

## Clearinghouse Rule 14-030



### State of Wisconsin Department of Children and Families

#### DCF 201

### Incentive Program for Local Agencies That Identify Child Care Subsidy Fraud Committed by Child Care Providers

The Wisconsin Department of Children and Families proposes to create s. DCF 201.03 (6), relating to the incentive program for local agencies that identify child care subsidy fraud committed by child care providers.

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#### Analysis Prepared by the Department of Children and Families

**Statutory authority:** Section 49.197 (2) (b), Stats., as repealed and recreated by 2011 Wisconsin Act 32.

**Statutes interpreted:** Section 49.197 (2), Stats., as repealed and recreated by 2011 Wisconsin Act 32.

**Related statute or rule:** Section 49.155 (7m), Stats.

#### Explanation of Agency Authority

Section 49.197 (2), Stats., as repealed and recreated by 2011 Wisconsin Act 32, provides that the department shall by rule establish an incentive program that, using moneys from the allocation under s. 49.175 (1) (p), Stats., rewards county departments, Wisconsin Works (W-2) agencies, and tribal governing bodies that administer the subsidy program for identifying fraud in the subsidy program.

The rule shall specify that a county department, W-2 agency, or tribal governing body shall receive, for identifying fraudulent activity under the subsidy program on the part of a child care provider, an amount equal to the average monthly subsidy payment per child during the prior fiscal year, multiplied by the number of children participating in the subsidy program for whom the provider provides care, multiplied by 1.5 months. A county department, W-2 agency, or tribal governing body may use payments received for any purpose for which moneys under the Temporary Assistance for Needy Families block grant program may be used under federal law.

No later than January 1, 2012, the department shall submit its plan for the incentive program to the Joint Committee on Finance for review by the committee. The department shall

promulgate the rule for the incentive program in accordance with the plan as approved by the committee.

### **Summary of the Proposed Rule**

The proposed rule for the incentive program will implement the department's plan as approved by the Joint Committee on Finance on January 23, 2012. The department's plan is available at [http://legis.wisconsin.gov/lfb/jfc/passive\\_review/Pages/JFC-Passive-Review.aspx](http://legis.wisconsin.gov/lfb/jfc/passive_review/Pages/JFC-Passive-Review.aspx).

The proposed rule provides that the department shall provide an incentive payment to a local agency for identifying fraud in the child care subsidy program on the part of a child care provider if all of the following apply:

- The local agency investigates the child care provider by conducting site visits, collecting and reviewing the provider's attendance and billing records, interviewing persons of interest, or gathering supporting case information.
- The local agency's investigation finds that the child care provider intentionally submitted false, misleading, or irregular information to the department or failed to comply with the terms of the child care subsidy program and failed to provide to the satisfaction of the agency or the department an explanation for the noncompliance.
- The local agency calculates and establishes the amount of the overpayment made to the provider as a result of the provider's actions.
- The local agency's actions result in the department, in conjunction with the local agency, withholding payments to be made to the child care provider.
- The withholding of payments is upheld in the final review under s. DCF 201.07 or the provider does not request a review or appeal.
- If directed by the department, the local agency requests the district attorney to consider criminal prosecution of the child care provider.

The department shall determine the amount of an incentive payment earned by a local agency by multiplying the statewide average monthly subsidy payment per child in the preceding fiscal year by the average monthly number of children for whom payment was authorized to the provider in the 12 months before the local agency or the department refused to issue payments by 1.5 months. If payment was not authorized to the provider for all of the preceding 12 months, multiply by the average monthly number of children for whom payment was authorized to the provider for the number of months that payment was authorized will be used.

An incentive payment earned by a local agency for identifying fraud in the child care subsidy program by a single child care provider may not exceed \$25,000. A local agency may earn more than one incentive payment per year if the local agency identifies fraud in the child care subsidy program by more than one child care provider.

A local agency that has earned an incentive payment may request that the department distribute the funds for any of the following:

- The local agency's child care fraud contract with the department for the following year.

- The local agency's current child care fraud contract with the department if the request is made in the first half of the contract term.
- Any purpose that is consistent with the currently approved state plan for use of federal funds under the Temporary Assistance to Needy Families program.

