



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

**Ronald Sklansky**  
*Clearinghouse Director*

**Richard Sweet**  
*Clearinghouse Assistant Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

#### CLEARINGHOUSE RULE 02-104

AN ORDER to repeal DWD 56.04 (1) and (2) (a) and 56.05 (5); to renumber DWD 56.02 (7) and (20) to (25), 56.04 (5) and 56.05 (4); to renumber and amend DWD 56.03 (5), 56.04 (2) (b), (d) 3. and (e), (3) and (6); to amend DWD 56.01, 56.02 (4), (11), (12), (13) and (21), 56.03 (title), 56.04 (2) (c), (d) (intro.) and 1., (7) (c) (intro.) and (d), 56.05 (1), 56.06 (1) (b) and (c) 2. and (2) (a) 2., (b) 1. and (d) and 56.08 (1) (Note) and (3) (a) 5.; to repeal and recreate DWD 56.02 (3), (15) and (15) (Note), 56.04 (title) and (2) (e) (title) and (7) (c) 1., 2. and 3.; and to create DWD 56.02 (7) and (20), 56.03 (5), 56.04 (1) (d), (2) (b), (d) 1. b. and (e) to (i), (7) (e) and (8), 56.05 (2) and (4) (b), 56.06 (1) (c) 3. and 4. and 56.07, relating to the administration of child care funds.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

07-15-2002 RECEIVED BY LEGISLATIVE COUNCIL.

08-09-2002 REPORT SENT TO AGENCY.

RNS:MM

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached      YES       NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached      YES       NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached      YES       NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached      YES       NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached      YES       NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached      YES       NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached      YES       NO



---

---

## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

---

---

Ronald Sklansky  
Clearinghouse Director

Richard Sweet  
Clearinghouse Assistant Director

Terry C. Anderson  
Legislative Council Director

Laura D. Rose  
Legislative Council Deputy Director

### CLEARINGHOUSE RULE 02-104

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]**

#### 2. Form, Style and Placement in Administrative Code

a. In s. DWD 56.01, and several other provisions of the rule, "subs." should be inserted before "(1d) and (1g)."

b. The department should be aware that it is unnecessary to renumber current rule provisions in order to insert a new provision between them. [See s. 1.03 (7), Manual.] For example, the new definition of "child care worker" could be created as s. DWD 56.02 (6m), thereby eliminating the need to renumber sub. (7).

c. In SECTIONS 7 and 15, "to read:" should replace "as:".

d. In SECTION 21 and elsewhere in the rule, underscored language should immediately follow adjacent stricken language.

e. In s. DWD 56.04 (7) (e), no underscoring is necessary because the entire section is newly created in the rule-making order.

f. The title to s. DWD 56.045 should be created rather than repealed and recreated because there is no title to the current section that is renumbered as s. DWD 56.045. SECTION 27 needs substantial revision since it appears that sub. (4) (e), rather than sub. (2) (e), of s. DWD 56.04 is being affected. It appears that sub. (4) (e) (title) should be repealed; sub. (4) (e) should be renumbered, and s. DWD 56.045 (title) should be created; using three SECTIONS.

g. It appears that a provision should be added to s. DWD 56.08 (3) (a) authorizing the department to adjust the copayment schedule when funding is not sufficient to meet the needs of

all eligible parents applying for child care assistance. It does not appear that any of the factors currently set forth in s. DWD 56.08 (3) specifically refer to this contingency.

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

The statutory references in s. DWD 56.02 (15) should be changed to s. 48.57 (3m) (a) 2., Stats., and s. 48.57 (3n) (a) 2., Stats.

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The analysis to the rule should explain why child support payments are eliminated as a type of income under s. DWD 56.02 (13).

b. Current s. DWD 56.03 (5) requires the department annually to review child care rates. The rule-making order deletes "annually." The analysis does not explain why this change is made. Is it anticipated that the department will review rates more or less frequently than under the current rule? Should the rule specify a minimum frequency with which rates must be reviewed? This comment applies also to day care center surveys under s. DWD 56.06 (1) (b).

c. Currently, counties maintain waiting lists for families in need of child care assistance under s. DWD 56.05 (5). The rule-making order repeals s. DWD 56.05 (5) and creates s. DWD 56.03 (5) (a), which authorizes the department to establish waiting lists. However, the new section does not address several issues pertaining to waiting lists that are addressed under the current rule, such as whether a parent's eligibility must be determined before they are placed on the waiting list and whether and how often the waiting list must be updated. Also, is it anticipated that the waiting list will operate on a statewide basis or will a separate waiting list be maintained for each county? Finally, should the rule specify how the information regarding waiting lists is to be transmitted between the department and counties?

d. Section DWD 56.045 states that the department "may" set reimbursement rates for child care services provided for children of migrant workers. Should "may" be changed to "shall"? In other words, if the department does not set the reimbursement rates, how will they be set?

e. Should s. DWD 56.04 (2) (g) explain that an "in-home provider" is one who provides care in the home of the child rather than in the provider's home? In addition, why do group size limitations not apply to in-home providers?

f. The rule should clarify what is meant by the requirement that child care prices be "documented" in s. DWD 56.06 (1) (b).

g. The rule should clarify what is meant by "submitted" in s. DWD 56.07 (3). Specifically, must a request for review be postmarked or actually received by the department within 30 days from the date the notice was mailed? Also, s. DWD 56.07 (3) should clarify that the "notice" referred to in that section is any notice of departmental action described under sub. (1).

h. Section DWD 56.07 (4) should specify the time frame within which a contested case hearing under that section must be provided.

**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(2)(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), 56.04(5), and 56.05(4); to renumber and amend ss. DWD 56.03(5), 56.04(3), 56.04(2)(b), 56.04(2)(d)3., 56.04(2)(e), and 56.04(6); to amend ss. DWD 56.01, 56.02(4), 56.02(11), 56.02(12), 56.02(13), 56.02(21), 56.03(title), 56.04(2)(c), 56.04(2)(d)(intro), 56.04(2)(d)1., 56.04(7)(c)(intro), 56.04(7)(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), 56.02(15)(note), 56.04(title), 56.04(2)(e)(title), 56.04(7)(c)1., 56.04(7)(c)2., and 56.04(7)(c)3.; and to create ss. DWD 56.02(7), 56.02(20), 56.03(5), 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(7)(e), 56.04(8), 56.05(2), 56.05(4)(b), 56.06(1)(c)3., 56.06(1)(c)4., and 56.07, relating to the administration of child care funds.

---

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

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

**Statute interpreted:** Section 49.155, excluding (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 (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 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.
- The department may issue all payments by electronic funds transfer.
- 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.
- An agency may contact a representative sample of licensed providers, rather than all licensed providers, to determine the prices that they charge to the general community. The department may arrange for a survey independent of the county or tribal agency.
- 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.

**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)~~ <sup>sub.</sup> ss. 49.155, excluding (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) <sup>sub.</sup> 49.155, excluding (1d) and (1g), Stats.

*unnecessary*  
**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.

*4) as a but of def 16.*

**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,~~ <sup>OC</sup> ~~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.

(?) explain  
u  
analysis  
(5)

**SECTION 7. DWD 56.02 (15) is repealed and recreated as:**

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

(4)

**SECTION 8. DWD 56.02 (15)(note) is amended to read:**

Note: Section Sections 48.57 (3m) (a), and 48.57 (3n) (a), 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 9. DWD 56.02 (20), (21), (22), (23), (24), and (25) are renumbered DWD 56.02 (21), (22), (23), (24), (25), and (26), respectively.**

**SECTION 10. DWD 56.02(21) is amended to read:**

as ren.?

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

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

**SECTION 13. DWD 56.03 (5) is renumbered DWD 56.03 (4) and as renumbered DWD 56.03 (4)(intro) is amended to read:**

(5)  
low  
BEN?  
Jan 16

**DWD 56.03 (4)(intro) RATE REVIEW.** (a) 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:

*currently, counties establish waiting lists. Can dept do this? Hand rules appear to date. no dept waiting list*

**SECTION 14. 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 <sup>sub.</sup>(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).

