

**State of Wisconsin
Department of Children and Families**

Payments under the Child Care Subsidy Program

Chapter DCF 201

Emergency Rule

The Wisconsin Department of Children and Families orders the repeal of ss. DCF 101.26 (1), 201.02 (2), (7), (19), (23), and (25), 201.03 (5), 201.04 (1), (2g) (title), (a), (d), (e), and (g), (2j), (2m), (3), (4), (5) (title) and (b) 5., and (6) (title), 201.045, and 201.05; the renumbering of ss. DCF 101.26 (2) and 201.035; the amendment of ss. DCF 201.02 (3), (6), (6m), and (12), 201.03 (3) and (6), 201.04 (2g) (c) 1. (intro.) and (h), (5) (a) 1. and 2. (intro.) and (b) 1. to 4.; the repeal and recreation of ch. DCF 201 (title), 201.01, 201.02 (5), (7r), and (13), 201.03 (1) and (3), 201.04 (title) and (2), and 201.06; and the creation of ss. DCF 201.02 (15m) and (19m), 201.034, 201.036, 201.038, and 201.039, relating to payments under the child care subsidy program.

This emergency rule was approved by the governor on April 26, 2017.

The statement of scope for this rule, SS 106-16, was approved by the governor on November 4, 2016, published in Register 731A2, on November 14, 2016, and approved by Secretary Eloise Anderson on November 28, 2016.

Finding of Emergency

An emergency rule is necessary to ensure legal authority for the new definitions, standards, policies, and procedures related to the new system for issuing child care subsidy payments. The department's plan approved by the Joint Committee on Finance provides for implementation of the new payment system in early 2017.

Analysis Prepared by the Department of Children and Families

Statutory authority: Section 227.11 (2) (a), Stats.

Statutes interpreted: Sections 49.155 and 48.685 (2) (br), Stats.

Related statutes: Sections 48.65, 48.651, 48.659, 49.825, and 120.13 (14), Stats.

Explanation of Agency Authority

The department administers the child care subsidy program under s. 49.155, Stats. Section 49.155, (3m) (a), Stats., as affected by 2013 Wisconsin Act 20, provides that the department shall issue benefits directly to individuals who are eligible for subsidies under this section or pay or reimburse child care providers.

Section 227.11 (2) (a), Stats., expressly confers rule-making authority on each agency to promulgate rules interpreting the provisions of any statute enforced or administered by the agency.

Summary of the Emergency Rule

New Payment System

The emergency rule implements a new system for issuing child care subsidy payments to families to assist with the cost of child care. Under the new system, the department will make a monthly subsidy payment available to a parent electronically on the first of a month. As payments to the child care provider become due based on the provider's billing and collection practices, the parent will transfer the funds due to the child care provider electronically. The new system for paying child care providers that serve children whose care is subsidized will be more closely aligned with the generally accepted payment practices of child care providers that serve children whose care is not subsidized.

Authorization and Payment

A parent will only be able to use the subsidy payment to pay for child care on the terms that have been authorized by the child care administrative agency. The parent will inform the agency of his or her schedule of approved activities, the child care provider that will care for the child, and any other information requested by the agency regarding the family's need for child care. The agency will assess the family's need for child care and issue an authorization notice that specifies the child who will receive the care, the child care provider, the location where the child care will be provided, the time period in which the child care will be provided, the number of hours of child care authorized per month, and the maximum subsidy payment amount per month. The department will issue a monthly payment to the parent based on the terms in the authorization notice. The parent's electronic access to the subsidy payment will expire 90 days after the issuance date.

Backdating an Authorization

If the parent submits his or her schedule of approved activities, information on the child care provider, and other required information to the agency within 30 days after submitting the request for assistance, the agency may backdate an authorization so the parent can receive a subsidy for ongoing child care. Assistance under the subsidy program may begin on the date that all of the following conditions are met:

- The parent has submitted a request for assistance.
- The child is receiving child care services from a child care provider.
- The provider is in compliance with program requirements.

