

DEPARTMENT OF PUBLIC HEALTH
AND HUMAN SERVICES

CHAPTER 80

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Subchapter 1

General Requirements

37.80.101 PURPOSE AND GENERAL LIMITATIONS (1) This chapter pertains to payment for child care services provided to parents eligible for benefits funded under section 5082 of the Omnibus Reconciliation Act of 1990, Public Law 101-508, entitled "Child Care and Development Block Grant Act of 1990", as amended in 1996, and the "Personal Responsibility and Work Opportunity Reconciliation Act" of 1996. These rules also pertain to subsequent refunding of this program. In addition, this chapter's requirements for certification of legally unregistered providers under ARM 37.80.306 apply to all child care programs administered by the department where the department allows participation of legally unregistered providers.

(2) Child care assistance may be available to cover the cost of child care incurred by working parents who are income eligible and who demonstrate a need for child care assistance in support of employment, subject to the following restrictions:

(a) If all or part of the cost of child care is provided by another source, child care assistance will be reduced by the amount paid by the other source.

(b) If child care services are provided to a parent who is an employee of a child care business free or at a reduced cost as an employment benefit, the parent's child care assistance will be based on the amount the parent is required to pay out of the parent's own pocket for care of the parent's own child.

(c) A parent may not receive child care assistance for providing care to the parent's own child, but child care assistance may be available to pay for child care provided by another provider to allow the parent to attend child care education or training activities.

(d) A parent who provides child care to another's child while their own child is cared for by someone else is not eligible for child care assistance, unless they are an employee of a child care provider that is unable to care for the parent's child. The foregoing does not prevent child care assistance to an employee of a child care provider whose child receives care from that provider, so long as children other than those of the employee and the employee's employer are also attending the facility.

(3) A parent who is not making monthly payments on outstanding child care overpayments is not eligible for further child care assistance. Any parent who misses a payment as required by the terms of an overpayment repayment agreement or order and who does not become fully current in making all payments required under the agreement or order within the times described below will not be eligible to receive child care assistance until the parent has become fully current in making all payments required under the agreement or order, or unless the department has agreed to modify the payment schedule under the repayment agreement or order.

(a) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 90th day following the first missed payment. The period of ineligibility will begin on the 90th day following the first missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(b) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 60th day following the second missed payment. The period of ineligibility will begin on the 60th day following the second missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(c) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance if the parent has not become fully current in making all required payments on or before the 30th day following of the third missed payment. The period of ineligibility will begin on the 30th day following the third missed payment and will end when the parent has become fully current in making all payments required under the repayment agreement or order.

(d) Unless the department has agreed to a modified repayment schedule, a parent will cease being eligible to receive child care assistance when the parent has missed more than three payments, and the parent will not be eligible to receive further child care assistance until the parent has become fully current in making all payments required under the repayment agreement or order.

(4) Eligibility of parents and the amount of child care assistance provided under this chapter is based on income as set out in ARM 37.80.202. Households whose gross income exceeds 150% of the federal poverty guidelines are not eligible. Each household must actively seek all income for which the household has a legal claim.

(5) Households that are not receiving temporary assistance for needy families (TANF) may receive child care assistance for 30 days while eligibility is being verified. Households may benefit from 30 days of presumptive eligibility only once during any 12 month period. To apply for presumptive eligibility, a household must:

(a) submit a completed child care application which indicates the household is likely to be eligible;

(b) provide a completed authorization to release information form; and

(c) submit an appropriate child care service plan.

(6) If the household intentionally provides false information for the purpose of receiving child care assistance from a presumptive eligibility determination, the household will be responsible for repaying the overpayment.

(7) All providers must be certified for the purpose of receiving payment under a state assisted child care program. Certification under a state assisted child care program is separate and apart from registration as a group or family child care home, or licensure as a child care center, and means simply that the provider has been approved as eligible to receive state payment for child care services as allowed by this chapter. Those operating as a group or family child care home or child care center as defined by department rule and the Montana Child Care Act remain subject to child care facility registration and licensing rules in addition to requirements for certification under this chapter.

(8) Eligibility of parents and providers for child care assistance is contingent on meeting all applicable requirements under this chapter.

(9) Payment of funds under this chapter also depends on continued federal funding. Termination of any and all benefits may occur based on the loss or depletion of federal funding.

(10) Provision of benefits for child care services under this chapter, or under any other department child care program, does not create an employer-employee relationship between the department and the provider and may not be deemed to obligate the department to provide employment-related benefits to child care providers.

(11) Except as provided in (5), child care assistance payments are not available unless both the parent and the provider meet all eligibility requirements specified in this chapter.

(12) An application for child care assistance will be denied if the applicant fails to submit all required documentation within 30 days of the date on which the application is received by the resource and referral agency. Applicants may receive one 15 day extension to submit required documentation in the possession of a third party provided the applicant submits a request for extension prior to the expiration of the 30 day period.

(13) The child care assistance program will be administered in accordance with:

(a) the requirements of federal law governing the Child Care and Development Block Grant Act of 1990, section 5082 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101-508 as amended and codified at 42 USC 9858 et seq.), and 45 CFR parts 98 and 99, child care and development fund, adopted July 24, 1998; and

(b) the Montana Child Care Manual in effect on September 1, 2007. The Montana Child Care Manual, dated September 1, 2007, is adopted and incorporated by this reference. The manual contains the policies and procedures utilized in the implementation of the department's Child Care Assistance program. A copy of the Montana Child Care Manual is available at each child care resource and referral agency; at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2925; and on the department's web site at www.childcare.mt.gov. (History: 52-2-704, 53-4-212, MCA; IMP, 52-2-702, 52-2-704, 52-2-713, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; AMD, 1997 MAR p. 578, Eff. 3/25/97; AMD, 1997 MAR p. 1920, Eff. 10/21/97; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 2002 MAR p. 1989, Eff. 5/31/02; AMD, 2003 MAR p. 1306, Eff. 7/1/03; AMD, 2005 MAR p. 1057, Eff. 7/1/05; AMD, 2006 MAR p. 2964, Eff. 12/8/06; AMD, 2008 MAR p. 174, Eff. 2/1/08.)

