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State of Minnesota
Department of Human Services
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

July 14, 1993

Ms. Maryanne Hruby
Executive Director, LCRAR
55 State Office Building
St. Paul, Minnesota 55155

Dear Ms. Hruby:

Pursuant to Minnesota Statutes, section 14.131, enclosed is a statement of need and reasonableness relating to amendments to the child care fund, Minnesota Rules, parts 9565.5000 to 9565.5200.

If you have any questions on the statement of need and reasonableness, please do not hesitate to contact me at 296-7815.

Sincerely,

Jim Schmidt

Jim Schmidt
Rulemaker

Encl.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of Proposed Amendments to the Department of Human Services Rule Relating to the Child Care Fund; Minnesota Rules, Parts 9565.5000 to 9565.5200.

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

Minnesota Rules, parts 9565.5000 to 9565.5200 govern administration of the child care fund under Minnesota Statutes, sections 256H.01 to 256H.19. The purpose of the child care fund rule is to reduce, according to a sliding fee schedule, the costs of child care services for eligible families to enable them to seek or retain employment or to participate in education or training programs necessary to obtain employment. The current rule was adopted in 1989. Amendments to the rule are necessary to implement statutory changes made in the child care fund program subsequent to the adoption of the rule in 1989.

OVERVIEW OF CHILD CARE FUND PROGRAM

The child care fund program began in Minnesota as an experimental program in 1979 under the authority of Laws of Minnesota 1979, chapter 307. The intent of the original legislation was to demonstrate whether a child care sliding fee program could reduce the incidence of low income families remaining on or requiring public assistance; to demonstrate whether the program could provide an incentive for economic independence; and to demonstrate whether the program could provide other benefits.

The experimental program concluded that a sliding fee subsidy encouraged greater use of licensed day care providers; it demonstrated the ability to reduce dependence on public assistance at a lesser cost than other public assistance programs; and it prevented dependence on public assistance by helping participants remain employed.

In 1981, 1982, and 1983, legislation was adopted which continued and modified the child care sliding fee program. In 1985 the legislature transferred the administration of the child care fund from the Department of Human Services to the Department of Jobs and Training. In 1987 the legislature transferred the responsibility for administration of the child care fund back to the Department of Human Services.

In 1988 the Department began rulemaking to implement five separate child care programs which were under the child care fund. These five

programs were the Basic Sliding Fee program, the AFDC Priority program, the AFDC Postsecondary Students program, the Public Postsecondary Students program, and the Nonprofit Postsecondary Students program. In 1989, before the final rule was adopted, the legislature combined the five child care programs into two programs, the Basic Sliding Fee program and the AFDC child care program. The adopted rule included two child care programs, the Basic Sliding Fee program and the AFDC child care program.

In October of 1988, Congress enacted the Family Support Act of 1988, Public Law Number 100-485. Title II of the Act established the Job Opportunities and Basic Skills Training (JOBS) program under title IV-F of the Social Security Act. The purpose of the federal JOBS program is to assure that needy families with children obtain the education, training, and employment that will help them avoid long-term welfare dependence.

Section 301 of the Family Support Act guarantees child care and provides other supportive services for JOBS participants and recipients in approved educational and training activities, and guarantees child care for those who are working. In Minnesota the JOBS program is called "Project STRIDE".

Section 302 of the Family Support Act guarantees child care for certain individuals who lose AFDC eligibility due to increased earnings, increased hours of work, or loss of the earned income disregard. Families receiving child care under section 302 are referred to as transition year families. Federal regulations governing transition year families are found in 45 C.F.R. § 256.

In 1990 the legislature amended Minnesota Statutes, section 256H.01 by adding a new subdivision 16 which defined "transition year family". It also amended section 256H.05, subdivision 1b to identify families eligible for guaranteed child care assistance under the AFDC child care program.

In November 1990, Congress enacted the Omnibus Budget Reconciliation Act of 1990 (OBRA), Public Law Number 101-508. OBRA included federal funding for two child care programs: the Child Care Development Block Grant program, and the At-Risk Child Care program (child care for low-income working families in need of such care and at-risk of becoming eligible for AFDC).

In 1991 the legislature authorized the commissioner to adopt rules under Minnesota Statutes, chapter 14, to administer the federal At-Risk Child Care program (Minnesota Statutes, section 256H.035, subdivision 2); to administer the federal Child Care Development Block Grant program (Minnesota Statutes, section 256H.055, subdivision 2); and to implement and coordinate federal program requirements (Minnesota Statutes, section 256H.02). Final federal regulations governing the At-Risk Child Care program and Child Care Development Block Grant program were published in the August 4, 1992, Federal Register.

In 1992 the legislature created a limited Non-STRIDE AFDC child care program under Minnesota Statutes, section 256H.05, subdivision 6. The program authorized 2,000 family slots for AFDC caretakers not eligible for services under Minnesota Statutes, section 256.736 and who are engaged in an authorized educational or job search program.

REASON FOR AMENDMENTS

The amendments are necessary to:

(1) implement three federal child care programs, Transition Year child care, At-Risk Child Care, and Child Care and Development Block Grant;
(2) clarify child care entitlements under the AFDC child care program;
(3) implement 1990, 1991, and 1992 legislative changes;
(4) repeal obsolete requirements and statutory references;
(5) provide greater consistency in terms used in the rule by making minor editorial changes;
(6) establish standards governing the recovery of overpayments; and
(7) clarify payments for certain provider practices instituted since 1989.

STATUTORY AUTHORITY FOR RULE

Minnesota Statutes, sections 256H.02; 256H.035, subdivision 2; and 256H.055, subdivision 2 authorize the Commissioner to promulgate the rule.

SMALL BUSINESS CONSIDERATION IN RULEMAKING

Families receiving assistance under the child care fund are a small subset of all families using child care services. Since child care resources are limited, child care fund families must compete with other families for available child care services.

During the rule amendment process, the Department has updated the rule to react to current market practices. It has not attempted to dictate those market practices. The Department ability to influence market practices is extremely limited. More important, since child care fund families must compete with other consumers for child care resources, if the rule sets burdensome requirements on providers those providers will elect to serve other consumers to the detriment of the child care fund program.

The rule clarifies payment responsibility for families relative to a number of existing market practices, e.g., costs of registration and activity fees and purchase of child care services in half-day, full-day, and weekly blocks of time. It does not dictate provider practices. Providers have complete freedom to establish fees or other business practices.

Except as provided in Minnesota Statutes, section 256H.10, subdivision 5, which permits a county to deny a child care subsidy to an unsafe provider, parents are not otherwise restricted in their choice of child care provider. However, consistent with Minnesota Statutes, section 256H.15, the rule limits the maximum rate paid for child care assistance under the child care fund to the maximum rate eligible for federal reimbursement. The maximum rate eligible for federal reimbursement under the JOBS program, Transition Year child care program, and At-Risk program is the 75th percentile rate (See 45 C.F.R. §§ 255.4, 256.4, and 257.63). The same standard is used for the Child Care and Development Block Grant program and state sliding fee program to permit seamless service between programs. Although the rule limits the maximum child care rate paid under the child care fund, a family may select a provider who charges more than the maximum rate eligible for federal reimbursement but the family is responsible for charges above the maximum rate.

The rule establishes a registration requirement for legal nonlicensed caregivers. A legal nonlicensed caregiver is an individual exempt from licensure under Minnesota Statutes, section 245A.03, subdivision 2. Legal nonlicensed child care is child care generally provided by a relative or an individual to a single family or school age child care programs operated by local boards of education. From a small business perspective, individuals in the "business" of child care have a family day care or day care center license. Therefore, it is not clear whether the requirements under Minnesota Statutes, section 14.115 apply to registration requirements governing legal nonlicensed caregivers.

In the event section 14.115 does apply, the registration requirement is necessary to comply with state and federal requirements. Registration is required under 45 C.F.R. §§ 98.45 and 257.41. In order to provide seamless service, it is necessary to carry over common requirements for all programs. Even if the federal programs did not require registration, registration would be necessary for financial accountability, for authorizing payments, and for establishing payment procedures.

Under the registration requirement, the legal nonlicensed caregiver must provide the county with the following information: the caregiver's name (for identification and payment purposes); social security number (required for tax reporting purposes); age (must be over 18 years of age under Minnesota Statutes, section 256H.01, subdivision 12); provider rate (necessary to determine payment amount); and a release to permit information on substantiated parental complaints to be disclosed subject to Minnesota Statutes, chapter 13 (45 C.F.R. § 98.32 requires information on parental complaints be made available to the public, the signed release permits a substantiated complaint to be release to the public upon request subject to Minnesota Statutes, chapter 13).

Registration of legal nonlicensed caregivers is only required when child care payments are made from the child care fund. Legal nonlicensed caregivers are not required to serve child care fund

families. If a legal nonlicensed caregiver refuses to register, the family may need to select a different provider.

The rule amendments do not impact small businesses.

FISCAL NOTE

There are additional state costs due to combining the federal child care programs with the state Basic Sliding Fee program. The Department must comply with individual federal program and reporting requirements for the federal child care programs.

The decision to commingle state, county, and federal funding under the Basic Sliding Fee program is predicated on the ability:

1. to achieve cost avoidance for the counties;
2. to maximize use of federal child care funds;
3. to minimize funding penalties for counties who supplement state child care funds with additional county funds; and
4. to provide seamless service to families even though there are multiple funding sources.

County cost avoidance is realized by combining similar but separate programs into essentially two programs, an AFDC program and the Basic Sliding Fee program. This eliminates the need for the counties to administer three different Non-AFDC programs; to account for or comply with multiple funding requirements; and to comply with separate program and reporting requirements.

The proposed amendments to the rule will result in increase costs to the counties. The estimated cost to the counties in 1994 and 1995 is $35,000 with $26,800 of the cost in the first year. The largest cost element to the counties is staff time necessary to obtain a working knowledge of the rule amendments.

A fiscal note has been prepared for the rule.

RULE THAT SETS FEES

Minnesota Statutes, section 16A.128, subdivision 1a, does <u>not</u> apply to the child care fund. Child care assistance is a partial payment of a grant to an individual or provider and not a payment to the State. Rules that set fees under Minnesota Statutes, section 16A.128 are rules that establish fees to recover the expenses incurred by State government in providing a direct service.

IMPACT ON AGRICULTURAL LAND

Minnesota Statutes, section 14.11, subdivision 2 requires agencies proposing rules that have an adverse impact on agricultural land to comply with additional statutory requirements. The child care fund

rule does not impact agricultural land and, therefore, the additional statutory provisions do not apply.

RULE DEVELOPMENT PROCEDURES

In the development of the rule amendments, the Department followed the procedures mandated by the Administrative Procedures Act and internal department policies that insure maximum public input. Public input was sought through a Notice to Solicit Outside Opinion published March 4, 1991, in the State Register (15 S.R. 1930) and establishment of a rule advisory committee. The rule advisory committee consisted of 12 persons from the following organizations: Minnesota counties; Legal Services Advocacy Profession; Child Care Resource and Referral; Child Care Workers Alliance; Children's Defense Fund; Greater Minneapolis Day Care Association; and the Department of Jobs and Training. The rule advisory committee met on June 28, 1991, August 1, 1991; September 10, 1992; September 16, 1992; and October 7, 1992.

RULE AMENDMENTS

9565.5000 PURPOSE AND APPLICABILITY.

Subp. 2. **Applicability.** The amendment to this subpart is necessary to delete the phrase "to the extent of available allocations." The phrase "to the extent of available allocations" is being deleted because set-aside funds are no longer allocated for child care under the AFDC child care program. The Family Support Act of 1988, Public Law Number 100-485, guarantees child care for AFDC caretakers who are working; who are in an approved educational or training program; or who have lost AFDC eligibility due to increased earnings, increased hours of work, or loss of the earned income disregard. Under Minnesota Statutes, section 256H.05, subdivision 1b, child care under the AFDC child care program is now an entitlement. Since the reference to rule parts 9565.5000 to 9565.5200 includes both the Basic Sliding Fee program and AFDC child care program and only funding under the Basic Sliding Fee program is limited "to the extent of available allocations", it is necessary to delete the phrase from this subpart. This change is reasonable because it is consistent with Minnesota Statutes, section 256H.05, subdivision 1b. Deleting the phrase in this subpart does not affect the Basic Sliding Fee program since part 9565.5030, subpart 6 states, "To the extent of available allocations, a family is eligible for child care assistance under the Basic Sliding Fee program if: A. the applicant meets eligibility requirements under part 9565.5025; B. the applicant is not an AFDC caretaker; and C. the family has an annual gross income that does not exceed 75 percent of the state median income for a family of four, adjusted for family size."

The word "subsidized" is being deleted from this subpart and other subparts in the rule as an editorial change. Minnesota Statutes, chapter 256H, uses the terms "subsidy" and "assistance" interchangeably. However, in order to provide greater consistency in

the use of terms in the rule, the term "subsidy" is being replaced with the word "assistance" throughout the rule.

9565.5010 DEFINITIONS.

Subp. 1a. **ACCESS child care program.** This subpart is necessary to clarify a term used in the rule. Under Minnesota Statutes, section 256H.05, subdivision 6, a special Non-STRIDE AFDC child care program was created which authorized 2,000 family slots for AFDC caretakers not eligible for services under section 256.736, who are engaged in an authorized educational or job search program. The Department refers to this Non-STRIDE program as the "ACCESS" child care program. ACCESS is an acronym for Access to Child Care for Educational Support and Services. The definition is reasonable because it cross-references the special child care program under Minnesota Statutes, section 256H.05, subdivision 6.

Subp. 1b. **ACCESS participant.** This subpart is necessary to clarify a term used in the rule. The term "ACCESS participant" is used rather than "ACCESS child care program participant" to shorten the length of the rule.

Subp. 2. **Administering agency.** The amendment to this subpart is necessary to implement an editorial change. The term "child care subsidy program" is being changed to "child care fund". The name change does not affect any program requirements. The change is reasonable because the term child care fund is used in the chapter heading under parts 9565.5000 to 9565.5200 and is commonly used by the counties and child care organizations to refer to the child care programs under Minnesota Statutes, sections 256H.01 to 256H.19. This editorial change will be made throughout the rule.

Subp. 3. **Administrative expenses.** The amendments in this subpart are necessary to implement editorial changes. The term "child care subsidy program" is being replaced with the term "child care fund" to provide consistency with the administrative rule chapter heading and because of the term's common usage by counties and providers.

The second amendment modifies the phrase "The costs include, but are not limited to" to address rule language which is no longer acceptable to the Office of Administrative Hearings. The amendment is necessary because the phrase "the costs include, but are not limited to" does not provide adequate guidance to the counties governing what are and what are not administrative expenses. The change is an editorial change since the expense categories under "administrative expenses" have not changed.

Subp. 5. **AFDC caretaker.** The amendment to this subpart is necessary to clarify a term used in the rule. The former definition referenced the Minnesota AFDC rule definition for persons who may be caretakers. Instead of referencing the AFDC rule, the amended definition references Minnesota Statutes, section 256.736, subdivision 1a, paragraph (c). This subpart is reasonable because it ensures

consistency with Minnesota Statutes and will not require a rule amendment should the statutory definition be amended.

Subp. 6. [See repealer.] **AFDC employment special needs program.** The AFDC employment special needs program has been superseded by the federal JOBS Program under the Family Support Act of 1988. As a result of this change, references to the AFDC employment special needs program were deleted from the child care fund statutes (Minnesota Statutes, sections 256H.01 to 256H.19). Since the special needs program no longer exists and the term has been deleted from the child care fund statutes, the repealer is necessary to delete obsolete terminology.

Subp. 7. [See repealer.] **AFDC priority groups.** Under the former AFDC set-aside program, priority for child care assistance was given to certain AFDC groups. The "AFDC priority groups" were defined under Minnesota Statutes, section 256.736, subdivision 2a. Subdivision 2a was repealed in 1990 by Laws of Minnesota, 1990, chapter 568, article 4, section 85. Since the statutory definition has been repealed, it is necessary to delete the obsolete term from the rule.

