

## ☞ 07hr\_JCR-AR\_Misc\_pt06a



☞ Details: Correspondence on DWD Emergency Rule, affecting Section DWD 56, relating to childcare enrollment underutilization.

(FORM UPDATED: 08/11/2010)

# WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

## 2007-08

(session year)

## Joint

(Assembly, Senate or Joint)

## Committee for Review of Administrative Rules...

### COMMITTEE NOTICES ...

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

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

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

Department of Workforce Development  
 Secretary's Office  
 201 East Washington Avenue  
 P.O. Box 7946  
 Madison, WI 53707-7946  
 Telephone: (608) 266-3131  
 Fax: (608) 266-1784  
 Email: [dwdsec@dwd.state.wi.us](mailto:dwdsec@dwd.state.wi.us)



State of Wisconsin  
 Department of Workforce Development  
 Jim Doyle, Governor  
 Roberta Gaseman, Secretary

March 5, 2008

Representative Tamara Grigsby  
 State Capitol, P.O. Box 8952  
 Madison, WI 53708

Dear Representative Grigsby:

I received your letter and press release last Friday afternoon. I would like to respond to the points you made in your letter regarding the Department of Workforce Development's (DWD) actions to reinstate the 50% attendance-based reimbursement policy (UU 50) for our Wisconsin Shares child care subsidy program which serves low wage, working parents.

The decision to reinstate the UU 50 child care reimbursement policy, which allows full state child care reimbursement for only those children whose attendance exceeds 50%, was not easy. But, as a protector of public resources, it is my responsibility to offer the Governor and the Legislature viable options when facing a projected deficit of \$18.6 million in a DWD program, as we now do in the current fiscal year with Wisconsin Shares. As with any major decision that affects many customers, DWD did not act in a vacuum and we reviewed all possible options to address this staggering deficit. Compounding our decision, given the weak national economy, was the Legislative Fiscal Bureau's recent projection of a \$650 million shortfall in the current state biennial budget.

The Wisconsin Shares program serves approximately 57,000 children and 30,000 working parents and involves about 5,800 providers statewide. You may find it helpful to know that 31% of the providers and 47% of the children served by Wisconsin Shares reside in Milwaukee County, with the majority of Shares providers and children residing in the balance of the state.

Over the last six years, the enrollment of children statewide in Wisconsin Shares has grown by 29%, unfortunately, while our federal funds for this program have remained flat. Sadly, stagnant federal assistance in a time of increased need and inflation, really amounts to a cut in federal resources.

Knowing that growth in this program would continue and that Wisconsin is one of the most generous child care states in the country, in his 2007-09 state budget, the Governor recommended that the Legislature enact some cost control tools, such as the capacity to institute waiting lists (now used by 18 states) and limit eligibility (as most other states do). He offered these tools while increasing child care subsidy and quality funds substantially. He also knew that continued growth would certainly result in future budget shortfalls and that the state had to prepare to avert future fiscal crises. These cost-control tools were offered by the Governor because he was specifically seeking to not be short-sighted. These tools were not adopted by the Legislature.

During deliberations on the Governor's budget, however, the Joint Finance Committee, knowing that the enrollment was likely to climb and that federal block grant funding would likely remain flat, indicated that they would entertain a request from DWD for additional state funding under the Committee's 13.10 powers, if necessary. Now, however, just a few months later and with the new \$650 million state budget deficit, seeking additional Finance Committee funding is not possible as such supplemental funds are not now available to the Committee. Therefore, DWD had to take steps if we were indeed

Date  
Page 2

going to have any resources available for paying child care providers at the end of the current fiscal year and biennium.

When considering the cost-saving options available to DWD at this time, we rejected the following:

- ✓ the Wisconsin Council on Children and Families' proposal offered last year for attendance-based monitoring and reformatting as the Legislative Fiscal Bureau estimated that it would generate only \$1 million in savings;
- ✓ parent co-payment increases which would have had to triple to generate savings of \$16.6 million; and,
- ✓ provider rate reductions which would have reduced provider reimbursement rates by double-digit levels.

Additionally, DWD rejected 100% attendance-based reimbursement even though we now know that ten states use this child care reimbursement system. In a recent review of DWD's child care records we did find that Wisconsin pays over \$45 million per year for child care services when enrollment authorized children are not in attendance. And, of course, seeking to address the child care shortfall within a budget repair bill is not workable as such a bill has to cut state spending to fill the state budget hole, not add new spending to compound the state deficit.

Based on these facts and considerations, DWD chose the only administrative option which could responsibly address the current \$18.6 million child care deficit, the UU 50 attendance and reimbursement policy. Also, you should know that we had to act expeditiously, as the longer we would have waited to act, with spending continuing at growing levels, the less time we would have had to close the gap, leaving only a more severe burden for providers.

