

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

Joint Committee for  
Review of  
Administrative Rules  
(JCR-AR)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
- 97hrAC-EdR\_RCP\_pt02

➤ Appointments ... Appt

➤

➤ Clearinghouse Rules ... CRule

➤

➤ Committee Hearings ... CH

➤

➤ Committee Reports ... CR

➤

➤ Executive Sessions ... ES

➤ 97hr\_JCR-AR\_ES\_pt01b

➤ Hearing Records ... HR

➤

➤ Miscellaneous ... Misc

➤

➤ Record of Comm. Proceedings ... RCP

➤

JCRAR - Jan. 8, 1997  
Executive Session



State of Wisconsin  
**Department of Health and Family Services**

DEC 13 1996

Tommy G. Thompson, Governor  
Joe Lekan, Secretary

Joh

December 13, 1996

The Honorable Richard Grobschmidt, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 404, 100 North Hamilton  
Madison, Wisconsin

Dear Senator Grobschmidt:

The Department of Health and Family Services has two emergency rulemaking orders in effect that will expire before permanent rules replace the emergency rules unless the effective periods of the emergency orders are extended. Pursuant to s. 227.24(2), Stats., I ask the Joint Committee to extend the effective periods of these emergency rules by the number of days indicated below. The emergency rules are as follows:

(1) Operation of Public Swimming Pools. These emergency rules, amendments to HSS 172, clarify and update the definition of public swimming pool, update lifeguard qualifications and add rescue tubes as required lifeguard equipment. Emergency rules were necessary because of ambiguity in the definition of "public swimming pool," which affected enforcement, and recent changes made by the American Red Cross and the American Heart Association in lifeguard training courses. The Joint Committee on October 16, 1996, extended the effective period of the emergency rules by 60 days, through January 17, 1997. Replacement permanent rules were sent to the Legislature on October 14, 1996, for review by standing committees and were filed on November 22, 1996, for a February 1, 1997, effective date. Therefore, I request an extension of the effective period of the emergency rules by 14 days, through January 31, 1997. If the emergency rule effective period is not extended, in the interim the Department will not have the authority to take action against some pool operators for violating the rules.

(2) Coverage of School-Based Medical Services by the Medical Assistance Program. These emergency rules, HSS 101.03, 105.53 and 107.36, implement s. 49.45(39), Stats., as created by 1995 Wisconsin Act 27, which establishes "school medical services" as a new covered benefit under Medical Assistance. The statute directs the Department to promulgate rules for administration of the benefit, and s. 9126(7m) of Act 27 directs the Department to publish the rules quickly by using emergency rulemaking procedures but

Senator Grobschmidt

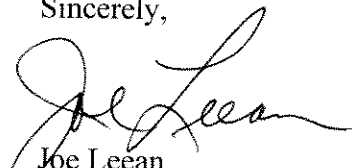
December 13, 1996

Page 2

without having to make a finding of emergency. Only school districts and CESAs may be certified providers of the services. The rules refer to these services as "school-based services" and specify the particular covered services and conditions for reimbursement. The Joint Committee on October 16, 1996, extended the effective period of the emergency rules by 60 days, through January 11, 1997. Replacement permanent rules were sent to the Legislature on October 21, 1996, for review by standing committees, and were filed on December 5, 1996, for a February 1, 1997, effective date. Therefore, I request an extension of the effective period of the emergency rules by 20 days, through January 31, 1997.

Copies of the emergency rule orders are attached to this letter. If you have any questions about the rules relating to operation of public swimming pools, you may contact Steve Keifer of the Department's Division of Health at 266-8282. If you have any questions about the rules relating to Medical Assistance coverage of school-based medical services, you may contact Marjorie Hannon Pifer of the Department's Division of Health at 266-1940.

Sincerely,



Joe Leean  
Secretary

Attachments

cc Representative Grothman

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
AMENDING AND CREATING RULES

FINDING OF EMERGENCY

The Department of Health and Social Services finds that an emergency exists and that the rules included in this order are necessary for the immediate preservation of the public peace, health, safety or welfare. The facts constituting the emergency are as follows:

The Department and agent local government health departments regulate the operation of public swimming pools under the authority of s. 254.47, Stats., to ensure that these facilities comply with health, sanitation and safety standards established by the Department by rule. The Department rules are in ch. HSS 172, Wis. Adm. Code. No public swimming pool may operate without having a permit from the Department or an agent local government health department.

This rulemaking order clarifies and updates the definition of public swimming pool, updates requirements for lifeguards and adds rescue tubes as required lifeguard equipment.

Section 254.47(1), Stats., directs the Department to define "public swimming pool," in rule, for purposes of the regulatory program. The current rule definition has not been changed for many years and has some resulting ambiguity, one reason being that some types of facilities are called by new names.

The requirements under s. HSS 172.05(2)(a)3. for lifeguard certification have to be modified due to changes in American Red Cross and the American Heart Association courses. The rule changes will ensure that all lifeguards are qualified to fulfill their duties as specified in ch. HSS 172. The exception under s. HSS 172.05(2)(c) to lifeguard certification for persons holding a current American Red Cross Water Safety Instructor certificate is removed. This is because the American Red Cross Water Safety Instructor certification course no longer includes course work in lifesaving methods. The change, however, will allow persons currently certified under the old program to continue the use of that certification until it expires.

New lifeguard training incorporates use of rescue tubes. These tubes are therefore made required equipment when lifeguards are provided.

These changes are needed to protect the health and assure the safety of persons using public swimming pools.

## ORDER

Pursuant to authority vested in the Department of Health and Social Services by ss. 227.11(2), 227.24(1)(a) and 254.47(1), Stats., the Department of Health and Social Services hereby amends and creates rules interpreting s. 254.47, Stats., as follows:

SECTION 1. HSS 172.03(12) is amended to read:

HSS 172.03 (12) "Public swimming pool" means a pool used for one or more purposes described in sub. (10) except a pool serving fewer than 3 ~~individual residential quarters~~ residences such as homes or apartments used by the owner or persons making the property their primary residence. A public swimming pool includes a pool installed in a "place of employment," as defined in s. 101.01(2)(f), Stats., or in a "public building," as defined in s. 101.01(2)(g), Stats., and any pool used on a regular basis by persons other than the residents. A public swimming pool includes but is not limited to a pool serving or installed for the state or any political subdivision of the state, ~~including a school district;~~ a pool serving or installed at a motel, hotel, resort, tourist rooming house, bed and breakfast establishment, campground, camp, club, association, housing development or school, or a religious, charitable or youth organization; a mobile pool; and a pool at an educational or rehabilitative institution. Included in the meaning of a "public swimming pool" are buildings, equipment and appurtenances, irrespective of whether or not a fee is charged for their use.

SECTION 2. HSS 172.05 (2)(a)3. is amended to read:

HSS 172.05(2)(a)3. Except as provided in subd. 4., Every every lifeguard shall hold a current American Red Cross Lifeguard Training certificate, ~~an American Red Cross Basic Lifeguarding certificate,~~ a Young Men's Christian Association (YMCA) Lifeguard certificate, a National Pool and Waterpark Lifeguard Training (NPWLT) program certificate or other lifeguard certification approved by the department. In addition, every lifeguard shall hold a current ~~standard first aid certificate from~~ for the American Red Cross Community First Aid and Safety Course or other first aid certification approved by the department and a current certificate ~~from~~ for the American Red Cross CPR for the Professional Rescuer Course or the American Heart Association BLS Health Care Provider Course or other equivalent cardiopulmonary resuscitation (CPR) certification approved by the department ~~for the completion of a course in cardiopulmonary resuscitation (CPR) for adults, children, and infants.~~

SECTION 3. HSS 172.05(2)(a)4. is created to read:

HSS 172.05(2)(a)4. A lifeguard with approved certification prior to January 1, 1996 may continue to use that certification until it expires. At renewal the certification shall comply with the requirements of subd. 3.

SECTION 4. HSS 172.05(2)(c) is amended to read:

HSS 172.05(2)(c) When a pool is used for instructional purposes, an instructor holding a current American Red Cross Water Safety Instructor (WSI) certificate ~~and a cardiopulmonary resuscitation certificate from the American Red Cross or the American Heart Association may substitute for the lifeguard required in this subsection.~~ with training in "Emergency Water Safety" may substitute for a lifeguard required in this subsection until the current certification expires or comes up for renewal or until July 1, 1997, whichever is earliest. WSI certification received after January 1, 1995 with training in "Community Water Safety" does not meet the requirements of this subsection. WSI certification received after January 1, 1996, does not meet the requirements of this subsection.

SECTION 5. HSS 172.05(4)(b) is renumbered 172.05(4)(b)1.

SECTION 6. HSS 172.05(4)(b)2. is created to read:

HSS 172.05 (4)(b) 2. When lifeguards are provided, a rescue tube with harness shall be provided to each lifeguard on duty.

