



**Minnesota Department of Human Services**

**Elmer L. Andersen Building**

**Commissioner Jodi Harpstead**

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**St. Paul, Minnesota 55164-0998**

January 15, 2020

Sen. Michelle Benson, Chair  
Senate Health and Human Services Finance and  
Policy Committee  
3109 Minnesota Senate Bldg.  
St. Paul, MN 55155

Sen. John Marty, Ranking Minority Member  
Senate Health and Human Services Finance and  
Policy Committee  
2211 Minnesota Senate Building  
St. Paul, MN 55155

Rep. Tina Lieblich, Chair  
House Health and Human Services Finance  
Committee  
477 State Office Building  
St. Paul, MN 55155

Rep. Joe Schomacker, Ranking Minority Member  
House Health and Human Services Finance  
Committee  
331 State Office Building  
St. Paul, MN 55155

Sen. Jim Abeler, Chair  
Senate Human Services Reform Finance and  
Policy Committee  
3215 Minnesota Senate Bldg.  
St. Paul, MN 55155

Sen. Jeff Hayden, Ranking Minority Member  
Senate Human Services Reform Finance and Policy  
Committee  
2209 Minnesota Senate Building  
St. Paul, MN 55155-1206

Rep. Rena Moran, Chair  
House Health and Human Services Policy  
Committee  
575 State Office Building  
St. Paul, MN 55155

Rep. Debra Kiel, Ranking Minority Member  
House Health and Human Services Policy  
Committee  
255 State Office Building  
St. Paul, MN 55155

Dear HHS Committee Chairs and Leads:

This letter is in response to instructions provided by the Legislature to the Minnesota Department of Human Services (DHS) during the 2019 session:

*No later than January 15, 2020, the commissioner of human services, in consultation with counties and other relevant stakeholders, shall report to the chairs and ranking minority members of the legislative committees and divisions with jurisdiction over human services with recommendations for legislation on how to count self-employment income for purposes of determining eligibility for and maintaining the integrity of public assistance programs.*

To comply with this request, DHS staff convened a cross-program work group. Staff from eight counties and one regional employment services provider participated. They included metro, suburban and

Greater Minnesota counties. Staff from the Minnesota Association of County Social Services Administrators also attended. DHS staff with policy expertise in the Minnesota Family Investment Program, Diversionary Work Program, Supplemental Nutrition Assistance Program (SNAP), Refugee Cash Assistance, General Assistance, Minnesota Supplemental Aid, Child Care Assistance Program, Medical Assistance, MinnesotaCare and Office of Inspector General also participated. Tribal representatives were also invited, but were unable to attend the meetings. The workgroup met July 23, Aug. 15, and Oct. 7, 2019.

The Minnesota Department of Revenue sent two staff to the work group. Many of the questions public assistance staff have about self-employment income relate to items covered in tax law, such as allowable deductions of expenses for self-employed individuals. We are grateful to Department of Revenue staff for their very helpful participation in this process. They have agreed to explore a pilot project with DHS, counties, and tribes to set up a process to confirm that tax forms submitted to a county or tribal agency for eligibility matches the forms filed with the IRS.

The work group set criteria that any recommended statutory changes should:

1. Make it possible to identify people trying to hide self-employment income.
2. Not turn eligibility workers into tax accountants.
3. Not create unnecessary barriers to eligibility.
4. Make sure workers can understand and explain policies so that the people we serve can understand what is expected of them.
5. Have policies as consistent or uniform as possible across different programs.
6. Clarify the roles of eligibility workers, fraud investigators and the Minnesota Department of Revenue.

The proposed legislation is the result of energetic and committed engagement by all stakeholders. DHS was happy to have staff from multiple programs participate in this opportunity to engage with the counties. Work group members put in many hours, worked through productive conflicts and gave serious thought to various options. We are grateful for the work they did.

