

CERTIFICATE

RECEIVED

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES)

OCT 25 1991  
2:20 pm  
Revisor of Statutes  
Bureau

I, Gerald Whitburn, Secretary of the Department of Health and Social Services and custodian of the official records of the Department, do hereby certify that the annexed rules relating to county certification of day care providers and day care program administration and funding were duly approved and adopted by this Department on October 25, 1991.

I further certify that this copy has been compared by me with the original on file in the Department and that this copy is a true copy of the original, and of the whole of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the State Office Building, 1 W. Wilson Street, in the city of Madison, this 25th day of October, 1991.



SEAL:

\_\_\_\_\_  
Gerald Whitburn, Secretary  
Department of Health and Social Services

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
REPEALING, RENUMBERING, AMENDING AND CREATING RULES

To repeal HSS 55.61(1)(c); to renumber HSS 55.58(5); to amend 55.73(6)(b), 55.74(1), (2)(b) and (e)5 and 7, 55.76(4) (intro.) and (g) and 55.77(2)(a); to repeal and recreate HSS 55.56, 55.61(1)(a) and (b), (2)(1), (4), (5) and (8), and 55.76(4)(h) and (5); and to create HSS 55.58(5), 55.605, 55.73(6)(c) and (7), 55.74(2)(j) and (k) and 55.76(3)(g) and (4)(i), relating to county certification of day care providers and day care program administration and funding.

Analysis Prepared by the Department of Health and Social Services

The Department's rules for certification of day care providers who are not required to be licensed and for administration of day care programs are set forth in ch. HSS 55 of the Wisconsin Administrative Code. This order makes several changes in those rules. The major change to certification provisions is the addition of mandatory and optional procedures for counties to follow in monitoring family and in-home day care provider compliance with certification standards. Current rules do not include procedures for monitoring compliance. Other changes to day care provider certification provisions are as follows:

1. Physical examination requirements for certified providers are eliminated, and a provision is added prohibiting individuals with symptoms of communicable disease or whose behavior or mental or physical condition gives reasonable concern for the safety of children from contact with children;
2. The initial training requirement for a certified day care provider is increased from 10 to 15 hours to be completed within 6 months after provisional certification, with the county agency permitted to require an additional 5 hours within that period and, following regular certification, up to 5 hours of annual continuing education;
3. Group size requirements are modified to clarify their relationship to family day care center licensing rules; and
4. The transportation rules are revised to require use of seat belts or child safety restraints by all children who are transported.

This order also modifies the ch. HSS 55 provisions on day care funding and administration to reflect the amendment of s. 46.98, Stats., by 1987 Wisconsin Act 27 and 1989 Wisconsin Act 31. The statutory changes require that, if a county does not have sufficient day care funds for all eligible parents, priority is to be given to parents in accordance with s. 46.98(4)(a) and (c), Stats., with first priority being given a parent in need of child care services to prevent or remedy child abuse or neglect, alleviate stress in the family or preserve the family unit.

Counties are required by these rule changes to establish day care waiting lists for eligible parents for whom there is not sufficient funding, procedures are specified for the use of waiting lists, counties are permitted to set special rates for children with special needs, parents receiving treatment for drug and alcohol abuse are clearly made eligible for funding, certain foster parents are placed into the category of parents with crisis or respite needs and counties are permitted to require full utilization of available student grants and loans as a condition of eligibility for day care funds. Maximum reimbursement rates set in contracts are to follow rules for setting rates based on market surveys. Counties are required to set maximum reimbursement rates for part-time, short-term and sporadic care, and are allowed to waive parent payments for working parents who are recipients of Aid to Families with Dependent Children (AFDC). Counties are allowed to reimburse providers for absences exceeding 20% of the authorized monthly units of service when the child in care is under 2 years of age, and to pay for day care services for up to one month for an individual waiting to enter or continue an education or training program.

The Department's authority to repeal, renumber, amend and create these rules is found in ss. 46.03(21) and 46.98(5)(e), Stats. The rules interpret ss. 46.98 and 48.651, Stats.

SECTION 1. HSS 55.56 is repealed and recreated to read:

HSS 55.56 DEFINITIONS. In this subchapter:

(1) "Certified day care" means day care not required to be licensed under s. 48.65, Stats., as a day care center and which meets the standards under s. HSS 55.61 for purchase of care by county agencies.

(2) "Certified day care operator" means an individual, corporation, partnership or non-incorporated association or cooperative which has legal and financial responsibility for the operation of a day care program and for meeting the certification requirements under this subchapter.

(3) "County agency" means a county department of social services established under s. 46.215 or 46.22, Stats., or a county department of human services established under s. 46.23, Stats.

