



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 01-138

AN ORDER to create chapter DWD 44, relating to child support incentive payments.

Submitted by **DEPARTMENT OF WORKFORCE DEVELOPMENT**

11-30-01 RECEIVED BY LEGISLATIVE COUNCIL.

01-03-02 REPORT SENT TO AGENCY.

RNS:AS:jal;rv

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



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CLEARINGHOUSE RULE 01-138

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

2. Form, Style and Placement in Administrative Code

In s. DWD 44.02 (1), the U.S. Code citation should be included.

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

In s. DWD 44.05 (2), pars. (f) and (g) should have titles for consistency with the preceding paragraphs. Also, in par. (f), "measures under pars. (a) to (e)" should replace "above measures."

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

a. In s. DWD 44.01, "a procedure" should be replaced with "the procedure."

b. In s. DWD 44.02 (2), the language in the definition relating to alleged fathers who may be obligated at some point to pay child support seems to be too broad. It suggests that any person who may ever be required to pay child support for a child receiving IV-D services could be counted as a case. It would be clearer if alleged fathers were discussed in a separate sentence and if there was a requirement that a case is pending relating to the person's potential support obligation or the child is receiving IV-D services during the year in question.

c. In s. DWD 44.02 (4), "percent" should be replaced with "percentage" and "will receive" should be replaced with "receives."

d. In s. DWD 44.02 (10), "a number" should be replaced with "the number."

e. In s. DWD 44.04 (1) (b), "should" should be replaced with "shall."

f. In s. DWD 44.04 (2), "will" should be replaced with "shall."

g. In s. DWD 44.05 (2) (a) (intro.), "may be" should be replaced with "is."

h. In s. DWD 44.05 (2) (a) 2., it appears that "minor" should be deleted.

i. In s. DWD 44.05 (2) (b), "orders" should be inserted at the end of the sentence.

j. In s. DWD 44.05 (2) (d), what is meant by "eligible IV-D cases"?

k. In s. DWD 44.05 (3), "will use" should be replaced with "shall follow."

l. In s. DWD 44.06 (1) (intro.), "all of the following" should be inserted at the end of the sentence.

m. In s. DWD 44.06 (1) (b) (intro.), "the following" should be inserted before "two methods."

n. In s. DWD 44.07 (1), will readers of the rule understand the significance of the ellipsis in the formula?

State of Wisconsin
Department of Workforce Development

DWD 44
Child Support Incentive Payments

The Wisconsin Department of Workforce Development proposes an order to create chapter DWD 44, relating to child support incentive payments.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 49.24, and 227.11, Stats.

Statute interpreted: s. 49.24, Stats.

Relevant federal law: 42 USC 658a; 45 CFR Part 305

Pursuant to s. 49.24, Stats., the Department of Workforce Development distributes child support incentive payments to counties. A county may use the payments only to pay costs under its child support program. Funding for the incentive payments is from monies that Wisconsin earns under the federal child support incentive payment program and from child support assigned to the state by public assistance recipients. The state funds are transferred from the Wisconsin Support Collections Trust Fund to an appropriation account under s. 20.445(3)(k), Stats. Total payments to counties may not exceed \$12,340,000 per year, and payments from child support assigned to the state by public assistance recipients may not exceed \$5,690,000 per year.

The federal child support incentive payments are earned pursuant to the Child Support Performance and Incentive Act of 1998 (Pub. L. No. 105-200, 42 USC 658a) and implementing regulations published in the *Federal Register* on December 27, 2000. Under federal law, states compete against one another for a share of an incentive payment pool that is set by statute. A state's share of the incentive payment pool is determined by the state's performance on federal performance measures relative to the performance of other states. Pursuant to 45 CFR 302.55, the state must share incentives earned with any political subdivision that shares in funding the administrative cost of the state's child support program.

The proposed rule specifies a procedure for distributing incentive payments to counties and tribes that enter into a cooperative agreement with the department for the delivery of child support services under the state child support plan. The proposed rule is based on the federal procedure for distributing incentive payments to states, and the focus of the rule is to provide incentives for agency performance that will maximize the amount of the federal incentive payment that Wisconsin receives.

The proposed rule provides that the department consult with representatives of child support agencies in implementing the procedure for distributing incentive payments to counties. The representatives are a subcommittee of the members of the child support policy advisory committee known as the county contract committee. The county contract committee is appointed

by local child support agency representatives on the policy advisory committee and serves to advise the department on matters relating to child support incentive payments.