37.80.102 DEFINITIONS As used in this chapter, the following definitions apply:

(1) "Certification plan" means a notice issued by the child care resource and referral agency which authorizes child care assistance and specifies the number of children for whom child care assistance is authorized, the number of hours per week for which assistance is authorized, the number of months for which authorization is granted, the name of the child care provider, and the amount of the monthly copayment which the parent must pay to the provider. Certification plans are subject to change based on circumstances affecting eligibility or the provision of child care assistance.

(2) "Child care" means supplemental parental care as defined in ARM 37.95.102 provided by either a child care facility or by a legally unregistered provider, for a child:

(a) from birth through the day prior to the 13th birthday;

(b) who is a child with special needs; or

(c) who is under the age of 19 and under the supervision of a court.

(3) "Child care facility" has the same meaning as the term "day care facility" as defined in ARM 37.95.102.

(4) Child Care Manual means the Montana Child Care Manual incorporated by reference in ARM 37.80.101.

(5) "Child care resource and referral agency" or "resource and referral agency" means the entity or organization with which the department contracts to administer the child care assistance program, including determination of eligibility for benefits, certification of providers to receive payments, and the payment of providers.

(6) "Child with special needs" means a child who is age 18 or younger who requires additional assistance because of an emotional or physical disability and/or cognitive delay that is verified by medical records or other appropriate documentation.

(7) "Children from the same household" means children who are of the same sibling group.

(8) "Copayment" means the portion of child care expenses which the parent is responsible for paying in accordance with the sliding scale established in ARM 37.80.202.

(9) "Department" means the Department of Public Health and Human Services.

(10) "Federal poverty guidelines (FPG)" means the poverty guidelines published annually by the U.S. Department of Health and Human Services based on information compiled by the U.S. Bureau of the Census. The department adopts and incorporates by reference the federal poverty guidelines published at 69 FR 7336 on February 13, 2004. The guidelines define the income levels for families that the federal government considers to be living in poverty. A copy of the guidelines is available from the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Jackson St., P.O. Box 202952, Helena, MT 59620-2925.

(11) "Full-time child care" means care certified for 30 or more hours per week on a regular basis, as regular basis is defined in ARM 37.95.102.

(12) "Full-time field experience and class time" means 30 hours per week combined of field experience and class time accrued by a postsecondary education student, not including home study time.

(13) "Household size" means the number of household members including the parents, as the term is defined in this chapter, and the children of the parents, but not including adults living in the household other than the parents, unless the income of such adults is counted in computing the household's monthly income under this chapter.

(14) "Individual with a disability" means a person with a physical, mental, or emotional defect, illness, or impairment diagnosed by a licensed physician, psychiatrist, or psychologist which is sufficiently serious as to eliminate or substantially reduce the individual's ability to obtain and retain employment for a period expected to last at least 30 days.

(15) "Legally unregistered provider" means a person providing child care under this chapter, or under any child care program administered by the department allowing for legally unregistered providers, who is not required to be registered or licensed as a child care facility and is not a preschool or drop-in facility, including providers whose child care services are provided in the home of the parents.

(a) A legally unregistered provider certified under this chapter, or under any child care program administered by the department allowing for participation of legally unregistered providers, may care for up to two children or all the children from the same household, and may provide child care in the home of the parents.

(16) "Monthly income" means gross monthly income of the parent or parents residing with the child and the income of adults in the household who are included in the calculation of household size as provided in ARM 37.80.202. The income of a parent not residing with the child shall be counted as monthly income under this chapter only in cases where such parent's income is available to support the household of the child. Any child support provided by a parent not residing with the child to the household of such child shall be counted as monthly income, and such child support shall be deemed to constitute the extent to which the nonresidential parent's income is available to the household. The following sources of income are the only sources that will not be counted in determining gross monthly income:

- (a) Pell grants;
- (b) national merit scholarships;
- (c) Carl Perkins federal scholarships;
- (d) state student incentive grants;
- (e) national direct student loan program funds;
- (f) guaranteed student loan program, section 502 funds;
- (g) congressional teachers scholarships;
- (h) nursing student loans;
- (i) other needs-based scholarships;
- (j) earned income tax credit;
- (k) tribal per capita payments;
- (l) independent living INC payments for youth;
- (m) foster care support services;
- (n) food stamp benefits;
- (o) a minor's earned income, if attending secondary education;
- (p) supplemental security income (SSI) payments; and
- (q) secondary or postsecondary education scholarships.

(17) "Parent" means the birth or adoptive parent, legal guardian, or other person acting in loco parentis.

(18) "Person acting in loco parentis" means a person who lives with the child and has assumed the care and control of the child.

(19) "Provider" means both legally unregistered providers, and licensees and registrants of other child care facilities.

(20) "Short-term emergency" means a break in employment which does not exceed three months and which is caused by an unforeseen medical condition of a parent or a child, excluding a normal pregnancy or normal delivery of a child.

(21) "Teen parent" means a parent who is attending high school, GED courses, or an equivalency program and has not yet attained the age of 20 years.

(22) "Training" means vocational or educational training meeting the requirements of this chapter. (History: 52-2-704, 53-4-212, MCA; IMP, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, 53-4-612, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; AMD, 1997 MAR p. 578, Eff. 3/25/97; AMD, 1997 MAR p. 1920, Eff. 10/21/97; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 2002 MAR p. 1989, Eff. 5/31/02; AMD, 2003 MAR p. 1306, Eff. 7/1/03; AMD, 2005 MAR p. 1057, Eff. 7/1/05; AMD, 2006 MAR p. 2964, Eff. 12/8/06.)

37.80.103 CONFIDENTIALITY (1) Use and disclosure of information pertaining to an applicant for, or recipient of child care assistance is allowed only for the following purposes:

(a) to administer child care assistance under this chapter, which includes but is not limited to:

- (i) determining eligibility and the amount of assistance;
- (ii) providing assistance to eligible persons;
- (iii) conducting audits and investigations; and
- (iv) prosecuting criminal or civil proceedings relating to assistance;

(b) to determine eligibility and amount of assistance for any other needs-based federally funded public assistance program for low income persons;

(c) to report possible child abuse or neglect to the appropriate agency or authority or respond to requests for information from an appropriate agency or authority investigating possible child abuse or neglect;

(d) to assist the Child Support Enforcement Division or any other agency or entity authorized to conduct child support enforcement activities;

(e) to provide the applicant or recipient's current address to a state or local law enforcement officer, if the officer documents that the person is a fugitive felon whose arrest is the responsibility of the officer. The officer shall provide the name and social security number of the recipient by written request;

(f) to provide information necessary for emergency medical or other critical needs. Notice of release shall be given as soon as possible to the applicant or participant;

- (g) to provide information relevant to a child care licensing investigation; and
- (h) any other disclosure required by law.

