

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10/16/02

BILL NO. \_\_\_\_\_  
OF \_\_\_\_\_

SUBJECT Clearinghouse Rule  
02-104 Administration of

Child care funds

(NAME) George Hasenauer  
2200 Park Circle -

(Street Address or Route Number)  
Verona WI 53593

(City and Zip Code)  
4-C 5 Odara Ct Madison  
WI 53719

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: Oct. 16, 2002

BILL NO. CR 02-104  
OF \_\_\_\_\_

SUBJECT \_\_\_\_\_

Wendy Rakower  
(NAME) 43 Red Caboose

654 Williamson St  
(Street Address or Route Number)

Madison, WI 53703  
(City and Zip Code)

Red Caboose Daycare Center, Inc  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10/16/02

BILL NO. CR 02-104  
OF \_\_\_\_\_

SUBJECT \_\_\_\_\_

Bob Andersen  
(NAME)

B. S. Mills  
(Street Address or Route Number)

Madison WI 53705  
(City and Zip Code)

Action of Wisconsin  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O.Box 7882  
Madison, WI 53707-7882

47a

cr 02-104

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: Oct 16, 2002

BILL NO. \_\_\_\_\_  
OR \_\_\_\_\_

SUBJECT Ch. Lube 02-104

(NAME) Carol Melaris

(Street Address or Route Number) 16 W. Carroll St.

(City and Zip Code) Madison WI 53711

(Representing) The Council of Children & Families

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY**

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10/16/02

BILL NO. \_\_\_\_\_  
OR \_\_\_\_\_

SUBJECT Heatinghouse Rte 02-104

(NAME) Jim Leenhart

(Street Address or Route Number) 2 E. Miffins Madison

(City and Zip Code) \_\_\_\_\_

(Representing) Wisconsin Child Care and Education Coalition

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY**

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10-16-02

BILL NO. \_\_\_\_\_  
OR \_\_\_\_\_

SUBJECT admin. of Child Care funds

(NAME) Claire Kuhr

(Street Address or Route Number) 5102 Flambeau Rd.

(City and Zip Code) Madison, WI 53705

(Representing) Self

Speaking in Favor:

Speaking Against:

Registering in Favor:   
but not speaking:

Registering Against:   
but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger **PROMPTLY**

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10/18/02

BILL NO. \_\_\_\_\_  
OR \_\_\_\_\_

SUBJECT Administration  
of Child Care Funds

~~F~~ Mary Babula

(NAME)  
744 Williamson St.

(Street Address or Route Number)  
MADISON, WI 53703

(City and Zip Code)  
Wis. Early Childhood Assoc.

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10-16-02

BILL NO. \_\_\_\_\_  
OR \_\_\_\_\_

SUBJECT Clearing house  
Rule 02-104

MARY ROWIN

(NAME)  
200 E Washington

(Street Address or Route Number)  
Madison

(City and Zip Code)  
DWD

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10/16/02

BILL NO. \_\_\_\_\_  
OR \_\_\_\_\_

SUBJECT Cleanypase Ruk 02-104

Rebecca Brueggerman

(NAME)  
201 E. Washington Ave

(Street Address or Route Number)  
Madison WI 53707

(City and Zip Code)  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10/16/2002

BILL NO. Clearance/Review Reels  
OR 02-104

SUBJECT Child Care Administration

Rev. Sue Mathis Farson  
(NAME)

322 E. Washington Ave.  
(Street Address or Route Number)

Madison, WI 53703  
(City and Zip Code)

Luthman Office for Public  
(Representing) Policy in WI

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 10-14-02

BILL NO. CR 02 104  
OR

SUBJECT \_\_\_\_\_

Beth Smith  
(NAME)

\_\_\_\_\_  
(Street Address or Route Number)

Madison  
(City and Zip Code)  
AFSCME

\_\_\_\_\_  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

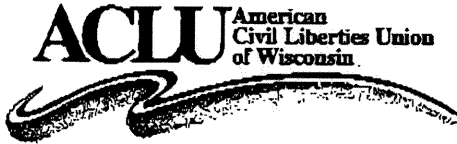
Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

cr  
02-104



**FACSIMILE COVER SHEET**

**FAX # (414) 272-0182**

TO: Sen Judith Robson

DESTINATION FAX # 608-267-5171

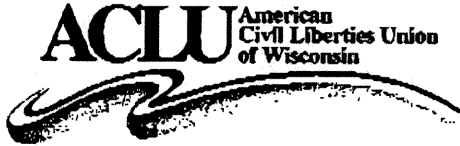
FROM: Chris Ahumty

DATE: 10-16-02

TOTAL PAGES (Including cover page) 5

If you do not receive all of the pages or have a problem with the transmission  
please call (414) 272-4032 and ask for \_\_\_\_\_.

MESSAGE Re: Child Care - Proposed  
DWD Rules on Waiting  
Lists



October 16, 2002

Senator Judith Robson, Chair  
Senate Committee on Human Services and Aging  
Room 15 South  
State Capitol  
P.O. Box 7882  
Madison WI 53707-7882

TRANSMITTED VIA FAX ONLY, (608) 267-5171

RE: Proposed Rule Changes for Child Care Funding

Dear Sen. Robson:

I am writing on behalf of the ACLU of Wisconsin to oppose the Wisconsin Department of Workforce Development's (DWD) decision to promulgate Clearinghouse Rule 02-104, which would allow the use of waiting lists for assistance from the Wisconsin Shares child care subsidy program.

DWD's proposal to establish waiting lists violates state law. Further, DWD's decision to give a low priority to foster parents and kinship care relatives in such waiting lists is likely to decrease the number of foster and kinship families, especially in the low and moderate income neighborhoods in which they are most needed. Finally, we believe that this matter could most appropriately be resolved by seeking changes in the W-2 statute which would permit W-2 participants to choose to remain home until their children reach 12 months of age.

**I. Child Care Waiting Lists Are Not Authorized by State Law.**

An administrative agency's powers and authority are statutorily created and defined by the legislature. See, *Jocz v. Labor and Industry Review Comm'n*, 196 Wis.2d 273, 538 N.W.2d 588, 593 (Ct. App. 1995), citing *Elroy-Kendall-Wilton Sch. v. Cooperative Educ. Serv. Agency, Dist. 12 (CESA 12)*, 102 Wis.2d 274, 306 N.W.2d 89, 91 (Ct. App. 1981). Further, "an administrative agency

has only those powers which are expressly conferred or which are fairly implied from the statutes under which it operates." *Peterson v. Natural Resources Board*, 94 Wis.2d 587, 288 N.W.2d 845, 848 (1980)(internal citations omitted).

In determining whether or not an administrative agency has exceeded its statutory authority, Wisconsin courts follow the policy set out in *In the Interest of A.L.W.*, 153 Wis.2d 412, 451 N.W.2d 416, 418 (1990). In that case, the Wisconsin Supreme Court stated that when an administrative rule is challenged for lack of statutory authority, courts "must look to the enabling statute to determine whether there is express or implied authorization for the rule." *Id.* Statutes are strictly construed so as to "preclude the exercise of a power which is not expressly granted." *Racine Fire and Police Comm'n v. Stanfield*, 70 Wis.2d 395, 234 N.W.2d 307, 309 (1975).

DWD has exceeded its statutory authority by allowing the use of waiting lists for child care assistance. It is clear that state law does not permit the use of waiting lists in the Wisconsin Shares program. Sections 49.155(1m), (3), Wis. Stats., state that an individual who meets the criteria for child care subsidies "shall" be referred to the county agency and, if found eligible, "shall" be provided with a child care subsidy voucher. Further, earlier this year, the legislature rejected that portion of the Governor's Budget Bill which would have authorized DWD to develop a plan to limit participation in Wisconsin Shares. Therefore, DWD's rule permitting the use of child care waiting lists must be rejected.