Subp. 9. **Applicant.** The amendment to this subpart is an editorial change. The legislature defined the term "applicant" in Minnesota Statutes, section 256H.01, subdivision 1a. The definition of "applicant" in rule is being deleted and replaced with a cross-reference to Minnesota Statutes. This is reasonable to ensure consistency with Minnesota Statutes and will not require a rule amendment should the statutory definition be amended.

Subp. 10. **Child.** The amendment to this subpart is an editorial change. The legislature defined "child" in Minnesota Statutes, section 256H.01, subdivision 3. The definition of "child" in rule is being deleted and replaced with a cross-reference to Minnesota Statutes. It is reasonable to reference the definition in Minnesota Statutes to ensure consistency with Minnesota Statutes and to eliminate the need to amend the rule should the statutory definition change.

Subp. 11. **Child care.** This subpart is necessary to clarify a term used in the rule. The definition is amended to include spouses of a parent, legal guardian, or eligible relative caretaker. It would be unreasonable to permit a spouse to receive payment for the care of a member of the family under the child care fund or to pay for child care assistance when a spouse is available to provide child care, i.e., not working and not participating in an education or training program. The amendment is necessary to ensure that child care does not include care provided by spouses. It is reasonable to exclude spouses from the definition of child care since the purpose of the child care fund is to reduce, according to a sliding fee schedule, the costs of child care services for eligible families to enable them to seek or retain employment or to participate in education or training programs necessary to obtain employment. The child care fund is not intended to supplement a family's income when a spouse provides child care to a member of the family or to pay for child care when a spouse is available to provide child care.

Subp. 11a. **Child care assistance.** This subpart is necessary to clarify a term used in the rule. As noted earlier, the term "subsidy" is being deleted from the rule and replaced with the term "assistance". Former subpart 13 (subpart 13 is being repealed under this rule) defined "child care subsidy program" to mean the child care services funded under Minnesota Statutes, sections 256H.01 to 256H.19. The definition under subpart 11a is consistent with the previous definition of "child care subsidy program" under subpart 13. The word "assistance" is being substituted for the words "subsidy program".

Subp. 11b. **Child care fund.** This subpart is necessary to clarify a term used in the rule. The term "child care fund" is a generic term that refers to any one or all of the child care programs under Minnesota Statutes, section 256H.01 to 256H.19. The term is reasonable because it shortens the length of the rule by eliminating the need to refer to all the child care assistance programs under Minnesota Statutes, section 256H.01 to 256H.19.

Subp. 12. **Child care services.** The amendment to this subpart is necessary to cross-reference Minnesota Statutes. Instead of paraphrasing the definition of "child care services" which is defined in Minnesota Statutes, section 256H.01, subdivision 2, the statute is directly referenced. The amendment is reasonable because it references Minnesota Statutes and eliminates the need to modify the rule should the statutory definition of "child care services" change and it shortens the length of the rule.

Subp. 13. [See repealer.] **Child care subsidy program.** This subpart is being repealed because the phrase "child care subsidy program" is being replaced with the phrase "child care assistance". See the definition under subpart 11a. Since the term "child care subsidy program" is being replaced throughout the rule, the definition is no longer necessary.

Subp. 15. **County board.** The amendment to this subpart is an editorial change. The legislature defined "county board" in Minnesota Statutes, section 256H.01, subdivision 6. The definition of "county board" in rule is being deleted and replaced with a cross-reference to Minnesota Statutes. It is reasonable to reference the definition in Minnesota Statutes to ensure consistency with Minnesota Statutes and to eliminate the need to amend the rule should the statutory definition change.

Subp. 18. **Education program.** The amendment to this subpart is an editorial change. The amendment is necessary to use the style and form preferred by the Revisor of Statutes when cross-referencing a definition in Minnesota Statutes. The definitional meaning is not changed.

Subp. 18a. **Eligible relative caretaker.** This subpart is necessary to clarify a term used in the rule. The term "eligible relative caretaker" is necessary to identify members of a "family" who are eligible to apply for child care assistance. Under Minnesota Statutes, section 256H.01, subdivision 9, "family" is defined but the phrase "other caretaker relatives" included within the definition of

"family" is not. An eligible relative caretaker is designated to care for a child who receives an AFDC child only grant but is not an AFDC caretaker because the adult's income is not considered in determining the AFDC grant and the adult is not on the AFDC grant. Under the Family Support Act of 1988, only AFDC caretakers are eligible for AFDC Child Care programs. Therefore, an eligible relative caretaker is not eligible for the AFDC Child Care program.

Since an eligible relative caretaker is not on the AFDC grant, the eligible relative caretaker is eligible for child care assistance under the Basic Sliding Fee program. The child in the family may be receiving AFDC dollars but family eligibility is determined by the adult applicant. The definition is necessary since it relates to program eligibility. The definition is reasonable because it references Minnesota AFDC Rules, part 9500.2440, subpart 7, items A to D, and identifies caretakers of a dependent child who are not members of the assistance unit.

Subp. 19. **Employability development plan or EDP.** The amendment to this subpart is necessary to define a term used under the AFDC program. The correct term under the AFDC program is "employability development plan" not "employability plan". Therefore, the word "development" is being inserted between the words "employability" and "plan". The phrase "the AFDC Employment Special Needs Program under Minnesota Statutes, section 256.736, subdivision 8 or other reimbursement programs provided by" is being deleted since the Special Needs Program has been superseded by the federal JOBS program. The phrase "Minnesota Statutes, sections 256H.01 to 256H.19, and parts 9565.5000 to 9565.5200" is being added to ensure that the employability development plans comply with child care fund statutes and rules.

Subp. 21. **Family.** The amendment to this subpart is an editorial change. The amendment is necessary to use the style and form preferred by the Revisor of Statutes when cross-referencing a definition in Minnesota Statutes. The definitional meaning is not changed.

Subp. 22a. **Full-day basis.** This subpart is necessary to clarify a term used in the rule. A number of child care providers now charge for child care on a full-day basis when they provide care for more than five hours per day. In order to establish a standard for conducting surveys of provider rates and to establish standards for payment, it is necessary to define the term "full-day basis". The definition is reasonable because a licensed provider who provides child care for more than five hours per day is using a full-day child care slot to serve that child.

Subp. 23. [See repealer.] **Full-time child care.** This subpart is being repealed because the term is no longer necessary and adds confusion to the rule since child care may be authorized on a full-day, half-day, or weekly basis.

Subp. 24. [See repealer.] **Greater Minnesota counties.** The definition of "greater Minnesota counties" is being repealed because

it is no longer needed. Under Minnesota Statutes, section 256H.03, subdivision 2, child care funds for the Basic Sliding Fee program were allocated so that neither the seven county metropolitan area or the area outside of the seven county metropolitan area received more than 55 percent of the Basic Sliding Fee funds. Beginning July 1, 1992, Basic Sliding Fee funds are allocated according to the formula set forth in Minnesota Statutes, section 256H.03, subdivisions 4, 5, and 6. The new allocation formula does not reference the seven county metropolitan area or the counties outside of the seven county metropolitan area. Since a definition is no longer necessary for the term "greater Minnesota counties", the definition is being repealed.

Subp. 24a. **Half-day basis.** This subpart is necessary to clarify a term used in the rule. Many child care providers now charge for child care in half-day blocks, full-day blocks, or weekly blocks. Since license holders are limited in the number of children they can serve, as a business practice, many providers must charge on a half-day basis because it is impossible to fill child care slots on an hourly basis. In order to establish a standard for conducting surveys of provider rates and to establish standards for payment, it is necessary to define the term "half-day basis". The definition is reasonable because the half-day standard of between one and five hours per day is typical of market practices.

Subp. 24b. **Household status.** This subpart is necessary to clarify a term used in the rule. Although this term is used in the existing rule, it was not previously defined. The members of the rule advisory committee suggested that a definition of "household status" would be helpful to persons implementing or reading the rule. Therefore, the term is being defined. The AFDC rules define "household" to mean a group of persons who live together (part 9500.2060, subpart 68). The child care fund builds upon the definition in the AFDC rule by including the number of individuals residing in a residence and the relationship of those individuals to one another. The administering agency must obtain information on individuals residing in a residence and the relationship of those individuals to one another to determine a family's eligibility and the amount of the family's copayment. The definition is reasonable because it is consistent with the way the term has been interpreted in the past when implementing program requirements.

Subp. 25. **Human services board.** The amendment to this subpart is an editorial change. The legislature defined "human services board" in Minnesota Statutes, section 256H.01, subdivision 10. The definition of "human services board" in rule is being deleted and replaced with a cross-reference to Minnesota Statutes. It is reasonable to reference the definition in Minnesota Statutes to ensure consistency with Minnesota Statutes and to eliminate the need to amend the rule should the statutory definition change.

Subp. 26. **Income.** The amendment to this subpart is an editorial change. The amendment is necessary to use the style and form preferred by the Revisor of Statutes when cross-referencing a definition in Minnesota Statutes. The definitional meaning is not changed.

Subp. 27. **In-kind service.** The amendment to this subpart is necessary to provide greater consistency in the use of terms in the rule. The word "subsidy" is being deleted since it is unnecessary as a modifier to the word "payment". The phrase "a recipient of AFDC" is being replaced with "an AFDC caretaker" since a recipient of AFDC may not necessarily be an AFDC caretaker. The phrase "child care disregard" is being replaced with the term "dependent care deduction" since that is the term used under the AFDC program. The term "actual" is being replaced with the term "allowable" since acceptable child care costs are limited to the 75th percentile rate. The phrase "Minnesota Rules" is being deleted by the Revisor of Statutes because it is unnecessary. Finally, the phrase "unemployed AFDC recipients enrolled in an education or training program" is being changed to "AFDC caretakers participating in education or training programs under Minnesota Statutes, section 256H.05" since the latter phrase is specific in its applicability to the AFDC child care program.

Subp. 28a. **Overpayment.** This subpart is necessary to clarify a term used in the rule. It is possible that a recipient may receive more child care (financial) assistance than he or she is rightfully entitled to receive. The portion of the child care assistance that is greater than the amount that the recipient is eligible to receive is an overpayment. The overpayment could be due to a calculation error, a recipient reporting error, a misapplication of existing program requirements by a county or administering agency, fraud, etc. For purposes of program integrity, the reason for the overpayment is not as important as recovering the funds. It is reasonable to define what an overpayment is so those funds can be recovered. The recovery of unentitled assistance is necessary to maintain program integrity and accountability and is required by 45 C.F.R. §§ 98.60(j), 257.68(a), and 255.4(j).

Subp. 29. **Provider.** The amendment to this subpart is necessary to cross-reference Minnesota Statutes. Instead of paraphrasing the definition of "provider" which is defined under Minnesota Statutes, section 256H.01, subdivision 12, the statute is directly referenced. The amendment is reasonable because it references Minnesota Statutes and eliminates the need to modify the rule should the statutory definition of "provider" change.

Subp. 30. **Provider rate.** The amendments to this subpart are necessary editorial changes. The first amendment substitutes the word "rate" for the word "charge" since the phrase "provider rate" is used later in the rule rather than "provider charge" (See part 9565.5100). The second amendment eliminates the modifier "child care service" which precedes the word "provider" since the modifier is unnecessary. Elimination of the phrase "child care service" is reasonable because it eliminates potential confusion over whether the terms "child care service provider" and "provider" have the same meaning.

Subp. 31. **Recipient.** The amendment to this subpart is a necessary editorial change. The term child care fund is replacing the term child care subsidy program.

Subp. 32. **Redetermination.** The amendment to this subpart is a necessary editorial change. The term child care fund is replacing the term child care subsidy program.

Subp. 32a. **Registration.** This subpart is necessary to clarify a term used in the rule. Under the federal At-Risk Child Care program (45 C.F.R. § 257.41(b)) and federal Child Care and Development Block Grant (45 C.F.R. § 98.45) the State is required to establish registration procedures for providers of child care services who are not licensed or regulated under State or local law. The federal regulations require that the registration be a simple, timely process through which the State authorizes the provider to receive payment for child care services. The definition is reasonable because it cross-references the information required under part 9565.5110, subpart 2c that must be submitted to the county before a child care payment may be made.

Subp. 33. [See repealer.] **Seven county metropolitan area.** The term "seven county metropolitan area" is being repealed because the definition is no longer needed in the rule. Under Minnesota Statutes, section 256H.03, subdivision 2, child care funds for the Basic Sliding Fee program were allocated so that neither the seven county metropolitan area or the area outside of the seven county metropolitan area received more than 55 percent of the Basic Sliding Fee funds. Beginning July 1, 1992, Basic Sliding Fee funds are allocated according to the formula set forth in Minnesota Statutes, section 256H.03, subdivisions 4, 5, and 6. The new allocation formula does not reference the seven county metropolitan area or the counties outside of the seven county metropolitan area. A definition is no longer necessary for the term "seven county metropolitan area." Therefore, the definition is being repealed.

Subp. 35. **Student.** This subpart is being amended to reflect the change in terminology identified under subpart 19. As noted earlier, the correct term under the AFDC program is "employability development plan" not "employability plan."

Subp. 35a. **Transition year child care.** This subpart is necessary to clarify a term used in the rule. Pursuant to federal and state law, "transition year child care" is guaranteed for families leaving AFDC due to increased hours of employment, increased earnings, or loss of income disregards. Since transitional child care is a joint federal and state program with specific requirements under 45 C.F.R. § 256, it is reasonable to distinguish Transition Year child care from other types of child care under the child care fund.

Subp. 35b. **Transition year families.** This subpart is necessary to clarify a term used in the rule. The definition is reasonable because it references the statutory definition under Minnesota Statutes, section 256H.01, subdivision 16.

Subp. 37. **Weekly basis.** This subpart is necessary to clarify a term used in the rule. As noted in subparts 22a and 24a, a number of providers now charge for child care on a basis other than an hourly rate. In order to establish a standard for conducting surveys of

provider rates and to establish standards for payment, it is necessary to define the term "weekly basis". The definition is reasonable because child care provided for more than 35 hours per week typically constitutes a full week of child care. Thirty-five plus hours includes at least four days of child care when child care is provided for ten hours per day.

9565.5020 NOTICE OF BASIC SLIDING FEE PROGRAM ALLOCATION.

The amendment to this part is necessary to provide notice of the Basic Sliding Fee program allocation. Since AFDC child care and Transition Year child care are entitlement programs, the commissioner does not allocate funds for those programs. The commissioner will continue to provide a notice of Basic Sliding Fee program allocation since counties are only required to expend Basic Sliding Fee funds to the extent of their allocation. This part is reasonable because it is consistent with Minnesota Statutes, section 256H.03, subdivision 1.

9565.5025 GENERAL ELIGIBILITY REQUIREMENTS AND ASSISTANCE STANDARDS FOR ALL APPLICANTS.

Subpart 1. **Applicant requirements and standards.** This subpart is necessary to inform administering agencies and families of eligibility requirements for child care assistance. When the current rule was adopted, there was not a federal Transition Year child care program. The first amendment to this subpart cross references the Transition Year child care program under part 9565.5065. This cross reference is necessary because, in addition to requirements under part 9565.5065, transition year families must comply with the general eligibility requirements under this part. A second amendment to this subpart is a change in terms. The term "subsidy" is being changed to "assistance" to reflect the editorial change effected in other rule parts. Finally, new subparts have been added to this rule part. Therefore, all applicants must comply with subparts 2 to 11 rather than 2 to 9.

