

# DEPARTMENT OF HEALTH AND SOCIAL SERVICES



## CHANGES TO REGULATIONS IN TITLE 7

### ADDING A NEW CHAPTER

#### 7 AAC 39 – CHILD CARE GRANT PROGRAM

### AND AMENDING

#### 7 AAC 78 – GRANT PROGRAMS

#### 7 AAC 81 -- GRANT SERVICES FOR INDIVIDUALS

### IN A JOINT PROJECT WITH

**DEPARTMENT OF EDUCATION AND EARLY DEVELOPMENT**  
[REPEALING REGULATIONS IN 4 AAC 64]



## **FILED REGULATIONS**

**Effective: June 23, 2006**

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**Title 7. Health and Social Services.**

**Part 3. Public Assistance and Medical Assistance.**

7 AAC is amended by adding a new chapter to read:

**Chapter 39. Child Care Grant Program.**

**Editor's note:** The regulations in this chapter, effective 6/23/2006, and published in Register 178, replace regulations in 4 AAC 64, which were repealed simultaneously with the adoption of this chapter. The history line at the end of each section does not reflect the history of the replaced provisions before 6/23/2006.

**Article**

1. Program Provisions (7 AAC 39.010 - 7 AAC 39.070)
2. Administrative Review (7 AAC 39.800 – 7 AAC 39.810)
3. General Provisions (7 AAC 39.990)

**Article 1. Program Provisions.**

**Section**

10. Applicability
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55. Overpayment of grant money
60. Intentional program violation
65. Monitoring and evaluation
70. Record retention

**7 AAC 39.010. Applicability.** This chapter applies to facilities participating in the child care grant program under AS 47.25.071 and this chapter. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.015. Eligibility.** (a) To be eligible for participation in the child care grant program under AS 47.25.071 and this chapter, a child care facility must meet the requirements of AS 47.25.071(b) and this chapter.

(b) If the department terminates a facility's participation in the program under 7 AAC 39.060, the facility becomes permanently ineligible for a grant under AS 47.25.071 and this chapter. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.020. Application for participation in the child care grant program.** To apply for participation in the child care grant program, an eligible child care facility must submit to the department a completed application, on a form prescribed by the department, that includes a signed certification that the facility will participate in the program as required by this chapter. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.025. Participation in the child care grant program.** (a) To participate in the child care grant program, a child care facility must

(1) participate in the child care assistance program under AS 47.25.001 – 47.25.095 and 7 AAC 41;

(2) use the grant money solely for operation of the facility;

(3) meet the requirements of AS 47.25.071(g) regarding availability of space for children of families issued an attendance authorization under 7 AAC 41.040; and

(4) if space and staff are available, accept into care children of families issued an enrollment authorization under 7 AAC 41.035.

(b) The number of spaces to be made available under (a)(3) of this section is based on the facility's average daily full-time equivalent units of care under 7 AAC 39.035 for the calendar month preceding the month in which a family requests care. For a facility that does not have an established attendance rate, a fair and reasonable attendance rate must be charged to satisfy (a)(3) of this section. An attendance rate is fair and reasonable if it is consistent with attendance rates charged by other child care facilities in the area or is a proration of the facility's enrollment rate.

(c) The department will determine a facility is participating in the child care assistance program as required by AS 47.25.071 and (a)(1) of this section if at least five percent of the children in care at the facility, or one child, whichever is more, are children described in (a)(3) or (4) of this section. The department will suspend payments under the child care grant program if, after any six-month period, the department finds that the facility has not met the requirements of this subsection during that period, unless the facility shows to the department's satisfaction that good cause exists for failure to meet those requirements. For purposes of this subsection, good cause includes one or more of the following:

(1) within the community, the number of children who are the subject of an enrollment authorization under 7 AAC 41.035 or an attendance authorization under 7 AAC 41.040 is smaller than the number of spaces required under this section for each participating facility;

(2) a waiver would prevent a disruption in the continuity of care for children who have been in care at the facility for more than a year.

(d) If the department waives suspension for good cause under (c) of this section, a new six-month period begins at that time. If the department suspends payment under this subsection, the facility may apply for reinstatement if the facility accepts into care a child described in (a)(3) or (4) of this section.

