the child care assistance program under this chapter if the child is

- (1) under 13 years of age; or

(2) 13 through 18 years of age, and has a developmental disability.

(b) A child described in (a) of this section is not eligible to participate in the program during the time the child is eligible to attend school or kindergarten, according to the schedule of the local school district, unless the child is age five or six and is attending a licensed child care facility. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.095

**7 AAC 41.355. Inactive status.** (a) If a participating family requests that it be placed in inactive status, the department or a designee may place the family in inactive status for up to

(1) 10 weeks; or

(2) 18 weeks if the parent is on leave under 29 U.S.C. 2601 - 2654

(Family Medical Leave Act of 1993), including regulations under 29 C.F.R. Part 825.

(b) Subject to (c) of this section, the family's participation in the program is terminated after the inactive period ends.

(c) A participating family on inactive status who wishes to return to active status must, before the end of the inactive period, report any income described in 7 AAC 41.325 received during the inactive period. If the family's income has changed during the inactive period, the department will or the designee shall re-determine the family's eligibility under 7 AAC 41.300. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.031

**7 AAC 41.360. Allowable absence: single-parent family.** If a participating family consists of only one parent and that parent is temporarily away from the child or children due to participating in an eligible activity under 7 AAC 41.310, the family may continue to receive program benefits up to the end of the following month. If the parent is still absent after that period, the family's eligibility under the program is terminated. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.021

**7 AAC 41.365. Allowable absence or incapacity: two-parent family.** (a) A family in which there are two parents and one parent is incapacitated, or is absent due to participating in an eligible activity under 7 AAC 41.310, may receive program benefits if the other parent in the family is not absent and is participating in an eligible activity under 7 AAC 41.310, and if the family otherwise meets eligibility requirements under this chapter.

(b) In this section, "incapacitated" means incapable of caring for children in the family by reason of hospitalization or being physically unable to care for a child, as

determined by a physician. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.021

**7 AAC 41.370. Child care in the child's own home.** (a) To participate in the child care assistance program, an eligible family choosing to hire an in-home child care provider to care for the family's children in the family's home may hire an in-home provider only if the provider has a valid criminal history check under AS 47.05.300 - 47.05.390 and 7 AAC 10.900 - 7 AAC 10.990, and is approved under (d) of this section. A parent will not be approved for participation in the program for the care of the parent's own child.

(b) The family shall submit to

(1) the department office responsible for conducting criminal history checks all items required under 7 AAC 10.910(b) for the selected provider; and

(2) the designee or to the department office responsible for approvals under this chapter,

(A) a copy of a government-issued picture identification of the selected provider;

(B) a verification signed by the selected provider, on a form prescribed by the department, that the selected provider

(i) is the same person pictured on the identification; and

(ii) is at least 18 years of age; and

(C) a verification signed by the family, on a form prescribed by the department, that the selected provider

(i) if approved under (c) or (d) of this section, will be employed by the family, and will care only for children who reside in the family's home; if fewer than five children are in the family, the provider may also care for the provider's children if the total number of all children in care does not exceed five; and

(ii) has been provided with a copy of the materials listed under (h)(2) and (4) of this section.

(c) If the department issues a notice of a provisional valid criminal history check for the selected provider under 7 AAC 10.920, the department office responsible for approvals under this chapter will, or the designee shall, issue a provisional approval for the selected provider if the department or designee determines that the provider has met the applicable requirements of this section and 7 AAC 41.205(a). If the department determines under 7 AAC 10.915 that the selected provider did not pass the criminal history check, or if the provisional valid criminal history check issued under 7 AAC 10.920 expires, the department will, or the designee shall, revoke the provisional approval, and the family shall terminate association with the selected provider, unless the family requests a variance under 7 AAC 10.930, and the department grants the request under 7 AAC 10.935.

(d) If the selected provider passed the criminal history check conducted under

7 AAC 10.915, the department will, or the designee shall, determine whether the provider has met the applicable requirements of this section and 7 AAC 41.205(a). If the department or designee determines that the provider

(1) has met the applicable requirements of this section and 7 AAC 41.205(a), the department will, or the designee shall, approve that provider in accordance with the applicable provisions of this chapter; or

(2) has not met the applicable requirements of this section and 7 AAC 41.205(a), the department will, or the designee shall, notify the provider and

- (A) specify the reasons for that determination; and
- (B) advise the provider of the right to request an administrative review under 7 AAC 41.435.

