

☞ **01hr\_AC-CF\_CRule\_02-104\_pt01**



(FORM UPDATED: 08/11/2010)

**WISCONSIN STATE LEGISLATURE ...  
PUBLIC HEARING - COMMITTEE RECORDS**

**2001-02**

(session year)

**Assembly**

(Assembly, Senate or Joint)

**Committee on ... Children and Families (AC-CF)**

**COMMITTEE NOTICES ...**

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

**INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL**

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

\* Contents organized for archiving by: Stefanie Rose (LRB) (May 2012)

Scott McCallum  
Governor

Jennifer Alexander  
Secretary



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY

201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

October 28, 2002

Senator Judith Robson  
Room 15 South  
State Capitol  
P.O. Box 7882  
Madison 53707-7882

Representative Steve Kestell  
Room 17 West  
State Capitol  
P.O. Box 8952  
Madison 53708-8952

Subject: DWD 56/CR 02-104, relating to the administration of child care funds

Dear Senator Robson and Representative Kestell:

The Department of Workforce Development agrees to the request of the Senate Committee on Human Services and Aging to modify Clearinghouse Rule 02-104 by deleting Sections 17 and 22. The department also submits germane modifications to the rule withdrawing Sections 14, 15, 16, and 18 and amending Sections 45 and 50.

The department is withdrawing Sections 14, 15, 16, and 18 because they are related to provisions in Section 17, which the department has agreed to delete.

The department is also removing a reference to the rule provision in Section 17 that was in Section 45. The previous version specified an exception to the requirement that counties annually survey child care providers' rates if the department's maximum reimbursement rates would not be increased due to insufficient funds. The current version submitted removes this exception.

**SECTION 45. DWD 56.06 (1)(b) is amended to read:**

**DWD 56.06 (1)(b) Survey.** The county or tribal agency, except a tribal agency acting under par. (a)2., shall annually contact all licensed group day care centers and licensed family day care centers in the county or tribal area to determine the child care prices they charge to the general community, except if the department arranges for a survey independent of the county or tribal agency. The child care prices shall be submitted in writing to be included in the survey.

In addition, the department is submitting a modification to Section 50 on provider appeal rights. The new provision will change the deadline for filing an appeal from 30 days from the date the notice was mailed to 30 days from the date printed on the notice. This modification is being submitted in response to a request from the Division of Hearings and Appeals.

**Section DWD 56.07 (3) in Section 50 is created to read:**

**Section DWD 56.07 (3)** A request for departmental review shall be in writing and received at the address provided on the notice within 30 days from the date printed on the notice of action under sub. (1).

The committee also requested a review of the provisions on monitoring in Section 38. This section gives specific authority to county agencies and to the department for documentation requirements and inspections related to monitoring a child care provider's compliance with the child care program. There is general authority in the current rule at s. DWD 56.04(7) for county agencies to take all reasonable steps necessary to recoup or recover any overpayments and to require providers to correct violations of licensing rules before payments are issued.

The county agencies are currently requiring documentation and making inspections as provided in the proposed Section 38. The proposed rule is more detailed so there is specific authority for county and department administrators to show to providers when enforcing program requirements and to help providers understand their responsibilities under the program. The monitoring actions listed are generally done by counties. The department is also given authority for monitoring to ensure there is specific authority allowing for department audits.

If you have any further concerns, please contact Mary Rowin at 267-9022 or Rebecca Brueggeman at 266-9703.

Sincerely,



Kimberly Markham  
Executive Assistant

Scott McCallum  
Governor

Jennifer Alexander  
Secretary



**OFFICE OF THE SECRETARY**

201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

**State of Wisconsin  
Department of Workforce Development**

---

August 28, 2002

President of the Senate  
220 South, State Capitol  
Madison, Wisconsin 53702

Speaker of the Assembly  
211 West, State Capitol  
Madison, Wisconsin 53702

**Notice of Administrative Rules in Final Draft Form**

Clearinghouse rule number: 02-104

Rule number: DWD 56

Relating to: Administration of child care funds

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules in final draft form and a rule report as required by s. 227.19(3), Stats., for referral to the appropriate legislative standing committees. If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink that reads "Jennifer Alexander". The signature is written in a cursive style with a large, looping initial 'J'.

Jennifer Alexander  
Secretary

Scott McCallum  
Governor

Jennifer Alexander  
Secretary



State of Wisconsin

Department of Workforce Development

---

OFFICE OF THE SECRETARY

201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

**Rule Analysis for Legislative Review**

**Proposed rules relating to the administration of child care funds**

**DWD 56  
CR 02-104**

**Need for rules**

The proposed rules provide authority to adjust various policies if child care funds are insufficient to serve all eligible families, increase the number of age categories used to determine maximum reimbursement rates from 2 to 4, exclude providers at which more than 75% of the children's care is subsidized from the survey used to determine market rates, authorize new methods of monitoring to prevent and address fraud and overpayments, and create appeal rights for providers.

**Public hearing response**

A public hearing was held in Madison on August 13, 2002. A summary of the hearing comments and the department's responses is attached.

**Response to Legislative Council staff recommendations**

Response to comment 5.e.: Group limitations do not apply to in-home providers because they are not required to be licensed.

Response to comment 5.c. and 5.h.: The department does not agree that the procedural issues raised in these comments must be in administrative rule.

Other comments were accepted.

**Final regulatory flexibility analysis**

A final regulatory flexibility analysis is not required because the rule will not have a significant economic impact on a substantial number of small businesses. The rule affects child care providers, some of which are small businesses as defined in s. 227.114, Stats. There is no significant change in the procedures they must follow to participate in the program beyond what is in statute.

**Department contacts**

Rebecca Brueggeman  
Office of Child Care  
Division of Workforce Solutions  
266-9703

Elaine S. Pridgen  
Administrative Rules Coordinator  
Office of Legal Counsel  
267-9403

Scott McCallum  
Governor

Jennifer Alexander  
Secretary



State of Wisconsin

## Department of Workforce Development

---

### OFFICE OF THE SECRETARY

201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-7552  
Fax: (608) 266-1784  
<http://www.dwd.state.wi.us/>

### Rule Analysis for Legislative Review

#### Proposed rules relating to the administration of child care funds

DWD 56  
CR 02-104

#### Need for rules

The proposed rules provide authority to adjust various policies if child care funds are insufficient to serve all eligible families, increase the number of age categories used to determine maximum reimbursement rates from 2 to 4, exclude providers at which more than 75% of the children's care is subsidized from the survey used to determine market rates, authorize new methods of monitoring to prevent and address fraud and overpayments, and create appeal rights for providers.

#### Public hearing response

A public hearing was held in Madison on August 13, 2002. A summary of the hearing comments and the department's responses is attached.

#### Response to Legislative Council staff recommendations

Response to comment 5.e.: Group limitations do not apply to in-home providers because they are not required to be licensed.

Response to comment 5.c. and 5.h.: The department does not agree that the procedural issues raised in these comments must be in administrative rule.

Other comments were accepted.

#### Final regulatory flexibility analysis

A final regulatory flexibility analysis is not required because the rule will not have a significant economic impact on a substantial number of small businesses. The rule affects child care providers, some of which are small businesses as defined in s. 227.114, Stats. There is no significant change in the procedures they must follow to participate in the program beyond what is in statute.