In consultation with the county contract committee, the department will estimate the total state and federal incentive funding that will be available for distribution to counties in the following year. In consultation with the county contract committee, the department determines each county's allocation, or share of the projected incentive funding, based on the following criteria: all child support agencies shall have funds available to achieve performance measures, agencies of similar size should receive equitable treatment, and a high level of performance is necessary in the large Wisconsin agencies to maximize the federal share of incentives. The allocation is the estimated minimum incentive payment amount that the agency is expected to receive if the actual incentive funding is equal to or exceeds the projected incentive funding and the agency's earned level is 100%.

In consultation with the county contract committee, the department establishes measures of performance and agencies earn incentive payments based on individual agency performance under each performance measure. The state measures for agency performance include one or more of the following federal measures for state performance:

- paternity establishment
- support order establishment
- collection of current child support due
- collection of child support arrearages
- cost effectiveness

The state performance measures also include any other measures or any modification to the measures used by the federal Office of Child Support Enforcement in providing incentive payments to states and any other measures as determined by the department in consultation with the county contract committee.

In consultation with the county contract committee, the department determines the weight to be given each performance measure and performance scales for each performance measure. The performance scales are used to determine agency earned levels for each performance measure. There are two methods of determining earned levels: (1) a table with performance levels and corresponding earned levels based on the federal performance levels, taking into account any potential federal penalties, or (2) an alternative method of evaluating performance levels based on an agency's incremental change from the agency's performance in the preceding year. In making the determinations, the department and agency representatives will consider state performance levels necessary to avoid federal penalties, past state performance on federal performance measures, projected future state performance on federal performance measures, and circumstances beyond the control of agencies that affect agency performance. The overall purpose of the determinations is to target areas for statewide improvement to maximize the state share of federal incentive dollars while ensuring that agencies have funds available to achieve the purposes of the child support program.

The formula to determine the amount of an agency's incentive payment is a 4-step process as follows:

1. The first step is determining each agency's combined earnings by adding the agency earned amounts for each performance measure. The agency's allocation is multiplied by the weighted earned level for each performance measure to determine the earned amount for each measure.
2. The second step is determining the statewide combined earnings by adding the agency combined earnings for all agencies.
3. The third step is determining each agency's share of the total available incentive funding by dividing the agency combined earnings by the statewide combined earnings.
4. The fourth step is determining each agency's incentive payment amount by multiplying the agency's share of the total available incentive funding by the total available incentive funding.

The department will distribute the total available incentive funding to counties and eligible tribes or tribal organizations. A tribe or tribal organization that enters into a cooperative agreement with the department for the delivery of child support services under the state plan pursuant to 42 USC 654(33) shall receive an incentive payment under this chapter based on the same criteria and subject to the same restrictions as counties carrying out activities under the state plan. A tribe or tribal organization that receives direct tribal child support enforcement funding pursuant to 42 USC 655(f) may not receive an incentive payment under this chapter.

The total incentive payment to a county under this chapter may not exceed the costs per year of the county's child support program. A county that receives an incentive payment may use the funds only to pay costs under its child support program. A county that receives an incentive payment may use the funds only to supplement, and not supplant, the baseline level of county funding for its child support program as determined by averaging the county's contribution to its IV-D expenditures in calendar years 1996, 1997, and 1998, unless waived by the department. The department will waive this requirement if the state is in compliance with federal reinvestment requirements under 45 CFR 305.35.

SECTION 1. Chapter DWD 44 is created to read:

Chapter DWD 44

CHILD SUPPORT INCENTIVE PAYMENTS

DWD 44.01 Authority and purpose. This chapter is promulgated under the authority of s. 49.24, Stats., for the purpose of specifying a procedure by which the department will distribute federal and state child support incentive payments to counties. 5

DWD 44.02 Definitions. In this chapter:

(1) "IV-D" means part D of title IV of the social security act of 1975, the federal law on the child support and establishment of paternity program. *UJC cite*

(2) "IV-D case" means a parent or alleged father who is ~~now or eventually may be~~ obligated under law for the support of a child or children receiving services under the title IV-D program. 57
A parent or alleged father is a separate IV-D case for each family with a dependent child or children that the parent or alleged father may be obligated to support. If both parents are absent and liable or potentially liable for support of a child or children receiving services under the IV-D program, each parent is considered a separate IV-D case. *"IV-D case"*

(3) "Agency combined earnings" means each agency's total earned amounts.

(4) "Agency share of total available incentive funding" means the percent of actual total funding available for distribution under s. 49.24, Stats., that an agency will receive.

