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☛ Details: Emergency Rules by Department of Workforce Development.

(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**

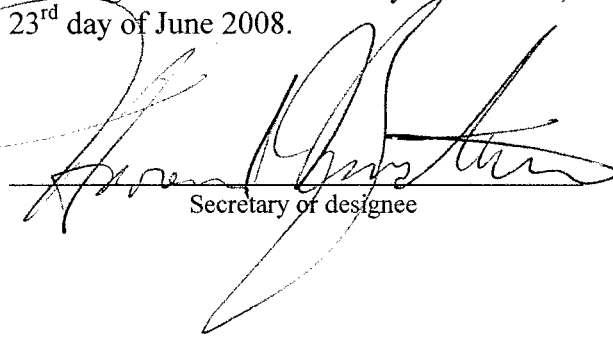
# Rules Certificate

STATE OF WISCONSIN )  
 ) SS  
DEPARTMENT OF WORKFORCE DEVELOPMENT )

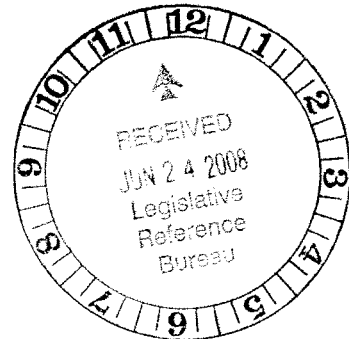
I, Roberta Gassman, Secretary of the Department of Workforce Development, and custodian of the official records, certify that the annexed rules relating to establishment of birth cost orders based on child support guidelines were duly approved and adopted by this department on June 23, 2008.

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 23<sup>rd</sup> day of June 2008.



Secretary of designee



## Order Adopting Rules

Pursuant to authority vested in the Department of Workforce Development by ss. 49.22 (9) and 227.11 (2) (a), Stats., the Department of Workforce Development creates rules of the Wisconsin Administrative Code Chapter DWD 40, relating to establishment of birth cost orders based on child support guidelines.

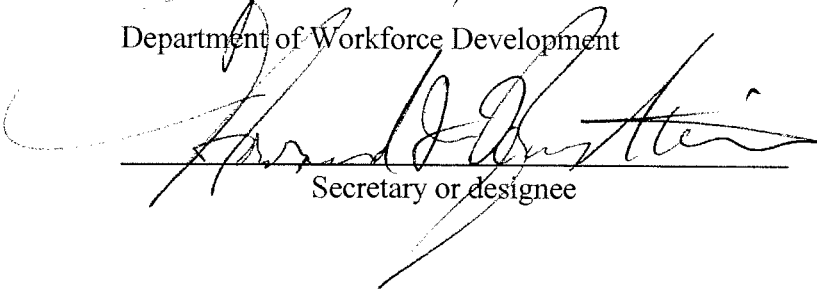
The attached rules shall take effect upon publication, pursuant to s. 227.24 (1) (c), Stats.

Adopted at Madison, Wisconsin this

Date:

June 23, 2008

Department of Workforce Development

  
Secretary or designee



State of Wisconsin  
Department of Workforce Development  
Division of Family Supports

**EMERGENCY RULE**

**Establishment of Birth Cost Orders  
Based on Child Support Guidelines**

**DWD 40**

The Wisconsin Department of Workforce Development orders the creation of ss. DWD 40.02 (12m), 40.05, and DWD 40 Appendix D, relating to establishment of birth cost orders based on child support guidelines.

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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 federal Office of Child Support Enforcement (OCSE) has notified Wisconsin that OCSE will not certify the state's request for federal income tax refund offset for birth cost orders that have not been set in accordance with the child support guidelines in Chapter DWD 40, which take into consideration the payer's ability to pay.

Federal income tax refund offset is one of the primary tools for collection of birth cost orders owed to the State of Wisconsin. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

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

**Statutory authority:** Sections 49.22 (9) and 227.11 (2) (a), Stats.

**Statutes interpreted:** Section 767.89 (3) (e), Stats.

**Related statutes or rules:** 45 CFR 302.33, 302.56, 303.31, 303.72(a)

**Explanation of agency authority.** Section 49.22 (9), Stats., provides that the department shall promulgate rules that provide a standard for courts to use in determining

a child support obligation based upon a percentage of the gross income and assets of either or both parents. According to OCSE, medical support is a subset of child support.

