

NUMBER

#19-68-16

DATE

July 25, 2019

OF INTEREST TO

County Directors

Social Services Supervisors and
StaffChild Care Assistance Program
Administrative and Client
Access Contacts

County and Tribal Attorneys

County and Tribal FPI
Supervisors and Investigators**ACTION/DUE DATE**Please read information and
prepare for implementation**EXPIRATION DATE**

July 25, 2021

Child Care Assistance Program 2019 Legislative Changes

TOPIC

Child Care Assistance Program changes resulting from legislative action.

PURPOSE

Provide information and instructions for legislative changes.

CONTACTContact your Child Care Assistance Program policy specialist or submit
questions through PolicyQuest.**SIGNED**

NIKKI FARAGO

Assistant Commissioner

Children and Family Services Administration

TERMINOLOGY NOTICE

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

I. Background

The Child Care Assistance Program (CCAP) helps approximately 15,000 families and 30,000 children receive child care throughout Minnesota.

During the 2019 legislative session, changes were made to CCAP, including:

- Changes required under the federal Child Care and Development Block Grant (CCDBG) Act of 2014.
- Changes to support program integrity and data sharing.
- Changes that clarify or affirm existing policy implementation.

This bulletin provides an introduction to these changes. The Department of Human Services (DHS) will provide more guidance in the CCAP Policy Manual and future bulletins and memos, including policy details and information about MEC² changes.

II. Federal Conformity and Program Improvements

Changes related to program improvements bring Minnesota into compliance with most federal requirements under the Child Care and Development Block Grant of 2014, including ensuring 12-month eligibility periods for families. Twelve-month eligibility helps parents find and keep employment and improves school readiness by keeping children in child care with fewer disruptions and more consistent schedules.

A. Portability Pool

Current Policy

When a family on Basic Sliding Fee (BSF) Child Care moves to a county or tribal agency with a waiting list and they notify the new county within 60 days, the family is eligible for CCAP through Portability Pool for the lesser of:

- Six months (beginning at the end of the two full calendar months after the move)
- Until Basic Sliding Fee funds are available in the new county.

New Policy

Effective December 2, 2019, Portability Pool funds continue until a family can be served by Basic Sliding Fee (BSF) Child Care. There is no limit to how long a family can receive Portability Pool funds.

B. Transition Year

Current Policy

To qualify for Transition Year (TY) Child Care, a family must have received the Minnesota Family Investment Program (MFIP) or the Diversionary Work Program (DWP) for at least three of the six months prior to the closing of their cash assistance.

New Policy

Effective March 23, 2020, a family can receive TY Child Care if they received MFIP or DWP for at least one of the six months prior to the closing of their cash assistance.

C. Children Turning 13 or 15

Current Policy

A child may receive CCAP through age 12 or through age 14 if they have a documented disability. Eligibility ends when a child turns 13 (or 15 if the child has a disability) even if the family is within their 12-month eligibility period.

New Policy

Effective June 29, 2020, during the 12-month eligibility period, a child's eligibility for CCAP continues after the child turns 13 (or age 15 if the child has a documented disability) until the family's next redetermination. Separate licensing laws and rules apply to children attending licensed child care programs.

D. Families Experiencing Homelessness

Current Policy

There are no specific policies for families experiencing homelessness.

New Policy

Effective September 21, 2020, when a family experiencing homelessness applies for CCAP, they will:

- Have their CCAP application processed within five business days of receipt.
- Have their application processed prior to receipt of verifications. The family will have three months to submit verifications.
- Be exempt from activity requirements for three months following CCAP application. Child care is authorized for 60 hours per biweekly period, per child, during this time.

CCAP defines a household as homeless if they lack a fixed, adequate night time residence. This includes, but is not limited to families living in shelters, cars, outside, public spaces, or motels due to lack of accommodation and families doubling up temporarily due to hardship.

Families experiencing homelessness who apply for Basic Sliding Fee Child Care in a county or tribal agency with a waiting list are subject to the waiting list.

E. Provider Due Process

Current Policy

A child care provider may request a fair hearing for limited reasons, such as an administrative fraud disqualification established by an Administrative Disqualification Hearing and the assignment and/or amount of an overpayment.

For other adverse actions taken against providers, only families may appeal based on the effect these actions have on them.

New Policy

Effective February 26, 2021, a provider will have appeal rights for all adverse actions taken by CCAP against a provider. Depending on the reason for an adverse action, due process rights will be met by either a fair hearing or an administrative review. Providers will not have appeal rights for actions taken against families; families will retain appeal rights for actions taken against them.

III. CCAP Policy - Program Integrity Changes

Multiple audits related to program integrity concerns were published in 2019. The Office of the Legislative Auditor (OLA) released two special reviews of the Child Care Assistance Program (CCAP) and the Office of Inspector General (OIG). DHS also hired a consulting firm, PFM, to assess procedures and give recommendations.