*add a provision in s. 49.155 authorizing adjustment for this purpose*

**SECTION 15. DWD 56.04 (title) is repealed and recreated <sup>(as)</sup>**

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

**SECTION 16. DWD 56.04 (1) is repealed.**

**SECTION 17. DWD 56.04 (3) is renumbered DWD 56.04 (1) and, as renumbered, DWD 56.04 (1) (a)(intro), (1)(b)(intro), and (1)(c) are amended to read:**

**DWD 56.04 (1) 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) (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 18. 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 19. DWD 56.04 (4) is renumbered DWD 56.04 (2).**

*no number 3*  
**SECTION 20. DWD 56.04(2)(a) is repealed.**

**SECTION 21. DWD 56.04 (2)(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~~ payment ~~which 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 22. 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 23. DWD 56.04 (2)(c) 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 24. DWD 56.04 (2)(d)(intro), DWD 56.04 (2)(d)1., and DWD 56.03 (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 56.03 (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 25. 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 26. DWD 56.04 (2)(d)1.b. is created to read:**

**DWD 56.04 (2)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 27. DWD 56.04 (2)(e)(title) is repealed and recreated as DWD 56.045 (title):**

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

**SECTION 28. DWD 56.04(2)(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 and services provided shall be negotiated by the county, tribe or W-2 agency and approved by the department may be set by the department.

**SECTION 29. 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.

? 5

**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.

?  
X  
5  
explain  
in-home  
provider  
family

**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 30. DWD 56.04 (5) is renumbered DWD 56.04 (3).**

**SECTION 31. 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. OK

**SECTION 32. DWD 56.04 (7)(c)(intro) is amended to read:**

**DWD 56.04 (7)(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 33. DWD 56.04 (7)(c)1., 2., and 3. are repealed and recreated to read:**

**DWD 56.04 (7)(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 (7)(c)2.** Revoke existing child care authorizations to the provider.

**DWD 56.04 (7)(c)3.** Refuse to issue payments to the provider until the provider has corrected the violation.

**SECTION 34. DWD 56.04 (7)(d) is amended to read:**

**DWD 56.04 (7)(d)** When the department or a child care administrative agency refuses to issue new authorizations, stops ~~stops~~ 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 35. DWD 56.04 (7)(e) is created to read:**

**DWD 56.04 (7)(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.

**SECTION 36. DWD 56.04 (8) is created to read:**

**DWD 56.04 (8) 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 37. 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 38. 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 39. DWD 56.05 (4) is renumbered DWD 56.05 (4)(a).**

**SECTION 40. 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 41. DWD 56.05 (5) is repealed.** *Waiting list. see new 56.03(5)(a)*

**SECTION 42. DWD 56.06 (1)(b) is amended to read:**

*see p. 4*  
**DWD 56.06 (1)(b) Survey.** The county or tribal agency, except a tribal agency acting under par. (a)2., shall ~~annually~~ contact all or a representative sample of 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, unless the department arranges for a survey independent of the county or tribal agency. The child care prices shall be documented to be included in the survey.

**SECTION 43. DWD 56.06 (1)(c)2. is amended to read:** *clarify vs 2*

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

**SECTION 44. 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 45. 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 90% of the children's care is subsidized under s. 49.155, excluding (1d) and (1g), *subsid.*  
Stats. *1*

**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 90% of the children's care is subsidized under s. 49.155, excluding (1d) and (1g), Stats.

^

**SECTION 46. 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 47. 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 submitted to the address provided on the notice within 30 days from the date the notice was mailed.

clarify - (5)

Notice of appeal (1)



(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. *any time*

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

**SECTION 48. 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 49. 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) (a)~~ 49.155, excluding (1d) and (1g), Stats.

^

**FISCAL ESTIMATE WORKSHEET**

**2002 Session**

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.  
DWD 56

Amendment No.

Subject  
Administration of child care funds

**I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
0

<b>II. Annualized Costs:</b>		<b>Annualized Fiscal impact on State funds from:</b>	
		<b>Increased Costs</b>	<b>Decreased Costs</b>
<b>A. State Costs by Category</b>			
State Operations - Salaries and Fringes		\$0	\$0 -
(FTE Position Changes)		0 ( FTE)	0
State Operations - Other Costs		indeterminate	indeterminate
Local Assistance		0	0
Aids to Individuals or Organizations			indeterminate
<b>TOTAL State Costs by Category</b>		indeterminate	indeterminate
<b>B. State Costs by Source of Funds</b>		<b>Increased Costs</b>	<b>Decreased Costs</b>
GPR		\$0	\$0-
FED		indeterminate	indeterminate
PRO/PRS		0	0
SEG/SEG-S		0	0
<b>III. State Revenues -</b>		<b>Increased Rev.</b>	<b>Decreased Rev.</b>
Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)			
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>TOTAL State Revenues</b>		\$0	\$0-

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	indeterminate	0
NET CHANGE IN REVENUES	\$0	\$0

Agency/Prepared by: (Name & Phone No.)  
DWD/ Elaine Pridden 267-9403

Authorized Signature/Telephone No.

*Elaine Pridden*

267-9427

Date

7-15-02

LRB or Bill No./Adm. Rule No.

DWD 56

Amendment No. if Applicable

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

- ORIGINAL
- UPDATED
- CORRECTED
- SUPPLEMENTAL

**Subject**

Administration of child care funds

**Fiscal Effect**

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No

- Increase Existing Appropriation
- Increase Existing Revenues
- Decrease Existing Appropriation
- Decrease Existing Revenues
- Create New Appropriation

Decrease Costs

Local:  No local government costs

- |  |  |  |
|--|--|--|
| 1. <input type="checkbox"/> Increase Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory<br>2. <input type="checkbox"/> Decrease Costs<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 3. <input type="checkbox"/> Increase Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory<br>4. <input type="checkbox"/> Decrease Revenues<br><input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory | 5. Types of Local Governmental Units Affected:<br><input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities<br><input type="checkbox"/> Counties <input type="checkbox"/> Others _____<br><input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts |
|--|--|--|

**Fund Sources Affected**

- GPR
- FED
- PRO
- PRS
- SEG
- SEG-S

**Affected Ch. 20 Appropriations**

**Assumptions Used in Arriving at Fiscal Estimate**

The creation of more precise maximum reimbursement rates to providers and the issuance of provider payments by electronic funds will decrease expenditures. The continuance of payments to providers to hold a slot when a parent has a temporary break in employment will increase expenditures. If the department exercises the authority in the rule to establish waiting lists, increase parental copayments, or limit the increase in the maximum rate paid to child care providers, there will be a decrease in expenditures.

**Long-Range Fiscal Implications**

Agency/Prepared by: (Name & Phone No.)  
DWD/Elaine Pridgen 267-9403

Authorized Signature/Telephone No.

*[Handwritten Signature]*  
266-9427

Date

7-15-02

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, flowing style.

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

**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.



## 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.	CCCRA
<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.	CCCRA
<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 CCCRA

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>CCCRRRA</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>CCCRRRA</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>CCCRRRA</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>CCCRRRA</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

# Strategies for Keeping the TANF Structural Deficit from Causing a Statewide Child Care Crisis

## Comments On Chapter DWD 56 Rule Changes Hearing August 13, 2002

Testimony by George Hagenauer, Data Coordinator 608 271-9181  
4-C- Community Coordinated Child Care 5 Odana Ct., Madison Wi. 53719

### **Introduction – Conceptual Framework:**

The revisions to the Child Care Administration Rules Chapter DWD 56 are done within the context of an increasing structural deficit within the state's TANF program that is further overshadowed by a structural deficit in the state's overall budget. As such it makes sense to address the rule changes within this context and to look at larger strategies to solving the structural deficits without seriously harming the state's diverse system of child care and early childhood education.

The Wisconsin Shares system has an impact on child care and early childhood education far beyond its stated mission of providing subsidies for low income predominately working families.