Subp. 1a. **Informational release.** This subpart is necessary to direct counties to offer applicants an opportunity to sign an informational release. The information release will permit counties to verify an applicant's eligibility to receive child care assistance under the child care fund. Verification of eligibility is necessary to ensure program integrity and accountability. Information that must be verified includes residence, family size, marital status, and employment or educational or training status. The county also needs to be able to obtain information from the provider to verify child care use and to inform providers of payment rates and procedures. Due to concerns over data privacy, counties are directed to offer applicants an opportunity to sign an informational release. If an applicant refuses or fails to sign the release, the applicant is responsible for providing the necessary documentation that will verify the applicant's eligibility for child care assistance and provide the necessary documentation to account for child care expenditures. This subpart is reasonable because it is consistent with Minnesota Statutes, section 13.04, subdivision 2.

Subp. 2. **Documentation of eligibility information.** The initial amendment to this subpart is necessary to effect editorial changes made in other parts of the rule where the word "subsidy" has been changed to "assistance". It is also necessary to add a reference to "residence" because residence is a condition of eligibility. Program eligibility is restricted to residents of Minnesota. In addition, information on the county of residence is necessary to determine the county of financial responsibility.

Subp. 3. **Recipient reporting responsibilities.** This subpart is being amended to identify two additional reporting requirements for recipients. The first amendment requires recipients to notify counties about changes in education status. If a student drops out of a program, the county needs to be informed of this change to prevent overpayments and to permit other students on a waiting list to qualify for assistance. The second amendment requires recipients to report a change in providers to the county within ten calendar days after the change. It is reasonable to require recipients to inform the county of a change in providers since the county is responsible for ensuring that program funds are properly expended. As part of its oversight and accountability function, the county needs to know who a recipient's provider is in order to approve reimbursements and to audit child care expenditures. In addition, under Minnesota Statutes, section 256H.10, subdivision 5, when a county knows that a particular provider is unsafe, or that the circumstances of the child care arrangement chosen by the parent are unsafe, the county may deny a child care subsidy. In order to fulfill its responsibilities under Minnesota Statutes, section 256H.10, subdivision 5, a county must be informed whenever there is a change in providers. Finally, since a legal nonlicensed caregiver must be registered with the county before the caregiver may receive a provider payment, it is reasonable to require the recipient to inform the county of a change in providers.

The other amendments in items A to C are editorial. Deletion of the phrase "of a child care subsidy" is redundant when used with the word "recipient" since a recipient by definition means a family receiving child care assistance under the child care fund. Substitution of the word "assistance" for the word "subsidy" is necessary to effect an editorial change made earlier in the rule under part 9565.5010, subpart 11b.

Subp. 4. [See repealer.] **Resident requirement.** This subpart is being repealed since it is redundant with part 9565.5030, subpart 9. In addition, the rule part cited is incorrect. This subpart is unnecessary because resident requirements under the AFDC child care program are based on AFDC program requirements. Under the Basic Sliding Fee program, an applicant is required to apply for child care assistance in the family's county of residence. If a family lives outside of Minnesota, they could not apply in a Minnesota county since there would be no Minnesota county of residence.

Subp. 5. **Eligible applicants.** The amendment to this subpart is necessary to more clearly identify eligible child care fund applicants. The intent of the original rule language was to address eligibility for child care assistance in two-parent families. The

sentence "An applicant must meet employment, education, or training requirements under the basic sliding fee program or the AFDC child care program unless the applicant is unable to care for the applicant's child or dependent as determined by a medical doctor or by an assessment by the local social services agency" has created confusion with other types of social services programs. Some social services agencies would like to use child care funds to pay for the child care needs of parents who are not employed or in an education or training program but who need child care. Minnesota Statutes, section 256H.02 is clear, "The commissioner shall develop standards for county and human services boards to provide child care services to enable eligible families to participate in employment, training or education programs." (Emphasis added.)

The amendment to this subpart addresses families with a single parent, eligible relative caretaker, and legal guardian and families with two parents, a parent and stepparent, legal guardian and spouse, and eligible relative caretaker and spouse. The amendment makes it clear that in a family with two parents, a parent and stepparent, a legal guardian and spouse, or an eligible relative caretaker and spouse, at least one parent, legal guardian, eligible relative caretaker, or spouse must meet employment, education, or training requirements and other eligibility requirements under the Basic Sliding Fee program or the AFDC child care program. The other parent, stepparent, legal guardian, eligible relative caretaker, or spouse must meet the requirements of the Basic Sliding Fee program or AFDC program or be unable to care for the child or dependent as determined by a medical doctor or by an assessment by the local service agency. In a family with a second adult who cannot provide child care, if child care assistance would be denied to the adult who is employed or in an education or training program that adult would need to remain at home to care for the child. This would be contrary to the purpose of the child care fund. This subpart is reasonable because it clarifies when child care assistance may be received under the child care fund in families with two parents, a parent and stepparent, a legal guardian and spouse, and an eligible relative caretaker and spouse.

Subp. 5a. **Selection of provider.** This subpart is necessary to establish a standard governing the period of time an applicant has to select a provider. Although it is common for applicants to identify a potential provider at the time of application, some applicants will not choose a provider until the application for child care assistance is approved. In most instances there will be an immediate need for child care assistance to permit the applicant to begin work or to begin an education or training program. However, there could may be some delay in finding and selecting a provider. This subpart allows an applicant up to 30 calendar days to select a provider after the application for child care assistance is approved. The 30 day time frame is reasonable because it strikes a balance between the needs of the applicant and the county. The applicant needs time to select a provider. The county needs to expend child care funds to realize the purpose of the child care fund. Funds cannot be held indefinitely pending the selection of a provider. State child care funds that are not expended at the end of the biennium are returned to the state general fund and are unavailable for child care assistance.

Subp. 6. **Maximum weekly child care assistance.** The amendment to this subpart is editorial. No change has been made to the standard governing the maximum number of hours of child care per child per week. Although the maximum number of hours is retained, counties may authorize child care on an hourly, half-day, full-day, or weekly basis as provided in part 9565.5080, subpart 1b.

Subp. 7. **Child care assistance during employment.** The amendment, which establishes a minimum work standard, is an editorial change. The standard is set forth under Minnesota Statutes, section 256H.11, subdivision 1, and was previously found in part 9565.5040, subpart 2. This subpart also informs the recipients and administering agencies that in addition to the minimum hour and wage requirements, the recipients must also meet the eligibility requirements under the Basic Sliding Fee program, the AFDC program, or the transition year program (parts 9565.5030, 9565.5060, or 9565.5065). Establishing a single child care standard during employment ensure seamless service and equal treatment. It also eliminated the need to repeat the requirement in part 9565.5040.

Subp. 7a. **Child care assistance in support of employment.** This subpart is necessary to establish a standard for child care assistance in support of employment. It was pointed out during the advisory committee meetings that not all parents work from 8 a.m. to 5 p.m. Can child care assistance be authorized that is in support of employment but not "during" employment? This subpart was discussed extensively by the rule advisory committee. It was pointed out that some shift workers are able to enlist the services of relatives and friends to cover child care needs during certain hours of work but may need child care during nonwork hours. The rule grants counties the authority to authorize child care in support of employment within certain limitations. Counties may authorize child care assistance in support of employment when all of the following conditions exist:

A. Child care assistance is not provided during working hours;

B. The family complies with the eligibility requirements of part 9565.5025, subpart 5 which address two parent families;

C. The worker cannot reasonably modify his or her nonwork schedule to provide parental supervision; and

D. The amount of child care assistance does not exceed the amount that would be granted under subpart 7.

This subpart is reasonable because it grants child care flexibility for individuals who work second and third shifts. The change allows some flexibility for families to use other available resources to complement the child care fund. Granting child care in support of employment is consistent with the intent of the child care fund legislation which is to enable families to seek or retain employment or to participate in education or training programs necessary to obtain employment.

Subp. 8. **Child care assistance during education or training.** This subpart is necessary to inform counties and other persons consulting the rule of standards governing child care assistance during education or training. Since there is limited child care funding under the basic sliding fee and the ACCESS child care programs, it is necessary

to begin this subpart with the phrase "to the extent of available allocations." The requirement that students eligible under parts 9565.5030 or 9565.5060 be enrolled in county-approved education or training programs is reasonable because it is consistent with the requirement under part 9565.5025, subpart 10 (the county approval language was previously found in parts 9565.5040, subpart 4 and 9565.5060, subpart 6).

The amendment to item A is necessary to modify the child care assistance standard for full-time students. As amended, full-time students will be granted child care: on a half-day or full-day basis during days of class and on non-class days if needed for study as determined by the county; on a weekly basis; or according to the standard under item B. The county representatives on the rule advisory committee indicated that the current standard is not equitable because full-time students who do not have open periods between classes are only granted up to five hours per week for study and academic appointments whereas other students with open periods between classes receive child care assistance for those open periods. The counties expressed a concern over insufficient study time. Under Minnesota Rules, part 8450.0600, courses for college credit are designed and conducted with the expectation that the typical student will need to spend time in scheduled class or laboratory-type instruction, in combination with out-of-class assignments, so that the total approximates three hours per week per quarter for each quarter credit. Acknowledging two hours of study for each credit hour requires a minimum of 36 hours of child care per week for full-time students (study and class time for 12 credit hours which is the minimum for a full-time student).

While the counties acknowledged the need for study time, they also expressed concern about the public's perception of the child care program should child care assistance on non-class days be abused. In order to ensure program integrity, it is reasonable to permit counties to determine the need for child care assistance on non-class days. The amendment to item A permits counties to grant child care assistance on a half-day, full-day, or weekly basis, or to determine the amount of child care assistance according to the standard in item B. The Department expects full-time students to receive at least 36 hours of child care per week. However, the method of authorizing the hours and the days of the week are left to the discretion of the county.

The amendment to item B is necessary to clarify the amount of child care assistance which can be granted to a part-time student. As noted above, courses for college credit are designed and conducted with the expectation that the typical student will need to spend two hours of study per week for each credit hour. While child care assistance is permitted for study time, a student is expected to use his or her open time periods wisely. When there is sufficient time between classes to study, additional child care for study time is not necessary. Therefore, if a student has more than one hour between classes during the day, the study and academic appointment time must be reduced accordingly.

Item C addresses child care for students taking remedial classes with or without credit. It is necessary to permit child care for remedial classes so students with educational deficiencies can address their educational needs. Counties are directed to use the standard in item A or B to determine the amount of child care assistance needed for students taking remedial classes. If remedial classes are in addition to full-time enrollment, those classes can be included within the standard in item A but the maximum hours of child care can not exceed 60 hours per week (standard in subpart 6). If the remedial classes are in addition to part-time classes, the standard in item B can be used to authorize necessary child care or if the part-time classes in addition to remedial classes constitutes full-time, the standard in item A could be used. Granting child care for remedial education classes is consistent with the intent of the child care fund legislation which is to enable families to participate in education or training programs necessary to obtain employment.

Subp. 8a. **Child care assistance during employment and education.** This subpart is necessary to establish a standard for child care assistance during employment and education. It is not uncommon for individuals to work while pursuing an education or training program. This subpart is reasonable because it references the standards for child care assistance under subpart 7 (during employment) and subpart 8 (during education or training) subject to the maximum of 60 hours per child per week set forth under part 9565.5025, subpart 6.

Subp. 8b. **Acceptable course of study.** This subpart is essentially a format change. The standards governing acceptable courses of study were previously found in part 9565.5040, subpart 3, item A and part 9565.5060, subpart 5, item A. The requirements in those subparts are stated in this subpart and those subparts are being repealed. The format change is reasonable since it reduces the length of the rule.

Subp. 8c. **Satisfactory progress in education program.** This subpart is essentially a format change. The standards governing satisfactory progress were previously found in part 9565.5040, subpart 3, item B and part 9565.5060, subpart 5, item B. The requirements in those subparts are stated in this subpart and those subparts are being repealed. The format change is reasonable since it reduces the length of the rule.

Subp. 9. **Maximum education and training under child care fund.** The amendment to item A is necessary to comply with Minnesota Statutes, section 256H.08 which states, in part:

> "Time limitations for child care assistance, as specified in Minnesota Rules, parts 9565.5000 to 9565.5200, do not apply to basic or remedial educational programs needed to prepare for postsecondary education or employment. These programs include: high school, general equivalency diploma, and English as a second language. Programs exempt from this time limit must not run concurrently with a post-secondary program."

Also, the phrase in item A "a single child care fund program or combination of programs within" is being deleted since it is not necessary.

The amendment to item B is necessary to permit a student who has not been able to find employment and "does not have marketable skills" to receive assistance for a second program. However, the total period under both programs cannot exceed 48 months. The item has been amended to delete the reference to the "student's first program". While discussing this subpart, the rule advisory committee indicated that it is not unusual for a student to find employment in a "related" field rather than the student's "first program". In addition, many individuals have marketable skills but would rather pursue additional education. While the pursuit of additional education is a worthwhile goal, the major goal of the child care fund should be to help families retain employment. However, there will be times when a student will not have marketable skills and will need to pursue a second education program. While the Department does not believe a second program will be necessary very often, it is reasonable to allow a student who does not have marketable skills to pursue a second program.

The amendment to item C is necessary to effect an editorial change made earlier in the rule in which the word "subsidy" is being changed to the word "assistance".

The amendment to item D is necessary to clarify the assistance standard for students who dropped out of an education program or who failed to complete an education program. Child care assistance for education is <u>not</u> an entitlement of 48 months of assistance. Forty-eight months is the maximum assistance that is granted. Most students will not need a full 48 months of assistance. Moreover, just because a program is completed before the end of 48 months, does not mean the student has carryover assistance. A county representative requested clarification on how the county should treat students who wish to change programs in the third or fourth year of a program to pursue a new interest. Should assistance be granted until the end of the 48 months of assistance even though the second program will not be completed? The Department believes a reasonable approach is to grant a maximum of 48 months to complete a program. That is the standard under items A and B. Since the success of the training program is dependent on child care assistance and assistance will be terminated before the program is completed, exceptions should only be made if the client can convince the agency that the program will be successfully completed. Since resources are limited, it is necessary to allocate available resources in the most efficient and reasonable manner possible. The reasonable approach is to use the remaining resources available to grant a new student child care assistance rather than extending assistance to a student who has dropped out of a program or failed a program and wishes to start a new program that cannot be completed within the 48 month limit.

The amendments to item E are necessary editorial changes.

Subp. 10. **Changes in education and training programs.** This subpart is necessary to inform applicants that a change in an education

program requires county approval before the change may be made. County approval was previously required under parts 9565.5040, subpart 4, and 9565.5060, subpart 6. Those subparts will be deleted and the standard will be included in this part since it informs recipients under the general eligibility section that changes in education or training programs must be approved by the counties.

Subp. 11. **Ineligibility for failure to pay fees under the child care fund.** This subpart is necessary to inform applicants and recipients that failure to pay the provider charge or family copayment fee under the child care fund will result in loss of program eligibility unless satisfactory arrangements are made for repayment that are acceptable to the provider and county. This subpart makes explicit the requirement to pay the provider charge or family copayment fee under the child care fund. Under part 9565.5110, subpart 10, item B, a county is authorized to terminate child care assistance for a family's failure to pay required fees. It is reasonable to state the payment requirement in the general eligibility section so child care fund recipients are clearly aware of their responsibilities and the penalty for failure to make necessary payments.

9565.5027 JOB SEARCH.

This new rule part is essentially a format change. The former job search standard under part 9565.5040 is being moved because the standard is used in both the basic sliding fee and AFDC child care programs. However, since the heading under part 9565.5040 states "Job Search, Employment, and Education or Training Eligibility Under Basic Sliding Fee program" the applicability of job search to other programs is not clear. Although the rule heading could have been modified, part 9565.5040 falls between parts 9565.5030 and 9565.5050 which both address Basic Sliding Fee program requirements. Therefore, part 9565.5040, subpart 1 is being moved to this new rule part.