The attached potential bill language would:

1. **Change the asset tests** for cash and child care assistance programs to include counting business accounts that are used to pay non-business (personal) expenses.
2. **Strengthen the verification process by:**
  - Requiring verification of business accounts used to pay non-business (personal) expenses for cash programs and when applicants or participants for child care assistance declare assets that exceed that program's asset limits.
  - Clarifying that self-employed individuals should submit the tax form filed with the IRS for **the most recent year, not** a tax form filed **within the last year**. This clarifies that an addendum to a tax form filed in the past is NOT sufficient.

3. **Enhance program alignment and uniformity** by ensuring the following programs align with SNAP on the policies for how to calculate self-employment income when a participant submits a tax form:
- General Assistance
  - Housing Support for participants without Supplemental Security Income
  - Minnesota Supplemental Aid for participants without Supplemental Security Income
  - Minnesota Family Investment Program
  - Diversionary Work Program
  - Child Care Assistance Program.

This will mean adding the following back to net taxable income on the IRS form:

- Depreciation
- Income that exceeds expenses to provide lodging and meals to a boarder
- Net losses from another tax period
- Federal, state and local income taxes
- Funds set aside for retirement.

The work group agreed that participants receiving cash assistance and/or SNAP should retain the option to establish their income either by submitting a tax form or using the “50% method” (subtracting half of gross earnings to account for business expenses). The work group also agreed that the Child Care Assistance program should align with cash assistance and SNAP.

4. **Address fraud** by amending the fraud statute to state that fraud includes knowingly using inaccurate self-employment records to hide income or assets. This can include transferring funds between accounts to purposefully hide income, submitting to the county or tribe a tax form that does not match the one submitted to the IRS, submitting falsified business records or using business accounts to pay personal expenses that are not allowed by the IRS.

These statutory changes may have fiscal implications and DHS recommends that a fiscal note be requested should the Legislature choose to pursue them. In addition, while representatives from the Minnesota Health Care Programs (MHCP) participated in this workgroup, those programs cannot align with these recommendations because federal health care regulations prohibit changes to the income methodologies. For the populations covered by the modified adjusted gross income (MAGI) methodology, DHS previously sought a waiver to make similar changes that was not approved by Centers for Medicare and Medicaid Services. For the non-MAGI populations, DHS must follow the policies for Supplemental Security Income (SSI), which do not allow for alignment with these recommendations because they are more restrictive policies.

Thank you for the opportunity to address the concerns about self-employment income raised during the 2019 Legislative Session in such a productive and collaborative manner. Please do not hesitate to contact our legislative staff if you have questions or need further technical assistance.

Committee Chairs and Leads

January 15, 2020

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- Minnesota Department of Human Services, State Government Relations Director, Matthew Burdick, 651.431.3858, [matthew.burdick@state.mn.us](mailto:matthew.burdick@state.mn.us); or
- Children and Family Services, Director of Legislation and External Affairs, Jennifer Sommerfeld, 651.431.3855, [jennifer.sommerfeld@state.mn.us](mailto:jennifer.sommerfeld@state.mn.us).

Sincerely,

A handwritten signature in black ink that reads "Jodi Harpstead". The signature is written in a cursive, flowing style.

Jodi Harpstead  
Commissioner

Enc.

Cc: Cynthia Bauerly, Commissioner, Minnesota Department of Revenue

## Proposed Legislative Language Changes

*This change treats any business accounts that are used to pay personal expenses as assets that count toward the \$10,000 asset limit and towards the CCAP asset limit.*

### **256P.02 PERSONAL PROPERTY LIMITATIONS.**

#### **Subdivision 1. Property ownership.**

(a) The agency must apply paragraphs (b) to (e) to determine the value of personal property. The agency must use the equity value of legally available personal property to determine whether an applicant or participant is eligible for assistance.

(b) When personal property is jointly owned by two or more persons, the agency shall assume that each person owns an equal share, except that either person owns the entire sum of a joint personal checking or savings account. When an applicant or participant documents greater or lesser ownership, the agency must use that greater or lesser share to determine the equity value held by the applicant or participant. Other types of ownership must be evaluated according to law.