The 2019 Legislature adopted many changes that build on existing laws, align with recommendations from the OLA and PFM audits, and increase accountability to ensure funds are spent with financial and administrative integrity.

A. Limits on Receiving Public Funds

Previous Policy

A person or provider who has been excluded from one DHS program cannot be a provider in another DHS program.

New Policy

Effective immediately, an existing law that prohibits a person or provider who has been excluded from a DHS program becoming a provider in another DHS program was strengthened by:

- Giving DHS additional authority to remove a provider who is excluded from one DHS program from all DHS programs (previous authority was to prohibit entry to a program, but did not address those already participating in more than one DHS program).
- Clarifying a provider excluded under this law includes any entity or individual receiving payment from a program administered by DHS.
- Modifying the definitions of who is “excluded” (e.g. a provider or individual who has had a child care license revoked or suspended).
- Expanding the list of possible sanctions covered by this law.

CCAP Agency Action(s) Required

Notify your CCAP policy specialist:

- Before entering a fraud disqualification in MEC² for a parent or a provider.
- At least 10 days prior to closing a provider’s registration or taking other action to enforce provider compliance clauses under [Minn. Stat. §119B.13, subd. 6\(d\)](#), except clause four.

This ensures DHS Background Studies and Licensing are aware of any program violations that may affect an individual or entity’s ability to qualify as a provider through other DHS programs.

B. Retroactive Eligibility

Previous Policy

Retroactive eligibility for MFIP Child Care is limited to **six** months prior to the application date.

New Policy

Effective July 1, 2019, retroactive eligibility is limited to **three** months prior to the CCAP application date.

Eligibility for MFIP Child Care can go back to the later of:

- The date of employment or approved job search (without an Employment Plan)
- The start date of participation with Employment Services (with an Employment Plan)
- The date of MFIP or DWP eligibility (no more than three months prior to the CCAP application date).

CCAP Agency Action(s) Required

Continue following instructions in the MEC² User Manual to process a [DWP/MFIP/Retro Application](#). For **applications received on or after July 1, 2019**, do NOT approve retroactive eligibility more than three months prior to the application date.

C. Attendance Record Keeping Requirements

Current Policy

A provider must keep daily attendance records for six years at the place where care is provided.

Attendance records MUST:

- Be immediately available upon request of the county, tribe, or DHS.
- Include the date of service, each child's first and last name, and sign in and out times. To the extent possible, the person picking up or dropping off the child should sign them in and out.

CCAP agencies and DHS may assess overpayments for attendance record violations. CCAP agency staff calculate attendance record overpayments by assessing the interaction between attendance records, CCAP rates, and payment policies.

New Policy

Effective July 1, 2019, in addition to existing attendance record policies:

- Attendance records must be "accurate and legible."
- Records not produced immediately cannot be submitted later to challenge an overpayment or provider disqualification.
- The amount of an attendance record overpayment will be the applicable maximum daily rate for each day an attendance record is missing, unavailable, incomplete, inaccurate, or otherwise inaccurate. The overpayment is assigned to the provider and cannot exceed the total payment for the biweekly period.

These policies apply to records collected and overpayments assessed July 1, 2019 or later, regardless of the attendance dates documented in the records.

D. Failure to Report Decreases in Attendance

Previous Policy

A provider must report on the billing form when a child's actual attendance drops to less than half of the authorized hours or days in a four-week period. CCAP agencies and DHS may close or deny a provider's registration, stop payment, and/or refuse to pay a bill for up to three months after the condition is corrected, when a provider violates certain policies.

However, the law has not assigned a specific penalty if a provider fails to properly report a child's decreased attendance.

Some counties and tribes currently implement a penalty when a provider fails to report decreases in attendance by including this in their biennial County and Tribal Child Care Fund Plan under [Minn. Stat. §119B.13, subd. 6\(d\), clause 3.](#)

New Policy

Effective July 1, 2019, CCAP agencies and DHS may take action if a provider fails to report on the billing form when a child's actual attendance drops to less than half of the authorized hours or days in a four-week period. Actions may include denying a provider's registration, stopping payment, refusing to pay a bill, and closing a provider's registration for up to three months after the condition is corrected.

CCAP Agency Action(s) Required

CCAP agencies must include this policy in their County and Tribal Child Care Fund Plan prior to implementation.

- For the 2018-2019 plan:
 - Continue implementing under [Minn. Stat. §119B.13, subd. 6\(d\), clause 3](#) (if already included); OR
 - Contact your policy specialist to amend your plan to include [Minn. Stat. §119B.13, subd. 6\(d\), clause 7](#) (beginning July 1, 2019).
- For the **2020-2021 County and Tribal Child Care Fund Plan (DHS-5107)**, select Clause 7 when completing Section IV. (Provider Compliance Policies).