Knowing that communicating this policy to parents, providers and stakeholders was critically important, DWD immediately began reaching out and we will continue to multiply our outreach in the coming days and weeks. Already planned are the following:

- ✓ letters to parents, providers, and counties;
- ✓ check stuffers to providers;
- ✓ community meetings and listening sessions, including a March 10 informational meeting in Milwaukee;
- ✓ operations memo to counties and tribes;
- ✓ language-translated materials to parents;
- ✓ a teleconference with all counties and tribes;
- ✓ listserv notices to income maintenance supervisors and staff, W-2 agencies, workforce development boards, job center and training staff and child care coordinators;
- ✓ child care website updates;
- ✓ emails to partners;
- ✓ fact sheets for legislators;
- ✓ newsletter articles for Child Care Information Center, Child Care Resource and Referral Agencies and other provider outlets such as the child care subsidy newsletter;
- ✓ information to foster care and kinship care parents;
- ✓ brochures for all providers and counties in English, Spanish and Hmong; and,
- ✓ posters for providers, parents, counties, tribes and communities.

Also, as we did last year, we have again arranged for a special attendance hotline for Milwaukee parents so that they may call in absences.

I also hope that you are aware that when DWD originally proposed the UU 50 policy last year, we received about 200 complaints, mostly at the start of the program. As the program proceeded, fewer complaints were received as parents and providers became familiar with the attendance reporting

Date  
Page 3

process. At the level of 200 complaints over the course of several months, that amounts to less than 1% of the 60,000 children served by Wisconsin Shares.

However, to ensure that counties and tribes administer the reporting in a timely manner, our Child Care Section staff will establish a hotline for statewide providers to allow the state to pursue adequate processing by the counties and tribes, facilitating timely payments to providers and accurate reporting of attendance.

We welcome other outreach suggestions not already anticipated and will make every effort to include them in our multi-layered, communication outreach operation. We take our responsibility to protect taxpayer resources while serving vulnerable children and families and working with partner providers most seriously.

Given the common values and goals that I know we both share, I hope that you will always feel free to call me directly whenever you have questions or strong concerns about any of the challenges we face in our department. We rarely face easy solutions and ensuring that all legislators and stakeholders have complete information when considering complex issues is a high priority for me and the Department of Workforce Development.

Sincerely,



Roberta Gassman  
Secretary

cc: Governor Jim Doyle  
 Senator Spencer Coggs  
 Senator Lena Taylor  
 Representative Pedro Colon  
 Representative Jason Fields  
 Representative Barbara Toles  
 Representative Robert Turner  
 Representative Annette Williams  
 Representative Leon Young  
 Milwaukee County Board of Supervisors Chairman, Lee Holloway  
 Reggie Bicha, Secretary-Designee, Department of Children and Family Services  
 Michael Morgan, Secretary, Department of Administration  
 JoAnna Richard, Deputy Secretary, Department of Workforce Development  
 Hector Colon, Executive Assistant, Department of Workforce Development  
 Brenda Bell-White, Office of Milwaukee Family Service Integration Office  
 Patricia DeLessio, Legal Action of Wisconsin  
 Amy Stear, 9 to 5 National Organization of Working Women  
 Pete Swinford, AFSCME  
 Corey Hoze, Director, Milwaukee County Department of Health and Human Services  
 Pam Fendt, Executive Director, Good Jobs and Livable Neighborhoods  
 Marcus White, Executive Director, Interfaith Conference of Milwaukee  
 Ruth Schmidt, Director, Wisconsin Early Childhood Association  
 Jill Jacklitz, Acting Executive Director, Wisconsin Council on Children and Families

hiring

- Jeopardies - the negotiations that  
are happening now -

Don't elevate - <sup>spoiling of</sup> in non-coherent way

legitimizes in any way

→ neg have been going well -

puts families @ risk -

→

Fluid  
Budget negotiations.

NOT a lot of push back -  
remains a chance - not  
outside could actually  
be included.

could cause



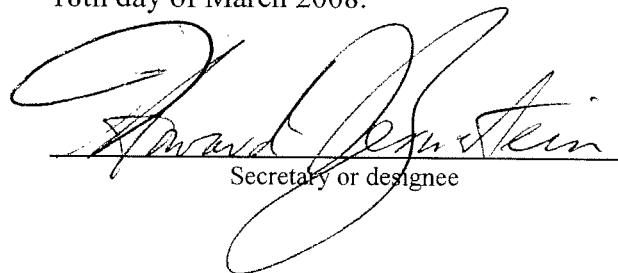
# Rules Certificate

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF WORKFORCE DEVELOPMENT )

I, Roberta Gassman, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules relating to child care enrollment underutilization were duly approved and adopted by this department on March 18, 2008.

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the of the Department of Workforce Development at 201 E. Washington Avenue in the city of Madison, this 18th day of March 2008.

  
Secretary or designee



## Order Adopting Rules

Pursuant to authority vested in the Department of Workforce Development by ss. 49.155 and 227.11, Stats., the Department of Workforce Development amends and repeals and recreates rules of the Wisconsin Administrative Code Chapter DWD 56, relating to child care enrollment underutilization.

The attached rules shall take effect on March 30, 2008, pursuant to s. 227.24 (1) (c), Stats.