(5) "Allocation" means the estimated minimum incentive payment amount that the agency is expected to receive if the total available incentive funding is equal to or exceeds the projected incentive funding and the agency's earned level is 100%. *on budget...*

(6) "Child support agency" or "agency" means the county child support agency under s. 59.53 (5), Stats.

(7) "County contract committee" means a subcommittee of the members of the child support policy advisory committee, as appointed by local child support agency representatives on the policy advisory committee, that serves to advise the department on matters relating to child support incentive payments.

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

(9) "Earned amount" means an agency's allocation multiplied by the agency's weighted earned level for an individual performance measure.

(10) "Earned level" means a number that is determined based on an agency's performance level on an individual performance measure and that is used in calculating an agency's earned amount for that performance measure. 5

(11) "Federal fiscal year" means October 1 of one year through September 30 of the following year.

(12) "Incentive payment amount" means the dollar amount the agency receives pursuant to s. 49.24, Stats.

(13) "Office of child support enforcement" means the office that administers the IV-D program within the federal department of health and human services, administration for children and families.

(14) "Performance level" means an agency's score on a performance measure.

(15) "Performance measure" or "measure of performance" means a standard used to evaluate agency performance for purposes of determining incentive payment amounts under s. 49.24, Stats.

(16) "Performance scale" means a table of agency performance levels and corresponding earned levels used in calculating an agency's incentive payment amount.

(17) "Projected incentive funding" means the estimated total funding that will be available for distribution to counties under s. 49.24, Stats.

(18) "Statewide combined earnings" means the total of agency combined earnings for all agencies.

(19) "Total available incentive funding" means the actual total funding available for distribution to counties under s. 49.24, Stats., as determined by the department, for a particular contract year.

DWD 44.03 Projected incentive funding. In consultation with the county contract committee, the department shall estimate the total state and federal incentive funding that will be available for distribution to counties under s. 49.24, Stats., in the following year.

DWD 44.04 Allocation to counties. (1). ALLOCATION CRITERIA. In consultation with the county contract committee, the department shall determine the amount of the projected incentive funding that will be allocated to each county using the following criteria:

(a) All child support agencies shall have funds available to achieve performance measures.

(b) Agencies of similar size should receive equitable treatment. sh. u. 5

(c) A high level of performance is necessary in the large Wisconsin agencies to maximize the federal share of incentives.

(2) NOTICE. The department will make a good faith effort to notify agencies of the estimated allocation for each county in time for agencies to plan their budgets for the following year.

DWD 44.05 Performance measures. (1) In consultation with the county contract committee, the department shall establish state measures of performance, and agencies shall earn incentive payments specified under s. 49.24, Stats., based on individual agency performance under each measure of performance.

(2) The state measures of performance shall include one or more of the following:

(a) *Paternity establishment percentage.* The paternity establishment percentage may be one of the following:

1. The ratio of the total number of nonmarital children in the IV-D caseload in the federal fiscal year or as of the end of the federal fiscal year for whom paternity is established or acknowledged to the total number of nonmarital children in the IV-D caseload as of the end of the preceding federal fiscal year.

2. The ratio of the total number of minor nonmarital children for whom paternity has been established or acknowledged during the federal fiscal year to the total number of nonmarital children born during the preceding federal fiscal year.

(b) *Support order establishment measure.* The support order establishment measure is the ratio of the number of IV-D cases with support orders during the federal fiscal year to the total number of IV-D cases during the federal fiscal year. These support orders include all types of legally enforceable orders, such as court, default, and administrative.

(c) *Current collections measure.* The current collections measure is the ratio of the total dollars collected for current support in IV-D cases to the total dollars owed for current support in IV-D cases.

(d) *Arrears collection measure.* The arrears collection measure is the ratio of the total number of eligible IV-D cases paying toward arrears to the total number of IV-D cases with arrears due.

(e) *Cost-effectiveness measure.* The cost-effectiveness measure is the ratio of the total IV-D dollars collected to the total IV-D dollars expended.

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(f) Any other measures or any modification to the above measures used by the federal office of child support enforcement in providing incentive payments to states pursuant to 45 CFR Part 305.

(g) Any other measures as determined by the department in consultation with the county contract committee.

(3) The state measures for agency performance in par. (2) (a) to (f) are based on federal measures for state performance at 45 CFR Part 305. The department will use the federal office of child support enforcement interpretation to resolve any ambiguities on the measures in sub. (2) (a) to (f).