## **II. Establishing a Waiting List for Child Care Assistance Is Bad Public Policy.**

Not only does the use of waiting lists violate state law, it also represents poor public policy.<sup>1</sup> As former Wisconsin governor, and current Secretary of Health & Human Services, Tommy Thompson, made clear,

One of the lessons I learned during my years as Governor of Wisconsin was that for people to move from dependency to success in the workforce, you had to be willing to invest in programs that support working families. One of the most important things

---

<sup>1</sup>CR 02-104 requires DWD to give priority status to the following individuals, in the following order:

- 1) A W-2 participant who is participating in a W-2 employment position or who is the custodial parent of an infant.
- 2) A parent whose child has a special need.
- 3) A parent who needs child care services to participate in activities to obtain a high school diploma or a declaration of equivalency of high school graduation.
- 4) A foster parent.
- 5) A kinship care relative.

that we as a government can do to help working families is to assist them in obtaining high-quality child care.<sup>2</sup>

There is no question that many parents of young children will be unable to participate in W-2 activities without child care assistance, yet DWD's proposed rule would allow such families to be placed on a waiting list without stopping their W-2 clocks. There is also no question that many parents, including teens, will be unable to complete their education without child care assistance. In addition, despite the crucial role of child care in permitting low income families to work, low-wage working parents are not even permitted to be placed on the waiting list.

Nor is there any justification for giving low priority to foster and kinship care families. As you may be aware, the ACLU of Wisconsin recently agreed to settle its nine-year-old foster care lawsuit against the state, *Jearmine B. et al v. McCallum et al*. During the course of the lawsuit, it became abundantly clear that there is a serious and ongoing need for more foster parents and kinship care relatives to care for children who are victims of abuse and neglect. This is particularly true given recent increases in the number of children removed from their homes, and given provisions of the settlement agreement which will prohibit the use of shelter placements for any children in the foster care system.

Under current law, foster and kinship families are eligible to receive child care subsidies for the foster and kinship children, if the children's biological or adoptive families are low income and if the subsidy is necessary for the foster or kinship family to maintain employment or participate in specified activities. §§49.155(1m)(c)1g., 1h, Stats. Such assistance is critical since, for example, in Milwaukee the *weekly* "Maximum Community Rate" for family care - the least expensive form of child care - is \$175 for children aged 2-13, an amount which far exceeds the monthly kinship care and foster care stipends.<sup>3</sup> Obviously, without child care assistance many families will simply be unable to afford to continue to care for their foster and kinship children. Thus, the denial of child care subsidies will inevitably reduce the number of foster and kinship families, particularly the low and moderate income families who tend to reside in the areas of greatest need.

### **III. Parents Should Be Permitted to Remain Home With Young Children.**

---

<sup>2</sup>Statement before the Senate Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee by Tommy G. Thompson, Secretary, Department of Health and Human Services (April 25, 2001).

<sup>3</sup>When a child is placed in kinship care, the relative receives a stipend of \$215 per month. §48.57(3m)(am), Stats. Foster parents receive a maximum of \$329 per month for a child under age 12. §48.62(4), Stats. In addition, state rules require that foster parents have "a stable income sufficient to meet the foster family's obligations without reliance on the basic maintenance payments received for the care of foster children . . ." Wisc. Adm Code HFS 56.05(2), which clearly obligates foster families to maintain employment.



The ACLU of Wisconsin supports proposals made by other advocates which would permit W-2 participants to choose remain home until their infants reach 12 months of age. The ACLU of Wisconsin strongly believes that parents should have the right to choose whether or not to work or remain home with their children. Low-income parents should have the same rights and abilities to make this choice as do more affluent families.

Further, there is no question that child care is expensive, and child care for infants is the most costly of all.<sup>4</sup> Under the current W-2 law, §49.148(1m)(a), Stats., a parent is required to participate in full-time activities as soon as a child reaches 12 *weeks* of age. Amending the statute to permit parents to remain on W-2 until the child reaches 12 *months* of age, or at a minimum reducing the participation hours required of parents of infants, will provide a meaningful choice to parents who wish to remain home with young children, decrease the expenditures for infant child care, and provide a more appropriate and rational method of solving any budget shortfalls in the Wisconsin Shares program.

Sincerely,



Chris Ahmuty  
Executive Director

---

<sup>4</sup>In Milwaukee, for example, the weekly "Maximum Community Rate" for children age 0-2 ranges from \$190 for family care to \$231 for accredited group care.

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

Comments On Chapter DWD 56 Rule Changes

Hearing October 16, 2002

Testimony by George Hagenauer, Data Coordinator 608 271-9181

4-C- Community Coordinated Child Care 5 Odana Ct., Madison Wi. 53719

The revisions to Child Care Administration Rules Chapter DWD 56 contain both positive short term changes related to addressing the structural deficit; as well as potentially seriously disruptive options for dealing with future problems. This paper identifies the good short term strategies and suggests that the more disruptive rules requested for later implementation by the department not be granted in the rules revision but rather be allowed only after a review by the legislature. At the conclusion of this paper are suggestions for additional strategies that might reduce costs in order to preserve the successes of the Wisconsin Shares subsidy system for future use by low income families across the state.

**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.

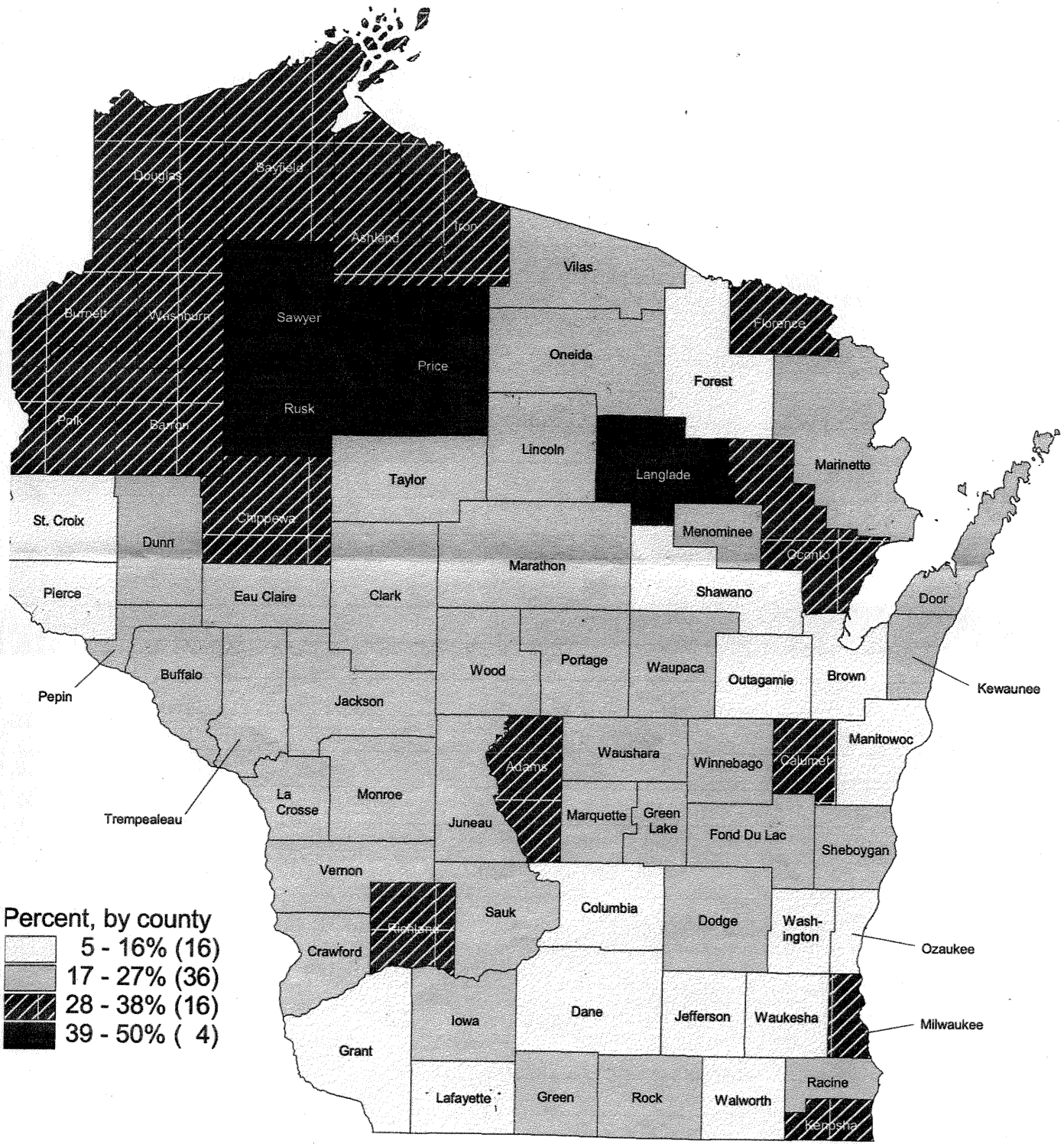
The analysis showed 20 counties in the state with 28%-50% of the child care slots paid partially or fully by Wisconsin Shares Subsidies. The counties with high percentages of subsidized children range from Milwaukee to Douglas and account for about a third of the state's child care capacity. That of 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 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

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, 200

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 disruptive and will not 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.