**Summary of the emergency rule.** Under s. 767.89 (3) (e), Stats., the content of a paternity judgment shall include an order establishing the amount of the father's obligation to pay or contribute to the reasonable expenses of the mother's pregnancy and the child's birth. The amount established may not exceed one-half of the total actual and reasonable pregnancy and birth expenses. The order shall specify the court's findings as to whether the father's income is at or below the federal poverty line and specify whether periodic payments are due on the obligation, based on the father's ability to pay or contribute to those expenses. If the father has no present ability to pay, the court may modify the judgment or order at a later date to require the periodic payments if the father has the ability to pay at that time.

If the birth costs were paid by the Medicaid program, the order for payment of birth costs under s. 767.89 (3) (e), Stats., will be to the State of Wisconsin. An unmarried mother who applies for or receives Medicaid is required to cooperate with the local child support agency in establishing paternity (if necessary), obtaining medical support, and assigning the rights to payment of medical support to the state. There are exceptions to the child support cooperation requirement for good cause and for women during pregnancy and 60 days post-partum.

Federal and state income tax refund offset is one of the primary tools for collection of birth cost orders owed to the state. OCSE recently notified Wisconsin that it will not certify the state's request for federal income tax refund offset for birth cost orders that have been determined using the methodology in s. 767.89 (3) (e), Stats. This provision requires the court to make a finding based on the father's ability to pay before *setting a periodic payment* on birth costs. OCSE's interpretation of federal regulations as issued in Policy Interpretation Question PIQ-07-01 provides that the *judgment amount* must be set according to guidelines that take into consideration the father's ability to pay.

This emergency rule creates a procedure in the child support guidelines in Chapter DWD 40 that allows a court to take into consideration the father's ability to pay in determining the birth cost judgment amount. The court may order a judgment that is the lowest of the following:

- An amount that does not exceed one-half of the actual and reasonable cost of the pregnancy and child's birth as provided under s. 767.89 (3) (e), Stats.
- An amount that does not exceed 5% of the father's income over 36 months.
- If a father's child support obligation was determined under s. DWD 40.04 (4) and the father's monthly income available for child support is between 75% and 125% of the federal poverty guidelines, the court may use the maximum birth cost judgment amount provided in the schedule in Appendix D.
- If a father's child support obligation was determined under s. DWD 40.04 (4) and the father's monthly income available for child support is less than 75% of the federal poverty guidelines, the court may order a birth cost judgment at an amount appropriate for the father's total economic circumstances.

Although the primary impetus for this rule is to comply with federal child support regulations to ensure that OCSE will certify birth cost orders owed to the State of Wisconsin in cases under Section IV-D of the Social Security Act, the rule will also apply to other parties, such as a private insurance company seeking recovery of birth costs under s. 767.89 (3) (e), Stats.

**Summary of related federal requirements.** In PIQ-07-01, OCSE states that medical support is a subset of child support, and child support orders must be set under state guidelines that comply with 45 CFR 302.56. State guidelines must:

- Take into consideration all earnings and income of the noncustodial parent.
- Be based on specific descriptive and numeric criteria and result in a computation of the support obligation.
- Provide for the child's health care needs through health insurance coverage or other means.
- Provide a rebuttable presumption that the amount determined using the guidelines is the correct child support to be awarded.

The circumstances in which past-due support qualifies for federal income tax refund offset are listed in 45 CFR 303.72(a). The list includes cases where the child support agency is providing services to a Medicaid recipient.

**Comparison with rules in adjacent states.** All states are required to comply with the OCSE interpretation that birth cost judgment amounts must be set under the state's child support guidelines.

**Summary of factual data and analytical methodologies.** OCSE has notified states that birth cost judgment amounts must be set according to child support guidelines that take into consideration the father's ability to pay.