DWD 44.06 Performance levels. (1) In consultation with the county contract committee, the department shall determine:

(a) *Weight.* A weight to be given each performance measure in s. DWD 44.05(2). The combined weight of the measures shall total 100%.

(b) *Performance scales.* Performance scales used to determine agency earned levels based on performance on each measure in s. DWD 44.05(2). There shall be two methods of determining earned levels:

1. Performance levels and corresponding earned levels based on federal performance levels at 45 CFR 305.33, taking into consideration any potential penalties under 45 CFR 305.40.

2. An alternative method of evaluating performance levels based on an agency's incremental change from the agency's performance in the preceding year.

(2) The purpose of the determinations in sub. (1) is to target areas for statewide improvement to maximize the state share of federal incentive dollars under 45 CFR Part 305 while ensuring that agencies have funds available to achieve the purposes of the child support program. The following factors shall be considered in making the determinations in sub. (1):

(a) State performance levels necessary to avoid federal penalties under 45 CFR 305.40.

(b) Past state performance on federal performance measures.

(c) Projected future state performance on federal performance measures.

(d) Circumstances beyond the control of agencies that affect agency performance.

DWD 44.07 Incentive payment formula. The formula to determine the amount of an agency's incentive payment is a 4-step process as follows:

(1) The first step is determining each agency's combined earnings by adding the agency earned amounts for each performance measure. The agency's allocation under s. DWD 44.04 is multiplied by the weighted earned level determined pursuant to s. DWD 44.06(1) for each performance measure under s. DWD 44.05 to determine the earned amount for each measure. The formula for this step is (allocation x earned level x weight for performance measure 1) + (allocation x earned level x weight for performance measure 2) + ... (allocation x earned level x weight for performance measure *N*) = agency combined earnings.

(2) The second step is determining the statewide combined earnings by adding the agency combined earnings from sub. (1) for all agencies.

(3) The third step is determining each agency's share of the total available incentive funding by dividing the agency combined earnings under sub. (1) by the statewide combined earnings under sub. (2).

(4) The fourth step is determining each agency's incentive payment amount by multiplying the agency's share of the total available incentive funding under sub. (3) by the total available incentive funding.

DWD 44.08 Distribution and use of incentive payments. (1) The department shall distribute the total available incentive funding under s. 49.24, Stats., to counties and to tribes or tribal organizations eligible under sub. (2).

(2) A tribe or tribal organization that enters into a cooperative agreement with the department for the delivery of child support services under the state plan pursuant to 42 USC 654(33) shall receive an incentive payment under this chapter based on the same criteria and subject to the same restrictions as counties carrying out activities under the state plan. A tribe or tribal organization that receives direct tribal child support enforcement funding pursuant to 42 USC 655(f) may not receive an incentive payment under this chapter.

(3) The total state and federal incentive payments to a county per year under s. 49.24, Stats., may not exceed the costs per year of the county's child support program under s. 49.22, Stats.

(4) A county that receives any state or federal incentive payments under s. 49.24, Stats., may use the funds only to pay costs under its child support program under s. 49.22, Stats.

(5) A county that receives any state or federal incentive payments under s. 49.24, Stats., may use the funds only to supplement, and not supplant, the baseline level of county funding for its child support program as determined by averaging the county's contribution to its IV-D expenditures in calendar years 1996, 1997, and 1998, unless waived by the department. The department will waive this subsection if the state is in compliance with 45 CFR 305.35.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Scott McCallum
Governor

Jennifer Reinert
Secretary



OFFICE OF THE SECRETARY

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**State of Wisconsin
Department of Workforce Development**

February 19, 2002

President of the Senate
220 South, State Capitol
Madison, Wisconsin 53702

Speaker of the Assembly
211 West, State Capitol
Madison, Wisconsin 53702

Notice of Administrative Rules in Final Draft Form

Clearinghouse rule number: 01-138

Rule number: DWD 44

Relating to: Child support incentive payments

Dear Senator Risser and Representative Jensen:

I have enclosed proposed rules in final draft form and a rule report as required by s. 227.19(3), Stats., for referral to the appropriate legislative standing committees. If you have any questions regarding this matter, please do not hesitate to contact us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jennifer Reinert', written in a cursive style.

Jennifer Reinert
Secretary

Scott McCallum
Governor

Jennifer Reinert
Secretary



State of Wisconsin

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Department of Workforce Development

Rule Analysis for Legislative Review

**Proposed rules relating to child support incentive payments
Chapter DWD 44
CR 01-138**

Need for rules

The proposed rules specify the procedure by which the department will distribute federal and state child support incentive payments to counties pursuant to s. 49.24, Stats.