It should also be remembered that the old waiting list system existed when each county administered their own child care funds. To institute a waiting list today , it would have to be a statewide system involving tens of thousands of families since there is no longer any local payment system.

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.

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.

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 an inaccurate survey can unnaturally drive rates up as much as it could distort rates downward. Also the survey needs to continue to be done on an annual basis as rates in most parts of the state rise annually.

**The above rules all have the potential of seriously disrupting the larger child care system and should only be allowed with proper review by the legislature or a designated legislative committee. The following are rules changes that should be supported.**

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 that 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 DWD 56.06 (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 .

Excluding programs from the rates survey with large numbers of children subsidized by Wisconsin Shares. In the past, the survey considered programs with large numbers of Wisconsin Shares children as if they were operating under the free market. In the past rates were 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 that rule it was almost impossible to exclude any program from the rates survey. Head Start programs providing wraparound care were the only full day programs whose data I could not 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 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.

The rules change suggests setting up a different standard for excluding programs from the survey and proposes at least 10% be from private pay. 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, 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. I would suggest that having a program have at least 75% private pay children is a more logical cut off percentage than 90% . This would lead to a more accurate market rate.

**To insure that lower rates will not exclude low income families from higher quality care (the care we most want high risk children to attend) DWD should be given the option to increase the quality bonus to 15% or 20% 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)> makes sense for family child care where it is often difficult to prove that there are children enrolled other than the provider's own. 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.

There is a change that could be done in the rules that may reduce costs significantly.

#### **Saving Child Care Dollars by Reducing Infant Care:**

One strategy that would work to reduce the number of children subsidized in care and the cost of that 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.

### **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) Increase Monitoring of Accredited Programs:** There are several accrediting agencies whose accreditation increases the maximum reimbursement rate 10% under Wisconsin Shares. One of the agencies is the City of Madison which visits programs at least annually. They recently revoked the accreditation of a center that was no longer meeting standards. As a result the state saved tens of thousands of dollars it would have paid under the accredited rate when the program was not meeting high quality standards. National accreditation program however only do on site visits every three years. Setting up a

simple monitoring system to check on whether program continue to meet national accreditation standards would insure that the state was not allowing higher rates for programs that did not meet higher standards.

**6) Reduce Monitoring Costs Through the Free Market:** Monitoring child care programs is a labor intensive and costly process . 4-C certifies family child care in Dane County. A significant amount of our budget is spent each year in the legal processes of closing substandard family child care homes. There are some low cost strategies using the R&R network and other systems than can help reduce monitoring costs. First require that the rates programs give or payment under the Wisconsin Shares system be the same rates listed on the R&R referral computers. Programs will be less likely to inflate rates given to the state payment system if the same rates are being given to other potential customers. Second make sure that the violation information that is kept by State Licensors and County Certifiers is proactively made available to parents and caseworkers. The two years this was done in Dane County , we saw several low quality programs go out of business without the expense of long hearings or extra monitoring. In many cases caseworkers are suggesting low quality group centers (which always have openings) when if the parent knew about the centers violations, they would have considered other lower cost options.





More stories from the [LaCrosse Tribune](#)

## ***Our view: Don't limit amount of child-care aid***

*Tribune editorial*

The state of Wisconsin may soon make it more difficult for poor people to qualify for subsidized child care.

It is doing this because far more people than expected are seeking child care. But restricting the amount child care available to poor people in a troubled economy is the wrong approach. If our goal is to get poor people off the welfare rolls and into jobs, then child care and other assistance to allow people to do that should be one of the last things we cut.

Wisconsin pioneered a work-based welfare reform program several years ago. Under former Gov. Tommy Thompson, who now serves as secretary of the U.S. Department of Health and Human Services, Wisconsin's program became a model for the rest of the nation.

One of the reasons why Wisconsin's program works is that this state offers more assistance and tools than most other states give to former welfare recipients and other poor people who are trying to work.

Many of these people are young single mothers. Traditionally, these mothers have lacked the job skills necessary to succeed. Wisconsin's welfare reform program first forced the issue and required these women to work. Then it offered child care and other assistance to help ensure that these people could work.

Wisconsin has been more generous than most states. In the current biennium, about \$580 million has been spent on child-care assistance. It is offered to people involved in the W2 Wisconsin Works welfare reform program, but also other poor people who have not been on welfare.

At this stage in the W2 program, most people who would have otherwise been on welfare are working. But they are working in low-wage jobs that require help to succeed. The state has provided this help in the form of health-care benefits and child care.

Even so, many of them are relying on food pantries to make ends meet. Let's not set up waiting lists and make it more difficult for them to succeed. Let's find the money needed to continue child-care assistance so that poor people who want to work can do so

(END)

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.

**DWD56 (CR 02-104)**  
**Senate Committee on Human Services and Aging**  
**October 16, 2002**

**Testimony by:**  
Department of Workforce Development  
Mary Rowin, Division of Workforce Solutions Deputy Administrator

Good morning Chairperson Robson and Committee Members. My name is Mary Rowin, Deputy Administrator of the DWD Division of Workforce Solutions, and with me today is Rebecca Brueggeman from the DWD Office of Child Care. Thank you for allowing us the opportunity to testify on DWD 56 relating to the administration of child care funds.

The Department of Workforce Development regards child care as a core program to support low income working families. Availability of child care has helped fuel the successful entry of many women into the labor force. In fact, the child care subsidy program has experienced tremendous growth over the past several years. The number of families served by Wisconsin Shares has grown from 11,000 in 1997 to 27,000 today, an increase of nearly 150% in five years.

While providing low-income working families with assistance in this important area of their quest for economic self-sufficiency, the caseload growth has not come without a hefty price tag. The budget for the direct child care subsidy program has grown from \$89.6 million in SFY97 to \$274.5 million in SFY02. This year's budget is \$305 million.

Even with this large financial commitment, we need to be prepared for the possibility that the growing demand for the program may outweigh the funding available in future years.

The Department of Workforce Development does not want to operate the child care subsidy program in a deficit. Therefore, the Department is proposing a series of

changes to administrative rule DWD56 in response to what is becoming tighter fiscal times for all of us in state government.

A number of factors have emerged which are requiring DWD to prepare for an increasing likelihood that funding for the child care subsidy program may not be adequate to meet the needs of all families who might be eligible. These factors include:

- The prospect of no increase in the near future, at the federal level, for either TANF or the Child Care Development Fund;
- A consistently increasing caseload of families participating in the Wisconsin Shares child care subsidy program;
- Increasing costs of child care in the private and public marketplaces;
- A downturn in the nation's economy; and,
- Wisconsin's budget deficit situation.

The administrative rule changes give the Department the authority and flexibility to respond, should we be faced with the situation where the funds available are inadequate to meet the need. The responses include:

- Adjusting the rates paid to providers for child care subsidy assistance
- Raising family co-payments
- Implement a waiting list

It is important to point out that the Department would invoke one or more of these actions **if, and only if**, the program data indicates the likelihood of deficit spending.

Whatever action may need to be taken in a deficit scenario would be taken only to balance the available funding level against the anticipated need. For example, a waiting

list can be invoked and then rescinded, if the federal funding levels were to be increased.

Further, the Department has identified a number of groups that would be allowed to either bypass a waiting list or go to the front of the line of those waiting to be served. These groups include families participating in the W-2 program, families with a special needs child, teen parents in high school, and families participating in the foster care or kinship care programs.