Adopted at Madison, Wisconsin this

Date: March 18, 2008

Department of Workforce Development

Sharon J. Stein  
Secretary or designee





State of Wisconsin  
Department of Workforce Development  
Division of Family Supports

**EMERGENCY RULE**

**Child Care Enrollment Underutilization**

**DWD 56.04**

The Wisconsin Department of Workforce Development orders the amendment of ss. DWD 56.04 (1) (a) 1., (2) (a) 1. b., and (5) (c); and the repeal and recreation of s. DWD 56.04 (2) (d), relating to child care enrollment underutilization.

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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, or welfare. A statement of facts constituting the emergency is:

The Department projects a potential current year budget shortfall in the child care subsidy program of \$18.6 million if no corrective measures are taken. This rule will provide for more efficient use of the program's limited funding.

**Analysis Prepared by the Department of Workforce Development**

**Statutory authority:** Sections 49.155 and 227.11 (2) (a), Stats.

**Statutes interpreted:** Section 49.155, Stats.

**Related statutes or rules:** Section 48.65, Stats, and Chapters HFS 45, 46, and 55; Section 48.651, Stats., and Chapter DWD 55

**Explanation of agency authority.** The Department administers the child care subsidy program under s. 49.155, Stats., and reimburses child care providers for services provided pursuant to s. 49.155 (3m), Stats.

**Summary of the emergency rule.** The current s. DWD 56.04 (2) (d) provides that a child care administrative agency shall authorize payment to licensed group and family day care centers based on authorized units of service except as follows:

- The agency may authorize payment to licensed providers based on units of service used by each child up to the maximum number of authorized units, with the

reimbursement rate increased by 10% to account for absent days, if the schedule of child care to be used is expected to vary widely.

- The agency may authorize payment to licensed providers based on units of service used by each child, up to the maximum number of authorized units, if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

The current methodology for authorizing payment to licensed providers has caused the child care subsidy program to pay for significant amounts of time when care is not actually being provided. This emergency rule attempts to control costs by reducing payments to licensed child care providers for authorized child care services that are significantly underused. The emergency rule repeals the presumption of enrollment authorization for licensed providers and provides that a local child care administrative agency shall authorize on either an enrollment or attendance basis as follows:

- The agency shall authorize the number of hours needed on an enrollment basis if the need for care is anticipated to be approximately the same number of hours each week.
- The agency shall authorize payment based on the hours of actual attendance by each child if the need for care is anticipated to vary from week to week or if the child has a history of variable attendance.
- The agency may authorize payment on the hours of actual attendance if the agency has documented 3 separate occasions where the provider significantly overreported the attendance of a child.

For any week in which a child whose authorized payments are on an enrollment basis attends less than 50% of the authorized hours of care, payment shall be made on the basis of actual hours of attendance used, unless the agency determines that the absence is for a reason approved by the Department, such as short-term illness of the child or death in the family. This policy does not apply to a child with a special needs authorization.

Payment to certified providers is based on a child's attendance and remains unchanged in this rule.

This rule also increases the penalties for a provider who submits false or inaccurate attendance reports. The current s. DWD 56.04 (5) (c) allows for the child care administrative agency to refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months, revoke existing child care authorizations to the provider, or refuse to issue payment to the provider until the violation is corrected. This emergency rule provides additional penalties in the following situations:

- If it is the provider's second documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$1,000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 1 year.
- If it is the provider's third or subsequent documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$5,000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 5 years.

**Summary of factual data and analytical methodologies.** The Department projects a potential current year deficit in the child care subsidy program of \$18.6 million if no corrective measures are taken. Due to this projected budget shortfall, the Department is reinstating the child care enrollment underutilization policy that was in effect April to October 2007. The underutilization policy was implemented in response to a significant 06-07 budget shortfall and was withdrawn in October 2007 upon passage of 2007 Wisconsin Act 20.

By paying the hourly rate for actual attendance to child care providers when attendance is under 50% of the authorized level for the child care subsidy program, the Department will avoid paying for significant amounts of time where care is not actually being provided. By comparing the amount currently paid for enrollment authorizations against the amount that would be paid if underutilized authorizations of 50% or less are paid for actual hours of care, it is estimated that the Department will realize \$18.6 million in annual savings in federal block grant funds.

**Summary of related federal regulations.** There are no applicable federal regulations.

**Comparison with rules in adjacent states.** Michigan. A provider may only receive payment for a child's hours of attendance, except for absences due to the child's illness, not to exceed 2 consecutive weeks, and state holidays.

Illinois. Payment to licensed and license-exempt child care centers are based on authorized days if the total of days attended for all publicly-funded children at the center location are 80% of the authorized days for the month.

Payment to licensed home providers are based on authorized days if the total of days attended for all children in a family are 80% of the family's authorized days for the month.

Payment to license-exempt home providers are based only on attendance.

Iowa. Payment is based on authorized days with payment allowed for a child not in attendance not to exceed 4 days per calendar month.

Minnesota. Payment is based on authorized days except child care providers may not be reimbursed for more than 25 full-day absent days per child, excluding holidays, in a fiscal year, or for more than 10 consecutive full-day absent days, unless the child has a documented medical condition that causes more frequent absences.

**Effect of rule on small businesses.** The rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses as defined in s. 227.114 (1), Stats.