Public hearing response

A public hearing was held in Madison on January 7, 2002. There were no appearances and no comments were received.

Response to Legislative Council staff recommendations

No change was made in response to comments 5.b., 5.h., or 5.j. because the language in the proposed rule is from the federal regulation on the distribution of federal child support incentive payments to states. The department will interpret this language in the manner determined by the federal Office of Child Support Enforcement. Other comments were accepted.

Final regulatory flexibility analysis

The proposed rule does not affect small business as defined in s. 227.14, Stats.

Fiscal effect

Section 49.24, Stats., provides for the distribution of child support incentive payments to counties using a combination of state and federal funds. The maximum annual distribution amount is \$12,340,000, of which a maximum of \$5,690,000 may be from state funds. Non-GPR funds from child support assigned to the state by public assistance recipients are used for the state component. The remainder of the annual distribution is dependent on the amount of federal funds available. The proposed rule is designed to provide incentives for counties to perform well on measures that will earn Wisconsin an increased incentive payment from the federal Office of Child Support Enforcement. If the state performs well on the federal performance measures in relation to other states, more federal incentive money will be available for distribution to counties. Under current law, this will not change the maximum amount that may be distributed under s. 49.24, Stats., but it may change the proportion of federal and state funds used in a given year, and it may increase the likelihood that the maximum of \$12,340,000 is available.

Department contacts

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267-4337

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Administrative Rules Coordinator
Office of Legal Counsel
267-9403

State of Wisconsin
Department of Workforce Development

DWD 44
Child Support Incentive Payments

The Wisconsin Department of Workforce Development proposes an order to create chapter DWD 44, relating to child support incentive payments.

Analysis Prepared by the Department of Workforce Development

Statutory authority: ss. 49.24, and 227.11, Stats.

Statute interpreted: s. 49.24, Stats.

Relevant federal law: 42 USC 658a; 45 CFR Part 305

Pursuant to s. 49.24, Stats., the Department of Workforce Development distributes child support incentive payments to counties. A county may use the payments only to pay costs under its child support program. Funding for the incentive payments is from monies that Wisconsin earns under the federal child support incentive payment program and from child support assigned to the state by public assistance recipients. The state funds are transferred from the Wisconsin Support Collections Trust Fund to an appropriation account under s. 20.445(3)(k), Stats. Total payments to counties may not exceed \$12,340,000 per year, and payments from child support assigned to the state by public assistance recipients may not exceed \$5,690,000 per year.

The federal child support incentive payments are earned pursuant to the Child Support Performance and Incentive Act of 1998 (Pub. L. No. 105-200, 42 USC 658a) and implementing regulations published in the *Federal Register* on December 27, 2000. Under federal law, states compete against one another for a share of an incentive payment pool that is set by statute. A state's share of the incentive payment pool is determined by the state's performance on federal performance measures relative to the performance of other states. Pursuant to 45 CFR 302.55, the state must share incentives earned with any political subdivision that shares in funding the administrative cost of the state's child support program.

The proposed rule specifies the procedure for distributing incentive payments to counties and tribes that enter into a cooperative agreement with the department for the delivery of child support services under the state child support plan. The proposed rule is based on the federal procedure for distributing incentive payments to states, and the focus of the rule is to provide incentives for agency performance that will maximize the amount of the federal incentive payment that Wisconsin receives.

The proposed rule provides that the department consult with representatives of child support agencies in implementing the procedure for distributing incentive payments to counties. The representatives are a subcommittee of the members of the child support policy advisory committee known as the county contract committee. The county contract committee is appointed

by local child support agency representatives on the policy advisory committee and serves to advise the department on matters relating to child support incentive payments.

In consultation with the county contract committee, the department will estimate the total state and federal incentive funding that will be available for distribution to counties in the following year. In consultation with the county contract committee, the department determines each county's allocation, or share of the projected incentive funding, based on the following criteria: all child support agencies shall have funds available to achieve performance measures, agencies of similar size should receive equitable treatment, and a high level of performance is necessary in the large Wisconsin agencies to maximize the federal share of incentives. The allocation is the estimated minimum incentive payment amount that the agency is expected to receive if the actual incentive funding is equal to or exceeds the projected incentive funding and the agency's earned level is 100%.