This rule part clarifies the amount of child care assistance authorized per year for job search. During discussions with the advisory committee, the committee requested that part 9565.5040, subpart 1 be clarified. It is clear under the current rule that up to one month of full time child care assistance can be used during job search, but the assistance must be used within four consecutive months. Counties have indicated that it is unusual for a client to need job search for four consecutive months but clients may change employment at some time during the year and may need child care during the new job search. Child care during job search is a standard that should be clearly articulated in the rule. Moreover, in order to ensure that all recipients are treated the same, if a recipient does not use the full month of child care assistance during the initial job search and a subsequent job search becomes necessary during that 12 month period, the recipient may use any remaining balance to initiate further job searches. This part is reasonable because it addresses actual needs of clients without changing the total assistance available for job search.

9565.5030 BASIC SLIDING FEE PROGRAM.

Subpart 1. **Basic sliding fee program, funding sources.** This subpart identifies funding sources under the Basic Sliding Fee program and informs the public that federal funds available under the federal At-Risk program (42 U.S.C. § 602(i)) and the federal Child Care Development Block Grant (42 U.S.C. § 9858) that are allocated to the Basic Sliding Fee program must be expended as provided in this rule part.

As amended, the Basic Sliding Fee program is compatible with the requirements set forth in 42 U.S.C. §§ 602(i) and 9858, and Title 45 CFR, parts 98 and 257. Placing the federal funds in the Basic Sliding Fee program eliminates the need to create new child care programs that would essentially duplicate the Basic Sliding Fee program but would require separate reporting and program accountability. Establishing a single program versus independent programs reduces the administrative burdens on counties. A single program also ensures smooth transitions for families as their situations change over time. Families are not required to reapply under different funding sources as their situations change and risk gaps in service that would undermine their self-sufficiency plans.

Subp. 1a. **Basic sliding fee allocation.** The amendment to this subpart is necessary to correct a statutory cite no longer accurate due to a 1991 legislative change. Effective July 1, 1992, the allocation formula is changed from the formula set forth under Minnesota Statutes, section 256H.03, subdivision 2 to the new formula under Minnesota Statutes, section 256H.03, subdivisions 4 to 6. This subpart is reasonable because it is consistent with Minnesota Statutes.

Subp. 2. [See repealer.] **County allocation.** The county allocation formula under this subpart is being repealed because beginning July 1, 1992, a new allocation formula has been established under Minnesota Statutes, section 256H.03, subdivisions 4 to 6.

Subp. 3. [See repealer.] **County administrative expenses.** This subpart is being repealed since the amount of county administrative expenses are set forth in Minnesota Statutes, section 256H.18. It is unnecessary to set forth the amount of county administrative expenses in rule since that amount is set forth under Minnesota Statutes.

Subp. 4. **Federal program reimbursement.** The amendment to this subpart is necessary to accomplish three changes. First, the reference that counties shall claim "on forms" prescribed by the commissioner has been changed to "in the manner" to permit counties to claim reimbursement in a manner other than the use of paper forms. This change will permit the submission of claims by electronic means. The term reimbursement is also changed because federal funding for non-AFDC child care is in the form of grants and direct funding rather than reimbursement.
The second change, which deletes the reference to the AFDC special needs program, is necessary because the AFDC special needs program is no longer operational.

The third change which changes "AFDC recipients" to "recipients" is necessary because AFDC caretakers are no longer eligible to receive child care assistance under the Basic Sliding Fee program. Therefore, the reference to "AFDC" recipient is deleted in this subpart. Minnesota Statutes, section 256H.03, subdivision 2a, specifically provides, "Families that meet the eligibility requirements under sections 256H.10, except AFDC recipients and transition year families, and 256H.11 are eligible for child care assistance under the Basic Sliding Fee program." [Emphasis added.] The amendment to this subpart is reasonable because it is consistent with Minnesota Statutes.

Subp. 5. **Reallocation of unexpended or unencumbered funds.** The amendment to item B is necessary to replace a rule cite with a statutory cite. The rule cite "part 9565.5110, subpart 9" is being deleted and replaced with a cross-reference to Minnesota Statutes, section 256H.12, subdivision 3 which requires a county maintenance of funding level.

The amendment to item D is necessary to delete the requirement that excess Basic Sliding Fee funds be allocated to the AFDC child care program. Before the AFDC child care program became an entitlement program, state funds were set-aside for both the Basic Sliding Fee program and the AFDC child care program. The provision in item D ensured that if the funds allocated under the Basic Sliding Fee program were greater than total county earnings the excess funds could be expended under the AFDC child care program. Since AFDC child care is an entitlement program, there is no need to reallocate Basic Sliding Fee funds to the AFDC child care program. Therefore, it is reasonable to delete the provision that would reallocate Basic Sliding Fee Funds to the AFDC child care program and to allow excess Basic Sliding Fee Funds to be carried forward to the second year in the biennium. The change in this item is reasonable because it is consistent with Minnesota Statutes, section 256H.03, subdivision 3.

Subp. 6. **Families eligible for assistance under the basic sliding fee program.** The amendment to this subpart is necessary to deny child care assistance eligibility under the Basic Sliding Fee program to AFDC caretakers. Under Minnesota Statutes, section 256H.03, subdivision 2a, AFDC caretakers are not eligible for child care assistance under the Basic Sliding Fee program. Former item A, subitem (3) [new item C] uses the term "family" instead of applicant because eligibility and copayment fees are based on family income. The change to item A is reasonable because it is consistent with Minnesota Statutes.

Former item B is being deleted for two reasons. First, it is unlikely that sufficient funding will become available to fund the child care needs of all the families earning less than 75 percent of the state median income for a family of four, adjusted for family size. Therefore, it is unlikely that item B would ever be implemented. If sufficient funding should become available to fund child care assistance for families earning more than 75 percent of state median income, additional rulemaking will be necessary to extend the sliding fee scale under part 9565.5070, subpart 3. Second, child care

assistance under the federal child care development block grant is limited to families with incomes that do not exceed 75 percent of the state median income, adjusted for family size. To ensure that federal funds are not improperly expended, separation of state and federal moneys would be necessary to implement item B. In order to maintain a single program and to ensure that state Basic Sliding Fee program requirements are consistent with federal requirements, it is necessary to delete item B.

Subp. 7. **Basic sliding fee program waiting lists.** The amendment to this subpart that changes the term "subsidy" to "assistance" is necessary to effect an editorial change made earlier in the rule under part 9565.5010, subpart 11a. A second editorial change substitutes the term "requested" for the phrase "applied for a". Finally, the modifier "or will be" is inserted in the rule before the word "eligible" to permit counties to place families on a child care waiting list who will be eligible for child care assistance prior to the time that their name would come up on the county's child care waiting list. An example of an individual who "will be" eligible for assistance would be a student who applies for assistance prior to the start of the school year. In some parts of the state an applicant may be on a waiting list for the Basic Sliding Fee program for up to two years and would not be able to begin participating in employment or training until they are assured that child care assistance is available.

Subp. 7a. **Waiting list, transfer of transition year families to the basic sliding fee program.** This subpart is necessary to inform counties that they must place transition year families on a waiting list for the Basic Sliding Fee program and sets forth the earliest of three different dates as the date for placement on the basic sliding fee waiting list. Placement on the waiting list is the earliest of the following three dates: the date the family became eligible for Transition Year child care assistance; the date the family began participating in the ACCESS child care program under part 9565.5060, subpart 2a; or the date the family enrolled in Project STRIDE. It is reasonable to use the earliest of these three dates to ensure continuation of the child care benefit through transition periods. However, transition year families are not eligible for child care assistance under the Basic Sliding Fee program until the transition year ends. If the transition year family does not come to the top of the Basic Sliding Fee program at the end of the transition year, the county must move the transition year family into the Basic Sliding Fee program according to the priority in Minnesota Statutes, section 256H.03, subdivision 2b. The prohibition against transfer of a transition year family to the Basic Sliding Fee program is reasonable because Minnesota Statutes, section 256H.03, subdivision 2a denies eligibility for assistance under the Basic Sliding Fee program to transition year families to ensure that federal financial participation is maximized.

If a transition year family comes to the top of the Basic Sliding Fee program before the end of the transition year, the county should encumber funds for those months remaining in the state fiscal year after the transition year ends. Once the transition year is over, if

the family remains eligible for child care assistance under the Basic Sliding Fee program, it should begin to receive assistance under the Basic Sliding Fee program. This subpart is reasonable because it provides an orderly means for moving families into the Basic Sliding Fee program after the transition year ends.

Subp. 8. [See repealer.] **Prioritizing child care assistance.** This subpart is being repealed because the requirement to prioritize eligibility is addressed under county responsibilities in part 9565.5110, subpart 5.

Subp. 9. **Application for child care assistance.** The amendment to this subpart is necessary to accomplish an editorial change. Although the sentence has been modified, the modification is a style and form change. The requirement for a family to apply for child care assistance in the family's county of residence has not changed.

Subp. 10. **County child care responsibility when family moves.** This subpart is necessary to clarify a county's financial responsibility to provide child care assistance under the Basic Sliding Fee program when a family moves to a new county within Minnesota. When a family that is receiving child care assistance moves to a new county, the original county must provide child care assistance for two full calendar months. The two full calendar month standard is based on the Unitary Residence and Financial Responsibility standard under Minnesota Statutes, chapter 256G and current AFDC practice for transferring payments.

When a family moves to a new county, the new county is directed to treat that family as a new applicant. It is reasonable to treat families moving into a new county as new applicants in the event the county has a child care assistance waiting list. If the county does not have a waiting list, the family could begin to receive assistance at the end of the two month period. If the county has a waiting list, treating the family as a new applicant eliminates administrative burdens on the counties and ensures fair treatment of families already on the waiting list in the county. This subpart is reasonable because it establishes a uniform standard governing county child care responsibility when a family moves and ensures that the family has adequate time to make application for services in the new county.

9565.5040 JOB SEARCH, EMPLOYMENT, AND EDUCATION OR TRAINING ELIGIBILITY UNDER BASIC SLIDING FEE PROGRAM. [See repealer.]

Subpart 1. [See repealer.] **Child care subsidy during job search.** This subpart is being repealed because the job search standard has been moved to part 9565.5027. Since the standards for job search apply to the AFDC child care programs as well as the Basic Sliding Fee program, it is reasonable to move the requirement outside of the rule parts that govern the Basic Sliding Fee program.

Subp. 2. [See repealer.] **Child care subsidy during employment.** This subpart is being repealed because the requirement has been moved to

the general eligibility requirements under part 9565.5025, subpart 7. Therefore, subpart 2 is unnecessary.

Subp. 3. [See repealer.] **Child care assistance during education or training programs.** This subpart is being repealed because the requirement has been moved to the general eligibility requirements under part 9565.5025, subparts 8a, 8b, and 8c.

Subp. 4. [See repealer.] **Changes in education or training programs; approvals required.** This subpart is being repealed because the requirement has been moved to the general eligibility requirements under part 9565.5025, subpart 10.

9565.5050 CONTINUED ELIGIBILITY UNDER THE BASIC SLIDING FEE PROGRAM.

The amendments to this part are necessary to effect an editorial change and to cross reference the time limit for job search. The word "subsidy" is being replaced with the word assistance" to reflect changes made in other parts of the rule. Since there is a time limit on job search, the limit under part 9565.5027 is cross-referenced.

9565.5060 AFDC CHILD CARE PROGRAM.

Subpart 1. [See repealer.] **County allocation.** This subpart is being repealed because the allocation formula under Minnesota Statutes, section 256H.05, subdivision 1a has been repealed. Child care assistance under the AFDC child care program is now an entitlement which guarantees assistance.

Subp. 2. **Families guaranteed child care assistance under the AFDC child care program.** The phrase "to the extent of available allocations" is being deleted because child care assistance is guaranteed for certain AFDC recipients. Therefore, that phrase is not correct. A new introductory phrase is being added that states "Except as provided in subpart 2a". This language is necessary because a new program is created in subpart 2a that provides child care under the ACCESS program. Expenditures under the ACCESS program are limited to the extent of a county's authorized entitlement. Therefore, not all non-STRIDE AFDC caretakers are guaranteed assistance under ACCESS. Finally, the sentence that identifies families who are eligible for child care assistance is being deleted and replaced with a reference to Minnesota Statutes, section 256H.05 which identifies families guaranteed child care assistance under the AFDC child care program.

Subp. 2a. **ACCESS child care program.** This subpart is necessary to authorize child care assistance for Non-STRIDE AFDC caretakers participating in the ACCESS program. Under the Job Opportunities and Basic Skills Training (JOBS) program, Titles IV-A AND IV-F of the Social Security Act, certain AFDC caretakers are guaranteed child care assistance. Those caretakers are identified in subpart 2. The U.S. Department of Health and Human Services in Action Transmittal JOBS-ACF-AT-91-15 dated August 19, 1991 addressed the issue of Non-JOBS

AFDC caretaker's eligibility for child care assistance. The transmittal stated, in part,:

> "This Action Transmittal clarifies that the State can include fiscal constraint criteria among the criteria for approval, or continuation of approval, of the education or training for JOBS or non-JOBS individuals or both. To require a State to approve education and training activities without regard to fiscal constraints would impose a significant burden on a State and would limit the State's approval discretion. As neither the Act nor the legislative history advises the States of a potentially open-ended and substantial financial obligation for education and training-related child care, a limitation on the State's discretion to include fiscal constraints would be contrary to Pennhurst State School & Hospital v. Halderman, 451 U.S. 1 (1981). Therefore, the State may include financial considerations."

Minnesota Statutes, section 256H.05, subdivision 6 authorizes a Non-STRIDE AFDC Child Care program. This program is referred to as the ACCESS child care program. The Department is directed to reimburse eligible expenditures for 2,000 family slots for AFDC caretakers not eligible for services under Minnesota Statutes, section 256.736, who are engaged in an authorized educational or job search program. Counties are permitted to establish priorities for assistance upon approval of the commissioner. The rule requires a county that establishes priorities for ACCESS child care to include the priorities in its allocation plan under part 9565.5120. While the Department expects most counties will prioritize on a first come, first serve basis, a number of counties have special "fast track" programs to assist AFDC caretakers in breaking the cycle of welfare dependency. It is reasonable to permit counties to establish priorities to meet the special needs and programs within the individual counties. The rule also requires that before a county grants child care assistance under this subpart, the county must approve the applicant's EDP. This requirement is necessary to comply with federal requirements governing program approval. Finally, pursuant to the State's authority to include financial considerations on program approval, a county is not required to provided child care assistance under this subpart beyond the county's authorized entitlement. This subpart is reasonable because it is consistent with federal policies regarding the approval of child care for self-initiated education and training for non-JOBS individuals and Minnesota Statutes, section 256H.05, subdivision 6.

Subp. 2b. **Approved EDP required under ACCESS.** This subpart is necessary to inform counties that ACCESS participants must have an approved EDP that meets the requirements of Minnesota Statutes, section 256.736, subdivision 10. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.05, subdivision 6 which directs counties to authorize an education plan for each student.

Subp. 2c. **Conversion to Project STRIDE.** This subpart is necessary to inform counties that the time limitation for an education program in part 9565.5025, subpart 9 and the time limitation for job search in

part 9565.5027 apply to ACCESS participants. In addition, since enrollment in Project STRIDE is not limited to a specific number of slots and additional support services beyond child care assistance are available for Project STRIDE participants, when ACCESS participants meet the eligibility requirements for Project STRIDE they should be converted over to Project STRIDE. An eligibility requirement for Project STRIDE is the length of time on AFDC. It is reasonable to expect a number of ACCESS participants to eventually meet eligibility requirements under Project STRIDE due to the length of time on AFDC. Therefore, it is necessary to direct the counties to continue to use the EDP under ACCESS as the approved EDP for Project STRIDE. It is reasonable to use the same EDP for ACCESS and Project STRIDE to eliminate administrative expense and to ensure continuation of the initial plan.

