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Details:

(FORM UPDATED: 08/11/2010)

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

### 2007-08

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on ... Elections and Constitutional Law (AC-ECL)

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**
- Record of Comm. Proceedings ... **RCP**

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

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

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State of Wisconsin  
Department of Workforce Development

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**Rule Analysis for Legislative Review**

**Proposed Rules Relating to Child Care Rates  
Chapter DWD 56  
CR 007-030**

**Basis and Purpose of the Proposed Rules**

The rule provides that the reimbursement rates paid to child care providers by the Wisconsin Shares child care subsidy program will not be adjusted for the year beginning January 1, 2007, and the rates effective on December 31, 2006, will remain in effect. This policy was implemented in January as an emergency rule when the estimated fiscal year deficit for the program was \$46 million. Moving into state fiscal year 2008, the Department continues to be challenged with potential deficit issues for the child care program.

**Public Hearing Summary**

A public hearing was held on May 7, 2007. A summary of the hearing comments and the Department's responses is attached.

**Response to Legislative Council Staff Recommendations**

The Department's responses are attached.

**Changes to Analysis Prepared under s. 227.14 (2), Stats.**

The "Factual Data and Analytical Methodologies" section was updated and a reference to the Department's more detailed analysis on the effect of the rule on small businesses was added.

**Final Regulatory Flexibility Analysis and Response to Small Business Regulatory Review Board**

The Department's analysis found that the proposed rule would not have a significant impact on a substantial number of small businesses. The Small Business Regulatory Review Board (SBRRB) directed the Department to provide more detail on the analytical approach and methodologies used in making this determination. The Department submitted a more detailed analysis of the Department's analytical approach to the SBRRB and this analysis was acknowledged by the Board on July 19, 2007.

**Department Contacts**

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266-3343

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267-9403



*Is this coming to  
Legislature for review  
which is possible*



State of Wisconsin  
Department of Workforce Development  
Division of Workforce Solutions

**CHILD CARE RATES**

**DWD 56.06 (1)**

*C-Rule  
007-030  
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Date  
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The Wisconsin Department of Workforce Development proposes an order to amend s. DWD 56.06 (1) (a) 1. and to create s. DWD 56.06 (1) (a) 1m., relating to child care rates and affecting small businesses.

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

**Statutory authority:** Sections 49.155 (6) and 227.11, Stats.

**Statutes interpreted:** Section 49.155 (6), Stats.

**Related statutes and rules:** Section 48.65, Stats, and Chapters HFS 45, 46, and 55; Section 48.651, Stats., and Chapter DWD 55

**Explanation of agency authority.** Section 49.155 (6), Stats., provides that, subject to review and approval by the department, each county shall establish maximum reimbursement rates for child care services provided to eligible individuals by licensed and certified child care providers. Each county shall set the rate for licensed providers so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. The maximum reimbursement rate for Level I certified providers may not exceed 75% of the rate established for licensed providers, and the maximum reimbursement rate for Level II certified providers may not exceed 50% of the rate established for licensed providers.

**Summary of the proposed rule.** Under s. DWD 56.06, the Department or each county must survey all licensed providers each year to determine the child care prices they charge the general community. The county or tribal agency annually sets maximum reimbursement rates based on the survey, unless the Department sets multi-county rates. The maximum rate for licensed providers is set so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. Separate maximum rates are set for licensed group child care centers, licensed family child care centers, Level I certified family child care providers, and Level II certified family child care providers. Separate maximum rates are also set for children in various age groupings. The current rates are multi-county rates set by the Department in 2006.

In past years, the adjusted rates based on the annual survey have generally become effective January 1 of the new year. This rule provides that the rates will not be adjusted for the year beginning January 1, 2007, and the rates effective on December 31, 2006, will remain in effect.

