

## Chapter DWD 56

### ADMINISTRATION OF CHILD CARE FUNDS

|           |   |           |   |
|-----------|---|-----------|---|
| DWD 56.01 | Authority, purpose and applicability.                 | DWD 56.05 | County and tribal agency responsibilities.              |
| DWD 56.02 | Definitions.  | DWD 56.06 | Establishing county and tribal agency child care rates. |
| DWD 56.03 | Department of workforce development responsibilities. | DWD 56.07 | Low-income child care.                                  |
| DWD 56.04 | General child care policies.                          |           |   |

Note: Sections HSS 55.70 to 55.77 as they existed on February 28, 1997 were repealed and a new chapter DWD 56 was created effective March 1, 1997.

#### DWD 56.01 Authority, purpose and applicability.

This chapter is promulgated under the authority of ss. 49.132 (2) (b), (2r) (d), (4) (d) and (e) 2. and (5) (e) and 227.11 (2), Stats., to provide definitions, procedures and standards for the administration of child care funds, including the distribution to county agencies of low-income child care funds under s. 49.132 (4) (a), Stats., the use of those funds by county or tribal agencies or JOBS administrative agencies and the eligibility of parents for low-income child care for their children. This chapter applies to the department, county and tribal agencies, JOBS administrative agencies, private agencies under contract to administer child care funds, both licensed and certified providers of child care and eligible parents.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

#### DWD 56.02 Definitions. In this chapter:

(1) "AFDC" means aid to families with dependent children, a public assistance program under title IV-A of the Social Security Act of 1935, as amended, ss. 49.19 to 49.41, Stats., and ch. HSS 201.

(2) "Center slots" or "slots" means the number of places for children within the licensed capacity of a day care center.

(3) "Child care administrative agency" means a county agency, tribal agency, JOBS administrative agency, food stamp employment and training program administrative agency or other agency having a contract with the department to administer child care funds.

(4) "Child care funds" means funding allocated by the state to child care administrative agencies for child care purposes under s. 49.132 (3), 49.191, 49.193, 49.26 or 49.27, Stats.

(5) "Child care price" means the amount regularly charged by a provider to a parent who pays for the child care services out of his or her personal funds.

(6) "Child care provider" or "provider" means a provider licensed under s. 48.65, Stats., certified under s. 48.651, Stats., or established or contracted for under s. 120.13 (14), Stats.

(7) "Department" means the Wisconsin department of workforce development.

(8) "Economic support agency" means a county department of social services or human services or a tribal agency which administers economic support programs including AFDC.

(9) "Employability plan" means a plan approved by a JOBS administrative agency or a food stamp employment and training program with an identified employment goal, a description of activities to be completed by the participant and a description of supportive services to be provided to the participant.

(10) "Family" means one or more adults and children, related by blood or law and residing in the same household. Where adults other than spouses reside together, each is considered a separate family, except for a nonmarital parent.

(11) "Formula" means a prescribed method for determining funding allocations.

(12) "Food stamp employment and training program" means the program established under s. 49.124, Stats., for the purpose of assisting food stamp recipients to develop marketable work skills and obtain gainful employment.

(13) "Income" means money, wages or salary, net income from self-employment, social security, dividends, interest on savings or bonds, income from estates or trusts, net rental income or royalties, public assistance, Supplemental Security Income (SSI), pensions and annuities, unemployment insurance, worker's compensation, alimony and other maintenance payments, child support payments and veteran pensions.

(14) "JOBS" means the job opportunities and basic skills training program established under 42 USC 682 and s. 49.193, Stats., for the purpose of assisting AFDC recipients to develop marketable work skills and obtain gainful employment.

(15) "JOBS administrative agency" means a public or private organization that has a contract with the department to provide JOBS services to AFDC recipients referred to the agency by economic support agencies.

(16) "Low-income child care" means child care that is provided for a person who is eligible for funding for that child care under s. 49.132 (4) (a) and (am), Stats., and 42 USC 9858.

