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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

Public Hearing Summary

Proposed Rules Relating to Child Care Certification Chapter DWD 55 CR 07-071

A public hearing was held in Madison on August 15, 2007. The following commented on the proposed rules:

1. Dave Edie, Early Education Policy Analyst
Wisconsin Council on Children and Families
Madison
2. Jane Robinson, Assistant Director
The Registry/ Harmony House
Madison
3. Nicole Peltier, Certification Manager
4-C Community Coordinated Child Care, Inc.
Madison
4. Oma Vic McMurray, provider and AFSCME representative
Madison
5. Carolyn Klinglesmith, Organizing Director
AFSCME
Madison
6. Silke O'Donnell, provider and AFSCME representative
Madison
7. Debra Block, provider

The following registered against the proposed rules:

8. Susanne Hoesler, AFSCME
Madison
9. Jan Fairchild, AFSCME organizer
Madison

The following observed for information only:

10. Pat Knabe, Certification Specialist
4-C Community Coordinated Child Care, Inc.
Madison
11. Brianne Heidke, Certification Assistant Manager
4-C Community Coordinated Child Care, Inc.
Madison
12. Kim Gonzalez, Administrative Assistant
4-C Community Coordinated Child Care, Inc.
Madison
13. Michael Strauss
Sharlene's Child Care
West Allis

Comment Summary and Department Response

DWD 55.04 Certification Process

Approval of Application for Certification, DWD 55.04 (3) (e)

Klinglesmith: The proposed rule provides that the certification agency shall issue a child care certification within 60 days after determining that the applicant is fit and qualified and the applicable standards in s. DWD 55.08 or 55.09 are in compliance. We suggest the time period be shortened to “within 30 days.”

Department response: The rule has been modified to state that “Within 60 days after receiving a completed application for certification or recertification and satisfactory investigation and determination that the applicant is fit, the county or tribal agency shall either approve the application and issue a certificate or deny the application.” The inspection of the premises and verification that other standards in ss. DWD 55.08 and 55.09 are met will be done within the 60-day period.

Inspection of Premises, DWD 55.04 (7) (b) 2. d.

Peltier: As a certifier in Dane County, I support the change that requires a county or tribal agency to conduct an inspection of the tract of land on which the home used for child care is located and all buildings and structures on that land, including areas that will not be used for child care. There have been numerous times over the years we have found the following violations in nonchild care areas of provider’s homes: Unreported residents, dead rodents, standing water, hidden unreported day care children, guns without trigger locks, ammunition stored near guns, animal feces, and medication in children’s reach with locks not in use, and inappropriate emergency shelters.

Department response: Department agrees.

Klinglesmith: Inspecting areas that will not be used for child care imposes an unnecessary burden on inspectors and is unduly invasive of the privacy of child care operators and their families.

Department response: Inspecting the entire premises is necessary for the health and safety for the children in care, as specified in Nicole Peltier’s comment. This change is proposed in part in response to the death of a small child in the care of a provider in LaCrosse who kept an unreported child hidden in a playpen in the basement with a gate covering the playpen, causing the child to strangle between the gate and the rail of the playpen. The inspector had been at the premises the week before and did not inspect the basement because the provider had said that area was not used for child care.

Limit Certification to One Operator for Each Family Residence, DWD 55.04 (7) (b) 2. g.

Peltier: Limiting certification to one operator for each family residence is helpful because operators often think they can have up to 12 children in care if they have 2 providers, misunderstanding the limits in the current rule.

Department response: Department agrees. In addition, this limit is necessary to ensure accurate monitoring of group size through the automation system and has been Departmental policy since 2002.

McMurray: Operators may need a second provider to care for children to give them time to get a second job, which may be financially necessary. A team of providers would also enhance accountability.

Department response: A child care operator may hire an assistant that is approved by the county or tribal agency under s. DWD 55.08 (1) (d). Only one certificate of approval for a child care operator may be granted per site. The Department of Health and Family Services has a similar that applies to licensed family providers.

Medical Evaluation of Persons Who May Endanger Children in Care, DWD 55.04 (7) (b) 3. e.

Peltier: With proper documentation of concerning behaviors (overreactive anger towards staff, parents, food program staff, police officers), seemingly oblivious and unresponsive to children's needs, erratic behavior, we feel it is imperative to have an evaluation conducted prior to it becoming a danger to children. County and tribal agency staff are not trained mental health professionals.

Department response: Department agrees.