The rules contained in this order shall take effect as emergency rules upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

Wisconsin Department of Health  
and Social Services

Dated: June 12, 1996

By:   
Joseph Leean  
Secretary

SEAL:

LRB or Bill No./Adm. Rule No. HSS 172
Amendment No. if Applicable

FISCAL ESTIMATE

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

DOA-2048 (R 11/90)

Subject

OPERATION OF PUBLIC SWIMMING POOLS

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

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

Decrease Costs

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     VTAE Districts

Fund Sources Affected

GPR     FED     PRO     PRS     SEG     SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

This order amends the Department's rules for operation of public swimming pools to clarify and update the definition of "public swimming pool," update requirements for lifeguard certification and add rescue tubes as required equipment when lifeguards are provided.

No public swimming pool may be operated in the state unless the operator has a permit issued by the Department or by one of 26 city (12) or county (14) health departments that serve, at their request, as agents of the Department for purposes of enforcing the Department's rules for protecting the public health. A permit is evidence that the operation of a public swimming pool complies with the Department's rules for operation of public swimming pools.

Department staff regulate 974 public swimming pools, and agent local government health department staff regulate 1,090 public swimming pools. The rule changes will not affect the costs of administration of state government or local governments.

Over 400 of the 2,064 public swimming pools in the state are operated by state government or local governments, including school districts. Although the rulemaking order adds a requirement that a pool that provides lifeguards have a rescue tube available for each lifeguard, pools are likely to already have rescue tubes for their lifeguards because in 1995 the American Red Cross and other lifeguard certification programs made the use of rescue tubes part of training for certification. This is now how a lifeguard is to make a rescue.

Long-Range Fiscal Implications

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

DHSS/Elmo Smyth      266-8294

Authorized Signature/Telephone No.

*Richard Lorang*  
Richard Lorang      266-9622

Date

6-12-96



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ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
CREATING RULES

The Legislature in s. 9126(7m) of 1995 Wisconsin Act 27 directed the Department to promulgate rules required under s. 49.45(39), Stats., as created by Act 27, by using emergency rulemaking procedures, but exempted the Department from the requirement under s. 227.24(1) and (3), Stats., to make a finding of emergency. These are the rules.

Analysis Prepared by the Department of Health and Social Services

The 1995-97 Budget Act, 1995 Wisconsin Act 27, created s. 49.45 (39), Stats., which requires the Department of Health and Social Services to reimburse school districts and Cooperative Educational Service Agencies (CESAs) for Medical Assistance school-based services. This rule-making order describes the covered services: speech, language, audiology and hearing services; occupational therapy; physical therapy; nursing services; psychological services, counseling and social work; developmental testing and assessments; transportation; and certain durable medical equipment. The order also explains the record-keeping collaboration with other health care providers required of school-based service providers.

ORDER

Pursuant to authority vested in the Department of Health and Social Services by s. 49.45(39), Stats., as created by 1995 Wisconsin Act 27, and s. 9126(7m) of 1995 Act 27, the Department of Health and Social Services hereby create rules interpreting s. 49.45(39), Stats., as created by 1995 Wisconsin Act 27, as follows:

SECTION 1. HSS 101.03(24m), (78m), (78r) are created to read:

HSS 101.03(24m) "CESA" means a cooperative educational service agency under ch. 116, Stats.

(78m) "IEP" means an individualized education plan developed under s. 115.80(4), Stats.

(78r) "IFSP" means an individual family service program developed under s. 51.44, Stats.

SECTION 2. HSS 105.53 is created to read:

HSS 105.53 SCHOOL-BASED SERVICES (1) For MA certification, school-based service providers shall be school districts under ch. 120, Stats., and cooperative educational service agencies (CESAs) under ch. 116, Stats.

(2) As of July 1, 1996, no school district or CESA may be certified as a provider of nursing services under ss. HSS 105.19 and 105.20, physical therapy services under s. HSS 105.27, occupational therapy services under s. HSS 105.28, speech and language pathology services under ss. HSS 105.29 and 105.30, audiology services under s. HSS 105.31 or transportation services under s. HSS 105.39.

SECTION 3. HSS 107.36 is created to read:

HSS 107.36 SCHOOL-BASED SERVICES (1) COVERED SERVICES (a) General.

1. School-based services covered by the MA program are services described in this section that are provided by a school district or CESA. The school district or CESA shall ensure that individuals who deliver the services, whether employed directly by or under contract with the school district or CESA, are licensed under s. PI 3.

2. For each recipient of school-based services, the provider shall keep a record containing, at a minimum, all of the following:

- a. The recipient's first and last name and date of birth;
- b. The prescription or, if referred, the referral for the service;
- c. Documentation used to develop the recipient's IEP or IFSP and in the annual revision of the IEP or IFSP; and
- d. Annual documentation of the individual's progress toward treatment goals, changes in the individual's physical or mental status and changes in the treatment plan.

3. For each date of service, the provider shall keep a record containing all of the following:

- a. The date of service;
- b. The general type of service provided;

- c. A brief description of the specific service provided;
- d. The unit of service delivered as defined through handbooks distributed by the department under s. HSS 108.02(4);
- e. A description and the cost of each equipment item with sufficient detail to allow the MA program to determine the reimbursement rate;
- f. A statement of whether the procedure was provided in a group or individual setting;
- g. For each service provided, a brief description of the recipient's response to the service and progress; and
- h. The service provider's signature.

4. The required annual audit of school district accounts under s. 120.14, Stats., and the audit of CESA receipts and expenditures under s. 115.28(3m), Stats., shall include evidence through instructions distributed by the department under s. HSS 108.02(4) that requirements under s. 49.45(39)(b), Stats., for paying expenses and billing are being met.

5. When a recipient in a school district or CESA receive MA-covered services from both a school-based service provider and an MA-assigned health maintenance organization (HMO), the school-based service provider shall contact the HMO in order to create and sign a joint memorandum of understanding to coordinate the provision of services. These contacts shall be documented. When a recipient receives similar services from both an MA fee-for-service provider and a school-based service provider, the school-based service provider shall document, at least annually, regular contacts with the MA fee-for-service provider, and provide the MA fee-for-service provider with copies of the recipient's IEP or IFSP and components of the multidisciplinary team evaluation under s. 115.80(3) and (5), Stats., upon request.

6. Consultation, case monitoring and coordination related to developmental testing under the individuals with disabilities education act, 20 USC 1400 to 1485, are included in

the MA-covered services described in this subsection when an IEP or IFSP results from the testing. Consultation, case monitoring and coordination for IEP or IFSP services are also included in the covered services described in this subsection.

7. Notwithstanding s. HSS 106.13 (intro.) and (1)(c), requirements under chs. HSS 101 to 108 as they relate to school-based services, to the extent consistent with 42 CFR ch. IV, may be waived if they are inconsistent with other federal mandates. Services provided between July 1, 1995 and June 30, 1996 may be billed through June 30, 1997, to the extent allowed by federal law, notwithstanding s. HSS 106.03(3)(b)1.

(b) Speech, language, hearing and audiological services. Speech, language, hearing and audiological services for a recipient with a speech, language or hearing disorder that adversely affects the individual's functioning are covered school-based services. These services include evaluation and testing to determine the individual's need for the service, recommendations for a course of treatment and treatment. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of a speech and language pathologist licensed by the department of public instruction under s. PI 3.35 or by an audiologist licensed by the department of public instruction under s. PI 3.355, and shall have a physician referral and be identified in the recipient's IEP or IFSP.

(c) Occupational therapy services. Occupational therapy services which identify, treat, rehabilitate, restore, improve or compensate for medical problems that interfere with age-appropriate functional performance are covered school-based services. These services include evaluation, recommendations for a course of treatment, and rehabilitative, active or restorative treatment services. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of an

occupational therapist licensed by the department of public instruction under s. PI 3.36 and shall be prescribed by a physician and identified in the recipient's IEP or IFSP.

(d) Physical therapy services. Physical therapy services which identify, treat, rehabilitate, restore, improve or compensate for medical problems are covered school-based services. These services include evaluations to determine an individual's need for physical therapy, recommendations for a course of treatment, and therapeutic exercises and rehabilitative procedures. The services may be delivered to an individual or to a group of 2 to 7 individuals. The services shall be performed by or under the direction of a physical therapist licensed by the department of public instruction under s. PI 3.37 and shall be prescribed by a physician and identified in the recipient's IEP or IFSP.

(e) Nursing services. Professional nursing services relevant to the recipient's medical needs are covered school-based services. These services include evaluation and management services, including screens and referrals for treatment of health needs; treatment; medication management; and explanations given of treatments, therapies and physical or mental conditions to family members or school district staff. The services shall be performed by a registered nurse licensed under s. 441.06, Stats., or a licensed practical nurse licensed under s. 441.10, Stats., or be delegated under nursing protocols. The services shall be prescribed or recommended by a physician or an advanced practice nurse as defined under s. N 8.02(1) with prescribing authority granted under s. 441.16(2), Stats., and shall be identified in the recipient's IEP or IFSP.