(17) "Parent" has the meaning prescribed in s. 49.132 (1) (c), Stats., namely, a parent, guardian, foster parent, treatment foster parent, legal custodian or person acting in place of a parent. In this subsection, "person acting in place of a parent" means a person to whom the child is related in one of the ways listed in s. HSS 201.17 (1) and who has the child under his or her care as provided in s. HSS 201.17 (2).

(18) "Poverty line" means the annually updated poverty income thresholds by family size published by the U.S. department of health and human services in the federal register.

Note: The federal poverty guidelines for 1996 were published in the *Federal Register*, March 4, 1996, 8286.

(19) "Rate" means the maximum amount a county or tribal agency will pay for child care.

(20) "Special need" means emotional, behavioral, physical or personal needs of a child requiring more than the usual amount of care and supervision for the child's age, as documented by a physician, psychologist, special educator or other qualified professional. A special need includes a developmental disability.

(21) "Tribe" means a Wisconsin American Indian tribe recognized by the federal government.

(22) "Voucher" means an authorization for reimbursement.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

**DWD 56.03 Department of workforce development responsibilities.** (1) GENERAL. The department shall maintain oversight responsibility for administration by child care administrative agencies of the child care funding program.

(2) RATE APPROVAL. The department shall review and approve the methods employed by counties and tribes for determining child care rates as required under ss. DWD 56.05 (3) and 56.06.

(3) ASSISTANCE TO COUNTIES, TRIBES AND JOBS ADMINISTRATIVE AGENCIES. The department shall provide information and technical assistance to county and tribal agencies and JOBS

administrative agencies regarding administration of the child care funding program.

(4) **FUNDS DISTRIBUTION.** The department shall distribute low-income child care funds to county agencies through a formula which shall be developed each year in accordance with all of the following procedures:

(a) A child care advisory committee appointed by the secretary shall review the formula annually and make recommendations to the department.

(b) All of the following criteria shall be considered in developing the formula:

1. The number of recipients of AFDC in each county.
2. The number of parents in each county who work and have children under age 13.
3. The number of children in income-eligible families.
4. Each county's child care expenditure history.

(c) The department shall consider the availability of reliable and current county-by-county data.

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

1. Whether the rate-setting method is in accordance with rate-setting requirements specified under ss. DWD 56.05 (3) and 56.06.
2. Whether the rate-setting method documents that the maximum allowable rates permit all eligible parents a reasonable choice of day care providers.

(b) The department may grant a variance to a nonstatutory requirement under ss. DWD 56.04 to 56.07 on written request of a county or tribal agency if the department is convinced that an alternative means meets the intent of the requirement.

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**DWD 56.04 General child care policies. (1) APPLICATION.** This section applies to all of the following child care funding sources and the child care administrative agencies responsible for administration of those funds:

- (a) Low-income child care under s. 49.132 (3) and (4), Stats.
- (b) At-risk child care under s. 49.132 (2m) and (2r), Stats.
- (c) Child care for the JOBS program under s. 49.193 (8), Stats.
- (d) Child care for AFDC recipients who are participating in self-initiated education or training activities as specified under s. 49.191 (1) (a), Stats., and s. HSS 206.15.
- (e) Child care for AFDC recipients who are working with child care costs in excess of the amount of the child care disregard under s. 49.191 (1) (b), Stats., and child care costs incurred before the child care disregard under s. 49.19 (5) (a), Stats., becomes available, as specified under s. 49.50 (6e) (b), Stats.

(f) Child care for former AFDC recipients as specified under s. 49.191 (2), Stats.

(g) Child care for participants in the learnfare program under s. 49.26, Stats.

(h) Child care for participants in the food stamp employment and training program under s. 49.124, Stats.

(2) **NON-APPLICABILITY.** Except for sub. (3) related to authorized providers, this section does not apply to family services program child care funds provided to tribes and used for child care. Requirements for tribes using family services program funds shall be set in the terms of the contract between the tribe and the department of health and family services.