(c) Personal property owned by the applicant or participant must be presumed legally available to the applicant or participant unless the applicant or participant documents that the property is not legally available to the applicant or participant. When personal property is not legally available, its equity value must not be applied against the limits of subdivision 2.

(d) An applicant must disclose whether the applicant has transferred personal property valued in excess of the property limits in subdivision 2 for which reasonable compensation was not received within one year prior to application. A participant must disclose all transfers of property valued in excess of these limits, according to the reporting requirements in section [256J.30, subdivision 9](#). When a transfer of personal property without reasonable compensation has occurred:

(1) the person who transferred the property must provide the property's description, information needed to determine the property's equity value, the names of the persons who received the property, and the circumstances of and reasons for the transfer; and

(2) when the transferred property can be reasonably reacquired, or when reasonable compensation can be secured, the property is presumed legally available to the applicant or participant.

(e) A participant may build the equity value of personal property to the limits in subdivision 2.

#### **Subd. 1a. Exemption.**

Participants who qualify for child care assistance programs under chapter 119B are exempt from this section except that the personal property identified in subd. 2 is counted toward the asset limit of the child care assistance program under chapter 119B.

#### **Subd. 2. Personal property limitations.**

The equity value of an assistance unit's personal property listed in clauses (1) to (4) must not exceed \$10,000 for applicants and participants. For purposes of this subdivision, personal property is limited to:

(1) cash;

(2) bank accounts

- (3) liquid stocks and bonds that can be readily accessed without a financial penalty; ~~and~~
- (4) vehicles not excluded under subdivision 3; ~~and~~
- (5) the full value of business accounts used to pay expenses not related to the business.

**Subd. 3. Vehicle exception.**

One vehicle per assistance unit member age 16 or older shall be excluded when determining the equity value of personal property. If the assistance unit owns more than one vehicle per assistance unit member age 16 or older, the agency shall determine the trade-in values of all additional vehicles and apply the values to the personal property limitations in subdivision 2. To establish the trade-in values of vehicles, an agency must use the National Automobile Dealers Association online car values and car prices guide. When a vehicle is not listed in the online guide, or when the applicant or participant disputes the trade-in value listed in the online guide as unreasonable given the condition of the particular vehicle, the agency may require the applicant or participant to document the trade-in value by securing a written statement from a motor vehicle dealer licensed under section [168.27](#), stating the amount that the dealer would pay to purchase the vehicle. The agency shall reimburse the applicant or participant for the cost of a written statement that documents a lower loan value.

*This change requires verifying any business accounts used to pay personal expenses. For CCAP, verification of business accounts used to pay personal expenses would be required when applicants and participants declare their assets are more than \$1 million. This is standard asset limit policy for CCAP based on federal law.*

**256P.04 DOCUMENTING, VERIFYING, AND RECERTIFYING ELIGIBILITY.**

**Subdivision 1. Exemption.**

Participants who receive Minnesota supplemental aid and who maintain Supplemental Security Income eligibility under chapters 256D and 256I are exempt from the reporting requirements of this section, except that the policies and procedures for transfers of assets are those used by the medical assistance program under section [256B.0595](#). Participants who receive child care assistance under chapter 119B are exempt from the requirements of this section.

**Subd. 2. Verification of information.**

An agency must only require verification of information necessary to determine eligibility and the amount of the assistance payment. If necessary, the agency shall assist the applicant or participant in obtaining verifications and required documents when the applicant or participant is unable to do so.

**Subd. 3. Documentation.**

The applicant or participant must document the information required under subdivisions 4 to 7 or authorize the agency to verify the information. The applicant or participant has the burden of providing documentary evidence to verify eligibility. The agency must accept a signed personal statement from the applicant or participant when determining personal property values under section [256P.02](#). The signed personal statement must include general penalty warnings and a disclaimer that any false or misrepresented information is subject to prosecution for fraud under sections [609.52](#) and [609.821](#) and perjury under section [609.48](#).