**Analysis used to determine effect on small businesses.** The Legislature and Governor set the funding level for the Wisconsin Shares child care subsidy program. These rules do not affect the amount of funding for the program. All of the allocated funding will be spent as subsidies for child care for the children of working families. We do not anticipate that the proposed rules will in any way change the extent to which these dollars are spent on small businesses.

**Agency contact person.** Barbara Stiefvater, Child Care Section, (608) 266-8200,  
[barbara.stiefvater@dwd.state.wi.us](mailto:barbara.stiefvater@dwd.state.wi.us).

**SECTION 1. DWD 56.04 (1) (a) 1. and (2) (a) 1. b. are amended to read:**

**DWD 56.04 (1) (a) 1.** Providers licensed by the department of health and family services under ~~ch.~~ chs. HFS 45, 46, or 55.

**DWD 56.04 (2) (a) 1. b.** A voucher shall be in writing and shall authorize a parent to obtain child care services stipulated in that voucher from a provider under sub. ~~(3)~~ (1).

**SECTION 2. DWD 56.04 (2) (d) is repealed and recreated to read:**

**DWD 56.04 (2) (d)** A child care administrative agency shall authorize payment to a child care provider as follows:

1. If the provider is a licensed group child care center, licensed family child care center, or a program established or contracted for by a school board under s. 120.13 (14), Stats., the agency shall authorize either on an enrollment basis or on an attendance basis as follows:

a. If the need for care is anticipated to be approximately the same number of hours each week, the agency shall authorize payment on enrollment based on the number of hours needed.

b. If the need for care is anticipated to vary from week to week or if the child has a history of variable attendance, the agency shall authorize payment based on the number of hours of actual attendance used by the child, up to the maximum authorized hours. The hourly rate for attendance-based authorizations shall be 10% higher than the reimbursement rate established under s. DWD 56.06.

c. Notwithstanding subd. 1.a., the agency may authorize payment on the basis of hours of actual attendance, up to the maximum authorized hours, if the provider has 3 or more documented instances of overreporting the attendance of any child.

2. For certified providers, the agency shall authorize payment for hours of attendance used by each child, up to the maximum number of authorized hours, except as provided in par. (h).

3. For any week in which a child whose authorized payments are described in subd. 1.a. attends less than 50% of the authorized hours of care, payment shall be made on the basis of actual hours of attendance used, unless the child care administrative agency determines that the absence is for a reason approved by the department, such as short-term illness of the child or death in the family. This subdivision does not apply to a child with a special need whose care is authorized under s. DWD 56.06 (3) (a).

**SECTION 3. DWD 56.04 (5) (c) is amended to read:**

**DWD 56.04 (5) (c)** If a child care administrative agency has given notice to a provider that the provider is in violation of licensing or certification rules and the provider has not corrected the violation or if the provider submits ~~false~~ inaccurate attendance reports, ~~refuses~~ fails to provide documentation of the child's actual attendance, or gives false or inaccurate child care price information, the child care administrative agency or department may take one or more of the following steps:

1. Refuse to issue new child care authorizations to a provider for a period of time not to exceed 6 months, except as follows:

a. If it is the provider's second documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an over-payment of \$1,000 or more, the agency may refuse to issue new child care authorizations to the provider for a period of time not to exceed one year.

b. If it is the provider's third or subsequent documented instance of submitting an inaccurate attendance report or the inaccurate report resulted in or would have resulted in an overpayment of \$5,000 or more, the agency may refuse to issue new child care authorizations to the provider for a period of time not to exceed 5 years.

2. Revoke existing child care authorizations to the provider.

3. Refuse to issue payments to the provider until the provider has corrected the violation.

4. Recoup or recover an overpayment under par. (b).

**SECTION 4. EFFECTIVE DATE.** This rule shall take effect on March 30, 2008, as provided in s. 227.24 (1) (c), Stats.

LRB or Bill No./Adm. Rule No.  
DWD 56

Amendment No. if Applicable

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**

Child care enrollment underutilization

**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**

20.445 (3)

**Assumptions Used in Arriving at Fiscal Estimate**

By paying the hourly rate for actual attendance to child care providers when attendance is under 50 percent of the authorized level for the Wisconsin Shares child care subsidy program, the Department will avoid paying for significant amounts of time where care is not actually being provided. By comparing the amount currently paid for enrollment authorizations against the amount that would be paid if underutilized authorizations of 50% or less are paid for actual hours of care, it is estimated that the Department will realize \$18.5 million in annual savings.

**Long-Range Fiscal Implications**

None

Agency/Prepared by: (Name & Phone No.)  
DWD/James Bates 266-6946

Authorized Signature/Telephone No.

*Edward J. Bernstein* 266-9427

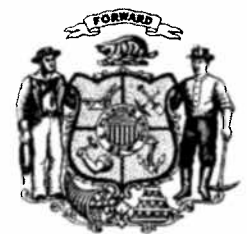
Date

3/18/08





# WISCONSIN STATE LEGISLATURE





# WISCONSIN LEGISLATURE

P. O. Box 7882 Madison, WI 53707-7882

March 18, 2008

Secretary Roberta Gassman  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707

Dear Secretary Gassman:

We write to you with great concern regarding the Department of Workforce Development's response to the projected deficit in the Wisconsin Shares child care subsidy program, namely the proposed implementation of an attendance-based reimbursement policy (UU 50) and co-payment increases. In seeking to implement these policies, the Department has chosen not only to usurp the will of the Legislature, but it has also failed to provide adequate notification or a framework for dispute resolution to the affected parties.