Subp. 3. [See repealer.] **Funding priority.** This subpart is obsolete because AFDC child care is now an entitlement. Since child care is guaranteed, there is no need to prioritize funding. Therefore, this subpart is being repealed.

Subp. 4. [See repealer.] **Agreement with employment and training service providers.** This subpart is being deleted because the requirement is addressed under county responsibilities in part 9565.5110, subpart 3a. It is reasonable to inform the counties of the requirement that they develop cooperative agreements with employment and training service providers under part 9565.5110 since that rule part deals with county responsibilities.

Subp. 4a. **AFDC caretakers required to have EDP.** This subpart is necessary to inform county and AFDC caretakers that all AFDC caretakers applying for child care assistance to support training or preemployment activities must have an employability development plan. An employability development plan is required under Minnesota Statutes, section 256.736, subdivision 10, paragraph (a), clause (15).

Subp. 4b. **Child care assistance in support of employment.** This subpart is necessary to inform counties and recipients that child care assistance to support employment for AFDC caretakers is guaranteed for allowable child care costs above the dependent deduction if the provider is eligible for payment under the child care fund. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.10, subdivision 1, paragraph (d) which states, "Child care services for the families receiving aid to families with dependent children must be made available as in-kind services, to cover any difference between the actual cost and the amount disregarded under the aid to families with dependent children program."

Subp. 5. [See repealer.] **Child care assistance during education or training programs under AFDC child care program.** This subpart is being deleted because it is addressed under part 9565.5025, subparts 8a, 8b, and 8c.

Subp. 6. [See repealer.] **Changes in education or training programs; approvals required.** This subpart is being deleted because it is addressed under part 9565.5025, subpart 10.

Subp. 7. [See repealer.] **Reallocation of unearned AFDC child care program funds.** This subpart references the reallocation procedure under Minnesota Statutes, section 256H.05, subdivision 3a. That section has been repealed. Therefore, this subpart is obsolete and is being repealed. It is no longer necessary to reallocate AFDC child care funds because the AFDC child care program is now an entitlement program.

Subp. 8. **AFDC federal program reimbursement.** The amendments to this subpart are editorial. The reference to the AFDC special needs program is being deleted because that program is no longer operational. The term AFDC recipient is being changed to AFDC caretaker to reflect changes made in other parts of the rule. Finally, the last sentence which states that counties shall use the earnings to expand funding for child care services under the AFDC child care program is unnecessary since child care is guaranteed under the AFDC child care program.

Subp. 9. **County child care responsibility when family moves to another county.** This subpart is necessary to clarify a county's responsibility to provide child care assistance when an AFDC family moves. Minnesota Statutes, section 256H.05 guarantees continued eligibility for child care assistance from the AFDC child care program from the county originating the EDP for as long as the AFDC caretaker complies with the terms of the EDP. Families receiving child care assistance from the AFDC child care program without an EDP may receive continued child care assistance for two full calendar months under the Unitary Residence and Financial Responsibility Act, Minnesota Statutes, chapter 256G. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.05 and chapter 256G.

9565.5065 [TRANSITION YEAR CHILD CARE.] This is a new Minnesota rule part that addresses Transition Year child care under 42 U.S.C. § 602(g); 45 C.F.R. § 256; and Minnesota Statutes, sections 256H.02 and 256H.05. Minnesota Statutes, section 256H.02 authorizes the commissioner to adopt rules under chapter 14 to implement and coordinate federal program requirements. The rules governing Transition Year child care are necessary to comply with federal program requirements in order to qualify for federal financial participation.

Subpart 1. **Notice to family of eligibility.** This subpart is necessary to state that the Department must notify all families at the time the family becomes ineligible for AFDC of their potential eligibility for Transition Year child care. This is done through the Department's MAXIS program. The requirement for notification is reasonable because it is consistent with federal program requirements under 45 C.F.R. § 256.4(c).

Subp. 2. **Eligibility.** This subpart is necessary to inform counties of eligibility requirements governing child care assistance under the Transition Year child care program. Requirements governing family eligibility are set forth in federal statutes and regulations. Federal regulations state that transition child care assistance may only be used to support employment related expenses. 45 C.F.R. § 256.2(a) states, "The State IV-A agency must guarantee child care for a child who is: under age 13; is physically or mentally incapable of caring for himself or herself, as verified by the State based on a determination of a physician or a licensed or certified psychologist; or under court supervision, and who would be a dependent child, if needy, (and for a child who would be a dependent child except for the receipt of benefits under Supplemental Security Income under title XVI or foster care under title IV-E), to the extent that such care is necessary to permit a member of an AFDC family to accept or retain employment."

This subpart identifies federal eligibility requirements which include the requirements that child care is only guaranteed as long as the child retains its dependent child status and the AFDC caretaker continues to cooperate with child support enforcement. This subpart is reasonable because it is consistent with federal requirements under 45 C.F.R. § 256.2(a),(b),(c), and (d)(2).

Subp. 3. **Loss of transition year child care eligibility.** This subpart is necessary to establish standards governing "good cause" for termination of employment which will enable a family to continue to receive Transition Year child care. Under 45 C.F.R. § 256.2(d)(1) a family is not eligible for child care for any remaining portion of the 12-month period if the former AFDC caretaker terminates employment without good cause as defined in 45 C.F.R. § 250.35. Under 45 C.F.R. § 250.35, good cause includes good cause set forth by the State in its JOBS plan. The list of circumstances that constitutes "good cause" under this item are the circumstances listed in Minnesota's state plan. The good cause standard is also consistent with the definition of "suitable employment" under Minnesota Statutes, section 256.736, subdivision 1a, paragraph (h). An advisory committee member recommended that the "good cause" include examples beyond the control of the employee since there can be any number of reasons why a person may lose a job. The "good cause" reasons in the rule only apply to employment that is terminated by the employee. If an employee is laid off from his or her job due to circumstances beyond the employee's control, the employee would not lose eligibility for the remaining portion of the Transition Year child care (45 C.F.R. §§ 250.35 and 256.2). This subpart is reasonable because it is consistent with federal requirements under 45 C.F.R. § 256.2(d).

Subp. 4. **Reestablishment of AFDC eligibility during transition year period.** This subpart is necessary to establish standards governing the treatment of families who reestablish AFDC eligibility during the transition year. This subpart is reasonable because it is consistent with federal requirements under 45 C.F.R. § 256.2(e).

Subp. 5. **Breaks during transition year when child care is not needed.** This subpart is necessary to establish a standard governing breaks in the transition year when child care is not needed. 45 C.F.R. § 256.2(c) states:

> "Notwithstanding when the family requests assistance under this Part, eligibility for transitional child care begins with the first full month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1) and continues for a period of 12 consecutive months. Families may begin to receive child care in any month during the 12-month eligibility period."

Although a family is "eligible" for Transition Year child care for 12 months, child care may not be needed for all 12 months. When child care is not needed, the rule provides for the suspension of the child care benefit but not the transition year period. This subpart is reasonable because it ensures that funds will only be spent when child care is needed and also ensures families 12 consecutive months of transition year eligibility.

Subp. 6. **Family copayment fee.** This subpart is necessary to establish family copayment fees under the Transition Year child care program. Except for a $1 monthly copayment fee for transition year families at or below the federal poverty level, transition year families are required to pay the same copayment as other families participating in the child care fund. This is accomplished by cross-referencing the sliding fee scale under part 9565.5070. This subpart is reasonable because it ensures similar standards for transition year and Basic Sliding Fee program recipients.

Subp. 7. **County child care assistance when family moves to another county.** This subpart is necessary to clarify a county's responsibility for providing child care assistance when transition families move to a new county and they continue to be eligible for Transition Year child care. Minnesota Statutes, section 256H.05 guarantees child care assistance for transition year families. Minnesota Statutes, section 256H.05 guarantees continued eligibility for child care assistance from the AFDC child care program from the county originating the EDP for as long as the AFDC caretaker complies with the terms of the EDP. Families receiving child care assistance from the AFDC child care program without an EDP may receive continued child care assistance for two full calendar months under the Unitary Residence and Financial Responsibility Act, Minnesota Statutes, chapter 256G despite the fact that a separate application is required for Transition Year child care assistance. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.05 and chapter 256G.

Subp. 8. **County denial of transition year child care application.** This subpart is necessary to inform counties that they must deny an application for Transition Year child care when the information submitted by the former AFDC caretaker is insufficient to determine eligibility or if the information indicates ineligibility. If a county denies an application, it must inform the applicant of the reason for denial and inform the applicant of the right to appeal

under Minnesota Statutes, section 256.045. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.19 which states, "An applicant or recipient adversely affected by a county agency action may request a fair hearing in accordance with section 256.045, subdivision 3."

Subp. 9. **Continuation of child care pending appeal.** This subpart is necessary to inform counties that a recipient of child care assistance under the Transition Year child care program must continue to receive child care assistance pending an appeal except for assistance that would extend beyond the 12-month period of eligibility. This subpart is necessary to conform to federal requirements governing the transition year program. Under the supplementary information on the final rule (Federal Register Vol. 54, No. 197, p. 42240), the Family Support Administration stated:

> "Another exception is that transitional child care benefits cannot be suspended, reduced, discontinued or terminated until a decision is rendered after a hearing requested within a timely notice period. We make this distinction because recipients of transitional child care benefits under this part do not have the same protection of the "means by which to live" (in terms of continuation of AFDC benefits and the option to cease participation) as is available to individual receiving child care under part 255."

Title 45 CFR, section 256.2(c) states: "Notwithstanding when the family requests assistance under this part, eligibility for transitional child care begins with the first month for which the family is ineligible for AFDC, for the reasons included in paragraph (b)(1), and continues for a period of 12 consecutive months. Families may begin to receive child care in any month during the 12-month eligibility period." Since transitional child care is only authorized for a 12-month period, child care must be discontinued after 12 months. It is unreasonable to continue assistance past the 12-month period pending an appeal because there is no entitlement to assistance beyond the 12-month period. Therefore, even when services have been continued pending fair hearing, it is reasonable to discontinue child care at the end of the 12-month period to prevent an overpayment to the family and to eliminate the need for counties to recover assistance which the family is not eligible to receive.

This subpart is reasonable because it is consistent with the federal requirements governing the Transition Year child care program.

9565.5070 FAMILY COPAYMENT FEE SCHEDULE.

Subpart 1. **Non-AFDC family copayment fees.** The amendment to this subpart is necessary to inform counties and recipients that the copayment fee for Non-AFDC families is determined according to subpart 2a for families with incomes less than or equal to the federal poverty level and according to subpart 3 for Non-AFDC families with incomes greater than the federal poverty level. The amendment is reasonable

because it is consistent with the requirements of Minnesota Statutes, section 256H.10, subdivision 1, paragraph (d).

Subp. 2. **AFDC family copayment fees.** The amendment to this subpart is necessary to clarify copayment fees for AFDC families. The first amendment deletes the reference to the maximum amount set "by the county" since the counties no longer set the rate. The maximum rates under part 9565.5100 are set by the Department based on the 75th percentile rate for like care arrangements. The 75th percentile is the maximum rate allowed under the federal child care programs. The second amendment is necessary to inform AFDC recipients that provider rates above the allowable maximum are the responsibility of the family. This requirement is necessary to inform AFDC recipients that the limitation previously found in subpart 3, item D applies to AFDC recipients as well as Non-AFDC recipients. It is reasonable to establish an upper limit on payments to address payment responsibilities when child care costs exceed the allowable rate.

Subp. 2a. **Non-AFDC family copayment fee for families with incomes less than or equal to the federal poverty level.** This subpart is necessary to establish a standard governing family copayment fees for Non-AFDC families living at or below the federal poverty level. Minnesota Statutes, section 256H.10, subdivision 1, paragraph (d) states that families whose incomes are below the threshold of eligibility for AFDC, but are not AFDC caretakers, must be made available with the minimum copayment required by federal law.

Item A requires transition year families whose income is less than or equal to the federal poverty level to pay a monthly copayment fee of one dollar. 45 C.F.R. § 256.3(b) requires each State IV-A agency to establish a sliding fee scale which will provide for some level of contribution by all recipients. Until such time as the federal regulations permit states to waive the copayment fee for families at or below the federal poverty level, the monthly copayment fee for transition year families at or below the federal poverty level is $1 per month subject to the maximum rate allowed under part 9565.5100. This item is reasonable because it is consistent with Minnesota Statutes, section 256H.10 and federal regulations.

Item B states that there is no family copayment for Non-Transition year families whose income is at or below the federal poverty level subject to the maximum rate allowed under part 9565.5100. Under the federal regulations governing the Child Care and Development Block Grant (45 C.F.R. § 98.42(c)), grantee may waive contributions from families whose incomes are at or below the poverty level for a family of the same size. This item is reasonable because it is consistent with Minnesota Statutes, section 256H.10 and federal regulations.

Subp. 3. **Calculation of non-AFDC family copayment fee.** The amendment in the introductory sentence is necessary to identify the exception to the sliding fee scale identified in subpart 2a.

The paragraph beginning "Subject to the maximum provider rate established under part 9565.5100" is being deleted because it no

longer applies due to the 1992 legislative change in Minnesota Statutes, section 256H.10, subdivision 1, paragraph (d).

The changes in items B and C are necessary because the standard for the beginning point of the sliding fee scale has been changed from the AFDC level to the federal poverty level.

A second change to item B modifies the family's monthly copayment fee from a flat $20 to "50 percent of the rate under Item C, subitem (1) rounded to the nearest whole dollar." The purpose of that change is to provide a formula for establishing the fee between the poverty level and 42.01 percent of state median income. When the rule was originally adopted, the dollar range between the AFDC standard and 42.01 percent of state median income was relatively small. As state median incomes increased and the AFDC standard remained the same, the range between AFDC and 42.01 percent of state median income increased significantly. The Department anticipates that the range between the poverty level and 42.01 percent of state median income will also increase significantly. Rather than stating a flat rate, the formula of 50 percent of the first step is being proposed. Based on 1993 state median income for a family of four, adjusted for family size, and the 1992 federal poverty level, the rule amendment will adjust family copayment fees as follows:

1. A family of two will be required to pay $14 per month for child care beginning with an annual income between $9,191 and $12,291. The current fee schedule of $20 begins with an annual income between $9,710 and $12,291.

2. A family of three will be required to pay $17 per month for child care beginning with an annual income between $11,571 and $15,183. The current fee schedule of $20 begins with an annual income between $11,810 and $15,183.

3. A family of four will be required to pay $20 per month for child care beginning with an annual income between $13,951 and $18,075. The current fee schedule of $20 begins with an annual income between $13,790 and $18,075.

4. A family of five will be required to pay $23 per month for child care beginning with an annual income between $16,331 and $20,967. The current fee schedule of $20 begins with an annual income between $15,482 and $20,967.

5. A family of six will be required to pay $26 per month for child care beginning with an annual income between $18,711 and $23,859. The current fee schedule of $20 begins with an annual income between $17,162 and $23,859.

6. A family of seven will be required to pay $27 per month for child care beginning with an annual income between $21,091 and $24,402. The current fee schedule of $20 begins with an annual income between $18,878 and $24,402.

7. A family of eight will be required to pay $28 per month for child care beginning with an annual income between $23,471 and $24,944. The current fee schedule of $20 begins with an annual income between $20,342 and $24,944.

8. A family of nine or ten will pay for child care according to the table in Minnesota Rules, part 9565.5070, subpart 3 once the family's annual income exceeds the federal poverty level.

Although the sliding fee schedule is carried out for family sizes two through ten, the vast majority of families participating in the child care fund are families of two, three, and four. The amendment is a reasonable implementation of Minnesota Statutes, section 256H.14 which directs the Commissioner to base the parent fee on the ability of the family to pay for child care. Instead of using a flat rate for all families, the amendment considers family size and income when establishing the family copayment fees between the federal poverty level and 42.01 percent of state median income.