#### Department contacts

Rebecca Brueggeman  
Office of Child Care  
Division of Workforce Solutions  
266-9703

Elaine S. Pridgen  
Administrative Rules Coordinator  
Office of Legal Counsel  
267-9403

**State of Wisconsin**  
**Department of Workforce Development**

**Chapter DWD 56**

**ADMINISTRATION OF CHILD CARE FUNDS**

The Wisconsin Department of Workforce Development proposes an order to repeal ss. DWD 56.04(1), 56.04(4)(a), and 56.05(5); to renumber ss. DWD 56.02(7), 56.02(20), 56.02(21), 56.02(22), 56.02(23), 56.02(24), 56.02(25), 56.03(5)(intro), 56.03(5)(b), 56.04(5), and 56.05(4); to renumber and amend ss. DWD 56.03(5)(a), 56.04(3), 56.04(2)(d)3., 56.04(4)(b), 56.04(4)(c), 56.04(4)(d), 56.04(4)(e), 56.04(6), and 56.04(7); to amend ss. DWD 56.01, 56.02(4), 56.02(11), 56.02(12), 56.02(13), 56.02(15)(note), 56.02(21), 56.03(title), 56.04(5)(d), 56.05(1), 56.06(1)(b), 56.06(1)(c)2., 56.06(2)(a)2., 56.06(2)(b)1., 56.06(2)(d), 56.08(1)(note), 56.08(3)(a)5.; to repeal and recreate ss. DWD 56.02(3), 56.02(15), 56.04(title), 56.04(5)(c)1., 56.04(5)(c)2., and 56.04(5)(c)3.; to create ss. DWD 56.02(7), 56.02(14), 56.02(20), 56.03(4)(b), 56.03(5), 56.03(6)(title), 56.04(1)(d), 56.04(2)(b), 56.04(2)(d)1.b., 56.04(2)(e), 56.04(2)(f), 56.04(2)(g), 56.04(2)(h), 56.04(2)(i), 56.04(5)(e), 56.04(5)(f), 56.04(6), 56.04(7)(e), 56.04(8), 56.045(title), 56.05(2), 56.05(4)(b), 56.06(1)(c)3., 56.06(1)(c)4., 56.07, and 56.08(3)(a)6., relating to the administration of child care funds.

---

**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 49.155, excluding subs. (1d) and (1g), and 227.11, Stats.

**Statute interpreted:** Section 49.155, excluding subs. (1d) and (1g), Stats.

The proposed rules affect the administration of child care funds for the child care subsidy program under s. 49.155, excluding subs. (1d) and (1g), Stats.

**Adjustments due to insufficient funds.** The proposed rules provide authority to adjust various policies if child care funds are insufficient to serve all eligible families. The options include limiting the increase in the maximum rate paid to child care providers, raising the parent co-payment levels, and establishing a waiting list. Priority status on the waiting list will be given to the following individuals in descending order: W-2 participants; parents whose children have special needs; parents who need child care services to participate in educational activities under s. 49.155(1m)(a)1m, Stats.; foster parents; and kinship care relatives.

**Creation of more precise categories for maximum reimbursement rates.** Maximum reimbursement rates to child care providers are determined by surveying licensed providers to determine the prices they charge to parents paying out of their personal funds and setting maximum rates under the child care subsidy program so that at least 75 percent of the slots in each county can be purchased at or below the maximum reimbursement rate. Currently maximum rates are set based on a survey of licensed providers' prices for children in two categories, ages 0 to 1 and 2 to 12. The department does not believe that the maximum rates set based on these categories accurately reflect market prices. The proposed rules provide the more precise categories of children ages 0 to 1, 2 to 3, 4 to 5, and 6 and older.

**Increased focus on monitoring to prevent and address fraud and overpayments.** The proposed rules authorize increased monitoring in the following ways:

- The child care administrative agency may refuse to authorize payment for child care services to a licensed provider if the provider refuses to submit documentation of the provider's child care prices in response to an agency request.
- An agency may limit the number of children authorized to a family day care provider unless the provider can show that he or she will not exceed the applicable group size limitation.
- An agency may authorize payments to a licensed provider based on attendance rather than enrollment if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.
- If a provider submits false attendance reports, refuses to provide documentation of the child's actual attendance or gives false or inaccurate child care price information, the department or agency may refuse to issue new authorizations to the provider for a period not to exceed 6 months, revoke existing authorizations, and refuse to issue payments until the provider has corrected the violation.
- An agency or the department may require a provider to submit documentation signed by the parent of the actual times that the child was dropped off to and picked up from the provider, contact the parents to determine the child's actual attendance hours, require the provider to submit attendance and payment records for families that pay for child care costs out of their own personal funds, require the provider to have attendance records available at the child care site whenever the department or agency requests to review them, and make on-site inspections to monitor provision of authorized services.

**Miscellaneous:**

- A child care administrative agency may not authorize payment to a provider for the care of a child when the care is done by a legally responsible parent.
- An agency may refuse to authorize payment on a provider's attendance report that is submitted more than 3 months after the attendance report was issued.
- An agency may authorize payment to a licensed or certified provider to hold a slot for a child if the parent has a temporary break in employment and intends to return to work and continue to use the child care provider upon return to work. The agency may authorize payment for no more than 6 weeks if the absence is due to a medical reason and is documented by a physician or for no more than 4 weeks if the absence is for other reasons.
- The rates of providers at which more than 75% of the children's care is subsidized will not be included in the annual survey to determine market rates.
- If the department refuses to issue payment based on a provider's violation of a requirement in this chapter, the provider may not hold the parent liable for payment other than the copayment and any amount that the parent agreed to above the department's maximum reimbursement rate if the parent relied on an approved authorization for care for his or her child to receive care from the provider.
- County and tribal agencies must ensure that each new child care worker completes the department's initial training during the first 6 months of employment.
- A child care provider may request a departmental review under chapter 227, Stats., of a refusal to issue new child care authorizations, a revocation of existing child care authorizations, a refusal to issue payment to the provider, a determination of the provider's payment amount, and collection of an overpayment, including the determination of the amount of the overpayment, the determination of the amount of the overpayment still owed, or a decision under s. 49.85, Stats., to recover the overpayment by means of certification to the Wisconsin department of revenue.
- Child support is deleted from the definition of income to comply with current statutory language.



**SECTION 1. DWD 56.01 is amended to read:**

**DWD 56.01 Authority, purpose, and applicability.** This chapter is promulgated under the authority of ~~s. 49.155(1g)~~ ss. 49.155, excluding subs. (1d) and (1g), and 227.11(2), Stats., to provide definitions, procedures, and standards for the administration of child care funds. This chapter applies to the department, county and tribal agencies, Wisconsin works agencies, private agencies under contract to administer child care funds, ~~both licensed and certified providers of child care~~ providers, and eligible parents.

**SECTION 2. DWD 56.02 (3) is repealed and recreated to read:**

**DWD 56.02 (3)** “Child care administrative agency” means any agency that has a contract with the department to administer child care funds or any agency that has a subcontract to administer child care funds with an agency that has a contract with the department.

**SECTION 3. DWD 56.02 (4) is amended to read:**

**DWD 56.02 (4)** “Child care funds” means funding ~~allocated by the state to child care administrative agencies~~ for child care purposes under s. ~~49.155(1g)~~ 49.155, excluding subs. (1d) and (1g), Stats.

**SECTION 4. DWD 56.02 (7) is renumbered DWD 56.02 (8).**

**SECTION 5. DWD 56.02 (7) is created to read:**

**DWD 56.02 (7)** “Child care worker” means a person employed by a child care administrative agency whose duties include determining or redetermining child care subsidy eligibility, authorizing child care funds, making child care payments to providers, or determining and processing the recoupment of child care parent and provider overpayments.

**SECTION 6. DWD 56.02 (11), (12), and (13) are amended to read:**

**DWD 56.02 (11)** “Food stamp employment and training program” means the program established under s. ~~49.124, 49.13~~ Stats., for the purpose of assisting food stamp recipients to develop marketable work skills and obtain gainful employment.

**DWD 56.02 (12)** “Foster parent” means a person ~~required to be~~ licensed under s. 48.62(1)(a), Stats.

**DWD 56.02 (13)** “Income” means money, wages or salary, net income from self-employment, social security, dividends, interest on savings or bonds, income from estates or trusts, net rental income or royalties, public assistance, Supplemental Security Income (SSI), pensions and annuities,

unemployment insurance, worker's compensation, alimony and other maintenance payments, ~~child support payments~~ and veteran pensions.