The initial applicability of incentives under the proposed rule is investigations that were initiated on or after January 1, 2012.

### **Summary of Factual Data and Analytical Methodologies**

The proposed rule provides detail necessary to implement s. 49.197 (2), Stats. No data was used.

### **Summary of Related Federal Requirements**

None

### **Comparison to Rules in Adjacent States**

The department is not aware of rules regarding incentive programs for local agencies that identify fraud committed by child care providers in any of the adjacent states.

### **Effect on Small Business**

The proposed rule will not have an effect on small businesses.

### **Analysis Used to Determine Effect on Small Business or in Preparation of Economic Impact Analysis**

The rule affects counties and tribes.

### **Agency Contact Person**

Erik Hayko, Division of Early Care and Education, (608) 266-9045, erik.hayko@wisconsin.gov.

### **Place Where Comments are to be Submitted and Deadline for Submission**

Comments may be submitted to Elaine Pridgen, Office of the Secretary, Department of Children and Families, 201 E. Washington Avenue, P.O. Box 8916, Madison, WI, 53708-8916 or [dcfpublichearing@wisconsin.gov](mailto:dcfpublichearing@wisconsin.gov). The comment deadline is May 8, 2014.

**SECTION 1. DCF 201.03 (6) is created to read:**

**DCF 201.03 (6) INCENTIVE PROGRAM FOR LOCAL FRAUD DETECTION.**

(a) *Definition.* In this subsection, “local agency” means a child care administrative agency, excluding an agency in a county having a population of 750,000 or more.

(b) *Identifying fraud.* The department shall provide an incentive payment to a local agency for identifying fraud in the child care subsidy program on the part of a child care provider if all of the following apply:

1. The local agency investigates the child care provider by doing any of the following:

a. Conducting site visits.

b. Collecting and reviewing the provider’s attendance and billing records.

c. Interviewing persons of interest.

d. Gathering supporting case information.

2. The local agency’s investigation finds that the child care provider intentionally submitted false, misleading, or irregular information to the department or failed to comply with the terms of the child care subsidy program under s. 49.155, Stats., and failed to provide to the satisfaction of the agency or the department an explanation for the noncompliance.

3. The local agency calculates and establishes the amount of the overpayment made to the provider as a result of the provider’s actions under sub. 2.

4. The local agency’s actions in subd. 1. to 3. result in the department, in conjunction with the local agency, withholding payments to be made to the child care provider under s. 49.155 (7m) (a) 2., Stats.

5. The withholding of payments under subd. 4. is upheld in the final review under s. DCF 201.07 or the provider does not request a review or appeal.

6. If directed by the department, the local agency requests the district attorney to consider criminal prosecution of the child care provider.

(c) *Payment amount.* 1. The department shall determine the amount of an incentive payment earned by a local agency under par. (b) by multiplying all of the following amounts:

a. The statewide average monthly subsidy payment per child in the preceding fiscal year.

b. The average monthly number of children for whom payment was authorized to the provider under s. DCF 201.04 (2g) in the 12 months before the local agency or the department withheld payments under par. (b) 3. If payment was not authorized to the provider for all of the preceding 12 months, the average monthly number of children for the number of months that payment was authorized.

c. 1.5 months.

2. An incentive payment earned by a local agency for identifying fraud in the child care subsidy program under par. (b) by a single child care provider may not exceed \$25,000.

3. A local agency may earn more than one incentive payment per year if the local agency identifies fraud in the child care subsidy program under par. (b) by more than one child care provider in that year.

(d) *Use of incentive funds.* A local agency that has earned an incentive payment may request that the department distribute the funds for any of the following purposes:

1. The local agency's child care fraud contract with the department for the following year.

2. The local agency's current child care fraud contract with the department if the request is made in the first half of the contract term.

Note: Contracts with counties are based on a calendar year and contracts with tribes are based on a federal fiscal year.

3. Any purpose that is consistent with the currently approved state plan for use of federal funds under the Temporary Assistance to Needy Families program.

**SECTION 2. INITIAL APPLICABILITY.** This rule first applies to investigations under s. DCF 201.03 (6) (b) 1. that were initiated on or after January 1, 2012.

**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.