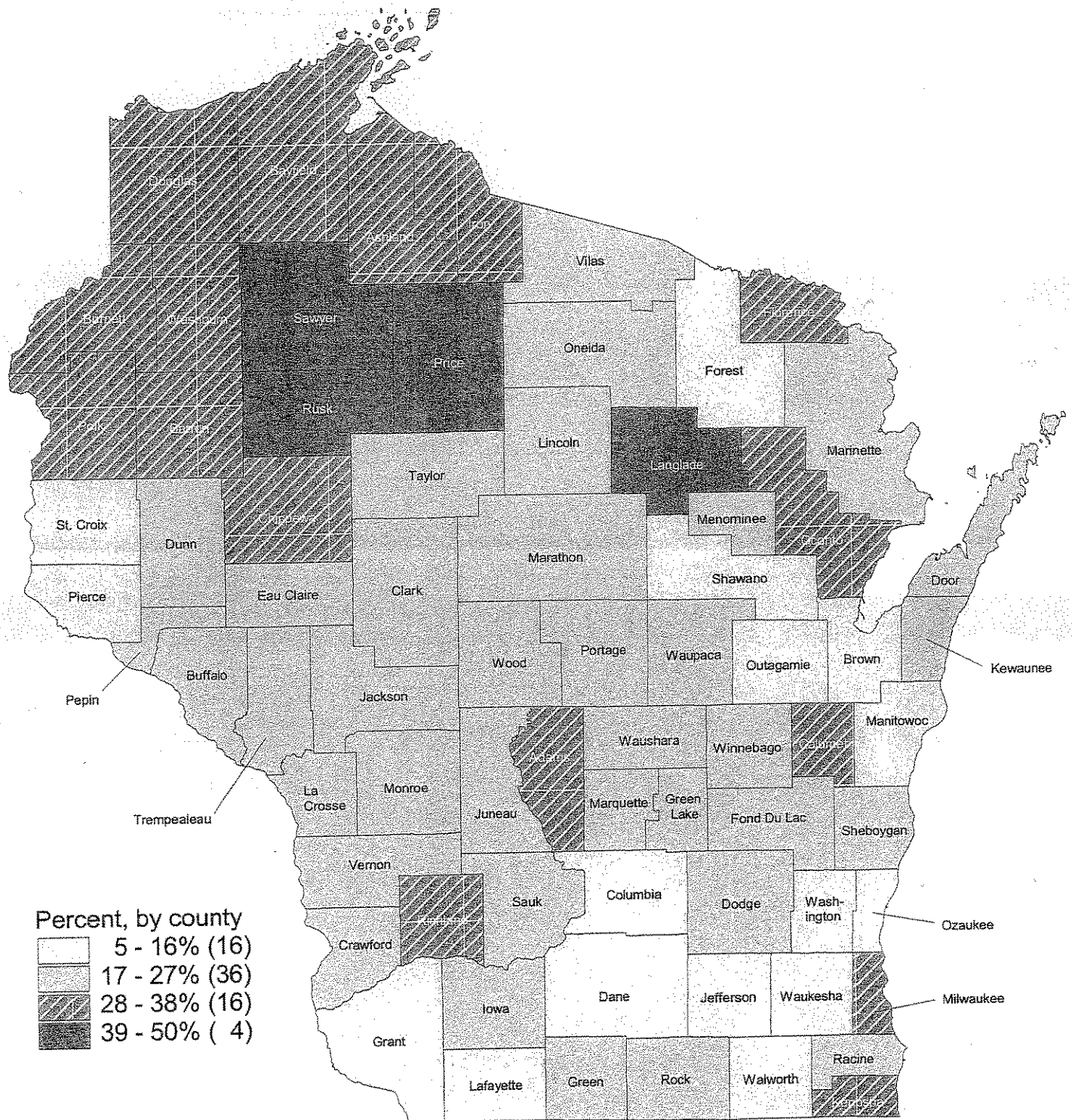
The Wisconsin Child Care Research Partnership has been researching the impact of Wisconsin Shares on the Child Care / Early Childhood Education Market in Wisconsin. Issue Brief 5 included a comparison between the regulated child care capacity and the number of subsidized children in each county in June 2000. The study created a subsidy density index which is the percentage of regulated child care slots paid partially or fully by the state's child care subsidy.

The analysis showed 20 counties in the state with 28%-50% of the child care slots paid partially or fully by Wisconsin Shares Subsidies. The counties with high percentages of subsidized children range from Milwaukee to Douglas and account for about a third of the state's child care capacity. That of course was a year ago and the numbers of counties with a high percentage of children receiving child care subsidies presumably has grown as the numbers of subsidized children have substantially increased in the past year.

The effect of Wisconsin Shares can also be seen in counties with a very low child care subsidy density index. In the Research Project study, Dane County is in the 5-16% range- the lowest subsidy density tier. However a recent analysis of the subsidy density index in 134 full day group centers in Dane County showed 30 centers whose capacity was 33-100% funded with another 6 funded at between 25 and 33%. As such, even though the overall percentage in Dane County is rather low, there are child care programs with high concentrations of subsidized children.

The centers with high percentages of subsidized children include several in and near major business areas on Madison's West and East Sides as well as downtown. As such

Map 5.1: Subsidized slots as a percent of child care capacity, by county



Sources:  
 1. Child care capacity - Wisconsin Child Care Resource and Referral Network, data from 17 CCR&R agencies as of July, 2001  
 2. Number of subsidized children - Department of Workforce Development Data Warehouse, June, 2000

the stability of child care for many professional workers and middle class families using these centers is linked to the ability of the centers to maintain full enrollment which increasingly includes large numbers of children whose care is paid by Wisconsin Shares.

This is a considerable tribute to the effectiveness of the subsidy program and its ability to help low income families pay for child care. It also complicates the process of making changes in the DWD child care rules in order to address the TANF structural deficit . Child care centers operate on very low profit margins. As such when areas or individual centers reach 25% or more subsidized children , major changes in the subsidy system can affect the viability of a center. In these cases, child care can be disrupted not only for the children receiving Wisconsin Shares subsidies but also other families using the centers or family child care homes.

As such what is at stake with the proposed rule changes is not just the future of the low income children and families receiving subsidies but also a wider range of workers and families who share the centers used by subsidized families. Equally at risk are the businesses who employ the workers whose children are in those centers since disrupted child care will often have an impact on the ability for those parents to work. It is not realistic to expect that child care costs will not rise. The federal subsidy system is based on free market principles. As such the state is buying child care in a market that has seen higher than inflation increases the past 5 years- mainly due to the need to increase wages. As such to maintain the current number of children in care next year will cost more than this year. To expect to be able to have programs not increase rates is not realistic. Either the state or the federal government at some point will need to allocate more funding for child care to address the growth in the program. However to secure that funding , it is necessary to show that the Department has taken all possible actions to address the deficit in a responsible manner that does not disrupt the larger child care market. My comments will address that issue in two ways- through comments on the rules and by addressing larger strategies that can be used to address the structural deficit.

An ideal system of child care/early education related to workforce development really addresses two needs – the short term needs of the workforce for low income families to work and the long term needs of the future workforce for highly skilled workers by providing quality early childhood education for the young children in care who in 15-20 years will be our workforce. This strategy has the potential additional benefit of reducing special education and school costs.

Wisconsin does not yet have this ideal system though there has been significant effort on the part of the Office of Child Care and others to move the state in that direction. Sections of the rules most notably the 10% quality payment to accredited centers are very good moves in this direction as it is very important for the state in its expenditures to maximize the benefits received from its expenditures related to the care and education of young children.

We know a lot about what it takes to provide high quality child care – care that includes proper early childhood education- for young children. It involves having the child

regularly attend a program with skilled trained staff. The most basic cornerstone is stability of both the staff and the child, since as we know from any basic educational program- time on task is essential to gaining skills. This becomes especially crucial for low income children who may not have family members with good reading writing and math skills and thus do not have access to many preschool experiences at home.

### **DWD Rules Revisions:**

I would hope that every other option to reduce TANF costs would be taken before reductions are considered in basic eligibility criteria or in major funding cuts in the child care program.

Most of the options listed under Adjustments due to insufficient funds <**Sect. 14 DWD 56.03(5)**> are not going to result in stability for either the child or the child care program.

Higher Co-Pay Rates <**Sect. 14 DWD 56.03(5) 2 & 2c**>: When W-2 first started, the higher co-pay rates resulted in lots of problems for parents and programs, many of whom lost thousands of dollars when parents were unable to pay co-pays. The result of the earlier co-pays were twofold in our service area. First many parents repeatedly shifted their children from program to program often dodging the co-pay. This resulted in very unstable care for the children and thus little added benefit from the expenditure of state dollars. Secondly programs with large numbers of subsidized children often have little leverage in collecting co-pays. In these cases we often saw large amounts of staff turnover as lost co-pays translated into lower salaries. Today's lower co-pay rates, while high compared to many other states, nonetheless have a far less negative impact. Our experience indicates increasing co-pays is not a good solution to the deficit problem.

Waiting Lists <**Sect 14. DWD 56.03(5)a**>: Establishing a waiting list actually means halting placing new children in care. This was the norm before W2 and it was a disaster for programs and families. Depending on county funding levels, programs often went 3, 5, 6 months or almost a year without being able to replace a subsidized child that left. That resulted in Dane County in the loss of many group centers in low income communities in the late 1980's early 1990's. With today's market and the broader use of the subsidies, the potential disruption of the child care market will be far greater and include non-low income areas if waiting lists are implemented.