E. Absent Days and Holidays

Current Policy

CCAP will pay for up to 25 absent days per calendar year (not to exceed 10 days in a row) if:

- The child is absent the entire day AND
- The child is scheduled and authorized to be in care that day AND
- The provider is open and care is available AND
- The provider bills ALL families for absent days.

CCAP will pay for up to 10 cultural or religious holidays per calendar year if:

- The provider is closed and not providing care AND
- The provider charges all families for these days AND
- The holiday falls on a day when the child is authorized and scheduled to be in care.

New Policy

Effective July 1, 2019, current policies regarding absent days and holidays still apply. Additionally, any day a child does not attend care that a provider fails to accurately mark as an absent day or holiday on the billing form is considered an overpayment, regardless of whether the child reached, or is exempt from, the absent day or holiday limits for the year.

CCAP Agency Action(s) Required

Any day when an attendance record indicates a child did not attend, but the provider failed to accurately mark the billing form (“A” for absent or “H” for holiday), results in an overpayment.

F. Administrative Fraud Disqualifications for Providers

Previous Policy

When an Intentional Program Violation (IPV) is established, disqualification periods for provider fraud are:

- One year for the first offense.
- Two years for the second offense.
- Permanently for any subsequent offenses.

Human Services Judges historically applied the “clear and convincing” standard of proof to provider disqualifications.

New Policy

Effective July 1, 2019, disqualification periods for a provider IPV are:

- Three years for the first offense.
- Permanently for any subsequent offenses.

The standard of proof used in Administrative Disqualification Hearings (ADH) for CCAP providers is “preponderance of the evidence.”

Providers serving disqualification periods on 7/01/2019

A provider serving a disqualification on 7/01/2019 due to an administrative fraud determination established prior to 7/01/2019 is subject to the disqualification period in place at the time fraud was determined. Do not extend or convert a provider’s disqualification period. An IPV is established the date one of the criteria listed under CCAP Policy Manual [§14.12.6 \(Disqualification for Fraud – Providers\)](#) is met (e.g. the date a provider signs a Waiver of Administrative Disqualification Hearing ([DHS-3131A](#))).

IPV established before 7/01/2019, but processed on or after 7/01/2019

For IPV’s established prior to 7/01/2019, use the disqualification period in effect when administrative fraud was determined, regardless of when the agency processes the IPV.

CCAP Agency Action(s) Required

Contact your CCAP policy specialist prior to entering a Provider Fraud window to ensure MEC² applies the proper penalty period and the provider receives the proper notice.

DHS will update the Provider Fraud window and fraud notices generated by MEC². DHS CCAP staff will provide more information when this occurs.

G. Fraud Notification for Families

Current Policy

The **Minnesota Child Care Assistance Program Application** ([DHS-3550](#)) and the **Minnesota Child Care Assistance Redetermination** ([DHS-5247](#)) require applicants and recipients to acknowledge in writing:

- Specific consequences of fraud
- Specific consequences of perjury
- Receipt of the **Client Responsibilities and Rights** ([DHS-4163](#)), which discusses fraud and its consequences.

Agencies may also provide applicants and recipients with a document titled **Child Care Assistance Program and Fraud – Questions and Answers for Families** ([DHS-3943B](#)), which explains fraud and its consequences.

New Policy

Effective September 1, 2019, in addition to current policies, at application and redetermination all families must receive and acknowledge a written notice about fraud consequences and what constitutes fraud.

CCAP Agency Action(s) Required

DHS CCAP policy staff will issue further guidance regarding processing applications and redeterminations to comply with new policy.

H. County and Tribal Roles in Provider Fraud Investigations

Current Policy

CCAP agencies and DHS have the authority to investigate child care provider fraud and immediately stop payments when a preponderance of the evidence indicates a provider intentionally submitted false information on billing forms and/or attendance records.

CCAP agencies refer or notify the DHS Office of Inspector General (OIG) Child Care Provider Fraud Investigations Unit of providers they suspect of fraud, and they notify DHS OIG of all provider fraud investigations. See CCAP Policy Manual [§9.3 \(Payments to Providers\)](#) and [§14.12 \(Fraudulently Obtaining Child Care Assistance\)](#).

New Policy

A new policy affirms CCAP agencies' authority to investigate provider fraud and immediately stop payments for suspected fraud. The new policy also states, effective February 26, 2021, that when a CCAP agency immediately stops a provider's payments for suspected fraud, the provider has a right to an administrative review. This coincides with other provider due process rights that take effect February 26, 2021.