(3) **AUTHORIZED PROVIDERS.** (a) A child care administrative agency may pay for child care services from any of the following child care providers:

1. Providers licensed by the department of health and family services under ch. HSS 45 or 55.

2. Providers certified by a county or tribal agency under standards specified in s. HFS 55.61 or 55.62.

3. Programs established or contracted for by a school board under s. 120.13 (14), Stats.

(b) A child care administrative agency may reimburse for services from other than a child care provider under par. (a) only if at least one of the following conditions is met:

1. The care is an arrangement for parents in training or counseling programs and the child care is provided at the training or counseling site.

2. The care is a short-term arrangement when a child is ill and not able to receive care from a child care provider under s. DWD 56.02 (6) or the provider has an emergency due to illness or other circumstance.

3. The care permits a JOBS enrollee to attend a JOBS program activity prior to the development of an employability plan under s. 49.193 (4), Stats., approved by a JOBS administrative agency.

4. The care is for a food stamp employment and training program enrollee to attend a program activity prior to the development of an employability plan.

(c) A child care administrative agency may not reimburse a person legally responsible for a child under s. 49.90, Stats., for child care services.

(d) A child care administrative agency may not reimburse a person residing in the child's household for child care services.

(e) A certified in-home care arrangement may be authorized by a child care administrative agency for reimbursement only in one of the following circumstances:

1. The child has a special need.
2. Licensed or certified care is not available during the times care is needed, such as during evening hours.
3. Care is provided to 3 or more children from the same family.
4. Licensed or certified care is not available within a reasonable geographic distance.

(4) **PROVISION AND PURCHASE OF SERVICE.** (a) A child care administrative agency shall provide child care services directly, provide child care services by contracting with child care providers, provide vouchers to parents for the purchase of child care services or, in accordance with par. (e), reimburse parents upon presentation of a receipt from the provider or make payments to parents. The child care administrative agency shall offer vouchers to each parent approved for child care funding.

(b) 1. A child care administrative agency shall use a portion of its child care funds and may use all of its child care funds to provide vouchers to eligible parents, as follows:

a. A child care administrative agency shall offer a voucher to each eligible parent to the extent that allocated funds are available.

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

c. The voucher shall set a maximum amount of authorized reimbursement which is no greater than the county or tribal maximum rate, minus any co-payment that the parent is required to make.

2. Parents using vouchers for the payment of child care services may receive child care services from a provider whose child care price is higher than the county or tribal maximum rate and pay the difference between the provider's child care price and the county or tribal maximum rate in addition to any required parents' co-payment.

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

(d) A child care administrative agency shall reimburse child care providers as follows:

1. Except as provided in subd. 3., for licensed group and family day care centers, the agency shall make payments based on authorized units of service.

2. For certified providers, the agency shall reimburse for units of service used by each child, up to the maximum number of authorized units.

3. For licensed group and family day care centers, when the schedule of child care to be used is expected to vary widely, the agency may make payments to licensed providers based on units of service used by each child, up to the maximum number of authorized units, with the reimbursement rate increased by 10% to account for absent days.

(e) A child care administrative agency may reimburse or make payments to a parent for child care services only when the care is provided by an in-home provider, when a payment to the parent is the only way to assure access to needed services on an emergency or temporary basis, or when a parent is being reimbursed for child care services previously paid for by the parent.

(5) **ELIGIBILITY REDETERMINATION.** A child care administrative agency shall redetermine parent need for service and eligibility at least every 6 months.

(6) **PARENTAL CHOICE. Parent choice of provider.** Parents may choose the particular licensed or certified child care provider for their child, except that parents may use in-home day care only if one of the criteria under sub. (3) (e) is met.

(7) **RECOURPMENT.** (a) A child care administrative agency shall take all reasonable steps necessary to recoup or 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 child care benefit.