(f) Psychological counseling and social work services. Psychological counseling and social work services relevant to the recipient's mental health needs with the intent to reasonably improve the recipient's functioning are covered school-based services. These services include testing, assessment and evaluation that appraise cognitive, emotional and

social functioning and self-concept; therapy or treatment that plans, manages and provides a program of psychological counseling or social work services to individuals with psychological or behavioral problems; and crisis intervention. The services may be delivered to an individual or to a group of 2 to 10 individuals. The services shall be performed by a school psychologist, school counselor or school social worker licensed by the department of public instruction under ch. PI 3. The services shall be prescribed or referred by a physician or a psychologist licensed under s. 455.04(1), Stats., and shall be identified in the individual's IEP or IFSP.

(g) Developmental testing and assessments under IDEA. Developmental testing and assessments under the individuals with disabilities education act (IDEA), 20 USC 1400 to 1485, are covered school-based services when an IEP or IFSP results. These services include evaluations, tests and related activities that are performed to determine if motor, speech, language or psychological problems exist, or to detect developmental lags for the determination of eligibility under IDEA. The services shall be performed by a special education teacher, diagnostic teacher or other school district staff licensed by the department of public instruction under ch. PI 3. The services are also covered when performed by a therapist, psychologist, social worker, counselor or nurse licensed by the department of public instruction under ch. PI 3 as part of their respective duties.

(h) Transportation. Transportation services provided to individuals who require special transportation accommodations in vehicles equipped with a ramp or lift are covered school-based services if the recipient receives an MA-covered service on the day transportation is provided. These services include transportation from the recipient's home to and from school on the same day if the school-based service is provided in the school, and transportation from school to a service site and back to school or home if the school-based

service is provided at a non-school location. Transportation shall be performed by a school district, CESA or contracted provider using vehicles equipped with a ramp or lift. A prescription from a physician or advanced practice nurse, as defined under s. N 8.02(1), with prescribing authority granted under s. 441.16(2), Stats., is required to demonstrate the recipient's need for special transportation. The service shall be included in the IEP or IFSP. The covered service that the recipient is transported to and from shall meet MA requirements for that service under ch. HSS 105 and this chapter.

(i) Durable medical equipment. Durable medical equipment except as covered in s. HSS 107.24 is a covered service if the need for the equipment is identified in the recipient's IEP or IFSP, the equipment is recipient-specific, the equipment is not duplicative of equipment the recipient currently owns and the equipment is for the recipient's use at school and home. The recipient shall own the equipment, not the school district or the CESA.

(2) LIMITATIONS (a) Age limit. School-based services may only be provided to MA-eligible recipients under 21 years of age, or for the school term during which an MA-eligible recipient becomes 21 years of age.

(b) Medically necessary. School-based services shall be medically necessary. In this paragraph "medically necessary" has the meaning prescribed in s. HSS 101.03 (96m) and in addition means services that:

1. Identify, treat, manage or address a medical problem or a mental, emotional or physical disability;
2. Are identified in an IEP or an IFSP;
3. Are necessary for a recipient to benefit from special education, as defined in s. PI 11.02(48);

4. Are referred by a physician or prescribed by a physician, an advanced practice nurse, as defined under s. N 8.02(1), with prescribing authority granted under s. 441.16(2), Stats., where appropriate, or a psychologist, where appropriate; and

5. Meet the requirements under s. 49.45(39), Stats.

(3) NON-COVERED SERVICES. Services not covered as school-based services are the following:

(a) Art, music and recreational therapies;

(b) Services that are strictly educational, vocational or pre-vocational in nature, or that are otherwise without a defined medical component;

(c) Services that are not in the recipient's IEP or IFSP;

(d) Services performed by a provider not specifically certified under s. HSS 105.53;

(e) General classroom instruction and programming;

(f) Staff development;

(g) In-school services to school staff and parents;

(h) General research and evaluation of the effectiveness of school programs;

(i) Administration or coordination of gifted and talented programs or student assistance programs;

(j) Kindergarten or other routine screening provided free of charge unless resulting in an IEP or IFSP referral;

(k) School health program services that are not in an IEP or IFSP;

(l) Diapering;

(m) Durable medical equipment covered under s. HSS 107.24; and


(n) Non-medical feeding.



The rules contained in this order shall take effect as emergency rules upon publication in official newspaper, as provided in s. 227.24(1)(c), Stats.

Wisconsin Department of Health and  
Social Services

Dated: June 6, 1996

By:   
Joe Lelan  
Secretary

SEAL:

LRB or Bill No./Adm. Rule No.  
HSS 101, 105 & 107

Amendment No. if Applicable

FISCAL ESTIMATE

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

DOA-2048 (R 11/90)

Subject: COVERAGE OF SCHOOL-BASED MEDICAL SERVICES UNDER THE MEDICAL ASSISTANCE PROGRAM

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

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

Decrease Costs

Local:  No local government costs

- |   |   |   |
|---|---|---|
| <p>1. <input type="checkbox"/> Increase Costs<br/>    <input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> <p>2. <input type="checkbox"/> Decrease Costs<br/>    <input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> | <p>3. <input type="checkbox"/> Increase Revenues<br/>    <input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> <p>4. <input type="checkbox"/> Decrease Revenues<br/>    <input type="checkbox"/> Permissive    <input type="checkbox"/> Mandatory</p> | <p>5. Types of Local Governmental Units Affected:</p> <p><input type="checkbox"/> Towns    <input type="checkbox"/> Villages    <input type="checkbox"/> Cities<br/><input type="checkbox"/> Counties    <input type="checkbox"/> Others _____<br/><input type="checkbox"/> School Districts    <input type="checkbox"/> VTAE Districts</p> |
|---|---|---|

Fund Sources Affected

- GPR     FED     PRO     PRS     SEG     SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The 1995-97 Budget Act, 1995 Wisconsin Act 27, added school medical services as a covered benefit under the Medical Assistance (MA) program. Section 49.45(39)(b) and (c), Stats., as created by Act 27, directed the Department to promulgate rules to implement the new covered benefit. These are the rules.

Under the rules, school districts and cooperative educational service agencies (CESAs) are identified as MA-certified providers of school-based medical services and may claim reimbursement from the Department for part of the costs of the services they provide to children who are eligible for Medical Assistance. The rules specify the covered services, record-keeping requirements and requirements for coordinating service provision with MA-assigned health maintenance organizations and MA fee-for-service providers serving the same children.

School districts and CESAs are not required under s.49.45(39), Stats., as created by Act 27, or by these rules to provide school-based medical services to certain students, but if they do and if the students are MA-clients, they can claim reimbursement from the Department for part of the costs of the services.

These rules will not affect the expenditures or revenues of state government or local governments. All costs were considered by the Legislature when school medical services were made a covered MA benefit.

Long-Range Fiscal Implications

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

DHSS/Anna Degelau 266-5635

Authorized Signature/Telephone No.

*Richard Lorang*  
Richard Lorang 266-9622

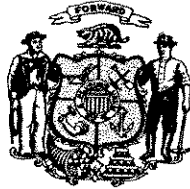
Date

5/20/96

DEC 19 1996

**Tommy G. Thompson**  
Governor

**Richard C. Wegner**  
Acting Secretary



**OFFICE OF THE SECRETARY**  
201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
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FAX: (608) 266-1784

**State of Wisconsin**  
**Department of Workforce Development**

December 16, 1996

The Honorable Richard Grobschmidt  
Room 404, 100 N. Hamilton Street  
Madison, Wisconsin 53702

The Honorable Glenn Grothman  
125 West, State Capitol  
Madison, Wisconsin 53702

Dear Senator Grobschmidt and Representative Grothman:

Administrative rule DWD 56, relating to the administration of child care funds, was promulgated as an emergency rule on July 1, 1996, under ss. HSS 55.70 to 55.76. The emergency rule was amended, effective August 13, 1996, to repeal the copayment schedule under s. HSS 55.76(5). The Governor appointed a Child Care Working Group to formulate recommendations to revise the copayment schedule.

The Wisconsin Legislative Council assigned Clearinghouse Rule number 96-140 to DWD 56. The Clearinghouse Report contained several comments for the Department to consider.

A public hearing was held on DWD 56 on September 17, 1996 and the deadline for written testimony was held open until September 24, 1996. The rule was submitted to the presiding officers of the Legislature on October 23, 1996. The Senate Committee on Labor held a public hearing on December 4, 1996.

A 60 day extension of the emergency rule was granted on November 20, 1996, and will expire on January 26, 1997. The Department expects to file the permanent rule early in January. Since the permanent rule will not be effective until March 1, 1997, the Department is requesting a second 60 day extension for emergency rule DWD 56.

