

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

Self-Employment Policies for the Child Care Subsidy Program

Chapter DCF 201

Emergency Rule

The statement of scope for this rule, SS 004-20, was approved by the governor on January 29, 2020, published in Register 770A1, on February 3, 2020, and approved by Secretary Emilie Amundson on February 3, 2020. This emergency rule was approved by the governor on March 17, 2021.

The Wisconsin Department of Children and Families adopts an order to create ss. DCF 201.036 (3m) and 201.039 (8m), relating to self-employment policies for the child care subsidy program.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and this rule is necessary for the immediate preservation of the public welfare based on the following:

The department's authority to administer program policies affecting a self-employed parent who received a subsidy for child care expenses was challenged in circuit court because the policies were not in administrative rule. An emergency rule is necessary to preclude another court challenge prior to the effective date of the proposed permanent rule.

Analysis Prepared by the Department of Children and Families

Statutory authority: Sections 49.155 (1m) (d) and 227.11 (2) (a), Stats.

Statutes interpreted: Section 49.155, Stats.

Related statutes and rules: DCF 202, 250, 251, and 252

Explanation of Agency Authority

The department administers the child care subsidy program under s. 49.155, Stats. Eligibility criteria for program are in s. 49.155 (1m), Stats., and s. 49.155 (1m) (d), Stats., authorizes the department to establish additional eligibility criteria by rule.

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 if the agency considers it necessary to effectuate the purpose of the statute.

Summary of the Emergency Rule

The emergency rule incorporates department policies into rule regarding the eligibility of and authorizations for parents who are self-employed and are applying for or receiving a subsidy for child care expenses.

Eligibility

Section 49.155 (1m) (c), Stats., provides that when calculating farm and self-employment income for determining financial eligibility for the child care subsidy program, the department or county department or agency shall include the sum of net earnings reported to the Internal Revenue Service and depreciation expenses, personal business and entertainment expenses, personal transportation costs, purchases of capital equipment and payments on the principal of loans.

The emergency rule creates a provision in the eligibility section requiring that a parent who is self-employed file personal and business taxes with the internal revenue service annually and provide a copy of the parent’s tax return to the child care administrative agency when the parent submits the initial request for assistance and at each annual eligibility redetermination.

Authorizations

New business. The emergency rule provides that a child care administrative agency shall consider a parent’s self-employment to be a new business for the 24 months following the date that the parent began the business. An agency may consider the parent’s self-employment to be a new business until the parent’s next eligibility redetermination following the end of that 24-month period. While a parent’s self-employment is a new business, a child care administrative agency may authorize payment for the number of hours of child care that the parent states is needed, up to a maximum of 50 hours per week. A parent may begin a new type of self-employment that is considered a new business no more than once every 24 months.

Ongoing business. If a parent’s self-employment is not a new business, the child care administrative agency shall determine the maximum number of hours of child care that may be authorized for the parent per week by dividing the parent’s average monthly gross earnings from self-employment by the higher of the minimum wage under state or federal law and dividing that amount by 4.3 weeks.

Summary of Factual Data and Analytical Methodologies

The emergency rule incorporates existing department policies.

Summary of Related Federal Law

None

Comparison to Adjacent States

Minnesota

To be eligible for child care assistance for self-employment, a parent must work for at least an average of 20 hours per week (10 hours if a full-time student) with a gross income of at least the minimum wage. If the parent meets this minimum activity requirement, the number of hours of subsidized child care that is authorized is the lesser of the following:

- The parent’s annual gross earned income from the self-employment activity, divided by 52 weeks, and then divided by the applicable minimum wage.
- The actual hours the parent spends in the self-employment activity.

Iowa

The number of hours of subsidized child care authorized for a self-employed parent is based on a statement from the parent on the number of hours needed, unless the agency has a reason to question the parent's statement.

Illinois

The numbers of hours authorized cannot exceed the parent's income divided by the state minimum hourly wage.

Michigan

Child care assistance is approved based on a parent's completion of a form with self-employment income and expenses.

Effect on Small Businesses

The rule will affect small businesses operated by parents who receive a subsidy for child care expenses incurred while the parents operate their businesses. The effect will be minimal.

Analysis Used to Determine Effect on Small Businesses

The primary effect of the rule is to incorporate existing department policy into rule.

Agency Contact

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SECTION 1. DCF 201.036 (3m) is created to read:

DCF 201.036 (3m) SELF-EMPLOYMENT. A parent who is self-employed shall file personal and business taxes with the internal revenue service annually and provide a copy of the parent's tax return to the child care administrative agency when the parent submits the initial request for assistance and at each annual eligibility redetermination.

SECTION 2. DCF 201.039 (8m) is created to read:

DCF 201.039 (8m) AUTHORIZATIONS FOR A PARENT WHO IS SELF-EMPLOYED. (a) *New business.* 1. In this subsection, a child care administrative agency shall consider a parent's self-employment to be a new business for the 24 months following the date that the parent began the business.

2. A child care administrative agency may consider a parent's self-employment to be a new business until the parent's next eligibility redetermination following the end of the 24-month period under subd. 1.

3. While a parent's self-employment is a new business, a child care administrative agency may authorize payment for the number of hours of child care that the parent states is needed, up to a maximum of 50 hours per week.

4. A parent may begin a new type of self-employment that is considered a new business under this paragraph no more than once every 24 months.

(b) *Ongoing business.* If a parent's self-employment is not a new business under par. (a), the child care administrative agency shall determine the maximum number of hours of child care that may be authorized for the parent per week by dividing the parent's average monthly gross earnings from self-employment by the higher of the minimum wage under state or federal law and dividing that amount by 4.3 weeks.

SECTION 3. EFFECTIVE DATE. This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.