(e) In this section, "enrollment rate" means a monthly rate for care of a child, based on a consistent schedule of a regular number of units of care per week. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.030. Grant payment.** (a) The department will pay a participating facility a monthly grant payment calculated under AS 47.25.071(c) and (f), based on the participating facility's average daily full-time equivalent units of care for the month, and the amount of appropriations available.

(b) To receive a monthly grant payment, a participating facility must submit to the department, in a format prescribed by the department, a payment request containing the following information relating to the grant payment:

(1) the number of children in care during the previous month, indicating whether the care is part-time or full-time;

(2) a description of how the grant payment for the previous month was spent during that month;

(3) any change in information provided in the application submitted under 7 AAC 39.020;

(4) the number of children described in 7 AAC 39.025(a)(3) and (4) who are enrolled for care in the participating facility;

(5) a calculation under 7 AAC 39.035 of the average daily full-time equivalent units of care during the previous month.

(c) A payment request must be submitted on or before the last day of the month following the month to which the request applies. Payment for a request submitted after the deadline will be made only if the department determines that the late submission was due to an emergency situation consisting of an unforeseen event.

(d) If the department determines that information in a payment request is incorrect or incomplete, the department will return the request to the participating facility. Unless the request is corrected and resubmitted to the department no later than the last day of the month following the month in which it was returned by the department, the department will not make a grant payment for that payment request.

(e) The department will not make a payment under this section to an agency, individual, or business other than the participating child care facility.

(f) In this section, "participating facility" means a facility that has met the requirements of AS 47.25.071 and this chapter and is receiving grant payments under AS 47.25.071 and this chapter. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.035. Calculation of average daily full-time equivalent units of care.** (a) To determine a facility's average daily full-time equivalent units of care for a month, the facility shall include in the calculation only the amount of time each child was actually in attendance at the facility. In making this calculation, the following standards apply:

(1) a child in care at the facility for more than five cumulative hours of a day constitutes one daily full-time equivalent unit of care;

(2) a child in care at the facility for five or fewer cumulative hours of a day constitutes one-half of a daily full-time equivalent unit of care;

(3) the daily full-time equivalent units of care arrived at under (1) and (2) of this subsection are totaled for each day of a month, and the daily totals are added together to arrive at a total for the month;

(4) the average daily full-time equivalent units of care for a month is determined by dividing the monthly total calculated under (3) of this subsection by 21.7.

(b) For purposes of the calculation under (a) of this section, the facility may not include in the calculation the biological child, adopted child, stepchild, or foster child of the owner of a child care facility that is receiving grant payments. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.040. Allowable expenditures.** (a) A participating child care facility may spend grant money only for operation of the facility. Categories of allowable expenditures related to facility operation are as follows:

- (1) staff salaries and benefits;
- (2) costs of providing for substitute care;
- (3) health and safety costs;
- (4) costs of supplies, equipment, and activities;
- (5) child development education and training.

(b) A facility shall retain receipts and other records of expenditures under this section as required by 7 AAC 39.070. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.045. Program violations.** (a) The department may impose a sanction under 7 AAC 39.050 upon a participating child care facility for one or more of the program violations set out in (b) of this section. The department will impose a level of sanction necessary to ensure benefits are being paid in accordance with AS 47.25.071 and this chapter.

(b) A facility is subject to sanction under this chapter for

(1) providing false or misleading information or withholding information in order to participate or receive payments under the child care grant program;

(2) failing to maintain records concerning the program as required by 7 AAC 39.040(b) and 7 AAC 39.070;

(3) failing to cooperate with a review or investigation by the department, including a refusal to allow inspection of the facility and its records during scheduled business hours for purposes of determining whether there has been a violation of the child care grant program;

(4) failing to comply with requirements related to allowable expenditures under 7 AAC 39.040;

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

(6) failing to submit a complete and timely response to a monitoring report under 7 AAC 39.065, or to achieve compliance in accordance with that response. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.050. Determination of overpayment or intentional program violation.** (a) If the department determines there is reasonable evidence of an overpayment to, or an intentional program violation by, a participating child care facility, the department will conduct one or more of the following methods of investigation:

(1) review and audit the facility's attendance, billing, and expenditure records;

(2) make announced or unannounced inspections of the facility to determine whether there has been a violation of the child care grant program;

(3) schedule office visits with the facility;

(4) review information or inquiries received by telephone, mail, electronic mail, or facsimile; the department will document the information and inquiries in the investigation file.