Item D is being amended because the county no longer establishes provider rates under part 9565.5100. Provider rates are established by the commissioner. Item D is reasonable because it is consistent with the standards established in subparts 2 and 2a and it establishes payment responsibilities when the charge exceeds the maximum rate allowed under Minnesota Statutes, section 256H.15, paragraph (b).

Item E is being amended because the county no longer sets the maximum provider rate under part 9565.5100. The maximum provider rate is determined by survey and is limited to the 75th percentile.

The change in item F is necessary to address child care during the start-up month. It has been suggested by child care advocates that the existing requirement which allows a county to establish fees no greater than 50 percent of the monthly copayment fee for families receiving assistance on or after the 16th of any month impedes immediate participation in the child care program. Some families have delayed employment until the beginning of the month because of the amount of the copayment fee. This item is being amended to require the counties during the start-up month to prorate the copayment fee based on the number of calendar days remaining in the month. Prorating the fee is reasonable because it encourages families to begin work as soon as possible.

Subp. 4. **Publication of state median income and fee schedule in State Register.** The amendment to this subpart clarifies the date that the fee schedule goes into effect each year. An updated sliding fee schedule will go into effect each July 1st, the beginning of the state fiscal year. The Department's experience in the last three years indicates that the updated sliding fee schedule can be published prior to July 1 of each year. When a new sliding fee schedule is published, it applies immediately to new applications on a certain date (July 1st) and to current recipients upon redetermination of eligibility. The July 1st standard is easier for the counties and the public to understand because it begins on the first day of the state fiscal year. Since it is possible that the state median income data from the

federal government could come too late to permit publication of a new schedule before the beginning of the state fiscal year, it is necessary to provide for that contingency. In that instance, the new schedule will begin on the first day of the first full quarter that follows publication of the state median income in the State Register. The change in this subpart is reasonable because it clarifies when a new fee schedule takes effect.

9565.5080 CHILD CARE ASSISTANCE PAYMENTS.

Subpart 1. **Payment options.** The amendment to this subpart is an editorial change. The word "subsidy" is unnecessary when followed by the word "payment".

Subp. 1a. **Registration of legal nonlicensed caregivers.** This subpart is necessary to inform counties and legal nonlicensed caregivers that before a county makes payments to a legal nonlicensed caregiver, the caregiver must be registered with the county. Registration is required under federal Child Care Development Block Grant regulations (45 C.F.R. § 98.40(a)(2)). It is reasonable to establish a registration requirement because the registration requirement is necessary to qualify for federal funding and it is administratively necessary in order to issue child care payments.

Subp. 1b. **County authorization of child care.** This subpart is necessary to permit counties to authorize child care according to prevailing provider practices. Licensed child care providers are in the "business" of providing child care. Under child care licensing regulations, providers are limited in the number of children that they can serve. Therefore, it is not always practical or possible for providers to split time between families. From a business perspective, a provider may not be able to fill the seventh, eighth, or ninth hour of a day when a family only needs child care for six hours. Therefore, the provider may charge a full-day rate for over five hours of child care. Likewise, if a family only needs full-day child care four days a week instead of five, the provider may not be able to fill the fifth day and may charge for child care on a weekly basis. This subpart is necessary to permit a county to authorize child care according to prevailing business practices. It is necessary to permit child care to be authorized according to prevailing business practices to ensure child care fund recipients have access to the full range of available child care providers.

This subpart also permits counties to authorize combinations of child care when the amount of child care needed exceeds 11 or more hours in a 24 hour period. Full-day child care is generally less than 11 hours per day. When child care is provided for 11 or more hours in a 24 hour day (persons working two consecutive work shifts), a mechanism is needed to authorize a combination of care to address the additional hours of care. This subpart is reasonable because it grants the counties the flexibility to address unusual child care needs and ensures providers will be paid for those hours of service in excess of 11 hours per day.

This subpart also informs parents that if they choose a provider that charges on a basis greater than the amount authorized by the county, the parents are responsible for those costs greater than the amount authorized by the county. For example, it is possible for a parent to choose a provider that charges on a full-day basis when the county only authorizes three hours of child care per day. In this instance, the family is responsible for child care costs that exceed the amount of child care authorized. It is necessary to limit child care assistance to the amount authorized to ensure that payments do not exceed the 75th percentile rate and that the amount of authorized child care is reasonably related to the hours of employment or education as required by 45 C.F.R. § 257.21. Since reimbursement is limited to the 75th percentile, it is necessary to relate the reimbursement to the closest unit of child care. It would be unreasonable to pay a for a full week of child care if child care is only provided for eight hours one day a week. On the other hand, the rule does not intend to limit parent choice. Parents may choose any provider they wish. However, the amount of child care assistance is limited to the amount authorized by the county.

Subp. 1c. **Maximum child care payments.** This subpart is necessary to inform counties and recipients that child care assistance payments under the child care fund may not exceed the 75th percentile rate for like care arrangements in the county. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.15, subdivision 1, paragraph (b) which limits the maximum rate to the maximum rate eligible for federal reimbursement. Minnesota Statutes, section 256H.15, subdivision 1, paragraph (c) states when the provider charge is greater than the maximum rate allowed, the parent is responsible for payment of the difference in the rates in addition to any family copayment fee.

Subp. 1d. **Standard for converting authorized care into hours used.** This subpart is necessary to establish a standard for converting authorized care into hours of child care used. Part 9565.5025, subpart 6, limits child care assistance to 60 hours per child per week. Since the rule permits counties to authorize child care on a half-day, full-day, and weekly basis, it is necessary to have a uniform standard of conversion. The standard of conversion is based on the payment rate. A half-day charge is roughly equivalent to five hours of child care. A full-day charge to ten hours and a weekly charge to 50 hours of child care. It is reasonable to have a conversion standard related to child care payments so recipients are treated similarly regardless of the provider selected.

Subp. 2. **Notification of vendor payment procedures.** The amendment to this subpart is necessary to establish a standard governing notification of providers who receive a vendor payment when a family has been given a termination notice. Due to the delay between the provision of services and the payment for those services, it is reasonable for providers to be informed that child care payments will no longer be made unless the family requests to continue to receive assistance pending an appeal. Otherwise, a situation is created where a provider may unknowingly continue to provide services for which the provider may not be reimbursed. Such a situation would impose a

hardship on the provider (loss of revenue) and could cause providers to refuse to provide services to recipients because of the possibility of incurring bad debts. Therefore, it is reasonable to notify a provider who receives a vendor payment when the county will no longer make child care payments.

Subp. 4. **Sick child care.** The amendment to this subpart deletes the reference to "on a limited basis" regarding the payment for sick child care. The reference to "on a limited basis" was tied to the standard under subpart 5 (The total payment amount allowed to be paid from the child care fund under this subpart and subpart 4 shall not exceed ten days per child in a six month period.) The standard under subpart 5 was specifically addressed by the legislature which amended Minnesota Statutes, section 256H.02 to state, "In the rules adopted under this section, county and human services boards shall be authorized to establish policies for payment of child care spaces for absent children, when the payment is required by the child's regular provider. The rules shall not set a maximum number of days for which absence payments can be made, but instead shall direct the county agency to set limits and pay for absences according to the prevailing market practice in the county." Although payment for sick child care was not specifically addressed by the legislature, the phrase "on a limited basis" is a nonstandard without the reference in subpart 5 since "on a limited basis" is not defined. The Department believes it is reasonable to allow the counties to determine whether they wish to make payments for care of sick children based on the county's perceived need for this type of child care in the county and subject to the limits established in part 9565.5100, subpart 2. Finally, the reference to an annual plan is being changed to a biennial plan because, effective January 1, 1992, Minnesota Statutes, section 256H.09, subdivision 3 provides for a biennial plan.

Subp. 5. **Payment during child absences.** The amendment to this subpart is necessary to comply with Minnesota Statutes. The standard under subpart 5 was specifically addressed by the legislature when Minnesota Statutes, section 256H.02 was amended to read:

> "In the rules adopted under this section, county and human services boards shall be authorized to establish policies for payment of child care spaces for absent children, when the payment is required by the child's regular provider. The rules shall not set a maximum number of days for which absence payments can be made, but instead shall direct the county agency to set limits and pay for absences according to the prevailing market practice in the county. County policies for payment of absences shall be subject to the approval of the commissioner."

Minnesota Statutes is clear regarding payment during child care absences. Presumably, since the county policy is required to be based on the prevailing market practice in the county, the only time the commissioner would not approve a county's policy is when it is not based on the prevailing market practice in the county. The amendment to this subpart is reasonable because it is consistent with Minnesota Statutes.

Subp. 6. **Payment during medical leaves of absence.** This subpart is necessary to establish a standard governing child care needs during a parent's medical leaves of absences from education or employment. During advisory committee discussions it was pointed out that the current rules do not address the issue of child care during short-term medical leaves of absence of the parent. Although a parent may be in the home, the parent may not be able to provide child care i.e., a doctor imposes lifting restrictions on a parent due to a recent surgery or a parent is placed on full bed rest. If a county permits the limited use of child care during a medical leave of absence, will the Department disallow the child care expense in a follow-up audit? Even after obtaining assistance from relatives and friends, a number of examples were given where a single parent would still need child care assistance. The examples generally cited child care needs during the day when relatives and friends are working. The question raised by the counties is will the Department recognize this child care as a legitimate use of the child care fund?

The Department believes child care assistance should only be used in support of employment and education programs. This includes child care needed to retain employment. The use of child care for an employment purpose and the use of child care for a social services purpose is not always easy to separate. If child care is denied, a parent may lose a child care slot with a provider. The loss of a child care slot is more serious for parents with infants because there is a shortage of infant care. If a provider who provides infant care is lost, this can have serious employment consequences. Under Minnesota Statutes, section 256H.02, the legislature authorized counties to establish child care policies for payment of child care space for absence children. The purpose of the legislation was to provide counties the flexibility necessary to deal with child care needs. The Department believes the issue of medical leaves of absence and the issue of child absences are similar.

Child care during medical leaves of absences are not specifically addressed in the statutes. However, the commissioner is given authority to establish standards for the child care program under Minnesota Statutes, section 256H.02. Therefore, it is reasonable to establish broad standards for payment of child care assistance during medical leaves of absence.

Under item A, the parent is expected to return to work within 90 days. This standard is necessary to ensure that the use of the child care assistance is consistent with Minnesota Statutes, sections 256H.01 to 256H.19 which is to support employment or education. It is also consistent with part 9565.5110, subpart 7 which permits a county to reserve a family's position in the child care program for up to 90 days if the family has been receiving assistance but is temporarily ineligible for assistance due to a change in income or family status.

Under item B, the necessity of the medical leave and the inability to provide child care must be documented by a physician. This is reasonable because a physician is trained to make medical assessments and it would be impossible in rule to identify every medical condition which may require a medical leave of absence from employment or an

education program. A county representative asked whether the county could ask for a second opinion regarding the necessity of the medical leave. The Department believes this is a requirement that the county should place in its policies governing medical leaves of absence. However, there is nothing in the rule that requires counties to establish policies governing medical leaves of absences. This is an option available to the counties similar to sick child care.

Under item C, the amount of child care assistance cannot exceed the equivalent of one month of full-time child care. This standard is necessary to limit the amount of child care which can be granted under this subpart. If child care services will be needed for more than one month full time, the child care need is more likely a social services need rather than an employment need.

Finally, if a county intends to establish a medical leave of absence policy, it must be included in the allocation plan required under part 9565.5120. The Department believes this subpart provides the county the needed flexibility to deal with unique child care needs, ensure that expenditures will not be disregarded in a subsequent audit, and provides program accountability by identifying the expenditure policy in the allocation plan. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.02 which directs the commissioner to develop standards for county and human services boards to provide child care services to enable families to participate in employment, training, or education programs.

9565.5090 ELIGIBLE PROVIDERS AND PROVIDER REQUIREMENTS.

Subpart 1. **Eligible providers.** The change to this subpart is an editorial change. Previously, the paragraph, which is now subpart 1, was the only provision in part 9565.5090. However, this part is now being amended by adding additional subparts under part 9565.5090. Therefore, it is necessary to identify the first paragraph as subpart 1.

The definition of provider under part 9565.5010, subpart 29 has been amended and references Minnesota Statutes, section 256H.01, subdivision 12. Instead of referencing a rule part that references Minnesota Statutes, a direct reference to made to Minnesota Statutes.

Subp. 2. **Registration before payment.** This subpart is necessary to inform legal nonlicensed caregivers that they must be registered with the county before they can receive a payment under the child care fund. The registration requirement is reasonable because it is required under the federal Child Care and Development Block Grant regulations (45 C.F.R. §§ 98.15(i) and 98.40(a)(2).

Subp. 3. **Parental access to children in care.** This subpart is necessary to inform child care providers that they must permit parents unlimited access to their children during normal hours of provider operation or whenever the children are in care. Unlimited parent access is reasonable to afford parents an opportunity to monitor health and safety standards and the quality of child care they have

chosen. Parental access is required under the federal JOBS rule (45 C.F.R. § 255.4(c)(1) and the Child Care and Development Block Grant rule (45 C.F.R. § 98.31). A similar requirement is also established for day care centers under Minnesota Rules, part 9503.0095.

Subp. 4. **Complaints, record, and disclosure.** This subpart is necessary to inform legal nonlicensed caregivers that they must permit counties to maintain a record of substantiated parental complaints against the caregiver concerning the health and safety of children in the care of the legal nonlicensed. The record of substantiated parental complaints is required under the Child Care and Development Block Grant rule (45 C.F.R. § 98.32). This subpart also informs the legal nonlicensed caregiver, that pursuant to Minnesota Statutes, section 256H.10, subdivision 5, the county may deny child care payments to an unsafe provider.

9565.5100 CHILD CARE PROVIDER RATES.

Subpart 1. **Rate determination.** The amendment that changes the frequency of the rate determination from each year to not less than once every two years is necessary to allow the commissioner discretion to determine whether rates need to be determined on an annual or biennial basis and to inform counties and the public of the potential to change the frequency of the rate determination.

Federal regulations allow rates to be surveyed every two years and the frequency of rate determination is not set forth in Minnesota Statutes. During the years prior to 1991 child care rate surveys identified substantial increases in rates on an annual basis. The results of the 1991 and 1992 rate surveys indicated that provider charges may be leveling off. Administrative costs to conduct rate surveys is substantial for the state, the counties (for legal nonlicensed caregivers and special needs), and for resource and referral agencies (licensed care arrangements). It is reasonable to allow the commissioner to conduct surveys biennially to reduce the costs of administering the program if current economic indicators warrant.

With a survey standard of at least once every two years, if a family uses a provider that was at the 75th percentile in the first year of the survey and the provider increased his or her rate during the second year above the 75th percentile and a new survey was not completed, the family would be liable for the increased costs. If the provider increases his or her rate during the second year and the rate falls within the 75th percentile, the child care fund would pay the provider rate and there would not be an impact on the provider or family. The standard governing payment of provider fees greater than the 75th percentile is set forth under part 9565.5080, subpart 1c.

The change from the median rate to the 75th percentile is necessary to comply with Minnesota Statutes, section 256H.15, subdivision 2 which states, effective July 1, 1991, the maximum rate paid for child care assistance under the child care fund is the maximum rate eligible for federal reimbursement. Under 45 C.F.R. § 255.4(a)(2) that rate is

based on the 75th percentile cost of such types of care in the local areas. The amendment to this subpart is reasonable because it is consistent with Minnesota Statutes and federal regulations.

This subpart add requires the Commissioner to conduct a survey of registration fees when it is usual and customary for a category of provider to charge registration fees. The survey of registration fees is necessary to react to market practices and to ensure child care fund recipients will have access to providers who charge registration fees.