I want to reiterate that the Department does not **plan** to invoke any of these provisions, and will do so only if needed to avoid operating the child care subsidy program in a deficit. We believe it is fiscally responsible to be prepared to act if necessary.

Finally, the rule revisions being proposed include the following:

- Creating more precise categories for maximum reimbursement rates – this change involves revising payment rates to more accurately reflect those being charged in the private market;
- An increased focus on program monitoring at both the state and local levels – the goal here is to identify cases in which overpayments may have occurred or, more seriously, fraudulent practices by child care providers;
- Restricting payments when a parent is involved in providing the care for his/her own child – the Department believes that the intent of the statute is clearly to restrict such payments. It is not within the goals of the program to pay individuals to care for their own children.

Thank you again for the opportunity to testify and for your interest in this important program. We would be happy to answer any questions you may have.



**WECA**

---

*Wisconsin  
Early  
Childhood  
Association*

744 Williamson St.  
Suite 200  
Madison, WI 53703  
Tel 608.240.9880  
Tel 800.783.9322

To: Senate Committee on Human Services and Aging  
From: Mary Babula, Wisconsin Early Childhood Association  
RE: Clearinghouse Rule 02-104 Relating to the Administration of Child  
Care Funds  
October 16, 2002

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. Currently, Legislative Fiscal Bureau projections indicate that funds are sufficient for the rest of this biennium, without changing the rules to allow DWD to establish waiting lists. This should be a legislative decision, debated and resolved in the next state budget process. The Legislature has already considered some of the cost control measures proposed in these draft rules, and rejected them. The full Legislature should have this discussion again, before changing the rules.

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 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:**

There are other options which could be considered, as a way to limit costs of Wisconsin Shares, should that become necessary. 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. This would require a change in statute, which would need to be discussed and enacted by the legislature.

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.



**Child Care Subsidy for Child Care Employees:**

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. 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.

As we know from the recent Wisconsin Child Care Research Partnership reports, 56% of child care teachers in Wisconsin earn less than \$8.00/hour, and employees in family child care programs average \$6.00/hour. Because of those low wages, many teachers and providers qualify for Wisconsin Shares subsidies. In fact, because their wages are so low, that helps keep the cost of child care low, which stretches the Wisconsin Shares dollars even further.

These teachers and providers rely on this subsidy to allow them to remain in the child care field, and provide the child care services needed by other parents so they can also work.

It is also important to remember that the Wisconsin Shares subsidy payment does not go to the parent, but to the child care program to pay for the cost of

a particular child attending that program. The program needs to be paid for providing the child care services for each child.

If the rule is not eliminated, it could at least be modified to allow a special exemption be granted based on the individual circumstances of the specific situation. 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, to assure equitable billing to Wisconsin Shares.

There are precedents with other publicly funded programs, like the Child and Adult Care Food Program, to provide a subsidy for low income child care providers caring for their own children, in certain circumstances, when specific criteria are met.

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.

Thank you for considering our comments.



Senate Committee on Human Services and Aging  
Hearing on Clearinghouse Rule 02-104  
Relating to administration of child care funds

Testimony by Carol W. Medaris  
Senior staff attorney  
October 16, 2002

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.

**1. Waiting lists as established in DWD 56.03(5) are not authorized under the statute governing the Wisconsin shares program.**

In Sec. 49.155(1m), stats. 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.

The Department may argue that authority for waiting lists is provided by language in sec. 49.141(4), stats. That section provides that

notwithstanding fulfillment of eligibility requirements for any component of Wisconsin works, the person is not entitled to benefits. However, that section may not be interpreted to allow the Department to take any action it pleases, in derogation of child care eligibility rules, without further direction from the legislature.

Furthermore, even if that provision were determined to be inconsistent with the later mandatory provisions set forth above, it is a well-accepted rule of statutory construction that when two conflicting statutes apply to the same subject, the more specific controls. State ex rel. Hensley v. Endicott, 245 Wis. 2d 607, 629 N.W. 2d 686 (2001). In this case, the eligibility sections of the child care provisions are clearly more specific than the non-entitlement provisions, included in the "general provisions" section of the W-2 statute.

Finally, if the two statutory sections were determined to create an ambiguity, the rules of statutory interpretation require the examination of extrinsic materials to determine legislative intent. Hensley v. Endicott at 617. Such an examination provides even further evidence that the legislature did not intend to authorize waiting lists for the Wisconsin Shares program.

## **2. Neither does legislative history provide support for waiting lists.**

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, the Joint Finance Committee has approved additional funds when shortfalls in the Wisconsin Shares program were imminent. In July, 2000, and again in April, 2001, the Joint Finance Committee approved additional funds when projections indicated funding would be insufficient. Then, in the 2001-03 Biennial Budget, the Committee provided for additional funds, beyond the governor's request, in order to fully fund the program. In addition the Committee rejected language sought by the governor which would have authorized the Department to meet any funding shortfall by developing a plan to limit participation in the program.

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

### **3. Waiting lists for the Wisconsin Shares program are bad public policy.**

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. All other working parents would be at the end of the line.

These 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! (The Department must give priority for W-2 participants, in order to support W-2 program work requirements, and comply with federal TANF requirements.)

### **4. 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 from a maximum of 16 per cent to 11.6 per cent of income, Wisconsin's levels were still higher than copayments in most other midwestern states by July, 2000. The U.S. Department of Health and Human Services recommends a high of 10 per cent in its regulations on the child care and development fund. (See LFB Budget Paper # 1045, May 21,, 2001.) Finally, 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.

**5. The legislature should reduce the costs of the Wisconsin Shares program by reducing 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.

Although the Department claims to be modeling their requirements on practices in "the real world," according to U.S. Census data, only 36 per cent of all mothers work year-round at 40 or more hours per week, with an average for those working of 30.9 hours per week. Percentages are even less 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.

# LEGAL ACTION OF WISCONSIN, INC.

31 South Mills Street • P.O. Box 259686 • Madison, Wisconsin 53725-9686  
608/256-3304 • 800/362-3904 • FAX 608/256-0510

**Kenosha Office**  
508 56th Street  
Kenosha, WI 53140  
1-800-242-5840

**Milwaukee Office**  
230 West Wells Street  
Milwaukee, WI 53203  
414-278-7722

TO: Senate Committee on Human Services and Aging  
FROM: Bob Andersen   
RE: CR 02-104, relating to the Administration of Child Care Funds  
DATE: October 16, 2002

1. **Both Existing DWD 56.05 (5) and the Proposed Rule , Authorizing the Establishment of Waiting Lists, Violate 227.10 (2), which Prohibits an Agency from adopting a Rule that Conflicts with State Law.**

Section 227.10 (2) of the statutes provides:

No agency may promulgate a rule which conflicts with state law.

Section 49.155 (1m) of the statutes provides:

A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. Under this section, *an individual may receive* a subsidy for child care for a child who has not attained the age of 13, or, if the child is disabled, who has not attained the age of 19, *if the individual meets all of the following conditions: . . .* [emphasis added]

Recognizing that this creates an entitlement for an individual if the person meets the eligibility criteria, the governor sought to amend this provision in 2001 SB 55 (the biennial budget bill) as follows (a copy of the provision is also attached to this memo), in order to allow the department to establish waiting lists and other limits on participation:

49.155 (1m) ELIGIBILITY. (Intro.) A Wisconsin works agency shall determine eligibility for a child care subsidy under this section. ~~Under this section~~ Except as provided un sub. (2m), an individual may receive a subsidy for child care for a child who has not attained the age of 13, or, if the child is disabled, who has not attained the age of 19, if the individual meets all of the following conditions:

The exception that the governor sought to create is as follows (also attached):

49.155 (2m) PLAN TO LIMIT PARTICIPATION. If the department determines

that moneys allocated under s. 49.175 (1) (p) are insufficient to provide a child care subsidy to individuals who meet the requirements under sub. (1m), the department may develop a plan to limit participation in the child care subsidy program. The plan may specify requirements that an individual must meet to be eligible for a subsidy that are different from those specified under sub. (1m). The department shall submit the plan to the secretary of administration for approval. If the secretary of administration approves the plan, the department may limit participation as specified in the plan.

The legislature rejected this amendment, leaving the requirement in 49.155 (1m) as is.