If this emergency rule is not extended, the administrative rules would conflict with the statutory provisions of 1995 Wisconsin Act 289, which implemented key changes to child care policies. On the basis of emergency rules promulgated in June 1996, regulations were implemented statewide for administration of child care funds. Failure to extend the emergency rule would cause confusion and disruption to the child care funding program at a time when the state is gearing up to implement Wisconsin Works (W-2).

Thank you for your consideration of this request. Please contact Katie Mnuk, the Department's Legislative Liaison, at 7-3200, if you have any questions concerning this request.

Sincerely,

Richard C. Wegner  
Acting Secretary

**EMERGENCY RULE RELATING TO  
THE ADMINISTRATION OF CHILD CARE FUNDS  
AND REQUIRED CO-PAYMENTS**

Pursuant to the authority vested in the Wisconsin Department of Workforce Development by §§46.98(2)(b), (2r)(d), (4)(d) and (e)2, and (5)(e), the Department of Workforce Development hereby repeals rules interpreting §46.98, Stats., relating to the administration of child care funds and required co-payments.

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Finding of Emergency

The Department of Workforce Development finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Congress has just enacted welfare reform legislation which makes major changes to the federal welfare system, in many cases replacing federal entitlements with block grants to the states. The Governor has directed the creation of a Child Care Working Group to analyze the impact that the federal legislation will have on child care in Wisconsin and on the Wisconsin Works program, and to analyze and identify effective methods and funding sources to increase child care options and expand the availability of affordable child care. Under these circumstances, it is necessary to withdraw the schedule for child care co-payments and the phase-in co-payment formula which were implemented by emergency rule on July 1 of this year. This will avoid the administrative problems and costs that would otherwise be incurred if these rules are changed again as a result of the new federal law.

Analysis

This rule amends the emergency rule of July 1, 1996, to repeal the co-payment schedule for new applicants applying for W-2 child care and the phase-in co-payment formula for families currently receiving child care assistance. (This effectively deletes Item #2 of the original analysis.)

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SECTION 1. HSS 55.76(5), as created by the emergency rule of July 1, 1996, is repealed.

SECTION 2. EFFECTIVE DATE. This emergency rule shall take effect upon publication in the official state newspaper in accordance with §227.24, Stats.

(End)

6-25-96

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
REPEALING AND RECREATING RULES

The Legislature in s. 275(2) of 1995 Wisconsin Act 289 directed to Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance-related rules. They are for administration of child care funds. They will take effect on July 1, 1996.

Analysis Prepared by the Department of Health and Social Services

The Department's rules for county agency, tribal agency and other child care administrative agency administration of funds for child day care under s. 46.98, Stats., are revised by this order to bring the rules into compliance with statute changes made by 1995 Wisconsin Acts 27 and 289 and changes in federal regulations, including federal regulations for child care and development block grant funding, 45 CFR Parts 98 and 99, and at-risk child care, 45 CFR Part 257, since the rules were last revised in late 1991; to make policies relating to eligibility for low-income child care more like child care eligibility policies under the Job Opportunities and Basic Skills (JOBS) training program under 42 USC 682 and s. 49.193, Stats.; to prevent and deal with fraud; and to clarify the applicability of certain policies.

Key changes are the following:

1. Income Eligibility

Income eligibility for low income child care is changed to be in compliance with changes made in s. 46.98(4), Stats., by Act 289.

2. Costs Charged to Parents

Parent co-payment responsibilities are revised to be those established in state law based on family income and the cost of care.

3. Eligibility for Parents in Training or Educational Programs

Parent eligibility to receive low-income child care funds when the parents are in training or educational programs is modified so that only parents under 20 years of age enrolled in high school or an equivalent program are eligible, in compliance with Act 289 changes in the statutes.

4. Loss of Eligibility

A local agency is permitted to determine that a parent is no longer eligible for child care funds if the parent fails to make required co-payments or provides false information to the agency about income or other matters affecting eligibility.

#### 5. Recovery of Funds

Rules are added in compliance with 1995 Wisconsin Act 27 to provide for recovery of funds from a parent if the parent was not eligible for the child care funds, and for recovery of an overpayment made to a provider when the provider is responsible for the overpayment.

#### 6. Reimbursement

Local agencies are permitted to reimburse parents under certain circumstances for the cost of child care services or to make funds available to parents for the purchase of child care services, and local agencies are directed when to reimburse child care providers on the basis of authorized units of service or for days of attendance.

#### 7. Authorized Child Care Providers

Local agencies are permitted to make payments, under certain conditions, to child care providers who are not licensed or certified, including:

- a. When an AFDC recipient is involved in orientation, enrollment or initial assessment in the JOBS program.
- b. When child care is on-site and short-term for parents in training or education programs.
- c. When short-term care is needed for a child who is ill and not allowed to receive care from a regulated provider.

#### 8. Higher Rates for Higher Quality Care

Local agencies are required to pay higher rates for child care to providers who meet higher quality of care standards, as allowed under federal regulations.

#### 9. Reimbursement Rate Categories

Reimbursement rates are required for two age categories and five provider types, a change from earlier policy.

#### 10. Elimination of Rules for Respite Child Care

Rules for respite child care are eliminated, now that there is no longer a separate funding program. The 1995-97 state budget folded funding for respite child care into general community aids allocations for counties.

### ORDER

Pursuant to authority vested in the Department of Health and Social Services by ss. 46.98(2)(b), (2r)(d), (4)(d) and (e)2. and (5)(e) and 227.11(2), Stats., and s. 275(2) of 1995 Wisconsin Act 289, the Department of Health and Social Services hereby repeals and recreates rules interpreting s. 46.98, Stats., as affected by 1995 Wisconsin Acts 27 and 289, as follows:

SECTION 1. HSS 55.70 to 55.76 are repealed and recreated to read:

Subchapter VII - Administration of Child Care Funds

**HSS 55.70 AUTHORITY, PURPOSE AND APPLICABILITY.** This subchapter is promulgated under the authority of ss. 46.98(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. 46.98(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 subchapter 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.

**HSS 55.71 DEFINITIONS.** The definitions in subch. VI apply to this subchapter, except the definition of "parent" under s. HSS 55.56(12). In addition, in this subchapter:

(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 ss. 46.98(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, if any, 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. An emancipated minor and child living under the care of an individual is considered a one-person family.

(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 non-farm self-employment, net income from farm 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 compensation, worker's compensation, alimony and other maintenance payments, child support payments and veteran pensions.

(14) "Income-eligible" means family income as established in s. 46.98(4)(a) and (am), Stats.

(15) "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.

(16) "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.

(17) "Low-income child care" means child care that is provided for a person who is eligible for funding for that child care under s. 46.98(4)(a) and (am), Stats., and 42 USC 9858.

(18) "Parent" has the meaning prescribed in s. 46.98(1)(c), Stats., namely, a parent, guardian, 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).



(19) "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.

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

(21) "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.

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

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

HSS 55.72 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 reasonable and customary child care rates as required under s. HSS 55.74(3).

(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 allocation formula:

1. The number of recipients of AFDC in each county;
2. The number of parents in each county who work and have children of child care age;

3. The number of children in income-eligible families; and

4. Each county's expenditure history; and

(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. The rate-setting method is in accordance with rate-setting requirements specified under ss. HSS 55.74(3) and 55.75; and

2. The rate-setting method documents that the maximum allowable rate permits all eligible parents a reasonable choice of day care providers.

(b) The department may grant a variance to a nonstatutory requirement under ss. HSS 55.73 to 55.77 on written request of a county or tribal agency if the department is convinced that an alternative means meets the intent of the requirement.

(c) The department may set maximum rates for multi-county or multi-tribe areas based on surveys or another methodology instead of setting rates based on each county's or tribes survey.

HSS 55.73 GENERAL CHILD CARE POLICIES. (1) APPLICABILITY. 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. 46.98(3) and (4), Stats.;

(b) At-risk child care under s. 46.98(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. 49.50(6g), Stats.;

(g) Child care for participants in the learnfare program under s. 49.50(7), Stats.; and

(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.

**(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 under ch. HSS 45 or 55;
2. Providers certified by a county or tribal agency under standards specified in s. HSS 55.61 or 55.62; or
3. Programs established and provided by a school board under s. 120.13(14), Stats.

(b) A child care administrative agency may purchase services from a child care provider other than a child care provider under par. (a) only when 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 regulated child care provider or the provider has an emergency due to illness or other circumstance;
3. The care is for 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; or
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 purchase services or issue vouchers for child care services provided by a person legally responsible under s. 49.90, Stats., for a child.

(d) A child care administrative agency may not purchase services or issue vouchers for child care services provided by a person residing in the child's household.