Subp. 1a. **Rate determination for registered legal nonlicensed caregivers.** This subpart is necessary to establish a process for determining the child care rate for registered legal nonlicensed caregivers. Under the amended rule, counties are required to register legal nonlicensed caregivers. Information included in the registration process is the caregiver's child care rate. Since the counties have the child care rates for registered legal nonlicensed caregivers in the county records, it is reasonable to ask the county to survey those records to determine the 75th percentile rate. Under this subpart, the survey must be conducted in a manner prescribed by the commissioner. This requirement is necessary to ensure that when the survey does not include 100 percent of the registered caregivers that the survey sample is a statistically valid sample. This subpart is reasonable because it directs counties to use data available in its files to determine the child care rate for registered legal nonlicensed caregivers. The survey is essentially a summary of the reported child care rates from registered legal nonlicensed caregivers.

Subp. 1b. **Rate determination; handicapped or special needs.** This subpart is necessary to establish a process for determining the child care rate for providers who serve children with a handicap or special need. Under Minnesota Statutes, section 256H.15, subdivision 3, counties are directed to reimburse providers for the care of children with handicaps or special needs at a special rate to be set by the county. The rate set by the county must comply with the maximum allowed for federal reimbursement (75th percentile) when there are four or more providers. With less than four providers, it is impossible to determine the 75th percentile. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.15, subdivision 3.

Subp. 1c. **Payment rate differential.** This subpart is necessary to comply with a federal requirement governing child care rates. It is necessary to comply with the federal requirement in order to qualify for federal funds under the federal Child Care Development and Block Grant regulations. 45 C.F.R. § 98.43 states, the differential between maximum payment rates for child care assistance in the same category of care may not exceed 10 percent. This subpart is reasonable because the standard permits the state to access federal funds for child care.

Subp. 1d. **Child care rate, provider's county of residence.** This subpart is necessary to identify which child care rate is used when a family resides in one county and uses a provider who resides in

another county within Minnesota. The rule establishes the rate as the rate allowed in the provider's county of residence. This standard is necessary to reflect the standards that exist in the provider's county where services are being provided. It is not uncommon for parents who live outside the Minneapolis-St. Paul metropolitan area to work within the metropolitan area. Some of these parents transport their children to day care in areas near their work place. The difference in child care rates between metro and non-metro counties can be significant. Therefore, it is necessary to establish the rate in the county where the provider resides as the standard for determining child care rates to assure full parental choice of providers. Although this requirement is more burdensome to the counties, it is necessary to achieve the purpose of the child care fund which is to enable families to participate in employment, training, or education programs.

Subp. 1e. **Provider rates under child care fund.** This subpart is necessary to comply with Minnesota Statutes, section 256H.15, subdivision 4 which states, "Child care providers receiving reimbursement under chapter 256H may not charge a rate to clients receiving assistance under chapter 256H that is higher than the private full-paying client rate. This subpart is reasonable because it is consistent with Minnesota Statutes.

Subp. 1f. **Payment of registration fees.** This subpart is necessary to establish a standard governing the payment of registration fees for licensed providers or license-exempt centers that charge a registration fee. Minnesota Statutes and federal regulations require that parents be permitted to choose from a variety of child care provider categories. The existing rule does not address the payment of registration fees that are charged by licensed providers or license-exempt centers to process child care applications. Failure to address registration fees could result in some families being denied access to certain types of child care providers. This is contrary to federal requirements which states that local rules, requirements, policies and procedures cannot either explicitly, or operationally, result in significant restrictions in the range of child care options. (See 45 C.F.R. § 98.30). The standard set forth in this subpart permits the use of child care funds to pay the registration fees charged by licensed providers and license-exempt centers. However, to ensure limited funds are used primarily for child care services and not to process numerous applications, a limit is placed on the amount and the number of registration fees that will be paid per family in a 12-month period. The maximum amount that will be paid for registration fees is the 75th percentile based on surveys conducted by the Department. The 75th percentile is consistent with the federal reimbursement standard for provider rates. Limiting the number of registrations per 12 month period is necessary to ensure child care funds are expended principally for child care and not preenrollment paper work. It is reasonable to establish a maximum standard to ensure child care funds are used for the purpose intended by the legislature while ensuring access to providers.

Subp. 1g. **Payment of activity fees.** This subpart is necessary to establish a standard governing payment of activity fees. If activities fees are optional, the fees must be paid by the parent. If

tivity fees are not optional, they must be included in the vider's base rate. It is reasonable to require that mandatory fees e included in the base rate to ensure equal treatment of all providers, that parent choice is not limited due to method of charging, and that payments do not exceed the statutory limit of the 75th percentile. This subpart is necessary to ensure that all required fees are identified and paid through the child care fund and to ensure that total provider charges do not exceed the 75th percentile.

Subp. 2. **Maximum county child care assistance rate.** The amendment to this subpart is necessary to implement Minnesota Statutes, section 256H.15, subdivision 1, paragraph (b) and subdivision 2. The amendment which replaces "eligible" with "authorized" is necessary to clarify that counties shall only pay the provider's rate to cover "authorized" hours of child care. This subpart also informs the counties that they shall pay the lesser of the provider's rate or the 75th percentile. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.15, subdivision 1, paragraph (b).

Items A to F are being deleted because they are addressed under Minnesota Statutes or under subparts 1 to 1g.

Item A is addressed under subpart 1a.

Item B is addressed under subpart 1b.

Item C is addressed under subpart 1.

Item D is addressed under Minnesota Statutes, section 256H.15, subdivision 2.

Item E is unnecessary since the requirements under Minnesota Statutes, section 256H.15, subdivision 1, paragraph (a) are no longer in effect.

Item F is addressed under subpart 1c.

Subp. 3. **Maximum state participation.** The amendment to this subpart is necessary to reflect the rate change from a maximum of 125 percent of the median rate to the 75th percentile rate which is the maximum rate eligible for federal financial participation. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.15, subdivision 1, paragraph (b).

9565.5110 COUNTY RESPONSIBILITIES.

Subpart 1. **County child care assistance policies and procedures.** The amendments to this subpart are editorial. The word "subsidy" has been changed to "assistance" and the phrase "applied to recipients of" has been changed to "that apply to". The word "annual" is being deleted and replaced with "biennial" because Minnesota Statutes, section 256H.09, subdivision 3 provides that "Effective January 1, 1992, the county will include the plan required under this subdivision in its

biennial community social services plan required in this section, for the group described in section 256E.03, subdivision 2, paragraph (h)."

Subp. 2. **Child care assistance information.** The amendment to this subpart is necessary to inform counties that they must inform individuals who inquire about child care assistance of the availability of child care assistance and child care resource and referral services. This amendment is reasonable because it implements Minnesota Statutes, section 256H.15, subdivision 5 which requires counties to make resources available to parents in choosing quality child care services.

Subp. 2a. **County termination of application approval for failure to select a provider.** This subpart is necessary to inform counties that they may terminate approval of an application for child care assistance when the applicant has not chosen a provider within 30 calendar days from the date the application is approved. It is reasonable to permit counties to terminate an application after 30 days to ensure the child care funds are expended for child care rather than held indefinitely pending selection of a provider. The county must give notice when terminating approval of the child care application. This subpart is reasonable because it sets a uniform standard for when a county can terminate an application for assistance when a family fails to select a provider. The requirement balances the family's need for time to select a child care provider with the state's directive to the county to expend child care funds for families who need child care to obtain or retain employment. Funds that are not expended by the end of the second year of the biennium are returned to the state general fund and no longer available for child care.

Subp. 2b. **Determination of providers eligible for payments.** This subpart is necessary to set forth a time limit for a county to approve or disapprove an applicant's choice of provider. Federal regulations require timely approval of providers. The Department believes 30 days to approve a provider is a reasonable interpretation of the federal requirement. It also establishes a start date for reimbursement of child care expenses. Finally, if a county determines that a provider is not eligible for child care payments under the child care fund, the applicant is informed of the right to appeal that adverse action. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.10, subdivision 5 which permits a county to deny a child care payment to an unsafe provider and Minnesota Statutes, section 256H.19 which permits an applicant or recipient to request a hearing if adversely affected by a county agency action.

Subp. 2c. **Registration of legal nonlicensed caregivers.** This subpart is necessary to establish a registration requirement for legal nonlicensed caregivers. The requirement is necessary to maintain program integrity and accountability and to comply with federal requirements. Registration of legal nonlicensed caregivers is required under the federal Child Care Development and Block Grant program regulations, 45 C.F.R. § 98.45.

Before a county may issue a provider payment, the county needs to know the provider's name, social security number, age and address. The name and address is necessary for identification purposes. The age is necessary since Minnesota Statutes, section 256H.01, subdivision 12 requires a legal nonlicensed caregiver to be at least 18 years old. The provider's social security number is necessary for tax purposes and completion of the Internal Revenue Services tax form 1099. Finally, signing a release that permits information on substantiated parental complaints regarding the health and safety of children in their care to be disclosed to the public alerts the caregiver that substantiated parental complaints will be disclosed to others upon request. This subpart also alerts legal nonlicensed providers that they must comply with state and local health ordinances and building and fire codes applicable to the premise where child care is provided. Information will be provided by the Department for the counties to give to the legal nonlicensed providers. Also, to assist legal nonlicensed providers, counties are direct to refer registered providers to the child care and resources and referral agency. The resource and referral agency can provide additional child care information to the legal nonlicensed provider. The registration requirement is reasonable because it requires a minimal amount of information and will reduce potential misunderstandings governing child care payment between the county and the provider, allows county rate determination for legal nonlicensed caregivers, and allows counties to offer health and safety education opportunities to registered providers.

Subp. 2d. **Parental complaint against legal nonlicensed caregivers.** This subpart is necessary to establish standards governing parental complaints against legal nonlicensed caregivers. Under the Child Care Development and Block Grant program, 45 C.F.R. § 98.32, grantees must:

(a) Maintain a record of substantiated parental complaints; and

(b) Make information regarding such parental complaints available to the public upon request.

Since the county agency that administers the child care fund does not have statutory authority to investigate parental complaints for registered legal nonlicensed caregivers, the administering agency is directed to relay parental complaints to the entities which have authority to investigate complaints concerning the health and safety of children. Parental complaints must be relayed within 24 hours to the entities with authority to investigate the complaint.

Under item A, parental complaints alleging child maltreatment must be relayed to the county's child protection agency.

Under item B, parental complaints alleging danger to public health must be relayed to the county's public health agency.

Under item C, parental complaints alleging criminal activity that could endanger the health or safety of children under care must be relayed to local law enforcement.

Under item D, parental complaints relating to the health and safety of a child that are not directly addressed by an agency under items A to

C, must be directed to other agencies with jurisdiction to investigate the complaint.

If a complaint under item A is substantiated, the county must keep a record of the substantiated complaint as provided in Minnesota Statutes, section 626.556. If a complaint is substantiated under items B to D, the county is directed to retain the information for three years. It is reasonable to require information obtained under items B to D to be retained for three years to establish a standard for record retention.

Upon request the county is direct to release the substantiated complaint information as authorized under the Government Data Practices Act, Minnesota Statutes, chapter 13. A county will need to follow up the complaint with the investigating agency or request that it be notified if the complaint is substantiated. The extent of the information that can be maintained by the agency and released to the public is dictated by Minnesota Statutes, chapter 13. This subpart is reasonable because it is consistent with federal requirements.

Subp. 3. **County contracts and designation of administering agency.** The change in this subpart is an editorial change. There are two changes in this subpart. First, the phrase "subsidy program" is being changed to "fund". Second, the word "subsidy" which precedes the word "funds" is being deleted since the qualifier is unnecessary.

Subp. 3a. **Agreement with employment and training service providers.** This subpart is necessary to establish a requirement that counties develop cooperative agreements with employment and training providers to coordinate child care funding for AFDC Project STRIDE caretakers. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.05, subdivision 2 and promotes the provision of seamless child care assistance.

Subp. 5. **Eligibility priorities for beginning assistance.** The amendments to this subpart are necessary to clarify provisions in the rule. The phrase "basic sliding fee" is being inserted because the subpart specifically addresses the Basic Sliding Fee program. There is no need to establish eligibility priorities for entitlement programs.

The statutory reference to priority requirements is being amended to comply with Minnesota Statutes. Minnesota Statutes, section 256H.03, subdivision 2b sets forth the funding priority under the Basic Sliding Fee program. The reference to Minnesota Statutes, section 256H.05 is being deleted since the AFDC child care program is an entitlement program for which funding is guaranteed. The word "subsidy" is also being deleted and replaced with the term "assistance" to implement a change made in other parts of the rule. In addition, the term "funding" is being replaced with the term "eligibility" because the county is required to prioritize eligibility not funding. Minnesota Statutes, section 256H.08 states, in part, "Counties may not limit the duration of child care subsidies for a person in an employment or education program, except when the person is found to be ineligible under the child care fund eligibility standards." The purpose of this

requirement is to ensure that counties do not terminate assistance for one family to serve a more needy family. To do so would disrupt the program for every family served since there could never be any assurance that a family with greater needs might not apply for assistance. Once a family begins to receive assistance, the family is to continue to receive child care assistance, subject to available allocations, until that family no longer meets the eligibility requirements under the Basic Sliding Fee program. The change in terms from "funding" to "eligibility" is reasonable because it clarifies that the county determines eligibility priorities for assistance and not funding priority.

The rule also establishes requirements governing termination of assistance for families who are currently receiving assistance when the available child care assistance funds are insufficient to permit continued child care assistance to all families. Counties must terminate assistance in the order of last on, first off and must consult with the commissioner before terminating assistance. It is reasonable to terminate assistance based on last on, first off since the families which have only recently received assistance, while severely impacted by the loss of assistance will still be disrupted less than families who have been on the program for a long time. It is reasonable to require counties to consult with the commissioner since funding may be available to the county from counties who have not used their full basic sliding fee allocation. Finally, it is reasonable to reinstate families who have been bumped from the program due to insufficient funds before accepting new applications as a matter of basic fairness.

Subp. 6. [See repealer.] **Documentation required if group is disproportionately funded.** This subpart is being repealed to delete the requirement that counties document if more than 75 percent of the child care funds are provided to any one of the groups described in Minnesota Statutes, sections 256H.03 and 256H.05. As noted in subpart 5, funding priorities under the Basic Sliding Fee program are set by statute under Minnesota Statutes, section 256H.03, subdivision 2b. There are no longer funding priorities for the AFDC child care programs since child care is now guaranteed under the AFDC child care programs. Therefore, this subpart is unnecessary and is being deleted.

Subp. 7. **Funding waiting list for basic sliding fee.** The initial amendment to this subpart is editorial. The language governing placement on a waiting list is similar to the language in part 9565.5030, subpart 7.

The amendment governing transition year families under this subpart is necessary to inform counties that they must place transition year families on the Basic Sliding Fee program waiting list as provided in part 9565.5030, subpart 7a.

The language governing intermittent assistance has been moved from this subpart to subpart 7b. The use of intermittent assistance applies to the other child care fund programs as well as the basic

sliding fee program. Therefore, it is reasonable to have that rule language stand alone.

Subp. 7a. **Waiting list, non-Project STRIDE AFDC caretakers.** This subpart is necessary to require counties to establish a waiting list for non-STRIDE AFDC caretakers who request ACCESS child care assistance. The requirement is necessary because funding under the ACCESS child care program is limited. Creating a waiting list is reasonable because not all families requesting assistance can be served and it provides an orderly means for adding new families to the program when other families leave the program. The number of families on the waiting lists also provide information on unmet funding needs.

Subp. 7b. **Intermittent assistance.** This subpart is essentially an editorial change. The language in this subpart was previously found in subpart 7. This subpart clarifies the maximum time limit for holding a family's position due to the intermittent need for assistance. A county may hold a family's position on a waiting list for up to one academic quarter for recipients in an education or training program or 90 days for employed recipients. Previously the rule authorized holding an employed recipient's place on the Basic Sliding Fee program for up to 90 days but was silent on holding the place of students. The change permitting a county to hold a student's place for one academic quarter is reasonable because it treats employed recipients and recipients in an education or training program in a consistent manner. The rule also clarifies that if there are temporary breaks during the year when child care is not needed, but the family remains eligible for child care assistance, there is a suspension of the child care benefit but not child care eligibility. An example of this is when child care is not needed during holidays and other breaks in a parent's school year or when parents of school age children only need child care during summer months.