Klinglesmith: We are concerned about certifier subjectivity. The Department has assured us that certifiers will be trained to use this rule only if they have documentation of concerning behavior. We suggest an additional sentence: "The county or tribal agency shall document what reason it has to believe that the person's physical or mental health may endanger children in care."

Department response: Department agrees.

Sanctions, DWD 55.065

Klinglesmith: The proposed rule provides that if a family child care operator violates the provisions of DWD 55, s. 48.685, or ch. HFS 12, the county or tribal agency may suspend the operator's certification for not more than 60 days. The agency shall

either reinstate or revoke the certification by the date that the suspension expires. In order to encourage certifying agencies to act as quickly as possible, we suggest this be rewritten as follows: "Suspend the operator's certification for not more than 30 days. The agency shall either reinstate or revoke the certification by the date that the suspension expires, or may continue the suspension for not more than 30 additional days, and then shall either reinstate or revoke the certification by the date that the suspension expires."

Department response: The Department does not think it is appropriate to impose the extra work on certification workers to extend the suspension at 30 days when the 60-day period is often needed. Sixty days is generally needed when there is a child abuse investigation or pending charges of serious crimes or crimes that may substantially relate to the care of children. In many other situations, the provider causes the delay by not correcting violations in a timely manner.

Qualifications of Providers, DWD 55.08 (1)

Training on Shaken Baby Syndrome, DWD 55.08 (1) (b) 1.

McMurray: My program has been successful, in part, because I bring in people who share their expertise, such as a drummer, yoga teacher, and artist. I also bring in volunteers to help with field trips. Requiring all employees and volunteers to take training on shaken baby syndrome hampers my ability to bring in other resources. If the training requirement were only applied to staff that meet ratios, it would not affect my business as much.

O'Donnell: Anne Carmody, who works in the Department of Health and Family Services Bureau of Regulation and Licensing, informed the Madison Area Association of Accredited Programs that the requirement of training on shaken baby syndrome will only apply to volunteers who are used in ratios of providers to children. This should be in the rules.

Department response: There have been discussions with Senator Lassa, the sponsor of the shaken baby bill, on how to interpret the requirement of training for volunteers. An agreement was reached after these rules were noticed for hearing that the shaken baby training requirement will apply to employees and volunteers who are left in charge of children. The Department has added the phrase "except for a volunteer who does no sole supervision of a child" to the shaken baby training requirement. All employees will be required to take the shaken baby training since they are likely to be left alone with children.

Training on Early Childhood Development, DWD 55.08 (1) (b) 2. a.

Edie: The Wisconsin Council on Children and Families supports the proposal for a family child care operator to complete at least 2 credits of early childhood training or non-credit department approved training prior to Level I certification, commonly referred to as

regular certification. We believe that understanding of child development and health and safety is essential in any child care setting, and this rule represents a needed increase in the certification training requirement.

Our agency is part of the Wisconsin Early Learning Coalition, which advocated raising educational requirements for certified child care providers to the same level required by licensed family child care providers in the 2007-09 budget. The Coalition and WCCF continue to support such a policy. This rule change is a major step in that direction, although Level II provisionally certified family child care providers still have to meet no early childhood development training requirements. Family child care certification was established to assure that children from low-income families receiving financial assistance were served in safe, healthy, nurturing child care settings. We believe that these children have a high risk of not being ready for school, and it is imperative that the family child care providers serving them are trained in basic child development.

Department response: The Department agrees that the Level I providers' increased understanding of child development and health and safety issues will be beneficial to children in care. A training requirement for Level II provisionally certified providers, beyond training on shaken baby syndrome and sudden infant death syndrome, will require a statutory change.

Block: I don't have time to take classes. I work long hours caring for a widower's children, work part-time at Wal-Mart, and have a special needs child of my own.

Department response: The requirement for 2 credits of early childhood training or non-credit department-approved training applies to new applicants for certification. It does not affect providers who are already certified. The training on shaken baby syndrome is a statutory requirement for all regulated child care providers and is necessary to ensure the health and safety of children in care who are under 5 years old.

The Registry (not included)

Robinson: Previous drafts of the rule required documentation of professional training and education through *The Registry*. I was very disappointed to see it was not in the current draft. A *Registry* certificate is verified training, education and experience reflected on a professional certificate. Licensed child care providers are required to document their professional qualifications through *The Registry*, and this is valuable information to state regulatory agencies and parents searching for child care. The cost of the initial certificate is \$42. *The Registry* and DWD could review these fees if cost is an issue. Participation in *The Registry* provides information that will be necessary for implementation of a quality rating system. Nearly every state in the nation is piloting or implementing a quality rating system. Early childhood practitioners need to demonstrate professional development and adhere to standards to be considered a profession.