As you know, during the 2007-09 biennial budget deliberations, the Joint Committee on Finance (JFC), the Joint Committee for the Review of Administrative Rules (JCRAR) and the Legislature chose not to implement the policy changes recommended by the Department to deal with the projected Wisconsin Shares deficit. Among those changes rejected by the Legislature and each of the legislative bodies were UU50 and co-payment increases. In fact, as a demonstration of its commitment to the working families of Wisconsin, the Legislature chose instead to balance the Wisconsin Shares budget by injecting more than \$60 million GPR into the program. Now, just four months later, the Department is once again seeking to implement these same policies through emergency rule and without legislative approval.

The Department's disregard for legislative actions concerning the Wisconsin Shares program is compounded by the possibility that reintroduction of the UU50 rule is not allowable under Wisconsin statutes. According to a 1973 Wisconsin Attorney General Opinion, "it is contrary to the legislative intent of the statute" for a Department to refile an emergency rule identical to a rule which has already expired. As you know, the previous UU50 rule was allowed to expire on October 27, 2007. As a result, at its March 13, 2008 meeting the Co-Chairs of the JCRAR indicated that the Committee was prepared to assert its legislative authority to review, and potentially suspend, the Department's latest UU50 emergency request.

The Department has also failed to provide adequate notice to the providers who will be affected by UU50 and the program participants who will be affected by co-payment increases. The Department has provided less than 10 working days for many businesses and families to drastically adjust their finances to accommodate for these changes to the program. It is unacceptable that the Department has until recently withheld information about the proposed changes from affected parties, especially given it has been aware of the federal requirement to increase co-payments since late last year.

Further, those notices that have been sent have contained incorrect contact information and have been in English only, leaving Spanish and Hmong speakers unaware of the proposed changes.

The Department has also failed to address a number of the problems that occurred during the previous implementation of the UU50, namely the handling and intake of complaints generated by the policy. In its brochures discussing the policy, the Department has listed out-of-service hotline phone and fax numbers and has failed to identify how it will adequately staff the hotlines to ensure W-2 and other agencies are not forced to field these calls using their own staff resources.

After repeated requests, the LFB has only recently received from the Department the information necessary to independently validate the Department's projection of the Wisconsin Shares deficit. Because of that the delay, the LFB has not yet had the opportunity to review the data. Until they have had the opportunity to do so, the Legislature is unable to accurately assess the scope of the problem and identify what, if any, corrective action is required.

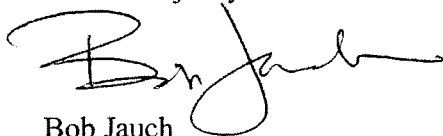
In light of these issues, we request that you delay implementation of these policies until the LFB has completed its own fiscal analysis of the Wisconsin Shares program and, in the event that LFB confirms the Department's deficit projections, until the Department more thoroughly analyzes these and other policy alternatives with legislative leaders and other stakeholders including the Wisconsin Early Learning Coalition, W-2 agencies, providers and parents.

Thank you for your attention to this matter. We look forward to an expeditious response from the Department.

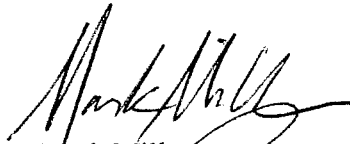
Sincerely,



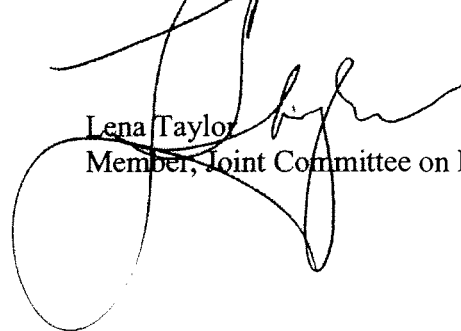
Russ Decker  
Senate Majority Leader



Bob Jauch  
Co-Chair, Joint Committee on the  
Review of Administrative Rules



Mark Miller  
Co-chair, Joint Committee on Finance

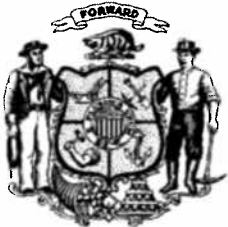


Lena Taylor  
Member, Joint Committee on Finance

cc: Governor Jim Doyle  
Hector Colon, Department of Workforce Development  
Dan Schooff, Department of Administration  
Reggie Bicha, Department of Children and Family Services  
Charity Eleson, Wisconsin Council on Children and Families  
John Gabel, AFSCME  
Ron Hermes, Office of Governor Jim Doyle  
JoAnna Richard, Department of Workforce Development



# WISCONSIN STATE LEGISLATURE





# DANIEL LEMAHIEU

STATE REPRESENTATIVE  
59<sup>TH</sup> ASSEMBLY DISTRICT



## Senate Leadership Doesn't Speak for Me!

March 27, 2008  
For Immediate Release

Contact: Rep. Dan LeMahieu  
(608) 266-9175

Rep. Dan LeMahieu, (R-Cascade) Co-Chair of the Joint Committee for the Review of Administrative Rules (JCRAR), wanted it to be on the record that State Senator Bob Jauch and Senate Majority Leader Russ Decker need to get their facts straight before they write their next public letter.