(b) The facility shall cooperate with the department during an investigation, and shall provide any information necessary to assist the department in completing the investigation.

(c) Based on an investigation under this section, the department will determine whether an overpayment under 7 AAC 39.055 or an intentional program violation under 7 AAC 39.060 has occurred. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.055. Overpayment of grant money.** (a) If the department determines that an overpayment of grant money has occurred, the department will provide a written notice to the facility that

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

(2) advises the facility of the opportunity to develop a repayment plan;

(3) advises that if the facility refuses to cooperate in the development of a repayment plan within 15 days after receiving a notice under this subsection, the department will take action to recover the overpayment through collection procedures or deduction from any future amounts paid under AS 47.25.071 and this chapter; and

(4) advises that the facility has the right to request an administrative review of the decision under 7 AAC 39.800.

(b) The department will consult with the facility to develop and approve a repayment plan. If the facility fails to comply with a repayment plan developed under this subsection, the department will take action to recover the overpayment through collection procedures or deduction from any future amounts paid under AS 47.25.071 and this chapter. The department will provide a written notice to the facility that

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

(2) advises the facility of the right to request an administrative review of the decision under 7 AAC 39.800.

(c) Unless the facility requests an administrative review under 7 AAC 39.800, a department action to recover an overpayment is effective 15 days after the facility receives notice

(1) under (a) of this section if the facility refuses to cooperate with the development of a repayment plan; or

(2) under (b) of this section if the facility fails to comply with a repayment plan developed under this section. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.060. Intentional program violation.** (a) If the department determines that an intentional program violation has occurred, the department will send a written notice to the facility that

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

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

(3) advises the facility of the right to request an administrative review under 7 AAC 39.800.

(b) A sanction imposed under this section is effective 15 days after the facility receives notice under (a) of this section unless the facility requests an administrative review under 7 AAC 39.800.

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

(1) suspension of payments for two to six months for one or more violations identified in the first investigation of a facility, except as described in (2) of this subsection;

(2) termination if a violation during the first investigation involves the facility claiming attendance for a child who was not enrolled for care in the facility; and

(3) termination of the facility's participation in the child care grant program for one or more violations identified in a second investigation of the facility.

(d) A facility may not bill the department for services provided during a period of suspension or after the facility's participation in the child care grant program is terminated.

(e) The department will reinstate a facility after a period of suspension if the facility submits a new application and continues to meet the applicable requirements of this chapter.

(f) A termination imposed by a final department decision is permanent, and the facility may not reapply to participate in the child care grant program.

(g) If a facility's participation in the child care grant program is terminated under this section, the facility shall return all unexpended grant money to the department in accordance with 7 AAC 39.055(b). (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.065. Monitoring and evaluation.** (a) The department may monitor and inspect a facility's billings, sign-in and sign-out sheets, attendance reports, and other documents the department determines are necessary to evaluate grant compliance. The department will furnish the facility with a written monitoring report of the department's findings. If the department finds that the facility is not in compliance with a requirement of this chapter, the department will include actions that must be taken to achieve compliance. If the department issues a monitoring report that includes requirements for program compliance, the department will advise the operator of the facility

(1) of the requirement to submit within 15 days after receiving the report a signed and dated response indicating intent to comply with each requirement; and

(2) that failure to submit a complete and timely response could result in a sanction under this chapter.

(b) Upon request by the department, a facility shall allow the department access to the facility's grant-related records during the facility's normal business hours or at a time agreed to by the facility and the department. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.070. Record retention.** A facility shall maintain attendance records, grant and billing records, including records of receipt and disposition of grant money, and other records relating to participation in the child care grant program for at least three years from the date each record is created. The facility shall make the records available for department review upon request. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**Article 2. Administrative Review.**

**Section**

800. Request for administrative review

810. Administrative review

**7 AAC 39.800. Request for administrative review.** (a) A facility aggrieved by a written determination made by the department under this chapter may request the department to conduct an administrative review of the determination by submitting a written request for administrative review to the department.

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

(1) a copy of the written determination for which administrative review is requested;

(2) an itemized list of each alleged violation of a statute or regulation upon which the request is based;

(3) factual arguments supporting the facility's allegations; and

(4) the specific relief sought.