(e) If the selected provider did not pass the criminal history check, the department office responsible for conducting criminal history checks will notify

(1) the provider of the right to challenge the department's determination or to seek reconsideration under 7 AAC 10.950; and

(2) the family of the right to request a variance under 7 AAC 10.930.

(f) The department or designee will not approve under this chapter a selected provider who did not pass a background check unless

(1) the department's determination changes upon reconsideration requested by the selected provider; or

(2) the family requests a variance under 7 AAC 10.930, and the department grants the request under 7 AAC 10.935.

(g) The department will, or a designee shall, provide written notice of the family's obligation to pay the approved in-home child care provider at least the minimum wage established under AS 23.10.065 or the amount of the family's program benefits established under 7 AAC 41.345, whichever is more.

(h) The department will, or a designee shall, provide an in-home child care packet to a family choosing in-home child care. The packet must contain information specified by the department, including

(1) state and federal employment information;

(2) United States Internal Revenue Service Form W-2 and a wage and tax statement;

(3) a reminder that the parent is responsible for complying with applicable labor laws and tax requirements; and

(4) a checklist of suggested health and safety guidelines for in-home child care.

(i) Subject to the monthly maximum set in 7 AAC 41.025(g) and the amount of the family contribution under 7 AAC 41.330, the department will, or a designee shall, issue an authorization for in-home child care and program benefit payments to the family. A family shall submit billing statements, and any corrections to billing statements, to the department or designee, as determined by the department as follows:

(1) for the first 10 months of a state fiscal year, no later than the last day of the third month following the month in which the charges were incurred;

(2) for the last two months of a state fiscal year, no later than 31 days after the end of the fiscal year.

(j) The department will not pay program benefits billed on a billing statement or a correction to a billing statement submitted later than the applicable deadline set in (i) of this section.

(k) The family shall retain for at least three years all records related to attendance of children in care, billing under this chapter, and provider employment.

(l) The family and the approved in-home child care provider shall cooperate with the department or a designee for purposes of monitoring reviews or investigations to determine compliance with this section. In this subsection, "cooperate" includes providing access to

- (1) the site where care is provided;
- (2) records; and
- (3) children for purposes of conducting interviews.

(Eff. 6/23/2006, Register 178; am 2/9/2007, Register 181; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010                      AS 47.05.310                      AS 47.25.051  
AS 47.05.300                      AS 47.25.001

#### **Article 4. General Provisions.**

##### **Section**

- 400. Confidentiality
- 405. Notice of proposed action
- 407. Compliance reviews; plans of correction
- 410. Intentional program violations
- 415. Determination of overpayment of program benefits or intentional program violation
- 420. Overpayment of program benefits
- 425. Sanctions for an intentional program violation
- 430. Emergency suspension
- 435. Request for administrative review
- 440. Administrative review
- 445. Department list of eligible providers
- 450. Department list of ineligible families

**7 AAC 41.400. Confidentiality.** Information relating to a family's participation in the child care assistance program is confidential under AS 47.05.020 and to the extent provided under law. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010                      AS 47.05.020                      AS 47.25.001

**7 AAC 41.405. Notice of proposed action.** (a) The department will or a designee shall give written notice to a participating family of an action to reduce or terminate program benefits before a child care authorization expires, unless

(1) the family indicates in writing that the family no longer desires program benefits; or

(2) the family's whereabouts are unknown and mail directed to the family's last known address was returned by the post office indicating no known forwarding address.

(b) In a circumstance described in (a)(1) or (2) of this section, the department will or the designee shall terminate program benefits without notice.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.407. Compliance reviews; plans of correction.** (a) A participating provider and a participating family choosing in-home child care shall cooperate with the department or a designee for purposes of monitoring reviews, inspections, or investigations to determine compliance with this chapter, including allowing access to the premises where child care is provided, to relevant records, and to children for purposes of conducting interviews.

(b) If, after a compliance review under this section, the department or designee determines that a provider or a family choosing in-home child care is not in compliance with one or more applicable requirements of AS 47.25.002 - 47.25.095 or this chapter, the department will issue a plan of correction, stating a date on or before which compliance must be achieved.