For low income families the old waiting list strategy was often even more disastrous. Many of the "successes" of the current W2 program involve keeping single mothers employed by having them move from short term job to job. That is feasible under the current situation since the low income parent who works a short term job and loses it, can get child care again when they are hired by a new employer a month or so later. In a waiting list situation, that parent would lose their job and their child care and not be able to get care. The end result would be more instability for the low income family and less success for the W2 program.

Wisconsin Shares priority list <**Sect. 14 DWD56.03(5)a**>: I do not see anywhere a major user of the program -- the low income family who receives child care but does not

access any of the more intensive W2 services and thus is not necessarily considered a W-2 recipient. This preventive use of child care reduces the need for other more expensive services and keeps the family off of welfare. As such it should be noted as a priority.

### **Suggested Option 1-Saving Child Care Dollars by Reducing Infant Care:**

One strategy that would work to reduce the number of children subsidized in care, would be to reduce the number of subsidized children in infant care by expanding the mother's ability to stay home for a longer time after birth. Infant care is the most costly care in the marketplace often 15-25% more expensive than preschool care. It is also the most in demand. As such removing infants supported by the subsidy would have the least impact on the marketplace as child care programs could easily replace them with regular paying families. There is also the question of, "Is the best use of these highly scarce infant toddler slots, the support of low skilled workers entering low paying jobs?"

Wisconsin Shares accounted for about 16% of all children in care in Dane County in 2001 but 29% of all children under two. I know nurses and other skilled workers with infants or toddlers who did not go back to work because they could not find infant-toddler care. At the same time, we are using hundreds of these scarce slots for low income women to leave their children at a very early age to enter usually low wage often unstable employment. The next time you are in a understaffed emergency room or hospital, think that the understaffing may be the unintended result of W2 child care policy.

Setting Maximum Reimbursement Rates <Sect. 14 DWD 56.03 (5)b 1&2>: I don't see "limiting the increase in the maximum reimbursement rate" as a realistic strategy for reducing child care costs. The maximum rate should reflect the actual child care market. Limiting it by ignoring major market forces can have serious effects on the viability of many programs with large numbers of subsidized children, as well as the ability of low income families to access the market place. However changes in the proposed rules that work to make the rates paid under Wisconsin Shares conform more accurately to the child care market should be pursued. What makes that strategy work (as opposed to arbitrarily reducing the maximum rate to meet a budget goal) is that you are not adding stress to a program beyond what the regular market is providing. For instance not increasing the maximum rate would in many counties result in some centers potentially losing 6% in income, a major loss. Several years ago changes in the Child Care Food Program reimbursement process reflected just a slightly higher loss of income and greatly reduced the number of licensed family child care homes in many areas. On the other hand, insuring the maximum reimbursement rate and the rates paid are closer to the actual market rate would only affect those programs with rates that are inflated above the normal market.

Rate Category Changes <Sect. 43 DWD56.06 (1)(c-2), Section 44 DWD 56.06(1) (c-3&4) >: The rules change from 2 to 4 rate categories is good as it conforms Wisconsin Shares payments to the real market. In many markets the rates drop as the age of the child increases and child/staff ratios change. Adding additional maximum rate categories will



in many cases reduce the maximum amount paid for older children and reduce expenditures. Likewise strengthening monitoring is a logical strategy .

Sampling to determine the Maximum Reimbursement Rate <Sect. 42 DWD 56.06 1(b)>: However moving to a representative sample of licensed providers to determine rates as opposed to a mailing to all licensed providers could lead to problems. I've seen major differences in rates from county to county especially between rural counties. Doing a sample that would be accurate (especially given that the core problem is getting the rates sheets returned from the many providers who do not serve Wisconsin Shares children) on a county by county basis does not seem real feasible from my experience. Also the survey needs to continue to be done on an annual basis as rates in most parts of the state rise annually .

### **Suggested Option 2-Saving Child Care Dollars by More Accurate Rate Surveys:**

There is a rules change, not currently proposed, that would make the survey and thus the reimbursement rate more accurate . The current problem with the survey is that it considers programs with large numbers of Wisconsin Shares children as if they were operating under the free market. Currently rates are only excluded from determining the market reimbursement rate if the group center has not served 3 private pay children or the family child care has not served 1 private pay child during the past year.

Under this rule it is almost impossible to exclude any program from the rates survey. Currently Head Start programs providing wraparound care are the only full day programs whose data I can't include in the Dane County annual rates survey. However there are a number of other group centers who serve large numbers of Wisconsin Shares Children and whose rates are essentially the maximum county reimbursement rate. Some of these programs have high rates because they are accredited and providing a higher cost/higher quality service. But a others (including several with large numbers of licensing violations) are receiving more from the state than they would on the free market. Of course, these programs are not working on a free market principle due to the large numbers of subsidized children they serve.

As such it would make sense to set up a different standard for excluding programs from the survey. A logical approach would be to look at a ratio between site capacity and DWD use. What is interesting about this approach is that it can be done totally from existing records from the data warehouse, the R&Rs or state licensing as opposed to relying on the child care program itself. The data warehouse could select a single or multiple month period compare it to the licensed capacity and if the average ratio is over a specific percent for instance 75%- the program would be excluded from the rates survey. Printouts of the excluded programs could be sent to whoever does the survey in each county. This would lead to a more accurate market rate. If the concern is that this might lower rates and exclude low income families from higher quality care (the care we most want high risk children to attend) DWD could be given the option to increase the quality bonus to 15% above the maximum rate for centers that are accredited.

Limiting Reimbursement to 3 months after service < Sect. 29 DWD 56.04 (2)(f)> : The change to put a 3 month cap on the number of months after service that a provider can file for reimbursement is a positive one as it limits the state's potential unpaid receivables for care. It also makes it easier to remove providers who are no longer regulated from the CARES system since at a certain point they can no longer be paid for care they have provided. Without this rule providers can have a file existing on Cares for a long period after they have dropped their regulation increasing the risk that they will be assigned a new child even though they are unregulated.

Restrictions on Parents Providing Care <Sect 18. DWD 56.04 (1) (d)> Not allowing a teacher at a licensed group center (not a family child care) to be reimbursed for care for their own child at the center, however does not make sense. This excludes a group of low wage workers arbitrarily from the benefits of the Wisconsin Shares system due to the type of work they do.

### **Beyond the Rules -- Other Strategies to Address the Structural Deficit :**

Just as the Wisconsin Shares system has impact on the child care market far beyond its statutory mission, likewise addressing the problem of the TANF structural deficit needs to go beyond just revisions in the DWD child care rules.

**1) Making accurate decisions requires good information.** The DWD data warehouse project is critical to this process as is the continual maintenance and improvement of data from the state's Resource and Referral agencies. The R&Rs and the data warehouse have worked together the past 2 years on the as part of the Wisconsin Child Care Partnership Project. The data warehouse is a critical tool for managing the Wisconsin Shares system. Comparing its data with the up to date market data at the R&Rs can make the warehouse even more powerful.

**2) Increased Collaboration Between Head Start and Wisconsin Shares:** Important partnerships have been created in some areas between Head Start and Wisconsin Shares. There are however areas of the state where this still has not occurred often to the detriment of Head Start's ability to recruit students and potentially causing increased costs in Wisconsin Shares. Using the state Head Start funds to leverage more collaboration on the local level between Head Start and Wisconsin Shares may create some savings as well as enabling more low income children to access Head Start.

**3) Contingency Planning for the Deficit:** There should be contingency planning at both the state and local level to deal with the TANF structural deficit. Request the R&Rs convene local task forces involving both county W2 officials , key child care/early childhood groups and local public schools to discuss strategies of how to reduce the impact of the structural deficit. At the state level, contingency plans should be made if revenue is going to be shifted from other funds like the pass through or Centers of Excellence. For instance could staff receiving wage bonuses under those programs be transferred to the Reward program?

**4) Coordination with Public School 4 and 5 Year Old Programs:** There should be a requirement that any school system instituting or repealing a four year old program or an expansion to full day kindergarten – hold a planning meeting with local child care providers and parents to create an impact plan outlining how the change in school services will help the education of the 4 and 5 year olds as well as impact the education of younger children. The increased dependency of many parts of the state on Wisconsin Shares is not just the result of the growth of the Shares program but also the shrinking of the child care market by the loss of many 5 year olds. Increased coordination and collaboration at the local level could result in better more stable programming for all young children.