This rule provides that the amount of a birth cost judgment may not exceed 5% of the father's income over 3 years, with a graduated scale of lower amounts for fathers with income below 125% of the federal poverty guidelines. The 5% limit is based on a proposed federal rule on medical support in child support cases. The proposed federal rule provides that cash medical support or private health insurance is considered reasonable in cost to the obligated parent if it does not exceed 5% of his or her gross income. *Child Support Enforcement Program; Medical Support*, 71 Fed. Reg. 549965, (proposed September 20, 2006)

**Agency contact person.** Attorney Connie Chesnik, Office of Legal Counsel, (608) 267-7295, [connie.chesnik@dwd.state.wi.us](mailto:connie.chesnik@dwd.state.wi.us).

**SECTION 1. DWD 40.02 (12m) is created to read:**

**DWD 40.02 (12m)** “Federal poverty guidelines” means the poverty guidelines updated periodically in the Federal Register by the U.S. department of health and human services under the authority of 42 USC 9902 (2).

**SECTION 2. DWD 40.05 is created to read:**

**DWD 40.05 Medical support. (2) BIRTH COST JUDGMENT.** (a) In this subsection, “birth cost judgment” means an order establishing the amount of the father’s obligation to pay or contribute to the reasonable expenses of the mother’s pregnancy and the child’s birth under s. 767.89 (3) (e), Stats.

(b) The court may order a birth cost judgment amount that is the lowest of the following:

1. An amount that does not exceed one-half of the actual and reasonable cost of the pregnancy and child’s birth as provided under s. 767.89 (3) (e), Stats.
2. An amount that does not exceed the sum of 5% of a father’s monthly income available for child support for 36 months.
3. If a father’s child support obligation was determined under s. DWD 40.04 (4) and the father’s monthly income available for child support is between 75% and 125% of the federal poverty guidelines, the court may use the maximum birth cost judgment amount provided in the schedule in Appendix D.
4. If a father’s child support obligation was determined under s. DWD 40.04 (4) and the father’s monthly income available for child support is less than 75% of the federal poverty guidelines, the court may order a birth cost judgment at an amount appropriate for the father’s total economic circumstances.

(c) The department shall revise the schedule in Appendix D every year based on changes in the federal poverty guidelines. The department shall publish revisions to the schedule in the Wisconsin Administrative Register.

**SECTION 3. DWD 40, Appendix D is created to read:**



**Chapter DWD 40**

**APPENDIX D**

**2008 Maximum Birth Cost Judgment Amounts for Low-Income Payers at 75% to 125% of the Federal Poverty Guidelines**

<b>Monthly Income Up To:</b>	<b>Percent</b>	<b>Number of Months</b>	<b>Maximum Birth Cost Judgment Amount*</b>
\$650	3.28%	36	\$768
\$675	3.38%	36	\$821
\$700	3.49%	36	\$879
\$725	3.60%	36	\$940
\$750	3.71%	36	\$1,002
\$775	3.81%	36	\$1,063
\$800	3.92%	36	\$1,129
\$825	4.03%	36	\$1,197
\$850	4.14%	36	\$1,267
\$875	4.25%	36	\$1,339
\$900	4.35%	36	\$1,409
\$925	4.46%	36	\$1,485
\$950	4.57%	36	\$1,563
\$975	4.68%	36	\$1,643
\$1,000	4.78%	36	\$1,721
\$1,025	4.89%	36	\$1,804
\$1,050	5.00%	36	\$1,890

\*The maximum birth cost judgment amount may not exceed the identified percentage of the father's monthly income available for child support over 36 months.