**SECTION 7. DWD 56.02 (14) is created to read:**

**DWD 56.02 (14)** "In-home provider" means a person caring for a child in the child's own home.

**SECTION 8. DWD 56.02 (15) is repealed and recreated to read:**

**DWD 56.02 (15)** "Kinship care relative" has the same meaning as "kinship care relative" under s. 48.57 (3m)(a)2., Stats., and "long-term kinship care relative" under s. 48.57 (3n)(a)2., Stats. A "kinship care relative" may or may not be receiving payments under ss. 48.57 (3m) or (3n), Stats.

**SECTION 9. DWD 56.02 (15)(note) is amended to read:**

**Note:** ~~Section~~ Sections 48.57 (3m) (a)2., and 48.57 (3n) (a)2., Stats., ~~provides:~~ "Kinship care relative" means provide that a "kinship care relative" and a "long-term kinship care relative" mean "a stepparent, brother, sister, stepbrother, stepsister, first cousin, nephew, niece, aunt, uncle or any person of a preceding generation as denoted by the prefix of grand, great or great-great, whether by consanguinity, direct affinity or legal adoption, or the spouse of any person named in this paragraph, even if the marriage is terminated by death or divorce."

**SECTION 10. DWD 56.02 (20), (21), (22), (23), (24), and (25) are renumbered DWD 56.02 (21), (22), (23), (24), (25), and (26), respectively.**

**SECTION 11. DWD 56.02 (21) is amended to read:**

**DWD 56.02 (21)** "Treatment foster parent" means a person ~~required to be~~ licensed under s. 48.62(1)(b), Stats.

**SECTION 11. DWD 56.02 ( 20) is created to read:**

**DWD 56.02 (20)** "Special need" means an emotional, behavioral, physical, or personal need of a child requiring more than the usual amount of care and supervision for the child's age, as documented by a physician, psychologist, special educator, or other qualified professional. A "special need" includes a developmental disability.

**SECTION 13. DWD 56.03 (title) is amended to read:**

**DWD 56.03 (title) Department of workforce development powers and responsibilities.**

**SECTION 14. DWD 56.03 (5)(intro) and (5)(a) are renumbered DWD 56.03 (4)(intro) and (4)(a), and, as renumbered, DWD 56.03 (4)(a) is amended to read:**

**DWD 56.03 (4)(intro) RATE REVIEW.** (a) ~~The~~ Except as provided in par. (b), the department shall annually review child care rates set by each county and tribe and shall approve or disapprove each county agency's rates and tribal agency's rates based on the following criteria:

**SECTION 15. DWD 56.03 (4)(b) is created to read:**

**DWD 56.03 (4)(b)** If the department determines that maximum rates will not be increased due to insufficient funds as provided under s. DWD 56.03 (5)(b), the department may instruct each county and tribe that a survey of child care rates under s. DWD 56.06 (1)(b) is not required.

**SECTION 16. DWD 56.03 (5)(b) is renumbered as DWD 56.03 (6).**

**SECTION 17. DWD 56.03 (5) is created to read:**

**DWD 56.03 (5) ADJUSTMENTS DUE TO INSUFFICIENT FUNDS.** The department may make one or more of the following adjustments when funding is not sufficient to meet the needs of all eligible parents applying for child care assistance under s. 49.155, excluding subs. (1d) and (1g), Stats.:

(a) Establish a waiting list for parents who cannot be accommodated by available funding. The waiting list shall include a parent's name; address and phone number; priority status; the date of the parent's application; and the household composition, including the number and ages of children needing child care. The department shall give priority status to the following individuals in descending order:

1. A W-2 participant under s. 49.147 (2) to (5) or 49.148 (1m), Stats.
2. A parent whose child has a special need.
3. A parent who needs child care services to participate in activities under s. 49.155 (1m)(a)1m., Stats.
4. A foster parent.
5. A kinship care relative.

(b) Limit the increase in maximum rates in one of the following ways:

1. Hold the maximum rates at the current level for no more than one year.
2. Limit a maximum rate increase to a percentage amount determined by the department.

(c) Adjust the co-payment schedule as provided in s. DWD 56.08 (3).

**SECTION 18. DWD 56.03 (6)(title) is created to read:**

**DWD 56.03 (6)(title) VARIANCE.**

**SECTION 19. DWD 56.04 (title) is repealed and recreated to read:**

**DWD 56.04 (title) Policies for child care services through the voucher system.**

**SECTION 20. DWD 56.04 (1) is repealed.**

**SECTION 21. DWD 56.04 (3) is renumbered DWD 56.04 (1) and, as renumbered, DWD 56.04 (1) (a)(intro), (1)(a)2., (1)(b)(intro), and (1)(c) are amended to read:**

**DWD 56.04 (1)(a)(intro) AUTHORIZED PROVIDERS.** (a) A child care administrative agency may ~~pay for~~ authorize payment for child care services provided by any of the following child care providers:

**DWD 56.04(1)(a)2.** Providers certified by a county or tribal agency under standards specified in s. DWD 55.08 or 55.09. The agency may authorize payment to providers who become certified from the date the certification application was received by the child care administrative agency.

**DWD 56.04 (1) (b) (intro)** A child care administrative agency may ~~reimburse for~~ authorize payment for services from other than a child care provider under par. (a) only if at least one of the following conditions is met:

**DWD 56.04 (1) (c)** A child care administrative agency may not ~~reimburse~~ authorize payment to a person legally responsible for a child under s. 49.90, Stats., for child care services.

**SECTION 22. DWD 56.04 (1)(d) is created to read:**

**DWD 56.04 (1)(d)** The child care administrative agency may not authorize payment to a provider for the care of a child when the care is done by a legally responsible parent.

**SECTION 23. DWD 56.04 (4)(a) is repealed.**

**SECTION 24. DWD 56.04 (4)(b) is renumbered DWD 56.04 (2)(a) and, as renumbered, DWD 56.04 (2)(a)1.c. is amended to read:**

**DWD 56.04 (2)(a)1.c.** The voucher shall set a maximum amount of authorized ~~reimbursement~~ which payment that is no greater than the county or tribal maximum rate the lesser of the provider price and the county or tribal maximum rate, minus any co-payment that the parent is required to make.

**SECTION 25. DWD 56.04 (2)(b) is created to read:**

**DWD 56.04 (2)(b)** A child care administrative agency may authorize payment for child care services to a two parent family only if both parents are participating in an approved activity as defined in s. 49.155 (1m)(a) or if one parent is participating in an approved activity and the other parent is

unable to care for the child due to a disability or health condition as verified by a doctor, psychiatrist, or psychologist.

**SECTION 26. DWD 56.04 (4)(c) is renumbered 56.04(2)(c), and, as renumbered, is amended to read:**

**DWD 56.04 (2)(c)** If a county or tribal agency ~~purchases~~ authorizes payment for child care services by means of a voucher issued to the parents or by contract with a provider, billing and collection of any parent co-payment requirement is the responsibility of the provider.

**SECTION 27. DWD 56.04 (4)(d) is renumbered 56.04(2)(d), and as renumbered, DWD 56.04 (2)(d)(intro), DWD 56.04 (2)(d)1., and DWD 56.04 (2)(d)2. are amended to read:**

**DWD 56.04 (2)(d)(intro)** The child care administrative agency shall ~~reimburse~~ authorize payment to child care providers as follows:

**DWD 56.04 (2)(d)1.** ~~Except as provided in subd. 3., for~~ For licensed group and family day care centers, the agency shall ~~make payments~~ authorize payment based on authorized units of service, except in the following circumstances:

**DWD 56.04 (2)(d)2.** For certified providers, the agency shall ~~reimburse~~ authorize payment for units of service used by each child, up to the maximum number of authorized units, except as provided in subd. (2)(h).

**SECTION 28. DWD 56.04 (2)(d)3. is renumbered DWD 56.04 (2)(d)1.a. and, as renumbered, is amended to read:**

**DWD 56.04 (2)(d)1.a.** ~~For licensed group and family day care centers, when the schedule of child care to be used is expected to vary widely, the~~ The agency may ~~make payments~~ authorize payment to licensed providers based on units of service used by each child, up to the maximum number of authorized units, with the reimbursement rate increased by 10% to account for absent days, if the schedule of child care to be used is expected to vary widely.

**SECTION 29. DWD 56.04 (2)(d)1.b. is created to read:**

**DWD 56.04 (2)(d)1.b.** The agency may authorize payment to licensed providers based on units of service used by each child, up to the maximum number of authorized units, if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

**SECTION 30. DWD 56.04 (2)(e), (f), (g), (h), and (i) are created to read:**

**DWD 56.04 (2)(e)** The child care administrative agency may refuse to authorize payment for child care services to a licensed provider if the provider refuses to submit documentation of the provider's child care prices in response to an agency request.

**DWD 56.04 (2)(f)** The child care administrative agency may refuse to authorize payment on a provider's attendance report that is submitted more than 3 months after the attendance report was issued.

**DWD 56.04 (2)(g)** The child care administrative agency may limit the number of children that may be authorized to a certified or licensed family day care provider, who is not an in-home provider, for a particular time period, unless the provider can show that he or she will not exceed the applicable group size limitation.

**DWD 56.04 (2)(h)** The child care administrative agency may authorize payment to a licensed or certified provider to hold a slot for a child if the parent has a temporary break in employment and intends to return to work and continue to use the child care provider upon return to work. The agency may authorize payment for no more than 6 weeks if the absence is due to a medical reason and is documented by a physician or for no more than 4 weeks if the absence is for other reasons. The department and child care administrative agency may not consider payment for a temporary absence to be an overpayment if the parent intended to return to work but does not actually return.

**DWD 56.04 (2)(i)** The department may issue all payments by electronic funds transfer.

**SECTION 31. DWD 56.04 (4)(e) is renumbered DWD 56.045 and, as renumbered, is amended to read:**

**DWD 56.045** The department may reimburse a county agency, tribal agency, or W-2 agency, or private nonprofit agency that provides child care for children of migrant workers for direct child care services or child care costs incurred on-site or for contracted child care approved in advance by the department. Reimbursement rates for contracts ~~shall~~ and services may be negotiated by the county, tribe, or W-2 agency and approved by the department or may be set by the department.

**SECTION 32. DWD 56.04 (5) is renumbered DWD 56.04 (3).**

**SECTION 33. DWD 56.04 (6) is renumbered DWD 56.04 (4) and, as renumbered, is amended to read:**

**DWD 56.04 (4) PARENTAL CHOICE.** ~~Parent choice of provider.~~ Parents may choose the particular ~~licensed or certified~~ child care provider for their child, except that parents may use in-home day care only if one of the criteria under sub. ~~(3)(e)~~ (1)(e) is met.

**SECTION 34. DWD 56.04 (7) is renumbered DWD 56.04 (5) and, as renumbered, DWD 56.04 (5)(c)(intro) is amended to read:**

**DWD 56.04 (5)(c)(intro)** If a child care administrative agency has given notice to a provider that the provider is in violation of licensing or certification rules and the provider has not corrected the violation or if the provider submits false attendance reports, refuses to provide documentation of the child's actual attendance, or gives false or inaccurate child care price information, the child care administrative agency or department may take one or more of the following steps:

**SECTION 35. DWD 56.04 (5)(c)1., 2., and 3. are repealed and recreated to read:**

**DWD 56.04 (5)(c)1.** Refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months.

**DWD 56.04 (5)(c)2.** Revoke existing child care authorizations to the provider.

**DWD 56.04 (5)(c)3.** Refuse to issue payments to the provider until the provider has corrected the violation.

**SECTION 36. DWD 56.04 (5)(d) is amended to read:**

**DWD 56.04 (5)(d)** When the department or a child care administrative agency ~~stops~~ refuses to issue new authorizations, revokes existing authorizations, or refuses to issue payments to a provider under par. (c), the child care administrative agency shall provide written notice to the parent as soon as possible before the effective date of the sanction.

**SECTION 37. DWD 56.04 (5)(e) and (5)(f) are created to read:**

**DWD 56.04 (5)(e)** If the provider has not repaid an overpayment, the child care administrative agency or department may recover the overpayment by making an offset from current or future funds under its control that are payable to the provider.

**DWD 56.04 (5)(f)** If the department refuses to issue payment based on a provider's violation of a requirement in this chapter, the provider may not hold the parent liable for payment other than the copayment and any amount that the parent agreed to above the department's maximum reimbursement rate if the parent relied on an approved authorization for care for his or her child to receive care from the provider.

**SECTION 38. DWD 56.04 (6) is created to read:**

**DWD 56.04 (6) MONITORING OF CHILD CARE PROGRAMS.** The department or the child care administrative agency may take one or more of the following steps to monitor a provider's compliance with program requirements:

- (a) Require the provider to submit documentation signed by the parent of the actual times that the child was dropped off to and picked up from the child care provider.
- (b) Contact the parents to determine the child's actual attendance hours.
- (c) Require the provider to submit attendance and payment records for families that pay for child care costs out of their own personal funds.
- (d) Require the provider to have attendance records available at the child care site whenever the department or child care administrative agency requests to review them.
- (e) Make on-site inspections to monitor provision of authorized services.

**SECTION 39. DWD 56.045 (title) is created to read:**

**DWD 56.045 (title) Payment of child care costs outside of the voucher system.**

**SECTION 40. DWD 56.05 (1) is amended to read:**

**DWD 56.05 (1) GENERAL.** Each child care administrative agency shall administer child care funds ~~specified in s. DWD 56.04 (1)~~ in accordance with the requirements set forth in this section. A child care administrative agency may subcontract for administration of child care funds with the approval of the department.

**SECTION 41. DWD 56.05 (2) is created to read:**

**DWD 56.05 (2) TRAINING REQUIREMENT.** County and tribal agencies shall ensure that each new child care worker completes the department's initial training during the first 6 months of employment.

**SECTION 42. DWD 56.05 (4) is renumbered DWD 56.05 (4)(a).**

**SECTION 43. DWD 56.05 (4)(b) is created to read:**

**DWD 56.05 (4)(b)** County and tribal agencies shall require child care providers to sign a memorandum of understanding prior to receiving authorization or payment that specifies that the provider agrees to adhere to child care subsidy attendance reporting policies and cooperate with the agency in all program monitoring efforts.

**SECTION 44. DWD 56.05 (5) is repealed.**



**SECTION 45. DWD 56.06 (1)(b) is amended to read:**

**DWD 56.06 (1)(b) Survey.** The county or tribal agency, except a tribal agency acting under par. (a)2., shall annually contact all licensed group day care centers and licensed family day care centers in the county or tribal area to determine the child care prices they charge to the general community, except as provided in s. DWD 56.03 (4)(b) or if the department arranges for a survey independent of the county or tribal agency. The child care prices shall be submitted in writing to be included in the survey.

**SECTION 46. DWD 56.06 (1)(c)2. is amended to read:**

**DWD 56.06 (1)(c)2.** Children age 2 ~~and older~~ to 3 years.

**SECTION 47. DWD 56.06 (1)(c)3. and 4. are created to read:**

**DWD 56.06 (1)(c)3.** Children age 4 to 5 years.

**DWD 56.06 (1)(c)4.** Children age 6 to 13 years.

**SECTION 48. DWD 56.06 (2)(a)2. and DWD 56.06 (2)(b)1. are amended to read:**

**DWD 56.06 (2)(a)2.** In determining whether 75% of the day care slots can be purchased at or below the maximum rate, the county or tribal agency may exclude day care centers ~~which~~ that operate less than 5 days a week or 5 hours a day, ~~which~~ receive funding from a county department established under s. 51.42 or 51.437, Stats., ~~or which~~ do not have a set full-time, weekly child care price, or at which more than 75% of the children's care is subsidized under s. 49.155, excluding subs. (1d) and (1g), Stats.

**DWD 56.06(2)(b)1.** Maximum rates shall be set so that at least 75% of the family day care center slots in the county or tribal area may be purchased at or below the maximum rates. The number of slots attributed to a center shall be equal to the center's licensed capacity. In determining whether 75% of the day care slots can be purchased at or below the maximum rate, the county or tribal agency may exclude day care centers that operate less than 5 days a week or 5 hours a day, receive funding from a county department established under s. 51.42 or 51.437, Stats., do not have a set full-time, weekly child care price, or at which more than 75% of the children's care is subsidized under s. 49.155, excluding subs. (1d) and (1g), Stats.

**SECTION 49. DWD 56.06 (2)(d) is amended to read:**

**DWD 56.06 (2)(d) In-home day care.** For in-home care, the county or tribal agency shall establish the maximum rate at the level of no less than the state minimum wage established under ch. 104, Stats.,

and ch. DWD 272. The child care administrative agency may ~~choose to reimburse~~ authorize payment to the child care provider at the local reimbursement rate for the type of care provided multiplied by the number of children in care if this rate exceeds the minimum wage.

**SECTION 50. DWD 56.07 is created to read:**

**DWD 56.07 Provider appeal rights.** (1) A child care provider who contests any of the following actions may request a departmental review:

- (a) Refusal to issue new child care authorizations.
- (b) Revocation of existing child care authorizations.
- (c) Refusal to issue payment to the provider.
- (d) Determination of the provider's payment amount.

(e) Collection of an overpayment, including the determination of the amount of the overpayment, the determination of the amount of the overpayment still owed, or a decision under s. 49.85, Stats., to recover the overpayment by means of certification to the Wisconsin department of revenue. The provider may make only one request for appeal of the basis for the overpayment claim. Any subsequent appeals shall be limited to questions of prior payment of the debt that the department or agency is proceeding against or mistaken identity of the debtor.

(2) A request for a departmental review may be made by a child care provider or someone with legal authority to act on their behalf.

(3) A request for a departmental review shall be in writing and received at the address provided on the notice within 30 days from the date the notice of action under sub. (1) was mailed.

(4) Upon receipt of a timely request for departmental review, the department shall give the child care provider a contested case hearing under chapter 227, Stats.

(5) The department may contract with the division of hearings and appeals to conduct the review.

**SECTION 51. DWD 56.08(1)(note) is amended to read:**

**DWD 56.08(1)(note):** This copayment schedule is current as of ~~February 1, 2001~~ April 1, 2002. DWD may make future adjustments to the schedule as described in sub. (3).

**SECTION 52. DWD 56.08 (3)(a)5. is amended to read:**

**DWD 56.08 (3)(a)5.** A change in economic factors affecting the cost of child care to the state, such as an increase in the demand for child care financial assistance under s. ~~49.175 (1) (e)~~ 49.155, excluding subs. (1d) and (1g), Stats.

**SECTION 53 DWD 56.08(3)(a) 6. is created to read:**

**DWD 56.08(3)(a)6.** Funding is not sufficient to meet the needs of all eligible families applying for child care assistance.

**EFFECTIVE DATE.** This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

### Child Care Co-Payment Schedule for Licensed and Certified Care

Look down the column of the appropriate family size until you find the gross family monthly income level at or just less than the family income. Look to the right to find the appropriate co-payment by family and type of care.

FAMILY SIZE	WEEKLY LICENSED CARE CO-PAY AMOUNT					WEEKLY CERTIFIED CARE CO-PAY AMOUNT				
	1	2	3	4	5 or more	1	2	3	4	5 or more
70% FPL	\$697	\$876	\$1,056	\$1,236	\$1,415	\$1,595	\$1,775	\$1,954	\$2,134	\$2,314
75% FPL	\$746	\$939	\$1,131	\$1,324	\$1,516	\$1,709	\$1,901	\$2,094	\$2,286	\$2,479
80% FPL	\$796	\$1,001	\$1,207	\$1,412	\$1,617	\$1,823	\$2,028	\$2,233	\$2,439	\$2,644
85% FPL	\$846	\$1,064	\$1,282	\$1,500	\$1,718	\$1,937	\$2,155	\$2,373	\$2,591	\$2,809
90% FPL	\$896	\$1,127	\$1,358	\$1,589	\$1,820	\$2,051	\$2,282	\$2,513	\$2,744	\$2,975
95% FPL	\$945	\$1,189	\$1,433	\$1,677	\$1,921	\$2,164	\$2,408	\$2,652	\$2,896	\$3,140
100% FPL	\$995	\$1,252	\$1,508	\$1,765	\$2,022	\$2,278	\$2,535	\$2,792	\$3,048	\$3,304
105% FPL	\$1,045	\$1,314	\$1,584	\$1,853	\$2,123	\$2,392	\$2,662	\$2,931	\$3,201	\$3,471
110% FPL	\$1,095	\$1,377	\$1,659	\$1,942	\$2,224	\$2,506	\$2,789	\$3,071	\$3,353	\$3,635
115% FPL	\$1,144	\$1,439	\$1,735	\$2,030	\$2,325	\$2,620	\$2,915	\$3,210	\$3,506	\$3,801
120% FPL	\$1,194	\$1,502	\$1,810	\$2,118	\$2,426	\$2,734	\$3,042	\$3,350	\$3,658	\$3,966
125% FPL	\$1,244	\$1,565	\$1,885	\$2,206	\$2,527	\$2,848	\$3,169	\$3,490	\$3,810	\$4,130
130% FPL	\$1,294	\$1,627	\$1,961	\$2,295	\$2,628	\$2,962	\$3,296	\$3,629	\$3,963	\$4,296
135% FPL	\$1,343	\$1,690	\$2,036	\$2,383	\$2,729	\$3,076	\$3,422	\$3,769	\$4,115	\$4,462
140% FPL	\$1,393	\$1,752	\$2,112	\$2,471	\$2,830	\$3,190	\$3,549	\$3,908	\$4,268	\$4,615
145% FPL	\$1,443	\$1,815	\$2,187	\$2,559	\$2,931	\$3,304	\$3,676	\$4,048	\$4,420	\$4,792
150% FPL	\$1,493	\$1,878	\$2,263	\$2,648	\$3,033	\$3,418	\$3,803	\$4,188	\$4,573	\$4,958
155% FPL	\$1,542	\$1,940	\$2,338	\$2,736	\$3,134	\$3,531	\$3,929	\$4,327	\$4,725	\$5,123
160% FPL	\$1,592	\$2,003	\$2,413	\$2,824	\$3,235	\$3,645	\$4,056	\$4,467	\$4,877	\$5,288
165% FPL	\$1,642	\$2,065	\$2,489	\$2,912	\$3,336	\$3,759	\$4,183	\$4,606	\$5,030	\$5,453
170% FPL	\$1,692	\$2,128	\$2,564	\$3,001	\$3,437	\$3,873	\$4,310	\$4,746	\$5,182	\$5,615
175% FPL	\$1,741	\$2,190	\$2,640	\$3,089	\$3,538	\$3,987	\$4,436	\$4,885	\$5,335	\$5,784
180% FPL	\$1,791	\$2,253	\$2,715	\$3,177	\$3,639	\$4,101	\$4,563	\$5,025	\$5,487	\$5,950
185% FPL	\$1,841	\$2,316	\$2,790	\$3,265	\$3,740	\$4,215	\$4,690	\$5,165	\$5,639	\$6,113
-----185% of the Federal Poverty Level-----										
190% FPL	\$1,891	\$2,378	\$2,866	\$3,354	\$3,841	\$4,329	\$4,817	\$5,304	\$5,792	\$6,280
195% FPL	\$1,940	\$2,441	\$2,941	\$3,442	\$3,942	\$4,443	\$4,943	\$5,444	\$5,944	\$6,444
200% FPL	\$1,990	\$2,503	\$3,017	\$3,530	\$4,043	\$4,557	\$5,070	\$5,583	\$6,097	\$6,610
-----200% of the Federal Poverty Level----->>>										

NOTE: The copayment rate for teen parents who are not Learnfare participants is minimum copay and is found by selecting the lowest income line (70%) FPL and then finding the copayment listed, under either licensed care or certified care, for the appropriate number of children. Parents who have left a W-2 employment position for unsubsidized work also qualify for the minimum copay for one month. Families with children who are authorized for 20 hours or less are subject to one half of their share of the family copay listed above for those children. No copay is required for parents who participate in Learnfare or Food Stamp Employment and Training. Foster parents do not have a copayment responsibility for the foster children in their care. Kinship care relatives caring for a child under a court order do not have a copayment responsibility. Kinship care relatives caring for a child without a court order pay the minimum copay, unless they are receiving a child care subsidy for another child who is subject to a copayment greater than the minimum copay.