In consultation with the county contract committee, the department establishes measures of performance and agencies earn incentive payments based on individual agency performance under each performance measure. The state measures for agency performance include one or more of the following federal measures for state performance:

- paternity establishment
- support order establishment
- collection of current child support due
- collection of child support arrearages
- cost effectiveness

The state performance measures also include any other measures or any modification to the measures used by the federal Office of Child Support Enforcement in providing incentive payments to states and any other measures as determined by the department in consultation with the county contract committee.

In consultation with the county contract committee, the department determines the weight to be given each performance measure and performance scales for each performance measure. The performance scales are used to determine agency earned levels for each performance measure. There are two methods of determining earned levels: (1) a table with performance levels and corresponding earned levels based on the federal performance levels, taking into account any potential federal penalties, or (2) an alternative method of evaluating performance levels based on an agency's incremental change from the agency's performance in the preceding year. In making the determinations, the department and agency representatives will consider state performance levels necessary to avoid federal penalties, past state performance on federal performance measures, projected future state performance on federal performance measures, and circumstances beyond the control of agencies that affect agency performance. The overall purpose of the determinations is to target areas for statewide improvement to maximize the state share of federal incentive dollars while ensuring that agencies have funds available to achieve the purposes of the child support program.

The formula to determine the amount of an agency's incentive payment is a 4-step process as follows:

1. The first step is to determine an agency's earned amount for each performance measure by multiplying each agency's allocation by the weighted earned level for each measure. The agency's earned amounts for all measures are then added to determine the agency's combined earnings.

2. The second step is determining the statewide combined earnings by adding the agency combined earnings for all agencies.

3. The third step is determining each agency's share of the total available incentive funding by dividing the agency combined earnings by the statewide combined earnings.

4. The fourth step is determining each agency's incentive payment amount by multiplying the agency's share of the total available incentive funding by the total available incentive funding.

The department will distribute the total available incentive funding to counties and eligible tribes or tribal organizations. A tribe or tribal organization that enters into a cooperative agreement with the department for the delivery of child support services under the state plan pursuant to 42 USC 654(33) shall receive an incentive payment under this chapter based on the same criteria and subject to the same restrictions as counties carrying out activities under the state plan. A tribe or tribal organization that receives direct tribal child support enforcement funding pursuant to 42 USC 655(f) may not receive an incentive payment under this chapter.

The total incentive payment to a county under this chapter may not exceed the costs per year of the county's child support program. A county that receives an incentive payment may use the funds only to pay costs under its child support program. A county that receives an incentive payment may use the funds only to supplement, and not supplant, the baseline level of county funding for its child support program as determined by averaging the county's contribution to its IV-D expenditures in calendar years 1996, 1997, and 1998, unless waived by the department. The department will waive this requirement if the state is in compliance with federal reinvestment requirements under 45 CFR 305.35.

SECTION 1. Chapter DWD 44 is created to read:

Chapter DWD 44
CHILD SUPPORT INCENTIVE PAYMENTS

DWD 44.01 Authority and purpose. This chapter is promulgated under the authority of s. 49.24, Stats., for the purpose of specifying the procedure by which the department will distribute federal and state child support incentive payments to counties.

DWD 44.02 Definitions. In this chapter:

(1) "IV-D" means part D of title IV of the social security act of 1975, the federal law on the child support and establishment of paternity program (42 USC 651 to 669b).

(2) "IV-D case" means a parent or alleged father who is now or eventually may be obligated under law for the support of a child or children receiving services under the title IV-D program. A parent or alleged father is a separate IV-D case for each family with a dependent child or children that the parent or alleged father may be obligated to support. If both parents are absent and liable or potentially liable for support of a child or children receiving services under the IV-D program, each parent is considered a separate IV-D case.

(3) "Agency combined earnings" means each agency's total earned amounts.

(4) "Agency share of total available incentive funding" means the percentage of actual total funding available for distribution under s. 49.24, Stats., that an agency receives.

(5) "Allocation" means the estimated minimum incentive payment amount that the agency is expected to receive if the total available incentive funding is equal to or exceeds the projected incentive funding and the agency's earned level is 100%.

(6) "Child support agency" or "agency" means the county child support agency under s. 59.53 (5), Stats.

(7) "County contract committee" means a subcommittee of the members of the child support policy advisory committee, as appointed by local child support agency representatives on the policy advisory committee, that serves to advise the department on matters relating to child support incentive payments.

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

(9) "Earned amount" means an agency's allocation multiplied by the agency's weighted earned level for an individual performance measure.

(10) "Earned level" means the number that is determined based on an agency's performance level on an individual performance measure and that is used in calculating an agency's earned amount for that performance measure.