Assistance for a kinship care relative providing care and maintenance for a child placed in his or her home pursuant to a court order under ch. 48 or 938, Stats., may begin on the later of the first day of a month or the date of child placement if the specified conditions are met on or before the last day of the month.

If the parent submits the required information more than 30 days after submitting the request for assistance, the agency may authorize payment for child care by a provider who is in compliance with program requirements beginning the first of the month in which the parent submits the information.

Provider Requirements

The emergency rule requires child care providers to be licensed, certified, licensed or regulated in an adjacent state, or a child care program established or contracted for by a school board. In addition, providers must participate in the department's quality rating system under ss. 48.659 and 49.155 (6) (e) and, Stats. In-home providers and out-of-state providers are exempt and instead sign a Wisconsin Shares participation contract. Providers must also comply with the requirements in s. 48.685 (2) (br), Stats., on fingerprint-based background checks and complete the procedures necessary to receive payments by electronic fund transfer.

Obsolete Policies and Terminology

The term "voucher" is replaced by the term "authorization notice" to signify agency approval of a subsidy for child care based on the terms specified in the notice. The rule also repeals the requirement that an agency issue an authorization for payment based on authorized hours if the care will be by a licensed group provider and an authorization for payment based on attendance if the care will be by a licensed family provider or a certified provider. Under the new payment system, authorizations for all types of providers will be based on a family's need for care. Existing policies on authorizations are reorganized for clarity.

The section of the rule on maximum rates for child care services is rewritten to incorporate the change from counties establishing maximum rates and the department approving the rates to the department having sole responsibility for rates under 2013 Wisconsin Act 20.

Summary of Factual Data and Analytical Methodologies

The rule is updated to incorporate changes in policy and terminology related to the issuance of child care subsidy payments to parents instead of child care providers.

Summary of Related Federal Law

42 USC 9858c (c) (2) (S) requires that the payment practices of child care providers that serve children who receive assistance reflect generally accepted payment practices of child care providers that serve children who do not receive assistance, so as to provide stability of funding and encourage more child care providers to serve children who receive assistance.

The emergency rule does not include requirements of the final rule adopted by the Administration for Children and Families on September 30, 2016. The federal rule makes significant changes to the Child Care Development Fund program that will require state statutory changes before implementation.

Comparison to Adjacent States

In the adjacent states, child care providers generally receive subsidy payments directly from the state after providing child care and submitting attendance report forms to the department.

Effect on Small Businesses

The rule will benefit child care providers that are small businesses as defined in s. 227.114 (1), Stats.

Analysis Used to Determine Effect on Small Businesses

With the new payment system, child care providers will no longer be required to submit attendance report forms to the department and will receive subsidy payments more quickly.

Agency Contact

Rose Prochazka, Chief, Wisconsin Shares Policy Section, rose.prochazka@wisconsin.gov, (608) 422-6078.

Hearing Information

Date: June 12, 2017

Time: 1:30 pm

Location: GEF 1 Building, 201 E. Washington, D203, Madison WI

Written comments may be submitted no later than June 13, 2017, to dcfpublichearing@wisconsin.gov or Elaine Pridgen, Rules Coordinator, Department of Children and Families, 201 E. Washington, P.O. Box 8916, Madison, WI, 53708-8916.

SECTION 1. DCF 101.26 (1) is repealed.

SECTION 1m. DCF 101.26 (2) is renumbered DCF 101.26.

SECTION 2. Chapter DCF 201 (title) is repealed and recreated to read:

Chapter DCF 201

CHILD CARE SUBSIDY PROGRAM

SECTION 3. DCF 201.01 is repealed and recreated to read:

DCF 201.01 Purpose. This chapter provides standards and procedures for the administration of the child care subsidy program under ss. 49.155 and 227.11 (2) (a), Stats. This chapter applies to the department, child care administrative agencies, child care providers, and eligible parents.