In addition, sections 49.155 (3)(a) and (b) provide as follows:

(a) A Wisconsin *shall* refer an individual who has been determined eligible under sub. (1m) to a county department under 46.215, 46.22, or 46.23 for child care assistance.

(b) The county department under 46.215, 46.22, or 46.23 *shall* administer child care assistance under this section. In administering child care assistance under this section, the county department under s. 46.215, 46.22, or 46.23 *shall* do all of the following: . . .

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. [emphasis added]

Both existing DWD 56.05 (5) and the proposed rule are in conflict with these statutes, because they purport to authorize the department to establish waiting lists that will limit the statutory requirements that eligible persons receive child care assistance. As a result, they cannot be enforced as administrative rules.

2. **The Requirements of these Statutory Sections Govern Over Section 49.141 (4), which Provides that the Components of W-2 Do Not Create an Entitlement.**

The department argues that section 49.141 (4) of the statutes denies eligible participants an entitlement to child care and therefore the administrative rules may be adopted. That section provides as follows:

(4) NONENTITLEMENT. Notwithstanding fulfillment of eligibility requirements for any component of Wisconsin works, an individual is not entitled to services or benefits under Wisconsin works.

It is a long standing rule of statutory construction that, where two statutes may be in conflict, the statute which more *specifically* relates to the subject matter governs. The statutes described at the outset of this memo relate specifically to child care. The statute which the department relies on is a general statute relating to all of W-2.



Consequently, the statutes relating more specifically to child care, which require assistance to be given to an eligible individual, govern over this general provision regarding W-2.

3. **Moreover, Legislative History and the Governor's Own Interpretation, Announced in his Veto Message, Make it Absolutely Clear that the Law Does Not Authorize the Department to Establish Waiting Lists.**

It is also well established, that where there is an ambiguity in the statutes, legislative history may be resorted to in order to interpret the law. Attached is a copy of Legislative Fiscal Bureau (LFB) Paper #1045 which was presented to the Joint Committee on Finance for a discussion of the governor's proposal to authorize DWD to establish limits to participation. Alternatives for establishing limits are discussed over several pages of the paper, including a full discussion of the option for establishing waiting lists.

The Joint Committee on Finance rejected all of these options and continued full funding for the program. See the attached Omnibus Funding Motion, paragraph 14, which provides that the choice of the committee on these options is as follows:

14. LFB Paper #1045 Delete the statutory language allowing DWD to submit a plan to the Secretary of DOA for approval to limit participation in the Wisconsin Shares program if DWD determines that funds allocated for child care subsidies are insufficient to provide a subsidy to eligible recipients.

Finally, the Governor's own veto message (attached) of the provisions of the budget bill reveal that he realizes that the legislature must act in order to allow the department to establish waiting lists or the other limits that he sought in his bill:

I am concerned that we may not always be able to fund growth in child care subsidies at the expense of the W-2 contracts and other related W-2 programs. In order to set priorities, *the Legislature will, at some point, have to adopt the language I proposed allowing the administration to control child care expenditures through administrative means if the need arises.* [emphasis added]

4. **Placing W-2 Participants on Waiting Lists Removes Them from the Work Requirements and Exposes the State to Possible Federal Penalties.**

Federal regulations provide that if a W-2 participant is a single custodial parent caring for a child under age six, the state may not reduce or terminate assistance based on the parent's refusal to engage in required work if he or she demonstrates an inability to obtain child care because: (1) appropriate child care within an appropriate distance is unavailable; (b) informal child care by a relative or under other arrangements is unavailable or unsuitable; (c) appropriate and affordable child care arrangements are unavailable. If child care subsidies are not available because there is a waiting list, the W-2 agency cannot sanction participants who do not participate in work requirements. If

the state is determined to have violated this provision, the state can be penalized by up to 5% of the state's TANF grant for the next year. If the TANF block grant is reduced, the state has to supplant that with its own funds. Additionally, if the state's worker participation rate falls below a certain level (in 2000 it was 0% for all families and 17% for two parent families), the federal government can reduce the TANF grant by 5% to 21% depending on how many years the state fails to meet the requirements. While the state is not near these levels now, it is a consideration for the future, especially with future changes in the formula being made by the federal government.

5. **There is no Justification for the Priority Given to Different Classes of Recipients.**

The rules give priority to W-2 participants, parents with children with special needs, teens completing high school, foster parents, and kinship care relatives. The list fails 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 90's, 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 forego employment. This in turn could overburden the W-2 program and force an increase in W-2 expenditures.

Another questionable decision is listing foster parents before kinship care relatives. There is no basis to conclude that one group is more in need than the other. For a kinship care 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.

6. **Child Care Should be Allowed for a Legally Responsible Parent in Some Circumstances.**

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 a legally responsible parent in some circumstances. In some cases, parents are employed by the same child care facility and encouraged to enroll their children at the same site. For many parents such arrangements are not merely conveniences but, due to transportation or health needs, they are necessities. We 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.



## Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

---

May 21, 2001

Joint Committee on Finance

Paper #1045

### *Temporary Assistance for Needy Families (TANF)*

### **Direct Child Care Program (DWD – Economic Support and Child Care)**

[LFB 2001-03 Budget Summary: Page 737, #10 & Page 738, #11]

---

#### **CURRENT LAW**

The direct child care program provides funds for: child care subsidies through the Wisconsin Shares program; local administration of Wisconsin Shares; on-site child care at job centers and counties; and migrant child care. Base funding for direct child care is \$181,050,000. However, the actual amount available in 2000-01 is \$237,180,100, including funds added by the Joint Committee on Finance in July, 2000, and April, 2001.

Under current law, the Wisconsin Shares program is administered by the Department of Workforce Development (DWD) through local Wisconsin Works (W-2) agencies and county human and social services departments. To be eligible for child care subsidies, families must generally have an initial income of no more than 185% of the federal poverty level. Once eligible, families retain eligibility until gross income exceeds 200% of the federal poverty level. There are no resource limits for the program. The individual applying for child care must be a custodial parent, guardian, foster parent, legal custodian or person acting in place of a parent. The subsidy can be provided for children under age 13 and for children under age 19 who are physically or mentally incapable of their own care.

Families must need child care to do any of the following: (a) work in an unsubsidized job; (b) work in a W-2 employment position; (c) participate in the food stamp employment and training (FSET) program; (d) participate in basic education or a course of study to obtain a GED, if the W-2 agency determines that basic education would facilitate the individual's efforts to maintain employment; (e) participate in a course of study at a technical college or participate in educational courses to provide an employment skill, if the W-2 agency determines that basic education would facilitate the individual's efforts to maintain employment; (f) meet the

children, unless the county determines that the care is necessary because of a special health condition of the child. These changes are not anticipated to have any significant fiscal effect, keeping total estimated costs at \$274.5 million in 2001-02 and \$305.6 million in 2002-03.

9. The Governor's proposed budget includes \$242,475,000 annually in the 2001-03 budget for the direct child care program. Therefore, the program is estimated to be underfunded by approximately \$32.0 million in 2001-02 and \$63.1 million in 2002-03, for a total of \$95.1 million over the biennium.

### **Options to Reduce Program Costs**

10. To address the projected shortfall, the Committee could reduce costs in the child care subsidy program. The following options are discussed in this paper: (a) the Governor's proposal to have DWD develop a plan to limit participation; (b) increasing copayments; (c) modifying reimbursement rates; (d) imposing stricter income limitations; (e) establishing waiting lists; or (f) implementing of combination of these alternatives. Each option is discussed in detail below.

#### ***a. DWD Plan***

11. Due to increasing demand for the Wisconsin Shares program, the Governor proposed providing DWD with authority to develop a plan to limit participation in the program if sufficient funds are not available to meet demand. The plan could have different eligibility requirements than those required under current law, such as stricter income limits or additional limitations on the types of activities required to participate in the program. DWD would be required to submit the plan to the Secretary of the Department of Administration (DOA) for approval before it could be implemented. Under current law, DWD would also be allowed to modify the copayment requirements.

12. If the Legislature chooses this option, DWD would likely have to develop a plan within the first few months of the biennium, because a deficit of \$32.0 million is projected for 2001-02. DWD would also need to program any changes necessary into the CARES computer system, which could take several months. The longer DWD waits to implement a plan, the more severe and abrupt the modifications to the program would have to be.