(b) A child care administrative agency shall take all reasonable steps necessary to recoup or recover from a provider any overpayments made for child care services for which the provider was responsible.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

**DWD 56.05 County and tribal agency responsibilities.** (1) **GENERAL.** Each county and tribal agency shall administer child care funds specified in s. DWD 56.04 (1) in accordance with the requirements set forth in this section. A county or tribal agency may subcontract for administration of child care funds with the approval of the department.

(2) **FUNDING SOURCE PRIORITY.** County and tribal agencies shall ensure that parents are served first by child care funding sources guaranteed to AFDC recipients and former AFDC recipients who meet applicable eligibility criteria.

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

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

(5) **WAITING LIST.** (a) If funding is not sufficient to meet the needs of all parents eligible for low-income child care funds under s. 49.132 (4), Stats., a county shall establish a waiting list for parents who cannot be accommodated by available funding. The waiting list shall include a parent's name, address and phone number, priority status, the date of the parent's application, and the number and ages of children needing child care.

(b) The county shall place a parent's name on the waiting list when an application is received by phone or in writing and the par-

ent's eligibility appears likely. Documentation of eligibility is not required before placing a name on the waiting list.

(c) The county shall at least annually update the waiting list to ensure that families on the list still need child care and are still likely to be eligible.

(d) The county shall submit information to the department upon request on the number of parents on the waiting list and the number and ages of the children on the waiting list, by category of eligibility under s. DWD 56.07.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

**DWD 56.06 Establishing county and tribal agency child care rates.** (1) **ESTABLISHMENT OF MAXIMUM RATES.** (a) **Responsibility.** 1. Except as provided in subd. 2., a county or tribal agency shall annually set child care rates in accordance with the policies and procedures set out in this section unless the department sets maximum rates for a multicounty area which includes the particular county or tribal area.

2. A tribal agency may use the maximum rates established by a neighboring county rather than establish its own rates.

(b) **Survey.** The county or tribal agency, except a tribal agency acting under par. (a) 2., shall annually contact all licensed group day care centers and licensed family day care centers in the county or tribal area to determine the child care prices they charge to the general community.

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

1. Infants and toddlers under 2 years of age.
2. Children age 2 and older.

(d) **Types of care.** To the extent permitted by federal statutes and regulations, the rates for each group under par. (c) shall be set separately for each of the following types of care:

1. Licensed group day care centers.
2. Licensed family day care centers.
3. Level I (regular) certified family day care providers who are not in-home providers.
4. Level II (provisional) certified family day care providers who are not in-home providers.
5. Certified in-home providers.

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

1. Maximum rates shall be set so that at least 75% of the group day care center slots in the county or tribal area may be purchased at or below the maximum rate. The number of slots attributed to a center shall be equal to the center's licensed capacity.

2. In determining whether 75% of the day care slots can be purchased at or below the maximum rate, the county or tribal agency may exclude day care centers which operate less than 5 days a week or 5 hours a day, which receive funding from a county department established under s. 51.42 or 51.437, Stats., or which do not have a set child care price.

3. Reduced maximum rates may not be set for siblings.

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

1. Maximum rates shall be set so that at least 75% of the family day care center slots in the county or tribal area may be purchased at or below the maximum rates. The number of slots attributed to a center shall be equal to the center's licensed capacity.

2. Reduced maximum rates may not be set for siblings.

(c) **Certified family day care.** To the extent permitted by federal statutes and regulations, maximum rates for certified family day care shall comply with s. 49.132 (4)(dg) and (dm), Stats.

(d) **In-home day care.** For in-home care, the county or tribal agency shall establish the maximum rate at the level of no less than the state minimum wage established under ch. 104, Stats., and ch.

DWD 272. The child care administrative agency may choose to reimburse the child care provider at the local reimbursement rate for the type of care provided multiplied by the number of children in care if this rate exceeds the minimum wage.

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

(3) **HIGHER RATES.** (a) *Special need child.* A rate higher than the maximum allowed under subs. (1) and (2) may be set on a case-by-case basis for child care for a child with a special need.