SECTION 4. DCF 201.02 (2) is repealed.

SECTION 5. DCF 201.02 (3) is 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 the child care funds subsidy program; any agency that has a subcontract to administer the child care funds subsidy program with an agency that has a

contract with the department; or, in ~~a county having a population of 500,000 or more~~ Milwaukee County, the department or the “unit” as defined in s. 49.825 (1) (e), Stats.

SECTION 6. DCF 201.02 (5) is repealed and recreated to read:

DCF 201.02 (5) “Child care price” means the amount a child care provider charges for child care services.

SECTION 7. DCF 201.02 (6) is amended to read:

DCF 201.02 (6) “Child care provider” or “provider” means a provider licensed under s. 48.65, Stats.; certified under s. 48.651, Stats.; established or contracted for under s. 120.13 (14), Stats.; or licensed or regulated in Illinois, Minnesota, Iowa, or Michigan.

SECTION 8. DCF 201.02 (6m) is repealed and recreated to read:

DCF 201.02 (6m) “Child care subsidy program” or “subsidy program” means the program under which the department issues payments to assist parents who are eligible under s. 49.155 (1m), Stats., with child care expenses.

SECTION 9. DCF 201.04 (7) is repealed.

SECTION 10. DCF 201.04 (7r) is repealed and recreated to read:

DCF 201.04 (7r) “Debtor” means a person who is responsible for an overpayment under s. DCF 201.04 (5) (b) or a person who is liable under s. 49.155 (7m) (b), Stats.

SECTION 11. DCF 201.02 (11) is repealed.

SECTION 11m. DCF 201.02 (12) is amended to read:

DCF 201.02 (12) “Foster parent” means a person licensed under s. 48.62 (1), Stats., or licensed by a tribal social services agency as a tribal placement home.

SECTION 12. DCF 201.02 (13) is repealed and recreated to read:

DCF 201.02 (13) “Gross income” means the income used in determining financial eligibility under s. 49.155 (1m) (c), Stats.

SECTION 13. DCF 201.02 (15m) is created to read:

DCF 201.02 (15m) “Maximum rate” means the maximum rate that the department will use in calculating the amount of a payment under the child care subsidy program.

SECTION 14. DCF 201.02 (19) is repealed.

SECTION 15. DCF 201.02 (19m) is created to read:

DCF 201.02 (19m) “Slots” means the number of places for children within the capacity of a child care provider under the applicable law for that type of provider.

SECTION 16. DCF 201.02 (23) and (25) are repealed.

SECTION 17. DCF 201.03 (1) and (2) are repealed and recreated to read:

DCF 201.03 (1) GENERAL. The department shall maintain oversight responsibility of local administration of the child care subsidy program by child care administrative agencies.

(2) RATE DETERMINATION. Notwithstanding s. DCF 201.06, the department may determine maximum rates under s. 49.155 (6d) (a) 3., Stats.

SECTION 18. DCF 201.03 (3) is amended to read:

DCF 201.03 (3) ASSISTANCE TO CHILD CARE ADMINISTRATIVE AGENCIES. The department shall provide information and technical assistance to child care administrative agencies regarding administration of the child care ~~funding~~ subsidy program.

SECTION 19. DCF 201.03 (5) is repealed.

SECTION 20. DCF 201.03 (6) is amended to read:

DCF 201.03 (6) INCENTIVE PROGRAM FOR LOCAL FRAUD DETECTION. The department shall provide an incentive payment as specified under ~~s. DCF 201.035~~ s. DCF 201.044 to a local agency for identifying fraud in the child care subsidy program.

SECTION 21. DCF 201.034 is created to read:

DCF 201.034 Child care administrative agencies. (1) The department may contract with a child care administrative agency to administer, or to share in the administration of, the child care subsidy program in a particular county.

(2) The duties of a child care administrative agency shall include all of the following:

- (a) Responding to requests for information on the child care subsidy program.
- (b) Ensuring that a parent’s eligibility for the subsidy program is accurately determined.
- (c) Assessing a family’s need for child care.
- (d) Providing information to a parent about resources for identifying potential child care providers.
- (e) Determining a parent’s copayment amount.
- (f) Establishing an authorization for subsidized child care for an eligible parent.
- (g) Ensuring program integrity, including determining and processing overpayments.
- (h) Representing the agency in appeals under ch. 227, Stats.

(3) A child care administrative agency shall ensure that each new employee who performs an agency responsibility under sub. (2) (b), (c), (e), (f), or (g) completes the department’s initial training within the first 6 months of employment.

(4) A child care administrative agency may subcontract responsibilities with the approval of the department.

SECTION 22. DCF 201.035 is renumbered to be DCF 201.044.

SECTION 23. DCF 201.036, 201.038, and 201.039 are created to read:

DCF 201.036 Eligibility. (1) REQUEST FOR ASSISTANCE. A parent shall sign a request for assistance under the child care subsidy program.

(2) **AGENCY DETERMINATION.** A child care administrative agency shall determine a parent's eligibility for the child care subsidy program under s. 49.155 (1m), Stats.

(3) **CHANGE IN CIRCUMSTANCES (a) Parent.** A parent shall notify the child care administrative agency of any change in circumstances that affects the parent's eligibility or need for child care within 10 days after the change.

(b) **Agency.** A child care administrative agency shall redetermine a parent's eligibility for the child care subsidy program and need for child care in a timely manner following receipt of a parent's report of a change in circumstances affecting his or her eligibility or need for child care.

(4) **ANNUAL RENEWAL.** A child care administrative agency shall review a parent's eligibility no sooner than 12 months following the initial determination of the parent's eligibility or the parent's most recent annual renewal of eligibility, unless the parent requests a renewal sooner.

Note: For example, a parent may want to renew eligibility for the child care subsidy program early because he or she is at the agency for a renewal of a different program, such as FoodShare.

DCF 201.038 Child care providers. (1) PROVIDER REQUIREMENTS. A child care administrative agency may authorize payment for child care services provided by a child care provider who meets all of the following conditions:

(a) *Regulated child care.* The child care provider is any of the following:

1. A child care center licensed by the department under s. 48.65, Stats., and ch. DCF 250 or 251, or a day camp licensed by the department under s. 48.65, Stats., and ch. DCF 252.

2. A child care provider certified by a certification agency under s. 48.651, Stats., and ch. DCF 202. For purposes of this paragraph, a child care administrative agency may consider a provider to be certified beginning on the date the provider's application for certification was received by the certification agency.

3. A child care program established or contracted for by a school board under s. 120.13 (14), Stats.

4. A child care provider licensed or regulated in Illinois, Minnesota, Iowa, or Michigan.

(b) *Quality rating system.* The child care provider is any of the following:

1. A child care provider that is participating in the department's quality rating system under ss. 48.659 and 49.155 (6) (e), Stats.

2. An in-home provider or an out-of-state provider that has signed a child care subsidy participation contract

Note: For information on the department's quality rating system or a Wisconsin Shares participation contract, contact the local Youngstar office. Contact information is available at <https://dcf.wisconsin.gov/youngstar/program/localoffice>.

(c) *Fingerprint background check.* The provider is in compliance with the requirements in s. 48.685 (2) (br), Stats.

(2) **ELECTRONIC FUND TRANSFER.** A provider shall complete the procedures necessary to receive payments by electronic fund transfer.

(3) **PARENTAL CHOICE.** A parent may choose any child care provider that meets the conditions in sub. (1).

(4) **PRICE AND RATE.** A parent may choose a child care provider with a child care price that is higher than the applicable maximum rate and pay the difference between the provider's price and the applicable maximum rate under s. DCF 201.06 in addition to any required copayment.

DCF 201.039 Authorizations. (1) ASSESSMENT OF NEED. A child care administrative agency shall determine and authorize the amount of child care for which an eligible parent may receive a subsidy.

(2) **PARENT.** A parent shall inform the child care administrative agency of all of the following:

(a) The child care provider that will care for the child.

(b) The specific dates and times of the parent's schedule of approved activities under s. 49.155 (1m) (a), Stats.

(c) Any other information requested by the agency regarding the family's need for child care.

(3) **LICENSED PROVIDER PRICES.** A child care administrative agency may refuse to authorize payment for child care services by a child care provider licensed under s. 48.65, Stats., if the provider refuses to submit documentation of the provider's child care prices in response to an agency request.

(4) **TWO-PARENT FAMILY.** In two-parent families, both parents shall meet the eligibility criteria in s. 49.155 (1m), Stats., unless the child care administrative agency verifies that one parent has a disability or health condition that makes that parent unable to participate in an approved activity under s. 49.155 (1m) (a), Stats., and unable to provide the child care necessary for the second parent to participate in an approved activity under s. 49.155 (1m) (a), Stats. The agency shall require the parent to provide documentation of the disability or health condition from a doctor, psychiatrist, or psychologist.

(5) **CARE PROVIDED IN A CHILD'S HOME.** A child care administrative agency may authorize payment for child care services in a child's home only if the child care provider is certified under s. 48.651, Stats., and any of the following apply:

(a) Care is provided to 3 or more children from the same family.

(b) Other licensed or certified care is not available within a reasonable geographic area.

(c) Other licensed or certified care is not available during the hours when child care is needed, such as during second or third shift or weekend hours.

(d) The child has a special need and child care is best provided in the child's home.

(6) NO PARENTS OR HOUSEHOLD MEMBERS. A child care administrative agency may not authorize payment for child care services by a provider who is a parent of the child, resides with the child, or is legally responsible for the child under s. 49.90, Stats.

(7) AUTHORIZATION CRITERIA FOR A PROVIDER'S CHILD. (a) The department or a child care administrative agency may authorize payment for the care of a child whose parent is a child care provider only if the care will be provided by another child care provider and any of the following apply:

1. The care will allow the parent to participate in an approved activity under s. 49.155 (1m) (a), Stats., other than an activity related to child care.

2. The department or agency determines that assistance is appropriate because the child has a special need.

Note: See s. DCF 201.02 (20).

3. The parent is the child's foster parent.

4. The parent is the child's guardian or interim caretaker and is receiving subsidized guardianship payments under s. 48.623, Stats., for the care and maintenance of the child.

5. The parent is the child's kinship care relative, the child has been placed with the relative under a court order, and the relative is receiving kinship care payments under s. 48.57 (3m) or (3n), Stats., for the care and maintenance of the child.

6. Both of the following apply:

a. The child's biological parent is a dependent minor child under the age of 18 who attends high school or participates in a course of study meeting the standards established by the state superintendent of public instruction for the granting of a declaration of equivalency of high school graduation.

b. The dependent minor parent and the child reside with a person who is considered the child's parent for the purposes of this chapter and who may be the dependent minor parent's custodial parent, kinship care relative, foster parent, or guardian or interim caretaker receiving a payment under s. 48.623, Stats., for the care and maintenance of the dependent minor parent.

(b) If a parent who is a child care provider submits documentation of circumstances that meet the conditions of this subsection, the child care administrative agency shall consider the documentation to be an application for a waiver under s. 49.155 (3m) (d) 3, Stats.

(8) EMPLOYEE OF CERTIFIED PROVIDER. A child care administrative agency may not authorize payment for child care services by a provider certified under s. 48.651, Stats., if the child's parent or a person who resides with the child is employed by the provider at the same location.

(9) AUTHORIZATION NOTICE. (a) After a parent has provided all of the information required under sub. (2) and the child care administrative agency has completed the assessment of the family's need for child care, the agency shall issue a written authorization notice to the parent approving payment for child care through the subsidy program based on the specific provisions in the notice.

(b) An authorization notice shall specify the child who will receive the care, the child care provider, the location where the child care will be provided, the time period in which the child care

will be provided, the number of hours of child care authorized per month, and the maximum subsidy payment amount per month.

(10) BACKDATED START DATE. (a) *Authorization within 30 days after request for assistance.* 1. If an agency determines that a parent is eligible for the subsidy program under s. 49.155 (1m), Stats., and the parent submits the information required under sub. (2) to the agency within 30 days after the date that the parent submitted a request for assistance, the agency may authorize payment beginning on the date that all of the following conditions are met:

- a. The parent has submitted a request for assistance under the child care subsidy program.
- b. The child is receiving child care services from a child care provider.
- c. The provider is in compliance with the requirements of s. DCF 201.038 (1).

2. Notwithstanding subd. 1., if an agency determines that a parent is eligible for the subsidy program under s. 49.155 (1m), Stats., and the parent submits the information required under sub. (2) to the agency within 30 days after the date that the parent submitted a request for assistance, the agency may authorize payment beginning on the later of the first day of a month or the date of child placement if all of the following conditions are met:

- a. The parent is a kinship care relative receiving payments under s. 48.57 (3m), Stats., and providing care and maintenance for the child who is placed in his or her home pursuant to a court order under ch. 48 or 938, Stats.

- b. The requirements in subd. 1. a. to c. are met on or before the last day of the month.

(b) *Authorization more than 30 days after request for assistance.* If an agency determines that a parent is eligible for the subsidy program under s. 49.155 (1m), Stats., and the parent submits the information required under sub. (2) to the agency more than 30 days after the date that the parent submitted a request for assistance, the agency may authorize payment for child care services by a provider in compliance with s. DCF 201.038 (1) beginning the first of the month in which the parent submits the information required under sub. (2).

(11) NEW CHILD CARE PROVIDER. If a parent receiving assistance under the child care subsidy program notifies the child care administrative agency of the parent's intent to obtain child care services from a different child care provider, the agency may authorize payment for child care by the new provider as follows:

- (a) Effective the first day of the following month if the parent notifies the agency prior to the end of business hours on the last business day of a month.

- (b) Effective on a date in the current month only with department approval.

SECTION 24. DCF 201.04 (title) is repealed and recreated to read:

DCF 201.04 (title) Payments and overpayments.

SECTION 25. DCF 201.04 (1) is repealed.

SECTION 26. DCF 201.04 (2) is repealed and recreated to read:

DCF 201.04 (2) (a) The amount of a monthly subsidy payment shall be based on the number of hours of child care that an agency authorizes and any of the following that are applicable:

1. For care by a provider licensed under s. 48.65, Stats., the lower of the provider's child care price or the applicable maximum rate under s. DCF 201.06 (4), minus any copayment required under s. DCF 201.08.

2. For care by a provider certified under s. 48.651, Stats., the applicable rate under s. DCF 201.06 (5), minus any copayment required under s. DCF 201.08.

3. For care at a child care program established or contracted for by a school board under s. 120.13 (14), Stats., the applicable rate under s. DCF 201.06 (6), minus any copayment required under s. DCF 201.08.

(b) The department may issue all payments by electronic funds transfer.

(c) A parent's electronic access to a subsidy payment shall expire 90 days after the date that the department issues the payment to the parent.

(d) A parent's child care provider is responsible for billing and collecting payment for child care services from the parent.

SECTION 27. DCF 201.04 (2g) (title) and (a) are repealed.

SECTION 28. DCF 201.04 (2g) (c) 1. (intro.) is amended to read:

DCF 201.04 (2g) (c) 1. (intro.) If ~~reimbursement~~ payment 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:

SECTION 29. DCF 201.04 (2g) (d), (e), and (g) are repealed.