Subp. 9. [See repealer.] **Maintenance of effort.** This subpart is being repealed because it is unnecessary. Minnesota Statutes, section 256H.12, subdivision 3 establishes a maintenance of effort requirement.

Subp. 10. [See repealer.] **Termination of child care assistance.** This subpart is being repealed as a format change. Subpart 10 is awkward because the sequence of actions under items A to D are not set forth in a logical order. As an aid to persons who consult the rule, subpart 10 is rewritten as subparts 10a to 10d.

Subp. 10a. **Just cause for terminating child care assistance.** This subpart is necessary to identify circumstances that constitute just cause for terminating child care assistance. Item A includes the standard previously set forth in subpart 10, item B, plus the new rule requirement (part 9565.5025, subpart 5a) that permits a county to terminate an approved application when the family fails to select a provider within 30 days.

Item B is necessary to address termination of assistance in instances where the recipient wrongfully obtains child care assistance due to fraud. Termination of assistance due to fraud is reasonable to ensure

the integrity of the program and to ensure funds are expended as intended by the legislature.

Item C is necessary to address termination of assistance when insufficient funds are available to fund the child care needs of all families currently receiving assistance. Since, in the event of insufficient funds, assistance will need to be terminated to some families, it is reasonable to address that eventuality in the subpart dealing with just cause for terminating child care assistance. This item is reasonable because the Basic Sliding Fee program and ACCESS programs are limited programs which only require county funding to the extent of available allocations.

Subp. 10b. **Notice of termination of child care assistance to recipients.** This subpart is necessary to establish a standard governing the notice of termination of assistance to recipients. This subpart is a format change. The notice standard in subpart 10b was previously stated in subpart 10, item A.

Subp. 10c. **Notice of termination of child care assistance to vendors.** This subpart is necessary to establish a standard governing the notice given to vendors when child care assistance is terminated to a recipient. This subpart is necessary to identify what information can be shared with the provider. The provider will simply be informed that child care payments will no longer be made unless the family requests to continue to receive assistance pending an appeal. The purpose of the new language is to protect a family's privacy. Only the minimum information necessary to be shared with the provider will be shared, that is, child care payments will no longer be made unless a family requests to continue to receive assistance pending an appeal. This subpart is reasonable because it provides a means of informing the provider who receives a vendor payment that the county will no longer make vendor payments. That notice is reasonable because it reduces the potential of uncollectible debt for services rendered.

Subp. 10d. **Child care payments when termination is appealed.** This subpart is necessary to establish a standard governing the payment of child care when a termination is appealed. Except for the last two sentences in subpart 10d, the language in subpart 10d was previously found in subpart 10, item D. Therefore, subpart 10d is essentially a format change.

The last two sentences in subpart 10d are necessary to permit a family to be reimbursed for child care expenses incurred pending an appeal. The rule currently permits families to receive child care assistance pending an appeal. The rule is silent on a family's ability to be reimbursed for child care assistance if it prevails in an appeal but does not receive child care assistance pending the appeal. This change is necessary to provide equitable treatment of families who prevail in an appeal. For families that requested continuation of assistance there is no change in rule requirements. For families that chose not to receive assistance pending an appeal that prevail in the appeal shall be reimbursed for their documented child care expenses.

Subp. 11. **Recoupment of overpayments.** This subpart is necessary to establish a standard for recoupment of overpayments. An overpayment is funding in excess of the amount the family should have received based on child care fund requirements. The overpayment may be due to either family or county error. Recoupment of an overpayment is required under 45 C.F.R. §§ 98.60(j), 255.4, and 257.65(a).

Item A is necessary to establish a requirement for notice that the county must provide the family. When the county discovers an overpayment, the county must inform the family of the overpayment in writing, specify the reason for the overpayment, the time period in which the overpayment occurred, the amount of the overpayment, and inform the family of the right to appeal the overpayment. It is reasonable to identify the information that must be provided by the county because the information relied upon by the county is important for the family to understand the basis for the determination. In order for a family to properly exercise its right of appeal, it needs to know what was the county's basis for determining that an overpayment was made.

Item B is necessary to establish a payment procedure for families who receive an overpayment but remain eligible for child care assistance. The rule advisory committee spent considerable time discussing item B. The recovery of an overpayment is necessary to ensure program integrity and accountability. At the same time, the speed with which the funds are recovered and the amount of the monthly payments could impose hardships on families participating in the child care fund programs. The proposed standards attempt to balance the administrative need to recover funds as quickly as possible with consideration of the financial burdens placed on recipients who received an overpayment.

Under subitem (1), except as provided in subitem (3), an overpayment to families with incomes less than or equal to the federal poverty level, shall be recovered by reducing child care assistance $20 per month until the debt is retired. The amount of child care assistance is reduced which will require the family to pay a larger monthly copayment. This type of recovery is administratively easier on the counties since they will not need to account for direct payments from the recipient to the county. It should not make any difference to the recipient how the overpayment is recovered, i.e., additional payment to the provider instead of the county.

Under subitem (2), except as provided in subitem (3), when a family's income is greater than the federal poverty level the standard of recoupment is an amount of eight percent of the overpayment or $20 whichever is larger, not to exceed two times the family copayment fee. The eight percent standard is necessary to ensure the overpayment will be paid off in a timely manner (approximately 13 months). The minimum payment of $20 per month is necessary to ensure smaller overpayments are recovered in a shorter time period. For example, with a minimum $20 payment, a $100 overpayment will be paid off in 5 months rather than in 13 months. Thirteen months is the time period for recoupment if only a percentage standard is applied. Finally, the amount of the overpayment recovered in a month cannot exceed twice the family's

copayment fee. Subitems (1) and (2) address situations where the amount of the overpayment is relatively small. Minor errors in calculating income will not result in significant overpayments.

Significant overpayments can occur when a family receives assistance for which it is not entitled. For example, a parent who receives child care assistance for education who discontinues the education program but does not inform the county and continues to use child care assistance would generate a significant overpayment. Overpayments for families who are no longer eligible for assistance would be recovered as provided in item C. However, it is also possible for a family to receive a significant overpayment but to remain eligible for child care assistance. Subitem (3) addresses recoupment of large overpayments, greater than $1,000; overpayments due to a family's failure to provide accurate information on household status, income, or employment or education status; or a family's failure to report a change under part 9565.5025, subpart 3 on two or more occasions and the failure to report caused the overpayment.

Under subitem (3) recoupment is accelerated to 16 percent of the overpayment which will result in the recovery of those funds in approximately seven months. It is reasonable to increase the recoupment amount on large overpayments to ensure recovery does not extend over a lengthy period of time. Larger recoupment for failure to provide accurate information or for failure to report necessary changes on two or more occasions also discourages false or late reports.

Item C is necessary to establish a repayment procedure for families who no longer remain eligible for child care assistance. Since it may not be cost effective for counties to attempt to recover overpayments less than $50, no requirement is placed on the counties to do so. A family cannot reestablish eligibility for child care assistance when it has an outstanding overpayment unless the debt is repaid or satisfactory arrangements are made with the county to retire the debt. It is reasonable to deny further child care assistance to families who owe an overpayment to facilitate repayment. The real enforcement mechanism for recovering overpayments under item C is that the family is not eligible for assistance until satisfactory arrangements are made to retire the debt.

The recoupment procedures under this subpart are necessary to uniform treatment of overpayments throughout the state and to ensure program integrity by recouping funds improperly expended.

Subp. 12. **Notice to recipients of adverse action.** This subpart is necessary to inform counties that, in addition to providing notice of termination under subpart 10b, they must give applicants and recipients notice of any adverse action. The rule identifies a number of adverse actions. The notice is similar to the notice found under subpart 10 which deals with terminations. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.19 which grants an applicant or recipient the right to a fair hearing or informal conference when adversely affected by an agency action. Unless the applicant or recipient is given notice of the adverse

action and the process for an informal conference or appeal, the applicant or recipient cannot exercise the right granted him or her in Minnesota Statutes, section 256H.19.

9565.5120 CHILD CARE FUND ALLOCATION PLAN.

Subpart 1. **Submittal of plan.** The amendment to this subpart is necessary to change the frequency of the plan from once a year to once every two years. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.09, subdivision 3. The rule also informs the counties that the commissioner may request updates of information as necessary to comply with specific federal or state laws.

Subp. 2. **Plan content.** The amendments to items B, C, and E in which the word "subsidy" is being replaced with the word "assistance" is necessary to implement changes made in other parts of the rule. The change is editorial.

The amendment to item C in which the term "target groups" is changed to "families" is necessary to provide greater specificity in the rule. The term "families" more clearly identifies who the county informs of the availability of child care assistance. The amendment is editorial.

The amendment to item D is necessary to inform counties that information on provider rates will no longer be routinely required as part of the allocation plan. The Department now independently collects data on licensed provider rates. However, counties will need to provide information on the child care rates of registered legal nonlicensed caregivers, as requested by the Commissioner, and rates for care of sick, special needs, and handicapped children in the biennial plan. Counties will only need to provide information on certain provider rates when it is specifically requested rather than providing it on a routine basis. This amendment is reasonable because it reduces unnecessary reporting.

The amendment to item G replaces the rule reference which is being repealed with the statutory reference.

The new item H is necessary to require counties to submit copies of subcontracts if the administering agency is not the county. This item is reasonable because it provides a means of determining compliance with Minnesota Statutes, section 256H.05, subdivisions 2 and 3.

The new item I is necessary to require counties to submit its policy governing eligibility priority for ACCESS child care if the county prioritizes eligibility on other than a first-come, first-served basis.

The amendment to item J is simply a relettering change. The plural "funds" is also changed to the singular "fund" since the correct reference is the child care fund.

9565.5130 DUTIES OF ADMINISTERING AGENCY.

Subpart 1. **Child care assistance information.** The first sentence in this subpart is being deleted since it is redundant with the sentence under subpart 2, item A. The phrase "for child care assistance" is inserted because the prepositional phrase is a necessary modifier for the word "request". The amendments to items A to C are necessary to implement changes made in other parts of the rule where the word "subsidy" is being replaced with the word "assistance".

A new item E is added that requires the administering agency to inform the family of its rights and responsibilities when choosing a provider. The administering agency may choose to use a brochure prepared by the Department that identifies a family's rights and responsibilities when choosing a provider or the administering agency may develop its own informational sheet.

Subp. 2. **Application procedure.** The amendment to this subpart is an editorial change necessary to implement changes made in other parts of the rule where the word "subsidy" is being replaced with the word "assistance".

Subp. 3. **Date of eligibility for assistance.** The amendment to this subpart is necessary to include a reference to the ACCESS child care program, part 9565.5060, subpart 2a, and to establish the date of eligibility for Transition Year child care under part 9565.5065. Upon approval of the application for assistance under part 9565.5065, child care assistance must be made retroactive to the date the family ceased to be eligible for AFDC if all other provisions of parts 9565.5000 to 9565.5200 are met. The retroactive requirement is necessary to comply with federal requirements governing the Transition Year child care program.

The amendment to item B is necessary to implement the change in part 9565.5020, subpart 3, item A which requires a family to notify the county when there is a change in providers or marital status.

A new Item C is added to inform families that, if child care assistance is terminated, that vendor paid providers will be informed of the termination. Notice to the vendor is necessary to ensure proper notice that services provided after a certain date are not the responsibility of the county. This notice is necessary to eliminate the potential for bad debt should services be provided for which the provider is not reimbursed. It is necessary to eliminate the potential for bad debt to ensure providers will continue to accept families receiving assistance under the child care fund.

9565.5140 DETERMINATION OF INCOME ELIGIBILITY FOR CHILD CARE ASSISTANCE.

Subpart 1. **Proof of income eligibility.** Minnesota Statutes, section 256H.10, subdivision 4 and subpart 1 provide three different methods for determining annual income. The amendment to this subpart is necessary to inform the administering agency that it must use the

method for determining annual income that provides the most accurate assessment of annual income available to the family. The amendment is reasonable because it ensures that income will be accurately assessed.

Subp. 4. **Determination of annual gross income.** The amendment to this subpart is an editorial change necessary to implement changes made in other parts of the rule where the word "subsidy" is being replaced with the word "assistance".

Subp. 6. **Excluded income.** The amendments to this subpart are necessary to comply with Minnesota Statutes, section 256H.01, subdivision 11. Subsequent to adoption of the existing rule, the legislature modified the definition of income and provided a number of additional exclusions to income. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.01, subdivision 11.

Subp. 11. **Determination of rental income.** For purposes of self-employment, the AFDC and General Assistance programs use 20 or more hours per week (part 9500.2380, subpart 9 and 9500.1225, subpart 2, item D, respectively). The amendment to this subpart is necessary to establish a uniform standard for income for rental property. It is reasonable to use a common standard to provide uniform treatment of individuals in various programs.

9565.5150 REDETERMINATION OF ELIGIBILITY.

The amendment to this part is an editorial change necessary to implement changes made in other parts of the rule where the word "subsidy" is being replaced with the word "assistance".

9565.5160 QUARTERLY FINANCIAL AND PROGRAM ACTIVITY REPORTS.

The amendments to this part are necessary to delete obsolete rule provisions and to implement an editorial change.

Item A. The change to item A is necessary to implement an editorial change made in other rule parts.

Item B. The deletion under item B is necessary to remove the reference to the AFDC employment special needs program which is no longer operational. The word "state" is being inserted in front of federal reimbursement programs to require counties to include a description of child care activities that are reimbursable under state programs as well as federal programs. It is reasonable to require counties to include a description of child care activities that are reimbursable under state programs to ensure program accountability.

Item C. The deletion of item C is necessary because there are no longer set-aside funds for the various programs. The only specific allocation is for Basic Sliding Fee program. Item C is unnecessary because the requirement is addressed under item B.

Item D is being deleted because child care funds are being allocated in a different manner than before. As noted in the fiscal note, the new federal "Child Care and Development Block Grant" became available to provide child care assistance. This funding source, along with the federal "At-Risk" child care program which became available in February 1991, complements state and county child care funding under the Basic Sliding Fee program. DHS has taken advantage of the federal child care funds to introduce new, simplified fiscal procedures. Combining the federal funds with the Basic Sliding Fee program enables the Department to immediately allocate available funds within an existing program and to incorporate administrative expenses within the allocation. The decision to commingle state, county, and federal funding under the Basic Sliding Fee program is predicated on the ability to achieve cost avoidance for the counties, the ability to maximize use of federal child care funds, and the opportunity to minimize funding penalties for counties who supplement state child care funds with additional county funds. County cost avoidance is realized by combining three similar but separate programs into one program. The single Basic Sliding Fee program eliminates the need for the counties to administer three separate programs; to account for or comply with multiple funding requirements; and to comply with separate program and reporting requirements. To accomplish the preceding goals, the multiple federal reporting requirements will be consolidated within the Department.

9565.5200 FAIR HEARING PROCESS.

Subpart 1. **Hearing request.** The amendment to this subpart is necessary to clarify an applicant's or recipient's right to request a hearing when adversely affected by a county's action. This change is editorial to address an oversight in the wording of the original rule. Minnesota Statutes, section 256H.19 permits an applicant or recipient to appeal a county's action. The amendment makes it clear that an applicant or recipient can appeal a county's action. This subpart is reasonable because it is consistent with Minnesota Statutes, section 256H.19.

REPEALER: An explanation for the rule parts being repealed was given under the specific rule part.

EXPERT WITNESSES

The Department does not plan to have outside expert witnesses testify on its behalf.

DATE: 6/1/93

NATALIE HAAS STEFFEN
Commissioner