Department response: The Department agrees that there are advantages to requiring that professional training be documented with *The Registry*, but we will not be implementing the requirement at this time. The Department will continue to research and discuss this issue for possible implementation in the future.

Consistent Continuing Education Training Statewide, DWD 55.08 (1) (b) 2. b. (not included)

Robinson: I was disappointed to see that a proposal to require consistent continuing education training statewide was not included in this draft. The current rule *allows* a county or tribal agency to require up to 5 hours of annual continuing education by a Level I (regular) certified child care operator. The proposal that was deleted would have *required* all Level I (regular) certified child care operators to complete the 5 hours of continuing education in early childhood core knowledge areas approved by the Department. The inconsistency from county to county may confuse parents who may be searching for child care in multiple counties if they work in one county and live in another. These early years of child development are of critical importance and we need to move Wisconsin child care to higher levels of professionalism and quality.

Department response: The Department agrees that a consistent continuing education requirement throughout the state has advantages but we will not be implementing the requirement at this time. The Department will continue to research and discuss this issue for possible implementation in the future.

Training for Substitutes, DWD 55.08 (1) (b) 2. d.

McMurray: The proposed rule requires a substitute who has worked more than 240 hours for a certified child care operator with a Level I (regular) certification to comply with the same training requirements as the child care operator, including the 2 credits of early childhood training or non-credit department-approved training. Getting substitutes is difficult. The full training in early childhood development seems excessive. Training for substitutes should just include first aid, CPR, and shaken baby syndrome. I suggest limiting the requirement of early childhood development training to substitutes to those who have worked more than 240 hours per year.

Department response: When parents enroll their children with a Level I certified child care operator, they are under the impression that the provider has taken the basic early childhood development training required to obtain certification. If a child care operator regularly uses a substitute who does not have any early childhood training, the children are not receiving the same standard of care that they would if the certified operator were in charge. The rule is intended to ensure that the quality of care is constant. The Department of Health and Family Services has a similar rule that applies to licensed family providers.

Reporting Changes That Affect Eligibility, DWD 55.08 (1) (c)

McMurray: The proposed rule requires that a certified child care operator report as soon as possible, but not later than the operator's next working day, changes that affect eligibility, including, among other things, any construction or remodeling of the premises that might have an effect on health and safety of children in care. I suggest that the standard be limited to any construction that might have an effect on health and safety of children who are present during the construction or that the premises would not meet the required health and safety standards until the construction is complete.

Department response: The proposed rule will ensure that the county or tribal agency is aware of construction so the certification worker may visit the site to ensure that the home is free of hazards that are common while doing home repair.

Approval of New Substitutes, Employees, and Volunteers, DWD 55.08 (1) (d)

McMurray: The proposed rule requires that a substitute, employee, or volunteer for a Level I or Level II provider be approved by the certifying agency before employment or volunteer work commences. The Department should not hinder our ability to get much needed help. It could be required to have a background check done because that typically takes just a few days to be returned.

Klinglesmith: What does "approved" mean? If it means the certifying agency must receive and process all required background check information and training documentation, and advise the certified child care operator in a timely manner if there is a problem, the rule should be rewritten to reflect that. Certifying agencies do not have statutory authority for hiring approval based on unspecified criteria.

Department response: The Department added the following language to s. DWD 55.08(1)(d): "The county or tribal agency shall approve the substitute, employee, or volunteer if the agency has verification that the substitute, employee, or volunteer has met the standards under s. DWD 55.05, regarding the criminal history and child abuse record search, and completed the training on sudden infant death syndrome and shaken baby syndrome and impacted babies required under par. (b) 1."

Supervision, DWD 55.08 (5)

Supervision of Children for 16 Hours, DWD 55.08 (5) (c) (not changed)

Peltier: I was disappointed to see that an earlier proposal to limit the hours a certified provider may supervise children to 12 hours in a 24-hour period and to prohibit a provider from being both licensed and certified was eliminated from this draft of the rule. The current certification rules allow a provider to care for up to 6 children for 16 hours. Licensed providers may care for up to 8 children for 12 hours. Dual regulation allows a provider

to care for 8 children for 12 hours as a licensed provider and then to care for up to 6 children for an additional 4 hours as a certified provider. Allowing providers to care for other people's children for 16 hours is simply too much for one person to reasonably conduct and yet take care of themselves, their own family, proper maintenance of their home, and records for their child care business. Providers who are subject to both the licensing rules and the certification rules have additional paperwork, hardship, and confusion.