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

(d) The department will stay a determination that would result in the termination of grant payments pending the outcome of the administrative review.

(e) The department will deny a request for administrative review if the issues raised in the request do not fall within the department's jurisdiction. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**7 AAC 39.810. Administrative review.** (a) An administrative review by the department under this section will be conducted by a person who was not involved in the decision being reviewed, and who is not subordinate to the person who made the decision. The department will issue a decision to grant or deny the relief sought and will provide the aggrieved facility with a copy of the decision within 15 days after receipt of the request under 7 AAC 39.800. The department will base its decision upon

- (1) the information provided in the request for administrative review;
- (2) the department's research, findings, and records; and
- (3) other available information that is relevant to the matter being reviewed.

(b) The department will advise the facility of its right to appeal the decision to the division director under (c) of this section.

(c) Within 15 days after receiving a decision on administrative review under (a) of this section, an aggrieved facility may submit a written appeal from that decision to the director of the division responsible for administering the child care grant program within the department. Within 30 days after receipt of an appeal, the director will review the department's records, the decision, and applicable law, and will issue a written decision on the appeal to the aggrieved facility. A decision under this subsection constitutes the final department decision. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**Article 3. General Provisions.**

**Section**

990. Definitions

**7 AAC 39.990. Definitions.** (a) In this chapter, unless the context indicates otherwise,

(1) "attendance" means the time during which a child is actually in the paid care of a facility;

(2) "attendance rate" means a daily, part-time daily, or hourly rate charged for a child's actual time in care;

(3) "average daily full-time equivalent units of care" means the number of units of care calculated under 7 AAC 39.035;

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

(5) "child care facility" has the meaning given in AS 47.25.095;

(6) "child in care" means a child receiving care at a child care facility;

(7) "department" means the Department of Health and Social Services;

(8) "facility" means a child care facility;

(9) "grant" means a child care grant under AS 47.25.071 and this chapter;

(10) "intentional program violation" means an action taken by a facility to deliberately misrepresent, conceal, or withhold a material fact that results in a payment to the facility under AS 47.25.071 and this chapter;

(11) "program" means the child care grant program under AS 47.25.071 and this chapter.

(b) For purposes of AS 47.25.071 and this chapter, "child" as defined in AS 47.25.095 does not include the biological, adopted, step-, or foster child of the owner or operator of a child care facility receiving a grant payment. (Eff. 6/23/2006, Register 178)

**Authority:** AS 47.25.001 AS 47.25.071

**Part 6. Miscellaneous.**

**Chapter 78. Grant Programs.**

7 AAC 78.010(b) is amended to read:

(b) This chapter does not apply to **the child care grant program under 7 AAC 39 or to grant services provided to individuals under 7 AAC 81.** (Eff. 4/11/81, Register 78; am 7/21/2002, Register 163; am 6/24/2004, Register 170; am 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.040	AS 44.29.020	AS 47.30.477
	AS 18.08.010	AS 47.05.010	AS 47.30.530
	AS 18.08.080	AS 47.20.075	AS 47.37.030
	AS 18.25.100	AS 47.20.110	AS 47.37.045
	AS 18.28.010	<b><u>AS 47.25.071</u></b>	AS 47.40.041
	AS 18.28.050	AS 47.27.005	AS 47.40.120
	AS 29.60.600	AS 47.27.050	AS 47.80.130

**Chapter 81. Grant Services for Individuals.**

7 AAC 81.020(c) is amended to read:

(c) This chapter does not apply to payments made under

**(1) 7 AAC 53.300 – 7 AAC 53.370 in connection with children in state custody or under supervision; or**

**(2) 7 AAC 39 in connection with the child care grant program.**  
(Eff. 7/21/2002, Register 163; am 6/24/2004, Register 170; am 6/23/2006, Register 178)

<b>Authority:</b>	AS 18.05.040	AS 44.29.020	AS 47.30.477
	AS 18.08.010	AS 47.05.010	AS 47.30.530
	AS 18.08.080	AS 47.20.075	AS 47.37.030
	AS 18.25.100	AS 47.20.110	AS 47.37.045
	AS 18.28.010	<b><u>AS 47.25.071</u></b>	AS 47.40.041
	AS 18.28.050	AS 47.27.005	AS 47.40.120
	AS 29.60.600	AS 47.27.050	AS 47.80.130