(c) If a provider or a family choosing in-home child care refuses to achieve compliance within the time set in the plan of correction, the noncompliance will be considered an intentional program violation subject to sanction under 7 AAC 41.410 – 7 AAC 41.425. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.410. Intentional program violations.** (a) An intentional program violation is an action taken by a family or provider to deliberately misrepresent, conceal, or withhold a material fact, resulting in establishing a payment to the family or provider under this chapter. The department may impose a sanction upon a provider or family under 7 AAC 41.425 for an intentional program violation set out in (c) - (d) of this section. The department will impose a level of sanction necessary to ensure benefits are being paid in accordance with AS 47.25.001 - 47.25.095 and this chapter.

(b) If the department imposes a sanction described in 7 AAC 41.425(c)(3) or (4) against a family, and after opportunity for administrative review and appeal under 7 AAC 41.435 and 7 AAC 49, the

(1) department will place the family's name on the list maintained under

7 AAC 41.450 of ineligible families; and

(2) family will be prohibited from receiving PASS II or PASS III child care assistance until the name is removed from that list.

(c) A provider may be subject to sanction for

(1) refusing to maintain status as an eligible provider;

(2) providing false or misleading information or withholding necessary information that results in an erroneous determination of eligibility or an erroneous payment of program benefits;

(3) refusing to maintain records concerning the program as required by this chapter;

(4) refusing to cooperate with a review or investigation by the department or a designee, including a refusal to allow inspection of the provider's facility or records;

(5) refusing to provide care that conforms to applicable requirements of 7 AAC 57 or this chapter, if the nonperformance places the health, safety, or welfare of the children in care at significant risk;

(6) refusing to comply with requirements related to rates charged in accordance with 7 AAC 41.245;

(7) falsifying attendance records to reflect a higher amount of time a child was in care than actually occurred;

(8) refusing to comply with any repayment plan developed under 7 AAC 41.420, or to cooperate with the development of the plan; or

(9) refusing to comply with a plan of correction issued under 7 AAC 41.407.

(d) A family is subject to sanction under the program for

(1) reporting incomplete or inaccurate information regarding the family's income or eligibility for benefits;

(2) refusing to keep required information current;

(3) refusing to comply with family responsibilities for participation in the program as specified in 7 AAC 41.320, including payment of the required family contribution;

(4) providing false or misleading information, or withholding information, in order to receive benefits under the program;

(5) falsifying attendance records to reflect a higher amount of time a child was in care than actually occurred;

(6) refusing to cooperate with a monitoring review or investigation by the department or a designee regarding

(A) eligibility for benefits;

(B) provision of services by a participating provider; or

(C) compliance with the applicable requirements of this chapter;

or (7) refusing to comply with any repayment plan developed under 7 AAC 41.420 or to cooperate with the development of the plan.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.415. Determination of overpayment of program benefits or intentional program violation.** (a) If the department or a designee determines there is reasonable evidence of an overpayment of program benefits to, or an intentional program violation by, a participating family or provider, the department will or a designee shall conduct one or more of the following methods of investigation:

- (1) review and audit records in the files of the family, provider, designee, or department;
- (2) make announced or unannounced inspections of the premises where child care is provided;
- (3) schedule office visits with the family or provider;
- (4) review information or inquiries received by telephone, mail, electronic mail, or facsimile; the department will document the information or inquiries in the investigation file.

(b) The family or provider shall cooperate with the department or designee during an investigation conducted under this section, and provide any information necessary to assist the department or designee in completing the investigation.

(c) Based on any investigation conducted under this section, the department will determine whether an overpayment of program benefits or an intentional program violation has occurred and will take action under 7 AAC 41.420 or 7 AAC 41.425 as appropriate. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.420. Overpayment of program benefits.** (a) Overpayment of program benefits occurs if a family or provider receives benefits it is not entitled to under AS 47.25.001 - 47.25.095 and this chapter.