**Summary of related federal regulations.** Under 45 CFR 98.43, a state must certify that state payment rates for the provision of child care services funded under the Child Care and Development Fund are sufficient to ensure equal access to child care services for eligible families as families not eligible for child care assistance. At a minimum, the state must show that it considered 3 key elements in determining that its child care program provides equal access for eligible families: 1) Adequate payment rates based on a local market rate survey conducted no earlier than two years prior to the effective date of the current plan; 2) Choice of the full range of categories and types of providers; and 3) Affordable copayments.

In the commentary issued with the regulation, the Administration for Children and Families notes that rates established at least at the 75<sup>th</sup> percentile of the market rate would be regarded as providing equal access. Under the former title IV-A child care program, states were required to set rates at this level. (63 FR 39936, 39959, July 24, 1998)

**Comparison with rules in adjacent states.** A 2006 study by the National Women's Law Center, entitled *State Child Care Assistance Policies 2006: Gaps Remain, With New Challenges Ahead* compared state 2006 reimbursement rates to market rates for child care centers. The study found that Wisconsin was one of 9 states that had reimbursement rates at or above the 75<sup>th</sup> percentile of the market rate in 2006 and one of 22 states that had reimbursement rates at or above 75<sup>th</sup> percentile of the market rate in 2001. The Department does not have comparative information on 2007 rates.

**Michigan.** Reimbursement rates have not been increased since 1997. Rates in 2006 were at the 75<sup>th</sup> percentile of 1996 market rates. In Wayne County, the percentage difference between the state rate and the 75<sup>th</sup> percentile of the market rate was -42% for center care of a 4-year-old and -46% for care of a one-year-old.

**Minnesota.** In Hennepin County, the percentage difference between the state 2006 rate and the 75<sup>th</sup> percentile of the market rate was -10% for center care of a 4-year-old and -12% for care of a one-year-old.

**Illinois.** In Cook County, the percentage difference between the state 2006 rate and the 75<sup>th</sup> percentile of the market rate was -33% for center care of a 4-year-old and -25% for care of a one-year-old.

**Iowa.** The percentage difference between the statewide 2006 rate and the 75<sup>th</sup> percentile of the market rate was -4% for center care of a 4-year-old and -6% for care of a one-year-old.

The National Women's Law Center study *State Child Care Assistance Policies 2006: Gaps Remain, With New Challenges Ahead* is available at <http://www.nwlc.org/pdf/StateChildCareAssistancePoliciesReport2006web.pdf>.

**Summary of factual data and analytical methodologies.** In January 2007, the Department estimated that the Wisconsin Shares child care subsidy program would have a fiscal year deficit of \$46 million due to flat federal funding, rising caseload, and

increased provider costs. The Department implemented the policy to not adjust the reimbursement rates for 2007 as an emergency rule. In April, the Legislature appropriated an additional \$30 million for the program in 2007 Wisconsin Act 5. The emergency rule has been instrumental in the Department's ability to address the remaining \$16 million deficit. Moving into state fiscal year 2008, the Department continues to be challenged with potential deficit issues for the child care program.

By not increasing the maximum county rates reimbursed to child care providers, the Department will avoid the increased cost of using the rates based on the 2006 provider survey. By comparing the current rates used for the reimbursement versus the rates that would otherwise go into effect and annualizing the results, it is estimated that the Department will realize about \$8,400,000 in annual savings in federal block grant funds.

**Effect of rule on small businesses.** The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

**Analysis used to determine effect on small businesses.** Pursuant to direction by the Small Business Regulatory Review Board, the Department adopted the following definitions to use in making the determination of whether a rule will have a significant economic impact on a substantial number of small businesses:

“Significant economic impact” means the rule increases overall expenses of small businesses by more than 5% per year or the rule decreases overall revenue of small businesses by more than 5% per year.

“Substantial number” means more than 25% of the businesses affected by the scope of the rule.