## Hearing Summary

### Proposed rules relating to the administration of child care funds DWD 56 CR02-104

A public hearing was held in Madison on August 13, 2002. The hearing record remained open until August 15 for the receipt of written comments.

#### Comments were received from the following:

1. George Hagenauer, Data Coordinator  
Community Coordinated Child Care (Dane 4C)  
Madison
2. Pat DeLessio, Attorney at Law  
Legal Action of Wisconsin (LAW)  
Milwaukee
3. Diane Gallagher, Childcare Organizer  
Wisconsin Childcare Union and Dane County  
ACYC Worthy Wages Task Force (WCU)  
Madison
4. Carol Medaris, Project Attorney  
Wisconsin Council on Children and Families  
(WCCF)  
Madison
5. Mary Babula, Acting Executive Director  
Wisconsin Early Childhood Association  
(WECA)  
Madison
6. Amy Schuster, Program Coordinator  
R.E.W.A.R.D. Wisconsin Stipend Program  
Wisconsin Early Childhood Association  
(WECA-reward)  
Madison
7. Wendy Rakower, Director  
Red Caboose Day Care Center  
Madison
8. Oma Vic McMurray, Child Care Worker  
Bridges Family Child Care  
Madison
9. Dorothy Conniff, Community Services  
Supervisor  
City of Madison Office of Community Services  
(Madison/OCS)  
Madison
10. Jennifer Kraus, Economic Support Supervisor  
Dane County Human Services (Dane HS)  
Madison
11. Michelle Lee  
Child Care Connection Resource and Referral  
Agency (CCCRRA)
12. Michelle Martin

#### The following observed the hearing for information only:

1. Darlene Turner, One Step Ahead Child Care Center, Racine
2. Lisa Orta, One Step Ahead Child Care Center, Racine
3. Jon Peacock, Wisconsin Council on Children and Families, Madison

Three people registered against the proposed rules, one registered to provide information to the department, and one registered as in favor/against/and providing information to the department. Seven additional written comments were received.

Copies of the written comments are attached.

Comments	Department response	Organization or individual commenting
<p><b>General comment</b>            The department should be aware that child care subsidies to low income families have an impact on child care far beyond the low income families directly served. In 20 counties in the state, 28 – 50% of child care slots are paid partially or in full by the state child care subsidy program. Child care centers operate on low profit margins. When areas or individual centers reach 25% or more subsidized children, major changes in the subsidy system can affect the viability of the centers, which affect other families using those centers.</p>	<p>Department agrees.</p>	<p>Dane 4C</p>
<p><b>DWD 56.03(5) Adjustments due to insufficient funds</b>            Any changes in eligibility, copayments, waiting lists, and reimbursement rates should be made by the legislature and the governor, weighing these changes against funding options.</p>	<p>a. This proposed rule section does not affect eligibility.            b. Section 49.155(5), Stats., provides that the department specify an individual's copayment in a printed copayment schedule. This schedule may be found at s. DWD 56.08. Section DWD 56.08(3) provides that the department may adjust the copayment schedule based on several factors, including economic factors affecting the cost of child care to the state, such as an increase in demand, and a change in the amount of funds available for child care assistance.            c. Authority for waiting lists currently exists at s. DWD 56.05(5). The proposed rule changes the procedure from a county-managed system to a department-managed system and reorganizes the rule to include the waiting list authority with other proposed cost-containment measures.            d. The procedure for determining reimbursement rates is not mentioned in the statutes. It is found in rule at s. DWD 56.06.</p> <p>The department would welcome additional funding that would make these difficult choices unnecessary. Although the department believes that we have authority for the proposed adjustments and that it is fiscally responsible to plan options in the event of insufficient funding, the legislature will have an opportunity to review this proposed rule before it becomes effective. If the legislature determines otherwise, we will comply with their direction.</p>	<p>LAW            WECA            WCU</p>

Comments	Department response	Organization or individual commenting
Waiting list rules and authority for certain adjustments are contrary to legislative intent expressed when portion of bill authorizing rules similar to those proposed was rejected.	The department believes that the legislative intent was unclear, particularly given the existing rule authority for waiting lists at s. DWD 56.05(5).	LAW WCCF
Waiting lists are not authorized under 49.155. Mandatory language in sub. (3m) provides that an individual determined eligible <i>shall</i> be referred for assistance...dept. <i>shall</i> reimburse providers...	Authority for waiting lists currently exists at s. DWD 56.05(5). Section 49.141(4), Stats., provides that notwithstanding fulfillment of the eligibility requirements for any component of W-2, including child care, an individual is not entitled to services or benefits under W-2.	WCCF
Opposed to waiting lists. Will jeopardize parents' ability to maintain employment and put children at risk of unsafe child care settings. Many parents who have recently left W-2 move from one short-term job to another. If there is a waiting list, the parent would lose child care when he or she lost a job, resulting in instability for families and child care providers and less success for the W-2 program.	The department will not be able to provide subsidies to all eligible families if funding authority is insufficient. The department acknowledges the difficulties families face if child care subsidies are delayed or unavailable.	WECA Dane 4C Dane HS
Priorities on waiting list should include families who receive child care only. Preventative use of child care reduces need for more expensive services.	Individuals in W-2 employment positions are given priority because they have already been identified as needing assistance to join the workforce. Families with children with special needs are required to receive priority under federal law. Teenagers who need child care to obtain their high school diploma are given priority to increase their opportunities for future self-sufficiency. Foster parents and kinship care relatives are given priority because these children may be at risk of becoming wards of the state if their caretakers are unable to manage the child care expenses. Although families who receive child care assistance only are not given a priority, the department acknowledges they also have significant needs.	Dane 4C Dane HS
Better and fairer policy for addressing insufficient funds would be to request authority to reduce income eligibility limits.	That would involve a statutory change and is beyond the scope of this rule. A waiting list would only be used to the extent necessary.	WCCF
Not necessary to repeat authority to adjust copay schedule. It already exists in DWD 56.08(3).	Department agrees that the proposed s. 56.03(5)(c) repeats what is already at s. DWD 56.08(3). The duplication is for clear communication of options for cost-containment that are within the department's rule authority rather than new authority.	LAW