**SECTION 4. EFFECTIVE DATE.** This rule shall take effect upon publication as provided in s. 227.24 (1) (c), Stats.

LRB or Bill No./Adm. Rule No.  
DWD 40

Amendment No. if Applicable

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

**Subject**  
Establishment of birth cost orders based on child support guidelines

**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:**

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**

**Assumptions Used in Arriving at Fiscal Estimate**

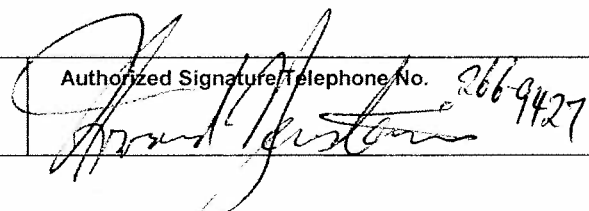
The rule allows Wisconsin to continue to collect birth cost judgments owed to the state through federal income tax refund offset. If the department failed to enact this rule to comply with OCSE requirements, the state and county child support agencies would likely experience a decrease in revenue. In calendar year 2007, the child support program collected \$11,481,000 in birth costs through federal income tax refund offset. Of the nearly \$11.5 million collected, approximately \$6.62 million was returned to the federal government to reimburse Medicaid costs, \$1.72 million was used by county child support agency programs to benefit children in the state, and the remaining \$3.14 million was returned to the state Medicaid program.

**Long-Range Fiscal Implications**

Continuation of current revenue.

Agency/Prepared by: (Name & Phone No.)  
DWD/Sue Kinan 608-264-9826

Authorized Signature/Telephone No. 266-9427

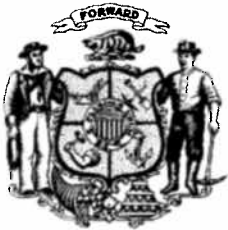


Date

6/23/08



# WISCONSIN STATE LEGISLATURE





State of Wisconsin  
Department of Workforce Development  
Division of Workforce Solutions  
**EMERGENCY RULE**

*email  
in JCRACK  
folder  
from  
Elaine Bridges*

**Child Care Enrollment Underutilization**

**DWD 56**

The Wisconsin Department of Workforce Development orders the amendment of ss. DWD 56.04 (1) (a) 1., 56.04 (2) (a) 1. b., and 56.04 (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 child care subsidy budget is expected to have a substantial deficit by the end of state fiscal year 2006-07. While many factors will have an impact on the program's final fiscal balance, current spending patterns at current rates suggest that the program will exceed its 06-07 budget authorization by approximately \$46 million. 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 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.

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 \$1000 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 \$5000 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.** 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 \$20,387,000 in annual savings in federal block grant funds.

**Summary of related federal regulations.** NA

**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 does not affect small businesses as defined in s. 227.114 (1), Stats.

**Analysis used to determine effect on small businesses.** Section 227.114 (6m) (a), Stats., excludes licensed and certified child care providers from the definition of small business.

**Agency contact person.** Barbara Stiefvater, (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 each 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.

**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 \$1000 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.

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

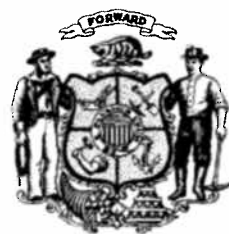
an overpayment of \$5000 or more, the agency may refuse to issue new child care authorizations to a provider for a period of time not to exceed 5 years.

2. Revoke existing child care authorizations to the provider.
3. Refuse to issue payments to the provider until the provider has corrected the violation.

**SECTION 4. EFFECTIVE DATE.** This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.



WISCONSIN STATE LEGISLATURE





State of Wisconsin  
Department of Workforce Development  
Division of Workforce Solutions  
**EMERGENCY RULE**

**CHILD CARE RATES**

**DWD 56.06 (1)**

The Wisconsin Department of Workforce Development renumbers and amends s. DWD 56.06 (1) (a) 1. and creates s. DWD 56.06 (1) (a) 1. b., relating to child care rates and affecting small businesses.

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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 child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06-07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007. This emergency rule will maintain the maximum rates at 2006 levels.

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

**Statutory authority:** Sections 49.155 (6) and 227.11, Stats.

**Statutes interpreted:** Section 49.155 (6), Stats.

**Explanation of agency authority.** Section 49.155 (6), Stats., provides that, subject to review and approval by the department, each county shall establish maximum reimbursement rates for child care services provided to eligible individuals by licensed and certified child care providers. Each county shall set the rate for licensed providers so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. The maximum reimbursement rate for Level I certified providers may not exceed 75% of the rate established for licensed providers, and the maximum reimbursement rate for Level II certified providers may not exceed 50% of the rate established for licensed providers.

**Summary of the emergency rule.** Under s. DWD 56.06, the Department or each county must survey all licensed providers each year to determine the child care prices they charge the general community. The county or tribal agency annually sets maximum reimbursement rates based on the survey, unless the Department sets multi-county rates. The maximum rate for licensed providers is set so that at least 75% of the number of places for children within the licensed capacity of all child care providers in the county can be purchased at or below that maximum rate. Separate maximum rates are set for licensed group child care centers, licensed family child care centers, Level I certified family child care providers, and Level II certified family child care providers. Separate maximum rates are also set for children in various age groupings. The current rates are multi-county rates set by the Department in 2006.

In past years, the adjusted rates based on the annual survey have generally become effective January 1 of the new year. This emergency rule provides that the rates will not be adjusted for the year beginning January 1, 2007, and the rates effective on December 31, 2006, will remain in effect.

**Summary of related federal regulations.** Under 45 CFR 98.43, a state must certify that state payment rates for the provision of child care services funded under the Child Care and Development Fund are sufficient to ensure equal access to child care services for eligible families as families not eligible for child care assistance. At a minimum, the state must show that it considered 3 key elements in determining that its child care program provides equal access for eligible families: 1) Adequate payment rates based on a local market rate survey conducted no earlier than two years prior to the effective date of the current plan; 2) Choice of the full range of categories and types of providers; and 3) Affordable copayments.

In the commentary issued with the regulation, the Administration for Children and Families notes that rates established at least at the 75<sup>th</sup> percentile of the market rate would be regarded as providing equal access. Under the former title IV-A child care program, states were required to set rates at this level. (63 FR 39936, 39959, July 24, 1998)

**Comparison with rules in adjacent states.** A 2006 study by the National Women's Law Center, entitled *State Child Care Assistance Policies 2006: Gaps Remain, With New Challenges Ahead* compared state 2006 reimbursement rates to market rates for child care centers. The study found that Wisconsin was one of 9 states that had reimbursement rates at or above the 75<sup>th</sup> percentile of the market rate in 2006 and one of 22 states that had reimbursement rates at or above 75<sup>th</sup> percentile of the market rate in 2001. The Department does not have comparative information on 2007 rates.

Michigan. Reimbursement rates have not been increased since 1997. Rates in 2006 were at the 75<sup>th</sup> percentile of 1996 market rates. In Wayne County, the percentage difference between the state rate and the 75<sup>th</sup> percentile of the market rate was -42% for center care of a 4-year-old and -46% for care of a one-year-old.

Minnesota. In Hennepin County, the percentage difference between the state 2006 rate and the 75<sup>th</sup> percentile of the market rate was -10% for center care of a 4-year-old and -12% for care of a one-year-old.

Illinois. In Cook County, the percentage difference between the state 2006 rate and the 75<sup>th</sup> percentile of the market rate was -33% for center care of a 4-year-old and -25% for care of a one-year-old.

Iowa. The percentage difference between the statewide 2006 rate and the 75<sup>th</sup> percentile of the market rate was -4% for center care of a 4-year-old and -6% for care of a one-year-old.

The National Women's Law Center study *State Child Care Assistance Policies 2006: Gaps Remain, With New Challenges Ahead* is available at <http://www.nwlc.org/pdf/StateChildCareAssistancePoliciesReport2006web.pdf>.

**Summary of factual data and analytical methodologies.** The child care subsidy budget estimates that the child care subsidy program will have a tight budget by the end of fiscal year 06-07. This is due to flat federal funding, rising caseload, and increased provider costs. To begin to address the tight budget, the Department will not increase the child care subsidy maximum rates for 2007.

**Effect of rule on small businesses.** The emergency rule will affect small businesses but will not have a significant economic impact on a substantial number of small businesses.

**Analysis used to determine effect on small businesses.** Pursuant to direction by the Small Business Regulatory Review Board, the Department adopted the following definitions to use in making the determination of whether a rule will have a significant economic impact on a substantial number of small businesses:

"Significant economic impact" means the rule increases overall expenses of small businesses by more than 5% per year or the rule decreases overall revenue of small businesses by more than 5% per year.