(2) An applicant or recipient of child care assistance is entitled to information regarding the applicant or recipient's case upon request, except:

(a) when release of the information is prohibited by law; or

(b) when the requested information was provided on the condition that it not be shared with the applicant or recipient; or

(c) when release of the information would impede law enforcement. (History: 52-2-704, 53-4-212, MCA; IMP, 52-2-704, 53-2-211, MCA; NEW, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 2002 MAR p. 1553, Eff. 5/31/02.)

37.80.104 CHILD CARE ASSISTANCE HEARING RIGHTS (1) A parent who has applied for or is receiving child care assistance under this chapter and who is subject to any adverse action, as defined in ARM 37.5.304, by the department or the department's agent is entitled to a fair hearing in accordance with ARM 37.5.103. (History: 52-2-704, 53-4-212, MCA; IMP, 52-2-713, MCA; NEW, 2002 MAR p. 1553, Eff. 5/31/02.)

Subchapter 2

Eligibility

37.80.201 NONFINANCIAL REQUIREMENTS FOR ELIGIBILITY AND PRIORITY FOR ASSISTANCE (1) In addition to the income requirements of ARM 37.80.202, the following nonfinancial requirements must be met in order for payments under this chapter to be made:

- (a) With the exceptions in (1)(b), parents must work the following minimum number of hours each month:
 - (i) for two-parent households, parents must work a total of 120 hours per month, but there is no minimum number of hours which each parent must work each month; or
 - (ii) for single parent households:
 - (A) the parent must be working a minimum of 60 hours each month; or
 - (B) the parent must be working a minimum of 40 hours each month if attending school or training full time.
 - (b) The monthly minimum hourly work requirement does not apply to:
 - (i) households receiving cash assistance funded by temporary assistance for needy families (TANF);
 - (ii) households in which the parent is a teen parent, or both parents in a two-parent household are teen parents, attending high school or an equivalency program;
 - (iii) households containing working parents who are experiencing short-term medical emergencies;
 - (iv) households containing parents who lost a job either in the current month or in the month just preceding the current month, provided the parents:
 - (A) are actively seeking work;
 - (B) have reported the change in circumstance in a timely manner in accordance with ARM 37.80.203; and
 - (C) have applied for a grace period and have been approved;
 - (v) an individual parent with a severe disability who is not able to meet a minimum hourly work requirement and has a need for child care during work hours;
 - (vi) a parent, in a two-parent household, who is severely disabled and unable to care for their child.

(2) Households which are not receiving cash assistance funded by TANF may be eligible for child care assistance under this chapter while a parent is participating in education or training reasonably expected to lead to gainful employment if:

(a) either the parent or another adult who is included in the calculation of household size as provided in ARM 37.80.202 meets the minimum hourly work requirement provided in this rule; or

(b) the minimum hourly work requirement is waived while a parent participates in a full-time field experience, or a full-time combination of field experience and course work, required for graduation in the parent's curriculum.

(3) Child care assistance under this chapter for parents who are pursuing training or education is subject to the following limitations:

(a) assistance is not available to parents seeking postsecondary education beyond the level of a bachelor's degree or its equivalent, except that assistance may be provided while a parent is participating in training which lasts no more than six weeks if the department or its designated agent determines that such training has a high probability of leading to employment in the near future;

(b) assistance is not available for education and training to a parent who has earned an educational certificate or degree within the past five years;

(c) the training is for the purpose of obtaining employment in a recognized occupation in which job openings exist in Montana;

(d) the training is obtained through an institution approved by the Board of Regents or other recognized accrediting body; and

(e) the parent must verify that he or she is making satisfactory progress in the training or education as defined by the training or educational institution or by the department.

(4) If a birth or adoptive parent of a child does not live with the child and is not paying child support under a child support order recognized by a Montana district court, the custodial parent must apply for and cooperate with child support enforcement services from the department's Child Support Enforcement Division. The department determines cooperation with Child Support Enforcement Division by maintaining an open case when a case can be established or by the parent providing all appropriate requested documentation to Child Support Enforcement Division for them to open a child support case. A custodial parent who fails without good cause to apply for such services and to cooperate with the Child Support Enforcement Division will be decertified for benefits under this chapter as of the date of such failure. Good cause is defined as specified in ARM 37.78.215.

(5) The parents may apply for certification/recertification under this chapter at the nearest child care resource and referral agency.

(6) Due to limited funding for child care assistance, some households which meet all requirements for eligibility may not receive benefits. If there are insufficient funds to provide benefits to all eligible households, priority for benefits will be determined as follows:

(a) A household receiving assistance funded by the TANF program is guaranteed needed child care when participating in family investment agreement activities which require child care, subject to the following:

(i) Assistance for care provided by a provider certified by the department will begin the date that the TANF participant parent is referred to a child care resource and referral agency to obtain child care assistance, so long as the participant contacts the resource and referral agency within ten days after the date the referral is made.

(ii) If the parent does not contact the child care resource and referral agency within ten days after being referred for TANF child care assistance, eligibility for child care assistance will begin on the date a child care certification plan is obtained from the child care resource and referral agency.

(b) Households containing a child with special needs are guaranteed child care when otherwise eligible for child care assistance under ARM 37.80.201 through 37.80.502.

(c) Households headed by a teen parent are guaranteed child care when otherwise eligible for child care assistance under subchapters 2, 3, and 5.

(d) All other eligible non-TANF households shall be prioritized by ranking household income as a percentage of the Federal Poverty Guidelines (FPG). The household with the lowest percentage of income, relative to FPG, has the highest priority when funding becomes available.

(e) If there are two or more non-TANF households at the same level of priority as set forth in (6)(d), the household whose application was received first has a higher priority.

(7) Under no circumstances may payment be made for child care provided by a parent or person acting in loco parentis of the child, even if such parent does not reside in the child's household. In addition, no payment under this chapter may be made for child care provided by any person who is included as a member of the same household as the child for purposes of determining eligibility for TANF cash assistance or child care assistance under this chapter.