(e) An in-home care arrangement may be authorized 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; or

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 stipulated child care services from a provider under sub. (2); and

c. The voucher shall set a maximum amount of authorized reimbursement which is less than the county or tribal maximum rate or the provider's weekly price, 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 price is higher than the county or tribal maximum rate and pay the difference between the provider's price and the county or tribal maximum rate in addition to any required parents' co-payment.

(c) If a child care administrative agency purchases child care services by contract with a provider, billing and collection procedures shall be subject to ch. HSS 1. If a county or tribal agency purchases child care services by means of a voucher issued to the parents, 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. For licensed group and family day care centers, the agency shall make payments based on authorized units of service, adjusting future authorized units of service when excessive absence occurs;

2. For certified providers, the agency shall reimburse for units of service used by each child, up to the maximum number of approved units, with the reimbursement rate increased by 10 percent to account for absent days; and

3. For licensed group and family day care centers, the agency may make payments to licensed providers based on units of service used by each child, up to the maximum number of approved units, when the schedule of child care to be used is expected to vary widely, with the reimbursement rate increased by 10 percent 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 AND PARENTS' PAYMENT. (a) 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 if one of the criteria under sub. (3)(e) is met.

(b) Parent payments. When a parent is required to make co-payments for child care, the co-payments shall be in accordance with a payment schedule under s. HSS 55.76(5).

(7) RECOUPMENT. (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.

HSS 55.74 COUNTY AND TRIBAL AGENCY RESPONSIBILITIES. (1) GENERAL. Each county and tribal agency shall administer child care funds specified in s. HSS 55.73(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 rates 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. 46.98(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, and the date of the parent's application.

(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 parent'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. HSS 55.76.

**HSS 55.75 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 reasonable and customary maximum 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 under par. (a) 2., shall annually contact all licensed group day care centers and family day care centers in the county 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; and
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. Regularly certified family day care providers;
4. Provisionally certified family day care providers; and

5. Certified in-home providers.

(2) MAXIMUM RATES. (a) Group day care centers. In setting maximum rates for 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 percent 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 percent 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 day care price; and

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

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

1. Maximum rates shall be met so that at least 75 percent 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; and

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. 46.98(4)(dg) and (dm), Stats.

(d) Certified in-home day care. For certified in-home care, the county or tribal agency shall establish the maximum rate at the level of the state minimum wage established under ch. 104, Stats., and ch. IND 72.

(e) Other day care providers. For a day care program established and provided 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) or (b).

(3) HIGHER RATES. (a) Special need child. A rate higher than the maximum allowed under this section may be set on an 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 sub. (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.

**HSS 55.76 LOW-INCOME CHILD CARE.** (1) **USE OF FUNDS.** Low-income child care funds distributed under s. 46.98, 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 day care services for parents eligible under this section through the use of vouchers issued to parents or contracts with providers for purchase of services.

(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 or tribal maximum child care rate;

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

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.

(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 standard family income is at or below levels set in s. 46.98(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 or serious violation of program requirements provided to county agencies concerning income or eligibility.

(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 office of administrative hearings 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. HSS 55.74(5) and shall distribute funds in accordance with priorities established in s. 46.98(4)(c), Stats.

(b) A county agency may not establish priorities for low-income child care other than those set forth in s. 46.98(4)(c), Stats.

(c) A county agency may not terminate funding provided to any parent eligible under sub. (2) and s. 46.98(4), Stats., in order to give priority to clients identified in s. 46.98(4)(c), Stats.

(5) **COSTS CHARGED TO PARENTS.** (a) Co-payment requirement. Parents shall be required to make co-payments for child care services provided directly or by voucher or purchased by the county agency. Co-payments shall be required of all parents receiving low-income child care subsidies. A family receiving low-income child care assistance shall be liable for the following percentages of the cost of care received:

1. For a family with an income equal to or less than 75% of the poverty line, 7.5%.

2. For a family with an income greater than 75% of the poverty line but not greater than 95% of the poverty line, 10%.

3. For a family with an income greater than 95% of the poverty line, 10%, plus 1.2857% for every percentage point by which the individual's income exceeds 95% of the poverty line, up to the cost of the child care.


(b) Phase-in of co-payment requirement. The co-payment amount for a family receiving low-income child care assistance on July 1, 1996, shall be gradually increased until the full co-payment under sub. (a) is required on July 1, 1997. The department shall develop a phase-in schedule of the co-payment requirement.

SECTION 2. HSS 55.77 is repealed.

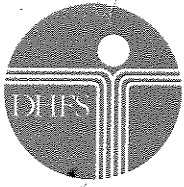
The rules contained in this order shall take effect as emergency rules on July 1, 1996.

Wisconsin Department of Health and Social Services

Dated: June 25, 1996

By:   
Joe Leean  
Secretary

SEAL:



State of Wisconsin  
**Department of Health and Family Services**

DEC 19 1996

Tommy G. Thompson, Governor  
Joe Leean, Secretary

December 19, 1996

The Honorable Richard Grobschmidt, Co-Chairperson  
Joint Committee for Review of Administrative Rules  
Room 404, 100 North Hamilton  
Madison, Wisconsin 53702

Dear Senator Grobschmidt:

In my letter to you dated December 13, 1996, I asked the Joint Committee to extend the effective periods of two emergency rule orders, those relating to operation of public swimming pools and to Medical Assistance coverage of school-based medical services. The Department of Workforce Development now advises me that there is need for the Department of Health and Family Services to also request extension of emergency rules relating to child care certification. As Secretary Wegner and I pointed out in our letter of November 14, 1996 to Senator Russell Decker and Representative John Gard, although 1995 Wisconsin Act 404 transferred responsibility for the child care certification program to the new Department of Workforce Development on July 1, 1996, responsibility for making rules for the program was inadvertently left in DHFS. Therefore, in response to DWD's request and pursuant to s. 227.24(2), Stats., I ask the Joint Committee to extend the effective period of the child care certification emergency rules by 33 days, through February 28, 1997.

The child care certification emergency rules, HSS 55.55 to 55.63, were published by the Department of Health and Social Services on June 29, 1996, to take effect on July 1, 1996. The Joint Committee on October 16, 1996, extended the effective period of the emergency rules, by 60 days, through January 26, 1997. Replacement permanent rules were submitted to the presiding officers of the Legislature on October 22, 1996, for review by standing committees. The Senate Labor Committee held a public hearing on those rules on December 4, 1996, and discussions with DWD are continuing about possible modifications in the rules. The Department of Health and Family Services expects to file the permanent rules early in January for a March 1, 1997 effective date. If the effective period of the emergency rules is not extended, there will be confusion and disruption in the child care certification program at a time when the state is preparing to implement Wisconsin Works (W-2).

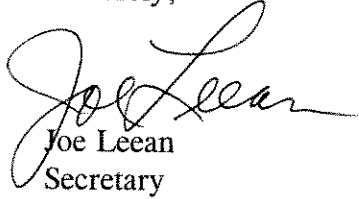
The Honorable Richard Grobschmidt

Page 2

December 19, 1996

A copy of the child care certification emergency rule order is attached to this letter. If you have any questions about the rules, please contact David Edie, director of the Office of Child Care in the Department of Workforce Development, at 266-6946.

Sincerely,



Joe Lekan  
Secretary

Attachment

cc Representative Grothman

6-25-96a

ORDER OF THE  
DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
REPEALING AND RECREATING RULES

The Legislature in s. 275(2) of 1995 Wisconsin Act 289 directed the Department to promulgate rules relating to public assistance required under chs. 46, 48 and 49, Stats., as affected by the Acts of 1995, before July 1, 1996, for the period before permanent rules take effect, by using emergency rulemaking procedures but without having to make a finding of emergency. These are public assistance-related rules. They are for certified child care. They will take effect on July 1, 1996.

Analysis Prepared by the Department of Health and Social Services

The Department's current rules for certification of family day care providers, in-home day care providers and school-age day care programs are amended by this order to bring the rules into compliance with recent statute changes, in particular the changes made by 1995 Wisconsin Act 289 in establishing Wisconsin Works (W-2), a new system of assistance for families with dependent children which will replace Aid to Families with Dependent Children (AFDC), and to add needed protections for children, reduce or eliminate unnecessary requirements and clarify the authority of certifying agencies.

Key changes include:

1. Provisional Certification

Modifying standards for provisional certification so that no training is required, in compliance with Act 289 changes in the statutes.

2. Limited Certification

Deleting the category of limited certification, in compliance with Act 289 changes in the statutes.

3. Training for Regular Certification

Deleting the optional requirement to add 5 hours of initial training for regular certification, in order to standardize regulation statewide.

4. Criminal Records Check

Adding requirements for state criminal records checks and FBI criminal record checks under certain circumstances, as required by Act 289 changes in the statutes.

5. Certification Fee

Permitting counties and tribal agencies to charge certification fees, as allowed under Act 289, not to exceed licensing fees for family day care centers plus the cost of criminal record checks.