13. Because changes would likely be necessary from the very beginning of the fiscal year, the Committee may wish to make changes as part of the budget bill to exercise more legislative control over the types of changes made. Alternatively, the Committee could modify the Governor's proposal to require that DWD's plan to limit participation also be approved by the Joint Committee on Finance so that it can decide whether to accept DWD's plan, modify the plan, or add additional funds to the program.

#### ***b. Increase Copayments***

14. A second option to reduce program costs would be to increase copayments required

of participants. Copayments are currently capped at 11.6% of participants' gross income. Prior to March, 2000, the maximum copayment was 16% of gross income. Large increases in copayments would be necessary to generate significant savings because copayments currently account for only 9% of the cost of care. In addition, approximately 25% of participants from July to December, 2000, had incomes of less than or equal to 70% of the federal poverty level, and were therefore, only required to pay the minimum copay, which is currently \$4 per week for one child in licensed care and \$2 per week for one child in certified care.

15. There are many different ways to change the copay schedule. A three-month implementation delay would be necessary for DWD to make necessary programmatic and computer changes. These scenarios assume an October 1, 2001, implementation date, but the costs would have to be recalculated if the Legislature does not adopt a budget at the start of the fiscal year. In addition, all copay alternatives presented in this paper assume that, under current law, DWD will change its copay schedules annually to adjust for increases in the federal poverty level and will keep the maximum copayment at 11.6% of gross income. One option would be to increase the copayment by a specific dollar amount for all participants over the current law copay schedule for each year. This would cause relatively large percentage increases for participants in the lower range of the copay schedule and smaller percentage increases for participants in the higher range of the copay schedule. A \$1 increase over the current law copays for each year would result in savings of approximately \$0.9 million in 2001-02 and \$1.3 million in 2002-03 and would increase copays as a percentage of gross income from a maximum of 11.6% to 11.9% in 2001-02 and 11.8% in 2002-03. A \$5 increase would reduce projected costs by approximately \$4.4 million 2001-02 and \$6.6 million in 2002-03 and would increase copays as a percentage of gross income from a maximum of 11.6% to 12.9% annually. To revert back to the 16% of income maximum that was in place prior to March, 2000, copays would have to be increased by \$16.50 over current law copays for each year and would reduce projected costs by approximately \$14.7 million in 2001-02 and \$21.6 million in 2002-03.

16. Another option would be to increase copays for all participants by an equal percentage. This would result in small dollar increases for participants in the lower range of the copay schedule and larger dollar increases for participants in the higher range of the copay schedule. A 5% increase over the current law copays for each year would result in a savings of approximately \$1.1 million in 2001-02 and \$1.7 million in 2002-03 and would increase copays as a percentage of gross income from a maximum of 11.6% to 12.2% annually. A 15% increase would reduce projected costs by approximately \$3.2 million 2001-02 and \$5.0 million in 2002-03 and would increase copays as a percentage of gross income from a maximum of 11.6% to 13.4% in 2001-02 and 13.3% in 2002-03. To revert back to the 16% of income maximum that was in place prior to March, 2000, copays would have to be increased by 38% over current law copays for each year and would reduce projected costs by approximately \$8.2 million in 2001-02 and \$12.6 million in 2002-03.

17. The two options to revert back to maximum copayments of 16% of gross income have different cost savings. The savings would be less if copayments are increased by a percentage than if they were increased by a specific dollar amount because many participants are in the lower

income ranges of the copayment schedule and the dollar value of these participants' copayment increases would be less than if all participants had a flat copayment increase.

18. Other options to change copay requirements could include increasing copayments only for families at higher income levels to avoid negative impacts on families with lower income levels.

19. However, the Legislature may not wish to increase copayments because affordability of child care is a pressing issue for many families both nationwide and in Wisconsin. According to a December, 2000, study by the Urban Institute entitled *Child Care Expenses of America's Families*, 40% of low-earning families with incomes of less than 200% of the federal poverty level had out-of-pocket expenses for child care nationwide, compared to 38% in Wisconsin. Nationwide, these families paid an average of 15.9% of their earnings for child care. In Wisconsin, this percentage was 16.3%. In addition, the study found that 29% of Wisconsin's low-earning families were paying more than 20% of their earnings on child care.

In addition, the U.S. Department of Health and Human Services recommends in its regulations on the child care and development fund that copayment scales require a low-income family to pay no more than 10% of its income for child care to ensure equal access. While not all states have complied with this guideline, the Legislative Audit Bureau's child care audit released in January, 2001, states that copayment rates in Wisconsin are generally higher than in other Midwestern states. Table 2 below illustrates the percentage of monthly income a family of three with one infant and one toddler would have to pay in various Midwestern states.

**TABLE 2**

**Monthly Copayment Comparison (July 2000)  
Out-of-Pocket Child Care Costs as a Percent of Income**

<u>State</u>	<u>Families With Income at 100% of Federal Poverty Level</u>	<u>Families With Income at 150% of Federal Poverty Level</u>
Illinois	17.5%	13.1%
Indiana	0.0%	7.3%
Iowa	3.7%	Ineligible
Michigan	5.0%	3.3%
Minnesota	0.4%	3.0%
Ohio	0.2%	9.7%
Wisconsin	7.6%	10.7%

*c. Modify Reimbursement Rates*

20. A third option would be to modify the reimbursement rates for providers. DWD is required to set reimbursement rates on an annual bases. Each county establishes the maximum child care subsidy that will be paid to a licensed child care provider on an annual basis, subject to DWD review and approval. The rates are determined by surveying licensed group and licensed family day care centers for the rates they charge to the general community. The rate is set so that at least 75% of the number of places for children with licensed providers could be purchased at or below the maximum rate. The maximum rate for Level I certified providers may not exceed 75% of the rate for licensed family day care providers and the maximum rate for Level II certified providers may not exceed 50% of the rate for licensed family day care providers.

21. One option would be to freeze the reimbursement rates for the entire biennium and not have an annual increase. This would save approximately \$1.9 million in 2001-02 and \$8.3 million in 2002-03. A second option would be to allow the reimbursement rates to grow in 2001-02, but not in 2002-03. This would generate savings of approximately \$6.3 million in 2002-03. However, as the costs of child care increase, fewer providers would likely be willing to participate in the program and families would have fewer options for child care providers. Federal law requires states to certify that the payment rates for child care services are sufficient to ensure equal access for eligible children to comparable child care services provided to children whose parents are not eligible to receive assistance. If the Committee chooses this option, the state would have to be able to justify that families receiving child care subsidies are still receiving equal access. In addition, statutory provisions would have to be changed to provide a temporary or permanent exception to the requirement that counties set the reimbursement rate for licensed family providers so that at least 75% of the number of places for children can be purchased at or below the maximum rate.

*d. Income Eligibility Limits*

22. A fourth option would be to impose stricter income eligibility limits. Initial income eligibility is currently 185% of the federal poverty level and families can remain eligible until their incomes reach 200% of the federal poverty level. According to federal law, states can set their income limitations up to 85% of the state median income. In Wisconsin, 85% of median income is \$49,300 for a family of four for FFY 2001, which is approximately 275% of the federal poverty level. Prior to March, 2000, initial eligibility was 165% of the federal poverty level. Changing initial eligibility back to 165% of the federal poverty level would result in a savings of approximately \$6.6 million in 2001-02 and \$12.2 million in 2002-03, assuming an October 1, 2001, implementation date. Changing initial eligibility to 115% of the federal poverty level would reduce projected costs by approximately \$27.4 million in 2001-02 and \$51.4 million in 2002-03, assuming an October 1, 2001, implementation date. Under these two scenarios, families would remain eligible for the program until their incomes reach 200% of the federal poverty level.

23. While families currently receiving child care subsidies would be allowed to remain part of the program, limiting eligibility would eliminate access to the program for some families. Under the option to reduce initial eligibility to 165% of the federal poverty level, an estimated 1,000

families in 2001-02 and 1,800 families in 2002-03 anticipated to seek the subsidy would not have access to the program. Under the option to reduce initial eligibility to 115% of the federal poverty level, families that would be denied access to the program are estimated at 3,000 in 2001-02 and 5,700 in 2002-03. The smaller caseload reductions in the first year are primarily due to the October 1, 2001, implementation date.