(8) Payment may only be made for care provided during the time both parents or, in single parent households, the parent, and any other adult included in calculating household size under this chapter, are required to be out of the home to attend work or training. Brief care or eligibility interruptions may be accommodated under continuity of care policies, as established in the department's Child Care Manual, section 6-6. A copy of section 6-6 of the manual may be obtained from the Department of Public Health and Human Services, Human and Community Services Division, Early Childhood Services Bureau, 111 N. Jackson St., P.O. Box 202925, Helena, MT 59620-2952.

(9) A household experiencing unemployment due to good cause as defined in ARM 37.78.508 may have child care benefits extended and the usual child care schedule continued for 30 days following the job loss, if the following conditions are met:

(a) the department has sufficient funds to provide extended child care benefits;

(b) the household requests the extension within ten days after the parent's last day of employment; and

(c) the unemployed parent or parents must actively seek new employment during the period of extended child care.

(10) Child care assistance is only available under this chapter for child care provided by:

(a) a legally unregistered provider who is certified under this chapter; or

(b) a licensed or registered child care facility certified under this chapter.

(11) Any licensed or registered child care provider is not eligible for child care assistance for children who fall within the age groups traditionally serviced by the public school system, or alternately a private or home school and who are attending said school for educational purposes during traditional school hours are not eligible for child care payments. The department will not pay for a child during normal school hours when a child is home schooled. (History: 40-4-234, 52-2-704, 53-4-212, MCA; IMP, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-601, 53-4-611, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; AMD, 1997 MAR p. 578, Eff. 3/25/97; AMD, 1997 MAR p. 1920, Eff. 10/21/97; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 1999 MAR p. 2454, Eff. 10/22/99; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2002 MAR p. 3153, Eff. 11/15/02; AMD, 2003 MAR p. 1306, Eff. 7/1/03; AMD, 2005 MAR p. 1057, Eff. 7/1/05; AMD, 2008 MAR p. 174, Eff. 2/1/08.)

37.80.202 FINANCIAL REQUIREMENTS FOR ELIGIBILITY; PAYMENT FOR CHILD CARE SERVICES; PARENT'S COPAYMENT

(1) Financial eligibility for child care assistance is based on the household's monthly income as defined in ARM 37.80.102. Households whose income exceeds 150% of the FPG for a household of their size are not eligible for child care assistance.

(2) Assets owned by the members of the household or in which the members of a household have an interest are not considered in determining whether a household is eligible for child care assistance.

(3) Parents eligible for assistance are responsible for paying a monthly copayment in the amount specified in the sliding fee scale table incorporated in (14).

(a) In general, the household's copayment is a percentage of the household's gross monthly income, based on the household's gross monthly income as compared to the FPG for a household of that size. Generally, households with income which is a higher percentage of the FPG are required to pay a higher percentage of their gross monthly income as a copayment than households whose income is a smaller percentage of the FPG. All parents receiving TANF-funded cash assistance shall pay the \$10 minimum copayment amount as specified in the sliding fee scale, regardless of household size or income.

(b) In the event that the actual cost of child care for the month is less than the copayment which the parent would be required to pay according to the sliding fee scale the parent will be required to pay the actual cost of care rather than the specified copayment.

(c) Parents are solely responsible for paying the copayment to the child care provider. Parents who fail to make the required payment or make arrangements satisfactory to the provider for payment will be ineligible for child care assistance until the amount due has been paid or arrangements satisfactory to the provider have been made.

(d) Children in child care placements due to protective services provided by the department are not subject to a copayment.

(4) In computing a household's size for purposes of determining eligibility and the parent's copayment, the following persons must be included as members of the household:

- (a) the child or children for whom child care is being provided;
- (b) all persons who live in the same household as the child or children and who are the child's:
 - (i) natural or adoptive parents, or stepparents;
 - (ii) brothers and sisters, or stepbrothers and stepsisters, or half brothers and half sisters who are age 17 and younger;

(c) a person who lives in the same household as the child or children and who is the child's legal guardian or is acting in loco parentis for the child; and

(d) parents residing outside of the child's home, provided the parents of the child are not separated or divorced.

(5) In computing a household's size for purposes of determining eligibility and the parent's copayment, the household has the option of choosing to include or exclude as a household member any other person residing with the child.

(a) After the household exercises its option to include or exclude a person when eligibility is initially being determined, the household cannot subsequently choose a different option, unless the optional members leave the household.

(6) In computing the household's income for purposes of determining eligibility and the parent's copayment, the income of all persons counted in computing household size must be counted. The income of persons not counted in computing household size will not be counted.

(7) In determining the household's need for child care assistance, the work hours, school schedules and ability to care for the child or children of each adult included in calculating household size will be considered. The work hours and ability to care for the child or children of adults excluded in calculating household size will not be considered.

(8) Persons providing child care services subsidized under this chapter will be paid at the lesser of the providers usual and customary rate or the rates specified in ARM 37.80.205. This total monthly payment due to the child care provider is computed by multiplying the applicable payment rate times the number of child care hours or days for the month for which payment is allowed under this chapter. The portion of the total monthly payment which the department is required to pay is computed by subtracting the parent's monthly copayment from the total monthly payment due.

(9) Eligible households may receive child care assistance for each child in the household who meet the age requirement for child care contained in ARM 37.80.102 and whose care meets all other requirements of this chapter for payment.

(10) No child care assistance payments can be issued until a certification plan has been issued by the child care resource and referral agency.

(11) The child care certification plan sets limits for child care benefits. Certification plans may change. The most recent certification plan is the effective plan. No further notice is provided when benefits expire at the end date of a certification plan.

(12) Benefits will only be paid for actual care provided during the certification period, except as provided in ARM 37.80.205 and 37.80.206.

(13) A household that receives any amount of child care assistance to which the household was not entitled shall repay all child care assistance to which the household was not entitled, regardless of whether the applicant, the recipient or the department caused the overpayment. (History: 52-2-704, 53-4-212, MCA; IMP, 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723, 52-2-731, 53-2-201, 53-4-211, 53-4-212, 53-4-601, 53-4-611, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; AMD, 1993 MAR p. 541, Eff. 4/16/93; AMD, 1995 MAR p. 1325, Eff. 7/14/95; AMD, 1997 MAR p. 578, Eff. 3/25/97; AMD, 1997 MAR p. 1920, Eff. 10/21/97; TRANS & AMD, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 1999 MAR p. 1378, Eff. 6/18/99; AMD, 1999 MAR p. 2454, Eff. 10/22/99; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2002 MAR p. 2922, Eff. 10/18/02; AMD, 2003 MAR p. 1306, Eff. 7/1/03; AMD, 2005 MAR p. 1057, Eff. 7/1/05; AMD, 2006 MAR p. 2964, Eff. 12/8/06.)