The total child care subsidy annual budget is \$300 million. The Department estimates that \$270 million is annually paid to 7,000 child care providers that are small businesses. Not increasing the child care subsidy maximum rates is estimated to decrease annual revenue to all child care providers by \$8.4 million and decrease revenue to child care providers that are small businesses by \$7.56 million. On average, the annual child care funds to a child care provider that is a small business is \$38,571. The average decreased revenue from the child care subsidy program to a provider due to not increasing the child care subsidy maximum rates is \$1,080 or 2.8%. The percentage decrease in overall revenue to a provider will be significantly less than 2.8% due to revenue from private pay families and copayments from families receiving child care assistance. According to the UW-Extension's Wisconsin Child Care Research Partnership in 2001, there were 190,000 young children in out-of-home regulated child care, of whom 40,000 (21%) were funded by the subsidy. On average, we would expect providers, including those who are small businesses, to experience a decrease in overall revenue of about 0.5%.

The Department's more detailed analysis submitted to the Small Business Regulatory Review Board on June 29, 2007, is attached.

**Agency contact person.** Barbara Stiefvater, Child Care Section, (608) 266-8200, [barbara.stiefvater@dwd.state.wi.us](mailto:barbara.stiefvater@dwd.state.wi.us).

**Place where comments are to be submitted and deadline for submission.** Comments may be submitted to Elaine Pridgen, Office of Legal Counsel, Dept. of

Workforce Development, P.O. Box 7946, Madison, WI 53707-7946 or  
[elaine.pridgen@dwd.state.wi.us](mailto:elaine.pridgen@dwd.state.wi.us). The comment deadline is May 9, 2007.

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

**DWD 56.06 Establishing county and tribal agency child care rates. (1)**

ESTABLISHMENT OF MAXIMUM RATES. (a) *Responsibility*. 1. Except as provided in subd. 1m. or 2., a child care administrative agency shall annually set child care rates in accordance with the policies and procedures set out in this section unless the department sets maximum rates for a multicounty area which includes the particular county or tribal area.

**SECTION 2. DWD 56.06 (1) (a) 1m. is created to read:**

**DWD 56.06 (1) (a) 1m.** Notwithstanding subd. 1., the department shall set child care rates for the year beginning January 1, 2007, to be the same as the rates in effect on December 31, 2006.

**SECTION 3. EFFECTIVE DATE.** This rule shall take effect the first day of the month following publication in the Administrative Register as provided in s. 227.22 (2) (intro), Stats.







Date ?

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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Ronald Sklansky  
Clearinghouse Director

Terry C. Anderson  
Legislative Council Director

Richard Sweet  
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Laura D. Rose  
Legislative Council Deputy Director

### CLEARINGHOUSE RULE 07-030

#### Comments

**[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]**

#### 1. Statutory Authority

Section 49.155 (6), Stats., does not specify how frequently each county must set its maximum reimbursement rate for child care services. However, that subsection provides that the maximum reimbursement rate must be set at a rate so that at least 75% of the number of places for children within the licensed capacity of all child care providers in that county can be purchased at or below that maximum rate. Arguably, under the proposed rule, in 2007, fewer than 75% of the number of places will be able to be purchased at the maximum reimbursement rate.

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

a. In s. DWD 56.06 (1) (a) 1. a., "a." should not be underscored. Also, under current drafting rules, it would be preferable to create a new subd. 1m. rather than to divide subd. 1. into subdivision paragraphs. [See s. 1.03 (6), Manual.]

b. In the text of SECTION 2, the full rule citation should precede the new language.

c. It appears that s. DWD 56.06 (1) (b) should also be modified to clarify that counties do not have to conduct an annual survey for 2007, if that is the intent of the proposed rule.





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FORM 2

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**WISCONSIN LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE**

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*Clearinghouse Director*

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*Legislative Council Deputy Director*

**CLEARINGHOUSE REPORT TO AGENCY**

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

**CLEARINGHOUSE RULE 07-030**

AN ORDER to renumber and amend DWD 56.06 (1) (a) 1.; and to create DWD 56.06 (1) (a) 1. b, relating to child care rates and affecting small businesses.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

04-02-2007 RECEIVED BY LEGISLATIVE COUNCIL.

04-30-2007 REPORT SENT TO AGENCY.