24. It could be argued that income eligibility levels should not be decreased because doing so would heighten affordability problems for families in the excluded income range. In addition, some states have more generous income eligibility standards than Wisconsin. According to the State Policy Documentation Project database maintained by the Center for Budget and Policy Priorities and the Center for Law and Social Policy, state income eligibility guidelines for families of three varied from 125% of the federal poverty level in South Carolina to 330% of the federal poverty level in Connecticut, as of October, 1999. In the Midwest, Minnesota had higher income limitations than Wisconsin at 275% of the federal poverty level. Limits in other Midwestern states as percentages of the federal poverty level were as follows: 157% in Illinois, 143% in Indiana, 155% in Iowa, 185% in Michigan and 182% in Ohio.

*e. Waiting Lists*

25. A fifth option to limit costs would be to place eligible participants on waiting lists. If the number of participants were capped at the number of children being served at the end of June, 2001, and a waiting list were implemented, projected costs would be reduced by approximately \$33.1 million in 2001-02 and \$59.6 million in 2002-03. This would almost reduce costs down to the level funded by the Governor. This means that an estimated 3,300 families in 2001-02 and 5,800 families in 2002-03 anticipated to seek the subsidy would not have access to the program. If the state waited three months to implement a waiting list, projected costs would be reduced by approximately \$22.1 million in 2001-02 and \$59.6 million in 2002-03, leaving approximately 2,200 families in 2001-02 and 5,800 families in 2002-03 without access to the program.

26. According to the Children's Defense Fund, at least 15 states had waiting lists for child care subsidies as of March, 2000: Alabama, Alaska, Arkansas, California, Florida, Georgia, Maine, Massachusetts, Minnesota, Mississippi, New York, North Carolina, Tennessee, Texas and Virginia.

27. Child care waiting lists may not be desirable because of their capricious effect. If a waiting list has no system of priorities, families already receiving child care subsidies would be able to remain on the program while new families would not be able to participate. New families with very low income levels would not have access to the program, while families with higher incomes already receiving the subsidy could remain on the program.

28. Waiting lists could also impact the W-2 program. A waiting list could undermine the philosophy of W-2, which is to provide support services that will enable people to work. In addition, federal regulations state that if a W-2 participant is a single custodial parent caring for a child under age six, the state may not reduce or terminate assistance based on the parent's refusal to engage in



required work if he or she demonstrates an inability to obtain needed child care because: (a) appropriate care within a reasonable distance is unavailable; (b) informal child care by a relative or under other arrangements is unavailable or unsuitable; (c) appropriate and affordable formal child care arrangements are unavailable. Therefore, if child care subsidies are not available because there is a waiting list, the W-2 agency would not be permitted to sanction participants who do not participate in work requirements. If a state is determined to have violated this provision, the federal government can reduce the state's TANF grant by up to 5% for the immediately succeeding federal fiscal year unless the state demonstrates that it had reasonable cause or achieves compliance under a corrective compliance plan. If the TANF block grant is reduced, the state must expend its own funds to replace the reduction in the grant.

29. If W-2 participants are denied child care funds and are unable to work, then the state's worker participation rates will decrease. However, this is not likely to have much of an impact because the adjusted worker participation rates required by the federal government in FFY 2000 were 0% for all families and 17% for two-parent families. If the state does not comply with the minimum worker participation requirements, the federal government can reduce the TANF grant from 5% to 21%, depending on how many years the state fails to meet the requirements and the degree of noncompliance. If the TANF block grant is reduced, the state must expend its own funds to replace the reduction in the grant.

30. In order to ensure that W-2 participants receive child care services, a system of priorities could be established for a waiting list or there could be exemptions to the waiting list. Exemptions could be created for persons participating in W-2 employment positions and/or with income less than 115% of poverty. Keeping current eligibility guidelines and implementing a waiting list for those below 115% of the federal poverty level would reduce projected costs by approximately \$8.3 million in 2001-02 and \$22.4 million in 2002-03. This means that an estimated 1,000 families in 2001-02 and 2,600 families in 2002-03 anticipated to seek the subsidy would not have access to the program. Changing the waiting list threshold to 150% of the federal poverty level would reduce projected costs by approximately \$3.2 million in 2001-02 and \$8.6 million in 2002-03, leaving approximately 400 families in 2001-02 and 1,200 families in 2002-03 without access to the program.

31. DWD indicates that it would need several months lead time to establish a waiting list system on its computer system. DWD would have to decide whether the waiting list would be by county, by state, how much information to gather from waiting list applicants and how to assign and weight priorities.

*f. Combinations of Alternatives*

32. The options described above could be combined in numerous ways to reduce projected costs to the level funded by the Governor's budget bill. It is important to note that alternatives discussed in the preceding sections cannot be added together to produce combinations of alternatives because the variables interact. A few options are discussed below and other options could be estimated for the Committee. All options assume an October 1, 2001, implementation date

to allow DWD to make any necessary programmatic and computer system changes.

33. One option would be to limit initial eligibility to 115% of the federal poverty level, allow no growth in reimbursement rates and to require a 20% increase in copays over the current law copay for each year. Families could remain eligible for subsidies until their income reaches 200% of the federal poverty level. This option would reduce projected costs by approximately \$32.6 million in 2001-02 and \$62.5 million in 2002-03 and would cost approximately the same as the amount provided by the Governor over the biennium. The impact on participants would be an increase in the maximum copay as a percentage of gross income from 11.6% to 14%. In addition, an estimated 3,000 families in 2001-02 and 5,700 families in 2002-03 anticipated to seek the subsidy would not have access to the program.

34. A second option would be to begin a waiting list in October, 2001, limit growth in reimbursement rates to the first year of the biennium and require a 10% increase in copays over the current law copay for each year. This option would reduce projected costs by approximately \$26.8 million in 2001-02 and \$67.2 million in 2002-03 and would cost approximately \$1.2 million more than the biennial amount provided by the Governor. The impact on participants would be an increase in the maximum copay as a percentage of gross income from 11.6% to 12.8%. In addition, an estimated 2,500 families in 2001-02 and 5,800 families in 2002-03 anticipated to seek the subsidy would not have access to the program.

35. A third option would be to begin a waiting list in October, 2001, and have no growth in reimbursement rates in either year of the biennium. This option would reduce projected costs by approximately \$26.5 million in 2001-02 and \$66.2 million in 2002-03 and would cost approximately \$2.5 million more than the biennial amount provided by the Governor. This option would not change the maximum copay as a percentage of gross income. However, an estimated 2,500 families in 2001-02 and 5,800 families in 2002-03 anticipated to seek the subsidy would not have access to the program.

### **Options to Fully Fund Child Care**

36. Another option would be to fully fund the Wisconsin Shares program by reducing funding for other programs included in the TANF program. Papers #1046, #1047, #1048 and #1049 detail options for providing funding for direct child care. These papers focus on the indirect child care program, local pass-through program, as well as other TANF-funded programs. Alternatively, additional state funding could be provided.