6. Acceptance of Certification

Providing that certification issued by one certifying agency is to be accepted as valid by other certifying agencies.

7. Certification Exemption

Exempting specified child care arrangements from certification because those arrangements are short-term.

8. Sanction Authority

Giving sanction authority to certifying agencies when there is danger to the health, safety or welfare of children in care.

9. School-Age Programs

Adding requirements relating to swimming pools and water safety.

Adding requirements for the safety of vehicles transporting children.

Deleting requirements for:

- a. Physical exams for children and staff (replaced by a health history requirement).
- b. 75 square feet of outdoor space per child.
- c. Daily outdoor activities.
- d. A place for rest or relaxation.
- e. Ongoing communication with the child's parent.
- f. Making copies of the certification standards available to all parents.

10. Parochial and Private Schools

Deleting rules related to certification of parochial and private schools since those programs can become licensed in order to receive public child care funding.

11. Parent Checklist

Deleting the rules requirement that parents in certified family day care and in-home day care complete and return a checklist of basic certification standards but permitting counties and tribes to continue to require it.

12. Other New or Changed Rules

- a. Clarifying what is acceptable supervision and limiting the number of hours a provider can provide child care per day.
- b. Requiring TB tests for all certified providers.
- c. Requiring proper hand washing for child care providers and children.
- d. Changing the water testing requirement when a public water supply is not available to be a one-time test prior to or within 3 months of initial certification.
- e. Requiring certified providers to report relevant information to the certifying agency.
- f. Prohibiting consumption of alcoholic beverages or controlled substances on the premises during hours of operation.
- g. Prohibiting discrimination.

ORDER

Pursuant to authority vested in the Department of Health and Social Services by s. 46.03(21), Stats., and s. 275(2) of 1995 Wisconsin Act 289, the Department of Health and Social Services hereby creates rules interpreting s. 48.651, Stats., as affected by 1995 Wisconsin Act 289, as follows:

SECTION 1. HSS 55.55 to 55.62 are repealed and recreated to read:



### Subchapter VI - Day Care Certification

**HSS 55.55 AUTHORITY, PURPOSE AND APPLICABILITY.** (1) **AUTHORITY AND PURPOSE.** This subchapter is promulgated pursuant to s. 46.03 (21), Stats., and implements s. 48.651, Stats. It establishes standards for the certification of persons who provide child care for 1 to 3 children or who are not otherwise required to be licensed as a day care center under s. 48.65, Stats., and whose services are purchased with state or federal child care funds. The standards are intended to protect and promote the health, safety and welfare of children in the care of these providers.

(2) **APPLICABILITY.** This subchapter applies to county and tribal agencies and to all providers of day care who receive reimbursement with state or federal child care funds and who are not required to be licensed under s. 46.95, Stats., including providers of child care for 1 to 3 children, providers of child care for a child in the child's home and providers of child care for school-age children.

**HSS 55.56 DEFINITIONS.** In this subchapter:

(1) "AFDC recipient" means a recipient of 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) "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 or s. HSS 55.62 for purchase of care by county or tribal agencies.

(3) "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.

(4) "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.

(5) "Department" means the Wisconsin department of health and family services.

(6) "Family day care center" means a day care center licensed under s. 48.65, Stats., and ch. HSS 45.

(7) "Family day care provider" means a person providing care for preschool 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.

(8) "Group day care center" means a day care center licensed under s. 48.65, Stats., and ch. HSS 55.

(9) "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.

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

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

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

(13) "Parent" means a parent, guardian, 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).

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

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

(16) "Publicly funded parent" means a parent whose child 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, first cousins, nephews, nieces, uncles and aunts.

(19) "School-age child" means a child 7 years of age or older who is enrolled in a public school or a parochial or other private school.

(20) "School-age day care program" means a program providing care and supervision in other than a provider's home for less than 24 hours a day for 7 or more school-age children and which is exempt from being licensed as a day care center under s. 48.65(1), Stats.

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

(22) "Wisconsin works participant" means an individual participating in the Wisconsin works program for families with dependent children administered under ss. 49.141 to 49.161, Stats.

**HSS 55.57 CONDITIONS FOR PURCHASE OF SERVICES.** (1) **REGULATION REQUIRED.** Except as provided under sub. (2), a county or tribal agency may purchase child care only from a family day care center licensed by the department of health and family services, a group day care center licensed by the department, a day camp licensed by the department, a day care provider certified by a county or tribal agency under this subchapter or a day care program established and provided by a public school board.

(2) EXEMPTION FROM REGULATION. A county or tribal agency may purchase child care that is exempt from licensing for any of the following reasons:

(a) Care is provided to the child of an AFDC recipient or Wisconsin works participant involved in orientation, enrollment, job search or initial assessment prior to the development of an employability plan;

(b) The care is an arrangement for parents in training or counseling programs and the child care is provided at the training or counseling site; or

(c) The care is a short-term arrangement when a child is ill and not allowed to receive care from a regulated child care provider or the provider has an emergency due to illness or other circumstance.

**HSS 55.58 CERTIFICATION.** (1) BASIS FOR CERTIFICATION. In order to be certified, a day care provider shall be exempt from having to be licensed under subchs. I, and II, III or IV and shall comply with the appropriate standards for the type of certified provider that are specified in this subchapter.

(2) TYPES OF CERTIFIED PROVIDERS. The following types of day care providers shall be certified as a condition for receiving state or federal child care funds:

(a) Family day care providers and in-home providers. Family day care and in-home providers are required to meet the standards under s. HSS 55.61 and may care for preschool children or school-age children or a combination of preschool and school-age children consistent with Table 55.61(6); and

(b) School-age day care programs. School-age day care programs are required to meet the standards under s. HSS 55.62.

(3) APPLICATION FOR CERTIFICATION. (a) *Form.* Application for certification shall be made on a form available from the county or tribal agency in the provider's county or tribal territory. The applicant shall submit the completed form to that county or tribal agency.

(b) *References.* The applicant shall submit with the application the names and addresses of persons who can attest to the applicant's good character and ability to care for children. The county or tribal agency shall require references of all applicants and shall contact references by phone or letter before certifying an applicant.

(c) *Criminal background.* The applicant shall submit a completed notarized background verification form for each provider, employe, prospective employe, substitute or adult living in the provider's home.

(d) *Compliance with standards and certification.* The county or tribal agency shall process all certification applications as follows:

1. If the application is for certification under sub. (2)(a), the county or tribal agency shall review the application for compliance with standards under s. HSS 55.61 prior to issuing a certificate; and

2. If the application is for certification under sub. (2)(b), the county or tribal agency shall refer the application to a licensing representative in the department of health and family services regional office. The licensing representative shall determine whether the applicant is in compliance with all standards under s. HSS 55.62 and report back to the county or tribal agency. The county or tribal agency may issue a certificate based on the licensing representative's report.

(d) Approval. Within 60 days after receiving a completed application for certification or recertification, the county or tribal agency shall either approve the application and issue a certificate or deny the application. If an application is denied, the county or tribal agency shall give the applicant the reasons, in writing, for denial.

(e) Ineligible individual. An individual residing in the child's household is not eligible for certification for that child.

(4) CERTIFICATION FEE. A county or tribal agency may charge a fee for day care certification not to exceed the licensing fee for a day care center that provides care and supervision for 4 to 8 children, under s. 48.65(3)(a), Stats., plus the costs of criminal record checks.

(5) CATEGORIES OF CERTIFICATION. Certification of a provider by a county or tribal agency shall be provisional or regular as follows:

(a) Regular (Level 1) certification. Regular certification may be issued only after the provider has demonstrated compliance with all certification standards including training. Regular certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards. A provider is not eligible to be issued regular certification if the provider is related to all the children in care; or

(b) Provisional (Level II) certification. Provisional certification may be issued only after the provider has demonstrated compliance with all certification standards, except standards for training under s. HSS 55.61(1)(b). Provisional certification shall be for a period of 2 years and shall be renewed upon application if the provider continues to comply with the certification standards, except standards for training under s. HSS 55.61(1)(b).

(6) CERTIFICATION AGENCY. (a) The county or tribal agency responsible for certification of a provider shall be determined by the geographic area in which the provider resides.

(b) Certification issued to a provider by a county or tribal agency shall be accepted as valid by all other agencies authorized to certify providers.

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

(b) Compliance with other standards. 1. General. County and tribal agencies shall help assure provider compliance with s. HSS 55.61(2) to (12) in accordance with this paragraph.

2. Required procedures. A county or tribal 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. Provide orientation for applicants for certification to explain how the certification system works;
- d. Conduct an inspection before certification or within 30 days following certification of any provider;
- e. Check the criminal record history for applicants for certification, for employees and prospective employees including substitutes, and for adults living in the applicant's home as specified in s. 48.651(2), Stats.; and.
- f. Check relevant files on child abuse and neglect findings or pending investigations.