(b) *Higher quality.* Rates higher than the maximum rates allowed under subs. (1) and (2) shall be paid to child care providers who meet higher quality of care standards under s. HSS 55.90, up to maximums determined by the department.

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

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.

**DWD 56.07 Low-income child care.** (1) **USE OF FUNDS.** Low-income child care funds distributed under s. 49.132, Stats., may be expended by a county only to fund services that directly or indirectly benefit parents eligible under this section, as follows:

(a) *Services that directly benefit parents.* Counties shall expend child care funds to provide child care services for parents eligible under this section through the use of vouchers issued to parents or contracts with providers for purchase of services, or reimburse a parent as specified in s. DWD 56.04 (4) (e).

(b) *Services that indirectly benefit parents.* Department approval is required for counties to expend child care funds for start up, improvement and expansion of child care services and facilities, and recruitment, education and training for persons providing child care.

(2) **PARENT ELIGIBILITY.** (a) *Need.* To be eligible for low-income child care funds, a parent shall have a need for child care services for a child who is under 13 years of age and shall meet the criteria under par. (b) or (c).

(b) *Eligibility criteria for working parents or parents seeking work.* A parent who is working or seeking work is eligible if one of the following criteria is met:

1. The parent is working, is a recipient of AFDC and has monthly child care expenses exceeding the child care disregard limit under AFDC. These parents are eligible for funding of child care costs which are above the disregard limit up to the county child care rate.

2. The parent is income-eligible and is in paid employment, including migrant or seasonal labor.

3. The parent is income-eligible and is actively seeking work. This parent is eligible for the funding of a maximum of 20 hours of child care a week for 60 working days for time related to activities involved in seeking employment.

(c) *Eligibility criteria for parents in training or educational programs.* A parent is eligible if less than 20 years of age and enrolled in a high school or a high school equivalency program or a course of study meeting the standards established under s. 115.29 (4), Stats., for the granting of a declaration of equivalency of high school graduation, and the parent is income-eligible.

(d) *Two parent families.* In two parent families, both parents shall meet eligibility criteria for working, seeking work, or training under par. (b) or (c).

(e) *Income eligibility.* A parent is income-eligible if family income is at or below levels set in s. 49.132 (4) (a) and (am), Stats.

(3) **LOSS OF ELIGIBILITY.** (a) A parent may be determined no longer eligible for child care funds because of false information provided to county agencies concerning income or eligibility or serious violation of program requirements.

(b) The county agency shall send a written notice to the parent and the provider when the parent is determined no longer eligible for child care funds, stating the reasons for that determination. The notice shall specify that the parent's eligibility will end on the 10th day after the date of the notice. The notice shall inform the parent of the right to a fair hearing.

(c) The parent may request a fair hearing. A request for a fair hearing shall comply with the procedures under ch. HSS 225 except that the request shall be sent to the division of hearings and appeals so that it is received there within 45 days after the effective date of the action being appealed.

(d) Changes in the manner of payment of child care services are not subject to timely notice requirements under s. HSS 201.09 (2) (a) unless the change results in a discontinuation, suspension, reduction or termination of these benefits, or the change forces a change in the parent's child care arrangements.

(e) The provisions of s. HSS 201.09 (2) (a) regarding continuation of aid pending results of a hearing do not apply to hearings under this section.

(4) **FUNDING PRIORITIES FOR LOW-INCOME CHILD CARE.** (a) If funding for low-income child care 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. DWD 56.05 (5) and shall distribute funds in accordance with priorities established in s. 49.132 (4) (c), Stats.

(b) A county agency may not establish priorities for low-income child care other than those set forth in s. 49.132 (4) (c), Stats.

(c) A county agency may not terminate funding provided to any parent eligible under sub. (2) and s. 49.132 (4), Stats., in order to give priority to clients identified in s. 49.132 (4) (c), Stats.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97.