### **Changes to Eligibility Requirements in the Bill**

#### ***a. Kinship Care***

37. The bill would make the eligibility requirements for long- and short-term court-ordered kinship care relatives consistent. According to DWD, the discrepancy in eligibility was the unintentional result of statutory changes in the last budget. Local W-2 agencies have been treating these two types of kinship care relatives the same, despite the law's distinctions. Therefore, DWD

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Omnibus Funding Motion

Motion:

Move to approve the Governor's recommendations contained in the Fiscal Bureau Papers #517 (Part B) and #1041 through #1057 with the following modifications:

1. LFB Paper #517. Alternative B1. Approve the Governor's recommendation to authorize DHFS to distribute substance abuse treatment grants to all counties rather than Milwaukee County, exclusively. Require that allocated but unexpended funds for these substance abuse treatment grants on June 30 of each year be transferred to the Wisconsin Works and other public administration and benefits appropriation in DWD. Specify the effective date of this change would be January 1, 2002.
2. LFB Paper #517. Transfer \$1,000,000 GPR annually from DWD to DHFS for substance abuse services grants. Increase TANF funding in DWD by \$1,000,000 annually to replace the GPR. Specify that no less than \$2,000,000 of the total annual grant funding be awarded to Milwaukee County or private, nonprofit organizations in Milwaukee County. In addition, specify that no more than \$4,000,000 of the total annual grant funding be awarded to counties and private, nonprofit organizations throughout the state. Require DHFS to distribute substance abuse services grants that are not earmarked specifically for services in Milwaukee County to counties and private, nonprofit organizations in counties, including Milwaukee County, based on the distribution of families with income at or below 200% of the federal poverty level.
3. LFB Paper #1041. Modification. Modify the Governor's proposal to account for the following inadvertent errors and reestimates: (a) a reduction in GPR supporting the TANF program of \$275,000 annually; (b) an increase in program revenue in DWD of \$117,300 in 2001-02 and \$122,200 in 2002-03; (c) a reduction in CCDF revenue of \$16,105,400 in 2001-02 and \$81,100 in 2002-03; (d) a decrease in federal food stamp revenue of \$275,100 annually; (e) an increase in the TANF carryover estimate from 2000-01 to 2001-02 of \$48,081,900; (f) a decrease of \$947,000 in 2001-02 for administration and services in the current W-2 contracts; (g) a decrease of \$53,600 for performance bonuses associated with the current W-2 contracts; (h) a decrease of \$3,029,500 in 2001-02 and \$20,100 in 2002-03 for community reinvestment activities associated with the 2000-2001 W-2 contracts; (i) an increase of \$8,972,300 in 2001-02 and a decrease of \$48,800 in 2002-03 in programs to improve child care quality and availability; (j) an increase of \$7,715,800 in 2001-02 and a decrease of \$227,900 in 2002-03 for the local

care subsidies and kinship care benefits.

10. LFB Paper #1042. Alternative 12b. Reduce the allocation for community reinvestment in 2001-03 by \$12,734,800 FED to reflect not rebudgeting funds that were unspent in 1999-01 for the first six months of community reinvestment associated with the 1997-1999 W-2 contracts.
11. LFB Paper #1042. Alternative 15. Direct DWD to eliminate community reinvestment funding from the 2002-2003 W-2 contracts.
12. LFB Paper #1043. Require DWD to hold public hearings and consult with the Milwaukee County Department of Human Services prior to implementing any changes to the W-2 geographic regions.
13. LFB Paper #1044. Alternative 4. Eliminate \$500,000 annually for the Milwaukee Private Industry Council. Modify the statutes to require DWD to perform the following oversight and coordination functions for W-2 agencies in Milwaukee County: (a) monitor agencies' compliance with the provisions in their contracts; (b) provide technical assistance; and (c) assist in the coordination of W-2 services among the five Milwaukee County W-2 agencies.
14. LFB Paper #1045. Delete the statutory language allowing DWD to submit a plan to the Secretary of DOA for approval to limit participation in the Wisconsin Shares program if DWD determines that funds allocated for child care subsidies are insufficient to provide a subsidy to eligible recipients.
15. LFB Paper #1046. Provide additional funding for child care subsidies of \$32,025,000 FED in 2001-02 and \$63,075,000 FED in 2002-03.
16. LFB Paper #1046. Alternative 4. Reduce funding for the following items: (a) employment skills advancement program (\$100,000 annually); (b) children first (\$1,660,000 annually); (c) state administration (\$18,800 in 2001-02 and \$25,100 in 2002-03); (d) work-based learning programs (\$6,399,000 in 2001-02 and \$2,000,000 in 2002-03); (e) workforce attachment and advancement (\$359,000 in 2001-02 and \$5,000,000 in 2002-03); (f) early childhood excellence (\$5,000,000 in 2002-03); and (g) early pregnancy identification (\$100,000 annually).
17. LFB Paper #1047. Revise the statutory provisions relating to the indirect child care allocation for 2001-03 to allow funds to be used for a child care scholarship and bonus program, safe child care activities and the DWD Office Child Care.
18. LFB Paper #1047. Alternative 4. Decrease funding for indirect child care to reflect a reduction of: (a) \$750,000 annually for resource and referral agencies; and (b) \$182,200 annually for day care administration for Milwaukee County foster parents.
19. LFB Paper #1047. Eliminate \$1,000,000 FED annually of funding for child care quality improvement grants and provide \$1,000,000 FED annually for a high quality child care demonstration project in Racine County.

5. Child Care Subsidies – Child care assistance is one of the key priorities for use of Temporary Assistance for Needy Families (TANF) funding. However, we must not forget that the top priority for TANF funding is the Wisconsin Works (W-2) program. I am concerned that we may not always be able to fund growth in child care subsidies at the expense of the W-2 contracts and other related W-2 programs. In order to set priorities, the Legislature will, at some point, have to adopt the language I proposed allowing the administration to control child care expenditures through administrative means if the need arises.

6. Recycling – The budget bill increases the state recycling tipping fee to \$3.00 and provides \$24.5 million annually for municipal recycling grants in the 2001-03 biennium. At this level of support for local recycling programs, Wisconsin has the most generous subsidy in the country. While I do not believe that tipping fees are the best funding source to support recycling costs, I am concerned that many out-of-state communities neighboring Wisconsin view our state as a dumping ground. A review of the average total tipping fees at out-of-state landfills located near Wisconsin's borders point to these landfills using tipping fees to discourage the dumping of Wisconsin waste. Wisconsin's average total tipping fee is \$38 per ton, and ranges from \$16 per ton to \$80 per ton. Average total tipping fees in Minnesota, Illinois and Michigan landfills near our state lines are \$54, \$44 and \$63 per ton, respectively. The range of tipping fees in Illinois varies from \$25 to \$152, with many of the higher cost landfills close to our border. I have retained the increase in the tipping fee to discourage other states from viewing Wisconsin as a dumping ground for their garbage.

To Whom It May Concern:

October 16, 2002

I am writing on behalf of the hearing on Administrative Rule Chapter DWD 56, and its effects on teachers in the childcare workforce who receive county assistance and also care for their own children.

My name is Claire Lind Kuhr and I have been in the field of early childhood development since January, 1994. I have a BA from UW-Madison, and five and a half years preschool teaching experience. I recently began work on the T.E.A.C.H. Early Childhood® WISCONSIN Scholarship Program at Wisconsin Early Childhood Association. Prior to this I taught preschool at Red Caboose Day Care Center for two years. I left teaching for financial and professional reasons, but this rule interpretation did not encourage me to continue teaching in this field.

I first heard about the implementation of this rule from my director at Red Caboose, Wendy Rakower, in late spring of this year. The concern was that my daughter was approaching the age where she needed to move up to my room in the fall, and I had been receiving county child care assistance since I began teaching and my children began care at Red Caboose.

Since going off assistance was not an option (my take-home pay was less than my child care bill) we came up with five alternatives, none of which are conducive to quality child care: 1) I find a new job. This goes against everything we know about quality childcare: the key is consistency and experienced teachers. 2) I switch to a different room for the year my daughter would be in my room. 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 and make mine much more stressful. And I want my kids at Red Caboose, because it is a great school with a very dedicated and experienced staff. 5) We completely change the structure of our classroom, dividing into two distinct groups, with my child always in the "other" group. This was deemed the only acceptable solution, but by no means desirable. (We obviously didn't have to implement this because I no longer work there.)

Our room had the same structure for at least 20 years. We have a group of 18 four and five year old 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 out "groups." This new rule would have upset our room, making it less than what it should be.

I am also outraged on a different level. This law is discriminatory on two levels: it discriminates against women, because we are the biggest percentage of the early childhood education workforce, and because of the low wages involved, it primarily targets poor women. It also assumes that members of this workforce are trying to "cheat

the system" in some way, which is insulting and impossible. It is not possible for me to obtain the funds the county pays for my daughter for my own personal use. The county payment goes to the accountant, who deposits it into the proper account for the school. It does not go to me. I got paid to watch 18 children, not one.

Please do not allow this rule to affect the childcare industry negatively. It is extremely difficult to keep good, qualified teachers in the field. We don't need another obstacle preventing children in our society from getting the best tools they need to grow into amazing adults. Thank you for your time.

Sincerely,

Claire Lind Kuhr