3. Optional procedures. A county or tribal agency may:

- a. Conduct on-site inspections at any time prior to or after certification to monitor compliance with certification standards, in addition to the required inspection under subd. 2.d.;
- 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. 2.b.

4. Exception. The department of workforce development may grant an exception to the required procedure under subd. 2.e. if the department determines that the alternative procedure meets the intent of the requirement.

(8) EXCEPTIONS TO PARTICULAR CERTIFICATION REQUIREMENTS. A county or tribal agency may grant an exception to any standard in s. HSS 55.61 or 55.62 if the county or tribal agency is convinced that an alternative means meets the intent of the requirement.

HSS 55.59 SANCTIONS. (1) The county or tribal agency shall deny, suspend, revoke or refuse to renew certification and discontinue payment for care if the certified day care operator, day care program employe, provider, assistant to the provider, substitute provider or person living in the family day care provider's home:

(a) Is the subject of a pending criminal charge if the charge substantially relates to the circumstances of caring for children or the activities of the home; or

(b) Has been convicted of a felony, misdemeanor or other offense the circumstances of which substantially relate to the care of children or activities of the home.

(2) The county or tribal agency may deny, suspend, revoke or refuse to renew certification and discontinue payment for care if the certified day care operator, day care program employe, provider, assistant to the provider, substitute provider or person living in the family day care provider's home:

(a) Has been determined to have abused or neglected a child pursuant to s. 48.981, Stats.; or

(b) Is the subject of a court finding that the person has abandoned his or her child, has inflicted emotional damage or sexual or physical abuse on a child or has neglected or refused, for reasons other than poverty, to provide necessary care, food, clothing, medical or dental care or shelter so as to seriously endanger the physical health of a child.

(3) The county or tribal agency may deny, suspend, revoke or refuse to renew certification and discontinue payment for care if:

(a) The provider is not in compliance with certification standards under s. HSS 55.61 or 55.62, as appropriate;

(b) The provider's references or other community information does not support the provider's declaration that he or she is able to provide an acceptable level of child care; or

(c) The county or tribal agency determines there is danger to the health, safety or welfare of the children in care.

HSS 55.60 APPEAL. If a county or tribal agency denies, suspends, revokes or refuses to renew a certification, the county or tribal agency shall notify the provider in writing and give reasons for the action. The action is reviewable pursuant to ch. 68. Stats., which provides for administrative review of the decisions of local agencies.

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

HSS 55.61 STANDARDS FOR FAMILY DAY CARE AND IN-HOME DAY CARE.  
(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.

3. A provider shall demonstrate that he or she is free from tuberculosis prior to certification.

(b) Training. 1. A regularly certified provider under s. HSS 55.58(5)(a) shall have completed 15 hours of child care training approved by the county or tribal agency responsible for certification prior to regular certification.

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

(c) Reporting changes. A provider shall report immediately to the certifying agency any changes related to certification rules, including changes in individuals living in the household.

(2) THE HOME IN FAMILY DAY CARE. A provider's home and outside play areas shall meet the following requirements:

(a) Each floor level used for child care shall have at least one unblocked exit and at least one smoke detector;

(b) All areas used for child care shall have adequate and safe heat, light and ventilation;

(c) The home shall be free of hazards and the following items shall be kept inaccessible to the children:

1. Medications and drugs;
2. Cleaning supplies, poisons and insecticides;
3. Guns, knives, scissors and sharp objects;
4. Matches, cigarette lighters and flammable liquids;
5. Plastic bags; and
6. Litter and rubbish;

(d) Indoor and outdoor areas used for child care shall include sufficient space for play and for activities which meet the developmental needs of the children in care;

(e) Outdoor play areas shall be free of hazards and shall be fenced or the provider shall take special measures to ensure the safety of the children;

(f) Pets that are kept in the home shall be tolerant of children and vaccinated against rabies;

(g) The home shall have at least one telephone in working order with a list of emergency numbers posted by each telephone, including numbers for the rescue squad, police, fire station, emergency medical care and poison control center;

(h) The provider shall use an enrollment form which includes:

1. The parents' home and work phone numbers;
2. The parents' signed consent for emergency medical care; and
3. A name and number to call if the child requires emergency medical care;

(i) The provider shall maintain first-aid supplies and shall wash superficial wounds with soap and water before bandaging;

(j) The home shall be clean, uncluttered and free of insects and rodents;

(k) Bathrooms, including toilets, sinks and potty chairs, shall be clean and in good working condition;

(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 prior to or within 3 months of initial certification.

(m) Areas, equipment and utensils for food preparation, serving and clean-up shall be kept clean and sanitary; and

(n) Children may not share cups, eating utensils, washcloths or towels.

(3) THE HOME FOR IN-HOME CARE. When a provider cares for children in the children's own home, the provider shall comply with requirements in sub. (2)(c), (e), (h), (i) and (m).

(4) CHILD HEALTH CARE. (a) Except as provided under pars. (c) and (d), a 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 or tribal 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. 252.04, 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.

(g) The provider shall wash hands with soap and warm running water after toileting, prior to food preparation and after diapering children.

(h) All children in care shall wash their hands with soap and warm running water before eating and after toileting.

(5) SUPERVISION. (a) The provider may not be engaged in any other activity or occupation during the hours of operation which interferes with the adequate care and supervision of children.

(b) The provider shall be awake whenever the children in care are awake.

(c) No individual provider may take care of children for more than 16 hours in any 24-hour period. The 16-hour period includes any combination of care by a provider who is both licensed as a family day care provider and certified as a family day care provider.

(d) A child shall have adult supervision at all times.

(e) No person under 18 years of age may be left in sole charge of the children.

(f) The provider and any other adult working with children may not consume or be under the influence of alcoholic beverages or any non-prescribed controlled substance specified in ch. 161, Stats., during the hours of operation.

(g) No person in the home of a provider may consume or be under the influence of alcoholic beverages or any non-prescribed controlled substance specified in ch. 161, Stats., during the hours of operation in the presence of children.

(h) The provider, a household member, volunteer, visitor or parent whose behavior or mental or physical condition gives reasonable concern for the safety of children may not be in contact with children in care.

(6) 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 are under the age of 2, the total number of children may not exceed 5; or

2. If 4 of the children 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 Table 55.61(6)A and B.

Table 55.61(6)  
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 ages 7 to 11 may be cared for as long as the maximum total number of children is not exceeded.	6
1	3		6
2	3		6
3	3		6
4	2		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 of health and family services a license to operate a day care center.

(7) PROVIDER INTERACTIONS WITH CHILDREN. The provider shall interact with the children in a caring and positive manner and:

(a) Shall protect children in care from danger and be aware of where each child is at all times;

(b) May not hit, spank, pinch, shake or inflict any other form of corporal punishment on the child, or use any discipline which is frightening to the child; and

(c) May not verbally abuse or threaten a child or make derogatory remarks about the child or the child's family.

(8) ACTIVITIES AND EQUIPMENT. (a) The provider shall implement a program of learning and play activities. Activities shall include:

1. A balance of active and quiet play for each child daily;

2. Both indoor and, weather permitting, outdoor activities for each child daily;

3. Opportunities for each child to play with a variety of toys and equipment;

4. Opportunities for each child to be involved in a variety of activities during a week;

5. Activities specifically for children under one year of age, if these children are present; and

6. Activities specifically for children from one to 2 years of age and for children 2 years and older, if these children are present.

(b) Television may be used only to supplement the daily plan for children. No child may be required to watch television.

(9) 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 4 years of age, a child safety restraint system, in compliance with s. 347.48(2m) and (4), Stats.

(10) MEALS AND SNACKS. The provider shall ensure that each child receives proper nourishment while in day care as follows:

(a) Each child shall be served one meal or snack at least once every 3 hours;

(b) Each child in attendance for 4 or more hours shall be served a noon or evening meal which consists of a protein food, fruit and vegetable, a cereal or bread product and pasteurized grade A vitamin D milk; and

(c) Each infant who is unable to hold his or her own bottle shall be held for bottle feeding. Bottles may not be propped.

(11) REST. The provider shall ensure that each child has a clean, comfortable and safe place to rest as follows:

(a) Each child shall be allowed to have undisturbed rest or a nap, when needed, in a place that is clean, safe and comfortable; and

(b) Each child shall have a personal clean sheet or blanket or both and pillowcase if a pillow is used.

(12) PROVIDER AND PARENT COMMUNICATION. The provider shall be in ongoing communication with a child's parent by:

(a) Allowing parents to visit and observe the program of child care during any hours that care is being provided;

(b) Talking to each child's parent at least once a week about his or her child's development, activities, likes and dislikes;

(c) Developing written information which specifies the charge for child care and the expected frequency of payment for the service;

(d) Making a copy of the applicable certification standards available to each parent; and

(e) Display a copy of the certificate in an area easily seen by parents and visitors;

(13) DISCRIMINATION PROHIBITED. The provider shall not discriminate on the basis of race, color, sex, sexual orientation, creed, handicap or national origin or ancestry.