(4) "Department" means the Wisconsin department of health and social services.

(5) "Family day care center" means a day care center licensed under ch. HSS 45.

(6) "Family day care provider" means a person providing care for pre-school or school-age children, or both, outside their homes for less than 24 hours a day and who is not required to be licensed under s. 48.65, Stats., because the provider is caring for fewer than 4 children under 7 years old who are not related to the provider.

(7) "Group day care center" means a day care center licensed under s. 48.65, Stats., and subchs. I and III [ch. HSS 46].

(8) "HealthCheck provider" means a provider of health assessment and evaluation services eligible to be certified under s. HSS 105.37(1)(a), including an outpatient hospital facility, health maintenance organization, visiting nurse association, clinic operated under a physician's supervision, local public health agency, home health agency, rural health clinic, Indian health agency, and neighborhood health center.

(9) "Infant" means a child under one year of age.

(10) "In-home provider" means a person caring for a child in the child's own home.

(11) "Licensed physician" means a physician licensed under ch. 448, Stats.

(12) "Parent" means a parent as defined in s. 48.02(13), Stats., or a guardian as defined in s. 48.02(8), Stats.

(13) "Parochial or other private school-operated day care program" means a program providing care and supervision for less than 24 hours a day for 4 or more children under the age of 7 and which is exempt under s. 48.65(2)(b), Stats., from being licensed as a day care center.

(14) "Physician's assistant" means a health care professional certified under s. 448.04(1)(f), Stats., and Med. 8.

(15) "Provider" means a person who provides day care for children.

(16) "Publicly funded parent" means a parent whose day care expenses are subsidized directly with state or federal funds.

(17) "Registered nurse" means a nurse licensed as a registered nurse under ch. 441, Stats.

(18) "Related to the provider" means the provider's natural or adopted children, foster children, stepchildren, grandchildren, brothers, sisters, nephews, nieces, uncles and aunts.

(19) "School-age day care program" means a program providing care and supervision for less than 24 hours a day for 7 or more school-age children who are at least 7 years of age but less than 12 years of age and which is exempt from being licensed as a day care center under s. 48.65(1), Stats.

SECTION 2. HSS 55.58(5) is renumbered HSS 55.58(6).

SECTION 3. HSS 55.58(5) is created to read:

HSS 55.58(5) COMPLIANCE. (a) Qualifications of providers. County agencies shall maintain records demonstrating provider compliance with s. HSS 55.61(1).

(b) The home in family day care and in-home day care.

1. General. County agencies shall help assure provider compliance with s. HSS 55.61(2) to (11) in accordance with this paragraph.

2. Required procedures. A county agency shall:

a. Require receipt of a signed application from the provider agreeing to follow day care certification standards;

b. Provide a checklist of basic day care certification standards and procedures for filing a complaint to all parents who are using certified family day care or in-home care and who are publicly funded parents;

c. Require publicly funded parents to complete and return the checklist to county personnel upon initial enrollment of their child with a certified day care provider;

d. Provide orientation for applicants for certification to explain how the certification system works; and

e. Conduct a pre-certification inspection or conduct an inspection within 30 days following provisional certification of any provider funded by the county agency to provide day care.

3. Optional procedures. A county agency may:

a. Conduct on-site inspections prior to or after certification to monitor compliance with certification standards;

b. Conduct on-site inspections of a random sample of certified providers;

c. Make certification available to all family day care providers, whether or not public funding is involved; and

d. Request that all parents who are using a certified home complete and return the checklist provided under subd. 2b.

4. Exceptions. The department may grant an exception to the required procedure under subd. 2.e. if the department determines that alternative procedures meet the intent of the requirement.

SECTION 4. HSS 55.605 is created to read:

HSS 55.605 COMPLAINTS. Within 10 working days after a county agency receives a complaint by telephone, letter or personal contact about a certified day care provider, the county agency shall investigate that complaint.

SECTION 5. HSS 55.61(1)(a) and (b) are repealed and recreated to read:

HSS 55.61(1) QUALIFICATIONS OF PROVIDERS. (a) Ability, age and health.  
1. A provider shall be physically and emotionally able to provide responsible child care and shall be at least 18 years of age.

2. A provider, household member, volunteer, visitor or parent who has symptoms of illness or of a communicable disease reportable under ch. HSS 145 that may be transmitted through normal contact, or whose behavior or mental or physical condition gives reasonable concern for the safety of the children, may not be in contact with the children in care.

(b) Training. 1. A certified provider shall have completed at least 15 hours of county agency-approved child care training within 6 months after provisional certification, prior to regular certification.