**5) Combine Office of Child Care, State Licensing and the Child Care Food Program into One Unit:** As part of the discussions related to streamlining government to address the other state deficit, serious consideration should be made of combining State Child Care Licensing, the Office of Child Care and the Child Care portion of the Child and Adult Food Program into one office. It makes little sense that there are two payment and authorization systems for Wisconsin Shares and The Child and Adult Food Program when many providers are involved with both. Why not have providers receive one check with both payments and combine the food program monitors for group centers with the licensing staff so that group centers would be monitored by one person. Properly organized, it could make it easier for both family and group centers to offer the food program since many of the families could be pre-approved through the Cares system. It would provide more staff for licensing. While savings may not be major, increasing access to the food program might help balance the more restricted revenues available from Wisconsin Shares.

This could be done by DPI subcontracting the child care portion of the food program to the office of child care while maintaining the school portion at DPI.

# LEGAL ACTION OF WISCONSIN, INC.

230 West Wells Street • Room 800 • Milwaukee, Wisconsin 53203

414/278-7722

FAX 414/278-7126

[www.legalaction.org](http://www.legalaction.org)

**Kenosha Office**

508 56th Street

Kenosha, WI 53140

262/654-0114

August 12, 2002

**Madison Office**

31 South Mills Street

P.O. Box 259686

Madison, WI 53725-9686

608/256-3304

Elaine Pridgen  
Office of Legal Counsel  
Department of Workforce Development  
201 East Washington Avenue  
P. O. Box 7946  
Madison, Wisconsin 53707-7946

**Re: Proposed Rules -Chapter DWD 56  
Administration of Child Care Funds**

Dear Ms. Pridgen:

These comments are submitted in response to the department's proposed amendments to Chapter 56, the administration of child care funds.

(1) Section DWD 56.03(5) authorizes DWD to establish waiting lists and make certain adjustments when funding for child care is insufficient. These changes cannot be adopted because they are contrary to state law. In the most recent Budget Bill the Governor proposed legislation specifically authorizing DWD to promulgate rules similar to those proposed. That legislation was rejected by the legislature. Instead, the legislature recognized the importance of child care to low-income working families and enacted legislation providing for full funding. DWD cannot ignore this clear legislative intent and promulgate rules to the contrary.

The rule as proposed establishes priority status for certain individuals and allows DWD to limit the increase in maximum rates and adjust the co-payment schedule in the event funds are insufficient. The present rules, DWD 56.08(3), already provide for adjustments to the co-payment schedule to reflect certain factors. DWD does not need additional authority.

The priority status list and the authority to limit maximum rates raise significant and difficult policy questions which are better addressed through legislative debate. One

obvious question is the failure to even mention working parents. Priority status is given to W-2 participants, but working parents are not even included in the list. In the mid-90s, Milwaukee County maintained a waiting list for child care assistance. Parents often waited years to receive help and for many low-income families this was the most significant barrier to employment. The possible return to this scenario would be devastating. Single parents who could not obtain child care assistance would be forced to forgo employment. This in turn could overburden the W-2 program and force an increase in W-2 expenditures.<sup>1</sup>

Another questionable decision is listing foster parents before kinship relatives. There is no basis to conclude that one group is more in need than the other. For a kinship relative who is receiving only \$215 a month to care for a child, affordable child care is unavailable. As a result, the relative may not be able to care for the child even though it is the best possible placement. The alternative, placing the child through the foster care system, entails more of the system's time, personnel and funds than the kinship placement.

The proposal to allow DWD to hold maximum rates at their current level for one year or to limit rate increases to a percentage amount could result in significant unintended consequences. Child care facilities might be forced to increase their rates in future years more than originally planned to compensate for lost revenues; they may limit the numbers of low-income children they accept or not accept them at all, and some facilities may simply be forced to close.

(2) DWD 56.04(1)(d), as proposed, provides that child care payments may not be authorized to a provider for the care of a child when the care is done by a legally responsible parent. The proposal should be modified to allow child care to be provided by the legally responsible parent in some circumstances. In some cases parents are employed by the same child care facility their children attend. In others, W-2 participants are assigned to training or work at a facility and encouraged to enroll their children at the same site. For many parents such arrangements are not merely

---

<sup>1</sup> It is also possible that parents who could not obtain child care assistance would be found "job ready" and, as a result, denied all assistance.

conveniences but, due to transportation or health needs, they are necessities.<sup>2</sup> The proposed rule should encourage these arrangements, not discourage them.<sup>3</sup>

(3) DWD 56.04(2)(e) and (2)(f), as proposed, should be amended to provide that in those cases where a payment is not authorized due to the provider's actions, the eligible parent cannot be held liable for the payment owed (except for any amounts already due such as the co-payments). This amendment is similar to the practice in the medical assistance program. In that program if a provider's actions result in the denial of payment by the state, the eligible individual cannot be billed for the services. By adopting a similar provision, the rules would ensure that low-income parents are not held liable for services they cannot afford and which would have been paid if the provider had correctly submitted information.

(4) DWD 56.04(7)(d), as proposed, should be amended to provide that written notice should be given to the parent immediately and, at the very least, two weeks before the sanction. The parent should also be offered assistance in locating and securing a new child care provider.

(5) DWD 56.06(1)(b), as proposed, should define the term representative sample to ensure that the county or tribal agency conducts a meaningful survey. A provision should be added allowing interested providers and affected families to seek review of the rates adopted if they feel the rates are not representative of the cost of care in the county.

The legislature made a clear choice- to continue full funding for child care assistance. DWD, as an administrative agency, cannot enact rules that ignore that choice. If implemented the proposed rules will affect more than just the availability of child care - they will affect employment, the W-2 program, the child welfare system and the lives of low-income children. It is the legislature, after careful and considered debate, that

---

<sup>2</sup> I have had W-2 clients who could work only if their child could attend the same facility because of the need to administer certain treatments to the child during the course of the day.

<sup>3</sup> If DWD is concerned with the sole provider who cares for her children and others that situation should be addressed directly.

must make the policy decisions at issue.<sup>4</sup>

Your time and consideration of the above comments are appreciated.

Very truly yours,

*Patricia DeLessio*  
PDP

Patricia DeLessio  
Attorney at Law

PDL/eca

---

<sup>4</sup> When faced with a need to reduce expenditures the legislature may very well choose to look to programs, other than child care, to save money. For example, streamlining the administration of the W-2 program might be a better alternative.

## TESTIMONY

### DWD Hearing On Administrative Rule Chapter DWD 56

August 13, 2002

My name is Diane Gallagher. I am the Organizer for the Wisconsin Childcare Union, Local 255 AFSCME Council 40 and the chairperson of the Dane County AEYC Worthy Wage Task Force. I have worked in the childcare field for more than 20 years both as a childcare teacher and center director. I want to speak about the statute administrative rule regarding Wisconsin Shares eligibility for childcare teachers and providers, s.49,155(3m)(d) **This statute denies eligibility for Wisconsin Shares childcare subsidies to childcare teachers and providers if their jobs include caring for their own children, even if they are eligible in all other respects.** This applies to owners of family childcare programs who care for their own children along with the other children in their program, employees of family based childcare programs whose children are enrolled in the program that employs them, and employees of center based childcare programs whose children are enrolled in the classroom they are in charge of or share the responsibility for.

I am here today to represent many teachers and providers who cannot be here because they are providing childcare for the families of Wisconsin. The Union and the members of the Task Force believe that this rule is an unfair restriction on teachers and providers who are already burdened by unacceptably low wages and stressful working conditions. We are also greatly concerned about the unintended impact this rule can have on a significant portion of the childcare workforce and on childcare programs. We believe that it negatively impacts the quality and supply of childcare in the state and exacerbates the already unacceptable 40% turnover rate in Wisconsin. This rule increases the pressure for teachers and providers to leave the field if they cannot pay for the care of their own children.

As one example I will read the words of a union member who is in this situation. READ MEMBER'S TESTIMONY (see attached).

In another case, a member of the Worthy Wage Task Force, who is an employee in a licensed family childcare program in Madison, decided to continue to work at her job when she had her own children. She has been working as team teacher with the owners caring for a group averaging eight children in the family based program for eight years. She has one year toward her associate degree in early childhood education. Her mother was able provide childcare for her children until they were three and five years of age. About a year ago, when that was no longer possible, she enrolled them in the program where she worked. This teacher qualified financially for and received a Wisconsin Shares subsidy to help with the cost of the care for her children so she could continue in her job. Her program has now received notice that she will no longer qualify for childcare subsidies if her children are enrolled in the program.