**"The State Senate should remember they should first check all their facts,"** stated LeMahieu.

On March 18, 2007, a letter was sent out by the senate majority leader's office on Wisconsin Legislature letterhead to Department of Workforce Development (DWD) Secretary Roberta Gassman chastising her agency for their introduction of an administrative emergency rule, rule UU50, relating to implementation of an attendance-based reimbursement policy. The letter was signed by Senator Decker, Senator Jauch, Senator Miller and Senator Taylor.

Rep. LeMahieu claims two inaccuracies in the March 18<sup>th</sup> letter that can be directly tied to his senate JCRAR co-chairman and letter co-signer, Senator Bob Jauch. First, in the second paragraph the Senate Democrats make claims that during the 2007-2009 budget deliberations, The Joint Committee on Finance, The Joint Committee for Review of Administrative Rules and the Legislature chose not to implement the policy changes recommended by DWD to deal with the attendance-based reimbursement policy. However, facts don't support this statement.

The Senate leadership letter in the third full paragraph goes on to say that DWD had attempted to implement this type of rule once before. That statement is true; the rule was DWD Emergency Rule 56. This leads us to our first inaccuracy, JCRAR held at least one known committee hearing to extend that emergency rule for 60 days, thus allowing this emergency rule additional days of existence. That JCRAR Hearing took place on August 7, 2007 (well before the budget was passed) in attendance at that public hearing and executive session was Senator Bob Jauch. After the public hearing, an executive session was held to vote to extend the DWD Emergency rule for Child Care reimbursement rates an additional 60 days. Interestingly, Senator Jauch was the legislator that made the motion for passage of an additional 60 days for the emergency rule with the vote going 9-1. (Rep. Tom Nelson voting No).

The second inaccuracy in this Senate leadership letter once again occurs in the third paragraph, with the authors of the letter stating that Co-Chairs of the JCRAR committee were prepared to “assert legislative authority to review, and potentially suspend, the Department’s latest UU50 emergency request.” The JCRAR committee last met on March 13, 2008. At that time Senator Jauch was interested in having a public hearing on UU50 and at that time Rep. LeMahieu made mention of agreeing to a public hearing on UU50. However at NO time did Co-Chair LeMahieu say he was prepared to assert his legislative authority to suspend the Department’s emergency rule. At no time was there any discussion between Senator Jauch and Rep. LeMahieu or Senator Decker or Rep. LeMahieu, so any use of the entire committee by the Senate Democrats is completely out of order.

**“I have no problem with the senate democrat’s opposition to the emergency rule. When the rule was brought to my desk I had some serious questions. However the democrats in this building continue to think they can speak for all on any topic. Well, as long as I serve the people of the 59<sup>th</sup> Assembly District and remain Co-Chair of the Joint committee for Review of Administrative Rules, the Assembly will have an equally strong say in the happenings of what goes on under the Capitol dome. If the Senate Democrats have a problem with this rule then they should have addressed it with Governor Doyle. Now, all they are showing is more fighting between themselves. In my three terms here in the legislature no one speaks for me but me and I won’t simply sit by and let this inaccurate letter slide by,”** stated LeMahieu.

*\*Copies of all the documents referred to in this press release will be attach to the release.*

*Representative Dan LeMahieu, who was elected to serve the 59<sup>th</sup> assembly district, currently Co-Chairs the Joint Committee for Review of Administrative Rules. In addition LeMahieu is a member of four other assembly committees, including Vice-Chairman of the Assembly Committee on Urban & Local Affairs.*



FOR IMMEDIATE RELEASE  
March 28, 2008

Contact: Sen. Bob Jauch  
608.266.3510

### **Democracy Should Assure Citizens Right to Speak**

*Senator Jauch (D-Poplar) is Co-Chair of the Joint Committee for the Review of Administrative Rules (JCRAR). He has issued the following statement regarding his Assembly Co-Chair Representative LeMahieu's reluctance to hold a public hearing on the Department of Workforce Development's attendance-based child care reimbursement rule, known as UU50. The Department's emergency rule that goes into effect March 30 will cost childcare providers \$18.6 million.*

Representative LeMahieu's reluctance to schedule a public hearing on the UU50 rule reveals a lack of respect for the democratic process in which citizens are given an opportunity to petition their government about issues that impact their lives. I made a simple request that child care providers facing the \$18.6 million reimbursement reduction be given the opportunity to express their concerns and elaborate on the consequences of the attendance-based policy under the new emergency rule. I am not asking for a vote, but a public hearing on an important issue.

Representative LeMahieu is making my request for a public hearing more complicated than it is. I suggested we have a public hearing because of widespread concerns about the policy. This hearing would provide an opportunity for the agency to provide an explanation for its policy decision. At our last meeting on March 13, Representative LeMahieu agreed to a hearing on this matter. Unfortunately, he has reversed his position. On behalf of these providers whose businesses will be adversely impacted, I am asking him to keep his word.