(11) "Federal fiscal year" means October 1 of one year through September 30 of the following year.

(12) "Incentive payment amount" means the dollar amount the agency receives pursuant to s. 49.24, Stats.

(13) "Office of child support enforcement" means the office that administers the IV-D program within the federal department of health and human services, administration for children and families.

(14) "Performance level" means an agency's score on a performance measure.

(15) "Performance measure" or "measure of performance" means a standard used to evaluate agency performance for purposes of determining incentive payment amounts under s. 49.24, Stats.

(16) "Performance scale" means a table of agency performance levels and corresponding earned levels used in calculating an agency's incentive payment amount.

(17) "Projected incentive funding" means the estimated total funding that will be available for distribution to counties under s. 49.24, Stats.

(18) "Statewide combined earnings" means the total of agency combined earnings for all agencies.

(19) "Total available incentive funding" means the actual total funding available for distribution to counties under s. 49.24, Stats., as determined by the department, for a particular contract year.

DWD 44.03 Projected incentive funding. In consultation with the county contract committee, the department shall estimate the total state and federal incentive funding that will be available for distribution to counties under s. 49.24, Stats., in the following year.

DWD 44.04 Allocation to counties. (1). ALLOCATION CRITERIA. In consultation with the county contract committee, the department shall determine the amount of the projected incentive funding that will be allocated to each county using the following criteria:

- (a) All child support agencies shall have funds available to achieve performance measures.
- (b) Agencies of similar size shall receive equitable treatment.

(c) A high level of performance is necessary in the large Wisconsin agencies to maximize the federal share of incentives.

(2) NOTICE. The department shall make a good faith effort to notify agencies of the estimated allocation for each county in time for agencies to plan their budgets for the following year.

DWD 44.05 Performance measures. (1) In consultation with the county contract committee, the department shall establish state measures of performance, and agencies shall earn incentive payments specified under s. 49.24, Stats., based on individual agency performance under each measure of performance.

(2) The state measures of performance shall include one or more of the following:

(a) *Paternity establishment percentage.* The paternity establishment percentage is one of the following:

1. The ratio of the total number of nonmarital children in the IV-D caseload in the federal fiscal year or as of the end of the federal fiscal year for whom paternity is established or acknowledged to the total number of nonmarital children in the IV-D caseload as of the end of the preceding federal fiscal year.

2. The ratio of the total number of minor nonmarital children for whom paternity has been established or acknowledged during the federal fiscal year to the total number of nonmarital children born during the preceding federal fiscal year.

(b) *Support order establishment measure.* The support order establishment measure is the ratio of the number of IV-D cases with support orders during the federal fiscal year to the total number of IV-D cases during the federal fiscal year. These support orders include all types of legally enforceable orders, such as court, default, and administrative orders.

(c) *Current collections measure.* The current collections measure is the ratio of the total dollars collected for current support in IV-D cases to the total dollars owed for current support in IV-D cases.

(d) *Arrears collection measure.* The arrears collection measure is the ratio of the total number of eligible IV-D cases paying toward arrears to the total number of IV-D cases with arrears due.

(e) *Cost-effectiveness measure.* The cost-effectiveness measure is the ratio of the total IV-D dollars collected to the total IV-D dollars expended.

(f) *Other federal measures.* Any other measures or any modification to the measures under pars. (a) to (e) used by the federal office of child support enforcement in providing incentive payments to states pursuant to 45 CFR Part 305.

(g) *Other state measures.* Any other measures as determined by the department in consultation with the county contract committee.

(3) The state measures for agency performance in par. (2) (a) to (f) are based on federal measures for state performance at 45 CFR Part 305. The department shall follow the federal office of child support enforcement interpretation to resolve any ambiguities on the measures in sub. (2) (a) to (f).

DWD 44.06 Performance levels. (1) In consultation with the county contract committee, the department shall determine all of the following:

(a) *Weight.* A weight to be given each performance measure in s. DWD 44.05(2). The combined weight of the measures shall total 100%.

(b) *Performance scales.* Performance scales used to determine agency earned levels based on performance on each measure in s. DWD 44.05(2). There shall be the following two methods of determining earned levels:

1. Performance levels and corresponding earned levels based on federal performance levels at 45 CFR 305.33, taking into consideration any potential penalties under 45 CFR 305.40.

2. An alternative method of evaluating performance levels based on an agency's incremental change from the agency's performance in the preceding year.