This rule leaves these parents with two very poor choices. They can either send their children to other centers, disrupting their continuity of care, or leave their positions and look for jobs elsewhere so their children can maintain consistency of care.

These cases are by no means isolated ones. They are repeated in great numbers in childcare programs all over the state. Since notices went out to programs in May clarifying this rule, we have received a number of phone calls from our members in the Madison area alone. We have also heard from childcare programs in Milwaukee and Sheboygan, facing similar issues. Few



childcare programs, either center or family based, offer free childcare to employees. When teachers and providers must pay for care for their children, whether or not they work with their own child, it is unfair and illogical for them to lose their subsidy just because their child is in their classroom.

As you know from the recent Wisconsin Childcare Research Partnership Briefs, 56% of center based childcare teachers in Wisconsin earn less than \$8.00 per hour. Employees in family childcare programs average approximately \$6.00 per hour. Because of low wages many of these teachers and providers who have young children qualify financially for the Wisconsin Shares subsidies. In fact, *many teachers and providers rely on the childcare subsidies in order to remain in the childcare field and childcare programs rely on these employees to maintain the quality of care for the children they serve.* We should not add to the insult of their low wages by making these employees ineligible for a subsidy program when other low-income parents with different jobs are eligible.

Many teachers and providers choose to work in childcare, despite the low wages, in part so they can be close to their children while they work. Forcing them to enroll their children in a different program entirely removes that incentive to stay in the field. Employers in other industries are encouraged to help sponsor childcare close to or on site of the parent's place of employment because it is beneficial to the child, the parent and the employer. We encourage this in employer sponsored childcare settings. Is it fair to discourage onsite care only for childcare teachers and providers who supply the care for other working families in the community?

The Union and the Worthy Wage Task Force urge you to modify this rule to allow **EMPLOYEES OF LICENSED OR CERTIFIED CHILDCARE PROGRAMS** who care for their own children, **IN ADDITION TO OTHER CHILDREN IN THEIR CHARGE, to be entitled to receive a Wisconsin Shares subsidy, as long as they meet the other eligibility requirements.** This should apply to both center and family based programs. **These teachers and providers do not actually receive any reimbursements from Wisconsin Shares to care for their children.** *The program that employs them* is reimbursed for that care. The employed parents simply receive a wage for caring for all of the children. Well-trained childcare professionals can work with their own child and continue to provide quality care for all of the children in the classroom.

The Child and Adult Care Food Program (CACFP) administered federally by USDA and in Wisconsin by the Department of Public Instruction, provides a precedent that relates to this situation. In the CACFP, low income family childcare providers are eligible to receive reimbursement for the meals and snacks they serve to their own children who are in their care, if they also have at least one day care child present. This assures that the provider is actually providing childcare to other people's children as well as their own, before they can be reimbursed for the food they serve that day. It seems fair that the same logic should apply to eligibility for Wisconsin Shares childcare subsidies.

Diane Gallagher  
Childcare Organizer  
Wisconsin Childcare Union, Local 255 AFSCME Council 40  
8033 Excelsior Dr. Suite D.  
Madison, WI 53717  
(608)836-4040 ex 227  
email: dgallagher@afscmecouncil40.org

For Hearing On Administrative Rule Chapter DWD 56  
August 13, 2002

To Whom It May Concern:

I am having Diane Gallagher read you my story because I am afraid of the consequences of revealing my identity. I am a preschool teacher and have been in the field for five years. I have a BA and am a level 7 in the Registry. I enjoy working with children. I have been at my current center for about two years. I have two children of my own, and because of my low income as a childcare professional, I receive childcare assistance from the county. I am concerned because of the new enforcement of the state law that won't allow teachers who receive county assistance to have their children in their classrooms. My older child is moving up to my room in two weeks.

We have five alternatives, all of which are not good for the children, teachers, or center. 1) I find a new job. This is going against everything we know about quality childcare: the key is consistency and experienced teachers. 2) I switch to a different room for the year. This affects the kids in two rooms, and the team teachers in two rooms. Again, there would be no consistency. 3) My child stays in an inappropriate classroom for her age, which would not allow her to grow and learn in an appropriate manner. 4) My child goes to a new center altogether, which would upset her life. 5) We completely change the structure of our classroom, dividing into two distinct groups, with my child always in the "other" group. This is the only acceptable solution, but is by no means desirable.

Our room has had the same structure for at least 19 years, if not longer. We have a group of kids with two teachers, and we team-teach. We cover both rooms, allowing all the children to choose where they want to explore and learn, and we teachers move fluidly between them. This works. This gives children the greatest number of interesting choices, along with giving the teachers the opportunity to learn from each other and get to know all the children in the room, not just the ones in our "groups." The new enforcement of this law is upsetting our room, and making it less than what it should be.

I am also outraged on a different level. I think this law is discriminatory on two levels: it discriminates against women and it discriminates against the poor. Because women are the biggest population of the childcare workforce, it is of course going to affect us the hardest. And because of the low income involved in childcare, it most harshly affects poor women. It also assumes that we are trying to cheat the system, which is A) insulting, and B) impossible. It is not possible for me to obtain the funds the county pays for my daughter for my own personal use. The check from the county goes to the accountant, who deposits it into the proper account for the school. It does not go to me. I get paid to watch many children, not just one.

Please do not allow this law to affect the childcare industry negatively. It is hard enough to keep good teachers. We don't need another obstacle preventing children in our society from getting the best tools they need to grow into amazing adults.



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

From: Mary Babula [mbabula@wecanaeyc.org]

Sent: Thursday, August 15, 2002 4:52 PM

To: Pridgen, Elaine

Subject: Comments on Proposed Wisconsin Shares Rules Chapter DWD 56

On behalf of Wisconsin Early Childhood Association, a statewide membership organization representing the early childhood care and education workforce, I wish to make the following comments about the proposed Wisconsin Shares Rules Chapter DWD 56--Administration of Child Care Funds.

Adjustments due to insufficient funds:

We believe that this program was established by the State Legislature to provide the support services low income persons need to be able to accept and maintain employment, and move toward self-sufficiency. If the funds allocated by the State Legislature become insufficient to allow the program to continue to operate within the current rules and policies, we believe the Department of Workforce Development should make recommendations to the State Legislature and the Governor about how to continue to operate the program, and that the decision about any changes to be made in program policies or rules should be made by the State Legislature, not by the Department of Workforce Development.

We believe this is an important safeguard to the program, to be sure the State Legislature and Governor take responsibility for any changes in eligibility guidelines, co-payment levels, reimbursement rates, etc. and to weigh those changes against funding options. We oppose giving this authority to change the rules solely to DWD.

Establishing waiting lists:

Wisconsin Early Childhood Association opposes the establishment of waiting lists for Wisconsin Shares Child Care Funds. Low income families cannot afford to pay the full cost of child care, even at the rates now charged by child care programs, which do not allow for adequate resources to provide high quality child care and education services to young children, and do not allow for adequate wages to attract and retain qualified staff in most programs. Putting families on waiting lists for child care services will seriously jeopardize their ability to maintain employment and support their family. It will put children at risk of being placed in unsafe child care settings or even being left home alone by desperate parents who have to go to work. Wisconsin has an obligation to help provide safe child care options for at least low income families who are required by Wisconsin Works to be employed before those children are old enough to attend our publicly funded public education system, and during the parents work hours before and after school for school-aged children.

Options to consider if funding is insufficient:

One way to limit the costs of Wisconsin Shares Child Care would be to allow parents of infants to stay home with their babies for the first year, or at least the first six months of the infant's life. Due to the high cost of infant child care, this would save the state money, and allow the parent to establish a secure relationship with their infant. Establishing a secure relationship between a parent and his or her infant is not just something that would be nice to support. It is essential to the baby's long term ability to form healthy relationships, to learn to respect authority, and to be able to succeed in school and as an adult. Adopting this policy would

not only save money in the Wisconsin Shares program but would support the healthy development of the next generation.

Miscellaneous:

Wisconsin Early Childhood Association is opposed to the rule 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."

While we understand the decision to not reimburse a family child care provider for the care of her own children, we would like to discuss this rule at a future time. That is not what we are asking to be changed. The rule we would like to see changed affects child care centers and family child care providers who hire a staff person to assist in providing child care services to a group of children, and that group happens to include a child of that staff person.