IV. Other Program Integrity Changes Related to CCAP

In addition to the CCAP policy changes listed above, the 2019 Legislature passed other changes that support program integrity for child care assistance.

A. Child Care Licensing Oversight

Effective January 1, 2020, new laws:

- Require license holders to notify DHS of changes to the ownership or operation of a child care program.
- Allow a license to be temporarily immediately suspended if the license holder is criminally charged with an offense that involves fraud or theft against a program administered by DHS.

B. Program Integrity Investments

The 2019 Legislature appropriated funding for:

- A temporary staff person to research and report back to the 2021 Legislature about:
 - Electronic attendance record keeping systems
 - Improved monitoring of CCAP billing practices
 - Possible centralization of CCAP provider registration.
- Increased funding for the Fraud Prevention Investigations (FPI) program, including a new DHS staff person to support county and tribal investigations.
- New staff to strengthen and support DHS OIG fraud investigations, including Bureau of Criminal Apprehension (BCA) agents, and data analysts.
- New child care licensors to provide additional technical assistance and guidance to child care centers during their first year of licensure.
- A new electronic system to track DHS OIG fraud investigations.

C. Initiatives and Reports to the Legislature

The 2019 Legislature directed DHS to:

- Work with counties and stakeholders to report back to the legislature with recommendations on how to count self-employment income for purposes of determining eligibility for and maintaining integrity of public assistance programs.
- Consult with counties and report back to the legislature with recommendations for legislation that identifies and clarifies the responsibilities of the department and counties for fraud investigations in public programs administered by DHS.

V. Data Sharing

The 2019 Legislature passed multiple changes related to data sharing. DHS recommends CCAP agencies consult with their county/tribal attorney's office regarding data sharing questions.

A. Data Sharing with the Department of Education

Previous Policy

CCAP agencies (county and tribal agencies administering CCAP) may share information about program applicants and recipients and child care providers with the Minnesota Department of Education.

New Policy

Effective immediately, CCAP agencies that administer *CCAP and DHS* may share information about program applicants and recipients and child care providers with the Minnesota Department of Education.

B. Sharing Center Payment Data

Previous Policy

CCAP agencies and DHS may share whether a provider is or has been registered to receive CCAP, but they cannot share payment data (e.g. whether a provider has been paid, how much a provider has been paid, the number of families and children on whose behalf payments were made, CCAP provider ID).

New Policy

Effective immediately, CCAP agencies and DHS may share payment data about licensed and certified license-exempt child care centers (e.g. whether a center has been paid, how much a center has been paid, the number of families and children on whose behalf payments were made, CCAP provider ID) when:

- The center receives CCAP payments of more than \$100,000 in a period of one year or less;
OR
- DHS or a CCAP agency:

- Disqualified the center for fraud under [Minn. Stat. §256.98, subd. 8\(c\)](#); OR
- Denied or closed a CCAP registration, stopped payment, and/or refused to pay a bill for a center under [Minn. Stat. §119B.13, subd. 6\(d\)](#); AND/OR
- Made a finding of financial misconduct under [Minn. Stat. §245E.02](#).

Payment data that meets criteria above but could identify a specific family or child is classified as private and cannot be shared.

CCAP agencies and DHS cannot share payment data about licensed family or legal nonlicensed child care providers.

C. Sharing Data with Law Enforcement

Previous Policy

DHS, the counties, and tribes may share information about program applicants, vendors of services, licensees and recipients in the welfare system with law enforcement for the investigation or prosecution of a criminal, civil or administrative proceeding.

New Policy

Clarified that this ability to share information with law enforcement includes sharing investigative data held by DHS, the counties, and the tribes.

VI. Technical Changes and Clarifications

A. Market Rate Survey

Previous Policy

DHS conducts a provider market rate survey every two years.

New Policy

Effective immediately, DHS conducts a provider market rate survey every three years. Minnesota completed the last survey in 2018. The next survey will be completed in 2021.

B. Provider Definition

Effective July 1, 2019, the definition of “provider” under Minnesota Statutes, Chapter 119B is changed to ensure that out-of-state child care providers meet federal health and safety requirements to receive CCAP.

C. Attendance Records

The Legislature repealed duplicate language from Minn. Stat. §119B.125, subd. 8 about attendance records.

VII. Legal References

Laws of Minnesota 2019, 1st Special Session, Chapter 9, Articles 1 and 2

Minnesota Statutes, section 13.46

Minnesota Statutes, Chapter 119B

Minnesota Statutes, section 245.095

Minnesota Statutes, Chapter 245E

The Child Care Development Block Grant Act of 2014, Public Law Number 113-186.

Federal Child Care and Development Fund, 45 C.F.R.

Americans with Disabilities Act (ADA) Advisory

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