(b) If the department determines under 7 AAC 41.415(c) that an overpayment of program benefits to a family or provider has occurred, the department will provide written notice to the family or provider that

- (1) includes the determination, and the basis for that determination;
- (2) advises the family or provider of the opportunity to develop a repayment plan;
- (3) advises that if the family or provider refuses to cooperate in the development of a repayment plan within 15 days after receiving notice under this subsection, the department will take action to recover the overpayment through collection procedures or deduction from any future amounts paid under AS 47.25.001 - 47.25.095 and this chapter; and

(4) advises that the family or provider has the right to

(A) request an administrative review under 7 AAC 41.435 of the determination; or

(B) appeal the determination under 7 AAC 49.

(c) The department will or a designee shall consult with the family or provider to develop a repayment plan. Any repayment plan developed under this subsection must be approved by the department.

(d) If the family or provider fails to comply with a repayment plan developed under (c) of this section, the department will

(1) take action to recover the overpayment through collection procedures or deduction from any future amounts paid under AS 47.25.001 - 47.25.095 and this chapter;

(2) place the family's name on the list maintained under 7 AAC 41.450 of ineligible families, the family will be prohibited from receiving PASS II or PASS III child care assistance until the name is removed from the list; and

(3) provide a written notice to the family or provider that

(A) describes the action the department intends to take, and the effective date of that action; and

(B) advises the family or provider of the right to

(i) request an administrative review under 7 AAC 41.435 of the decision; or

(ii) appeal the decision under 7 AAC 49.

(e) Unless the family or provider requests an administrative review under 7 AAC 41.435 or appeals the decision under 7 AAC 49, an action taken under (b)(3) or (d)(1) of this section is effective 15 days after the family or provider receives notice under (b) or (d) of this section, as applicable. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.425. Sanctions for an intentional program violation.** (a) Subject to 7 AAC 41.430, if the department makes a determination under 7 AAC 41.415(c) that a family or provider committed an intentional program violation under 7 AAC 41.410, the department will send a written notice to the family or provider that

(1) includes the department's determination, and the basis for that determination;

(2) describes the action the department intends to take, and the effective date of that action; and

(3) advises the family or provider of the right to

(A) request an administrative review under 7 AAC 41.435 of the determination; or

(B) appeal the determination under 7 AAC 49.

(b) A sanction imposed under this section is effective 15 days after the family or provider receives notice under (a) of this section unless the family or provider requests an administrative review under 7 AAC 41.435 or appeals the determination under 7 AAC 49.

(c) The department may impose one or more sanctions under this section, including

(1) limiting the types of child care that may be used;

(2) limiting the number of children for whom a provider may provide care;

(3) suspending a provider or a family from the program, including

suspending authorizations and payments for up to six months; or

(4) terminating a provider or a family from the program, including terminating authorizations and payments, and revoking approval status.

(d) A provider may not bill the department or the designee for services provided under this chapter during a period of suspension, or for services provided after the provider is terminated from the program.

(e) The department will remove a suspended provider from the list of eligible providers that is maintained under 7 AAC 41.445. The department will reinstate a provider to the list of eligible providers after the end of the provider's period of suspension if the provider continues to meet the applicable requirements of this chapter.

(f) If termination from the program is imposed, the department will remove a provider from the list of eligible providers referred to in 7 AAC 41.445, effective on the date the department issues its final decision. A termination imposed by a final department decision is permanent, and the family or provider may not reapply to participate in the program. (Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.430. Emergency suspension.** (a) If the department determines in a review under 7 AAC 41.415 that a provider's continuation in the program will result in an imminent threat to the health, safety, or welfare of a child in care, the department will issue to the provider a notice of an emergency suspension and advise the provider of the right to request an administrative review under 7 AAC 41.435 or to appeal the decision under 7 AAC 49. The emergency suspension is effective immediately, for a period necessary to allow the department to conduct an investigation and reach a final decision.

(b) A provider may not bill the department or the designee for services provided under this chapter during a period of an emergency suspension.

(c) The department will remove a suspended provider from the list of eligible providers maintained under 7 AAC 41.445. The department will reinstate a provider to the list of eligible providers after the end of a period of emergency suspension if the provider continues to meet the applicable requirements of this chapter.

Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.435. Request for administrative review.** (a) A family or provider aggrieved by a written determination made under this chapter may request an administrative review by the department of the determination by submitting a written request for administrative review to the department. A request under this section does not affect the right to appeal the determination under 7 AAC 49.