We would like this rule to be eliminated or modified. We would like DWD to remember that many people with young children have been encouraged by their W-2 case managers to take a job in child care. Now they are being told that if they work in child care and their child needs to be in the same classroom or group for a variety of reasons, they cannot be reimbursed for a portion of their child care costs, but if they take work at a fast food restaurant or another job, they can get their child care subsidized. It is important to remember that there is a 40% turnover in the child care workforce each year, due to low wages and benefits. Yet W-2 will only work if parents have access to child care while they work. This policy will have a negative impact on the supply of child care, which is already too limited.

This rule could be modified to require a special exemption be granted based on the individual circumstances of the individual situation. Those circumstances could include: the parent has worked at the program for many years, and now has a child, and it would be disruptive to the program and the parent if the parent cannot continue to work in the program. Another special exemption could be that there is not another child care program available in a reasonable distance from the parent's place of employment, or one that provides a program which is acceptable to the parent (options given to other parents participating in W-2.) Granting an exemption could be based on a visit to the child care program by the child care administrative agency staff to assure that the care is actually provided and that the child is part of a larger group. Programs could also be required to submit their policy about whether all parents who are employed by the child care program are required to pay for the child care slot their child uses.

These are some options which could be considered as part of a modified rule, which could protect the public's interests and at the same time provide equitable support to all income eligible parents, where ever they work.

We have heard of many challenging situations in child care programs throughout the state, that will have a significant, negative impact on individual families--the parents and the children--and on the child care program, if this rule is enforced.

We ask that you establish a work group, of representative child care staff/providers, county and W-2 agencies, legislators and other appropriate individuals, to craft a policy that will address the concerns you have heard identified in this public comment process.

Thank you for considering our comments.

Sincerely,

Mary Babula  
Acting Executive Director  
Wisconsin Early Childhood Association  
744 Williamson Street, Suite 200  
Madison, WI 53703

Mary Babula  
Director of Membership Services and Outreach  
Wisconsin Early Childhood Association



From: Amy Schuster [aschus@wecanaeyc.org]

Sent: Monday, August 12, 2002 4:53 PM

To: Pridgen, Elaine

Subject: DWD 56 hearing

Elaine,

I would like to share some thoughts with you as I cannot attend the hearing tomorrow concerning Administrative Rule DWD 56. It is my understanding that child care professionals will no longer be able to receive subsidies for their child if they in fact are the child care provider for that child. I personally spent almost 9 years working in a child care center and remember that many of my peers could not afford to send their children to the program they worked in due to the high cost of child care. DWD 56 I believe would even exacerbate this situation by taking away subsidies used by these individuals. Shouldn't a working parent (who happens to be a child care professional) be able to use their subsidy towards a program they believe is best for their child (the one they work for)? This rule unfairly singles out one group of parents...and surprisingly they are the individuals that are the cornerstone of the child care system in Wisconsin.

A response that I have heard regarding this point is that the child could be placed in another room so that the parent isn't the caregiver. In most programs, this is impossible because they have only one group for each age level. Shifting staff would unduly burden program operations, and create instability for the other children being cared for. We have learned that consistency of caregivers is one of the biggest indicators of quality of care for children, and this rule would work against that goal.

I currently coordinate a program called the R.E.W.A.R.D.(tm) WISCONSIN Stipend Program. It is a compensation initiative that awards annual stipends to child care providers, with the amounts based upon the level of education the individual has attained. We gather a lot of data for this program, and we also gather stories from the recipients. Overwhelmingly we hear that child care professionals are underpaid, receive few if any benefits, and struggle to remain in the field. From a recent study by the UW-Extension, we know that the annual turnover rate for child care professionals in Wisconsin is close to 40% already. I believe that this rule will make it harder for some professionals to stay in this field.

I understand that this rule is being enforced to discourage potential abuse. My thoughts are that the possible abuse situations are few, and therefore all providers should not be punished. Couldn't better monitoring be the answer? Or another way?

The subsidy system was enacted to support low income individuals in purchasing quality child care. Don't establish a rule that would make the very individuals that provide quality child care unable to access the subsidies themselves.

Amy Schuster

Program Coordinator

R.E.W.A.R.D.(tm) WISCONSIN Stipend Program

Wisconsin Early Childhood Association

744 Williamson, Suite 200

Madison, WI 53703

1-800-783-9322, ext. 7239

aschus@wecanaeyc.org

From: Red Caboose E-mail [redcaboose daycare@tds.net]  
Sent: Tuesday, August 13, 2002 1:15 PM  
To: Pridgen, Elaine  
Subject: Administrative Rule DWD 56

Here is a written copy of my verbal presentation at the public hearing on August 13, 2000 re:  
Administrative Rule DWD 56

Hello. I am Wendy Rakower, director of Red Caboose Day Care Center. I have worked at Red Caboose for twenty-nine years. During that time, there have been many teachers whose children were enrolled at the center, including myself. Some teachers were private-paying, some had city funding, and some had county tuition assistance.

Red Caboose has four classrooms, based on age. A teacher is hired into a particular classroom based on their experience and training working with that age group.

The children, on the other hand, move from room to room as they grow older. Generally they stay in a given classroom for about one year.

At Red Caboose, we team teach. It is very important that the teaching team be as consistent as possible. It takes time to build a strong team that works together to meet the needs of the children in the group. It is important for the quality of the center to keep teams together.

It would be very disruptive to move a teacher to another classroom for the time his/her child is in his/her classroom. In fact, this would disrupt two classrooms and two teaching teams.

On the other hand, it would be unreasonable to expect that a parent would disrupt their child's life by sending them to another center for a year. And obviously, if they are income eligible for county funding, they could not afford to pay for the entire cost of child care for the period of time the child is in their classroom.

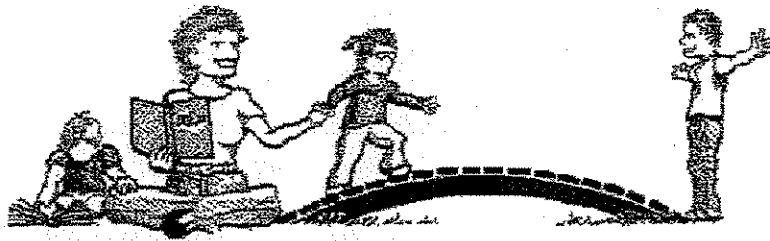
A teacher is a teacher to all the children at a center, including their own. During work hours, they are responsible for the care and education of all the children in the class, just like every other teacher.

When a teacher has county tuition assistance, the teacher does not receive money directly from the county. The center receives the money from the county plus a co-pay from the parent. The teacher receives wages and benefits from the center exactly like every other employee.

Administrative rule DWD 56 threatens an already fragile child care system. We need to do everything we can do to support the people who work in the field, so that we can build a stable and strong workforce. I worry about losing good teachers because of this rule.

Please help support the parents who receive county tuition assistance and who work as teachers, now and in the future, by allowing them to continue to work during the period of time their child is in their classroom. This will support the center as well.

On behalf of all the children in child care who need all the good teachers we can provide, I thank you for your consideration.



## **Bridges Family Child Care**

525 Dunning Street  
Madison, WI 53704  
(608) 249-0949  
[www.bridgeschildcare.org](http://www.bridgeschildcare.org)

Aug 13, 2002

I am concerned about the rule that would have an effect on the eligibility of child care teachers to receive funding for their child care needs. I understand this issue has been raised because of the misuse of a few people in the system and the goal is intended to eliminate future misuse or fraud. Unfortunately unless this is dealt with in a careful way hardworking, well intended legitimate child care workers will suffer as a result.

I know our government hasn't accepted responsibility for the care and education of all the preschool children and some folks are anxious about some parents being paid to stay home with their children. While this may be an important issue that we as a society need to grapple with, for now our welfare system needs to reflect the wishes of the public. I urge you to do so carefully. Please do not create unnecessary financial challenges for child care workers.

I believe that when the State of Wisconsin went through welfare reform many people worked hard to reduce the barriers to employment. One of the policies that was created was to provide funding for child care givers that weren't trained or regulated and a tiered system was created. Provisional care made it easy for a relative or neighbor to receive funds for accepting the responsibility of child care that would enable parents to get to work. It also made it easy to abuse the system. Correct that loophole. Require that in order for a child care worker to be eligible for child care funding their child must be placed in a licensed child care facility. This opens the door on any given day to unannounced visits. This allows the licenser to determine whether or not someone is misusing the system. Meeting licensing standards is not nothing. The standards have been carefully and legitimately adhered to since welfare reform. As a licensed child care facility of 15 years I can tell you, it used to mean nothing to be licensed. My licenser used to come and talk about his hobbies and then leave. I would raise concerns about my environment or practices because I needed some guidance. Now, I am constantly working hard to meet licensing standards because licensers are holding facilities accountable to the standards. My health and safety records are maintained routinely. We have fire and tornado drills. We have planned activities. We sanitize our meal table and chairs after each meal. We have ample equipment for the children to choose from that we maintain. We receive continuing education and offer parent conferences annually.