Department response: The Department agrees that caring for other people's children for 16 hours while balancing other responsibilities is challenging. Representatives of providers have raised the issue that a decrease in hours that providers are allowed to care for children is a decrease in their earning capacity. The Department will not be implementing the decrease in hours at this time but may revisit it in the future.

Provider and Parent Communication, DWD 55.08 (12)

Same Rates for Publicly Funded Parents and Private Pay Parents, DWD 55.08 (12) (c)

Klinglesmith: The proposed rule provides that the child care operator shall charge the same rates for publicly funded parents and private pay parents. This sentence may be interpreted to prevent providers from charging more than the maximum reimbursement rate. This sentence may also restrict use of sliding fee scale rates or variable rates based on when a child was enrolled or the number of children in a family. We suggest that the sentence be rewritten as "The child care operator shall apply his or her rate structure equally to publicly funded parents and private pay parents."

Department response: This provision has been withdrawn.

Discrimination Prohibited, DWD 55.08 (13)

Discrimination Prohibited Based on Socioeconomic Background, DWD 55.08 (13)

Klinglesmith: Prohibiting discrimination based on socioeconomic background may be interpreted to prohibit child care operators from choosing to provide care for a publicly funded child over a private pay child or from choosing to provide care for a private pay child over a publicly funded child. The National Association for the Education of Young Children's position on ethnic and socioeconomic integration is that programs should be designed to include child from a variety of ethnic and socioeconomic backgrounds; a socioeconomic mix should be facilitated through sliding fee scales and use of multiple funding sources; and policies that intentionally or unintentionally result in segregation on the basis of ethnicity, socioeconomic status, or special need, including "at risk" status, must be rectified.

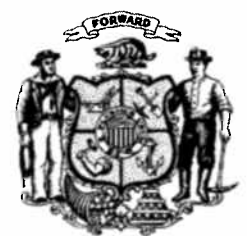
McMurray: Providers have to limit the number of publicly funded children that they enroll due

to funding cuts.

Department response: This provision has been withdrawn.



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 07-071

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.]

1. Statutory Authority

The rule does not appear to comply with the requirement set forth in ss. 49.155 (1d) (a), and 253.15 (4), Stats., that any person certified to provide child care under s. 48.651, Stats., must receive training relating to impacted babies. All of the newly created provisions in the rule pertaining to shaken baby syndrome should also apply to impacted babies.

2. Form, Style and Placement in Administrative Code

a. The definition in s. DWD 55.02 (7) is substantive in nature and therefore should be placed in the text of the rule. [See s. 1.01 (7) (b), Manual.] In addition, all of the items listed for consideration in determining whether a person is “fit and qualified” appear to relate only to whether a person is “fit”, not “qualified.”

b. The rule should set forth a definition of “impacted baby”, as set forth in s. 253.15 (1) (d), Stats.

c. The entire rule should be reviewed to ensure that defined terms used to identify the different types of child care providers and operators are used consistently and that undefined terms are not used. For example, s. DWD 55.04 (2) (a) uses the terms “in-home operator”, which is not defined; s. DWD 55.08 (title) uses the term “in-home child care”, which is not defined; s. DWD 55.08 (1) (a) 3. and (b) 2. a. use the term “family child care operator”, which is not defined; s. DWD 55.08 (1) (c) and (e) use the term “certified family child care operator”

which is not defined; and s. DWD 55.08 (b) (intro.) uses the term “certified family program” which is not defined.

d. The entire rule should be reviewed to ensure there are no unintended consequences to the many instances in which the rule substitutes “operator” for “provider” in already-existing provisions of the rule. For example, in s. DWD 55.08 (1) (a) 3., the substitution has the effect of eliminating the requirement that all child care providers provide proof that they are free of tuberculosis.

e. In s. DWD 55.04 (3) (f), the term “certification agency” is used. It appears that this term refers to the same entity as the term “county or tribal agency.” Since “county or tribal agency” is a defined term, it should be used instead of “certification agency.”

f. The material set forth in the first sentence of the Note following s. DWD 55.08 (1) (b) 1. and in the first two paragraphs of the Note following s. DWD 55.08 (1) (b) 2. a. is substantive in nature and should be placed in the text of the rule. [See s. 1.09 (1), Manual.]

g. In s. DWD 55.08 (2) (b), the phrase “all of” should be inserted after the word “including.” [See also s. DWD 55.08 (4) (k) (intro.). Section DWD 55.08 (8m) (a) (intro.) should be rewritten to read: “All of the following safe indoor and outdoor play equipment shall be provided:”.]

h. The newly created material in the Note following s. DWD 55.08 (9) (a) should not be underscored.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section DWD 55.08 (1) (d) should contain a cross reference to the rule provisions that set forth the standards and procedures for approval of substitutes, employees, and volunteers of a provider by the certifying agency.

b. Should s. DWD 55.09 (1m) (b) specify that school-age programs need to comply with only the provisions of the chapter that apply to school-age programs, rather than the entire chapter?

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

a. The following comments apply to the rule preface:

(1) In the second sentence of the second bullet point on page 3, the phrase “are in compliance” is awkward. Is the intent of the sentence to state, in part, that the applicant has complied with the applicable standards in s. DWD 55.08 or 55.09?

(2) In the first bullet point Qualifications of child care operators and providers, it appears that the word “test” should be deleted.

(3) In the second bullet point Qualifications of child care operators and providers, it appears that the word “least” should be inserted before the number “2.”

(4) In the last sentence Qualifications of child care operators and providers, it appears that the word “of” should be replaced by the word “or.”

(5) In the description of Child health care, it appears that the phrase “any of these diseases” should be inserted after the phrase “has or had.”

(6) In the third bullet point of Supervision, it appears that the word “with” should be inserted after the word “comply.”

(7) In the fourth bullet point of School-age child care programs, it appears that the word “the” should be inserted before the word “licensing.”

(8) In the description of Illinois law, it appears that the second occurrence of the word “care” should be replaced by the word “cared.”

(9) In the description of Michigan law, in the second sentence, it appears that the word “care” should be replaced by the word “cares.”

b. In s. DWD 55.02 (9g), the word “the” should be replaced by the word “a.”

c. In s. DWD 55.02 (20), the article that precedes the word “operator’s” should be the word “an.”

d. In s. DWD 55.04 (3) (e) “are in compliance” should be changed to “have been met.”

e. Section DWD 55.04 (3) (e) should provide more specificity as to the responsibility placed upon the county or tribal agency to determine that an applicant is “fit and qualified.” For example, what sources of information must an agency consult to determine whether an applicant is fit and qualified? For example, how should an agency determine whether an applicant has abused alcohol or drugs or exercised “unsound judgment”?

f. The current rule requires an agency to provide written reasons for denial of child care certification. The rulemaking order eliminates this requirement. Is this change intentional? If so, the analysis to the rule should explain the rationale for this change. If written reasons for denial are not provided, how can a rejected applicant appeal the denial of his or her application?

g. In s. DWD 55.04 (3) (f), what is the purpose of allowing the certification agency to backdate a certificate of approval to the date that the agency received the application? Will this provision in effect allow an operator to receive payment for care provided before the agency actually reviewed and approved the application? If so, this should be explicitly stated in the analysis to the rule and a rationale for this policy should be provided.

h. Section DWD 55.04 (7) (b) 2. e., should specify the identity of the “certain” individuals to whom the rule refers.

i. Section DWD 55.04 (7) (b) 3. d., in part, requires a certified child care operator to submit references at initial certification. Since a child care operator cannot be certified prior to an initial certification, it appears that the word “certified” should be deleted.

j. Sections DWD 55.08 (1) (b) 1. and 55.09 (2) (a) 2. should specify how department approval of training may be obtained, and how it may be determined whether training has been approved by the department. Also, how will a county or tribal agency determine whether a person has obtained the required training?

k. For purposes of the requirement set forth in s. DWD 55.08 (1) (b) 2. d., how is it to be determined that a substitute has worked more than 240 hours? Must the operator keep records of the use of substitutes?

l. In s. DWD 55.08 (1) (c) 1., the phrase “to a child in care” should be inserted after “injury.”

m. The requirement in s. DWD 55.08 (1) (c) 7., that an operator report any “changes in individuals living in the household” is ambiguous. The rule should make clear that it refers to the instance when a person moves in or out of the household, not to a circumstance in which a resident of the household undergoes some type of personal change.

n. Should s. DWD 55.08 (2) (a) 4. c. specify that the window may not be more than a certain height above ground level?

o. In s. DWD 55.08 (2) (a) 5. b., should “to the outside of the building at street or ground level” be inserted after “travel”? Also, why is the term “nominal” used in relation to the required window opening size? Should it be changed to “minimal”?

p. In s. DWD 55.08 (2) (b) 2., it appears that the phrase “if the home is not air conditioned” should be deleted. It is irrelevant whether the home has air conditioning unless the rule is changed to require the air conditioning to be turned on if the temperature in the home exceeds 80 degrees Fahrenheit.

q. In s. DWD 55.08 (2) (f) why is the word “appropriately” added to this provision?

r. Section DWD 55.08 (2) (p) should specify whether the prohibition on the use of lead paint applies to paint that has already been applied or only to the application of new paint. In other words, must the premises be tested for the existence of lead paint in areas accessible to children?

s. Should s. DWD 55.08 (4) (k) and (12) (j) specify that the requirement apply only if the provider is aware that a child has or had a communicable disease? Also, in s. DWD 55.08 (4) (k) should “provider” be changed to “operator”?

t. What is the “daily plan” referred to in s. DWD 55.08 (8) (c)? Could the rule be more explicit about the number of hours that a television may be used by a provider per day?

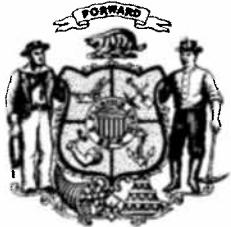
u. In s. DWD 55.08 (12) (intro.), the introduction should conclude with the phrase "doing all of the following."

v. Why does the rule, in s. DWD 55.09 (7) (c), repeal the requirement that a school-age program maintain first aid supplies?

w. Why does s. DWD 55.09 (8) (c) repeal the requirement that water from a non-public supply in a school-age program be tested for nitrate and lead levels?



WISCONSIN STATE LEGISLATURE



Response to Legislative Council Recommendations

Proposed Rules Relating to Child Care Certification Chapter DWD 55 CR 07-071

All recommendations were accepted, except the following:

Comment 4.a. Section DWD 55.08 (1) (d) should contain a cross reference to the rule provisions that set forth the standards and procedures for approval of substitutes, employees, and volunteers of a provider by the certifying agency.

Department response: The standards for approval of substitutes, employees, and volunteers of a child care operator have been added to s. DWD 55.08 (1) (d). The Department does not agree that the procedures for approval must be in administrative rule. The issues will be covered in the policy manual and operations memos.

Comment 5.e. Section DWD 55.04 (3) (e) should provide more specificity as to the responsibility placed upon the county or tribal agency to determine that an applicant is “fit and qualified.” For example, what sources of information must an agency consult to determine whether an applicant is fit and qualified? For example, how should an agency determine whether an applicant has abused alcohol or drugs or exercised “unsound judgment”?

Department response: The Department will provide more specificity in the policy manual.

Comment 5.f. The current rule requires an agency to provide written reasons for denial of child care certification. The rulemaking order eliminates this requirement. Is this change intentional? If so, the analysis to the rule should explain the rationale for this change. If written reasons for denial are not provided, how can a rejected applicant appeal the denial of his or her application?

Department response: The rulemaking order repeals a duplicative provision. Section DWD 55.06 (4) provides that if a county or tribal agency denies, suspends, revokes or refuses to renew a certification, the county or tribal agency shall notify the child care operator in writing and give reasons for the action.

Comment 5.g. In s. DWD 55.04 (3) (f), what is the purpose of allowing the certification agency to backdate a certificate of approval to the date that the agency received the application? Will this provision in effect allow an operator to receive payment for care provided before the agency actually reviewed and approved the application? If so, this should be explicitly stated in the analysis to the rule and a rationale for this policy should be provided.

Department response: Backdating a certificate of approval to the date that the agency received the application allows more flexibility for parental choice if a parent is using unregulated care and becomes eligible for the child care subsidy. If the unregulated provider agrees to become certified, the subsidy payment can be backdated to the date the provider submitted the certification application as long as the provider is given regulatory approval within 60 days from the application date.

Comment 5.j. Sections DWD 55.08 (1) (b) 1. and 55.09 (2) (a) 2. should specify how department approval of training may be obtained, and how it may be determined whether training has been approved by the department. Also, how will a county or tribal agency determine whether a person has obtained the required training?

Department response: The Department does not agree that these procedural issues must be in administrative rule. The issues will be covered in the policy manual and operations memos.

Comment 5.k. For purposes of the requirement set forth in s. DWD 55.08 (1) (b) 2. d., how is it to be determined that a substitute has worked more than 240 hours? Must the operator keep records of the use of substitutes?

Department response: The Department does not agree that these procedural issues must be in administrative rule. The issues will be covered in the policy manual and operations memos.

Comment 5.n. Should s. DWD 55.08 (2) (a) 4. c. specify that the window may not be more than a certain height above ground level?

Department response: No, the rule only requires that the window be of a certain size. Exits from some windows will require assistance from rescue workers.

Comment 5.q. In s. DWD 55.08 (2) (f) why is the word “appropriately” added to this provision? [rabies vaccination for pets]

Department response: The word “appropriately” has been withdrawn. The proposed requirement that the rabies vaccination be documented with a current certificate from a veterinarian remains.

Comment 5.r. Section DWD 55.08 (2) (p) should specify whether the prohibition on the use of lead paint applies to paint that has already been applied or only to the application of new paint. In other words, must the premises be tested for the existence of lead paint in areas accessible to children?

Department response: The prohibition on use of lead paint has been withdrawn. The rule prohibits chipping, peeling, or deteriorating paint on exterior or interior surfaces in areas accessible to children.

Comment 5.t. What is the “daily plan” referred to in s. DWD 55.08 (8) (c)? Could the rule be more explicit about the number of hours that a television may be used by a provider per day?

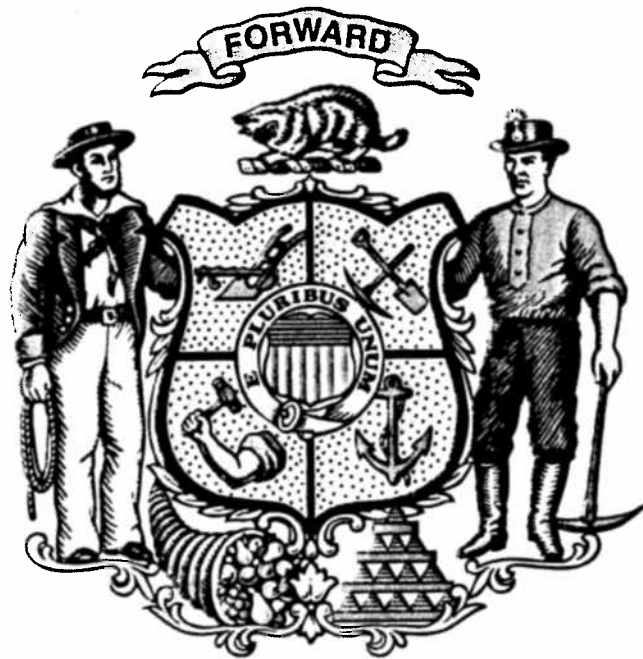
Department response: The phrase “daily plan” has been changed to “daily activities.” The Department does not think it is necessary to be more explicit about a limit on the numbers of hours of television. Television use may vary with weather conditions.

Comment 5.v. Why does the rule, in s. DWD 55.09 (7) (c), repeal the requirement that a school-age program maintain first aid supplies?

Department response: First aid kits contain creams and ointments that may cause children to have allergic reactions. The rule is updated to state that “staff shall wash superficial wounds with soap and water only and protect the wound with a band-aid or bandage.” This change was made to s. DWD 55.08 (4) (j), affecting certified family child care operators, in 2002. The Department of Health and Family Services has the same provision that applies to licensed child care providers.

Comment 5.w. Why does s. DWD 55.09 (8) (c) repeal the requirement that water from a non-public supply in a school-age program be tested for nitrate and lead levels?

Department response: Nitrate in water is primarily harmful to infants; it is not a significant issue for school age children. Lead in water is caused by lead pipes. The water in an old building with lead pipes may initially come out with a high lead concentration because the water has been sitting in the pipes. The lead tests rarely come back positive because the testers let the water run for 2 minutes before taking a sample. The Department instructs child care operators who are in a building that has lead pipes to let the water run a few minutes before using it for cooking or drinking.



Response to Legislative Council Recommendations

Proposed Rules Relating to Child Care Certification Chapter DWD 55 CR 07-071

All recommendations were accepted, except the following:

Comment 4.a. Section DWD 55.08 (1) (d) should contain a cross reference to the rule provisions that set forth the standards and procedures for approval of substitutes, employees, and volunteers of a provider by the certifying agency.

Department response: The standards for approval of substitutes, employees, and volunteers of a child care operator have been added to s. DWD 55.08 (1) (d). The Department does not agree that the procedures for approval must be in administrative rule. The issues will be covered in the policy manual and operations memos.

Comment 5.e. Section DWD 55.04 (3) (e) should provide more specificity as to the responsibility placed upon the county or tribal agency to determine that an applicant is “fit and qualified.” For example, what sources of information must an agency consult to determine whether an applicant is fit and qualified? For example, how should an agency determine whether an applicant has abused alcohol or drugs or exercised “unsound judgment”?

Department response: The Department will provide more specificity in the policy manual.

Comment 5.f. The current rule requires an agency to provide written reasons for denial of child care certification. The rulemaking order eliminates this requirement. Is this change intentional? If so, the analysis to the rule should explain the rationale for this change. If written reasons for denial are not provided, how can a rejected applicant appeal the denial of his or her application?

Department response: The rulemaking order repeals a duplicative provision. Section DWD 55.06 (4) provides that if a county or tribal agency denies, suspends, revokes or refuses to renew a certification, the county or tribal agency shall notify the child care operator in writing and give reasons for the action.

Comment 5.g. In s. DWD 55.04 (3) (f), what is the purpose of allowing the certification agency to backdate a certificate of approval to the date that the agency received the application? Will this provision in effect allow an operator to receive payment for care provided before the agency actually reviewed and approved the application? If so, this should be explicitly stated in the analysis to the rule and a rationale for this policy should be provided.

Department response: Backdating a certificate of approval to the date that the agency received the application allows more flexibility for parental choice if a parent is using unregulated care and becomes eligible for the child care subsidy. If the unregulated provider agrees to become certified, the subsidy payment can be backdated to the date the provider submitted the certification application as long as the provider is given regulatory approval within 60 days from the application date.

Comment 5.j. Sections DWD 55.08 (1) (b) 1. and 55.09 (2) (a) 2. should specify how department approval of training may be obtained, and how it may be determined whether training has been approved by the department. Also, how will a county or tribal agency determine whether a person has obtained the required training?

Department response: The Department does not agree that these procedural issues must be in administrative rule. The issues will be covered in the policy manual and operations memos.

Comment 5.k. For purposes of the requirement set forth in s. DWD 55.08 (1) (b) 2. d., how is it to be determined that a substitute has worked more than 240 hours? Must the operator keep records of the use of substitutes?

Department response: The Department does not agree that these procedural issues must be in administrative rule. The issues will be covered in the policy manual and operations memos.

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FISCAL ESTIMATE
DOA-2048 N(R03/97)

- ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 55
Amendment No. if Applicable

Subject
Child care certification

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

- Increase Costs - May be possible to Absorb Within Agency's Budget Yes No
 Decrease Costs

- Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Local: No local government costs

1. Increase Costs
 Permissive Mandatory
2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory
4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____
 School Districts WTCS Districts

Fund Sources Affected
 GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The cost to implement training to prevent shaken baby syndrome was included in the fiscal estimate for 2005 Wisconsin Act 165 (SB 221). The proposed rules add no cost beyond the bill estimate.

The rule allows a county or tribal agency to charge a fee for school-age child care certification not to exceed the licensing fee for a group child care center that provides care and supervision for 9 or more children, plus the costs of the required criminal record checks. There are currently 28 school-age certified child care programs in the state. It is not known how many counties will charge a certification fee. Counties currently have the authority the charge fees for family child care certification and approximately half of the counties assess a fee. The potential increase in county revenue is indeterminate and likely to be very minor.

No other rule proposals are expected to have a fiscal effect.

Long-Range Fiscal Implications
None

Agency/Prepared by: (Name & Phone No.)
DWD/Elaine Pridgen

Authorized Signature Telephone No. 266-9427

Elaine Pridgen

Date

7/12/07

FISCAL ESTIMATE WORKSHEET

2007 Session

Detailed Estimate of Annual Fiscal Effect
DOA-2047 (R10/94)

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No.
DWD 55

Amendment No.

Subject
Child care certification

I. One-time Costs or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):

0

II. Annualized Costs:	Annualized Fiscal Impact on State funds from:	
	Increased Costs	Decreased Costs
A. State Costs by Category		
State Operations - Salaries and Fringes	\$0	\$0 -
(FTE Position Changes)	0 (FTE)	0
State Operations - Other Costs	0	0
Local Assistance	0	0
Aids to Individuals or Organizations		0
TOTAL State Costs by Category		
B. State Costs by Source of Funds		
GPR	\$0	\$0-
FED	0	0
PRO/PRS	0	0
SEG/SEG-S	0	0
III. State Revenues - Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)		
GPR Taxes	\$	\$ -
GPR Earned	0	0
FED	0	0
PRO/PRS	0	0
SEG/SEG-S	0	0
TOTAL State Revenues	\$0	\$0-

NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	0	0
NET CHANGE IN REVENUES	\$0	\$0

Agency/Prepared by: (Name & Phone No.)
DWD/ Elaine Pridgen 267-9403

Authorized Signature/ Telephone No.

Elaine Pridgen 266-9427

Date

7/12/07