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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 08-035

#### 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.]**

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

a. As a general comment, both current and proposed s. DWD 56.04 utilize excessive subdivision of material, making it difficult to read. A good example is found in proposed s. DWD 56.04 (2) (d). It is suggested that the entire section (current and proposed) be reviewed to determine whether provisions could be grouped so as to avoid the use of subdivision paragraphs, which are discouraged in s. 1.03 (6), Manual.

b. Section DWD 56.04 (2) should be given a title, such as “VOUCHERS,” for consistency with the other subsections in s. DWD 56.04.

c. Section DWD 56.04 (2) (d) is repealed and recreated in this rule, rather than amended, so the changes to the current rule are not shown. Because the provision contains significant changes to requirements for payments to child care providers, it might be preferable to amend the rule to show the changes being made.

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

a. The following comments pertain to the rule analysis:

- (1) In general, the analysis is difficult to read due to lack of spacing between paragraphs and bulleted items. Also, the main feature of the rule—reinstating the child care enrollment underutilization policy—should be more clearly explained, earlier in the analysis. Now, reference to that policy is in the

“summary of factual data and analytical methodologies” section, which follows the summary of the proposed rule.

- (2) On page 1, on the second line from the bottom, “will repeal” should be replaced by “repeals.”
  - (3) On page 2, line 1, to clarify what the administrative agency “shall authorize,” the phrase “payments to licensed providers” should be inserted. Also, the phrase stating that payments shall be on “*either* an enrollment or attendance basis” implies that both bases are suitable, whereas (as the analysis goes on to indicate), the rule requires that payments be based on attendance where the child care needs vary from week to week or where the child attends less than 50% of the authorized hours of care. See comment b. (1), below, regarding this provision.
  - (4) The analysis should note the following changes in the language in s. DWD 56.04 (5) (c) (intro.), relating to sanctioning childcare providers: (a) the current rule provides for sanctions if the provider submits *false* attendance reports, but the proposed rule strikes “false” and inserts “inaccurate”; and (b) the current rule provides for sanctions if the provider *refuses* to provide documentation of actual attendance, but the proposed rule strikes “refuses” and inserts “fails.”
  - (5) In the third full paragraph on page 2, the phrase “will also increase” should read “also increases.” Further, the analysis states that the rule increases the penalties for a provider who submits “false or inaccurate” attendance reports. However, with the change from “false” to “inaccurate” in s. DWD 56.04 (5) (c) (intro.), noted in the previous comment, the only reference to “false” in the proposed rule is a sanction for giving false or inaccurate child care *price information*. In the last sentence before the colon, “will also provide” should read “also provides.”
- b. The following comments pertain to s. DWD 56.04(2) (d):
- (1) In subd. 1. (intro.), “licensed group child care center” and “licensed family child care center” are used instead of “provider,” the term used and defined in the current rule. Should those terms be defined? If definitions exist elsewhere in the Administrative Code, the terms could be defined by reference to those definitions. Also in that provision, “payment” should be inserted after “shall authorize” on line 3. Further, the phrase “either on an enrollment basis or on an attendance basis” makes it sound as if *both* types of payment are acceptable under the circumstances that follow, whereas only one type is permitted under each circumstance. It would be clearer if the provision separated out the circumstances in which the enrollment basis is to be used from those in which the attendance basis is required.

- (2) In subd. 1. a., the phrase “on enrollment based on” would be clearer if rewritten “on an enrollment basis, according to.” Should this provision end with “; up to the maximum authorized hours,” as do subd. 1. b. and c.? Also, it would be useful to move the language currently in subd. 1. c. into or directly following subd. 1. a., since it contains an exception to the language in subd. 1. a., relating to children whose authorized payments are described in that provision.
- (3) Subdivision 1. b. permits paying an hourly rate for attendance-based authorizations that is 10% higher than the reimbursement rate established under s. DWD 56.06. [This provision also exists in current s. DWD 56.04 (2) (d) 1. a.] Section DWD 56.06 pertains to maximum rates that may be set by child care administrative agencies, but makes no mention of the fact that subd. 1. b. permits exceeding those maximums by 10% for attendance-based authorizations. It is suggested that s. DWD 56.06 (2) be amended to specify that the payments under s. DWD 56.04 (2) (d) 1. b. may be 10% higher than the maximum rates established in s. DWD 56.06.
  - c. In s. DWD 56.04 (5) (c) 1. (intro.), on the first line, the “a” should be changed to “the.”
  - d. In s. DWD 56.04 (5) (c) 1., the sanctions in subd. 1. (intro.), a. and b. could each be in a separate subdivision (1. to 3.), rather than drafting a. and b. as exceptions to subd. 1. (intro.).