(2) The purpose of the determinations in sub. (1) is to target areas for statewide improvement to maximize the state share of federal incentive dollars under 45 CFR Part 305 while ensuring that agencies have funds available to achieve the purposes of the child support program. The following factors shall be considered in making the determinations in sub. (1):

(a) State performance levels necessary to avoid federal penalties under 45 CFR 305.40.

(b) Past state performance on federal performance measures.

(c) Projected future state performance on federal performance measures.

(d) Circumstances beyond the control of agencies that affect agency performance.

DWD 44.07 Incentive payment formula. The formula to determine the amount of an agency's incentive payment is a 4-step process as follows:

(1) The first step is to determine an agency's earned amount for each performance measure by multiplying each agency's allocation by the weighted earned level for each measure. The agency's earned amounts for all measures are then added to determine the agency's combined earnings.

(2) The second step is determining the statewide combined earnings by adding the agency combined earnings from sub. (1) for all agencies.

(3) The third step is determining each agency's share of the total available incentive funding by dividing the agency combined earnings under sub. (1) by the statewide combined earnings under sub. (2).

(4) The fourth step is determining each agency's incentive payment amount by multiplying the agency's share of the total available incentive funding under sub. (3) by the total available incentive funding.

DWD 44.08 Distribution and use of incentive payments. (1) The department shall distribute the total available incentive funding under s. 49.24, Stats., to counties and to tribes or tribal organizations eligible under sub. (2):

(2) A tribe or tribal organization that enters into a cooperative agreement with the department for the delivery of child support services under the state plan pursuant to 42 USC 654(33) shall receive an incentive payment under this chapter based on the same criteria and subject to the same restrictions as counties carrying out activities under the state plan. A tribe or tribal organization that receives direct tribal child support enforcement funding pursuant to 42 USC 655(f) may not receive an incentive payment under this chapter.

(3) The total state and federal incentive payments to a county per year under s. 49.24, Stats., may not exceed the costs per year of the county's child support program under s. 49.22, Stats.

(4) A county that receives any state or federal incentive payments under s. 49.24, Stats., may use the funds only to pay costs under its child support program under s. 49.22, Stats.

(5) A county that receives any state or federal incentive payments under s. 49.24, Stats., may use the funds only to supplement, and not supplant, the baseline level of county funding for its child support program as determined by averaging the county's contribution to its IV-D

expenditures in calendar years 1996, 1997, and 1998, unless waived by the department. The department will waive this subsection if the state is in compliance with 45 CFR 305.35.

EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

FISCAL ESTIMATE
DOA-2048 N(R03/97)

Subject
Child Support Incentive Payments

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 WTCS Districts

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

s. 20.445 (3) (k) and (nL), Stats.

Assumptions Used in Arriving at Fiscal Estimate

Section 49.24, Stats., provides for child support incentive payments to counties using a combination of state and federal funds. The maximum annual distribution amount is \$12,340,000, of which a maximum of \$5,690,000 can come from state funds. Non-GPR funds from child support assigned to the state by public assistance are used for the state component. The state funds are transferred from the Wisconsin Support Collections Trust Fund to an appropriation account under s. 20.445(3)(k), Stats. The remainder of the annual distribution is dependent on the amount of federal funds available.

The proposed rule is a formula to distribute incentive payments available under s. 49.24, Stats. It is designed to provide incentives for counties to perform well on measures that will earn Wisconsin an increased incentive payment from the federal Office of Child Support Enforcement. If the state performs well on the federal performance measures in relation to other states, more federal incentive money will be available for distribution to counties. Under current law, this will not change the maximum amount that may be distributed under s. 49.24, Stats., but it may change the proportion of federal and state funds used in a given year, and it may increase the likelihood that the maximum of \$12,340,000 is available. A change in the mix of federal and state costs will have no net annualized fiscal effect. Any future change in costs by source of funds cannot be predicted at this time.

Long-Range Fiscal Implications

If the state receives an increased federal incentive payment, there will be a lower expenditure of state funds under s. 49.24, Stats., which caps the total payments to counties from federal and state funds at \$12,340,000 and caps the payments from state funds at \$5,690,000. Increasing the federal share of incentive payments will correspondingly decrease the state share of the \$5,690,000.

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

Authorized Signature/Telephone No.

Date

11/29/01

FISCAL ESTIMATE WORKSHEET

2001 Session

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

ORIGINAL UPDATED
 CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.
DWD 44

Subject
Child support incentive payments

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

0

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

NET ANNUALIZED FISCAL IMPACT

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

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

Authorized Signature/Telephone No.

Date