2. A county agency may require up to 5 additional hours of county agency-approved child care training within 6 months after provisional certification, prior to regular certification.

3. A county agency may require up to 5 hours of annual continuing education by a certified provider each year following regular certification.

SECTION 6. HSS 55.61(1)(c) is repealed.

SECTION 7. HSS 56.61(2)(L), (4), (5) and (8) are repealed and recreated to read:

HSS 55.61(2)(L) When a public water supply is not available, the well water shall be tested and found to be bacteriologically safe by a laboratory certified under ch. HSS 165 at least every 2 years.

(4) CHILD HEALTH CARE. (a) Except as provided under pars. (c) and (d), the provider shall have a current report of a physical examination on file for each child, including each provider's child in care, as follows:

1. For a child under 2 years of age, a report of a physical examination conducted not more than 6 months prior to nor later than 3 months after the child is admitted, and a follow-up health examination at least once every 6 months after admission; and

2. For a child 2 years of age or older, a report of a physical examination conducted not more than 2 years prior to nor later than 3 months after the child is admitted.

(b) The physical examination report shall be signed and dated by a licensed physician, a physician's assistant or a HealthCheck provider.

(c) The requirement under par. (a) does not apply to a provider who requests from the county agency in writing an exemption for a child based upon adherence by the child's parent to religious belief in exclusive use of prayer or spiritual means for healing.

(d) The requirement under par. (a) does not apply to school-age children. In this paragraph, "school-age children" means children 5 years of age or older who are enrolled in kindergarten or a higher grade in a public or private school.

(e) The provider shall have on file a written record verifying that each child in care has been immunized in accordance with s. 140.05(16), Stats., and ch. HSS 144.

(f) The provider may administer medication to a child only in accordance with written and signed permission from the child's parent.

(5) MAXIMUM NUMBER OF CHILDREN. (a) A certified provider may take care of no more than 3 children under the age of 7 who are not related to the provider.

(b) A certified provider may take care of no more than 6 children, including children related to the provider, except that:

1. If 3 of the children present are under the age of 2, the total number of children may not exceed 5; or

2. If 4 of the children present are under the age of 2, the total number of children may not exceed 4.

(c) A provider's natural, adopted or foster children 7 years of age or older are not counted in determining the maximum number of children allowed under par. (b).

(d) The maximum number of children that one provider may care for is shown in Tables 55.61(5) A and B.

TABLE 55.61(5)  
 MAXIMUM NUMBER OF CHILDREN IN CERTIFIED DAY CARE  
 A. WHEN ALL CHILDREN ARE 2 YEARS OF AGE OR OLDER

Related Children Under 7 years of Age	Additional Children Under 7 years of age	Additional Children Ages 7 to 11	Maximum Number of Children*
0	3	Additional children	6
1	3	ages 7 to 11 may be	6
2	3	cared for as long as	6
3	3	the maximum total number	6
4	2	of children is not exceeded	6
5	1		6
6	0		6

\*The maximum number does not include the provider's natural, adopted or foster children 7 years of age and older.

B. WHEN CHILDREN UNDER THE  
 AGE OF 2 YEARS ARE PRESENT

Number of Children Under 2 Years of Age	Maximum Number of Children*
0	6
1	6
2	6
3	5
4	4

\*The maximum number does not include the provider's natural, adopted or foster children 7 years of age and older.

Note: Under s. 48.65(1), Stats., if a provider takes care of 4 or more children under the age of 7 who are not related to the provider, for compensation, the provider must obtain from the department a license to operate a day care center.

(8) TRANSPORTATION. When transporting children the provider shall ensure that:

- (a) The driver of the vehicle holds a valid operator's license;
- (b) The vehicle is registered in Wisconsin; and

(c) Each child is seated and properly restrained in a seat belt or, for a child under 2 years of age, a child safety restraint system, in compliance with s. 347.48(2m) and (4), Stats.

SECTION 8. HSS 55.73(6)(b) is amended to read:

HSS 55.73(6)(b) The county agency shall reimburse the day care provider for services authorized and provided, whether under contract with the county agency or through vouchers, and shall pay for absences up to 20% of the authorized monthly units of service. Counties may reimburse providers for absences exceeding 20% of the authorized monthly units of service only when the day care is for parents with crisis or respite needs, or the child in care is under the age of 2.

SECTION 9. HSS 55.73(6)(c) and (7) are created to read:

HSS 55.73(6)(c) The county agency may provide day care services for an individual who is waiting to enter or continue an approved education or training program or employment:

1. For a period not to exceed 2 weeks; or
2. For a period not to exceed one month where day care arrangements would otherwise be lost and the work or training activity is scheduled to begin within that period.