37.80.203 REQUIREMENT TO REPORT CHANGES (1) Applicants and recipients of child care assistance must report to the resource and referral agency administering their case any change in their child care provider within one business day of the change.

(2) Applicants and recipients of child care assistance must report to the resource and referral agency administering their case any change in the following circumstances within ten calendar days from the date the applicant or recipient learns of the change:

- (a) persons living in the applicant's or recipient's household;
- (b) employment of any household member, including new employment, loss of employment, increase or decrease in working hours, and increase or decrease in earned income;
- (c) increase or decrease in the household's monthly gross income;
- (d) training or school attendance, including changes to the location or hours of the training and circumstances regarding satisfactory progress;
- (e) mailing address, residential address, and phone number; and
- (f) any change in:
 - (i) compliance by the applicant or recipient with any order or determination of DPHHS Child Support Enforcement Division;
 - (ii) receipt of child support by the applicant or recipient pursuant to a district court order, including but not limited to changes in the frequency or amount of child support received; or
 - (iii) circumstances concerning good faith reasons for an applicant or recipient not to pursue child support enforcement through the department's Child Support Enforcement Division.

(3) Changes that are required to be reported under this rule must be reported to the resource and referral agency administering the child care assistance case. A report to any other employee, contractor, or agent of the department does not satisfy the reporting requirements set forth in this rule.

(4) A household that receives any amount of child care assistance to which the household was not entitled, including due to the parent's failure to report changes in circumstances as required by this rule, shall repay all child care assistance received but to which the household was not entitled. (History: 52-2-704, 53-4-212, MCA; IMP, 52-2-704, 52-2-713, 53-2-108, 53-2-201, MCA; NEW, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2006 MAR p. 2964, Eff. 12/8/06.)

37.80.204 AT-HOME INFANT CARE (REPEALED) (History: 52-2-111, 52-2-704, 53-2-201, 53-4-212, MCA; IMP, 52-2-704, 52-2-713, MCA; NEW, 2002 MAR p. 1553, Eff. 5/31/02; REP, 2003 MAR p. 1306, Eff. 7/1/03.)

37.80.205 CHILD CARE RATES: PAYMENT REQUIREMENTS

- (1) The hourly rate is paid for services provided less than six hours during a calendar day.
- (2) The daily rate is paid for six to ten hours of service during a calendar day.
- (3) Child care certification plans may authorize payment for extended care of more than ten hours during a calendar day. When care is provided for ten to 16 hours per day, the daily rate applies to the first ten hours of service. The hourly rate applies up to six hours of additional service. If the certification plan specifies service exceeding 16 hours of care during a calendar day, the state will pay twice the daily rate for each day in which care exceeds 16 hours.
- (4) Child care providers are entitled to payment only when care is actually provided to the child, with the following three exceptions:
 - (a) a licensed or registered child care facility may be paid for care for the holidays of New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day, even though the facility is closed for business if:
 - (i) the facility charges private pay households for the holiday; and
 - (ii) the holiday falls on a day for which the certification plan authorizes care.
 - (b) a household may use the child care subsidy program to pay for days when care is not actually provided to the child in accordance with the requirements for the certified enrollment program as specified in ARM 37.80.206;
 - (c) a household may use the child care subsidy program to pay for days when care is not actually provided when the child's slot is vacant for a period of not more than 30 days and the child's slot will be lost to a child on the provider's waiting list if payment is not made.

(5) The rates set forth in the Child Care Manual, section 1-4, are the maximum rates payable.

(6) The rate charged by a child care provider for children whose child care is paid for by the department cannot exceed the rate charged to private pay parents for the same service.

(7) Rates for children with special needs may be adjusted for special accommodations which increase the cost of care. A special needs subsidy rating scale and/or an individual child care plan must be completed to determine the appropriate rate adjustment. The criteria used to determine special needs adjustments are set forth in section 1-4a of the Child Care Manual.

(8) When child care is provided in the child's home by a provider who does not live with the child, the state payment will be made to the parent. The parent is responsible to pay the provider, and failure to do so will result in the parent's ineligibility for child care assistance until the provider has been paid in full or the parent has made arrangements for payment which are satisfactory to the provider. (History: 52-2-704, 53-4-212, MCA; IMP, 52-2-704, 52-2-713, MCA; NEW, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 2002 MAR p. 1989, Eff. 5/31/02; AMD, 2003 MAR p. 1306, Eff. 7/1/03; AMD, 2005 MAR p. 1057, Eff. 7/1/05; AMD, 2008 MAR p. 174, Eff. 2/1/08.)

37.80.206 CERTIFIED ENROLLMENT (1) Certified enrollment is intended to assist households to pay child care facilities requiring payment when a child is temporarily absent.

(2) The following requirements must be met in order for a provider to be paid under certified enrollment:

(a) Certified enrollment is available only for children receiving full-time child care. It is not available if the child is receiving care on a part-time basis.

(b) There must be a definite plan for the child to return to the facility as soon as the reason for an absence, such as a vacation or illness of the child or parent, is resolved.

(c) Certified enrollment may not be used for more than 150 certified enrollment hours in a state fiscal year per child.

(3) Child care providers may not charge for children under certified enrollment if the parent has not indicated an intent to return the child to the facility for additional child care services. The intent to return a child may be manifested either:

(a) verbally;

(b) in writing; or

(c) by actions of the parent which would lead a reasonable person to believe that the child would be returning to the facility in the foreseeable future.

(4) Child care facilities must notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days. If the provider fails to notify the child care resource and referral agency when a child is absent without explanation for five consecutive working days, the department is not required to pay for any care from the date the child last attended the facility.

(History: 52-2-704, MCA; IMP, 52-2-704, MCA; NEW, Eff. 4/5/76; AMD, 1985 MAR p. 945, Eff. 7/12/85; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; AMD, 1991 MAR p. 2261, Eff. 11/28/91; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 1999 MAR p. 2454, Eff. 10/22/99; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2008 MAR p. 174, Eff. 2/1/08.)