"Substantial number" means more than 25% of the businesses affected by the scope of the rule.

The total child care subsidy annual budget is \$300 million. The Department estimates that \$270 million is annually paid to 7,000 child care providers that are small businesses. Not increasing the child care subsidy maximum rates is estimated to decrease annual revenue to all child care providers by \$8.4 million and decrease revenue to child care providers that are small businesses by \$7.56 million. On average, the annual child care funds to a child care provider that is a small business is \$38,571. The average decreased revenue from the child care subsidy program to a provider due to not increasing the child care subsidy maximum rates is \$1,080 or 2.8%. The percentage decrease in overall revenue to a provider will be significantly less than 2.8% due to revenue from private pay families and copayments from families receiving child care assistance.

**SECTION 1. DWD 56.06 (1) (a) 1. is renumbered s. DWD 56.06 (1) (a) 1. a. and, as renumbered, is amended to read:**

**DWD 56.06 Establishing county and tribal agency child care rates. (1)**

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

**SECTION 2. DWD 56.06 (1) (a) 1. b. is created to read:**

b. Notwithstanding subd. 1. a., the department shall set child care rates for the year beginning January 1, 2007, to be the same as the rates in effect on December 31, 2006.

**SECTION 3. EFFECTIVE DATE.** This rule shall take effect upon publication in the official state newspaper as provided in s. 227.24 (1) (c), Stats.

LRB or Bill No./Adm. Rule No.

DWD 56

Amendment No. if Applicable

- ORIGINAL       UPDATED  
 CORRECTED       SUPPLEMENTAL

FISCAL ESTIMATE  
DOA-2048 N(R03/97)

**Subject**  
Administration of child care funds

**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 (md)

**Assumptions Used in Arriving at Fiscal Estimate**

By not increasing the maximum County rates reimbursed to child care providers for the Wisconsin Shares child care subsidy program, the Department will avoid the increased cost of using the rates based on the the 2006 provider survey. By comparing the current rates used for reimbursement versus the rates that would otherwise go into effect and then annualizing the results, it is estimated that the Department will realize about \$8,400,000 in savings in direct child care subsidies on a full-year annualized basis. These savings are avoided costs, but current-year appropriations are still anticipated to be fully expended.

**Long-Range Fiscal Implications**

None

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

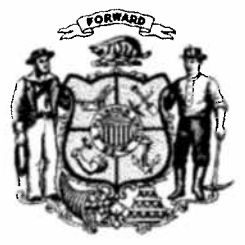
Authorized Signature/Telephone No.

Date





# WISCONSIN STATE LEGISLATURE



Jim Doyle  
Governor

Roberta Gassman  
Secretary

RECEIVED

DEC 19 2008

BY:



State of Wisconsin

Department of Workforce Development

OFFICE OF THE SECRETARY  
201 East Washington Avenue  
P.O. Box 7946  
Madison, WI 53707-7946  
Telephone: (608) 266-9427  
Fax: (608) 266-1784  
<http://www.dwd.wisconsin.gov/>  
e-mail: [bernsho@dwd.state.wi.us](mailto:bernsho@dwd.state.wi.us)

December 18, 2008

Senator Robert Jauch  
Co-Chair, Joint Committee for the  
Review of Administrative Rules  
Room 118 South  
State Capitol

Representative Daniel LeMahieu  
Co-Chair, Joint Committee for the  
Review of Administrative Rules  
Room 17 North  
State Capitol

Re: Emergency rule relating to the adjustment of thresholds for the application  
of prevailing wage rates under sec. DWD 290.155(1), Wis. Adm. Code

Dear Senator Jauch and Representative LeMahieu:

This emergency rule is scheduled for publication on December 29, 2008, with an  
effective date of January 1, 2009. The enclosed rule documents contain a full analysis  
and explanation of the rule and the finding of emergency

Sincerely,

A handwritten signature in black ink that reads "Howard Bernstein". The signature is written in a cursive style with a large, looping initial 'H'.