(7) WAITING LIST. (a) If funding is not sufficient to meet the needs of all eligible parents, a county agency shall establish a waiting list for services for parents who cannot be accommodated by available funding. The waiting list shall include a parent's name, address and phone number, and the date of the parent's application.

(b) The county agency shall place a parent's name on the waiting list when an application is received by phone or in writing and the parent's eligibility appears likely. Documentation of eligibility is not required before placing a name on the waiting list.

(c) The county agency shall submit information to the department every 6 months on the number of parents on the waiting list, by category of eligibility under s. HSS 55.76.

SECTION 10. HSS 55.74(1) and (2)(b) and (e)5 and 7 are amended to read:

(1) DAY CARE PURCHASED BY CONTRACT. If a county agency contracts directly with a day care provider, the ~~rates~~ maximum reimbursement rate for the provider shall be determined ~~by a negotiated agreement between the provider and the county, within allowable costs as determined by the department~~ as established under sub. (2).

(2) (b) Survey. The county agency shall annually contact all ~~full-time~~ licensed group day care centers and family day care centers in the county to determine the day care prices they charge to the general community.

(e)5. In determining whether 75% of the full-time day care slots can be purchased at or below the maximum rate, the county agency may exclude ~~only~~ day care centers which operate less than 5 days a week or 5 hours a day ~~or~~, which receive funding from a ~~board~~ county department established under s. 51.42 or 51.437, Stats., or which do not have a set day care price;

7. Separate maximum rates ~~may~~ shall be set for day care for part of the day at group and family day care centers using the same method required under this paragraph.

SECTION 11. HSS 55.74(2)(j) and (k) are created to read:

HSS 55.74(2)(j) Higher rates for a child with a special need. Rates which are higher than the maximums allowed under this section may be set for day care for a child with a special need.

(k) Maximum rates for short-term and sporadic day care. Maximum reimbursement rates for day care provided for less than a 2-week period or for sporadic periods may be set through negotiations with the child care provider.

SECTION 12. HSS 55.76(3)(g) is created to read:

HSS 55.76(3)(g) A county may require, as a condition of eligibility for day care funds, that a parent enrolled in an institution of higher education document that all available student grants and loans from the school's financial aids office have been obtained.

SECTION 13. HSS 55.76(4) (intro.) and (g) are amended to read:

HSS 55.76(4) (intro.) A parent meeting eligibility criteria under this subsection is eligible to receive funds for day care costs without regard to income. Eligibility for a parent with crisis or respite needs shall be determined by the county agency based on the ~~following criteria~~ family situation, with particular attention to the following:

(g) The parent lacks adequate parenting skills; ~~or~~

SECTION 14. HSS 55.76(4)(h) is repealed and recreated to read:

HSS 55.76(4)(h) The parent is receiving treatment for alcohol or other drug abuse; or

SECTION 15. HSS 55.76(4)(i) is created to read:

HSS 55.76(4)(i) The parent is a foster parent and day care services are needed to maintain the child in the foster care placement.

SECTION 16. HSS 55.76(5) is repealed and recreated to read:

HSS 55.76(5) FUNDING PRIORITIES. (a) If funding is insufficient to meet the needs of all eligible parents, a county agency shall place eligible parents who cannot be accommodated by available funding on a waiting list in accordance with s. HSS 55.73(7) and shall distribute funds in accordance with priorities established in s. 46.98(4)(a) and (c), Stats.

(b) A county agency may not establish priorities other than those set forth in s. 46.98(4)(a) and (c), Stats.

(c) A county agency may not terminate funding provided to any parent eligible under subs (1) to (4) and s. 46.98(4), Stats., in order to give priority to clients identified in s. 46.98(4)(a) and (c), Stats.

SECTION 17. HSS 55.77(2)(a) is amended to read:

HSS 55.77(2) COSTS CHARGED TO PARENTS. (a) Parents shall be required to make payments for day care services provided directly or by voucher or purchased by the county agency, in accordance with a payment schedule and procedures developed by the department under s. HSS 1.03. Payments shall be required of parents whose income is equal to or greater than 50% of the state median income except that payments for crisis or respite day care and payments for working parents receiving aid to families with dependent children (AFDC) and eligible under s. HSS 55.76(2)(a) may be waived by the county agency.

The rules contained in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Wisconsin Department of Health and  
Social Services

Date: October 25, 1991

By: \_\_\_\_\_

  
Gerald Whitburn  
Secretary

Seal:

RECEIVED

OCT 25 1991

Revisor of Statutes  
Bureau