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**STATE OF WISCONSIN
DEPARTMENT OF CHILDREN AND FAMILIES**

**EMERGENCY RULE
Authorized Hours of Subsidized Child Care
DCF 201**

The Wisconsin Department of Children and Families orders the repeal of s. DCF 201.02(3); the renumbering of ss. DCF 201.04(2)(b), (d), and (e) to (h); the amendment of ss. DCF 201.01, 201.02(3) and (19), 201.03(3), (5)(a)(intro.) and (b), 201.04(1)(a)2., (2)(a)1.b., (2)(c), 201.05(title), (2), (3), and (4), 201.06(title), (1)(b), and (c), (2)(a)(intro.) and 2., (b)(intro.) and 1., (d), and (e), and (4), 201.08(3)(a); and the creation of ss. DCF 201.02(2m), 201.04(2g)(title), (b), and (c), relating to authorized hours of subsidized child care and affecting small businesses.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

2009 Wisconsin Act 28 assumes that implementation of s. 49.155 (6g), Stats., will save an estimated \$9 million over the 2009-2011 biennium.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.155 (6g), Stats., as created by 2009 Wisconsin Act 28, and 227.11 (2) (a), Stats.
Statutes interpreted: Sections 48.651 and 49.155, Stats.

Explanation of Agency Authority

Section 49.155 (1m) (a), Stats., provides the work, training, and educational activities for which an eligible individual can receive a subsidy for child care. A child care administrative agency determines the hours of child care authorized per week and authorizes payment to a child care provider.

Maximum number of authorized hours. Section 49.155 (6g) (a), Stats., as created by 2009 Wisconsin Act 28, provides that no more than 12 hours of child care per day per child may be authorized unless the parent provides written documentation of work or transportation requirements that exceed 12 hours in a day. The child care administrative agency may authorize more than 12 hours, not exceeding 16 hours, of child care per day for a child whose parent provides written documentation of work or transportation requirements that exceed 12 hours in a day. If the authorized hours of child care per day for a child will be reduced from more than 12 to 12 or less because the child's parent does not provide the written documentation, the child care administrative agency shall provide to the child's parent and to the child care provider 4 weeks' notice of the reduction in authorized hours before actually reducing the child's authorized hours.

Adjusting authorized hours. Section 49.155 (6g) (am) and (b), Stats., as created by 2009 Wisconsin Act 28, provides that if payment to a child care provider is based on authorized hours of child care, the department shall do all of the following with respect to establishing and adjusting the number of authorized hours per child:

- The department shall track a child's hourly usage of child care authorizations over a 6-week period.
- If the child's hourly usage tracked is less than 60 % of the authorized hours of child care, the department shall reduce the authorized hours of child care for the child to 90% of the maximum number of hours of child care that the child attended during that 6-week period.
- The department shall provide written notice of the proposed adjustment to the child's parent, the child care provider, and the applicable county department or agency.

- The department shall provide a grace period after the number of authorized hours are reduced during which time the child care subsidy amount paid to the child care provider for the child shall remain the same as before the reduction in authorized hours was made.

The department shall exclude from a child’s hourly usage calculation all of the following:

- One week per year of vacation time for the child care provider.
- One week per year of sick time for the child care provider.
- Two weeks per year of vacation time for the child’s parent.

The department shall promulgate rules that specify how these requirements will be implemented.

Summary of the Rule

The rules incorporate the provisions of s. 49.155 (6g), Stats., regarding authorized hours of subsidized child care.

The statute requires a grace period during which the subsidy paid to the provider remains the same after the authorized hours are reduced. The rules provide that the grace period will be 2 weeks.

The rules also provide that weeks for which the child care administrative agency approved payment to a provider to hold a slot during a parent’s temporary break in employment shall be excluded from a child’s hourly usage calculation. Section DCF 201.04 (2) (h) currently provides that the child care administrative agency may authorize payment to a provider to hold a slot for a child if the parent has a temporary break in employment and intends to return to work and continue to use the child care provider upon return to work. The agency may authorize payment for no more than 6 weeks if the absence is due to a medical reason and is documented by a physician or for no more than 4 weeks if the absence is for other reasons.

In addition, the rules update agency terminology and definitions to reflect changes in 2009 Wisconsin Act 28 that authorize the department to contract with counties, tribes, W-2 agencies, child care resource and referral agencies, or other agencies to administer the child care subsidy program and to certify child care providers. Act 28 also provides for department administration of child care in Milwaukee County.

Summary of Factual Data and Analytical Methodologies

The Governor’s veto message requested the department to implement a 2-week grace period.

Summary of Related Federal Requirements

None

Comparison to Adjacent States

Michigan. A provider may only receive payment for a child’s hours of attendance, except for absences due to the child’s illness, not to exceed 2 consecutive weeks, and state holidays.

Illinois. Payment to licensed and license-exempt child care centers are based on authorized days if the total of days attended for all publicly-funded children at the center location are 80% of the authorized days for the month.

Payment to licensed home providers are based on authorized days if the total of days attended for all children in a family are 80% of the family’s authorized days for the month.

Payment to license-exempt home providers are based only on attendance.