**Subd. 4. Factors to be verified.**

(a) The agency shall verify the following at application:

- (1) identity of adults;
- (2) age, if necessary to determine eligibility;
- (3) immigration status;
- (4) income;
- (5) spousal support and child support payments made to persons outside the household;
- (6) vehicles;
- (7) checking and savings accounts, including any business accounts used to pay expenses not related to the business;
- (8) inconsistent information, if related to eligibility;
- (9) residence;
- (10) Social Security number; and
- (11) use of nonrecurring income under section [256P.06, subdivision 3](#), clause (2), item (ix), for the intended purpose for which it was given and received.

(b) Applicants who are qualified noncitizens and victims of domestic violence as defined under section [256J.08, subdivision 73](#), clause (7), are not required to verify the information in paragraph (a), clause (10). When a Social Security number is not provided to the agency for verification, this requirement is satisfied when each member of the assistance unit cooperates with the procedures for verification of Social Security numbers, issuance of duplicate cards, and issuance of new numbers which have been established jointly between the Social Security Administration and the commissioner.

**Subd. 5. MFIP-only verifications.**

In addition to subdivision 4, the agency shall verify the following for programs under chapter 256J:

- (1) the presence of the minor child in the home, if questionable;
- (2) the relationship of a minor child to caregivers in the assistance unit;
- (3) pregnancy, if related to eligibility;
- (4) school attendance, if related to eligibility;
- (5) a claim of family violence, if used as a basis to qualify for the family violence waiver under chapter 256J; and

(6) disability, if used as the basis for reducing the hourly participation requirements under section [256J.55, subdivision 1](#), or for the type of activity included in an employment plan under section [256J.521, subdivision 2](#).

**Subd. 6. Personal property inconsistent information.**

If there is inconsistent information known to the agency when reporting personal property under section [256P.02](#), an agency must require the applicant or participant to document the information required under section [256P.02](#) or authorize the county agency to verify the information. The applicant or participant has the burden of providing documentary evidence to verify eligibility. The agency shall assist the applicant or participant in obtaining required documents when the applicant or participant is unable to do so.

**Subd. 7. Documenting and verifying inconsistent information.**

When the agency verifies inconsistent information under subdivision 4, paragraph (a), clause (8); subdivision 6; or subdivision 8, clause (3), the reason for verifying the information must be documented in the financial case record.

**Subd. 8. Recertification.**

The agency shall recertify eligibility in an annual interview with the participant. The interview may be conducted by telephone, by Internet telepresence, or face-to-face in the county office or in another location mutually agreed upon. A participant must be given the option of a telephone interview or Internet telepresence to recertify eligibility. During the interview, the agency shall verify the following:

- (1) income, unless excluded, including self-employment earnings;
- (2) assets when the value is within \$200 of the asset limit; and
- (3) inconsistent information, if related to eligibility.

**Subd. 9. MFIP-only recertification.**

In addition to subdivision 8, the agency shall verify the following for programs under chapter 256J:

- (1) the presence of the minor child in the home, if questionable; and
- (2) whether a single-caregiver household meets the requirements in section [256J.575, subdivision 3](#).

**Subd. 10. Participant's completion of form for recertification of eligibility.**

A participant must complete forms prescribed by the commissioner which are required for recertification of eligibility according to subdivisions 8 and 9. An agency must end benefits when the participant fails to submit the recertification form and verifications before the end of the certification period. If the participant submits the recertification form within 30 days of the termination of benefits, benefits must be reinstated and made available retroactively for the full benefit month.

**Subd. 11. Participant's completion of household report form.**

- (a) When a participant is required to complete a household report form, the following paragraphs apply.
- (b) If the agency receives an incomplete household report form, the agency must immediately return the incomplete form and clearly state what the participant must do for the form to be complete.