Subchapter 3

Provider Requirements

37.80.301 REQUIREMENTS FOR CHILD CARE FACILITIES, COMPLIANCE WITH EXISTING RULES, CERTIFICATION

(1) Child care facilities must be in compliance with applicable licensing and registration requirements as specified in ARM 23.7.109 and 37.95.101 and 37.95.102 to receive payment under this chapter. Loss of eligibility for funds under this chapter for failing to comply with child care facility licensing and registration requirements is in addition to other remedies available for such violations.

(2) The provider is responsible for informing parents who are receiving child care assistance under this chapter that the provider has lost their license, registration, or payment number. The provider may not bill the household for payments denied by the department due to the provider's failure to comply with licensing, certification, or registration requirements.

(3) Child care facilities must be certified or recognized by the department or its designated agent as eligible to receive payment under this chapter. All applicable forms must be completed and submitted for approval. Registered and licensed facilities are certified by the child care licensing bureau of the department's quality assurance division. Legally unregistered providers are certified by the early childhood services bureau. Facilities licensed or registered by other entities must be recognized by the child care licensing bureau of the department's quality assurance division.

(4) A provider's eligibility to receive state payment under a state assisted child care program may be terminated if:

(a) the provider willfully misrepresents services provided, as set out in ARM 37.80.316(4) or 37.80.502(6); or

(b) the provider refuses access to the child care setting and child records during business hours to the following personnel:

(i) employees or other agents of state or local government, investigating child care services or child abuse or neglect;

(ii) child care resource and referral agency personnel investigating child care services; or

(iii) health, building or fire officials investigating child care facility health and safety issues.

(5) All child care providers shall maintain current sign in/sign out records for each child receiving child care assistance and utilize them as follows:

(a) Each time the child enters or leaves the provider's care, the parent or other individual authorized to deliver or pick up the child shall initial or sign the sign in/sign out sheet. An electronic signature system may be used if it employs a unique and confidential identification process for individuals.

(b) Sign in/sign out records must indicate the child's name, the date, the hour, and the minute when the child enters and leaves the provider's care.

(c) The provider shall make sign in/sign out records available to child care resource and referral agency staff and state and local government health, safety or law enforcement representatives upon request.

(d) The provider shall keep sign in/sign out records for five years beyond the date of attendance. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; AMD, 1993 MAR p. 941, Eff. 7/1/93; AMD, 1997 MAR p. 578, Eff. 3/25/97; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2003 MAR p. 1306, Eff. 7/1/03; AMD, 2005 MAR p. 1057, Eff. 7/1/05.)

Rules 02 through 04 reserved

37.80.305 LEGALLY UNREGISTERED PROVIDERS: INTRODUCTION

(1) Except where otherwise specified, unregistered providers are not subject to department licensing or registration requirements applicable to "child care facilities" as the term is defined by statutes and rules. Nevertheless, legally unregistered providers must be properly certified under this chapter to receive payment for child care services. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; AMD, 1997 MAR p. 578, Eff. 3/25/97; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98.)

37.80.306 LEGALLY UNREGISTERED PROVIDERS: CERTIFICATION REQUIREMENTS AND PROCEDURES

(1) Application to provide child care under this chapter as a legally unregistered provider may be made at the nearest child care resource and referral agency. (2) An application for certification or recertification will be denied under any of the following circumstances:

(a) the applicant fails to submit all required documentation within 30 days of the date on which the application is received by the resource and referral agency except the applicant may receive one 15 day extension to submit required documentation in the possession of a third party provided the applicant submits a request for extension prior to the expiration of the 30 day period;

(b) the applicant is the child's parent or a person who is living with the child and acting in loco parentis or is a person who is included in the same household as the child for purposes of determining eligibility for TANF cash assistance or child care assistance under this chapter;

(c) the applicant discriminates in the provision of child care services on the basis of the race, sex, religion, creed, color or national origin of the parent or the child;

(d) the applicant has currently been denied a child care provider registration or license or would be denied a registration or license if the applicant applied, or the applicant has been denied a child care provider registration or license in the past or has had a child care provider registration or license revoked for cause in the past.

(3) The applicant and any adult who resides in the applicant's home who might come in contact with children to whom care is provided must provide authorization for criminal and child protective services background checks for the period of time from the present date back to the date of the individual's 18th birthday.

(a) If an individual required to have a background check has lived outside the state of Montana at any time after the individual's 18th birthday and is unable to obtain the necessary out-of-state background checks, the individual must complete a Montana department of justice criminal justice information network fingerprint background check at the applicant's expense.

(4) In addition to completing all required application forms for certification under this chapter, applicants for certification to provide child care as legally unregistered providers must truthfully attest in writing that he or she:

(a) has not been named as the perpetrator in a report substantiating abuse or neglect of a child, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act or of a person protected by a similar law in another jurisdiction or had parental rights terminated while an adult;

(b) has not been convicted or adjudicated of a crime involving harm to children, or physical or sexual violence against any person;

(c) is not facing a pending criminal charge involving harm to children, or physical or sexual violence against any person;

(d) is not currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care. Mental illness or emotional disturbance which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. Prior to certification, the department may require that an applicant obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness or emotional disturbance exists; or

(e) is not chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. Prior to certification, the department may require that the provider obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists.

(5) An applicant proposing to provide care outside the home of the parents must also truthfully attest in writing that, to the best information and belief of the applicant, no member of the applicant's household, and no person coming in contact with children for whom the provider applicant proposes to provide child care under this chapter:

(a) has been named as the perpetrator in a report substantiating abuse or neglect of a child, or been named as a perpetrator in a report substantiating abuse or neglect of a person protected under the Montana Elder and Persons with Developmental Disabilities Abuse Prevention Act or had parental rights terminated while an adult;

(b) has been convicted or adjudicated of a crime involving harm to children, or physical or sexual violence against any person;

(c) is facing a pending criminal charge involving harm to children, or physical or sexual violence against any person;

(d) is currently diagnosed or receiving therapy or medication for a mental illness or emotional disturbance which might create a risk to children in care. Mental illness or emotional disturbance which might create a risk to children in care shall be determined by a licensed psychologist or psychiatrist. Prior to certification, the department may require that a provider, caregiver or other person obtain a psychological or psychiatric evaluation at his or her own expense if there is reasonable cause to believe such a mental illness or emotional disturbance exists; or

(e) is chemically dependent upon drugs or alcohol. Chemical dependence on drugs or alcohol shall be determined by a licensed physician or certified chemical dependency counselor. Prior to certification, the department may require that the household member or other person in contact with the children obtain an evaluation at his or her own expense if there is reasonable cause to believe chemical dependence exists.