Iowa. Payment is based on authorized days with payment allowed for a child not in attendance not to exceed 4 days per calendar month.

Minnesota. Payment is based on authorized days except child care providers may not be reimbursed for more than 25 full-day absent days per child, excluding holidays, in a fiscal year, or for more than 10 consecutive full-day absent days, unless the child has a documented medical condition that causes more frequent absences.

Agency Contact Person

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SECTION 1. DCF 201.01 is amended to read:

DCF 201.01 Authority, purpose, and applicability. This chapter is promulgated under the authority of s. 49.155, Stats., excluding subs. (1d) and (1g), and s. 227.11 (2), Stats., to provide definitions, procedures, and standards for the administration of child care funds. This chapter applies to the department, county and tribal agencies, child care administrative agencies, Wisconsin works agencies, private agencies under contract to administer child care funds, licensed and certified child care providers, and eligible parents.

SECTION 2. DCF 201.02 (2m) is created to read:

DCF 201.02 (2m) “Certification agency” means the department in a county having a population of 500,000 or more or any agency that has a contract with the department to certify child care providers under s. 48.651 and ch. DCF 202 in a particular county or tribal area.

SECTION 3. DCF 201.02 (3) and (19) are amended to read:

DCF 201.02 (3) “Child care administrative agency” or “agency” means any agency that has a contract with the department to administer child care funds; ~~or any agency that has a subcontract to administer child care funds with an agency that has a contract with the department; or, in a county having a population of 500,000 or more, the department or the “unit” as defined in s. 49.825 (1) (e), Stats.~~

(19) “Rate” means the maximum amount a ~~county or tribal~~ child care administrative agency will pay for child care.

SECTION 4. DCF 201.03 (3), (5) (a) (intro.) and (b) are amended to read:

DCF 201.03 (3) ASSISTANCE TO COUNTIES, TRIBES AND W-2 CHILD CARE ADMINISTRATIVE AGENCIES. The department shall provide information and technical assistance to ~~county, tribal and W-2~~ child care administrative agencies regarding administration of the child care funding program.

(5) RATE REVIEW. (a) (intro.) The department shall annually review child care rates set by each ~~county and tribe~~ child care administrative agency and shall approve or disapprove each ~~county agency’s rates and tribal agency’s rates~~ based on the following criteria:

(b) The department may grant a variance to a nonstatutory requirement under ss. DCF 201.04 to 201.06 on written request of a ~~county or tribal~~ child care administrative agency if the department is convinced that an alternative means meets the intent of the requirement.

SECTION 5. DCF 201.04 (1) (a) 2. and (2) (a) 1. b. are amended to read:

DCF 201.04 (1) (a) 2. Providers certified by a ~~county or tribal~~ certification agency under standards specified in s. DCF 202.08 or 202.09. The child care administrative agency may authorize payment to providers who become certified from the date the certification application was received by the ~~child care administrative~~ certification agency.

(2) (a) 1. b. A voucher shall be in writing and shall authorize a parent to obtain child care services stipulated in that voucher from a provider under sub. ~~(3)~~ (1).

SECTION 6. DCF 201.04 (2) (b) is renumbered DCF 201.04 (2g) (d).

SECTION 7. DCF 201.04 (2) (c) is amended to read:

DCF 201.04 (2) (c) If a ~~county or tribal~~ child care administrative agency authorizes payment for child care services by means of a voucher issued to the parents or by contract with a provider, billing and collection of any parent co-payment requirement is the responsibility of the provider.

SECTION 8. DCF 201.04 (2) (d) is renumbered DCF 201.04 (2g) (a) and DCF 201.04 (2) (e) to (h) are respectively renumbered DCF 201.04 (2g) (e) to (h).

SECTION 9. DCF 201.04 (2g) (title), (b), and (c) are created to read:

DCF 201.04 (2g) PAYMENT AUTHORIZATION.

(b) 1. Except as provided in subd. 2., the child care administrative agency shall authorize no more than 12 hours of child care per day per child.

2. The child care administrative agency may authorize more than 12 hours, not exceeding 16 hours, of child care per day for a child whose parent provides written documentation of work or transportation requirements that exceed 12 hours in a day.

3. If the authorized hours of child care per day for a child will be reduced from more than 12 to 12 or fewer because the child's parent does not provide the written documentation required under subd. 2., the child care administrative agency shall provide to the child's parent who is receiving the subsidy under s. 49.155, Stats., and to the child's child care provider 4 weeks' notice of the reduction in authorized hours before actually reducing the child's authorized hours.

(c) 1. If reimbursement to a child care provider is based on weekly authorized hours of child care, the department shall do all of the following with respect to establishing and adjusting the number of authorized hours per child:

a. The department shall track a child's weekly usage of child care authorizations over a 6-week period.

b. If the child's hourly usage tracked under subd. 1.a. is less than 60 percent of the authorized hours of child care, the department shall reduce the authorized hours of child care for the child to 90 percent of the maximum number of hours of child care that the child attended during any week of that 6-week period.

c. The department shall provide written notice of the adjustment under subd. 1. b. to the child's parent who is receiving the subsidy under this section, the child's child care provider, and the applicable child care administrative agency.

d. The department shall provide a grace period of 2 weeks after the number of authorized hours are reduced under subd. 1. b., during which time the child care subsidy amount paid to the child care provider for the child shall remain the same as before the reduction in authorized hours was made.

2. The department shall exclude from a child's hourly usage calculation under subd. 1. b., all of the following:

a. One week per year of vacation time for the child's provider.

b. One week per year of sick time for the child's provider.

c. Two weeks per year of vacation time for the child's parent who is receiving the subsidy under s. 49.155, Stats., with the child.

d. Weeks for which the child care administrative agency approved payment to a provider to hold a slot during a parent's temporary break in employment under par. (h).

SECTION 10. DCF 201.05 (title), (2), (3), and (4) are amended to read:

DCF 201.05 ~~County and tribal~~ Child care administrative agency responsibilities.

(2) TRAINING REQUIREMENT. ~~County and tribal~~ Child care administrative agencies shall ensure that each new child care worker completes the department's initial training during the first 6 months of employment.

(3) RATE-SETTING METHOD. Each ~~county and tribal~~ child care administrative agency shall submit a written statement to the department which describes the method by which the ~~county or tribal~~ child care administrative agency has determined reasonable and customary child care prices and the maximum rate that the ~~county or tribal~~ child care administrative agency will allow for the purchase of child care services. The department may prescribe standard units of service by which rates are set in order to achieve statewide consistency.

(4) INFORMATION TO PROVIDERS. (a) ~~County and tribal~~ Child care administrative agencies shall distribute information to child care providers regarding child care funding policies.

(b) ~~County and tribal~~ Child care administrative agencies shall require child care providers to sign a memorandum of understanding prior to receiving authorization or payment that specifies that the provider agrees to adhere to child care subsidy attendance reporting policies and cooperate with the agency in all program monitoring efforts.

SECTION 11. DCF 201.06 (title); (1) (b), and (c); (2) (a) (intro.) and 2., (b) (intro.) and 1., (d), and (e); and (4) are amended to read:

DCF 201.06 Establishing county and tribal agency child care rates.

(1) (b) *Survey*. The ~~county or tribal~~ child care administrative agency, except a tribal agency acting under par. (a) 2., shall annually contact all licensed group day care centers and licensed family day care centers in the county or tribal area to determine the child care prices they charge to the general community, except if the department arranges for a survey independent of the ~~county or tribal~~ child care administrative agency. The child care prices shall be submitted in writing to be included in the survey.

(c) *Group*. The ~~county or tribal~~ child care administrative agency shall set separate maximum rates for the following groups of children:

(2) MAXIMUM RATES. (a) *Licensed group day care centers*. In setting maximum rates for licensed group day care centers, the ~~county or tribal~~ child care administrative agency shall comply with the following:

2. In determining whether 75% of the day care slots can be purchased at or below the maximum rate, the ~~county or tribal~~ child care administrative agency may exclude day care centers that operate less than 5 days a week or 5 hours a day, receive funding from a county department established under s. 51.42 or 51.437, Stats., do not have a set full-time, weekly child care price, or at which more than 75% of the children's care is subsidized under s. 49.155, Stats., excluding subs. (1d) and (1g).

(b) *Licensed family day care centers.* In setting maximum rates for licensed family day care centers, the ~~county or tribal~~ child care administrative agency shall comply with the following:

1. Maximum rates shall be set so that at least 75% of the family day care center slots in the county or tribal area may be purchased at or below the maximum rates. The number of slots attributed to a center shall be equal to the center's licensed capacity. In determining whether 75% of the day care slots can be purchased at or below the maximum rate, the ~~county or tribal~~ child care administrative agency may exclude day care centers that operate less than 5 days a week or 5 hours a day, receive funding from a county department established under s. 51.42 or 51.437, Stats., do not have a set full-time, weekly child care price, or at which more than 75% of the children's care is subsidized under s. 49.155, Stats., excluding subs. (1d) and (1g).

(d) *In-home day care.* For in-home care, the ~~county or tribal~~ child care administrative agency shall establish the maximum rate at the level of no less than the state minimum wage established under ch. 104, Stats., and ch. DWD 272. The child care administrative agency may authorize payment to the child care provider at the local reimbursement rate for the type of care provided multiplied by the number of children in care if this rate exceeds the minimum wage.

(e) *Other day care providers.* For a day care program established or contracted for by a school board or for a certified school-age day care program, the ~~county or tribal~~ child care administrative agency shall establish maximum rates in accordance with par. (a).

(4) **SPECIAL RATES.** A ~~county or tribal~~ child care administrative agency may set maximum reimbursement rates that are different from the rates allowed under subs. (1) and (2) for child care provided for less than a 2-week period, provided sporadically or provided for care of an ill child through negotiations with the child care provider.

SECTION 12. DCF 201.08 (3) (a) is amended to read:

DCF 201.08 (3) (a) 1. A change in child care prices or ~~in the rates paid by county or tribal agencies.~~

SECTION 13. EFFECTIVE DATE. This rule shall take effect on May 17, 2010, as provided in s. 227.24 (1) (c), Stats.