(c) The automated eligibility system must send a notice of proposed termination of assistance to the participant if a complete household report form is not received by the agency. The automated notice must be mailed to the participant by approximately the 16th of the month. When a participant submits an incomplete form on or after the date a notice of proposed termination has been sent, the termination is valid unless the participant submits a complete form before the end of the month.

(d) The submission of a household report form is considered to have continued the participant's application for assistance if a complete household report form is received within a calendar month after the month in which the form was due. Assistance shall be paid for the period beginning with the first day of that calendar month.

(e) An agency must allow good cause exemptions for a participant required to complete a household report form when any of the following factors cause a participant to fail to submit a completed household report form before the end of the month in which the form is due:

(1) an employer delays completion of employment verification;

(2) the agency does not help a participant complete the household report form when the participant asks for help;

(3) a participant does not receive a household report form due to a mistake on the part of the department or the agency or a reported change in address;

(4) a participant is ill or physically or mentally incapacitated; or

(5) some other circumstance occurs that a participant could not avoid with reasonable care which prevents the participant from providing a completed household report form before the end of the month in which the form is due.

**Subd. 12. Contacting third parties.**

An agency must not request information about an applicant or participant that is not of public record from a source other than agencies, the department, or the United States Department of Health and Human Services without the applicant's or participant's prior written consent. An applicant's signature on an application form constitutes consent for contact with the sources specified on the application. An agency may use a single consent form to contact a group of similar sources, such as banks or insurance agencies, but the sources to be contacted must be identified by the agency prior to requesting an applicant's consent.

**Subd. 13. Notice to undocumented persons; release of private data.**

Agencies, in consultation with the commissioner of human services, shall provide notification to undocumented persons regarding the release of personal data to the United States Citizenship and Immigration Services and develop protocols regarding the release or sharing of data about undocumented persons with the United States Citizenship and Immigration Services as required under sections 404, 411A, and 434 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**Subd. 14. Requirement to report to United States Citizenship and Immigration Services.**

The commissioner shall comply with the reporting requirements under United States Code, title 42, section 611a, and any federal regulation or guidance adopted under that law.

**Subd. 15. Personal statement.**

The agency may accept a signed personal statement from the applicant or participant explaining the reasons that the documentation requested in subdivision 3 is unavailable as sufficient documentation at the time of application, recertification, or change related to eligibility only for the following factors:

- (1) a claim of family violence, if used as a basis to qualify for the family violence waiver;
- (2) relationship of a minor child to caregivers in the assistance unit;
- (3) citizenship status from a noncitizen who reports to be, or is identified as, a victim of severe forms of trafficking in persons, if the noncitizen reports that the noncitizen's immigration documents are being held by an individual or group of individuals against the noncitizen's will. The noncitizen must follow up with the Office of Refugee Resettlement (ORR) to pursue certification. If verification that certification is being pursued is not received within 30 days, the case must be closed and the agency shall pursue overpayments. The ORR documents certifying the noncitizen's status as a victim of severe forms of trafficking in persons, or the reason for the delay in processing, must be received within 90 days, or the case must be closed and the agency shall pursue overpayments; and
- (4) other documentation unavailable for reasons beyond the control of the applicant or participant. The applicant or participant must have made reasonable attempts to obtain the documents requested under subdivision 3.

**Subd. 16. Excluded resources.**

Payments of funds made according to litigation and subsequent appropriation by the United States Congress to compensate members of Indian tribes for the taking of tribal lands by the federal government are excluded.

**256P.05 SELF-EMPLOYMENT EARNINGS.**

**Subdivision 1. Exempted programs.**

Participants who qualify for ~~child care assistance programs under chapter 119B~~, Minnesota supplemental aid under chapter 256D, and housing support under chapter 256I on the basis of eligibility for Supplemental Security Income are exempt from this section. Participants who qualify for child care assistance programs under chapter 119B are exempt from subdivision 3.