SECTION 30. DCF 201.04 (2g) (h) is amended to read:

DCF 201.04 (2g) (h) ~~The~~ A child care administrative agency may authorize payment ~~to a licensed or certified provider~~ to hold a slot for a child with a child care provider 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. The department and child care administrative agency may not consider payment for a temporary absence to be an overpayment if the parent intended to return to work but does not actually return.

SECTION 31. DCF 201.04 (2j), (2m), (3), (4), and (5) (title) are repealed.

SECTION 32. DCF 201.04 (5) (a) 1. and 2. (intro.) and (b) 1. to 4. are amended to read:

DCF 201.04 (5) (a) Parent overpayments. 1. A child care administrative agency or the department shall take all reasonable steps necessary to recover from a parent funds paid to a child care provider or to that parent when the parent was not eligible for that level of payment under the child care benefit subsidy program and the overpayment benefited the parent by causing the parent to pay less for child care expenses than the parent otherwise would have been required to pay under

~~the requirements of the child care assistance subsidy program requirements, regardless of whether the overpayment was the result of administrative error, client error, or intentional program violation.~~ Section DCF 101.23 shall apply to overpayment collection from a parent under this section.

2. An overpayment shall include excess child care funds paid when there was a change in family eligibility circumstances that was significant enough that it would have resulted in a smaller child care ~~benefit~~ subsidy payment or ineligibility for a ~~the child care benefit~~ subsidy program due to any reason, including the following:

3. The child care ~~worker~~ administrative agency shall determine good cause under subd. 2. b. if the approved activity is ~~unsubsidized~~ employment. A parent's absence from ~~unsubsidized~~ employment shall be considered good cause if the parent is using employer-approved sick time, personal time, or vacation time and the child is in care for no more than the hours authorized.

(b) 1. A provider ~~received reimbursement~~ was paid with child care funds based on attendance records that indicate more hours than a child actually attended. If attended hours were misrepresented by the provider, the provider is responsible for an overpayment of the difference between the ~~reimbursed~~ hours paid for with child care funds and the actual hours of attendance ~~regardless of the type of authorization under s. DCF 201.04 (2g) (a).~~

2. A provider ~~received reimbursement~~ was paid with child care funds for care provided at a location other than the location for which the authorization for care was issued, except for field trips.

3. A provider ~~received reimbursement made~~ was paid with child care funds for care during time when the provider was in violation of the applicable provision regarding limits on the maximum number of children in care or the required provider-to-child ratios for children of various ages in s. DCF 202.08 (6), 250.05 (4), 251.05 (4), or 252.42 (3).

4. A provider ~~received reimbursement~~ was paid with child care funds for care during time when the provider was in violation of the terms of the provider's license under s. DCF 250.04 (1), 251.04 (1), or 252.05 (3), including age of the children served by the center and hours, days, and months of operation of the center.

SECTION 33. DCF 201.04 (5) (b) 5. and (6) (title) are repealed.

SECTION 34. DCF 201.045 and 201.05 are repealed.

SECTION 35. DCF 201.06 is repealed and recreated to read:

DCF 201.06 Establishing maximum rates. (1) EQUAL ACCESS. The department shall establish maximum rates that are sufficient to ensure that families eligible for the child care subsidy program have access to child care services that are comparable to those accessible to families who are not eligible for the child care subsidy program.

(2) RATE GROUPING. (a) County. The department shall set maximum rates for child care services in each county within the state. A tribal area shall be included in the county in which it is geographically located.

(b) *Age groups.* Within each county, the department shall set maximum rates for the following age groups:

1. Infants and toddlers under 2 years of age.
2. Children ages 2 to 3 years and 11 months.
3. Children ages 4 to 5 years and 11 months.
4. Children ages 6 to 13 years.