(6) Legally unregistered providers must also meet the following requirements to be registered under this chapter:

- (a) be 18 years of age or older;
- (b) within 60 days of approval, attend a training or orientation session provided or approved by the department which includes health and safety issues;
- (c) limit the care they provide to a period less than 24 hours in any day;
- (d) care for no more than two children at a time, unless the children are from the same family. If the children are from separate families, then a legally unregistered provider may care for no more than two children; and
- (e) must provide appropriate verification of the attestations and other requirements in this rule upon request from the department. The department may deny eligibility based upon inaccuracy or falsification of such attestations, and/or failure to fulfill the other requirements of this rule. Prior to and during certification, the department may also require disclosure to parents of information known to the department involving any acts of the provider bearing on the provider's ability to safely care for children.

(7) Legally unregistered providers are not eligible to be reimbursed for child care services provided while home schooling. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; AMD, 1993 MAR p. 941, Eff. 7/1/93; AMD, 1994 MAR p. 958, Eff. 4/15/94; AMD, 1997 MAR p. 578, Eff. 3/25/97; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2005 MAR p. 1057, Eff. 7/1/05.)

Rules 07 through 14 reserved

37.80.315 RIGHTS AND RESPONSIBILITIES AGREEMENT (1) In addition to complying with all other certification requirements, providers must sign a rights and responsibilities agreement under this chapter, on the form provided by the department. The provider must return the signed agreement to the child care resource and referral agency. Parents are provided a copy of the providers's rights and responsibilities. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, 52-2-713, 52-2-721, 52-2-722, 52-2-723 and 52-2-731, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; AMD, 1997 MAR p. 578, Eff. 3/25/97; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 1999 MAR p. 2454, Eff. 10/22/99; AMD, 2002 MAR p. 1553, Eff. 5/31/02.)

37.80.316 REQUIREMENTS AND PROCEDURES FOR CHILD CARE PAYMENTS (1) Except as provided in (2) and (3), the provider will receive payment for child care services when the care is provided outside the child's home or when the care is provided by a great grandparent, grandparent, aunt or uncle who resides in the parent or child's home. If the parent and the provider both agree payment should be made to the parent, payment may be made to the parent.

(2) Payment will be made to the parent when a care giver, who does not live with the parent or child, provides child care in the child's home.

(3) Payment will be made to the provider when the provider participates in the tiered reimbursement program, as referenced in ARM 37.80.205(6)(a). The tiered reimbursement program is intended to benefit the higher quality child care provider.

(4) In the case of direct payment to the parents, the parents and/or the provider bear sole responsibility:

(a) for obtaining provider certification through this chapter prior to claiming payment for covered child care under this chapter; and

(b) for resolving any and all disputes as to proper payment arising between the parent(s) and the provider.

(5) The provider must submit a claim for covered child care services on the billing form provided by the department. Except as provided in (4)(a), a completed billing form with all information and documentation necessary to process the claim must be received by the resource and referral agency of the department within 60 days after the last day of the calendar month in which the service was provided. Timely filing of claims in accordance with the requirements of this rule is a prerequisite for payment. In addition:

(a) The claim must be for actual care provided by the provider designated on the child care certification plan as defined in ARM 37.80.102(1) and subject to the limitations described in 37.80.201(9). The provider may not bill for care subcontracted to another individual or facility.

(b) The claim must indicate the child's actual attendance accurately, within one quarter hour. The provider's claim may be rounded to the nearest quarter hour of total daily attendance.

(c) The claim must be verifiable through the provider's sign in/sign out records as required in ARM 37.80.301(5).

(d) If the certification plan is not completed until after the calendar month in which the child care is provided, the claim will be considered to be filed timely if a completed billing form with all information and documentation necessary to process the claim is received by the department or the entity designated by the department for this purpose within 60 days after the billing document is sent to the provider.

(e) If corrections or adjustments to a submitted claim are necessary, they must be received by the department or its designated entity within the 60 day period prescribed by this rule for timely filing of the claim.

(6) In cases where payments are made directly to the parent, a parent who fails to pay the provider will be ineligible for further child care assistance until the provider has been paid in full or the parent has made arrangements for payment which are satisfactory to the provider. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, 52-2-711 and 52-2-713, MCA; NEW, 1992 MAR p. 1863, Eff. 8/28/92; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 2002 MAR p. 1553, Eff. 5/31/02; AMD, 2003 MAR p. 1306, Eff. 7/1/03; AMD, 2005 MAR p. 1057, Eff. 7/1/05.)

Subchapter 4 reserved

Subchapter 5

Termination of Services

37.80.501 TERMINATION OF CHILD CARE ASSISTANCE (1) Child care assistance will be terminated if any of the following occurs:

(a) the child care resource and referral agency does not recertify the household or the certification plan expires;

(b) a parent terminates the employment or training that made the parent eligible for child care assistance;

(c) the parent no longer needs child care to allow the parent to participate in an activity specified in ARM 37.80.201;

(d) the parent voluntarily makes a written request to the child care resource and referral agency worker that child care services be closed;

(e) the child care provider no longer meets licensing standards or loses certification for payment;

(f) a parent who was participating in the TANF funded cash assistance program is no longer a participant in that program and is not otherwise eligible for child care assistance under the provisions of ARM 37.80.201;

(g) the child no longer meets the age requirements of ARM 37.80.102; or

(h) the child no longer receives care at the child care facility specified in the certification plan and there is no indication that the child will be receiving care at that facility in the near future.

(2) When child care assistance is terminated due to the household's loss of eligibility, as specified in (1)(b), (c), (f), or (g), notice of termination must be sent to both the parent and the provider at least 10 days prior to the effective date of termination. No notice is required from the state when child care is terminated by the parent or provider, or for the other reasons specified in (1)(a), (d), (e), or (h).