Howard Bernstein  
Legal Counsel

cc: Hector Colon



**State of Wisconsin  
Department of Workforce Development  
Equal Rights Division**

**EMERGENCY RULE**

**Adjustment of Thresholds for Application of Prevailing Wage Rates**

**DWD 290.155 (1)**

The Wisconsin Department of Workforce Development amends s. DWD 290.155 (1), relating to the adjustment of thresholds for application of prevailing wage rates.

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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:

Adjusting the thresholds for application of the prevailing wage rate requirements by emergency rule ensures that the adjustments are effective on a date certain that is prior to the time of year that project requests are generally submitted to the Department and applicability of the prevailing wage law is determined. The adjustment avoids imposing an additional administrative burden on local governments and state agencies caused by an effective decrease of the thresholds due solely to inflation in the construction industry. If these new thresholds are not put into effect by emergency rule, the old thresholds will remain effective for approximately six to seven months, until the conclusion of the permanent rule-making process. The thresholds are based on national construction cost statistics and are unlikely to be changed by the permanent rule-making process.

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

**Statutory authority:** Sections 66.0903 (5), 103.49 (3g), and 227.11, Stats.

**Statutes interpreted:** Sections 66.0903 (5), and 103.49 (3g), Stats.

**Explanation of agency authority.** The prevailing wage laws require that when a state agency or local governmental unit contracts for the erection, construction, remodeling, repairing, or demolition of a public works project it must obtain a prevailing wage rate determination from the Department of Workforce Development and require that the contractors and subcontractors on the project pay their employees in accordance

with those wage rates. Sections 66.0903 (5) and 103.49 (3g), Stats., set initial estimated project cost thresholds for application of the prevailing wage rate requirements and direct the Department to adjust the thresholds each year in proportion to any change in construction costs since the thresholds were last determined. Pursuant to s. DWD 290.15, the Department adjusts the thresholds based on changes in the construction cost index published in the *Engineering News-Record*, a national construction trade publication.

**Summary of the emergency rule.** Section DWD 290.155 (1) currently provides that the prevailing wage rate requirements do not apply to any single-trade public works project for which the estimated cost of completion is below \$45,000 and do not apply to any multi-trade public works project for which the estimated cost of completion is below \$221,000. This rule adjusts the thresholds from \$45,000 to \$48,000 for a single-trade project and from \$221,000 to \$234,000 for a multi-trade project based on a 5.71% increase in the construction cost index between December 2007 and December 2008.

**Summary of related federal law.** The federal prevailing wage law applies to a federal public works project for which the contract is greater than \$2,000. This threshold is in statute and is rarely adjusted.

**Comparison with laws in adjacent states.** Minnesota has a statutory threshold of \$2,500 for a single-trade project and \$25,000 for a multi-trade project. Illinois does not have a threshold in its prevailing wage law. The law covers public works projects and defines public works projects as projects financed under various other specified laws. Michigan does not have a threshold in its prevailing wage law. The law covers projects that must be bid and relies on other agencies to determine the thresholds for what projects must be bid. Iowa does not have a prevailing wage law.

**Summary of factual data and analytical methodologies.** The thresholds are increased based on the national inflation rate in the construction industry. The Department uses the construction cost index in the *Engineering News-Record*, a national construction trade publication, to determine the inflation rate.

**Anticipated costs incurred by the private sector.** The rule does not have a significant fiscal effect on the private sector.

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

**Analysis used to determine effect on small business.** Many construction companies are small businesses. The adjustment of the thresholds for application of the prevailing wage and payment and performance bond requirements prevent these provisions from affecting more and more public works projects over time due solely to the effects of inflation.

**Rule Text**

**SECTION 1. DWD 290.155 (1) is amended to read:**

**DWD 290.155 (1)** This chapter does not apply to any single-trade public works project for which the estimated cost of completion is below ~~\$45,000~~ \$48,000 and any multi-trade public works project for which the estimated cost of completion is below ~~\$221,000~~ \$234,000.

**SECTION 2. EFFECTIVE DATE.** This rule shall take effect on January 1, 2009, as provided in s. 227.24(1)(d), Stats.