Comments	Department response	Organization or individual commenting
Increasing copays would reduce program usage by those most in need of help.	The department acknowledges difficult choices and problems that may be caused by insufficient funding.	WCCF
Increasing copays will lead to instability for families and child care programs. When W-2 first started and there were higher copays, parents shifted children from program to program to dodge the copay, resulting in thousands of dollars lost to programs and unstable care for children. Programs with large numbers of subsidized children have little leverage in collecting copays, resulting in lower salaries for staff and higher turnover.	A copay increase would only be implemented to the extent necessary. Providers do have the option of collecting copays before service is given.	Dane 4C
Limiting the increase in the maximum reimbursement rates will have serious effects on the viability of child care providers with large numbers of subsidized children and the ability of low income families to access the marketplace.	Limiting the increase in the maximum reimbursement rates would only be implemented to the extent necessary.	Dane 4C
The department should urge the legislature to extend custodial parent of an infant payments until the infant is at least 6 months old. Infant day care is more expensive. Infant care is most in demand so removing infants supported by the subsidy would have the least impact on the marketplace. Allowing the parent to stay home longer would help the parent establish a secure relationship with the infant, which is essential to the child's long term ability to form healthy relationships, respect authority, and succeed in school and as an adult.	One of the purposes of the W-2 program is to model the workplace. A 3-month maternity leave is closer to the norm in this country than a paid leave of 6 months or more. Many working parents do not receive any paid maternity leave.	WCCF WECA Dane 4C
<b>DWD 56.04(1)(d) No subsidy when care by legally responsible parent.</b> Agree with this.	Department agrees.	CCCRRA
We understand decision to not reimburse provider for care of own children but are opposed to not allowing staff of providers to have child in center or family day care where he or she works. Many W-2 case managers have encouraged participants to take a job in child care. Now they can't work in child care and be reimbursed for a portion of their child care costs when they care for their own child. There is a 40% turnover rate in the child care workforce already due to low wages. This policy will negatively impact on the supply of child care.	See below.	WECA
Should allow in some circumstances. Often necessary due to transportation or health needs.	See below.	LAW



Comments	Department response	Organization or individual commenting
<p><b>DWD 56.04(1)(d) No subsidy when care by legally responsible parent. (continued)</b></p> <ul style="list-style-type: none"> <li>Leaves parents who work in child care with poor choices, including sending children to other centers disrupting their continuity of care, moving to a different classroom in a center, or looking for jobs elsewhere so their children can maintain consistency of care. Disrupts care for other children if teacher must move to different classroom or find new job. Consistency of caregivers is one of the biggest indicators of quality of care for children and this rule would work against that goal.</li> <li>Few childcare programs offer free childcare to employees.</li> <li>Child care workers are low paid and need the child care subsidy to work in the child care field.</li> <li>Child care programs will lose good teachers because of this rule.</li> <li>Employees who care for their children as well as other children should be entitled to receive subsidized child care if they are otherwise eligible. They are not being reimbursed to care for their own children; the program that employs them is reimbursed for that care.</li> <li>Child care food program is precedent. It allows reimbursement for own children if at least one day care child is present.</li> <li>Monitoring potential abuse is a better answer.</li> </ul>	<p>Section 49.155(3m)(d), Stats., prohibits funds to be distributed for child care services that are provided for a child by a child care provider who is the parent of the child. The DWD Office of Legal Counsel has determined that this provision must be applied to employees of child care providers as agents of the provider. The rule language clarifies this statutory interpretation.</p> <p>As a policy matter, parents who care for their own children in any day care setting should not receive state child care subsidies for that care.</p> <ul style="list-style-type: none"> <li>This policy is based in part on the social belief that parents have a duty to care of their own children without remuneration.</li> <li>It is not good policy for teachers to have their own children in a classroom because they are unable to be dispassionate toward their children.</li> <li>There is some concern with fraud, particularly in the family day care setting. The department has received reports of family day care providers who hire parents as staff and the parents are actually only caring for their own children. The provider passes the subsidy dollars through to the parent. Although the fraud has been more prevalent in the family day care setting, the policy is applied to all types of providers and employees as a matter of equity.</li> <li>Also, some day care providers do offer care to children of employees at a free or reduced price.</li> </ul>	<p>WCU          Red Caboose          WECA-reward          Madison/OCS</p>
<p>Employees in both family day care and centers should receive subsidy if they are otherwise eligible.</p>	<p>See above.</p>	<p>WCU</p>
<p>A teacher at a licensed group center (not a family child care) should be eligible for reimbursement for care of their own child at the center. The rule excludes a group of low wage workers arbitrarily from the benefits of the child care subsidy system due to the type of work they do.</p>	<p>See above.</p>	<p>Dane 4C</p>

Comments	Department response	Organization or individual commenting
<p><b>DWD 56.04(1)(d) No subsidy when care by legally responsible parent. (continued)</b>            Provisional care has made it easy to abuse system. Require child care worker to be in a licensed child care facility and close that loophole. Licensed providers are monitored closely and are legitimate businesses. Monitor potential fraud more closely but don't hurt legitimate child care workers.</p>	See above.	Bridges Family Child Care
<p>Suggestions for exemptions: parent has worked at program for many years; it would be disruptive to the program and the parent if the parent cannot continue to work; if there is not another child care program available within a reasonable distance from the parent's place of employment that is acceptable to the parent; programs could be required to submit policy that all employees are required to pay for the slot that their child uses.</p>	See above.	WECA
<p>A family day care provider who provides care for his or her own child is a direct cost not free childcare because cannot then enroll another child who would pay tuition. Workers in centers licensed by the state should be eligible for subsidies too, given lack of availability of quality childcare and low pay received by most childcare workers.</p>	See above.	Martin
<p><b>DWD 56.04(2)(d)1.b. Agency may authorize payment to licensed provider by attendance if provider has significantly overreported attendance 3 times. We agree with this.</b></p>	Department agrees.	CCCRRA
<p><b>DWD 56.04(2)(e) Authority to refuse to authorize provider payment if licensed provider fails to submit documentation of prices is good but should also apply to certified providers.</b></p>	The department does not require certified providers to submit documentation of their prices because they are small providers and often do not have a significant number of private pay customers.	CCCRRA
<p><b>DWD 56.04(2)(f) Limiting reimbursement to 3 months after attendance report was issued is positive because it limits the state's potential unpaid receivables for care. Also makes it easier to remove providers who are no longer regulated from the system.</b></p>	Department agrees.	Dane 4C CCCRRA

Comments	Department response	Organization or individual commenting
<p><b>DWD 56.04(2)(e) and (2)(f) When payment not authorized due to provider's actions,</b> rule should provide that eligible parent cannot be held liable for payment owed, except copayments. This is similar to practice in medical assistance program.</p>	<p>DWD 56.04 (5)(f) has been created to say that if the department refuses to issue payment based on a provider's violation of a requirement in this chapter, the provider may not hold the parent liable for payment other than the copayment and any amount that the parent agreed to above the department's maximum reimbursement rate if the parent relied on an approved authorization for care for his or her child to receive care from the provider.</p>	<p>LAW</p>
<p><b>DWD 56.04(2)(g) Limiting the number of children authorized to family day care provider unless the provider can show he or she will not exceed the group size limitation.</b> We agree with this.</p>	<p>Department agrees.</p>	<p>CCCRRA</p>
<p><b>DWD 56.04(2)(h) Authorization to pay provider to hold slot for temporary break in employment.</b> We disagree with this.</p>	<p>This policy will allow payment to hold a slot for a break in employment of no more than 6 weeks for medical reasons and of no more than 4 weeks for other reasons when the individual plans to return to work with the same employer. Continuity of care is important to the affected parties with minor cost to the system when applied in these limited circumstances.</p>	<p>CCCRRA</p>
<p><b>DWD 56.04(2)(i) Dept. issuing payment by electronic transfer.</b> We agree with this.</p>	<p>Department agrees.</p>	<p>CCCRRA</p>
<p><b>DWD 56.04(5)(c)1., 2., and 3. Refusal to issue authorization or payment for various actions by provider.</b> We agree with this except the refusal to issue new authorizations to provider should be limited to 3 months instead of 6 months.</p>	<p>The refusal to issue new authorizations is due to a provider's fraudulent acts or significant noncompliance with certification or licensing rules. The department believes that 6 months provides more effective deterrence.</p>	<p>CCCRRA</p>
<p><b>DWD 56.04(5)(d) Notice to parent when provider sanctioned.</b> Rule currently says notice to parent as soon as possible. Should be amended to say immediately and, at the very least, two weeks before the sanction.</p>	<p>The sanctions are generally due to health and safety violations or fraudulent acts by the provider and are effective at the end of the week that they are given. There are circumstances where the department cannot continue payment because the children may be at risk due to safety violations or the provider has committed fraud. The department will add a provision to the policy manual instructing counties and tribes to give adequate notice to parents and providers unless circumstances are egregious.</p>	<p>LAW</p>