RNS:AS

**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

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

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]  
Comment Attached      YES       NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]  
Comment Attached      YES       NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]  
Comment Attached      YES       NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]  
Comment Attached      YES       NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]  
Comment Attached      YES       NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]  
Comment Attached      YES       NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]  
Comment Attached      YES       NO



Date?

## Response to Legislative Council Comments

### Proposed Rules Relating to Child Care Rates Chapter DWD 56 CR 007-030

Comment 1. Section 49.155 (6), Stats., does not specify how frequently each county must set its maximum reimbursement rate for child care services. However, that subsection provides that the maximum reimbursement rate must be set at a rate so that at least 75% of the number of places for children within the licensed capacity of all child care providers in that county can be purchased at or below that maximum rate. Arguably, under the proposed rule, in 2007, fewer than 75% of the number of places will be able to be purchased at the maximum reimbursement rate.

Department response: The Department believes that s. 49.155 (6), Stats., only applies if counties and tribes are setting local rates. The statute refers to counties and tribes setting rates at the 75% level, subject to the Department's review and approval. Presumably, the Department's review and approval would consider available funding. Section DWD 56.06 (1)(a)1. excludes department-set regional and statewide rates from the detail requirements for counties and tribes. Since the Department is setting regional rates, the 75% limit does not apply. Nonetheless, the Department believes that, within available funding, the Department should seek to maintain regional or statewide rates that meet the 75% guideline.

The Department believes that, if s. 49.155 (6), Stats. did apply the rates established in 2006 would still be in compliance on a regional and statewide basis, given that the annual survey of the private market is approximate and the adjustment that would have occurred from 2006 to 2007 is relatively small in comparison to the uncertainty of the survey process. Shortcomings of the annual rate survey include the following:

- Response rates. Counties and tribes are actively encouraged to work for a response rate of at least 80 percent. However, there is a great deal of variability from county to county. In Milwaukee County, for 2005, 977 surveys were sent to family providers and 653 were returned for a response rate of 67 percent.
- Number of useable responses. Not all responses are eligible for inclusion in the rate survey. To be included, a response must indicate that at least 25 percent of children served are private pay. This requirement is intended to get at the private pay market, which is the price structure the program seeks to support. In 2005, of the 653 surveys returned from Milwaukee County family providers, only 108 met this threshold.
- Lack of verification that providers actually charge the rates they indicate on the survey. Providers have vested interest in over-reporting rates to increase the maximum county rates and the Department has not invested funds in a validation that could verify whether or not the provider-reported rates actually reflect the amounts charged private pay customers.

- Lack of verification that parents actually pay the rates that providers indicate on the survey. The program is intended to assist low income working parents in accessing the same regulated care that moderate income parents can purchase. We do not know what moderate income parents are paying for child care.
- Concern that, in some areas of the state, the subsidy is such a large share of the market that the subsidy is actually setting the market rate and middle income parents cannot afford to buy regulated care in those markets.

In 1999, John Pawasarat and Lois Quinn of UW-Milwaukee's Employment and Training Institute indicated that subsidy rates were higher in Milwaukee, even without the co-payment, than providers were charging unsubsidized families. The study is named "Impact of Welfare Reform on Child Care Subsidies in Milwaukee County: 1996-1999." Since then, maximum subsidy rates have increased regularly without reference to economic forces. There are a number of providers who serve only children on the subsidy. This phenomenon poses great challenges for the Department in surveying providers to find the true private market rate in Milwaukee County. It also leaves many concerned that moderate income parents are unable to purchase regulated child care in Milwaukee County. The 2006 average cost per subsidized child served for Milwaukee County was \$4,227.07, which is \$923.46 above the state average.

Comment 2. c. It appears that s. DWD 56.06 (1) (b) should also be modified to clarify that counties do not have to conduct an annual survey for 2007, if that is the intent of the proposed rule.

Department response: The survey that would influence rates for calendar year 2007 occurred in July of 2006. The 2007 survey, which is currently in process, will impact 2008 rates unless the 2007-2009 biennial budget provides other direction to the program.