**Subd. 2. Self-employment income determinations.**

Applicants and participants must choose one of the methods described in subdivision 2 for determining self-employment earned income. An agency must determine self-employment income, which is either:

- (1) one-half of gross earnings from self-employment; or

(2) taxable income as determined from an Internal Revenue Service tax form that has been filed with the Internal Revenue Service within the last for the most recent year and in alignment with guidance provided for the Supplemental Nutrition Assistance Program. A 12-month average using net taxable income shall be used to budget monthly income.

**Subd. 3. Self-employment budgeting.**

(a) The self-employment budget period begins in the month of application or in the first month of self-employment. Applicants and participants must choose one of the methods described in subdivision 2 for determining self-employment earned income.

(b) Applicants and participants who elect to use taxable income as described in subdivision 2, clause (2), to determine self-employment income must continue to use this method until recertification, unless there is an unforeseen significant change in gross income equaling a decline in gross income of the amount equal to or greater than the earned income disregard as defined in section 256P.03 from the income used to determine the benefit for the current month.

(c) For applicants and participants who elect to use one-half of gross earnings as described in subdivision 2, clause (1), to determine self-employment income, earnings must be counted as income in the month received.

**256.98 WRONGFULLY OBTAINING ASSISTANCE; THEFT.**

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**Subdivision 1. Wrongfully obtaining assistance.**

A person who commits any of the following acts or omissions with intent to defeat the purposes of sections 145.891 to 145.897, the MFIP program formerly codified in sections 256.031 to 256.0361, the AFDC program formerly codified in sections 256.72 to 256.871, chapter 256B, 256D, 256I, 256J, 256K, or 256L, child care assistance programs, and emergency assistance programs under section 256D.06, is guilty of theft and shall be sentenced under section 609.52, subdivision 3, clauses (1) to (5):

(1) obtains or attempts to obtain, or aids or abets any person to obtain by means of a willfully false statement or representation, by intentional concealment of any material fact, or by impersonation or other fraudulent device, assistance or the continued receipt of assistance, to include child care assistance or vouchers produced according to sections 145.891 to 145.897 and MinnesotaCare services according to sections 256.9365, 256.94, and 256L.01 to 256L.15, to which the person is not entitled or assistance greater than that to which the person is entitled;

(a) Knowingly using inaccurate self-employment records to conceal income or assets including but not limited to the following methods:

(1) transfer of funds between financial accounts, including business and personal accounts;

(2) submission of a tax form to a state, county, or tribal authority inconsistent with the tax form filed with the state or federal tax authority;

(3) submission of business records to a state, county, or tribal authority that are not an accurate reflection of earnings, income, expenses, or activities; or

(4) use of business accounts to pay personal expenses that are not allowable business expenses under the Internal Revenue Code.

(2) knowingly aids or abets in buying or in any way disposing of the property of a recipient or applicant of assistance without the consent of the county agency; or

(3) obtains or attempts to obtain, alone or in collusion with others, the receipt of payments to which the individual is not entitled as a provider of subsidized child care, or by furnishing or concurring in a willfully false claim for child care assistance.

The continued receipt of assistance to which the person is not entitled or greater than that to which the person is entitled as a result of any of the acts, failure to act, or concealment described in this subdivision shall be deemed to be continuing offenses from the date that the first act or failure to act occurred.

*The change to subdivision 4 aligns CCAP's self-employment income determination with other programs subject to 256P.05, which the department recommends to align with SNAP.*

#### **119B.09 FINANCIAL ELIGIBILITY.**

Subd. 4. **Eligibility; annual income; calculation.** (a) Annual income of the applicant family is the current monthly income of the family multiplied by 12 or the income for the 12-month period immediately preceding the date of application, or income calculated by the method which provides the most accurate assessment of income available to the family.

(b) Self-employment income must be calculated based on section 256P.05, subdivision 2 gross receipts less operating expenses.

(c) Income changes are processed under section 119B.025, subdivision 4. Included lump sums counted as income under section 256P.06, subdivision 3, must be annualized over 12 months. Income must be verified with documentary evidence. If the applicant does not have sufficient evidence of income, verification must be obtained from the source of the income.