(a) The notice sent to the parent must state the reason for the termination and must inform the parent of the right to a hearing as provided in ARM 37.80.104.

(b) The notice of termination sent to the provider must include the child's name, the parent's name, and the date of termination but must not disclose any confidential information about the parent or child.

(3) When the child care resource and referral agency denies an initial application for child care assistance, written notice must be sent to both the parent and the provider, but there is no requirement for advance notice of the denial.

(a) The notice to the parent shall include reasons for the denial and inform the parent of the right to a hearing as provided in ARM 37.80.104.

(b) The notice to the provider must include the child's name and the parent's name but must not disclose any confidential information about the parent or child.

(4) The department is obligated to the parent and/or the provider only to the extent specified in the certification plan and the rules governing child care assistance. No agreement or arrangement between the parent and provider purporting to modify or terminate any provision of the certification plan is binding on the department. (History: Sec. 52-2-704, MCA; IMP, Sec. 52-2-704, MCA; NEW, Eff. 12/31/72; AMD, Eff. 4/5/76; AMD, 1981 MAR p. 1792, Eff. 12/18/81; TRANS, from Dept. of SRS, 1987 MAR p. 1492, Eff. 7/1/87; TRANS & AMD, from DFS, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 1999 MAR p. 2454, Eff. 10/22/99; AMD, 2002 MAR p. 1989, Eff. 5/31/02.)

37.80.502 CHILD CARE UNDERPAYMENT, OVERPAYMENT AND OVERCLAIM: CRIMINAL PROSECUTION (1) A child care provider or a parent who has reason to believe an overpayment or underpayment of child care assistance has occurred shall notify the department within 10 days.

(2) The department is entitled to recover the amount of any child care payment made to a child care provider or to a parent which is in excess of the amount to which the provider or parent was entitled, regardless of whether the overpayment was caused by the department, by the provider, or by the parent.

(a) If an overpayment is due to any error, act, or omission of the parent, whether intentional or otherwise, the parent must repay the overpayment to the department.

(b) If an overpayment is due to any error, act, or omission of the provider, whether intentional or otherwise, the provider must repay the overpayment to the department.

(c) If an overpayment is due to any error, act, or omission of the department, the department may recover the overpayment from either the provider, the parent, or from both, but the total amount recovered from the provider and the parent may not exceed the amount of the overpayment.

(3) The provider or the parent must repay the overpayment within 30 days after the department sends notice of the overpayment with a demand for repayment.

(4) If the provider or the parent fails to repay the overpayment within 30 days, the department may reduce future child care payments or increase household child care copayments until the overpayment is recovered in full.

(5) If an underpayment of child care payments occurs, the underpayment will be corrected by increasing the payment for the following month to cover the underpayment.

(6) When a provider or a parent receives child care assistance in excess of the amount to which the provider or parent is entitled due to a willful action of the provider or parent, the department may pursue criminal charges against the provider or parent. Criminal prosecution may be pursued in addition to recovery of the overpayment as provided in (2) and (3) of this rule.

(a) A willful action includes but is not limited to the making of a false or misleading statement, a misrepresentation, or the concealment or withholding of facts or information.

(7) If a willful action is an overclaim, the following will occur:

(a) The first willful overclaim will result in:

(i) an assessment of 10% of the amount actually due being added to the amount of repayment due if an overpayment has already been made to the claimant;

(ii) if an overclaim is discovered before payment is made, deduction of 10% of the amount due from the amount paid to the claimant; and

(iii) if the provider is responsible, the loss of web invoicing privileges for six months and the imposition of the requirement that copies of sign in/sign out sheets must be submitted with invoices for the following three months.

(b) The second willful overclaim will result in:

(i) an assessment of 25% of the amount actually due being either added to the amount of repayment due to the department or deducted from the amount of payment due to the claimant, depending upon whether payment to the claimant has already been made; and

(ii) if the provider is responsible for the overclaim, the loss of web invoicing privileges permanently and imposition of the requirements that the provider must submit copies of sign in/sign out sheets with invoices for the following six months.

(c) The third willful overclaim will result in the household or provider responsible being ineligible to participate in the child care development fund child care assistance, grant, and quality child care programs for seven years. (History: Sec. 52-2-704 and 53-4-212, MCA; IMP, Sec. 52-2-704 and 52-2-713, MCA, NEW, 1998 MAR p. 3117, Eff. 11/20/98; AMD, 2002 MAR p. 1989, Eff. 5/31/02; AMD, 2003 MAR p. 1306, Eff. 7/1/03; AMD, 2005 MAR p. 1057, Eff. 7/1/05.)

Subchapter 6

Child Care Quality Improvement Programs

37.80.601 BEST BEGINNINGS QUALITY CHILD CARE MINI GRANTS
(REPEALED) (History: 52-2-704, 53-2-201, 53-4-212, MCA; IMP, 52-2-704, MCA;
NEW, 2002 MAR p. 1553, Eff. 5/31/02; REP, 2008 MAR p. 174, Eff. 2/1/08.)

37.80.602 BEST BEGINNINGS QUALITY CHILD CARE MERIT PAY
(REPEALED) (History: 52-2-704, 53-2-111, MCA; IMP, 52-2-704, 52-2-111, 52-2-
112, 52-2-711, MCA; NEW, 2002 MAR p. 1989, Eff. 5/31/02; AMD, 2005 MAR p.
1057, Eff. 7/1/05; REP, 2008 MAR p. 174, Eff. 2/1/08.)

37.80.603 INFANT/TODDLER CARE GIVER CERTIFICATION
(REPEALED) (History: 52-2-111, 52-2-704, 53-2-201, MCA; IMP, 52-2-704, MCA;
NEW, 2002 MAR p. 1553, Eff. 5/31/02; REP, 2008 MAR p. 174, Eff. 2/1/08.)

37.80.604 REQUIREMENTS FOR CHILD CARE FACILITY PARTICIPATION
IN THE BEST BEGINNINGS STAR QUALITY TIERED REIMBURSEMENT
PROGRAM (REPEALED) (History: 52-2-704, 53-4-212, MCA; IMP, 52-2-704, 52-
2-721, 53-4-212, MCA; NEW, 2005 MAR p. 1057, Eff. 7/1/05; REP, 2008 MAR p.
174, Eff. 2/1/08.)

Chapter 81 reserved