HSS 55.62 STANDARDS FOR SCHOOL-AGE PROGRAMS. (1) CONDITIONS FOR CERTIFICATION. School-age day care programs shall meet the standards set out in this section in order to be certified.

(2) PERSONNEL. (a) Director. Each school-age day care program shall have a person designated as director. The director shall:

1. Be at least 21 years of age; and

2. Have had at least one year of child care or administrative experience with preschool or school-age children or have completed 36 classroom hours or 3 credits of training in at least one of the following areas: child development, early childhood education, elementary education, child guidance, physical education, recreation or other department-approved area.

(b) Program leader. A program leader shall be designated by the program director to plan and implement the daily activities for a designated group of children. The program leader shall:

1. Be at least 18 years old;
2. Have completed high school or its equivalency;
3. Have had 80 working days experience working with school-age children; and
4. Have completed 10 classroom hours of training in at least one of the following areas: child development, early childhood education, elementary education, child guidance, physical education, recreation or other department-approved area.

(c) Program assistant. A program assistant shall:

1. Work under the supervision of a program leader;
2. Be at least 18 years old; and
3. Have completed or be enrolled in 10 classroom hours of training in at least one of the following areas: child development, early childhood education, elementary education, child guidance, physical education, recreation or other department-approved area.

(d) Substitutes. In the absence of a regular staff member, there shall be a similarly qualified substitute who is at least 18 years old, but when the regular staff member is not expected to be absent for more than 3 days a person not meeting the educational qualifications under par. (a), (b) or (c) may substitute for the regular staff member if a qualified person is not available.

(e) Staff records. The school-age day care program shall maintain a record for each employe which is available to the county or tribal agency and includes:

1. The name, address, date of birth, education, position, names and addresses of employers in previous work experience in child care, the name, address and telephone number of a person to be notified in an emergency, and a statement signed by the employe affirming that he or she has not been convicted or is not the subject of a pending criminal charge as specified under s. HSS 55.59 (1);

2. Evidence that the employe is free from tuberculosis; and
3. Documentation of educational qualifications for the position.

(3) **ORIENTATION.** Each program shall develop and implement an orientation program which shall be given to all new staff and volunteers in the first week that they are working in the program. This orientation shall include:

- (a) Review of health, nutrition and discipline policies;
- (b) Review of plans for evacuation and other emergencies;
- (c) Training in emergency procedures and use of first-aid;
- (d) Review of all applicable parts of this subchapter;
- (e) Review of the program's activity schedules;
- (f) Training in the recognition of signs of child abuse and neglect and explanation of responsibilities for reporting suspected cases of child abuse or neglect;
- (g) Explanation of job responsibilities and job descriptions; and
- (h) Training in the recognition of childhood illnesses.

(4) **FACILITY.** (a) General rules. 1. A program shall consult local authorities to obtain any required zoning clearances or building permits.

2. There shall be a report of inspection which indicates approval of the building by the state department of commerce or by a certified agent of that department. The building shall comply with applicable state and local building codes.

(b) Indoor space. 1. The space used by children shall be no less than 35 square feet (3.3 sq. meters) of usable floor space per child.

2. The indoor area shall be free of hazards, and items that may be harmful to children such as medications, drugs, poisons, insecticides, weapons, matches, cigarette lighters and flammable liquids shall be kept out of reach of the children.

(d) Swimming pool. 1. A program which has a swimming pool on its premises shall comply with the requirements of chs. ILHR 90 and HSS 172, relating to swimming pool safety.

2. The program shall maintain a ratio of one person qualified by Red Cross, Boy Scouts, Young Men's Christian Association or other generally accepted lifesaving certificate for every 25 children in the water.

(5) CHILD HEALTH CARE. (a) Within 30 days after a child is enrolled, the program shall have on file a health history for that child.

(b) The program shall isolate any ill child and contact the parent or designated responsible person as soon as possible to arrange for removal of the child from the program.

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

(d) Pets that are kept on the premises shall be tolerant of children and vaccinated against rabies.

(e) Staff shall wash hands with soap and warm running water after toileting and prior to food service and preparation.

(f) All children in care shall wash their hands with soap and warm running water before eating and after toileting.

(6) STAFFING AND GROUPING. (a) At least one person meeting the qualifications of a program leader shall supervise each group of children.

(b) There shall be no more than 32 children in a group.

(c) There shall be at least one staff member for every 16 children.

(d) Children who are relatives of staff are counted in the group size and ratio calculations.

(e) In a program with 10 or more children present, there shall be at least 2 adults available at all times on the premises.

(7) EMERGENCIES. (a) A program shall have a phone in working order to which the staff has access and a list of emergency phone numbers posted on or near the phone. The list shall include numbers for the rescue squad, police, fire station, emergency medical care and poison control center.

(b) A program shall have on file:

1. The parents' home and work phone numbers;
2. The parents' signed consent for emergency care; and
3. A name and number to call if a child requires emergency medical care.



(c) The program shall maintain first-aid supplies and staff shall wash superficial wounds with soap and water before bandaging.

(8) SANITATION. (a) The premises shall be clean, uncluttered and free of insects and rodents.

(b) Bathrooms, including toilets and sinks, shall be clean and in good working condition.

(c) When a public water supply is not available, the well water shall be tested and found to be bacteriologically safe by the state laboratory of hygiene or a laboratory certified under ch. HSS 165 prior to or within 3 months of initial certification.

(d) Areas, equipment and utensils for food preparation, serving and clean-up shall be kept clean and sanitary.

(e) Children may not share cups, eating utensils, washcloths or towels.

(9) STAFF INTERACTIONS WITH CHILDREN. Staff shall interact with the children in a caring and positive manner and:

(a) Shall protect children in their care from danger and be aware of where each child is at all times;

(b) May not hit, spank, pinch, shake or inflict any other form of corporal punishment on a child, or use any discipline which is frightening to the child; and

(c) May not verbally abuse or threaten a child or make derogatory remarks about the child or the child's family.

(10) ACTIVITIES AND EQUIPMENT. (a) The program shall implement a schedule of activities which include:

1. A variety of activities which ensure that each child is involved in both active and quiet play;

2. Opportunities for each child to use a variety of materials and equipment; and

3. Opportunities for each child to be involved in a variety of activities during a week and to select and plan his or her own activities.

(b) Television viewing, if part of the activities, may not exceed one hour a day per child and shall be appropriate for the children in care.

(11) MEALS AND SNACKS. (a) A program operating for less than 4 hours shall ensure that each child is served a snack.

(b) A program operating 4 or more hours shall ensure that each child is served one meal or one snack at least once every 3 hours.

(c) For each child served a noon or evening meal, that meal shall consist of a protein food, fruit and vegetable, a cereal or bread product and pasteurized grade A vitamin D milk.

(d) Snacks shall consist of at least one of the following: milk or a milk product, fruit, fruit juice, vegetable, peanut butter or other protein, whole grain or enriched bread or cereal. When only fruit juice is served, it shall be pure fruit juice.

(12) TRANSPORTATION. (a) The program shall have a written agreement with each child's parent or guardian, and signed by the parent or guardian, which specifies how the child will be transported to and from the program.

(b) A driver for the program shall hold a valid Wisconsin operator's license of whatever type is required.

(c) Any vehicle used by the program to transport children shall be registered in Wisconsin.

(d) Any vehicle used by the program to transport children shall be in safe operating condition and at 12-month intervals the school-age day care program shall provide evidence of the vehicle's safe operating condition.

(e) Each child and adult being transported in a vehicle with a seating capacity of 15 or fewer shall be seated and properly restrained in an individual vehicle seat belt or a car safety seat.

(13) PARENTS. The program shall allow parents to visit and observe the program at any time during the hours of operation.

(14) INSURANCE. The program shall provide documentation of insurance coverage by submitting to the county or tribal agency a certificate of insurance reflecting current dates of coverage for:

(a) General liability insurance which provides coverage with limits of not less than \$25,000 for each person and total limits of \$75,000 for each occurrence;

(b) Vehicle liability insurance when transportation is provided, with minimums no less than those specified in s. 121.53, Stats.; and

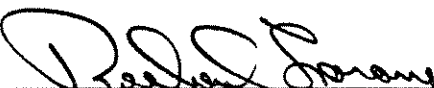

(c) Non-owned vehicle liability insurance when transportation is provided by other than center-owned vehicles.

SECTION 2. HSS 55.63 is repealed.

The rules contained in this order shall take effect as emergency rules on July 1, 1996.

Wisconsin Department of Health and  
Social Services

Dated: June 25, 1996

By:   
Joe Leean  
Secretary 

SEAL: