

R986. Workforce Services, Employment Development.

R986-700. Child Care Assistance.

R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

- (1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.
- (2) Rule R986-100 applies to CC except as noted in this rule.
- (3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-701.1. Definitions and Acronyms.

- (1) The terms used in this rule are defined in Sections 35A-3-102 and 35A-3-201.
- (2) In addition:
 - (a) "ALJ" means Administrative Law Judge.
 - (b) "Applicant" means any person requesting CC.
 - (c) "Approved Provider" means a provider who meets the requirements in Section R986-700-726.
 - (d) "CC" means Child Care assistance or subsidy.
 - (e) "CCDF" means Child Care and Development Fund.
 - (f) "Certification period" as it relates to a recipient of CC is the period of time for which CC is presumptively approved.
 - (g) "Client" means an applicant for, or recipient of, CC.
 - (h) "Child" includes children and vice versa.
 - (i) "Child Care Provider" or "Provider" means any person, individual or corporation, institution or organization that provides child care services.
 - (j) "Department" means Department of Workforce Services.
 - (k) "DWS" means Department of Workforce Services.
 - (l) "Employment" means a job or providing a service that pays wages, a salary, in-kind benefits, or self-employment income, provided federal or state law does not prohibit the occupation.
 - (m) "Employment plan" is a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.
 - (n) "FEP" means Family Employment Program.
 - (o) "FEPTP" means Family Employment Program Two Parent.
 - (p) "FFN" means Family, Friend and Neighbor provider.
 - (q) "Financial assistance" means a payment, other than for SNAP, CC, or medical care, to an eligible individual or household that is intended to provide for the individual's or household's basic needs.
 - (r) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued.
 - (s) "IPV" means intentional program violation.
 - (t) "Licensed-center provider" means a non-hourly, licensed child care center that is regulated through CCL.
 - (u) "Local office" means the Employment Center that serves the geographical area in which the client resides.
 - (v) "Minor child" means a child under the age of 18, or under 19 years of age and in school full time and expected to complete the educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.
 - (w) "OCC" means Department of Workforce Services, Office of Child Care.
 - (x) "ORS" means Office of Recovery Service, Utah State Department of Human Services.
 - (y) "Parent" includes natural, adoptive, and stepparents. "Parent" includes "parents" and vice versa.
 - (z) "Recipient" means any individual receiving CC.
 - (aa) Review or recertification. Clients who are found eligible for CC are given a date for review or recertification at which point continuing eligibility is determined.
 - (bb) "SSA" means Social Security Administration.
 - (cc) "SSI" means Supplemental Security Insurance.
 - (dd) "TCA" means Transitional Cash Assistance.
 - (ee) "VA" means US Department of Veteran Affairs.

R986-700-702. General Provisions.

- (1) Child Care assistance is provided to support employment for a qualified household with at least one minor dependent child who is a United States citizen or who meets qualified alien status. Child Care assistance for approved education and training activities, job search, or for an approved temporary change as defined in Section R986-700-703 may be authorized in accordance with this rule.
- (2) Child Care assistance is available, as funding permits, to a client who is employed or is participating in activities that lead to employment, and is:
 - (a) a parent, including a foster care parent who receives foster care reimbursement from the Utah Department of Human Services, Division of Family and Child Care Services, or its successor;
 - (b) a specified relative; or
 - (c) a client who has been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care assistance is provided only for a child who lives in the home of the client and only during hours when no parent or other guardian is available to provide care for the child. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(4) If a client is eligible to receive CC, each of the following children, living in the household unit, are eligible:

(a) a child under the age of 13 years; and

(b) a child up to the age of 18 years if the child:

(i) meets the requirements of Section R986-700-717; or

(ii) is under court supervision.

(5) A client who qualifies for CC will be paid if and as funding is available. When the child care needs of an eligible applicant exceeds available funding, the applicant will be placed on a waiting list. Eligible applicants on the waiting list will be served as funding becomes available. Special needs children, homeless children, and FEP or FEPTP eligible children will be prioritized at the top of the waiting list and will be served first. "Special needs child" is defined in Section R986-700-717.

(6) Child Care assistance is issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) Child Care assistance can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) Child Care assistance will not be paid for the care of a client's own child during the time the client is working as a caregiver in the same residential setting where care is being provided. Child Care assistance will not be approved where the client is working for an approved child care center and regularly watches the client's own children at the center or has an ownership interest in the child care center. Child Care assistance will not be paid for the care of a client's own child if the client is also the licensee or is a stockholder, officer, director, partner, manager, or member of a corporation, partnership, limited liability partnership or company, or similar legal entity providing the child care.

(10) Neither the Department nor the state is liable for an injury that may occur when a child is placed in child care even if the parent receives CC from the Department.

(11) Once eligibility for CC has been established, eligibility must be reviewed once every 12 months. The review is not complete until the client has completed, signed, and returned each necessary review form to the local office. Each requested verification must be provided at the time of the review. If the Department determines the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in Subsection R986-700-710(3), the Department may terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in Rule R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client must verify the client's identity. Benefits will not be denied or withheld if a client chooses not to provide a Social Security Number if the client is otherwise eligible. A client is not required to provide a Social Security Number. Social Security Numbers that are supplied will be verified. If a Social Security Number is provided but is not valid, the Department will request further verification to confirm the individual's identity.

(4) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(5) A client is responsible to pay all costs of care charged by the provider. If the CC payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(6) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in Subsection R986-700-710(3);

(b) when the client no longer needs child care;

(c) a change of address;

(d) a child receiving child care moves out of the home;

(e) a change in the child care provider, including when care is provided at no cost;

(f) when the child has stopped attending child care; and

(g) when the child is no longer enrolled in child care.

(7) Allowable temporary changes.

(a) The following are allowable temporary changes:

(i) time-limited absences from work due to medical or other emergency, such as maternity leave, bed rest, or temporary medical issues of the client or an immediate family member living in the client's home if the client is responsible for the immediate family member's care;

- (ii) temporary fluctuations in earnings or hours, such as summer break for teachers or seasonal hours changes for IRS employees, that would otherwise have the effect of causing the client to fail to meet the minimum work requirements for eligibility;
 - (iii) scheduled holidays or breaks in a client's educational training schedule;
 - (iv) an eligible child turning 13 years old during an eligibility review period, unless the child no longer has a need for child care;
 - (v) a client who has been approved for ongoing Employment Support Child Care assistance at application or recertification and has a permanent loss of employment may remain eligible through the remainder of that certification period; and
 - (vi) a child has a continued need for child care and remains enrolled in child care with the current provider.
- (b) A client who experiences an allowable temporary change after having been approved for ongoing Employment Support Child Care assistance may continue to receive CC at the same level for the remainder of the certification period.
- (8) Once an eligibility determination is made and a full month's payment and copayment is assessed, benefits will be paid at the same level during the remainder of the certification period so long as the client remains eligible, except that:
- (a) The Department may act on reported changes that result in a participation increase or copayment decrease; and
 - (b) Benefits may be reduced if a child care provider reports a lower monthly charge or the client changes to a different child care provider.
- (9) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. The Department may find that the client and provider jointly liable, or responsible, for the overpayment. In the case of joint liability, both parties can be held liable for the entire overpayment.
- (10) The Department is authorized to release the following information to the designated provider:
- (a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;
 - (b) the date the CC payment was issued;
 - (c) the CC payment amount for that provider;
 - (d) the copayment amount;
 - (e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;
 - (f) the month the client is scheduled for review;
 - (g) the date the client's application was received; and
 - (h) general information about what additional information or verification is needed to approve CC such as the client's work schedule and income.
- (11) If a child is enrolled with a child care provider in a calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month, even if the client changed providers, unless the maximum subsidy payment amount for the month will not be exceeded by paying the second provider or one of the following exceptions also applies:
- (a) The child is no longer enrolled with the initial provider, the initial provider is no longer an approved provider, or has been disqualified by the Department.
 - (b) The client relocates the client's residence and it is no longer reasonably feasible to continue using the initial provider due to travel time or distance.
 - (c) There is a substantial change in the days or times of day when child care is needed, such as a change in the timing of the shifts the client is working, that cannot be accommodated by the initial provider.
 - (d) The Department determines a change in child care providers is necessary due to an endangerment finding for the child. The Department may, in its discretion, approve payment to a second provider due to an endangerment finding even if the maximum subsidy payment amount would be exceeded.
 - (e) The Department determines a change in child care providers is necessary due to circumstances related to a pandemic, natural disaster, or other state of emergency.
 - (f) The parent reported a change in providers prior to monthly issuance for the next month but the change was not processed until after monthly issuance.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-707. Copayment.

- (1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent's countable earned and unearned income and household size.
- (2) The parent is responsible for paying the amount of the copayment directly to the child care provider.
- (3) If the copayment exceeds the actual cost of child care, the family is not eligible for CC.
- (4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.
- (5) The following clients are not subject to the copayment requirement:
 - (a) clients at or below 100% of the poverty level;
 - (b) clients receiving transitional CC and FEP CC as provided in Section R986-700-708; or

- (c) other households in accordance with CCDF guidance.

R986-700-708. FEP CC Transitional Child Care.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan.

(2) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased earned income and the household meets the work requirement and income rules for ESCC. Clients receiving transitional child care are not subject to the copayment requirement. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-709. Employment Support (ES) CC.

- (1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC.
- (2) Employment Support CC is available in the following circumstances:
 - (a) In a single-parent household, the single parent must be the custodial parent of the eligible child and must be:
 - (i) employed an average of at least 15 hours per week;
 - (ii) employed to the single parent's full capacity if the single parent has a disability that has been verified and confirmed by the Department;
 - (iii) enrolled and participating in either an in-person, formal course of study or online courses with a set class schedule to obtain a high school diploma or equivalent General Education Diploma (GED); or
 - (iv) employed an average of at least 15 hours per week and participating in education and training activities as defined in Section R986-700-711.
 - (b) Two-parent households.
 - (i) In a two-parent household, the parents must be:
 - (A) employed, with one parent employed an average of at least 30 hours per week and the second parent employed an average of at least 15 hours per week;
 - (B) employed to both parents' full capacities if one or both parents has a disability that has been verified and confirmed by the Department;
 - (C) employed, with one parent employed an average of at least 30 hours per week and the second parent employed an average of at least 15 hours per week and participating in education and training activities as defined in Section R986-700-711; or
 - (D) enrolled and participating in an in-person, formal course of study or online courses with a set class schedule to obtain a high school diploma or GED.
 - (I) Employment Support CC may be provided when both parents are enrolled and participating in a formal course of study to obtain a high school diploma or GED.
 - (II) Employment Support CC may be provided when one parent is working and the second parent is participating in the formal course of study to obtain a high school diploma or GED.
 - (ii) Employment Support CC shall be provided to two-parent households only when neither the parents' work schedules nor course schedules can be changed to provide care for the parents' child.
 - (c) Self-employed parents.
 - (i) Self-employed parents may receive ES CC if they meet the minimum work requirements and earn wages or profit from self-employment at a rate equal to at least minimum wage, calculated by dividing the wage or profit earned through self-employment by the number of hours worked in the timeframe used to determine eligibility.
 - (ii) A self-employed parent shall submit business records for the most recent three-month period of self-employment to establish that the self-employed parent is earning at least minimum wage.
 - (iii) An exception to the requirement that a self-employed parent earn at least minimum wage may apply if the self-employed parent has a barrier to other types of employment.
- (3) Employment Support CC shall be provided to cover the hours the parent needs child care for employment or approved educational or training activities.
- (4) Disability.
 - (a) A household may verify a disability under this section by establishing:
 - (i) the disabled parent has an inability to earn a minimum of \$500 per month;
 - (ii) the disabled parent has a temporary physical, emotional, or mental incapacity expected to last 30 days or longer that has been verified by the household by submitting the following, and the incapacity is confirmed by the Department:
 - (A) evidence that the disabled parent receives disability benefits from SSA if it proves the incapacity prevents the parent from providing care for the parent's child;
 - (B) a determination by VA that the parent is 100% disabled if it proves the incapacity prevents the parent from providing care for the parent's child; or
 - (C) a written statement from a licensed:
 - (I) medical doctor;
 - (II) doctor of osteopathy;
 - (III) Mental Health Therapist as defined in Section 58-60-102;

- (IV) Advanced Practice Registered Nurse; or
- (V) Physician's Assistant; and
- (iii) in a two-parent household, the disabled parent is unable to provide care for the child while the other parent is employed.
- (b) A parent who is employed and earning more than \$500 per month or participating in educational or training activities will not be considered disabled under this section unless the Department confirms the disability.
- (5) As used in this section the term "employment" does not include:
 - (a) Americorps* Vista, Job Corps and other similar training activities; or
 - (b) Work Study activities.

R986-700-710. Income and Asset Limits for ES CC.

- (1) Rule R986-200 is used to determine the following:
 - (a) Who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. Determining household composition for a ES CC household may be different from determining household composition for a FEP or FEPTP household. Employment Support CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible.
 - (i) A specified relative may not opt out of the household assistance unit when determining eligibility for CC.
 - (ii) Recipients of SSI benefits are included in the household assistance unit.
 - (iii) Foster care parents may not opt out of the household assistance unit when determining eligibility for CC. The foster care parent's children and foster care children are included in the household size.
 - (b) What is counted as income except:
 - (i) the earned income of a child who is not a parent is not counted;
 - (ii) child support is counted as unearned income of the child, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted;
 - (iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit;
 - (iv) if both parents are living in the household, the income of both parents is counted;
 - (v) the income of each specified relative in the household must be counted; and
 - (vi) the income of each foster parent in the household must be counted.
 - (c) How to estimate income.
 - (2) The following income deductions are the only deductions allowed on a monthly basis:
 - (a) the first \$50 of child support received by the family;
 - (b) court ordered and verified child support and alimony paid out by the household;
 - (c) \$100 for each person with countable earned income; and
 - (d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.
 - (3) The household's countable income, less applicable deductions in Subsection R986-700-710(2), must be at, or below, a percentage of the state median income as determined by the Department. The Department will adjust the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.
 - (4) Charts establishing income limits and the copayment amounts are available at each local Department office.
 - (5) An independent living grant paid by DHS to a minor parent is not counted as income.
 - (6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the amount the provider reports to the Department as the charge for the child. For example: The provider's monthly charge is \$800 per month. The non-applicant parent pays \$300 directly to the provider. The provider should report the charge of \$500, as that is the portion the applicant parent is responsible to pay. The provider charge of \$500 will be used in the benefit calculation when determining the amount of subsidy. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.
 - (7) Clients must meet the CCDF asset limit.

R986-700-711. Employment Support CC to Support Education and Training Activities.

- (1) Child Care assistance may be provided when the client is engaged in education or training and employment, provided the client meets the work requirements under Section R986-700-709.
- (2) The work requirement may be waived in accordance with Subsection R986-700-709(2)(a)(iii) or Subsection R986-700-709(2)(b)(i)(C) for a client who is unemployed and is enrolled in a formal course of study to obtain a high school diploma or equivalent (GED).
 - (a) The 24 calendar month time limit in this section does not apply to high school or GED completion.
 - (b) The client must provide verification of satisfactory progress to receive continued ES CC beyond 12 months.
 - (3) The education or training is limited to courses that directly relate to improving the parent's employment skills.
 - (4) Employment Support CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.
 - (a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when the client is meeting the work requirements under Section R986-700-709 and is enrolled in a formal course of study for any of the following:

- (i) obtaining a high school diploma or equivalent;
- (ii) adult basic education; or
- (iii) learning English as a second language.
- (b) Months during which the client received FEP CC while receiving education and training do not count toward the 24-month time limit.
 - (c) Child Care assistance cannot ordinarily be used to support short-term workshops unless they are required or encouraged by the employer. If a short-term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24-month time limit.
 - (5) Education or training can only be approved if the client can realistically complete the course of study within 24 months and demonstrates progress in the program.
 - (6) Any CC payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.
 - (7) There are no exceptions to the 24-month time limit, and no extensions can be granted.
 - (8) Only the last two years of a four-year program may be supported.
 - (9) Child Care assistance is not allowed to support education or training if the client already has a bachelor's degree.
 - (10) Child Care assistance cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. Child Care assistance for Certain Homeless Families.

- (1) Child Care assistance can be provided for homeless families with one or two parents when the family meets the following criteria:
 - (a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of the family's homeless state. Local offices will provide a list of recognized homeless agencies in the local office area.
 - (b) The family must meet ES CC relationship and income eligibility criteria. Only the minimum work requirements are waived.
- (2) Child Care assistance for homeless families is provided for up to 12 months.
- (3) Qualifying families may use CC for any activity including, but not limited to, employment, job search, training, shelter search, or working through a crisis situation.
- (4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC.

- CC will be paid at the lower of the following levels:
- (1) the maximum monthly local market rate as calculated using the Local Market Survey; or
 - (2) the rate established by the provider for services and reported to the local Care About Child Care agency or the Department, provided that CC cannot pay more for services than is charged to the public for the same service; or
 - (3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

- (1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.
- (2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not possible.
- (3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.
- (4) The Department is authorized to stop payment on a CC check without prior notice if:
 - (a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider: or
 - (b) when the check has been outstanding for at least 90 days; or
 - (c) the check is lost or stolen.
- (5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes.

(2) An away-from-home study hall or lab may be required as part of the class course. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school.

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both.

(4) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care Assistance for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires:

(a) an increase in the amount of care or supervision; or

(b) special care needs, which include the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in Subsection R986-700-709(4)(a)(ii)(C) or one of the following documenting the child's disability and special child care needs:

(a) Social Security Administration showing that the child is a SSI recipient;

(b) Division of Services for People with Disabilities;

(c) Division of Mental Health;

(d) State Office of Education;

(e) Baby Watch, Early Intervention Program; or

(f) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a licensed Advanced Practice Registered Nurse;

(iii) a licensed Physician's Assistant; or

(iv) a licensed or certified Psychologist.

(3) Verification to support that the child is disabled and has a special need must be dated and signed by the preparer and include the following:

(a) the child's name;

(b) a description of the child's disability; and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for CC under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each CC category is available at any Department office.

R986-700-720. Provider General Provisions.

(1) The Department will only pay CC to a client who selects an:

(a) eligible provider,

(b) who is providing care in an eligible setting; and

(c) who has approved provider status.

(2) In addition to the requirements in this section, an eligible provider must meet all CCDF requirements.

(3) CC is only available for care provided in the state of Utah.

R986-700-721. Eligible Provider.

(1) A provider may only be eligible if the provider is:

(a) a provider regulated through CCL including a licensed:

(i) home provider;

(ii) child care center, unless the center is an hourly center; or

(iii) home with a residential certificate.

(b) a license exempt provider who is not required by law to be licensed and is either;

(i) a license exempt center provider as defined in R430-8-3. A license exempt center provider must have a current letter of exempt status from CCL identifying the provider as DWS Approved; or

(ii) a DWS FFN provider as approved by CCL.

(A) The requirements for FFN approval are provided in R986-700-724 and in DWS policy.

R986-700-722. Ineligible Provider.

(1) A provider is not eligible for any CC payment if the provider is:

- (a) an undocumented alien; or
- (b) under age 18.
- (2) A provider who has been disqualified pursuant to Sections R986-700-733 and R986-700-734 is not eligible for any CC payment. The disqualification will remain in effect until the disqualification period has run, any related overpayment has been satisfied, and the provider is otherwise eligible.

R986-700-723. Ineligible Provider Setting.

- (1) A provider is not eligible to receive a CC payment for a particular client if the provider is:
 - (a) living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs as determined by the Department and who cannot be otherwise accommodated;
 - (b) a sibling of the child living in the home, even for a special needs child;
 - (c) a parent, foster care parent, stepparent or former stepparent of the child, even if living in another residence;
 - (d) providing care for the child in another state;
 - (e) a sponsor of a qualified alien client applying for CC; or
 - (f) living in the same home as a non-custodial parent and providing child care for a child of that parent.

R986-700-724. Family, Friend and Neighbor (FFN) provider.

- (1) An FFN provider must comply with all CCDF and Department requirements and will not be approved for a CC payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:
 - (a) complete, sign and submit an application to CCL;
 - (b) complete New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;
 - (c) pass a home inspection as provided in Department policy;
 - (d) complete an infant/child CPR training;
 - (e) complete first aid training; and,
 - (f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.
- (2) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.
- (3) FFN approval must be renewed annually.
 - (a) The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.
 - (4) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

R986-700-725. Appeals of CCL adverse action.

If a provider has any adverse action taken against it by CCL, the provider's appeal shall be made to CCL according to CCL's procedures.

R986-700-726. Approved Provider Status.

- (1) If an eligible provider chooses not to comply with the following requirements, OCC will presume the provider has voluntarily chosen not to receive payment for CC clients. To obtain and retain approved provider status, an eligible provider shall comply with each of the following provisions.
 - (a) CCQS. A licensed-center provider must participate in the CCQS pursuant to Section R986-700-741.
 - (b) Care About Childcare. A provider, except an FFN provider, shall report its monthly, full-time child care rates to the local Care About Child Care agency.
 - (c) Verification. A provider must provide verification information to the Utah Department of Health, Child Care Licensing Program (CCL) and DWS to determine initial and continuing eligibility, which includes submission of a completed Internal Revenue Service (IRS) Form W-9. For a provider approved by the Department before May 8, 2020, the provider shall submit a completed IRS Form W-9 by December 31, 2020.
 - (i) Payment may be withheld from a provider who fails to provide verification information until verification information is provided.
 - (d) Provider Guide. A provider must read and agree to the terms and conditions contained in the Provider Guide. A provider that has not previously received CC payment must comply with this subsection before being approved and receiving payment.
 - (i) An approved provider will be notified of any substantial change to the terms and conditions of the Provider Guide.
 - (A) An approved provider will be provided at least 30 days' notice of any substantial change to the terms and conditions of the Provider Guide.
 - (B) An approved provider shall agree to the terms and conditions of the Provider Guide during the subsequent provider certification period pursuant to Subsection R986-700-727(5).
 - (C) If an approved provider fails to agree to any changes, CC payment will be withheld pursuant to Section R986-700-729.
 - (e) Certification. A provider must complete any ongoing certification in the Provider Portal, including any certification described in Subsection R986-700-727(5).

(i) If a provider fails to complete a required certification, CC payment may be withheld pursuant to Section R986-700-729.

(ii) If a provider fails to complete a required certification, the provider may be subject to an audit conducted by the Department.

(2) The Director of OCC may recommend disqualifying a provider pursuant to Sections R986-700-733 and R986-700-734 if a provider:

(a) fails to provide necessary information or cooperate with a Department investigation or audit pursuant to Section R986-700-730;

(b) has an established pattern of overpayments pursuant to Section R986-700-731;

(c) commits an Intentional Program Violation pursuant to Section R986-700-732; or

(d) demonstrates a pattern of behavior indicating an inability or unwillingness to fulfil the provider's responsibilities under Section R986-700-727.

(3) If a provider is no longer an approved provider and the provider has accrued overpayments that have not been repaid and later seeks to become an approved provider, approval will not be granted until any overpayment is paid in full.

R986-700-727. Approved Provider Responsibilities.

(1) The provider shall assume the responsibility to collect any copayment and any other fee for child care services rendered. Neither the Department nor the state assumes responsibility for private payment to a provider.

(2) Records. The provider shall keep an accurate record of CC client time and attendance.

(a) A complete time and attendance record for each CC client must be kept for at least three years.

(b) If a provider is not able to produce an accurate time and attendance record for a specific CC client for a specific month, there is a rebuttable presumption that the provider did not provide child care for that CC client during that month.

(c) "Accurate record" means a record that:

(i) was made at or near the time of the event;

(ii) was made by, or from information transmitted by, someone with knowledge; and

(iii) neither the source of information nor the method or circumstances of preparation of the record indicate a lack of trustworthiness.

(d) To receive a CC payment for an eligible household, the provider must contact the Department to report the children in care and their start date in care.

(3) Provider Portal.

(a) The provider has an ongoing responsibility to access the Provider Portal located at the Department website to:

(i) submit ongoing, monthly certification;

(ii) submit and manage bank account information, including to:

(A) read and agree to the Financial Terms and Conditions contained in the Provider Portal;

(iii) view CC payment information; and

(iv) manage Provider Portal user access to ensure only a user with authority to make changes can do so.

(b) The provider is liable for any change made and information provided through the Provider Portal.

(4) Change reporting. Upon knowledge of the following changes, the provider shall report within ten calendar days, or by the 25th of the month, whichever is sooner:

(a) a reduced or part-time rate for an individual child in care, as applicable;

(b) any rate change or other update that occurs for each child once a rate has been submitted in the Provider Portal;

(c) a child is no longer enrolled in child care;

(d) a child is not expected to be enrolled in child care the following month;

(e) that the provider received a greater CC payment amount than what was charged to the client for the month of service;

(f) that a child has never attended or attended less than eight hours in the first benefit month a CC payment was issued;

(g) the child is enrolled but has not attended within the last 90 days; or

(h) a change in financial institution account information for direct deposit.

(5) Certification.

(a) A licensed provider shall certify between the 25th of each month and the last day of the month, in a manner specified by the Department, the following:

(i) the provider has reviewed each child's enrollment and attendance; and

(ii) the provider has reported any reportable change in each child's enrollment or attendance, including any future change known or expected by the provider.

(b) The provider shall certify that the provider agrees to the terms and conditions specified in the most current Provider Guide.

(c) If a provider fails to certify by the last day of the month, CC payment may be withheld until certification is completed pursuant to Section R986-700-729. The Department may also increase monitoring or take other remedial action pursuant to OCC policy to ensure future compliance.

(6) A provider who is assessed an overpayment or IPV pursuant to Sections R986-700-731 or R986-700-732 may be subject to increased monitoring or other remedial action pursuant to OCC policy to ensure future compliance with program rules.

R986-700-728. Appropriate use of CC.

(1) Child Care assistance is to support an eligible client's monthly employment and any allowed training activity and allows for temporary absences and unforeseen circumstances.

(2) A provider must provide at least eight hours of care during the initial benefit month for which a CC payment was issued to be eligible for CC payment.

(a) A provider has the burden of proof to demonstrate the provider provided care to any CC client for which it receives CC payment.

(b) Pursuant to Subsection R986-700-727(2), if a provider is not able to produce a time and attendance record for a specific CC client for a specific month, there is a rebuttable presumption that the provider did not provide child care for that CC client during that month.

(3) Inappropriate use of a CC payment includes:

(a) applying the CC payment to a:

(i) copayment;

(ii) registration fee;

(iii) late fee;

(iv) field trip; or

(v) client's out of pocket expenses; or

(b) carrying forward the CC payment for future months of service.

(4) An excess CC payment cannot be used to cover an outstanding balance, a copayment, a registration fee, a late fee, a field trip, or future services. If excess funds are issued for a month of service, the excess funds must be returned to the Department. The CC payment for the following month may be reduced to offset the over-issuance.

(5) A provider who receives a CC payment when the child was not enrolled is responsible for repayment of the resulting overpayment under Title 35A, Chapter 3, Part 6, Administrative Determination of Overpayment Act, and Sections R986-700-731 and R986-700-731.1, and there may be a disqualification period pursuant to Sections R986-700-733 and R986-700-734, and potential criminal prosecution under Title 76, Chapter 8, Part 12, Public Assistance Fraud.

(6) A provider who provides services for any part of a month and then terminates services with the client or for a child during the month shall reimburse the Department for the days when care was not provided.

(a) If it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

(7) The Department will issue a IRS Form 1099 annually where applicable to each eligible provider who received a CC payment during the year.

(8) A provider who applies CC funds inappropriately may be subject to an overpayment and possible disqualification pursuant to Sections R986-700-731, R986-700-733, and R986-700-734.

R986-700-729. Withholding of CC Payment.

(1) Pursuant to Section R986-700-731.1, CC payment may be withheld if a provider is found to have been overpaid and:

(a) fails to repay the overpayment; or

(b) fails to enter into a repayment or recoupment plan in accordance with Department policy; or

(c) is not current with repayment in accordance with a repayment plan.

(2) CC payment may be withheld if a provider fails to comply with each requirement of Sections R986-700-726 and R986-700-727.

(3) CC payment withheld pursuant to Section R986-700-729 will be released once the provider complies with the requirement.

(4) A provider shall not charge a client for a withheld CC payment. Although the client remains eligible, the provider will not receive CC payment until the provider complies with all participation requirements as provided by Sections R986-700-726, R986-700-727, R986-700-729, and R986-700-731.1.

R986-700-730. Audits and Investigations.

(1) The Department has the right to investigate a child care provider and audit the provider's records.

(a) An audit or investigation may be performed by a person or entity under contract with the Department, a Department employee, or other person authorized by the Department to obtain information on behalf of the Department.

(b) A provider must cooperate with an investigation or audit to determine ongoing client eligibility or if client eligibility was correctly determined.

(2) A client or a provider must cooperate with any investigation or audit in a timely manner.

(a) A timely manner means ten business days for written or electronic documentation and two business days to return a phone call or email request.

(b) Cooperation means timely:

(i) providing information and verification of any record as requested by the Department;

(ii) returning a telephone call; and

(iii) responding to an email request.

(c) Cooperation with an audit includes submitting a written statement that the person chooses not to respond to an audit finding included in a draft audit report.

(3) If a client fails to cooperate with an investigation or audit without good cause, the case will be referred to the public assistance overpayments unit and the client may be found liable for an overpayment.

(4) If a provider fails to cooperate with an investigation or audit without good cause, or fails to keep an accurate and complete time and attendance record for three years without good cause, CC payment may be withheld until the provider cooperates and the Director of OCC may recommend disqualifying the provider pursuant to Sections R986-700-733 and R986-700-734. The provider will also be referred to the public assistance overpayments unit and the provider may be found liable for an overpayment.

(a) If a provider significantly impairs or unnecessarily delays an audit or investigation, CC payment may be withheld and the Director of OCC may recommend disqualifying the provider pursuant to Sections R986-700-733 and R986-700-734.

(5) Good cause. Good cause is limited to circumstances where the client or provider can show that the reason for the failure to cooperate, to timely respond to a request, or to provide or keep a record was due to circumstances beyond the client or provider's control or were compelling and reasonable.

(6) Providing incomplete or incorrect information will be treated as a failure to cooperate if the incorrect or insufficient information results in an improper decision with regard to eligibility.

(7) A provider has the burden of proof to demonstrate the provider actually provided care to any CC client for which it receives CC payment.

R986-700-731. Overpayments.

(1) An overpayment occurs when:

(a) a client or provider receives CC for which the client was not eligible;

(b) a provider receives a CC payment but does not provide care for at least eight hours during the initial benefit month of CC;

(c) a provider receives a CC payment when a child is no longer enrolled;

(d) a provider fails to report or does not report timely that an enrolled child has not attended in 90 days, which may result in subsequent month CC payments being issued that may be subject to an overpayment if there is no longer a need for CC;

(e) a provider receives a greater CC payment amount than the client is charged for the month of service; or

(f) a provider applies CC to nonallowable costs pursuant to Section R986-700-728.

(2) Pursuant to Section 35A-3-603 of the Administrative Determination of Overpayment Act, any provider, client, or other person who receives an overpayment shall return the overpaid funds to the Department, regardless of fault. The client and provider shall be jointly and severally responsible for repayment of any overpayment except when:

(a) an overpayment is caused by an IPV on the part of solely the client or solely the provider; or

(b) a provider receives a CC payment, provides at least eight hours of child care during the month, and provides an attendance record to verify the provision of care, unless the provider terminated services during the month as described in Subsection R986-700-728(6).

(3) A provider who is assessed an overpayment pursuant to this section may be subject to increased monitoring or other remedial action pursuant to Subsection R986-700-727(6).

R986-700-731.1. Collection of Overpayments.

(1) A CC overpayment must be repaid to the Department pursuant to Section 35A-3-603 of the Administrative Determination of Overpayment Act.

(a) The Department reserves the right to pursue collection of any overpayment pursuant to Title 35A, Chapter 3, Part 6, Administrative Determination of Overpayment Act.

(b) For the purposes of this section "recoupment" or "recoup" means applying a CC payment or grant funds, such as an Enhanced Subsidy Grant (ESG) through Child Care Quality System (CCQS), to an overpayment balance.

(c) For the purposes of this section "withholding" means delaying payment until a specified condition is met. Once the condition is met, the payment will be released.

(2) A client who is receiving CC and has an outstanding CC overpayment balance may be subject to recoupment of the overpayment from ongoing CC payment.

(3) If a provider does not repay an overpayment within 30 days of the order establishing that overpayment, the Department will take one of the following actions:

(a) for a provider receiving an ESG, recoup grant funds pursuant to Subsection R986-700-742(3), regardless of whether the provider agrees to recoupment;

(b) recoup a CC payment, if the provider voluntarily agrees recoupment;

(c) establish a repayment plan with the provider;

(d) if the provider is not receiving an ESG and does not establish a repayment plan or voluntary recoupment, or fails to comply with a repayment plan, withhold any CC payment until the provider establishes a repayment plan or voluntary recoupment, the provider complies with the repayment plan, or overpayment is paid in full; or

(e) file an abstract of the final administrative order and pursue a lien pursuant to Section 35A-3-606.

(4) Overpayment assessed against a provider before May 8, 2020. For a provider that accrued any overpayment that has not been repaid before May 8, 2020, the following provisions apply.

(a) A provider shall repay an overpayment within 12 months of the order establishing that overpayment or enter into and comply with a repayment plan.

(b) A provider that does not repay an overpayment within 12 months of the order establishing the overpayment or comply with a repayment plan shall be subject to one of the following:

(i) for a provider receiving an ESG, involuntary recoupment of an ESG pursuant to Subsection R986-700-742(3), regardless of whether the provider agrees to recoupment;

(ii) voluntary recoupment of a CC payment, if the child care provider agrees to the voluntary recoupment;

(iii) the Department may withhold CC payment until the overpayment is paid in full; or

(c) the Department may file an abstract of the final administrative order and pursue a lien pursuant to Section 35A-3-606.

(5) A provider shall not penalize any current CC client as a result of the Department's collection action.

(i) "Penalize" includes:

(A) requiring a client to pay new or additional fees for service, excluding the copayment or amount exceeding the CC payment; or

(B) terminating services with the client.

(6) If the client or provider files a timely appeal, collection procedures will be stayed during the appeal process.

R986-700-732. Intentional Program Violation.

(1) An Intentional Program Violation (IPV) occurs when a person:

(a) either personally or through a representative;

(b) intentionally, knowingly, or recklessly, as defined in Section 76-2-103 concerning definitions of culpable conduct;

(c) violates a program rule, or helps another person violate a program rule;

(d) in an attempt to:

(i) obtain,

(ii) maintain,

(iii) increase, or

(iv) prevent the decrease or termination of CC payment.

(2) The evidentiary standard for determining an IPV is clear and convincing evidence.

(3) Acts which may constitute an IPV include:

(a) making a false or misleading statement;

(b) misrepresenting, concealing, or withholding information;

(c) posing as someone else;

(d) taking, using, or accepting a CC payment the person knew they were not eligible to receive,

(e) not reporting the receipt of a CC payment the person knew they were not eligible to receive;

(f) not reporting a material change as required by Sections R986-700-727 and R986-100-113; and

(g) committing an act intended to mislead, misrepresent, conceal or withhold a fact, or propound a falsity.

(4) When an IPV is alleged, the Department may:

(a) refer the case for criminal prosecution;

(b) in the case of a client IPV, issue a notice of agency action finding the person committed an IPV, which the person may appeal through the fair hearing process set forth in Rule R986-100;

(c) in the case of a provider IPV which occurred before May 8, 2020, or for which the Director of OCC does not recommend disqualifying the provider, in addition to any increased monitoring or remedial action pursuant to Subsection R986-700-727(6), issue a notice of agency action establishing an overpayment and penalty finding the provider committed an IPV, which the provider may appeal via the fair hearing process set forth in Rule R986-100; or

(d) in the case of a provider IPV for which the Director of OCC recommends disqualifying the provider, in addition to any increased monitoring or remedial action pursuant to Subsection R986-700-727(6), refer the case for an administrative disqualification hearing (ADH) pursuant to Section R986-700-733.

(5) The Department may not disqualify a provider unless an ADH has been held and the ALJ has ordered disqualification or the provider has been criminally convicted.

(6) The Department may not make a concurrent referral for an ADH and a criminal prosecution.

(a) If a case referred for criminal prosecution is dismissed or referred back to the Department without prosecution, the Department may issue a notice of agency action or refer the case for an ADH pursuant to Subsection R986-700-732(4).

(7) A provider found to have committed an IPV will be responsible for repayment of both any related overpayment and a civil penalty pursuant to Subsection 35A-3-603(4).

R986-700-733. Administrative Disqualification Hearing (ADH).

(1) An ADH will be held if the Director of OCC recommends disqualifying a provider pursuant Subsections R986-700-726(2), R986-700-730(4), or R986-700-732(4). If the provider does not participate in the ADH, the ALJ will make a decision based solely on the evidence before the ALJ.

(2) The hearing procedures set forth in Rule R986-100 apply to an ADH unless otherwise specified or inconsistent with this section.

(3) The Division of Adjudication will schedule any ADH. Each party will be given 30-days' notice of the date and time of the ADH.

(a) The Department may withdraw a request for an ADH at any time before the scheduled hearing by sending written notice to the Division of Adjudication and any party.

(4) The Division of Adjudication may combine a fair hearing and an ADH into a single hearing if the relevant factual issues arise out of the same or related circumstances.

(a) The notice of hearing shall indicate whether a fair hearing and an ADH will be combined into a single hearing.

(b) If the hearings are combined, the applicable filing deadline and hearing timeframe are those contained in this section to the extent of any conflict.

(c) If the provider fails to appear or participate in the combined hearing, the fair hearing will be dismissed but the ADH will still be held.

(5) The ALJ shall advise a witness that the witness has the right to refuse to answer any question during the hearing, and that the ALJ may draw any reasonable adverse inference based on a party's refusal to answer a question during the hearing.

(6) A qualified employee of the Department shall represent the Department at the ADH.

(7) If any party fails to participate in the hearing and disagrees with the hearing decision, the party may request reopening of the hearing as set forth in Section R986-100-131.

(8) Within 90 days of the date the notice of hearing is issued, the ALJ shall conduct the hearing, arrive at a decision, and issue written notice of the decision to the Department and each party. If the ADH is postponed for any reason, the 90-day time limit will be extended by as many days as the ADH is postponed.

(a) The ALJ shall determine if the provider should be disqualified pursuant to Section R986-700-734.

(9) The ALJ is not required to disqualify a provider based solely upon a finding of IPV. If the ALJ determines the provider's conduct does not warrant disqualification, the Department may establish an overpayment pursuant to Section R986-700-731, assess a penalty pursuant to Section R986-700-732, and take remedial action pursuant to Subsection R986-700-727(6).

(10) Any party, including the Department, may request a further appeal pursuant to Section 63G-4-402 of the Administrative Procedures Act, Section R986-100-135, and Subsection R986-100-735(3).

R986-700-734. Approved Provider Disqualification.

(1) When determining whether to disqualify a provider from approved provider status the Department may consider:

(a) the seriousness of offense or offenses;

(b) the extent of offense or offenses;

(c) a history of adjudicated overpayments or IPV's;

(d) previous imposition of increased monitoring or remedial action by the Department;

(e) failure to comply with monitoring or remedial action by the Department;

(f) the extent of notice, education, or warning given to the provider by the Department pertaining to the offense or offenses for which the provider is being considered for disqualification;

(g) the adequacy of assurances by the provider that the provider will comply prospectively with each Department and OCC requirement related to the offense; and

(h) whether a lesser sanction will be sufficient to remedy the problem.

(2) Disqualification period.

(a) The first disqualification assessed against a provider shall be 12 months.

(b) The second disqualification assessed against a provider shall be 24 months.

(c) The third disqualification assessed against a provider shall be a lifetime disqualification.

(3) A provider that has been disqualified pursuant to Sections R986-700-733 and R986-700-734:

(a) may not receive an enhanced subsidy grant (ESG), a state-funded grant, or other CCDF funding during the disqualification period; and

(b) will remain ineligible for any CC payment, ESG, state-funded grant, or other CCDF funding until any overpayment and penalty established in conjunction with the disqualification has been satisfied in full.

(4) A disqualification is effective two benefit months from the date of the ALJ order.

(5) A disqualification will take effect even if the provider files an appeal pursuant to Section 63G-4-402 of the Administrative Procedures Act, Section R986-100-135, and Subsection R986-100-735(3).

(6) Disqualifications run concurrently.

(7) A disqualification assessed to a provider will follow the facility, any successor facility, and a principal of the facility.

(a) A "successor facility" is any facility that acquires the business or acquires substantially all the assets of a facility that has been disqualified. This includes a facility whose provider changes from one status to another; such as a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession, or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liability to the purchaser. It is not necessary to purchase the assets to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" include any property, tangible or intangible, which has value. Assets may include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of the predecessor's assets.

(e) A "principal" is an individual who is responsible for the day to day business of a child care center, if that individual has an ownership interest in the center. An ownership interest includes a shareholder, director, or officer of a corporation, and a partner, member, or manager of a limited liability partnership or company.

R986-700-735. Appeals.

(1) A client may appeal an adverse agency action pursuant to Rule R986-100.

(2) A provider may appeal an overpayment pursuant to Rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(3) A provider may appeal an ADH disqualification pursuant to Section 63G-4-402 of the Administrative Procedures Act, Section R986-100-135, and Subsection R986-100-735(3). Any appeal must be filed in writing within 30 days of the date of the ALJ order.

R986-700-740. Child Care Quality System (CCQS) Definitions and Acronyms.

In addition to the definitions and acronyms found in Title 35A, Chapter 3, Employment Support Act, Sections R986-100-103, R986-100-104, and R986-700-701.1, the following definitions apply to CCQS:

(1) "CC subsidy" means a Child Care assistance subsidy payment.

(2) "CCL" means Utah Department of Health, Child Care Licensing Program.

(3) "Certified quality rating" means the CCQS rating determined by applying the CCQS framework and assigned by OCC.

(4) "Certified Quality Rating Review Committee" or "Review Committee" means a committee consisting of one representative from OCC, one representative from a licensed private program; and one expert in the field of early childhood education or school-age children, which reviews disputed quality ratings and makes recommendations to the Director of Adjudication concerning final certified quality rating decisions.

(5) "Child Care Quality System" or "CCQS" refers to the comprehensive statewide system administered by OCC that provides quality ratings to eligible programs and supports programs in attaining higher levels of quality.

(6) "CCQS status" means the status assigned by OCC to a program without a default rating or certified quality rating.

(7) DWS-eligible program or "eligible provider" means a provider who:

(a) meets CCDF eligibility requirements;

(b) is compliant with CCL licensing requirements;

(c) has followed the CCL process to indicate the program will accept funding from OCC, including funding for children covered by CC subsidy; and

(d) can potentially receive CC subsidy and OCC grants, including ESG, if approved.

(8) "Enhanced Subsidy Grant" or "ESG" refers to monthly payments issued to an eligible program serving children covered by CC subsidies and achieving a rating of High Quality or High Quality Plus.

(9) "License in good standing" means a program is licensed by CCL, but not with a conditional license.

(10) "Not participating" is a CCQS Status referring to a program that:

(a) has withdrawn from participation in the CCQS;

(b) does not hold a center license in good standing from CCL;

(c) is ineligible due to being disqualified by OCC; or

(d) has not applied for a certified quality rating and has not elected to become DWS-eligible.

(11) "Program" refers to an individual location of a child care business.

R986-700-741. CCQS Rating and Status.

(1) Each licensed center program shall receive a CCQS rating or status, unless the program withdraws from participation following the process established by OCC policy.

(a) A licensed center program who chooses not to apply for a certified quality rating will receive a default rating.

(b) A DWS-Eligible child care program is required to participate in CCQS to remain an eligible provider. Participation means maintaining at least a default rating. An eligible provider is not required to submit an application for a certified quality rating.

(c) All CCQS ratings or statuses shall be made public on the Care About Childcare website.

(d) A DWS-eligible child care program which withdraws from participation in CCQS will become ineligible to receive CC subsidy and CCQS grants or funding.

(2) A program may apply for a certified quality rating in accordance with OCC policy through the Care About Childcare website.

(a) A rating shall be awarded or a status shall be assigned no later than 180 days after the application was submitted.

(b) Certified quality ratings will be published publicly on the first day of the month of the certified rating period.

(3) A certified quality rating shall remain in place during the 12-month certified quality rating period unless a program:

(a) loses its license in good standing and goes on conditional license; or

(b) is disqualified from accepting funds from CCDF.

(4) The 12-month certified quality rating period may be modified when a program is receiving CCQS technical assistance and support from OCC, in accordance with OCC policy.

(5) Recertification. Upon expiration of the certified quality rating period, a program must recertify in order to maintain a certified quality rating.

(a) A program must follow the recertification procedures established by OCC policy.

(b) A program failing to recertify in a timely manner may receive one of the following ratings or statuses until a certified quality rating is awarded:

(i) a default Foundation of Quality rating for a program that is DWS-Eligible;

(ii) not participating status for a program that is not DWS-Eligible; or

(iii) denied participation status for a program operating on a conditional license at the time of recertification.

R986-700-742. Enhanced Subsidy Grant (ESG).

(1) To receive an Enhanced Subsidy Grant (ESG) a program must:

(a) receive a certified quality rating of:

(i) High Quality, or

(ii) High Quality Plus;

(b) serve children for whom child care was paid for with CC subsidy during the 12-month period used to calculate the ESG;

(c) maintain a license in good standing with CCL during the 12-month certification period;

(d) maintain status as a DWS-Eligible child care program during the 12-month certification period;

(e) agree to comply with each requirement outlined in the certified quality rating award notice;

(f) agree to the amount of the ESG stated on the certified quality rating award notice;

(g) agree to receive the ESG through the process established by OCC policy;

(h) not be disqualified pursuant to Sections R986-700-733 and R986-700-734;

(i) not have a pending administrative review on the awarded certified quality rating; and

(j) not have a pending referral from the Director of OCC for an administrative disqualification hearing pursuant to Sections R986-700-733 and R986-700-734.

(2) Upon final disposition of a pending administrative review, an ESG may be issued retroactively where all other ESG requirements are met and the program has not been disqualified pursuant to Sections R986-700-733 and R986-700-734.

(3) An ESG for a program that has an outstanding adjudicated overpayment or other debt owing to OCC shall be issued as follows:

(a) if the overpayment amount is less than the monthly ESG amount, the ESG shall be reduced by the amount of outstanding overpayment due; or

(b) if the overpayment amount is greater than the monthly ESG, a monthly ESG shall continue to be reduced until the overpayment is fully repaid.

(4) An overpayment where there is not a suspected IPV and for which there is a pending administrative review or appeal shall not impact the ESG until final disposition of the action is issued.

(5) The monthly ESG will be calculated in accordance with OCC policy.

R986-700-743. CCQS Rating Administrative Review.

(1) A program may request a review of a certified quality rating following the process established by OCC policy.

(2) A review request shall be submitted within 30 calendar days of the date of the certified rating award notice except where there is good cause for failing to request a review within this timeframe.

(a) Good cause for failing to timely request review is limited to circumstances that are:

(i) beyond the party's control, or;

(ii) compelling and reasonable.

(b) Good cause excludes ordinary illness, lack of transportation and temporary absences.

(3) Quality Rating Pending Review. The certified quality rating issued in the quality rating award notice shall be published by OCC and remain published until the review is complete. Issuance of an ESG shall be temporarily suspended until the review is complete.

(4) OCC Review. Each request for review submitted to OCC shall be subject to an OCC review. Upon final determination of the OCC review, a notice of determination shall be sent to the program.

(5) If a program does not agree with the OCC review determination, the program may request a review by the Certified Quality Rating Review Committee.

(a) A review request shall be submitted within 30 calendar days of the date of the OCC review determination, except where there is good cause for failing to request a review within this timeframe pursuant to Subsection R986-700-742(2).

(b) A review by the Review Committee is an informal adjudicative proceeding under the Utah Administrative Procedures Act.

(c) A review may:

(i) include an OCC staff member to present the conclusions of the OCC review;

(ii) provide an opportunity for the program to present their reasons and evidence for the review request; and

(iii) include witnesses or legal representatives, as applicable; and

(iv) a request for any additional documentation relevant to the review, from either OCC or the program.

(d) Failure by the program to respond to any request by the Review Committee shall result in a dismissal of the review request.

(e) The Review Committee will issue a recommendation to the Department of Workforce Services Director of Adjudication once the review process is complete.

(6) The Director of Adjudication will make a final certified quality rating decision based upon the recommendation of the Review Committee. The Director of Adjudication decision is the final agency action pursuant to the Utah Administrative Procedures Act.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1) and license-exempt providers and other programs and grantees not subject to CCL requirements.

(2) The following persons must submit to a background check:

(a) The provider;

(b) Each person age 12 years old or older who is living in the household where the child care is provided; and

(c) Each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and any person described in Subsection (2) above has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided;

(c) each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Checks.

(1) The Department will contract with the CCL to perform a criminal background check, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. The provider shall pay all applicable background check fees. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted if required by Subsection (4) below. If the fingerprints are submitted electronically, they must be submitted in conformity with the CCL guidelines regarding electronic submissions. Fingerprints are not required to be submitted if:

(a) The covered individual has previously submitted fingerprints to CCL for a Next Generation national criminal history record check;

(b) The covered individual has resided in Utah continuously since the fingerprints were submitted; and
(c) The covered individual has not permitted his or her background check to lapse or expire since the fingerprints were submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, caregivers who are 16 years old and older, and covered individuals who are 18 years and older are required to submit fingerprints under these rules as requested. In addition, the Department may conduct background checks annually.

(5) If CCL takes an action adverse to any covered individual based upon the background check, CCL will send a denial letter to the provider and the covered individual.

(6) A background check must be submitted for each covered individual:

(a) Prior to the date the person becomes a covered individual, unless:

(1) The person is turning 12 years old and resides in the facility where child care is being provided, in which case the background check form must be submitted and authorized within ten business days of the date the child turns 12 years old;

(2) The person is currently employed by another child care provider within the State and has a current background check; or

(3) The person has been separated from employment from another child care provider within the State for no more than 180 days and has a current background check; and

(b) On an annual basis for each covered individual.

(7) A person may not begin work as a covered individual until the person has completed a fingerprint-based check and the results have been received. After the fingerprint-based check has been completed but prior to full completion of the background check process, a covered individual must be supervised by a person who has fully completed and passed the background check process.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

- (v) 76-10-1301 to 1314, Prostitution; and
 - (vi) 76-10-2301, Contributing to the Delinquency of a Minor and
 - (m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.
- (3) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.
- (4) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.
- (5) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.
- (6)(a) Pursuant to Utah Code Ann. Section 35A-3-310.5(5)(b), the Department's designee for considering and exempting individual cases is the Child Care Licensing Administrator within the Utah Department of Health.
- (b) The Department's designee may exempt a covered individual from being excluded from providing child care due to a criminal conviction if the Department's designee determines that the nature of the background check finding or relevant mitigating circumstances indicate the covered individual does not pose a risk to children.
- (c) Notwithstanding Subsection (b) above, the Department's designee shall not exempt a covered individual convicted of any of the following:
- (i) Any offense specifically not excluded under Subsection (2) above;
 - (ii) Any "violent felony" as that term is used in Section 76-3-203.5(1)(c) of the Utah Code;
 - (iii) Any felony against a child, including child pornography;
 - (iv) Any felony involving abuse or neglect of a spouse, child, or vulnerable adult;
 - (v) Any felony involving rape or sexual assault;
 - (vi) Any felony involving kidnapping;
 - (vii) Any felony involving arson;
 - (viii) Any felony involving physical assault or battery;
 - (ix) Any drug-related felony, unless the offense was a non-violent offense and occurred at least ten years prior to the date of the background check; or
 - (x) Any violent misdemeanor committed as an adult against a child, including offenses involving child abuse, child endangerment, sexual assault, or child pornography.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-770. Provider Grant Eligibility.

To be eligible for a CCDF-funded OCC grant from the Department a provider must:

- (1) meet each CCDF requirement;
- (2) participate in CCQS, if applicable;
- (3)(a) have no outstanding overpayment pursuant to Section R986-700-731; or
- (b) have an established repayment plan or recoupment with the Department and be current in repayment pursuant to Section R986-700-731.1;

- (4) hold a license in good standing from CCL;
- (5) not have a pending referral from the Director of OCC for an administrative disqualification hearing pursuant to Sections R986-700-733 and R986-700-734; and
- (6) not be disqualified from receiving CC payment pursuant to Sections R986-700-733 and R986-700-734.

R986-700-778. Training and Scholarships for Early Childhood Teachers.

The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

R986-700-779. Educational Improvement Opportunities Outside of the Regular School Day Grant Program.

(1) This rule is authorized by Section 53F-5-210, which creates a grant program for out-of-school time programs and instructs the Department to make rules to administer the grant program for private providers, nonprofit providers, and municipalities.

(2) The purpose of this rule is to outline procedures for the Educational Improvement Opportunities Outside of the Regular School Day Grant Program, including the acceptance of grant applications and the awarding of grants.

(3) Terms used in this rule have the definitions given to them in Section 53F-5-210. For purposes of this rule, "private matching funds" as used in Subsection 53F-5-210(7) means funds from a private source that have not been earmarked or pledged as a match for any other purpose. "Private matching funds" specifically excludes the following:

- (a) any federal funds, and
- (b) parent funds or any other funds, if the practical effect of earmarking or pledging the funds is to pass the cost of the match along to parents.

(4) For each year the Department is authorized to solicit grant applications, the Department shall publish a grant application timeline that includes the start and end dates for application acceptance and anticipated timeframes for grant evaluation, acceptance or rejection, and funding. The Department may disregard any application that does not comply with the grant application timeline.

(5) The Department shall create a grant application consistent with the requirements of Subsections 53F-5-210(4) and (7)(a). Applicants shall apply for grants using the application the Department creates. The Department may disregard incomplete or non-conforming applications.

(6) The Department shall evaluate and accept or reject grant applications in accordance with the criteria set forth in Subsection 53F-5-210(5).

(7) Grant recipients shall execute and comply with a standard grant terms and conditions agreement with the Department as a condition of receiving a grant under this rule.

(8) Grant recipients shall claim grant funds by submitting reimbursement requests in accordance with Department reimbursement procedures.

R986-700-901. Unearned Income, Pandemic.

(1) This Section supersedes any conflicting provisions of Rules R986-200 and R986-700.

(2) Federal Pandemic Unemployment Compensation under Section 2104 of the Coronavirus Aid, Relief, and Economic Security Act of 2020, Pub. L. No. 116-136, is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

(3) Lost Wages Assistance paid pursuant to the August 8, 2020, Presidential Memorandum instructing the Secretary of Homeland Security, acting through FEMA, to make available other needs assistance for lost wages in accordance with Section 408(e)(2) of the Stafford Act (42 U.S.C. Subsection 5174(e)(2)), is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

(4) Federal Pandemic Unemployment Compensation under section 203 of the Continued Assistance Act, part of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, enacted on December 27, 2020, is not countable unearned income for purposes of determining eligibility for any child care subsidy program.

KEY: child care, grant programs

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