Comments	Department response	Organization or individual commenting
<b>DWD 56.04(6) Monitoring.</b> Strengthening monitoring is a logical strategy for reducing expenditures.	Department agrees.	Dane 4C CCCRRA
<b>DWD 56.05(2) Training for county and tribal child care workers.</b> We agree with this.	Department agrees.	CCCRRA
<b>DWD 56.06(1)(b) Using representative sample for rate survey.</b> It would not be feasible to get an accurate sample. There are major differences in rates from county to county, especially between rural counties. And it is always difficult to get rates sheets returned from providers who do not serve children whose care is subsidized.	Department agrees. This provision has been withdrawn.	Dane 4C CCCRRA
Should define representative sample and allow interested providers and affected families to seek a review if they feel the rates are not representative of the cost of care in the county.	Proposed representative sampling has been withdrawn.	LAW
<b>DWD 56.06(1)(b) Frequency of rate survey.</b> Survey needs to continue to be done on an annual basis as rates in most parts of the state rise annually.	This provision has been rewritten to clarify that the survey will be done annually unless the department determines that rates will not be increased due to insufficient funds.	Dane 4C
<b>DWD 56.06(1)(c)2., 3., and 4. Rate category changes.</b> The proposed change from 2 to 4 rate categories is good as it conforms the child care subsidy program to the real market. In many markets, the rates drop as the age of the child increases and child/staff ratios change.	Department agrees.	Dane 4C CCCRRA
Should also be categories of payment based on quality of program.	The department already pays more for subsidized children who attend accredited programs. There is no way to do any further judging of quality for purposes of adjusting payment rates.	CCCRRA
<b>DWD 56.06(2)(a)2. and (2)(b)1. Excluding programs with high numbers of subsidized children from the rate survey.</b> The department is proposing to exclude child care programs at which more than 90% of the children's care is subsidized. That is still too high. A better number would be 75%. There are some programs that serve large numbers of subsidized children and set their rates at whatever the maximum county reimbursement rate is. The purpose of the survey is to determine market rates. Some programs with many subsidized children are receiving more from the state than they would on the free market.	Department agrees. The rule has been rewritten to exclude child care providers from the rate survey if more than 75% of the children's care is subsidized under s. 49.155, Stats.	Dane 4C
<b>DWD 56.07 Provider appeal rights.</b> We agree.	Department agrees.	CCCRRA





August 9, 2002

Elaine Pridgen  
Office of Legal Counsel  
Dept. of Workforce Development  
201 E. Washington Ave.  
Madison, WI 53707-7946

Re: Proposed rules on Chapter 56  
Administration of Child Care Funds

Dear Ms. Pridgen,

This letter contains my comments on proposed rules affecting Chapter 56, governing the administration of child care funds. Although the proposed rules raise a number of important issues, I will concentrate my comments on the adjustments proposed to meet funding shortfalls, especially providing authority to establish waiting lists and to increase parental copayments. The waiting list provisions would establish priorities for service in the following order: W-2 participants, parents with children with special needs, teens completing high school, foster parents, and kinship care relatives.

1. **Waiting lists as established in DWD 56.03(5) are neither authorized under the statute governing the Wisconsin shares program, nor are they contemplated by the legislature.**

In Sec. 49.155(1m), eligibility criteria for the Wisconsin shares program are clearly laid out. Then in subsection (3)(a), it states that W-2 agencies “**shall** refer an individual who has been determined eligible under sub. (1m)” to county departments for child care assistance. Next, subsection (3)(b) states that the county department, “**shall** do all of the following:

1. Determine an individual’s liability under sub. (5).
2. Provide a voucher to an eligible individual for the payment of child care services provided by a child care provider or otherwise reimburse child care providers.

....”

Finally, subsection (3m)(a) states that “the department **shall** reimburse child care providers or **shall** distribute funds to county departments . . . for

child care services provided under this section . . . .” This is all mandatory language; it leaves no discretion to the department to decide to deny funds to eligible families under any terms.

As written, the child care statute does not contemplate running out of funds. When the legislature intends to provide for such an event, it clearly knows how to set forth standards for reducing expenditures. See sec. 49.665 (4)(at), Stats. where the department is authorized to meet insufficient funds in the Badger care program by lowering maximum income levels for initial eligibility. No language providing for such an eventuality is present in the child care statute.

Instead, on at least two occasions, in July, 2000, and again in April, 2001, the Joint Finance Committee approved additional funds when shortfalls in the Wisconsin shares program were eminent. Furthermore, in the 2001-03 Biennial Budget, the governor’s budget sought to authorize waiting lists. The legislature rejected that proposal.

Besides failing to provide any authority for the department to establish waiting lists, the intent to provide for all eligible families is clear.

**2. A better and fairer policy, should the department be unable to meet the demand for Wisconsin shares by any other means, would be to request authority to reduce income eligibility limits.**

Waiting lists will hurt most those with the least stable employment – those cycling in and out of jobs or forced to depend on temporary employment. Losing employment will place them at the back of the line for Wisconsin shares, since there is no priority for working families (except those with special needs children). These are likely to be family heads who are just entering the job market, or those with the least marketable skills – a profile that fits many, many parents who are leaving the W-2 program.

The end result may well be families forced back into W-2, because they have no means of support without the child care necessary to work. Or, worse, parents may try to maintain their employment with only informal child care arrangements, or no child care arrangements at all. Finally, and even more perverse, the department’s proposed priorities mean that family heads going back on W-2 will immediately go to the head of the line for Wisconsin shares eligibility!

Far better and fairer would be to reduce the maximum income limits for initial eligibility. Such an eligibility rule would favor those least able to pay, rather than those who happened to get in the door at the right time and then were able to sustain their employment the longest. Such a solution

makes just as much sense for the Wisconsin shares program as it does for Badger care.

**3. Increasing copays to reduce costs, as proposed in DWD 56.03(5)(c), would also reduce usage of the program by those most in need of help.**

In January, 2001, the Legislative Audit Bureau reported that the cost of copayments to families likely resulted in parents not participating in Wisconsin shares. (LAB Report 01-1) According to federal estimates, only 13.6% of eligible children participated in the child care subsidy program in the period April through September, 1998. After reducing copayments somewhat, Wisconsin's levels were still higher than copayments in most other midwestern states by July, 2000. And, county and W-2 agency staff told LAB that copayments remained unaffordable and that many parents did not participate as a result.

The result of raising copayments can only result in reducing usage of the program and parents relying on informal care, or no care at all. And, the lack of stable child care has a profound effect on parents' ability to sustain their work efforts.

**4. Before any shortfall is declared, the department should urge the legislature to reduce W-2 work requirements for parents of infants.**

The W-2 program currently requires full time work as soon as the youngest child in the family reaches 12 weeks of age. At the same time, reports are indicating that children whose parents work full time before a child is nine-months-old do less well in school. Other reports affirm the benefits of mothers nursing their infants, a practice exceedingly problematic for mothers returning so early to full-time work. Finally, infant day care is much more expensive than care for older children. For all these reasons it makes very good sense to reduce work requirements for parents of infants. Even a minimal change, such as allowing parents to provide full-time care of their infants up to 6 months of age, and then requiring half-time work until the child is a year old, makes excellent economic sense, and would promote the fiscal stability of the Wisconsin shares program as well as the health and welfare of Wisconsin's children.

Respectfully submitted,



Carol W. Medaris  
Project Attorney  
Wisconsin Council on Children and Families