(b) A request for administrative review must be postmarked no later than 15 days after receipt of the determination for which review is sought. The request for administrative review must contain

(1) a copy of the determination for which administrative review is sought;  
(2) a list of each alleged violation of a statute or regulation upon which the request is based;

(3) factual arguments supporting allegations of the aggrieved party; and  
(4) the specific relief sought.

(c) The request for administrative review must be signed by the aggrieved party or an authorized representative.

(d) A determination that would result in the termination of previously authorized benefits will be stayed pending the outcome of the administrative review, unless the determination is based upon substantial evidence of threat or harm to a child in care.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.440. Administrative review.** (a) An administrative review by the department under this section will be conducted by a person who was not involved in the decision being reviewed and who is not subordinate to the person who made the decision. Within 15 days after receipt of the request under 7 AAC 41.435, the department will issue a decision to grant or deny the relief sought, and will provide the aggrieved party requesting the administrative review, and any designee, a copy of the decision. The department will base its decision upon

(1) information provided in the request for administrative review;  
(2) the records of the department and any designee; and  
(3) other available information that is relevant to the decision for which

review is sought.

(b) The department will deny a request for administrative review if the issues raised in the request do not fall within the department's jurisdiction.

(c) A decision on administrative review constitutes the final department decision, unless an aggrieved party appeals the decision by requesting a hearing under 7 AAC 49.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**7 AAC 41.445. Department list of eligible providers.** The department will  
(1) maintain a list of current licensed and approved providers who are eligible providers under this chapter; and

(2) provide the list upon request.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

**Editor's note:** A copy of the list of eligible providers referred to in 7 AAC 41.445 may be obtained from the Department of Health and Social Services, Child Care Program Office, 619 E. Ship Creek Avenue, Suite 230, Anchorage, Alaska 99501-1677. The list is also available on the department's website at <http://health.hss.state.ak.us/dpa/programs/ccare/>

**7 AAC 41.450. Department list of ineligible families.** (a) The department will maintain a list of families found to be ineligible under this chapter because of

(1) a sanction described in 7 AAC 41.425(c)(3) or (4) for an intentional program violation described in 7 AAC 41.410;

(2) refusing to comply with a repayment plan developed under 7 AAC 41.420; or

(3) refusing to cooperate with the development of a repayment plan.

(b) A family on the list maintained under this section may not participate in the PASS II or PASS III child care assistance program under this chapter.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001

## **Article 5. Definitions.**

### **Section**

#### 990. Definitions

**7 AAC 41.990. Definitions.** (a) In this chapter, unless the context indicates otherwise,

(1) "adult" means an individual who is 18 years of age or older;

(2) "approved provider" means a provider described in 7 AAC 41.200(d) or (e) who has been found eligible to participate in the child care assistance program;

(3) "approved in-home child care provider" means an in-home child care provider who is approved under 7 AAC 41.370(d);

(4) "ATAP" means the Alaska Temporary Assistance Program under AS 47.27;

(5) "attendance" means the time during which a child is actually in the care of a provider;

(6) "attendance rate" means a daily, part-time daily, or hourly rate for actual time a child is in care;

(7) "authorized" means contained in a child care authorization;

(8) "category of care" means a classification of child care described in 7 AAC 41.025(b) and specified in a child care authorization;

(9) "child," when that term is used to refer to

(A) a child receiving child care services under this chapter, has the meaning given that term in AS 47.25.095;

(B) the children of a family, for purposes of determining family eligibility, means an individual under 18 years of age;

(10) "child care" has the meaning given "day care" in AS 47.25.095;

(11) "child care assistance program" means the program described in 7 AAC 41.010;