The use of TV is extremely limited. We are legitimate teachers. We work extremely hard. I welcome anyone from DWD to come and work with us for a full day to understand just how legitimate the work of a licensed child care teacher or provider is. I can't tell you enough how much I appreciate the fact that being licensed now really means that we have met standards that separates us from untrained child care givers. I want to thank the Department of Workforce Development for that. Our children are safer and our teachers and providers are more accountable.

What I think should be done to eliminate parents receiving funds for taking care of their children only and not providing child care services to the public is to require that they must be licensed and operating a legitimate business. This would mean that they are required to be opened to the public. State that the child care facility may not be eligible to receive funds for providing care for the child care workers exclusive care of the providers children. State that it is fraudulent to set up a mock child care to receive funds and violators will be prosecuted. Require licensers to ask if children in care are children of the teachers. This would separate the child care facilities into two categories. Most of the facilities answer to that question would be no. To those who answer yes have the licenser check the children's records to determine if this may be a mock child care facility. If there are no other children enrolled have the licenser require that the provider must inform them in writing what they are doing to offer their services to the general public and enroll other families. At this point the number of licensed child care facilities that would have failed to meet 'the test' as a legitimate facility will be low. It would be easy to address the concerns of the public by setting up a mock enrollment to determine whether or not the facility is open to the public. Just going through this process will reduce the number of people who are abusing the system. Specifically what punitive challenges might be enforced at that point is up to you but at least it wouldn't challenge most of the child care teachers that are working legitimately. This career is not easy. When we meet standards we have earned our license. We meet health and safety standards. We nurture childrens development. Please respect that. As you probably know there are so many challenges in the field already that we loose about one third of the workforce annually already. Many of the teachers leave because they cannot afford to stay in the field. This ruling would have a financial impact on many legitimate child care facilities. Don't create more unnecessary barriers. Target the concern and separate those of us who work with integrity and enhance all of Wisconsin workforce from the few people who have learned how to abuse the system. Create language that protects the legitimate child care workforce and keep Wisconsin working effectively.

Thank you for taking the time to process this carefully.

Oma Vic McMurray

From: Dorothy Conniff [DCONNIFF@ci.madison.wi.us]  
Sent: Tuesday, August 13, 2002 3:42 PM  
To: Pridgen, Elaine  
Subject: Comment on Eligibility Rules for Wisconsin Shares

Dear Ms Pridgen,

I am sorry not to be able to attend the hearing of the rules today. However, I would like to express a strong opinion that the rule that forbids child care workers to receive child care subsidies while their own child is in the classroom where they work may have serious consequences for children, child care workers, and centers.

Most child care workers cannot afford child care on their salaries, and so must be dependent on subsidies. This rule would leave a worker with two options: finding another place for her child (which may be very difficult both because of availability and transportation), or finding another job (which will aggravate child care turnover, the most serious problem in the field.

In order to keep a worker, a center might offer free child care to the child. Unfortunately, because child care is a very marginal business, this will most often not be affordable for the center.

I urge you to reconsider this rule.

Thank you for the opportunity to comment.

Dorothy Conniff

Dorothy Conniff  
Community Services Supervisor  
Madison Municipal Building  
P.O. Box 2626  
Madison, WI 53701  
608 266 6520  
dconniff@ci.madison.wi.us

**State of Wisconsin  
Department of Workforce Development  
NOTICE OF PUBLIC HEARING**

**Chapter DWD 56**

**Administration of Child Care Funds**

NOTICE IS HEREBY GIVEN that pursuant to ss. 49.155, excluding (1d) and (1g), and 227.11, Stats., the Department of Workforce Development proposes to hold a public hearing to consider rules relating to the administration of child care funds.

**Hearing Information**

**August 13, 2002 GEF 1 Building, Room H305**

**Tuesday 201 E. Washington Avenue**

**10 a.m. MADISON**

Interested persons are invited to appear at the hearing and will be afforded the opportunity to make an oral presentation of their positions. Persons making oral presentations are requested to submit their facts, views, and suggested rewording in writing. Visitors to the GEF 1 building are requested to enter through the left East Washington Avenue door and register with the customer service desk. The entrance is accessible via a ramp from the corner of Webster Street and East Washington Avenue. If you have special needs or circumstances that may make communication or accessibility difficult at the hearing, please call (608) 267-9403 at least 10 days prior to the hearing date. Accommodations such as ASL interpreters, English translators, or materials in audiotape format will be made available on request to the fullest extent possible.

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

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

Statute interpreted: Section 49.155, excluding (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 (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.

The arrows indicate agreement ↑ or disagreement ↓ with proposed revisions. There are also two additions in content.

**↑ 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. Please also categories of payment based on quality of program.

**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 and certified 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 3 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 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.

↑ The department may issue all payments by electronic funds transfer.

↑ 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.

↓ An agency may contact a representative sample of licensed providers, rather than all licensed providers, to determine the prices that they charge to the general community. The department may arrange for a survey independent of the county or tribal agency.



† 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.

#### **Initial Regulatory Flexibility Analysis**

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 that they must follow to participate in the program. Subsidy payment levels for certain age groups will be adjusted to be closer to the prices that providers charge the general community.

#### **Fiscal Impact**

The creation of more precise maximum reimbursement rates to providers and the issuance of provider payments by electronic funds will decrease expenditures. The continuance of payments to providers to hold a slot when a parent has a temporary break in employment will increase expenditures. If the department exercises the authority in the rule to establish waiting lists, increase parental copayments, or limit the increase in the maximum rate paid to child care providers, there will be a decrease in expenditures.

#### **Contact Information**

The proposed rules are available on the DWD web site at <http://www.dwd.state.wi.us/dwd/hearings.htm>.

A paper copy may be obtained at no charge by contacting:

Elaine Pridgen

Office of Legal Counsel

Dept. of Workforce Development

201 E. Washington Avenue

P.O. Box 7946

Madison, WI 53707-7946

(608) 267-9403

[elaine.pridgen@dwd.state.wi.us](mailto:elaine.pridgen@dwd.state.wi.us)

#### **Written Comments**

Written comments on the proposed rules received at the above address no later than August 15, 2002, will be given the same consideration as testimony presented at the hearing. Secretary or designee Date

Additional comments/suggestions:

1. All providers who accept children with the State Subsidy must have successfully completed the 20 hour course and at least 15 hours of continuing education annually to receive the reimbursement.
2. Remove provisional care. It perpetuates poor quality. The children and taxpayers of Wisconsin deserve and expect more.
3. Money set aside in the subsidy program to contract with agencies (like Resource & Referral) to inspect and evaluate programs for quality. All programs must attain a minimal level of quality (such as level 4 on the ETTERS scale) to receive any amount of subsidy payment, and payments may increase based on higher levels achieved. Can provide more detail on this, please contact.

From: marjam@mailbag.com  
Sent: Tuesday, July 23, 2002 4:36 PM  
To: Pridgen, Elaine  
Subject: Administrative Rule DWD 56

Dear Ms. Pridgen,

I am unable to attend the hearing regarding the proposal to deny childcare funds to providers who care for their own child within their childcare program, but would like to submit written comments for consideration.

While there is certainly a need to safe guard against abuse in the system, I feel that a wholesale restriction of funds will hurt too many legitimate childcare providers.

The restrictions placed on teachers in childcare centers would then cause providers to search for care for their own children outside of their own center. Given the lack of availability of quality childcare and the pay provided most childcare providers, this is a huge and unnecessary burden placed on the backs of childcare providers. I think it is safe to say that a provider in a center licenced by the state is providing legitimate care and is therefor eligible for subsidies.

Furthermore for a home childcare provider providing care for your own child is a direct cost, it is not "free childcare". You can not then enroll another child who would be paying tuition to you. You are, in effect, paying tuition to yourself. If at the same time you are eligible for state funds those funds would need to go to you to make up for the cost to your business of caring for your own child.

Please take these thoughts into consideration when regulating subsidies as they affect those working in childcare.

Michelle Martin  
marjam@mailbag.com