(c) *Types of providers.* Within each county and within each age group, the department shall set maximum rates for child care services by each of the following types of providers:

1. Group child care centers licensed under s. 48.65, Stats., and ch. DCF 251 and day camps licensed under s. 48.65, Stats., and ch. DCF 252.
2. Family child care centers licensed under s. 48.65, Stats., and ch. DCF 250.
3. Level I regular certified child care providers under s. 48.651 (1) (a), Stats., and ch. DCF 202.
4. Level II provisional certified child care providers under s. 48.651 (1) (b), Stats., and ch. DCF 202.

(3) SURVEY OF LICENSED CENTERS AND DAY CAMPS. (a) The department shall annually contact all group child care centers, family child care centers, and day camps to obtain their child care prices.

(b) The department shall include only child care prices submitted in writing in the survey results.

(4) MAXIMUM RATES FOR LICENSED CENTERS AND DAY CAMPS. (a) *Licensed group child care centers and day camps.* The department shall set maximum rates so that at least 75 percent of the slots in a county at group child care centers licensed under ch. DCF 251 and day camps licensed under ch. DCF 252 may be purchased at or below the maximum rate. The number of slots attributed to a group child care center or day camp shall be equal to the licensed capacity.

(b) *Licensed family child care centers.* The department shall set maximum rates so that at least 75 percent of the slots in a county at family child care centers licensed under ch. DCF 250 may be purchased at or below the maximum rate. The number of slots attributed to a family child care center shall be equal to the center's licensed capacity.

(c) *Exclusions.* In determining maximum rates for licensed group child care centers, licensed family child care centers, and licensed day camps under pars. (a) and (b), the department may exclude the child care prices of a group child care center, family child care center, or day camp at which any of the following apply:

1. The center or day camp operates less than 5 days a week or 5 hours a day.
2. The center or day camp has not established full-time, weekly, or monthly child care prices.
3. The department issues child care subsidy payments for the care of more than 75% of the children attending the center or day camp.

(d) *Sibling rates.* The department may not establish reduced maximum rates for siblings.

(5) RATES FOR CERTIFIED CHILD CARE PROVIDERS. (a) *Percentage of licensed rates.* The department shall set rates for certified child care providers under s. 49.155 (6) (b) and (c), as follows:

1. Rates for Level I regular certified providers under s. 48.651 (1) (a), Stats., shall be 75 percent of the rates established under sub. (4) (b).

2. Rates for Level II provisional certified providers under s. 48.651 (1) (b), Stats., shall be 50 percent of the rates established under sub. (4) (b).

(b) *In-home providers.* Notwithstanding par. (a), the rate for a certified in-home provider who is providing child care services for 15 or more hours per week is the applicable minimum wage, regardless of the number of children receiving care.

(6) RATES FOR SCHOOL BOARD PROGRAMS. The rate for care at a child care program established or contracted for by a school board under s. 120.13 (14), Stats, shall be the same as the applicable rate for a licensed group child care center under sub. (4) (a).

(7) RATES FOR OUT-OF-STATE PROVIDERS. The maximum rate for an out-of-state provider shall be the applicable maximum rate in the county in which the parent resides or the out-of-state provider's actual rate, whichever is lower.

(8) SPECIAL NEED. On a case-by-case basis, a child care administrative agency may set a rate higher than the rate established under this section for the care of a child with a special need.

SECTION 36. DCF 201.08 (2) (f) (Note) is amended to read:

DCF 201.08 (2) Note: Section 49.155 (5), Stats., provides: "An individual who is under the age of 20 and is attending high school or participating in a course of study meeting the standards established under s. 115.29 (4) for the granting of a declaration of equivalency to high school graduation may not be determined liable for more than the minimum copayment amount for the type of child care received and the number of children receiving child care."

Section 49.26 (1) (e), Stats., prohibits copayment responsibility for minor teen parents who are Learnfare participants.

~~7 USC 2015 prohibits copayment responsibility for participants in the Food Stamp Employment and Training program.~~

SECTION 37. EFFECTIVE DATE. This rule shall take effect upon publication as provided in s.

227.24 (1) (c), Stats.