- (12) "child care authorization" means the written authorization regarding program assistance issued under 7 AAC 41.340;
- (13) "clean" has the meaning given in 7 AAC 10.9990;
- (14) "contaminate" or "contamination" has the meaning given in 7 AAC 10.9990;
- (15) "contract" means an agreement between the department and a designee, under which the department provides money to the designee to carry out the program under AS 47.25.001 - 47.25.095 and this chapter;
- (16) "CPR" means cardiopulmonary resuscitation;
- (17) "day" means calendar day;
- (18) "department" means the Department of Health and Social Services;
- (19) "designee" means a municipality or other entity that has been designated by the department to assume one or more of the department's duties under this chapter;
- (20) "easily cleanable" has the meaning given in 7 AAC 10.9990;
- (21) "eligible cost of care" means the program rate set under 7 AAC 41.025 or the provider's charge for services, whichever is less;
- (22) "eligible family" means a family that meets the requirements of this chapter for receiving program benefits;
- (23) "eligible provider" means a licensed provider or an approved provider determined by the department or a designee to be eligible to participate in the program;
- (24) "enrollment rate" means a rate based on a schedule of an estimated number of units of a care per month, regardless of the actual time a child is in care;
- (25) "family" means a group described in 7 AAC 41.013;
- (26) "food" has the meaning given in 7 AAC 10.9990;
- (27) "grant" has the meaning given "contract" in this section;
- (28) "handsink" means a lavatory
- (A) equipped to provide hot and cold running water in a manner that meets the requirements of 7 AAC 41.220(c)(9)(D); and
- (B) used solely for washing hands, face, arms, or other portions of the body;
- (29) "impervious bag" has the meaning given in 7 AAC 10.9990;
- (30) "inactive status" means retention of eligibility while not actively receiving benefits;
- (31) "in care" means receiving care in a provider's facility;
- (32) "in-home child care" means child care services provided in the child's own home by an approved in-home child care provider;
- (33) "in-home child care provider" means an individual who provides child care services in the child's own home; "in-home child care provider" does not include the child's parent;
- (34) "licensed provider" means a provider licensed under AS 47.32 and 7 AAC 57;
- (35) "month" means a calendar month;
- (36) "monthly enrollment rate" means a rate based on a schedule of an estimated number of units of care per month;

- (37) "municipality" has the meaning given in AS 01.10.060;
- (38) "parent" means a
  - (A) parent by blood, marriage, or adoption;
  - (B) legal guardian of a child; or
  - (C) person standing in loco parentis;
- (39) "participating family" means a family the department has determined to be eligible to participate in the program and to whom the department has issued a current child care authorization;
- (40) "participating provider" means a provider providing child care services under a child care authorization;
- (41) "PASS" means Parents Achieving Self-Sufficiency;
- (42) "pest" has the meaning given in 7 AAC 10.9990;
- (43) "potable water" has the meaning given in 7 AAC 10.9990;
- (44) "program" means the child care assistance program under AS 47.25.001 - 47.25.095 and this chapter;
- (45) "provider" means
  - (A) a provider licensed under 7 AAC 57; for purposes of this subparagraph, "provider" has the meaning given "day care facility" under AS 47.25.095;
  - (B) a provider described in 7 AAC 41.200(a)(2), (3), and (4);
  - (C) an approved provider; and
  - (D) an approved in-home child care provider;
- (46) "registration fee" means a charge associated with the initial or annual enrollment of a child by a provider;
- (47) "regularly provides care" means that a child is enrolled for regular care with a provider, regardless of whether that child receives fill-time or part-time care;
- (48) "relative" means a child who, by marriage, blood, or court decree, is
  - (A) grandchild or great-grandchild of the provider;
  - (B) niece, nephew, great-niece, or great-nephew of the provider;
 or
  - (C) sibling of the provider, if the provider lives in a separate residence;
- (49) "sanitize" has the meaning given in 7 AAC 10.9990;
- (50) "single-use" has the meaning given in 7 AAC 10.9990;
- (51) "subcontract" means a binding legal agreement that provides for an organization or an individual other than the designee to carry out the administrative duties required by a grant or contract under this chapter;
- (52) "toilet" has the meaning given in 7 AAC 10.9990;
- (53) "unit" means a fixed duration of child care time in relation to a rate, such as an hourly rate, part-time daily rate, full-time daily rate, part-time monthly, or monthly enrollment rate;
- (54) "work" means an activity described in 7 AAC 41.312;
- (55) "work activities" has the meaning given in AS 47.27.900 .

(b) In the definition of "developmental disability" in AS 47.25.095, "disability" means a condition attributable to one or more mental or physical impairments that are severe, chronic, and likely to continue indefinitely.

(Eff. 6/23/2006, Register 178; am \_\_\_\_/\_\_\_\_/2011, Register \_\_\_\_\_)

**Authority:** AS 47.05.010 AS 47.25.001 AS 47.25.095