It is not unprecedented for the administrative rules committee to hold public hearings on existing rules. In fact, two years ago when the Republicans controlled the committee they held a hearing on an existing rule regarding the Butler Garter Snake. Last year, I agreed to a request to hold a hearing on the sprinkler rule, even though related language was included in the Assembly version of the budget.

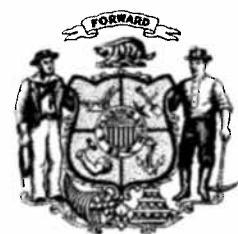
I respect Representative LeMahieu's position on the child care policy, whatever it may be, on its merits. I have made it clear I am not trying to convince him that my position is more correct than his. More critical than the issue itself is the realization that public opinion and the voice of concerned citizens is more important than our own, and it is imperative that we remember that we are the voice of the people and their viewpoint is a lot more important than ours. To deprive them of the opportunity to make their case and contribute to the public conversation is a dereliction of our duty.

Legislative leaders will work out their differences on the budget. Meanwhile, the rule goes into effect in two days. It is courteous for a legislative committee to take some time to allow citizens to voice their concerns. Holding a public hearing is the right and respectful decision for us to make. I hope Representative LeMahieu reevaluates his position and allows the public to speak.

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WISCONSIN STATE LEGISLATURE





Department of Workforce Development

Office of the Secretary

201 East Washington Avenue

P.O. Box 7946

Madison, WI 53707-7946

Telephone: (608) 266-3131

Fax: (608) 266-1784

e-mail: [dwdsec@dwd.state.wi.us](mailto:dwdsec@dwd.state.wi.us)



State of Wisconsin  
Department of Workforce Development

Jim Doyle, Governor  
Roberta Gassman, Secretary


March 28, 2008

Senator Russ Decker  
Senate Majority Leader  
Room 122 South, State Capitol  
Madison, WI 53707-7882

Senator Mark Miller  
Co-Chair, Joint Committee on Finance  
Room 409 South, State Capitol  
Madison, WI 53707-7882

Senator Robert Jauch  
Co-Chair, Joint Committee on the  
Review of Administrative Rules  
Room 118 South, State Capitol  
Madison, WI 53707-7882

Senator Lena Taylor  
Member, Joint Committee on Finance  
Room 415 South, State Capitol  
Madison, WI 53707-7882

  
Dear Senators Decker, Jauch, Miller & Taylor:

I wanted to respond to your letter dated March 18<sup>th</sup>, 2008 regarding our child care policy changes that we have been planning for implementation on March 30<sup>th</sup>, 2008. The department intends to implement the policy change related to 50% attendance based reimbursement for the Wisconsin Shares Child Care Subsidy program (UU50).

In light of the current budget deficit, the department must find ways to contain costs in its programs and reduce the deficit in this particular program. Implementing UU50, a child care provider reimbursement methodology that pays providers for actual attendance when a child attends less than half of the hours for which they have been authorized, is the least onerous option we have available to address our deficit in any meaningful way compared to other options such as increasing co-payments or decreasing provider rates. We now know that at least 15 states reimburse providers solely on attendance. We believe implementing UU50 is a fair option available to us to deal with our current deficit.

With regards to co-payment increases, the federal Department of Health and Human Services (DHHS) has found that Wisconsin's sliding fee parent co-payment scale is not allowable under their regulations. To comply with their federal directive, we have submitted a corrective plan to DHHS eliminating Wisconsin's different co-payment amounts for certified and licensed care with a federally required effective date of April 1.

I thank you for your interest and look forward to working together to serve the best interests for the residents of this great state.

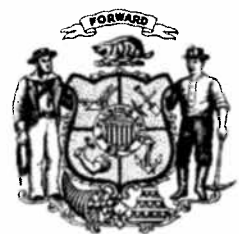
Sincerely,

  
Roberta Gassman  
Secretary

cc: Governor Jim Doyle  
Hector Colon, Department of Workforce Development  
Dan Schooff, Department of Administration  
Reggie Bicha, Department of Children and Family Services  
Charity Eleson, Wisconsin Council on Children and Families  
John Grabel, AFSCME  
Ron Hermes, Office of Governor Jim Doyle  
JoAnna Richard, Department of Workforce Development



# WISCONSIN STATE LEGISLATURE



April 16, 2008

Dear ,

Thank you for contacting me regarding your concerns about the Wisconsin Shares program. As you know, the Wisconsin Department of Workforce Development implemented an attendance-based policy on March 30, 2008 as a cost saving measure. This is not an acceptable solution to the Department's budget challenges, in the short or long term. I am committed to helping working families in Wisconsin obtain childcare. During last year's budget process I successfully worked to include money in the budget to support this program. I fully support and encouraged the inclusion of the \$18.6 million program shortfall in the budget repair bill.

This same attendance-based policy was in place temporarily last year during budget negotiations. The Department has again implemented the rule, to the detriment of many child care providers around the State. In my capacity as Co-Chair of the Joint Committee for Review of Administrative Rules (JCRAR) I have pushed to have a public hearing on the rule. To date, the Republican Assembly JCRAR Co-Chair has refused to agree to a public hearing on this matter.

The committee has the authority to exercise oversight on rules promulgated by executive branch agencies such as the Department of Workforce development. It was my hope that a hearing would provide an opportunity for the agency to provide a public explanation for its policy decision. Additionally, child care providers facing the \$18.6 million reimbursement reduction would be given the opportunity to express their concerns and elaborate on the consequences of this policy under the new emergency rule.

Despite facing a \$700 million State budget deficit, Senate Democrats including myself have again included money for the program in our budget repair bill. This \$18.6 million is a high priority and it demonstrates our sincere commitment to family values. Child care providers give families in Wisconsin a vital service, one that allows parents to participate in the workforce in a way otherwise not possible.

Frankly, this program is facing some serious structural financial difficulties. The reality is that our State is heading into a difficult economic downturn, the effects of which will be felt by all citizens. I hope to engage with the Department on potential policy solutions for the program and I am encouraging all of my colleagues to do the same.

Again, I appreciate that you took the time to contact me on this important matter. It is a high priority and I hope the final budget repair agreement will include the \$18.6 million program shortfall. This funding will help keep families and providers working and in business this year. If there is anything else I can do for you, as always, please feel free to write or call me toll-free at (800) 469-6562 anytime.

Sincerely,

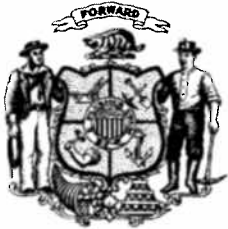
A handwritten signature in black ink that reads "Bob Jauch". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Bob Jauch  
State Senate

BJ/skb



# WISCONSIN STATE LEGISLATURE





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## WISCONSIN LEGISLATIVE COUNCIL

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*Terry C. Anderson, Director*  
*Laura D. Rose, Deputy Director*

TO: SENATOR BOB JAUCH  
FROM: Ronald Sklansky, Senior Staff Attorney   
RE: Adoption of Successive Emergency Rules  
DATE: April 9, 2008

This memorandum, prepared at your request, summarizes an opinion of the Attorney General regarding adoption of successive emergency rules.

### **Background**

Section 227.24, Stats., provides that an agency may promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements of ch. 227, Stats., if there is an emergency that requires the rule to go into effect prior to the time it would take effect if the agency complied with the regular procedures. The emergency rule remains in effect for 150 days, unless extended by the Joint Committee for Review of Administrative Rules (JCRAR). The total period for all extensions granted by the committee may not exceed 120 days. An emergency rule takes effect upon publication in the official state newspaper or on any later date specified in the rule.

The process for the promulgation of a *permanent* rule generally requires an agency to take the following actions:

1. Adoption of a scope statement.
2. Submission of a rule draft to the Legislative Council staff for review.
3. Conducting a public hearing concerning the rule.
4. Preparation of a report to the Legislature.
5. Submission of the rule and the agency report to the Chief Clerks of the Legislature for legislative review of the rule.
6. Publishing the rule in the Administrative Code.

[See ss. 227.135 and 227.14 to 227.21, Stats.]

Discussion

There appear to be no published judicial opinions regarding the authority of an agency to adopt successive emergency rules on the same topic.

The Attorney General addressed this question in 1973 when an agency adopted an emergency rule that was identical to a previously filed emergency rule that was set to expire on the date that the second emergency rule was adopted. The agency claimed that the emergency situation was ongoing and that the normal rule-making procedure would not be completed for a number of months. [See 62 Op. Att'y Gen. 305 (1973).]

The Attorney General concluded that while the adoption of a successive emergency rule was not specifically prohibited by the language of the emergency rule statute, it was clearly contrary to the legislative intent of the statute. The Attorney General reached this finding because:

...[T]he foreseeable consequence of interpreting the statute so as to allow refiling is that administrative agencies could completely avoid the normal notice, hearing, and publication requirements of ch. 227, simply by systematically refiling emergency rules. This cannot be what the legislature intended. [*Id.*, at p. 306.]

The Attorney General acknowledged the tension that exists between the goal of public participation in the rule-making process and the necessity to address an emergency situation without public participation. He found that a balance was struck by generally requiring public participation in the process, but deviating from that goal by promulgating an emergency rule that would be in effect only for the time necessary to promulgate a permanent rule with full public participation. He concluded the opinion by stating that the period of effectiveness of an emergency rule was intended to afford an agency the requisite time to adopt a permanent rule pursuant to the normal procedures, if the agency believes that what begins as an emergency presents the need for a permanent rule. Thus, successive emergency rules could not be adopted under ch. 227, Stats.

The Attorney General's concern about avoidance of public participation through the use of an emergency rule is more of a factor today than it was in 1973. The process described above for the promulgation of a permanent rule basically was created on November 2, 1979 and provides for greater public participation in the process than the truncated procedures of 1973. For example, in 1973 the following procedural requirements did not exist: scope statement, Legislative Council review, agency report to the Legislature, and legislative review.

If I can be of any further assistance in this matter, please feel free to contact me.

RS:ty